

**Recommendations  
of the  
EU-Japan Business Round Table  
to the Leaders of the European Union and Japan**

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**Working Party A  
Trade Relations, Investment and Regulatory Cooperation**

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## List of Abbreviations

Abbreviation	Meaning
AEOs	Authorised Economic Operators
APEC	Asia-Pacific Economic Cooperation
ATP	Adaptation to Technical Progress
BPR	Biocidal Products Regulation
CAA	Consumer Affairs Agency
CBCR	Country by Country reporting
CCCTB	Common Consolidated Corporate Tax Base
CE	Conformité Européenne (European Conformity)
CLP	Classification, labelling and packaging
CMR	Carcinogenic mutagenic or reprotoxic
CoRAP	Community Rolling Action Plan
DDA	Doha Development Agenda
DC	Direct Current
ECHA	European Chemical Agency
ELV	End of Life Vehicle
EN	Européen de Normalisation de Normalisation (European Standards)
EP	European Parliament
EPA	Economic Partnership Agreement
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FSA	Financial Services Agency
G8	Group of Eight
G20	Group of Twenty
GATS	General Agreement of Trade in Services
GCP	Good Clinical Practise
GDP	Gross Domestic Product
GHS	The Globally Harmonized System of Classification and Labelling of Chemicals
GoJ	Government of Japan
GPA	The Agreement on Government Procurement
GPS	Gross Product Strategy
HSE	Health Safety and Environment
ICTs	intra-corporate transferees
IEC	International Electrotechnical Commission
IPM	Interface Public Members
ISO	International Organisation for Standardisation
JAS	Japan Agricultural Standard
JELMA	Japan Electric Lamp Manufacturers Association
JET	Japan Electrical Safety & Environment Technology Laboratories
JETRO	Japan External Trade Organisation

JIS	Japan Industrial Standard
JR	Japan Railways
KPIs	Key Performance Indicators
LED	Light-Emitting Diode
LoA	Letter or Access
MAFF	Ministry of Agriculture, Forestry and Fisheries
METI	Ministry of Economy, Trade and Industry
NOL	Net Operation Loss
OECD	Organisation for Economic Co-operation and Development
OR	Only Representative
PMDA	Pharmaceuticals and Medical Devices Agency
PPPR	Plant Protection Products regulation
PSE	Electrical Appliance and Material Safety Law
QMS	Quality Management System
R&D	Research & Development
REACH	Registration, Evaluation, Authorization and Restriction of Chemicals
RoHS	Restriction of Hazardous Substances
RTD	Research and Technology Development
SDR	Special Drawing Rights
SDS	Safety Data Sheet
SIEF	Substance Information Exchange Forum
SMEs	Small and Medium size Enterprises
SVHC	Substance of Very High Concern
TPP	Trans-Pacific Strategic Economic Partnership Agreement
TTIP	Transatlantic Trade and Investment Partnership
UNECE	United Nations European Commission for Europe
VAT	Value Added Tax
VICH	International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products
WCO	World Customs Organisation
WHO	World Health Organization
WTO	World Trade Organization
WP	Working Party

## Introduction

Japan is the EU's seventh largest trading partner and the EU ranks as Japan's third largest trading partner. While already significant, this trade relationship has considerable upwards potential and the benefits of the EU-Japan FTA/EPA, currently under negotiation, will stretch beyond the many European and Japanese companies already operating in each other's home markets to all those, attracted to the new opportunities it creates. Working Party A stresses that any agreement must address the specific concerns of European and Japanese businesses reflected in this and previous reports. With so much at stake, we are urging the authorities on both sides to ensure that the necessary progress is made. Many reforms are required to secure a fair and competitive environment for business and have been identified from the extensive first-hand operational experience of Working Party A members in the Japanese and European markets. This report sets out concrete recommendations that address the following key issues:

- Creating a common regulatory environment, mutual recognition of regulations, standards and market authorisations to the extent possible and adoption of international standards
- Elimination of both tariff and non-tariff measures as well as unnecessary bureaucracy
- Ensuring fair competition and equal treatment of all companies, domestic & foreign
- Ensuring fairer and more open competition in services, and procurement markets
- Improving conditions for foreign direct investment. And finally,
- Further enhancing incentives for growth of SMEs and for investment in R&D

*Working Party A members reiterate that the EU-Japan FTA/EPA bilateral agreement must be balanced, comprehensive and ambitious in order to dismantle these barriers holding back EU-Japan trade and investment and significantly promote growth both economies.*

To highlight priority issues in the text that follows, one asterisk (\*) indicates "priority" recommendations and, two asterisks (\*\*) indicate "top priority" Recommendations. (e.g. WPA / # 01\*\* / EJ to EJ)

## Recommendations from both European and Japanese industries

### **WP-A / # 01\*\* / EJ to EJ Strengthening the EU-Japan Economic Relationship**

The BRT welcomes and supports the Authorities' determination to work for agreement in principle on a comprehensive and ambitious EU-Japan FTA/EPA during 2015. The BRT restates its longstanding conviction that an EU-Japan FTA/EPA will boost trade and investment, promote job creation and accelerate growth in both economies, and that it will also help create new opportunities for global economic growth. The BRT reiterates its call for the EU and Japanese Authorities to step up their efforts to tackle and resolve the substance of outstanding issues and to conclude a comprehensive, ambitious, high-level and mutually beneficial FTA/EPA as soon as possible, and reaffirms its commitment to making efforts to achieve this objective, such as making industry expertise available.

The BRT believes that an aim of a speedy conclusion must come together with a high level of ambition. Should a sufficiently high level of ambition seem difficult to achieve on the basis of the technical negotiations, the BRT urges, for the sake of our economies, political leaders at the highest level to intervene to resolve the deadlocks and bring the negotiations to a timely and ambitious conclusion.

#### < Background >

*As major advanced economies and major global traders and investors, the EU and Japan can do more to unlock the enormous growth potential which their bilateral economic relations can offer. They are now working on enhancing bilateral trade, investment and cooperation and building a closer relationship. As both strive to overcome global financial instability and economic uncertainties, it is crucial that they join forces in tackling common challenges in order to attain a long-term, sound and stronger growth. The EU-Japan relationship should not be left behind*

### **WP-A / # 02\*\* / EJ to EJ Call for effective and quick implementation of WTO 'Bali Package' and work on a future WTO work program**

The agreement on Trade Facilitation signed in November 2014 can serve as a boost to global trade by reducing costs of trade by 10-15%. Its objectives are to speed up customs procedures, make trade easier, faster and cheaper, provide clarity, efficiency and transparency, reduce bureaucracy and corruption, and use technological advances. The BRT calls upon the authorities of the EU and Japan, together with other WTO members to quickly implement the Trade Facilitation Agreement.

The BRT strongly supports the progress in these issues, and requests the authorities of the EU and Japan to further make efforts to vitalize and earn momentum in order to move the DDA negotiations forward, as well as to facilitate timely conclusion of plurilateral agreements such as expansion of the Information Technology Agreement (ITA) and Trade in Services Agreement (TiSA).

Additionally, the BRT suggests that the authorities of the EU and Japan should, together with other WTO members, explore further topics that are essential for the smooth functioning of global value chains.

Furthermore, the BRT requests the authorities of the EU and Japan to exert their utmost efforts to realise global free trade in goods and services under the auspices of the WTO, including environmental goods, so long as it does not discriminate unfairly between products and sectors.

However, the tariff liberalisation should not be limited to finished goods but include goods over the whole value chain to have a real impact and to take into account the globalisation of the value chains.

#### < Recent Progress >

The BRT welcomes the adoption of the Protocol of Amendment to insert the Agreement on Trade Facilitation (TFA) into the WTO Agreement (Protocol amending the WTO Agreement) at the Special Session of the General Council of the World Trade Organization (WTO) held in Geneva in November 2014. The BRT welcomes the advancement in the DDA negotiation.

The informal WTO Ministerial gathering held in Davos on 24 January 2015 was furthermore a good opportunity for WTO members to discuss the future work programme on the remaining issues of the DDA. A number of WTO members expressed the following views:

- it is important to steadily and gradually operationalise the agreed items, based on the MC9 outcome;
- for the remaining DDA items, the discussion of a work program to address such items should commence as soon as possible;
- and the WTO must not refrain from discussing potentially contentious issues such as agriculture and market access for non-agricultural goods and services.

The BRT hopes the negotiation on other agenda items such as non-agricultural market access (NAMA), agriculture, non-tariff barriers (NTBs) and export subsidies will make progress now that the TFA has been passed.

#### < Background >

*The BRT is a strong supporter of the multilateral trading system, whose core functions are trade liberalisation, rule-making and dispute settlement. However, to liberalize multilateral trade, the initial high-level ambition of the Doha Round, launched in 2001, has not been maintained, resulting in the current deadlock of negotiations which continue due to the lack of political will and the inability to bridge the gap in the market access commitments between OECD and emerging country members.*

*Especially given the great and increasing uncertainty in the world economy, the WTO must demonstrate its ability to deliver results for the business community. As the only international organisation creating rules and setting standards on trade at the multilateral level, the WTO must remain a leader in this area and take more and*

*stronger action. The existing legal framework provides an excellent basis for such action. However, it needs to be updated in order to respond to a changing global economic landscape.*

*WTO members made partial progress in the DDA at the 9<sup>th</sup> WTO Ministerial Conference in Bali in December 2013. The so-called “Bali Package” that was agreed consists of three main components: (1) a trade facilitation agreement; (2) an agreement on the agriculture sector; and (3) agreements on development (a package for least developed countries and flexibilities for public food stockholding programmes).*

## **WP-A / # 03\*\* / EJ to EJ Applying international standards and enhancing regulatory cooperation**

### 1. General recommendations

The BRT strongly supports the joint development and application of internationally harmonised technical requirements and procedures for the testing and approval of products that are traded internationally.

The BRT recommends the authorities of the EU and Japan to enhance their regulatory cooperation. The aim is to eliminate barriers to trade and investment in order to promote business and to disseminate the experience of the EU and Japan to the rest of the world.

To this end, the BRT encourages the authorities of the EU and Japan to work together in the relevant fora to develop international product standards and certification procedures. The BRT recommends that the authorities of the EU and Japan should apply such standards in as many sectors as possible.

Where international standards have not yet been developed, the BRT urges the authorities of the EU and Japan, when possible, and appropriate, to accept the mutual approval of the import, sale or use of products that have been approved on the basis of functionally equivalent requirements.

Taking into account the benefit of common regulatory environment, the BRT recommends that the EU-Japan FTA/EPA should include a framework to promote regulatory cooperation and to ensure that the authorities of the EU and Japan not take unnecessary measures which act as an impediment to trade and investment.

The BRT recommends that the policy-makers of the EU and Japan should increase their understanding of existing and upcoming regulations of the other side. Where a harmonised regulatory framework between the EU and Japan has not yet been developed, the regulatory authorities of the EU and Japan should review their domestic technical regulations and conformity assessment procedures at regular intervals to determine the scope for further regulatory harmonisation. The outcome

of these reviews, including scientific and technical evidence used, shall be exchanged between the regulatory authorities and provided to industry upon request.

The BRT recommends that the regulators of the EU and Japan should study the possible impact of new regulatory developments on domestic and foreign business to avoid taking initiatives that might unwittingly create barriers to trade and investment. They should exchange annual legislative work programmes at the earliest stage to prevent regulatory divergence and the creation of new trade barriers. In addition, they should agree to an early warning system for draft legislation to facilitate an effective bilateral dialogue.

The policy-makers of the EU and Japan should develop a joint strategy to promote better regulation by learning from each other's experience and adopting a common system of good governance. Throughout the process, the two authorities should have close dialogue with businesses.

The BRT calls on the Leaders of the EU-Japan Summit to ensure that the FTA/EPA provides a solid and comprehensive framework for regulatory cooperation to address the sector-specific concerns of the business community. In addition, the BRT welcomes the adoption of a Joint Document for Regulatory Cooperation at the EU-Japan Industrial Policy Dialogue between METI and DG GROW on 17 March 2015. As a long-standing advocate of regulatory cooperation, and recognising that this is a key issue for the future, the BRT hopes that this joint initiative will reinforce and complement the upcoming FTA/EPA and set the frame for a solid, forward-looking and long-lasting regulatory cooperation. The BRT is willing to support the EU and Japanese Authorities on regulatory cooperation matters.

#### *<Background>*

*The BRT believes that regulatory cooperation will be a key to the economic prosperity of the two economies. Once an FTA/EPA is concluded, it will be important not only to ensure that new regulations do not nullify or impair the market access benefits accruing to either party under the agreement or create new barriers to bilateral trade, but also to expand and strengthen the relations between the two economies so that the benefits of their cooperation will further increase and so that they will eventually be able to expand such regulatory cooperation to other bilateral and multilateral relations.*

*In the meetings of the BRT on 8-9 April 2014, the Japanese side proposed that the authorities of the EU and Japan together with key players such as the BRT should look at future issues coming out of a long-range vision for the relationship for, say, the next three decades.*

#### Sector specific recommendations

2. Create a common chemicals regulation

Policies on the control of chemicals such as the EU's REACH and RoHS and Japan's Chemical Control Law have a significant impact on global supply chains. The two Authorities should not only implement effective regulations, but also establish a common list of restricted substances and a common approach to the evaluation of risks and sharing of data. Such a common regulatory environment will not only benefit industries through cost mitigation but also benefit users and consumers through lower prices and consistent protection.

Furthermore, the two Authorities should develop a common policy on emerging issues such as endocrine disruptor and nano materials. The two authorities should also support supply chain management in developing countries in cooperation with businesses.

3. Create a common resource efficiency policy

The authorities of the EU and Japan should promote the concept of energy efficiency including resource efficiency, using the right incentives, standardised methodology, criteria and the format of environmental product declaration between the EU and Japan and cooperate with each other so that such a policy will be internationally shared.

The two authorities should work together at the multilateral level to promote international harmonisation of energy conservation regulations, relevant labelling rules, and environmental and carbon footprint schemes.

4. Expand the benefits of AEOs

Following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan, the Authorities of the EU and Japan should aim at introducing further regulatory cooperation in order to give more concrete benefits to AEOs. The BRT would in this regard like to put emphasis on simplifications of import procedures where companies are given greater freedom while also taking greater responsibility for their imports without an excessive administrative burden. Authorities should also establish closer contacts to learn from each other in order to improve and further facilitate trade between the EU and Japan. The BRT is aware that the two authorities are engaged in regular discussion, but no concrete benefits have emerged for operators.

5. Fight against counterfeited, pirated and contraband goods

The BRT would like to see the EU and Japan to step up efforts to fight against counterfeited, pirated and contraband goods, both inside and outside the EU and Japan. For example, they should better cooperate with each other and with the third country authorities to secure the closure of sites trading in fake goods.

The BRT requests that the authorities of Japan should make all trade with fake goods illegal by closing the loophole by which individuals are allowed to bring in or import counterfeits for personal consumption.

The BRT reiterates its support of Regulation (EU) 608/2013 of the EP and Council of 12 June 2013 on Customs enforcement of Intellectual Property rights which reflects to some extent the BRT's key recommendations such as simplifying the procedure. However, the BRT requests the authorities of the EU that they should seek ways to mitigate the financial burden of the importers of the authentic goods.

The BRT would like to see an enhanced role of the Observatory on Counterfeiting and Piracy in line with the Regulation adopted by the European Parliament and Council on 19 April 2012.

The BRT suggests that with an increased cooperation by the manufacturers and importers of the authentic goods, including the provision of more information on their products, the on-site training of officials and the training of officials on the more effective use of the WCO's IPM (Interface Public Members), the customs authorities should make inspection more efficient and raise the rate of its coverage.

## 6. Adoption of UN Regulations

In the automobile sector, the Japanese and EU Authorities should accelerate their adoption of UN Regulations to lower the cost of regulatory compliance for both European and Japanese automobile exporters by extending the benefits of mutual recognition. Also the Japanese and EU Authorities should work together to establish internationally harmonised technical requirements and testing procedures that will encourage the smooth market adoption of new environmentally friendly power-train technologies – clean diesel, electric vehicles, hybrid vehicles and fuel-cell vehicles.

### < Background for 6 >

*In 1998, Japan became the first country in Asia to accede to the UN-ECE 1958 Agreement on the Mutual Recognition of Type Approval for Vehicles etc, which provides that vehicle components which have received type approval according to UN Regulations in one contracting country are exempt from testing in any other signatory country where those regulations have been adopted. Japan has now adopted UN-ECE Regulations in 35 of the 47 areas included in Japanese type approval.*

### < General Background for 1-6 >

*Implementation of these recommendations will lead to a significant improvement in the business environments of both the EU and Japan.*

## **WP-A / # 04\* / EJ to EJ Supporting timely development of business**

### 1. Social security contributions (avoiding double contributions):

The BRT welcomes the conclusion of social security agreements between Japan and 10 EU Member States. The BRT requests that, Japan and the Member States of the

EU should make further efforts to expand the network of Social Security Agreements. In addition, they should introduce an interim measure, by which a host country should either exempt contributions to pension funds unilaterally or refund the contributions in full, not only partially, when expatriates return to their home country.

< Recent progress >

There has been a limited progress in the past year

< Background >

*As individual EU Member States and Japan conclude a bilateral social security agreement, it will lessen the burden both on companies as well as their employees. So far, social security agreements between Japan, and Germany, the United Kingdom, Belgium, France, the Netherlands, Czech Republic, Spain, Ireland and Hungary have entered into force. The agreements between Japan, Italy and Luxembourg have been signed. Furthermore, negotiations are underway between Japan and Sweden, and are at the preparatory stage between Japan, and the Slovak Republic, Austria and Finland.*

2. Liberalisation of the movement of intra-corporate transferees in the framework of an FTA/EPA

The EU and Japan should realise far-reaching liberalisation of the movement of intra-corporate transferees within the framework of an FTA/EPA. Such liberalisation should aim at the following system:

- A framework agreement between the mother company, which sends expatriates, and the host country, stipulates the maximum number of expatriates. Within the agreed limit, the mother company is free to send intra-corporate transferees to that country without further obtaining individual work permits.
- When the mother company concludes such an agreement with several Member States in which its subsidiaries or branches have operations, movement of intra-corporate transferees between those countries does not require a new work permit as long as the total number in each agreement is respected.
- Both sides should facilitate access to the labour market for accompanying family members without any limitations in regard to regular working hours.

< Background >

*For the smooth and efficient running of international businesses, it is essential that companies are able to dispatch key personnel, including directors without going through red tape. Such transfers do not have any negative impact on the labour market of the host country. On the contrary, they will expand employment in the host country through the development of the business concerned. In addition, expatriates themselves tend to pay high income taxes to the host country. The requirement to obtain work and residence permits for intra-corporate transferees between the EU Member States and Japan is usually a formality. However, the burden on companies as well as employees and their family members is substantial, it does constitute an obstacle to the swift development of business.*

*The EU has adopted Directive 2014/66/EU of the European Parliament and of the Council of the 15 May 2014 on the conditions of entry and residence of third-*

*country nationals in the framework of an intra-corporate transfer. By 29 November 2016, the directive should be transposed in the Member States. The directive will prove very useful for Japanese companies sending their employees to the EU because, for example, it will facilitate an assignment that involves several Member States and allow accompanying family members to have access to the labour market. However, unfortunately, the new Directive will not be applied in the UK, Ireland and Denmark due to the opt-out of those Member States. Japanese nationals in the UK, where their number is the highest among the EU Member States, will not benefit from this Directive. It is therefore imperative that such liberalisation is realised within the framework of an EPA/FTA so that it will be applicable to all intra-corporate transferees between the Member States of the EU and Japan.*

### **WP-A / # 05\* / EJ to EJ Support for SMEs**

The BRT calls on the EU and Japanese Authorities to develop measures to promote and assist each other's SMEs within their own jurisdictions. Specific consideration should be made to include such cross-support in FTA/EPA negotiations.

This would include:

1. Providing each other's SMEs the same general support and privileges as provided to one's own SMEs.
2. Establishing permanent local assistance in language, paperwork, hiring local personnel, legal and regulatory matters, as well as advice on financing and banking, etc.
3. Providing tax breaks and incentives, tax deduction for total research expenses, income tax breaks for foreign experts, tax exemption for doctoral students, tax relief for R&D, tax deduction for joint and entrusted researches based on industry-academic-government cooperation, as well as tax and other facilities and incentives for investors.
4. Helping graduates with international backgrounds find local jobs with the other side's SMEs.
5. A study of the feasibility of creating a joint investment fund for both Japanese and European SMEs.
6. Exchanging best practices and tested solutions in industrial policy for SMEs.
7. Expanding the SME-related programmes already run by the EU-Japan Centre for Industrial Cooperation.

#### **< Recent progress >**

The BRT welcomes the willingness of both Authorities to increase cooperation on cross-support for SMEs.

#### **< Background >**

*SMEs are the most promising sources of growth and jobs in both Europe and Japan. Their success in bilateral trade is a major factor in their development and also helps to revitalise both Japanese and EU industries by disseminating new products and technologies. However, market access problems and various impediments noted in other BRT recommendations are even harder to tackle or manage for SMEs. While the Japanese government, the European Commission and most EU Member States have internationalisation programmes for their own*

*SMEs, existing help programmes for foreign companies are mostly geared towards large foreign direct investments in established industries and are inadequate for SMEs. Once a European SME has established a footing in Japan, or a Japanese in the EU, using already available government support programmes, it should continue to receive support from the host region. Such support cannot be expected as a unilateral measure but would only be possible if agreed in a formal bilateral agreement. The BRT is aware of the major work being done for both Japanese and European SMEs by the European Commission and the Government of Japan through the programmes run by EU-Japan Centre for Industrial Cooperation.*

## Recommendations from European industry to Japan

### **WP-A / # 06\*\* / E to J      Harmonisation & mutual recognition of standards and product certifications; acceptance of international standards where applicable**

Reluctance of the Government of Japan to accept imported products approved in accordance with EN and ISO standards or CE marking delays the introduction of innovative new products to the market and increases import costs. While accepting the need to safeguard consumer health and safety, the BRT urges Japan to promote the harmonisation of standards and certification procedures, the mutual recognition of product certification and, in areas where harmonised standards do not exist, the mutual approval of the import, sale or use of products that have been approved on the basis of functionally equivalent requirements, so that products certified for one market are automatically accepted in the other market. The BRT recommends the Japanese Government to place particular emphasis on:

#### Automobiles

The Government of Japan should adopt the relevant UN Regulations in all areas where Japan requires certification for passenger cars but does not currently accept a UN approval as demonstrating compliance with Japan's national requirements, so that a vehicle certificated in the EU can be sold in Japan without modification or further testing. The Government of Japan should also work towards the international harmonisation of Japan's technical requirements for commercial vehicles which should be included within the scope of the provision of any FTA/EPA.

< Recent progress >

*There are still nine areas where Japan does not accept a UN approval as demonstrating compliance with its national type approval requirements. The reference to commercial vehicles is a new recommendation.*

#### Construction Products

The Government of Japan should work together with the EU Authorities towards mutual recognition of all JAS/JIS and EN standards for all building materials. This is unfortunately still rather common in the flooring sector as well as for roofing sheets. Mere reference to ISO standards within JAS/JIS, has not proved to be adequately helpful in facilitating the process.

The Government of Japan should, furthermore, better support local and regional authorities to ensure that transparent and consequent interpretations are made in regards to technical regulations and guidelines.

< Recent progress >

There has been some progress, however much work still remains. We furthermore note that the Japanese government did not respond to the issue of discrepancy

between ISO and JIS/JAS in its progress report of April 2013, April 2014 and April 2015.

< Background >

*The Japanese construction sector has long been a very “domestic” market. Even in the aftermath of the 2011 Tohoku earthquake and tsunami, there is little evidence that this situation is changing.*

### Cosmetics

The BRT calls for common regulations on the certification of medicated cosmetics, so-called quasi drugs (disclosure of approved ingredients, standard application times); common regulations on efficacy claims and advertisements; a common positive list of allowable ingredients in cosmetics; and establishment of joint standards for alternatives to animal testing.

< Recent progress >

While very little has been confirmed or decided, the BRT is pleased to see that the issue is reported to be discussed in the FTA/EPA negotiations. Additionally, there are signs of movement in regards to the standard of use for fluoride in toothpaste and mouthwash.

< Background >

*European cosmetics firms find it continuously difficult to expand their business in Japan due to the difference in standards for ingredients and permitted efficacy claims between Japan and the EU and the Japan-specific product certification procedures for so-called quasi drugs.*

### Railways

Though standards are not so different and data generated at European research facilities are relevant for Japan, duplicate testing in Japan is required for the Japanese market. This has repeatedly been communicated by one operator. Duplicate testing raises the costs of imports, making them less competitive than domestic products. The Government of Japan and the EU authorities should work toward establishing a mechanism through which test data and certification of railway equipment provided by European organisations is accepted in Japan, and vice versa.

The BRT furthermore recommends Japan to establish a system whereby standards and requirements are available openly so that European companies will have a better understanding of what is needed in order to offer goods and services that meet or exceed the safety measures in the Japanese market. While the BRT understands that operators might have different performance requirements, the same safety requirements and standards should preferably be used by all operators in Japan, which currently is not the case as each individual operator can choose its own standards and requirements. As a first step, test results and approvals by one operator should be accepted by other operators.

The BRT, however, recognises the latest development and positively views the first call for tender by a Japanese operator. The BRT recommends Japan to make better use of the tendering system as this leads to more competition and better transparency, while not negatively affecting safety.

< Recent progress >

While some progress has been made, the core issue still remains that there is no common conformity assessment scheme in Japan that all operators adhere to.

< Background >

*Japanese safety standards and regulations are not publically available. There is, therefore, no possibility for foreign manufacturers to know exactly what requirements must be fulfilled. Furthermore each operator can in principle have their own testing requirements as there is no legislation on exactly what safety requirements need to be fulfilled.*

< Recent progress >

### Veterinary Products

Animal health products already approved in the EU have to undergo further rigorous controls and unnecessary tests before being approved in Japan, which increases costs and causes delays. Accordingly, the BRT:

- a) Urges the Government of Japan to take all measures available to speed up product approvals.
- b) Requests Japan and EU to work towards mutual recognition of European and Japanese marketing authorisations for veterinary products. This should start with mutual recognition of GMP certification for veterinary medicines. MAFF and European agencies should accept GMP certification of the other party where the GMP requirements are similar or equivalent.

< Recent progress >

In recent years, MAFF has implemented various measures to improve the predictability, quality and speed of the registration process leading to a significant improvement. Furthermore, on 25 December MAFF revised regulations presented, both in Japanese and English, on the issuance of accreditation licences. This change accommodated a request by JVPA. However, since harmonisation is still not complete and non-recognition of GMP certificates is common, improvement is still needed.

< Background >

*Japan participates in the VICH, which aims to harmonise registration requirements for animal health products at the international level. This has helped to some extent*

*to reduce the registration cost for globally developed products. However, there are still requirements that are unique to Japan.*

### Processed Food

For processed food, the combination of differences between EU and Japanese standards and technical requirements as well as cumbersome border procedures results in high costs for EU exporters. High conformity costs are incurred because Japanese authorities do not accept evaluations made by the EU or international bodies, and the FSC is constantly asking for tests to be carried out in Japan. The market potential for European exporters would be greatly enhanced by:

- a) Substantially increasing the list of permitted additives and enzymes, in addition to speeding up and fundamentally revising the approval process
- b) Introducing mutual recognition of conformity assessment procedures to eliminate the duplicate costs of evaluations.
- c) Introduce deadlines for all parts of the application process. While there are guidelines on timelines these only cover part of the application process. Accordingly, it is difficult for an applicant to know how long the application will take.

#### < Recent progress >

There has been no concrete progress, although the issue is under discussion in the EU-Japan FTA/EPA negotiations. We note that the progress report of 2014 mentions that the GOJ is considering setting “a standard time frame” for approval procedure upon establishment of the Food Additive Design Consultation Center. We are very much looking forward to know more about this.

#### < Background >

*The limited number of permitted food additives in Japan and unaligned standards between the EU and Japan increases costs and prevent EU exporters from utilising scale effects.*

### LED lamps and luminaries

Lack of harmonisation of international electrical safety standards, such as IEC, and Japanese standards and technical requirements, such as PSE/JIS/JET results in high costs and effectively prohibits entry to the Japanese market for EU companies.

- The current standard for LED luminaries issued by the Japanese ministry (i.e. METI) is not compatible with standards used by manufacturers of other countries

The BRT requests Japan without delay to harmonise with international standards and safety/technical requirements in order for Japan to avoid being left behind in the global market. The market for LED lamps and luminaries is rapidly expanding and these products are expected to play an important role in saving energy on a global basis.

#### < Recent progress >

While the Japanese Government has agreed to harmonise JIS with IEC, the authorities have also said that this will take more than five years. Needless to say this is not acceptable. Japan has issued a list of products where IEC test report can be used (“appendix 12”). This list does not include LED lamps and some LED luminaries.

< Background >

*Japan has its own standards and technical requirements, such as PSE and JIS, and delays in setting standards such as J-deviation increases costs and prohibits EU companies and exporters from entering the Japanese market. In addition, lack of harmonisation of standards of remote control prohibits EU companies from entering the Japanese market.*

### Labelling rules

The Government of Japan should issue clarifying orders to provide retailers with flexible alternatives for providing Japanese consumers with globally sourced products while taking full responsibility for the quality and safety of the products. A simple example of an inflexible labelling rule that has substantial labelling cost implications for European companies is that the dimensions of furniture must be expressed in millimetres and not centimetres, although use of the latter is common practice in other countries using the metric system. There are also examples where the information required on the labels is too technical for the consumer to understand.

< Recent progress >

This issue was brought up in the Regulatory Reform Council where both representatives for European companies as well as domestic companies argued for a revision of the Household Labelling Law. The CAA is said to be working on a revision, but has so far not presented anything concrete. This issue was not touched upon in the GoJ progress report of April 2013. In parallel to this, Japan has announced that it will align its regulation on washing instruction with the ISO standards.

< Background >

*The Household Product Quality Law and accompanying voluntary labelling guidelines, “hyojikitei”, prescribe in extreme detail how household products should be labelled when sold in Japan.*

## **WP-A / # 07\*\* / E to J      Automobiles**

The Government of Japan should put kei cars and other motor vehicles on the same fiscal and regulatory footing.

< Recent progress >

The change in the taxation of kei-cars from FY2015 is a welcome first step towards reducing the discrepancy in the burden of taxation on compact cars and kei cars but it does not go far enough. In the FTA negotiations, the GOJ should commit to further fiscal and regulatory changes so that European compact cars can compete on equal terms with kei-cars in the Japanese market.

< Background >

*“Kei” or mini-cars are those vehicles legally restricted to a maximum length of 3.4m, a width of 1.48m, a height of 2m, and to an engine displacement of 660cc and below. Kei cars benefit from lower automobile related taxes, automobile liability insurance and motorway tolls and are subject to less stringent overnight garaging requirements. The continued existence of the privileges enjoyed by kei cars is an anachronism which distorts the competition with compact and subcompact cars, which do not enjoy the same prerogatives, even though their performance and specifications are similar*

**WP-A / # 08\*\* / E to J Fuel Cell Vehicles**

Pending agreement and implementation of Phase II of the UN Regulation for HFCV's concerning the material requirements for hydrogen storage systems, the Japanese and EU Authorities should introduce flexible arrangements to allow manufacturers/importers to demonstrate that HFCV's meet each other's requirements and approval procedures

< Background >

Phase I of the UN Regulation for HFCV's is expected to go into force in the summer of 2015. Both the EU and Japan intend to implement this regulation. But even when Japan has implemented Phase I, HFCV tanks imported into Japan would still need to meet Japanese unique national requirements concerning metal materials. Whereas the EU uses a performance-based approach to approve hydrogen compatible materials, Japan's approach is more prescriptive, in effect limiting the choice of materials to very few specific types of stainless steel and aluminium.

**WP-A / # 09\*\* / E to J      Ensuring free and open competition in services**

The BRT urges the Government of Japan to tackle the lack of free and open competition in Japan's services markets.

On the matter on postal reform, the BRT is disappointed with the decisions taken so far by the Japanese Government. Japan has a duty to abide by its WTO obligations, including the national treatment provision of the GATS. This means establishing equivalent conditions of competition between the Japan Post entities and EU and other private delivery companies, banks, and insurance companies. Specifically:

- a. Kampo insurance business should be subject to the same capital, solvency margin, tax and policyholder protection funding requirements as private sector insurers. Limits are needed on expansion of Japan Post's services, including the introduction of new products as well as caps on postal life insurance, until competitive safeguards have been established to prevent cross-subsidies from its existing dominant position. The BRT is particularly concerned by the recent approval of the new or modified products offered by Japan Post Insurance. It is also imperative that Japan Post remains under the jurisdiction of the FSA. The above requests are well within the realm of the GPA. Similarly, the insurance

business of cooperative societies (kyosai) should be subject to the same requirements as private sector insurers.

- b. Japan Post and private postal delivery operators should be subject to the same customs procedures and formalities. A level playing field for both Japan Post and private postal operators should be ensured in the requirements for dedicated airway bills, obligatory customs, quarantine and security clearance and the funding of these services, as well as in the issuance of parking tickets for delivery vehicle parking infringements.

< Recent progress >

While the issue is being discussed in the FTA/EPA negotiations, the WP A is not aware of any concrete improvements. Furthermore, on issues directly related to Japan Post very little change in either direction has been seen during the last year.

< Background >

*Since the Big Bang in the late 1990's, Tokyo has seen its role diminish in the global arena. This is partially due to the very few changes undertaken since that time. The preferential treatment extended to Japan Post and its subsidiaries still exists, and has unfortunately been expanded without private companies having access to the same benefits.*

**WP-A / # 10\*\* / E to J      Freight and logistics**

1. Further to the WP-A / # 03 / EJ to EJ, the BRT recommends Japan to revise its AEO system to introduce real benefits for operators regardless of whether they are forwarders, customs brokers or importers. Furthermore, the administrative load needs to be lessened for companies to be truly attracted to the AEO status.

The AEO concept should focus more on offering simplifications if the operator meets the agreed criteria for traceability and adheres to the agreed process flow. Examples of this could be:

- Deregulated customs clearance beyond the local customs jurisdiction territories
- Reducing the physical examination of shipments
- Being able to use alternative documentation for showing “direct shipment” under free trade arrangements

< Recent progress >

Japan Customs have announced a plan to deregulate customs clearance beyond the local customs jurisdiction territory by 2017.

< Background >

*The current system of AEO has unfortunately not led to the simplifications that many operators had hoped for. On the contrary, in many cases the administrative burden has increased.*

2. The BRT recommends that Japan introduces a comprehensive system of remote filing and at the same time, strengthens alignment of the various customs areas to avoid discrepancies between the regional customs authorities. This would improve the situation not only for European companies, but also for small- and medium-sized Japanese companies,

A long-term solution could be to consolidate the various jurisdictions. A first step would be to consolidate Tokyo and Yokohama, and Osaka and Kobe.

< Recent progress >

This is a new recommendation.

< Background >

*Currently Japan has nine separate customs area and no real central customs authority. This leads to discrepancies between the treatments of imported goods depending on the port of entry. The different interpretations of customs law in addition to different HS code classification create costs for the importer. This also makes it difficult for European logistics companies, which lack multiple regional offices in Japan to expand their regional coverage as licensing is per region, ie. the license given by Tokyo Customs is not valid in Yokohama.*

**WP-A / # 11\* / E to J      Promoting foreign direct investment**

The Government of Japan should create a business environment that will foster investment of foreign firms in the domestic economy. To this end, and in line with the treatment applied to stock swaps involving purely domestic companies, it should consider allowing tax deferrals for capital gains stemming from direct cross-border mergers and re-organisations.

The BRT furthermore would like to point out the disadvantageous rules for Net Operation Loss (NOL). With the upcoming changes, companies in Japan will be able to carry forward 50% (from 2017) of their losses for ten years. This is well behind the NOL in neighbouring countries, countries with which Japan competes for investments. In addition, Japanese rules on inheritance tax makes foreigners liable for inheritance tax covering all global assets from day one of being registered in Japan. While many countries have removed the inheritance tax Japan is moving in the opposite direction.

Moreover, while such improvement of the generic investment environment is a precondition, regulatory reform is the best motivator for foreign companies to enter the Japanese market. In the sectors where the formal barriers to foreign investment were removed some time ago, such as automotives and machinery, foreign investment is relatively high. By contrast, two sectors where investments are low are the financial and medical fields. Japan's regulatory environment in these sectors remains much more difficult than the rest of the world to allow for foreign companies to set up any larger operation than the minimal level needed to serve the existing client base. Mutual recognition of market certifications would be an important first step to improving investments in the medical field. Mutual acceptance of principles governing the financial services industry and the mutual acceptance of the home regulator as the core regulator would go a long way to improving the investment environment in the financial sector.

#### < Recent progress >

While Japan has established incentive programmes for FDI, they are often limited in scope and application procedures are very inflexible. There are also some indications that Japan is contemplating shorting the period.

#### < Background >

*Despite its position as the world's second largest economy, Japan's level of inward FDI as a proportion of GDP remains one of the lowest among all OECD countries. Even with the reorganisation of JETRO and the efforts starting with former Prime Minister Koizumi to increase FDI to Japan, only very small improvements have been seen. According to UNCTAD in 2012 inward stocks was only 3.5 % of GDP.*

### **WP-A / # 12\*\* / E to J      Procurement**

#### < General Recommendations >

The Government of Japan should increase its efforts to facilitate better access to the procurement market in Japan. This could be achieved by lowering the threshold for public tenders and better defining or removing the "operational safety clause" within the transport sector. Japan should also include more cities in the GPA as currently only nineteen cities are included.

Japan should, furthermore, make more information available in English. The BRT is aware of the recent initiatives by JETRO, but the complete information is rarely available in English. In addition the BRT requests the use of English when submitting tender proposals to be allowed or at least partially allowed, especially for the technical specifications.

In addition the BRT asks that Japan streamlines the requirements on pre-registration and also recognises overseas experience and qualifications when setting up requirements for the bidders.

#### < Specific Recommendations >

- In the bidding process in public tenders for helicopters>
  - a. More balanced competition should be ensured by comprehensive evaluation systems that also take aircraft performance into account.
  - b. Single year budget procurement constraints should be relaxed.
- Procurement of integrated systems of space ground equipment should be encouraged.
- The share of open tendering as a means for procurement by the Japanese utilities should be increased substantially.
- Making certain that the recent changes to the Operation Safety Clause indeed leads to more open calls for tenders in accordance with the WTO agreement on government procurement.

#### < Recent progress >

The BRT has seen some changes in particular for the three JR Honshu companies and is therefore looking forward to see what the changes in the OSC will bring.

#### < Background >

*Studies have shown that over 80% of the total procurement market in Japan is not covered by the GPA.<sup>1</sup> Currently some sectors are exempted from the threshold of 5 million SDR. Some changes have been seen, such as the establishment of a national data base on calls for tenders, and the first ever open call for tender in the railway sector. However, significant improvements are required to bring Japanese procurement closer to the levels of the EU.*

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<sup>1</sup> Copenhagen Economics, "Assessment of barriers to trade and investment between the EU and Japan", 2009

## Recommendations from Japanese industry to the EU

### WP-A / # 13\*\* / J to E Europe 2020 strategy

The BRT expresses its continued support for Europe 2020 strategy.

The BRT believes that the Europe 2020 strategy has made policy makers focus on the issues that are essential for the EU and the Member States. In addition, the European Semesters have made the economic and fiscal policies of the Member States increasingly coherent. If continued, the EU and its Member States should be able to realise important gains in a medium term.

In order to achieve smart, sustainable and inclusive growth, the BRT believes that further and continuous improvement of the Single Market is the most important and relevant areas to be addressed. The Single Market, in other words, is the most valuable source of the smart, sustainable and inclusive growth of the EU.

The BRT would like to emphasise the importance of the following priorities for the single market that will lead to the smart, sustainable and inclusive growth of the EU.

- Further improvement and realisation of the true single market of chemical materials
- Business environment
- Taxation
- Intellectual property rights
- Consumer empowerment
- Services
- Networks
- The digital single market

In improving the Single Market, the EU and its Member States should not only aim at the harmonisation of national rules at the EU level. They should also aim at better regulation by eliminating duplicative legislative framework and at the liberalisation and deregulation.

As to the type of instruments appropriate to use to achieve smart, sustainable and inclusive growth, the BRT has observed that policy coordination at the EU level seems to work better in recent years than before the crisis. The EU should seek an optimal mix of such an approach and harmonisation through Directives/Regulations. The BRT would like to emphasise, however, that the EU should make a policy through Regulations in the areas in which the uniform application of policy throughout the EU is crucial.

As it is estimated that in the next 10-15 years, 90% of the world's growth will come from outside the EU, the BRT would like to emphasise that an internationally open European Single Market is essential for the smart, sustainable and inclusive growth of the EU.

The BRT supports the deepening of EU-Japan trade relations through an ambitious FTA/EPA and fair market access that will contribute substantially to industrial growth and job creation.

The strength of the European economy is, furthermore, built on a set of values that will lead to a sustainable economic development. Corporate social responsibility is a pivotal contributor to the EU's objectives of sustainable development and highly competitive social market economy. Considering the relationship with Japan, for example, the BRT believes that fostering responsible business should be at the heart of the EU-Japan economic and political partnership.

*< Recent Progress >*

*The European Commission is carrying out the mid-term review of the Europe 2020 strategy.*

*< Background >*

*The Commission proposed in 2010 the Europe 2020 strategy. It was launched as the EU's strategy for smart, sustainable and inclusive growth. Its aim was to improve the EU's competitiveness while maintaining its social market economy model and improving significantly its resource efficiency.*

*The European Commission carried out a public consultation in 2014 to gather the views of all stakeholders to help it develop the strategy for the 2015-2020 period.*

**WP-A / # 14\*\* / J to E     Revision of high customs tariffs on audio-visual products and passenger cars**

The authorities of the EU should immediately eliminate high customs tariffs, for example, 14% for audio-visual products and 10% for passenger cars. In the absence of a progress in global trade negotiations, such reduction should be realised through bilateral negotiations, notably, through an EPA/FTA between the EU and Japan.

*< Recent Progress >*

*A progress has been seen for this recommendation because the EU-Japan bilateral negotiations on an EPA/FTA are underway.*

*< Background >*

*The EU is protecting some sectors of its industries by maintaining high customs tariffs even though these industries are at the forefront of international competition and need stimuli for competition rather than protection. Such protection will not help enhance international competitiveness of those sectors. Furthermore, it is only their users and consumers in the EU who unfortunately have to pay the resulting higher prices.*

**WP-A / # 15\*\* / J to E      Chemical Regulations**

**15.1 REACH**

1. Concerning REACH, the BRT recommends as follows:

- ✓ The BRT asks the authorities of the EU to proceed swiftly against the Member States which do not follow the interpretation of Article as stipulated in the Guidance document so that actors in the supply chain can avoid the fragmented compliance requirement in the EU market.

*< Recent Progress >*

*Some progress has been seen for the recommendation on the interpretation of the Article. The issue of phthalates has been resolved by the withdrawal of ban in the Member State.*

*< Background >*

*REACH, though it is a Regulation, has not realised a single market in the EU because its interpretation is diverse. The authorities of the EU should realise a single market through the clarification of interpretation that is accepted throughout the EU.*

*The interpretation of “Article” applied to 0.1% threshold for SVHC (Substance of Very High Concern) is still disharmonized among EU member states. The Guidance on Requirements for Substances in Articles in REACH regulation states that the 0.1% threshold should apply to an article as a whole produced or imported. Five Member States and Norway, however, insist that the threshold should apply to the parts of complex articles based on the “Once an article – always an article” concept.*

In Denmark, phthalates for indoor use was banned in its national law published in its official journal on 30 November 2012. Its implementation has been postponed for two years. In addition, although Denmark had proposed its EU-wide ban by submitting dossiers in accordance with Annex XV of REACH, the proposal was rejected by committees of the ECHA in June and December 2012. Denmark subsequently has withdrawn the ban. Harmonisation at the EU level will restart.

2. The Authorities of the EU should prepare a practical guidance to facilitate the implementation of REACH. In particular:

- ✓ The number of SVHC increases steadily. The ECHA started a new website on PACT-RMOA and publishes the result of the assessment of SVHC as carried out, which is an improvement though SMEs might still find difficult to digest. The authorities of the EU should further improve the care for SMEs.
- ✓ Although PACT-RMOA has increased the transparency of the identification of SVHC, the process of contributions by industries should be further developed.
- ✓ The BRT requests that the authorities of the EU should issue a clarification on the obligation of ORs under the Article 8 of REACH and its implication under the EU competition law.
- ✓ The disseminated dossier information that is purchased from Lead Registrant in ECHA home page for HSE (health safety and environment) purposes (such as GPS - Global Product Strategy - and SDS - Safety Data Sheet) should be made accessible for free and made available worldwide.

- ✓ In the evaluation of a substance allocated to a Member State in the framework of CoRAP - Community Rolling Action Plan, a private business is often requested to provide information on the substance which it holds. However, it is sometimes requested at a short notice and/or a not-well-organised manner, which is not effective. The authorities of the EU should publish the best practice for the Member States so that private businesses can help them more efficiently and effectively.

< Recent Progress >

*Progress has been seen for the recommendation on SVHC by the introduction of PACT-RMOA.*

< Background >

*REACH includes requirements that are practically very difficult to implement for businesses.*

*Concerning the obligation of ORs, the Article 8 of REACH states that the OR 'shall keep available and up-to-date information on quantities imported and customers sold to, as well as information on the supply of the latest update of the safety data sheet'. However, in practice, there is a risk of infringing the EU competition law if OR collects customer-of-customers-information, such as customer names and imported volumes, especially from indirect supply routes, because under the EU competition law such supply chain information (i.e. market information) may be considered critical and sensitive. In addition, it remains unclear whether or not the competent authorities of each Member State will accept the use of a third-party trustee in the collection of such information in order to avoid possible infringement of the EU competition law. The reason is that Article 8 only relates to OR and there is no other indication in REACH that such OR obligation could be outsourced to a third party. The authorities in Germany appear to interpret that the use of a third-party trustee is not allowed. Furthermore, the use of the service of a trustee requires a significant additional cost. As the EU manufactures do not have to collect information on the quantity of imports, this only affects ORs – i.e. non-EU manufactures, which creates unfair market conditions.*

3. The BRT recommends that the authorities of the EU should summarise and publish issues and concerns coming out of the latest registration – such as difficulty to identify Lead Registrants and no transparency of the cost for LoA (Letter of Access), and their solutions in time for the following joint submission. The authorities of the EU should, instead of relying upon agreement among the participants of SIEF, actively monitor and, if necessary, initiate corrective measures in order to realise transparency of the cost for LoA and the equity in cost sharing.

< Recent Progress >

*Some limited progress has been made due to the introduction of data sharing dispute mechanism but more active involvement of the authorities of the EU is desirable.*

< Background >

*New challenges are already foreseen in the SIEF operation as the result of 2013 registration deadline, and a further 2018 deadline, namely, less data available, inexperienced Lead Registrants, mostly SMEs in the supply chain, and heavy financial burden. The BRT is concerned that the SIEF activities will stagnate due to such concerns.*

*The ECHA's testing proposals and evaluation of registered dossiers, and the Member States' evaluation of substances would result in renegotiation of cost sharing in a SIEF. LoA revenue from latter registrants would have to be distributed amount former registrants. To realise transparent and equitable cost sharing, the authorities of the EU would have to monitor and intervene more actively.*

## **15.2 Appropriate approach to Endocrine disruptor**

The BRT requests that the authorities of the EU should regulate endocrine disruptors not by using the categorisation like CMR (carcinogenic, mutagenic or reprotoxic), but by using the risk assessment based on sound science because endocrine disruption is not the endpoint of toxicity. The hazard assessment should be conducted by identifying adverse effect based on the endocrine mode of action defined by the WHO, and characterising with taking into account of potency, lead toxicity, severity and irreversibility.

### *< Recent Progress >*

*Some progress has been made as the result of ongoing discussion including public consultation.*

### *< Background >*

*Currently, the authorities of the EU are reviewing the current legislations such as REACH, PPPR (Plant Protection Products regulation) and BPR (Biocidal Products Regulation), and they are contemplating a policy measure.*

## **15.3 RoHS**

*The BRT recommends that the identification and assessment of substances for RoHS inclusion should be done based on a robust and consistent methodology by taking account of the most appropriate risk management option. Going forward, the principles of "REACH and Directive 2011/65/EU (RoHS) - A Common Understanding should be duly applied and implemented to avoid overlap in regulation.*

*The BRT requests that all new regulatory initiatives should provide the necessary level of legal certainty, transparency and predictability to allow for timely implementation with regard to restriction, substitution and exemption requests.*

### *< Recent Progress >*

*Some progress has been made.*

*Upon the European Commission's initiative, a working group has been established to develop guidance on the methodology for the identification and assessment of*

*substances for inclusion in the list of restricted substances.*

*A Common Understanding paper has also been issued by the European Commission which sets out scenarios on how to manage future regulatory action on the same chemical substances under REACH and RoHS.*

*< Background >*

*To identify and assess substances for potential inclusion in the list of restricted substances under RoHS, the Commission has been working on a methodology. The methodology should be further fine-tuned to provide clarity on the process and criteria for substance review, offering a robust and consistent approach for all future evaluations. The assessment of a substance does not necessarily lead to a recommendation for inclusion in the list of restricted substances under RoHS as also other risk management options may be considered.*

*Both REACH and RoHS regulate the use of chemical substances. The processes of authorisation, restriction and exemptions partially overlap between the two regulations, adding to the complexity and burden for industry. The Common Understanding specifies how these processes should be managed in the most efficient and effective way while safeguarding the protection of human health and the environment.*

## **15.4 CLP Regulation**

- ✓ The BRT requests that, to alleviate burden on exporters, the authorities of the EU should accept GHS classification and labelling at the custom clearances.
- ✓ The BRT requests, in addition, that the authorities of the EU should take GHS into consideration from ATP (Adaptation to Technical Progress) stage.

*< Recent Progress >*

*Some progress albeit very limited and unsatisfactory for businesses has been seen for the recommendation.*

*< Background >*

*CLP Regulation (Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures) affects not only the EU manufactures and importers but also exporters outside the EU. While CLP is comparable to UN GHS, CLP does not take some of GHS classification but introduces the EU's own classification. As a consequence, the exporters to EU are forced to be compliant with both GHS and CLP.*

## **15.5. Nanomaterial**

### **1. Definition**

The BRT requests that the authorities of the EU should implement the prospective policy tools on nanomaterials by taking into consideration the degree of exposure of nanomaterials released from a product.

## 2. Reporting scheme

The BRT requests that the authorities of the EU should take an initiative and establish a harmonized reporting system at the EU level.

## 3. Standardization of measurement method

The BRT requests that the authorities of the EU should standardise a practical measurement method of nanomaterials. Such a measurement method should be simple and internationally harmonised.

### < Recent Progress >

*Some progress has been made:*

*As to the reporting scheme, the European Commission has carried out public consultation.*

*As to the reporting scheme, some Member States, such as France, Belgium and Denmark, have introduced their own regulation. A unified reporting scheme is even more critical for industry.*

*As to measurement method, although the Joint Research Centre issued a report in 2012 titled 'Requirements on measurements for the implementation of the European Commission definition of the term „nanomaterial', there remain the issues of practicality and cost. .*

### < Background >

*The European Commission Recommendation on the definition of nanomaterial (2011/696/EU) was published on 18 October, 2011.*

*Several EU Member States plan to enact their own nanomaterial reporting schemes at a national level. It would oblige their manufacturers and importers make multiple reporting in different formats, which would not only be inefficient but also create confusion in their supply chains.*

*Different measurement methods are used in the measurement of nanomaterials to meet regulatory requirements such as notification. As a result, there is a risk that the results of measurement by different actors are not comparable.*

## 15.6. Biocide Product Regulation

The BRT asks the authorities of the EU to evaluate, in due course, the effectiveness of measures for treated articles under the Biocide Product Regulation (BPR) in reducing the risks posed to humans, animals and the environment by biocidal products, and ensure that such measures are fit for purpose.

### <Recent Progress>

This is a new recommendation.

### <Background>

The BPR (Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products) requires that treated articles may not be placed on the market unless all active substances contained in the biocidal products with which the articles are treated or which they incorporate are approved. This requirement places large burden and costs on industry, in addition to existing legislation mechanisms to restrict and control hazardous chemicals (e.g. REACH, RoHS), resulting in possible cessation of technologies, and consequent impact on competitiveness for manufacturers or importers placing goods on the EU market. The BRT is concerned that this is disproportionately impacting on non-EU manufacturers and importers because such active substances to be regulated are often sourced from SMEs and companies with limited sales to the EU which cannot afford to undertake the requirements of the BPR, resulting in a loss of functionality, and in turn limiting the technologies and potential innovations reaching the EU market. As a result the BRT recommends an assessment of the impacts of this regulation via an evaluation of socio-economic versus human and environmental benefits for treated articles measures under the BPR.

#### **WP-A / # 16\*\* / J to E      Ecodesign**

Relation of different product categories in Ecodesign

The BRT asks the authorities of the EU to uphold the Energy Related Products (ErP) principle of setting Minimum Energy Performance Standard (MEPS) at the level of Least Life Cycle Cost (LLCC) so that consumers can buy affordable and efficient products.

The BRT also asks that the authorities of the EU should carry out comprehensive impact assessments for components integrated into products so that optimum efficiency is pursued at the level of the final product not at the component level where there is no tangible benefit to the consumers.

The BRT suggests that “repair as produced” principle should be applied as is the case in the RoHS Directive.

<Recent Progress>

This is a new recommendation.

<Background>

When an impact assessment for components integrated into products is not carried out like it is the case for instance with the revision of Lot 11 (fans), the benefits for environment and energy efficiency could be misleading. The lack of proper impact assessment would lead to unaffordable products that no one would buy which in turn would not contribute to the reduction of energy use. Additionally, this would cause the setting of unrealistic MEPs leading again to unaffordable final products for the consumer. ErP implementing measures should focus on removing the least

efficient products on the market and not set MEPs based on the 10% of most efficient products which is covered by the Ecolabel regulation.

Using once again the Lot 11 (fans) example, when a product needs to be repaired, if spare parts needed do not meet the current regulation, the product cannot be repaired and a new product has to be bought, which is not resource efficient. If regulation on a product takes spare parts into account, the product life can be extended by repair.

## **WP-A / # 17\*\* / J to E      Taxation**

### **17.1 Common Consolidated Corporate Tax Base**

The BRT welcomes the proposal for CCCTB (Common Consolidated Corporate Tax Base) proposed on 16 March 2011. The BRT hopes for its swift adoption. CCCTB should realise the following points to improve the competitiveness of the EU economy.

- 1) Non-taxation of unrealised gains on goodwill within a group of companies that form CCCTB
- 2) Non-application of arms-length principle within a group of companies that form CCCTB.
- 3) Off-setting of profits and losses within a group of companies that form CCCTB.

#### *< Recent Progress >*

*No progress has been seen for this recommendation.*

#### *< Background >*

*Many Japanese companies are implementing integration and rationalisation of their European business organisations in order to remain competitive in the Single Market. Examples are the centralisation of such functions as sales support and accounting.*

*The relation between intra-group transactions and taxation is an important element in decision making in a business. It is highly desirable that companies with international business should be allowed to compute the income of the entire group according to one set of rules and establish consolidated accounts for tax purposes in the EU.*

### **17.2 Merger Directive**

The scope of the Merger Directive (90/434/EEC) should be expanded to include the transfer of real estates and other intangible assets in reorganisation. Furthermore, the shareholding requirements should be abolished.

#### *< Recent Progress >*

*No progress has been seen for this recommendation.*

#### *< Background >*

*In the communication COM (2001)582, the European Commission referred to its intention to extend the scope of the Merger Directive to tax on the transfer of real estates. The amendments to the Directive (2005/19/EC), however, do not include provisions related to this issue.*

*By extending the scope of the Directive to the transfer of real estates and other intangible assets in reorganisation, companies could reduce the cost of reorganisation and increase competitiveness.*

*The Merger Directive (90/434/EEC) provides for the deferral of corporate tax in the qualified cross-border restructuring of business. In certain EU Member States, companies are required to hold shares that they have received in exchange of contributed assets for a number of years even if those holding companies cease to function as an operating company. There appears to be no ground in the Directive to support such measures.*

*In addition to the cost of maintaining these empty companies, it increases the risk of double taxation. Dividends paid by the subsidiaries do not qualify for Japanese foreign dividend exclusion for the portion distributed through the empty holding company if the shareholding of Japanese parent in it is below 25%.*

### **17.3 The fundamental reforms of VAT regime under consideration**

The BRT welcomes the strategy of the European Commission to fundamentally revise the VAT system and to establish a simpler, more efficient and robust VAT system tailored to the single market as described in Com (2011) 851. The BRT also welcomes the publication by the Commission of options for simpler and more robust future VAT regime.

The BRT hopes that the new regime will be realised swiftly and in such a way that a business group could easily and cost effectively centralise VAT administration in the EU.

#### *< Recent Progress >*

*Some progress albeit limited has been seen for this recommendation.*

#### *< Background >*

*Many Japanese companies are implementing integration and rationalisation of their European business organisation in order to remain competitive in the Single Market. Accounting functions including VAT administration are often targeted for centralisation with the aim of reducing overall costs and increasing efficiency.*

*Although the VAT system in the EU is a common system, in reality, differences among Member States are significant mainly due to derogations. Presently, therefore, the centralisation of VAT administration carries a high financial risk.*

*For example, if centralised accounting staff with limited country specific knowledge makes a mistake in a repetitive transaction, the accumulated amount that should be rectified could become high over a relatively short period. In addition, a penalty may be imposed. To avoid such a high risk, businesses have to either leave*

*accounting staff in local operations or employ a number of accounting staff with country specific knowledge in a central location. In either case, cost-effective centralisation of accounting functions is unlikely to be realised.*

## **WP-A / # 18\*\* / J to E      Company Law / Corporate social responsibility**

### **18.1 A new strategy on CSR Policy**

The BRT recommends:

- (1) Policy discussion should not be lost in the argument about definition and about the dichotomy between voluntary or mandatory approaches

Following the Communication of the European Commission in 2011 ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’ (COM(2011) 681), which has clearly defined CSR and which has been widely welcomed by stakeholders, now it is time for every stakeholder to take its own part and build a future action. The BRT, therefore, proposes the European Commission to lead policy discussion on promoting actions to maximise positive impacts and mitigate negative impacts.

- (2) Highlight the aspect of innovation and provide open platform

In order to enhance the competitiveness of companies in Europe and also to enhance the uptake of CSR, it is extremely important to articulate the proactive character of CSR that will lead to ‘innovation and opportunities’. The European Commission should take a proactive role and lead this discussion by creating an open platform.

Dialogue is a powerful tool to understand other societal actors’ thoughts and motivations. It is often more useful in building lasting trust than forced transparency in the form of disclosure. Innovation is more likely to be triggered by open exchanges among stakeholders, partner countries or regions, with their governments and with suppliers.

- (3) Take a process based approach with flexibility

“Rule-based” approach or “tick box” approach cannot solve all the challenges that we face in today’s world. A Compliance mind-set stops us to think further. CSR is a journey. Therefore, a process based approach with flexibility can shape a dynamic business environment which fosters innovation and competitiveness.

- (4) Create incentives for companies with leadership for change

Identifying, preventing and mitigating the negative impact of businesses is extremely important and, when done effectively, companies gain competitiveness in the end. In tackling difficult issues like human rights inside and outside companies, the first movers would face challenges more often than the followers. The BRT would welcome a mechanism where the first movers receive more recognition whereby efforts to improve both positive and negative side of CSR are praised, not penalised.

#### (5) Articulate policy linkages across the European Institutions

CSR is increasingly integrated into other EU policies such as company law, trade agreements, and public procurement. Such policy linkages should be more clearly presented by the European Institutions, so that companies can engage in early discussion and more effectively integrate CSR throughout relevant functions.

<Recent progress>

This is a new recommendation.

<Background>

The Communication of the European Commission in 2011 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (COM(2011) 681) was an important milestone. Not only did it provide a modernised definition of CSR as the "responsibility of enterprises for their impacts on society", but it further set out the expectation that companies should have a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close cooperation with their stakeholders. Furthermore, it made clear that the development of CSR should be led by enterprises themselves.

In preparation for a policy revision, the European Commission carried out public consultation in 2014 and sought stakeholders' views on the impact of its CSR strategy over the past three years and on the role that it should play in the future. The EU Multistakeholder Forum on CSR was held in February 2015 as the final milestone of the Commission's multi-stakeholder review process. The Commission will draft a new strategy on CSR.

### **18.2 Conflict minerals**

The BRT acknowledges that the proposal for a Regulation has taken up certain feedback from businesses such as the promotion of internationally recognised frameworks, the voluntary approach of self-certification and the publication of a list of responsible smelters and refiners.

The BRT also acknowledges that two expert groups have been formed to define the list of minerals and metals within the scope of the Regulation and to clarify the meaning of conflict and high risk areas. The BRT requests that their work should be carried out in a transparent manner.

Without a well-established traceability scheme such as the iTSCi (ITRI Tin Supply Chain Initiative), it would be extremely difficult to implement the conflict-free accreditation for smelters. The BRT thus requests that hasty expansion of the geographical scope without reliable implementation of the existing traceability scheme should be avoided. In order to effectively stimulate responsible sourcing, the BRT suggests that incentives focusing on upstream operations should be further considered.

The BRT further requests that clear criteria for the certification of Responsible Importers, Smelters and Refiners should be set under a reliable, well-governed and functioning certification system. In order to avoid confusion in certifying importers, the BRT calls for the EU to set clear criteria for importers to become 'responsible'. Such criteria should make use of the existing criteria such as CFSI (Conflict Free Sourcing Initiative) 's Conflict Free Smelter Program and LBMA (London Bullion Market Association).

Concerning Incentives laid down in the Joint Communication, the BRT requests a clarification on the definition of equivalence to the OECD Due Diligence Guidance in terms of Procurement and on the benefits and duties of a company that signs the Letter of Intent as to industry commitments. The BRT also requests good internal coordination in implementing Procurement Incentives.

*<Recent progress>*

*There has been little progress. The proposal is currently under deliberation in the European Parliament.*

*<Background>*

*The European Commission submitted on 5 March 2014 a Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict affected and high-risk areas (COM(2014)111). The proposed Regulation is accompanied by a joint Communication by the European Commission and the High Representative to the European Parliament and the Council: Responsible sourcing of minerals originating in conflict-affected and high-risk areas - Towards an integrated EU approach (JOIN(2014) 8).*

*The informal meetings of experts have been established among the European Commission, the Member States, the European Parliament, and experts to create a hand book to set the criteria of the 'Conflict affected and high risk areas', and to create Guidelines for the competent authorities to be prepared for a harmonised accreditation.*

### **18.3 Country by country reporting (CBCR)**

The BRT recommends that, in considering whether to introduce CBCR or not, the authorities of the EU should carefully assess the risks of excessive disclosure requirements that could unduly hamper multinational enterprises' business activities.

*<Recent progress>*

*There has been little progress.*

*<Background>*

*The Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large companies and groups requires the*

*European Commission to report on CBCR by 21 July 2018: The report shall also consider, taking into account developments in the OECD and the results of related European initiatives, the possibility of introducing an obligation requiring large undertakings to produce on an annual basis, a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received.*

*By the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, the EU law already requires financial institutions to disclose annually, specifying, by Member State and by third country in which they have an establishment, profit or loss before tax, tax on profit or loss, and public subsidies received from 2015. The EU law also requires large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments from 2016.*

*Within the context of the G8 and the G20, the OECD has been asked to draw up a standardised reporting template for multi-national undertakings to report to tax authorities where they make their profits and pay taxes around the world.*

#### **18.4 Non-financial disclosure**

The BRT appreciates the fact that the Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 addresses a number of concerns raised by businesses including the BRT such as making non-financial KPIs non-binding, allowing reporting at a consolidated level and limiting the scope of entities that the new rules become applicable. The BRT looks forward to consultation by the European Commission during the preparation of non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators. The BRT requests that its preparation should be carried out in a transparent manner.

*<Recent progress>*

*There has been a little progress.*

*The European Parliament and the Council reached an agreement in February 2014 on the final text of the Directive. The Directive was formally adopted on 22 October 2014 and published in the Official Journal on 15 November 2014.*

*<Background>*

*The European Parliament and the Council adopted the Directive 2014/95/EU on 22 October 2014. According to the text of the Directive:*

- *Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.*
- *The Commission shall prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral, with a view to facilitating relevant, useful and comparable disclosure of non-financial information by undertakings. In doing so, the Commission shall consult relevant stakeholders. The Commission shall publish the guidelines by 6 December 2016.*

## **WP-A / # 19\* / J to E      Product Safety/Market Surveillance**

### **19.1 Product safety and market surveillance package proposal**

The BRT requests the authorities of the EU to proceed prudently in the deliberation of the Product Safety and Market Surveillance Package, in particular, Article 7 of the proposal for a Regulation on consumer product safety by which the indication of the country of origin would become mandatory. The BRT believes that the mandatory indication of the country of origin would not necessarily improve safety for consumers but that it would place substantial administrative burden on manufacturers and/or importers. The BRT therefore believes the mandatory indication of the country of origin should not be included in the Package.

#### *<Recent progress>*

*There has been little progress. The proposal is under deliberation in the European Parliament and the Council.*

#### *<Background>*

*The European Commission proposed on 13 February 2013 the Product Safety and Market Surveillance Package – A proposal for a Regulation on market surveillance of products (COM(2013)75) and a Proposal for a Regulation on consumer product safety (COM(2013)78). The package is now at a final stage of deliberations in the Council. The Article 7 of a Proposal for a Regulation on consumer product safety requires manufacturers and importers to ensure that products bear an indication of the country of origin of the product.*

### **19.2 Market Surveillance under the New Legislative Framework**

The BRT supports the general direction the European Commission and the Member States are taking for harmonising market surveillance. This is an important step for fair movement of products. The BRT requests the European Commission and the Member States to disclose all the relevant information regarding the progress of this

process and the implementation of the market surveillance in each Member State. The BRT also requests the European Commission and the Member States to give industry an opportunity for contributing to developing the framework of harmonised market surveillance.

The BRT would like to thank the Directorate General of the European Commission concerned for the involvement of the industry and requests that it should continue to consult stakeholders widely – preferably through public consultation when draft guidance for the New Legislative Framework is ready.

*< Recent Progress >*

*Some progress has been seen for this recommendation.*

*< Background >*

*In 2008, the Regulation 765/2008/EC, setting out the requirements for accreditation and market surveillance relating to the marketing of the products, and the Decision 768/2008/EC, a common framework for the marketing of products, were adopted. The Regulation has been applied as from 1 January 2010.*

*The Regulation and Decision address and complement missing elements, namely, accreditation and market surveillance, in the existing sectoral legislations. The existing legislations are being amended based on the Decision when they are reviewed. The objectives of the so-called New Legislative Framework are to introduce harmonised and transparent market surveillance and accreditation for all economic operators. The Decision provides definitions, the obligations of economic operators, traceability provisions and safeguard measures. National authorities were to develop their market surveillance programmes and communicate them to the Commission by 1 January 2010.*

*The European Commission published the guidance for the New Legislative Framework in 2014.*

### **19.3 Consumer protection**

The new Directive, 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, still maintains the discretion of the Member States to set a guarantee period longer than 2 years set in the Directive 1999/44/EC, which the BRT believes could constitute an obstacle in the single market. The BRT would like to ask the European Commission to review the advantage and disadvantage of this discretion to set a guarantee period longer than 2 years in the future review.

*< Recent Progress >*

*No progress has been made for this recommendation*

*< Background >*

*The BRT believes that, to maximise the benefit of the single market, any legislation that affects cross-border transactions should be harmonised to the extent that businesses and consumers do not have to be concerned about difference in implementation among the Member States.*

**WP-A / # 20\* / J to E      Access of third countries goods and services to the EU's Procurement Market**

The BRT believes and recommends the following:

1. Non-legislative policy measures should be adopted to achieve the objective of opening procurement markets internationally;
2. Any measures should incorporate an effective mechanism to prevent the EU from arbitrarily excluding third-country goods and services from its procurement market and to ensure legal stability and predictability for businesses; and
3. Any measures should contain clear and transparent criteria for the scope and conditions of their application based on an appropriate and balanced analysis.
4. The authorities of the EU and its Member States should increase their efforts to facilitate better access to the respective public procurement markets.
5. The authorities of the EU and its Member States should make more information available in English. The BRT requests the use of English when submitting tender proposals to be allowed or at least partially allowed, especially for the technical specifications and communication.

*< Recent Progress >*

*There has been little progress.*

*< Background >*

*The reform of the legislative framework of public procurement is one of the twelve priority actions set out in the Single Market Act adopted in April 2011. Although the European Commission has stated in its Work Programme 2015 its intention to withdraw and modify a proposal for a Regulation on the access of third-country goods and services to the EU public procurement market (COM (2012) 124), it still intends to establish legislative rules on the access of third countries goods and services to the EU's internal market in public procurement and procedures supporting negotiations on the access of the EU good and services to the public procurement markets of third countries.*

*The BRT has a serious concern about such legislation that would enable the EU to close its market unilaterally. The BRT is concerned because, by exercising such unilateral measures, the EU could send a signal to its trading partners that the EU is closing its procurement market discreetly, which could trigger a chain reaction of protectionist measures all over the world. Should it happen, the EU's intention and objective of opening public procurement markets internationally would not be achieved.*