

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

Tokyo, 20 April 2016

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

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List of Abbreviations

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

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

Introduction

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

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

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

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

Recommendations from both European and Japanese industries

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

The BRT recognizes and welcomes the progress that the negotiators have made in many areas under discussion, but is concerned that momentum will be lost as time passes without an agreement. In view of the political calendar in 2017, the BRT considers it difficult to maintain momentum beyond the end of 2016. The BRT stresses that 2016 represents the best window of opportunity to conclude the negotiations of the EU-Japan FTA/EPA.

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

The BRT is strongly convinced that the EU-Japan FTA/EPA will lead to an expansion of trade and investments, job creation and acceleration of growth in both economies, as well as contributing to the creation of new opportunities for global growth. The BRT highlights its request to the highest Authorities of the EU and Japan to focus on addressing the remaining obstacles to the conclusion of a comprehensive, ambitious, high-level, and mutually beneficial FTA/EPA as early as possible.

< Background >

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

WP-1 / # 02 / EJ to EJ Call for effective and quick implementation of WTO ‘Bali Package’ and work on a future WTO work program based on Nairobi Ministerial Conference Declaration**

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

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

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

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

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

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

< Recent Progress >

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

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

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

The BRT welcomes the conclusion of the expansion of the Information Technology Agreement (ITA) and the Agreement on export subsidies and export competition elements at the WTO Ministerial Meeting in Nairobi in December 2015. For the future course of DDA negotiation, however, two courses of its continuation and termination have been set forth in parallel. The BRT expects further progress in WTO's DDA

negotiation to reach a new stage in negotiation, which should result in mutually beneficial outcome for both developed and developing countries.

< Background >

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

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

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

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

1. General recommendations

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

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

<Background>

The BRT believes that regulatory cooperation will be a key to the economic prosperity of the two economies. Once an FTA/EPA is concluded, it will be important not only to ensure that new regulations do not nullify or impair the market access benefits accruing

to either party under the agreement or create new barriers to bilateral trade, but also to expand and strengthen the relations between the two economies so that the benefits of their cooperation will further increase and so that they will eventually be able to expand such regulatory cooperation to other bilateral and multilateral relations.

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

Sector specific recommendations

2. Create a common chemicals regulation

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

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

3. Create a common resource efficiency policy

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

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

4. Expand the benefits of AEOs

The authorities of the EU and Japan should aim at introducing further regulatory cooperation in order to give more concrete benefits to AEOs. The BRT is aware that the two authorities are engaged in regular discussion following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan, but that no concrete benefits have emerged for operators. According to the progress report of the EU in 2015, the scope of this agreement is restricted to 'security and safety' only. The BRT would like in this regard to

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

5. Fight against counterfeited, pirated and contraband goods

The BRT would like to see the EU and Japan step up efforts to fight against counterfeited, pirated and contraband goods, both inside and outside the EU and Japan. For example, they should better cooperate with each other and with the third country authorities to secure the closure of sites trading in fake goods. The BRT requests that the authorities of Japan should make all trade with fake goods illegal by closing the loophole by which individuals are allowed to bring in or import counterfeits for personal consumption.

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

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

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

6. Adoption of UN Regulations

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

< Background for 6 >

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

adopted. Japan has now adopted UN-ECE Regulations in 41 of the 47 areas included in Japanese type approval for passenger cars.

< General Background for 1-6 >

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

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

1. Social security contributions (avoiding double contributions):

The BRT welcomes the conclusion of social security agreements between Japan and 11 EU Member States. Negotiations or preliminary talks are under way between Japan and 4 EU Member States. The BRT requests that, Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements.

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

In addition, they should introduce an interim measure, by which a host country should either exempt contributions to pension funds unilaterally or refund the contributions in full, not only partially, when expatriates return to their home country.

< Recent progress >

There has been limited progress in the past year

< Background >

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

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

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

- A framework agreement between the mother company, sending expatriates, and the host country, stipulates the maximum number of expatriates. Within the agreed

limit, the mother company is free to send intra-corporate transferees to that country without further obtaining individual work permits.

- When the mother company concludes such an agreement with several Member States in which its subsidiaries or branches have operations, movement of intra-corporate transferees between those countries does not require a new work permit as long as the total number in each agreement is respected.
- Both sides should facilitate access to the labour market for accompanying family members without any limitations in regard to regular working hours.

< Background >

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

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

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

The BRT calls on the EU and Japanese Authorities to develop measures to promote and assist each other's SMEs within their own jurisdictions. Specific consideration should be made to include such cross-support in 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. Assisting and supporting SMEs with participation in local “Requests for Proposals”, especially for renewable energy projects. This could include streamlining and extending the proposal submission time frames which in many cases are too short for foreign SMEs to respond.
5. Helping graduates with international backgrounds find local jobs with the other side's SMEs.
6. Conducting a feasibility study on creating a joint investment fund for both Japanese and European SMEs.
7. Exchanging best practices and tested solutions in industrial policy for SMEs.
8. Expanding the SME-related programmes already run by the EU-Japan Centre for Industrial Cooperation.

< Recent progress >

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

< Background >

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

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

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

The BRT welcomes the agreement by OECD/G20 countries to implement the master file-local files system in the transfer pricing documentation in BEPS Action 13. The BRT eagerly awaits coherent and successful implementation in the bilateral and

multilateral relations between the EU Member States and Japan in a way that will reduce the compliance costs and uncertainty significantly.

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

The BRT emphasises that it is important that the scope of information required for disclosure through Country-by-Country Reporting to be internationally coherent and in accordance with BEPS Action 13 in order to realise a level playing field.

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

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

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

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

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

<Recent Progress>

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

<Background>

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

WP-1 / # 07 / EJ to E 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 wide range of application. If imposed, the FTT will result in reduced volume of financial transactions and decreased liquidity. It will also lead to a significant increase in funding costs and impairment of legitimate hedging activities by parties including non-financial corporations. The decreased liquidity in secondary markets is also likely to cause impacts on primary markets eventually.

Impact on liquidity, funding costs and hedging costs should be carefully considered in the ongoing discussion on scope of transaction, country of taxation and tax rate in one harmonised tax regime so as to develop and integrate capital markets in the EU.

< Background >

The EC announced proposals in September 2011 to impose a Financial Transaction Tax on financial instruments between financial institutions when at least one party to the transaction is located in the EU. However, it has since concluded that a common FTT system could not be attained within a reasonable amount of time by the EU as a whole. On 14 February 2013, the EC published a proposal for a Council Directive implementing enhanced cooperation between 11 Member States in the area of financial transaction tax. Due to the intricate discussion such as the scope of taxable derivatives, implementation date has been postponed several times from initial January 2014. According to the terms of the agreement disclosed in December 2015 by the EU Council, final agreement should be reached by June 2016.

Recommendations from European industry to Japan

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

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

Automobiles

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

< Recent progress >

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

Construction Products

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

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

< Recent progress >

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

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

< Background >

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

Cosmetics

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

< Recent progress >

While very little has been confirmed or decided, the BRT is pleased to see that the issue is reportedly under discussion in the FTA/EPA negotiations. Additionally, Japan has taken the first step to revise the levels of fluoride in toothpaste and mouthwash. The BRT views this in a positive light.

< Background >

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

Railways

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

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

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

< Recent progress >

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

< Background >

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

Veterinary Products

Animal health products already approved in the EU have to undergo further rigorous reviews on market authorisation application dossiers and Japan-specific tests before being approved in Japan, which increases costs and causes delays. Accordingly, the BRT:

- a) The BRT requests the Government of Japan to take all measures available to speed up product approvals, particularly for veterinary products intended for use in food producing animals.
- b) The BRT requests the Ministry of Agriculture, Forestry and Fisheries to minimise Japan-specific tests for market authorisation, such as the serological potency test for live vaccines, which is a unique requirement in Japan.

< Recent progress >

On August 3, 2015, MAFF announced a drastic change in the review process under discussion for veterinary products intended for food producing animals. The current step-by-step or sequential flow of reviews among MAFF, Food Safety Commission, and MHLW will shift to a parallel review process among those government bodies. According to MAFF, this has the potential to shorten the review process toward MA by one to two years when compared to the current process.

< Background >

Japan is part of the Trans-Pacific Partnership (TPP), which is shaping up to become the largest trade deal in history. If it passes, Japan may face more competition in

certain meat categories, such as the low- to middle-price range of beef and pork imported from abroad. Therefore, the availability of innovative veterinary products for both pharmaceuticals and biologicals for Japanese livestock producers are considered critical to ensure their competitiveness.

Processed Food

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

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

< Recent progress >

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

< Background >

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

LED lamps and luminaries

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

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

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

< Recent progress >

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

< Background >

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

Labelling rules

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

< Recent progress >

This issue was brought up in the Regulatory Reform Council where both representatives for European companies as well as domestic companies argued for a revision of the Household Labelling Law. The CAA is said to be working on a revision, but has so far not presented anything concrete. This issue was not touched upon in the GoJ progress report of April 2013.

< Background >

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

WP-1 / # 09 / E to J Automobiles**

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

< Recent progress >

The change in the taxation of kei-cars from FY2015 is a welcome first step towards reducing the discrepancy in the burden of taxation on compact cars and kei cars but it does not go far enough. In the FTA negotiations, the GOJ should commit to further

fiscal and regulatory changes so that European compact cars can compete on equal terms with kei-cars in the Japanese market.

< Background >

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

WP-1 / # 10 / E to J Fuel Cell Vehicles**

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

< Background >

UNR 134: Hydrogen and Fuel Cell Vehicles, Phase I of the UN Regulation for HFCVs, entered into force in June 2015 and has been adopted by the EU, but not yet by Japan. Even when Japan has implemented Phase I, HFCV tanks imported into Japan would still need to meet Japanese unique national requirements concerning metal materials. Whereas the EU uses a performance-based approach to approve hydrogen compatible materials, Japan's approach is more prescriptive, in effect limiting the choice of materials to very few specific types of stainless steel and aluminium.

WP-1 / # 11 / E to J Ensuring free and open competition in services**

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

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

- a. Kampo insurance business should be subject to the same capital, solvency margin, tax and policyholder protection funding requirements as private sector insurers. Limits are needed on expansion of Japan Post's services, including the introduction of new products as well as caps on postal life insurance, until competitive safeguards have been established to prevent cross-subsidies from its existing dominant position. The BRT is particularly concerned by the recent

approval of the new or modified products offered by Japan Post Insurance. It is also imperative that Japan Post remains under the jurisdiction of the FSA. The above requests are well within the realm of the GPA. Similarly, the insurance business of cooperative societies (kyosai) should be subject to the same requirements as private sector insurers.

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

< Recent progress >

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

< Background >

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

WP-1 / # 12 / E to J Freight and logistics**

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

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

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

< Recent progress >

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

< Background >

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

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

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

< Recent progress >

This is a new recommendation.

< Background >

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

WP-1 / # 13* / E to J Promoting foreign direct investment

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

The BRT furthermore would like to point out the disadvantageous rules for Net Operation Loss (NOL). With the upcoming changes, companies in Japan will be able

to carry forward 50% (from 2017) of their losses for ten years. This is well behind the NOL in neighbouring countries, countries with which Japan competes for investments.

In addition, Japanese rules on inheritance tax make foreigners liable for inheritance tax covering all global assets from day one of registration as a resident in Japan. This differs from the application of both global income taxation, which applies only after five years, and the recently introduced exit tax which will only apply to persons with either permanent residence visas or spouse visa. This will serve as a disincentive to foreign direct investments. Moreover, while such improvement of the generic investment environment is a precondition, regulatory reform is the best motivator for foreign companies to enter the Japanese market. In the sectors where the formal barriers to foreign investment were removed some time ago, such as automotive and machinery, foreign investment is relatively high. By contrast, two sectors where investments are low are the financial and medical fields. Japan's regulatory environment in these sectors remains much more difficult than the rest of the world to allow for foreign companies to set up any larger operation than the minimal level needed to serve the existing client base. Mutual recognition of market certifications would be an important first step to improving investments in the medical field. Mutual acceptance of principles governing the financial services industry and the mutual acceptance of the home regulator as the core regulator would go a long way to improving the investment environment in the financial sector.

< Recent progress >

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

< Background >

Despite its position as the world's second largest economy, Japan's level of inward FDI as a proportion of GDP remains one of the lowest among all OECD countries. Even with the reorganisation of JETRO and the efforts starting with former Prime Minister Koizumi to increase FDI to Japan, only very small improvements have been seen. According to OECD in 2013 inward FDI stocks was accounted for only 3.5 % of GDP.

WP-1 / # 14 / E to J Procurement**

< General Recommendations >

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

Japan should, furthermore, make more information available in English. The BRT is aware of the recent initiatives by JETRO, but complete information is rarely available

in English. In addition the BRT requests that the use of English when submitting tender proposals to allowed or at least partially allowed, especially for the technical specifications.

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

< Specific Recommendations >

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

< Recent progress >

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

< Background >

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

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

Recommendations from Japanese industry to the EU

WP-1 / # 15** / J to E The importance of the Single Market

The BRT welcomes a roadmap published in October 2015 to deliver on President Juncker's political commitment to unleash the full potential of the Single Market and make it the launch pad for Europe to thrive in the global economy. It proposes a number of actions focused on three main areas:

- Creating additional opportunities for consumers, professionals and businesses;
- Encouraging the modernisation and innovation that Europe needs; and
- Ensuring practical benefits for people in their daily lives

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

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

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

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

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

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

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

The strength of the European economy is, furthermore, built on a set of values that will lead to a sustainable economic development. Corporate social responsibility is a pivotal contributor to the EU's objectives of sustainable development and highly competitive social market economy. Considering the relationship with Japan, for

example, the BRT believes that fostering responsible business should be at the heart of the EU-Japan economic and political partnership.

< Recent Progress >

There has been some progress since the European Commission is committed to unleashing the full potential of the Single Market.

< Background >

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

The European Commission published a roadmap in October 2015 and proposed a number of actions focused on three main areas.

WP-1 / # 16 / J to E Revision of high customs tariffs on audio-visual products and passenger cars**

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

< Recent Progress >

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

< Background >

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

WP-1 / # 17 / J to E Chemical Regulations**

17.1 REACH

1. The BRT requests that the Authorities of the EU should pay more attention to the implementation of REACH. In particular:

- ✓ There should be more opportunities to take account of the views of non-EU companies in updating guidance because a substantial part of articles on the EU market is imported from outside the EU. In this regard, the representatives of non-EU companies should be allowed to register as the stakeholders of the ECHA.

- ✓ If the thresholds of new SVHSs are too low, for example, in the units of ppb rather than the units of ppm, there will be practical difficulties for manufactures and importers to implement it effectively as it will be too difficult to measure correctly.
- ✓ The authorities of the EU should improve the enforcement of the thresholds applicable to SVHCs once they are adopted. Otherwise the increasing number of SVHCs with extremely low threshold will distort the competition between strictly complying manufacturers/importers and less strictly complying manufacturers/importers.
- ✓ In the evaluation of a substance allocated to a Member State in the framework of CoRAP - Community Rolling Action Plan, a private business is often requested to provide information on the substance which it holds. However, it is sometimes requested at a short notice and/or a not-well-organised manner, which is not effective. The authorities of the EU should publish the best practice for the Member States so that private businesses can help them more efficiently and effectively.

2. The BRT requests that the authorities of the EU should further improve the PACT-RMOA. In particular:

- ✓ The authorities of the EU should improve it in order to look after the needs of SMEs because SMEs might still find it difficult to digest.
- ✓ The process of contributions by industries should be further developed.
- ✓ The transparency of the PACT-RMOA should be improved.
- ✓ The quality of evaluation by the evaluating authorities of the Member States should be made more consistent through the standardisation of the evaluation process.
- ✓ The criteria for the selection of substances should be more transparent.

< Recent Progress >

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

< Background >

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

It is understood that the representatives of non-EU companies have been unable to register as the stakeholders of the ECHA though the European Commission has suggested to enable it. As the EU is an open economy and a substantial part of articles on the EU market is imported from outside the EU, it is for the benefit of the EU that it has a system to take account of the views of non-EU companies on such important issues.

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

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

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

17.2 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.

The BRT is concerned that the European Commission has already sent a draft decision to the WTO that applies to DEHP, DBP, BBP and DiBP without waiting for a communication on the categorisation due to be published in July 2016.

< Recent Progress >

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

< Background >

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

17.3 RoHS

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

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

< Recent Progress >

Some progress has been made.

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

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

< Background >

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

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

17.4 CLP Regulation

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

< Recent Progress >

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

< Background >

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

17.5. Nanomaterial

1. Definition

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

2. Standardisation of measurement method

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

3. Reporting scheme

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

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

< Recent Progress >

Little progress has been made:

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

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

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

< Background >

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

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

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

17.6. Biocide Product Regulation

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

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

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

<Recent Progress>

This has been some progress.

<Background>

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

Although the competent authorities' meetings produce many guidance documents, the sheer amount of the guidance documents have increased the complexity of the subject matter. The BRT requests the authorities of the EU to make guidance easier to understand.

WP-1 / # 18 / J to E Resource Efficiency Policy**

18.1 Circular Economy

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

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

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

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

<Recent Progress>

This is a new recommendation.

<Background>

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

18.2 Ecodesign Product Lots

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

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

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

<Recent Progress>

There has been some progress as consultation is ongoing.

<Background>

When an impact assessment for components integrated into products is not carried out like it is the case for instance with the revision of Lot 11 (fans), the benefits for environment and energy efficiency could be misleading. The lack of proper impact assessment would lead to unaffordable products that no one would buy which in turn would not contribute to the reduction of energy use. Additionally, this would cause the setting of unrealistic MEPs leading again to unaffordable final products for the consumer. ErP implementing measures should focus on removing the least efficient products on the market and not set MEPs based on the 10% of most efficient products which is covered by the Ecolabel regulation.

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

18.3 Energy Labelling

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

<Recent Progress>

This is a new recommendation.

<Background>

With regard to the Energy labelling directive revision, the European Commission’s draft (COM(2015)241) is proposing to leave the top classes (i.e. A and B) empty at the moment of the introduction of the label so that the estimated time within which a majority of models falls into those classes shall be at least ten years, and remove the bottom classes (D, E, F or G) from the label where due to ErP implementing measures products falling in these classes cannot be placed on the market anymore. This will discourage innovation and confuse consumers from investing to buy the most energy

efficient products on the market and is counterproductive to the aim of Energy labelling. The proposal to create a product database to be managed by the European Commission will only add additional costs, burden and damage competitiveness for SMEs with no added benefits in terms of market surveillance which needs to be performed in the market by the Member States. Most of the product data requested to be included in the database is already available on the producers' free websites under the ErP implementing measures.

WP-1 / # 19 / J to E Taxation**

19.1 Common Consolidated Corporate Tax Base

The European Commission intends to re-launch the proposal on the CCCTB in 2016. It intends to split the proposal into two: first to agree on the rules for a common tax base and, at a larger stage, agree on the rules for consolidation. It also intends the re-launched CCCTB to be a mandatory system.

The BRT regards that the CCCTB will be attractive for businesses in a sense that it will strengthen the Single Market.

Although the BRT prefers the CCCTB to the CCTB, the BRT recognises that, if Member States are unlikely to agree to the CCCTB immediately, a staged approach may be a way forward.

The BRT would like to emphasise that cross-border loss relief, the carry-over of unrealised good-will taxation in intragroup reorganisation and non-application of arms-length principle within a group of companies that form CCCTB are the key attractiveness of the CCCTB and that there should be temporary measures to realise such benefits at the stage of the CCTB. The BRT also recommends that a temporary mechanism for cross-border loss relief should be designed in such a way that cross-border loss relief can be exercised when the principal entity incurs losses on a stand-alone basis.

In addition to the mandatory application to a group of companies with a holding company in the EU, a group of companies and branches in the EU directly held by a Parent Company established outside the EU should have the possibility to apply the rules of the system.

The BRT supports the EU's priorities to restore growth, and promote investment and job creation in a fairer and deeper Single Market. The EU therefore should focus on tax policies that will foster growth, investment and job creation. It will create a favourable environment beneficial to the economy and public finance of the EU

The BRT suggests that the CCCTB should be a simple, light and sensible tax system so that it is by itself attractive to all companies including SMEs and even a single company to use. It will also reduce an incentive to resort to aggressive tax planning.

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

< Recent Progress >

There has been some progress since the European Commission is trying to break the deadlock in the Council on the proposal.

< Background >

The European Commission proposed a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) in 2011. The Council has been unable to agree on the proposal.

The European Commission published an Action Plan for a Fairer and Efficient Corporate Tax System on 17 June 2015. The Action Plan calls for a renewed approach to the pending proposal whereby the main amendments will be the following:

- The re-launched CCCTB will be a mandatory system.*
- It will be deployed in 2 steps because the current proposal is too vast to agree in one go; efforts will first concentrate on agreeing the rules for a common tax base, and consolidation will be left to be adopted at a later stage.*

The European Commission carried out a public consultation on the re-launch of the CCCTB from October 2015 to January 2016.

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

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

19.2 Merger Directive

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

< Recent Progress >

No progress has been seen for this recommendation.

< Background >

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

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

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

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

19.3 The fundamental reforms of VAT regime under consideration

The BRT welcomes the strategy of the European Commission to fundamentally revise the VAT system and to establish a simpler, more efficient and robust VAT system tailored to the single market as described in Com (2011) 851. The BRT also welcomes the publication by the Commission of options for simpler and more robust future VAT regime. Furthermore the European Commission announced in its Work Programme 2016 to publish a Communication setting out the definitive VAT regime.

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

< Recent Progress >

Some progress albeit limited has been seen for this recommendation.

< Background >

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

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

For example, if centralised accounting staff with limited country specific knowledge makes a mistake in a repetitive transaction, the accumulated amount that should be rectified could become high over a relatively short period. In addition, a penalty may be imposed. To avoid such a high risk, businesses have to either leave accounting staff in local operations or employ a number of accounting staff with country specific knowledge in a central location. In either case, cost-effective centralisation of accounting functions is unlikely to be realised.

19.4 Country by country reporting (CBCR)

The BRT supports the creation of an internationally fair taxation framework and level playing field. The BRT would like to emphasise that, in implementing CBCR/BEPS Action 13 in the EU, the EU should aim at realising an internationally level playing field.

It is therefore important that information required to disclose in CBCR is internationally coherent in order to realise a level playing field. The EU should, therefore, limit information required to disclose to the tax authorities to BEPS Action 13 information.

Furthermore, information concerning a tax payer should be kept confidential by the tax authorities. That is the reason that BEPS Action 13 demands that a legal framework must ensure the confidentiality of exchanged tax information and limit its use to appropriate purposes. By the extension of this principle, the BRT regards mandatory public disclosure of tax-related information inappropriate.

The BRT understands the desire of the EU to combat aggressive tax planning. The BRT would like to point out the importance of a tax system that is simple, light and sensible in order to reduce the necessity of tax planning and foster growth and innovation friendly tax environment. When the enterprises view the EU introducing simple, light and sensible tax systems to foster growth and innovation friendly tax environment, it will create a favourable environment for investors far more beneficial to the economy and public finance of the EU.

<Recent progress>

This is a new recommendation because there have been considerable changes in the policy of the EU.

<Background>

The Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large companies and groups requires the European Commission to report on CBCR by 21 July 2018.

Due to the agreement to introduce CBCR from 2017 in the framework of the BEPs Actions, the European Commission launched a public consultation in 2015 on the possibility to introduce CBCR on a pan-European basis and expand its scope.

WP-1 / # 20 / J to E Company Law / Corporate social responsibility**

20.1 A new strategy on CSR Policy

Concerning a new strategy on CSR policy that the European Commission is currently updating, the BRT recommends as follows:

- (1) Highlight innovation: The European Commission should articulate the proactive nature of CSR that leads to innovation and opportunities.

- (2) Take a flexible, principle-based approach: The European Commission should take a “principle-based” approach for evaluation and reporting. This approach will allow each company to meaningfully express their business in a dynamic and changing environment.
- (3) Build an open platform: The European Commission should take a proactive role in creating an open platform.
- (4) Create incentives to foster leadership for change: The European Commission should create incentives for companies that take leadership in identifying, preventing and mitigating the negative impact of businesses
- (5) Articulate policy linkages across the European Institutions

<Recent progress>

There has been some progress as the European Commission is currently updating its strategy (action plan) on CSR.

<Background>

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

In preparation for a policy revision, the European Commission carried out public consultation in 2014 and sought stakeholders’ views on the impact of its CSR strategy over the past three years and on the role that it should play in the future. The EU Multistakeholder Forum on CSR was held in February 2015 as the final milestone of the Commission’s multi-stakeholder review process. The European Commission is currently drafting an updated strategy (action plan) on CSR.

More background on recommendations

- (1) Much has been said of the improved definition of CSR since the publication of the EU strategy (2011-2014). Now is the time for every stakeholder to take part and design actions for the future. Policy instruments therefore need to encourage the uptake of CSR as a driver for European industrial competitiveness. The European Commission should lead policy discussions on promoting actions to maximise positive impacts, while mitigating negative ones.
- (2) Businesses need flexibility to choose how they reach their goal of sustainable development, in a manner meaningful to their supplier relations. “Rule-based” or “tick the box” approaches do not reflect the real challenges multinational companies face in today’s complex value chain, and sometimes do not

accurately reflect the ongoing efforts of companies at a local level. A compliance mind-set also has the effect of limiting thinking about longer term challenges. CSR is a journey. The CSR policy tools must be designed to foster innovation and growth.

- (3) Dialogue is a powerful tool to understand how our communities work. It is often more useful in building lasting trust than forced transparency measures like naming and shaming. Innovation is fostered through open exchanges among stakeholders, partner countries or regions, governments, and suppliers. As relationships develop, partners are more likely to care about sustainable growth amongst other stakeholders, and to look for common goals. The BRT would like to commend the EU-Japan CSR Working Group set up by DG GROW and the Japanese Ministry of Economy (METI) as one of the technical working groups within the EU-Japan Industrial Policy Dialogue. This Working Group has a lot of potential not only to strengthen the relationship between the EU and Japan, but also to create a new platform for dialogue.
- (4) Done effectively, such incentives would give first adopters a competitive advantage over the followers in terms of reputation and risk management. At present, however, companies taking the lead, for example in tackling human rights issues inside and outside companies, are undermined and sometimes penalized. We would therefore welcome a mechanism in which the first adopters receive more recognition, whereby efforts to improve both the positive and negative sides of CSR are praised, not penalised.
- (5) Since CSR is increasingly integrated into other EU policies, such as company law, trade agreements, and public procurement, the European Commission and other European institutions should articulate such policy linkages when presenting new initiatives and communications. This way, companies can engage in early discussion, highlight shortcomings, and more effectively integrate CSR in company functions.

20.2 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. Concentrating on upstream supply chain operators and on facilitating the transmission of quality information in the supply chain leverages the appropriate point in the supply chain, is consistent with the OECD guidance and with industry initiative. Beyond the pinch point of smelters/refiners, it becomes exponentially more difficult to identify the origins of metals.

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

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

<Recent progress>

There has been little progress. The proposal is currently subject to trilogue between the Council, the European Parliament and the European Commission.

<Background>

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

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

The European Parliament adopted amendments on 20 May 2015 on the 1st reading. The amendments change the voluntary nature of self-certification to an obligation and expand the scope to downstream companies.

20.3 Non-financial disclosure

Concerning the non-binding guidelines for the reporting of non-financial information under the Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups, the BRT recommends as follows:

1. Be flexible and principle-based

Non-financial reports are a vital communication tool when reporting companies retain ownership in determining whom it intends to tell and what is material. Materiality differs for each company, depending on the nature of business, the perspective of top management and corporate culture. Due to the subjective character of materiality, the imposition of a specific and harmonised KPIs does not accurately reflect the ongoing efforts of companies faced with complex challenges at a local level. Therefore, a principle-based approach is the only viable way for companies to meaningfully express their business in a dynamic and changing environment.

2. Emphasise on dialogue

The guidelines should recognise dialogue as equally valuable means for companies to strengthen the trust of their investors and stakeholders, and leverage the improvements of companies' internal practices by making it part of the PDCA management cycle. Dialogue is a powerful tool to foster a culture of risk management and innovation, whereby companies can exchange views on potential future risks as well as explore collaborative opportunities. Many private initiatives are in the making at the international level to forge cost effective and meaningful collaborative dialogues.

3. Foster innovation and growth

Global companies are motivated to integrate CSR into daily business to become more innovative and competitive in the global context. Such innovation is fostered through open exchanges among stakeholders, partner countries or regions, governments and suppliers. From this perspective, the guidelines should not push for compliance mindset, but foster meaningful channels for companies and investors to discuss value creating processes.

4. Promote existing international reporting frameworks

The EU should promote internationally recognised frameworks that take a process based approach, therefore give companies enough flexibility to take meaningful actions without becoming an outcomes based tick-box exercise. Such frameworks include the UN Guiding Principles on Business and Human Rights and OECD Due Diligence Guidance.

<Recent progress>

There has been a progress. The European Commission carried out public consultation from 15 January to 15 April 2016 in the preparation of non-binding guidelines on methodology for reporting non-financial information.

<Background>

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

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

20.4 Responsible Supply Chain Management

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

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

- 1) It ensures flexibility as well as global harmonisation;
- 2) It is compatible and does not conflict with existing initiatives and legal instruments not only in the EU but also in other regions;
- 3) It does not create unnecessary administrative burden and incur supplementary costs for companies which are not effective in solving the fundamental problem; and
- 4) It is globally comprehensive and encourages all governments (not only national but also local governments), business, and civil society to foster responsible supply chains.

<Recent progress>

This is a new recommendation.

<Background>

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

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

21.1 Product safety and market surveillance package proposal

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

<Recent progress>

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

<Background>

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

21.2 Market Surveillance under the New Legislative Framework

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

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

< Recent Progress >

Some progress has been seen for this recommendation.

< Background >

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

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

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

21.3 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 review of the Directive 1999/44/EC underway.

< Recent Progress >

Some progress has been made for this recommendation because the fitness check of consumer law started in the final quarter of 2015.

< Background >

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

The European Commission started the fitness check of consumer law in the final quarter of 2015. It is expected to finish in the second quarter of 2017. The roadmap published by the European Commission in December 2015 states that the differences between national rules based on the minimum harmonisation nature of the Sales and Guarantees Directive have created Single Market barriers that impede businesses from offering goods across the entire EU and – as a result – consumer detriment and that this issue will be examined.

WP-1 / # 22* / J to E Access of third countries goods and services to the EU's Procurement Market

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

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

< Recent Progress >

There has been some progress.

< Background >

The reform of the legislative framework of public procurement is one of the twelve priority actions set out in the Single Market Act adopted in April 2011. As part of this reform programme, the European Commission announced on 31 March 2012 a proposal for a Regulation on the access of third-country goods and services to Union's internal market in public procurement and procedures supporting negotiations on the access of Union goods and services to the public procurement markets of third countries (COM(2012) 124). This initial proposal was opposed by several Member States because the possibility to close the EU public procurement market was perceived as discriminatory measures.

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

The BRT appreciates that the EU has dropped its original idea of closing its market unilaterally. The BRT is still concerned, however, that the EU's possible actions could trigger a chain reaction of protectionist measures all over the world.

Should it happen, the EU's intention and objective of opening up international public procurement markets would not be achieved.

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