

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

Tokyo, 20 April 2018

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

Working Party Leaders:

*Co-Chair*

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

*Co-Chair*

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

*Vice Co-Chair*

Mr. Markus BEYRER  
Director General  
BUSINESS EUROPE

*Vice Co-Chair*

Mr. Shinji FUKUKAWA  
Senior Advisor  
Global Industrial and Social  
Progress Research Institute

## List of Abbreviations

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

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

## Introduction

Japan is the EU's sixth largest trading partner and the EU ranks as Japan's third largest trading partner. While already significant, this trade relationship has considerable upwards potential and the benefits of the EU-Japan Economic Partnership Agreement will stretch beyond the many European and Japanese companies already operating in each other's home markets to all those, attracted to the new opportunities it creates. Working Party 1 stresses that the implementation of the 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:

- Creation of a common regulatory environment, mutual recognition of regulations, standards and market authorisations to the extent possible, adoption of international standards and enhancing regulatory cooperation
  - Elimination of unnecessary barriers and bureaucracy
  - Ensuring fair competition and equal treatment of all companies, domestic & foreign
  - Ensuring fairer and more open competition in services
  - Improving conditions for foreign direct investment
- and finally,
- Pursuing simpler, lighter and sensible tax systems, including the implementation of the BEPS Actions without additional administrative burden

*Working Party 1 welcomes the conclusion of the EU-Japan EPA which was achieved last year and urges both governments to work for a swift entry into force by early 2019.*

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

## Recommendations from both European and Japanese industries

**WP-1 / # 01\* / EJ to EJ    Strengthening the EU-Japan Economic Relationship:  
Call for early entry into force of the EU-Japan EPA**

The BRT lauds the governments of the EU and Japan on the successful conclusion of the EPA. During the EU-Japan Telephone Summit last December, Prime Minister Abe and EU Commission President Juncker issued a joint statement confirming the finalisation of negotiations on the EU-Japan EPA.

The BRT strongly believes that the EU-Japan EPA, which is comprehensive, ambitious and mutually-beneficial, will unlock the potential of the EU and Japan economic relationship through further expansion of trade and mutual cooperation.

The BRT also welcomes the inclusion in the EU-Japan EPA of a framework to discuss issues on regulatory coherence and regulatory cooperation which aim at harmonisation of the regulatory environment between EU and Japan.

Given the significance of the EU-Japan EPA as mentioned above, the BRT calls on the Authorities of the EU and Japan to continue their commendable efforts in working with their respective legislative bodies and national governments for an effective Economic Partnership Agreement that would enter into force by early 2019.

**WP-1 / # 02\* / EJ to EJ    Recommendations for an ambitious multilateral trade agenda following the WTO Ministerial Conference in Buenos Aires**

Under the growing pressure of protectionism in the world, the EU and Japan must defend together with other WTO members the centrality of the WTO as the guardian of the multilateral trading system, and the value of WTO agreements as a basis of fair rules to maintain order in global trade and to promote further liberalization. The negotiating pillar of the WTO must be reinforced to better disseminate the benefits of global value chains, and the EU and Japan must play a central role in this regard.

Businesses also call on both authorities to safeguard the proper functioning of the enforcement pillar of the WTO, its Appellate Body. The current deadlock in the appointment of new judges means that the body is at risk of being paralysed later this year, undermining the possibilities for dispute settlement and encouraging WTO members to go beyond WTO rules in their attempts to remedy trade issues.

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

The BRT also welcomes the entry into force of the Trade Facilitation Agreement in 2017, which will serve as a boost to global trade by reducing costs of trade by 10-15% and adding \$ 1 trillion to the global economy. 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. It is now important that remaining WTO members ratify the agreement and that those who have already ratified ensure its effective implementation, making use of technical assistance where necessary.

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

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

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

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

The BRT anticipates the authorities of EU and Japan to lead the discussion of further expanding the product coverage and membership countries and regions for the Information Technology Agreement (ITA), as agreed in December 2015.

#### < Recent Progress >

The WTO Ministerial Conference held in Buenos Aires on 10-13 December 2017 could not reach unanimous consensus to adopt a ministerial declaration, and did not make an agreement on issues of negotiated areas, such as agriculture and fisheries. A number of WTO members expressed the following views:

- it is crucial for the WTO and its members to take into account concerns expressed against trade and globalisation, while ensuring that the multilateral trading system remains relevant and is updated to better respond to current challenges;
- 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. 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 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 9<sup>th</sup> and 10<sup>th</sup> WTO Ministerial Conferences held in Bali in December 2013 and in Nairobi in December 2015 respectively. Unfortunately, the 11<sup>th</sup> WTO Ministerial Conference held in Buenos Aires in 2017 resulted in very limited outcomes.*

**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.

Building on the last December's successful conclusion of the EU-Japan EPA, the BRT recommends the authorities of the EU and Japan to enhance their regulatory cooperation even further and to increase communication between the two economies. Needless to say, 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 even closer 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 welcomes the inclusion in the EU-Japan EPA of a framework to promote regulatory cooperation to ensure that the authorities of the EU and Japan not take unnecessary measures which act as an impediment to trade and investment.

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

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

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

The BRT calls on the Leaders of the EU-Japan Summit to ensure that the EPA will be a living agreement and will provide a solid and comprehensive framework for regulatory cooperation to address the sector-specific concerns of the business community. As a long-standing advocate of regulatory cooperation, and recognising that this is a key issue for the future, the BRT hopes that this joint initiative will reinforce and complement the upcoming EPA and set the frame for a solid, forward-looking and long-lasting regulatory cooperation. The BRT is willing to support the EU and Japanese Authorities on regulatory cooperation matters.

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

### <Background>

*The BRT believes that regulatory cooperation will be a key to the economic prosperity of the two economies. Given the successful conclusion of the EU-Japan EPA last December, it will be more important than ever 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.*

### 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. The two Authorities should enable mutual use of physicochemical properties and toxicity information which both governments hold. The two Authorities should then discuss on the basis of sound science the establishment of common hazard classification criteria, and harmonise the classification results. 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 disruptors 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 concepts of resource and energy efficiency, using the right incentives, standardised methodologies, criteria and a common format of environmental product declaration between the EU and Japan and cooperate with each other so that such policies are 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. Adoption of UN Regulations and promotion of regulatory cooperation in the automobile sector

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.

Furthermore, common regulatory environment brings benefits to the effective and efficient implementation of new technologies such as automated driving. Therefore, the BRT recommends that the EU and Japanese authorities work together to remove potential barriers in existing regulations, and aim to establish a well-designed and globally harmonised future looking regulatory framework on new technologies.

< Background for 5 >

*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 1-5 >

*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 Avoiding double contributions on social security**

The BRT welcomes the conclusion of social security agreements between Japan and 12 EU Member States. Negotiations or preliminary talks are under way between Japan and 3 EU Member States. The BRT requests that, Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements.

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

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

### **< Recent progress >**

There has been limited progress in the past year

### **< Background >**

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

## **WP-1 / # 05\* / 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 the authorities of the EU and Japan to ensure that the implementation of the BEPS Actions should not create additional administrative burden on businesses.

The BRT welcomes the agreement by OECD/G20 countries to implement the master file-local files system in the transfer pricing documentation in BEPS Action 13. The BRT eagerly awaits coherent and successful implementation in the bilateral and multilateral relations between the EU Member States and Japan in a way that will reduce the compliance costs and uncertainty significantly. In this respect, there are some countries who appear to be seeking CbCR directly from MNE's subsidiaries situated therein, as opposed to the OECD's suggested protocol where CbCR should

only be filed by the MNE's top parent company with the tax authorities of the ultimate parent company's jurisdiction, and any subsequent sharing of CbCR between various countries where the MNE's subsidiaries are located shall be done under the exchange of information clause of respective tax treaties. The BRT recommends that the OECD suggested protocol should be adhered to by the countries where MNE's subsidiaries are situated.

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

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

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

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

The BRT requests that the tax authorities in European countries give the utmost consideration to the implementation requirements in other jurisdictions before implementing new tax rules, which may or not be BEPs Action 13 and 17 related.

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

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

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

1. Pursue simpler, lighter and sensible tax systems that will lead to growth and innovation. A simple, light and sensible tax system will reduce the incentive to avoid or reduce taxation. It should include participation exemptions that will

exempt dividends and capital gains received from business investment above a certain holding threshold from further corporate taxation.

2. Reduce administrative burden. The more complex a tax system and the heavier the tax burden, the more time and money both businesses and tax authorities spend merely to comply or enforce.
3. Promote healthy competition in attracting investments. In the majority of investment decisions, a combination of tax, human resources and infrastructure plays the decisive role. The authorities of the EU and Japan should promote and compete on the three factors in a healthy way in order to attract investments.
4. Eliminate double taxation. Double taxation still weighs heavily on cross-border business activities. The EU Member States and Japan should modernise the tax treaties between them and ensure, to the greatest possible extent, that dividend, royalty and interest payments are exempted from withholdings taxes.

#### <Recent Progress>

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

#### <Background>

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

### **WP-1 / # 06\* / 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. Additionally, the BRT maintains its serious concerns where bank levies or similar are introduced and are calculated based on the balances of financial institutions. The concerns are similar to those highlighted for the FTT.

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

#### < Background >

The EC announced proposals in September 2011 to impose a Financial Transaction Tax on financial instruments between financial institutions when at least one party to the transaction is located in the EU. However, it has since concluded that a common FTT system could not be attained within a reasonable amount of time by the EU as a

whole. On 14 February 2013, the EC published a proposal for a Council Directive implementing enhanced cooperation between 11 Member States in the area of financial transaction tax (Now 10 Member States due to the exit of Estonia). Due to the intricate discussion such as the scope of taxable derivatives, implementation date has been postponed several times from initial January 2014. As of today, no date has been set for a final agreement.

## Recommendations from European industry to Japan

### **WP-1 / # 07 / E to J      Harmonisation & mutual recognition of standards and product certifications; acceptance of international standards where applicable**

Industry still faces standards and products certification that are not harmonised with international standards or regulations. Furthermore, some overseas approvals, despite having been issued in accordance with EN and or ISO, are not recognised by the Japanese authorities. This leads to delays in 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 EPA.

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

#### <Recent progress>

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

## Construction Products

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

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

### < Recent progress >

There has been some progress, however much work still remains. We furthermore note that the Japanese government did not respond to the issue of discrepancy between ISO and JIS/JAS in its progress reports of April 2013, April 2014, April 2015, 2016, as well as in 2017, but rather chose to focus on the possibility for overseas test facilities to carry out testing in accordance with JAS/JIS.

### < Background >

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

## Railways

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

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

### < Recent progress >

Some progress has been made in the past, and the EPA covered these issues quite extensively. Therefore the BRT is slightly more optimistic about the future. However, it is difficult to analyse exactly what progress has been made. The core issue still remains that there is no common conformity assessment scheme in Japan to which all operators adhere. The BRT takes note of the efforts of some operators in publishing a list of potential future procurements, and views this as a good first step to improved market access.

< Background >

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

Processed Food

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

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

< Recent progress >

Sanitary and phytosanitary issues were discussed under the EPA and a whole chapter is dedicated to this. However as with many other areas, it is difficult to say exactly what the practical outcome will be. While not necessarily the same in detail, it is fair to say that the WTO SPS agreement has not been enough to remedy all problems. It should be noted though that thanks to the EPA, Japan has approved a number of food additives, both for food and drinks.

< Background >

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

### LED lamps and luminaries

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

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

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

< Recent progress >

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

< Background >

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

### Labelling rules

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

< Recent progress >

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

< Background >

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

**WP-1 / #08 / E to J      Self-verification and risk assessment**

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

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

< Background >

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

**WP-1 / # 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. Recently, both METI and JAMA have suggested to reduce the level of discrepancy to the order of 1:2.

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

< Background >

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

**WP-1 / # 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 and Japan. However, despite Japan having implemented Phase I, HFCV tanks imported into Japan would still need to meet Japanese unique national requirements concerning metal materials. Whereas the EU uses a performance-based approach to approve hydrogen compatible materials, Japan's approach is more prescriptive, in effect limiting the choice of materials to very few specific types of stainless steel and aluminium.

#### **WP-1 / # 11 / E to J      Freight and logistics**

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

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

- Reducing the physical examination of shipments
- Being able to use alternative documentation for showing "direct shipment" under free trade arrangements
- Using a bonded warehouse as a port of first entry in regards to products covered by quarantine related regulations.
- The use of double printed documents.
- Electronic Delivery Order for ocean freight
- Smartboxes should be allowed to be part of the container. Only in Japan does this have to be declared as part of the cargo, hence it has to be declared for import.

The Japanese Government should furthermore take a lead in trying to digitalise the industry as currently sector parties, including large companies, are still using fax and "paper" orders. With increased difficulties in securing human resources, it is of utmost importance that effective solutions are implemented.

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

< Recent progress >

Japan Customs deregulated customs clearance beyond the local customs jurisdiction territory in October 2017. The BRT applauds this change which is a significant improvement that industry has long requested.

< Background >

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

**WP-1 / # 12 / E to J      Aeronautics**

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

< Yearly Status Report >

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

<Background>

*With the purpose of expanding airport capacity in response to the increase in air travel demand as well as to reduce congestion, a fourth runway (D runway) and an international terminal were opened in Haneda in October 2010. So far, the focus has been on flights to and from Asian countries, but its use for long-haul international routes is expected increase in the future. The number of flights will grow together with the demand but will be limited in the end by the capacity in terms of slots. The recent dramatic increase in the number of foreign visitors to Japan, just under 20 million in 2015, has caused the GoJ to revise the target upwards to 40 million for 2020. The average size of aircraft (230 seats) departing from Haneda is now lower than it was in 1980 (240 seats) when 747s were used domestically. To see traffic grow at Tokyo's airports and more specifically Haneda, work needs to be done to ensure that larger aircraft can be used at Haneda. In this regard, the use of new and larger aircraft will be an important part of the airlines' strategies. Under such circumstances, aircraft weight restrictions on the D runway could impede the conversion of Haneda Airport to the use of larger and newer aircraft. New aircraft such as the A350 and A380 are significantly quieter and more environmentally friendly than older aircraft now in use at Haneda airport and, with plans to overfly the city to increase flights to and from Haneda,*

*it is essential that quiet aircraft are used as much as possible. In order to avoid disturbing the flow of the Tama River, the D runway was overhauled using a pier-like structure instead of a conventional landfill. Due to this, weight restrictions have been placed upon the aircraft in use, and with the entire lineup of Airbus' newest A380 and A350 series exceeding the weight limit, these aircraft could no longer be used as they currently are (cf. chart below).*

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

### **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.

On the other hand Japan has improved the situation for foreigners in regard to inheritance tax policies. It should however be pointed out that the Japanese inheritance tax law is extreme in that it combines high tax brackets with a low deductible amount for the immediate family

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 third 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 2016 inward FDI stocks was accounted for only 3.9% of GDP, a slight reduction from the previous year.*

## **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 removing the “operational safety clause” within the transport sector. Japan should also include more cities in the GPA as currently only nineteen are included.

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

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

< Specific Recommendations >

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

Japanese authorities have any data on the increase of open calls for tenders due to the changes in the definition of the OSC.

< Recent progress >

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

< Background >

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

## **WP-1 / # 15 / E to J      Financial reporting**

### Recommendation:

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

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

< Recent progress >

New recommendation

< Background >

*The global push to integrate financial reporting standards and enhance cross-border compatibility continues to gather steam with an increasing number of companies adopting International Financial Reporting Standards (IFRS) in Europe and Japan. However, challenges remain for multinational companies headquartered in Europe with significant subsidiaries domiciled in Japan. This is because such subsidiaries will*

---

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

*often continue to report under local Japanese Generally Accepted Accounting Principles (J-GAAP) as published by the ASBJ for statutory reporting purposes and yet they must then perform reconciliations to IFRS for group reporting required by their parent. Any reduction in the need for such reconciliation and IFRS would decrease the administrative burden on these subsidiaries.*

## Recommendations from Japanese industry to the EU

### **WP-1 / # 16 / J to E**      **Concern over Brexit**

The BRT urges the EU and the UK to pay utmost attention to minimise the adverse impact on businesses which the UK's withdrawal from the EU may cause.

Needless to say, Brexit will impact both European and Japanese businesses. In particular, Japanese businesses operating in Europe which have built up integrated supply chain between the EU and the UK will be deeply impacted. Therefore, it is crucially important for the Japanese businesses to maintain frictionless trade such as no tariff and minimum custom procedures between the EU and the UK. Moreover, Japanese businesses operating in the EU has a strong need for free and open business environment across Europe which include unfettered investment, smooth services and financial transaction, harmonised regulation and standards, and access to workforces with necessary skills.

Therefore, the BRT urges the EU and the UK to seriously consider such concern of Japanese businesses, and through constructive negotiation, to find a solution to maintain the current business environment to a maximum extent and to avoid any radical changes that would potentially impact businesses.

*< Recent Progress >*

*This is a new recommendation.*

*< Background >*

*Following the outcome of the referendum which the UK voted to leave the EU, British Prime Minister Theresa May triggered Article 50 of the Lisbon Treaty on 29 March 2017. As a consequence, the UK is going to leave the EU on 29 March 2019, but there are concerns among businesses whether an orderly Brexit with open and frictionless future economic relationship between the EU and the UK could be achieved.*

### **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 same as the EU companies.
  - If the thresholds of new SVHCs are too low, for example, in the units of ppb rather than the units of ppm, there will be practical difficulties for

manufactures and importers to implement it effectively as it will be too difficult to measure correctly.

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

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

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

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

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

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

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

4. European Commission is planning to review the REACH regulations, and it includes the establishment of the registration rules for polymers which have risk for human health and the environment. In the current REACH regulations, only the monomers registrations of which polymer consist are required, and the polymer registration is not. The BRT requests that European Commission abolish the current monomer registration rules through the review, and change rules into the polymer registration which has risk for human health and the environment. The monomer registration is required only by REACH regulations in the world, and in the other nation's rules such as the Chemical Substance

Control Law of Japan and TSCA of America, the notification of polymer which has risk for human health and the environment is the main stream. After 10 years from REACH started, it has become evident that the monomer registration has many problems. It spends much labor, time and cost of non-EU companies, but it cannot provide for EU companies the enough information about hazard for human health and the environment and chemical exposure.

< 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.

## **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**

To alleviate burden on both EU importers and non-EU exporters, the BRT requests that the authorities of the EU should establish a common classification criterion based on GHS through the discussion based on the sound science with the Japanese government, and harmonise the classification results.

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. General recommendations**

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. Specific recommendations**

#### **(1) Definition of Nanomaterial**

The BRT requests that the commission recommendation on the definition of nanomaterial that is under the review in the European Commission should reflect the results of the public consultations, which will be conducted shortly, and be internationally harmonized.

#### **(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) Report and Registration System**

The amendments of the Annexes to REACH for registration of nanomaterials was released on October 2017, and the public consultations had been conducted for about a month. The BRT requests the EU authority to fully reflect the opinions of the public consultations, and to make the registration system which requires registering only what have any risks. There are some materials which have no risks resulting from nano size. Also, the nanomaterials, which have little possibility of exposure as it is fixed in the matrix like incorporated within the resin, should be exempted from the registration requirements which will be added in coming amendments.

The current report requirements for nanomaterials reportings are separated at each Member States, and it becomes a significant burden for industries, especially SMEs. So the BRT requests the EU authority to take an initiative in the establishment of the harmonized reporting system at the EU level.

### **< Recent Progress >**

*Little progress has been made:*

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

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

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

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

#### *< Background >*

*The European Commission Recommendation on the definition of nanomaterial (2011/696/EU) was published on 18 October, 2011. Several EU Member States plan to enact their own nanomaterial reporting schemes at a national level. It would oblige their manufacturers and importers make multiple reporting in different formats, which would not only be inefficient but also create confusion in their supply chains. Different measurement methods are used in the measurement of nanomaterials to meet regulatory requirements such as notification. As a result, there is a risk that the results of measurement by different actors are not comparable.*

## **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 >*

*There has been some progress.*

#### *< Background >*

*The BPR (Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products) requires that treated articles may not be placed on the market unless all active substances contained in the biocidal products with which the articles are treated or which they incorporate are approved. This requirement places large burden and costs on industry, in addition to existing legislation mechanisms to restrict and control hazardous chemicals (e.g. REACH, RoHS), resulting in possible cessation of technologies, and consequent impact on competitiveness for manufacturers or importers placing goods on the EU market. The BRT is concerned that this is disproportionately impacting on non-EU manufacturers and importers because such active substances to be regulated are often sourced from SMEs and*

*companies with limited sales to the EU which cannot afford to undertake the requirements of the BPR, resulting in a loss of functionality, and in turn limiting the technologies and potential innovations reaching the EU market. As a result the BRT recommends an assessment of the impacts of this regulation via an evaluation of socio-economic versus human and environmental benefits for treated articles measures under the BPR.*

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

## **WP-1 / # 18 / J to E**

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

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

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

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

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

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

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

The BRT would like to suggest that, if the Member States should find it difficult to agree on the CCTB/CCCTB proposals, they should move on to the enhanced cooperation procedure swiftly so that CCCTB would be first implemented by the Member States that support them.

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

< *Recent Progress* >

*There has been certain progress because the European Commission relaunched the proposals.*

< *Background* >

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

*The European Commission re-launched the legislative proposals on the CCCTB on 26 October 2016. The first step is a Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) COM(2016)685 and the second step is a Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM(2016)683.*

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

**WP-1 / # 19 / J to E      Sustainable European Future**

**Policy on CSR/RBC and SDGs**

In its Communication on “Next Steps for a Sustainable European Future” published on 22 November 2016, the European Commission laid down its plans to intensify the work on Responsible Business Conduct (RBC/CSR). BRT welcomes its direction and recommends as follows;

- Integrate SDGs/CSR in the EU policy-making and take lead in policy discussions on how to encourage the uptake of SDGs/CSR and promote actions to maximise positive impacts while mitigating negative ones.
- Build an open platform beyond EU Multistakeholder Platform on SDGs: The European Commission should open up dialogues and consultations beyond the EU Multistakeholder Platform on SDGs. The EU’s global partners such as Japan would be particularly beneficial not only to exchange best practices with, but also gathers views on the future discussion. The EU-Japan CSR Working Group, one of the technical working groups set up by DG GROW and METI within the EU-Japan Industrial Policy Dialogue is one of the existing platforms for a vital bilateral dialogue to supplement other multi-stakeholder mechanisms.
- Do not reinvent the wheel and build on the past experience: There exist many frameworks and collaboration platforms on sustainability involving companies and stakeholders following the EU CSR policy. We should focus on these collective achievements to identify best practices, knowledge for further innovation and collaboration to achieve SDGs.

## **Responsible supply chain management**

The BRT welcomes the European Commission's commitment to support the implementation of internationally recognised frameworks such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance. The BRT also values the Commission's engagement with non-EU countries to advance this agenda.

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

- Promote internationally recognized frameworks in the EU that take a risk-based approach instead of adopting the EU-specific conditions. This allows companies to be globally consistent in taking meaningful actions. Such frameworks include the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance;
- Avoid creating unnecessary administrative burdens that would hamper companies' learning. There are more and more legal and non-legal requirements on due diligence and transparency emerging around the globe which makes companies busy with meeting different requirements. The commission should play a leading role to navigate the trend to focus more on what is really important and meaningful to meet the objectives that is to mitigating the negative impacts.
- Take leadership in closing the governance gap between countries and regions in order to effectively address the fundamental problems on the ground. BRT recognizes that the efforts of industry alone cannot ensure responsible sourcing from such regions. It is crucial that national governments get involved and collaborate. Here, the EU diplomacy has an important role to play. The BRT supports dialogue and engagement with stakeholders. It is the best method for driving collaboration across different cultures and systems and for creating value for business and society.
- Create an environment where companies are encouraged to establish responsible supply chains. Companies which diligently tackle the issue should be recognised for their efforts and progress and the quality of their management processes.

## **Disclosure and transparency**

Disclosure of information is the first step for companies to communicate the value which it creates and has a potential to create trust among stakeholders..

Regarding non-financial reports, they are a vital communication tool, provided that the reporting company retains discretion in determining to whom it intends to disclose and what material is. Materiality differs for each company, depending on the nature of business, the perspective of top management and corporate culture. Due to this varied character of materiality, companies should be given the flexibility in deciding what to report to express company's value creation. Therefore, a principle-based approach is the only viable way for companies to meaningfully explain their business in a dynamic and changing environment.

The BRT recommends as follows:

- Emphasize dialogue in policies as an equally valuable means for companies to strengthen the trust of their investors and stakeholders, and leverage the improvements of companies' internal practices by incorporating dialogue into the PDCA management cycle. Dialogue is a powerful tool in fostering a culture of risk management and innovation, whereby companies across different cultures can exchange views on potential future risks as well as explore collaborative opportunities;
- Approach non-financial reporting not from a compliance mindset, but by building meaningful channels for companies and investors to discuss value creating processes.
- Foster innovation and growth by motivating companies to integrate CSR/SDGs into daily business to become more innovative and competitive in the global context, including through open exchanges among stakeholders, partner countries or regions, governments and suppliers;
- Do not create and impose EU only monitoring/reporting mechanism on companies regarding the contribution towards SDGs. Monitoring is meaningful if focused on the impacts and improvements which are important for companies. EU should collaborate with other countries such as Japan in creating such monitoring mechanism.