



2016 Report of the JBCE

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Japan Business Council in Europe (JBCE)

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Japan Business Council in Europe was established in 1999 as the representative organization of Japanese companies operating in the European Union. Our membership consists of about 70 leading multinational corporations that are active across a wide range of sectors, including electronics, automotive, and chemical manufacturing.

The key goal of JBCE is to contribute to EU public policy in a positive and constructive way. In doing so, we can draw upon the expertise and experience of our member companies.

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1 Foreword

The successful conclusion of an EU-Japan FTA/EPA at the earliest possible time in the year 2016

A comprehensive FTA/EPA between the EU and Japan has vast potential to promote innovation and competition, generate economic growth, and benefit consumers. Although further efforts are still required for a successful conclusion of an agreement, the JBCE strongly request the authorities of the EU and Japan to make utmost efforts and reach its successful conclusion at the earliest possible time in the year 2016. The JBCE regards a successful conclusion should include an early and swift implementation of the agreement.

Future issues coming out of a long-range vision

As a leading organisation that focuses on the EU-Japan business relationship, the JBCE proposed the EU-Japan 2050 in the meetings of the EU-Japan Business Round Table (BRT) on 8-9 April 2014 and received wide support by the members of the BRT. In the EU-Japan 2050, the JBCE proposed to look at future issues coming out of a long-range vision, say, issues that are important for the relationship for the next three decades.

The proposed vision of the EU-Japan relationship in 2050 has the following elements:

- An area of common regulatory environment has been firmly established for a long time.
- Policy makers, regulators and players such as businesses and consumers are comfortable with such common regulatory environment.
- Lots of businesses – not only large businesses but also SMEs are doing business in the both regions as if they are doing business in one of the regions.
- Experimenting and successfully implementing solutions for new political, economic or societal issues by closely cooperating with each other at a wide range of levels – such as governmental, academic, societal as well as commercial levels.
- The two economies have overcome many of the key issues of today such as aging society, sustainable economic development and international standardisation, and have been disseminating their experience to the rest of the world as the leaders of the cutting edge issues.
- The EU-Japan relations have been the source of inspiration and innovation and have strengthened and improved the other relationship, for example, between the US and the EU, the US-Japan, and among Asian countries, in a direction that has expanded a common regulatory environment globally.
- The world at large has benefitted from such EU-Japan relations.

Against the backdrop of the above long-range vision, the JBCE would like to describe the issues that are important between the EU and Japan.

2 Executive summary

2.1 Recommendations to both the EU and Japan

2.1.1 The successful conclusion of an FTA/EPA at the earliest possible time in the year 2016

- Concerning an EU-Japan FTA/EPA, the JBCE strongly request the authorities of the EU and Japan to make utmost efforts and reach a successful conclusion at the earliest possible time in the year 2016. The JBCE regards a successful conclusion should include an early and swift implementation of the agreement.

2.1.2 Future issues coming out of a long-range vision

- The JBCE proposes to look at future issues coming out of a long-range vision, say, issues that are important for the relationship between the EU and Japan for the next three decades.

2.1.3 To build an area of common regulatory environment

- The upcoming FTA/EPA should be a living agreement and should provide a solid framework for regulatory cooperation to address the concerns of the business community.
- The process of regulatory cooperation should be transparent and the representatives of the business community should be involved in the process.
- In order to realise a common regulatory environment between the EU and Japan, Japanese and European policy-makers should increase their mutual understanding of existing and upcoming regulations on each side and their impact on domestic and foreign business to avoid unwittingly taking initiatives that create barriers to trade and investment.
- They should develop a joint strategy to promote better regulation, learning from each other's experience and adopting a common system of good governance to expand a common regulatory environment into existing regulatory regimes.
- They should together disseminate their experience to the rest of the world as the leaders of the cutting edge issues.
- The two authorities should strengthen their cooperation in developing high-level international standards and rules in order to prevent protectionist measures in the third countries at the multilateral level, in particular in the WTO, as well as the regional or bilateral levels.
- They should exert their utmost efforts to realise global free trade in environmental goods through the ongoing negotiations at the WTO.
- They should 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.

- Concerning the control of chemicals, 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 the evaluation of risks and the sharing of data so that cost for industries could be mitigated.
- The authorities of Japan and the EU should promote the concept of resource efficiency including energy efficiency, and should standardise methodology, criteria and the format of environmental product declaration between the EU and Japan and cooperate with each other so that such a policy will be internationally shared.
- The two authorities should work together at the multilateral level to promote international harmonisation of energy conservation regulations, relevant labelling rules, and environmental and carbon footprint schemes.
- The two authorities should contribute to regulatory harmonisation of circular economy at global level.
- The two authorities should consider incentives for manufacturers to increase the use of recycled materials in products and for producers of secondary raw materials to provide them in higher quality and quantity.
- The two authorities should open up Science, Technology and Innovation programmes more so that companies and R&D centres located in the EU or Japan can participate in and benefit from the programmes of the other region under the same conditions as participants from the other region.
- The two authorities should specifically favour joint R&D programmes that are geared towards international standardisation such as standardisation in advanced manufacturing and in the internet of things.
- Introduce further regulatory cooperation in order to give more concrete benefits to AEOs (Authorised Economic Operators) and facilitate trade between the EU and Japan, if necessary, by expanding the legal base.;
- The authorities of the EU and Japan should step up efforts to fight against counterfeited, pirated and contraband goods, both inside and outside the EU and Japan.
- The two authorities should punctually implement tariff elimination as scheduled in the successfully concluded ITA expansion and even consider accelerated tariff elimination.
- The authorities of the EU, its Member States and Japan should increase their efforts to facilitate better access to the respective public procurement markets. They should make more information available in English.

- Concerning the amended proposal for a Regulation on the access of third-country goods and services to the EU public procurement market, and any other public procurement related legislation:
 - Non-legislative policy measures should be pursued in order to achieve the objective of opening procurement markets internationally;
 - An effective mechanism to prevent the EU from arbitrarily excluding better and cheaper goods and services from its procurement market and to ensure legal stability and predictability for businesses should be incorporated; and
 - Clear and transparent criteria for the scope and conditions of the application of the legislation based on an appropriate and balanced analysis should be included.
- Concerning Railway safety certification requirements:
 - The authorities of the EU and Japan should continue their efforts to ensure that their commitments, such as procurement transparency and non-discrimination, are fully implemented in order to achieve much more tangible improvements in actual market access. Especially, they should establish their respective open description of compliance requirements as well as validation processes. The certification procedures for the railway rolling stock and equipment should be made fully transparent to the interested parties of both sides and should be further simplified.
 - The European Railway Agency and the Japanese Ministry of Land, Infrastructure, Transport and Tourism should look into the possibility of harmonising their respective mandatory technical requirements by assessing the equivalence of these mandatory technical requirements.
- The two authorities should take initiative towards early implementation of the Trade Facilitation Agreement by encouraging the WTO members to accelerate their ratification.
- The authorities of the EU and Japan should continue their efforts towards the conclusion of the Trade in Services Agreement (TiSA) by the end of 2016 and encourage as many WTO members as possible to join the ongoing negotiations.

2.1.4 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. The authorities of the EU and Japan should explore the possibility to make a common EU agreement on social security with Japan to cover the remaining Member States. 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 FTA/EPA between EU and Japan, far-reaching liberalisation of the movement of Intra-Corporate Transferees (ICTs) should be realised.

- On Personal Data Protection Regimes, the JBCE requests the authorities of the EU and Japan the following:
 - Create a balanced, harmonised and future orientated data protection regimes both in the EU and Japan as data protection regimes have a potential to act as a catalyst for growth and innovation;
 - Carry out a public consultation in advance on delegated acts, implementation acts and/or guidelines so that the views of the global businesses would be taken into consideration;
 - Apply sanctions with careful consideration to risks that disproportionately large sanctions might have because the amount of sanctions of up to 4% of the total global turnover in the new EU Regulation could have negative impacts on the industries and economy beyond its border;
 - Start substantial discussions on the establishment of a mechanism that will lead to the free flow of personal data between the EU and Japan: in principle, the EU and Japan should certify the adequate level of personal data protection with each other in accordance with their respective legislations; and
 - Launch a dialogue in order to realise consistent personal data protection regimes around the world, to assure interoperability and to address digital protectionism by enhancing cooperation with third countries and international organisations.

2.1.5 To secure the optimisation of the returns on investment

- The JBCE supports the creation of an internationally fair taxation framework and level playing field. At the same time, the JBCE would like to urge that the authorities of the EU and Japan should care that the implementation of the BEPS Actions should not create additional administrative burden on businesses.
- The JBCE welcomes that the OECD/G20 countries have agreed to implement the master file-local files system in the transfer pricing documentation in BEPS Action 13. The JBCE eagerly awaits that it will be implemented coherently and successfully to the bilateral and multilateral relations between the EU Member States and Japan in the way that will reduce the compliance costs and uncertainty significantly.
- The JBCE would like to recommend that the authorities of the EU, its Member States and Japan should also aim at facilitating the conclusion of bilateral and multilateral APAs.
- The JBCE would like to emphasise that it is important that the scope of information required to disclose through Country-by-Country Reporting is internationally coherent and in accordance with the BEPS Action 13 in order to realise a level playing field.
- The JBCE also would like to point out that information concerning a tax payer should be kept confidential by the tax authorities as BEPS Action 13 demands.

- The JBCE requests that, as agreed by OECD/G20 countries in 2013, the introduction of the measures developed by the BEPS Action Plan should not lead to unnecessary uncertainty for compliant taxpayers and to unintended double taxation.
- The JBCE welcomes the commitment made by 20 countries including Japan and 13 EU Member States (Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Slovenia, Spain, Sweden and the UK) to provide for mandatory binding MAP arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe. The JBCE recommends that this mechanism should be extended to between all the EU Member States and Japan.
- Furthermore, the JBCE would like to recommend the authorities of the EU and Japan to
 1. Pursue simpler, lighter and sensible tax systems that will lead to growth and innovation. A simple, light and sensible tax system will reduce the incentive to avoid or reduce taxation. It should include participation exemptions that will exempt dividends and capital gains received from business investment above a certain holding threshold from further corporate taxation.
 2. Reduce administrative burden. The more complex a tax system and the heavier the tax burden, the more time and money both businesses and tax authorities spend merely to comply or enforce.
 3. Promote healthy competition in attracting investments. In the majority of investment decisions, a combination of tax, human resources and infrastructure plays the decisive role. The authorities of the EU and Japan should promote and compete on the three factors in a healthy way in order to attract investments.
 4. Eliminate double taxation. Double taxation still weighs heavily on cross-border business activities. The EU Member States and Japan should modernise the tax treaties between them and ensure, to the greatest possible extent, that dividend, royalty and interest payments are exempted from withholdings taxes.

2.2 On the policy of the EU

2.2.1 The importance of the Single Market

- The JBCE agrees that the Single Market is one of Europe's major achievements and its best asset in times of increasing globalisation.
- In improving the Single Market, the authorities of the EU and its Member States should not only aim at the harmonisation of national rules at the EU level. They should also aim at better regulation by eliminating duplicative legislative framework and at the liberalisation and deregulation.
- The authorities of the EU should seek an optimal mix of soft policy coordination and harmonisation through Directives/Regulations. The EU should, however, make a policy

through Regulations in the areas in which the uniform application of policy throughout the EU is crucial.

- The authorities of the EU should maintain an internationally open European Single Market because it is essential for the smart, sustainable and inclusive growth of the EU.

2.2.2 Revision of high customs tariffs

- The EU should reduce customs tariffs on audio-visual products and passenger cars in order to improve the international competitiveness of the EU economy.

2.2.3 Chemical Regulations

- The EU should pay more attention to the implementation of REACH :
 - There should be more opportunities to take account of the views of non-EU companies in updating guidance because a substantial part of articles on the EU market is imported from outside the EU. In this regard, the representatives of non-EU companies should be allowed to register as the stakeholders of the ECHA.
 - If the thresholds of new SVHCs are too low, for example, in the units of ppb rather than the units of ppm, there will be practical difficulties for manufactures and importers to implement it effectively as it will be too difficult to measure correctly.
 - The authorities of the EU should improve the enforcement of the thresholds applicable to SVHCs once they are adopted. Otherwise the increasing number of SVHCs with extremely low threshold will distort the competition between strictly complying manufacturers/importers and less strictly complying manufacturers/importers.
 - In the evaluation of a substance allocated to a Member State in the framework of CoRAP - Community Rolling Action Plan, a private business is often requested to provide information on the substance which it holds. However, it is sometimes requested at a short notice and/or a not-well-organised manner, which is not effective. The authorities of the EU should publish the best practice for the Member States so that private businesses can help them more efficiently and effectively.
- The EU should further improve the PACT-RMOA
 - The authorities of the EU should improve it in order to look after the needs of SMEs because SMEs might still find it difficult to digest.
 - The process of contributions by industries should be further developed.
 - The transparency of the PACT-RMOA should be improved.
 - The quality of evaluation by the evaluating authorities of the Member States should be made more consistent through the standardisation of the evaluation process.
 - The criteria for the selection of substances should be more transparent.

- Concerning approach to Endocrine disruptor:
 - The authorities of the EU should regulate endocrine disruptors not by using the categorisation like CMR (carcinogenic, mutagenic or reprotoxic), but by using the risk assessment based on sound science because endocrine disruption is not the endpoint of toxicity.
 - The hazard assessment should be conducted by identifying adverse effect based on the endocrine mode of action defined by the WHO, and characterising with taking into account of potency, lead toxicity, severity and irreversibility.
- Concerning RoHS (Restriction of Hazardous Substances in Electrical and Electronic Equipment):
 - The identification and assessment of substances for RoHS inclusion should be based on a robust and consistent methodology, by taking account of the most appropriate risk management option. The principles of "REACH and Directive 2011/65/EU (RoHS) - A Common Understanding" should be duly applied and implemented to avoid overlap in regulation.
 - All new regulatory initiatives should provide the necessary level of legal certainty, transparency and predictability to allow for timely implementation with regard to restriction, substitution and exemption requests.
- Concerning CLP Regulation:
 - To alleviate burden on exporters, the authorities of the EU should accept GHS classification and labelling at the custom clearances; and
 - The authorities of the EU should take GHS into consideration from ATP (Adaptation to Technical Progress) stage.
- Concerning nanomaterial:
 - The authorities of the EU should implement the prospective policy tools on nanomaterials by taking into consideration the degree of exposure of nanomaterials released from a product;
 - The authorities of the EU should standardise a practical measurement method of nanomaterials. Such a measurement method should be simple and internationally harmonised; and
 - The authorities of the EU should take an initiative and establish a harmonized reporting system at the EU level.
- Concerning the Biocide Product Regulation (BPR):
 - The authorities of the EU should evaluate, in due course, the effectiveness of measures for treated articles under the BPR in reducing the risks posed to humans, animals and

the environment by biocidal products, and to ensure that such measures are fit for purpose.

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

2.2.4 Resource Efficiency Policy

■ Concerning Circular Economy:

- The authorities of the EU should assess environmental benefits at the design stage from the perspective of scientific evidence and to take into account trade-offs between energy efficiency, resource efficiency, safety and performance of products;
- The authorities of the EU should ensure coherence in the development of the Circular Economy Action Plan and avoid overlaps or contradictions between several pieces of legislation;
- When new or revised legislative and policy proposals will be put forward, effective enforcement schemes should be implemented in order to avoid unfair competition which would undermine the credibility of new business models.
- The authorities of the EU should assess – e.g., through REFIT - whether existing framework/environmental legislation poses obstacles to the Circular Economy.
- The authorities of the EU should closely monitor national implementation of such criteria as waste and end-of-waste in order to identify potential barriers to the Circular Economy;

■ Concerning Ecodesign Product Lots:

- The authorities of the EU should uphold the Energy related Products (ErP) principle of setting Minimum Energy Performance Standards (MEPS) at the level of Least Life Cycle Cost (LLCC).
- The authorities of the EU should carry out comprehensive impact assessments before deciding to include components integrated into products into ErP product Lots scope and hence avoid inefficient ‘double’ regulation measures. It is essential that optimum efficiency is pursued at the level of the final product not at the component level where there are no tangible benefits to the consumers.
- The “repair as produced” principle should be applied for spare parts as is the case in the RoHS Directive.

■ Concerning Energy Labelling:

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

2.2.5 Taxation

- Concerning CCCTB (Common Consolidated Corporate Tax Base):
 - Cross-border loss relief, the carry-over of unrealised good-will taxation in intragroup reorganisation and non-application of arms-length principle within a group of companies that form CCCTB are the key attractiveness of the CCCTB and there should be temporary measures to realise such benefits at the stage of the CCTB.
 - A temporary mechanism for cross-border loss relief should be designed in such a way that cross-border loss relief can be exercised when the principal entity incurs losses on a stand-alone basis.
 - In addition to the mandatory application to a group of companies with a holding company in the EU, a group of companies and branches in the EU directly held by a Parent Company established outside the EU should have the possibility to apply the rules of the system.
- Concerning 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; and
 - The requirements in certain EU Member States to maintain the holding of shares for a number of years should be abolished.
- Concerning the strategy of the European Commission to fundamentally revise the VAT system, the JBCE hopes that the new regime will be realised swiftly and in such a way that a business group could easily and cost effectively centralise VAT administration in the EU.
- Concerning country by country reporting (CBCR)
 - The JBCE supports the creation of an internationally fair taxation framework and level playing field. In implementing CBCR/BEPS Action 13 in the EU, the authorities of the EU should aim at realising an internationally level playing field.

- Information required to disclose in CBCR should be internationally coherent and thus limited to BEPS Action 13 information.
- Information concerning a tax payer should be kept confidential by the tax authorities and the authorities of the EU should not pursue mandatory public disclosure of tax-related information.
- The authorities of the EU should aim at a tax system that is simple, light and sensible in order to reduce the necessity of tax planning and foster growth and innovation.

2.2.6 Company Law / Corporate Social Responsibility

- Concerning a new strategy on CSR Policy:
 - Highlight innovation: The European Commission should articulate the proactive nature of CSR that leads to innovation and opportunities.
 - Take a flexible, principle-based approach: The European Commission should take a “principle-based” approach for evaluation and reporting. This approach will allow each company to meaningfully express their business in a dynamic and changing environment.
 - Build an open platform: The European Commission should take a proactive role in creating an open platform.
 - Create incentives to foster leadership for change: The European Commission should create incentives for companies that take leadership in identifying, preventing and mitigating the negative impact of businesses.
 - Articulate policy linkages across the European Institutions.
- Concerning the proposed Regulation on conflict minerals:
 - The work of the two expert groups, that have been formed to define the list of minerals and metals within the scope of the Regulation and to clarify the meaning of conflict and high risk areas, should be carried out in a transparent manner.
 - Hasty expansion of the geographical scope without reliable implementation of the existing traceability scheme should be avoided.
 - In order to effectively stimulate responsible sourcing, incentives focusing on upstream operations should be further considered.
 - Clear criteria for the certification of Responsible Importers, Smelters and Refiners should be set under a reliable, well-governed and functioning certification system.
 - In order to avoid confusion in certifying importers, the EU should set clear criteria for importers to become ‘responsible’. Such criteria should make use of the existing criteria.

- Concerning the non-binding guidelines for the reporting of non-financial information under the Directive 2014/95/EU:
 - Be flexible and principle-based
 - Emphasise on dialogue
 - Foster innovation and growth
 - Promote existing international reporting frameworks
- Concerning approach to responsible supply chain management
 - Ensure flexibility as well as global harmonisation;
 - Be compatible and does not conflict with existing initiatives and legal instruments not only in the EU, but also in other regions;
 - Do not create unnecessary administrative burden and incur supplementary costs for companies which are not effective in solving the fundamental problem; and
 - Be globally comprehensive and encourages all governments (not only national but also local governments), business, and civil society to foster responsible supply chains.

2.2.7 Product safety and market surveillance

- Concerning Product Safety and Market Surveillance Package, the authorities of the EU should amend the Article 7 of the proposal for a Regulation on consumer product safety (COM(2013) 78) by which the indication of the country of origin would become mandatory because the mandatory indication of the country of origin does not add much value.
- Concerning Market Surveillance under the New Legislative Framework: the authorities of the EU should disclose all the relevant information regarding the progress in the harmonisation of market surveillance and its implementation in each Member State. They should continue to consult stakeholders widely.
- Concerning the review of the Sales and Guarantees Directive (1999/44/EC) the authorities of the EU should review the advantages and disadvantages of the discretion of Member States to set a guarantee period longer than 2 years in a future review.

2.2.8 Competition policy

- The authorities of the EU should pay due attention to the correctness and relevance of the addressee when they send a 'simple request for information' or a 'request to supply information by decision'.
- They should allow a sufficient time for the addressee to prepare a reply as well as to be flexible in allowing extension of the time limit to respond to the request.

2.2.9 Trade Defence Instruments

- Concerning the proposed Regulation on the modernisation of the EU trade defence instruments, the JBCE requests that communication with all the stakeholders should be transparent throughout the process in order to increase the predictability of the process for businesses and that it should not force the businesses to cooperate unnecessarily and excessively, especially, in case the ex-officio option is adopted.

3 Recommendations to both the EU and Japan

3.1 To build an area of common regulatory environment

3.1.1 Towards a common regulatory environment

<Recommendations>

The JBCE would like to make a recommendation on the direction of future cooperation between the authorities of the EU and Japan in order to realise a common regulatory environment between them.

The JBCE recommends that Japanese and European policy-makers should increase their mutual understanding of existing and upcoming regulations on each side and their impact on domestic and foreign business to avoid unwittingly taking initiatives that create barriers to trade and investment. They should commit to exchanging annual legislative work programmes at the earliest stage to prevent regulatory divergence and new trade barriers. In addition, they should agree to an early warning system for draft legislation in order to make the dialogue effective. To expand a common regulatory environment into existing regulatory regimes, they should also develop a joint strategy to promote better regulation, learning from each other's experience and adopting a common system of good governance. Throughout the process, the two authorities should have close dialogue with businesses.

Where an FTA/EPA does not already create a harmonised regulatory framework between the EU and Japan, the regulatory authorities in Japan and the EU should review their domestic technical regulations and conformity assessment procedures at regular intervals to determine the scope for further regulatory harmonisation. The outcome of these reviews, including scientific and technical evidence used, should be exchanged between the regulatory authorities and provided to industry upon request.

Furthermore, the authorities of the EU and Japan should look at opportunities that a common regulatory environment will create. They should together disseminate their experience to the rest of the world as the leaders of the cutting edge issues.

The JBCE calls on the leaders of the EU and Japan to ensure that the upcoming FTA/EPA will be a living agreement and will provide a solid framework for regulatory cooperation to address the concerns of the business community. In the recommendations of last year, the JBCE welcomed the successful outcome of the EU-Japan Industrial Policy Dialogue between METI and DG GROW on 17 March 2015 during which they adopted a Regulatory Cooperation Joint Document. The JBCE hopes that this joint initiative will reinforce and complement the upcoming FTA/EPA, and that the cooperation based on this joint initiative will be implemented steadily.

As a long-standing active and consistent advocate of the regulatory cooperation, the JBCE reaffirms its commitment to supporting the authorities of the EU and Japan on regulatory cooperation. The JBCE strongly requests that the process of regulatory cooperation should be transparent and that the representatives of the relevant industry should be involved in the process.

<Background>

The JBCE would like to look at future issues that will become important after the conclusion of an FTA/EPA between the EU and Japan. Once an FTA/EPA is concluded, key issues would move away from barriers to market access to how to build a common regulatory environment in numerous sectors. The JBCE believes that the general direction of creating a common regulatory environment should be deregulation so that resulting economic benefit will become far larger and more widely spread than the mere reduction of the cost of doing business between the EU and Japan. Thus, such a common regulatory environment will be a key to the economic prosperity of the two economies as well as wellbeing of their citizens. The JBCE also believes that building a common regulatory environment is a direction that developed countries in general will aim at in coming years.

The Regulatory Cooperation Joint Document foresees the enlargement of the existing cooperation between the European Commission and the government of Japan to new areas such as robotics, chemicals, automobile and conflict minerals. The JBCE recognises that building a common regulatory environment is not an easy task and will take a long time of active cooperation as we have witnessed in the Single Market of the EU.

As the Regulatory Cooperation Joint Document indicates, it is easier to build a common regulatory environment when a new policy is being formulated than to try to bridge between two existing regimes. As an example, we have regulation on chemicals in mind. Had the authorities of the EU and Japan built a common regulatory environment when REACH was planned, there could have been a huge benefit for chemicals industry and its downstream users. In the end, the EU and Japan built different regulatory regimes on chemicals and, as the result, chemicals companies and related companies on both sides have to bear a huge cost in complying with the two regimes.

The JBCE nonetheless hopes that, in a long term, regulatory cooperation between the EU and Japan will expand further from new policy areas to existing policy areas.

3.1.2 Cooperation for high-level international standards and rules

<Recommendations>

- The authorities of the EU and Japan should strengthen their cooperation in developing high-level international standards and rules in order to prevent protectionist measures at the multilateral level, in particular in the WTO, as well as the regional or bilateral level.
- While the JBCE supports the further trade liberalisation through bilateral trade agreements, the two authorities should continue to make utmost efforts at achieving multilateral trade agreements in the WTO.
- The authorities of the EU and Japan should exert their utmost efforts to realise global free trade in environmental goods through the ongoing negotiations at the WTO and seek for its earliest possible conclusion. In addition to the APEC List of 54

Environmental Goods, a broad range of additional products including intermediate products (i.e. essential materials or components to produce the qualified goods) should be explored, by taking account of global value chains that developing countries participate. At the same time, an efficient review mechanism to allow updating the list of environmental goods and to reflect changes in technologies in the years to come should be included, so that such an agreement can also directly and positively contribute to green growth and sustainable development.

- The authorities of the EU and Japan should 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.

<Background>

For the global activities of both EU and Japanese industries, emerging markets have increased their importance. On the other hand, in many countries, protectionist measures, including trade-related and regulatory measures, have been introduced in various areas such as raw materials, information security, environment protection, human health and competition policies.

An increased cooperation between the EU and Japan is necessary in order to realise global agreements under the auspices of the WTO and international standardisation.

3.1.3 A common policy on the control of chemicals

<Recommendations>

- 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 the evaluation of risks and the 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.

<Recent Progress>

No progress has been seen for these recommendations.>

<Background>

Policies on the control of chemicals such as REACH and RoHS and Japan's Chemical Control Law have a significant impact on global supply chains.

3.1.4 A common resource efficiency policy

<Recommendations>

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

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

The authorities of the EU and Japan should contribute to regulatory harmonisation of circular economy at global level. Such harmonisation can be achieved through the development of technical standards in line with ISO standards and help industry to better implement circular models in the supply chain whilst creating a level playing field for all market actors.

In parallel, the authorities of the EU and Japan should consider incentives for manufacturers to increase the use of recycled materials in products and for producers of secondary raw materials to provide them in higher quality and quantity. These would be necessary steps for the creation of a global and functional secondary raw materials market.

<Recent Progress>

There has been little progress.

<Background>

The European Commission proposed a new Circular Economy Package in December 2015.

Resource efficiency is an important policy issue in Japan. Furthermore, it is a global issue. Therefore, the JBCE recommends the authorities of the EU and Japan to create a common resource efficiency policy and lead the world in this area.

It is understood that resource efficiency is one of the new areas to which the Regulatory Cooperation Joint Document of 17 March, 2015 between METI and DG GROW foresees the enlargement of the existing cooperation between the European Commission and the government of Japan.

3.1.5 Opening up Science, Technology & Innovation programmes with each other

<Recommendations>

The two authorities should open up Science, Technology and Innovation programmes more so that companies and R&D centres located in the EU or Japan can participate in and benefit from the programmes of the other region under the same conditions as participants from the other region.

The two authorities should specifically favour joint R&D programmes that are geared towards international standardisation such as standardisation in advanced manufacturing and in the

internet of things. Regulatory cooperation on emerging technologies between the EU and Japan will facilitate the deployment of new services and products in the both regions.

Such cooperation could be extended to the development of practical application of new technologies, such as smart grid, smart city, smart community, RFID (Radio Frequency Identification) and biometrics authentication technologies. The two authorities should also cooperate in the dissemination of 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.

3.1.6 Expand the benefits of AEOs

<Recommendations>

The authorities of the EU and Japan should:

- aim at introducing further regulatory cooperation in order to give more concrete benefits to AEOs (Authorised Economic Operators) and facilitate trade between the EU and Japan following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan; and
- consider expanding the legal base if it is necessary to realise the simplification of import procedures.

<Recent progress>

Little progress has been seen for these recommendations.

<Background>

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 impose excessively strict regulations. European and Japanese businesses share concerns about possible additional burdens on businesses and unwanted hindrances to smooth trade due to the inconsistency of such regulations among countries.

The JBCE is aware that the two authorities are engaged in regular discussion following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan but that no concrete benefits have emerged for operators. It could be because the scope of this agreement is restricted to 'security and safety'. The JBCE would like in this regard to put emphasis on the simplification of import procedures where companies are given greater freedom while taking greater responsibility for their imports without an excessive administrative burden.

3.1.7 Strengthening cooperation on the fight against counterfeiting, piracy and contraband goods

<Recommendations>

- The JBCE would like to see the EU and Japan to step up efforts to fight against counterfeited, pirated and contraband goods, both inside and outside the EU and Japan. For example, they should better cooperate with each other and with the third country authorities to secure the closure of sites trading in fake goods.
- The JBCE requests that the authorities of Japan should make all trade with counterfeit goods illegal by closing the loophole by which individuals are allowed to bring in or import counterfeits for person consumption.
- The JBCE reiterates its support of Regulation (EU) 608/2013 of the EP and Council of 12 June 2013 on Customs enforcement of Intellectual Property rights which reflects to some extent the JBCE's key recommendations such as simplifying the procedure. However, the JBCE requests the authorities of the EU that they should seek ways to mitigate the financial burden of the importers of the authentic goods.
- The JBCE would like to see an enhanced role of the Observatory on Counterfeiting and Piracy in line with the Regulation adopted by the European Parliament and Council on 19 April 2012.
- The JBCE suggests that with an increased cooperation by the manufacturers and importers of the authentic goods, including the provision of more information on their products, the on-site training of officials and the training of officials on the more effective use of the WCO's IPM (Interface Public Members), the customs authorities should make inspection more efficient and raise the rate of its coverage.

<Recent Progress>

Some progress has been seen for the cooperation.

3.1.8 For the successful implementation of the ITA Expansion

<Recommendations>

The JBCE welcomes the conclusion of the negotiations to expand the WTO's Information Technology Agreement (ITA) at the 10th WTO Ministerial Conference in Nairobi in December 2015. With this agreement signed by 53 WTO members, the tariff of 201 new products will be eliminated. The JBCE highly welcomes that a periodical review mechanism has been built in in the agreement.

The JBCE recommends that the authorities of the EU and Japan should work together in order to convince additional members to sign up to the expanded ITA.

The JBCE would like to emphasise to the both authorities the importance of the punctual implementation of tariff elimination as scheduled as starting on 1 July 2016. The JBCE recommends to the both authorities even to consider accelerated implementation.

<Recent Progress>

53 WTO members including the EU and Japan successfully concluded the ITA expansion negotiations at the 10th Ministerial Conference in Nairobi Kenya in December 2015. Tariffs shall be eliminated through annual reductions beginning on 1st July 2016. Japan has committed to eliminate tariffs on all new ITA products on 1st July 2016, while the EU sets 77% for immediate elimination.

<Background >

An ITA expansion would boost trade, remove uncertainties relating to product classification and ensure technological developments across all sectors and public services. Both Japan and Europe will benefit from the development of a major industrial sector that is a driver in virtually all other sectors and in public services of productivity, innovation, job creation, and improved competitiveness and service quality.

Since the conclusion of the original agreement in 1996, its product coverage had remained unchanged despite innovative technological developments.

3.1.9 Public procurement

<Recommendations >

- The authorities of the EU, its Member States and Japan should increase their efforts to facilitate better access to the respective public procurement markets.
- The authorities of the EU, its Member States and Japan should make more information available in English.
- The JBCE requests that the use of English when submitting tender proposals should be allowed, or at least partially allowed, especially for the technical specifications and communication.

<Specific recommendations to the authorities of the EU>

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

- Non-legislative policy measures should be pursued in order to achieve the objective of opening procurement markets internationally;
- An effective mechanism to prevent the EU from arbitrarily excluding better and cheaper goods and services from its procurement market and to ensure legal stability and predictability for businesses should be incorporated into the legislation; and

- Clear and transparent criteria for the scope and conditions of the application of the legislation based on an appropriate and balanced analysis should be included in the legislation.

< Recent progress >

There has been some progress.

< Background >

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

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

The JBCE appreciates that the EU has dropped its original idea of closing its market unilaterally. The JBCE is still concerned, however, that the EU’s possible actions could trigger a chain reaction of protectionist measures all over the world. Should it happen, the EU’s intention and objective of opening up international public procurement markets would not be achieved.

3.1.10 Railway safety certification requirements

< Recommendations >

- The authorities of the EU and Japan should continue their efforts to ensure that their commitments, such as procurement transparency and non-discrimination, are fully implemented in order to achieve much more tangible improvements in actual market access. Especially, they should establish their respective open description of compliance requirements as well as validation processes. The certification procedures for the railway rolling stock and equipment should be made fully transparent to the interested parties of both sides and should be further simplified.
- The JBCE notes that both authorities are now discussing the removal of Japanese operational safety clause from Japan’s GPA Annex III as well as the EU’s notes against Japan from the EU’s GPA Annex III in the context of EU-Japan EPA/FTA negotiations.
- In addition, the European Railway Agency and the Japanese Ministry of Land, Infrastructure, Transport and Tourism should look into the possibility of harmonising their respective mandatory technical requirements by assessing the equivalence of these mandatory technical requirements.

- The JBCE believes that win-win solutions can be found through such development. This will help both the EU and Japanese railway operators to increase their capabilities to respond to their customers' expectations as well as railway manufacturers in both the EU and Japan to strengthen their competitiveness in and outside the two regions.

< Recent progress >

Although limited compared to last year, steady progress has been achieved in railway market access:

The players in the railway sector of the both sides have continued their efforts to understand the difference between the two systems especially through Railway Industrial Dialogues. Following the two successful Dialogues in 2014, two Dialogues were held successfully in 2015 to further improve the mutual understanding among operators and manufacturers on both sides.

The JBCE supports this initiative sponsored by both authorities. Such a structured industrial-sector dialogue enable players to enhance mutual understanding and should be held regularly.

The JBCE welcomes the fact that one of the three JR companies, which had been delisted from Japan's GPA Annex III, opened its third international tender for the procurement of 63 electric-diesel railcars in May 2015.

< Background >

- 1) Both the EU and Japanese railways have respectively long and successful histories. However, the legal requirements, management systems and procurement practices differ. In addition, the responsibility for the safety and reliability of equipment and systems falls on different players: while, in the EU, manufacturers are mainly responsible for obtaining safety certification, in Japan, railways operators are responsible for obtaining safety certification. Furthermore while, in the EU, railway operators are mainly public utilities, in Japan, railway operators are mainly private utilities. In order to address the difference in safety certification, opening and developing a dialogue between the industry players, especially the manufacturers, of the two sides could be an appropriate way. It would foster the cross-fertilisation of safety performance of the global railways industry.
- 2) In 2014 the European Commission and the Japanese Ministry of Land, Infrastructure, Transport and Tourism agreed on matters such as procurement transparency and defining the scope of the operational safety clause.
- 3) The EU finally lifted its objection to the withdrawal of the three JR companies from Japan's GPA Annex III, and these companies simultaneously published their voluntary codes of conduct regarding materiel procurement.
- 4) On 27 March 2014, the first industrial dialogue on railways involving nearly all the players in the EU and Japan in the sector was organised in Brussels under the sponsorship of the European Commission and the Japanese government. The second dialogue was held in Tokyo on 4 December 2014, the third in Brussels on 21 May 2015 and the fourth in Tokyo on 10 November 2015.

- 5) During the past few years, significant efforts have been undertaken in the EU in order to get better visibility on the certification in EU Member States. These relate to specific requirements for safe operation of relevant railway networks. The European Railway Agency is taking care of the certification coordination among EU Member States' National Safety Authorities. In its so-called "Fourth Railway Package" proposal, the European Commission is paving the way for a common certification procedure to be granted by the European Railway Agency.

3.1.11 To call for successful ratification of Trade Facilitation Agreement

< Recommendations >

The two authorities should take initiative towards early implementation of the Trade Facilitation Agreement by encouraging the WTO members to accelerate their ratification.

< Recent progress >

There has been some progress. The EU and Japan finalised the ratification process in May 2015 and in October 2015 respectively.

< Background >

In December 2013, WTO members concluded negotiations on a Trade Facilitation Agreement at the Bali Ministerial Conference. However, WTO members failed to sign the Protocol to the Trade Facilitation Agreement in time, without which the Agreement cannot be a part of the WTO legal framework.

Following successful talks between the US and India, WTO members could finally adopt in November 2014 a Protocol of Amendment. The Trade Facilitation Agreement will enter into force once two-third of members have completed their domestic ratification process.

The Trade Facilitation Agreement contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It also contains provisions for technical assistance and capacity building in this area.

3.1.12 The Trade in Services Agreement (TiSA)

< Recommendations >

The authorities of the EU and Japan should continue their efforts towards the conclusion of the Trade in Services Agreement (TiSA) by the end of 2016 and encourage as many WTO members as possible to join the ongoing negotiations.

< Recent progress >

There has been some progress.

< Background >

The Trade in Services Agreement (TiSA) is currently being negotiated by 23 WTO members including the EU and Japan. The TiSA is to modernise the WTO's General Agreement on Trade in Services (GATS), and is aimed at a high-quality and comprehensive trade agreement by opening up markets for services and developing new trade rules.

3.2 To support the timely development of business

3.2.1 Social security contributions

<Recommendations>

The JBCE welcomes the conclusion of social security agreements between Japan and 11 Member States of the EU. Negotiations or preliminary talks are under way between Japan and 4 EU Member States. The JBCE has noticed, however, that no new preliminary talks have been started since 2012 between the authorities of the EU Member States and Japan. The JBCE is concerned that 13 EU Member States could be left without a social security agreement due to relative importance of those Member States from the point of view of the social security of expatriates.

The JBCE requests that,

- Japan and the Member States of the EU that have not concluded a social security agreement should make further efforts to expand the network of social security agreements;
- the authorities of the EU and Japan should explore the possibility to make a common EU agreement on social security with Japan to cover the remaining Member States; and
- 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.

<Recent progress>

So far, social security agreements between Japan, and Germany, the United Kingdom, Belgium, France, the Netherlands, Czech Republic, Spain, Ireland and Hungary have entered into force. The agreement between Japan, and Italy and Luxembourg have been signed. Furthermore, negotiations are underway between Japan, and Sweden and Slovak Republic, and at the preparatory stage between Japan, and Austria and Finland

<Background>

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.

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

<Recommendations>

- The EU and Japan should realise far-reaching liberalisation of the movement of Intra-Corporate Transferees (ICTs) in the framework of an EPA/FTA. 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.
 - Accompanying family members should be given access to labour market automatically.

<Recent Progress>

It can be said that some progress has been seen for the recommendation because of the launch of negotiation on an EPA/FTA.

<Background>

For the smooth and efficient running of international businesses, it is essential that companies are able to dispatch key personnel including directors without going through red tape. Such transfers do not have any negative impact on the labour market 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, as the burden on companies as well as employees and their families is substantial, it does constitute an obstacle to swift development of business.

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

3.2.3 Personal Data Protection Regimes

<Recommendations>

The JBCE welcomes the fact that the revision of the data protection regulations in the EU and Japan has been agreed and that Japan has moved onto the stage of implementation. As to the next steps, the JBCE requests the authorities of the EU and Japan the following:

- Create a balanced, harmonised and future orientated data protection regimes both in the EU and Japan as data protection regimes have a potential to act as a catalyst for growth and innovation;
- Carry out a public consultation in advance on delegated acts, implementation acts and/or guidelines so that the views of the global businesses would be taken into consideration;
- Apply sanctions with careful consideration to risks that disproportionately large sanctions might have because the amount of sanctions of up to 4% of the total global turnover in the new EU Regulation could have negative impacts on the industries and economy beyond its border;
- Start substantial discussions on the establishment of a mechanism that will lead to the free flow of personal data between the EU and Japan: in principle, the EU and Japan should certify the adequate level of personal data protection with each other in accordance with their respective legislations; and
- Launch a dialogue in order to realise consistent personal data protection regimes around the world, to assure interoperability and to address digital protectionism by enhancing cooperation with third countries and international organisations.

<Recent Progress>

There has been good progress on this recommendation.

<Background>

The original personal data protection laws were adopted before the technical advancement of internet diffusion and the globalisation such as cross border data flow by cloud computing. In

addition, citizens have recently become more concerned about privacy protection. As a result, the differences in regulations among various jurisdictions have caused an increase in compliance costs. In this sense, the current regimes have to some extent become an obstacles to efficient global operations and innovation utilising data. The revision of the laws were thus needed.

The EU institutions reached an agreement on General Data Protection Regulation in December 2015. The regulation was formally adopted by the European Parliament and the Council in April 2016. The JBCE appreciates that the codes of conduct and certification mechanisms are included in the EU Regulation in addition to the standard contract clause and the binding corporate rules.

The revised act on the Protection of Personal Information of Japan was adopted in September 2015. Subsequently, the Personal Information Protection Commission started its activities on 1 January 2016.

3.3 To secure the optimisation of the returns on investment

3.3.1 The BEPS Action Plan and other tax issues

<Recommendations>

- The JBCE supports the creation of an internationally fair taxation framework and level playing field. At the same time, the JBCE would like to urge that the authorities of the EU and Japan should care that the implementation of the BEPS Actions should not create additional administrative burden on businesses.
- The JBCE welcomes that the OECD/G20 countries have agreed to implement the master file-local files system in the transfer pricing documentation in BEPS Action 13. The JBCE eagerly awaits that it will be implemented coherently and successfully to the bilateral and multilateral relations between the EU Member States and Japan in the way that will reduce the compliance costs and uncertainty significantly.
- The JBCE would like to recommend that the authorities of the EU, its Member States and Japan should also aim at facilitating the conclusion of bilateral and multilateral APAs.
- The JBCE would like to emphasise that it is important that the scope of information required to disclose through Country-by-Country Reporting is internationally coherent and in accordance with the BEPS Action 13 in order to realise a level playing field.
- The JBCE also would like to point out that information concerning a tax payer should be kept confidential by the tax authorities as BEPS Action 13 demands.
- The JBCE requests that, as agreed by OECD/G20 countries in 2013, the introduction of the measures developed by the BEPS Action Plan should not lead to unnecessary uncertainty for compliant taxpayers and to unintended double taxation.
- The JBCE welcomes the commitment made by 20 countries including Japan and 13 EU Member States (Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, the

Netherlands, Poland, Slovenia, Spain, Sweden and the UK) to provide for mandatory binding MAP arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe. The JBCE recommends that this mechanism should be extended to between all the EU Member States and Japan.

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

<Recent Progress>

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

<Background>

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

The European Commission published on 12 April 2016 a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (COM(2016) 198/2). It proposes to widen the scope of CBCR significantly more than that agreed in the framework of BEPS Action 13 by requiring the publication of CBCR on company's website, which the JBCE regards the breach the spirit of the agreement on BEPS Action Plan by the OECD/G20 countries and would be utterly counterproductive in realising a level playing field internationally.

4 Recommendations on the policy of the EU

4.1 The importance of the Single Market

<Recommendations>

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

- creating additional opportunities for consumers, professionals and businesses;
- encouraging the modernisation and innovation that Europe needs; and
- ensuring practical benefits for people in their daily lives.

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

The JBCE would like to emphasise the importance of the following policy areas for the single market:

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

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

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

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

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

The strength of the European economy is, furthermore, built on a set of values that will lead to a sustainable economic development. Corporate social responsibility is a pivotal contributor to the EU's objectives of sustainable development and highly competitive social market economy. Considering the relationship with Japan, for example, the JBCE believes that fostering responsible business should be at the heart of the EU-Japan economic and political partnership.

< Recent Progress >

There has been some progress since the European Commission published a road map to realise the unleashing of the full potential of the Single Market.

< Background >

President Juncker of the European Commission made a political commitment in July 2014 to unleash the full potential of the Single Market and make it the launch pad for Europe to thrive in the global economy.

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

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

< Recommendations >

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

< Recent Progress >

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

< Background >

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

4.3 Chemical Regulations

4.3.1 REACH

<Recommendations>

The EU should pay more attention to the implementation of REACH

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

The EU should further improve the PACT-RMOA

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

<Recent Progress >

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

< Background >

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

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

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

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

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

4.3.2 Appropriate approach to Endocrine disruptor

<Recommendations>

The JBCE requests that the authorities of the EU should regulate endocrine disruptors not by using the categorisation like CMR (carcinogenic, mutagenic or reprotoxic), but by using the risk assessment based on sound science because endocrine disruption is not the endpoint of toxicity. The hazard assessment should be conducted by identifying adverse effect based on the endocrine mode of action defined by the WHO, and characterising with taking account of potency, lead toxicity, severity and irreversibility.

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

< Recent Progress >

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

< Background >

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

4.3.3 RoHS

<Recommendations>

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

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

<Recent Progress >

Some progress has been made.

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

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

<Background >

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

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

4.3.4 CLP Regulation

<Recommendations>

- The JBCE requests that, to alleviate burden on exporters, the authorities of the EU should accept GHS classification and labelling at the custom clearances.

- The JBCE requests, in addition, that the authorities of the EU should take GHS into consideration from ATP (Adaptation to Technical Progress) stage.

< Recent Progress >

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

< Background >

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

4.3.5 Nanomaterial

< Recommendations >

1) Definition

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

2) Standardisation of measurement method

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

3) Reporting scheme

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

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

< Recent Progress >

Little progress has been made:

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

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

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

< Background >

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

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

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

4.3.6 Biocide Product Regulation

< Recommendations >

The JBCE asks the authorities of the EU to evaluate, in due course, the effectiveness of measures for treated articles under the Biocide Product Regulation (BPR) in reducing the risks posed to humans, animals and the environment by biocidal products, and to ensure that such measures are fit for purpose.

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

< Recent Progress >

There has been some progress.

< Background >

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

impact of this regulation via an evaluation of socio-economic versus human and environmental benefits for treated articles measures under the BPR.

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

4.4 Resource Efficiency Policy

4.4.1 Circular Economy

<Recommendations>

A truly circular economy requires the involvement of actors in all stages of the ideal economic cycle and should be based on life-cycle thinking. The JBCE therefore recommends the authorities of the EU to assess environmental benefits at the design stage from the perspective of scientific evidence and to take into account trade-offs between energy efficiency, resource efficiency, safety and performance of products.

Although framework conditions and enabling legislation at EU level exists, it requires better implementation, harmonisation and enforcement. The JBCE recommends the authorities of the EU to ensure coherence in the development of the Circular Economy Action Plan and avoid overlaps or contradictions between several pieces of legislation which limit circular business models which may focus on recycling and refurbishment/remanufacturing activities. In particular, before proposing new legislation at the production stage, the authorities of the EU should take into account coherence with ErP, Energy labelling, WEEE, RoHS, REACH, and Product Environmental Footprint (PEF), amongst others. When new or revised legislative and policy proposals will be put forward, effective enforcement schemes should be implemented in order to avoid unfair competition which would undermine the credibility of new business models. On the other hand, the JBCE recommends the authorities of the EU to assess – e.g., through REFIT - whether existing framework/environmental legislation poses obstacles to the Circular Economy, which can potentially be removed.

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

<Recent Progress>

This is a new recommendation.

<Background>

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

4.4.2 Ecodesign Product Lots

<Recommendations>

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

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

The JBCE suggests that ‘repair as produced’ principle should be applied to spare parts under ErP as it is the case under the RoHS Directive in order to consider the resource efficiency aspects and avoid disposing off usable parts prematurely.

<Recent Progress>

There has been some progress as consultation is ongoing.

<Background>

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

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

4.4.3 Energy Labelling

<Recommendations>

With respect to the ongoing Energy Labelling directive revision, the JBCE urges the authorities of the EU to avoid leaving the top energy classes empty as this will confuse consumers and discourage innovation on the producers’ side to come up with more energy efficient products.

The rules for rescaling the energy label should also be tailored to the characteristics of the products in scope and generally speaking should only take place when more than 50% of products on the market move to the top classes. The JBCE also cautions against setting a costly database for products' information as this will not substitute market surveillance in each Member State and risk that confidential data are leaked to third parties.

<Recent Progress>

This is a new recommendation.

<Background>

With regard to the Energy labelling directive revision, the European Commission's draft (COM(2015)241) is proposing to leave the top classes (i.e. A and B) empty at the moment of the introduction of the label so that the estimated time within which a majority of models falls into those classes shall be at least ten years, and remove the bottom classes (D, E, F or G) from the label where due to ErP implementing measures products falling in these classes cannot be placed on the market anymore. This will discourage innovation and confuse consumers from investing to buy the most energy efficient products on the market and is counterproductive to the aim of Energy labelling. The proposal to create a product database to be managed by the European Commission will only add additional costs, burden and damage competitiveness for SMEs with no added benefits in terms of market surveillance which needs to be performed in the market by the Member States. Most of the product data requested to be included in the database is already available on the producers' free websites under the ErP implementing measures.

4.5 Taxation

4.5.1 Common Consolidated Corporate Tax Base

<Recommendations>

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

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

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

The JBCE would like to emphasise that cross-border loss relief, the carry-over of unrealised good-will taxation in intragroup reorganisation and non-application of arms-length principle within a group of companies that form CCCTB are the key attractiveness of the CCCTB and that there should be temporary measures to realise such benefits at the stage of the CCTB. The JBCE also recommends that a temporary mechanism for cross-border loss relief should be

designed in such a way that cross-border loss relief can be exercised when the principal entity incurs losses on a stand-alone basis.

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

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

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

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

< Recent Progress >

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

< Background >

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

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

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

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

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

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

4.5.2 Merger Directive

<Recommendations>

- 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.
- The shareholding requirements should be abolished.

<Recent Progress >

No progress has been seen for this recommendation.

<Background >

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

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

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

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

4.5.3 The fundamental reforms of VAT regime under consideration

<Recommendations>

The JBCE welcomes the strategy of the European Commission to fundamentally revise the VAT system and to establish a simpler, more efficient and robust VAT system tailored to the single market as described in Com (2011) 851. The JBCE also welcomes the publication by the European Commission of options for simpler and more robust future VAT regime.

Furthermore, the European Commission published on 7 April 2016 an action plan on VAT 'Towards a single EU VAT area - Time to decide'.

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

< Recent Progress >

Some progress albeit limited has been seen for this recommendation.

< Background >

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

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

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

4.5.4 Country by country reporting (CBCR)

< Recommendations >

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

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

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

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

< Recent Progress >

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

< Background >

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

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

The European Commission published on 12 April 2016 a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (COM(2016) 198/2). It proposes to widen the scope of CBCR significantly more than that agreed in the framework of BEPS Action 13 by requiring the publication of CBCR on company's website, which the JBCE regards the breach the spirit of the agreement on BEPS Action Plan by the OECD/G20 countries and would be utterly counterproductive in realising a level playing field internationally.

4.6 Company Law / Corporate Social Responsibility

4.6.1 A new strategy on CSR Policy

<Recommendations>

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

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

<Recent progress>

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

<Background>

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

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

More background on the recommendations

- 1) Much has been said of the improved definition of CSR since the publication of the EU strategy (2011-2014). Now is the time for every stakeholder to take part and design actions for the future. Policy instruments therefore need to encourage the uptake of CSR as a driver for European industrial competitiveness. The European Commission should lead policy discussions on promoting actions to maximise positive impacts, while mitigating negative ones.
- 2) Businesses need flexibility to choose how they reach their goal of sustainable development, in a manner meaningful to their supplier relations. “Rule-based” or “tick the box” approaches do not reflect the real challenges multinational companies face in today’s complex value chain, and sometimes do not accurately reflect the ongoing efforts of companies at a local level. A compliance mind-set also has the effect of limiting thinking about longer term challenges. CSR is a journey. The CSR policy tools must be designed to foster innovation and growth.
- 3) Dialogue is a powerful tool to understand how our communities work. It is often more useful in building lasting trust than forced transparency measures like naming and shaming. Innovation is fostered through open exchanges among stakeholders, partner countries or regions, governments, and suppliers. As relationships develop, partners are more likely to care about sustainable growth amongst other stakeholders, and to look for common goals. The JBCE would like to commend the EU-Japan CSR Working Group set up by DG GROW and the Japanese Ministry of Economy (METI) as one of the technical working groups within the EU-Japan Industrial Policy Dialogue. This Working Group has a lot of potential not only to strengthen the relationship between the EU and Japan, but also to create a new platform for dialogue.
- 4) Done effectively, such incentives would give first adopters a competitive advantage over the followers in terms of reputation and risk management. At present, however, companies taking the lead, for example in tackling human rights issues inside and outside companies are undermined and sometimes penalised. The JBCE would therefore welcome a

mechanism in which the first adopters receive more recognition, whereby efforts to improve both the positive and negative sides of CSR are praised, not penalised.

- 5) Since CSR is increasingly integrated into other EU policies, such as company law, trade agreements and public procurement, the European Commission and other European institutions should articulate such policy linkages when presenting new initiatives and communications. In this way, companies can engage in early discussion, highlight shortcomings and more effectively integrate CSR in corporate functions.

4.6.2 Conflict minerals

<Recommendations>

The JBCE acknowledges that the proposal for a Regulation has taken up certain feedback from businesses such as the promotion of internationally recognised frameworks, the voluntary approach of self-certification and the publication of a list of responsible smelters and refiners.

The JBCE also acknowledges that two expert groups have been formed to define the list of minerals and metals within the scope of the Regulation and to clarify the meaning of conflict and high risk areas. The JBCE requests that their work should be carried out in a transparent manner.

Without a well-established traceability scheme such as the iTSCi (ITRI Tin Supply Chain Initiative), it would be extremely difficult to implement the conflict-free accreditation for smelters. The JBCE thus requests that hasty expansion of the geographical scope without reliable implementation of the existing traceability scheme should be avoided.

In order to effectively stimulate responsible sourcing, the JBCE suggests that incentives focusing on upstream operations should be further considered. Concentrating on upstream supply chain operators and on facilitating the transmission of quality information in the supply chain leverages the appropriate point in the supply chain, is consistent with the OECD guidance and with industry initiative. Beyond the pinch point of smelters/refiners, it becomes exponentially more difficult to identify the origins of metals.

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

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

<Recent progress>

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

<Background>

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

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

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

4.6.3 Non-financial disclosure

<Recommendations>

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

1. Be flexible and principle-based

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

2. Emphasise on dialogue

The guidelines should recognise dialogue as equally valuable means for companies to strengthen the trust of their investors and stakeholders, and leverage the improvements of companies' internal practices by making it part of the PDCA management cycle. Dialogue is a powerful tool to foster a culture of risk management and innovation, whereby companies can

exchange views on potential future risks as well as explore collaborative opportunities. Many private initiatives are in the making at the international level to forge cost effective and meaningful collaborative dialogues.

3. Foster innovation and growth

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

4. Promote existing international reporting frameworks

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

<Recent progress>

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

<Background>

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

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

4.6.4 Responsible supply chain management

<Recommendations>

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

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

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

<Recent progress>

This is a new recommendation.

<Background>

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

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

4.7 Product safety and market surveillance

4.7.1 Product safety and market surveillance package proposal

<Recommendations>

The JBCE recommends that the authorities of the EU should amend the Article 7 of the proposal for a Regulation on consumer product safety (COM(2013) 78) by which the indication of the country of origin would become mandatory because, according to the final report on the 'Implementation of the New Regulation on Market Surveillance: Indication of Origin' dated 6 May 2015, the mandatory indication of the country of origin does not add much value. The JBCE believes that the mandatory indication of the country of origin would not necessarily

improve safety for consumers but that it would place substantial administrative burden on manufacturers and/or importers. The JBCE therefore believes the mandatory indication of the country of origin should not be included in the Package.

<Recent progress>

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

<Background>

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

4.7.2 Market Surveillance under the New Legislative Framework

<Recommendations>

- The JBCE supports the general direction the European Commission and the Member States are taking for harmonising market surveillance. This is an important step for fair movement of products.
- The JBCE requests the European Commission and the Member States to disclose all the relevant information regarding the progress of this process and the implementation of the market surveillance in each Member State.
- The JBCE requests the European Commission and the Member States to give industry an opportunity for contributing to developing the framework of harmonised market surveillance.
- The JBCE would like to thank the Directorate General of the European Commission concerned for the involvement of the industry and requests that it should continue to consult stakeholders widely – preferably through public consultation when draft guidance for the New Legislative Framework is ready.

<Recent Progress >

Some progress has been seen for this recommendation.

<Background >

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

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

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

4.7.3 Consumer protection

<Recommendations>

The Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 still maintains the discretion of the Member States to set a guarantee period longer than 2 years set in the Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees, which the JBCE believes could constitute an obstacle in the single market. The JBCE would like to ask the European Commission to review the advantage and disadvantage of this discretion to set a guarantee period longer than 2 years in the review of the Directive 1999/44/EC underway.

<Recent Progress >

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

<Background >

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

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

4.8 Competition Policy

<Recommendations>

- The JBCE requests the authorities of the EU to pay due attention to the correctness and relevance of the addressee when they send a ‘simple request for information’ or a ‘request to supply information by decision’.

- The JBCE also requests the authorities of the EU to allow a sufficient time for the addressee to prepare a reply as well as to be flexible in allowing extension of the time limit to respond to the request.

< Recent Progress >

There has been no progress.

< Background >

According to the article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and the article 11 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, the European Commission may, by simple request or by decision, require any undertakings and associations of undertakings to provide all necessary information even if they are not directly involved in the case in question. The articles 23 and 24 of the first Council Regulation and the articles 14 and 15 of the second Council Regulation stipulate fines and penalties for not complying with such requests.

The European Commission services in charge often send a request to an entity of the group that is not capable of responding to a request. It seems that, when the head office is located outside the EU, the European Commission services in charge do not make sure that the request is sent to the addressee that is responsible for responding to such a request. By the time such a request is forwarded to those responsible for handling such a request, there sometimes is not enough time to prepare a response. Furthermore, the European Commission services in charge are not flexible in allowing extension of time-limit when a request for an extension is made by the company required to respond.

4.9 Trade Defence Instruments

< Recommendations >

Concerning the proposed Regulation on the modernisation of the EU trade defence instruments, the JBCE requests that:

- Communication with all the stakeholders should be transparent throughout the process in order to increase the predictability of the process for businesses; and that
- It should not force the businesses to cooperate unnecessarily and excessively, especially, in case the ex-officio option is adopted.

< Recent Progress >

The European Parliament adopted its position in 2014 by calling for tougher measures against unfair imports, while the Council are unable to establish its position due to divergent opinions among the Member States.

<Background>

The European Commission submitted to the European Parliament and to the Council on 10 April 2013 a proposal for a Regulation (COM(2013)192) amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community.

4.10 Issues that have been resolved

The JBCE would like to thank the authorities of the EU for the resolution of the following issues that were raised in the 2015 Report of JBCE:

- The interpretation of Article (REACH)
- The issue of the obligation of OR (REACH)
- The issue of disseminated dossier information (REACH)
- The issue of the publication of issues and concerns coming out of the latest registration (REACH)

5 The list of JBCE's position papers and inputs to the public consultation from 30 March 2015 to 12 April 2016.

Date	Title
30-Mar-15	Joint Industry Recommendations EU Draft Regulation on Responsible Sourcing of Minerals
Apr-2015	Joint Industry Position Paper Draft Regulation - Review Commission Regulation (EU) No. 327/2011 (fans)
Apr-2015	Joint industry position paper Double Regulation: a serious challenge putting at risk the benefits and success of Ecodesign
27-Apr-15	Promote innovation instead of double regulation
1-Jul-15	Global Industry Strongly Urges Negotiators to Conclude ITA Expansion in July
15-Jul-15	JBCE comments on draft TASK 1 report of Smart appliances
20-Aug-15	General comment for Circular Economy Public Consultation
11-Sep-15	Public consultation on further corporate tax transparency
21-Sep-15	JBCE's Priorities and Recommendations for the European CSR Strategy 2015-2019
25-Sep-15	Additional comments following the 1st meeting of Consultation Forum according to Art. 23 of Regulation (EU) No 517/2014 on fluorinated greenhouse gases
28-Sep-15	Comments on Draft Emirates Control Scheme to Restrict the Use of Hazardous Materials in Electronic and Electrical Devices
18-Dec-15	JBCE welcomes the conclusion of WTO's ITA Expansion
27-Nov-15	Position for Ecodesign ENTR Lot 6/ENER Lot21 (Central air conditioning & heating)
27-Nov-15	Joint Industry position EU Data Privacy in the Digital Single Market
7-Jan-16	Public consultation on the Re-launch of the Common Consolidated Corporate Tax Base (CCCTB)
4-Mar-16	Joint statement on the EU-Japan FTA/EPA negotiations
6-Apr-16	Joint Industry Position on Product Database Proposal