

Chapter 19

E-COMMERCE DISCUSSIONS

Electronic commerce eliminates the concept of national borders in transactions between enterprises and consumers. It will increase the number of cross-border transactions that take place, and will therefore be a force in the creation of increasingly borderless markets. The emergence of cross-border transactions on the Internet gives developed and developing countries (both companies and individuals) the opportunity to participate in global markets, and can be a tool for overcoming the disparities between countries (or individuals) in access to information.

In the late 1990s, countries began to formulate plans to promote electronic commercial transactions and the computerization of government procedures to take advantage of the benefits expected from e-commerce. But the emergence of a global “cybermarket” supported by the rapid development of information technology raises questions and doubts about the suitability of the legal systems that countries have been developing since the nineteenth century. We must ask ourselves whether legal systems based on the assumption of one market per country are effective any more in real life transactions. There is a growing awareness that a

global legal framework, based on cooperation and coordination between countries, is necessary for the sound development of e-commerce.

Many bilateral statements on this subject have been issued, including the US-Japan Bilateral Statement on E-Commerce of 1998. The WTO, OECD, and other international institutions have also begun to study aspects of E-Commerce.

International cooperation and coordination in the creation of systems for e-commerce are preferable, since this will promote the development of e-commerce. However, serious issues are involved. The expansion of markets beyond the spatial confines of the country raises questions about infringement upon the legal jurisdiction of other countries, competition between different laws in different countries, and challenges to the history, culture, and values that underlie these different systems.

In this chapter we explore the current discussion of e-commerce at the WTO and other international institutions and the issues raised in the “MITI proposal”.

E-COMMERCE INITIATIVES AND THE WTO

DISCUSSIONS PRIOR TO THE THIRD WTO (SEATTLE) MINISTERIAL CONFERENCE

At the second WTO Ministerial Conference (the Geneva Ministerial Conference) in May 1998, ministers adopted a “Ministerial Declaration on Global Electronic Commerce” that paved the way for the formulation of a working plan for e-commerce. Four institutions initiated e-commerce studies: the Council for Trade in Goods, Council for Trade in Services, Council for TRIPS, and Committee on Trade and Development. Issues were also raised about the classification of digital content (software, musical and video content, etc.) and the application of customs duties on electronic transmissions.

MAIN POINTS OF DISCUSSION

Handling of Digital Content Under Current Agreements

E-commerce is bringing substantial changes to the distribution structures for goods and services. The change does not remain in electronic processing of contracts and settlement of accounts; digital content lends itself to on-line distribution, and as a result, a market for international distribution is growing.

In the context of trade, the question is how to discipline on-line cross-border transactions of digital content within the context of the WTO.

The United States asserts that digital content is a “virtual good” that should be treated the same way as any other good under the GATT disciplines. The EU, on the other hand, asserts that electronic commerce is a service activity and, from the standpoint of technical neutrality, should be disciplined only by the GATS. Digital content as well should be recognized as a form of service trade similar in nature to the programming content of broadcasting services.

Japan is wary of the EU position that electronic commerce should be governed entirely by the GATS because of the potential to apply to the rapidly developing e-commerce field the most-favoured-nation exemptions, and reservations of market access and national treatment obligations claimed by the EU for 155 service sectors (particularly cinema, broadcasting), primarily for cultural reasons. We have explained repeatedly to the EU and the US the essential need to assure basic WTO principles such as most-favoured-nation and national treatment for the distribution of digital content.

Taxation of Electronic Transmissions

Digital content that used to be delivered in physical form on floppy disks and CD-ROMs is increasingly being delivered on-line across national borders. The main problem in attempting to tax these cross-border transactions is that it is almost impossible for customs agencies to monitor them. If one attempts to tax the means of electronic transmission (for example, the transmission log) as a substitute, one runs the risk of imposing taxes far in excess of the value of the content because it is impossible to value the digital content itself separately from the means of transmission.

In addition to these difficulties in collecting customs duties on electronic transmissions, there is also the need to ensure a free trading environment to foster the growth of e-commerce. This has led many to argue for the establishment of an international agreement not to impose custom duties on electronic transmissions.

At the Second WTO Ministerial Conference of 1998, Members agreed to a “Ministerial Declaration on Global Electronic Commerce” that promised to maintain the current practice of not imposing custom duties on electronic transmissions until the next Ministerial Conference (1999). However, when physical goods are moved, ordinary tariffs apply.

The impasse at the Third Seattle Ministerial Conference in 1999, however, means that no agreement on handling for this area has been reached at present.

ELECTRONIC COMMERCE WORK PROGRAMME

The work programme was created in October 1998 in response to the declaration from the Second WTO Ministerial Conference the previous May. Subsidiary bodies (the Council for Trade in Goods, Council for Trade in Services, Council for TRIPS, and Committee on Trade and Development) were asked to report their findings to the General Council by 30 July 1999. The Council for Trade in Services issued an interim report in March 1999 and a final report in July. The Council for Trade in Goods, Council for TRIPS, and Committee on Trade and Development also issued reports. Below is an outline of the issues studied by each of these bodies.

Council for Trade in Goods

Discussions focused on the relationship between e-commerce and GATT disciplines, the relationship between e-commerce and import licensing procedures, rules of origin, customs duties, and classification issues.

Council for Trade in Services

The Council for Trade in Services recognized that e-commerce fell within the scope of the GATS disciplines, but also found the need for further studies. On the question of which of the four modes of the GATS to apply, the Council acknowledged that any of them could be applied, but was unable to reach a conclusion on how to distinguish between Modes 1 and 2 and how to classify services. The Council also discussed privacy protection, competition (issues raised by monopolistic suppliers), customs duties, classification issues, and domestic regulation.

Council for TRIPS

The TRIPS Council discussed copyrights and related rights, protection and enforcement of trademarks, and access to technology. On the question of legal en-

forcement, the Council found that further studies of jurisdiction rights and other areas would be required, as would coordination with WIPO.

Committee on Trade and Development

The Committee on Trade and Development discussed the impact of e-commerce on developing country trade and economies, methods to maximize the benefits from e-commerce, transfers of e-commerce technologies to developing countries, improvement of access to telecommunications infrastructure, and the role of movement of natural persons.

DISCUSSIONS SINCE THE THIRD WTO MINISTERIAL CONFERENCE

The E-Commerce Work Programme has for all purposes been in suspension since the collapse of the Third WTO Ministerial Conference, but there have been high demands for liberalization and rule formulation for rapidly developing e-commerce-related sectors, and a forum for expert discussions has been sought.

Japan has argued for the establishment of a horizontal taskforce that would include experts and that would work under the supervision of the General Council to develop an effective and consistent understanding of the broad impact on trade of this new method of transaction. Based on the task force discussion, MITI (now known as METI) published the following proposal.

“Toward eQuality: Global E-Commerce Presents Digital Opportunity to Close the Divide Between Developed and Developing Countries”

The Ministry of International Trade and Industry (now known as the “Ministry of Economy, Trade and Industry”) published its first e-commerce proposal in June 2000 and a second proposal in October. The purposes of these proposals

were to highlight the areas in the e-commerce environment for which further study is required and to promote discussion of these issues.

E-commerce is a powerful tool in the world economy of the future. It has the ability to alleviate the international gaps in information and to help achieve a global “eQuality”. The term “eQuality” implies a strong faith in the absolute necessity of “equality” and “quality of life” for people living in the information society. The ideas expressed in the “eQuality” proposal are based on the principles and concepts founded in the “Okinawa Charter on Global Information Society” issued by the Kyushu-Okinawa Summit in July 2000 and on the Basic Law on the Formation of an Advanced Information and Telecommunications Network Society (IT Basic Law) that took effect in January 2001.

The proposal attempts to achieve three balances.

The first is the balance between the interests of enterprises and the interests of consumers. We seek to ensure “eQuality” in the information society of all countries, and we must take care that corporate activities do not harm the interests of consumers. WTO members should take into consideration the viewpoints of both consumers and the industries when they formulate and implement policies.

The second is the balance between developed and developing countries. It is vital that we provide reliable, stable networks at a global level so that both developed and developing countries have the opportunity to expand their e-commerce opportunities. As we make the transition to an information-centric society, liberalization and facilitation alone will not be enough. We must create consistent environments while accommodating different social and cultural circumstances, and we must build capacity in developing countries so that both developed and developing countries enjoy “eQuality”.

The third is the balance between liberalization and rules. Liberalization in the network economy invigorates economies by enabling corporate activities to expand internationally. On the other hand, there are justified fears that the information economy may give rise to an international oligopoly of global companies. Enjoying the benefits of liberalization is predicated upon fair competition in liberalized markets. Rule-making is also vital to the building of a vigorous, active cyberspace, because people must be able to participate in market environments with full confidence that they will work. There must therefore be a balance in the legal

environment between promotion of the liberalization of e-commerce and the maintenance of necessary consumer protection and order.

Trade Liberalization of E-Commerce-related Sectors

The liberalization of a broad range of related sectors is absolutely necessary for the smooth development of e-commerce. Consideration must be given to which sectors are required when liberalizing the sectors providing infrastructure for e-commerce and the service sectors provided through e-commerce. Consideration must also be given to the concepts and principles underlying these basic sectors and their liberalization, since this relates to the future development of e-commerce.

Principles for Domestic Regulations

The development of e-commerce makes it easier for companies to participate in markets in a number of countries, but also underscores the issues involved with domestic regulation. The requirement to follow different regulations in different countries raises the cost of participation to companies.

It is desirable that domestic regulations in different countries be unified and minimized so as not to impair the development of e-commerce. Study must therefore be given to the regulatory principles that are desired.

In doing this, we must apply Article VI of the GATS to establish the principles that govern domestic regulation (transparency, fairness, etc.). We must also minimize the trade limiting effect of unnecessary domestic regulation that impairs e-commerce (obligations to establish branch offices, obligations to submit paper documents, and other measures), although this must be done in a way that balances consumer protection concerns. We must also actively incorporate the standards established by other international institutions to improve predictability for e-commerce related companies and consumers.

Creating a Pro-Competitive Environment in E-commerce Related Markets

Concerns have been raised that the network economy lends itself to the formation and continuity of monopolies due to network effects, to the lock-in effect, and to competition between heavily capitalized companies seeking monopolies. Once a monopoly is achieved, its long-term maintenance requires continual development and competition backed by large amounts of capital. This makes it easier for large companies to form monopolies.

Companies are forming vast alliances and partnerships as they seek greater economies of scale, and there are some concerns about global, horizontal integration and about the vertical integrations formed when telecommunications carriers acquire Internet service providers (ISP).

We must take the utmost care to eliminate the damages produced by these monopolies and set in place a business environment that promotes competition.

In doing this, consideration should be given to applying to software areas the same “essential facilities” legal doctrine that holds for railways, pipelines, and other hardware areas. It may also be possible to formulate guidelines on the relationship between monopolies and new entrants.

Consideration must be given to restricting intellectual property protections when excessive protection of intellectual property functions in an anti-competitive manner. Examples might include exclusive selection of participating companies in the process of formulating standards or excessive definition of the scope of standards. Similarly, study should be made of adjusting the term of rights to the high life cycles of technologies in this area, and to the potential for patenting business models.

Finally, further consideration is needed for consumer protection concerns, which are not necessarily included in WTO disciplines, and for preferred forms of competition policy.

Reference

Network effect: When a personal computer operating system, application software, or similar product attains a critical mass of users, it enjoys a dominant monopoly from the perspective of compatibility.

Lock-in effect: When the cost of switching to a different product is high (for example, a different operating system, which would require learning operations all over again), it is difficult for consumers to switch products.

Essential facility (EF) doctrine: A legal doctrine developed in the United States; one standard for the application of the general principles of competition law, as found, for example, in Section 1 (restricted transaction) and Section 2 (monopoly) of the Sherman Act. Traditionally, the essential facility doctrine has been applied to railways, pipelines, and other “hardware” facilities. The doctrine says that there are four factors that produce a responsibility to allow access to an essential facility: 1) dominance of the essential facility by a monopolist, 2) practical impossibility of competitors having their own essential facilities, 3) denial of use of the essential facility to competitors, and 4) ability to provide access to the essential facility.

Cooperation with Relevant International Organizations

It is important that WTO disciplines be consistent with other international rules formulated by other international institutions for areas such as consumer protection, privacy protection, security measures, and legal jurisdiction. Consideration must be given to coordination with these institutions, including WIPO, United Nations Commission on International Trade Law (UNCITRAL), the Hague Conference on Private International Law, the International Organization for Standardization (ISO), and the OECD.

Capacity Building of Developing Countries

The WTO and its Members should consider assistance to developing countries so that the benefits of e-commerce are spread equally to them. Specific forms of cooperation might include technology cooperation, infrastructure creation, sharing of information and experiences through close policy dialogues, and cooperation using regional frameworks like APEC.

Promotion of Private Sector Initiatives

Encouragement should be given for voluntary initiatives by the private sector such as GBDe (Global Business Dialogue on electronic commerce), and GIIC (Global Information Infrastructure Commission). Consideration must also be given to the role to be played by government in supplementing these initiatives.

Moratorium on Customs Duties on Electronic Transmissions

Japan proposes that tariffs not be applied to digital products, an area for which the handling is currently unclear, at least until the Fourth Ministerial Conference.

The full paper is available on the Ministry of Economy, Trade and Industry website at:

<http://www.meti.go.jp/english/information/data/cw001019e.html>

Many balanced opinions were received on the proposal from a large number of countries. The United States, which favours liberalization and minimal regulation, expressed concerns over the sections on competition principles. Europe was somewhat more flexible, but said its position had not changed: that e-commerce was a service and that it was sufficient to consider it as part of the service negotiations.

HORIZONTAL TASKFORCE

The WTO is considering the establishment of a horizontal taskforce on e-commerce to develop a broad understanding of the impact that it will have on WTO disciplines (the impact on trade in goods, services and intellectual property, etc.).

Japan advocates the establishment of a horizontal task force in which experts in this rapidly advancing area would participate. We see this as an appropriate venue for centralized discussion of the issues that will be raised by various aspects of e-commerce. We have explained repeatedly the examples of the cross-

cutting issues that would be considered in the horizontal task force, and that liberalization itself will be undertaken within the services negotiations framework.

The United States, Canada, and many other countries support the establishment of the working group, and during the APEC Brunei Ministerial and Summit Meetings held in November 2000, APEC members agreed to call on the WTO to establish an analytical horizontal taskforce. Industry groups in Japan, North America, and Europe have also expressed an interest in the task force.

Opposition to the task force comes from the EU, which faces sensitive issues regarding audio and visual products, and some developing countries, who argue that implementation issues should be resolved first. Others argue that substantive discussions could be held at a special meeting of the General Council without establishing a working group. A decision on the establishment of the task force has not yet been reached.

It was, however, decided by the General Council in July 2000 to restart the E-Commerce Work Programme. The report submitted to the Third Ministerial Conference will be updated to in time for the December General Council meeting, and the groups responsible for the working plan have been instructed to identify horizontal issues as part of this. Below is an outline of the issues being studied by different councils and committees.

Council for Trade in Goods

The Council for Trade in Goods is verifying that the 1999 report is correct and discussing market access, tariffs, standards for e-commerce, rules of origin, and classification issues. It has been announced that the Council on Goods has made early contributions in the area of classification of digital goods.

Council for Trade in Services

The Council for Trade in Services determined that the 1999 report accurately reflected the opinions of members even today, and avoided reopening the discussion on these issues. It will be discussing issues for which further discussion was found to be necessary, but claims that the December deadline is too soon. The main horizontal issue identified by the council is development. There is also a dif-

ference of opinion on whether customs duties, classification of electronically transmitted materials, competition and other areas identified by other councils should be included in horizontal issues.

Council for TRIPS

Among TRIPS-specific issues involved with electronic commerce are trademark issues, Internet domain name issues, anti-competitive use of intellectual property in digital environments, and how digital technology can be used to enforce intellectual property rights. Among the horizontal issues identified by the Council are legal jurisdiction, choice of law, electronic contracts, enforcement, and categorization of intellectual property products.

There is a difference of opinion in the Council on whether the handling of these issues should be left to a task force, but it was recognized that this was a decision for the General Council to make. Members agreed on the need to consider coordination with WIPO, which has enormous expertise in this area and has already begun studies.

Committee on Trade and Development

The Committee acknowledged that no further study of the issues had been undertaken since the submission of the 1999 report and identified the development aspects of e-commerce as having a horizontal nature.

Japan will continue to work in coordination with the United States and Canada in arguing for the establishment of a task force.

Reference: Examples of Cross-cutting Issues

Classification of digital goods. What are the disciplines to be applied to digital products that can be distributed both in the physical world and on-line (examples include software, videos, and programs; see above)? While they are essentially the same things, the GATT would be applied in the case of physical distribution while the GATS would be applied for on-line distribution, and the

question is how to make adjustments when treatment under one agreement is less advantageous than treatment under the other.

Technological neutrality. When goods and services can be provided in both the physical and the on-line worlds, what adjustments are required so that one is not treated disadvantageously to the other? For example, tariffs that would be applied to physical goods may not be applied on-line, or services may be impaired by domestic regulation that was not drafted with the on-line world in mind. It is important that WTO rules be reformulated to adapt to technological advances.

Consumer confidence. There may be cases in which regulations enacted for prudential reasons (to protect consumers) may serve as impediments to e-commerce. A horizontal discussion not limited by the good/services frameworks is needed to arrive at a balance.

Competition policy. The issue here is how to balance intellectual property protection and competition promotion when a monopoly based on intellectual property rights exists. This will require study of how to rework of the GATS competition disciplines and the TRIPs disciplines.

Trade and Development. Expertise in e-commerce technology and intellectual property rights is required for programs to overcome the digital divide and to build capacity in developing countries.

Other Issues. Legal jurisdiction, choice of law (common for goods, services and intellectual property rights); cooperation with relevant international institutions; responsibility of ISPs (Internet service providers) for illegal content.

INITIATIVES AND OTHER INTERNATIONAL INSTITUTIONS

THE G8 OKINAWA SUMMIT: “OKINAWA CHARTER ON GLOBAL INFORMATION SOCIETY”

The Okinawa Charter on Global Information Society contains comments from the heads of the G8 members on the merits and demerits of information-centric societies, and strongly supports the liberalization and development of this industry so that people throughout the world can enjoy the benefits of the information revolution.

The Constitution is also notable for acknowledging the need to formulate international rules and to heed the wishes of developing countries, consumers, and others who are not on the supply-side so that appropriate market environments and consumer protection are put in place. One of the things that sets information technology apart is that it provides a means by which developing countries, smaller businesses, and individuals—groups that traditionally have not had much voice—can communicate with global markets. As information-centric societies develop, it is essential that an environment be put in place that will allow all to enjoy the benefits of the information revolution regardless of where they are.

The G8 heads of state were unanimous in recognizing the need to provide care for developing countries to alleviate the international “digital divide” brought on by the development of information technology. They agreed to establish a working group on remedying the international digital divide (the “Dot Force”). The working group will include representatives of the G8 countries, a commensurate number of government officials from developing countries, and representatives of private organizations and international institutions. Its purpose is to provide flexible cooperation that will supplement initiatives taken by the private sector. The working group will report on its results to the Genoa Summit scheduled for 2001.

COMPOSITION OF THE DOT FORCE

The Dot Force will be comprised of one government representative from each country and one private representative, in addition to one European repre-

sentative and representatives from nine developing countries (China, India, Indonesia, Bolivia, Brazil, South Africa, Senegal, Tanzania, and Egypt).

Secretariat: A joint secretariat will be administered by the World Bank and the United Nations Development Programme (UNDP)

Participation of interested parties:

- Business groups: World Economic Forum (WEF), GBDe, GIIC.
- International institutions: World Bank, UNDP, Economic and Social Council (ECOSOC), International Telecommunications Union (ITU), UNESCO, United Nations Conference on Trade and Development (UNCTAD), OECD.
- Non-interested sectors (one from each G8 Country), interested regional parties (ad hoc observers).

Reference: Japanese Programme for Comprehensive Cooperation

Japan has prepared a programme for comprehensive assistance and cooperation in light of the discussions at the Kyushu-Okinawa Summit. This programme, which was announced on 14 July 2000, includes: 1) intellectual contributions to policy formulation and institution building in developing countries, 2) enhancement of information communications infrastructure, 3) human-resources development, and 4) active use of IT in development assistance. The program targets \$15 billion in ODA and non-ODA assistance over a five-year period.

Cooperation under the programme is global in scope, but there will be particular emphasis on cooperative relations with the Asia-Pacific region, with which Japan enjoys deep ties. The programme will also emphasize coordination with private sector activities and IT policy in developing countries.

In addition, cooperation will emphasize participation in the IT initiative of the World Bank and coordination with international institutions like the World Bank, UNDP, and ITU.

OECD

The OECD's Ottawa E-commerce Ministerial Meeting in October 1998 identified six areas for study: 1) privacy protection, 2) electronic authentication, 3) consumer protection, 4) taxation, 5) access to information infrastructure, and 6) economic and social impact. Detailed studies of these areas are now in progress.

- 1) *Privacy protection.* Discussions of personal information protection must provide balance and options between the need to protect individual privacy and the improved convenience to consumers from advances in business that enable one-to-one marketing based on personal information. The OECD has published an "Online Privacy Policy Statement" Generator. The OECD has also been active in security issues. It published its first Security Guidelines in 1992 and Encryption Guidelines in 1997. These documents are scheduled for review in five years, with the next versions anticipated in 2002. Discussions already gearing up for them.
- 2) *Electronic authentication.* The OECD has an Authentication Steering Group to discuss authentication issues. This group is studying conditions in different countries on the formal requirements for documentation and signatures for e-commerce. It plans to issue a report with recommendations for ministers based on the results of this study.
- 3) *Consumer protection.* The OECD drafted consumer protection guidelines in December 1999. Among the measures for effective consumer protection, the guidelines include development of elective systems to accept and refuse spam mail, clarification of consumer protection authentication processes, and provision of timely dispute settlement and relief measures that do not impose excessive costs on consumers.

- 4) *Taxation.* The 1998 Ottawa E-Commerce Ministerial Meeting adopted its “Framework Conditions for Taxation” that elucidate some general principles for e-commerce taxation, namely “neutrality, efficiency, certainty and simplicity, effectiveness, and flexibility”. The Committee of Fiscal Affairs established five Technical Advisory Groups (TAGs) to provide expert studies.

As an example of the issues involved, income taxes on the sale of digital products will differ depending upon whether the sale is classified as a transfer of a tangible (business income), licensing of intellectual property (royalties), or services (income from the provision of personal services). The TAG attempts to classify representative transactions.

Another concern involves the ability to conduct transactions without the provider having a physical presence in the country of consumption. This is unlike the transactions involved with the traditional movement of goods. Current direct taxation systems are based on the premise of a “permanent establishment” (PE), and under these regimes tax revenue from e-commerce may shift from the source of income to the location of the provider. The TAG is studying the PE concept, and submitted a report to the Taxation Committee at the end of January 2001, finding that: 1) web sites by themselves do not constitute PEs, 2) the ISP is not an agent PE, and 3) the physical location of the server generating income is a PE.

The TAG is also discussing specific collection methods for indirect taxes. In June 1999, the EU amended VAT Ordinance No. 6 to clarify that a VAT would be collected from outside businesses based on the consumer location taxation doctrine (that taxation takes place in the country in which the consumer resides) agreed upon at Ottawa. This move spurred much discussion among other countries. The amendment would simplify taxation on outside businesses by allowing them to pay the VAT according to the tax rate of a country that they select. Other countries, however, have criticized the move, since: 1) there will be a concentration of registrations in Luxembourg, which has a low VAT (the “Luxembourg problem”), 2) it will be difficult to enforce taxation on businesses that do not formally register, and 3) the obligation to collect taxes based upon the tax codes of the consumer country imposes substantial burdens on businesses.

- 5) *Access to information infrastructure.* The Telecommunications Services Working Group is studying the Internet and e-commerce infrastructures in different countries, the development of telecommunications technology, and national regulatory systems. It is also investigating “factor analysis of the portable telephone growth trend and pricing structures”, “forms of regulatory administrations”, “licensing policy after the fusion of broadcasting and telecommunications”, and “airwave auction systems”.
- 6) *Economic and social impact.* The Information Economy Working Group has recently published an “IT Outlook” that contains information on policies, trends, and statistics relevant to IT in OECD member countries based on its studies of the economic impact of e-commerce. A revised edition is scheduled to come out in 2002, and the working group is now studying the content of the survey for that edition. The specific areas of inquiry include the changes brought to corporate organizations by information technology and the impact on market structure competition.

The working group's “growth project” undertakes a general analysis of the impact of IT industries on economic growth to uncover the nature of the new economy and the direction it will take in the future. This study includes an analysis of the causal relationships between information and telecommunications technologies and economic growth in the 1990s and evaluations of national policies and programs.

The Paris Forum on E-Commerce was held in October 1999 with widespread participation from the government and private sectors. The forum included reports on progress since the Ottawa Ministerial Meeting and a reconfirmation of the role of the OECD as the leading forum for e-commerce.

Reference: Guidelines Formulated by the OECD

- OECD Privacy Guidelines (1980)
- OECD Information Security Guidelines (1992)

- OECD Encryption Policy Guidelines (1997)
- OECD Frameworks Conditions on Taxation (1998)
- OECD Consumer Protection Guidelines (1999)

WIPO

The “WIPO Digital Agenda” was completed in September 1999, setting forth the organization's guidelines for future activities in e-commerce areas. WIPO will be studying promotion of new copyright treaties, use of trademarks on the Internet, infringement of existing trademarks, and other issues. It is also discussing dispute settlement rules for questions of infringement between Internet domain names and trademarks, legal jurisdiction issues, choice of law, and ADR. (For details on WIPO’ discussions, see Chapter 12 “Intellectual Property Rights”.)

ISO/ITU

The International Organization for Standardization (ISO) has problems in the process by which it arrives at decisions on international standards because each member country receives one vote, which gives the EU a relatively large voice. The EU is also pursuing coordination with its own standardization organizations and is working aggressively to obtain international standards through the ISO.

The ISO Committee on Consumer Policy (COPOLCO) is studying alternative dispute resolution systems (ADR).

The ITU has formulated programs for advancing technological means, providing technology assistance to developing countries, and policies for international telecommunications. Its purpose is to facilitate public use of telecommunications.

In recent years, the ISO COPOLCO and the ITU have worked jointly to formulate standards for telecommunications in what are significant attempts to re-

flect the voice of consumers in the rapidly progressing telecommunications area and to encourage broad recognition of the importance of “international standardization” in this area.

UNCITRAL

The e-commerce model law produced by the E-Commerce Working Group was adopted in 1996. This model law describes the issues raised by the use of electronic means to negotiate and enter into a contract, based on the assumption of traditional contractual methods that use non-electronic means. It proposes rules that would recognize similar effect to paper records for electronic records and information on “commercial activities” using electronic information, and substitution of provision and receipt of records and information by electronic means for provision and receipt of traditional expressions of intent.

It is also studying methods for unifying electronic authentication and electronic signatures.

ICANN (INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS)

ICANN is a non-profit corporation established in October 1998 with the purpose of facilitating the development of the Internet, improving recognition of the Internet, and drafting joint public/private Internet policy on a global scale. It is responsible for assigning IP addresses and for coordinating domain names. The organization has dispute settlement rules for domain names. In the past, domain name disputes required several years to settle, but settlement under ICANN rules by ICANN-recognized institutions requires fewer than 45 days and less than \$1,500.

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

There is a need to clarify international jurisdiction rules and governing law rules for cross-border disputes arising from e-commerce. This conference met to consider a draft of a proposed “Treaty on Civil and Commercial Jurisdiction and Foreign Country Verdicts”. The basic content of the treaty is principles related to international civil litigation, but it is written with a view to applying rules governing contracts (in particular, consumer contracts) and illegal actions to the rapidly advancing e-commerce area.

APEC, ETC.

The E-Commerce Steering Group identifies good practices, evaluates e-commerce readiness, and conducts other benchmark formulation and testing. The statement issued by the APEC Ministerial and Summit Meeting in November 2000 reaffirms a moratorium on the application of customs duties on electronic transmissions until the next WTO Ministerial Conference and calls for the establishment of an ad hoc analytical working group to study the potential for applying WTO rules to the development of e-commerce.

MEASURES WITH THE POTENTIAL TO BECOME TRADE ISSUES

The EU Personal Data Protection Directive

The EU adopted a directive on the protection of personal data in October 1995 (Directive 95/46/EU) that imposed a deadline of 25 October 1998 for domestic legislative compliance in member countries. (As of this writing, six countries had brought their domestic legislation into line with the directive: the UK, Italy, Sweden, Greece, Portugal, Belgium, and Finland.) The directive defines the extent to which personal data can be handled in the region, provides sanctions

against violators and relief for victims, and restricts the transfer of personal data to third countries that do not provide “adequate” levels of protection.

The advance of data communications technology has made privacy an increasingly important issue, but the directive in question does not provide a clear and specific statement of how the regulations on the transfer of personal data are to be administered. This raises the possibility that regulators could, at a whim, permit or restrict transfers to specific countries, which is in violation of the Article II of the GATS, which requires “immediate and unconditional” MFN treatment. The administration of the directive could also serve as impairment to electronic commerce and will need to be monitored from this perspective as well. Japan raised this issue with the EU during deregulation talks. In December of last year, the EU formulated a draft of regulations on personal data protection to better harmonize its measures. Japan should continue to follow the developments.

Allocation of Telephone Line Costs in Internet Usage

In conventional international telecommunications services (international telephone calls and leased lines), the cost of the network linking two countries is generally shared equally by the carriers of the two countries. However, with the Internet, non-US carriers are in point of fact bearing the entire cost of the international lines used. This in turn serves as an impediment to any reduction in the cost of Internet access in countries other than the United States.

The APEC Singapore Declaration of 1998 establishes an ICAIS (International Charging Arrangements for Internet Services) taskforce to analyze the status of ICAIS within APEC, to analyze economic models, to study the potential for introduction of high-frequency Internet that takes advantage of technological advances, to develop forecasts based on these results, and to study the ICAIS regulatory and cost models required for the building of an APII (Asia-Pacific Information Infrastructure).

The Fourth APEC Telecommunications and Information Industry Ministers Meeting, held in Cancun in May 2000, added the wording “equitable sharing” of costs to the ICAIS report at the behest of the Asian countries, but then amended this to the compromise wording “cost sharing or other mutually beneficial arrangements” because of strong opposition from the United States. Japan’s position

is that: 1) this is an issue for private- sector negotiation and not something in which government should interfere, and 2) there may, however, be a role for government to play in ensuring fair competition if a dominant business is involved. The government must therefore monitor developments. The current practice is for non-US carriers using international lines for Internet connections to bear the full cost of these lines. This inhibits fair competition and can hardly be termed reasonable. Japan expects that appropriate remedies will be found.