



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

Paris, 29 & 30 April 2013

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

Working Party Leaders:

*Co-Chair*

Mr. Duco DELGORGE  
Chairman  
European Business Council (EBC)  
in Japan

*Co-Chair*

Mr. Hitoshi KAWAGUCHI  
Senior Vice-President  
NISSAN MOTOR Co., Ltd.

*Vice Co-Chair*

Mr. Markus BEYRER  
Director General  
BUSINESSEUROPE

*Vice Co-Chair*

Mr. Shinji FUKUKAWA  
Senior Advisor  
Global Industrial and Social  
Progress Research Institute

## List of Abbreviations

<b>Abbreviation</b>	<b>Meaning</b>
AEOs	Authorised Economic Operators
CCCTB	Common Consolidated Corporate Tax Base
CE	Conformité Européenne (European Conformity)
CLP	Classification, labelling and packaging
ECE	Economic Commission for Europe
ECHA	European Chemical Agency
ELV	End of Life Vehicle
EN	Européen de Normalisation de Normalisation (European Standards)
FAQ	Frequently asked questions
FDI	Foreign Direct Investment
FSA	Financial Services Agency
FSC	Food safety Commission
GATS	General Agreement of Trade in Services
GCP	Good Clinical Practise
GHS	The Globally Harmonized System of Classification and Labelling of Chemicals
GMP	Good Manufacturing Practise
GPA	The Agreement on Government Procurement
HFC	HydroFluoroCarbons
HS	Harmonised System
ICT	Information and Communication Technology
ICTs	intra-corporate transferees
ITA	Information Technology Agreement
ISO	International Organisation for Standardisation
JAS	Japan Agricultural Standard
JCAB	Japan Civil Aviation Board
JELAM	Japan Electric Lamp Manufacturers Association
JET	Japan Electrical Safety & Environment Technology Laboratories
JETRO	Japan External Trade Organisation
JIS	Japan Industrial Standard
JPO	Japan Patent Office
JR	Japan Railways
LED	Light-Emitting Diode

MAFF	Ministry of Agriculture, Forestry and Fisheries
METI	Ministry of Economy, Trade and Industry
OECD	Organisation for Economic Co-operation and Development
OR	Only Representative
PMDA	Pharmaceuticals and Medical Devices Agency
PSE	Electrical Appliance and Material Safety Law
QMS	Quality Management System
REACH	Registration, Evaluation, Authorization and Restriction of Chemicals
RFID	Radio Frequency Identification
RoHS	Restriction of Hazardous Substances
RTD	Research and Technology Development
SIEF	Substance Information Exchange Forum
SMEs	Small and Medium size Enterprises
SVHC	Substance of Very High Concern
TPD	Transfer Pricing Documentation
UNECE	United Nations European Commission for Europe
UNGP	United Nations Guiding Principles on Business and Human Rights
VAT	Value Added Tax
VICH	International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products
WCO	World Customs Organisation
WTO	World Trade Organization

## Introduction

The global trade environment is changing. New major economic powerhouses have emerged and are increasingly taking advantage of opportunities in world markets. While major new bilateral deals are being struck between various countries to shore up their economies under these circumstances, the EU-Japan relationship has been in danger of being left behind. BRT members have been concerned about this trend and studied the potential for increasing trade and investment between the EU and Japan for years. Although some progress has been made through various dialogues on trade and regulatory reform, they strongly believe that significant issues have remained unaddressed. As a result, businesses on both sides are investing less than they should and our economies are growing less than they could. Fundamental measures to resolve pervasive issues limiting trade and investment will go a long way to improving the economies of both regions, including:

- Mutual recognition of regulations, standards and market authorisations to the extent possible and adoption of international standards
- Lifting of both tariff and non-tariff barriers as well as unnecessary bureaucracy
- Ensuring fair competition and equal treatment of all companies, domestic & foreign
- Ensuring fairer and more open competition in services
- Improving conditions for foreign direct investment
- Further enhancing incentives for growth of SMEs and for investment in R&D

The selection of recommendations for WP-A in this document reflects the need for such fundamental measures to be tackled. A major recommendation is for the EU-Japan FTA/EPA bilateral agreement to be sufficiently balanced, comprehensive and ambitious in order to dismantle these barriers holding back EU-Japan trade and investment. If negotiated speedily and fairly, it could strengthen the EU and Japan economically and position them as leaders in the development of rules and standards at the global level and help to protect the principles of rule-based trade as the foundation for the ultimate goal of a multi-lateral trading system.

To highlight priority issues, one asterisk (\*) identifies “priority” Recommendations, two asterisks (\*\*) identify “top priority” Recommendations. (e.g. WP A / # 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 the decision to open negotiations on a deep and comprehensive Free Trade Agreement between the EU and Japan, made by EU and Japanese leaders on March 25, 2013, which has marked the opening of a bright new chapter in EU-Japan bilateral relations.

In the expectation that a deep and comprehensive FTA / EPA between the EU and Japan will boost EU-Japan trade and investment and promote job creation and economic growth in both economies, the BRT urges both Authorities to conclude these negotiations as early as possible. To unlock the full growth potential of EU-Japan economic relations, the BRT reiterates its call that the resulting EU-Japan FTA / EPA should be ambitious, balanced, mutually beneficial, comprehensive, and tackle major outstanding issues such as tariffs, non-tariff barriers, public procurement, investment, services, competition, IPR, regulatory cooperation including harmonisation and the mutual recognition of regulations, standards and market authorisations. In addition, addressing elimination of tariffs and non tariff barriers in parallel in the negotiations is necessary to guarantee a successful outcome.

#### < 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 a breakthrough in WTO Doha Development Agenda negotiation and statement of strong support for fight against protectionism**

With a view to the upcoming Bali Ministerial Conference, the BRT expects that in particular an ambitious agreement on trade facilitation will be concluded. Further progress must be achieved in other key areas, such as non-tariff barriers. This would provide a significant boost to international trade.

The BRT also follows with interest the recently launched negotiations for an international services agreement and expects its design will be anchored within the WTO system. The WTO should also advance on plurilateral sectoral agreements, and work towards clearer WTO guidelines on the coherence between bilateral / regional / multilateral trade agreements and the WTO system. Finally, the WTO should explore other topical issues, such as the relationship between trade and investment, competition, energy and raw materials. The BRT counts that, under the new WTO Director General, expected to take office in September 2013, WTO is to pursue an ambitious trade agenda that will also tackle these issues which have a great impact on the business operations of companies today.

By advancing on a case by case basis the WTO should demonstrate its ability to develop new trade rules and help its members see the advantages of trade liberalisation. This should then serve to allow the restart of more comprehensive market access negotiations. Any weakening of the multilateral trade system must be prevented by all means.

< Recent Progress >

No tangible progress has been seen for this recommendation. Negotiations are on-going, including the informal ministerial meeting held in Davos, Switzerland in January 2013, towards the Ninth Ministerial WTO Conference in Bali which will take place in December 2013.

< 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 of ambition of the Doha Round, launched in 2001, has not been maintained, resulting in the current deadlock of negotiations which continue to revolve both around a lack of political will and the inability to bridge the gap of market access commitments between OECD and emerging country members.*

*With the prospects of great uncertainty, 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 leader in this area and take more action. The existing legal framework provides an excellent basis but needs to be updated in order to respond to a changing global economic landscape.*

**WP-A / # 03\*\* / EJ to EJ Applying international standards and enhanced cooperation in the promotion of new global standards**

1. The BRT urges both authorities to adopt international product standards and certification procedures where applicable, and, to promote harmonisation of standards and certification procedures, mutual recognition of product certification and, when possible, and appropriate, mutual acceptance of functionally equivalent regulations governing the application process for importing and selling/using products in sectors such as Construction Materials, Organic Products, Cosmetics, Medical Devices, Veterinary Products, Automobiles and Processed Food.
2. The BRT recognises the importance of global patent harmonisation and streamlining of the patent system as a way to promote innovation, reduce costs and boost legal certainty. With the introduction of a harmonised patent system in the EU, the authorities of the EU and Japan should take the lead in these efforts, and work closely in various international fora, such as “IP5”
3. Given the nature of the issue and the importance for business as well as for society in general, the two Authorities should make an effort to harmonise the regulations for energy conservation, relevant labelling rules, and environmental and carbon footprint schemes. The two authorities should aim at harmonisation at an international level rather than bilateral level.

4. 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. 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 consider a common policy by establishing a common list of restricted substances, a common approach to evaluation of risks and sharing of data so that cost for industries can be mitigated. Furthermore, they should share a support policy of supply chain management in developing countries in cooperation with businesses.
6. The two Authorities should create a framework between the EU and Japan in the development of practical application of new technologies, such as RFID and biometrics authentication technologies. This will enable and enhance cooperation among companies in the EU and Japan, and will also promote new international standardisation and lead to its dissemination.
7. The two Authorities should disseminate model ICT use that contributes to the security and the operational efficiency of the supply chain. For example, RFID tags, sensors, biometrics authentication technologies and UCR (Unique Consignment Reference) numbers can build a more secure and visible international supply chain.
8. The European Commission and the Japanese Government should collaborate on achieving international harmonisation at CODEX in the description and standards for food for specified health use/functional foods.
9. In the automobile sector, the Japanese and EU Authorities should accelerate their adoption of UN-ECE 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 9 >

*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-ECE 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 34 of the 50 areas included in Japanese type approval.*

< General Background for 1-9 >

*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 certain EU member states in the past, but regrets that no new agreements entered into force during 2011 and 2012. Therefore, the BRT requests that, Japan and the Member States of the EU 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 little progress in the last couple of years

< Background >

*While individual EU Member States and Japan have concluded bilateral social security agreement, Japanese citizens in many Member States cannot use pension premiums paid in those countries towards the pension in Japan and vice versa. This will lessen the burden both for companies as well as employees. So far, social security agreements between Japan, and Germany, the United Kingdom, Belgium, France, the Netherlands, Czech Republic, Spain and Ireland have entered into force. The agreement between Japan and Italy has been signed. Furthermore, negotiation is underway between Japan, and Hungary, Luxembourg and Sweden, and is 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.



< 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 and it is rare that the application of an intra-corporate transferee is questioned and required to submit substantial reasons. However, the recent economic situation in some Member States has caused the authorities to be more reluctant to issue work permits in general, which sometimes affects intra-corporate transferees by delaying the issuance of work permits to them. As 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 European Commission presented in July 2009, a proposal for a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (COM (2010) 378 final). Even if it is adopted, it will not be applicable in the UK, Ireland and Denmark because of opt-out of those Member States. Japanese nationals in the UK, where their number is the highest among the EU Member States, therefore, do 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 Better Regulation**

The BRT recommends that Japanese and European policy-makers increase mutual understanding of existing and upcoming regulations on each side and their impact on foreign business to exclude unwittingly taking initiatives that create barriers to trade. Both sides should commit to exchanging annual legislative work programmes at the earliest stage to prevent regulatory divergence and new trade barriers. In addition, the two sides should agree to an early warning system for draft legislation in order to make the dialogue effective. The EU and Japan should also develop a joint strategy to promote better regulation, learning from each other's experience and adopting a common system of good governance. Currently the views of businesses in Japan and the EU are not sufficiently taken into account in the regulatory process.

< Recent progress >

There is indeed increased communication between the authorities, but at the same time much improvement can still be achieved.

< Background >

*Better regulation, based on transparency, early public consultation, impact assessment, public access to draft regulations or administrative measures, could lead to a reduction in the cost of regulatory compliance and the overall administrative burden, which would be to the benefit of the Japanese and European economies as a whole.*

## WP-A / # 06\* / 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. Giving each other's SMEs the same general support and privileges as those given to one's own SMEs.
2. Permanent local assistance in language, paperwork, hiring local personnel, legal and regulatory matters, as well as advice on financing and banking, etc.
3. 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. Creating a joint investment fund for both sides' SMEs.
6. Exchanging best practices and tried 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 sides' Authorities to raise cooperation on cross-support for SMEs, as shown in their March 2013 Progress Reports, which mention including such cooperation in the FTA/EPA.

### < Background >

*SMEs are new 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 update both sides' industries through disseminating new products and technologies. However, market access problems and other 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 and for technological emulation. Aiming to provide local help to all potentially interested foreign SMEs is not realistic, but increasing and sustaining local help to SMEs that have established a local base is realistic in the context of a bilateral agreement. The BRT is of course aware of the major work being done for both sides' 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 / # 07\*\* / E to J    Harmonisation & mutual recognition of standards and product certifications; acceptance of international standards where applicable**

Reluctance to accept EN and ISO standards or CE marking of products exported to Japan delays the introduction of 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, when possible, and appropriate, the mutual acceptance of functionally equivalent regulations governing the application process for importing and selling/using products with particular consideration for consumer safety and health, 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:

#### 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.

#### < 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 >

There has been limited progress.

< 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 JR company. 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.

The BRT, however, recognises the latest development and positively views the first call for tender that was recently published. 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 >

There has been some progress. The Government of Japan did not address this issue in the progress report from April 2013.

< Background >

*The combined Japan Railways companies run on more than two-thirds of the railways, whereas the remaining one-third is controlled by more than 80 private carriers. This means that JR testing and acceptance standards serve as de-facto requirements for railway equipment to be exported to Japan. Unfortunately applied standards and requirements have not been openly published leading to a lack of information on exactly what requirements need to be fulfilled.*

## Medical Devices/Equipment

The Government of Japan is urged to create a more efficient product approval process, in particular by:

- a) Shortening the medical equipment certification process: accepting clinical trial data generated overseas and harmonising GCP and QMS requirements with international standards. The BRT recommends that in the meantime, both Authorities should officially recognise that either ISO 14155:2003 (and as subsequently amended) or Japan GCP is, in principle, generally acceptable to either party for all medical device clinical investigations. Both Authorities should also officially recognise that, in principle, a QMS audit conducted by responsible authorities in Japan (PMDA or third party testing organisation) or by Notified Bodies in the EU is generally sufficient as evidence of compliance with quality

management system requirements when applying for market authorisation on either market.

- b) Eliminating differences between Japanese GCP and the GCP established by the International Conference on Harmonisation.

< Recent progress >

While there is still a need for improvements, some progress has been made.

< Background >

*The EU's export of medical devices to Japan is limited by the costly and cumbersome approval process. Development costs for EU medical device producers are increased by requests for additional clinical trials from the Japanese authorities. Excessive Japanese standards and regulatory requirements result not only in a significant device lag, but also together with the insufficient reimbursement system, a device gap. The BRT calls on the government of Japan to intensify the work to simplify and harmonise the regulatory processes in the field of medical devices with that of the EU. Japan needs to reduce the time and costs associated with introducing innovative new treatments in the human healthcare market in Japan and to bring Japanese rules in line with global standards.*

### 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 and fully harmonise domestic regulations with international practices.
- b) Requests Japan 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. Harmonisation of regulations on animal vaccines, and ensuring product conformance under a unified GMP regime, should also be addressed.
- c) Asks Japan to better facilitate the use of English in applications without the need for a summary in Japanese.

< Recent progress >

Limited progress has been made. On December 3, 2012 the MAFF presented to the Japan Veterinary Products Association a list of 10 action items for change. These items are welcomed by the industry however still fall far short of the definitions of harmonisation described above. In addition, timelines are not yet available for implementation of these items, nor has MAFF made clear the extent of further collaboration with industry to establish the details of such changes.

< Background >

*While Japan participates in the VICH, the implementation of international and harmonised standards is often slow and Japan-unique elements are added. MAFF has to a certain extent facilitated the use of English, but have at the same time added a requirement to add a summary in Japanese, as mentioned above.*

## 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, 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.

### < Recent progress >

There has been no concrete progress

### < 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 lamps prepared by the Japanese ministry (i.e. METI) and Japanese lighting industrial association (i.e. JELMA) is not compatible with standards used by manufacturers of other countries
- In terms of fluorescent lamps (tube LED), the Japanese lighting industrial association (JELMA) appoints Japanese test facilities as the only laboratories permitted to test
- The Japanese government continues to support their own standard of remote control for LED lamp and luminaries

The BRT requests Japan to harmonise with international standards and 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 >

This is a new issue.

### < 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.

#### < Recent progress >

The Consumer Affairs Agency will during 2013 look into the Household Labelling Law. However, so far, nothing concrete has been presented. This issue was not touched upon in the GoJ progress report of April 2013.

#### < 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 / # 08\*\* / 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 >

There has been no progress.

#### < 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 / # 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. In particular, the Government should:

Remove obstacles to integrating the operations of financial groups. In particular, the initiated reforms of firewall restrictions should be implemented fully to allow financial groups to structure their organisations in Japan in the same way as they do in the rest of the world.

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 >

There has been no progress, but rather backward movement.

< 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**

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 >

This is a new recommendation.



< 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.*

**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 Government should also ensure that rules of fundamental importance to foreign companies are not altered without prior notice and consultation. In this context, the BRT calls on the Government to use all means available, including revision of Article 821 of the Corporation Law, to ensure legal certainty for foreign companies established as branches in Japan.

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.

< 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 WTO FDI in 2011 was only 3.9 % of GDP.*

**WP-A / # 12\* / E to J      Fight against counterfeited, pirated and contraband goods**

The Government of Japan should make all trade with fake goods illegal and to better cooperate with overseas authorities to secure the closure of sites trading in fake goods. Furthermore, Japan should remove the loophole by which individuals are allowed to bring in or import counterfeits for person consumption.

< Recent progress >

There has been some progress, especially in regard to the number of photographs sent to right holders in connection with suspicious goods. However, it is still legal to import fake goods for personal consumption.

< Background >

*Japan allows the importation of fake goods as long as they are for personal use. This is notably in explicit contradiction with Article 15 of the Universal Postal Convention that prohibits the insertion of counterfeit and pirated articles in all categories of items (letters, packages and parcels). Accordingly, there is an inflow of counterfeit goods sold on the internet on sites outside Japan, but which are catering to the Japanese market. These two factors unfortunately lead to quite a large trade in counterfeit goods.*

**WP-A / # 13\* / E to J      Patents and trademarks**

**1. Trademarks**

It should be the responsibility of the owner of an earlier trademark to defend that trademark, if there is concern about a similar more recent trademark. The owner of the earlier mark would usually issue a letter of consent to overcome the official complaint. In Japan this is not accepted. Trademarks considered by the Trademark Office to be too similar cannot co-exist, even if the affected owners see no problem with such a co-existence. In most countries this procedure was already abolished.

< Recent progress >

This is a new recommendation.

< Background >

*The Japanese Trademark Office checks new trademark applications ex-officio for the existence of relative grounds for refusal in the form of similar earlier registered trademarks. The applied standards are so strict that even brands are considered as a hindrance, which could in fact co-exist even from the perspective of the affected owners.*

**2. Patents**

The JPO should consider supplementary experimental evidence to support generic drug patent claims.

< Recent progress >

This is a new recommendation.

< Background >

*Currently, for many types of applications the JPO will only grant protection for embodiments disclosed in the application as filed. In addition, paediatric extension of pharmaceutical patents is not available in Japan.*

## WP-A / # 14\*\* / E to J Government procurement

### < General Recommendations >

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

### < Background >

*Studies have shown that over 80% of the total government 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. Government Procurement was included in the so-called paragraph 34 discussions, where Japan promised to set up a data base where all tenders, national and regional would be posted. However, significant improvements are required to bring Japanese public procurement closer to the levels of the EU.*

### < 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.

### < Background >

- a. *Although cheaper is not necessarily better, almost all Japanese government tenders still have an evaluation system merely based on price competition.*
  - b. *Procurement by some governmental agencies (such as fire fighting and disaster relief) is still tied to this constraint. In some cases the time between the bid award and the requested delivery is less than six months, which is much too short for helicopter manufacturing, considering also the hurdles of local certification upon import. This condition has been relaxed in the past few years (for police procurement for instance).*
- Procurement of integrated systems of space ground equipment should be encouraged

### < Recent progress >

There has been little progress.

### < Background >

*Japan's international procurement of space ground equipment is often broken up in small lots tailored for Japanese companies. Integrated systems have better cost performance and are more reliable.*

*It should, however, be mentioned that a call for tenders was published for the railway sector during 2012, the first ever case of its kind.*

---

<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 / # 15\*\* / J to E Europe 2020 and the Single Market Act

The BRT expresses our continued support for Europe 2020 and in particular, the Single Market Act - the initiative of the European Commission to relaunch the single market. In addition, The BRT looks forward to the adoption of Horizon 2020, the EU's RTD program for 2014-2020 and to increased international cooperation between businesses in the EU and Japan.

- 1) The BRT would like to repeat the importance of the single market for the EU and the Europe 2020 strategy.
- 2) The EU should make utmost efforts to realise all of the commitments that it has made under Single Market Act I and II. The BRT would like to emphasise the importance of the following priorities for the single market.
  - Intellectual property rights
  - Consumer empowerment
  - Services
  - Networks
  - The digital single market
  - Taxation
  - Business environment
- 3) The BRT requests that the EU should add the realisation of the true single market of chemical materials as a priority.

#### < Recent Progress >

Europe 2020 is evolving and progress has been made on Single Market Act I. Single Market Act II was launched in November 2012. The realisation of the true single market of chemical materials is a new recommendation.

#### < Background >

*For global businesses to flourish, the regulatory environment should be, as much as possible, consistent throughout the world. In this context, a level playing field in the single market is of key importance.*

*The BRT believes that a policy with social objectives such as environmental policy and social policy cannot be formed independently from economic and industrial policies. It is important to achieve synergy between these different policies. For example, in order to realise more energy efficient economy, innovative and competitive products and processes provided by industries will be essential not only in the manufacturing sector but also in the transport and household sectors. It goes without saying that sustainable social infrastructures for the aging society such as social security systems depend on the business activities that create growth and jobs.*

*Furthermore, the international coordination of regulatory policies and close cooperation amongst governmental and other institutions involved in policy-making process is important to realise a level playing field globally.*

## **WP-A / # 16\*\* / J to E      Revision of high customs tariffs on audio-visual products and passenger cars**

The authorities of the EU should abolish or drastically reduce 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 >**

It can be said that a progress has been seen for this recommendation because the EU-Japan bilateral negotiations on an EPA/FTA have been launched.

### **< 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 / # 17\*\* / J to E      Customs Classification**

### **17.1. IT products**

The BRT requests that the authorities of the EU should acknowledge the concerns and difficulties that businesses are facing and that, based on the panel reports of the WTO on information technology dispute issued in August 2010, the authorities of the EU should take steps to increase predictability and improve transparency upon importation of the IT products, in particular, in the framework of recently launched negotiations on expanding the current product coverage of the ITA.

### **< Recent Progress >**

It can be said that a progress has been seen for this recommendation because negotiations on expanding the ITA have been launched.

### **< Background >**

*The BRT believes that customs classification should be done in accordance with the Harmonized System Convention rules. However, the BRT also believes it a fact that the rules do not provide a clear method of classification for such products as electric-electronics products, where the technical convergence of IT and non-IT products has emerged. This situation makes interpretation and classification more difficult and complicated than ever, and has undermined transparency, predictability and promptness for businesses. The improvement of the said situation will indeed contribute to the development of the ICT industry.*

### **17.2. Packaged IGBT device**

The BRT requests the authorities of the EU to implement without delay in all the Member States the ruling made by the HS Committee of WCO at its 50th Session in September

2012 on a packaged insulated gate bipolar transistor (IGBT) device to classify it in heading 85.41 (subheading 8541.29).

< Recent Progress >

This is a new recommendation

< Background >

*The HS classification of a packaged IGBT device in heading 85.41 was disputed by the customs authorities of a Member State of the EU. The case was brought to the HS Committee of WCO in June 2011. In September 2011, the HS Committee decided to classify it in heading 85.41. However, the EU requested re-examination. In September 2012, the HS Committee re-examined the case and decided to classify it in heading 85.41 (subheading 8541.29). The ruling has been considered applicable since 1 December 2012. It appears that the customs authorities concerned have not yet implemented the ruling. The EU and all of its Member States are the members of WCO.*

**WP-A / # 18\*\* / J to E      Chemical Regulations**

**18.1 REACH**

1. Concerning REACH, the BRT recommends as follows:

- ✓ The BRT asks the authorities of the EU to soon unify the interpretation of the Article as stipulated in the Guidance document so that actors in the supply chain can avoid the fragmented compliance requirement in EU market.
- ✓ In Denmark, despite the objection by the ECHA (European Chemicals Agency), phthalates are banned in its new national law published in its official journal on 30 November 2012. The authorities of the EU should take action against Denmark.

< Recent Progress >

Some progress has been seen for the recommendation on the interpretation of the Article. The recommendation on phthalates is a new recommendation..

< 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. Six member states, however, insist that the threshold should apply to the parts of complex articles based on the "Once an article – always an article" concept.*

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

- ✓ Although the number of SVHC increases steadily, the ECHA is not involved in its dissemination. It is left to industry. The authorities of the EU should facilitate the dissemination of such information in supply chains through the publication of guidance.

- ✓ 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 >

No progress has been seen for the recommendation on SVHC.  
The others are new recommendations.

#### < 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.

#### < Recent Progress >

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

#### < Background >

*New challenges are already foreseen in the SIEF operation toward 2013 registration 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.*

## **18.2 Appropriate approach to Endocrine disruptor and combined effect**

The BRT requests that the authorities of the EU should regulate endocrine disruptors not by using the categorisation like CMR (carcinogenic, mutagenic or toxic for reproduction), but by using the risk assessment based on sound science because endocrine disruption is not the endpoint of toxicity but the mode of action to the adverse effects.

### **< Recent Progress >**

This is a new recommendation.

### **< Background >**

*Currently there is no regulation on Endocrine disruptor and combined effect. The authorities of the EU are contemplating a policy measure.*

## **18.3 RoHS**

The BRT requests that SVHC, authorisation or restriction under REACH and exemption under ELV/RoHS should not lead to duplicated regulation.

### **< Recent Progress >**

This is a new recommendation.

### **< Background >**

*REACH and RoHS are independent with each other. However, they regulate chemical substances. Both of them impose restrictions and exemptions thereof. Although currently the BRT is not aware of any discrepancy as to the restricted or exempted chemical substances between the two regulations, the BRT is nonetheless concerned about the risk of duplication due to the complexity of the two regulations.*

## **18.4 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.*

## 18.5. 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 >

These are new recommendations.

#### < 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.*

## 18.6 HFCs

The BRT recognises the following issues and requests the authorities of the EU to take them into account during the deliberations of the legislative proposal.

- ✓ The charging of refrigerants on site, due to pre-charge ban, could result in frequent leaking of HFC gases into the air even if carried out by qualified people because of less than ideal work environment. The charging of refrigerants in factories should be allowed.
- ✓ The pace of the reduction of the use of HFCs is too steep. It should be revised by taking account of safety (replacement refrigerants could be inflammable), performance (lower performance would result in less CO<sub>2</sub> reduction) and cost (cost for users and cost for the society in general).
- ✓ In order to realise a single market in chemical materials, there should be one rule on banned chemical materials that is applicable throughout the EU. If Member States

have the discretion of banning additional chemical materials, it would lead to market fragmentation.

< Recent Progress >

These are new recommendations.

< Background >

*The European Commission issued a proposal for a Regulation of the European Parliament and the Council on fluorinated greenhouse gases in November 2012.*

**WP-A / # 19\*\* / J to E      Japanese expatriates**

1. Intra-corporate transfer

The BRT believes that a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer should include the following measures:

- 1) The maximum duration of the transfer to the European Union should be 5 years for managers and specialists rather than 3 years currently set in the proposal (Article 16.3);
- 2) It should be possible for ICTs to submit the application for a work and residence permit after entering the assigned country based on the waiver of visa requirements;
- 3) It should be possible for their spouses to be automatically granted the right to work upon their arrival.
- 4) The application of integration measures to ICTs should be voluntary.

The BRT is concerned about the lack of its progress in the legislative process. The BRT recommends that the EU and Japan should include this issue in the negotiations on an EPA/FTA between the EU and Japan as referred to in the item 2 of WP-A / # 04 / EJ to EJ Supporting timely development of business.

< Recent Progress >

No progress has been seen for this recommendation.

< Background >

*The European Commission presented in July 2009 a proposal for a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (COM (2010) 378 final). The BRT believes such a Directive to expedite and facilitate the transfer of intra-corporate transferees (ICTs) is important to increase the attractiveness of the EU for multinational businesses. However, the proposal could be further improved to facilitate the transfer of ICTs and their family members.*

2. Long-term residents

The BRT supports the intention of the Commission to increase its efforts to ensure that the Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents is correctly transposed and implemented across the EU.

The authorities of the UK should take action in order to enable non-EU nationals resident in the UK to benefit from the Directive 2003/109/EC.

< Recent Progress >

No progress has been seen for this recommendation.

< Background >

*The European Commission published in 2011 a report on the application of Directive 2003/109/EC (Com (2011) 585). The BRT has noted that the numerous issues were pointed out in the report in the implementation of the Directive including the weak impact of the Directive in many Member States.*

*The Directive 2003/109/EC is not applicable in the UK, Ireland and Denmark. Japanese nationals in the UK, where their number is the highest among the EU Member States, therefore, do not benefit from this Directive.*

**WP-A / # 20 / J to E      Fight against counterfeited, pirated and contraband goods**

The BRT would like to see the EU to take further necessary steps with a view to step up efforts in all the EU Member States to fight against counterfeited, pirated and contraband goods, both inside and outside the EU.

The BRT reiterates its support of a proposal for a Regulation concerning customs enforcement of intellectual property rights of 24 May 2011, COM(2011)285, which reflects some of the BRT's key recommendations such as simplifying the procedure and mitigating the financial burden of the importers of the authentic goods. The EU should further seek ways to mitigate their financial burden.

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.

< Recent Progress >

Some progress has been seen for this recommendation.

< Background >

*Due to a lack of resources, only a small part of the goods that are passing through the EU customs are inspected by the authorities. A substantial part of counterfeit goods are passing through the customs as a result. With an increased cooperation by the manufacturers and importers of the authentic goods, including the provision of more information on their products and the on-site training of officials, the customs authorities should make inspection more efficient and raise the rate of its coverage.*

*The importers of the authentic products have to pay for the storage, transportation and destruction costs of counterfeit goods. Some companies may, as a result, renounce the fight against counterfeit goods. However, counterfeit products raise more and more health and safety issues. In addition, there is also an obligation for the Member States to destroy counterfeit goods detained by the customs and, especially, not to release them on the EU market. The EU, through the Member States, should introduce financial support or offer free assistance.*

## **WP-A / # 21 / J to E      Unitary Patent**

The BRT welcomes the adoption of the two Regulations that implement enhanced cooperation in the area of the creation of unitary patent protection. The BRT urges the Member States to ratify the international agreement that will create the unitary patent court as swiftly as possible.

### **< Recent Progress >**

A good progress has been seen for this recommendation.

### **< Background >**

*The unitary patent package consists of the following:*

- 1. a Regulation creating a European patent with unitary effect ('unitary patent');*
- 2. a Regulation establishing a language regime applicable to the unitary patent;*
- 3. an international agreement among Member States setting up a single and specialised patent jurisdiction (the 'Unified Patent Court').*

*The two Regulations were adopted in December 2012 by the 25 Member States participating in the enhanced cooperation in the area of the creation of unitary patent protection. These Regulations will enter into force once 13 Member States including Germany, France and the UK ratify the international agreement.*

## **WP-A / # 22 / J to E      Taxation**

### **22.1 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.*

## 22.2 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%.*

## 22.3 EU TPD

To provide sufficient incentive to the compliance with the EU TPD, the EU and the Member States should commit themselves to exemption from penalties (i.e. penalties related to non-compliance with documentation requirements, penalties related to transfer pricing adjustments and interest related to adjustments) if a company submits an EU TPD acting in good faith and in a timely manner.

< Recent Progress >

No progress has been seen for this recommendation

< Background >

*The EU and its Member States should not treat companies in good faith and companies that try to evade taxation in the same way as the imposition of penalties even when EU*

*TPD is prepared in good faith could lead to undesirable distortions in the single market by forcing companies to adopt artificial transfer price in order to avoid penalties*

## **22.4 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 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 / # 23 / J to E      On the legislative proposal on non-financial disclosure**

The BRT supports the initiatives taken by the European Commission to involve stakeholders and facilitate dialogue in order to improve the transparency of businesses with regard to non-financial information disclosure.

The BRT recommends that a principle-based approach which enables businesses of different sizes, sectors and organisational structures, to choose the reporting framework which best represents their company values should be adopted.

The BRT strongly favours an EU-wide approach in light of the global context concerning non-financial information disclosure.

The BRT recommends the possibility for companies to report either at group or at consolidated level under the future EU regulatory framework for non-financial disclosure.

### **< Recent Progress >**

The European Commission published a proposal for a Directive on 16 April 2013 (COM(2013) 207).

< Background >

*The BRT believes that corporate reports are a vital communication tool only when intended users and their material interests are clearly defined. Materiality is the key, and the BRT strongly believes that what is material to a company is company-specific. Key Performance Indicators (KPIs) are useful for businesses to measure internal achievement, however, due to the subjective character of materiality, the BRT is concerned that making the use of specific and harmonised quantitative KPIs mandatory in the EU would have negative rather than positive effects on the whole of the non-financial information disclosure process.*

*The perspective of multi-national businesses whose activities stretch across not only different European countries but also across different regions in the world should be taken into account. In order to avoid any confusion or unnecessary administrative burden, it is equally important that the content of the forthcoming legislation takes into account of the development of Global Reporting Initiative and International Integrated Reporting Council.*

*The possibility for companies to report either at group or at consolidated level should also be offered equally to businesses headquartered outside the EU which have entities in the EU. Such approach would create a solid foundation for the integration of non-financial information into the management structure of companies and would be more practical than a disclosure requirement at entity level.*

**WP-A / # 24 / J to E      Consumer protection**

The BRT welcomes the adoption of the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights. The BRT also welcomes the fact that the two of our recommendations are accommodated in the new directive.

The new directive, however, 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 / # 25 / J to E      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 requests that the European Commission should consult stakeholders more 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. The recommendation on New Legislative Framework is new.

< 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 is in the process of preparing the guidance for the New Legislative Framework and intends to publish it by the summer of 2013.*

## **WP-A / # 26 / J to E      Competition Policy**

The BRT requests the authorities of the EU to pay due attention to the correctness and relevance of the addressee when they send a ‘simple request for information’ or a ‘request to supply information by decision’.

The BRT also requests the authorities of the EU to allow a sufficient time for the addressee to prepare a reply as well as to be flexible in allowing extension of the time limit to respond to the request.

< Recent Progress >

These are new recommendations.

< Background >

*According to the article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and the article 11 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, the European Commission may, by simple request or by decision, require any undertakings and associations of undertakings to provide all necessary information even if they are not directly involved in the case in question. The articles 23 and 24 of the first Council Regulation and the articles 14 and 15*



of the second Council Regulation stipulate fines and penalties for not complying with such requests.

*The European Commission services in charge often send a request to an entity of the group that is not capable of responding to a request. It seems that, when the head office is located outside the EU, the European Commission services in charge do not make sure that the request is sent to the addressee that is responsible for responding to such a request. By the time such a request is forwarded to those responsible for handling such a request, there sometimes is not enough time to prepare a response. Furthermore, the European Commission services in charge are not flexible in allowing extension of time-limit when a request for an extension is made by the company required to respond.*

## **WP-A / # 27 / J to E      Environmental footprint**

The BRT requests as follows:

**Comparability or Harmonization of Global Methodologies:** To support comparability objectively, the EU should respect discussion on LCA (Life Cycle Assessment) (e.g. cLCA – carbon-Life Cycle Assessment), method under ISO, IEC (International Electrotechnical Commission) (ISO14040-14044, ISO26000 (GRI), ISO14025 etc.), etc. with consideration to global harmonization.

**Database:** The EU should allow mutual recognition of databases not only in the EU but also with those outside the EU and participate in the international development of database.

**Sector rules:** In setting sector rules, the EU should issue guidelines on the scope of products and industrial sector in addition to the EU methodologies of OEF (Organisation Environmental Footprint), PEF (Product Environmental Footprint). Furthermore, sector definitions should be sufficiently narrow to allow a meaningful comparison of data.

< Recent Progress >

These are new recommendations.

< Background >

*The European Commission is preparing initiative on environmental footprint of products and organisations.*

## **WP-A / # 28 / J to E      On business and human rights**

Concerning the European Commission's Communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility (COM(2011)681), the BRT recommends that the authorities of the EU should:

- 1) Avoid polarisation and focus on the UNGP's "principled pragmatism";
- 2) Consider different understanding of 'human rights' and acknowledge the need to communicate effectively;
- 3) Disseminate practical advice on how to prioritise actions to conduct due diligence on adverse human rights impacts;

- 4) Avoid increasing the burden on companies through a “tick-box exercise”; and
- 5) Encourage a ‘knowing and showing’ mindset and highlight companies’ positive contribution.

< Recent Progress >

These are new recommendations.

< Background >

**1) Avoid polarisation and focus on the UNGP’s “principled pragmatism”**

*The BRT welcomes that the European Commission’s Communication recognises the UN Guiding Principles on Business and Human Rights (UNGPR) as one of the internationally recognised standards. The BRT believes that the concept set by the UNGP enables businesses to be engaged in the issue of business and human rights more pragmatically than previously possible because it is more process focussed rather than performance focussed. The UNGP’s “principled pragmatism” helps businesses to develop their own capacity to know themselves internally and show externally how they meet the responsibility to respect Human Rights. The BRT welcomes the Commission’s support for this approach. Any other approach, or creating a different European standard, would create a confusing situation and be an unnecessary burden for businesses.*

**2) Consider different understanding of ‘human rights’ and acknowledge the need to communicate effectively**

*Although human rights should be universally understood and equally applied to all people, the use of the word “human rights” can have a different connotation within the different business sectors around the world in relation to national, cultural, historical and company contexts. There is a danger that, in such cases, the terminology issue predominates over the substance and that a constructive dialogue between all the business partners is hindered unnecessarily.*

*The BRT believes that a good understanding of such national, cultural, historical and company differences as well as the recognition of the dynamics between different business partners is a key to an effective communication about the relevance of human rights to businesses at an operational level. The BRT encourages the European Commission to provide support for businesses on how to deal with these differences and on how to communicate effectively. The BRT underlines the potential mutual benefit of an opportunity that would allow the exchange of information between the European Commission and businesses headquartered outside Europe on this topic.*

**3) Disseminate practical advice on how to prioritise actions to conduct due diligence on adverse human rights impacts**

*Businesses are increasingly challenged by the complexity of responding to several strengthened external expectations on the management of their supply chain. As the UNGPs wider acceptance may increase the focus on the issue of business and human rights in the near future, the BRT is concerned that it might lead to an increase of unreasonable accusations against businesses. The UNGP recognises that, for businesses with a large number of entities in their value chain, it may be unreasonably difficult to conduct due diligence on adverse human rights impacts across all of them. The UNGP also advises that businesses identify the areas where the risk of such adverse human rights impacts are the most significant and prioritise these in their human rights due diligence process. The BRT suggests that the EU should acknowledge this point of*

view, and disseminate a practical advice on how to prioritise actions to fulfil these responsibilities and to respond to increasing social expectations.

#### **4) Avoid increasing the burden on companies through a “tick-box exercise”**

Many individual or collective initiatives have already been taken by businesses to ensure that their supply chain is socially responsible, such as the implementation of appropriate business processes. Though businesses are usually evaluated in terms of performance rather than in terms of having the right processes in place, the BRT recognises that focussing on performance only will not always enable them to ensure that, for example, there are no instances of child labour.

With the right processes in place, businesses can increase their assurance that their suppliers have a method to avoid adverse human rights impacts. The BRT recommends that the European Commission avoids creating another framework that would lead to a tick-box exercise and is in favour of a flexible approach that can makes it easier for businesses of different backgrounds to adopt and adapt the UNGP.

#### **5) Encourage a ‘knowing and showing’ mindset and highlight companies’ positive contribution**

The BRT would welcome a mechanism where first movers receive more recognition as they face more risks. Strengthening the competitiveness of business should also be taken into account. The BRT believes that it is extremely important for the EU to move away from a ‘naming and shaming’ mindset and encourage a ‘knowing and showing’ mindset as it is also important to think about the long term competitiveness of businesses. This will create a beneficial incentive for more businesses to actively meet their responsibility to respect human rights and allow the strengthening of a win-win relationship between society and companies. It is also extremely important that the EU recognises and highlights the positive impact of companies on human rights rather than only focusing on the negative impacts and compliance.

### **WP-A / # 29 / J to E      EU policy on company law**

The Council should adopt a proposal for a Council Regulation on the statute for European Private Company without delay. The statute should realize the following points.

- 1) Widely accessible, easy to set up and inexpensive to run
- 2) Allowing a great deal of flexibility to founders and shareholders to organize themselves in the way that is best suited to their activities: and
- 3) As uniform throughout the EU as possible.

#### **< Recent Progress >**

No progress has been seen for this recommendation.

#### **< Background >**

The European Commission issued a proposal for a Council Regulation on the statute for European Private Company in June 2008. The proposal has not been adopted nearly five years later. The European Private Company is for private companies while the European Company Statute is for public companies. The European Company Statute has enabled the establishment of a European Company (SE) since October 2004 but it has been

*criticised as cumbersome and complex, unsuited to the needs of SMEs', which are 90% of companies in the EU.*

### **WP-A / # 30 / J to E      Access of third countries goods and services to the EU's Public Procurement Market**

The BRT believes and recommends the following:

1. Non-legislative policy measures should be adopted to achieve the objective of opening public 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 public 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.

#### **< Recent Progress >**

This is a new recommendation.

#### **< 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. As part of this reform programme, the European Commission announced on 31 March 2012 a proposal for a Regulation on the access of third-country goods and services to the EU public procurement market. (COM (2012) 124).*

*The BRT has a serious concern about the measures in the proposed Regulation that would enable the EU to close its market unilaterally. The BRT is concerned because, by exercising the proposed unilateral measures, the EU could send a signal to its trading partners that the EU is closing its public 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.*

### **WP-A / # 31 / J to E      The deployment of alternative fuels infrastructure**

The BRT supports the plan to expedite the deployment of alternative fuels infrastructure as described in a proposal for a Directive on the deployment of alternative fuels infrastructure.

The BRT requests the authorities of the EU, however,

- 1) To delete the technical specification for the connectors of Direct Current (DC) fast recharging points for electric vehicles from Annex III of the proposal since European standard has not been finalized yet and it is premature to refer to any specific technologies as a part of European standards.
- 2) To add dual chargers in with the existing DC fast charging technology as an option in order to ensure the convenience of the existing electric vehicle drivers in the EU and the development of the electric vehicle market.

< Recent Progress >

This is a new recommendation

< Background >

*The European Commission adopted a proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure (COM(2013)18) on 24 January 2013. When adopted by the European Parliament and the Council, it would require establishing a minimum number of recharging points for electric vehicles by each Member State, with 10% of them being publicly accessible. It would also require the implementation of common technical specifications for the interfaces between recharging points and vehicles. In Annex III 1.2 of the proposal, it stipulates that Direct Current (DC) fast recharging points for electric vehicles shall be equipped, for interoperability purposes, with connectors of Type "Combo 2" as described in the relevant EN standard, to be adopted by 2014.*

*As stated in the preamble (26) of the proposal, technical specifications for interoperability of recharging and refuelling points should be specified in European standard. However, such a standard is yet to be finalized for DC fast recharging points. Therefore, it is premature to refer to any specific technologies as a part of European standards.*

*Furthermore, the future Directive should make dual chargers with the existing DC fast charging technologies an option because a technical specification to become available in the market in near future may be specified as is the case in the current proposal. The fact is that there are more than 10,000 electric vehicles equipped with a fast charging technology on the road in Europe today. Dual chargers that can serve the existing electric vehicles as well as future ones will be important not only for the convenience of the drivers of the existing vehicles but also for the market to develop.*