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

Brussels, 11 July 2017

Working Party 1
Trade Relations; Investment and Regulatory Cooperation; Financial Services, Accounting and Taxation

Working Party Leaders:

Co-Chair
Mr. Danny RISBERG
Chairman
European Business Council (EBC) in Japan

Co-Chair
Mr. Hitoshi KAWAGUCHI
Senior Vice President / Chief Sustainability Officer
NISSAN MOTOR Co., Ltd.

Vice Co-Chair
Mr. Markus BEYRER
Director General
BUSINESS EUROPE

Vice Co-Chair
Mr. Shinji FUKUKAWA
Senior Advisor
Global Industrial and Social Progress Research Institute

List of Abbreviations

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

JETRO	Japan External Trade Organisation
JIS	Japan Industrial Standard
JR	Japan Railways
KPIs	Key Performance Indicators
LED	Light-Emitting Diode
LoA	Letter or Access
MAFF	Ministry of Agriculture, Forestry and Fisheries
METI	Ministry of Economy, Trade and Industry
NTM	Non Tarrif Measure
NOL	Net Operation Loss
OECD	Organisation for Economic Co-operation and Development
OR	Only Representative
PPPR	Plant Protection Products regulation
PSE	Electrical Appliance and Material Safety Law
R&D	Research & Development
REACH	Registration, Evaluation, Authorization and Restriction of Chemicals
RoHS	Restriction of Hazardous Substances
SDS	Safety Data Sheet
SIEF	Substance Information Exchange Forum
SMEs	Small and Medium size Enterprises
SVHC	Substance of Very High Concern
UNECE	United Nations European Commission for Europe
VAT	Value Added Tax
WCO	World Customs Organisation
WHO	World Health Organization
WTO	World Trade Organization
WP	Working Party

Introduction

Japan is the EU's seventh largest trading partner and the EU ranks as Japan's third largest trading partner. While already significant, this trade relationship has considerable upwards potential and the benefits of the EU-Japan Economic Partnership Agreement will stretch beyond the many European and Japanese companies already operating in each other's home markets to all those, attracted to the new opportunities it creates. Working Party 1 stresses that any agreement must address the specific concerns of European and Japanese businesses reflected in this and previous reports. With so much at stake, we are urging the authorities on both sides to ensure that the necessary progress is made. Many reforms are required to secure a fair and competitive environment for business and have been identified from the extensive first-hand operational experience of Working Party 1 members in the Japanese and European markets. This report sets out concrete recommendations that address the following key issues:

- Creating a common regulatory environment, mutual recognition of regulations, standards and market authorisations to the extent possible and adoption of international standards
- Elimination of both tariff and non-tariff measures as well as unnecessary bureaucracy
- Ensuring fair competition and equal treatment of all companies, domestic & foreign
- Ensuring fairer and more open competition in services, and procurement markets
- Improving conditions for foreign direct investment
- Further enhancing incentives for growth of SMEs and for investment in R&D. And finally,
- Pursuing simpler, lighter and sensible tax systems, including the implementation of the BEPS Actions without additional administrative burden

Working Party 1 members reiterate that the EU-Japan Economic Partnership Agreement bilateral agreement must be balanced, comprehensive and ambitious in order to dismantle these barriers holding back EU-Japan trade and investment and significantly promote growth both economies.

To highlight priority issues in the text that follows, one asterisk (*) indicates "priority" recommendations. (e.g. WP 1/ # 01* / EJ to EJ)

Recommendations from both European and Japanese industries

WP-1 / # 01* / EJ to EJ **Strengthening the EU-Japan Economic Relationship**

Ten years ago, the BRT “committed [itself] to creating the necessary conditions to deepen the full potential of EU-Japan economic relations, which are far from being fully exploited” and called for the feasibility of a bilateral FTA to be considered. The BRT welcomed the formal opening of Economic Partnership Agreement negotiations in 2013 as “a new chapter in EU-Japan bilateral relations” to deepen the relationship between EU and Japan and called for their completion as early as possible and with an outcome compatible with the high level of their ambition. The BRT's initial optimism became tempered with concern given the pace of the negotiations. Throughout the past four years the BRT has emphasised that the final outcome should be “comprehensive, ambitious and mutually-beneficial”.

Now that an agreement in principle has been reached on the EPA, the BRT urges the EU and Japan to begin looking beyond the EPA agreement and towards establishing a new high-level cooperation framework, which befits this innovation and digital age.

Firstly, industry seeks a voice in any post-agreement monitoring mechanism to enable industry to identify potential issues that may arise during implementation of the Agreement. Even more critical will be how to handle new issues that arise after the EPA has been concluded and pre-existing issues that were not covered in the EPA. A monitoring mechanism for all these issues (non-tariff measures (NTM), tariffs, etc.) should be addressed in a binding manner within the overarching EPA framework giving way to concrete outcomes and not just addressed through official 'dialogues'.

To ensure transparency and an effective implementation of the agreement, the BRT calls on both Authorities to make public items as they are implemented and assess their impact on business, showing how the implementation addresses the particular issue raised in the EPA and how it might address other related issues including those not discussed in the EPA. We recommend that the respective lists be updated regularly.

Secondly, the BRT reiterates its view that the upgrading of global value chains and securing the fruits of innovation require not only the adoption of global rules to eliminate non-tariff measures which may obstruct trade, but also forward- looking creative regulatory cooperation including a convergence of standards.

For these reasons, the BRT calls on the Authorities of the EU and Japan to initiate creative regulatory cooperation across the board and ensure the substantial participation of industries from the EU and Japan in the process. We are ready to contribute and provide input for the initiative.

Thirdly, in the realm of data security and data flow, the BRT emphasises the need for resolute action and measures in order to ensure the coherence of data privacy and the free flow of data between the EU and Japan. The BRT expects that the inaugural

high level meeting and the expert meeting on Data Economy will be repeated, and hopes that the Authorities of both the EU and Japan will work on establishing a framework in the near future based on the dialogues.

Finally, the BRT calls on the Authorities of the EU and Japan to continue their efforts to conclude an EPA in the near future, by building on last week's agreement in principle and maintaining the momentum that both sides have worked hard to achieve.

< 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-1 / # 02* / EJ to EJ **Call for an ambitious WTO Ministerial Conference in Buenos Aires**

Under the growing pressure of protectionism in the world, including the new US Administration's approach to emphasize bilateral negotiations over multilateral trade, the EU and Japan must share with other WTO members the value of WTO agreements as a basis of fair rules to maintain order in global trade and to promote liberalization. The negotiating pillar of the WTO must be reinforced to better disseminate the benefits of global value chains, while the EU and Japan shall play a central role in this regard.

It is evident that the WTO is to maintain its core role as the forum to create multilateral trade rules. In this context, the EU and Japan should lead the member countries of the WTO and adapt the organisation to the changing global trade environment better, for instance, by re-evaluating its negotiating processes to make them more efficient, by facilitating the delivery on the remaining DDA mandate and by agreeing to create new sets of rules on issues beyond the DDA.

The BRT welcomes the entering into force of the Trade Facilitation Agreement, which can serve as a boost to global trade by reducing costs of trade by 10-15% and adding $ 1 trillion. Its objectives are to speed up customs procedures, make trade easier, faster and cheaper, provide clarity, efficiency and transparency, reduce bureaucracy and corruption, and use technological advances.

Additionally, the BRT suggests that the authorities of the EU and Japan should, together with other WTO members, explore further topics that are essential for the smooth functioning of global value chains. These could include, for example, digital trade and e-commerce, subsidies, the reduction of export restrictions, investment (facilitation) and competition. Exploring these topics could reinforce the interest in the multilateral trading system and underline the central role of the WTO in rule making.

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

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

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

Finally, the BRT welcomes the expansion of the Information Technologies Agreement (ITA) that was agreed during the 10th WTO Ministerial Conference in Nairobi and anticipates the authorities of the EU and Japan to lead the discussion of further expanding its membership to more countries and regions as well as its product coverage, as agreed in December 2015.

< Recent Progress >

The informal WTO Ministerial gathering held in Oslo on 21-22 October 2016 was a good opportunity for WTO members to discuss the future work programme of the organisation, including potential outcomes to be achieved by the next WTO Ministerial Conference that will take place in Buenos Aires on 11-17 December 2017. A number of WTO members expressed the following views:

- it is important to maintain political momentum and secure the negotiated results of the MC10;
- it is crucial for the WTO and its members to take into account concerns expressed against trade and globalisation, while ensuring that the multilateral trading system remains relevant and is updated to better respond to current challenges;
- and the WTO must not refrain from discussing potentially contentious issues such as agriculture and market access for non-agricultural goods and services.

The BRT hopes the negotiation on other agenda items such as non-agricultural market access (NAMA), agriculture, non-tariff barriers (NTBs) and export subsidies will make progress ahead of the MC11. For the future course of DDA negotiation, however, two courses of its continuation and termination have been set forth in parallel. The BRT expects further progress in WTO's DDA negotiation to reach a new stage in negotiation, which should result in mutually beneficial outcome for both developed and developing countries.

< Background >

The BRT is a strong supporter of the multilateral trading system, whose core functions are trade liberalisation, rule-making and dispute settlement. However, to

liberalize multilateral trade, the initial high-level ambition of the Doha Round, launched in 2001, has not been maintained, resulting in the current deadlock of negotiations which continue due to the lack of political will and the inability to bridge the gap in the market access commitments between OECD and emerging country members.

Especially given the great and increasing uncertainty in the world economy, the WTO must demonstrate its ability to deliver results for the business community. As the only international organisation creating rules and setting standards on trade at the multilateral level, the WTO must remain a leader in this area and take more and stronger action. The existing legal framework provides an excellent basis for such action. However, it needs to be updated in order to respond to a changing global economic landscape.

WTO members made partial progress in the DDA at the 9th and 10th WTO Ministerial Conferences held in Bali in December 2013 and in Nairobi in December 2015 respectively.

WP-1 / # 03* / EJ to EJ Applying international standards and enhancing regulatory cooperation

1. General recommendations

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

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

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

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

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

The BRT recommends that the policy-makers of the EU and Japan should increase their understanding of existing and upcoming regulations of the other side. Where a

harmonised regulatory framework between the EU and Japan has not yet been developed, the regulatory authorities of the EU and Japan should review their domestic technical regulations and conformity assessment procedures at regular intervals to determine the scope for further regulatory harmonisation. The outcome of these reviews, including scientific and technical evidence used, shall be exchanged between the regulatory authorities and provided to industry upon request.

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

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

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

Finally, the BRT would like to see a modernisation and updating of the MRAs that were signed at the beginning of the last decade for them to become truly Mutual Recognition Agreements so that the products covered under these schemes do not have to be tested and approved in accordance with both EU and Japan regulations.

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

be able to expand such regulatory cooperation to other bilateral and multilateral relations.

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

Sector specific recommendations

2. Create a common chemicals regulation

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

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

3. Create a common resource efficiency policy

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

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

4. Expand the benefits of AEOs

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 is aware that the two authorities are engaged in regular discussion following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan, but that no concrete benefits have emerged for operators. According to the progress report of the EU in 2015, the scope of this agreement is restricted to 'security and safety' only. The BRT would like in this regard to put emphasis on the simplification of import procedures where

companies are given greater freedom while taking greater responsibility for their imports without an excessive administrative burden. The BRT recommends that the two authorities should consider expanding the legal base if it is necessary to realise the simplification of import procedures.

5. Fight against counterfeited, pirated and contraband goods

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

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

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

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

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

6. Adoption of UN Regulations

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

< Background for 6 >

In 1998, Japan became the first country in Asia to accede to the UN-ECE 1958 Agreement on the Mutual Recognition of Type Approval for Vehicles

etc, which provides that vehicle components which have received type approval according to UN Regulations in one contracting country are exempt from testing in any other signatory country where those regulations have been adopted. Japan has now adopted UN-ECE Regulations in 41 of the 47 areas included in Japanese type approval for passenger cars.

< General Background for 1-6 >
Implementation of these recommendations will lead to a significant improvement in the business environments of both the EU and Japan.

WP-1 / # 04 / EJ to EJ **<u>Supporting timely development of business</u>**

1. Social security contributions (avoiding double contributions):

The BRT welcomes the conclusion of social security agreements between Japan and 12 EU Member States. Negotiations or preliminary talks are under way between Japan and 4 EU Member States. The BRT requests that, Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements.

The BRT takes note that no new preliminary talks have been started since 2012 between EU Member States and Japan. The BRT is concerned that Japan and the remaining 13 EU Member States, with whom talks have not commenced, could be left without a social security agreement. The BRT recommends that the authorities of the EU and Japan should explore the possibility to make a common EU-Japan agreement on social security to cover the remaining Member States.

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 limited progress in the past year

< Background >
When an individual EU Member State and Japan conclude a bilateral social security agreement, it lessens the burden both on companies as well as their employees. So far, social security agreements between Japan and Germany, the United Kingdom, Belgium, France, the Netherlands, Czech Republic, Spain, Ireland and Hungary have entered into force. The agreements between Japan and Italy, the Slovak Republic and Luxembourg have been signed. Furthermore, negotiations are underway between Japan and Sweden, and are at the preparatory stage between Japan and Austria as well as 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 EPA. Such liberalisation should aim at the following system:

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

< Background >

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

The EU has adopted Directive 2014/66/EU of the European Parliament ad of the Council of the 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. By 29 November 2016, the directive should be transposed in the Member States. The directive will prove very useful for Japanese companies sending their employees to the EU because, for example, it will facilitate an assignment that involves several Member States and allow accompanying family members to have access to the labour market. However, unfortunately, the new Directive will not be applied in the UK, Ireland and Denmark due to the opt-out of those Member States. Japanese nationals in the UK, where their number is the highest among the EU Member States, will not benefit from this Directive. It is therefore imperative that such liberalisation is realised within the framework of an FTA so that it will be applicable to all intra-corporate transferees between the Member States of the EU and Japan.

WP-1 / # 05 / EJ to EJ Support for SMEs

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

1. Providing each other's SMEs the same general support and privileges as provided to one's own SMEs.
2. Establishing permanent local assistance in language, paperwork, hiring local personnel, legal and regulatory matters, as well as advice on financing and banking, etc.

3. Providing tax breaks and incentives, tax deduction for total research expenses, income tax breaks for foreign experts, tax exemption for doctoral students, tax relief for R&D, tax deduction for joint and entrusted researches based on industry-academic-government cooperation, as well as tax and other facilities and incentives for investors.
4. Assisting and supporting SMEs with participation in local "Requests for Proposals", especially for renewable energy projects. This could include streamlining and extending the proposal submission time frames which in many cases are too short for foreign SMEs to respond.
5. Helping graduates with international backgrounds find local jobs with the other side's SMEs.
6. Conducting a feasibility study on creating a joint investment fund for both Japanese and European SMEs.
7. Exchanging best practices and tested solutions in industrial policy for SMEs.
8. Expanding the SME-related programmes already run by the EU-Japan Centre for Industrial Cooperation.

< Recent progress >

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

< Background >

SMEs are the most promising sources of growth and jobs in both Europe and Japan. Their success in bilateral trade is a major factor in their development and also helps to revitalise both Japanese and EU industries by disseminating new products and technologies. However, market access problems and various impediments noted in other BRT recommendations are even harder to tackle or manage for SMEs. While the Japanese government, the European Commission and most EU Member States have internationalisation programmes for their own SMEs, existing help programmes for foreign companies are mostly geared towards large foreign direct investments in established industries and are inadequate for SMEs. Once a European SME has established a footing in Japan, or a Japanese in the EU, using already available government support programmes, it should continue to receive support from the host region. Such support cannot be expected as a unilateral measure but would only be possible if agreed in a formal bilateral agreement. The BRT is aware of the major work being done for both Japanese and European SMEs by the European Commission and the Government of Japan through the programmes run by EU-Japan Centre for Industrial Cooperation.

WP-1 / # 06* / EJ to EJ **<u>Recommendation on BEPS Action Plan and Other Tax Issues</u>**

The BRT supports the creation of an internationally fair taxation framework and level playing field. At the same time, the BRT urges that authorities of the EU and Japan to ensure that the implementation of the BEPS Actions should not create additional administrative burden on businesses.

The BRT welcomes the agreement by OECD/G20 countries to implement the master file-local files system in the transfer pricing documentation in BEPS Action 13. The

BRT eagerly awaits coherent and successful implementation in the bilateral and multilateral relations between the EU Member States and Japan in a way that will reduce the compliance costs and uncertainty significantly. In this respect, there are some countries who appear to be seeking the master file-CBCR report directly from MNE's subsidiaries situated therein, as opposed to the OECD suggested protocol where the master file-CBCR report should only be filed by the MNE's top parent company with the tax authorities of the ultimate parent company's jurisdiction, and any subsequent sharing of the master file-CBCR report between various countries where the MNE's subsidiaries are located shall be done under the exchange of information clause of respective tax treaties. The BRT recommends that the OECD suggested protocol should be adhered to by the countries where MNE's subsidiaries are situated.

The BRT recommends that the authorities of the EU, its Member States and Japan to also aim at facilitating the conclusion of bilateral and multilateral APAs.

The BRT emphasises that it is important that the scope of information required for disclosure to tax authorities of each country through Country-by-Country Reporting be internationally coherent and in accordance with BEPS Action 13 in order to realise a level playing field. The BRT opposes to the European Commission's proposal for Public CbCR as it breaches confidentiality of information on taxpayers.

The BRT also would like to point out that information concerning a tax payer should be kept confidential by the tax authorities as BEPS Action 13 demands.

In terms of Permanent Establishment ("PE"), BEPS Action 7 has not given any specific consideration to the global trading business model broadly conducted by the financial services industry at all. The BRT requests that the tax authorities in European countries shall give utmost consideration before making any tax assessment based on the determination that a trader booking into an offshore booking entity under the global trading business should qualify as dependent agent. Such determination that a trader qualify as a dependent agent PE will become significant obstacles for the global financial industry.

As was agreed by OECD/G20 countries in 2013, introduction of the measures developed by the BEPS Action Plan should not lead to unnecessary uncertainty for compliant taxpayers and to unintended double taxation.

The BRT welcomes the commitment made by 20 countries including Japan and 13 EU Member States (Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Slovenia, Spain, Sweden and the UK) to provide for mandatory binding MAP arbitration in their bilateral tax treaties as a mechanism to guarantee the resolution of treaty-related disputes within a specified timeframe. The BRT recommends that this mechanism should be extended to include all the EU Member States and Japan.

Furthermore, the BRT would like to recommend the authorities of the EU and Japan to

1. Pursue simpler, lighter and sensible tax systems that will lead to growth and innovation. A simple, light and sensible tax system will reduce the incentive to avoid or reduce taxation. It should include participation exemptions that will exempt dividends and capital gains received from business investment above a certain holding threshold from further corporate taxation.
2. Reduce administrative burden. The more complex a tax system and the heavier the tax burden, the more time and money both businesses and tax authorities spend merely to comply or enforce.
3. Promote healthy competition in attracting investments. In the majority of investment decisions, a combination of tax, human resources and infrastructure plays the decisive role. The authorities of the EU and Japan should promote and compete on the three factors in a healthy way in order to attract investments.
4. Eliminate double taxation. Double taxation still weighs heavily on cross-border business activities. The EU Member States and Japan should modernise the tax treaties between them and ensure, to the greatest possible extent, that dividend, royalty and interest payments are exempted from withholdings taxes.

<Recent Progress>
There was a progress as the final package of measures was presented by the OECD and endorsed by G20 leaders.

<Background>
The BEPS Action Plan was proposed by the OECD and endorsed by G20 Finance Ministers and Central Bank Governors in July 2013. The OECD presented the final package of measures (the 2015 Final Reports) to G20 Finance Ministers and they endorsed the final package on 9 October 2015. The G20 leaders endorsed the BEPS and committed to its implementation on 15 November 2015.

WP-1 / # 07* / EJ to E **<u>Recommendation on Financial Transaction Tax</u>**

The BRT maintains its serious concern over the EC's proposed financial transaction tax (FTT), particularly with respect to its wide range of application. If imposed, the FTT will result in reduced volume of financial transactions and decreased liquidity. It will also lead to a significant increase in funding costs and impairment of legitimate hedging activities by parties including non-financial corporations. The decreased liquidity in secondary markets is also likely to cause impacts on primary markets eventually.
Impact on liquidity, funding costs and hedging costs should be carefully considered in the ongoing discussion on scope of transaction, country of taxation and tax rate in one harmonised tax regime so as to develop and integrate capital markets in the EU.

< Background >
The EC announced proposals in September 2011 to impose a Financial Transaction Tax on financial instruments between financial institutions when at least one party to the transaction is located in the EU. However, it has since concluded that a common FTT system could not be attained within a reasonable amount of time by the EU as a whole. On 14 February 2013, the EC published a proposal for a Council Directive implementing enhanced cooperation between 11 Member States in the area of financial transaction tax (Now 10 Member States due to the exit of Estonia). Due to the intricate discussion such as the scope of taxable derivatives, implementation date

has been postponed several times from initial January 2014 As of today, no date has been set for a final agreement.

Recommendations from European industry to Japan

WP-1 / # 08* / E to J **<u>Harmonisation & mutual recognition of standards and product certifications; acceptance of international standards where applicable</u>**

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

<u>Automobiles</u>

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

Moreover, the EU-Japan ETA should include a meaningful Automotive Annex covering all kinds of vehicles (i.e. passenger vehicles and commercial vehicles) to avoid the appearance of any future market access barriers.

< Recent progress >

- ***Resolved: 8 items***
  - *76 GHz Radar; Closed Crankcase Ventilation; DRL; TNS and PHP Variants; Ultra-Small Mobility, Rim Marking of Light Alloy Disc Wheels, Definition of Vehicle Type; Seating Space and Head Clearance.*
- ***Resolved - Subject to confirmation: 4 items***
  - *Tag Axle GCW; Tyre/Wheel Protrusion; Angle of Exhaust Tailpipe; Whole Vehicle Inspection.*
- ***Outstanding: 4 items***
  - *Stamping/Embossment – VIN items- combustible engine and electric motor; Endurance Testing*

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 with non-recognition of standards 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 reports of April 2013, April 2014, April 2015 and also in 2016, but rather chose to focus on the possibility for overseas test facilities to carry out testing in accordance with JAS/JIS.

< 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.

Railways

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

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

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

< Recent progress >

While some progress has been made, the core issue still remains that there is no common conformity assessment scheme in Japan to which all operators adhere. The BRT takes note of the efforts of some operators in publishing a list of potential future procurements, and views this as a good first step to improved market access.

< Background >

While the Japanese Government is active in various international standards fora, these standards and regulations are not necessarily used by the Japanese operators There is, therefore, no possibility for foreign manufacturers to know exactly what requirements must be fulfilled. Furthermore each operator can in principle have their own testing requirements as there is no legislation on exactly what safety requirements need to be fulfilled.

Processed Food

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

a) Substantially increasing the list of permitted additives and enzymes, in addition to speeding up and fundamentally revising the approval process

b) Introducing mutual recognition of conformity assessment procedures to eliminate the duplicate costs of evaluations.

c) Introduce deadlines for all parts of the application process. While there are guidelines on timelines these only cover part of the application process. Accordingly, it is difficult for an applicant to know how long the application will take.

< Recent progress >

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

< 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 issued by the Japanese ministry (i.e. METI) is not compatible with standards used by manufacturers of other countries

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

< Recent progress >

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

< Background >

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

Labelling rules

The Japanese Household Product Quality Labelling Law prescribes in detail the information that labels must contain for a number of products. While several improvements were made in the latest revision of the law, some issues still remain for a number of products, such as teacups. In these cases, there is still a requirement to affix the label on the actual product, and not merely to label the box if this includes several identical items. Japan should introduce further flexibilities to the labelling law.
< Recent progress >

This issue was brought up in the Regulatory Reform Council where both representatives for European companies as well as domestic companies argued for a revision of the Household Labelling Law. The CAA has produced a draft which was published calling for comments, and it is our understanding that the new law will be passed in 2017.

< Background >

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

WP-1 / #09* / E to JSelf-verification and risk assessment

The Japanese Government should expand the allowed use of self-verification. Currently, in many cases, Japan requires approval to be obtained from either a Governmental body or a third party. This puts both a cost and a time premium on the process when the relevant company trying to put the goods or services onto the market. The latter aspect is of particular importance for sectors with short product cycles.

While it is understandable that Japan wants to protect the safety of human life, as well as animals and plants, a proper risk assessment should be undertaken so that those products or services with controllable risk can use a self-verification procedure.

< Background >

While Japan has introduced the concept of self-verification, third party or government approval is often the norm. This means that the time to put the products onto the market increases as well as the cost. This problem is particularly evident when test methods are not harmonised.

WP-1 / # 10* / E to J **Automobiles**

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

< Recent progress >

The change in the taxation of kei-cars from FY2015 is a welcome first step towards reducing the discrepancy in the burden of taxation on compact cars and kei cars, but it does not go far enough. In the FTA negotiations, the GOJ should commit to further fiscal and regulatory changes so that European compact cars can compete on equal terms with kei-cars in the Japanese market. Recently, both METI and JAMA have suggested to reduce the level of discrepancy to the order of 1:2.

Nevertheless, for the time being, the discrepancy in the base level of taxation of kei-cars and subcompact cars at 1:3.3 remains unacceptably wide.

< 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-1 / # 11* / E to J Fuel Cell Vehicles

Pending agreement and implementation of Phase II of the UN Regulation for HFCV's concerning the material requirements for hydrogen storage systems, the Japanese

and EU Authorities should introduce flexible arrangements to allow manufacturers/importers to demonstrate that HFCV's meet each other's requirements and approval procedures

< Background >

UNR 134: Hydrogen and Fuel Cell Vehicles, Phase I of the UN Regulation for HFCVs, entered into force in June 2015 and has been adopted by the EU and Japan. However, despite Japan having implemented Phase I, HFCV tanks imported into Japan would still need to meet Japanese unique national requirements concerning metal materials. Whereas the EU uses a performance-based approach to approve hydrogen compatible materials, Japan's approach is more prescriptive, in effect limiting the choice of materials to very few specific types of stainless steel and aluminium.

WP-1 / # 12* / E to J **Ensuring free and open competition in services**

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.

The BRT requests that the same benefits given to EMS are also given to equivalent private alternatives to achieve a level playing field as is the case in Europe and the US.

< Recent progress >

While the issue is being discussed in the EPA negotiations, the WP 1 is not aware of any concrete improvements. Furthermore, on issues directly related to Japan Post very little change in either direction has been seen during the last year.

< Background >

Japan Post and EMS receive preferential treatment not awarded to private logistics operators. While universal service is a concept present in both Europe and the USA, EMS is not part of this, but rather a service provided on equal terms with private express alternatives.

WP-1 / # 13* / E to J **Freight and logistics**

Further to the WP-A / # 03 / EJ to EJ, the BRT recommends that Japan revises 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 if companies are 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:

- Deregulating 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
- Using a bonded warehouse as a port of first entry in regards to products covered by quarantine related regulations.

We are, furthermore, particularly interested in obtaining more specific information on the information gathering that Government of Japan is carrying out in cooperation with the private sector as mentioned in the progress report.

< Recent progress >

Japan Customs have announced a plan to deregulate customs clearance beyond the local customs jurisdiction territory by October 2017. The BRT looks forward to this change which will be perceived by industry as a significant improvement.

< 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-1 / # 14* / E to J **<u>Aeronautics</u>**

Haneda D runway weight restrictions are an obstacle to the use of European-made aeroplanes and an obstacle to further development of international traffic at Haneda. These weight restrictions should be re-examined to allow the operations of new and larger airplanes such as Airbus-made A380 and A350. We request the relevant Authorities of both sides to cooperate in making the necessary verifications. Additionally, for the newest mid-size A350 aircraft, operation could be possible with the re-verification of the withstand load in regard to part of the construction.

< Yearly Status Report >
No progress has been seen on this recommendation. However, the recent approval of the 747-8i (Code F aircraft) for day-time operations at Haneda offers hope that the A380 (also a Code F aircraft) also will be approved soon for day-time operation as there are some airlines looking at operating the A380 via Haneda.

< Background >
With the purpose of expanding airport capacity in response to the increase in air travel demand as well as to reduce congestion, a fourth runway (D runway) and an international terminal were opened in Haneda in October 2010. So far. the focus has been on flights to and from Asian countries, but its use for long-haul international

routes is expected increase in the future. The number of flights will grow together with the demand but will be limited in the end by the capacity in terms of slots. The recent dramatic increase in the number of foreign visitors to Japan, just under 20 million in 2015, has caused the GoJ to revise the target upwards to 40 million for 2020. The average size of aircraft (230 seats) departing from Haneda is now lower than it was in 1980 (240 seats) when 747s were used domestically. To see traffic grow at Tokyo's airports and more specifically Haneda, work needs to be done to ensure that larger aircraft can be used at Haneda. In this regard, the use of new and larger aircraft will be an important part of the airlines' strategies. Under such circumstances, aircraft weight restrictions on the D runway could impede the conversion of Haneda Airport to the use of larger and newer aircraft. New aircraft such as the A350 and A380 are significantly quieter and more environmentally friendly than older aircraft now in use at Haneda airport and, with plans to overfly the city to increase flights to and from Haneda, it is essential that quiet aircraft are used as much as possible. In order to avoid disturbing the flow of the Tama River, the D runway was overhauled using a pier-like structure instead of a conventional landfill. Due to this, weight restrictions have been placed upon the aircraft in use, and with the entire lineup of Airbus' newest A380 and A350 series exceeding the weight limit, these aircraft could no longer be used as they currently are (cf. chart below).

Unit: tons	Weight limit	A380	A350-1000	A350-900	B747-400	B777-200ER
Total weight	400	**571**	308.9	268.9	396.0	286.9
Main gear load, t/gear	139.5	**161.6**	**146.9**	126.0	92.8	134.9
Wheel load	26.2	**26.9**	24.5	**31.5**	23.2	22.5

WP-1 / # 15 / E to J **Promoting foreign direct investment**

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

The BRT furthermore would like to point out the disadvantageous rules for Net Operation Loss (NOL). With the upcoming changes, companies in Japan will be able to carry forward 50% (from 2017) of their losses for ten years. This is well behind the NOL in neighbouring countries, countries with which Japan competes for investments.

In addition, while Japan has indeed improved the inheritance tax legislation compared to the previous legislation, it also introduced a so-called tail, whereby foreigners subject to Japanese inheritance tax will continue to be so even after having left Japan for up to five years. This is a clear disincentive to investing in Japan and will also make it difficult for industry to retain foreign talent long-term.

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 automotive and machinery, foreign investment is relatively high. By contrast, two sectors where investments are low are the financial and medical fields. Japan's regulatory environment in these sectors remains much more difficult than the rest of the world to allow for foreign companies to set up any larger operation than the minimal level needed to serve the existing client base. Mutual recognition of market certifications would be an important first step to improving investments in the medical field. Mutual acceptance of principles governing the financial services industry and the mutual acceptance of the home regulator as the core regulator would go a long way to improving the investment environment in the financial sector.

< Recent progress >

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

< Background >

Despite its position as the world's second largest economy, Japan's level of inward FDI as a proportion of GDP remains one of the lowest among all OECD countries. Even with the reorganisation of JETRO and the efforts starting with former Prime Minister Koizumi to increase FDI to Japan, only very small improvements have been seen. According to OECD in 2015 inward FDI stocks was accounted for only 4.1 % of GDP.

WP-1 / # 16* / E to J **<u>Procurement</u>**

< General Recommendations >

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

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

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

< Specific Recommendations >

- In the bidding process in public tenders for helicopters>

a. More balanced competition should be ensured by comprehensive evaluation systems that also take aircraft performance into account.

b. Single year budget procurement constraints should be relaxed.

- Procurement of integrated systems of space ground equipment should be encouraged.
- The share of open tendering as a means for procurement by the Japanese utilities should be increased substantially.
- The recent changes to the Operation Safety Clause should indeed lead to more open calls for tenders in accordance with the WTO agreement on government procurement. The BRT would be interested in knowing if the Japanese authorities have any data on the increase of open calls for tenders due to the changes in the definition of the OSC.

< Recent progress >

The BRT has seen some changes in particular for the three JR Honshu companies and is therefore looking forward to see what impact the changes in the OSC will have. While the Japanese authorities has defined the Operational Safety Clause the BRT views this definition as too all-encompassing.

< Background >

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

WP-1 / # 17 / E to J Financial reporting

Recommendation:

The BRT recommends that the ASBJ give greater priority to attaining alignment of JGAAP with IFRS, thereby reducing the need for cumbersome reconciliations. This will contribute to reduced costs, improved data transparency and accuracy, and at the same time strengthen the attractiveness of the Japanese financial market by improving the comparability of Financial Statements.

The BRT further recommends that regulators consider adjusting tax and company laws to facilitate financial reporting convergence where there are close ties between them. That way companies can keep existing tax accommodations while obtaining the aforementioned benefits of financial reporting alignment.

< Recent progress >

1 Copenhagen Economics, *"Assessment of barriers to trade and investment between the EU and Japan"*, 2009

New recommendation

< Background >

The global push to integrate financial reporting standards and enhance cross-border compatibility continues to gather steam with an increasing number of companies adopting International Financial Reporting Standards (IFRS) in Europe and Japan. However, challenges remain for multinational companies headquartered in Europe with significant subsidiaries domiciled in Japan. This is because such subsidiaries will often continue to report under local Japanese Generally Accepted Accounting Principles (J-GAAP) as published by the ASBJ for statutory reporting purposes and yet they must then perform reconciliations to IFRS for group reporting required by their parent. Any reduction in the need for such reconciliation and IFRS would decrease the administrative burden on these subsidiaries.

Recommendations from Japanese industry to the EU

WP-1 / # 18* / J to E **<u>The importance of the Single Market</u>**

The BRT welcomes the progress made since the publication of a Single Market Strategy in October 2015 to deliver on President Juncker's political commitment to unleash the full potential of the Single Market and make it the launch pad for Europe to thrive in the global economy.

The BRT agrees that the Single Market is one of Europe's major achievements and its best asset in times of increasing globalisation.

The BRT would like to emphasise the importance of the following policy areas for the businesses operating in the Single Market:

- Business environment
- Taxation
- Intellectual property rights
- Standardisation
- Consumer protection
- Services
- Networks
- The Digital Single Market
- Further improvement and realisation of the true single market of chemical materials

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. The BRT, therefore, welcomes that the EU framework on consumer protection, such as a legal guarantee period, is moving towards coherent implementation not only among the Member States but also between online and offline sales channels.

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

The BRT would like to emphasise the importance, however, that the EU should make a policy through Regulations in the areas in which the uniform application of policy throughout the EU is crucial.

The BRT would like to point out, moreover, that, when a rule is introduced at the EU level, not only its implementation but also its uniform compliance and enforcement in all the Member States is increasingly important. The BRT, therefore, welcomes the package of measures to enhance compliance and practical functioning of the Single Market published on 2 May 2017 as a step forward.

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

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

Regarding the UK's withdrawal from the EU (Brexit), the BRT would like to draw the attention of the authorities to the statement of KEIDANREN "Keidanren's view on Brexit" on 14 March 2017. The BRT requests that utmost effort should be made to minimise the negative effect caused by Brexit.

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

< Recent Progress >

There has been some progress since the European Commission has made a series of proposals to strengthen the Single Market.

< Background >

President Juncker of the European Commission has made a political commitment to unleash the full potential of the Single Market and make it the launch pad for Europe to thrive in the global economy.

The European Commission published a roadmap in October 2015 and has proposed a number of actions since then.

WP-1 / # 19* / J to E Chemical Regulations

19.1 REACH

1. The BRT requests that the Authorities of the EU should pay more attention to the implementation of REACH. In particular:
   - There should be more opportunities to take account of the views of non-EU companies in updating guidance because a substantial part of articles on the EU market is imported from outside the EU. In this regard, the representatives of non-EU companies should be allowed to register as the stakeholders of the ECHA same as the EU companies.
   - If the thresholds of new SVHCs are too low, for example, in the units of ppb rather than the units of ppm, there will be practical difficulties for manufactures and importers to implement it effectively as it will be too difficult to measure correctly.

- The authorities of the EU should improve the enforcement of the thresholds applicable to SVHCs once they are adopted. Otherwise the increasing number of SVHCs with extremely low threshold will distort the competition between strictly complying manufacturers/importers and less strictly complying manufacturers/importers.

2. The BRT requests that the Authorities of the EU should further improve the PACT-RMOA. In particular:
   - The authorities of the EU should improve it in order to look after the needs of SMEs because SMEs might still find it difficult to digest.
   - The process of contributions by industries should be further developed.
   - The transparency of the PACT-RMOA should be improved.
   - The quality of evaluation by the evaluating authorities of the Member States should be made more consistent through the standardisation of the evaluation process.
   - The criteria for the selection of substances should be more transparent.
   - At the very least, public consultations (minimum 12 weeks) should be conducted in all Member States in order to provide fairer and more accurate risk assessment.

3. The BRT requests to the authorities of the EU to mitigate the effect of the withdrawal of the UK from EU on the implementation of REACH.

   Quite a few companies which export chemical substances from Japan to EU countries currently appoint consulting companies or affiliates incorporated in the UK as the only representative (OR) and depute tasks to comply with REACH, including registration of substances and operations related to tonnage band.

   As the UK withdraws from the EU, these companies lose OR qualifications and manufacturers outside the EU not only have to re-appoint new ORs but also have to do the complicated work such as changing OR information for all existing registrations or transferring the information on customers in the EU and on hazardousness of substances to new ORs.

   Therefore, in order to avoid huge amount of paperwork, the BRT urges the European Commission to take bold measures to mitigate the impact, such as by continuing to grant OR qualifications to British corporations and to take sufficient transition period.

< Recent Progress >

There has been a progress. The ruling of the EJC on the interpretation of Articles has made the interpretation definitive. Further progress has been seen for the recommendation on SVHC by the introduction of PACT-RMOA.

< Background >

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

It is understood that the representatives of non-EU companies have been unable to register as the stakeholders of the ECHA though the European Commission has suggested to enable it. As the EU is an open economy and a substantial part of

articles on the EU market is imported from outside the EU, it is for the benefit of the EU that it has a system to take account of the views of non-EU companies on such important issues.

It has been observed that the enforcement of REACH is not sufficient. As the result, it is not implemented evenly. Some manufacturers or importers seem to interpret the threshold as a reference – not as the limit not to cross. It seems that some manufacturers or importers do not measure SVHCs at all in the belief that it is unlikely to be found out.

The ECHA started a new website on the PACT-RMOA and publishes the result of the assessment of an SVHC as carried out. The BRT appreciates that it has increased the transparency of the identification of SVHC.

However, although the conclusion in the PACT-RMOA could lead to the designation of a substance as SVHC, the quality of the evaluation by the evaluating authorities of Member States varies, and the criteria that a substance is selected for listing in the PACT-RMOA are not transparent. Furthermore, as the PACT-RMOA is voluntary activity, the responsibility of the authorities is not clear.

19.2 Appropriate approach to Endocrine disruptor

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

< Recent Progress >

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

< Background >

Currently, the authorities of the EU are reviewing the current legislations such as REACH, PPPR (Plant Protection Products Regulation) and BPR (Biocidal Products Regulation), and they are contemplating a policy measure. The European Commission has announced that it will publish a communication on the categorisation in July 2016.

19.3 RoHS

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

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

< Recent Progress >

Some progress has been made.

Upon the European Commission's initiative, a working group has been established to develop guidance on the methodology for the identification and assessment of substances for inclusion in the list of restricted substances.

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

< Background >

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

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

19.4 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.

19.5 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. Standardisation 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.

3. Reporting scheme

The BRT requests that the authorities of the EU should take an initiative and establish a harmonised reporting system at the EU level because the registration and reporting at each Member States are significant burden for industries, especially SMEs.

Because the above 1 and 2 are not progressing, some Member States have started their own reporting schemes. The EU should move more quickly on a harmonised reporting system.

< Recent Progress >

Little progress has been made:

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

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

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

In June 2017, the European Union Observatory on Nanomaterials (EU-ON) has been launched to provide the information on Nanomaterials.

< 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.

19.6 Biocide Product Regulation

The BRT asks the authorities of the EU to evaluate, in due course, the effectiveness of measures for treated articles under the Biocide Product Regulation (BPR) in

reducing the risks posed to humans, animals and the environment by biocidal products, and ensure that such measures are fit for purpose.

As the BPR is conceptual and not necessarily easy to understand, the BRT asks the authorities of the EU to issue a practical and easy-to-understand FAQs for the importers of active substance, biocide products or treated articles which illustrate proper procedures for actual cases.

< Recent Progress >
There has been some progress.

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

WP-1 / # 20* / J to E **<u>Resource Efficiency Policy</u>**

20.1 Circular Economy

A truly circular economy requires the involvement of actors in all stages of the ideal economic cycle and should be based on life-cycle thinking. The BRT therefore recommends the authorities of the EU to assess environmental benefits at the design stage from the perspective of scientific evidence and to take into account trade-offs between energy efficiency, resource efficiency, safety and performance of products. Although framework conditions and enabling legislation at EU level exists, it requires better implementation, harmonisation and enforcement. The BRT recommends the authorities of the EU to ensure coherence in the development of the Circular Economy Action Plan and avoid overlaps or contradictions between several pieces of legislation which limit circular business models which may focus on recycling and

refurbishment/remanufacturing activities. In particular, before proposing new legislation at the production stage, the authorities of the EU should take into account coherence with ErP, Energy labelling, WEEE, RoHS, REACH, and Product Environmental Footprint (PEF), amongst others. When new or revised legislative and policy proposals will be put forward, effective enforcement schemes should be implemented in order to avoid unfair competition which would undermine the credibility of new business models. On the other hand, the BRT recommends the authorities of the EU to assess – e.g., through REFIT - whether existing framework/environmental legislation poses obstacles to the Circular Economy, which can potentially be removed.

The BRT would like to stress the need for a greater harmonisation and simplification of existing legislation and policies at EU level to overcome barriers posed by diverging interpretation and implementation at Member State level. In this context, consistent definitions of waste and end-of-waste criteria would be needed in order to ensure free movement of secondary raw materials within Europe or globally. In particular, the BRT requests the authorities of the EU to closely monitor national implementation of such criteria in order to identify potential barriers to the Circular Economy.

The BRT represents industries with highly complex and global supply chains. The authorities of the EU and Japan should keep this in mind and therefore contribute to regulatory harmonisation at global level. Such harmonisation can be achieved through the development of technical standards in line with ISO standards and help industry to better implement circular models in the supply chain whilst creating a level playing field for all market actors. In parallel, the authorities of the EU and Japan should consider incentives for manufacturers to increase the use of recycled materials in products and for producers of secondary raw materials to provide them in higher quality and quantity. These would be necessary steps for the creation of a global and functional secondary raw materials market.

The BRT requests to the EU authorities to avoid implementing regulations or policies that require companies outside the EU to implement difficult and/or costly measures to comply with, in areas including location or other attributes of waste stream, and certification and labelling of recycled materials, which would potentially work as non-tariff barriers.

< Recent Progress >

There has been some progress. In January 2017, the roadmap on the intended work related to the chemicals, products and waste interface has been published.

< Background >

The European Commission published a new Circular Economy Package in December 2015. The package includes revised legislative proposals on waste and an EU Action Plan for the Circular Economy.

20.2 Ecodesign Product Lots

The BRT asks the authorities of the EU to uphold the Energy Related Products (ErP) principle of setting Minimum Energy Performance Standard (MEPS) at the level of

Least Life Cycle Cost (LLCC) so that consumers can buy affordable and efficient products.

The BRT also asks that the authorities of the EU should carry out comprehensive impact assessments before deciding to include components integrated into products into the ErP product Lots scope and hence avoid inefficient "double" regulation measures. It is essential that optimum efficiency is pursued at the level of the final product not at the component level where there are no tangible benefits to the consumers.

The BRT suggests that "repair as produced" principle should be applied to spare parts under ErP as it is the case in the RoHS Directive In order to avoid disposing off usable parts prematurely and considering the resource efficiency aspects.

< Recent Progress >
There has been some progress.

< Background >
When an impact assessment for components integrated into products is not carried out like it is the case for instance with the revision of Lot 11 (fans), the benefits for environment and energy efficiency could be misleading. The lack of proper impact assessment would lead to unaffordable products that no one would buy which in turn would not contribute to the reduction of energy use. Additionally, this would cause the setting of unrealistic MEPs leading again to unaffordable final products for the consumer. ErP implementing measures should focus on removing the least efficient products on the market and not set MEPs based on the 10% of most efficient products which is covered by the Ecolabel regulation.
Using once again the Lot 11 (fans) example, when a product needs to be repaired, if spare parts needed do not meet the most recent regulation requirements, the product cannot be repaired and a new product has to be bought, which is not resource efficient. If regulation on a product takes spare parts into account, the product life can be extended by repair.

20.3 Energy Labelling

With respect to the ongoing Energy Labelling directive revision, the BRT urges the authorities of the EU to avoid leaving the top energy classes empty as this will confuse consumers and discourage innovation on the producers' side to come up with more energy efficient products. The rules for rescaling the energy label should also be tailored to the characteristics of the products in scope and generally speaking should only take place when more than 50% of products on the market move to the top classes. The BRT also cautions against setting a costly database for products' information as this will not substitute market surveillance in each Member State and risks that confidential data are leaked to third parties.

< Recent Progress >
There has been some progress.

< Background >

With regard to the Energy labelling directive revision, the European Commission's draft (COM(2015)241) is proposing to leave the top classes (i.e. A and B) empty at the moment of the introduction of the label so that the estimated time within which a majority of models falls into those classes shall be at least ten years, and remove the bottom classes (D, E, F or G) from the label where due to ErP implementing measures products falling in these classes cannot be placed on the market anymore. This will discourage innovation and confuse consumers from investing to buy the most energy efficient products on the market and is counterproductive to the aim of Energy labelling. The proposal to create a product database to be managed by the European Commission will only add additional costs, burden and damage competitiveness for SMEs with no added benefits in terms of market surveillance which needs to be performed in the market by the Member States. Most of the product data requested to be included in the database is already available on the producers' free websites under the ErP implementing measures.

WP-1 / # 21* / J to E **<u>Taxation</u>**

21.1 Common Consolidated Corporate Tax Base

The European Commission re-launched the legislative proposals on the CCCTB on 26 October 2016. It proposes to legislate in two steps: first to agree on the rules for a common tax base (CCTB) and, then to agree on the rules for consolidation (CCCTB). The re-launched CCTB/CCCTB proposals make their application mandatory to companies belonging to a consolidated group with a total consolidated group revenue exceeding EUR 750 million.

Although there will be a substantial cost to companies in adapting themselves to a new tax base, the BRT expects that a CCCTB would simplify tax compliance in the Single Market. It would also introduce a mechanism of temporarily off-setting losses in a subsidiary against profits at the parent, and would foster growth and investment through participation exemptions and additional R&D deduction.

The BRT would like to note, however, that the substantial benefits to businesses are mostly in the second step.

- The consolidation would allow the totalisation of profits and losses.
- Goodwill transfer within a consolidated group would no longer be a tax issue.
- Transfer pricing within a consolidated group would no longer be a tax issue.

The BRT therefore urges the authorities of the EU to adopt the second step CCCTB proposal swiftly after the adoption of the first step CCTB proposal.

The BRT hopes that, in the deliberations of the proposals in the Council, the Member States will keep the tax system simple and sensible, and focus on fostering growth and investment.

The BRT would like to suggest that, if the Member States should find it difficult to agree on the CCTB/CCCTB proposals, they should move on to the enhanced

cooperation procedure swiftly so that CCCTB would be first implemented by the Member States that support them.

The BRT encourages the EU to aim at making the Best Practice corporate tax system in the world to which countries around the world would aspire.

< Recent Progress >
There has been certain progress because the European Commission relaunched the proposals.

< Background >
The European Commission proposed a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) in 2011. The Council has been unable to agree on the proposal.
The European Commission re-launched the legislative proposals on the CCCTB on 26 October 2016. The first step is a Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) COM(2016)685 and the second step is a Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM(2016)683.
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.

21.2 Merger Directive

The BRT would like to draw the attention of the authorities of the EU that cost associated with intra-group reorganisation in the EU should be further reduced. Although the Merger Directive provides the deferral of taxation on unrealised gains in the qualified reorganisations, further improvements are needed to enhance the competitiveness of enterprises in the EU.

- Merger Directive (90/434/EEC) covers only the change of legal forms – a more substantial reorganisation that results in the cross-border transfer of goodwill is taxed even if gains are not realised.

- Anti-Tax-Avoidance Directive (Council Directive (EU) 2016/1164) allows a five year instalments of payment of goodwill taxation from 2020. Goodwill is in most Member States depreciable over 10-20 years. Thus remaining timing mismatch will result in the outflow of cash on unrealised gains that has to be financed by companies.

- Council Directive 2008/7/EC allows Member States to charge transfer duties on immovable property situated within their territory. Some Member States exempt or apply reduced rates in case of intra-group reorganisation, but some Member States apply normal rates. Transfer duties related to intra-group reorganisation should be exempted throughout the EU.

- There are shareholding requirements after reorganisation in some Member States as an anti-abuse measure. It incurs unnecessary cost of maintaining an empty company and is a potential source of double taxation.

The BRT is aware that a CCCTB could solve many of these issues.

Although the priority should be given to the CCTB/CCCTB proposal, the BRT recommends that the authorities of the EU should resolve the remaining issues in a medium term by expanding the scope of the Merger Directive to include the transfer of real estates and other intangible assets in reorganisation, and by abolishing the shareholding requirements.

< Recent Progress >
No progress has been seen for this recommendation.

< Background >
The Merger Directive (90/434/EEC) provides for the deferral of corporate tax in the qualified cross-border restructuring of business. 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.
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.
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%.

21.3 The fundamental reforms of VAT regime under consideration

The BRT welcomes the Action Plan on VAT – Towards a single EU VAT area published by the European Commission on 7 April 2016. It provides clear orientations towards a robust single European VAT area in relation to the definitive VAT system. The BRT awaits a proposal for a definitive VAT system expected in September 2017.

Although the BRT is aware that it would take many years to adopt a definitive VAT system, it nonetheless 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.

The BRT would like to note that it remains to be seen that how destination VAT for intracommunity transactions, on one hand, and more flexibility in rate setting by Member States, on the other hand, can be reconciled and enable a group of companies to centralise VAT administration in the EU easily and cost effectively.

< Recent Progress >

There has been no progress since the Action Plan on VAT was published in April 2016. The BRT hopes to see progress this year.

< 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.

21.4 Country by country reporting (CBCR)

The BRT supports the creation of an internationally fair taxation framework and level playing field. The BRT would like to emphasise that, in implementing CBCR/BEPS Action 13 in the EU, the EU should aim at realising an internationally level playing field and should not deviate from the internationally agreed and endorsed policy.

The proposal for a Directive COM(2016)198 as regards disclosure of income tax information by certain undertakings and branches published on 13 April 2016 would demand companies with consolidated global net turnover exceeding EUR 750 Million to disclose country by country tax information publicly.

The proposal reflects certain aspects of the BEPS Action 13. However the BEPS Action 13 demands that a legal framework must ensure the confidentiality of exchanged tax information and limit its use to appropriate purposes. By the extension of this principle, the BRT regards the mandatory public disclosure of tax-related information is against the spirit of BEPS Action 13. The EU should respect the fact that G20 endorsed that CBCR should remain confidential.

The BRT is concerned that the mandatory public disclosure of CBCR would encourage actions against corporations based on the subjective concept of fair taxation of each interest group. Fair taxation could be very subjective depending on the interest based on which an interest group is formed.

The BRT regards that it is the responsibility of governments to realise fair taxation and that it is the very reason that G20 endorsed the BEPS Actions in November 2015.

Based on the above reasons, the BRT opposes to the proposed mandatory public CBCR.

The BRT is also concerned that the proposed mandatory public CBCR would force companies to disclose commercially sensitive information. The lower the threshold of disclosure, the higher the risk of disclosing commercially sensitive information through CBCR.

For companies whose headquarters are located outside the EU, the proposed threshold of a presence in the EU of a 'medium or large' company or branch, is too low.

For example, if a company, headquartered outside the EU with a global turnover of over EUR 750 million, has a single project worth more than EUR 8 million with the employees of more than 50 people in an EU Member State in which it has no other business, it would have to disclose publicly the profitability of the project if it constitutes a PE (a branch). Its competitors would be keen to look at such sensitive information.

The BRT, therefore, recommends that the threshold of a presence in the EU should be a 'large' company or branch for companies with their headquarters outside the EU and with a consolidated global net turnover exceeding EUR 750 million.

The BRT also strongly requests that companies should be allowed to omit commercially sensitive information from disclosure.

< Recent progress >

This is a new recommendation on a new proposal.

< Background >

The European Commission proposed on 13 April 2016 a Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches COM(2016)198.

If adopted, the following parent companies would have to disclose publicly country by country income tax information such as net turnover, profit and loss before tax, accrued tax and paid tax.

- *Ultimate parent companies located in the EU with a consolidated net turnover exceeding EUR 750 million*
- *Ultimate parent companies located outside the EU: a consolidated global net turnover exceeding EUR 750 million with a subsidiary in the EU that is medium or a branch. According to Directive 2013/34/EU, a medium or large company is a company that exceeds the limits of at least two of the three following criteria on its balance sheet data:*
  - *(a) balance sheet total: EUR 4 million;*
  - *(b) net turnover: EUR 8 million;*
  - *(c) average number of employees during the financial year: 50*
- *According to Directive 2013/34/EU, the definition of a large company is a company that exceeds the limits of at least two of the three following criteria on its balance sheet data:*

(a) Balance sheet total: EUR 20 million;
(b) Net turnover: EUR 40 million;
(c) Average number of employees during the financial year: 250

WP-1 / # 22* / J to E **Company Law / Corporate Social Responsibility**

22.1 A new strategy on CSR Policy

Concerning a new strategy on CSR policy that the European Commission is intensifying the work on CSR/RBC under the framework of its work towards the UN Sustainable Development Goals (SDGs) to ensure these principles are reflected across all policy areas. The BRT recommends as follows:

1. Take a leadership role in policy discussions on how to encourage the uptake of CSR and promote actions to maximise positive impacts while mitigating negative ones.

2. Capitalise on the EU-Japan CSR Working Group, set up by DG GROW and METI as one of the technical working groups within the EU-Japan Industrial Policy Dialogue, as a useful bilateral platform to supplement other on-going multi-stakeholder dialogues.

3. Highlight innovation: The European Commission should articulate the proactive nature of CSR that leads to innovation and opportunities.

4. Take a flexible, principle-based approach: The European Commission should take a "principle-based" approach for evaluation and reporting. This approach will allow each company to meaningfully express their business in a dynamic and changing environment.

5. Build an open platform: The European Commission should take a proactive role in creating an open platform.

6. Articulate policy linkages across the European Institutions and with international agendas such as the SDGs and the OECD RBC (Responsible Business Conduct) initiative.

< Recent progress >
There has been no progress from the European Commission on updating its strategy (action plan) on CSR as such, however the Communication Next steps for a sustainable European future, European action for sustainability (COM(2016)739 clarifies that "The Commission will intensify its work on Responsible Business Conduct, focusing on concrete actions to meet current and future social, environmental and governance challenges, building upon the main principles and policy approach identified in the Commission's 2011 EU Corporate Social Responsibility Strategy".

< Background >

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

In preparation for a policy revision, the European Commission carried out public consultation in 2014 and sought stakeholders' views on the impact of its CSR strategy over the past three years and on the role that it should play in the future. The EU Multistakeholder Forum on CSR was held in February 2015 as the final milestone of the Commission's multi-stakeholder review process. The European Commission committed to intensify its work on CSR within its new framework related to UN Agenda 2030, building upon its previous approach introduced in its Communication on CSR in 2011.

22.2 Conflict minerals

The BRT considers that responsible sourcing from conflict-affected and high-risk areas enables better living standards and economic progress in developing countries. Yet the efforts of industry alone cannot ensure responsible sourcing from such regions. It is crucial that national governments get involved and collaborate. Here, EU diplomacy has an important role to play.

The BRT supports dialogue and engagement with stakeholders as the best solution for driving collaboration across different cultures and systems to create value for business and society.

The BRT recommends as follows;

- Ensure timely disclosure of the planned Handbook by the European Commission on "conflict-affected and high-risk" (CAHR) areas to allow sufficient time for non-EU companies operating within the EU to implement it;
- Provide clarity regarding how the Commission's non-exhaustive list of CAHR areas aligns with outsourced projects and other initiatives that would define CAHR;
- Synchronise the listing and delisting of responsible smelters/refiners with EU-recognized supply chain due diligence industry schemes. Difference in timing of listing and delisting could be a source of confusion for companies;
- Focus on importers and set clear criteria for the certification of responsible importers, smelters and refiners. The Commission's intent to publish a list of 'responsible' importers who publicly declare their due diligence obligations as set up in the Regulation is positive in this regard. Such criteria should make use of existing schemes such as CFSI (Conflict Free Sourcing Initiative)'s Conflict Free Smelter Program and LBMA (The London Bullion Market Association).

< Recent Progress >

Regulation (EU) 2017/821 of the European Parliament and of the Council laying down supply chain due diligence obligations for Union importers of tin, tantalum and

tungsten, their ores, and gold originating from conflict-affected and high-risk areas was published on 17 May 2017.

The Regulation, which enters into force in 2021, aims to help EU companies ensure they import minerals and metals from responsible sources only.

< Background >

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

Regulation (EU) 2017/821 of the European Parliament and of the Council laying down supply chain due diligence obligation for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas was published on 17 May 2017.

22.3 Non-financial disclosure

Non-financial reports are a vital communication tool, provided that the reporting company retains discretion in determining to whom it intends to disclose and what material is. Materiality differs for each company, depending on the nature of business, the perspective of top management and corporate culture. Due to this varied character of materiality, the imposition of specific and harmonised Key Performance Indicators (KPIs) does not accurately reflect the ongoing efforts of companies faced with complex challenges at a local level.

Therefore, a principle-based approach is the only viable way for companies to meaningfully explain their business in a dynamic and changing environment.

The BRT recommends as follows:

- Emphasise dialogue in policies as an equally valuable means for companies to strengthen the trust of their investors and stakeholders, and leverage the improvements of companies' internal practices by incorporating dialogue into the PDCA management cycle. Dialogue is a powerful tool in fostering a culture of risk management and innovation, whereby companies across different cultures can exchange views on potential future risks as well as explore collaborative opportunities;
- Foster innovation and growth by motivating companies to integrate CSR into daily business to become more innovative and competitive in the global context, including through open exchanges among stakeholders, partner countries or regions, governments and suppliers;
- Approach non-financial reporting not from a compliance mindset, but by building meaningful channels for companies and investors to discuss value creating processes.

< Recent Progress >

The European Commission on 26 June 2017 adopted non-binding guidelines on non-financial reporting. These guidelines aim to help companies concerned under Directive 2014/95/EU to disclose non-financial information in a relevant, useful, consistent and more comparable manner. It aims also boost corporate transparency and performance, as well as encourage companies to embrace a more sustainable approach.

< Background >

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

- *Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.*

- *The European Commission carried out public consultation from 15 January to 15 April 2016 in the preparation of non-binding guidelines on methodology for reporting non-financial information, held stakeholder meetings on 27 September 2016 and 16 February 2017. The European Commission on 26 June 2017 adopted non-binding guidelines on non-financial reporting pursuant to Article 2 of Directive 2014/95/EU.*

22.4 Responsible Supply Chain Management

The BRT welcomes the European Commission's commitment to support the implementation of internationally recognised frameworks such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance.

The BRT suggests that the authorities of the EU should take the following approach:

- Promote internationally recognized frameworks in the EU that take a risk-based approach instead of adopting EU-specific conditions. This allows companies to maintain flexibility in taking meaningful actions without reducing their efforts to outcome-based box-ticking exercises. Such frameworks include the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance;
- Encourage a 'know and show' mindset by incentivising companies to more actively establish responsible supply chains. Companies which diligently tackle the issue should be recognised for their efforts and progress and the quality of their management processes;
- Avoid creating unnecessary administrative burdens that would hamper companies which are effectively addressing the fundamental problem on the ground.

< Recent Progress>

There was no major progress since last year.

< Background >

Responsible supply chain management is increasingly important as is shown by the reference in the Leaders' Declaration of G7 Summit in June 2015.

The European Commission presented a new trade and investment strategy 'Trade for all - Towards a more responsible trade and investment policy' in October 2015. In this document, it states that responsible management of global supply chains is essential to align trade policy with European values.

WP-1 / # 23 / J to E **Product Safety / Market Surveillance**

23.1 Product safety and market surveillance package proposal

The BRT recommends that the authorities of the EU should amend the Article 7 of the proposal for a Regulation on consumer product safety (COM(2013) 78) by which the indication of the country of origin would become mandatory because according to the final report on the 'Implementation of the New Regulation on Market Surveillance: Indication of Origin' dated 6 May 2015, the mandatory indication of the country of origin does not add much value. The BRT believes that the mandatory indication of the country of origin would not necessarily improve safety for consumers but that it would place substantial administrative burden on manufacturers and/or importers. The BRT therefore believes the mandatory indication of the country of origin should not be included in the Package.

< Recent Progress >

There has been some progress. A report on the indication of origin that the European Commission was requested to produce by the Member States was published. The proposal is under deliberation in the European Parliament and the Council.

< Background >

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

23.2 Market Surveillance under the New Legislative Framework

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

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

The BRT would like to thank the Directorate General of the European Commission concerned for the involvement of the industry and requests that it should continue to consult stakeholders widely.

< Recent Progress >
Some progress has been seen for this recommendation.

< Background >
In 2008, the Regulation 765/2008/EC, setting out the requirements for accreditation and market surveillance relating to the marketing of the products, and the Decision 768/2008/EC, a common framework for the marketing of products, were adopted. The Regulation has been applied as from 1 January 2010.
The Regulation and Decision address and complement missing elements, namely, accreditation and market surveillance, in the existing sectoral legislations. The existing legislations are being amended based on the Decision when they are reviewed. The objectives of the so-called New Legislative Framework are to introduce harmonised and transparent market surveillance and accreditation for all economic operators. The Decision provides definitions, the obligations of economic operators, traceability provisions and safeguard measures. National authorities were to develop their market surveillance programmes and communicate them to the Commission by 1 January 2010.
The European Commission published the guidance for the New Legislative Framework in 2016.

23.3 Consumer protection – legal guarantee period

The BRT welcomes the outcome of the Fitness Check of EU consumer and marketing law published on 29 May 2017. In particular, the review of the Consumer Sales and Guarantees (CSG) Directive 1999/44/EC recommends the introduction of a uniform two-year legal guarantee period for both online and offline sales channels.

The BRT also appreciates that the authorities of the EU are trying to fast-track its introduction by expanding the scope of a proposal for a Directive on online and distance sales of goods (COM/2015/635) to offline sales channels.

The BRT looks forward to the implementation of more aligned Single Market legislation in consumer sales and guarantees.

< Recent Progress >
Good progress has been made for this recommendation because the outcome of the Fitness Check confirms the recommendation of the BRT and a change in the Directive seems to be underway.

< 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.

Presently, the EU consumer law allows the discretion of the Member States to set a legal guarantee period longer than 2 years.

The European Commission started the fitness check of consumer law in the final quarter of 2015 and published its outcome on 29 May 2017.

WP-1 / # 24 / J to E **Access of third countries goods and services to the EU's Procurement Market**

Concerning the amended proposal for a Regulation on the access of third-country goods and services to the Union's internal market in public procurement COM(2016) 34, and any other public procurement related legislation, the BRT recommends the following:

1. Non-legislative policy measures should be pursued in order to achieve the objective of opening procurement markets internationally;

2. An effective mechanism to prevent the EU from arbitrarily excluding third-country goods and services from its procurement market and to ensure legal stability and predictability for businesses should be incorporated into the legislation;

3. Clear and transparent criteria for the scope and conditions of the application of the legislation based on an appropriate and balanced analysis should be included in the legislation.

4. Furthermore, the authorities of the EU and its Member States should increase their efforts to facilitate better access to the respective public procurement markets. In particular:
   - The authorities of the EU and its Member States should make more information available in English.
   - The use of English when submitting tender proposals should be allowed or at least partially allowed, especially for the technical specifications and communication.

< Recent Progress >

There has been some progress.

< Background >

The reform of the legislative framework of public procurement is one of the twelve priority actions set out in the Single Market Act adopted in April 2011. 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 Union's internal market in public procurement and procedures supporting negotiations on the access of Union goods and services to the public procurement markets of third countries (COM(2012) 124). This initial proposal was opposed by several Member States because the possibility to close the EU public procurement market was perceived as discriminatory measures.

The European Commission published on 29 January 2016 an amended proposal (COM(2016) 34). In the amended proposal, the possibility to close its market has been replaced by price penalties called "price adjustment measures".

The BRT appreciates that the EU has dropped its original idea of closing its market unilaterally. The BRT is still concerned, however, that the EU's possible actions could trigger a chain reaction of protectionist measures all over the world. Should it happen, the EU's intention and objective of opening up international public procurement markets would not be achieved.

The BRT welcomes the new initiative that Tenders Electronic Daily (TED) database covering public procurement opportunities in the EU is now equipped with a free translation tool. It is a step forward to mitigate language constraints.