Japan Business Council in Europe

2015 Report of the JBCE

24 April 2015

Japan Business Council in Europe (JBCE)

Rue de la Loi 82

Brussels, Belgium

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 by the end of 2015

A comprehensive EPA or FTA between the EU and Japan has vast potential to promote innovation and competition, generate economic growth, disseminate democratic values, and benefit consumers. Although a lot of 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 by the end of 2015. 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 by the end of 2015

- 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 by the end of 2015. 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

- 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 process of regulatory cooperation should be transparent and the representatives of the relevant industry should be involved in the process.

- 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 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 following the agreement on the mutual recognition of the AEOs in June 2010 between the EU and Japan;

- 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 try to bring the current negotiations to expand the ITA to a successful conclusion as soon as possible.

- In an expanded ITA, a compulsory and periodical review mechanisms should be built in in order to make it easier and effective to update the coverage of products.

- 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 access to the EU public procurement market, a proposal for a Regulation to be amended by the new Commission should take account of:

  - Any measures should incorporate 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; and

- Any measures should contain clear and transparent criteria for the scope and conditions of their application based on an appropriate and balanced analysis.

- The authorities of the EU and Japan should establish an open description of compliance requirements as well as validation processes. The certification procedures relevant for the railways should be made fully transparent to both parties. They should mutually inform of their evolutions.

- The European Railway Agency and the Japanese Ministry of Land, Infrastructure, Transport and Tourism could establish a dedicated working group in order to better capture the certification procedures in both sides' networks.

- 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 early conclusion of the Trade in Services Agreement (TiSA) 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. 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 authorities of the EU and Japan should set clear rules for the use of each category of data, thus enabling data transfers and creating an environment that facilitates the utilisation of "big data" in a responsible way that also protects privacy.

  - The two authorities should adopt laws and regulations on data protection which are compatible with each other, so that there is no gap in data protection and enterprises can conduct business without concern about different data protection regimes.

  - The authorities of Japan should, in the amendment of the law, consolidate the currently fragmented authorities over personal data protection in Japan to one independent data protection authority and ensure transparency and foreseeability for both domestic and foreign-based companies.

  - The authorities of Japan should make sure that an amended law will satisfy the adequacy-finding procedure under the EU system.

- A reasonable and equitable 'safe harbour' agreement between the EU and Japan or the adequacy-finding procedure under the EU system should be explored during or after the completion of reforms of the two regimes.

- Concerning the EU's proposal for General Data Protection Regulation COM(2012) 11), the authorities of the EU should balance privacy protection and innovation, and recommends an active use of recognised certification schemes in international data transfers, a clearer definition of extraterritorial applicability, a flexible notification period in case of a breach, the transfer of employee data to the head office or its data centre outside the EU, and the maximum fines to be proportionate and equitable.

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

2.1.5 To secure the optimisation of the returns on investment

- Concerning the BEPS (Base Erosion and Profit Shifting) Action Plan, the authorities of the EU and Japan should carefully consider the risks of excessive disclosure requirements and of excessive anti-tax avoidance measures so as not to hamper multinational enterprises' business activities.

- The authorities of the EU Member States and Japan should exempt dividend payments from subsidiaries in which its parent company has shareholding of 10% or more, and royalty and interest payments between related companies, from withholding taxes.

- The authorities of the EU Member States and Japan should review bilateral tax treaties and introduce clauses that will facilitate corresponding adjustments and eventual arbitration.

- The authorities of the EU Member States and Japan should harmonise and simplify documentary requirements between the EU and Japan and among the EU Member States in order to reduce the costs of compliance to various transfer pricing taxation regimes.

- The authorities of the EU Member States and Japan should make the conclusion of bilateral and multilateral APAs (Advance Pricing Arrangements) between the EU Member States and Japan easier and cheaper by improving their procedures.

- The authorities of the EU Member States and Japan should consider the introduction and/or expansion of participation exemption regimes in order to promote direct investment between the EU and Japan.

2.2 On the policy of the EU

2.2.1 To reinforce the competitiveness of the EU economy

- Concerning the importance of the Single Market

- In order to achieve smart, sustainable and inclusive growth, the authorities of the EU should pursue further and continuous improvement of the 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 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.

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

■ Concerning REACH:

- The authorities of the EU should proceed swiftly against the Member States which do not follow the interpretation of the Article as stipulated in the Guidance document so that actors in the supply chain can avoid the fragmented compliance requirement in EU market.

- Concerning SVHC (Substances of very high concern), the authorities of the EU should further improve the care for SMEs even though a new website on PACT-RMOA has been an improvement.

- The authorities of the EU should issue a clarification on the obligation of Only Representatives under the Article 8 of REACH and its implication under the EU competition law.

- The disseminated dossier information that is purchased from Lead Registrant in ECHA home page for HSE (health safety and environment) purposes (such as GPS - Global Product Strategy - and SDS - Safety Date Sheet) should be made accessible for free and made available worldwide.

- 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 authorities of the EU should summarise and publish issues and concerns coming out of the latest registration – such as difficulty to identify Lead Registrants and no

transparency of the cost for LoA (Letter of Access), and their solutions in time for the following joint submission.

- The authorities of the EU should, instead of leaving it to agreements among the participants of SIEF, actively monitor and, if necessary, initiate corrective measures in order to realise transparency of the cost for LoA and the equity in cost sharing.

- 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 take an initiative and establish a harmonized reporting system at the EU level; and

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

- Concerning the Biocide Product Regulation (BPR), the authorities of the EU should evaluate, in due course, the actual benefits 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.

- Concerning Ecodesign:

  - 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 for components integrated into products so that optimum efficiency is pursued at the level of the final product not at the component level where there is no tangible benefit to the consumers.

  - The "repair as produced" principle should be applied for spare parts as is the case in the RoHS Directive.

- Concerning environmental footprint:

  - To support comparability objectively, the EU should respect discussion on LCA (Life Cycle Assessment) (e.g. cLCA – carbon-Life Cycle Assessment), method under ISO, IEC (International Electrotechnical Commission) (ISO14040-14044, ISO26000 (GRI), ISO14025 etc.), etc. with consideration to global harmonization;

  - The EU should allow mutual recognition of databases not only in the EU but also with those outside the EU and participate in the international development of database; and

  - In setting sector rules, the EU should issue guidelines on the scope of products and industrial sector in addition to the EU methodologies of OEF (Organisation Environmental Footprint), PEF (Product Environmental Footprint). Furthermore, sector definitions should be sufficiently narrow to allow a meaningful comparison of data.

- Concerning CCCTB (Common Consolidated Corporate Tax Base):

  - Non-taxation of unrealised gains on goodwill as a result of cross-border reorganisation;

  - Non-application of arms-length principle within a group of companies that form CCCTB; and

  - Off-setting of profits and losses.

- 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 a new strategy on CSR Policy:
  - Policy discussion should not be lost in the argument about definition and about the dichotomy between voluntary or mandatory approaches.
  - Highlight the aspect of innovation and provide open platform.
  - Take a principle-based approach with flexibility.
  - Create incentives for companies with leadership for change.
  - 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.
  - 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.
  - The authorities of the EU should pursue globally conflict-free and responsible mineral extraction through dialogue with third countries.
- Concerning country by country reporting, the authorities of the EU should carefully consider the risks of excessive disclosure requirements that could unduly hamper multinational enterprises' business activities.
- Concerning non-financial disclosure, the JBCE looks forward to consultation by the European Commission during the preparation of non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators. The preparation should be carried out in a transparent manner.

- The authorities of the EU should proceed prudently in the deliberation of the Product Safety and Market Surveillance Package, in particular, Article 7 of the proposal for a Regulation on consumer product safety by which the indication of the country of origin would become mandatory. The mandatory indication of the country of origin should not be included in the Package.

- Concerning harmonising market surveillance, 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 Directive on consumer rights, 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.

- Concerning competition policy,

  - The approach chosen in the White Paper 'Towards more effective EU merger control' may still significantly increase administrative burden on businesses and decrease the legal certainty. The authorities of the EU should pursue consistence in its approach and consider the need for increased legal certainty and for the reduction of administrative burden for businesses.

  - 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.

- 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 welcomes 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 has been active and consistent advocate of the regulatory cooperation and reaffirms its commitment to it.

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 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 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. 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.

<Recent Progress>

This is a new recommendation

<Background>

Resource efficient Europe is one of the flagships of the EUROPE 2020. The European Commission proposed the Circular Economy Package in July 2014. The new European Commission has announced to replace it with 'more ambitious' legislation in 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 two authorities should:

- exchange electronic information such as customs entry data and manifest data between the authorities;

- introduce further regulatory cooperation in order to give more concrete benefits to AEOs (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;

- take the initiative to ultimately realise the single global AEO criteria;

<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. Particularly at a time of economic downturn, the negative effect can work as a Non-Tariff Barrier that slows down global economic activities.

The EU and Japan should lead the international harmonisation that strikes a balance between security and the facilitation of trade while realising efficient public-private operations.

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 Continued efforts for swift conclusion of ITA expansion

<Recommendations>

The JBCE requests that the two authorities should try to bring the current negotiations to expand the ITA to a successful conclusion as soon as possible and should encourage the signatories for its early implementation. The JBCE requests that, in an expanded ITA, a compulsory and periodical review mechanisms should be built in in order to ensure that the ITA will always be kept up-to-date and reflect technological developments. In addition, the EU and Japan should work together in convincing additional countries to sign up to the ITA.

<Recent Progress>

Following the agreement between the US and China made during the APEC Summit in Beijing in November 2014 to include around 200 products in a list, ITA signatories resumed the talks in Geneva in December 2014 for the first time in a year aiming to conclude an agreement. However, the negotiators were unable to reach a conclusion due to disagreement on the handling of some sensitive products.

< 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.

Unlike the current ITA that has never been updated since 1996, a built-in periodical review mechanism will enable additional categories of ICT goods to be traded duty free and will minimize the risk of current and future innovative technological developments giving rise to product classification uncertainties.

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 the use of English when submitting tender proposals to be allowed or at least partially allowed, especially for the technical specifications and communication.

<Specific recommendations to the authorities of the EU>

- Any measures should incorporate 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; and

- Any measures should contain clear and transparent criteria for the scope and conditions of their application based on an appropriate and balanced analysis.

< Recent progress >

There has been little progress, although the JBCE is aware of the recent initiatives by, for example, JETRO, in making information available in English but the complete information is rarely available in English.

< 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 EU public procurement market. (COM (2012) 124).

Although the European Commission has stated in its Work Programme 2015 its intention to withdraw and modify a proposal for a Regulation on the access of third-country goods and services to the EU public procurement market (COM (2012) 124), the proposal was not included in the list of withdrawn proposals published in the Official Journal of the EU on 7 March 2015. Furthermore, the European Commission still intends to establish legislative rules on the access of third countries goods and services to the EU's internal market in public procurement and procedures supporting negotiations on the access of the EU good and services to the public procurement markets of third countries.

Although the current proposal is to be amended, the JBCE has a serious concern about such legislation that would enable the EU to close its market unilaterally. The JBCE is concerned because, by exercising the proposed unilateral measures, the EU could send a signal to its trading partners that the EU is closing its procurement market discreetly, which could trigger a

chain reaction of protectionist measures all over the world. Should it happen, the EU's intention and objective of opening public procurement markets internationally would not be achieved.

3.1.10 Railway safety certification requirements

< Recommendations >

- The authorities of the EU and Japan should establish an open description of compliance requirements as well as validation processes. The certification procedures relevant for the railways should be made fully transparent to both parties. They should mutually inform of their evolutions.

- The European Railway Agency and the Japanese Ministry of Land, Infrastructure, Transport and Tourism could establish a dedicated working group in order to better capture the certification procedures in both sides' networks.

< Recent progress >

Some progress has been achieved in addressing this topic:

The players in the railway sector of the both sides have made efforts to understand the difference between the two systems for the past few years in parallel with negotiations on EPA/FTA, especially through Railway Industrial Dialogues. Although it still needs to be improved, their mutual understanding has improved.

The EU finally lifted its objection on the withdrawal of the three JR companies from Japan's GPA Annex III to the WTO Secretariat and these companies simultaneously published their voluntary codes of conduct regarding material procurement.

A major JR company already opened its procurement of safety signalling systems to European companies and recently announced new international tender for the procurement of diesel cars.

< Background >

1) Both the Japanese railways and the EU railways have respectively very long and successful experience in the railway safety domain.

2) The legal requirements, management systems and business practices of railways in the EU and Japan are not similar to each other. Notably, 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.

3) Safety certifications drive many railways equipment and systems procurement requirements.

4) 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.

5) On 27 March 2014, the first dialogue of the railways that involve 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.

6) The JBCE supports this initiative. Such an industrial-sector dialogue to enhance mutual understanding is useful and should be held regularly.

7) 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.

8) The JBCE hopes that, by taking the above progress into consideration, win-win solutions will be found through such a dialogue that will help the development of both the EU and Japanese railways industries in and outside the two regions.

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>

This is a new recommendation.

< 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 early conclusion of the Trade in Services Agreement (TiSA) and encourage as many WTO members as possible to join the ongoing negotiations.

<Recent progress>

This is a new recommendation.

< 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 10 Member States of the EU.

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; 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 at the preparatory stage between Japan, and Slovak Republic, 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 Regime

<Recommendations>

- The responsible collection and use of personal data is important not only for the ICT industry but also for the entire society.

- The JBCE requests the authorities of the EU and Japan to set clear rules for the use of each category of data, thus enabling data transfers and creating an environment that facilitates the utilisation of "big data" in a responsible way that also protects privacy.

- The JBCE also requests the two authorities to adopt laws and regulations on data protection which are compatible with each other, so that there is no gap in data protection and that enterprises can conduct business without concern about different data protection regimes.

- The JBCE welcomes the decision adopted on 20 December 2013 by the IT Strategic Headquarters headed by the Prime Minister of Japan to review the personal data protection regime and the submission of a draft law to the Diet in March 2015.

- The JBCE suggests that the amendment of Japan's personal data protection law should consolidate the currently fragmented authorities over personal data protection in Japan to one independent data protection authority and ensure transparency and foreseeability for both domestic and foreign-based companies.

- The JBCE also strongly recommends that the authorities of Japan should make sure that an amended law will satisfy the adequacy-finding procedure under the EU system.

- The JBCE suggests that a reasonable and equitable 'safe harbour' agreement between the EU and Japan or the adequacy-finding procedure under the EU system should be explored during or after the completion of reforms of the two regimes.

- Concerning the EU's proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation COM(2012) 11), the JBCE maintains that the authorities of the EU should balance privacy protection and innovation.

  - The JBCE would welcome the envisaged facilitation of BCRs (Binding Corporate Rules) in the Article 43 of the proposal as BCRs could become a key tool for those businesses with the possibility of global data transfers such as cloud computing. The JBCE suggests that adhesion to and compliance with recognised certification schemes in and/or outside the EU and mutual recognition among them should be taken into account in their approval process to further facilitate BCRs.

  - The JBCE is concerned about its extraterritorial applicability according to the Article 3, point 2 and requests the authorities of the EU to enumerate the conditions for exclusion from its territorial scope.

  - The JBCE is concerned about the obligation to notify personal data breaches not later than 24 hours in the Article 31. The notification deadlines should be flexible so as to reflect the different degrees of complexity in identifying the nature and scope of the breaches in question. The JBCE suggests that to notify 'without undue delay' should suffice.

  - The JBCE suggests that the transfer of the employee data of a subsidiary located in the EU to the parent company in a third country should be explicitly stated as permissible in the Article 44 1 (a) the consent of the data subject or (b) for the performance of a contract between the data subject and the controller.

  - The JBCE is concerned that the maximum fines stipulated in the Article 79 of the proposal are set too high for enterprises and that it could unduly deter business activities. Fines should be not only proportionate but also equitable.

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

<Recent Progress>

There has been certain progress on this recommendation.

The draft EU Regulation is under deliberations and might be adopted by the end of 2015.

< Background>

The JBCE believes that the ultimate objective of personal data protection for an individual business is to adopt and implement a reliable and cost-effective personal data protection system at the level of a corporate group, within which the flow of data should be free across national

borders. In order to achieve this, the national legislation of each country should promote such a system rather than impede by creating different requirements.

The European Parliament voted in its plenary session on 12 March 2014 and adopted the amendments proposed by the committee on Civil Liberties, Justice and Home Affairs (LIBE), the committee responsible for the proposal. The amendments by the EP keep harsh conditions on business entities such as potential fines up to 5% of an enterprise's annual worldwide turnover or 100 million Euros (whichever is greater) for data breach or complicated requirements on consent and erasure, although it introduces a definition of pseudonymous data and the certification program that would be favourable for business enterprises considering the use of personal data.

Negotiations on the proposal between the EP and the Council will only start after a position is agreed in the Council. With luck, it might be adopted by the end of 2015.

A draft law to revise Japan's personal data protection law was approved by the Cabinet on 10 March 2015 and is now under deliberations by the Diet. The draft law includes the establishment of an independent authority responsible for personal data protection.

3.3 To secure the optimisation of the returns on investment

3.3.1 The BEPS Action Plan

<Recommendations>

Concerning the BEPS (Base Erosion and Profit Shifting) Action Plan, the JBCE reiterates its recommendations that the authorities of the EU and Japan should carefully consider the risks of excessive disclosure requirements and of excessive anti-tax avoidance measures so as not to hamper multinational enterprises' business activities.

Furthermore, in order to realise fair taxation and to enhance direct investment between the EU and Japan, the JBCE recommends that the authorities of the EU and Japan should eliminate double taxation, reduce administrative burden on companies and reward risk-taking on substantial business investment.

<Recent Progress>

The OECD released its first recommendations for a co-ordinated international approach to combat tax avoidance by multinational enterprises in September 2014.

<Background>

The BEPS Action Plan was proposed by the OECD and endorsed by G20 Finance Ministers and Central Bank Governors in July 2013. The JBCE supports the idea of modernising international taxation rules that would include non-OECD countries to cope with the globalisation and digitalisation of economy. However, the JBCE is concerned that the requirements of BEPS Action Plan for multinational enterprises to disclose information on their global allocation of income, economic activity and country-by-country taxes paid to all relevant governments would risk leading to a substantial increase of administrative burden on enterprises

and of a risk of double taxation. The JBCE recommends that the introduction of excessive disclosure and anti-tax avoidance rules should be avoided so that legitimate business activities would not be hampered.

3.3.2 Avoidance of double taxation

<Recommendations>

The JBCE recommends that the authorities of the EU Member States and Japan should revise their bilateral tax treaties so that withholding taxes should be exempted on dividend payments from subsidiaries in which its parent company has shareholding of 10% or more, and on royalty and interest payments between related companies.

<Recent Progress>

Some progress has been seen for the recommendation.

<Background>

In order to enhance direct investment between the EU and Japan, measures to reward for taking risks associated with foreign investment are essential. In particular, the measures to avoid double taxation of the same profit should be regarded as sine qua non. Although there are various measures already in place such as bilateral treaties on the avoidance of double taxation (tax treaties), there is room for improvement.

3.3.3 Transfer pricing

<Recommendations>

The JBCE recommends the authorities of the EU, its Member States and Japan to:

- Review bilateral tax treaties and introduce clauses that will enable corresponding adjustments and eventual arbitration.

- Harmonise and simplify documentary requirements and their interpretation between the EU and Japan and among the EU Member States in order to reduce the costs of compliance to various transfer pricing taxation regimes.

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

- Make the conclusion of bilateral and multilateral APAs (Advance Pricing Arrangements) between the EU Member States and Japan easier and cheaper by improving their procedures. In particular:

  - by training experts on bilateral and multilateral APAs between the EU and Japan and accumulate their experience institutionally.

- by drawing up guidelines on bilateral and, more importantly, multilateral APAs between the EU and Japan. Such guidelines, when applied by all the EU Member States and Japan, would enable a harmonised application of APAs between Japan and all the EU Member States.

<Recent Progress>

No progress has been seen for the recommendations.

<Background>

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

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

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

3.3.4 Mutual participation exemption

<Recommendations>

- The JBCE recommends that the authorities of the EU Member States and Japan should consider the introduction and/or expansion of participation exemption regimes in order to promote direct investment between the EU and Japan.

<Recent Progress>

No progress has been seen for the recommendation.

<Background>

Participation exemption, by which dividends and capital gains received from business investment above certain holding threshold are exempted from further corporate taxation, is one measure to encourage mutual direct investment.

4 Recommendations on the policy of the EU

4.1 The importance of the Single Market

<Recommendations>

In order to achieve smart, sustainable and inclusive growth, the JBCE believes that further and continuous improvement of the Single Market is the most important and relevant area to be addressed. The Single Market, in other words, is the most valuable source of the smart, sustainable and inclusive growth of the EU.

The JBCE would like to emphasise the importance of the following priorities for the single market that will lead to the smart, sustainable and inclusive growth of the EU.

- 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.

As to the type of instruments appropriate to use to achieve smart, sustainable and inclusive growth, the JBCE has observed that soft policy coordination at the EU level seems to work better in recent years than before the economic crisis a few years ago. The EU should seek an optimal mix of such an approach and harmonisation through Directives/Regulations. The JBCE would like to emphasise, however, 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 the smart, sustainable and inclusive growth of the EU.

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 >

This is a new recommendation..

< Background >

The change of the European Commission has brought a change in the priority areas of its policy. The JBCE would like to reiterate the importance of the Single European Market not only for Japanese businesses but also for the European economy and its well-being.

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

<Recommendations>

The authorities of the EU should abolish or drastically reduce 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

4.3.1.1 Avoid fragmentation in its implementation

<Recommendations>

- The JBCE asks the authorities of the EU to proceed swiftly against the Member States which do not follow the interpretation of Article as stipulated in the Guidance document so that actors in the supply chain can avoid the fragmented compliance requirement in the EU market.

< Recent Progress >

Some progress has been seen for the recommendation on the interpretation of the Article. The issue of phthalates has been resolved by the withdrawal of ban in the Member State.

< Background >

REACH, though it is a Regulation, has not realised a single market in the EU because its interpretation is diverse among the Member States. The authorities of the EU should realise a single market through the clarification of interpretation that is accepted throughout the EU.

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

In Denmark, phthalates for indoor use were banned in its national law published in its official journal on 30 November 2012. Its implementation was postponed for two years. In addition, although Denmark had proposed its EU-wide ban by submitting dossiers in accordance with Annex XV of REACH, the proposal was rejected by committees of the ECHA in June and December 2012. Denmark has subsequently withdrawn the ban. Harmonisation at the EU level will restart.

4.3.1.2 Practical guidance to facilitate the implementation of REACH

<Recommendations>

The Authorities of the EU should prepare a practical guidance to facilitate the implementation of REACH, in particular:

- The number of SVHC (Substances of very high concern) increases steadily. The ECHA started a new website on PACT-RMOA (Public Activities Coordination Tool - a risk management option analysis) and publishes the result of the assessment of SVHC as carried out, which is an improvement though SMEs might still find difficult to digest. The authorities of the EU should further improve the care for SMEs.

- The JBCE requests that the authorities of the EU should issue a clarification on the obligation of Only Representatives (ORs) under the Article 8 of REACH and its implication under the EU competition law.

- The disseminated dossier information that is purchased from Lead Registrant in ECHA home page for HSE (health safety and environment) purposes (such as GPS - Global Product Strategy - and SDS - Safety Data Sheet) should be made accessible for free and made available worldwide.

- 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.

< Recent Progress >

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.

Concerning the obligation of ORs, the Article 8 of REACH states that the OR 'shall keep available and up-to-date information on quantities imported and customers sold to, as well as information on the supply of the latest update of the safety data sheet'. However, in practice, there is a risk of infringing the EU completion law if OR collects customer-of-customers-information, such as customer names and imported volumes, especially from indirect supply routes, because under the EU competition law such supply chain information (i.e. market information) may be considered critical and sensitive. In addition, it remains unclear whether or not the competent authorities of each Member State will accept the use of a third-party trustee in the collection of such information in order to avoid possible infringement of the EU competition law. The reason is that Article 8 only relates to OR and that there is no other indication in REACH that such OR obligation could be outsourced to a third party. The authorities in Germany appear to interpret that the use of a third-party trustee is not allowed. Furthermore, the use of the service of a trustee requires a significant additional cost. As the EU manufactures do not have to collect information on the quantity of imports, this only affects ORs – i.e. non-EU manufactures, which creates unfair market conditions.

4.3.1.3 Issues and concerns coming out of the latest registration

<Recommendations>

- The JBCE recommends that the authorities of the EU should summarise and publish issues and concerns coming out of the latest registration – such as difficulty to identify Lead Registrants and no transparency of the cost for LoA (Letter of Access), and their solutions in time for the following joint submission.

- The authorities of the EU should, instead of leaving it to agreements among the participants of SIEF, actively monitor and, if necessary, initiate corrective measures in order to realise transparency of the cost for LoA and the equity in cost sharing.

< Recent Progress >

Some limited progress has been made due to the introduction of data sharing dispute mechanism but more active involvement of the authorities of the EU is desirable..

< Background >

New challenges are already foreseen in the SIEF operation as the result of 2013 registration deadline, and a further 2018 deadline, namely, less data available, inexperienced Lead Registrants, mostly SMEs in the supply chain, and heavy financial burden. The JBCE is concerned that the SIEF activities will stagnate due to such concerns.

The ECHA's testing proposals and evaluation of registered dossiers, and the Member States' evaluation of substances would result in renegotiation of cost sharing in a SIEF. LoA revenue from latter registrants would have to be distributed amount former registrants. To realise transparent and equitable cost sharing, the authorities of the EU would have to monitor and intervene more actively.

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.

< 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.

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) 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.

3) Standardization 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.

< Recent Progress >

Some 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 and Denmark, 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

<Recommendation>

The JBCE asks the authorities of the EU to evaluate, in due course, the actual benefits 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.

<Recent Progress>

This is a new recommendation.

<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 they are treated or which they incorporate are approved. The provisions on treated articles under Article 58(2) of the BPR cover all treated articles placed on the EU market; whether manufactured in the EU or imported from a third country, such as Japan. This “equal treatment” might seem correct, but when it comes to the manufacturing of treated articles, EU manufacturers may easily select EU suppliers for their active substances and rely on the efforts of the active substance suppliers to take care of their approval status. Non-EU manufacturers have a disadvantage, as they need to specifically restrict their suppliers to only use EU approved active substances - otherwise their treated articles cannot be lawfully placed on the EU market. While for complex treated articles ensuring compliance with this requirement would have been simply impossible, had the Commission not clarified what they consider a complex treated article (as reflected in the revised Note for Guidance on Treated Articles; CA-Nov14-Doc.6.1), but even for simple articles, this measure creates a serious disadvantage for importers of non-EU manufactured treated articles. Japanese manufacturers are concerned that this will result in a cessation of export of products with related functionalities and technologies to the EU, thereby depriving EU customers from the selection of their products.

Depending on the treated article, the hazard of the active substance used and how that active is used in the article, the potential impact from placing such an article on the market can vary greatly. Such impacts depend on factors such as the original hazard of the active, the concentration in which it is used, and the likelihood of and type of exposure. However, under the BPR articles of negligible impact are regulated to the same degree as those of high impact.

Considering this wide variation, the JBCE believes there is a need for a new study, which would be based on actual experience gathered under the new Regulation in relation to the benefits resulting from better control of environmental impacts from treated articles, and its impact on the import of treated articles.

4.4 Resource Efficiency

4.4.1 Ecodesign

Relation of different product categories in Ecodesign

<Recommendation>

The JBCE asks the authorities of the EU to uphold the Energy related Products (ErP) principle of setting Minimum Energy Performance Standards (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 for components integrated into products so that optimum efficiency is pursued at the level of the final product not at the component level where there is no tangible benefit to the consumers.

The JBCE suggests that the "repair as produced" principle should be applied for spare parts as is the case in the RoHS Directive.

<Recent Progress>

This is a new recommendation.

<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 leads 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 current regulation, 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.

4.4.2 Environmental footprint

<Recommendations>

The JBCE requests as follows:

- Comparability or Harmonization of Global Methodologies: To support comparability objectively, the authorities of the EU should respect discussion on LCA (Life Cycle Assessment) (e.g. cLCA – carbon-Life Cycle Assessment), method under ISO, IEC (International Electrotechnical Commission) (ISO14040-14044, ISO26000 (GRI), ISO14025 etc.), etc. with consideration to global harmonization.

- Database: The authorities of the EU should allow mutual recognition of databases not only in the EU but also with those outside the EU, and participate in the international development of database.

- Sector rules: In setting sector rules, the authorities of the EU should issue guidelines on the scope of products and industrial sector in addition to the EU methodologies of OEF (Organisation Environmental Footprint), PEF (Product Environmental Footprint). Furthermore, sector definitions should be sufficiently narrow to allow a meaningful comparison of data.

< Recent Progress >

Progress has been made because pilot programmes started in 2013 in which Japanese industry participates.

< Background >

The European Commission's initiative on environmental footprint of products and organisations has entered the phase of pilot programmes. Japanese industries are contributing through the programmes.

4.5 Taxation

4.5.1 Common Consolidated Corporate Tax Base

<Recommendations>

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

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

- Non-application of arms-length principle within a group of companies that form CCCTB.

- Off-setting of profits and losses within a group of companies that form CCCTB.

< Recent Progress >

No progress has been seen for this recommendation.

< Background >

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.

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

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 Commission of options for simpler and more robust future VAT regime on 30 October 2014.

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.

4.6 Company Law / Corporate Social Responsibility

4.6.1 A new strategy on CSR Policy

<Recommendations>

The JBCE recommends:

1) Policy discussion should not be lost in the argument about definition and about the dichotomy between voluntary or mandatory approaches.

   Following the Communication of the European Commission in 2011 ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’ (COM(2011) 681), which has clearly defined CSR and which has been widely welcomed by stakeholders, now it is time for every stakeholder to take its own part and build a future action. The JBCE, therefore,

proposes the European Commission to lead policy discussion on promoting actions to maximise positive impacts and mitigate negative impacts.

2) Highlight the aspect of innovation and provide open platform.

   In order to enhance the competitiveness of companies in Europe and also to enhance the uptake of CSR, it is extremely important to articulate the proactive character of CSR that will lead to 'innovation and opportunities'. The European Commission should take a proactive role and lead this discussion by creating an open platform.

   Dialogue is a powerful tool to understand other societal actors' thoughts and motivations. It is often more useful in building lasting trust than forced transparency in the form of disclosure. Innovation is more likely to be triggered by open exchanges among stakeholders, partner countries or regions, with their governments and with suppliers.

3) Take a principle-based approach with flexibility.

   'Rule-based' approach or "tick box" approach cannot solve all the challenges that we face in today's world. A Compliance mind-set stops us to think further. CSR is a journey. Therefore, a principle-based approach with flexibility can shape a dynamic business environment which fosters innovation and competitiveness.

4) Create incentives for companies with leadership for change.

   Identifying, preventing and mitigating the negative impact of businesses is extremely important and, when done effectively, companies gain competitiveness in the end. In tackling difficult issues like human rights inside and outside companies, the first movers would face challenges more often than the followers. The JBCE would welcome a mechanism where the first movers receive more recognition whereby efforts to improve both positive and negative side of CSR are praised, not penalised.

5) Articulate policy linkages across the European Institutions.

   CSR is increasingly integrated into other EU policies such as company law, trade agreements, and public procurement. Such policy linkages should be more clearly presented by the European Institutions, so that companies can engage in early discussion and more effectively integrate CSR throughout relevant functions.

<Recent progress>

This is a new recommendation.

<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 will draft a new strategy on CSR.

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.

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 Public 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 Public Procurement Incentives.

Furthermore, the JBCE encourages the authorities of the EU to pursue globally conflict-free and responsible mineral extraction through dialogue with third countries.

<Recent progress>

There has been little progress. The proposal is currently under deliberation in the European Parliament..

<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.

4.6.3 Country by country reporting (CBCR)

<Recommendations>

The JBCE recommends that, in considering whether to introduce CBCR or not, the authorities of the EU should carefully assess the risks of excessive disclosure requirements that could unduly hamper multinational enterprises' business activities.

<Recent progress>

There has been little progress.

<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: the report shall also consider, taking into account developments in the OECD and the results of related European initiatives, the possibility of introducing an obligation requiring large undertakings to produce on an annual basis, a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received.

By the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, the EU law already requires financial institutions to disclose annually, specifying, by Member State and by third country in which they have an establishment, profit or loss before tax, tax on profit or loss, and public subsidies received from 2015. The EU law also requires large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments from 2016.

Within the context of the G8 and the G20, the OECD has been asked to draw up a standardised reporting template for multi-national undertakings to report to tax authorities where they make their profits and pay taxes around the world.

4.6.4 Non-financial disclosure

<Recommendations>

The JBCE appreciates the fact that the Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 addresses a number of concerns raised by businesses including the JBCE such as making non-financial KPIs non-binding, allowing reporting at a consolidated level and limiting the scope of entities that the new rules become applicable. The JBCE looks forward to consultation by the European Commission during the preparation of non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators. The JBCE requests that its preparation should be carried out in a transparent manner.

<Recent progress>

There has been little progress. The European Parliament and the Council reached an agreement in February 2014 on the final text of the Directive. The Directive was formally adopted on 22 October 2014 and published in the Official Journal on 15 November 2014.

<Background>

The European Parliament and the Council adopted the Directive2014/95/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.

4.7 Product safety and market surveillance

4.7.1 Product safety and market surveillance package proposal

<Recommendations>

The JBCE requests the authorities of the EU to proceed prudently in the deliberation of the Product Safety and Market Surveillance Package, in particular, Article 7 of the proposal for a Regulation on consumer product safety by which the indication of the country of origin would become mandatory. 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 little progress. 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.

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

- The new directive, however, still maintains the discretion of the Member States to set a guarantee period longer than 2 years set in the Directive 1999/44/EC, which the 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 future review.

< Recent Progress >

No progress has been made for this recommendation.

< 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.

4.8 Competition Policy

4.8.1 The contributions of the JBCE to the European Commission's public consultation

The JBCE made a submission to the European Commission's public consultation on a White Paper 'Towards more effective EU merger control' in October 2014.

- JBCE welcomes the fact that, in drafting the White paper, the Commission has been willing to take into account a number of observations made by JBCE.

- Against the above, however, JBCE notes that the approach chosen in the White Paper may still significantly increase administrative burden on businesses and decrease the legal certainty. It will lead to an increase in the number of transactions which require notification in one form or another for businesses that take minority shareholdings on a regular basis. It should not be forgotten that minority shareholders provide the necessary capital to a project that might otherwise not materialize. Such capital injections are vital to

innovation and to competitiveness of the economy. As JBCE has pointed out before, the overwhelming majority of such cases will be completely benign in nature, and will never be able to raise any competition concerns.

- Jurisdiction over minority shareholdings: In the White Paper, the Commission proposes a "targeted" transparency system, which combines the self-assessment and transparency systems. JBCE has a number of serious observations in respect of the proposed system
  - The proposed system goes against the objective of reducing the administrative burden for companies.
  - The notification system and waiting periods create legal uncertainty.
  - Absence of a clear safe harbour.
- JBCE has detected a clear willingness on the part of the Commission to consider the need for increased legal certainty and for the reduction of administrative burden for businesses. JBCE, therefore, requests the Commission to pursue consistence in its approach in these matters and consider the proposals formulated by JBCE in its present submission.

For the full text of the JBCE's submission, please see the website of JBCE

4.8.2 Requests for information by the European Commission

<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 >

These 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 2014 Report of JBCE:

- The issue of phthalates
- The deployment of alternative fuels infrastructure