



Mr. Karel De Gucht
Commissioner for Trade
European Commission
200, rue de la Loi
B-1049 Brussels
Belgium

4 September 2014

Dear Commissioner,

BUSINESSEUROPE welcomes the positive outcome of the review of the EU-Japan free trade negotiations (EPA/FTA) and the decision that they should continue. We want these bilateral free trade negotiations not only to be a success, but even to become a benchmark for all other bilateral negotiations that the EU or Japan may conduct with their trading partners. BUSINESSEUROPE expects that this agreement will lead to real new market opportunities by removing long-standing market access and investment barriers.

An ambitious result means a balanced agreement with specific, substantive and non-discriminatory measures to open markets. The focus must be on the removal of so-called non-tariff barriers, for example divergent standards or supplementary testing requirements. We also need to find long-lasting solutions to prevent future divergences. Significant progress has been achieved in line with the roadmaps for the elimination of non-tariff barriers, but numerous further obstacles still need to be removed. Inclusion of sector-specific NTB annexes would be a useful tool in order to achieve this objective. BUSINESSEUROPE will continue to assess business conditions for European companies in Japan and to provide further input on all the non-tariff barriers that should be removed through the negotiations.

Procurement is a principle test case of Japan's willingness further to open up its economy. Railway in particular as well as other sectors across the EU have long advocated for the transparent, predictable, and non-discriminatory application of the Operational Safety Clause (OSC) which represents an important non-tariff barrier to access the Japanese market. Recognizing that the EU has safety standards comparable to those in Japan, the Commission should press for the elimination of this specific horizontal non-tariff barrier. Beyond the issue of the OSC, during the second phase of the negotiations, significant progress should also be made by Japan to



improve access to its public procurement markets both at central and sub-central levels.

More specifically, in the field of railway, BUSINESSEUROPE considers that the “one year package” put forth by the Commission is far below the expectations of the European industry and not sufficient to guarantee transparency and non-discrimination throughout the tendering process. Therefore, the 3 Honshu JRs, which represent 60% of the Japanese railway market, should remain within the scope of the WTO Agreement on Government Procurement during a monitoring period. This period should be used by both parties to substantially improve the “one year package” and to ensure that the measures committed by the Japanese government are effectively implemented and translated into concrete changes in procurement procedures. The delisting of the JRs shall only be authorized when European companies have obtained an effective and comparable access to the Japanese market.

Japan and the EU should liberalise trade in all sectors: industrial goods, services, and agricultural products. This also includes tariff liberalisation. Although generally low, there are some tariff peaks, notably in agriculture. As tariffs are not equally distributed on both sides, it must be ensured that tariff liberalisation and removal of non-tariff barriers are linked in parallel, especially but not exclusively in the automotive sector.

In case Japan introduces new or reintroduces old non-tariff barriers, the EPA/FTA should allow the EU to take measures in line with the WTO to re-establish the balance in the market. The agreement should also include a binding bilateral dispute settlement mechanism to address efficiently potential new non-tariff barriers. If the agreement with Japan is poorly implemented, this could undermine rather than support a European manufacturing recovery in certain sectors.

Investments will also be enhanced on both sides by removing existing barriers and ensuring high-level protection for investors, including through an effective Investor-to-State Dispute Settlement (ISDS).

Finally, BUSINESSEUROPE calls for the EPA/FTA to be a so-called “living agreement”. Naturally we want trade and investment barriers, which are crucial to either side, to be removed during the negotiations. But the EU and Japan must also be very vigilant that no new obstacles arise in future. Therefore BUSINESSEUROPE requests that the agreement includes a mechanism to minimise that risk and provides for an on-going dialogue between the public authorities as well as business on both sides.

BUSINESSEUROPE is in close contact with KEIDANREN, our Japanese business colleagues, with whom we discuss very regularly issues of common interest and major challenges for business to be tackled through the free trade negotiations in order to achieve a high-quality agreement. Both associations share the view that the EPA/FTA should be very ambitious and comprehensive. BUSINESSEUROPE wishes you all success in the continuation of the discussions with your Japanese counterparts and



hopes for concrete steps to be taken soon in the above-mentioned fields. Moreover, BUSINESSEUROPE is ready to provide further input, in particular on non-tariff barriers, throughout the whole negotiating process.

Yours sincerely,

Markus J. Beyrer