

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

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

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Recommendations to the EU and Japan

A-EJ-1 Strengthening the EU-Japan Economic Relationship (Joint recommendation)

Japan and the EU collectively account for some 44% of world GDP and 23% of world trade. Maintaining such levels in the wake of the global economic crisis will be challenging, as new competitors combine with weak demand for goods to create stiff competition in world export and investment markets. However, a solution lies close at hand. EU exports to Japan amount to less than 2% of Japan's GDP, well below the level in the EU's other key markets. There is plainly enormous untapped growth potential in EU-Japan trade.

Under the existing 2001-2011 EU-Japan Action Plan, non-binding instruments, such as the Regulatory Reform Dialogue, aimed at improving the respective business environments and developing bilateral trade, have simply not delivered results. This huge growth potential in trade and investment remains untapped.

According to the November 2009 report, *Assessment of Barriers to Trade and Investment Between the EU and Japan*, on the results of a study by Copenhagen Economics,

“Efforts must be made to strengthen the EU-Japan economic relationship. This could be done by negotiating a bilateral agreement to help stimulate bilateral trade and investments. Our analysis shows that this would be beneficial to consumers in both economies.”

Results of the report indicate that a balanced bilateral agreement could unlock the enormous growth potential.¹

In the 2009 Annual Meeting of the BRT, Working Party A supported the joint statement adopted by the EU–Japan Summit in Prague on 8 May 2009 aiming notably for **“strengthening the integration of their economies with a view to better exploiting the full potential of their economic relationship”** and called upon the authorities to work towards this goal by focusing on issues that are of Japanese and European interest and create a win-win situation for both sides.

The Working Party recommends that both Authorities build ambitiously on this goal and start negotiations on a balanced and mutually beneficial bilateral agreement as soon as the EU and Japanese Authorities agree that the right conditions are met, in order to promote an ambitious expansion of trade and investment between the EU and Japan. Aiming for the removal of barriers to trade and investment, a broad range of trade issues should be addressed, including harmonisation of standards and certification procedures, mutual recognition of product certification and, when possible, and appropriate, the mutual acceptance of functionally equivalent regulations. It should also address areas such as competition rules, services, and procurement.

A-EJ-2 Support of WTO Doha Development Agenda for fight against protectionism (Joint recommendation)

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

Albeit the world economic outlook has improved significantly over the last six months, European and Japanese firms still face a difficult situation on world export and investment markets. World GDP is expected to increase by around 4% this year and world trade volumes by more than 5%, following a slump of 12.3% in 2009. Competition will be intense as the slow recovery in the developed world keeps global demand levels low. In addition, though the direst predictions of a protectionist wave in response to the crisis have not been realised, many governments have introduced significant new restrictions. Stimulus and stabilisation measures, though necessary, have hugely increased governments' involvement in economies. Behind-the-border regulatory barriers will therefore be of increasing importance. The BRT is very concerned that growing protectionism would prolong the crisis and hold back growth.

Given this background, the WTO must continue its proactive role in both preventing the closing of world-wide markets and the introduction of new restrictions on investments, market access and mobility for workers. Moreover, it should strengthen its stance by requesting WTO members to explain to the whole WTO membership the reasoning and compatibility of their measures with WTO law. This will mitigate the rising risk of protectionist measures and restore business confidence in the system by providing a concrete avenue to counter unhelpful protectionist tendencies. It is also critical that the WTO strongly counters any weakening of commitment to key WTO disciplines such as TRIPS.

The Working Party remains convinced that an ambitious and balanced Doha Round deal is the best way to deliver trade liberalisation for the world economy. The European Commission and the Government of Japan should align to exert their utmost efforts in concluding ambitious negotiations, by the end of this year, and including all major economies. Based on the current modalities of NAMA and other areas, specific sectoral agreements covering both non-tariff barriers and tariffs in non-agricultural goods (e.g. electrical and electronics, industrial machinery, etc.), in trade and environment (e.g. renewable energy, energy efficient goods, etc.) and in services should be part of an ambitious Doha outcome. Key emerging countries, in particular Brazil, India and China, will have to make contributions according to their economic and political weight, and should in addition to that show stronger commitment to participate in specific sector agreements. More serious engagement by the United States will also be necessary to drive the negotiations to a successful conclusion.

Considering the challenges of the Doha negotiations, the EU and Japan should consider parallel tracks for action within the WTO. Without undermining the single undertaking or suggesting an early harvest at this stage, the starting point for these could be existing elements of the negotiations which have wide support and could move forward before agreement on modalities, such as the trade facilitation package. An ambitious and binding Trade Facilitation Agreement would help significantly to facilitate trade for both developed and developing countries and to reduce costs for importers and exporters.

A-EJ-3 Applying international standards and enhanced cooperation in the promotion of new global standards
(Joint recommendation)

1. The Working Party urges both authorities to adopt international product standards and certification procedures where applicable, and, to promote harmonisation of standards and certification procedures, mutual recognition of product certification and, when possible, and appropriate, mutual acceptance of functionally equivalent regulations governing the application process for importing and selling/using products in sectors such as Construction Materials, Organic Products, Cosmetics, Medical Devices, Veterinary Products, Automobiles and Processed Food.
2. The Working Party recognises the importance of global patent harmonisation and

streamlining of the patent system as a way to promote innovation, reduce costs and boost legal certainty. The authorities of the EU and Japan should take the lead in these efforts.

3. We also believe that the two authorities should step up efforts against global counterfeiting and piracy and cooperate closely to establish a new common international legal framework for IPR enforcement. In this regard, we support the ongoing negotiation of an international anti-counterfeiting trade agreement (ACTA) and urge the two authorities to exercise active leadership in order to reach agreement as soon as possible.
4. Given the nature of the issue and the importance for business as well as for society in general, the two governments should make an effort to harmonise the regulations for energy conservation, relevant labelling rules, and carbon footprint schemes.
5. The authorities of the EU and Japan should introduce regulatory cooperation within the customs area through which, once an economic operator is approved as an AEO (Authorized Economic Operator) in Japan, its status should be recognised without additional formalities in the EU, and vice versa.

A-EJ-4 Supporting timely development of business (Joint recommendation)

1. Social security contributions (avoiding double contributions):

The Working Party welcomes the fact that following the agreements between Japan and Belgium and France in 2007, the social security agreements between Japan and the Netherlands and Czech Republic have entered into effect, and those between Japan and Spain, Italy and Ireland, respectively, have been signed. Furthermore, negotiation is underway between Japan and Hungary, and is at preparatory stage between Japan and Luxembourg and Sweden, respectively. Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements. In addition, they should introduce an interim measure, by which a host country should either exempt contribution to pension funds unilaterally or should refund in full when expatriates return to a home country.

2. Smoother and swifter movement of intra-corporate transferees (ICTs):

1) The Japanese and EU authorities should realise far-reaching liberalisation of the movement of intra-corporate transferees (ICTs). Such liberalisation could be achieved by the following systems:

- A framework agreement between the mother company, which sends expatriates, and the host country, stipulates the maximum number of expatriates. Within the agreed limit, the mother company is free to send ICTs 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 ICTs between those countries should be free from obtaining a new work permit as long as the total number of the agreement is respected.

2) The Japanese and EU authorities should automatically grant spouses the same or similar rights as the holder of the entry permit upon their arrival.

3. Personal data protection regime:

The Working Party believes that the ultimate objective of personal data protection for individual business is to adopt and implement a reliable and cost-effective personal data protection system at a level of a corporate group, within which the flow of data should be free across national borders. In order to achieve this, the national legislation of each country should promote such a system rather than impede by creating different requirements.

To realise such a business environment between the EU and Japan, the Government of Japan should request the European Commission to launch the adequacy-finding procedure on the basis of Article 25(6) of Directive 95/46/EC.

In parallel with this procedure, the authorities of the EU and Japan should launch a dialogue in order to create an international framework which allows adoption and implementation of a reliable and cost-effective personal data protection system at the level of a corporate group, within which the flow of data should be free across national borders.

A-EJ-5 Integrated Approach for CO₂ reduction

Both the EU and Japan are adopting challenging targets to reduce the level of 11 emissions. In addition to better engine performance, various measures including improvement of road systems and traffic flow, improvement of fuel quality, education of drivers toward eco-driving and fiscal incentives to encourage the purchase of more fuel efficient cars are important. An integrated approach which combines the efforts of all relevant parties involved, including the auto industry, the fuel sector, policy makers and drivers, to achieve the objective of CO₂ reductions is the most balanced and realistic way to achieve this goal. Working Party A supports this approach.

A-EJ-6 Better Regulation

In reviewing existing regulations or establishing new ones, it is extremely important that the authorities consider the relevant regulations from the perspective of competitiveness of the economy and industry. Stakeholder Consultations and Impact Assessment should be duly implemented. Moreover, an Integrated Approach, the concept of appropriate burden sharing by the entire society, is important. The BRT supports the initiative of the European Commission for Better Regulation and urges the Government of Japan to adopt a similar approach.

Recommendations from Japanese Members to the EU

A-E-1 EU policy on company law

The European Commission adopted a proposal for a Council Regulation on the status for European Private Company in June 2008. According to the proposal, it is to be applicable from 1 July 2010. The Council should adopt it without a delay, and the statute should realize the following points.

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

A-E-2 Japanese expatriates

1. The Commission announced that it would present in 2009 a proposal for a directive setting out common procedures to regulate the entry into, temporary stay and residence in the EU of intra-corporate transferees (ICTs). Such a draft directive should include:
 - 1) Possibilities for intra-corporate transferees to submit an application for a work-residence permit or a residence permit for self-employment after entering the assigned country;
 - 2) Provisions on intra-EU mobility;
 - 3) Possibilities for spouses to be automatically granted the same or similar rights as the holder of the permit upon their arrival.

The application of integration measures to ICTs should be voluntary.

2. More than three years have passed since the due date of the transposition into the law of the Member States of the Directive 2003/109/EC on long-term residence status. The first report required under the Directive is due by 23 January 2011. We look forward to hearing from the European Commission about the actual state of its implementation in each Member State.
3. The Directive 2003/109/EC is not applicable in the UK, Ireland and Denmark. Japanese nationals in the UK, where their number is the highest among EU countries, therefore, do not benefit from this Directive. The UK government should take action in order to enable them to benefit from the EU directive.

A-E-3 Community Patent and Patent Prosecution Highway

1. We would like to urge the EU and its Member States to adopt and implement a Community Patent as soon as possible.

2. The Patent Prosecution Highway (PPH) aims to facilitate, and enhance the quality of patent examination at a participating IP office, by utilizing and sharing the result of examination at another participating IP office. Therefore the PPH is highly beneficial for patent applicants as it will expedite and improve examinations. We would like to urge patent offices of other EU Member States to participate in the PPH as well as the EPO which had started a trial of the PPH from January 2010, for the benefit of patent applicants both in the EU and in Japan.

A-E-4 Fight against counterfeited, pirated and contraband goods

We would like to see the EU to take further necessary steps such as a possible proposal for modification of the Enforcement Directive with a view to step up efforts in all the EU Member States to fight against counterfeited, pirated and contraband goods, both inside and outside the EU. And we would like to urge the EU to make sure to implement Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. At present, several Member States have not implemented it. It seems that the customs authorities in those countries are unable to take the decision to ban counterfeit goods. All the EU Member States should implement this regulation.

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

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

A-E-5 Competitiveness of the EU economy

1. Europe 2020

We welcome Europe 2020 – a strategy for smart, sustainable and inclusive growth.

- We agree that the single market is the basis for growth in the EU. The EU should reinforce its efforts to remove the remaining obstacles and realise a fully functioning single market.
- We welcome the reference to the relationship with Japan that the European Commission will work to deepen. As developed economies such as the EU and Japan share common values and challenges in this regard, they should be natural key strategic partners.
- Global harmonisation of regulatory environment as well as growth in international trade and investment should be regarded as a key contributor to the realisation of the objectives of Europe 2020.

- The recently signed Science & Technology Cooperation Agreement, as well as the mutual cooperation between the EU and Japan, should be a driver to enhance cooperation.

2. Revision of high customs tariffs on audio-visual products and passenger cars

The EU is protecting some sectors of its industries by maintaining high customs tariffs, for example 14% for audio-visual products and 10% for passenger cars, even though these industries are at the forefront of international competition and need stimuli for competition rather than protection. Such protection will not help enhance international competitiveness of those sectors. Furthermore, it is only their users and consumers in the EU who unfortunately have to pay the resulting higher prices. The European Commission and the member states should abolish or drastically reduce these high customs tariffs.

3. Customs Classification;

We believe that customs classification should be done in accordance with the Harmonized System Convention rules. However, we also believe it to be a fact that the rules do not provide a clear method of classification for such products as electric-electronics products, where the technical convergence of IT and non-IT products has emerged. This situation makes interpretation and classification more difficult and complicated than ever, and has undermined transparency, predictability and promptness for businesses. It is requested that the EU acknowledges the concerns and difficulties the businesses are facing, and to take steps to increase predictability and improve transparency upon importation of the IT products. The improvement of the said situation will indeed contribute to the ICT industry development.

4. Taxation

4.1 Common Consolidated Corporate Tax Base

The European Commission should present a proposal for a common consolidated corporate tax base (CCCTB) to the Council and Parliament this year. It should include the following points to improve the competitiveness of the EU economy.

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

4.2 Merger Directive

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

4.3 EU TPD

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

The EU and its Member States should not treat companies in good faith and companies that try to evade taxation in the same way as the imposition of penalties even when EU TPD is prepared in good faith could lead to undesirable distortions in the single market by forcing companies to adopt artificial transfer price in order to avoid penalties.

5. Competition Policy

There are guidelines in the determination of the amount of penalties in case of an infringement of the competition rules. We would like to see more clarity in the determination of the amount of penalties so that businesses will not be unduly deterred and that the 'Lisbon Strategy' will be achieved.

6. REACH

The EU regulation of Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) has been put into effect since June, 2007. After entry into force of REACH, many of those tasks, including the provision of information on REACH to companies and the general public have been transferred to the European Chemicals Agency (ECHA). We recommend that the EU government takes further actions for education and capacity building in developing countries for compliance with REACH. We also request consideration by the EU government to establishing certain lead-times or grace periods for compliance in cases involving developing country parties in supply chains.

Notification on EU regulation of Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) will be starting from June 2011. We are making our best effort to comply with the regulation. We request the EU to organize a unified implementation of REACH, especially in notification, based on the ECHA's guidance document under preparation now.

7. Consumer protection

Although there is a uniform concept in guarantee with house consumer goods in the EU, there still exists significant difference in practice among the Member States especially in the Scandinavian countries. Further harmonisation of regulations on guarantee will help realise an economy of scale, which would benefit consumers.

The review of Consumer Acquis (namely the four existing consumer protection Directives comprising (i) Sale of consumer goods and guarantees (99/44/EC), (ii) Unfair contract terms (93/13/EC), (iii) Distance selling (97/7/EC) and (iv) Doorstep selling (85/577/EC)) is being carried out in the context of Consumer Rights Directive. In the new Directive, the following issues should be taken into consideration:

- Guarantee should be limited to 2 years.
- The decision whether to replace with a new product or to repair a defective product should be made by Trader rather than consumers.
- It should be consumers that bear the burden of proof that there was a defect from the beginning after 6 months of purchase even if the guarantee is still valid.

8. Environment, Social and Governance (ESG) information disclosure

We fully support the direction taken by the European Commission on CSR, including recent efforts to improve transparency by facilitating stakeholder dialogue on Environment, Social and Governance (ESG) disclosure.

We however express concern over the potential obligation imposed on companies of different size, business sector and organisational structure to quantify and report in accordance with only one set of quantitative key performance indicators. The drivers behind value creation are company specific and can be hardly expressed in on-size-fits-all parameters.

We therefore recommend that the European Commission should:

- create a non prescriptive approach to ESG disclosure;
- create an EU-wide approach in the global context; and
- train and educate information users, particularly investors and analysts, on how to read the ESG information.

Recommendations from EU-Members to Japan

A-J-1 Harmonisation & mutual recognition of standards and product certifications; acceptance of international standards where applicable

Reluctance to accept EN and ISO standards or CE marking of products exported to Japan delays the introduction of new products to the market and increases import costs. While accepting the need to safeguard consumer health and safety, the Working Party urges Japan to promote the harmonisation of standards and certification procedures, the mutual recognition of product certification and, when possible, and appropriate, the mutual acceptance of functionally equivalent regulations governing the application process for importing and selling/using products with particular consideration for consumer safety and health, so that products certified for one market are automatically accepted in the other market. The Working Party recommends the Japanese Government to place particular emphasis on:

1. 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. Procedures for foreign testing institutes seeking accreditation under JAS/JIS should be streamlined. Mere reference to ISO standards within JAS/JIS, has proved not to be adequately helpful in facilitating the process.

2. Organic Products

The Government of Japan should work together with the EU authorities to achieve mutual recognition of Organic Food Products labelling. A level playing field for European organic products, including the removal of all redundant regulations, would be the most efficient way to ensure access of quality European organic products to the Japanese market. Japan would benefit enormously from recognising Europe's stringent organic certification standards, and accepting organic and related products from Europe without requiring additional certification or bureaucracy.

3. Cosmetics

European cosmetics firms find it continuously difficult to expand their business in Japan due to the difference in standards for ingredients and permitted efficacy claims between Japan and the EU and the Japan-specific product certification procedures for so-called quasi drugs. The Working Party calls for common regulations on the certification of medicated cosmetics, so-called quasi drugs (disclosure of approved ingredients, standard application times); common regulations on efficacy claims and advertisements; a common positive list of allowable ingredients in cosmetics; and establishment of joint standards for alternatives to animal testing.

4. Railways

The combined Japan Railways companies run on more than two-thirds of the railways, whereas the remaining one-third is controlled by more than 80 private carriers. This means that JR testing and acceptance standards serve as de-facto requirements for railway equipment to be exported to Japan. 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. 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.

5. Medical Devices/Equipment

The EU's export of medical devices to Japan is limited by the costly and cumbersome approval process. Development costs for EU medical device producers are increased by requests for additional clinical trials from the Japanese authorities. Excessive Japanese standards and regulatory requirements result in a significant device lag. The pricing and reimbursement system creates disincentives for introducing new and innovative products on the Japanese market. The Working Party calls on the government of Japan to intensify the work to simplify and harmonise the regulatory processes in the field of Medical Devices with that of the EU. In particular, mutual acceptance of regulatory practices and standards concerning principles of safety and performance, marketing authorisation, clinical trials and on-site audits of manufacturing facilities should be promoted. Japan needs to reduce the time and costs associated with introducing innovative new treatments in the human healthcare market in Japan and to bring Japanese rules in line with global standards.

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

- a) Shortening the medical equipment certification process: accepting clinical trial data generated overseas and harmonising Good Clinical Practice (GCP) and Quality Management System (QMS) requirements with international standards. The Working Party recommends that in the meantime, both authorities should officially recognise that either ISO 14155:2003 (and as subsequently amended) or Japan GCP is, in principle, generally acceptable to either party for all medical device clinical investigations and that, in principle, a QMS audit conducted by responsible authorities in Japan (PMDA or third party testing organisation) or by Notified Bodies in the EU is generally sufficient as evidence of compliance with quality management system requirements when applying for market authorisation on either market.
- b) Eliminating differences between Japanese GCP and the GCP established by the International Conference on Harmonisation.

6. Veterinary Products

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

- a) Urges the Government of Japan to take all measures available to speed up product approvals and fully harmonise domestic regulations with international practices.
- b) Requests Japan to work towards mutual recognition of European and Japanese marketing authorisations for veterinary products. This should start with mutual recognition of GMP certification for veterinary medicines. Harmonisation of regulations on animal vaccines, abandoning National Assays at the earliest

opportunity and ensuring product conformance under a unified GMP regime, should also be addressed.

7. Automobiles

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 that have received type approval according to ECE Regulations in one contracting are exempt from testing in any other signatory country where those regulations have been adopted. Japan has now adopted 40 out of a total of 127 ECE Regulations. The Government of Japan is therefore urged to accelerate its adoption of ECE Regulations to lower the cost of regulatory compliance for both European and Japanese automobile exporters by extending the benefits of mutual recognition.

To facilitate the more rapid introduction into the Japanese market of European automobile advanced safety devices, the Government of Japan should also adopt a more transparent procedure, and a prescribed timetable, for establishing new Technical Guidelines and amending, or demonstrating compliance with, existing Technical Guidelines which take into account experience in the use of these device in the EU.

8. 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. The limited number of permitted food additives in Japan and unaligned standards between the EU and Japan increases costs and prevents EU exporters from utilising scale effects. High conformity costs are incurred because Japanese authorities do not accept evaluations made by the EU or international bodies. The market potential for European exporters would be greatly enhanced by:

- a) Harmonising Japanese regulations with international standards with respect to re-dating, labelling and nutritional standards
- b) Substantially increasing the list of permitted additives, in addition to speeding up the approval process
- c) Introducing mutual recognition of conformity assessment procedures to eliminate the duplicate costs of evaluations.

9. Labelling rules

The Household Product Quality Law and accompanying voluntary labelling guidelines, "hyojikitei", prescribe in extreme detail how household products should be labelled when sold in Japan. The Government of Japan should issue clarifying orders to provide retailers with flexible alternatives for providing Japanese consumers with globally sourced products while taking full responsibility for the quality and safety of the products. A simple example of an inflexible labelling rule that has substantial labelling cost implications for European companies is that the dimensions of furniture must be expressed in millimetres and not centimetres, although use of the latter is common practice in other countries using the metric system.

A-J-2 Ensuring free and open competition in services

The Working Party urges the Government of Japan to tackle the lack of free and open competition in Japan's services markets. In particular, the Government should:

1. Remove obstacles to integrating the operations of financial groups. In particular, the initiated reforms of firewall restrictions should be implemented fully to allow financial groups to structure their organisations in Japan in the same way as they do in the rest of the world.
2. Regardless of the direction the Government of Japan decides to take on postal reform, Japan has a duty to abide by its WTO obligations, including the national treatment provision of the General Agreement on Trade in Services, or GATS. This means establishing equivalent conditions of competition between the Japan Post entities and EU and other private delivery companies, banks, and insurance companies. Specifically,
 - a. Kampo insurance business should be subject to the same capital, solvency margin, tax and policyholder protection funding requirements as private sector insurers. Limits are needed on expansion of Japan Post's services, including the introduction of new products as well as caps on postal life insurance, until competitive safeguards have been established to prevent cross-subsidies from its existing dominant position. It is also imperative that Japan Post remains under the jurisdiction of the Financial Services Agency (FSA). The above requests are well within the realm of the Government Procurement Agreement (GPA). Similarly, the insurance business of cooperative societies (*kyosai*) should be subject to the same requirements as private sector insurers.
 - b. Japan Post and private postal delivery operators should be subject to the same customs procedures and formalities. A level playing field for both Japan Post and private postal operators should be ensured in the requirements for dedicated airway bills, obligatory customs, quarantine and security clearance and the funding of these services, as well as in the issuance of parking tickets for delivery vehicle parking infringements.

A-J-3 Promoting foreign direct investment

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. The Government of Japan should create a business environment that will foster investment of foreign firms in the domestic economy. To this end, and in line with the treatment applied to stock swaps involving purely domestic companies, it should consider allowing tax deferrals for capital gains stemming from direct cross-border mergers and re-organisations. The Government should also ensure that rules of fundamental importance to foreign companies are not altered without prior notice and consultation. In this context, the Working Party calls on the Government to use all means available, including revision of Article 821 of the Corporation Law, to ensure legal certainty for foreign companies established as branches in Japan.

Moreover, while such improvement of the generic investment environment is a precondition, regulatory reform is the best motivator for foreign companies to enter the Japanese market. In the sectors where Japanese rules and regulations are close to global norms and practices such as automotives and machinery, foreign investments are 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.

A-J-4 Government procurement

The Government of Japan should increase its effort to facilitate better access to the public procurement market in Japan. Studies have shown that over 80% of the total government procurement market in Japan is not covered by GPA (The Agreement on Government Procurement).² One way to combat this could be to lower the threshold for public tenders. Currently some sectors are exempted from the threshold of 5 million SDR (special drawing rights). Another example would be to better define the "operational safety clause" within the transport sector. The Working Party furthermore requests Japan to set up a single access point to fully cover all tenders, as well facilitate the use of e-procurement.

A-J-5 Promoting EU-Japan cooperation in aeronautics, space and defence

Historical circumstances have created practices that have distorted the market mechanism in the field of large (more than 100-seat) commercial aircraft procurement. As a result, Japanese airlines buy almost exclusively from one supplier. The Japanese Government should promote fair competition by providing similar support to European – Japan cooperation programmes in the field of commercial aircraft development as is currently given to the cooperation between Japanese manufacturing and their U.S. counterparts. European companies can offer technology, know-how, and production and management techniques that can benefit Japanese manufacturing companies and capitalise on their strengths, for the benefit of both Japan and the EU. The Japanese government should set a positive example to the private sector of the advantages of sourcing from more than one aircraft manufacturer by buying aircraft for official government use from a European supplier.

Similarly, the Japanese aerospace and defence industry is at times reluctant to work with European companies, due to the long-standing relationship with North American companies, and limited awareness of the European aerospace sector. European aerospace and defence companies are ready to consider joint development of new products and willing, within such programmes, to transfer to the Japanese aerospace and defence companies advanced technology and know-how. The improved capacity and global competitiveness of the Japanese industry following such cooperation should be increasingly important, given the acute need to cut procurement costs and the current discussion in Japan of a re-interpretation of the current very strict export ban. Cooperation with Europe will also allow final Japanese users of equipment such as fighter aircraft to directly manage configuration control, not possible through the "black box approach" employed by current suppliers. Improvement of indigenous capacity in areas, such as on-board avionics and electronics, which constitute a substantial portion of all commercial and military aerospace programmes, can also be envisaged for the Japanese electronics industry.

EU-Japan cooperation in space also runs far below its potential, ignoring large potential benefits for both sides. This is in large part due to the absence of a unified Space jurisdiction across the ministries and agencies. Japan, however, recently established a new organisation to remedy this deficiency, and the State Minister in charge of Space Development is currently establishing a unified Space policy. Taking advantage of this new context, Japan's authorities should implement the mutual backup of European and Japanese heavy-lift space launchers for government / institutional launch missions that they have been

² Copenhagen Economics, "Assessment of barriers to trade and investment between the EU and Japan", 2009

studying since its feasibility and benefits were established by a bilateral working group in 2003. Bilateral cooperation on government satellite projects should also be encouraged. Finally, Japan's international procurement of space ground equipment should not exclude whole systems.