

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

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

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## List of Abbreviations

<b>Abbreviation</b>	<b>Meaning</b>
AEOs	Authorized Economic Operators
CCCTB	Common Consolidated Corporate Tax Base
CE	Conformité Européenne (European Conformity)
CLP	Classification, labelling and packaging
EASA	European Civil Aviation Authority
ECE	Economic Commission for Europe
ECHA	European Chemical Agency
EN	Européen de Normalisation de Normalisation (European Standards)
ESG	Environment, Social and Governance
FAQ	Frequently asked questions
FSA	Financial Services Agency
G20	Group of 20:
GATS	General Agreement of Trade in Services
GCP	Good Clinical Practise
GHS	The Globally Harmonized System of Classification and Labelling of Chemicals
GMP	Good Manufacturing Practise
GPA	The Agreement on Government Procurement
ICT	Information and Communication Technology
ICTs	intra-corporate transferees
IFR	Instrument Flight Rules
ISO	International Organisation for Standardisation
JAS	Japan Agricultural Standard
JCAB	Japan Civil Aviation Board
JIS	Japan Industrial Standard
JR	Japan Railways
MRJ	Mitsubishi Regional Jet
NAMA	Non-Agricultural Market Access
PFI	Private Finance Initiative
PMDA	Pharmaceuticals and Medical Devices Agency
QMS	Quality Management System
REACH	Registration, Evaluation, Authorization and Restriction of Chemicals

RFID	Radio Frequency IDentification
RoHS	Restriction of Hazardous Substances
SIEF	Substance Information Exchange Forum
SMEs	Small and Medium size Enterprises
SVHC	Substance of Very High Concern
TPD	Transfer Pricing Documentation
UCR	Unique Consignment Reference
<hr/>	
UNECE	United Nations European Commission for Europe
WTO	World Trade Organization

## Recommendations from both European and Japanese industries

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

#### <Recommendation>

The BRT calls on the European Commission and the government of Japan to expedite the remaining efforts necessary to complete their scoping activities on ambitious terms. The BRT also urges the European Commission and the Council of the EU to expedite their respective work on the mandates to authorise the European Commission to negotiate an FTA/EPA and a political and cooperation agreement with Japan on the basis of a successful scoping and keeping in mind the high level of ambition shown at the May 2011 EU-Japan Summit and supported by the BRT in its September 2011 "Joint Statement Towards an EU-Japan FTA/EPA". An ambitious, balanced and mutually beneficial FTA/EPA would have to be comprehensive and tackle major outstanding issues, such as tariffs, non-tariff barriers, public procurement, investment, and harmonisation/mutual recognition of regulations and standards, to develop and unlock the growth potential of EU-Japan economic relations.

#### < 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.

### **WP-A / # 02 / EJ to EJ    Call for a breakthrough in WTO Doha Development Agenda negotiation and statement of strong support for fight against protectionism**

#### <Recommendations>

The BRT is a strong supporter of the multilateral trading system, whose core functions are: trade liberalisation, rule-making and dispute settlement. However, the initial high level of ambition of the Doha Round, launched in 2001, has not been confirmed resulting in the current deadlock of negotiations. A so-called "Plan B" was abandoned in May 2011. Also the December 2011 8th Ministerial Conference in Geneva could not overcome the current deadlock which has revolved both around a lack of political will and the inability to bridge the gap of market access commitments between OECD and emerging country members.

With the prospects of great uncertainty, the WTO must demonstrate its ability to deliver results for the business community. It should focus more on its core functions in the future, namely trade liberalisation and rule making. As the only international organisation creating rules and setting standards on trade at the multilateral level, the WTO must remain leader in this area and take more action. The existing legal framework provides an excellent basis but needs to be updated in order to respond to a changing global economic landscape.

Ambitious agreements on trade facilitation and non-tariff barriers should be concluded quickly. This would provide a significant boost to international trade. In addition, plurilateral sectoral agreements should be further negotiated. The WTO should also work towards clearer WTO guidelines on the coherence between bilateral / regional trade agreements and the WTO system. Finally, the WTO should explore other topical issues, such as the relationship between trade and investment, competition, energy and raw materials.

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

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

##### <Recommendations>

1. The BRT urges both authorities to adopt international product standards and certification procedures where applicable, and, to promote harmonisation of standards and certification procedures, mutual recognition of product certification and, when possible, and appropriate, mutual acceptance of functionally equivalent regulations governing the application process for importing and selling/using products in sectors such as Construction Materials, Organic Products, Cosmetics, Medical Devices, Veterinary Products, Automobiles and Processed Food.
2. The BRT recognises the importance of global patent harmonisation and streamlining of the patent system as a way to promote innovation, reduce costs and boost legal certainty. The authorities of the EU and Japan should take the lead in these efforts.

3. Given the nature of the issue and the importance for business as well as for society in general, the two Authorities should make an effort to harmonise the regulations for energy conservation, relevant labelling rules, and carbon footprint schemes.
4. Following the agreement on the mutual recognition of the AEOs (Authorized Economic Operators) in June 2010 between the EU and Japan, the Authorities of the EU and Japan should aim at introducing further regulatory cooperation in order to give more concrete benefits to AEOs. The BRT would in this regard like to put emphasis on simplifications of import procedures where companies are given a greater freedom while also taking greater responsibility for their imports.
5. The two Authorities should create a framework between the EU and Japan in the development of practical application of new technologies, such as RFID and biometrics authentication technologies. This will enable and enhance cooperation among companies in the EU and Japan, and will also promote new international standardisation and lead to its dissemination.
6. The two Authorities should disseminate model ICT use that contributes to the security and the operational efficiency of the supply chain. For example, RFID tags, sensors, biometrics authentication technologies and UCR (Unique Consignment Reference) numbers can build a more secure and visible international supply chain.
7. The European Commission and the Japanese Government should support the ICT for Energy Efficiency Forum, actively participating in it and disseminating its outcome in order to encourage global collaboration.
8. The European Commission and the Japanese Government should collaborate on achieving international harmonisation at CODEX in the description and standards for food for specified health use/functional foods.
9. In the automobile sector, the Japanese and EU Authorities should accelerate their adoption of ECE Regulations to lower the cost of regulatory compliance for both European and Japanese automobile exporters by extending the benefits of mutual recognition. Also the Japanese and EU Authorities should work together to establish internationally harmonised technical requirements and testing procedures that will encourage the smooth market adoption of new environmentally friendly power-train technologies - electric vehicles, hybrid vehicles and fuel-cell vehicles.

<Background for 9. >

In 1998, Japan became the first country in Asia to accede to the UN-ECE 1958 Agreement on the Mutual Recognition of Type Approval for Vehicles etc, which provides that vehicle components which have received type approval according to ECE Regulations in one contracting country are exempt from testing in any other signatory country where those regulations have been adopted. Japan has now adopted UNECE Regulations in 31 of the 45 areas included in Japanese type approval.

<General Background for 1-9>

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

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

1. Social security contributions (avoiding double contributions):

<Recommendations>

The BRT welcomes the conclusion of social security agreements between Japan and certain EU member states in the past, but regrets that no new agreements were concluded in 2011. Therefore, the BRT requests that, Japan and the Member States of the EU make further efforts to expand the network of Social Security Agreements. In addition, they should introduce an interim measure, by which a host country should either exempt contributions to pension funds unilaterally or refund the contributions in full when expatriates return to their home country.

< Background >

While individual EU Member States and Japan have concluded bilateral social security agreement, Japanese citizens in many Member States cannot use pension premiums paid in those countries towards the pension in Japan and vice versa.

2. Personal data protection regime:

<Recommendations>

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

To realise such a business environment between the EU and Japan, the Government of Japan should make sure to build on the report of July 2011 of the Special Commission about Personal Information Protection established in the Consumer Commission with a view to realise a harmonised data protection regime between the EU and Japan. Furthermore, the EU has launched the legislative process of significantly modifying its Directive 95/46/EC. The two authorities should consult closely with each other so that the two regimes should not become more diverse.. The two governments should then launch the adequacy-finding procedure under the EU Directive as soon as feasible.

In parallel with the above process, the authorities of the EU and Japan should launch a dialogue in order to seek an international framework by enhancing cooperation with third countries and international organisations. It should eventually lead to the closer alignment of data protection regimes around the world that would enable global businesses to transfer personal data by complying with one regime.

In addition, the authorities of the EU and Japan should improve legal certainty surrounding the use of new technological tools such as cloud computing applications and services. The BRT believes that such improved legal certainty would support and enhance the application of new technological developments while maintaining the degree of data protection currently provided.

#### <Background>

Implementation of these recommendations will lead to a significant improvement in the personal data protection regimes of both the EU and Japan.

### **WP-A / # 05 / EJ to EJ Better Regulation**

#### <Recommendations>

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

#### < Background >

Better regulation, based on transparency, early public consultation, impact assessment, public access to draft regulations or administrative measures, could

lead to a reduction in the cost of regulatory compliance and the overall administrative burden, which would be to the benefit of the Japanese and European economies as a whole.

#### **WP-A / # 06 / EJ to EJ     Support for SMEs**

##### <Recommendation>

The BRT calls on the EU and Japanese Authorities to develop measures to promote and assist SMEs to explore and seize business opportunities in each other's market. Should negotiations for an FTA/EPA begin, specific consideration should be made to establish measures for SMEs within the framework of negotiations.

##### < Background >

SMEs are considered as new sources of growth and jobs in both Europe and Japan and "going international" is one factor for enhancing their growth potential. Promoting SMEs' internationalisation is becoming increasingly important as a policy priority in the EU and Japan. In this context it should be noted that the market access problems and other impediments underlined in the BRT recommendations can be even more difficult to tackle or manage for SMEs. With this background the BRT considers it important for the EU and Japanese Authorities to discuss and cooperate to introduce support measures (e.g. grants, tax incentives), or improve existing measures (e.g. through exchanges of best practices), to help EU and Japanese SMEs seize business opportunities in each other's market.

## Recommendations from European industry to Japan

### **WP-A / # 07 / E to J      Harmonisation & mutual recognition of standards and product certifications; acceptance of international standards where applicable**

#### <Recommendations>

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

#### Construction Products

The Government of Japan should work together with the EU Authorities towards mutual recognition of all JAS/JIS and EN standards for all building materials. Procedures for foreign testing institutes seeking accreditation under JAS/JIS should be streamlined. Mere reference to ISO standards within JAS/JIS, has proved not to be adequately helpful in facilitating the process.

The BRT also calls for Japan to lower its threshold for construction services procured by sub-central Governments and public enterprises to 5,000,000 special drawing rights.

#### Organic Products

The Government of Japan should work together with the EU authorities to achieve true mutual recognition of Organic Food Products labelling. Currently, products which are certified as organic in Europe and meet the organic-JAS regulations and are labelled organic in Japan must obtain a supplementary organic certificate from the Embassy of the country of origin every time they are imported into Japan. The BRT requests the abolishment of this need for supplementary organic certificates. The BRT recognises the work of the Cabinet Office in this regard and is looking forward to see the result of this work.

#### Cosmetics

European cosmetics firms find it continuously difficult to expand their business in Japan due to the difference in standards for ingredients and permitted efficacy

claims between Japan and the EU and the Japan-specific product certification procedures for so-called quasi drugs. The 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.

### Railways

The combined Japan Railways companies run on more than two-thirds of the railways, whereas the remaining one-third is controlled by more than 80 private carriers. This means that JR testing and acceptance standards serve as de-facto requirements for railway equipment to be exported to Japan. Though standards are not so different and data generated at European research facilities are relevant for Japan, duplicate testing in Japan is required for the Japanese market. This has repeatedly been communicated by one JR company. Duplicate testing raises the costs of imports, making them less competitive than domestic products. The Government of Japan and the EU authorities should work toward establishing a mechanism through which test data and certification of railway equipment provided by European organisations is accepted in Japan, and vice versa.

### Medical Devices/Equipment

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

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

- a) Shortening the medical equipment certification process: accepting clinical trial data generated overseas and harmonising Good Clinical Practice (GCP) and Quality Management System (QMS) requirements with international standards. The BRT recommends that in the meantime, both authorities should officially recognise that either ISO 14155:2003 (and as subsequently amended) or Japan GCP is, in principle, generally acceptable to either party for all medical device clinical investigations and that, in principle, a QMS

audit conducted by responsible authorities in Japan (PMDA or third party testing organisation) or by Notified Bodies in the EU is generally sufficient as evidence of compliance with quality management system requirements when applying for market authorisation on either market.

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

### Veterinary Products

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

- a) Urges the Government of Japan to take all measures available to speed up product approvals and fully harmonise domestic regulations with international practices.
- b) Requests Japan to work towards mutual recognition of European and Japanese marketing authorisations for veterinary products. This should start with mutual recognition of GMP certification for veterinary medicines. Harmonisation of regulations on animal vaccines, and ensuring product conformance under a unified GMP regime, should also be addressed.
- c) Asks Japan to better facilitate the use of English in applications without the need for a summary in Japanese.

### Processed Food

For processed food, the combination of differences between EU and Japanese standards and technical requirements as well as cumbersome border procedures results in high costs for EU exporters. The limited number of permitted food additives in Japan and unaligned standards between the EU and Japan increases costs and prevents EU exporters from utilising scale effects. High conformity costs are incurred because Japanese authorities do not accept evaluations made by the EU or international bodies. The market potential for European exporters would be greatly enhanced by:

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

### Labelling rules

The Household Product Quality Law and accompanying voluntary labelling guidelines, “hyojikitei”, prescribe in extreme detail how household products should

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

#### < Background >

While some sectors have seen an improvement and “internationalisation”, several sectors lag behind. This area is of great interest to European industry, which would see significant benefits from not having to re-test its products.

### Commercial aircraft

#### <Recommendation>

Cooperation between Japanese and European aircraft certification authorities should be upgraded. Specifically, EU-Japan cooperation should be upgraded at the level of a full bilateral agreement. The use of English for all relevant documents should be permitted.

#### < Background >

There is a bilateral agreement between US and Japanese civil aviation authorities that facilitates the mutual acceptance of the other party’s certification basis, while there is only a working arrangement between Europe (EASA) and Japan (JCAB) that proves extremely difficult to work with. Validation by JCAB of European Type certified aircraft is a very lengthy process. In particular, validation of EASA-certified new optional equipments for helicopters whose Type Certificates are already validated by JCAB should be almost automatic, but instead the Japanese authority requires a review of all the technical documentation before approval. This is often the cause of delivery delays of the products to Japan and may at times preclude European manufacturers from fairly competing in public tenders, due to stringent delivery requirements. Moreover, Japan is probably the only country in the world where the Rotorcraft Flight Manuals must be translated into the local language and approved by the local authority, again representing an obstacle to helicopter imports.

Recently, Japanese civil aviation certification resources have been drained by a local development project (i.e. MRJ) at the expense of imported products leading to significant delays (and costs) in airworthiness clearance for European products.

### Helicopters

#### <Recommendation>

Establish an increased level and better cooperation between Europe and Japan on the development of low altitude IFR routes and satellite based navigation regulations for helicopters.

< Background >

The US, Europe and Japan are working on developing their own regulations and infrastructure without an adequate level of exchange of information and standardisation. European and Japanese territories have more similarities than each has with the US, so that Europe and Japan should work more closely and with a shared approach. Many European helicopters are already equipped with the hardware to interface with ground based infrastructure already established to allow low altitude IFR routes and satellite based navigation, but that may prove useless if there is no cross recognition of standards and regulations (software) between the countries.

**WP-A / # 08 / E to J      Automobiles**

<Recommendation>

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

< Background >

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

**WP-A / # 09 / E to J      Ensuring free and open competition in services**

<Recommendations>

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

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

Regardless of the direction the Government of Japan decides to take on postal reform, Japan has a duty to abide by its WTO obligations, including the national treatment provision of the General Agreement on Trade in Services, or GATS. This means establishing equivalent conditions of competition between the Japan Post entities and EU and other private delivery companies, banks, and insurance companies. Specifically:

- a. Kampo insurance business should be subject to the same capital, solvency margin, tax and policyholder protection funding requirements as private sector insurers. Limits are needed on expansion of Japan Post's services, including the introduction of new products as well as caps on postal life insurance, until competitive safeguards have been established to prevent cross-subsidies from its existing dominant position. It is also imperative that Japan Post remains under the jurisdiction of the Financial Services Agency (FSA). The above requests are well within the realm of the Government Procurement Agreement (GPA). Similarly, the insurance business of cooperative societies (kyosai) should be subject to the same requirements as private sector insurers.
- b. Japan Post and private postal delivery operators should be subject to the same customs procedures and formalities. A level playing field for both Japan Post and private postal operators should be ensured in the requirements for dedicated airway bills, obligatory customs, quarantine and security clearance and the funding of these services, as well as in the issuance of parking tickets for delivery vehicle parking infringements.

< 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.

**WP-A / # 10 / E to J      Promoting foreign direct investment**

<Recommendations>

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

Moreover, while such improvement of the generic investment environment is a precondition, regulatory reform is the best motivator for foreign companies to enter the Japanese market. In the sectors where the formal barriers to foreign investment were removed some time ago, such as automotives and machinery, foreign investment is relatively high. By contrast, two sectors where investments are low are the financial and medical fields. Japan's regulatory environment in these sectors remains much more difficult than the rest of the world to allow for foreign companies to set up any larger operation than the minimal level needed to serve the existing client base. Mutual recognition of market certifications would be an important first step to improving investments in the medical field. Mutual acceptance of principles governing the financial services industry and the mutual acceptance of the home regulator as the core regulator would go a long way to improving the investment environment in the financial sector.

< 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.

**WP-A / # 11 / E to J**      **Fight against counterfeited, pirated and contraband goods**

<Recommendations>

The Government of Japan should make all trade with fake goods illegal and to better cooperate with overseas authorities to secure the closure of sites trading in fake goods.

Furthermore Japanese authorities should improve and simplify the procedure for right-holders to receive information on suspected merchandise. Today right-holders can only receive information and photographs for a maximum of ten (10) suspended products (even if they are the same product), which means that right-holders are obliged to check most items physically at the custom offices.

< Background >

Japan allows the importation of fake goods as long as they are for personal use. Accordingly, there is an inflow of counterfeit goods sold on the internet on sites outside Japan, but which are catering to the Japanese market. These two factors unfortunately lead to quite a large trade in counterfeit goods.

**WP-A / # 12 / E to J      Government procurement**

< General Recommendations >

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

< Background >

Studies have shown that over 80% of the total government procurement market in Japan is not covered by GPA (The Agreement on Government Procurement).<sup>1</sup> Currently some sectors are exempted from the threshold of 5 million SDR (special drawing rights). Government Procurement was included in the so-called paragraph 34 discussions, where Japan promised to set up a data base where all tenders, national and regional would be posted. However, significant improvements are required to bring Japanese public procurement closer to the levels of the EU.

<Recommendation>

In the bidding process in public tenders for helicopters:

- a. More balanced competition should be ensured by comprehensive evaluation systems that also take aircraft performance into account.
- b. Single year budget procurement constraints should be relaxed.

< Background >

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

<Recommendation>

Procurement of integrated systems of space ground equipment should be encouraged.

< Background >

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

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<sup>1</sup> Copenhagen Economics, “Assessment of barriers to trade and investment between the EU and Japan”, 2009

**WP-A / # 13 / E to J      Aeronautics, space and defence**

1. Level Playing Field in Civil Aeronautics Markets

<Recommendation>

The Authorities of Japan and Europe should encourage competition and facilitate the entry of each other's aircraft on their respective domestic markets on the basis of reciprocity. Airlines and other major customers should be encouraged to diversify their sources of supply. Cooperation in aeronautics should not be biased towards US industry, but should be significantly increased between the EU and Japan.

< Background >

Europe's wide-body civil airliners have not made significant inroads in Japan, and Japan's business aircraft have not made significant inroads in the EU. Customers' procurement decisions are best when made on a competitive basis, free from irrelevant influence. Unbiased cooperation will help avoid more undue influence on the procurement decisions of commercial airlines. Diversification of supply sources will benefit customers, shareholders, taxpayers and the general public.

2. Approval of Satellite Launch Service Providers

<Recommendation>

The approval by Japanese Authorities of foreign launch service providers through the envisioned approval system of Japanese commercial satellite launch projects should be fair and consistent with commercial world practice as recognised and formalised by the French Space Operations Act of June 2008 and associated by-laws.

< Background >

Japanese Authorities contemplate Space Operations legislation that would require Japanese users of satellite launch services to obtain an official approval before they contract for launch, and that would also require them to only use reliable launch service providers approved by Japanese Authorities. We have no issue with such legislation if it cannot be used to make competition in Japan difficult for EU launch service providers.

3. Legitimate use of Private Finance Initiative Projects

<Recommendation>

The Authorities should explicitly ban their own use of Private Finance Initiative (PFI) projects to protect local satellite makers and launch service providers.

< Background >

Using PFI is a legitimate way for a government agency to procure space-based services in a budget-efficient manner. Authorising domestic candidate companies to include their own commercial payloads (so-called hosted commercial payloads) in the satellites that they will procure to provide the services is also legitimate. But barring foreign suppliers from bidding for the satellite and the launch service on the grounds that the government procures a government-only space-based service is not legitimate because the presence of the hosted commercial payload makes it a commercial satellite. If this practice is not explicitly banned, much of the commercial satellite and launch services markets may vanish piecemeal into supposedly government programmes. (Note: We do not dispute the practice of launching purely government satellites by a local government launcher.)

4. Establishing EU-Japan dialogue on defence industry issues

<Recommendations>

In the defence sector:

- Japan and EU countries should define a list of capabilities and technologies for which there exist opportunities for cooperation
- Japan is encouraged to develop its dialogue with NATO armament agencies and to improve access to NATO standard technologies
- A Japan-EU defence industry policy dialogue with the aim of exchanging views and experience about defence industry issues common to both, and identifying any impediments to further collaboration

<Background>

Europe's defence industries offer highly competitive defence products and services, which often come with transfer of cutting-edge technology. Moreover, its products satisfy Japan's fundamental requirement for full inter-operability with US equipment. There is scope for significantly greater collaboration between the EU and Japan on defence products and services.

Both Europe and Japan face the challenges of increasingly sophisticated threats, while defence budgets are under increasing threat. It is therefore clear that greater collaboration would bring substantial benefits to both sides.

## Recommendations from Japanese industry to the EU

### **WP-A / # 14 / J to E      Europe 2020 and the Single Market Act**

The BRT expresses our continued support for Europe 2020 and in particular, the Single Market Act - the initiative of the European Commission to relaunch the single market.

- 1) The BRT would like to repeat the importance of the single market for the EU and the Europe 2020 strategy.
- 2) The EU should make utmost efforts to realise the 12 priorities in the Single Market Act by the deadline of 2012. The BRT would like to emphasise the importance of the following priorities for the single market.
  - Intellectual property rights
  - Consumer empowerment
  - Services
  - Networks
  - The digital single market
  - Taxation
  - Business environment

### **WP-A / # 15 / J to E      Revision of high customs tariffs on audio-visual products and passenger cars**

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

### **WP-A / # 16 / J to E      Customs Classification**

The BRT believes that customs classification should be done in accordance with the Harmonized System Convention rules. However, the BRT also believes it to be a fact

that the rules do not provide a clear method of classification for such products as electric-electronics products, where the technical convergence of IT and non-IT products has emerged. This situation makes interpretation and classification more difficult and complicated than ever, and has undermined transparency, predictability and promptness for businesses. It is requested that the EU acknowledges the concerns and difficulties the businesses are facing, and based on the panel reports by WTO issued on information technology dispute in August 2010, to take steps to increase predictability and improve transparency upon importation of the IT products. The improvement of the said situation will indeed contribute to the ICT industry development.

In the Netherlands, the Supreme Court ruled that toner cartridges should be classified as chemical products and thus subject to 6% customs duty. In HN classification, it is a part of copiers and thus subject to 0% customs duty. The discrepancy should be resolved without delay.

**WP-A / # 17 / J to E      Fight against counterfeited, pirated and contraband goods**

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

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

The importers of the authentic products have to pay for the storage, transportation and destruction costs of counterfeit goods. Some companies may, as a result, renounce the fight against counterfeit goods. However, counterfeit products raise more and more health and safety issues. In addition, there is also an obligation for

the Member States to destroy counterfeit goods detained by the customs and, especially, not to release them on the EU market. The EU, through the Member States, should introduce financial support or offer free assistance.

## **WP-A / # 18 / J to E      Unitary Patent**

The BRT welcomes the launch of an enhanced cooperation procedure for the creation of unitary patent protection authorised by the Council on 10 March 2011. The BRT would like to urge the EU and its Member States to adopt and implement a unitary patent protection for the greatest possible number of Member States and a unified patent litigation system as soon as possible.

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

### **19.1 Common Consolidated Corporate Tax Base**

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

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

### **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.

### **19.3 EU TPD**

To provide sufficient incentive to the compliance with the EU TPD, the EU and the Member States should commit themselves to exemption from penalties (i.e. penalties related to non-compliance with documentation requirements, penalties related to

transfer pricing adjustments and interest related to adjustments) if a company submits an EU TPD acting in good faith and in a timely manner.

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

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

The BRT welcomes the strategy of the European Commission to fundamentally revise the VAT system and to establish a simpler, more efficient and robust VAT system tailored to the single market as described in Com (2011) 851.

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

#### **WP-A / # 20 / J to E      On the forthcoming legislative proposal on non-financial disclosure**

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

The BRT believes companies of different sizes, business sectors and organisational structures should be given the opportunity to choose the best reporting framework to express their company values. In line with the interpretation of materiality put forward by the IASB's Practice Statement for Management Commentary, the BRT strongly believes that what is material to companies is company-specific. The BRT is, therefore, in favour of a principles-based approach and have reservations about the EU endorsing any particular reporting scheme or a small number of quantitative Key Performance Indicators (KPIs).

From the perspective of an association of multi-national companies whose activities stretch across not only different European countries but also different regions in the world, the BRT strongly favours the harmonization of future requirements of non-financial information disclosure not only within the EU but also internationally. Different disclosure requirements regarding scope and content across the 27 EU

Member States would create an additional administrative burden for European or multinational companies operating in different countries and regions.

The BRT believes that under a new EU regulatory framework for non-financial disclosure, companies should be allowed to report on a group or consolidated level. Such an approach would create a solid foundation for the integration of non-financial information into the management structure of a company and would be more practical than a disclosure requirement at legal entity level. Furthermore, disclosure beyond consolidated group level, for example, disclosure concerning its supply chain or value chain, should not be mandatory because mandatory inclusion would make disclosure too burdensome for companies.

#### **WP-A / # 21 / J to E      EU policy on company law**

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

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

#### **WP-A / # 22 / J to E      Chemical Regulations**

##### **22.1 REACH**

The BRT requests harmonization of regulation proposal in accordance with the process of REACH, especially on combined exposure of chemicals which is submitted by Member States and on denominator of concentration which could be different from Article in REACH in some Member States.

European Chemical Agency (ECHA) has been running a campaign, “Act Now ! REACH 2013” to urge prospective registrants to undertake the preparation of the joint submission in the tonnage band 100 – 1,000 t/year by the next registration deadline, 31 May 2013.

New challenges are already foreseen in the SIEF operation toward 2013 registration deadline, namely, less data available, unexperienced lead registrants, mostly SMEs in the supply chain, and heavy financial burden. The SIEF activities will stagnate due to such concerns.

In this respect, EU Competent Authorities (CA) should enhance its promotion and support to allow the registrants to make the joint submission successful and in time. Especially, we request CA to engage in arbitration to solve the disputes, for example, in the cost sharing and the lead registrant nomination, among SIEF members.

The interpretation of “Article” applied to 0.1% threshold for SVHC (Substance of Very High Concern) is still disharmonized among EU member states. The Guidance on Requirements for Substances in Articles in REACH regulation states that the 0.1% threshold should apply to an article as a whole produced or imported. Six member states, however, insist that the threshold should apply to the parts of complex articles based on the “Once an article – always an article” concept.

The BRT asks EU to soon unify the interpretation of the Article as stipulated in the Guidance document so that actors in the supply chain can avoid the fragmented compliance requirement in EU market.

## **22.2 RoHS**

The BRT requests an early issuance of a compliance guidance of revised RoHS (RoHS II) and FAQ (frequently asked questions) which should be prepared, beforehand, in collaboration with industrial associations including Japanese ones.

## **22.3 CLP Regulation (Regulation (EC) No 1272/2008 on classification, labeling and packaging of substances and mixtures)**

CLP regulation affects not only EU manufactures and importers but also exporters out side EU. While CLP is comparable to UN GHS, CLP does not take some of GHS classification but introduces EU own classification. As a consequence, the exporters to EU are forced to be compliant with both GHS and CLP. To alleviate a burden of exporters, we request flexibility in a way that EU accepts GHS classification and labelling at the custom clearances.

## **22.4. Nanomaterial Definition**

The commission recommendation on the definition of Nanomaterial (2011/696/EU) was published on 18 October, 2011. We request EU to state that a product in which the Nanomaterials are embedded shall be out of the definition scope. Moreover, we

expect EU to implement the prospective policy tools on nanomaterials taking into consideration the degree of exposure of nanomaterials released from the product.

Several EU member states intend to enact its own nanomaterial reporting scheme at national level. This intention incurs the manufacturers and importers of nanomaterials to make multiple reporting in each format, which shall cause inefficiency and confusion in the supply chain.

To avoid such drawbacks, we urge EU commission to take an initiative to elaborate a harmonized reporting system in EU level.

#### **WP-A / # 23 / J to E      Competition Policy**

There are guidelines in the determination of the amount of fines in case of an infringement of the competition rules. The BRT would like to see more clarity in the determination of the amount of fines so that businesses will not be unduly deterred and that the 'Europe 2020' will be achieved.

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

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

The new directive, however, still maintains the discretion of the Member States to set a guarantee period longer than 2 years set in the Directive 1999/44/EC, which the BRT believes could constitute an obstacle in the single market. The BRT would like to ask the European Commission to review the advantage and disadvantage of this discretion to set a guarantee period longer than 2 years in the future review.

#### **WP-A / # 25 / J to E      Market Surveillance under the New Legislative Framework**

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 to be 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 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.

#### **WP-A / # 26 / J to E      Japanese expatriates**

1. The Commission presented in July 2009 a proposal for a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (COM (2010) 378 final). The BRT believes such a directive to expedite and facilitate the transfer of intra-corporate transferees (ICTs) is important to increase the attractiveness of the EU for multinational businesses. However, the proposal could be further improved to facilitate the transfer of ICTs and their family members. The BRT believes a Directive should include the following measures:
  - 1) The maximum duration of the transfer to the European Union should be 5 years for managers and specialists rather than 3 years currently set in the proposal (Article 16.3);
  - 2) It should be possible for ICTs to submit the application for a work and residence permit after entering the assigned country based on the waiver of visa requirements;
  - 3) It should be possible for their spouses to be automatically granted the right to work upon their arrival.

4) The application of integration measures to ICTs should be voluntary.

## 2. Long-term residents

The BRT welcomes the report from the Commission on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (Com (2011) 585). The BRT has noted that the numerous issues pointed out in the report in the implementation of the directive including the weak impact of the Directive in many Member States.

The BRT welcomes the intention of the Commission to increase its efforts to ensure that the directive is correctly transposed and implemented across the EU.

The Directive 2003/109/EC is not applicable in the UK, Ireland and Denmark. Japanese nationals in the UK, where their number is the highest among EU countries, therefore, do not benefit from this Directive. The UK government should take action in order to enable them to benefit from the EU directive.