



**Commission Services Progress Report**  
on the

**EU-Japan Business Round Table  
Recommendations 2015**

**"Paving the way for a renewed  
industrial partnership"**

**Brussels, March 2016**

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## **Working Party A**

# **Trade Relations, Investment and Regulatory Cooperation**

## **Recommendations from both European and Japanese industries**

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

#### ***Reply***

The Commission agrees on the need to further strengthening the EU-Japan relationship so as to foster growth and jobs both in the EU and in Japan.

The Commission is fully committed to the negotiations of a highly comprehensive and ambitious FTA with Japan. After 16 rounds of negotiations the Commission considers that discussions on most chapters are reaching a mature stage and that a conclusion of the FTA in 2016 would therefore be both possible and desirable.

However, the Commission remains convinced that only an agreement with a high level of ambition across the board will deliver real economic benefits and therefore be agreeable to all parties.

The Commission also welcomes the support to the negotiating process of the business community in general and the BRT in particular. It will be essential to reach a successful outcome.

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

#### ***Reply***

Important progress has been made in recent months in WTO negotiations. The successful 10th WTO Ministerial Conference held in Nairobi in December 2015 saw agreement being reached on agricultural export competition, as well as on a number of other important issues. Importantly, negotiations on the expansion of the ITA agreement were also concluded at the Ministerial Conference.

More prospectively, the Nairobi Ministerial Declaration also addresses the question of future negotiations in the WTO. While differences remain among Members on how to advance, there is a broad realisation that new approaches need to be explored in order to advance on outstanding DDA issues. There is also an acknowledgement that some WTO Members would like to also advance on other issues which are of central concern to traders today. In this context, reflections are currently taking place to identify priorities for post-Nairobi work.

Important progress has also been made toward the goal of implementing the Trade Facilitation Agreement. Over 70 WTO Members have ratified the agreement. A further impetus is needed to get the remaining necessary ratifications in place to ensure its entry into force.

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

#### ***1. General recommendations***

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

*The BRT recommends the authorities of the EU and Japan to enhance their regulatory cooperation. The aim is to eliminate barriers to trade and investment in order to promote business and to disseminate the experience of the EU and Japan to the rest of the world. To this end, the BRT encourages the authorities of the EU and Japan to work together in the relevant fora to develop international product standards and certification procedures. The BRT recommends that the authorities of the EU and Japan should apply such standards in as many sectors as possible.*

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

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

*The BRT recommends that the policy-makers of the EU and Japan should increase their understanding of existing and upcoming regulations of the other side. Where a harmonised regulatory framework between the EU and Japan has not yet been developed, the regulatory authorities of the EU and Japan should review their domestic technical regulations and conformity assessment procedures at regular intervals to determine the scope for further regulatory harmonisation. The outcome of these reviews, including scientific and technical evidence used, shall be exchanged between the regulatory authorities and provided to industry upon request.*

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

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

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

### **Reply**

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

On 19 May 2015 the European Commission adopted its Better Regulation Agenda – a comprehensive package of reforms covering the entire policy cycle to boost openness and transparency in the EU decision-making process, improve the quality of new laws through better impact assessments of draft legislation and amendments, and promote

constant and consistent review of existing EU laws, so that EU policies achieve their objectives in the most effective and efficient way. All stakeholders benefit of the following new opportunities for comments:

- Stakeholders have a chance to provide feedback on "roadmaps" and "inception impact assessments", right from the very start of work on a new initiative.
- After the Commission has adopted a legislative proposal, any stakeholder will have 8 weeks to provide feedback or suggestions which will feed into the legislative debate before Parliament and Council.
- For the first time, draft delegated and implementing acts, which amend or supplement existing legislation, or which set out specific technical provisions, will be made public to allow feedback for 4 weeks before their adoption by the Commission.
- In addition to current 12 weeks public consultations on impact assessments, the Commission now foresees 12 weeks consultations also for ex post evaluations of existing legislation.
- In addition to formal consultations, stakeholders will have a chance to share views and comments at any time on existing EU law, using a new "Lighten the Load – Have Toy Say" feature on the Commission's better regulation website.

The Commission is strengthening its approach to impact assessment and evaluations to improve the evidence base which underpins all legislative proposals. The major political priorities, including legislative proposals, are presented in European Commission's Annual Work Programme; roadmaps are also available on the Internet providing details of the content and timing of each planned regulatory initiative, including public stakeholder consultations and impact assessments.

With respect to avoiding initiatives that might unwittingly create barriers to trade and investment, please note that the Commission carries out impact assessment analysis to support its decision-making for all proposals with significant direct impact. Being aware of the potential negative impacts on international trade, the EU, before tabling a legislative proposal, is carrying out a comprehensive Impact Assessment where, among other impacts, also the impact on international trade are being considered.

The EC (DG GROW) and Japan (Ministry of Economy, Trade and Industry - METI) established an Industrial Policy Dialogue (IPD) in 1998 as a forum for in-depth discussion on issues of mutual interest covering competitiveness and industrial policy in Europe and Japan. The 18th meeting of the WG on Standards and Conformity Assessment was held on 10 December 2015 Brussels. Both sides exchanged information on the policy evolution in the areas of technical regulations, accreditation and standardisation, as well as on circular economy, standard essential patents and smart appliances. A specific issue concerning standardisation for LED lights was also discussed. The exchange of information at the WG meeting very beneficial and mutually valuable.

With respect to cooperation on standardisation, on 13 November 2014 CEN/CENELEC and JISC have signed a joint Cooperation Agreement which provides a new framework for closer collaboration on various aspects of standardization. The aim of the agreement is to streamline rules, reinforce reciprocity and exchange of information as well as to adapt to the evolving environment by strengthening cooperation in international standardization arena and ensuring support for leading technologies.

### ***3.4. Expand the benefits of AEOs***

*Following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan, the Authorities of the EU and Japan should aim at introducing further*

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

### **Reply**

Mutual Recognition of AEOs, including further benefits, has been discussed by AEO experts from both sides in their regular meetings concerning the implementation of the mutual recognition decision between the EU and Japan. Recently, an automated data exchange mechanism for the Mutual Recognition of AEOs has been implemented.

Additional benefits are currently under discussion, including a priority treatment at customs controls and the recognition of third party AEO business partners during the AEO application process. As the current scope of the agreement is 'security and safety' related, any amendments related to possible simplification of import procedures would require a change of the legal base.

### **3.5 Fight against counterfeited, pirated and contraband goods**

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

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

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

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

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

### **Reply**

IPR customs enforcement remains a top priority for Customs in the EU. In the daily completion of their IPR enforcement-related tasks, Customs use risk analysis technics for targeting suspected shipments and available IT tools. Increased cooperation between Customs and right holders remains a cornerstone for the effective enforcement of registered rights at the EU external border. Customs are committed to cooperation with the other IPR enforcement authorities in the EU and relevant authorities in third countries in order to reduce the volumes of international trade in IPR infringing goods and its impact on global economy.

## **6. Adoption of UN Regulations**

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

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**Reply**

In the motor vehicles sector, the EU shares the view of the BTR that the adoption of the relevant Regulations developed under the 1958 UN Agreement, thus benefitting also from the mutual recognition foreseen therein, is the most important avenue for minimizing duplication of requirements and related conformity assessment procedures, and lowering the costs of regulatory compliance of both EU and Japanese manufacturers. This explains why, since some years, the uptake of newly adopted UN Regulations (and their revisions) into the EU is automatic.

The EU has also been fully committed to develop UN Regulations and/or global technical regulations which establish technical requirements for vehicles using innovative and environmentally friendly power-train technologies such as clean diesel, electric vehicles, hybrid vehicles and fuel-cell vehicles. This work is developed in close partnership with Japan.

The EU, in partnership with Japan, is also active in the review process of the 1958 Agreement and in the development of the IWVTA (International Whole Vehicle Type-Approval). The overall objective for the process is two-fold: (1) to maintain a robust and reliable international framework to ensure sufficient level of safety and environmental protection; and (2) to make the framework more attractive for emerging countries. The UN WP29 has agreed on a roadmap to carry out the 1958 Agreement review and the IWVTA establishment by the target year of 2016.

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

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

*The BRT welcomes the conclusion of social security agreements between Japan and 10 EU Member States. The BRT requests that, Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements. In addition, they should introduce an interim measure, by which a host country should either exempt contributions to pension funds unilaterally or refund the contributions in full, not only partially, when expatriates return to their home country.*

**Reply**

Social Security is not harmonised in the EU and it is for Member States to organise their own social security schemes and to lay down their own national conditions according to which social security benefits (including pensions) are granted, the contributions to be made, the amount of the benefits and the period for which they are granted. Accordingly,



the possible refund of contributions paid into a Member State's social security system is a matter of national law and is not regulated at EU level.

The problem of double contributions can be addressed by concluding bilateral social security agreements with Member States. It is the competence of Member States to conclude social security agreements with third countries. Such agreements can allow workers posted from Japan to work on the territory of a Member State, but be exempted from contributing to the Member State's social security system for an agreed period of time.

In this context, the Commission is aware that a growing number of bilateral social security agreements between Japan and EU Member States have been concluded, or are being negotiated at present. The Commission wishes to encourage closer cooperation between Member States in the conclusion and operation of bilateral agreements with non-EU states.

In addition, the Council of the EU and the European adopted Directive 2014/66/EU dealing with the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT). The aim of the Directive is to attract non-EU workers with much-needed skills, in particular key personnel of transnational corporations temporarily transferred to the EU. The Directive is an important part of the EU common migration policy. The Directive specifically accommodates the fact that key personnel may be sent to work in an EU country yet, by virtue of the application of bilateral agreements made with the country in question, will not be required to make social security contributions there. A key aspect of this Directive is to allow such temporary non-EU workers short-term mobility between Member States in order to serve the needs of their employer.

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

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

- ü A framework agreement between the mother company, which sends expatriates, and the host country, stipulates the maximum number of expatriates. Within the agreed limit, the mother company is free to send intra-corporate transferees to that country without further obtaining individual work permits.*
- ü 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.*
- ü Both sides should facilitate access to the labour market for accompanying family members without any limitations in regard to regular working hours.*

### ***Reply***

The Directive 2014/66/EU on intra-corporate transfers should be implemented by EU Member States by 29 November 2016. This Directive will allow third-country nationals to be transferred temporarily to the territory of the Member States as managers, specialists or trainees. A labour market test or economic needs test will not be applied. The Directive allows Member States to introduce simplified procedures for recognised entities or (groups of) undertakings. These may consist of faster procedures, as well as exemptions from providing certain documents which would normally be required as part of the admissions procedure.

The Directive already specifies that professional stays in other Member States can happen on the basis of the permit issued by the first Member State, so long as these do not exceed 90 days within any 180 day period in any single Member State. A simple notification procedure suffices in such cases. For stays exceeding 90 days, the second Member State may choose to apply the same simple notification procedure, or it may choose to issue a specific permit. In the latter case, the issuance of permits to recognised entities or (groups of) undertakings can also be facilitated by that Member State.

The Directive 2014/66/EU specifies that family members have access to employment or self-employment and it does not place any restrictions as regards working hours.

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

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

*This would include:*

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

### ***Reply***

The Commission welcome the EU-Japan Business Round Table recommendations and the renewed focus put on the necessary support for SMEs. To provide support and information to small and medium-sized businesses (SMES) of both EU and Japan, the long-standing EU-Japan Centre for Industrial Cooperation remains available. One of the main priorities of the Centre is to offer a reinforced support for SMEs, with a particular focus on internationalization aspects as SMEs represent the backbone of EU and Japanese economies. The Centre already implements in a pragmatic manner a number of recommendations included in the progress report.

Moreover, the EU-Japan Centre for Industrial Cooperation is member of the Enterprise Europe Network whose aim is to help SMEs making the most out of business opportunities. It provides support on access to market information, overcoming legal obstacles, and identifying potential business partners across Europe and in third countries markets. Mutual business cooperation between European and Japanese SMEs could be strengthened through the Enterprise Europe Network: Japanese business intermediary organisations could certainly benefit from joining the network and the business matchmaking opportunities it offers for European SMEs.

## Recommendations from Japanese industry to the EU

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

*The BRT emphasises the importance of further improvement and realisation of the true single market of chemical materials contributing to the smart, sustainable and inclusive growth of the EU.*

#### ***Reply***

The Commission agrees that a well-functioning single market is instrumental to achieve smart, sustainable and inclusive growth of the EU and is committed to ensure via the correct implementation of the Regulations that the single market for chemicals is indeed realised.

The REACH and CLP Regulations have actually already created a fully harmonised single market for chemical substances and mixtures. The Commission would like to invite the BRT to flag any specific and concrete problem/issue perceived in this regard for further follow-up.

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

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

#### ***Reply***

The Commission notes that the negotiations for a Free trade Agreement with Japan are ongoing and the objective is to reach a deep and comprehensive agreement with the full liberalisation of trade in goods on both sides, and the elimination of non-tariff barriers which hamper bilateral trade.

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

#### **15.1 REACH**

*1. Concerning REACH, the BRT recommends as follows:*

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

#### ***Reply:***

The judgment of the European Court of Justice in case C-106/14 has provided clarification on the interpretation of the Articles 7(2) and 33 of REACH as regards their application to complex articles and thus created the basis for a unified application of those provisions on the EU Single Market. The European Chemicals Agency (ECHA) is in the process of revising the related guidance document to bring it in line with the judgement of the Court. The guidance should provide support to the industry to apply the judgement in practice.

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

*- The number of SVHC increases steadily. The ECHA started a new website on PACT-RMOA and publishes the result of the assessment of SVHC as carried out, which is an improvement though SMEs might still find difficult to digest. The authorities of the EU should further improve the care for SMEs.*

*- Although PACT-RMOA has increased the transparency of the identification of SVHC, the process of contributions by industries should be further developed.*

### **Reply**

The transparency in the choice of substances for SVHC identification has been further increased. In addition of the publication on ECHA website of substances selected for an RMOA or for PBT, vPvB and ED assessment, ECHA informs all registrants when a substance is selected in the preliminary screening for REACH regulatory processes (including SVHC identification). SMEs that registered a substance selected for the screening are, therefore, contacted at a very early stage. ECHA is considering to further improve the communication by informing registrants of the outcome of the screening process. Registrants can then pro-actively update the registration dossiers by providing the information needed by the authorities for their assessment. Furthermore, the Commission and ECHA are working to increase the possibility for stakeholders to contribute to the RMOA. For example, some Member States authorities publish the full RMOA on PACT and, before finalising it, organise a public consultation.

*- The BRT requests that the authorities of the EU should issue a clarification on the obligation of ORs under the Article 8 of REACH and its implication under the EU competition law.*

### **Reply**

Clarifications on the role of the OR in REACH registration pursuant to Article 8 are contained in the Guidance on registration (see in particular Section 2.1.2.5 Only representative of a 'non-EU manufacturer'), directly available here: [http://echa.europa.eu/documents/10162/13632/registration\\_en.pdf](http://echa.europa.eu/documents/10162/13632/registration_en.pdf).

All Guidance documents on REACH implementation are drafted by ECHA following well-defined procedures involving Partner Expert Group (Member States and industry stakeholders) consultations. Those Guidance documents are publicly available in all official languages on ECHA's website: <http://echa.europa.eu/ja/support/guidance>

*- The disseminated dossier information that is purchased from Lead Registrant in ECHA home page for HSE (health safety and environment) purposes (such as GPS - Global Product Strategy - and SDS - Safety Data Sheet) should be made accessible for free and made available worldwide.*

### **Reply**

The information from the registration dossiers is publicly available free of charge on the ECHA's dissemination web-page: <http://echa.europa.eu/information-on-chemicals/registered-substances>

REACH requires that the information in the safety data sheet (SDS) is consistent with the information in the chemical safety assessment completed for registration purposes in accordance with Article 14 of REACH.

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

*corrective measures in order to realise transparency of the cost for LoA and the equity in cost sharing.*

**Reply**

The Commission has adopted Implementing Regulation (EU) No 2016/9 on joint submission of data and data-sharing, pursuant to Article 132 of REACH, to put into effect the provisions of REACH on data sharing. This Regulation clarifies the meaning of the terms 'fair, transparent and non-discriminatory' used in REACH by setting certain obligations for registrants. Thus, it aims at reducing any abusive practices and increasing the transparency in SIEFs in particular. It further provides enhanced power to ECHA to monitor the correct application of the OSOR principle. ECHA is in the process of preparing guidance for the correct application of the Regulation.

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

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

**Reply**

The Commission published in June 2014 a roadmap outlining different options of defining criteria for identifying endocrine disruptors. The options are based on the WHO/IPCS (2002) definition of endocrine disruptors. One of the options is taking potency into account. An impact assessment on these options, which will support the decision-making on defining criteria for endocrine disruptors in the contexts of the Pesticides and Biocides Regulations, is currently in its final stage, and a proposal by the Commission on how to regulate endocrine disruptors under the above mentioned legislations is expected before summer 2016.

Options evaluated in this impact assessment include: considering elements of hazard characterization when identifying endocrine disruptors; the possibility to introduce in the regulatory decision making on endocrine disruptors further elements of risk assessment.

## **15.3 RoHS**

**Reply**

"The European Commission recognises the potential for overlap between the REACH Regulation and Directive 2011/65/EU (RoHS) and has prepared and published on its website (link below) a "Common Understanding paper explaining how the services of the Commission intend to manage the interface between the two instruments. The paper is based on the premise that, as far as possible, RoHS should be given priority to regulate issues pertaining to the use of substances in electrical and electronic equipment."

## **15.4 CLP Regulation**

**Reply**

"The European Commission recognises the potential for overlap between the REACH Regulation and Directive 2011/65/EU (RoHS) and has prepared and published on its website (link below) a "Common Understanding paper explaining how the services of the Commission intend to manage the interface between the two instruments. The paper is based on the premise that, as far as possible, RoHS should be given priority to regulate issues pertaining to the use of substances in electrical and electronic equipment."

## 15.5. Nanomaterial

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

### **Reply**

Exposure is taken into account in relevant legislation. For example registration requirements in REACH (Regulation (EC) No 1907/2006) expressly require consideration of foreseeable releases from articles when conducting safety assessments. Exposure is also considered in the context of European standardisation activities on nanomaterials.

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

### **Reply**

As for all chemicals, substances with nanoforms are subject to registration requirements under the REACH Regulation (Regulation (EC) No 1907/2006) and to notification requirements under the CLP Regulation (Regulation (EC) No 1272/2008 on Classification, Labelling and Packaging). The Commission is currently finalising an impact assessment on possible amendments of the Annexes to the REACH Regulation to ensure clarity on how nanomaterials are addressed and safety demonstrated in registration dossiers and will propose such amendments in the near future.

In addition, the Commission is finalising an impact assessment on transparency measures for nanomaterials on the market. The preliminary results indicate that an EU-wide nanomaterials registry with notification duties (on top of the REACH and CLP requirements) would generate significant administrative burden for businesses, while the added value of the generated information in terms of reducing health and environmental risks and informing consumers is limited. Instead, the Commission is considering the launch of a Nanomaterials Observatory to collect and present relevant information on nanomaterials from existing sources and new market studies. This would provide relevant information to different target audiences, including businesses, consumers, workers and authorities, thereby contributing to increased confidence in the safe use of nanomaterials.

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

### **Reply**

The Commission is currently working on measurement and monitoring methods for nanomaterials and their validation to ensure the proper implementation of the nanomaterial definition as contained in Commission Recommendation (EC) 696/2011. In addition, the Commission promotes the work on nanomaterial characterisation through a mandate to the European Standardisation Organisations (CEN, CENELEC, ETSI). In the frame of this mandate the technical committees of CEN (European Committee for Standardisation) are working on European standards concerning the methods for the measurement of the efficiency of air filtration for nanoparticles, for workplace exposure including the characterisation of ultrafine aerosols and for measurement of dustiness of bulk nanomaterials. In addition they are working on the set of technical specifications covering measurements for the characterisation of nanomaterials, aspects of Life Cycle Assessment, identification of nanoparticles in complex matrices, explosivity and flammability of nano-powders and the management of disposal of waste from manufacturing and processing of nano-objects. This standardisation process is coordinated on principles of complementarity with ISO (International Organization for Standardization) standardisation activities.

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

*Relation of different product categories in Ecodesign*

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

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

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

**Reply**

The Climate Change & Environment Working Group is part of the Industrial Policy Dialogue of DG GROW with the Japanese Ministry of Economy, Trade & Industry (METI). Within the WG parties exchange information and learn from best practice on:

Product policy: exchange information on eco-design and products being tackled under the respective regulations and fostering mutual compatibility of standards.

**WP-A/# 17\*\* / J to E Taxation****17.1 Common Consolidated Corporate Tax Base**

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

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

**Reply**

The Commission welcomes the comments from BRT and wishes to note that a reference to the CCCTB features in Annex I on New Initiatives of the Commission Work Programme 2015. The initiative is also included in the Work Programme of 2016. In fact, the Action Plan of June 2015 announced the re-launch of the CCCTB as a holistic approach to addressing a number of issues related tax avoidance but also ensuring an efficient and friendly business environment of fair taxation in the internal market. The re-launch will consist of proposing a mandatory system as part of a 2-step strategy whereby efforts will initially concentrate on securing the tax base. The element of consolidation will be left to be debated at a second stage.

In the meantime, the essence of certain international and tax avoidance-related aspects of the system are debated in Council in the framework of the technical discussions of the proposal for an anti-tax avoidance directive (adopted by the College on 28th January 2016).

**17.2 Merger Directive**

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

### **Reply**

After the publication of the Company Tax Study and the accompanying Communication, COM (2001)581, the Council adopted a new recast of the Directive concerning indirect taxes on the raising of capital (Council Directive 2007/7/EC of 12 February 2008) whose article 6 provides that the Member States may charge transfer duties on the transfer of immovable property situated within their territory.

Concerning the request by some Member States to hold shares received in exchange for an asset contribution during a number of years, the Commission services have not received any individual complaint raising this issue as a potential infringement to the Merger Directive and there has not been any case before the European Court of Justice about it. In any case, any company may introduce such a complaint and request our services to consider the case under EU Law.

Finally, the risk of double taxation on dividends paid by European subsidiaries to Japanese parent companies is an issue outside the competence of the EU Institutions and should be ruled by the bilateral relations between the concerned EU Member State and Japan.

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

### **Reply**

The fundamental reform of the VAT system is a longer term process which consists of several steps. The Commission presented in 2013 in the framework of the VAT reform a legislative proposal for a standardised VAT return. This proposal should facilitate compliance for businesses having reporting obligations for VAT in several Member States. The proposal is discussed in the Council. The Commission also intends to modernise and simplify the VAT rules on intra-EU B2B supplies, to expand the One Stop Shop as a priority for B2C sales of goods and services and to set up a web portal to provide business with accurate and reliable information on the details of the VAT regimes in place in the Member States. However, for such projects to succeed, the involvement of all the tax authorities will be key.

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

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

*The BRT recommends:*

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

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

### **Reply**

The EU's policy on Corporate Social Responsibility (CSR) / Responsible Business Conduct (RBC) promotes a policy mix of voluntary measures and complementary regulation (ex. Directive on Non-Financial Information Reporting, revised Procurement Directives, Timber Regulation, etc). Each stakeholder should play an active role in supporting and operationalising measures that can help facilitate a wider uptake of responsible business practices among a greater number of firms.



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

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

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

**Reply**

The Commission believes that CSR provides an opportunity for firms to enhance competitiveness and innovation through addressing human or environmental risks in their core business operations. Many leading companies have tailored their business strategies to models which reflect "Shared Value," namely integrating social responsibility in their management models. All firms have risks which can influence a firm's financial bottom line. The European Commission believes that integrating multi-stakeholder dialogue and incorporating human, environmental and ethical concerns in their core business strategies allows for greater innovation while allowing businesses to be better placed to deal with externalities.

*(3) Take a process based approach with flexibility*

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

**Reply**

The European Commission promotes a smart mix of voluntary measures and complementary regulation. The regulatory tools already adopted seek to provide an enabling environment for responsible business and allow for a stronger international level playing field for businesses. New regulations are not envisioned, where a focused will be on supporting regulatory measures already adopted (ex. NFI Directive, revised Procurement Directives, etc).

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

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

**Reply**

Indeed, promoting cases of good practices, including those which involve multi-stakeholder cooperation, are valuable so as to highlight progress and achievements. The Commission welcomes the suggestion and will contemplate such measures in future policy planning cycles.

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

*CSR is increasingly integrated into other EU policies such as company law, trade agreements, and public procurement. Such policy linkages should be more clearly presented*

*by the European Institutions, so that companies can engage in early discussion and more effectively integrate CSR throughout relevant functions.*

### **Reply**

Owing to the diverse nature of CSR, many Commission services are indeed involved in various aspects according to thematic expertise. The European Commission and EEAS already work closely together on CSR/RBC but agree that more needs to be done in order to communicate our efforts. Greater work on policy coherence is underway and will be a central focus of our revised framework on CSR/RBC.

### **18.2 Conflict minerals**

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

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

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

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

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

### **Reply**

Following the Joint Communication on the responsible sourcing of minerals from conflict-affected areas, the Commission considers breaking the link between minerals and the financing of conflict of utmost importance. To this end, it has proposed a number of actions including the EU Conflict Minerals Regulation currently in informal trilogue negotiations between the European Parliament, Council and European Commission. The aim of the EU Regulation is to put in place an effective and workable due diligence system building on and benefitting from existing schemes to avoid double audit costs and undue red tape.

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

#### **Reply**

The Commission notes the BRT's call for a careful analysis of implications for multinational enterprises' business activities of any extension of the reporting duties to include a country-by-country report. The Commission will conduct a comprehensive analysis of the pros and cons of such an extension, when the work starts on the review report due by 2018.

## **18.4 Non-financial disclosure**

### ***Reply***

**No comment**

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

### **19.1 Product safety and market surveillance package proposal /19.2 Market Surveillance under the New Legislative Framework**

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

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

### ***Reply***

Decision provides definitions, the obligations of economic operators, traceability provisions and safeguard measures. National authorities were to develop their market surveillance programmes and communicate them to the Commission by 1 January 2010.

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

On 28 October 2015, the European Commission presented a new Single Market Strategy to deliver a deeper and fairer Single Market that will benefit both consumers and businesses. In 2016, the Commission will, among other measures, take actions to strengthen the single market for goods and in particular launch a comprehensive set of actions to further enhance efforts to keep non-compliant products from the EU market by strengthening market surveillance and providing the right incentives to economic operators. For further information and upcoming action please consult: [http://ec.europa.eu/growth/single-market/index\\_en.htm](http://ec.europa.eu/growth/single-market/index_en.htm)

Keeping on the promise to regularly update the Guide to the implementation of directives based on the New Approach and the Global Approach (the "Blue Guide"), the Commission has just published a new version of the Blue Guide which can be accessed at: <http://ec.europa.eu/DocsRoom/documents/16210>

### **19.3 Consumer protection**

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

### ***Reply***

The European Commission can report progress in relation to recommendation 19.3. In the context of the actions planned to realise a digital single market in Europe, the Commission presented two proposals to further harmonise EU rules on digital content on 9 December 2015. One of these proposals aims to adopt an EU Directive harmonising rules on remedies in case of non-conformity of goods sold online or otherwise at a distance. This proposal sets the legal guarantee period to two years, as in the current Directive 1999/44/EC, but on the basis of full harmonisation. This means that the new Directive, if adopted by the Council and the European Parliament, would not allow Member States to have longer periods in their national laws. Moreover, Directive 1999/44/EC is currently being evaluated by the Commission in the context of the Regulatory Fitness and Performance Programme (REFIT). This evaluation will in particular look into the case for extending the rules of the new proposal to offline sales of goods. The result of this Fitness Check, which covers also several other EU consumer and marketing Directives, will be made public in the first half of 2017.

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

***Reply***

In its impact assessment on the proposal for a regulation on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries, the European Commission has carefully analysed all policy options, including a non-legislative approach. This option was, however, considered as non-appropriate as it would fail to address the lack of leverage on third countries to open up their public procurement market.

The Commission proposal in fact incorporates effective mechanisms to prevent any form of arbitrary measures. Possible restrictions would be limited, reasoned and based on the existence of restrictive policies in the third country concerned. Where the EU has concluded an international agreement on public procurement, exclusion would only be possible where the goods and services concerned are subject to a market access reservation specified in the agreement in question.

The proposal contains additional procedural guarantees which will ensure that no restrictive measure will be taken arbitrarily. For example it establishes a mechanism for consultation with third countries in cases where the Commission concludes that the country concerned maintains a restrictive procurement practice.

The proposal contains clear and transparent criteria for the scope and conditions of the application of measures. Deviations from the principle of openness of the public procurement market will only occur in very limited cases, where exclusions are duly justified because of major problems in the relation with a specific trading partner. Any restrictive measure under the instrument would only be allowed in limited and well-defined cases, concerning a particular country which severely discriminates against European companies. In addition, the decentralised instrument of Article 6 can only be used for contracts above € 5 million and under the control of the Commission.

The proposal will be amended in line with the priorities of the Commission in order to simplify the procedures, shortening timelines of investigations and reducing the number of actors in implementation.



## **Working Party B**

### **Life Sciences and Biotechnologies, Healthcare and Well-being**

## Recommendations from both European and Japanese industries

### *General*

#### ***WP-B / # 02\*\* / EJ to EJ MRA of GMP for pharmaceuticals***

*Further extension of “Mutual Recognition Agreement (MRA)” of GMP should be proceeded in order to avoid redundant inspections of manufacturing facilities. In addition to oral dosage forms, API, Sterile and Bio products are being requested to apply to the MRA. Full support is requested to expand the MRA of GMP to liquids, and sterile forms, API and bio products to avoid redundant inspections and testing.*

### ***Reply***

The extensive exchange of information requested to extend the MRA to all Member states have been finalised in 2015. It is expected that the formal extension of the MRA will take place before end of 2016. Technical exchanges to expand the scope of products covered by the MRA are ongoing and will continue in 2016.

Harmonisation efforts of requirements for the authorisation of medicinal products should be further pursued under the auspices of the International Council for Harmonisation of technical requirements for the registration of pharmaceuticals (ICH).

#### ***WP-B / # 03\*\* / EJ to EJ Mutual recognition of quality management audit results for medical devices between EU and Japan***

#### ***WP-B / # 04\*\* / EJ to EJ Mutual recognition of medical devices product licenses***

#### ***WP-B / # 05\*\* / EJ to EJ Mutual recognition of clinical trial results for medical devices***

### ***Reply***

As far as medical devices are concerned and from the EU standpoint

- Two confidentiality arrangements between the Japanese Ministry of Health, Labour and Welfare (MHLW) assisted by its Pharmaceutical and Medical Device Agency (PMDA) were concluded in 2015 with DG GROW-D for the two sectors: Health Technology (Medical Devices) and Cosmetics. These arrangements allow the exchange of regulatory information including advanced drafts of legislation and/or regulatory guidance documents as well as information related to the authorisation and supervision of Medical devices and Cosmetics.

- In the Medical Device sector, Japan regulatory authorities and DG GROW assisted by representatives of Member States are cooperating in the International Medical Device Regulators' Forum (IMDRF), in particular in the Single Audit Programme, the simultaneous submission of regulatory files and the track and trace harmonisation using a Unique Device Identification system. This will facilitate overseas expansion of regulatory harmonisation.

### ***Plant Protection & Biotechnology***

***WP-B / #06\*\* / EJ to E Shortening review times of plant protection & biotechnology products******Reply***

The question relates to the approval process in Japan for plant protection products and other biotechnological products.

This issue has been highlighted in the negotiations with Japan.

The EU has specifically requested Japan in the second Non- Tariff Measure list as presented to Japan during the negotiation to consider the approval process for these products.

The EU expressed its concern to Japan that the approval time in Japan is time consuming. The information was received from industry during the consultation that Japan sometimes set lower Maximum Residue Limits than those internationally set in the standard setting bodies. The normal procedures in Japan were indicated by industry to be normally two or more years, which is longer than the average duration in the EU.

The Commission stated to Japan that the financial damage can be significant with new, patent protected active ingredients, as speed of procedures is an important issue for the value of innovation.

Therefore the EU side requested Japan that approval process should have specific deadlines for completing the various steps .

These discussions to see what Japan can do to expedite these processes are still under discussions with the Japanese

***Healthcare******WP-B / # 09\*\* / EJ to E Evaluation of innovation values for pharmaceuticals in Prices***

*The EU government should reinforce its innovation policy to member states and clarify its healthcare policy, resulting in the appropriate evaluation of the value of pharmaceuticals. If member states introduce healthcare technology assessment (HTA) for their reimbursement system, they should carefully adapt appropriate methods and process not to interfere patient access to new pharmaceuticals and discourage innovations.*

***Reply***

The Commission takes note of the requests. However, it should be stated that pricing/reimbursement falls under MS competences. In any case the Japanese practices do not seem to violate the principles of fairness and non-discriminatory treatment. The justifications given by the Japanese side do not seem to advocate disproportionate practices.

Animal Health

***WP-B / # 10\*\* / EJ to E Introduction of “1-1-1 concept” for all animal health Products******Reply***

The Commission has adopted a proposal for a revision, in the form of a Regulation, of the current regulatory framework for veterinary medicinal products. The Commission proposal provides for the extension of the possibility for any application for a marketing



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authorisation to be submitted through the centralised procedure, thus going in the direction of the recommendation.

## **Working Party C**

### **Innovation, Information & Communication Technologies**

## Recommendations from both European and Japanese industries

### ***WP-C / # 01\*\* / EJ to EJ Cybersecurity of Critical Infrastructure***

*Trust, safety and robustness are key pillars expected of cyberspace and physical infrastructure supported by ICT. The BRT appreciates that both sides' Authorities are already working on joint initiatives on cybersecurity issues, and also encourages further cooperation between the EU and Japan on safe and robust infrastructure based on ICT.*

*Security of data and, preventing damaging leaks from public or private organizations is a key growing issue, as more and more data go into clouds and are processed from it. A common frame of best practices related to protection from and adequate response to cyber-attacks should be established by both Authorities. Cooperation between critical infrastructure operators and ICT service providers is a must in order to address cyber threats. The BRT considers that security notification reporting should be applied only to critical infrastructure operators and that such a requirement should not be applied to enablers of internet services. The BRT requests that both sides' Authorities enhance the quality and volume of human talent in the cybersecurity area.*

*Finally, due to the sometimes crucial role played by ICT in supporting and developing key lifelines (energy, transportation, etc.), a robust ICT sector is especially important. Considering the development and smartening of the infrastructures including Electricity Grid Transmission, the BRT recommends the Authorities to encourage the private sector to construct resilient and safe ICT infrastructures in order to both promote the development of new technologies and guarantee an adequate level of protection for critical infrastructures.*

### ***Reply***

EU and Japan will continue the bilateral dialogues on IT security seeking information sharing on relevant policies and initiatives, alignment of positions and support on international cybersecurity issues and exploration of areas for cooperation as for instance on cyber incident management.

The European Commission agrees with the BRT on the importance to ensure cybersecurity of critical infrastructures. On 7th December 2015, the European Parliament and the Council reached an agreement on the European Commission's proposed measures to increase online security in the EU: the Network and Information Security (NIS) Directive is the first piece of European legislation on cybersecurity that aims to make the online environment more trustworthy and, thus, to support the smooth functioning of the EU Digital Single Market.

"Ensuring the Free Flow of Information and Promoting a Secure Cyberspace" will be one of the 4 items to be discussed on 29 & 30 April 2016 in Takamatsu at the occasion of the G7 ICT Ministerial meeting.

### ***WP-C / # 03\*\* / EJ to EJ Cooperation to Maintain an Open and Transparent Internet (Internet Governance)***

*The BRT supports the past coordinated efforts on Internet Governance by both sides' Authorities and expresses its utmost gratitude to the Leaders and Authorities of the EU and Japan for the leadership and efforts they have shown in relation to this issue. 2015 is*

*an important year as the UN General Assembly will review the WSIS activities therefore we request both sides' Authorities to continue cooperating in order to maintain an open and transparent online environment involving multi-stakeholders*

### **Reply**

The EU and Japan, as like-minded countries, have a similar position on internet governance and continue to cooperate on this matter. The next DG CONNECT-MIC Dialogue on ICT will be held end 2016 in Brussels and will address, as one of its items, internet governance.

In its conclusions, the G7 ICT Ministerial meeting in Takamatsu will reaffirm the importance of an open and transparent internet involving multi-stakeholders.

### **WP-C / # 04\*\* / EJ to EJ Concerns on Emerging FLMs and Market Access Improvement in Third Countries**

*The BRT has serious concerns that some countries are implementing Forced Localization Measures (FLMs). Both sides' Authorities are requested to take coordinated actions against FLMs such as compulsory requirements of local facilities and subsidiaries for services provisioning, forced local technology transfers and local testing requirement etc., when those measures are not necessary, are unfair, or obviously interfere with the rightful and un-hindered provisioning of services to the users. These kinds of FLMs have a potential to be a real threat to free global trade.*

*Maintain the business environment to realize "Cross Border Data Flow" is imperative for multinational companies and citizens who consume several services offered by global players.*

*The BRT also requests that both sides' Authorities intensively work on an ambitious and comprehensive trade liberalization policy of services over the internet with the purpose of facilitating cross-border business and data flows, including a clear standard for taxation of cross-border digital contents. This will help actors on all layers (infrastructure providers, operators and service providers) to thrive in synergy for the overall benefit of the final users. The BRT highly appreciates that at 18th EU-Japan Industrial Policy Dialogue, DG GROW and Ministry of Economy, Trade and Industry (METI) agreed to deepen the cooperation in Forced Localization Measures in ICT and personal data protection etc.*

### **Reply**

EU companies face significant digital barriers across the world. As announced in its trade for all communication, the EU will use FTAs to set rules for e-commerce and cross-border data flows and tackle new forms of digital protectionism, in full compliance and without prejudice to the EU data protection and data privacy rules.

EU shares JPN broad objectives on digital matters and is looking forward to cooperating on this with JPN, whether as part of FTA talks or regular dialogue.

### **WP-C / # 05\*\* / EJ to EJ Continued Efforts for Conclusion of ITA Expansion**

The BRT requests that both sides' Authorities set a near-term deadline for WTO talks and try to bring the current negotiations to expand the ITA to a successful conclusion. To enjoy the outcome of ITA expansion, we urge zero or shorter staging periods for the majority of negotiated products.

The BRT also requests that, in the expanded ITA, compulsory and periodical review mechanisms be built in order to ensure that the ITA will always be kept up-to-date and reflect technological developments.

**Reply**

ITA-expansion talks were successfully concluded at the end of last year at the Nairobi 10th WTO Ministerial Conference. Subject to the finalisation of domestic procedures, participants will implement the first cuts on 1 July. The EU, Japan and most other participants will eliminate duties on the majority of lines immediately.

The original ITA already includes a review clause and both the EU and Japan agree on the need for regular review and update. However, it is difficult to introduce some sort of obligation in this process, as negotiations are entered into by countries on a voluntary basis. As the update on tariffs has now taken place, it is now time to tackle Non-Tariff Barriers as is also foreseen in the ITA and agreed before the ITA-expansion started.

**Innovation in General****WP-C / #07\*\* / EJ to EJ Work towards international standardisation at joint R&D programmes**

*Both sides' Authorities should specifically favour joint R&D programmes that are geared towards international standardisation such as standardisation in advanced manufacturing and in the Internet of Things. Regulatory cooperation for emerging technologies between the EU and Japan will facilitate the deployment of new services and products in both regions.*

**Reply**

In March 2015 during the EU-Japan ICT Policy Dialogue held in Tokyo, MIC and DG CONNECT signed a common EU-Japan statement about 5G (5th Generation mobile communication systems). This Ministerial Joint Declaration covers a number of standardisation activities in this area which play an important role in the development of this technology and the future development of a digital single market whose geographic scope is not limited to Europe but includes also other partner countries.

More specifically the joint declaration addresses:

- A global definition of 5G. Both parties will strive to reach a common understanding on the broad definition, the key functionalities and a target time table for 5G, This will include also the commitment of both EU and Japan to work together in the development of common standards
- Another dimension of the activities in 5G with an impact in future standards concerns the identification of radio frequency bands can be harmonised globally to meet additional spectrum requirements for 5G. EU and Japan will work closely on this in the framework of the International Telecommunication Union and the World Radio Conference.
- The discussion of future 5G applications and ecosystems in areas like connected cars, e-health or high-quality video content distribution, will be also impacting in future standards in these areas.

Future standards are also strongly impacted by ICT research and innovation activities supported in Horizon 2020. The EU-Japan joint call on ICT Horizon 2020 in WP2016-17 is expected to provide important contributions to relevant standards in the following domains:

- Progress on standards related technologies and system approaches to realize 5G radio access. A strong focus will be given to a common standardization roadmap for 5G,

which may start with 3GPP R14, including coordinated and common standards in the SDN/NFV domain. Standardization impact through EU and Japanese research efforts are addressed through H2020 as well as 5GPF (5G Promotion Forum) and contributions to standardization bodies and for a will be especially focused on 3G PP and WRC 2018/19.

- Joint research and innovation activities on Internet of Things will have also an impact in the implementation of interoperable solutions that integrate Big Data, IoT and Cloud supporting relevant standardization.
- Also noteworthy the contribution to the definition of open standards and common Application programming Interfaces ensuring world-scale interoperability across platforms for Internet-based applications.
- Contribution to standards is also an expected outcome of joint research activities dealing with robotics-based solutions for active and healthy ageing at home of in care facilities" notably through a platform approach supporting interoperability.

***WP-C / #08\*\* / EJ to EJ Sharing vision and roadmaps for a better coordination of R&D projects/programmes***

*To make the programmes even more effective to manage and accessible from the industry, the procedure for preparation and launch of coordinated calls should be well discussed by both parties and standardised. Especially, transparency should be enhanced throughout the application and evaluation processes. Clearly mentioning correspondences between European and Japanese calls would greatly facilitate the identification of opportunities for cooperation. If possible, synchronized publication of such calls would be desirable. Both sides' Authorities should increase matchmaking activities between EU and Japanese industry to find out common themes. For sharing the vision and working on the common roadmaps, the industry-led activities of European Technology Platforms (ETPs) can be a model.*

*To increase participation in the respective R&D projects of each region, the BRT recommends authorities to promote the services offered by the newly established National Contact Point in Japan for Horizon 2020 and other relevant instruments (including EEN) to widely circulate R&D call notifications and support the formation of partnerships. The BRT hopes that initiatives under Horizon 2020 and the forthcoming 5th Science and Technology Basic Plan in Japan will lead to further EU-Japan strategic R&D cooperation.*

*The BRT welcomes the successful outcome of the EU-Japan ICT Policy Dialogue held in March, 2015 between MIC and DG CONNECT. It confirmed the importance of policy coordination and R&D cooperation in the ICT field to promote growth and competitiveness. In particular, the BRT welcomes their announcement of the forthcoming signature of the EU-Japan 5G (5th Generation mobile communication systems) Ministerial Joint Declaration*

***Reply***

In FP7, there were 5 coordinated calls with Japan (in energy, Manufacturing/New materials, aviation, ICT, and Manufacturing/Critical raw materials). In Horizon 2020, 4 coordinated calls have been launched: 2 in Work Programme 2014-2015 in ICT and aeronautics, and 2 in Work Programme 2016-2017, in the field of ICT and Health. Participants from the private sector have been active in these calls. The preparations and launch of the above-mentioned coordinated calls are in general always well discussed and coordinated between the EU and the Japanese counterpart. Beside these co-ordinated calls, we have recently developed a co-funding mechanism with Japan's Science and

Technology Agency (JST), which is applied in two call topics in Horizon 2020 WP 2016-17 (NMBP-02-2016 – Advanced Materials for Power Electronics and NMPB-03-2016 – Innovative and sustainable materials solutions for the substitution of critical raw materials). These call topics have been discussed and agreed by authorities on both sides, and this scheme will hopefully be expanded to more call topics in the next Horizon 2020 WP.

An important instrument we have in our policy dialogue with Japan is the Joint Science and Technology Coordination Committee (JSTCC) meetings under the framework of the EU-Japan S&T agreement, which are organised in average every 18 months. At these meetings, priorities for future cooperation between the EU and Japan are discussed. The third such meeting was in May 2015 in Brussels.

In our multiannual roadmap on Japan (the second is currently being prepared), we identify key priority areas in our R&I cooperation and other areas with potential for strengthened collaboration. Besides promoting Japanese participation in Horizon 2020, we also stimulate cooperation with Japan through contributing to multilateral initiatives such as the Belmont Forum, International Human Epigenome Consortium (IHEC), the International Human Microbiome Consortium (IHMC), the International Cancer Genome Consortium (ICGC), the Human Frontier Science Programme (HFSP), the Group on Earth Observations (GEO) etc.

The Horizon 2020 NCP for Japan and the FP7 BILAT project JEUISTE, which comes to an end in September 2016) provide important activities and services in relation to the dissemination of opportunities offered by Horizon 2020 for Japanese researchers and research organisations, in order to strengthen cooperation between the EU and Japan in R&I, and to support the EU-Japan policy dialogue and coordination activities. We agree on the recommendation that these services are promoted in order to increase the participation in the respective R&D projects of each region. A new Service Facility has been launched in Horizon 2020, WP 2016-17, to support the strategic development of international cooperation in R&I. Services will include awareness raising and training activities to enhance international cooperation activities in Horizon 2020, support to NCPs and other multipliers, organisation of meetings and events, and analysis and monitoring activities.

The EU-Japan joint call in work-programme 2016-17 of the LEIT-ICT part of Horizon 2020 is the 3rd call of this nature and shows the degree of maturity of research and innovation cooperation between EU and Japan. This call addressed three major topics:

- "5G – Next Generation Communication Networks" (EUJ-01-2016) which aim at promoting common approaches and sharing of experiences in the development of 5G including aspects such as dynamic resource allocation, spectral efficiency, interoperability across heterogeneous networks and putting a especial emphasis on contributions to future standardisation work (as stated under section "WP-C07").
- "IoT/Cloud/Big Data platforms in social application contexts" (EUJ-02-2016) looks at environments with multiple sensors and devices linked with big data analytics and cloud data management, machine learning and IoT. The research will address technological issues in big data application scenarios such as: elasticity and scalability of cloud data management; federated clouds; distributed storage; distributed and/or edge computing; wireless sensor networks; data analysis; etc. Applications related in particular to smart cities supporting urban needs and green manufacturing should serve as test-bed and verification areas.
- "Experimental testbeds on Information-Centric Networking" (EUJ-03-2016) looks at some still pending issues associated to information-centric networking and efficient media distribution technologies especially those associated to new trends involving large numbers of users creating, storing, sharing and consuming and new types

of content (higher quality, richer). This calls for more extensive and realistic experimentation to be able to identify limitations and problems; and to test and validate new solutions.

These topics extend the scope of the EU-Japan joint research and innovation activities in ICT which addressed in WP2014-15 also "optical communications" and "access networks in densely located users".

Another important joint activity concerns the EU-Japan coordinated call in Health on "EU-Japan cooperation on Novel ICT Robotics based solutions for active and healthy ageing at home of in care facilities" (SC1-PM-14-2016). The purpose is to develop and demonstrate advanced ICT Robotics based solutions for extending active and healthy ageing in daily life, resulting notably in an extend the independence and autonomy of older persons in need of care, improved quality of life and increased efficiency in care provision.

Japan participation is also encouraged in mainstream research and innovation activities addressing the following topics of ICT WP 2016-17:

- ICT-07-2017: 5G PPP Research and Validation of critical technologies and systems
- ICT-31-2017: Micro- and nanoelectronics technologies
- ICT-08-2017: 5G PPP Convergent Technologies

Also noteworthy is the sharing of experiences and approaches that has been developed around the EU Flagships on Future and Emerging Technologies in the areas of Human Brain and Graphene and their equivalent programmes in Japan with the realisation of a number of joint workshops in the second half of 2015.

#### ***WP-C / # 09\*\* / EJ to EJ Tax credits and other incentives for R&D***

The BRT recommends further enhancement of tax credits for R&D, public-private cooperation in the procurement of R&D results, etc., in particular for SMEs. The authorities should not change the laws and rules too often, otherwise companies will be reluctant to plan long-term R&D.

#### ***Reply***

The Commission has no comment for formulate

#### ***Aeronautics***

#### ***WP-C / # 10\*\* / EJ to EJ Government-Led Industrial Cooperation in Aeronautics***

#### ***WP-C / # 11\*\* / EJ to EJ Cooperation in aircraft certification***

#### ***Reply***

The launch of the initiative for a possible future a Bilateral Aviation Safety Agreement with Japan, based on the authorization given by the (EU) Council of Ministers on 7 March 2016, is intended to serve mutual interests of the respective industrial stakeholders, as well as to result in significant positive impacts in terms of simplification, clarity, reduction of administrative burden and market access.

At this time pre-negotiation preparations are ongoing in view of the launch formal negotiations in the course of 2016. Although the content and outcome of formal negotiations cannot be pre-empted, it is fair to say that a 'traditional' approach will be taken, i.e. initial areas for collaboration to include certification/airworthiness and maintenance.



As for the duration of negotiations it is not possible to provide such indications at this time.

We acknowledge the progress being made in safety cooperation/air worthiness (progress towards a future BASA; ongoing dialogue and in-person meetings between EASA and JCAB), and would like to emphasize the importance of this collaboration for a wider cooperation in the future.

***WP-C / # 12\*\* / EJ to EJ Cooperation on Navigation Regulations for Helicopters  
Reply***

The Ministry of Land, Infrastructure, Transport and Tourism of Japan (MLIT) and Directorate General MOVE signed an arrangement in July 2011 establishing a framework for cooperation with Japan on future air traffic systems' initiatives (SESAR & CARATS) with the objective to enhance cooperation at working-level for the implementation of interoperable and seamless ATM systems worldwide. While policy issues and the identification of areas for technical cooperation are dealt with by DG MOVE and MLIT, technical cooperation is planned to be carried between the SESAR Joint Undertaking and the Civil Aviation Bureau of Japan (JCAB).

This arrangement could indeed provide the tool for developing cooperation in the suggested domain. In fact, the SESAR JU is working on low altitude IFR routes for rotorcraft using satellite based navigation. However, not much has been happening under the agreement. The Japanese counterpart has been silent both with DG MOVE and SESAR JU. We have been trying to organise yearly meetings for the Arrangement's Steering Board, but we haven't been able to get any reaction from our Japanese contact persons since 2012.

To address the recommendation, it is "recommended" that our Japanese colleagues reactivate the arrangement.

***Space***

***WP-C / # 13\*\* / EJ to EJ Regulatory Cooperation in Space Operations / WP-C / # 14\*\* / EJ to EJ Mutual Backup of Government Satellite Launches***

*Japanese and EU Authorities should use their new EU-Japan Space Policy Dialogue to discuss regulatory cooperation in space operations.*

*Japanese and EU Authorities should bring about a mutual backup cooperation scheme of government launches using Japanese and European launcher fleets.*

***Reply***

The EU and the Japanese space industries are major suppliers of space products and services.

Cooperation is necessary for the EU and Japan to achieve their goals in space and for their industries to realize their full potential in the global market.

We are satisfied with the creation of the EU-Japan Space Policy Dialogue.

## ***Defence***

### ***WPC # 15\*\* / EJ to EJ EU-Japan Cooperation in Defence Equipment***

*Potentially momentous changes have been occurring in Japan's defence equipment sector. Cooperation between the Japanese and EU defence industries shows signs of budding as a result. Taking note of the fact that most of the progress being made is between Japan and individual EU Member States, we urge a steady continuation of this fruitful bilateral process while also recommending discussions between Japan and both the European Commission and the European Defence Agency.*

### ***Reply***

The EU conducts with Japan a Defence and Security Dialogue, with, in particular, regular talks between the EEAS's Crisis Management and Planning Directorate and the Operations Department of the JMoD's Joint Staff Office. These talks are chiefly centred on Japan's potential participation in CSDP missions and operations. Official negotiations on a Framework Participation Agreement to that effect, however, have not yet started.

The EU-Japan Space Policy Dialogue has also helped to identify potential defence-related areas of cooperation, especially satellite navigation systems and maritime surveillance. On the latter topic, the EDA has also looked into the potential for including Japan in its efforts to expand the MARSUR system.

Furthermore, the EC and the EU Delegation to Japan have been trying to create a relationship with Japan on defence equipment policy, both in the margins of these dialogues and separately:

- In June 2015, a representative of the JMoD's equipment policy department met an EDA representative and was presented the EDA's mechanisms for cooperation with non-member states.
- In September, the head of this department met a representative of the EEAS's Conventional Arms Exports Working Group to present Japan's new defence export control system, as well as a director of DG Grow, to whom he expressed interest in the Horizon 2020 R&D funding programme.
- In November, representatives of DGs GROW and TRADE met representatives of the JMoD's procurement office for a briefing on the JMoD's acquisition policy.

Looking forward, the EC and EDA's have been striving since 2014 to launch a defence R&D funding project (a Preparatory Action is under preparation). If and when (i.e. in the early 2020's) this project does start, it might be considered to offer the Japanese government to participate in funding.

It has appeared that the JMoD, while interested in principle in a relationship with the EU on defence equipment policy, is for the moment focused on internal organisational and policy issues, following the establishment of a unified defence equipment acquisition agency in October 2015. Efforts to create a relationship with Japan on defence equipment policy will continue from 2017, when the agency can be expected to have settled these issues.

A three-stage research project on defence equipment run by the EU-Japan Centre for Industrial Cooperation has been used to facilitate EU-JMoD contacts and to detect and encourage interest on the Japanese side in bringing them to the next level. The project has also offered opportunities for exchanges between the EU Delegation and local EU industry representatives (Airbus, Thales, AgustaWestland, Turbomeca, Rolls Royce, ThyssenKrupp, etc.). The EU Delegation has expressed a willingness to support EU

industry, especially by advocating fairness and transparency in the JMoD's budgeting, requirement definition and tendering processes.

Finally, the EU encourages member states to provide opportunities to firms from other member states to benefit from their presence in Japan, where possible. An encouraging initiative is that of the German chamber of commerce in Japan to invite SMEs from some other member states to its annual defence equipment forum.

## **Railways**

### **WP-C / # 16\*\* / EJ to EJ Railway Market Access**

*Both authorities should establish an open description of compliance requirements as well as current validation processes. The certification procedures relevant for the as well as current validation processes. The certification procedures relevant for the railways should be made fully transparent to both parties. They should mutually inform of their evolutions.*

*For that purpose, both sides' authorities should continue their efforts to ensure that their commitments, such as on procurement transparency and non-discrimination as well as defining the operational safety clause that were agreed in 2014, are fully implemented to result in much more significant improvements in actual market access conditions.*

*In addition, the European Railway Agency and the Japanese Ministry of Land, Infrastructure, Transport and Tourism could establish a dedicated working group in order to better capture the certification procedures in both sides' networks.*

### **Reply**

EU-Japan Industrial Dialogue on railways

The Dialogue was set up as the EU industry has an important offensive interest in acceding the Japanese market. In the framework of the session on railways procurement of the EU-Japan FTA/EPA negotiations. As a result of the negotiations leading to the conclusions of the GPA negotiations in 2012/13, an EU-Japan Industrial Dialogue on Railways was established in 2014. The Dialogue brings manufacturers and operators from both sides to facilitate bilateral trade in the railway sector, to monitor mutual market access, to ensure better comprehension of the relevant markets and ensure mutual recognition of safety standards. So far 4 meetings took place, in Brussels and Tokyo respectively. The Dialogue is important as it provides for a platform where to voice positions and look for enhanced access to the Japanese procurement market in the sector.

Railways procurement under the FTA/EPA negotiations

The implementing measures of the One-year package were put in place in October 2014. A first review of their efficiency for ensuring a transparent and non-discriminatory procurement by the Japanese suppliers should have taken place at the end of July this year. However, due to late delivery of the needed data by Japan the exercise is still being conducted.

For the post-One year package discussions, under the Railways Roadmap, the EU and Japan discuss the reciprocal opening of their respective railways and urban transport procurement markets, both in terms of additional market access commitments and of removal of technical barriers.

- Additional market access commitments and lifting of existing reservations

The EU understands the market access negotiations on railways and urban transport as aiming both to increase the number of railways and urban transport covered by the FTA in comparison with the GPA and to lift existing market access reservation starting with the operational safety clause.

As additional entities are concerned, the EU already clarified that we want additional public operators, especially at sub-central level and also private operators, starting with the three JR Honshu companies.

- Japan's proposal to remove the OSC

Japan submitted a proposal to remove the Operational Safety Clause and apply GPA standards (rules and thresholds) for the GPA-covered entities. However, they subject this to a transitional period of 10 years for the majority of the covered procurement. In parallel, they presented to the EU a long list of concessions that they expect from us-complete removal of the EU reservation on railways, presenting an exhaustive list of the EU covered entities, notification in cases of exemption when there is a competition on the market, etc. We need to welcome the Japanese proposal but stress that such a long transitional period is not acceptable. The commitments of both sides should be balanced-the EU cannot grant access to 80% of its railways market (as covered under the GPA) in exchange of only few entities under the Japanese schedule (ca. 20 entities).

- Removal of technical barriers

To ease the non-applicability of the operational safety clause, the EU is to propose an approach on technical barriers inspired by the TBT chapters of the EU bilateral FTAs: process for mutual recognition of technical requirements and mutual information on new technical requirements and voluntary standards.

## Recommendations from European industry

### *Aeronautics*

#### ***WP-C / # 17\*\* / E to EJ Weight Restrictions on Haneda Airport D Runway***

*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 both sides' Authorities in charge to cooperate in making the necessary verifications. Additionally, for the newest mid-size A350 aircraft, operation could be possible with the reverification of the withstand load with regards to part of the construction.*

### ***Reply***

The European Commission has taken good note of the issue raised by the industry and will monitor closely that the Japanese authorities' carry out the necessary verifications.

It is to be highlighted that as part of the Aviation Strategy adopted on 7 December 2015, the European Commission "recommended that the EU negotiates further bilateral aviation safety agreements with important aeronautical manufacturing nations such as China and Japan". On 7 March 2016, the Council of the European Union authorised the European Commission to open negotiations with Japan in view of concluding Bilateral Air Safety Agreements (BASA). Negotiations will start shortly. The Commission will be supported by the European Aviation Safety Agency, which is recognised throughout the world as the EU's aviation safety and aircraft certification body.

Bilateral aviation safety agreements (BASA) are signed between the EU and third countries in order to enable cooperation in the aviation safety domain, including certification, testing and maintenance of aeronautical components, air operations, flight crew licensing, air traffic management and airports. They remove the duplication of oversight activities and support mutual safety recognition between the EU and third countries. This reduces the transaction cost of exporting aircraft, while ensuring high levels of safety in partner countries and helping to harmonise product standards worldwide.

## **Working Party D**

### **Financial Services, Accounting and Tax Issues**

## Recommendations from both European and Japanese industries

### ***WP-D / #01\*\* / EJ to EJ Recommendation regarding Financial Reform and Regulation***

*The BRT requests that regulating bodies continue to address the impact of reforms and new regulations on the real economy and take a co-ordinated approach to reduce extraterritorial impact of rules introduced in one jurisdiction on other locations and to recognise substituted compliance.*

### ***Reply***

The European Commission attaches particular attention to the impact of financial regulatory reforms on the real economy. In 2015, we launched the so-called call for evidence on the EU regulatory framework for financial services. The objective is to map out the interactions and cumulative impact of legislation. The public feedback received in this exercise will inform further actions of the Commission. The Commission is also supporting similar exercises at global level (e.g. the cumulative impact assessment in the Basel Committee on Banking Supervision).

When it comes to addressing cross-border questions of regulatory divergence and overlap, the EU has taken an open, outward-looking approach (equivalence), which rests on recognition and reliance. This reflects our experience in building the Single Market. In our contacts with 3rd countries we encourage our partners to follow the same approach in order to reduce regulatory frictions and overlaps.

Overall, currently the EU-Japan regulatory relations in the financial services are very good. In addition to a series of recent equivalence decisions adopted for Japan, the Commission and the Japan FSA are working on an advanced regulatory co-operation framework involving the possibilities to rely on each other's rules and supervision. Substantial progress at technical level was achieved over the last year and both parties look forward to concluding the discussions and reaffirming their commitments in the currently negotiated EU-Japan Free Trade Agreement / Economic Partnership Agreement.

### ***WP-D / # 02\*\* / EJ to EJ Recommendation on BEPS Action Plan and Other Tax Issues***

*The BRT maintains the following recommendations:*

#### ***BEPS (base erosion and profit shifting) Action Plan***

*The authorities should carefully consider the risks of excessive disclosure requirements and anti-tax avoidance measures so as not to hamper multinational enterprises' business activities.*

*Furthermore, in order to realise fair taxation and to enhance direct investment between the EU and Japan, the following measures should be adopted:*

### ***Reply***

The Commission strongly supports the OECD Action Plan on BEPS to address the main challenges of international tax avoidance, endorsed by G20 Leaders, lastly at their summit in Antalya on November 2015 and considers a consistent and effective implementation of BEPS Project critical for a fair and modern international tax system, as G20 Ministers of Finance also stated in recent meeting in Shanghai.

The BEPS Action Plan aims to ensure that profits are taxed where economic activities generating the profits are performed and where value is created, while at the same time give business greater certainty by reducing disputes over the application of international tax rules, and standardising requirements. The BEPS Project is therefore a matter of balance between further transparency on the one hand and certainty and predictability for business on the other hand.

As the solutions proposed to address BEPS challenges will require implementation in the EU, the Commission services have also taken an active role to ensure that such solutions are compatible with the EU legal framework and implemented in a coordinated way in the EU and in the external relationship.

The Commission Services follow closely the OECD's work on transfer pricing documentation country-by-country reporting and welcome that the EU standard of transfer pricing documentation, i.e. the structure of master file and local file and its content is put on a broader basis. As regards country-by-country reporting, the Commission Services are aware of the various aspects which need to be considered in the context of disclosing information of multinational enterprise groups (MNEs), i.e. effective tax collection, transparency and legitimate business interest and are working towards a balanced approach. Overall, the Commission Services are working with Member States and businesses to improve the transfer pricing framework in the EU, based on the conclusions of BEPS actions 8 to 10 in particular. The Commission Services are also working on an initiative to improve dispute resolution mechanisms in case of effective double taxation.

### **Tax Treaties**

*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 and that corresponding adjustments and arbitration in case of transfer pricing taxation are provided.*

### **Reply**

The Commission services are in favour of a modernisation of the Tax Treaties. However, it is up to Member States to re-negotiate their Double Tax Conventions. According to our information the protocol amending tax treaty signed by Japan with United Kingdom has entered into force - including MoU on application of arbitration procedure - and Germany signed a new tax treaty. Moreover, Slovenia, Belgium, Estonia and Latvia are negotiating (or renegotiating) tax treaties with Japan this year.

The Commission services recognise that the existing instruments are insufficient to address many of the double taxation situations not covered by the EU directives or by the Arbitration Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustments of profits of associated enterprises. The Commission services have recommended amongst possible policy options to re-negotiate the Double Tax Conventions between Member States in order to include in the Mutual Agreement Procedure (MAP) the arbitration mechanism as foreseen in the new version of article 25 of the OECD Model as indicated in its Communication on Double Taxation (COM(2011)712). The Commission services are also involved in the works of OECD/G20. In that sense the developments of Action 14 (Make dispute resolution mechanisms more effective) and Action 15 (Develop a multilateral instrument) could significantly contribute to reduce double taxation.

### **Transfer Pricing**



*The BRT requests the harmonisation and simplification of documentary requirements in transfer pricing taxation and the facilitation of the conclusion of bilateral and multilateral APAs (Advance Pricing Arrangements).*

### **Reply**

Promoting and facilitating bilateral and multilateral APAs is an area of work addressed by the EU Joint Transfer Pricing Forum. That work resulted in a Communication that included guidelines for Advanced Pricing Agreements within the EU. The Communication was subsequently welcomed by Council who noted the commitment of Member States to follow the guidelines and implement them in their national administrative practices as far as legally possible. The following Communication extracts are pertinent:

17. These guidelines focus on bi and multilateral APAs because they are considered as the most efficient tool to prevent double taxation. However the Guidelines also include a section on Unilateral APAs; and

63. Although there may be circumstances where the taxpayer has good reasons to believe that a unilateral APA is more appropriate than a bilateral, bilateral APAs are preferred over unilateral APAs. Where a unilateral APA may reduce the risk of double taxation to some degree, care must be taken that unilateral APAs are consistent with the arm's length principle in the same way as bilateral or multilateral APAs.

These efforts seem to pay out. The JTPF Statistics on APAs reveal that the number of bi and multilateral APAs in force between EU Member States and non EU countries increased from 168 (2012) to 178 (2013) and 214 (2014). The number of requests for a bi- or multilateral

### **Participation Exemption**

*The BRT recommends further introduction of participation exemption that will exempt dividends and capital gains received from business investment from further corporate taxation.*

### **Reply**

The Commission services are aware that taxation of capital gains and dividends may be problematic for business as it may result in a double taxation or trigger administrative burdens to recover the taxes paid. The Parent-subsidiary directive is aimed at eliminating these risks for the corporate dividend distribution in the EU, but it requires at least a 10% shareholding. For portfolio dividends, as well as for capital gains, there are currently no provisions at EU level. The recent amendments introduced in Parent-Subsidiary directive have not changed the threshold.

### ***WP-D / # 03\*\* / EJ to E Recommendation on Financial Transaction Tax***

*The BRT maintains its serious concern over the EC's proposed financial transaction tax (FTT), particularly with respect to its wider application. If imposed, the FTT will result in reduced volume of financial transactions and decreased liquidity, significantly increase funding costs and impair legitimate hedging activities by parties such as business 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, place to tax and tax rate in one harmonised tax regime so as to develop and integrate capital markets in EU.*

### **Reply**

The Commission understands the arguments raised by the BRT, but considers that the proposal will still deliver in terms of: harmonising financial transaction taxes within the enhanced cooperation zone, making the financial sector pay a fair and substantial contribution (to covering the costs related to the crisis) and improving the efficiency of financial markets. The proposal is fully in line with the principles of international tax law and the Commission invites the BRT to consult the web page dedicated to the taxation of the financial sector where we have uploaded a document addressing the alleged extra-territoriality of the tax. Issues of double taxation would actually be solved inside the enhanced cooperation zone (not only for the benefit of the economic operators inside the zone, but also for those outside) as a result of the proposal; one harmonised tax regime would be in place instead of 10 (potentially) different ones. Where both participating Member States and other countries (including third countries) impose financial transaction taxes tax agreements could deal with the double taxation.

In its impact assessments the Commission has acknowledged a limited negative impact on the cost of capital (and on the liquidity of certain markets), but estimated that the positive outcomes (reduction of administrative costs and of double taxation, tax revenues, enhanced market efficiency such as investment behaviours oriented more towards the long-term etc.) would surpass the negative impacts. It is also to be stressed that primary markets in shares and bonds would not be taxed. The tax needs to be broad-based in terms of financial instruments, actors and markets in order to ensure tax neutrality and to minimise potential relocation and substitution. Moreover, further technical background information, among others a trend analysis on the influence of the new French FTT on trading volumes, price levels and/or volatility in the taxed market segment has been added to the Commission's dedicated webpages

([http://ec.europa.eu/taxation\\_customs/taxation/other\\_taxes/financial\\_sector/ftt\\_background\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/ftt_background_en.htm)).

The European Parliament already expressed a positive opinion on the matter.

At Council level there is no final and formal agreement yet on the actual design of the tax. Discussions both at political and technical level are ongoing. Certain products would most probably not be taxed in a first phase. The Member States participating in the enhanced cooperation in the area of FTT will have to unanimously decide on the final legal text.

## **Working Party E**

### **Energy, Environment and Sustainable Development**

## Recommendations from both European and Japanese Industries

### ***WP-E/ #01\*\* /EJ to EJ Changes and harmonization in energy and environment***

#### *Significant geopolitical risks in energy-supply areas*

*Political and social instability remain in the Middle East, a region that supplies a large portion of the world's energy. The road to stability in oil producing countries such as Iraq, Libya, Algeria, and Iran remains unclear.*

*For Japan, a country that imports more than 80% of its oil from the Middle East, securing the energy required to support the country's economic activities is an issue of vital importance. This applies also to EU, whose average oil import dependency is 83%. Recent events in Ukraine and Russia also raise concerns over security of gas supplies as the EU-28 imports more than 60% of its energy needs in gas, a quarter of which from Russia.*

*Energy importers also continue to face security issues such as combating piracy off the coast of Somalia and maintaining access to sea lanes such as the Suez Canal and the Strait of Hormuz. Japan and the EU should therefore enhance international collaboration to preserve energy security.*

#### *Energy price volatility strongly impacts importing countries such as Japan and the EU*

*Oil prices have halved in less than 6 months since June 2014, with mixed consequences worldwide: sizable revenue losses for energy exporters such as Russia and Venezuela, cheaper energy and improvement of trade deficit in Japan and the EU. However, this situation negatively affected the effort by the EU and Japan to end long periods of deflation.*

#### *Increased energy demand from emerging countries affects the energy policies of other countries and price stability*

*As the world's population continues to increase, the main consumption of energy is shifting from developed to emerging countries. In the long term, exports of shale gas from the United States may help stabilizing both energy prices and supply; however, the development of resources by state-owned enterprises in emerging countries will lead to severe competition to secure stable supply at affordable prices .*

*Japan and the EU should cooperate to stabilize natural resource prices and establish an energy mix policy that reflects the actual energy situation in each country so that private-sector corporations can continue to carry out stable business activities.*

#### *Increase in greenhouse gas emissions and its impact on the environment*

*Global warming causes increase in the acidity of the oceans, raises sea levels, and severely affects many aspects of human life such as agriculture, forestry and fishing, ecosystems, water resources, and human health.*

*Governments, industries, and academia in Japan and EU should deepen their dialogue on measures to mitigate global warming.*

*Japan and EU should accelerate developing the next generation of technically advanced and competitive renewable energies and promote the technologies globally.*

*In Japan, in order to reduce greenhouse emissions, restarting the nuclear power plants that are verified as being safe needs to be seriously considered.*

### **Reply**

It should be noted that through adopting the 2030 energy and climate policy framework, the EU has decided on ambitious targets for reducing greenhouse gas emissions, increasing the use of renewable energy and increasing energy efficiency. This strategy is fully in line with the aim of securing the supply of energy to the EU's businesses and citizens.

***WP-E/ #02\*\* /EJ to EJ Basic energy policy***

***WP-E / # 03\*\* / EJ to EJ Energy policy timeline, energy mix policies and integrated energy market***

*It is crucial for the EU and Japan to secure stable energy supply and to reduce their energy needs while supporting the development of their economic infrastructure in an affordable manner.*

***Reply***

While the EU recognises the role that nuclear can play in decarbonising electricity generation, it is important to recall that the EU and the Commission do not decide on the composition of the energy mix of the Member States; this is generally a national competence. Therefore, irrespective of their merits as such, many of the recommendations that are related to promoting the use of nuclear energy and installing new nuclear power stations cannot be endorsed by the European institutions and should rather be addressed to EU Member States. In this sense, the official EU line on nuclear energy is that, firstly, each EU Member State decides alone whether to include nuclear power in its energy mix or not. Secondly, when it comes to promotional activities, the EU promotes the highest safety standards for all types of civilian nuclear activity, including power generation, research, and medical use.

In line with the general comment above, the EU level institutions cannot establish energy policies that preserve a role for nuclear power, as the choice of whether to use nuclear energy or not is a question for the Member States.

***WP-E/ #05\*\* /EJ to EJ Nuclear power***

***Reply***

The EU cannot promote the investment in nuclear energy power plants for the reasons explained above. Within the EURATOM Treaty certain aspects of nuclear research can be supported as well as policies and measures to assure the safe and secure use of nuclear energy in those Member States that have chosen the nuclear option

***WP-E / # 06\*\* / EJ to EJ Renewable energies***

***WP-E / # 07\*\* / EJ to EJ Utilization of renewable bio-based resources as versatile raw materials***

***WP-E / # 08\*\* / EJ to EJ Energy conservation and energy efficiency***

***Reply***

The wording on renewable energy is generally rather negative (focusing on the disadvantages rather than the benefits). The EU does not view renewable energy as a source that merely “complements conventional energy”. As is clear from the objectives of the 2030 policy framework and the 2050 decarbonisation scenarios, renewable energy is rather to be seen as an important part of our future energy systems.

***WP-E / # 10\*\* / EJ to EJ Importance of measures against global warming and to reduce greenhouse gases emissions******Reply***

The EU has now committed, through the agreement by the European Council on the 2030 Climate and Energy Policy Framework in October 2014, to an at least 40% domestic reduction in greenhouse gas emissions compared to 1990 levels by 2030. The European Commission will start coming forward with policy proposals to implement this commitment by mid-2015.

The EU is keen to maintain a global dialogue on decarbonisation policies. An essential vehicle for such a dialogue at present are intended nationally determined contributions (INDCs) to the new climate Agreement. The EU's INDC is formulated in a transparent way and the EU welcomes opportunities for exchange on INDCs.

The Environment Council has approved the EU's intended nationally determined contribution to achieve an at least 40% domestic reduction in greenhouse gas emissions compared to 1990 levels by 2030.

This translates the agreement by EU Heads of State and Government in October 2014 on the EU 2030 climate and energy framework, in accordance with the requirements for upfront information agreed at the Lima climate conference in December 2014.

The EU Presidency and the Commission will communicate this intended nationally determined contribution (INDC) to the United Nations Framework Convention on Climate Change (UNFCCC).

Within the EU, different Member States made positive experiences with the market introduction of renewable energies, such as wind power or photovoltaics. They contributed to greenhouse gas reduction targets and created several positive side effects, such as local employment.

***WP-E / # 11\* / EJ to EJ International contributions******Reply***

A liquid international carbon market can promote cost-effective mitigation and stimulate ambition.

The EU supports an agreement in Paris that is durable and facilitates the international use of markets in order to encourage greater ambition. We remain committed to market based mechanisms as an important instrument of domestic policy, and look forward to linking of domestic carbon markets. It will be important to ensure that use of markets is recognised towards commitments while not undermining those commitments. The only way to accomplish this is through an appropriately designed rules base including accounting rules which ensure the integrity of the future regime.

In order to achieve our climate objective, crediting mechanisms need to deliver a contribution to global mitigation – we need to move away from pure offsetting approaches, and expect all Parties, sectors and activities to make a contribution.

***WP-E / # 12\* / EJ to EJ Environmental technology collaboration between EU and Japan******Reply***

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With Horizon 2020, the EU has introduced one of the world's largest and most open research and innovation programmes. Japan is already a partner country and cooperation take place in different areas, such as aeronautics. The research activities are normally carried out by public and private actors, who are also responsible for the dissemination of the results of their work. Stronger cooperation between the EU and Japan, in particular in areas such as renewable energy technologies, can bring win-win effects.