



WHITE PAPER 1995

TOKYO, JAPAN

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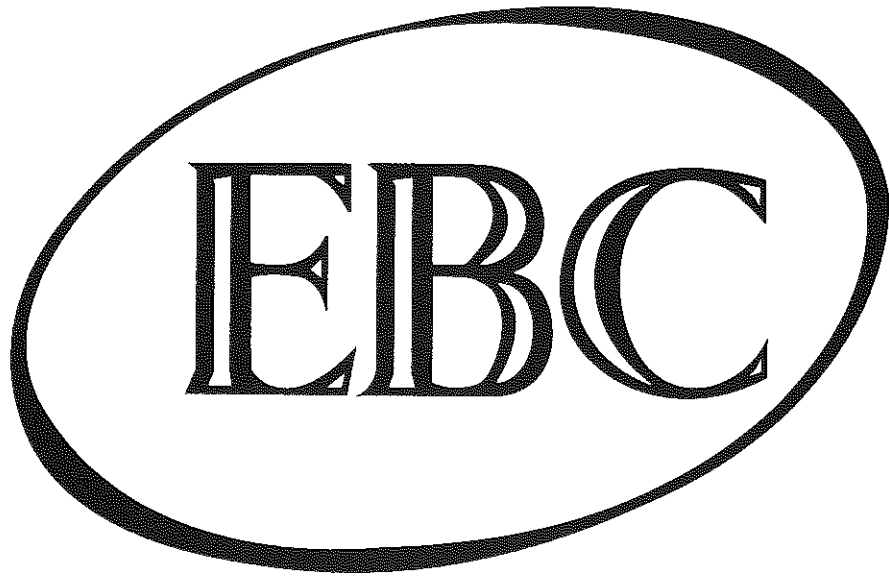
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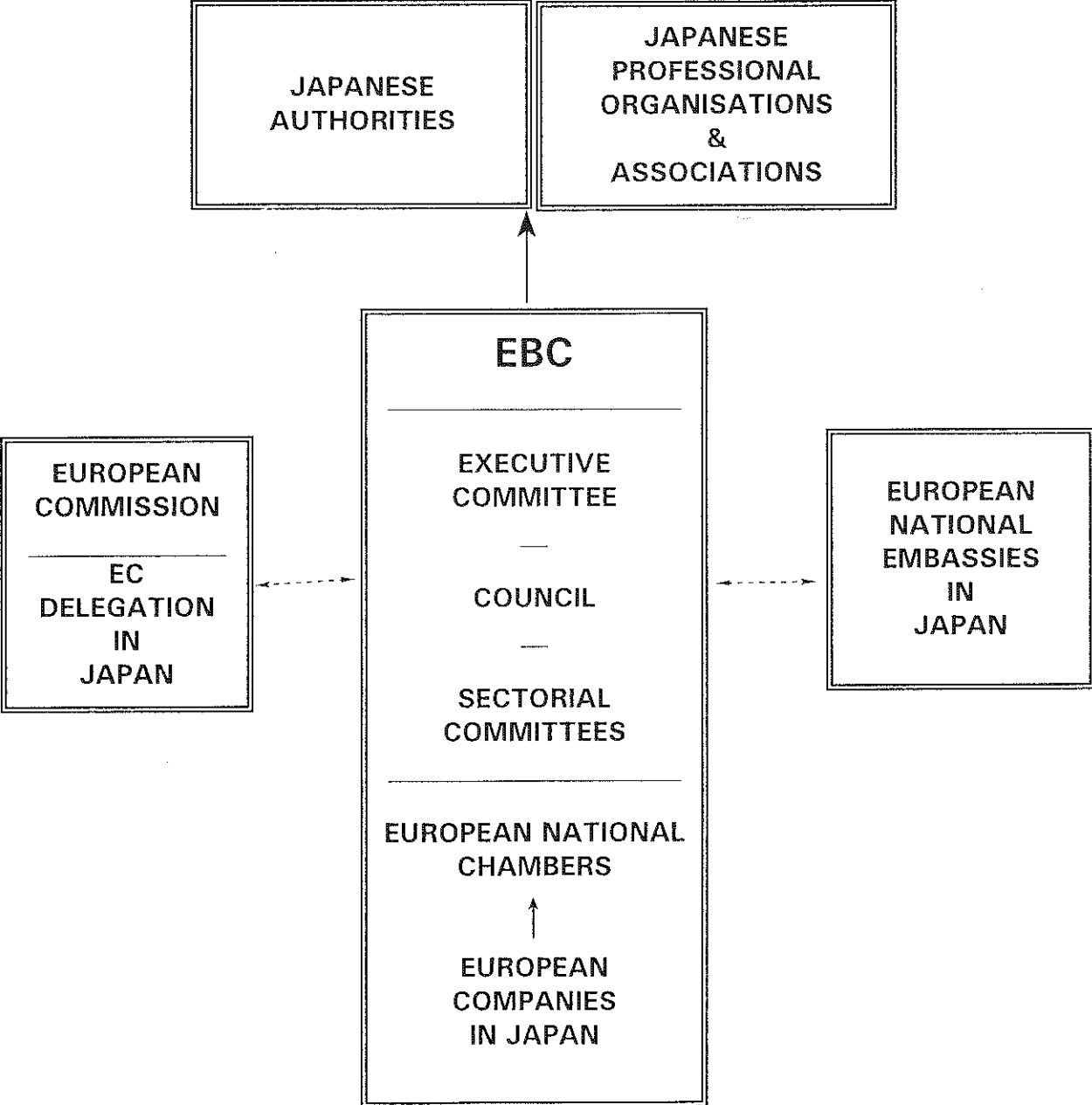
Editor: Keld Hammering



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EBC NETWORK



General Information on EBC

The Council of the European Business Community in Japan was established in 1972 to promote closer co-ordination between the National Chambers of Commerce, to formalise networking and the exchange of information and to ensure the community speaks with one voice to the Japanese Government.

The EBC is a non political organisation which promotes the interests of European companies and industries in Japan with governmental and business organisations. EBC, working closely with the European Commission through its Delegation in Japan, is acknowledged by the Japanese authorities and recognised as an alliance of European business units by the Keidanren. Major issues can be raised with government on behalf of companies and industries without fear of retaliation.

EBC operates through a number of sectorial committees whose members are professionals in their sectors. Companies of all sizes participate in this committee work which reflects a wealth of business experience in Japan.

Information is channelled to the European Commission via its Delegation whose representatives have a standing invitation to participate in committee meetings. EBC supports through the Delegation final briefings to E.U. officials prior to negotiation with Japanese Government officials.

The EBC is a private organisation representing European Companies in Japan and relies on support from the E.U. National Governments and the European Commission. Financial support is provided by the European National Chambers in Japan, voluntary donations from European companies and subsidies from the European Commission.

Table of contents:

General Information on EBC	5
Current Business Environment in Japan	8
The EBC White Paper	9
Common Issues and Themes	10
Automobiles	11
Automotive Components	15
Aeronautics	19
Space	21
Airlines	24
Shipping	28
Pharmaceuticals	36
Cosmetics	39
Medical Diagnostics	43
Medical Equipment	47
Chemicals	50
Industrial Raw Materials	53
Construction	55
Liquor	59
Animal Health	64
Cut Flowers	69
Telecommunication & Information Processing	72
Legal Services	74
Patents, Trademarks & Licences	79
Banking	84
Securities	88
Asset Management	94
Investment	98
Insurance	105
Abbreviations:	112
Japanese words used in the text	113
EBC Sectorial Committees	114
National Chambers of Commerce	129

Current Business Environment in Japan

The Japanese economy remains one of the strongest in the world. Japan is at present the leading economic power in Asia, representing more than 70% of the total GNP of the region. It has considerable influence on some of the world's leading economies through its trade and investment policies. However, these policies do not always reflect the responsibilities of a leading economic power and market opening measures and steps to restructure the Japanese economy are often viewed as slow and less than adequate.

In spite of the basic national financial indicators being favourable, Japan is in a deep and prolonged economical slowdown and firm governmental action will be required to sustain the hesitant recovery.

There appears to be little public confidence in the Government's ability to take necessary steps to achieve this. After years of nearly full employment, redundancies have reached a level which is now becoming critical and which may lead to a fundamental change in Japanese business practices. The strong Yen and the current crises in the Japanese financial industry could further aggravate the situation. These factors are causing a realignment of practices in Japan, in the business sector as well as in government. Strong evolutionary changes are in process.

The situation for Japan is, however, strongly influenced by other external factors. Foreign companies are attracted to the investment opportunities of rapidly expanding Asian economies. Japan by comparison is viewed increasingly as a less rewarding investment opportunity.

The historically strong relationship between Japan and the US is under constant pressure as a result of geo-political changes. A constant watch on the Europe-Japan relationship is therefore necessary.

It is a most appropriate time for the Japanese authorities to address the need for change by implementing suggestions put forward by the foreign business community in Japan including those summarised in this "EBC White Paper".

The EBC White Paper

EBC have over the years published various papers to acquaint the Japanese Government, the European National Embassies, the EC Delegation in Tokyo and European businesses who do not have a presence in Japan, about the environment for foreign business in Japan. The 1995 edition of the "EBC White Paper" is a summary of major critical issues faced by the European business sectors. The paper contains a brief background for each sector, the nature of the key problems and proposals which, if implemented, could contribute to that sector's business performance in Japan.

The reports are written by members of EBC's sectorial Committees dealing with issues which are part of their daily business environment. Each report has been circulated and approved by members of the committee as being an accurate, fair and appropriate description of the problems. The issues are described from a business point of view and the suggested solutions to the problems are often the result of close interaction with the European National Embassies in Japan and the European Delegation in Tokyo.

Some of the issues raised by the EBC in this paper are naturally shared by the Japanese business community.

Common Issues and Themes

The EBC has a number of issues which are common to several committees such as the harmonisation of Japanese standards to recognised international standards, testing procedures, government reporting issues and the acceptance of foreign data. Most of the EBC Committees work closely with the EC Delegation as well as counterparts in the Japanese Government in order to foster an international business environment in Japan. The Japanese Government has over the last few years shown a willingness to meet the requests of the foreign business community and satisfactory progress has been made in certain sectors. Nevertheless, much action is still needed in order to create an environment that is truly conducive to foreign investment.

Deregulation is vital. The Japanese economy is heavily over-regulated with rules which are ambiguous and open to different interpretations. Such regulations too often discourage foreign businesses from entering the market.

Tangible barriers have been diminished in a number of sectors and trade tariffs have also been reduced, but not always to the level desired by the EBC. A number of barriers still remain. Some of these which adversely affect foreign business in Japan include price setting among cartels, manipulated biddings, exclusion from bidding due to the use of exclusive standards and the lack of response from the Japanese Fair Trade Commission on Japanese mergers which create monopoly situations. Also, bilateral agreements between Japan and selected nations often exclude European business from competing which has a detrimental effect on Japan as a whole.

Most EBC Committees clearly indicate lack of incentives as a prime factor slowing inward investment into Japan. Such incentives could provide compensation for the very high cost of entering this market.

Automobiles

Background

Japan a closed market for foreign automobiles.

The strong position which the Japanese car industry occupies today, both in its own domestic market and in the global marketplace, owes much to the policies adopted in the past by the Japanese Government to protect the domestic industry. For a forty year period from the mid-1930's through to the mid-1970's the Japanese industry was largely shielded from external competition. The tone was set in 1935 with the passage of the Automobile Manufacturing Law which stated bluntly that the automobile industry "should be placed in the hands of Japanese, both in name and reality, now and in the future."

Tariffs and tax discrimination against imports.

That protectionist policy was resurrected after the Occupation. Through the use of high tariffs, a commodity tax regime which discriminated against imports, foreign exchange controls and restrictions on foreign investment, both American and European car makers were prevented from establishing a significant presence in Japan at a time when they had a competitive advantage over the Japanese industry. In the 1950's the European car makers tried and failed to set up manufacturing operations in Japan. Only when the Japanese industry was capable of standing on its own feet, and the domestic market had effectively been sewn up, did the Japanese Government begin to lower the formal barriers to trade in cars. Even so foreign exchange control for completed car imports was not lifted until 1965 and the last remaining controls on engine imports were only eliminated in 1971. Foreign investment was

liberalized in 1973 and tariffs were gradually lowered, before being totally eliminated on cars and trucks in 1978. But by then the competitive position of the Japanese and foreign producers had been reversed.

Market share of foreign imported cars in Japan is below 6%

Pure imports of passenger cars (i.e., excluding re-exports from the Japanese overseas transplants) grew steadily from 50,000 units in 1985 to 220,000 units in 1990. But with the bursting of the "bubble economy" imports declined in common with the total market to 158,000 units by 1993. The pure import market grew strongly in 1994 to 206,000 units, of which European manufacturers accounted for 171,000 and continues to grow strongly in 1995. MITI defines the passenger' car market as excluding the purely Japanese category of "kei cars" (light mini-cars) with a displacement of 660 cc or less. On this basis, in 1994 pure imports took 6% of the Japanese market for passenger cars. If the kei car passenger' sector, in which no foreign manufacturer competes, is included, the share of imports falls to 5%.

Japanese share of European car market is above 11%

Japan has the lowest share of automotive imports among major industrialised countries. Japan's share of the EU market has increased steadily, notwithstanding the monitoring of Japanese exports to the EU. Last year Japanese manufacturers took 11% of the Western European market (EU, Austria, Finland, Norway, Sweden and Switzerland). For every European car sold in Japan, Japanese manufacturers sell 7.6 cars in Western Europe even though the output of the European industry is larger than that of the Japanese.

Technical barriers and international standards.

The Japanese authorities have made considerable efforts in recent years to facilitate the growth of passenger car imports. Many of the technical barriers have been removed. But the Ministry of Transport could do more to simplify the procedures to allow foreign manufacturers to obtain Japanese type certification. With the growth of international trade in passenger vehicles, Japan should play a more active part in seeking the adoption of common international standards so that vehicles approved for use in Europe would automatically qualify for use in Japan.

Key Problems

Restricted zoning laws.

The domestic manufacturers were able to build up their distribution channels in a protected market. High land prices and restrictive zoning laws raise the cost of, if they do not effectively preclude foreign manufacturers from acquiring, green field sites or prime locations for their dealerships.

Distribution.

Domestic manufacturers exercise considerable influence over their dealers. Even if there are no longer any contractual obligations which prevent them from doing so, Japanese relationships are long standing and unwritten rules strong and domestic dealers are therefore hesitant about handling imported cars. Further import growth will be crucially dependent upon the ability of foreign manufacturers to develop their distribution networks.

Compliance with technical standards which are specific to Japan raises the cost of entry into the Japanese market and selling costs in Japan.

Recommendations

The Japanese Government should:

Ensure that dealers are aware that Japanese Anti-Monopoly legislation allows them freedom to handle whatever products they wish.

Improve the terms of Japan Development Bank loans available for domestic dealers who take on import franchises.

Offer tax advantages to domestic dealers who take on import franchises, e.g., reductions in the real estate acquisition tax and fixed asset tax pertaining to land, buildings and facilities acquired by dealers for the purpose of selling or maintaining imported cars.

Provide low interest loans to dealers to enable them to increase their inventory of imported cars.

Provide credit insurance on favorable terms to import car dealers.

Increase government procurement of imported automobiles at the national and local level.

Abolish the automobile acquisition tax, consumption tax and automobile weight tax on imported cars.

Co-operate closely with the European Commission to harmonise Japanese and European standards and testing procedures. Japan should as a general principles be prepared to accept approval of a

European vehicle to a EU Directive as equivalent to conformity with the relevant Japanese standard.

Automotive Components

Background

By the year 2000 the Japanese automobile manufacturer's plan to have a 40% share of the world market.

The Japanese automotive industry controls more than 35% of world car production. Its stated objective is to reach 40% by 1997 and 50% by the year 2000. In Japan the automotive industry, the second largest in the world after Europe, was protected from imports for 40 years. The 11 Japanese vehicle manufacturers have relied exclusively on domestic parts and equipment suppliers traditionally organised into associations controlled by the vehicle makers (keiretsu). The exclusive nature of the keiretsu system effectively barred direct participation in domestic programmes by foreign suppliers until the early 1990's. However, these historical ties between manufacturers and suppliers still persist and continue to hamper the penetration of foreign suppliers into the Japanese market. Imported components in 1993 accounted for only 2.6% of the Original Equipment Manufacturer's (OEM) parts used in Japan and less than 2.2% if replacement parts are included.

Design-in seminars.

In 1992 the trade dispute between the US and Japan over automotive parts resulted in a voluntary purchasing plan by Japanese vehicle manufacturers. This plan envisaged purchase of parts from US suppliers with a value of US \$ 19 billion in 1994 by

Japan both for their transplants in the US and imports to Japan. Intensive activities such as design-in seminars and one-on-one meetings were organised to expand business opportunities between US suppliers and Japanese manufacturers.

Declining market share for European automotive component manufacturers.

At the same time Japan-based European suppliers recognised a change in the business environment in Japan. Trade statistics on automotive parts showed declining import market shares for European suppliers. The Automotive Components Committee of EBC was established in 1993 to protect the interests of European OEM's and after-market suppliers. The EBC enjoys the support of the EC Delegation and the Embassies in its demand for fair and non-discriminatory treatment by Japanese manufacturers.

Key Problems

European manufacturers convinced they can supply the Japanese market with products of high quality at competitive prices.

Access to the Japanese automotive market is particularly difficult due to the intimate relationship between suppliers and manufacturers. The EBC is well aware of the necessity to adopt Japanese business practices, e.g., using a long-term business approach in order to be successful in this market. The European suppliers, having improved their competitiveness in recent years, are willing to do so. European manufacturers are convinced that they can supply the Japanese market with products of the highest quality at competitive prices. It is encouraging to see some signs of increasing interest in purchases from foreign suppliers, but the reluctance of Japanese manufacturers to build up equally strong relationships with foreign suppliers is still apparent.

Japanese consumers denied the potential benefits from a strong Yen.

The EBC is also aware of increasing competition in this market due to the decline in car production in Japan. However, taking into account the strong value of the Yen - not only against the US \$ but also against the European ECU - commercial sense should dictate a much higher share of imported parts than is actually seen. The recent trend on automotive components showing a rising trade surplus for Japan does not reflect the fundamental rules of economics, accenting the unusual nature of the Japanese market. In the interests of the Japanese people, who are being denied the potential benefits of a strong currency, government and industry in Japan are urged to remove all hurdles to a completely free and non-discriminatory market.

Deregulation measures.

The EBC agrees with the US statement that the market share of imported automotive components is extremely low and supports the demand for deregulation which will ease access to the Japanese market. The EBC, however, strongly opposes all bilateral activities and agreements, which discriminate against European suppliers or jeopardise their business efforts in Japan.

Recommendations

To tackle these problems the EBC - Automotive Components Committee should continue to:

Press for fair trade and fair purchasing decisions on all fronts.

Pursue European organisations, e.g., EC, Liaison Committee for the Automotive Component and

Equipment Industry (CLEPA), national industry associations and chambers of commerce, to work for fair trade and fair purchasing decisions.

Create a dialogue with Japanese industry associations including the automotive component's sub-committee of JAMA, in order to establish trust and constructive relationships at industry level.

Promote ties between European suppliers and Japanese manufacturers in co-operation with JAMA and CLEPA.

Promote face to face meetings, design-in seminars and quality support centres in Europe and Japan.

Inform European suppliers about needs and business practices in Japan.

Inform European suppliers about market developments in Japan.

Support the establishment of a European Technology Centre in Japan.

Promote and facilitate greater participation of European component suppliers in trade shows such as the Tokyo International Motor Show.

Urge suppliers to study and invest continuously in marketing, image and business development.

The EBC will continue to monitor trade in automotive components to and from Japan in order to measure the results of these efforts.

Aeronautics

Background

Japan's largest airline, JAL, has never bought any large European aircraft or any European manufactured jet engines.

The Japanese aeronautics market has so far been largely dominated by US manufacturers. The civilian market, with the exception of some successes in the field of helicopters and sales of Airbus, is still mostly in the hands of the US. Japan's largest airline, JAL, has never bought any large European aircraft or any European manufactured jet engines. The military market, due to the Japan-US special relationship and the security treaty, is all but limited to domestically produced and US co-developed or US imported equipment.

The Japanese aeronautics industry is comprised of divisions of "Heavy Industry" rather than specialised companies.

The Japanese aeronautics industry, which was disbanded after the war, has been striving ever since to rebuild an indigenous capability. However, rather than being composed of specialised companies, the industry consists of Aerospace Divisions of large "Heavy Industries" which depend mostly on defence contracts from which 70% of their revenue is earned. Its civilian activity is for the best part subcontract work for or in partnership with US manufacturers. MITI has promoted the sector's independence through national projects and only recently through international co-operation on projects such as the R&D hypersonic engine HYPR or the YS-X commuter aircraft.

Key Problems

The Governmental pressure.

In the civilian field, the US manufacturers benefit over European manufacturers because of their ability to exert pressure at government, industrial and commercial levels. Even the YS-X project which was custom-tailored for co-operation with Europe finally went to US manufacturers.

European manufacturers have only marginal success.

In spite of the trading merits of “even handedness” by opening up to Europe, Japanese industry tends to stay with US partners and with the exception of some successes in the field of engines, co-operation between European and Japanese companies is close to non-existent.

Security agreement.

In the military field, Europe is lacking a similar kind of security agreement with Japan that would allow exchange of technologies and co-operation.

Recommendations

In the defence market it is necessary to maintain pressure on the authorities to open up the market to imports and to authorise and support co-operation with European companies.

For the civilian market we have to ensure that the Japanese authorities, agencies and companies, in the fields of aircraft, power plant and components, allow European manufacturers to compete with the US on a fair basis allowing Europe equal opportunities of success.

Deregulation needs to be promoted whenever possible. For example, the increase in the 60 seat limit for unscheduled airlines would facilitate airline business and purchases.

Future transport projects such as the "Supersonic Transport" are being discussed between European and US manufacturers and Japanese industry is also officially part of those discussions. The EBC feels that this is an opportunity for Japan to increase contacts and co-operation with European companies both in airframe and propulsion.

The Japanese Air Self Defence Force will need to replace its ageing military transport fleet by approximately 2005. It also has an increasing requirement for medium-long haul transport for peace keeping or international emergency operations. The European Future Larger Aircraft would be an excellent base for co-operation with Japan, provided exchange of technology became authorised in the defence field.

Space

Background

No bilateral satellite - programme has been established.

In the Japanese space market, European involvement is almost non-existent. Some success has been achieved in areas such as satellite launch services, but on the whole European space-related sales in Japan are far from satisfactory. There is very little co-operation between Japanese and European Space Agencies and not even a bilateral satellite programme

has been established. Japanese Space Industries, led by the its agencies NASDA and ISAS, are equivalent in size and missions to Europe and after 30 years have now achieved several successful launches of its H2 rocket, securing Japan's ultimate goal of space independence.

The commercial telecommunication satellite market is theoretically open but is in fact a monopoly of US satellite makers.

Key Problems

Although there have been some slight improvements, there is still a tendency in Japanese Government and industry to first seek a domestic solution, second view the US offer, then finally look at what Europe can offer.

Japanese companies have little regard for profitability in the space market.

The majority of Japanese companies pursue government R&D contracts with little regard for profitability. Small contracts are subsequently awarded to many companies covering a broad spectrum of technology. This blocks foreign competition both domestically and overseas, without giving Japanese companies any real competitive edge for exports. European manufacturers purchase some components from Japan, but EBC feels that this Japanese national R&D policy isolates the industry from the rest of the world to the disadvantage of both sides.

Due to the policies of some government agencies it is difficult to negotiate with Japanese companies on a commercial basis. Even if this is not stated

Difficult to plan a global strategy.

explicitly in the negotiations, government policy often has an undue influence on corporate decisions.

As Japanese commercial work has been completed with the objective of supporting national technology, it is difficult to plan global commercial strategies. As a result, opportunities to increase business through co-operation with foreign companies or by purchasing competitive foreign products are lost.

Recommendations

Japan should change its philosophy from technology-driven government programmes, focussing on national independence, to commercially viable spacecraft.

International co-operation, even on a limited scale, should be considered from the very beginning on all programmes, in order to complement rather than duplicate work.

Japanese industry should be given more autonomy and flexibility to work within budgetary constraints, so allowing the use of cost effective foreign manufacturers who can operate within a given time frame.

European certification standards should be accepted without restriction by Japanese Agencies.

Japanese National Agencies and European Agencies and manufacturer should consider co-operating for mutual benefit on such projects as remote sensing, navigation, global information infrastructure and components.

Airlines

Background

Foreign airlines confronted with a network of rules, guidelines and procedures.

Efficient international air transport and freight services are vital to the economic life of a highly industrialised country such as Japan. An expansion of trade between Japan and other countries requires at the same time an increase of airline services in order to meet the needs of the business community. However, European passenger and cargo airlines doing business in Japan are confronted by a network of rules, guidelines and procedures which reduce efficiency and consume a great amount of energy, time and money.

Over-regulation and arbitrary procedures imposed by MoF.

Strictly regulated proceedings imposed on services by the Ministry of Transport (MoT) are fully acceptable when these are designed to maintain safety and to preserve regularity in the market. However, over regulation and arbitrary decisions by the MoT and other Japanese agencies related to airline traffic must be considered impediments for foreign airlines operating in Japan.

Key Problems

Not enough slots at Narita and lack of flexibility for re-allocations of slots.

Since December 1990, additional slot requests at Tokyo Narita airport by European carriers have been rejected due to the limited number available. The commonly used transfer principles for airport slots, including reallocation of unused slots, which have been adopted by members of the International Air

Transport Authorities (IATA) are rejected by the Japanese Government. The only way market access will be increased prior to the completion of the second runway will be by a strong commitment from the MoT and Narita Airport Authorities to revise the one-hour and three-hour flight movement limitations. Other major airports with only one runway, like Hong Kong and Gatwick, allow substantially more movements per hour than Narita Airport.

MoT preventing prices reflecting supply and demand.

In Japan all passenger tariffs must be registered with the Japan Civil Aviation Board, however, MoT has influenced price levels in a way that is neither in the interests of the consumer nor reflecting of supply and demand. The current pricing structure does not reflect the business environment and is very different from liberalised pricing practices in Europe.

Foreign carriers disadvantaged in distribution.

The rigid pricing structure for ticket sales forces airlines to restrict discounting to sales through travel agencies. Foreign airlines are at a disadvantage when compared with to the national carriers, as the latter have sufficient economies of scale to set up 'de facto' direct distribution channels through captive and affiliated travel agencies. More equal competition could be established if greater freedom in pricing were given to enable direct distribution for all carriers.

Inefficiencies and extra costs related to bank settlement.

Restrictions on the "Bank Settlement Plan", the official settlement and clearing system for ticket sales, does not allow agencies to make net remittance of market fares to airlines. Airlines are compelled to incur inefficiencies and extra costs of establishing duplicate settlement programmes.

The Fair Trade Commission not fair.

The national carriers are enjoying favourable consideration in respect of petitions by the Fair Trade Commission (FTC). A recent ruling by the FTC to "suspend" restrictions hindering introduction of frequent flyer programs was only made public to foreign carriers after the national carriers had established such programmes.

Osaka Airport's terminal and landing fees the highest in the world.

The costs of building the second international airport in Osaka rose to such levels that terminal and landing fees are set at the highest rates in the world. Although they have been lowered recently the reductions are temporary and subject to further review.

Only one US carrier is allowed to use own warehouse.

No carrier is allowed to use its own warehouse for storage of imported cargo except for Japan Airlines and Federal Express. All other carriers must use common warehouse facilities at additional costs. At Narita and Baraki, airlines share the costs of storage for imported cargo. These shares were established a long time ago and need to be reviewed to reflect the present market situation.

Sorting standards for cargo clearance.

The customer "sorting standards definition" applicable to cargo arriving at Narita stipulates what cargo may be cleared at Narita or Baraki. Since additional costs are involved for sorting and trucking the cargo, European carriers request the abolition of different standards.

Recommendations

EBC request that a clear statement be made by the MoT of the principles behind slot assignments and reconfirmation of the commitment to the IATA

accepted practices for the assignment, transfer and withdrawal of airport slots.

Consent from MoT be given for adjusting and refiling of all tariffs nearer the market-level and administrative support made available for acceptance of timely fare adjustments.

Current restrictions be eliminated in air fare settlement and airlines allowed to use facilities as they desire at their own risk.

Equal access be ensured for all carriers to the FTC proceedings and prompt advice of notice of rulings be given to all member carriers at the same time .

The authorities of the new Osaka airport, as well as the Japanese Government, are requested to cooperate in finding an equitable solution to the landing and terminal fees in order to attract more traffic to the new gateway.

Airport authorities of Narita Airport as well as other authorities involved are requested to redefine cargo storage costs.

Customs authorities are requested to abolish the point of entry emulations in connection with the sorting standards.

Shipping

Background

Container shipping industry.

Although many types of European ships including liners, bulk carriers, tankers, cruise ships and other specialised vessels operate to and from Japan, this paper deals with the container shipping industry only as it is this sector on which the activities of the EBC Shipping Committee are concentrated.

European Shipping lines carry over 50% of the container trade.

The following EU member state container operators serve Japan today: Compagnie Maritime d'Affretement (CMA), DSR-Senator, Hapag-Lloyd, Lloyd Triestino, Maersk Line, Nedlloyd Lines, P&O Containers and P&O Swire Containers. Other European container carriers include Norasia and Wilhelmsen Lines. The majority of these lines or their predecessors have served Japan for very many years, some dating back well over 100 years. European carriers lift over 50% of the container trade between Japan and Europe and vice versa, and are also engaged in many cross trades, i.e. between Japan and non-European countries. In some of these trades, for example between Japan and USA, Australia, New Zealand, Africa and Latin America, they play a very significant role.

No discrimination against foreign carriers.

There is generally no formal discrimination against European or other non-Japanese carriers in this market although non-Japanese shipping lines face the usual problems of most foreign service businesses in Japan, i.e. a general preference for the national

Restricted and inflexible working practices on the waterfront.

The JHTA controls the waterfront.

'product' and a host of intangible and subtle barriers to free competition.

The major problems faced by European and other foreign carriers, are in most cases the same as faced by the Japanese shipping industry. These are restrictive working practices on the waterfront which give rise to lack of competition amongst waterfront industries and associations, lack of operational flexibility and very high costs. Most of these problems have their roots in historical practice and the general business environment in Japan, however, the particular problems faced by the industry as described in the following section, stem from actions taken by the waterfront industry at the start of containerisation in the late 1960's.

The key influence on the waterfront is exercised by the Japan Harbour Transportation Association (JHTA or Nikko-kyo). The membership of JHTA comprises all major waterfront business with the exception of shipping lines and it is JHTA's policies and decisions which control the way the waterfront is run. There does not seem to be any international parallel to this exceptionally powerful organisation.

The Shipping Committee of the EBC represents the interests of the European carriers and liaises with the Transport Directorate in Brussels through the EC Delegation. Individual members of the EBC Shipping Committee also liaise on specific shipping issues with their respective Embassies. The principal organisation representing all foreign shipping lines in Japan is, however, the Japan Foreign Steamship Association (JFSA). EBC Shipping Committee members are all members of the JFSA Executive Committee and work

actively to support its initiatives. These include regular meetings with the Ministry of Transport, JHTA, the Japanese Shipowners and various other waterfront associations.

Transport Forums.

In the last two years, the Ministry of Transport has taken the initiative to arrange "Transport Forums" in Japan with both European and US lines. Whilst the opportunity for additional dialogue with MoT is welcomed, no tangible progress towards resolving the main issues have been made.

Active support from the EC Delegation.

The EC Delegation's active support of the European lines, backed by the Transport Directorate in Brussels, has played a significant role in influencing the JHTA to stop the collection of the highly controversial Harbour Management Fund a few years ago. Concerted action of this type will be necessary in future to help resolve the long-standing problems faced by the industry in Japan.

Key Problems

Managed competition.

"Managed" competition on the waterfront is a fundamental problem underlying most specific issues, including the high costs of operation. Shipping lines may not change terminal operators without JHTA's approval and this is rarely given. The result is that lines cannot seek competitive bids for the handling of their business, nor can they consolidate their operations, except in rare cases, to achieve economies of scale or efficiency of operation. The effect of this denial of free competition is far-reaching. Contractors, both management and labour, have little if any incentive to eliminate or modernise

practices which are outmoded and which merely preserve the status quo. This is a deeply entrenched situation in which the MoT has shown no inclination to intervene.

Rather than try to tackle this problem head on, the EBC shipping lines are focusing on the specific issues below.

Prior Consultation is the process by which JHTA actually exercise their control of the waterfront and the lines. This practice was introduced at the time of containerisation, following an agreement between JHTA and the waterfront Labour Unions, that there would be Prior Consultation on any changes that might reduce employment or adversely affect working conditions of the labour.

Issues that require Prior Consultation range from extremely minor ones such as substitution of vessels, to more significant ones such as terminal and other operational changes resulting from the formation of new groupings of shipping lines.

The present system is that lines submit their applications to JHTA through the JFSA. JHTA, in a process which totally lacks transparency, then 'consults' as necessary with the unions and hands down their decision, which the lines are effectively bound to accept. In practice, only in very rare cases do lines submit applications which they know will not be granted, as JHTA's policy of ensuring the continuation of the status quo, as far as individual terminal operator/line relationships is concerned, is an accepted but resented fact of life.

Prior Consultation on any change that might reduce employment.

Total lack of transparency.

MoT decline involvement.

The EBC recommends that by the end of 1995, those matters not affecting the employment of labour be handled on a fully routine basis, thus eliminating the need for the unnecessary and time-consuming approval process. The EBC Shipping Committee further recommends that continuous pressure be brought to bear on the MoT, who presently decline to become involved on the basis that this is a "commercial matter", to create an environment in which a freely competitive waterfront is achieved.

Sunday an exception at the waterfront in Japan.

With the exception of Shimizu, and Kobe which has just been granted a two year special exemption as a result of the Great Hanshin Earthquake, major Japanese container ports do not work on Sundays.

The limited utilisation causes increasing costs to shipping lines and their customers.

The lack of Sunday work limits the utilisation of expensive facilities, results in congestion both on the water and landside, inhibits the efficient scheduling of vessels, increases costs to shipping lines and their customers and contributes to a lack of competitiveness of Japanese ports compared to those in neighbouring countries.

Historically, Sunday work has only been permitted on an exceptional basis in Japan, however, until 1992 permission was granted on application but as a matter of course through the Prior Consultation process. The facility was then withdrawn by JHTA as a result of a dispute with the waterfront unions over other labour issues.

Despite repeated requests by European and EBC backed carriers, the Federal Maritime Commission (FMC), other foreign governments and the Japanese

lines, no tangible progress towards resumption of regular Sunday working has been achieved.

The issue has, however, had its profile raised as a result of the active campaign of the foreign lines and a JHTA committee is now considering the issue. The EBC therefore recommends that continued pressure be brought to bear by the Transport Directorate in Brussels on MOT, and that the Shipping Committee/JFSA continue to lobby/discuss the issue with all concerned. The first objective should be a return to Sunday work on an 'automatically approved' application basis, followed by an agreement with labour under which Sundays will become a regular working day, with a suitable premium if appropriate under individual lines' terminal agreements.

Changes.

Since the time of writing, agreement has been reached between JHTA and the labour unions for a one year resumption of Sunday work at all container ports, effective June 1995. However, whilst this development is welcome, there are still a number of conditions attached which make it less than fully satisfactory. Therefore pressure has to be maintained to ensure the one year agreement becomes permanent and to make it more "user friendly".

Mandatory Sworn Weighing
and Measuring.

As a result of containerisation, the previous practice of lines requiring the measuring of every package shipped has become progressively redundant. Despite this, the JHTA continues to require weighing and measuring by one of the two licensed associations of practically all cargo shipped from Japan. The cost of this is substantial, approximately US\$170 per 40 foot container which is a significant portion of the freight on some trades.

Subject to agreement between labour and management.

The position of the MoT on this matter is that it is a question subject to agreement between labour and management and therefore not a matter of Government regulations. Until recently JHTA has refused even to discuss the matter but again, due to the active lobbying of the foreign lines backed by Governmental pressure, meetings have recently been started between JHTA, the Sworn Measurers Associations, and JFSA. No progress has been achieved so far and the EBC recommends that further pressure be maintained by all concerned.

It is recognised that there is a social issue at work in this case, in that approximately 4000 people are employed in the industry in Japan, and that immediate phasing-out of the weighing and measuring requirement cannot realistically be achieved. However, it is felt that a reasonable time scale for achievement of this objective should be two years.

Charges among the highest in the world.

Port and associated charges in Japan have long been amongst the highest in the world and this situation has worsened with the further sharp strengthening of the Yen. Ocean freight is charged in US Dollars so shipping lines operating in Japan are caught in a squeeze. Outdated and inefficient working practices referred to above exacerbate the problem.

JFSA in co-operation with the European lines have drawn the attention of Government authorities in Japan and the respective contractors, not only to the excessively high costs of operating in Japan, but also the fact that charges in Japan are far higher than in other major ports in the world. So far, little reaction has been obtained but the JFSA and EBC Shipping

Committee will maintain an active campaign on this issue. Pilotage, tugs, wharfage charges and tonnage dues have been in particular targeted.

Cabotage is popularly understood to be the carriage of goods or passengers from one port to another within the same country.

In general, only national flag carriers are permitted to engage in such activities. A few exceptions are known to exist, for limited activities, under political bilateral agreements.

Freedom to carry own containers.

Foreign shipping lines in Japan, engaged in the container trade, wish to have the freedom to carry their own containers, full or empty, from one Japanese port to another. This on the premise that "full" containers contain "foreign trade" cargo i.e. originating from, or destined to a foreign country.

The following are amongst the issues which the EBC Shipping Committee is also looking at, in conjunction with JFSA:

Urgent need to open the waterfront industry.

The EBC believes there is an urgent need for the Japanese Government to use their influence to open the waterfront industry to allow the lines freedom of choice in their facilities and contractors and thereby lower costs, improve productivity and work as effectively as in other major ports. The decreasing competitiveness and attractiveness of Japan as a market for not only the European lines but other carriers will have a progressively adverse impact on the shipping and waterfront industry. It will potentially have an even wider impact on Japan as a trading nation.

Recommendations

The ability to move 2 x 20 foot containers on one chassis over the roads in Japan.

Relaxation of road weight limitations for containers on chassis.

The ability of terminal lessees to own their cranes on leased terminals, which would result in lower costs.

Pharmaceuticals

Background

Industry and MHW working together to ease regulations.

After decades of closed market policies and excessive regulations, the Ministry of Health and Welfare (MHW) has since 1980 taken a series of steps to ease regulations and open the pharmaceutical market. Today, the Japanese pharmaceutical market is considered open and with the exception of foreign data acceptance, there are no major obstacles to market entry. On the other hand, because of the huge deficit in the National Health and Insurance (NHI) budget, the MHW is planning to take various measures aimed at containing medical and drug expenditure. Drugs are singled out as a component largely contributing to this budget deficit and the MHW is currently deliberating on major modifications in the NHI system, designed to reduce drug costs. While dialogue between the MHW and the industry has improved more recently, the pharmaceutical

Harmonisation of technical Requirements.

industry is often not included in the official forums debating these cost containment measures.

Representatives from Japan, US and EU will participate in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceutical Products for Human Use (ICH), which will take place in Yokohama in 1995.

Only comparative open trials should be conducted in Japan.

Key Problems

Currently, all clinical data for a new product (phase I, II and III) must be generated in Japan, and foreign clinical data are accepted only as a reference. Although the third round of the ICH is yet to be held, it is highly unlikely that any progress will be made in this area. The industry position is that, if a complete set of foreign clinical data is available for a given new product, only comparative open trials should be conducted in Japan to confirm efficacy and safety in Japanese subjects. If this is permitted, the time required to put together a New Drug Admission (NDA) dossier would be cut by half. Presently, it takes between four to six years to complete all phases of clinical trials before an NDA is filed.

Repeating of tests.

When importing a pharmaceutical product the importer is required to prepare quality control tests, in addition to those made in the exporting country, unless a mutual agreement on Good Manufacturing Practice (GMP) has been reached. Unfortunately, Japan has only confirmed such a mutual agreement with certain European countries.

Pharmaceutical industry prohibited from participating in CSIMC meetings.

Although a new price calculation method was introduced for new drugs in 1991, the premiums given were so small, between 1.5 - 3%, that there is very little incentive for research based companies to develop and introduce new drugs.

There are two advisory bodies for the MHW's Health Insurance Scheme, the Central Social Insurance Medical Council (CSIMC) and the Council of Health Insurance. Pharmaceutical industry representatives were, for the first time in 1994, invited to participate in a special committee of the Council of Health Insurance. However, they are still prohibited from participating in the more powerful CSIMC meetings, where the final decision is made on issues of the Health Insurance Scheme.

Recommendations

The MHW has invited industry representatives including EBC to express their views on cost containment proposals worked out by the Central Council. The industry recommends that:

Additional opportunities be given so that the industry's concrete proposals can be presented and reflected in the official deliberations.

An industry representative be officially included as a member of the Central Council.

We would continue to prepare scientific argument supporting the acceptance of foreign clinical data while intensifying pressure on various activities including the MHW.

The EU should strive to obtain a blanket agreement related to GMP between Japan and EU.

Cosmetics

Background

Cosmetics and quasi-drugs.

In terms of regulatory requirements two types of cosmetic products exist in Japan; "cosmetics" and "quasi-drugs". Quasi-drugs cover, for example, hair dyes, permanent waves, bath preparations, products to prevent skin disorders and mouthwashes. In the EU these are all regulated as normal cosmetics under the Cosmetic Directive.

Registration takes three months.

It takes about three months to register a cosmetic product and about six months to register a quasi-drug in Japan.

Comprehensive Licensing System.

Registration of cosmetics, has been partly simplified by the introduction of the Comprehensive Licensing System (CLS). The CLS, system includes 25 product categories which again cover a range of cosmetic products with each category having its own list of approved ingredients. Under CLS, if the cosmetic product contains only ingredients already allowed in the corresponding category, it is not necessary to apply for registration and notification of its sale is sufficient.

Registration of cosmetics, however, is still required when ingredients are used which are not listed under

the specific CLS product category, even though the ingredient is listed in another CLS product category. In this case it is necessary to apply for ingredient registration and obtain an approval before product registration.

Registration costly, slow and lacks transparency.

Ingredient registration is extremely slow, costly and lacking transparency. Reasons for refusals cannot be debated, even if the ingredient has a long history of safe use in the EU or the USA.

Over the past eight years, the number of approved ingredients has increased to approximately 2,500 ingredients. But cosmetic imports still represent only 4% of the total market volume.

In March 1995, a deregulation program was announced by the Japanese Government. This package promises to:

- Decrease the 25 categories for CLS
- Increase the number of approved ingredients.
- Allow the use of floppy disk processing of import licence applications, for speedier processing.
- Allow the possible acceptance of preservatives already used worldwide.
- Ease the import application procedures for parallel importers.

Harmonisation of standards.

Every two or three years, worldwide meetings for mutual understanding and harmonisation of industry

standards are organised by the American Cosmetic Toiletry and Fragrance Association, the European Cosmetic Toiletry and Perfumery Association and the Japanese Japan Cosmetic Industry Association. The next meeting will be held in Washington, USA in the spring of 1996.

Key Problems

Parallel imports could damage investments in Japan.

Deregulation which favours only parallel imports could damage the long term investment made by already active brands. New entrants would face the same market entry regulations as before and current proposals by the Ministry of Health and Welfare (MHW) are only for products which have already been granted import permission. This current proposal suggests unequal treatment of importers and it is vague on the implementation of guarantees for consumer safety.

International price comparisons by the Keizai Kikaku Cho, initiated by MITI, are prejudiced, incomplete and lack serious methodology.

Difficult to penetrate the distribution network.

Japan is still allowing the cosmetic industry to practice a so-called SEIDO-HIN system. Chain store agreements between major local brands and retailers make it very difficult for outsiders to penetrate the distribution networks. Moreover, the current system with the "big store law" and special tax treatment protects the retailers. These protections favour the industry but not the consumers.

No follow up on government imposed regulations.

Currently regulations such as the Japanese labelling of imported products, are not being followed by

"unofficial" importers and the authorities are not implementing the regulations fairly.

Recommendations.

For product registration of cosmetics, Japanese standards of evaluation and acceptance of ingredients should be harmonised with EU and US standards.

The announced deregulation package should be implemented and the same registration procedures should apply to all applicants and products. There should be fair and equal treatment of all importers.

Too much emphasis is placed on registration of products and not enough on the control of products in the market. Increased control could help to eliminate counterfeit goods which could cause health risks to consumers.

The distribution system should be made more accessible for imported products.

No further international price surveys should be undertaken unless they include prices for other commodities such as gasoline, housing, advertising and other elements which influence the price of both foreign and local products in the Japanese market.

Medical Diagnostics

Background

Instruments and reagents.

The "In Vitro Diagnostics" (IVD) products for reagents and instruments are used by clinical testing laboratories such as hospitals, private laboratories and blood transfusion centres, to carry out diagnostic tests on clinical specimens. However, instruments and reagents have to be considered as separate issues as they are treated in a different way under the Pharmaceutical Law in Japan.

In-Vitro Diagnostics products classified as pharmaceuticals.

In Japan, IVD products are classified as pharmaceuticals and therefore need specific approval application. The registration of class 2.2 products, also defined as "me too" products, is supposed to take a standard processing time of six months, as defined by the Ministry of Health and Welfare (MHW). In reality, however, the standard processing time is nearly nine months. All class 1 products and some class 2 products have to undergo additional Documentation and Laboratory testing (Yoken) and/or pass the Investigation Subcommittee Examination under the Pharmaceutical Affairs Council, (Chosakai). The products that have to undergo Yoken, regardless of class, are blood typing sera and blood transfusion related parameters. Further important parameters in the light of public health, defined by MHW, have to undergo Yoken. The necessity of at least six months stability test data for three lots of IVD is time consuming. For the supervision of IVD, classified as "biological products", which is IVD's using enzyme immune assays, a pharmacist is required, in addition to the pharmacist supervising the ordinary IVD's.

Registration of IVD's in Europe.

In Europe, the situation for IVD varies from country to country. In France the registration is easier and takes approximately four months. In Germany the number of tests to register is limited to plasma proteins and some infectious diseases. In other European countries there is no registration except for reagents used in blood transfusion and for major infectious diseases such as Aids and Hepatitis. Future European legislation, currently under preparation, will only require registration for reagents used in blood transfusion and major infectious diseases.

Problem areas for the industry.

The EBC Committee for Medical Diagnostics was established in 1986. The purpose was to focus on impending problems related to the required IVD registration procedure, which was introduced in 1985. Four years ago EBC established a list of twelve "Problem Areas" for improvements especially in the field of registration. The list of problems, which was later shortened to eight, was recognised as a working document by the American Chamber of Commerce in Japan (ACCJ) and the Japanese Association of Clinical Reagents Industries (JACR). Through informal contacts the list was submitted to MHW. Independent from that, JACR founded a working group, which included ACCJ and EBC, for the purpose of developing the idea of a specific category for IVD, separate from pharmaceuticals. This proposal was officially submitted to MHW in November 1993.

MHW working on deregulation.

All these requests were repeated to the Office of Trade and Investment Ombudsman (OTO) in February 1995. At this occasion EBC also requested the creation of a category of IVD medical devices, in accordance with the European Parliament and

Council's Directive Third Draft of April 1993. The MHW's answer to the proposals tabled at the OTO, advised as part of the deregulation process the establishment of an "Investigation Group for Making IVD Approval Standards" for a notification system. The ministry also addressed their considerations to the eight points raised by the EBC. The recent introduction of floppy disks as data carriers of application approval data should lead to a shortening of the processing time of the application.

Key Problems

The classification of IVD as pharmaceuticals is a general problem that continues to be time consuming and cumbersome in achieving registration.

Processing time of applications.

The current approval application system to register IVD also for class 2 products has led to an average processing time of nine months, including delivery time of the certificate. This is far from the standard processing time of six months announced by the MHW.

International standards and norms.

The international tendency to introduce standards and norms in the field of IVD manufacturing, will also take place in Japan. It is, however, expected that the authorities will create specific Japanese standards and norms, that will not necessarily fit with those of Europe.

Recommendations

To separate IVD from pharmaceuticals and create a category according to the spirit of the proposal of the EU Council Directive on IVD medical devices. The item is not under discussion at the moment, as the focus is on the installation of the notification system, but it is the long term target of EBC.

Support the Investigation Group, making IVD Approval Standards for a notification system. The JACR and the ACCJ could reinforce EBC efforts through their own committees in the San Sha Kaidan. The time frame announced for the work of the Investigation Group by the MHW is still two years.

EBC will closely follow the activities of the MHW in the following fields:

The achievement of the standard processing time of six months.

The shortening of the six months real time stability of IVD and/or acceptance of accelerated stability data.

The reduction of requirements for pharmacists performing different duties.

Improve the definition of products which have to undergo Chosakai and/or Yoken.

Progress in the above areas is anticipated through to March 1996, but failing this a complaint to OTO should be considered again.

The reaction of the Japanese authorities to international standardisation and norms, e.g., ISO 9000/EN29000, and Good Manufacturing Practices, have to be monitored and influenced through San Sha Kaidan, in order to avoid separate standards being developed which could lead to additional bureaucratic hurdles.

Medical Equipment

Background

Japanese companies were quick to make inexpensive copies or adaptations of western products

European made medical equipment has a long history in Japan based on a tradition of innovation and superior performance. New types of products have typically been introduced from the West and Japanese companies, unencumbered by research costs, were quick to make inexpensive copies or adaptations of western products. Thus, historically, foreign-made equipment has been limited to technologically superior products, innovative products that are not easily copied, or those where the Japanese market is too small to make the copying of products worthwhile.

Slow licensing procedures and spare part processing difficulties.

Along with the improvement of the health care system during the past twenty-five years and increased domestic manufacturing costs, foreign companies have had the opportunity to expand their market share. During this time various trade barriers such as high import duties, slow licensing procedures and difficult spare parts processing, have conspired

to increase costs and delay product introduction by foreign companies, thereby protecting Japanese manufacturers from strong competition and giving them additional time to develop copies of foreign products.

Elimination of trade barriers.

The EBC Medical Equipment Committee was established in 1984 and worked to ease or eliminate direct forms of trade barriers. Since that time the following areas of improvements have been realised in co-operation with the Ministries of the Japanese Government:

- Elimination of all import duties on medical equipment.
- Shortening of time periods for approval procedures.
- Recognition of chemical and electronic test data obtained abroad.
- Improved procedures for licensing modified equipment.
- Improve procedures for displaying and demonstrating unlicensed equipment at exhibitions
- Easing of customs procedures for spare parts.
- Improved Consultation procedures with government organisations.

Key Problems

In addition to the difficulty newcomers experience in trying to break into a competitive market in a country with different business practices, the problems faced by the industry are related to the way government budgets are allocated. This includes equipment of different performance, payment to doctors and hospitals under the medical compensation system for using different types of modalities and unification and mutual recognition of standards.

Recommendations

The Medical Equipment Committee recommends that doctors and hospitals should be adequately compensated under the medical reimbursement systems for purchasing and using European medical equipment, and that the allocation of government budgets should take better account of the need for quality equipment. The movement to unify standards needs to be accelerated and mutual recognition of good manufacturing standards with European ones needs to be achieved.

Chemicals

Background

Nearly 100 chemical companies have commercial activities in Japan.

The chemical industry in Japan is ranked as number two in the world. Foreign companies represent an important part of the chemical sector as far as sales, marketing, production and research and development are concerned, and nearly one hundred European chemical companies have commercial activities in Japan. Some of these companies use Japan as a base to cover Asia and most of them are involved in Japanese chemical industry associations and are members of EBC's Chemical Committee.

In 1993 imported chemicals to Japan amounted to US\$20.7 billion and exported chemicals were valued at US\$29 billion resulting in a surplus for Japan. However, the European chemical trade with Japan in the same year represented a surplus of US \$ 3.4 billion for Europe.

Although the situation for foreign companies has improved over the past few years there are still a number of direct obstacles which must be overcome.

Key Problems

Government not implementing GATT agreement.

Under the tariff harmonisation programme of the General Agreement on Tariffs and Trade (GATT) Uruguay Round Agreement of December 1993, Japan agreed to reduce tariffs on high density polyethylene

and polypropylene by implementing a linear reduction over 10 years starting from January 1995. However, this agreement has not been implemented.

Suggest tariffs to be calculated on a percentage of CIF value.

The current methods of calculating tariffs need to be simplified. Rates are calculated in terms of Yen per kilo which is unusual and difficult to convert into normal business terms. EBC suggests that rates should be calculated as a percentage of CIF value.

Favours US products.

There is discrepancy on import tariffs between synthetic sodium carbonate and natural soda ash which favours natural soda ash imported from the US.

Containers for inflammable gas.

It is still necessary to obtain specific approval for bulk container use for inland transportation even when these containers comply with internationally approved standards such as DIN, DOT, CSC and IMCO.

For each loading of a container, detailed fabrication data of the containers are required in order to receive transport approval and this approval is only valid for a limited number of days.

Cartels.

Japanese companies in the chemical industry have formed cartels which are seriously threatening free competition in the market. The cartels are operating openly and without any governmental interference. This is particularly noticeable in the area of petrochemicals.

Monopolising.

Mergers between Japanese companies are often authorised even if this creates dominance in a market sector for the merging company.

Environmental laws.

Health safety, environment laws and regulations are still far less demanding than laws in force in Europe and in the US, which give an unfair and unethical competitive advantage to Japanese producers and impose risks to the environment.

Recommendations

The Japanese authorities should accelerate the process of tariff harmonisation with other countries. The currently committed linear reduction over ten years for polyethylene and polypropylene is far too long.

The current methods used to calculate tariffs by kilo must be simplified as soon as possible in order to create competitive market prices for imported products.

The mandatory container approval for inland transportation must be abolished when containers have received international approvals.

The fundamental rules of fair trade must be strictly implemented by the Japanese Fair Trade Commission and endorsed by the Japanese authorities, associations and companies. No violation of the anti-monopoly law must be permitted.

Health safety, environmental laws and regulations should be upgraded to reach the same demanding level of those in force in Europe and in the US. The Japanese Government and chemical industry associations must be encouraged to improve the current situation.

The overall situation of the Japanese chemical industry is far from satisfactory and the Japanese authorities must take major steps to encourage foreign companies to become more involved in order to support the industry. Within particular small and medium size Japanese companies facing restructuring problems, acquisitions and mergers, new investments are to be encouraged.

Industrial Raw Materials

Background

Japan is the largest market in the world for nickel.

Nickel, and particularly ferronickel, are mainly used for manufacturing stainless steel. The principal stainless steel end-users are the chemical, food processing and construction industries along with household appliances and consumer goods. Regular growth in stainless steel consumption has led to a steady development of the stainless steel industry. Indeed, Japan, which represents the largest market in the world for the consumption of nickel, has one of the most dynamic stainless steel industries and stands first in the world for stainless steel production. As a consequence, the industry relies on a third of imported nickel materials to meet its needs.

Japan suffer from energy and labour costs.

There is an important domestic industry of nickel which has to import its nickel feed, suffers from high energy and labour costs and large fluctuations in output and is in an unfavourable position compared to overseas producers.

Key Problems

The Japanese import system protects the local industry.

The Japanese nickel industry is still protected by customs import duties which penalize heavily European producers in the very competitive nickel market. It is important to note that Japan is the only industrialised country to have set duties on nickel products. The import duty system, originally meant to protect the domestic nickel producers, has allowed Japanese manufacturers to modernise its equipment and to regularly increase production capacities. The Japanese ferronickel producers have recently stepped up production with an engagement in long-term export contracts to South East Asia's fast-growing stainless steel industry.

Committed at GATT to reduce duty rates.

In the frame of the GATT Uruguay round, the Japanese Government committed itself to lower the duty rates. The duty rate applied to ferronickel is to be reduced by half to 3.3% by the end of 1999. But this is completely unsatisfactory as the import duty system will still significantly affect the competitiveness of imported ferronickel.

The Japanese Government claims that the Generalised System of Preference (GSP) duty-free quotas allow ferronickel producers to avoid duties. The spirit of the GSP was to encourage the development of certain countries. In this respect, ferronickel imported from New Caledonia is eligible in the system. However, the quantity covered by these quotas amounts to a mere fourth of the total ferronickel imports and thus does not solve the problem.

The EBC Raw Material Committee believes that given the current nickel and stainless steel industries' position action should be taken to resolve the import duty question.

Recommendations

Since Japanese ferronickel producers have started exporting on a regular basis to South East Asian markets, the need to maintain protection of the domestic nickel industry appears questionable. Moreover, Taiwan and Korea have recently decided to abolish all duties on imports of ferronickel.

In order to solve this problem, the EBC proposes that either the duties on raw nickel imports are eliminated or that ferronickel GSP quotas are tripled to prevent discrimination against European companies.

Construction

Background

Japanese closed market.

The EBC Construction Committee was established in 1993 and embraces the following sections in the Japanese construction market; import of construction materials, architecture, design engineering and services and general construction. The Japanese market was almost closed to foreign construction companies until 1988 when measures to open the design and construction market were facilitated through the Major Projects Arrangement (MPA). The

MPA system was terminated in January of 1994 and has since been replaced by the "Action Plan on Construction". The General Agreement on Tariffs and Trade's (GATT) Government Product Agreement, which will come into action in 1996, will help to enhance more open competition in the Japanese construction market.

Key Problems

Import of building materials.

The majority of building material imports consist of only stone and wood products. Importers as well as architects face problems in convincing job site managers to use more innovative and energy saving materials. The main reasons given are that these materials are not well known and the manager cannot guarantee a proper execution of the work.

Only one MPA project has been assigned to a European Company.

Experience through MPA shows that European construction companies have not been treated on an unequal footing compared to others. Only one MPA project has been assigned to a European company. Japanese sub-contractors usually work exclusively with an established group of general contractors and it is extremely difficult to become a member of this closed organisation. The very tight links between administrative officials and Japanese firms do not help the move towards a more open market.

Consultant services in the construction industry not developed.

Conditions to obtain a Japanese architect's licence are particularly severe. For example a Japanese written test must be passed, and in addition, applicants must have practiced abroad and had at least three years experience in Japan. European architects and engineers are recognised in Japan as having

experience in renovation, energy saving and waste treatment but European professionals do not currently contribute significantly to construction work in Japan. Consulting services to the private as well as the public sector are not developed as it is considered an additional cost. Design and engineering are mostly included in the package of construction costs.

Recommendations

International standards for construction materials used in Europe are not recognised in Japan and it is costly to perform the required tests prior to any imports to Japan. EBC request that international standards be established between Japan, Europe and the US.

It is necessary to promote energy saving in construction plans not only by means of the material and equipment but also in the architecture and engineering.

Promotion of a third company to advise for example on cost controls for the contractor would show that even with the additional cost of a consultant, the overall cost could be remarkably reduced. Third party project managers could also secure better quality control on site compared to in house controls. In Europe cost control is mainly done by the architect or a specialist who has no relationship with the contractor.

The Government procurement bidding system should also be extended to local administrative areas, municipalities and prefectures.

The pre-qualification system should be standardised, i.e., the criteria should be the same in every municipality or public institution.

The threshold under which the new bidding system is not compulsory should be lowered.

Tenders for construction projects should leave space for innovation and alternative proposals, processes, designs and materials, which could subsequently reduce costs while maintaining and enhancing quality.

Economy of construction could be improved by open bidding and allowing alternative bids for the same project.

EBC requests that recognition be given to architectural licence of EU member states as the equivalent to the 1st class architect's licence in Japan.

The Japanese administration should set incentives in favour of co-operation between Japanese international contractors and European international contractors who are known to be outstanding construction exporters all over the world. This could provide a positive impact both on the competitiveness and innovation of the domestic market, as well as on the international development of Japanese contractors.

Liquor

Background

Highly discriminatory tax.

The European wines and spirits industry produces a large percentage of the world's finest and most famous alcoholic beverages, widely acknowledged to be pre-eminent in terms of quality.

Despite progress in recent years, Japanese market penetration rates achieved by EU distilled spirits producers remain at low levels, due principally to the continued existence of a highly discriminatory liquor tax regime. Indeed, total spirits' imports from all countries comprise only 8% by volume of the Japanese market, compared with an imported spirits penetration rate of 30% or more in other industrialised democracies.

GATT ruling on liquor tax not implemented by the Japanese Government.

In contrast, the liquor taxation system as applied to wine in Japan does not discriminate against imported products and with this background EU producers have succeeded in gaining a market share in excess of 40%.

The initiatives of the EBC Liquor Committee have been strongly supported by the European Commission, particularly in the area of liquor tax. Following EBC representations, the Commission secured a favourable GATT Panel ruling in 1987 which led to a narrowing of liquor tax differentials by the Japanese government in 1989 and 1994. Despite these changes, large discriminatory differentials still

persist and the Commission indicated its intention to refer the dispute to the WTO in June 1995.

“Zero for zero” agreement.

Other areas in which EBC lobbying activities have had a material result include import duty, tariffs on whisky and brandy imports being phased out under the “zero for zero” agreement in the GATT Uruguay Round and product labelling specifications. As explained below, however, further progress in both areas remains a priority of the EBC.

Key Problems

Tax discrimination on foreign products.

Continued liquor tax discrimination against imported distilled spirits in favour of domestic products distorts consumer demand and restricts fair market access by European producers. The current liquor tax regime contravenes a clear GATT Panel ruling in 1987, which the Japanese Government accepted but has not fully complied with.

Whisky and brandy taxed four to seven times higher than shochu.

The 1987 GATT Panel found that Japan's liquor tax regime discriminated against imported spirits in favour of domestic products and required the reduction of liquor tax differentials on all distilled spirits to 'de minimis' levels. The Japanese Government accepted the GATT findings but, eight years later, these have been only partially implemented. Whisky and brandy continue to be taxed between four and seven times more than shochu while for other spirits, (e.g. vodka, gin and rum), the tax rate is some two to three times higher.

Duty rates in Japan remain unreasonably high. Under the GATT Uruguay Round the Japanese Government

Shochu accounts for 98% of the white spirits consumed in Japan.

agreed in 1993 to a “zero for zero” basis on duty rates for imported whisky and brandy. However, this is to be phased in over ten years. Meanwhile, the Japanese Government did not agree to reduce or remove duty on imported white spirits. This duty remains as a significant impediment to European white spirits producers in their efforts to compete against shochu which accounts for 98% of the white spirits consumed in Japan. In addition as already explained above, the protectionist intent and effect of the duty is complemented by a tax rate of gin, rum, vodka etc. which is two to three times that levied on shochu.

Product definition.

Product definitions for alcoholic products are still very loose, allowing European nomenclature to be applied to products made in Japan, such as whisky, which would not qualify for use of such terms in Europe. This misleads consumers and allows Japanese producers to exploit discriminatory liquor tax differentials and market products which fall below internationally accepted product specifications.

Restricted access for Japanese consumers to European alcoholic beverage products.

Under the Large Scale Retail Stores Law, retail liquor licences are granted automatically only to very large stores with a total floor area of more than 10,000 square meters. This restricts the access of European alcoholic beverage products to Japanese consumers in the majority of modern and progressive retail outlets (e.g. most supermarkets and many convenience stores).

Licensing requirements.

Several kinds of wholesale liquor licences exist, e.g., oo-oroshi and oroshi, and separate licences are required for each sales office operated by the manufacturer or importer of liquor products. Criteria

for licensing approval are not transparent. Moreover, the present licensing system becomes blurred because regulations are policed unevenly.

Recommendations

The Japanese Government should fully implement the GATT ruling to reduce liquor tax differentials across all spirit categories including shochu to 'de minimis' levels. The most transparent method of compliance would be to levy a single tax rate per litre of pure alcohol for all distilled spirits.

The EBC does not seek preferential treatment for imports, nor specific levels of tax rates, nor "guarantees" of market share; the request is simply for a level playing field on which to compete fairly in all sectors of the market. This would also benefit Japanese consumers by allowing them to choose their distilled spirits on the basis of their taste preferences, not their tax preferences.

The EBC strongly urges the Japanese Government to agree to implement the GATT ruling in full during the imminent consultations with the European Commission under the auspices of the WTO.

The EBC requests the Japanese Government to phase out duty on imported white spirits in line with, and at the same time as, the phasing out of duty on imported whisky and brandy.

Product definitions in Japan should be raised to the level of product specifications prevailing for all international liquor categories, as defined in the EU

and USA and endorsed by the International Federation of Wines and Spirits (FIVS). Liquor tax loopholes which permit or encourage domestic producers to market such substandard products should be closed.

The EBC strongly endorses the EU proposal that Japan relax the Large Scale Retail Stores Law by lowering the threshold for "automatic liquor licensing" from the existing 10,000 sqm. to 3,000 sqm. Moreover, simple and transparent license approval criteria for retail stores below the threshold should be introduced.

Either the wholesale liquor licensing system should be consistently and universally enforced, with a clear separation between the tiers of distribution, or the deregulated measure of allowing all manufacturers and importers of alcoholic beverages to sell directly to retailers should be introduced. Moreover, licenses should be geographically "borderless" within Japan and simple notification to the tax authorities should be accepted in case of change of address or establishment of a new branch office by an existing license-holder. Finally, simple and transparent application vetting criteria should be established.

Animal Health

Background

Nutritional products to maintain the health of animals.

Animal health products are those nutritional, pharmaceutical or biological products used by veterinarians and the farming industry to maintain the health of animals and to achieve good economic results in the rearing of animals for meat, milk, and eggs. The use and availability of these products effects the competitiveness of the domestic animal producer and has an indirect impact on Agricultural Policy, especially strategic self sufficiency. The misuse of these products may effect food safety, and the products are, therefore, highly regulated by the Ministry of Agriculture, Forestry, and Fisheries (MAFF) and indirectly by the Ministry of Health and Welfare (MHW). Each product is subject to a lengthy application and review process, e.g., one to two years for a new drug, before it is registered as approved for sale. Because of its impact on the successful introduction and penetration of the Japanese market by European products, the regulatory process has been the main focus of the EBC Animal Health Committee.

Valid scientific data generated outside Japan has not been accepted for application purposes.

The Japanese procedures for the approval for sale of animal health products have been unique without significant reference to international norms. Valid scientific data generated outside Japan has not been accepted to substantiate an application for approval in Japan, except as anecdotal data. It is therefore necessary to generate scientific data which, by

generally accepted scientific principles, has very limited relevance.

Japanese standards are not consistent with accepted international standards.

The lack of consistent with generally accepted international standards and the difficulty in determining the true and complete requirements for approval result in the duplication of expensive, long term scientific studies and significant delays in the introduction of new products from Europe.

Restricted distribution.

These circumstances led many European manufacturers to assign the development work necessary for approval to Japanese companies with the facilities and understanding of the requirements. Usually this development work was done *quid pro quo* in exchange for the granting of distribution and sales rights for the product. Some companies invested in the staff and facilities necessary to make an application for approval themselves. By doing so they have retained the distribution rights and may participate directly in the market.

EBC acting closely with ACCJ.

Formed some four years ago the Animal Health Committee of the EBC has acted in close cooperation with the subcommittee on Animal Health Products of the American Chamber of Commerce in Japan. The first major issue identified and addressed with the appropriate Ministry was the acceptance by the Government of Japan of the principle of standards for Acceptable Daily Intake (ADI) and Minimum Residue Level (MRL) of veterinary pharmaceutical products. Acceptance of this principle was confirmed by Japan's ratification of the World Trade Organization (WTO) agreements. EBC continues to participate in a working group concerned with the implementation of these principles. More

recently, with the encouragement of the EBC, representatives of MAFF and EBC have begun to participate fully in the process of international harmonisation of standards for animal health products under the auspices of the "Office International des Epizootics".

Key Problems

The results of long term stability studies conducted outside Japan are accepted in principle by MAFF. In practice, however, due to variations in detailed requirements and, in general, a narrow interpretation of the requirements, these studies must still be repeated in Japan.

Unnecessary costs.

At the present time virtually all studies required to be done in the target animal must be conducted in Japan. Valid clinical, residue and safety studies in the target animal conducted outside Japan are not accepted by the Government. As a result unnecessary costs are incurred and introduction to the market is delayed. The number of independent laboratories which are authorised for such studies is very limited. For example, no independent laboratories are authorised to conduct the required investigations of live virus vaccines resulting in extraordinary capital investments for companies in this segment. The unnecessary duplication of animal studies often conflicts with the company's commitment to animal welfare issues and the company's animal ethics policy.

Re-establishing of standards and test methods.

The standards and test methods for products developed outside Japan are often established

according to generally accepted international standards such as the British Pharmacopoeia, the European Pharmacopoeia or the US Pharmacopoeia. In many cases MAFF suggests that these standards and test methods be re-established according to the Japan Pharmacopoeia, a costly, tedious and unnecessary process. In all cases the applicant is required to establish, or re-establish, standards and test methods in Japan using three distinct production lots.

The relevancy of the required pharmacological studies is limited to an academic interest.

The current requirements for General Pharmacology are not relevant. Isolated organ studies give only limited insight as to the interaction of a drug in the whole body system. For safety in target animals the other required study is more than adequate. For food safety i.e., drug residues in livestock, the intake through food is at least 100 times below the No Observable Effect Level (NOEL). Thus the relevancy of the required pharmacological studies is limited to an academic interest. Neither the US nor the EU member states require such general pharmacology studies.

Products tested a number of times before released for sale.

The Japanese Government requires that each production lot of all biological products, antibiotic feed additives and injectable antibiotics be assayed and released for sale by the National Veterinary Assay Laboratory. This requirement is enforced on all such products even if produced in compliance with Good Manufacturing Practice. As a result of this requirement some products are tested three or four times before release for sale, thus increasing testing and inventory costs and, for many products, reducing the valid period of sale.

International harmonisation of test methods.

The EBC recognises the willingness of the Government to act on these and similar issues as shown by its position concerning ADI/MRL, international harmonisation and the recent announcements concerning deregulation. While we also recognise that some actions require revisions in the law or published regulations, we recognise the considerable ability of the Government to revise its interpretation and application of these regulations.

More safe, more efficacious and proven animal health products will be affordable in Japan.

Timely adaptation of these recommendations by the Government will mean that more safe, efficacious and proven animal health products will be available and affordable in Japan. Timely adaptation will directly contribute to the competitiveness of the Japanese farmer and will benefit all consumers, especially the veterinarian and his client.

Recommendations

While the eventual harmonisation of standards may eliminate this issue, the EBC recommends that the Government accept valid, long term stability studies conducted outside Japan.

Wider acceptance by the Government of valid target animal studies conducted outside Japan.

Specifications and test methods validated according to generally accepted international standards should be consistently accepted by the Government.

The Government should abolish the requirements for General Pharmacology.

The Government should fully and completely accept the principle of Good Manufacturing Practice and eliminate the repetitive release testing now required.

Cut Flowers

Background

Imported flowers are 6% of total market.

The Japanese market for cut flowers is the largest in the world. The total consumption grew in the period 1985-1994 from about 400 billion Yen to 800 billion Yen. Until now the market has been dominated by domestic producers, and although imports have grown to approximately 48 billion Yen in market value the share of imported flowers is only 6% of the total market.

It is realistic to expect that after the year 2000 the market share of imported flowers will increase to more than 20%

The consumption in Japan is mainly centred on special occasions - such as weddings, funerals and gifts. Compared to Europe, where flowers are part of daily household consumption, the Japanese market could still be developed further. It is expected that because of a changing society, home use consumption will increase and that the demand for flowers will have the potential to double within the next decade. As the Japanese agricultural sector is confronted with new problems, such as a lack of successors to the older generation, domestic producers will find themselves unable to meet the rising demand. It is realistic to expect that after the year 2000 the market share of imported flowers will increase to more than 20%. Exports from Europe to

Japan could amount to 100 - 120 billion Yen in market value. However this can only be achieved following drastic changes in the Japanese plant-quarantine system and the infrastructure of the international airports.

Through the work of the EC Delegation in Tokyo, the National Embassies and the EBC, general procedures for the import of flowers have improved. Times allocated for plant quarantine inspection have been extended and the number of inspectors have increased.

Bilateral agreement of pre-inspection before shipment between Japan and the Netherlands.

In 1985, bilateral negotiations between Japan and the Netherlands resulted in the establishment of the "pre-shipment inspection system" under which flowers are inspected in the Netherlands by Japanese plant quarantine officers. The pre-shipment inspection system and the strong commitment of the Dutch flower industry has resulted in a considerable increase in exports from the Netherlands to Japan. The pre-shipment inspection system has contributed to the increase in exports, but it has not solved the basic problems. Given more flexible plant quarantine regulations, exports from the Netherlands and other EU countries could have increased two-fold.

High international cost differentials, improved distribution methods and the appreciation of the Yen should have led to a much higher ratio of flower imports. Non-tariff barriers however restrict free access to the Japanese flower market.

Key Problems

Airport facilities totally inadequate.

Most international airports facilities in Japan are totally inadequate for handling high and increasing volumes of cut flowers and other perishables.

Insufficient inspectors.

The plant quarantine regulations are outdated and not in line with internationally accepted standards.

The numbers of plant quarantine inspectors are insufficient and limited inspection times at some of the international airports hinder the speedy distribution of imported flowers with obvious detrimental effects.

Recommendations

The Japanese Government should make a detailed study of the development of the inspection systems practice in the main cut-flower importing countries.

"Selective plant quarantine systems" in advanced countries are based on the Pest Risk Analysis approach developed by the Food and Agricultural Organisation (FAO). In 1992 FAO-members adopted the distinction between quarantine and non-quarantine pests to be included in the official International Plant Protection Convention Certificates. Based on the GATT Uruguay Round agreement, a sound scientific method was developed to support the Pest Risk Analysis System. As a first step, the Japanese authorities should apply minimum levels of the agreement on insects which are common in Japan and in the exporting countries, for example aphids and thrips.

In order to speed up the procedures the inspection capacity should be increased and inspection times further extended. Inspection and clearance procedures should be simplified by establishing an on line-system between Plant Quarantine and Customs.

Flowers failing the inspection test have to be fumigated which reduces the quality and increases the cost. The Japanese Government is requested to investigate other means of disinfection. Improvements at the bonded warehouses and the dispatch and distribution areas at all international airports are necessary and in particular at Narita where the biggest volumes are imported.

As there is a basic lack of space at the airports, the Ministry of Agriculture, Ministry of Transportation and the Ministry of Finance must investigate the possibilities of a fundamental change in the total handling, inspection and clearance process to make more efficient use of space and manpower.

Telecommunication & Information Processing

Background

Different standards in Japan.

The import situation for Telecommunications and Information Processing remains complicated since the standards applied for telecommunication equipment in Japan differ substantially from international standards.

NTT had mandate to national research and development.

In the past Nippon Telegraph and Telephone Corporation (NTT) had the mandate from the Ministry of Post and Telecommunications to promote national research and development in the field of telecommunications. NTT was also authorised to build up a national communications network. NTT employs 8,000 engineers developing telecommunication systems and equipment for the national network. In other institutions, universities or in private industry, there are no comparable capacities allocated for telecommunications developments. This situation is unchanged even after the privatisation of NTT about ten years ago.

Key Problems

Adaptation to NTT standards.

As a result of the NTT "monopoly" substantial interfaces and protocols are proprietary and a manufacturer cannot supply equipment without implementing essential adaptation. In the mobile telecommunications area certain aspects such as "service functions" are not specified public standards as the standards are defined internally among the operators.

Broadband networks to NTT's standards.

This situation, dominated by NTT, could become even more imbalanced, if the future nationwide fibre based "broadband networks" are implemented according to NTT's guidelines alone. Accordingly the lack of real deregulation and effective competition causes uncertainty about future trends in the telecommunications business in Japan.

Reduction of product rights.

Up to now manufacturers can join NTT's procurement tenders for new equipment and thereby acquire

long term continuity as an NTT supplier. This, however, implies the manufacturers carry out new developments and implement upgrades according to detailed instructions from NTT. Such collaboration will include components and equipment from a third party into the suppliers' systems resulting in reduced product rights for the supplier. This affects not only suppliers from abroad but Japanese suppliers as well.

Recommendations

NTT should be encouraged to provide open interfaces to its network and inside the network (V.51), so that it will be possible for manufacturers to become suppliers to NTT with equipment which has not been co-developed with NTT.

For the long term, it would help if new carriers are encouraged to set up their own networks at a reasonable size.

Legal Services

Background

The Japanese and foreign business community has an increasing need for legal service.

As a general rule, only Japanese qualified lawyers, "bengoshi", are permitted to practise law in Japan. The law establishing this monopoly can impose criminal sanctions on any person contravening it.

As an exception to this rule, foreign law firms were first permitted to establish offices in Japan in 1987. However, the conditions under which they can operate are restrictive. This is particularly relevant since Japanese and foreign business need increasingly to have legal advice on international transactions or disputes.

Foreign law firms are permitted only to practise through designated lawyers “gaikokuho jimubangoshi” (GJB) who have been licensed in Japan. These GJB can act in matters which involve the law but only of a jurisdiction in which they are qualified to act and not otherwise.

European lawyers with GJB’s in Japan act for Japanese clients with business in, or subject to the law of, the jurisdiction(s) in which the firm’s GJB is qualified, and for existing foreign clients with business in Japan who want to use their existing lawyers to assist them in obtaining appropriate legal advice.

Key Problems

American and European lawyers together raised, in the context of the GATT negotiations, a number of problems affecting their ability to practise in Japan. As a result some minor amendments have been made to the law, but they are by no means enough. The main issues are described below.

Five year's experience in the country of principal qualification is a requirement for a GJB licence. An amendment to the law at the beginning of 1995

relaxed this to the extent that two of those years can have been spent in Japan, but practising the law of qualification in any other foreign country is disallowed.

The lawyers that are of most use in Japan are those with experience in advising foreign businesses. It is usual for such lawyers to have spent some of their time abroad elsewhere than in Japan. It is believed that the five year requirement is unnecessary at all, but even if it remains, the additional restriction operates solely as a further barrier to bringing suitable lawyers into Japan.

Only a bengoshi is permitted to advise on third party law.

Although GJB are entitled to pass on to Japanese clients advice obtained from other jurisdictions provided the source is clearly indicated, Japanese lawyers argue that under the current law only bengoshi are permitted to handle third party law. This appears to be an attempt to oblige clients to use bengoshi, and not the international law firms which are clearly more competent in this field, when legal work in several jurisdictions has to be efficiently co-ordinated and the client given overall legal advice.

There is no wish for foreign law firms to practice Japanese law.

International European law firms have no wish to practise Japanese law without using Japanese lawyers. A much improved service could be provided to clients trading or investing in Japan if their international lawyers had a Japanese qualified partner who could provide the advice as part of the overall service by the firm.

Restriction in co-operation between Japanese and foreign layers.

A change in the law in 1995 permits a joint arrangement between a foreign firm and bengoshi,

but it is highly restrictive. It is unlikely to work unless used as a facade for a more workable partnership.

Employment of a bengoshi by foreign lawyers.

The service to clients would also be much improved if GJB could employ bengoshi. This is not permitted and there are no signs at present of any relaxation of this policy. There are few other countries that prohibit employment in this way, even if there are restrictions in limited areas such as appearance in court.

Unfairly strengthen the position of the Japanese party.

The effect of a combination of laws in Japan mean that in practice any foreign company with an arbitration that is held in Japan must employ a bengoshi to conduct the arbitration even though the governing law of the contract is not Japanese law. If the Japanese party is able to negotiate a contract with an arbitration clause that requires arbitration in Japan, for example, these legal impediments unfairly strengthen the negotiating position of the Japanese party in the event of a dispute.

Restrictions deprive Japanese and foreign lawyers of business.

In terms of business, these restrictions may work to the advantage of most international firms since they will inevitably advise their clients to avoid if at all possible arbitration clauses that permit arbitration in Japan. As a result, the business probably goes to Hong Kong or elsewhere where such firms can handle it in any event. Despite this, it is a restriction that is unhelpful to clients and deprives lawyers, both foreign and Japanese, of business in Japan.

There is a study commission set up by the Ministry of Justice and the Federation of Japanese Law Societies "Nichibenren" looking into the problems of arbitration at present. It has been considering evidence since the

summer of 1994. It may well recommend some changes in the law.

Unlikely the Ministry of Justice will take action without support from Nichibenren.

As a result of the GATT negotiations, Japan amended the law governing GJB's with effect from the beginning of 1995. The Ministry of Justice is unlikely to do much more without the support of the Nichibenren and that support is very unlikely. Only a very small proportion of Japanese lawyers do any commercial work, even domestic work. They concentrate much more on crime and tort. Although they will be largely unaffected by the changes sought by European and American lawyers, they nevertheless claim that foreign law firms will eventually move into their practice areas.

Education on Japanese business of the need for international legal advice.

The need for good international legal advice at the early stage of a negotiation is increasingly important for Japanese companies investing abroad. As much as possible needs to be done to educate Japanese business of this need. They may then in turn strongly encourage the bureaucracy to bring about more change.

Gradually, Japanese lawyers themselves may come to realise how much they are losing out by not opening the market. The ability to work for international firms whose clients include major Japanese companies as well as many others is an opportunity that is now denied them.

Patents, Trademarks & Licences

Background

Increase in infringement of rights.

The economic value of intellectual property rights has increased tremendously as a result of the rapid incorporation of high technology and software applications into the economy during recent years. However, at the same time, a consequence of this has been a pronounced increase in the frequency of infringement of these rights, raising the need to reinforce regulatory safeguards.

Japan has worked hard for 20 years to improve its image.

For a long time accused by other industrialised countries of its abusive and discriminatory use of the intellectual property system, Japan has been working in the last twenty years to improve its image as a fair protector of foreign techniques and know-how. Reform of the intellectual property laws is numerous and far-reaching, making Japan today one of the most advanced countries in this regard.

Global harmonisation.

Japan has followed the predominant trend towards global harmonisation and has been actively involved in different rounds of negotiations within the World Intellectual Property Organization (WIPO) or within the General Agreement on Tariffs and Trade (GATT) where a special agreement was recently concluded on Trade-Related Aspects of Intellectual Property Rights.

Stronger action has been taken by the police and customs on infringement.

In line with global harmonisation of intellectual property laws and practices, the Japanese Patent Office has improved the process of patent and trademark applications. Stronger action has been taken by the police and customs office to deal with infringement of intellectual property rights. Protection of software was granted under copyright law in 1985. The Trade Secret Law was enacted on June 29, 1990. Protection of service marks was introduced on April 1st, 1992. Penalties against infringers were substantially raised in 1994. Protection of notorious trademarks and against dead copies were granted in the same year 1994. Further, the latest revision of the Patent Law will greatly alleviate criticism of the Japanese system, by the introduction of the post-grant opposition system, together with the right to file Japanese patent applications in the English language initially and the alleviation of amendment procedure.

Infringement on software remains an obstacle faced by foreigners.

Despite all these efforts, it remains to be seen whether enforcement of this most recent provision of the law will in practice be as promising as the law itself is in dispelling former criticism. The lack of efficient legal measures against infringers of intellectual property rights, especially in the case of patent and software infringement, remains also today one of the obstacles faced by foreign companies in Japan.

Key Problems

Average length of pending applications in Japan is still one of the longest among developed countries.

Shortage of patent examiners.

The backlog is due to a chronic shortage of patent examiners (despite the increase of personnel between 1991 and 1994), exacerbated by the very large number of patent applications filed in Japan.

The filing of applications to cover slight variations in known technology is widely practised, despite the availability of the multi-claim system.

There is no formal time deadline for the examiner to render a written decision, even though this has been improved with the accelerated proceeding.

No discovery procedure.

There is no discovery procedure whereby the owner of a process patent may seek evidence of suspected infringement.

Design law unusable.

The design law is almost unusable because of the length of the examination in addition to the high cost of registration fees.

Counterfeits endemic.

The problem of counterfeits remains endemic, despite the substantial efforts of police and customs.

In civil cases, the pitifully small damages awarded to Trademark owners deter them from taking legal action against counterfeiters, not to mention the high cost of court proceedings and difficulties of enforcement.

The delay by the Patent Office in its issuance of official counterfeit appraisal is often another obstacle to a speedy resolution of counterfeit cases.

The investigations into counterfeiting at customs houses has improved but still, in many cases, importers are not subject to judicial proceedings.

The liberalisation of parallel imports is used too often as a way to circumvent the law on counterfeit goods.

Names of origin are still insufficiently protected in Japan, despite the recent amendment of the Trade-mark Law which prohibits registration of names of origin for wine and spirits.

With regard to software protection, the Japanese authorities have not, at the time of printing, drawn up any final position concerning the software decompilation in Japan. Moreover the enforcement of the copyright law in the field of software remains difficult in Japan. According to reliable sources (Business Software Alliance) pirated softwares account in 1994 for 67% of software business in Japan.

Recommendations

The EBC is pleased about the recent Japanese policy in the field of intellectual property and its goodwill with regard to the global harmonisation of laws and systems. The newly enacted laws now provide Japan with a comparable system to that of the main industrialised countries.

Notwithstanding these improvements, problems remain which require further attention from the Japanese authorities.

In particular we would recommend additional action so as to:

- Eliminate post examination delays, so that the overall time for registering a patent can be reduced to a maximum of eighteen months.
- Extend the interpretation of patent claims sufficiently to protect minor modifications.
- Allow application of designs belonging to the same family of goods in a single application in order to reduce the cost of registration and annuities.
- Provide judicial or administrative means, by which a patent owner can obtain information about processes suspected of infringement with appropriate safeguards against abuse.
- Accelerate and to ease the issue of the "preservation of evidence" orders.
- Enforce effective economic sanctions against counterfeiting.
- Accelerate the delivery of the Patent Office counterfeit appraisal.
- Have the burden of proof shared between the importer and the Trademark owner in case of the parallel import of dubious goods.

- Strengthen enforcement remedies for copyright owners and adopt a clear position concerning the decompilation issue.

Banking

Background

Moving towards a more equitable market.

While it is true progress has been made in the past few years and, with the implementation of the recently announced deregulation measures, further progress is in prospect, there is still room for improvement towards a more equitable market environment. Since financial services competition is global in nature, and foreign participants continue to attach importance to Japan's financial markets, it is of paramount importance that deregulation and the enhancement of transparency proceed at an accelerated rate.

There are currently 90 foreign banks with branches in Japan, of which 37 are European.

Foreign banks market share in Japan vis-à-vis Europe.

All foreign Banks' and not only the European Banks' market share, as far as loans are concerned, is less than 1% of the total granted by the banking sector. On the other hand, the market share of foreign banks in the more open US and European markets is at least 5%.

Key Problems

Some banking activities no longer generate sufficient profit.

Foreign banks in the past relied considerably on financial activities' income such as treasury, foreign exchange, arbitrage and asset swaps to balance their operating account. Some of these activities no longer generate sufficient profits such as treasury. Moreover volumes of other activities, such as foreign exchange, have drastically declined in Tokyo markets.

As a consequence, some foreign banks are relocating parts of their dealing rooms or back-office activities outside Japan for taxation and overhead reasons.

Reduction of margins.

The only recurrent income for most foreign banks remains in the lending sector, which unfortunately is not expanding as explained above. On the other hand, margins have been declining substantially over the past 12 months.

Is the Japanese market attractive enough.

More and more foreign banks will find it difficult to secure profits in Japan. Under the present market conditions such a situation will lead to questions being raised in head offices, as to whether the Japanese market is attractive enough to conduct business, since the return on investment is becoming so marginal.

If the situation does not improve, it is expected that more banks will be obliged to trim their activities here or even close down their operations.

Tokyo as an international financial centre.

Such a turn of events would be most unfavourable and would be far from being in the best interests of Tokyo as an international financial centre, which it is

hoped would be characterised by free competition in a deregulated and invigorated market.

Obstacles against a meaningful penetration in the market.

The often-repeated but still significant barrier to participation by foreign institutions in the financial markets is the "keiretsu" or Japanese industrial/corporate groupings. The inclination of these groups toward an "inclusive" stance concerning business transactions, makes it particularly difficult for non-group market participants, especially foreign ones, to make a meaningful penetration in the market/segment. This has resulted in the continued dominant market positions of certain domestic institutions.

In addition, such a position effectively distorts competition and could even put a very competitive service at a disadvantage, when offered by a non-group company.

Although it is recognised that this aspect is not within the scope of a regulatory environment, overt the authorities should encourage a more open and accommodating stance by industrial group members towards regarding non-group members.

More accommodating interpretation of regulations.

Increased transparency is sought with regard to the regulations, which continue to be vague. The interpretation of these regulations is often more of a restraining or constraining. A more accommodating interpretation would contribute to the progress of the financial markets.

Financial reporting.

Although financial reporting by banks has improved and the information disclosed is greater than that of other markets, increased disclosure is warranted to

enable adequate understanding of the institutions' financial positions and to enable satisfactory credit assessments by institutions, corporates and individuals. This aspect is essential in facilitating increased market participation. It is also important in view of the increasing inter-dependence across national borders of financial markets.

Recommendations

A morerep accommodating and less restraining stance is recommended on the interpretation of regulations. The implementation of a "negative list" to indicate that which is not permissible would contribute to making the regulatory environment more transparent.

A more market-oriented position should be adopted concerning new products and services such as derivatives. If the introduction of new products and services involves reporting requirements of an administratively constraining nature, the positive impact of such introductions would be diluted.

Meanwhile, there is considerable room for improvement on the regulatory reporting requirements of the Ministry of Finance (MoF) and the Bank of Japan (BoJ), which are still numerous and complex. A specific case in point would be the consolidation (i.e. reduction) of financial futures' reporting requirements which currently entails the redundant reporting of similar statistics (partially identical statistics), in different formats and different currencies. A co-ordination by the recipient regulatory departments

should enable the reduction of the three monthly reports currently required to one monthly report.

Another area that would benefit from increased deregulation is securitisation. Within the increasingly competitive banking environment and decreased demarcation of market segments, securitisation promises to be a growth area. The regulatory stance towards this area needs to be more supportive. The introduction of new securitisation products should be actively encouraged and the associated rules and procedures should be rapidly deregulated so as to promote a wider and faster growth of the market for securitisation products.

Securities

Background

There are currently 52 foreign securities houses operating in Japan. Of these, 27 are from EU countries and two from Switzerland. Fifteen of these are members of the Tokyo Stock Exchange (TSE).

Country of Origin	Number of Securities	Number of TSE Members
Britain	14	7
Germany	6	2
France	5	3
Netherlands	2	1
Switzerland	2	2

The European houses together cover most areas of securities business, including the trading and broking of bonds, equities and derivatives, although some of them tend to specialise in one or two fields such as Japanese equity broking or derivatives trading.

The turnover at the TSE has fallen markedly.

As far as Japanese equity turnover is concerned, the overall turnover on the TSE has fallen markedly in the last few years, but foreign securities houses' market share of that dwindling turnover has increased to between 20% and 25%, i.e. a very substantial share of the market. Statistics on turnover in the bond and derivatives markets are more difficult to assess because of the wider dispersion of these markets.

The system does not discriminate against non-Japanese companies.

In general, much progress has been made in recent years in the elimination of regulations which resulted in effective discrimination against foreign securities companies. It is acknowledged that the legal and regulatory system does not discriminate against non-Japanese companies which therefore, it can be argued, enjoy 'national' treatment. Therefore, many of the regulations or requirements which the Securities Committee would like to see modified, represent concerns shared by Japanese securities companies. The Japanese tendency to be slow in developing new business relationships and to favour the retention of long-term associations, supports the position of established suppliers of goods and services, at the expense of newcomers attempting to break in or to procure an enhanced role or increased share of a company's business. However, this same cultural trait protects the position of established foreign companies although, on average, it hampers progress because most are indeed relative newcomers.

Key Problems

Foreign securities companies and foreign investors are major participants.

Japanese privatisation issues have taken place only in the domestic market, thereby severely restricting the participation of foreign securities companies and foreign investors. Foreign securities companies and foreign investors are major participants in the Japanese equities market. To deny them full involvement, represents effective discrimination revealing a lack of reciprocity by the Government of Japan towards certain European countries which have regularly included separate Japanese and other international tranches in their privatization issues. It is also in the interests of the newly privatised companies, that their shareholders should be distributed as widely as possible and include a representative overseas element.

The current system is flawed in two major respects.

The present system of determining the price of initial public offers by auction and subsequent fixed price offers, including initial public offers of privatised companies, is not working well and is currently being reviewed. The current system is flawed in two major respects:

- Firstly, it is illogical mathematically in that substantially all the demand for the issue is matched against supply and restricted in the auction to only one third or one half of the total number of shares being offered.
- Secondly, the system lends greater credence to the speculative "whims" of individual investors rather than the professional judgement of securities companies. It tends to

result in a distorted offer price which does not accurately reflect the market value of the shares.

Foreign securities houses' share of underwriting of new equity is only around 1.5%

The foreign securities companies' share of domestic bond and equity market underwriting is minuscule, as compared with their share of turnover in the secondary market in these securities. It does not begin to compare with the penetration of overseas markets achieved by Japanese securities companies. For example, the foreign securities houses' share of underwriting new equity or equity-related securities in Japan is around 1.5%, whereas their share of TSE turnover is between 20% and 25%; such a divergence is peculiar to Japan and is most unfortunate.

The efforts of foreign securities companies to increase their underwriting business are now made more difficult by the establishment of many new bank-related securities companies, which can to some extent command the loyalty of client issuers of securities.

Reporting is cumbersome.

The authorities (the Ministry of Finance, the Bank of Japan and the Japan Securities Dealers' Association) require more than 40 monthly reports and a substantial number of other reports (weekly, quarterly, annual etc.) which represents a cumbersome and unnecessary burden. The effect of this is to saddle foreign securities companies with significant extra costs.

Confidential information leaks.

At present, company results are released on a daily basis at the TSE after the close of business. This information is made available to journalists for the

following morning's newspapers. The information is therefore embargoed overnight. However, there is a lack of confidence in the procedure being strictly observed. It is believed that information may be used by certain securities houses to solicit business during the day of release in London and New York.

Yen denominated Eurobonds issued by private sector resident borrowers, are subject to a three month 'lock-up' period during which they may not be offered or sold to residents of Japan. However, these bonds are actually designed to appeal to Japanese investors and there is little appetite for them amongst other investors. The current system is widely known within the industry to be a "sham" and brings disrepute on both participants and regulators.

There is no efficient bond clearing or settlement system in the domestic market similar to Euroclear or Cedel.

Recommendations

International offers of shares of privatised companies should be made simultaneously with all significant privatization offers in the domestic market. It is suggested there should be separate tranches offered in the European and US markets. Obviously, the issue schedules should be harmonised but allocation methods and rules appropriate to the domestic market, should only be applied overseas where strictly necessary.

To the maximum extent possible, the system should be changed to an underwritten system or a 'book

building' system, as commonly applied in the UK and US markets. If there are areas where it is essential to retain the auction system, and it is argued that this may be the case in initial public offers of privatization issues, then steps should be taken to eliminate the influence of individual investors, perhaps by fixing the minimum bid at a substantial figure. The Securities Committee believes, however, that this would be a second best solution and that the Government should adopt an underwritten or a "book building" system as soon as possible even if changes to the law are necessary.

The Ministry of Finance should ask lead managers of domestic bonds and equity issues to encourage issuers to offer significantly larger underwriting shares to foreign securities companies.

In keeping with the Government's expressed intention to reduce regulation and unnecessary administrative red tape, the Ministry of Finance should apply itself more urgently to the task of simplifying reporting requirements and eliminating those that are not necessary.

All information released to the TSE should be made equally available to all member firms and restrictions on the immediate use of such information should be applied equally to all member firms or abolished.

The three month 'lock-up' period applied to the sale of Yen denominated Eurobonds issued by resident borrowers should be abolished.

A modern bond clearing system should be established. Representatives of foreign securities compa-

nies should have an opportunity to advise on the design of such a system, before final decisions are taken.

All regulations with regard to pension fund management, which place investment advisory companies who hold a discretionary management licence at a disadvantage, compared with trust banks and life insurance companies, should be abolished. An early date should be set for the abolition of the 'one third' rule.

Asset Management

Background

Until the mid-1980s, domestic trust banks and life insurance companies completely dominated the pension fund industry in Japan and, in the same way, the investment trust management subsidiaries of domestic securities companies held sway over the mutual fund industry.

Limitation in licence.

Change came slowly through the recognition in 1985 - 1986 of the first foreign trust banks. Only a limited number of licences were granted - nine in all, with six going to US banks, two to Swiss banks and one to Barclays, the sole EU representative - but they carried all the privileges of access that the Japanese trust banks enjoyed.

Companies playing the stock market.

At the same time, a number of investment management companies both domestic and foreign, opened. Japanese companies tended to be subsidiaries of securities companies and banks, attracted both by the longer term prospect of eventual access to pension funds but more immediately to the apparently easy pickings offered by the "zaitech" boom, companies playing the stock market. Foreign companies usually had mixed motives for opening. To the above, one can add that Tokyo was too large a market to ignore, and there was a desire to manage Japanese equities closer to the market and obtain access to the flow of funds from Japanese financial institutions into overseas markets.

The formal licensing of discretionary investment management companies started in 1987, but it was not until 1990 that access to two major pools of money - pension funds and retail funds - was conceded.

International funds management changing.

The management of mutual funds in Japan was until fairly recently entirely in the hands of the Investment Trust Management (ITM) subsidiaries of domestic securities companies. From 1990, separate ITM subsidiaries of foreign investment management companies were permitted and a small number of companies, all European, took advantage of this. While there is no legal prohibition against direct sales through telephone or mail historically, distribution has been in the hands of the securities companies and it was only until very recently that limited direct sales to institutional investors started.

No barriers target foreign companies.

Partly as a result of continued domestic liberalisation and partly as a result of US pressure, entry to the

Japanese market has been eased and it is now possible to run both mutual funds and other types of account, such as pension funds, from the same legal entity. Apart from the necessity to be physically present in Japan, there are few legal impediments or barriers and none that target foreign companies.

Key Problems

Denied access to public funds.

Dealing with the management of Japanese pension funds which has been the main area of concern for the EBC Asset Management Committee, the liberalisation in 1990 was only a partial one. It gave investment managers, both domestic and foreign, access to only one type of pension fund, the so-called Employment Benefit Pension (EBP) or "kosei nenkin" but denied them access to most public pension funds, which is a significant part of the Japanese market, and to all Tax Qualified Pensions (TQP) or "tekikaku nenkin". Even the access granted to EBPs was restricted in terms of amounts, maturity of the fund, source of funding, and most notoriously, an entirely ad hoc one third cap on the maximum total entrust able to Investment Management (IM) companies was imposed.

Foreign share of the market is still small.

When one also takes into account the relatively low fees paid by pension funds in Japan and the enormous marketing effort required to attract Japanese clients, it is hardly surprising that to date the foreign share of the market has been small. This should, however, be seen in the context of the whole pension fund market where, as at 31st March, 1994, the combined share of all IM companies was around 3% of the accessible, i.e. EBP, market. Thus, even

for the likes of Nomura and Industrial Bank of Japan, penetration of an historically closed market has been slow work.

As at 30th September, 1994, seven European IM companies have obtained mandates from Japanese corporate clients and four have, in addition, been awarded mandates by public pension funds. The total sums of money involved are, however, still fairly small and no one claims to be making money yet!

Recommendations

Since 1990, there has been a gradual further relaxation of restrictions which have increased the scope for both foreign and domestic IM companies. Of particular recent significance was the agreement on Financial Services between the Japanese and US Governments announced in January, 1995. Access has now been granted to a number of additional public pension funds. The qualification period before pension funds may employ investment management companies has been reduced and commitments have been given to gradually phase out the 'one-third' rule and to phase in market value based accounting for pension funds. Although arising from discussions between the Ministry of Finance (MOF) and US Treasury, the concessions won are clearly stated to apply on a Most Favoured Nation (MFN) basis and full implementation of the letter and spirit will need to be monitored.

Notwithstanding these further concessions, there are still restrictions on both the access by IM companies

and on what terms they may be entrusted with funds. The net result is that, even after the proposed reforms, there will be access to only around 50% of pension fund assets.

While the restriction on IM companies' total share of a pension fund's asset is due to be relaxed from a cap of one-third to one-half from next year, this still represents clear discrimination against I.M. companies and should be eliminated altogether.

Remaining pools of money where access is restricted for historical reasons to trust banks and life insurance companies should also be freed up. These include tax qualified pensions, certain Mutual Aid Associations, and funds controlled by the Ministry of Posts and Telecommunications.

The method proposed whereby IM companies may obtain access to Pension Welfare Service Public Corporation "Nenpuku" funds is far too cumbersome and should be simplified to the benefit of all concerned.

Investment

Background

Japan is the world's second largest economy, with GDP equal to about twice the rest of Asia combined. As such, Japan represents an attractive marketplace for many European companies. However, notwith-

standing Japan's technical and knowledge-based lead in several key sectors, historic Foreign Direct Investment (FDI) into Japan has been relatively limited.

European investment into Japan - \$ 10 billion.

Japanese investment into Europe - \$ 90 billion.

The cumulative total of FDI from Europe into Japan between 1950 and 1994 reaches only US \$ 10 billion, which is roughly 1/9th of what Japan has invested in Europe over the same period - about US \$ 90 billion. In 1994, total direct Japanese investment in Europe amounted to US \$ 6.2 billion (15% of Japan's total investments abroad), while European FDI toward Japan was US \$ 1.5 billion (33% of world-wide FDI in Japan).

This huge imbalance is largely a result of Japan's regulatory, structural and cultural impediments to FDI.

However, the Japanese economy is changing and a consumer-oriented society is taking root. The new demand generated presents a great opportunity for European companies, providing they are given the opportunity to grow.

EBC obligations.

The main task of the EBC Investment Committee is to promote measures to facilitate European investment in Japan. At conferences, lectures and in position papers, the EBC has consistently called for the removal of obstacles to FDI in Japan and for the introduction of meaningful incentives.

Company mergers.

According to KPMG, foreign acquisitions activity in Japan during 1994 resulted in merely 44 deals with a total disclosed value of Yen 183 billion. US companies were the most active, with 24 transactions while European acquisitions accounted for

only 14 deals. The majority of these transactions involved small, often family owned Japanese Companies.

Key Problems

The obstacles to M & A in Japan are both cultural and structural.

Major companies in Japan are often organised into clusters, with reciprocal share holdings to cement commercial relationships. Companies are very reluctant to sell such holdings. These arrangements rule out many companies from Merger and Acquisitions (M&A) transactions and distort stock market prices.

Japanese style corporate governance is marked by factors such as lifetime-employment, commercial relationship based share holdings and seniority based salary and benefits, but takes little account of the interests of minority shareholders.

Foreign investors are disadvantaged by a lack of financial information. Japanese financial statements are prepared for tax purposes on a basis which allows losses on investment to be deferred and allows the deferral of non-deductible expenses and provisions. Furthermore, the number of companies required to undergo an external audit (broadly, issued share capital of over Yen 500 million) is fewer than in other major industrialised countries.

The Japanese corporate tax system discourages FDI.

The rate of corporate tax is high at 52%, lowering the returns to investors. The EBC believes that this Japanese corporate tax system discourages FDI.

Japanese law prohibits holding companies, preventing commonly owned companies from consolidating tax returns and utilising “group relief”. Group relief would help foreign conglomerates to reduce exposure to new ventures in Japan.

In common with other countries, Japan has introduced a version of Advance Pricing Agreement (APA) to help corporations avoid future tax problems with transfer pricing arrangements. However, Japan’s version, called the “pre-confirmation system”, is uncertain and time consuming.

The Government has made efforts to address these taxation issues and EBC welcomes the Law of Extraordinary Measures for the Facilitation of Imports and FDI.

Regulations.

The business environment in Japan is more highly regulated than in most other countries. This undoubtedly obstructs new market entry by both domestic and foreign firms. Over the past decade there has been a strong relationship between deregulation and FDI.

Government restrictions.

The Government can restrict inward investment in any sector if it is judged to “seriously and adversely affect the smooth performance of the national economy”. However, in practice FDI is more likely to be restricted by individual industry regulation.

A five year deregulation programme has recently been announced, but few extra incentives to invest are offered. Existing controls over FDI in reserved economic sectors are essentially maintained.

Arbitration by local lawyers only.

Japan is not a hospitable forum for international commercial arbitration. Unlike other Organisation for Economic Co-operation and Development (OECD) countries, arbitration proceedings must be handled exclusively by local lawyers, depriving foreign companies of optimal representation.

Incentives.

FDI in Japan is characterised by high start-up costs and poor prospects for an early return on investment. These factors, plus a host of other difficulties, ranging from recruitment problems to exclusionary business practices, discourages FDI in Japan in favour of the emerging Asian economic centres. Incentives are needed if Japan is to attract significant investment.

Whilst we appreciate efforts by the Japanese Government and its affiliated organisations such as the Foreign Investment in Japan Development Corporation (FIND) and the Japan Development Bank(JDB) to provide incentives, the EBC believes that the publicity given to many of the programmes is out of proportion to their true value. Furthermore, the programmes often exclude companies already operating in Japan.

Recommendations

Mergers & Acquisitions.

The Government, banks and capital markets should encourage Japanese corporations to respect the interests of independent shareholders, to be more open to foreign joint venture/collaboration proposals and to release more information.

The share capital threshold for external audit of financial statements should be reduced from 500 million Yen to 100 million Yen. Audited financial statements should be publicly available.

Taxation.

The corporate tax rate should be cut and special taxation measures, such as import tax credits and accelerated depreciation rates, should be used more frequently. Japan should reconsider its law banning holding companies in order that commonly owned companies may combine and utilise "group relief".

The tax loss carry forward period for foreign companies making new investments should be extended to over ten years. Carry forward should be available for tax losses arising in any year, not just the first three years of the investment.

Japan should unilaterally lower its withholding tax rate to 5%.

More legal certainty is needed in the tax treatment of transfer pricing.

Regulations.

The Government should pursue its objective of deregulation more vigorously in all sectors. This includes full execution of the Administrative Procedures Law which clarifies administrative procedures, promotes transparency and ensures equal treatment of domestic and foreign companies.

The restrictive provisions on the practices of foreign lawyers should be abolished.

Incentives.

The Government should systematically review the effectiveness and performance of existing incentive

programmes and extend programmes to cover all foreign companies in Japan. The Government's efforts should be more focused and the views of foreign companies should be considered when setting policy.

Recommendations.

More specifically, we recommend that the JDB:

- Provides loans in respect of start-up costs and equity investment.
- Focusses more on providing loans to smaller & medium size companies.
- Provides loans to finance development of office-based, not just manufacturing-based organisations and considers taking the lead in arranging co-finance with commercial banks.

We support the establishment and objectives of FIND and have the following recommendations on its future development. FIND should:

- Focus its resources by targeting specific industries and countries.
- Develop closer relationships and co-operation with regional government, to promote and improve incentive schemes.
- Use its growing experience to act as a voice for the international business community within the establishment in Japan.

Insurance

Background

EBC Insurance Committee consists of life and non-life insurance companies.

Japan is the largest life market and second largest non-life market in the world commanding some ¥ 41,523,405 million Gross Written Premium (GWP) in fiscal 1993.

There are 22 Japanese life and 22 Japanese non-life companies with a combined premium income of ¥ 40,392,897 million (Direct GWP) whilst in respect of foreign insurers there are eight foreign life companies of which four are with mixed share holding and 29 non-life companies with an income of ¥ 1,130,508 million (Direct GWP). In other words, foreign companies have a 2.72% share of the market in Japan whereas in G7 countries in Europe these figures are:

		Per cent
1	France	10
2	Germany	13
3	Italy	33
4	United Kingdom	19

In 1992, the Insurance Advisory Council issued a report making recommendations for changes in the laws of Japan, together with other insurance procedures. Whilst some of these proposals were welcomed by the foreign insurance industry in Japan, others were considered to be detrimental to their interests and therefore, to better reflect the opinions of those parties, a European Business Insurance

Committee was formed consisting of Life and Non-Life Insurers, Insurance Brokers and Reinsurers.

Some of the earliest concerns following publication of the Insurance Council report were:

Third area.

The proposal to allow mutual entry into the third area before deregulation in the primary area, was viewed with great alarm by foreign non-life insurers and was seen to be targeting their niche market.

The absence of the legal definition of "life" and "non-life", per the European business practice created a lack of transparency in the market.

The continued restriction of not being able to adopt a "file and use" system.

The extended version of these views was published in a position paper dated July 1993.

Up to and including the production of the Insurance Advisory Council's report, foreign entities had been led to believe that there would be opportunities for consultation and discussion with the Japanese authorities prior to the submission of any draft law to the Diet. However, the draft which was made public at the end of March allowed very little time for comment, especially with members of the EBC Insurance Committee, and only heightened their general concerns. Currently those fears remain because of the absence of any of the ordinances which are crucial to the continued existence of small and medium sized foreign insurance entities in Japan.

Key Problems

Small to medium sized non-life insurance companies could be financially impeded through the introduction of massive increases within the provisions of the new law and in some cases the deposits could represent an unrealistic ratio to premium income.

Solvency margins.

EBC believes that if the solvency margin standards are applied correctly, there should be no need to increase statutory deposits.

Should these measures be introduced, however, then there must be a period of several years grace in which to build up deposits and that such capital should be regarded as working capital in line with Japanese domestic insurers.

The use of solvency margins in Europe is a well established practise and therefore EBC welcomes that principle being introduced in Japan. However, based on the different financial and legal standings of foreign non-life branches, EBC asserts that the separate standard be applied to such entities.

EBC believes there should be no limit to reinsurance outward within the provisions of the proposed standard, because of its likely impact in reducing the solvency margin. All other forms of reinsurance should be incorporated to arrive at a net exposure.

The assessment of Probable Maximum Loss should not be arbitrarily imposed and should be the preserve of each insurer.

The inclusion of unrealized profit on land, in the proposed solvency margin standard, is not an accepted practise in Europe. EBC believes this item should be deleted from the calculation, as it is too dependent on movements in markets outside their control.

Asset Held to Meet the Different Reserves Requirements.

EBC believes that any assets held in Japan which meet the different reserve requirements, should be in the form and denomination of the foreign insurer's choosing, in line with their respective investment philosophies. Furthermore, foreign insurers should have the same investment opportunities overseas as domestic Japanese companies.

Reinsurance premium
outwards.

In 1992, the Ministry of Finance proposed draft legislation of tax outward on reinsurance premiums. The introduction of amendments to the law was subsequently postponed but was never finally withdrawn. EBC would oppose reintroduction of any such amendment.

If the solvency margin standard is applied correctly, there should be no need to create such a fund. However, if a scheme is to proceed, EBC believes that any participation should be on a voluntary basis and that there needs to be much greater definition from the Japanese authorities on the intended purpose and use of this fund.

In addition, any foreign insurer should have equal opportunity to take over the portfolio of any potentially bankrupt insurance company in Japan.

Freedom of rate and products.

On the 1st July, 1994, a single insurance market was created in Europe, allowing insurance companies to issue a full range of products and premiums of their own choosing. EBC firmly believes that a similar process should occur in Japan to market such products.

The US/Japan trade talks agreement acknowledges that statistical data from outside Japan will be permitted to support applications for the approval of products. EBC welcomes this statement.

EBC also welcomes the Japanese Government's commitment not to deregulate the third area without first unlocking the primary areas and now requests details of the timetable and scheduling for such deregulation.

The application of mandatory risk and advisory expense rates has the potential to do great harm to small companies which cannot hope to achieve the economies of scale of large Japanese domestic companies. If, therefore, this system is to be introduced, small companies could be provided with adequate safeguards.

The draft law demands that the Ministry of Finance must respond in writing within 90 days from the date of filing an application for a product. EBC notes that this period can be extended or shortened and in that case, would not be used as a means of refusing an application, which may not meet the documentary requirements of the Japanese authorities.

Life insurance distribution.

The opening up of the exclusive life distribution system should be carried out promptly and on a fair and equal basis.

Insurance brokers.

EBC believes that if insurance brokers meet the financial and technical requirements of the authorities in Japan, they should be allowed a much greater flexibility to introduce new concepts of insurance covers, rates and conditions.

Insurance brokers should also be able to work equally in the life, non-life and reinsurance markets without hindrance and charge fees for their services, allowing insurers to correspondingly deduct commissions.

Associations.

EBC believes this body should be both independent and neutral, especially in the production and control of rates. The presence of a foreign insurer should be allowed at all meetings on this subject.

EBC notes the recent report made by the Fair Trade Commission on the need to abolish all exemptions to the anti-monopoly law.

Other considerations.

In submitting a draft law without first detailing any of the ordinances only serves to heighten the apprehension and uncertainty of the foreign insurance industry operation in Japan.

It is of paramount importance therefore, that there is far greater opportunity for timely and adequate dialogue and that a timetable and schedule is now provided for the ordinances concerned - otherwise, the risk of re-regulation may be greater than the deregulation process itself.

US/Japan Trade Agreement.

There was no European involvement in the talks leading to this agreement and EBC has had no means of monitoring or being involved in the process to date. EBC therefore urges that means are created to ensure all interested parties are fully and actively involved in the future. In the interim, EBC notes that a study is to take place on exclusionary business practice including Keiretsu issues.

Administrative Procedures
Law.

This recently introduced law provides for approval standards for licensing issues. Until working and fully operational, EBC emphasises that the wording "unless it causes undue hindrance and administration" should not be used to limit any process of deregulation.

If such a process is enforced, EBC considers the reason for refusal should be published and there should be a right of appeal.

Product Liability Insurance

The recent announcement that a single agency and one insurance company is to control this programme is construed by EBC as being against the spirit of deregulation. This change in law has provided the first real opportunity for the authorities to demonstrate a new era of deregulation in Japan which has sadly been ignored.

EBC urges that no similar process be introduced in connection with covers for Insurance Brokers which are also likely to be introduced following measures contained in the draft law.

Abbreviations:

ACCJ	American Chamber of Commerce in Japan
BoJ	Bank of Japan
CLEPA	Liaison Committee for the Automotive Components and Equipment Industry
CSIMC	Central Social Insurance Medical Council
EBP	Employment Benefit Pension
ESA	European Space Agency
GATT	General Agreement on Tariffs and Trade
GIBN	Global Information Broadband Network
GJB	Gakoku Jimu Bengoshi
GSP	Generalised System of Preference
GWP	Gross Written Premium
IATA	International Air Transport Authorities
IM	Investment Management
IVD	In-Vitro Diagnostics
ISAS	Institute of Space and Astronautical Sciences
ITM	Investment Trust Management
JACR	Japan Association of Clinical Reagents Industries
JAMA	Japan Automotive Manufacturers Association
JFSA	Japan Foreign Steamship Association
MHW	Ministry of Health and Welfare
MITI	Ministry of International Trade and Industry
MoF	Ministry of Finance
MoT	Ministry of Transport
NASDA	National Space Development Agency
OTO	Office of the Trade and Investment Ombudsman
TQP	Tax Qualified Pension
TSE	Tokyo Stock Exchange
WIPO	World Intellectual Property Organisation

Japanese words used in the text:

Baraki	Port town close to Narita
Chosakai	Investigation Sub-committee Examination
Dango	Manipulated bidding
Kansai	West Japan, Osaka area
Keidanren	Federation of Economic Organizations
Keiretsu	Cullusion by affiliated companies
Kosei nenkin	Employment Benefit Pension
Nenpuku	Pension Welfare Service Public Corporation
San Sha Kaidan	Three party meeting
Tekikaku nenkin	Tax Qualified Pension
Yoken	Documentation and Laboratory Testing
Zaitech	Companies playing the stock market

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