

2011 Report of JBCE

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Japan Business Council in Europe (JBCE)

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1 Executive summary

We are presenting this year's Report of JBCE at a difficult moment in Japan. The earthquake and tsunami that struck the north-eastern Japan on 11 March left serious damages to the country. We would like to express our deep sympathy to those who suffer from the disaster and wish a swift recovery from it. We would also like to express our high appreciation towards the solidarity shown by the EU, its Member States and their people towards Japan and its people.

We have become aware that, although it was an immensely unfortunate event, it could trigger profound changes both in Japan and in its relation with the EU.

First, the very need to reconstruct the society and the economy could accelerate changes in Japan towards more dynamic and open economy.

Secondly, the willingness of the EU to contribute to the reconstruction of Japan could lead to the opening of the negotiation on EIA between the EU and Japan.

We hope that the two authorities will agree upon the launch of the negotiation on an EIA in the coming EU-Japan summit.

We also would like to urge that, in the event that negotiation is launched, the two parties should engage in a negotiation with the determination to overcome difficulties encountered for the sake of realising more open and dynamic economies between the EU and Japan, which could become a model in the world.

1.1 Recommendations to both the EU and Japan

1.1.1 To build an area of common regulatory environment

- The EU and Japan should look into areas for deepening cooperation, build an area of common regulatory environment and contemplate an early launch of an Economic Integration Agreement that includes the elimination of tariffs.
- The two authorities should cooperate in order to achieve the maximum economic benefits from FTAs with third countries. Concerning negotiations with ASEAN and India, the two authorities should cooperate in order to realise the maximum economic benefits.
- The two authorities should take an initiative in order to strike a balance between the security of trade and the facilitation of trade through information and communication technologies. In particular, the two authorities should:
 - exchange electronic information such as customs entry data and manifest data between authorities;
 - introduce further regulatory cooperation in order to give more concrete benefits to AEOs following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan;
 - take the initiative to ultimately realise the single global AEO criteria;

- create a framework between the EU and Japan that will enable and enhance cooperation among companies in the EU and Japan in the development of practical application of new technologies, such as RFID and biometrics authentication technologies, and that will promote new international standardisation and its dissemination;
 - 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; and
 - promote the deployment of ICT infrastructure by SMEs to minimize digital divides by using a policy to give strong incentives.
- The two authorities should make efforts to harmonise and streamline international patent systems.
 - We welcome the finalisation of the text of Anti-Counterfeiting Trade Agreement (ACTA) announced in November 2010. The two authorities should continue their efforts to realise ACTA that would enhance the enforcement of the protection of intellectual and industrial property rights.
 - The EU and Japan should ensure that the current Information Technology Agreement (ITA) should be maintained. In addition, we encourage both authorities to work towards an expansion of the ITA in terms of its product coverage and geographical coverage.
 - The two authorities should further strengthen the implementation of 'Better Regulation'.
 - The two authorities should consider the establishment of a common policy on the control of chemicals.
 - The two authorities should harmonise regulations on energy conservation and relevant labelling rules.
 - The European Commission should support the ICT for Energy Efficiency Forum and actively participate in it including the dissemination of its outcome. The Japanese authorities should cooperate with the European Commission and encourage global collaboration.

1.1.2 To support the timely development of business

- The authorities of Japan and the EU Member States should resolve the issue of double payments of social security contributions by intra-corporate transferees by concluding social security agreements with all EU Member States and Japan. In addition, they should introduce such an interim measure that the host country should either exempt them from mandatory pension contributions unilaterally or refund in full when expatriates return to the home country.
- In an EIA between EU and Japan, far-reaching liberalisation of the movement of Intra-Corporate Transferees (ICTs) should be realised.

■ Personal Data Protection Regime

- The authorities of Japan should make sure that the review currently underway in its Special Commission about Personal Data Protection in the Consumer Commission 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 authorities should then launch the adequacy-finding procedure under the EU Directive as soon as feasible.
- In parallel with the above process, the two authorities 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.
- Furthermore, the EU and Japan should improve legal certainty surrounding the use of new technological tools such as cloud computing applications and services.

1.1.3 To secure the optimisation of the returns on investment

- The authorities of the EU Member States and Japan should exempt dividend payments from subsidiaries to the parent company and royalty and interest payments between related companies from withholding taxes.
- The authorities of the EU Member States and Japan should review bilateral tax treaties and introduce clauses that will facilitate corresponding adjustments and eventual arbitration.
- The authorities of the EU Member States and Japan should harmonise and simplify documentary requirements between the EU and Japan and among the EU Member States in order to reduce the costs of compliance to various transfer pricing taxation regimes.
- The authorities of the EU Member States and Japan should make the conclusion of bilateral and multilateral APAs between the EU Member States and Japan easier and cheaper by improving their procedures.
- The authorities of the EU Member States and Japan should consider the introduction and/or expansion of participation exemption regimes in order to promote direct investment between the EU and Japan.

1.2 On the policy of the EU

1.2.1 To reinforce the competitiveness of the EU economy

- We express our continued support for Europe 2020. In particular, we support the initiative of the European Commission: the Single Market Act – the ‘relaunch’ of the single market. The EU should make utmost efforts to realise the 50 proposals in the Single Market Act by 2012.

- We welcome the launch of an enhanced cooperation procedure on the creation of unitary patent protection. We would like to urge the EU and its Member States to realise an EU Patent together with the unified patent litigation system as soon as possible.
- We would like to urge the patent offices of the EU Member States to participate in the Patent Prosecution Highway (PPH).
- We would like to propose a reduction of customs tariffs on audio-visual products and passenger cars in order to improve the international competitiveness of the EU economy.
- The EU should continue its efforts to take initiative towards substantive solutions of customs classification of IT related products.
- In the Netherlands, the Supreme Court ruled that toner cartridges are 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 of this kind should be resolved at once.
- We would like to see the EU and its Member States to take further measures and reinforce the fight against counterfeit goods both inside and outside the EU, in particular:
 - With an increased cooperation by the manufacturers and importers of the authentic goods, the customs authorities should make inspection more efficient and raise the rate of its coverage.
 - The simplified procedure to stop the importation of counterfeit goods should be fully implemented in all the EU Member States.
 - The EU, through its Member States, should introduce financial support or offer free assistance for the storage, transportation and destruction costs of counterfeit goods
- We support so-called ‘integrated approach’ in which all the stakeholders of the society should make concerted efforts for the objective of CO2 reductions.
- We would like to see more clarity in the determination of the amount of penalties in case of an infringement of the competition rules.
- Concerning a proposed Consumer Rights 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.
- We support the general direction the European Commission and its Member States are taking for harmonising market surveillance. They should disclose all the relevant

information regarding the progress in the harmonisation of market surveillance and its implementation in each Member State. They should give industry an opportunity for contributing to developing the framework of harmonised market surveillance.

- Concerning Environment, Social and Governance (ESG) information disclosure, 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 evaluation.
- Concerning REACH,
 - the ECHA and the European Commission together with the industry should strengthen their efforts to facilitate the process for future registration, which will involve SMEs.
 - the EU should take further actions for education and capacity building in developing countries for compliance with REACH. The EU should consider establishing certain lead-times or grace periods for compliance in cases involving developing country parties in supply chains.
 - concerning the requirement of notification of substances in articles under REACH that will start from June 2011, the EU should ensure the consistent implementation of REACH at the EU level based on the ECHA's guidance documents including the 6 countries dissenting on the definition of an article.

1.2.2 Company law

- The proposed Council Regulation on a Statute for European Private Company ('the SPE') should be adopted as soon as possible.

1.2.3 People

- Concerning the proposal for a Directive on an intra-corporate transfer (ICT), it should include the following measures;
 - 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);
 - It should be possible for ICTs to submit an application for a work-residence permit after entering the assigned country based on the waiver of visa requirements;
 - ICTs should be exempted from obtaining a new permit in a second Member State if their assignment so requires;
 - It should be possible for their spouses to be automatically granted the same or similar rights as the holder of the permit upon their arrival.

- The application of integration measures to ICTs should be voluntary.
- Concerning the Directive 2003/109/EC on long-term residence status, the European Commission should publish a report on the state of its implementation in each Member State that was due by 25 January 2011.
- This Directive is not applicable in the UK, Ireland and Denmark. The UK authorities should take action in order to enable them to benefit from the EU directive.

1.2.4 Taxation

- 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:
 - Non-taxation of unrealised gains on goodwill as a result of cross-border reorganisation.
 - Non-application of arms-length principle within a group of companies that form CCCTB.
 - Off-setting of profits and losses
- Merger Directive (90/434/EEC)
 - Its scope should be extended to include deferral of taxation on the transfer of real estates and other intangible assets.
 - The requirements in certain EU Member States to maintain the holding of shares for a number of years should be abolished.
- Concerning the EU Transfer Pricing Documentation – the EU TPD, the EU and its Member States should commit themselves to exemption from penalties related to non-compliance with documentation requirements, penalties related to transfer pricing adjustments and interest related to adjustments if a company submits EU TPD acting in good faith and in a timely manner.
- We welcome a profound review of the VAT system launched by the Commission. The EU and its Member States should simplify and harmonise the VAT system in the EU to the extent that businesses can centralise VAT administration easily in a cost effective manner.

1.3 On the policy of Japan

- We welcome the change in the CFC rules (so-called tax haven rules) introduced in April 2010. The trigger corporate tax rate and the scope of exemptions should be reviewed and amended if necessary in the future.

2 Recommendations to both the EU and Japan

2.1 To turn the disaster into a new era of cooperation

We are presenting this year's Report of JBCE at a difficult moment in Japan. The earthquake and tsunami that struck the north-eastern Japan on 11 March left serious damages to the country. We would like to express our deep sympathy to those who suffer from the disaster and wish a swift recovery from it. We would also like to express our high appreciation towards the solidarity shown by the EU, its Member States and their people towards Japan and its people.

We have become aware that, although it was an immensely unfortunate event, it could trigger profound changes both in Japan and in its relation with the EU.

First, the very need to reconstruct the society and the economy could accelerate changes in Japan towards more dynamic and open economy. We are certain that Japanese economy will bounce back before long and will emerge as a more open and dynamic economy.

Secondly, the willingness of the EU to contribute to the reconstruction of Japan could lead to the opening of the negotiation on EIA between the EU and Japan.

The following statement was inserted in the conclusion of the European Council held on 24-25 March:

The forthcoming summit must be used to strengthen this relationship and bring forward our common agenda, including through the potential launch of negotiations for a free trade agreement on the basis that Japan is willing to tackle inter alia the issue of non tariff barriers and restrictions on public procurement.

We welcome the statement by the European Council. We hope that the two authorities will agree upon the launch of the negotiation on an EIA in the coming EU-Japan summit.

We also would like to urge that, in the event that negotiation is launched, the two parties should engage in a negotiation with the determination to overcome difficulties encountered for the sake of realising more open and dynamic economies between the EU and Japan, which could become a model in the world.

2.2 To build an area of common regulatory environment

2.2.1 An Economic Integration Agreement

We believe that the EU and Japan could gain more – a lot more - by raising the level of cooperation onto a new stage.

As a way to deepen cooperation, the two authorities should go further than deregulations by building an area of common regulatory environment.

Deregulations are important means in achieving this objective. Both authorities should continue to make efforts in implementing our recommendations on deregulations. However,

we believe that they are not enough for the EU and Japan that are leaders in the world economy. They should lead the rest of the world by creating examples.

We are aware that there is a similar initiative between the US and the EU. We believe that this initiative to build an area of common regulatory environment is an important step forward in policy making for the leading countries in the world economy. Those countries should exercise leadership in realising a prosperous world economy by removing tariffs, unnecessary regulations and trade barriers that hamper sustainable development.

- We would like to recommend that the EU and Japan should consider the conclusion of an Economic Integration Agreement that goes beyond the framework of traditional free trade agreements and economic partnership agreements. An Economic Integration Agreement should support strengthening the trade and investment relationship through promoting structural changes in respective countries.
- An Economic Integration Agreement could include the following issues and topics:
 - the harmonisation of standards and certification procedures,
 - the mutual recognition of product certification,
 - the mutual recognition of functionally equivalent regulations
 - competition rules,
 - investment rules,
 - services,
 - the opening up of government procurement, and
 - the protection of intellectual and industrial property rights.

2.2.2 Bilateral trade agreements

The EU and Japan are seeking to conclude free trade agreements with third countries, in particular, those in Asia.

Although we support bilateral trade agreements, the two authorities should continue to make utmost efforts at achieving multilateral trade agreements under WTO.

ASEAN countries, India, the EU and Japan have close economic relations. The authorities of the EU and Japan are already engaged in negotiation with some of them. The two authorities should cooperate in order to achieve the maximum economic benefits and to avoid undermining each other's interest by such agreements.

2.2.3 Striking a balance between the security and facilitation of trade through ICT

Since the terrorist attacks in the United States on September 11, 2001, a global trend of stricter security measures has been imposing burdens on the management resources of companies, which is also becoming a hindrance to a smooth international supply chain. Based on the

WCO SAFE FRAMEWORK OF STANDARDS, institutions are being developed around the world such as Authorized Economic Operators programs and the advance cargo manifest declaration rule. However, the data set for advance manifest declaration, or the process and criteria for AEO certification are not always the same and sometimes some of them invite excessively tight regulations. The multinational companies of the EU and Japan share concerns about further burdens on businesses and unwanted hindrances to smooth trade, because of inconsistency of such regulations between countries. Particularly in this time of economic downturn worldwide, the negative effect can work as a Non-Tariff Barrier that clogs global economic activities.

Under such circumstances, the EU and Japan must lead international harmonization of trade institutions to strike a balance between security and the facilitation of trade, while realizing efficient public-private operations. A secure and innovative international supply chain should be pursued, especially using ICT that will support the institution and public-private operations, and by the dissemination of usage models. More specifically, the two authorities are expected to:

- exchange electronic information such as customs entry data and manifest data between the authorities;
- introduce further regulatory cooperation in order to give more concrete benefits to AEOs following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan;
- take the initiative to ultimately realise the single global AEO criteria;
- create a framework between the EU and Japan that will enable and enhance cooperation among companies in the EU and Japan in the development of practical application of new technologies, such as RFID and biometrics authentication technologies, and that will promote new international standardisation and its dissemination;
- 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; and
- promote the deployment of ICT infrastructure by SMEs to minimize digital divides by using a policy to give strong incentives.

The economic slowdown is urging the EU and Japan even more to contribute to the facilitation of trade, and to bring innovation to the international supply chain, by launching their initiative for striking a balance between security and facilitation of trade, and by proactively deploying ICT as an effective tool for policy goals.

2.2.4 Harmonisation and streamlining of international patent systems

It is very important to harmonise and streamline international patent systems for expeditious patent granting as well as for protection of patent rights. We believe that every concerned party should make efforts in accelerating such international harmonisation.

2.2.5 Strengthening cooperation on the fight against counterfeiting and piracy

The EU and Japan should further strengthen cooperation on the fight against counterfeiting and piracy. In particular, they should make the utmost efforts through close cooperation to realise Anti-Counterfeiting Trade Agreement (ACTA) that would enhance the enforcement of the protection of intellectual and industrial property rights in the global fight against counterfeiting and piracy.

- We welcome the finalisation of the text of ACTA announced in November 2010. The two authorities should continue their efforts to realise this agreement.

2.2.6 ITA

We express strong support for maintaining the Information Technology Agreement (ITA), one of the most successful trade agreements of our time. The increased access to IT products generated by the ITA has led to greater innovation, consumer welfare, productivity, trade, investment, and economic growth worldwide. ITA signatories are obligated to bind and eliminate customs duties on covered IT products. However, it is noted that there are concerns around the world over ITA-covered products being reclassified as dutiable. In fact, some new-convergence-technology ITA products have already lost their zero-tariff status.

We strongly believe that the ITA signatories should be providing more, not less, market access opportunities for IT products. The letter and spirit of this market-opening agreement must be maintained and the ITA commitment to "bind and eliminate" duties on covered products must be respected. As a priority, both authorities should do their best to ensure that the maintenance of the current ITA is achieved as soon as possible. In addition, as a second step, we encourage both authorities to work towards an expansion of the ITA in terms of its product coverage and geographical coverage.

2.2.7 Better Regulation

In reviewing the existing regulations or establishing new ones, it is extremely important to make a study from the perspective of competitiveness of the economy and the industry. In this respect, the agreed processes of Stakeholder Consultations and Impact Assessment should be duly implemented. In addition, integrated approach, a concept of appropriate burden sharing by the entire society, is also important. The two authorities should further strengthen the implementation of 'Better Regulation'.

2.2.8 A common policy on the control of chemicals

Policies on the control of chemicals such as REACH and RoHS have a significant impact on global supply chains. The two authorities should not only implement effective regulations but also consider a common policy by establishing a common list of restricted substances, a common approach to evaluation of risks and sharing of data so that cost for industries could be mitigated. Furthermore, they should share a support policy of supply chain management in developing countries in cooperation with businesses.

2.2.9 Harmonisation of regulations on energy conservation and relevant labelling rules

It is a burden for businesses that regulations on energy conservation and relevant labelling rules are different between the EU and Japan. This is particularly true for internationally traded

goods such as ICT products. Furthermore, the resulting additional costs are borne by the consumers in the EU and Japan through an increase in prices.

There is a view that, since the objectives of regulations on energy conservation and relevant labelling rules may be different, they do not necessarily require harmonisation. However, their objectives must be the same, i.e. the conservation of energy.

The authorities of the EU and Japan should aim at harmonisation at least in testing and application based on the existing standards and labelling schemes such as International Energy Star Program, IEC/TC108, IE/TC100 and CEN/TC113.

2.2.10 ICT for Energy Efficiency

ICT is one of the main drivers of growth – both within the sector itself as well as a main driver for modernisation in other sectors. As a good example of its contribution, the ICT for Energy Efficiency Forum could play an important role in achieving this objective.

In this regard, we request the European Commission that it should not only fully support the forum but also actively participate in it as one of the top priorities. The Commission's support should include the dissemination of its outcome to the relevant industries and public sectors. We also request the Japanese authorities to cooperate with the European Commission and encourage global collaboration.

2.3 To support the timely development of business

2.3.1 Social security contributions

Double payments of social security contributions by and for their personnel dispatched between the EU and Japan discourage investment by businesses.

When a company sends its employee to an overseas assignment for a limited period – typically 3 to 5 years – it is mostly the case that the employee concerned and his/her employer keep on contributing to the social security system, particularly pension funds, of the sending country. If contribution to the social security system of the hosting country is obligatory, contributions will be paid in both countries. This double payment is a heavy and unnecessary burden for a company and its employee. A social security agreement solves this problem by typically exempting intra-corporate transferees from contributing to the social security system of the hosting country for a limited period. So far, social security agreements between Japan, and Germany, the United Kingdom, Belgium, France, the Netherlands, Czech Republic, Spain and Ireland have entered into force. The agreement between Japan and Italy has been signed. Furthermore, negotiation is underway between Japan, and Hungary and Luxembourg, and at preparatory stage between Japan, and Sweden, Slovak Republic and Austria.

We welcome the steady expansion of social security agreements between Japan and the EU Member States.

Japan and the EU Member States should continue to make efforts and expand the network of social security agreements. However, it takes a few years at least to negotiate, conclude and ratify a social security agreement. It could take a long time to conclude such agreements with the rest of the EU Member States. In addition, such an agreement may never be introduced

between Japan and a Member State that hosts a small number of Japanese expatriates and vice versa.

- The authorities of Japan and the EU Member States should resolve the issue of double payments of social security contributions by intra-corporate transferees by concluding social security agreements with all EU Member States and Japan.
- Until an agreement enters into force, they should introduce an interim measure. The host country should either exempt them from mandatory pension contributions unilaterally or refund in full when expatriates return to the home country.

2.3.2 Work and residence permits

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

- The EU and Japan should realise far-reaching liberalisation of the movement of Intra-Corporate Transferees (ICTs), possibly in the framework of an EIA. Such liberalisation should aim at the following system:
 - A framework agreement between the mother company, which sends expatriates, and the host country, stipulates the maximum number of expatriates. Within the agreed limit, the mother company is free to send ICTs to that country without further obtaining individual work permits.
 - When the mother company concludes such an agreement with several Member States in which its subsidiaries or branches have operations, movement of ICTs between those countries is free from obtaining a new work permit as long as the total number in each agreement is respected.

2.3.3 Personal Data Protection Regime

Global businesses have their operations spread across the world. The headquarters of these global companies design and implement strict compliance and governance systems for their entire groups of companies. Personal data protection is one of the key issues that should be managed centrally and implemented consistently throughout an entire global organisation.

Moreover, these global companies are constantly exposed to competition and are in need of reducing costs and improving efficiency - even as they strengthen their compliance regimes. Staying competitive through cost reductions is particularly important under the current economic conditions.

Therefore, our ultimate desire is the closer alignment of various data protection regimes around the world that would enable global businesses to transfer personal data by complying with one regime. Not only does compliance with different personal data protection regimes incur additional cost without any apparent benefit, but also it creates several sets of rules applied to the same issue within one global organisation.

Directive 95/46/EC, on the protection of individuals with regard to the processing of personal data and the free movement of such data, requires the EU Member States to permit transfer of personal data to countries outside the EU only where there is an adequate level of protection of such data as the Directive could provide, unless one of several specific exemptions apply. Currently, there is no recognition that there is an adequate level of protection of such data in Japan. This situation forces global companies with operations in Japan and in the EU either to comply with two personal data protection regimes or to refrain from transferring personal data from its European operations to Japan.

International data transfer regime between the EU and Japan should be streamlined to develop a better environment for the provision of high-value-added services. The objective should be to build and implement a reliable and cost-effective regime for businesses in the EU and Japan.

To realise such a business environment, we would like to propose to the two authorities the following solutions:

- The authorities 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 authorities should then launch the adequacy-finding procedure under the EU Directive as soon as feasible.
- In parallel with the above process, the two authorities 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.
- Furthermore, 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.

2.4 To secure the optimisation of the returns on investment

2.4.1 Avoidance of double taxation

In order to enhance direct investment between the EU and Japan, measures to reward for taking risks associated with foreign investment are essential. In particular, the measures to avoid double taxation of the same profit should be regarded as *sine qua non*. Although there are

various measures already in place such as bilateral treaties on the avoidance of double taxation (tax treaties), there is room for improvement.

For example, Japan and the EU Member States should revise their bilateral tax treaties so that withholding taxes should be exempted on dividend payments from subsidiaries in which its parent company has shareholding of 25% or more, and on royalty and interest payments between related companies.

In this regard, the tax treaty between Japan and Germany should be revised as a matter of priority.

2.4.2 Transfer pricing

While there is a convergence of policies on transfer pricing taxation among major countries according to the OECD Guidelines, companies find it costly and complicated to comply with the transfer pricing requirements of various countries.

In addition, compliance costs associated with the transfer pricing taxation requirements in the EU are potentially far higher than such costs between the US and Japan when the market size is taken into account. This is due to the fact that there are 27 Member States in the EU with separate jurisdictions, each of which is smaller in terms of market size than the US or Japan, and the fact that multiple Member States, such as a country where the European headquarters is located and a country where a sales company is located, are often involved in European operations.

Although Advanced Price Agreements (APAs) are increasingly used in the EU Member States as well as in Japan, the conditions differ country by country and companies have to satisfy the requirements of each country. An EU-Japan transaction often involves three countries or more – i.e., Japan, an EU Member State where the market is and an EU Member State where the European Headquarters with centralised European logistics and finance functions are located. For such businesses, multiple APAs are necessary to obtain sufficient assurance. However, multiple APAs are still its infancy even within the EU and the implications for costs and managerial resources are prohibitive.

The EU Member States and Japan should enhance cooperation within the framework of OECD. Furthermore, they should seek improvements bilaterally concerning the following issues that are unique to them. The EU Member States and Japan should:

- Review bilateral tax treaties and introduce clauses that will enable corresponding adjustments and eventual arbitration.
- Harmonise and simplify documentary requirements and their interpretation between the EU and Japan and among the EU Member States in order to reduce the costs of compliance to various transfer pricing taxation regimes.

The guidelines should aim to harmonise and, more importantly, simplify interpretation and documentary requirements between the EU and Japan by establishing a best practice. Such a best practice could then be applied by Japan and each Member State.

- Make the conclusion of bilateral and multilateral APAs between the EU Member States and Japan easier and cheaper by improving their procedures. In particular:
 - by training experts on bilateral and multilateral APAs between the EU and Japan and accumulate their experience institutionally.
 - by drawing up guidelines on bilateral and, more importantly, multilateral APAs between the EU and Japan. Such guidelines, when applied by all the EU Member States and Japan, would enable a harmonised application of APAs between Japan and all the EU Member States.

2.4.3 Mutual participation exemption

Participation exemption, by which dividends and capital gains received from business investment are exempted from further corporate taxation, is one measure to encourage mutual direct investment. Participation exemption is also effective in encouraging direct investment in other countries from Japan and the EU to other countries, for example, in Asia.

3 Recommendations on the policy of the EU

3.1 To reinforce the competitiveness of the EU economy

3.1.1 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 that 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 international regulatory convergence 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.

3.1.2 The EU Patent

Intellectual and industrial property rights in the EU have been protected by national systems of law. Unified European systems, which co-exist with the traditional ones at the national level, have been established with the Community trademark and Community designs. An EU Patent has not yet been realised.

We welcome the proposal of the European Commission in the Communication 'Towards a Single Market Act' (COM(2010) 608 final/2) that the European Parliament and the Council should take the necessary steps to adopt the proposals for the EU patent, its languages and the unified patent litigation system with the aim for the first EU patents to be issued in 2014.

We also 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 realise an EU Patent together with the unified patent litigation system as soon as possible.

3.1.3 The Patent Prosecution Highway

The Patent Prosecution Highway (PPH) aims to facilitate and expedite patent examination at a second participating IP office, by sharing the result of examination at the first participating IP office. Therefore, the PPH is highly beneficial for international patent applicants.

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.

3.1.4 To revitalise the Internal Market through the reduction of customs tariffs

The EU is protecting some sectors of its industries by setting high customs tariffs even though these industries are at the forefront of international competition and need stimuli for competition rather than protection. Such protection has led to weakening of the international competitiveness of those sectors rather than helping them to become more competitive. Furthermore, it is none but their users and consumers in the EU who unfortunately have to pay the resulting higher prices. To improve the international competitiveness of the EU economy, the European Commission and the EU Member States should drastically reduce high customs tariffs in these sectors.

In our opinion, the reduction of customs tariffs in the following sectors is necessary in improving the international competitiveness of the EU economy.

- Audio visual products

The dynamic fusion of information technology, communication and audio visual is going on. For users and consumers in the EU to benefit from innovation and to contribute to global development in these sectors, the rapid and extensive diffusion of new audiovisual products is essential. The current customs tariffs on audiovisual products are up to 14% and are an obstacle to such development.

- Passenger cars

Automotive industry is one of the most important industrial sectors in the EU. Since supply exceeds demand in automotive industry globally, rationalisation and reorganisation of the sector is inevitable. The EU is delaying the reorganisation and rationalisation of its automotive industry by applying a customs tariff as high as 10%, and thus hampers its opportunity to improve its international competitiveness.

3.1.5 Customs classification

We understand that the classification must be done in accordance with the Harmonized System Convention rules. However, we believe it also 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, which has undermined transparency, predictability and promptness for businesses.

- The EU should continue efforts to take initiative towards a substantive solution.
- 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 of this kind should be resolved at once.

3.1.6 The fight against counterfeiting

- We would like to see the EU to take further measures, through, for example, modification of the Directive on the enforcement of intellectual property rights (2004/48/EC), in order to reinforce in all the EU Member States the fight against counterfeited, pirated and contraband goods, both inside and outside the EU.
- 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.
- As not all the EU Member States have already fully implemented the simplified procedure to stop the importation of counterfeit goods, the fight against counterfeit goods passing through the customs may result in very expensive and long proceedings that are not always successful. The simplified procedure should be fully implemented in all the EU Member States.
- 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 EU Member States to destroy counterfeit goods detained by the customs and, especially, not to release them on the EU market. The EU, through its Member States, should introduce financial support or offer free assistance.

3.1.7 Integrated approach for CO2 reduction

Regulation (EC) No 443/2009 of the European Parliament and of the Council was adopted on the 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO2 emissions from light-duty vehicles. For CO2 reduction, various measures including improvement of road systems and traffic flow, improvement of fuel quality, education of drivers toward eco-driving and fiscal incentives for encouraging purchase of more fuel-efficient cars are important. We support the so-called 'integrated approach' in which all the stakeholders of the society should make concerted efforts for the objective of CO2 reductions. Furthermore, cross-sectoral cooperation such as with ICT industry should be promoted.

3.1.8 Competition policy

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

3.1.9 Consumer protection

Although there is a uniform concept in guarantee with consumer goods in the EU, there still exists significant difference in practice among the EU 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.

3.1.10 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 Jan 2010.

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

3.1.11 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.

Providing companies flexibility of choice within broadly defined voluntary ESG disclosure options is the most viable approach, which is consistent with the EU 2020's objective of enhancing companies' competitiveness and innovation. The alternative of imposing a single set of quantitative key performance indicators upon companies does not respect the diversity of business realities, would undermine the accuracy of reports and deter innovation in company-specific approaches to CSR.

- Create an EU-wide approach in the global context.

An EU-wide approach in light of the global context would create a meaningful strategy towards for sustainable development. Diverse disclosure requirements regarding scope and content across 27 EU Member States may create an additional administrative burden for European companies without bringing meaningful benefits to the CSR domain. By taking a globally consistent approach, the EU would facilitate the ability of multinational companies to focus on low-carbon and welfare-enhancing solutions and effectively meet the Europe 2020 objectives.

- Encourage and motivate information users such as investor communities and analysts to understand non-financial aspects of companies and integrate them in their evaluation.

The manner in which multinationals formulate and implement CSR strategies are influenced by the political, social, cultural and corporate context in which they operate. The EU should step up investor/analyst educations.

3.1.12 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 passed the first deadline of registration last year with the contribution of all the stakeholders. From this experience, we have learnt so many things, such as the importance and difficulties of information exchange through supply chains.

- For future registration, which will involve more small and medium enterprises, the ECHA and the European Commission together with the industry should strengthen their efforts to facilitate the process.
- We recommend that the EU should take further actions for education and capacity building in developing countries for compliance with REACH. We also request consideration by

the EU to establishing certain lead-times or grace periods for compliance in cases involving developing country parties in supply chains.

- We are also concerned about the requirement of notification of substances in articles under REACH that will start from June 2011. While we are making every effort to comply with the regulation, we strongly request the EU to ensure the consistent implementation of REACH at the EU level based on the ECHA's guidance documents including the 6 countries dissenting on the definition of an article.

3.2 Company Law: Statute for European Private Company

The European Commission adopted a proposal for a Council Regulation on the statute for European Private Company in June 2008. According to the proposal, it was to be applicable from 1 July 2010.

- The proposal should be adopted without delay.
- The statute should realise the following points:
 - Widely accessible, easy to set up and cheap to run;
 - It allows a great deal of flexibility to founders and shareholders to organise themselves in the way that is best suited to their activities; and
 - As uniform throughout the EU as possible.

3.3 People

3.3.1 Intra-corporate transferees.

The European 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 such a Directive should include the following measures;

- The maximum duration of the transfer to the EU should be 5 years for managers and specialists rather than 3 years currently set in the proposal (Article 16.3);
- It should be possible for ICTs to submit an application for a work-residence permit after entering the assigned country based on the waiver of visa requirements;
- ICTs should be exempted from obtaining a new permit in a second Member State if their assignment so requires;
- It should be possible for their spouses to be automatically granted the same or similar rights as the holder of the permit upon their arrival.

- The application of integration measures to ICTs should be voluntary.

3.3.2 Directive 2003/109/EC on long-term residence status

More than five years have passed since the due date of the transposition into the law of the EU Member States of the Directive 2003/109/EC on long-term residence status. The first report on the actual state of its implementation in each Member State required under the Directive was due by 23 January 2011.

- The European Commission should publish this report as soon as possible.

Furthermore, the Directive is not applicable in the UK, Ireland and Denmark. Japanese nationals in the UK, where their number is the largest in the EU, therefore, do not benefit from this Directive.

- The UK authorities should take action in order to enable them to benefit from the EU Directive.

3.4 Taxation

3.4.1 Common consolidated corporate tax base (CCCTB)

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

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

We welcome the proposal for CCCTB (Common Consolidated Corporate Tax Base) proposed on 16 March 2011. We hope for its swift adoption.

In a common consolidated corporate tax base, the following points should be resolved.

- Non-taxation of unrealised gains on goodwill within a group of companies that form CCCTB

In business restructuring, if goodwill is transferred from one Member State to the other, it could trigger taxation in the former state. The cross-border reorganisation of sales networks is often necessary to increase economic efficiency in the Single Market. In such reorganisation, the transfer of goodwill is often unavoidable. However, goodwill transfer could trigger a very high amount of taxation. As a result, companies could be forced to leave economically sub-optimal structure untouched. In a CCCTB, such taxation on unrealised gains on goodwill should not take place.

- Non-application of arms-length principle within a group of companies that form CCCTB.
- Offsetting of profits and losses within a group of companies that form CCCTB.

3.4.2 Merger Directive

■ The scope of the Directive

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

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

The European Commission and the EU Member States should extend the scope of the Merger Directive so as to cover tax on the transfer of real estates and other intangible assets in reorganisation.

■ Shareholding requirements

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

In addition to the cost of maintaining these empty companies, it will increase the risk of double taxation. Corporate taxes paid by the subsidiaries of the new holding company will not qualify for Japanese foreign tax credit for the portion distributed through the empty company because the scope of Japanese foreign tax credit is limited to the second tier companies.

Therefore, the requirements in certain EU Member States to maintain the holding of shares for a number of years should be abolished.

3.4.3 Transfer Pricing

The Joint Transfer Pricing Forum set up by the EU is proposing the EU Transfer Pricing Documentation – the EU TPD. The EU TPD could enable companies to centralise and simplify the preparation of TP related documentation in the EU. Therefore the EU TPD could reduce the compliance costs related to transfer pricing taxation. It should benefit not only companies operating in several EU Member States but also the tax authorities by allowing them to have an access to a set of harmonised documentation.

To provide sufficient incentive to the compliance with the EU TPD, the EU and its 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 even lead to undesirable distortions in the single market by forcing companies to adopt artificial transfer price in order to avoid penalties.

3.4.4 VAT

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

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

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

We welcome a profound review of the VAT system launched by the Green Paper of the European Commission 'On the future of VAT - Towards a simpler, more robust and efficient VAT system' COM(2010) 695 final. We strongly hope that the European Commission and the EU Member States will realise a simpler, more robust and efficient VAT system in the near future.

- The EU and its Member States should simplify and further harmonise the VAT system so that businesses can easily centralise their VAT administration in the EU in a cost-effective manner.

Recommendations on the policy of Japan

3.5 CFC rules

We welcome the change in the CFC rules (so-called tax haven rules) introduced in April 2010. The trigger corporate tax rate and the scope of exemptions should be reviewed and amended if necessary in the future.