



**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**

Working Party Leaders:

Co-Chair

Mr. Tommy KULLBERG
Chairman
European Business Council (EBC)
in Japan

Vice Co-Chair

Mr. Philippe DE BUCK
Director General
BUSINESS EUROPE

Co-Chair

Mr Hitoshi KAWAGUCHI
Senior Vice-President
NISSAN MOTORS Co., Ltd.

Vice Co-Chair

Shinji FUKUKAWA
Senior Advisor
Global Industrial and Social
Progress Research Institute

Recommendations from both European and Japanese industries to the EU and Japan

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

Japan and the EU together account for more than one-third of world GDP and 22.4% of world trade. However, EU exports to Japan amount to less than 2% of Japan's GDP, well below the level in the EU's other key markets, indicating that Japan offers the EU enormous untapped trade potential.

Under the existing 2001-2011 EU-Japan Action Plan, non-binding instruments, such as the Regulatory Reform Dialogue, aimed at improving the respective business environments and developing bilateral trade, have delivered only extremely limited results. As a result, this huge growth potential in trade and investment remains untapped.

In 2010, EU-Japan Business Roundtable recommended that negotiations on a balanced and mutually beneficial bilateral agreement should start as soon as the EU and Japanese Authorities agree that the right conditions are met, in order to promote an ambitious expansion of trade and investment between the EU and Japan. Working Party A repeats this call for the removal of barriers to trade and investment by addressing a broad range of trade issues, including harmonisation of standards and certification procedures, mutual recognition of product certification and, when possible, and appropriate, the mutual acceptance of functionally equivalent regulations. Other areas, such as competition rules, services, procurement, investment rules, the protection of intellectual and industrial properties, and cooperation on raw materials should also be addressed.

WP-A / # 02 / EJ to EJ Support of WTO Doha Development Agenda for fight against protectionism

Although the global economy is growing again, protectionist risks remain high. The Working Party is concerned about global imbalances and sharp currency fluctuations which are pushing countries to intervene in currency markets or through capital controls in what appears to be a classical game of currency devaluation. High



commodity prices are pushing countries to adopt highly interventionist policies to secure food and raw materials supplies. Moreover, export restrictions are on the rise.

The G20 Summit in Korea in 2010 gave a new impetus to the Doha Round and technical negotiations have resumed in Geneva. WTO Director General Pascal Lamy has called for the start of a “final countdown” in 2011 in view of the next WTO ministerial conference on 15-17 December 2011 in Geneva. The impasse in the negotiations must be overcome in order to achieve a rapid and ambitious conclusion.

The Working Party recommends that the EU and Japan intensify their efforts to jointly push for a more ambitious outcome. Together with other partners (like the US) they should engage jointly with key emerging countries (in particular Brazil, India and China) to secure market access on industry and services that reflects their growing economic weight. It is important to note in this light that during the economic crisis, countries like China, India and Brazil have increased their competitiveness and trade market share. Improved market access must be obtained in the Doha Round, and not in any future trade round.

The draft agreement on industrial goods (December 2008 texts on NAMA) should be improved to support growth and development more. In the current modality, emerging countries make too few commitments and receive too many exceptions. Specific tariff and non-tariff sectoral agreements in goods (chemicals, machinery, electronics/electrical), agreements on services including elimination of foreign equity limitations, and agreements on trade facilitation of clean technologies – (for renewable energy and energy efficiency products – provided a sector can be delimited in a clear and non-discriminatory manner) should all be part of a more ambitious Doha outcome. Given their dependence on external raw materials supply, the EU and Japan should also strongly make the case for strengthening disciplines on export restriction. The EU and Japan should also move ahead with parallel tracks for action within the WTO, for example on the trade facilitation package. An ambitious and binding trade facilitation agreement would help significantly to facilitate trade for both developed and developing countries and to reduce costs for importers and exporters.

In the current GPA revision by major trading partners, the EU and Japan should also press for the suppression of unjustified exemptions and derogations of GPA rules.

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

1. The Working Party urges both authorities to adopt international product standards and certification procedures where applicable, and, to promote harmonisation of

standards and certification procedures, mutual recognition of product certification and, when possible, and appropriate, mutual acceptance of functionally equivalent regulations governing the application process for importing and selling/using products in sectors such as Construction Materials, Organic Products, Cosmetics, Medical Devices, Veterinary Products, Automobiles and Processed Food.

2. The Working Party recognises the importance of global patent harmonisation and streamlining of the patent system as a way to promote innovation, reduce costs and boost legal certainty. The authorities of the EU and Japan should take the lead in these efforts.
3. 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; for example, once an economic operator is approved as an AEO in Japan, its status should be extended to its subsidiaries in the EU, and vice versa.
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.



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

1. Social security contributions (avoiding double contributions):

The Working Party welcomes the conclusion of more agreements between Japan and the EU member states in 2010 and that further agreements are under consideration. However, Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements. In addition, they should introduce an interim measure, by which a host country should either exempt contributions to pension funds unilaterally or refund the contributions in full when expatriates return to their home country.

2. Personal data protection regime:

The Working Party believes that the ultimate objective of personal data protection for individual business is to adopt and implement a reliable and cost-effective personal data protection system at 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 that the review currently underway in its Special Commission about Personal Data Protection in the Consumer Commission, in which the revision of the law itself may be considered, should pay due attention to the international aspects of personal data protection and, in particular, the issue of the absence of the adequacy status with Japan under the EU Directive 95/46/EC. 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. We believe that such improved legal certainty would support and



enhance the application of new technological developments while maintaining the degree of data protection currently provided.

WP-A / # 05 / EJ to EJ Cooperation in the area of climate change and environment

1. Collaboration to advance new technologies for more efficient energy use

Global warming is a global challenge that is high on the political agenda of both the EU and Japan. Over the next decades the world will drastically have to change the way it produces and uses energy in order to save resources and contribute to limiting global warming to 2° Celsius in this century. This will require a wide range of low-carbon solutions. Much of the required emission savings need to come from more efficient energy use in homes, business and transport. Many goods and services can contribute to environmental improvements including the fight against climate change, and have the potential to create huge business opportunities. European and Japanese companies are at the forefront of developing technologies for low-carbon solutions. The Working Party recommends that the EU and Japan should work together, for example, through common standards and testing procedures, and by fostering industry cooperation to advance these technologies and create larger markets.

2. Integrated Approach for CO2 emission reduction

Although Japan and Europe still have relatively high per-capita emissions, their relative share in global greenhouse gas emissions is steadily decreasing. Both the EU and Japan are adopting challenging targets to reduce the level of CO2 emissions. For example, in the transport sector, in addition to better engine performance, various measures including improvement of road systems and traffic flow, improvement of fuel quality, education of drivers toward eco-driving and fiscal incentives to encourage the purchase of more fuel efficient cars are important. An integrated approach that combines the efforts of all relevant parties involved, including the auto industry, the fuel sector, policy makers and drivers, to achieve the objective of CO2 reductions is the most balanced and realistic way to achieve this goal. Working Party A supports this approach, and urges the EU and Japanese Authorities to cooperate in the transport and other sectors to achieve the highest reductions possible at the minimum social cost.



WP-A / # 06 / EJ to EJ Better Regulation

The Working Party recommends that Japanese and European policy-makers increase mutual understanding of existing and upcoming regulations on each side 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. 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.

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

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

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.

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 working Party requests the abolishment of this need for supplementary organic certificates.

Cosmetics

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

regulations on efficacy claims and advertisements; a common positive list of allowable ingredients in cosmetics; and establishment of joint standards for alternatives to animal testing.

Railways

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

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 Working Party calls on the government of Japan to intensify the work to simplify and harmonise the regulatory processes in the field of Medical Devices with that of the EU. Japan needs to reduce the time and costs associated with introducing innovative new treatments in the human healthcare market in Japan and to bring Japanese rules in line with global standards.

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

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

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

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

Veterinary Products

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

- a) Urges the Government of Japan to take all measures available to speed up product approvals and fully harmonise domestic regulations with international practices.
- b) Requests Japan to work towards mutual recognition of European and Japanese marketing authorisations for veterinary products. This should start with mutual recognition of GMP certification for veterinary medicines. Harmonisation of regulations on animal vaccines, and ensuring product conformance under a unified GMP regime, should also be addressed.

Automobiles

In 1998, Japan became the first country in Asia to accede to the UN-ECE 1958 Agreement on the Mutual Recognition of Type Approval for Vehicles etc, which provides that vehicle components 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 40 out of a total of 127 ECE Regulations. The Government of Japan is therefore urged to accelerate its adoption of ECE Regulations to lower the cost of regulatory compliance for both European and Japanese automobile exporters by extending the benefits of mutual recognition.

As new power-train technologies - electric vehicles, hybrid vehicles and fuel-cell vehicles – are developed, the Government of Japan should work with the EU to establish internationally harmonised technical requirements that will encourage the smooth market adoption of these new environmentally friendly technologies. Compared with other countries, Japan imposes an excessively heavy tax on the purchase and ownership of motor vehicles. As part of the proposed comprehensive review of the taxation of automobiles which will take place in FY 2011, the Government of Japan should:

- Abolish the Automobile Acquisition Tax and Tonnage Tax.
- Simplify the structure of the tax on automobiles and reduce the overall tax burden on motorists in line with international best practice.
- Adopt and implement as early as possible internationally harmonised standards for measuring fuel efficiency and exhaust emissions to assess environmentally friendly vehicles.

“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. The Government of Japan should take advantage of the review of the taxation system to put kei cars and other motor vehicles on the same fiscal and regulatory footing.

Processed Food

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

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

9. Labelling rules

The Household Product Quality Law and accompanying voluntary labelling guidelines, “hyojikitei”, prescribe in extreme detail how household products should be labelled when sold in Japan. The Government of Japan should issue clarifying orders to provide retailers with flexible alternatives for providing

Japanese consumers with globally sourced products while taking full responsibility for the quality and safety of the products. A simple example of an inflexible labelling rule that has substantial labelling cost implications for European companies is that the dimensions of furniture must be expressed in millimetres and not centimetres, although use of the latter is common practice in other countries using the metric system.

WP-A / # 08 / E to J **Ensuring free and open competition in services**

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

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.

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.

WP-A / # 09 / E to J Promoting foreign direct investment

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

Moreover, while such improvement of the generic investment environment is a precondition, regulatory reform is the best motivator for foreign companies to enter the Japanese market. In the sectors where 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.

WP-A / # 10 / E to J Fight against counterfeited, pirated and contraband goods

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. The Government of Japan needs to 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.

WP-A / # 11 / E to J Government procurement

The Government of Japan should increase its effort to facilitate better access to the public procurement market in Japan. Studies have shown that over 80% of the total government procurement market in Japan is not covered by GPA (The Agreement on Government Procurement).¹ One way to combat this could be to lower the threshold for public tenders. Currently some sectors are exempted from the threshold of 5 million SDR (special drawing rights). Another example would be to better define the “operational safety clause” within the transport sector. The Working Party furthermore requests Japan to set up a single access point to fully cover all tenders, as well as facilitate the use of e-procurement.

WP-A / # 12 / E to J Aeronautics, space and defence

1. Space-related matters

The Japanese Authorities are contemplating space operations legislation that would require Japanese users of satellite launch services to obtain official approval before they contract for a launch, and would also require them to only use reliable launch service providers approved by the Japanese Authorities. If the Japanese Authorities do promulgate such a system, we request that it be fair and consistent with world practice, i.e., as similar as possible to the regime established by the French Space Operations Act of June 2008 and associated by-laws.

Japan's international procurement of space ground equipment is often broken up in small lots that are, in fact, tailor-made for individual Japanese suppliers. Integrated systems have better cost performance, are more reliable, and should not be excluded.

2. Level Playing Field in Civil Aeronautics Markets

Europe's wide-body civil airliners have not made significant inroads in the Japanese market, and Japan's business aircraft have not made significant inroads in the European market. The Authorities of Japan and Europe should encourage

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

competition and facilitate the entry of each other's aircraft on their respective domestic markets on the basis of reciprocity. Customers' procurement decisions should be made on a competitive basis, free from irrelevant influence. For the benefit of customers, shareholders, taxpayers and the general public, airlines and other major customers should be encouraged to diversify their sources of supply. In order to avoid undue influence on the procurement decisions of commercial airlines, cooperation in aeronautics should not be biased towards US industry, but should be significantly increased between the EU and Japan.

3. Establishing EU-Japan dialogue on defence industry issues

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. To encourage the deepening of this collaboration, we propose:

- 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
- Japan allocate to Europe some proportion of its funds for Japanese officials to undertake fact-finding visits to overseas defence industrial sites.

Recommendations from Japanese industry to the EU

WP-A / # 13 / 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.

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

WP-A / # 14 / 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). We believe 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. We believe 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. More than five years have passed since the due date of the transposition into the law of the Member States of the Directive 2003/109/EC on long-term residence status. The first report required under the Directive was due by 23 January 2011.



We look forward to hearing from the European Commission about the actual state of its implementation in each Member State.

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.

WP-A / # 15 / J to E EU Patent and Patent Prosecution Highway

1. We welcome the launch of an enhanced cooperation procedure on the creation of unitary patent protection authorised by the Council on 10 March 2011. We would like to urge the EU and its Member States to adopt and implement an EU Patent together with the European and EU Patent Court as soon as possible. We expect that each EU member state which agrees this system will approve ratification since the beginning
2. The Patent Prosecution Highway (PPH) aims to facilitate, and enhance the quality of patent examination at a participating IP office, by utilizing and sharing the result of examination at another participating IP office. Therefore, the PPH is highly beneficial for patent applicants as it will expedite and improve examinations. The EPO has been conducting a trial of the PPH with JPO and USPTO. The PPH has been implemented between JPO and USPTO since 2008. We would like to urge the patent offices of the EU Member States to participate in the PPH.

WP-A / # 16 / J to E Fight against counterfeited, pirated and contraband goods

We would like to see the EU to take further necessary steps such as a possible proposal for modification of the Enforcement Directive with a view to step up efforts in all the EU Member States to fight against counterfeited, pirated and contraband goods, both inside and outside the EU. We 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 / # 17 / J to E Competitiveness of the EU economy

1. Europe 2020 and the Single Market Act

We express our continued support for Europe 2020. In particular, we support the Single Market Act - the initiative of the European Commission to relaunch the single market.

- We would like to repeat the importance of the single market for the EU and the Europe 2020 strategy.
- We believe that the single market can offer even more growth and jobs when its full use is realised.
- We agree to the Commission's statement that the lack of regulatory convergence internationally is a major obstacle to international trade. We believe that the EU should go further than deregulations and should aim to build an area of common regulatory environment internationally.
- The EU should make utmost efforts to realise the 50 proposals in the Single Market Act by 2012.

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

The EU is protecting some sectors of its industries by maintaining high customs tariffs, for example 14% for audio-visual products and 10% for passenger cars, even though these industries are at the forefront of international competition and

need stimuli for competition rather than protection. Such protection will not help enhance international competitiveness of those sectors. Furthermore, it is only their users and consumers in the EU who unfortunately have to pay the resulting higher prices. The European Commission and the member states should abolish or drastically reduce these high customs tariffs.

3. Customs Classification

We believe that customs classification should be done in accordance with the Harmonized System Convention rules. However, we also believe it to be a fact that the rules do not provide a clear method of classification for such products as electric-electronics products, where the technical convergence of IT and non-IT products has emerged. This situation makes interpretation and classification more difficult and complicated than ever, and has undermined transparency, predictability and promptness for businesses. It is requested that the EU acknowledges the concerns and difficulties the businesses are facing, and based on the panel reports by WTO issued on information technology dispute last August, 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.

4. Taxation

4.1 Common Consolidated Corporate Tax Base

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

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

4.2 Merger Directive



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

4.3 EU TPD

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

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

5. Competition Policy

There are guidelines in the determination of the amount of fines in case of an infringement of the competition rules. We 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 'Lisbon Strategy' will be achieved.

6. REACH

The EU regulation of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) has been put into effect since June, 2007. Since the entry into force of REACH, many of those tasks, including the provision of information on REACH to companies and the general public, have been transferred to the European Chemicals Agency (ECHA).

We successfully reached and passed the first deadline of registration thanks to all stakeholders' contribution last year. From this great achievement, we have learnt so many things, such as importance and difficulty of information exchange through supply chains. We recommend that the EU government takes further actions for education and capacity building in developing countries for compliance with REACH. We also request consideration by the EU government to establishing certain lead-times or grace periods for compliance in cases involving developing country parties in supply chains.

Notification of substances in articles under Article 7 (2) of REACH will be starting from June 2011. We are making our best effort to comply with the regulation. We request the EU to organize consistent implementation of REACH at Community level, especially in notification, based on the ECHA's guidance document under preparation now.

Under draft RoHS Directive which is currently being reviewed (as of Feb. 2011), it is obligatory to put CE mark on the subject products. The current legislation which requires CE mark, entails technical documents. But this does not cause major problems because the data which was measured for a specific product, can also be used for all the products within a certain error range. However, the draft Directive requires data on the basis of homogeneous materials, and it will be necessary to measure and record each time the lot of the each parts' materials change. It is almost impossible to take such procedure for the products which are composed of many parts. Therefore, we wish to express that the technical documents in RoHS should aim at the systems of compliance rather than the data themselves, in order to avoid unreasonable obligation to the industry and to implement legislation practically.

7. Consumer protection

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

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

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

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



We fully support the direction taken by the European Commission on CSR, particularly the increased attention to the impact that EU policies have beyond its borders and to the role it plays in coordinating with other nation states to encourage companies to use their potential for achieving the common goals of sustainable development. We strongly support the recent efforts to improve transparency by facilitating all-inclusive stakeholder dialogue on Environment, Social and Governance (ESG) disclosure.

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

We therefore recommend that the European Commission should:

- create a non prescriptive approach to ESG disclosure;
- create an EU-wide approach in the global context; and
- encourage and motivate information users such as investor communities and analysts to understand non financial aspects of companies and integrate them in their evaluations.

9. 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.

We support 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. We request 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. We also request the European Commission and the Member States to give industry an opportunity for contributing to developing the framework of harmonised market surveillance.