On Commerce and Industry

White Paper

EBC European Business Community

1998

The European Business Community
The Tower Iikura, Room 301
1-10-14, Higashi Azabu
Minato-ku, Tokyo 106, Japan

Tel: 03-5570-6880
Fax: 03-5570-6881

Editor: Keld Hammering

¥3,000

Printed and bound in Japan by AlphaText, Ltd.

Forward

The EBC produced its first white paper in 1995, followed by an updated edition in 1996 which was subsequently translated and published in Japanese. This new edition of the white paper is prompted by major changes in the business environment as a result of initiatives announced by the Japanese government. Some changes have already occurred while others are in the process of implementation, or are currently being considered by the government. Inevitably the white paper is a snapshot in time, and for certain issues it may no longer reflect the actual situation. However, progress in many areas has been slow and there are some sectors which have been immobile for years. This is despite the Hashimoto cabinet's strong public commitment to deregulation and administrative reform.

The EBC actively supports the government's deregulation and trade liberalisation efforts by participating in several government bodies such as the Import Board, the Administrative Reform Committee, the Office of Investment and Trade Ombudsman, and through meetings with parliament, the cabinet and the Prime Minister. The EBC's expertise originates from its 25 sectoral committees whose members are senior executives of European companies engaged in the respective business areas. The committees meet regularly to discuss and evaluate the influence and consequences regulatory changes will have on their businesses. While the EBC is organised on a sectoral basis it also tries to keep in mind the broad aim of integrating European business more fully in the Japanese economy. This can be best achieved if a level playing field exists for all players and if necessary rules and regulations are implemented in a fair and transparent manner.

One of the most important developments of the past year has been the launching of Prime Minister Hashimoto's "Big Bang" programme for financial market reform. While some details remain to be worked out, particularly in the insurance sector, the programme promises to sweep away many existing barriers within, and between, the banking, securities, asset management and insurance sectors. The effect should be to revive Tokyo's role as an international financial market and to create new business opportunities for Japanese and foreign companies.

In several other sectors significant changes are under way, either in the form of deregulation or harmonisation with international standards. The harmonisation of clinical test procedures for pharmaceutical products and the mutual approval of test results, is one such area. While much still remains to be done, and full harmonisation may be hard to achieve, Europe's industry is well placed to benefit. European companies have invested massively into Japan and have already achieved a market share of 18%.

The liquor industry is another sector where progress has been achieved in obtaining fair treatment for foreign products after many years of delay and discrimination. In September 1997 Japan announced a series of tax changes which significantly reduced the preference given to domestic white spirits over whisky and brandy. Yet, even now, major action is still needed in the area of product definition, further reduction of duty rates and simplification of retail licence store approvals.

Two areas where little or no progress has been made in meeting foreign requests for equal access and conformity with international standards are food and construction. In the food sector dairy products

which are appealing to consumers are disadvantaged by restrictive regulations. Registration procedures for food additives are too complex and harmonisation with international regulations is urgently needed. In the construction sector, architecture, planning, engineering and other consultancy services are underdeveloped and largely closed to foreign competition. The potential in the construction materials market is great, but safety and other regulations which are peculiar to Japan have prevented innovative European products and designs from reaching the market. In the meantime, the Japanese people are asked to tolerate construction costs that are much higher than those in other developed nations.

Given the sharply uneven progress of liberalisation it is not surprising that the market shares of different European industries differ widely. European companies hold a 40% market share in the market for agrochemicals, but only 1% in construction materials, and 1.1% in automobile components. Evaluation of market shares has to take into account such factors as import duties on luxury items, exaggerated quarantine procedures, *keiretsu* relationships between purchasers and suppliers in the corporate sector, the practice of organising *dango* or bidding rings for public sector contracts and residual distrust among some Japanese consumers of the quality of foreign products. The EBC is closely monitoring European market shares in Japan and will publish data on this subject at intervals. A table of market shares appears on page 92 of this white paper.

While most of the EBC's work is concerned with identifying and discussing access problems in specific sectors it is important to note some underlying obstacles to the development of a free market in Japan. An area in which the EBC sees a need for urgent change is wholesale and retail distribution. The existence of multiple layers of wholesalers between suppliers and consumers results in final prices to the consumer which are much higher than they should be and certainly higher than in the US and Europe. Rationalisation of the distribution system is a complex task which calls for changes in long established business practices as well as legal and regulatory reforms. The government should concentrate on promoting free competition by enforcing the Antimonopoly Law and by further relaxing the Large Scale Retail Stores law.

European direct investment in Japan still lags far behind Japanese investment in Europe. While this is no longer the result of formal barriers on the Japanese side many cultural and institutional obstacles remain to incoming investment. The most frequently mentioned impediments include high land and related start-up costs, difficult labour markets, multiple barriers to foreign acquisition of Japanese companies and inter-corporate shareholdings between allied Japanese firms. Japan should recognise that foreign direct investment (FDI) will be increasingly vital to its prosperity as Japanese industry moves offshore. Promoting incoming FDI should be a top government priority.

The aim of this white paper is to present a balanced view of the Japanese business scene as it affects the European business community. We hope that it will serve as a catalyst for active discussions with our Japanese colleagues and with government officials. Apart from the immediate aim of promoting trade flows such discussions can hopefully contribute to the broader purpose of fostering a constructive and dynamic relationship between Japan and Europe.

Contents

Financial Services

Asset Management

Background

Japanese investors have lost confidence in the ability of Japanese financial institutions to produce positive returns for the huge pool of domestic savings. This is in stark contrast to the USA and Europe where the 1990s has provided both pension funds and mutual fund investors with high returns, based on prudent and professional asset management.

Asset Management companies' (known in Japan as Investment Advisory companies (IAs)) have been forbidden until recently by Japanese regulations to make their services available to Japanese investors.

The value of assets invested in the Japanese mutual fund industry (known as Investment Trust Management in Japan) has been static. The U.S. and UK mutual fund industries have experienced huge growth (up 480% and 260% in local currency terms in the ten years to 1996) while Japan's has risen just 13% over the same period. The mutual fund industries in the U.S. and UK have also been major creators of new jobs.

Access for IAs to the Japanese pension fund and mutual fund markets has come about only gradually. Very restricted access for IAs to the pension fund market was granted in 1990. Until then only Trust Banks and Life Companies were allowed to manage pension fund assets. In 1990 IAs were also allowed to establish separate investment trust management companies.

The lack of access to professional asset management means that the cost of the provision of pensions in Japan is substantially more expensive than in other countries. Japanese firms' pension costs are estimated to be two to three times greater than the average cost for American or British firms. This reduces the ability of Japan and Japanese companies to compete internationally.

Those pension fund and mutual aid associations (MAAs) who have been allowed to appoint IAs are now diverting a much larger share of their assets to IAs. Yet existing regulations still prevent a substantial part of Japanese pension assets from being contracted to IAs.

Deregulation can enable Japanese investors to have access to global best practice in asset management. Based on international experience this should provide higher returns for Japanese investors. IAs in addition to providing Japanese investors with prudent, professional and efficient savings vehicles also have the potential to create many new jobs in Japan.

Five major measures have been announced

Subject to receiving requisite approvals, Employee Pension Funds (EPFs) can now be exempted from the 5-3-3-2 rule. This lays down arbitrary rules based on book cost accounting, determining how investments should be managed. A minimum of 50% of a fund's assets by book cost must be invested in yen denominated "safe assets" (cash and bonds), not more than 30% by book cost in Japanese equities and in overseas assets respectively and not more than 20% in real estate. The rule remains in place for Mutual Aid Associations and Tax Qualified Pension Plans (TQPPs) with no possible exemptions.

It is understood that the Ministry of Health and Welfare will lift all investment restrictions on EPFs by March 1999. EPFs will then be able to determine their own asset allocation.

The Ministry of Finance will lift the ban on privately placed investment trust funds with fewer than 50 subscribers in the year to March 1999. ITMs will also be allowed to subcontract fund management to overseas firms.

Banks will be allowed to distribute investment trusts from the Spring of 1998
The Ministry of Finance announced on 12th September 1997 that Tax Qualified Pension Plans will be allowed to appoint IAs from October 1997.

Pension Funds
Japan's total pension assets are estimated to total in excess of ¥224 trillion (approx. US $ 2,000 billion). In recent years, IAs have seen a substantial growth of pension fund assets from a small base. As at December 1996, IAs managed a total of ¥9 trillion of pension fund assets on a discretionary basis, giving an estimated market share of 4%. Assets managed by European IAs totalled approximately ¥1.5 trillion, giving a market share of less than 1%.

Below is a table of the size of the Japanese Pension Fund Market and Restrictions on access to IAs.

	Size ¥bn	Access to IAs
Private Corporate		
Employee Pension Funds	41,775	A maximum 50% of assets can be awarded to IAs
Tax Qualified Pension Plans	17,801	Open from October 1997
Public		
National Pension	6,952	A maximum of 50% of assets can be awarded to IAs.
Employee Pension Insurance	118,763	Limited Access
Mutual Aid Associations	39,000	Limited Access
Total	224,291	-

Source: Japanese Government Ministries (MoHW, MoF, MAFF)

Japanese Mutual Funds as at December 1996

	Value ¥bn	European ITM Cos. Value ¥bn	European ITM Market Share %
Bonds	21,670	408	1.9
Money Market Funds (MMF)	14,219	-	-
Equities	12,779	764	6.0
Total	48,668	1,172	2.4

Source: The Japanese Investment Trust Association

Current regulations on pension fund management do not discriminate against foreign IAs in particular, but rather against the IA industry as a whole, which includes the asset management subsidiaries of Japanese securities companies and banks.

The main impediment to market growth of the mutual fund business is that it is not market practice for ITMs to sell funds directly to the public, although it is legally permissible. Distribution is therefore effectively restricted to the securities companies and, from April 1998, to banks.

Key Problems

The key problems which beset IAs can be summarised as follows:

A major condition of the recent agreement on Financial Services between the Japanese and US Government announced in January 1995 was that pension funds should adopt market value accounting. However, this ruling applies only to Employee Pension Funds (EPF) where market value accounting is supposed to be introduced by March 1998.

Market value accounting is the only objective assessment of the value of a fund's assets and is accepted globally as the most prudent method of measurement. For example, the current Japanese system of book cost accounting lacks transparency, makes it difficult to evaluate the husbandry of assets by fund managers and conceals much of the true value of Japan's pension related assets.

Rules relating to access for IAs to Mutual Aid Associations (MAA) are inconsistent and are laid down by the controlling Ministry. For example access to funds controlled by the Ministry of Posts and Telecommunications is very restricted.

A major impediment to Plan Sponsors transferring assets to IAs is current Japanese trust law which requires that assets taken out of trust have to be turned into cash.

If assets are to be transferred from a Trust Bank to an Investment Advisory Company, under the existing law, all the assets have to be sold and then the cash is transferred to the new manager to invest. This is contrary to investors' interests for the following reasons:

- There are two sets of transaction costs (the sale of assets followed by the purchase of assets).
- The new manager may choose to retain some of the holdings but is not given the option.
- The client's assets are at a risk of being "out of the market" while the assets are in cash prior to being reinvested. If global markets rise by 10% during this period, the opportunity cost could be very high.

Deep rooted problems

The difficult environment for the equity mutual fund industry in Japan is in direct contrast to the US and UK. Japanese stock market conditions clearly have not been helpful. However, the problems would appear to be much more deep rooted, and wholesale reform of the industry is required. Many of the problems relate more to existing market practices which are highly unusual compared to best practice in the US or certain European markets. In this connection the EBC notes that the average holding period for Japanese equity mutual funds is one year compared to, for example, the long term average of between three and five years in the UK. In Japan, mutual funds are treated as short term investments whereas in the US and Europe they are viewed as long term investments. The structure of the industry, too, raises problems in that although investment trusts can be distributed directly by ITMs, this is not current market practice, with distribution effectively controlled by the securities companies.

The Japanese Investment Trust Association (ITA) as at December 1996 comprises 38 investment trust management (ITM) companies and 110 securities companies. The EBC believes that for the market to grow, distribution of investment trust products should be opened to other channels apart from securities companies and banks. However, Japanese securities companies are unwilling to give up their monopoly. The result is a clear conflict of interest within the Japan ITA, such that the industry association is incapable of making a meaningful contribution to the need for deregulation.

Other problem areas in the ITM arena are:

Tax

The holding of individual stocks for private investors is more tax efficient than holding stock investment trusts. The profit on disposal of an investment trust by a private investor is subject to income tax at the full rate, whereas for stock holdings an election can be made to pay tax of 1.05% of the sale price despite the actual gain. The tax paid on a gain from a sale of an investment trust is higher than on the equivalent gain made on a stock holding. Additionally the pricing mechanism for investment trusts whereby withholding tax based on the average trust cost of the fund is deducted at source disadvantages existing investors when new investors purchase units in the fund. Such a pricing system is not used in other countries with developed mutual fund industries. The tax regime applied to ITM products is contrary to the Japanese authorities' stated desire to have a tax system that is "fair, neutral, and simple."

Pricing

There is a need to price bond funds on the basis of market value. Currently there is no requirement to mark to market. Effectively when interest rates are falling the funds generate hidden profits which are not passed on to existing holders of the funds. The reverse occurs when interest rates rise, resulting in new investors buying overvalued assets or sellers of units benefiting at the expense of those who continue to hold the fund.

Recommendations

- Pension fund sponsors should have a free choice in selecting competent authorised investment managers. The Japanese investment trust industry should follow global best practice.

- In the recent Structural Reform Paper, the Japanese Government stressed that the reforms should produce an environment which is "free, fair, and global." To achieve these objectives in the field of asset management the following reforms are required:

- All restrictions which discriminate against IAs in favour of Trust Banks and Life Insurance companies should be abolished. IAs should have access to all pension assets.

- All pension fund assets, not just those of EPFs, should be subject to market value accounting. Likewise, Investment Trust Bond funds and MME's should be priced based on market values.

- Impediments to the transfer of assets away from poorly performing managers should be removed. In particular the law which prevents Trust Banks from transferring assets in specie should be reformed.

- The distribution of investment trust products should be liberalised.

- The composition of the Japanese Investment Trust Association is outdated. The Japanese ITA should recognise the different interests of the ITM companies and securities companies and restructure itself accordingly.

- The taxation of Investment Trusts should be reformed. A "look through" form of tax assessment would be appropriate.

Banking

Background

The activities of foreign banks in Japan date from the end of the Edo period. After the Second World War, they played a leading role in handling Japanese transactions with foreign countries. Since then, their presence and activities have changed in line with circumstances. Overall, the presence of foreign banks in Japan has contributed to the internationalisation and development of Japanese financial markets.

Liberalisation

Some European banks entered the Japanese market during the 1950s, yet the majority came in the mid seventies and early eighties. The European banks' strategy for Japan was part of a globalization of financial services, and corresponded with similar advances made by Japanese banks in the European market. European banks expected to participate in the liberalisation and internationalisation of the Japanese economy and its financial system. To some extent their interest relied more on expectations than market realities.

Presence in Japan

In March 1981, some 64 foreign banks with 85 branches were operating in Japan, of which 24 banks or 37.5% were European. In June 1995, 90 foreign banks were operating in Japan with 142 branches, of which European banks numbered 37, or 41.% of the total. Three subsidiaries and 58 representative offices further complement the European banking presence in Japan. From 1981 to March 1995, the participation of foreign banks in domestic loans and discounts decreased from 3.25% to 1.8%, and in deposits increased from 0.93% to 1.02%.

The commitment by the Japanese authorities towards deregulation, liberalisation, and internationalisation of the Japanese market was one of the promising incentives that encouraged European banks to come to Japan. Foreign bankers wanted to take advantage of sophisticated banking instruments, financial proficiency, technology and innovation. However, as time has shown, industry expectations were too great as regards the pace, quality and possible benefits of expected reforms.

Key Problems

In Japan, foreign participation in banking not only concerns economics, but is further complicated by other issues such as the complex web of laws, regulations and guidance, through which the government controls the financial market. In addition, the characteristics of the Japanese financial system, the peculiar Japanese accounting norms and business practices, high operating costs and taxes, discourage foreign bankers from expanding in Japan.

Over the last fifteen years the government has implemented many changes to Japanese Banking Law, and to the financial system as a whole. These changes have aggravated rather than improved operating conditions for foreign bankers in Japan.

Tokyo's offshore market remains undeveloped due to the overly strict demarcations existing between domestic and offshore markets. Ratings are inadequately reflected in prices in the unsecured yen call market and the CD market. The trading tax on securities in repurchase agreement transactions is an additional impediment to development.

In the Bond market there are several areas, including the secondary market for government-secured and municipal bonds, which leave room for improvement. For liquidity maintenance, trading concentrates on benchmark issues, causing problems in price formation.

The development of the foreign exchange market is slow and there is a lack of transparency in the approval process for new financial instruments.

In the derivative markets, accounting practices and the taxation system differ from international standards and the approval process for new financial products is unclear. Furthermore, the transaction-tax for these instruments should be abolished in order to be competitive with other financial centres (SIMEX, LIFFE, etc.)

Tokyo, as an international financial centre, lags behind London and New York. Tokyo has sufficient financial institutions, large-scale capital and financial markets, and highly developed communications and information networks. However, it lacks sophisticated capital and money markets and has other deficiencies, including:

- Lack of equal interpretation of tax laws leading to different treatment/results of the market participants.
- Complicated reporting requirements to authorities.
- The presence of Fire-walls.
- Lack of market transparency; inadequate disclosure by financial firms.
- Some Bank of Japan money market transactions are monopolized by Tanshi companies despite their limited capital.

Tokyo is currently the most important market in Asia, but there is a growing perception that in the medium term Singapore could outrank Tokyo in the region due to better earnings prospects for foreign financial institutions.

Recommendations

The overall assessment is that efforts towards deregulation of the financial market are slowly taking effect, but still fall short of the standards achieved by other major financial centres like New York, London, Singapore, etc. At present, Japan is far from being globalized, and the EBC Banking Committee therefore notes:

- An even playing field must be created in terms of competition with Japanese financial institutions. (e.g. funding opportunities via Bank of Japan).
- Adequate disclosure by financial firms is needed.
- Removal of the strict demarcations between the domestic and offshore markets should be implemented.
- Financial instruments must become more sophisticated.
- The enhancement of settlement procedures is needed as well as development of the market-market function.
- Harmonization of accounting standards and taxation system is encouraged in line with internationally accepted standards.

- The interpretation of tax laws must be equal for every participant. Furthermore, the tax regulations must be further developed to deal with new financial instruments in line with OECD-tax-guidelines.

- Level of obligations for filing reports to the authorities should be reduced.

- The practice of fixed commissions for foreign exchange broker-dealers should be changed.

- Funding transactions with Tanshi companies should be endorsed by Bank of Japan to exclude tanshi credit risk.

Insurance

Background

Japan is the largest life and second largest non-life insurance market in the world, accounting for some ¥ 40 trillion of premium income in fiscal 1996. In fiscal year 1996, foreign firms received about 3.6% of the total risk premium of Japan's insurance market. However, the European share of the total is a mere 0.3% or ¥120 billion of life and non-life premium income.

The new Insurance Business Law came into effect from April 1996. This reform, which followed the recommendations of the Insurance Council, included the Law enacted in 1949 concerning foreign insurers. As a result, foreign insurers are now treated under the same law as domestic insurers.

The detail and timetable of the Prime Minister's proposal regarding deregulation linked to a financial services "Big Bang" in the year 2001 are still under discussion and therefore in-depth comment is not possible. Generally, however, the EBC would like to see the government aiming to create a level playing field between domestic insurers and foreign insurers as well as between the insurance industry as a whole and other financial sectors.

The intention to privatise the insurance operations of the Japanese Post Office is welcomed. However, given the major size of Post Office insurance operations, the supervision of the new company (or companies) and the rules and regulations under which it operates should be the same as those applying to other insurance sector companies.

The government's decision to reform the Rating Organisation system and, from July 1998, to eliminate the obligation to use rates published by the Rating Organisation, will clearly encourage diversification of products and lead to the opening of new methods of distribution, thus extending consumer choice.

The Rating Organisation should continue to play an important role in the industry. There will remain a need for a central agency to collect and analyse data to assist companies in their marketing and pricing decisions for which, however, they alone should be responsible. In some instances, appropriate statistical data, e.g. for new products, may not be available in Japan and in future MOF will accept data based on foreign experience when considering company product applications.

As an interim measure, EBC supports the move to reduce the level of risks under which mandatory pure premium rates and expenses must be applied to ¥ 20 billion from January 1997 and to ¥ 7 billion from April 1998.

Key problems

European insurance companies have concerns about the nature and strength of rules or guidance set by the supervising authority. In effect, these form a secondary tier of regulation which can on occasions hamper diversification and interfere with free competition.

"File and Use" Notification System

The European insurers appreciate the extension of "the file and use" notification system, but regret that this system is limited to certain products, namely commercial lines, and does not include individual or personal lines risks at this stage. The retention of a 90-day notification period is also disappointing and the EBC believes that this should be shortened to 30 days. MOF is expected to shorten the application process by providing the necessary capacity to deal with new applications. It is rec-

ommended that no product application should be declined solely on the ground of timing or documentary requirements and the systems currently in force in European countries are proposed.

Solvency Margins

The introduction of standard rules for the calculation and reporting of solvency margins is clearly a necessary move. It is a well-established practice, used in Europe and elsewhere, to monitor the financial well-being of companies. Because of the different financial and legal standing of foreign non-life branches, when compared with domestic companies, the EBC asserts that foreign branches' head office assets should be taken into account when computing the solvency margin. At the very least, a separate standard should be applied or alternatively some reference should be made to the global size of the home group.

Recommendations

- The EBC recommends unrealised profit on real estate or from other financial instruments should not be included in the solvency margin standard since they are too dependent on movements in markets beyond insurers' control.

- The assessment of probable maximum loss for earthquake exposure should not be arbitrarily imposed and should be the preserve of each insurer.

- The introduction of proposals in 1992 to amend legislation to tax outward reinsurance premiums has never been enacted or withdrawn. The EBC would oppose reintroduction of any such amendments.

- Insurance brokers should be allowed to place insurance cover and perform all related activities in a manner similar to their business practices outside Japan, based on their skills and experience gained in international markets.

- Finally, the EBC observes that insurance supervision in the EC has moved strongly towards the monitoring of companies' overall financial strength, with full disclosure, rather than seeking control through rigid product licensing procedures. It is believed that companies should take clear responsibility for the management of their businesses and in particular for the product pricing and marketing decisions. It would appear that Japan wishes to move its insurance supervision in a similar direction and the EBC urges that this be given full consideration. Such a shift will be in the interest of sound development of the industry as well as that of the Japanese consumer.

Investment

Background

Japan is the world's second largest economy, with GDP almost double the rest of Asia combined. However, European direct investment into Japan is approximately one tenth of Japanese investment into Europe. This imbalance is well illustrated by the fact that Japan accounts for 16% of world GNP but has attracted only about 1% of the world's cumulative foreign direct investment until 1997, compared to USA with 26.1% of world GNP and 19.1% of inward investment.

The 1997 MITI White Paper on International Trade, adopted by the Government of Japan in May 1997, points out that Japan needs to strengthen its attractiveness in order to increase the level of foreign direct investment. It states that "Japan needs to reduce the disadvantages of its high-cost structure and to proceed with reform of its economic structure to make it easier to operate businesses in Japan. It needs to reduce the risks faced by foreign capital affiliated firms that operate abroad, and Japan should take an active role in formulating international investment rules and harmonise its domestic regulatory system with international rules."

The 1997 Economic Survey of Japan (the Economic Planning Agency White Paper) states that the "inflow of foreign companies with new business resources is one effective way to make the Japanese economy more vital." The EBC welcomes these statements and those by the Government's Investment Council which echo the EBC's consistent view for some years.

Japan has indicated that the systems for notification of mergers and acquisition of businesses, reporting of stock holdings, and notification of interlocking directorates will be reviewed and necessary action will be taken by the end of fiscal year 1997. Japan has also committed itself to simplify merger procedures. This will include the abolition of the obligation to convene a general shareholders' report meeting at the time of merger and simplification of the procedures to protect creditors. This is also planned to be implemented in fiscal year 1997.

With regard to direct promotional activities, efforts have been made by the Foreign Investment in Japan Development Corporation (FIND) and Japan Development Bank (JDB) to provide incentives for FDI, though the latter are not remarkable by international standards.

The EBC considers that a greater balance of European-Japanese investment flows would be mutually beneficial and have a balancing effect on trade relations.

Key problems

Factors discouraging foreign investment include the high costs of doing business in Japan, high corporate taxation, difficulties in accessing distribution channels and the regulatory environment. Although the situation has eased in recent years, it is still difficult to secure well qualified staff for foreign companies wishing to enter the Japanese market.

Major obstacles are the difficulties encountered by foreign companies wishing to acquire Japanese companies and the inability of a firm to continue its normal pattern of business with other Japanese companies after a take-over. Foreign firms face a number of cultural and institutional barriers when proposing to acquire a Japanese company. Among the most serious difficulties are:

- High level of cross-share holdings between allied companies

- Low percentage of publicly-traded common stock
- Widespread mistrust of foreign ownership
- Reluctance of *keiretsu* members to see a fellow member under foreign control
- Complex legal provisions related to mergers and acquisitions
- Lack of transparency in Japanese accountancy regulations

Recommendations

- At a general level, for Japan's attractiveness as a foreign investment base to increase, investment opportunities need to be expanded by vigorous deregulation as well as simplification and greater transparency in administrative procedures.
- The OECD based negotiations on a Multilateral Agreement on Investment (MIA), launched at the May 1995 OECD Ministerial meeting, are potentially a significant route to improving the investment environment for foreign firms in Japan. The negotiations aim to establish an ambitious agreement covering investment protection and liberalisation in all sectors. Contracting Parties will have to negotiate country-specific exceptions if they want to derogate from the core MIA discipline. It is important, however, that exemptions from the disciplines of the MIA are kept to a minimum.

At a more specific level:

- Stricter enforcement of competition rules and the Anti-Monopoly Act, in particular concerning the area of mergers and acquisitions, and status of shareholders within companies.
- Adaptation of accountancy regulations, notably by introducing more globally compatible standards for Small and Medium-sized Enterprises (SME's) to reveal the true asset and liability structure.
- Strengthening of the legal provisions related to mergers and acquisitions in Japan.
- Steps to encourage foreign ownership in companies.
- A broader range of incentives (outright as well as tax incentives).
- The EBC urges the government to reconsider the decision preventing foreign lawyers from engaging local Japanese lawyers. This prevents foreign investors from receiving a full range of services when considering investment into Japan.

Securities

Background

There are currently approximately 56 non-Japanese securities houses operating in Japan. Of these, 23 from EU countries and two from Switzerland. Fourteen of these are members of the Tokyo Stock Exchange (TSE).

Country of Origin	Number of Securities Houses	Number of TSE Members
Britain	10	5
Germany	6	2
France	5	4
Netherlands	2	1
Switzerland	2	2

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

As far as Japanese equity turnover is concerned, non-Japanese TSE-member turnover has increased to between 20% and 25% - a very substantial share of the market - of which around half is accounted for by European including Swiss houses and half by US houses. Statistics on turnover in the bond and derivatives markets are more difficult to assess because of the wider dispersion of these markets.

Deregulation progress very slow

In general, much progress has been made in recent years to eliminate regulations which effectively discriminated against foreign companies, but progress towards the deregulation of Japan's financial markets along the lines of New York and London has been very slow. The EBC considers the time is now ripe for the rapid deregulation of the financial industry in Japan; and believes that this is needed not just by foreign securities companies but by the financial industry in Japan as a whole, and indeed arguably by the whole of the Japanese economy. EBC therefore welcomes the government's recent initiatives to deregulate the industry over the next 5 years and calls for a concrete plan of action as soon as possible, including the planned timing of each of the various measures necessary.

The EBC is not against deregulation of commissions, but it is concerned that without abolition of the Securities Tax and the introduction and recognition of instruments which are a normal part of a securities company's business in overseas markets, such as single stock options and OTC derivatives, the deregulation of Japanese equity commissions will hinder the healthy development of the securities market in Japan.

Progress on addressing specific points on our recommendation agenda has continued during 1996. The most notable has been the decision to introduce single stock options on the TSE and/or Osaka Securities Exchange by the middle of 1997. EBC welcomes this decision which addresses an item at the top of our agenda for some time and we are now happy to remove this item in anticipation of their introduction. We are also pleased that our recommendations for increased use of electronic settlement systems and simplified reporting to authorities have been met. These items have also been removed from our agenda.

As a general observation during the last 12 months, the Japanese authorities have moved quickly to establish a welcome and strong impetus towards broad deregulation in the securities industry. Whilst

that impetus sustains we would now like to see attention focused increasingly on the structure, content and style of the new regulatory framework that will emerge in the more deregulated market of the future. Going forward, requests for greater clarity and direction in this regard will be the primary focus of the EBC Securities Committee.

Key Problems

All financial markets require regulations both to protect the consumer of financial products against unscrupulous operators and to ensure the stability of the financial system as a whole. The problem with the financial industry in Japan is that it is regulated in a way that does not appear to prevent financial scandals nor to protect the consumer. The myriad of regulations appear to serve primarily to reduce competition and decrease efficiency.

The financial industry in Japan suffers not only from a poor regulatory environment, but also from uncertainty as to when and how that environment will change. This inhibits investment in just those new areas such as IT, training and recruitment for the development of new products, which will be vital for the industry's future health and for the Japanese consumer's future needs.

Article 65 of the Securities and Exchange Law forbids banks from conducting securities business and vice versa. This is particularly damaging to European securities firms most of whom are part of banking groups. Recent proposals to introduce holding companies will be of limited value unless the holding company can manage banking and securities as one integrated business in every way, i.e. marketing, product development, financial control, risk, tax, operations etc.

Capital requirements for many types of securities activities are much more onerous in Japan than in most major overseas markets.

Japanese accounting conventions are incompatible with internationally accepted practice. This results in difficulties in valuing companies from a global perspective which inhibits international investment flows. This is not in Japan's interest and serves to undermine the Government's stated aim of internationalising Japan's capital markets.

Company results are released to the press after the close of TSE business but not made freely available until the following morning Tokyo time, with the result that several users have access to inside information that can be misused outside TSE trading hours for example on the London/New York "over-the-counter" markets.

Currently the 150 stocks most traded on the TSE must be executed manually on the floor of the TSE despite the fact that technically it is possible to execute them electronically.

There is a limit of a very small number of shares per investor in any Initial Public Offering (IPO), which is particularly onerous for non-Japanese firms who target institutional as opposed to individual clients.

The tax regulations in Japan are less clear, with the result that individual inspectors have more discretion, than in other OECD countries. This puts all businesses operating in Japan, both foreign and domestic, at unnecessary risk. It is of particular concern to foreign businesses because any lack of clarity in the regulatory framework puts them at a disadvantage and effectively constitutes a barrier to competition.

Stock-lending and stock-borrowing is not a free market in Japan with the result that borrowing rates are higher than London and New York even for Japanese shares, and much higher than these markets for their domestic shares.

There are severe restrictions on selling stock short in Japan. This reduces liquidity in the market and particularly hampers foreign firms, many of whose clients wish to trade in the Tokyo market but do not necessarily wish to have a net long position in every stock in which they trade.

Overseas primary issues have to be 'seasonalised' for 24 hours before being distributed in Japan. This forces the securities company to take the issue on its own books and finance it for 24 hours which is often costly and complex to arrange. It also involves passing on the issue in the secondary market at a price which is often not necessarily equivalent to the prevailing market price.

Recommendations

Deregulate the financial industry along the lines of successful models such as New York and London. This will include eliminating barriers to one type of financial organisation entering into the province of a different type of organisation, facilitating new product innovation and, last but not least, liberalising commissions.

The above deregulation should be planned as soon as possible. The plans should include the timing of the various measures and should be promulgated as widely as possible so organisations can in turn plan and invest for the future with as much certainty as possible.

The above deregulation should include the abolition of those elements of Article 65 of the Securities and Exchange Law which inhibit the management of banking and securities as one integrated business in every way, such as marketing, product development, financial control, risk, tax, operations etc.

- Bring the capital requirements for all types of securities activities in line with overseas markets.
- Bring Japanese accounting conventions in line with overseas markets.
- The TSE should make arrangements to transmit corporate results electronically as soon as they are announced.
- The TSE should abolish the requirement that floor stocks have to be traded by floor traders and any firm should be allowed to execute all its trades electronically should it so wish.
- Abolish the limit on shares per investor for IPO's at least for bona fide overseas investors included in an international tranche.
- The tax regime should be clarified so that authoritative legal opinions can easily be sought and followed.
- Liberalise the stock-lending and stock-borrowing market in Japan.
- Permit short-selling as long as stock is borrowed so that prompt settlement can be made.
- Overseas primary issues should not have to be 'seasonalised' for 24 hours before being distributed in Japan at least where professional investors are the buyers.

Latent Loss on Land and Buildings

Under current Japanese tax laws, reduction of real estate value cannot be used as a tax deductible expense unless the real estate has been physically damaged. This tax rule is based on the assumption that price fluctuation is temporary and will find an average level in the course of time.

This rule prevents companies from writing off the losses caused by the bubble economy and entering the current value of real-estate in their books.

The EBC recommends that the authorities change the tax rules to allow companies to enter the current real-estate values and receive the appropriate reduction in tax liability.

Transfer pricing

Background

The issue of Transfer Pricing described in the 1996 EBC White Paper outlined the severe burden of double taxation imposed on Multi-National Enterprises (MNE) by transfer pricing adjustments. The recent increase of transfer pricing audits to 44 cases in the twelve months from July 1995 to June 1996, was double the number in the previous 12 months. This seems to indicate a pattern with the National Tax Agency (NTA) systematically tapping international businesses sector by sector as a source of additional tax revenue.

Violation of OECD Transfer pricing Guidelines

The OECD transfer pricing guidelines define in detail methods of setting transfer prices at arm's-length and fair procedures for examining whether such methods were observed. Press reports as well as inquiries among members of the EBC and the American Chamber of Commerce in Japan (ACCJ) have shown that the examination practice of the NTA is in breach of basic principles of the OECD Guidelines.

Problems

Under Japanese rules Transfer Pricing audits may use comparative data, which are not disclosed to the taxpayer, as indicators of arm's-length conditions. Even without access to the comparative data the taxpayer has the burden of proving to the NTA why his case is different.

Unduly harsh penalties

The Japanese system imposes a 10 - 15% penalty in addition to interest even if the taxpayer has made every effort to derive an arm's-length transfer price. This "automatic penalty" is a clear breach of the OECD Guidelines.

In line with the OECD Guidelines, Japanese Law only allows profit-oriented methods such as the so-called "fourth" methods, where the standard transaction-oriented methods lead to no result. Other profit-oriented methods, such as the Transaction Net-Margin Method, should therefore be introduced only as possible examples of the fourth method.

Insufficient remedies

Under Japanese Tax Law, appeals have to be filed with the independent National Tax Tribunal. However, all judges except its president are seconded NTA officers. Further appeal is only possible to ordinary civil courts, where judges are assisted by officers seconded by NTA. Most taxpayers therefore choose to apply for mutual consultation directly, followed invariably by substantial reductions to the NTA's adjustments. Notwithstanding this, Japanese Tax Law requires immediate payment even if the taxpayer decides to file an appeal. Furthermore, the basis of adjustment agreed under mutual consultation procedures is not disclosed. Subsequent audits are therefore often conducted as if the previous mutual consultation had not taken place.

Recommendation

- Enforcement practice should fully observe OECD Guidelines and new legislation of profit oriented methods should preserve the priority of transaction-oriented pricing methods.
- Transfer pricing audit standards should be transparent, and arm's-length adjustments should be based only on facts and data which have been available to the taxpayer when setting the transfer price.
- Mutual consultation with the tax authorities should be started promptly and the outcome reflected in subsequent audit examinations.
- Regulations should be introduced to suspend payments of assessments until the results of appeal or mutual consultation procedures are known. The imposition of penalties should be restricted to cases of negligence.
- A special tax jurisdiction with specialised and independent judges should be introduced.

Medical and Cosmetics

Animal Health

Background

The Animal Health industry researches, manufactures, and distributes products that treat or prevent ease and improve the health and overall performance of animals. These products are used by veterinarians and farmers, making an important contribution to quality of life by keeping pets healthy, and allowing the efficient production of livestock and poultry. Animal health products are the result of intensive scientific research and technological innovation with an unparalleled emphasis on the safety, quality, and efficacy of each product.

These products are closely regulated; indirectly by the Ministry of Health and directly by the Ministry of Agriculture, Forestry and Fisheries (MAFF). Each product is reviewed and approved for use by MAFF. Such product approval usually requires additional studies. It can take three to four years after approval has been granted in the European Union to gain approval in Japan.

The market for animal health products in Japan had a value of ¥ 110 bn in 1995 at the manufacturers' level. Products and technology from EBC member companies alone account for at least 10% of this value. Market penetration of European products is higher, if all of the value added indirectly by importers, formulators, licensees, etc., is considered.

Key problems

The uniqueness of Japanese regulations and practices regarding the approval and administration of animal health products affects the success of European companies. This uniqueness has several problematic aspects.

Unnecessary data
In order for a product to be approved, the Japanese government requires the generation of laboratory and clinical data that are not required by any other developed country and have a very limited scientific basis. For example, the requirement for General Pharmacology, and certain physico-chemical tests of biological products.

Non-scientific evaluation
Japanese authorities, in general, do not allow for the use of laboratory and clinical data that substantially or wholly scientifically satisfy the published requirements. For example, a long term study of three years conducted according to EU requirements may not be acceptable due to some inconsequential difference in analytical or statistical methods.

Limited acceptance of foreign data
Contrary to written guidelines, Japanese authorities are reluctant to accept certain laboratory and clinical data that were not generated in Japan. Applicants are encouraged to conduct testing in Japan to ease the approval process, and most studies in the target animal must still be conducted in Japan. Furthermore, at present the entire text of extensive studies, sometimes several hundred pages, must be wholly translated into the Japanese language. This process is extremely costly and time-consuming.

Obligatory testing
Despite the establishment and enforcement of Good Manufacturing Practice, each and every production lot of some products, in particular vaccines, must be presented for testing and release by the government laboratory. At the time of writing, all biological products are tested in this way. The

mandatory testing of each production lot of certain other products is also required, but not once thirty lots have been tested and released. This mandatory testing is an outdated concept resulting in additional fees and increased costs due to inventory demands and shorter expiration dates.

Inappropriate standardisation
Appropriate, validated analytical methods are an integral and proprietary part of the development of a new product. The mandatory testing conducted at the National Assay Laboratory results in the imposition of standard test procedures for all similar products. The unique characteristics of individual products, the availability of new technologies, and the appropriate, validated methods are considered secondary to the administrative ease of standardised tests. For example, a manufacturer may be requested to demonstrate that the "standardised" analytical methods applied to a similar, approved product (often a competitor's) are not appropriate before the authorities will consider an appropriate, validated method. This practice can result in long delays in the approval process and the eventual use or application of inappropriate or invalid testing methods.

Unnecessary use of animals
The additional, unnecessary testing cited above increases the use of animals. It is contrary to the animal testing policies and animal welfare ethics of European companies and the international scientific community.

Antiquated regulations
Other related regulations are antiquated and create unnecessary restrictions on the animal health industry. For example, The Poisons and Deleterious Substances Act is considered to be outdated and a hindrance to trade in some products, especially feed additives. The current Act is also inconsistent with agricultural chemical regulations.

Continuous improvement
As industry leaders, European companies devote important resources toward the discovery, research and development of new, improved animal health products and medicinal feed additives. With the help of the veterinarian, these new products can benefit the pet owner and the farmer. Such products will contribute to the improvement of quality of life and the competitiveness of animal production in Japan. However, the extraordinary cost of introducing a new animal health product in Japan can be prohibitive. Thoughtful streamlining and deregulation of this industry should be accelerated to benefit Japanese consumers and ease farmers' concerns about the high prices and availability of veterinary products.

The global consolidation of the animal health industry is of interest and concern to Japanese companies. Their desire to offer innovative products combined with the increasing cost of basic research creates an ideal environment for alliances of virtually every nature and every scope.

Changing demographics
The often cited aging of the population and the non-stop urban migration and development creates some specific opportunities for this industry. Animals play an important role in society as companions to older citizens. Products and services that address this market will enjoy increasing demand. Urban migration, negative population growth, and the aging of the farming population have created an increasing shortage of agricultural labour. Products for the animal production sector that result in labour savings, for example easier modes of administration, will be in demand.

Recommendations

- The EBC recognises the intention of the Government to deregulate and to participate in the harmonization of international standards for animal health products. There is a notable spirit of openness and co-operation in the relevant department of the Ministry of Agriculture, Forestry and Fisheries. However, the pace of actual deregulation is too slow and should be accelerated.

- We recommend the Government act without delay to address each of the problems cited for the benefit of all concerned parties. We are prepared to discuss or to present in written form our detailed recommendations.

- Furthermore, we recognize that true, international harmonization of standards is a long process. Streamlining and deregulation, however, does not need to depend on such a long term process. Timely application of established international principles and procedures supported by the World Trade Organization, such as Maximum Residue Levels, should be fully integrated into the regulations for approval of new products without delay.

Cosmetics

Background

The cosmetic market in Japan amounted to ¥1.4 trillion in 1996. The share occupied by imported foreign brands was 4%, European companies providing 2.8% of the market. The total market share of foreign brands, including the sales of locally produced products, is around 15%. Of imported cosmetic products, 93% are distributed through department stores. Most cosmetics retailers are connected to chain-store systems organized by Japanese cosmetics producers, and generally do not sell imported brands. The chain-stores represent about 34% of the cosmetic market, whereas supermarkets and convenience stores together have a 33% share. Door to door sales contribute a further 27% share.

Production and importation of cosmetic products are subject to approval by the Ministry of Health and Welfare (MHW). Formulae and safety data have to be presented to obtain approval, for both imported and locally produced products.

Registration procedures have been partially simplified by the introduction of the Comprehensive Licensing System (CLS). The CLS system includes 11 product categories (reduced from 25 in March 1997), each covering a range of cosmetics products, and each category having its own list of approved ingredients. Under CLS, if a new product contains only ingredients already allowed in the corresponding category, it is not necessary to apply for registration, and notification of manufacture/import is sufficient.

Registration of new products is still required when ingredients to be used are not listed within the specific product category, even if the ingredient concerned is listed among the approved ingredients in another CLS category. In these cases, it is necessary to apply for ingredient registration and obtain an approval before being able to manufacture or import.

Approval of non listed ingredients is slow, costly and occasionally lacking in transparency. Even if the ingredient has a long history of safe usage in the EU or the USA, there is no guarantee of its eventual approval in Japan.

Over the past eight years the number of published approved ingredients has increased to 2,627 ingredients. (This list is available in English.)

In March 1996 a deregulation program was implemented:

- To ease the import application procedures for parallel importers.
- To allow the use of floppy disks to speed up the processing of import licence applications.

By March 1997, further deregulation measures were carried out:

- To decrease the number of CLS categories from 25 to 11.
- To add 143 ingredients to the list of approved ingredients.

Until 1999, MHW has undertaken to study the possibility of harmonising their registration and ingredient labelling systems with those in the EU and the USA.

Every two or three years, world-wide meetings for mutual understanding and harmonization are organized by the American Cosmetics Toiletry and Fragrance Association (CTFA), the European

Cosmetic Toiletry and Perfumery Association (COLIPA), and the Japanese Cosmetic Industry Association (JCIA). The next meeting will be held in Brussels in 1999.

Key problems

Parallel imports were favoured in the March 1996 deregulation package. There are two different import approval procedures, one for direct imports and one for parallel imports. The procedure for parallel imports is considerably easier than that which must be used by the official direct importers.

Labelling
The administrative laws that guarantee consumer safety and the importer's product liability are not enforced equally. There are still many unlabelled, and therefore illegal, products being sold in Japan. The municipal authorities are as yet very reluctant to stop these sales. Joint appeals have been made to MHW, by the EC Delegation in Japan, the US Embassy, the American Chamber of Commerce (ACCJ), and the EBC, but to no avail. Only international foreign brands suffer from this unequal treatment, as local Japanese brands are not sold overseas and thus not subject to parallel importing.

Despite the deregulation of the retailing system, the traditional "SEIDO-HIN" set-up continues to dominate the market. Chain store agreements between major Japanese producers and retailers and the "big store law" protect the existing distribution system, making new entry very difficult.

International retail price comparisons as they are presently carried out by the Economic Planning Agency, initiated by MITI, are prejudiced, incomplete and lacking in serious methodology.

The change from the present product registration system to a European model requires a fundamental change of legislation as cosmetics in Japan are part of pharmaceutical law, whereas in the EU and USA they are not.

Recommendations

- Japan should harmonise its regulatory procedures with those of the EU and USA, starting with the definition of "cosmetics" as specified in the first EU Cosmetic Directive.
- The present positive list of approved ingredients should be replaced by a negative list of forbidden substances, except for UV filters, colouring agents and preservatives, for which positive lists exist in the EU.
- Japan should shift from a product registration to a notification only system.
- The regulations that guarantee consumer safety and the manufacturer/importer's product liability (Japanese labelling etc), should be enforced more strictly and evenly. The European Directives place a considerable burden of responsibility on both the manufacturers and importers in order to ensure consumer safety.
- Increased 'post-marketing' control would help eliminate the danger of counterfeit products, which could cause health risks to consumers and destroy the reputation of the victimised manufacturer.
- The same import licence approval procedures should be applied fairly and equally to all importers.
- If international price surveys are continued, they should be based on a comparison of average market prices, or the prices of market leaders in each sector.

- EU's COLIPA and America's CTFA should co-operate in their efforts for deregulation, as any division between them will make harmonisation more difficult and might lead to new "Japan only" regulations. (ACCJ and EBC Cosmetic subcommittee representatives attend each other's meetings and minutes are exchanged).

Medical Diagnostics

Background

The EBC Medical Diagnostics Committee was established in 1986. The purpose was to focus on impending problems related to the required In Vitro Diagnostics (IVD) registration procedure, which was introduced in 1985. The IVD products for reagents and instruments are used to perform diagnostic tests on clinical specimens by clinical testing laboratories such as hospitals, private laboratories and blood transfusion centres. However, instruments and reagents have to be considered as separate issues as they are treated differently under the Pharmaceutical Affairs Law (PAL) in Japan.

Market data of IVD in Japan

The market size for IVD in 1995 was 254.2 billion Yen. The foreign business market share was 34% and the European business share was 16% of the total market.

Classification problems

In Japan, IVD reagents are classified as "pharmaceuticals" and therefore need specific approval. The application procedures raise certain questions for the applicant:

- 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). However, the processing time is not always adhered to by the government.

- All Class 1 products and some Class 2 products require additional documentation and supplementary laboratory testing by the National Institute of Infectious Disease, the former National Institute of Health *(Kansenken* testing, former *Yoken)* and/or must pass the Investigation Subcommittee Examination under the Central Pharmaceutical Affairs Council *(Chosakai).* If the *Chosakai* has questions relating to the applications, the process, until the final examination of the applicant's response, is prolonged by at least two extra months. The products that have to undergo Kansenken testing, 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 undergo Kansenken testing.

- The necessity of test data for three lots of IVD requires a considerable effort from the applicant and is costly.

Financial impact of the legal situation

Several issues are having an unfavourable financial impact on all IVD companies, such as direct registration costs, delays in launching new products and loss of market share caused by launch delays. Foreign companies who distribute their products through Japanese companies to avoid registration often suffer loss of profits.

Registration of IVD in Europe

In Europe, the situation for IVD varies from country to country. In France registration is easier and takes approximately four months. In Germany the number of tests necessary for registration is limited to several plasma proteins and some infectious diseases determination. 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 registration, currently under preparation, will only require registration for reagents used in blood transfusion and major infectious diseases.

EBC history in the field of IVD

In 1992, 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 recognized as a working document by the American Chamber of Commerce in Japan (ACCJ) and the Japanese Association of Clinical Reagents Industries (JACR). Additionally, 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. 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, in accordance with the European Parliament and Council Directive on In Vitro Diagnostic Medical Devices. At the end of 1996, EBC took the opportunity to explain this request to the Administrative Reform Board. In August 1997 EBC, JACR and ACCJ jointly submitted a letter to MHW asking again to establish IVD as a separate category under the PAL.

MHW's answer to the proposals tabled at the OTO advised as part of the deregulation process the establishment of an "Investigation Group on Preparation of Reference Norms for IVD". EBC attended as an observer. The work of the Investigation Group was finished in March 1997. As a result, minimum requirements for the performance of 31 parameters have been defined and the availability of approved standard materials was listed. However, in terms of deregulation only the abandonment of correlation data has been announced, but the originally announced notification system for those parameters was not introduced and the meaning of "prioritised examination" was not explained. Meanwhile almost all requests of the eight "Problem Areas" have been addressed by more or less effective deregulation steps. As a first measure, MHW has introduced the flexible disk as application system, which is expected to lead to a shortening of the application processing time.

MHW accepted the start of a discussion about the value of a separate category for IVD at the last quarterly meeting of JACR, ACCJ, EBC and MHW officials.

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 2.2 products does not consistently adhere to the processing time of six months, as announced by the MHW. The delivery time of the approval certificate of up to one month is an additional problem. After involving the Organisation of Adverse Drug Reaction Relief, Research and Development Promotion and Product Review *(Iyakuhin Kiko)* in 1994, the investigators are changing frequently and therefore they are not able to acquire the special knowledge required for the investigation of IVD. Consequently, approval is further delayed.

Recommendations

- EBC requests the separation of IVD from pharmaceuticals to create a specific category according to the spirit of the proposal of the EU Council Directive on IVD Medical Devices within the framework of the Pharmaceutical Law. This issue is of vital importance and the most effective way to eliminate the burdens currently faced by the sector.

- The process of the establishment of a notification system, based on the results of the Investigation Group on Preparation of Reference Norms for IVD must become transparent. It might be an intermediate step on the way to a new category for IVD under the PAL.

- EBC will continue to follow up the activities of the MHW in its effort to establish a standard processing time of six months, which should also include the delivery of the certificate. EBC will also continue to propose improvements in the legally regulated fields of the IVD business.

- The reaction of the Japanese authorities to international standardisation and norms, e.g., ISO 9000/EN29000, EN 46000 and GMP, have to be monitored and the harmonisation of Japanese standards to international standards must be supported.

Medical Equipment

Background

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. 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.

Licensing procedures slow
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. These barriers have helped to protect Japanese manufacturers from strong competition and given them additional time to develop copies of foreign products.

Trade barriers
The EBC Medical Equipment Committee was established in 1984 and has worked to ease or eliminate direct forms of trade barriers. Since that time the following areas of improvements have been realised, in cooperation 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.
- Improved procedures for displaying and demonstrating un-licensed 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. Recent changes in the procedures for government tenders often discriminate against high performance equipment and make the system unwieldy.

Recommendations

The EBC recommends that:

- Doctors and hospitals should be adequately compensated, under the medical reimbursement systems, for purchasing and using European medical equipment.
- 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.
- The new government tender system needs to be streamlined.

Pharmaceuticals

Background

With total sales of 6.65 trillion Yen, the Japanese pharmaceuticals market is the second largest in the world after USA. The market has expanded rapidly since 1970 when its sales exceeded 1 trillion Yen. However, the corresponding increase in "production values" of drugs has been 573 billion Yen and average annual growth rate has been 2.2% in the last 5 years due to National Health Insurance (NHI) price revisions and the policy promoting moderate dosing of drugs for cost containment measures.

There are about 1,689 drug manufacturers in Japan of which 500 are manufacturers of ethical drugs and the other 1,189 manufacture both ethical and "Over The Counter" (OTC) drugs. Research & Development is the main focus for 87 of these companies. In a market dominated by domestic producers, European pharmaceutical business holds a share of 17%.

Following the Japan-US Market-Oriented Sector-Selective (MOSS) Talk in 1980, the Ministry of Health and Welfare (MHW) has taken a series of steps to ease regulations and admit foreign non-clinical trial data. Foreign clinical trial data are acceptable except for human Absorption Distribution Metabolism and Excretion (ADME), Dose Finding Tests and Phase V study. Unfortunately, there are not many cases where foreign data are used on the application dossier, however, EBC expects deregulation will occur with the introduction of ICH-GCP.

MHW increasing pressure on drug manufacturer

Although Japanese Health Care costs - per capita and as a percentage of GDP - are moderate when compared to other major OECD countries, the MHW is planning to take various measures aimed at containing medical and drug expenditures to counter the huge deficit in the NHI fund. In addition, Japan's rapidly changing demographic structure indicates that by the year 2020 more than a quarter of the nation's population will have reached or exceeded age 65, adding to an increasing financial burden on national health insurance. Drugs are singled out as a major component contributing to the steady increase in health care cost and the MHW is focused on drugs as the prime target for cost containment measures. While dialogue between the MHW and the industry has improved more recently, the pharmaceutical industry is often not included in the official Council at which these cost containment measures are debated.

Harmonization of technical requirements

Representatives of governments and pharmaceutical industries from Japan, US and EU have participated in the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The 4th ICH took place in July 1997 in Brussels with the aim of formulating policy on ethnic difference issues.

Key Problems

Currently, all clinical data for a new product (Phase I, II and III study) must be generated in Japan, and foreign clinical data are accepted only as a reference. Although some progress have been done at the ICH-4, the industry's position is that if a complete set of foreign clinical data is available for a given new product, only open trials should be conducted in Japan to confirm efficacy and safety of the drug in Japanese subjects. Currently, the procedures for examining and evaluating applications for an approval of new drugs in Japan take longer in comparison to Europe and the USA.

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 both countries recognise and agree on Good Manufacturing Practice (GMP). Unfortunately, Japan has only confirmed such mutual recognition with certain members of the European Union (EU), and negotiations to improve the status quo are ongoing between Japan and the European Commission, and EU expects a comprehensive agreement.

Pharmaceutical industry not represented in CSIMC
There are two advisory bodies for MHW's Health Insurance Scheme: the "Central Social Insurance Medical Council" (CSIMC) and the "Council on Health Insurance and Welfare." However, they are still prohibited from participating in the more powerful CSIMC meetings, where the final decision is made on issues relevant to the Health Insurance Scheme.

Recommendations

- The Pharmaceutical Industry should continue to support ICH in preparing scientific arguments supporting the acceptance of foreign clinical data while intensifying pressure through various activities aimed at the MHW.

- A new drug examination procedure is planned after partial amendments of the Pharmaceutical Affairs Law in 1997. The procedural flow of a new drug application should be shortened to one year and should introduce the drug to the market expeditiously as a contribution to the nation's health.

- The EC should strive to reach a comprehensive agreement on GMP for the Pharmaceutical Industry independently of the current agreement discussions.

- With regard to the policy on long listed products and on generics, provisional measures were introduced in 1997. This matter, however, is under discussion in addition to a drastic reform of the NHI pricing system. Representatives of the Pharmaceutical Industry should be invited to take part in the discussions as official members at the CSIMC meetings and the Council on Health Insurance and Welfare which are planned in the near future.

Consumption and Flowers

Cut Flowers

Background

The Japanese market for cut flowers is one of the largest in the world. Total consumption grew in the period 1985-1995 from about 400 billion yen per year to 800 billion yen (retail value). The market has traditionally been dominated by domestic producers and the share of imported flowers is less than 6% of the total market. The market share of European flowers is not more than 2%. Since 1991 total imports of flowers have not shown any fundamental growth and in 1996 amounted to 18.5 billion yen (import value) of which 5.5 billion yen originated from the EU.

No flowers for the Wives

Flower consumption in Japan is mainly related to special occasions such as weddings, funerals and gifts. Compared to Europe, where flowers are part of daily household consumption, the Japanese market could be developed further. With a changing society, it is expected that home use consumption will increase and demand for flowers could potentially double within the next decade. This, however, requires mass market products which can be supplied at prices below present levels. As the Japanese agricultural sector is confronted with problems, such as a lack of successors to the older generation and high production costs, domestic producers will find themselves unable to meet rising demand for cheaper flowers. After the year 2000 the market share of imported flowers has the potential to grow to more than 20%. Exports from Europe to Japan could amount to 40-60 billion yen in import value. However, this can only be achieved through drastic changes in the Japanese plant quarantine system and the infrastructure of its international airports.

With support from the EC Delegation in Tokyo and the National Embassies, the EBC has succeeded in convincing the government to improve airport procedures. Times allocated for plant quarantine inspections have been extended and the number of inspectors has increased.

Pre inspection not solving the problem

In 1985, bilateral negotiations between Japan and the Netherlands resulted in the establishment of "pre-shipment inspection," under which flowers are inspected in the Netherlands by Japanese plant quarantine officers. Initially the pre-shipment inspection system resulted in a considerable increase in exports from the Netherlands to Japan, but in 1996 exports decreased by about 25%. The pre-inspection system has not solved the fundamental problems and is only a tool which makes it possible to export small quantities.

High international cost differentials, differences in climate and improved distribution methods should have led to a much higher ratio of flower imports. However, non-tariff barriers such as the plant quarantine regulations, cost of entry at the airports and fumigation add unnecessary cost to the flowers and have an adverse effect on freshness and quality. This makes it impossible to import large volumes of flowers at low prices and to compete with the domestic producers.

Key problems

Plant quarantine regulations are outdated and not in line with internationally accepted standards. Japan practises "zero-tolerance" without making a distinction between harmful and non harmful organisms. Shipments of flowers in which, for example, one insect is found are rejected, even if the insect is very common in Japan.

Insufficient number of inspectors
The speedy distribution of imported flowers is hampered by the time-consuming inspection procedures. The actual inspection time is usually short, but because of inspection time schedules and an insufficient number of plant quarantine inspectors, waiting times are often to long. Especially at Narita Airport, during the peak seasons, waiting times of 4 hours or more are very common. In major flower importing countries like the USA, Germany and the Netherlands inspection is carried out immediately after arrival of the shipments.

Although inspection times at Narita, the main port of entry, have been extended from the morning until arrival of the last shipment, inspection before 09.00 hrs is still not possible. Inspection at airports like Sapporo and Komatsu after 17.00 hrs is also not possible. At Haneda, inspection outside normal hours is possible but custom procedures are not available.

For reasons of verification, all shipments of pre-inspected flowers are inspected again after arrival in Japan. Although the actual inspection is relatively quick, this procedure delays the total distribution process by about 2 hours.

Inadequate facilities
The most international airports the facilities are totally inadequate for handling large volumes of cut flowers and other perishables. At Narita the warehouse and cooling facilities built in 1996 have improved the situation, but are still insufficient to guarantee swift handling of the shipments. After arrival it often takes 2-3 hours before a shipment is made free for inspection and custom procedures. After finishing these procedures there is a further delay before the flowers are delivered from the warehouses. Facilities at the airports of Fukuoka, Nagoya and Komatsu are small and inadequate. Komatsu does not even have cooling and fumigation facilities; nor does Fukuoka, where fumigation of flowers has to take place at the harbour. The warehouse and fumigation facilities at New Kansai International Airport are basically insufficient but because of limited import volumes this does not currently cause any major problems.

Japan still most expensive
Costs of using the airport facilities are high because there is no competition between companies supplying these facilities. The warehouse and fumigation companies at Narita Airport charge exactly the same for their services. At New Kansai International Airport the costs are higher, and again there are no differences in charges between the warehouse and fumigation companies. Fumigation costs at Narita Airport are about 5 times higher than in the USA and Europe, while cooling charges are 3-4 times higher than the rates charged by companies outside the airport.

Finally, import duties of 4.3% on greens and leaves still exist which further increase the cost price of imported products.

Recommendations

- The Japanese Government should make a detailed study of the development of inspection systems practice in the main cut-flower importing countries such as the USA, Germany and the Netherlands.

- "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 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 result of the GATT Uruguay Round Agreement, the Plant Quarantine Law of Japan was partially revised and passed by the Diet in June 1996. However, so far this revised law has had no substan-

tial effect on cut flower imports. The revised Plant Quarantine law should, with the Pest Risk Assessment chapter, lead to the announced abolition of zero-tolerance. Currently it does not make a sufficient and practical distinction between harmful and non-harmful organisms. On the new list of non-quarantine pests, for example, thrips and aphids are not mentioned. As a first step, the Japanese authorities should apply the minimum levels of the agreement on these two insects, which are common in Japan and in the exporting countries and are responsible for 80-90% of rejected shipments.

- In order to speed up the procedures at airports, inspection capacity should be further increased during peak seasons and inspection time schedules improved. At Narita in particular inspection should be made available from 06.00 hrs. At Kansai New International Airport a 24 hours system has been established.

- Shipments of pre-inspected flowers should be verified on a random basis.

- Inspection and clearance procedures should be simplified and speeded up by using on-line computer systems. In April 1997 an on-line system between Plant Quarantine and Customs was introduced, but does not appear to be efficient.

- The Japanese Government is requested to investigate other means of disinfection such as X-ray and ultra violet treatment, rather than fumigation which reduces quality and increases costs.

- Further improvements are necessary at the bonded warehouses and dispatch areas, in particular at Narita where the largest volumes of imports are handled.

- Cost of fumigation, warehouse and cooling facilities should be reduced by establishing a competitive system between the companies supplying the services. The Fair Trade Commission should investigate this matter.

- The Ministry of Agriculture, Ministry of Transport and the Ministry of Finance should investigate the possibilities of a fundamental change in the total handling, inspection and clearance procedures, to make more efficient use of limited space and manpower at the airports.

- The import duties on greens and leaves should be reduced from 4.3% to 0%.

- The Japanese Government is requested to publish a clear timetable for the implementation of further improvements that are currently being considered.

Food

Background

Japan is the second largest food importer in the world. Imports of agricultural and fishery products are increasing every year and reached $51.1 billion in 1995, a 62% increase since 1990. With $15.9 billion in 1995, equivalent to a share of 31.2%, the USA is the leading exporter of food to Japan, followed by China with $4.7 billion in 1995 (9.2%). The European Union comes third with $4.5 billion. However, the European food industry is under-represented in Japan compared with other economic sectors.

Japanese food production is legislated by strict standards and regulations, whose inconsistencies with international standards generate a wide range of obstacles to further penetration by foreign companies, and particularly affect European firms with their broad variety of products.

The EBC Food Committee was formed in 1996 and has focused primarily on the issues of pork meat products, dairy products, additives, mineral water and administrative procedures.

Key problems

Pork meat products
European pork exporters are largely controlled by the Japanese trading companies. Over 80% of food processors import their pork through trading companies, mainly via consignments. The market is quite concentrated with more than 70% of the sales of processed meat controlled by 5 companies.

Imports of pork are submitted to a minimum or "gate" price system which is used to calculate import taxes on a shipment. In order to minimise taxes, the shipments are therefore organised with a combination of products aiming to value them as closely as possible to the gate price. To control the level of imports the government can implement a "safeguard" and increase the gate price if imports are increasing faster than a predetermined rate.

This measure particularly affects the trade of frozen cuts, whose lower prices are not compatible with an increased gate price. Since winter 1995, the quasi permanent implementation of the safeguard has increasingly disturbed trade, leading to soaring so-called "illegal imports" which, by a scheme of refunds to the providers, supply the market with material cheaper than the safeguard would permit. It is estimated that more than 60% of imports enter by this method, and this strongly affects European companies.

Dairy products
Dairy products such as cheese, butter, yoghurt and ice cream, which were not traditionally a part of the Japanese diet, have become more appealing to consumers, but imports are seriously disadvantaged by restrictive regulations and/or very high duties. The recent shift from a quota to a tariff system, as decided by GATT, has brought extra high tariffs on certain items.

Japanese regulations allow cheeses to be on display at temperatures up to 10°C. This limit is shortening the shelf life of imported cheeses which would benefit from temperatures below 5°C.

Cheese powder is obtained from industrial rejects of natural cheese production and melted, then thickened by additive and fragmented into powder. It is used in snacks and in the baking industry to give products a cheese flavour. Because of the thickening agent, which is an additive, it falls under

the custom classification of "processed cheese" and subject to a 40% tariff. There are no plans to reduce this duty within the GATT agreement.

Unlike other milk ingredients, "Total Milk Proteins" are not the object of a tariff reduction programme. Ingredients derived from dairy products, and mixes containing such ingredients, are facing problems because of high tariffs and Customs classifications (sodium caseinate). Furthermore imports of certain mixes, such as compound of lactose & micro crystalline cellulose, are not allowed while local production is permitted.

The application of quotas to imports of "Whey Protein Concentrates" is restrictive to larger users. A licence system would seem more appropriate than quotas, and would still allow the control of the imports as the purpose of importation must be justified.

Imports of milk minerals can be made by licensed manufacturers, with a 25% tariff, or "freely" with a 33.3% tariff and levy of 475 Yen per kilogramme. The supplementation of milk with calcium is booming in Japan but the licence procedure is too onerous for medium size firms.

Harmonisation might unilaterally focus on some specific items such as:

- Pectins. Because pectins are classified as prepared food, compounds incorporating pectins are heavily taxed, while those incorporating carrageenan and Locust Bean Gums are duty free. Furthermore, the taxation system in unclear.

- Sorbic acid and potassium sorbate. The positive list of items which can contain those additives bears some aberrations: sorbic acid is authorised in jams but not in fruits preserved in sugar.

- Sodium sulphite and sulphur dioxide used as a conservative agents in vinegar and dried biscuits are limited to unsuitable quantities by the Japanese legislation.

Additives

For a small company, the cost of obtaining registration of a new additive is too high and the procedure too long. In this respect, harmonisation with international regulations and an automatic update of Japanese legislation in accordance with the recommendations of the international bodies is urgently required.

Mineral Water

Despite the tremendous difference in quality standards with Europe, bottled waters in Japan - irrespective of their origin or treatment - are nevertheless referred to and labelled as "natural water" or "spring water." This is strongly misleading customers who wish to consume "natural", meaning unprocessed, products. In Europe, the "mineral" qualification forbids any form of processing, and the mineral water label is only granted to waters which have proven health benefits. Mineral water springs are protected from contamination by purchase of extensive areas surrounding the spring and by careful monitoring of nearby industrial and agricultural activities.

Administrative Procedures

Administrative procedures present a considerable hindrance for importers. To acquire information about import procedures it is necessary to consult numerous Ministerial divisions whose answers are often contradictory. It would be a great improvement to have an official classification of all the foods and agro-food products, and a clear and complete list of administrative rules, regulations and guidelines relating to their import. Written answers to consultations should be made compulsory when requested, with references to the legislation or regulations guiding the answers.

On semi processed items, Customs conduct random ingredient analysis to verify conformity with import documents and confirms the tariff accordingly. Despite preparatory analysis performed in the country of origin, using methods similar to those used by Japanese customs, there are often

differences in the results. This can lead to higher tariffs than assumed by the importer, or even to refusal of shipments, as items cannot enter in any pre-established classification. Japanese authorities' compliance with international standards of analysis must be established, and the competence of foreign laboratories to carry out analysis on behalf of the Japanese authorities must be recognised.

When importers change their port of entry, they are often confronted with changes of tariff treatment or requested to conduct new sets of analysis for conformity with sanitary regulations, as the local customs may not acknowledge the certificates or tariffs granted by other ports of entry. Apart from the cost of the analysis itself, the procedure requires about two weeks in which the goods are in a bonded area, with costs charged to the importer. Analysis certificates should be valid independently of the port of entry and the lower tariff should become the reference for further imports.

Sampling procedures are cumbersome and endanger the commercial value of numerous shipments (interruption of cold chain or damage to the packaging), especially in the case of small quantities of high value items. Imported goods should be inspected in temperature controlled bonding areas if required, and sampling should take into consideration potential damage to the commercial value of the shipments.

At Narita Airport, the fumigation equipment used when inspectors find suspect eggs, insects or larvae in imported vegetables is unsuitable for the proper conservation of the shipments (waiting area is not air conditioned) and not adaptable to shipment sizes.

Import through Narita International Airport has a number of additional problems. Although denied by the Japanese authorities, MAFF and MoHW counters operate with half normal crew and on reduced schedules on Sundays. The inspection and storage areas used in airports must be temperature controlled, and intermediary sizes of fumigation chambers made available to lower costs and damages. Facilities for frozen products used in airports are often too small and the temperature poorly controlled, leading to deterioration of shipments (ice cream).

Recommendations

- The EBC urges the government to take the necessary steps to prevent strong fluctuations in the price of imported pork which is caused by the "gate" price system, and to introduce measures which will prevent illegal import of pork.

- Remove restrictions and high import duties which diminish import of dairy products such as cheese, butter, yoghurt and ice cream and abolish the mandatory licence system required on dairy products.

- Reduce shelf storage temperature for cheese from 10°C to 5°C allowing a longer shelf life for imported products. The import duty on cheese powder should be the same as natural cheese, and not processed cheese.

- Simplify the importation procedures and reduce the duties on Total Milk Proteins and Whey Protein Concentrates to allow smaller and medium size companies to import the products.

- Reduce costs and application time for obtaining registration of new additives.

- To have pectin compounds taxed at the same level as pure pectins, and rationalise compound taxation.

- Harmonisation with European standards regarding sorbic acid and potassium sorbate.

- Glanapon DG121 & DG158, defoaming agents used in pastry processing are allowed in Europe but not in Japan.

- The Japanese government is urged to allow health conscious customers to be fully informed of the non processed and therefore completely natural character of European Mineral Water, by introducing classifications and labelling requirements enabling a clear distinction between processed and unprocessed waters. It must be clear that European mineral waters have been scientifically proven to be beneficial to consumer health in order to earn their qualification.

- The use of a word *"shizensui"*, to label bottled water of all origins, is considered unsuitable and misleading when differentiating between processed and unprocessed waters and should cease.

- The government must streamline all procedures related to the import of agro-food products, create easy and transparent rules for administrative procedures, and provide written replies about procedures when requested to do so.

- Harmonisation with international standards for analysis of ingredients must be implemented. Japanese port authorities must harmonise and accept certificates issued by other Japanese ports.

- Inspection of food product must be performed without reducing the quality of the products, and additional staff must be allocated in ports of entry to ensure smooth entry of agro-food products.

Liquor

Background

The European liquor industry produces a large percentage of the world's finest and most famous alcoholic beverages. Exports of European Union (EU) liquors to Japan in 1995 were over ECU 400 million, with Scotch whisky and cognac the two leading products.

Victory

Japan's liquor tax regime has discriminated against imported spirits for over 50 years. In 1987, GATT Panels ruled against Japan, but frustrated by only minor improvements in 1989 and 1994, the EU, Canada and the USA referred the issues to the World Trade Organisation (WTO), which upheld their complaint in November 1996. Consequently, Japan has proposed to reduce the tax differential between imported brown spirits and local *shochu* from 600% to just 3%. For white spirits like gin and vodka, currently taxed some 150% higher than shochu, tax discrimination will completely disappear. The final implementation date for these reforms is unclear. The major part of the change will be on October 1st 1997 with the balance to be completed between then and 2001 if the Japanese Government follows it's current plan. The WTO appeal process has found in favour of the US and has said that reforms should be completed within the usual 15 month time frame, i.e., by February 1998. The US and Japanese Government are negotiating this issue at the time of going to press.

The WTO ruling rewards the EBC Liquor Committee and its European counterpart Confederation Europeenne des Producteurs de Spiritueux (CEPS) for many years of vigorous lobbying. The EBC gratefully acknowledges the unstinting support of the European Commission throughout this long period.

Other areas in which EBC lobbying activities have had 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 definitions. As explained below, however, further progress in both areas remains a priority of the EBC.

Shochu *dominating*

The Japanese spirits market is one of the largest in the world, at approximately 100 million cases i.e. 900 million litres per year. However, Japanese market penetration rates achieved by EU distilled spirits remain at low levels, due principally to the current discriminatory liquor tax regime which taxes imported spirits up to 600% higher than domestic shochu. Indeed, total spirits imports from all countries comprise only 8% by volume of the Japanese market, compared to much higher penetration rates in other industrialised countries such as the US 35%, Canada 38%, UK 25%, Germany 30%, France 30%, Italy 45% and Belgium 80%. In contrast, *shochu* now commands a spirits market share of 77% in volume terms.

Liquor tax reform has enormous implications for European spirits producers, as indicated below:

Yen per litre of pure alcohol	Current Tax Rate	Post-Reform Tax Rate	Variance
Whisky/Brandy	2,456	1,023	-58%
Gin/Rum/Vodka	993	99	-20%
Liquors	822	992	+21%
Shochu 'A'	623	992	+58%
Shochu 'B'	408	992	+143%

Tax savings per bottle of whisky or brandy (700ml at 40% alcohol) will be ¥301.

Creation of a level playing field through liquor tax reform does not guarantee that EU spirits will be more successful in future, and any prediction of post-reform market share is speculative. Nevertheless, liquor tax reform can be expected to result in a significant one-off change in consumer demand. More significantly, it opens up to imported spirits a comprehensive array of marketing options and enables them to compete freely and fairly in all sectors of the market for the first time.

Prosperity in the wine market

The Japanese wine market has increased rapidly in recent years, although annual per capita consumption, at less than 2 litres, remains low in comparison with mature markets. In 1996, the size of the market was approximately 20 million cases i.e. 180 million litres, having doubled over the past decade. Unlike spirits, the liquor tax system as applied to wine does not discriminate against imports and consequently this is the only liquor category in which imports command a market share in excess of 50%. In turn, the EU share of wine imports exceeds 80%. Prospects for the continued growth of wine drinking in Japan are excellent and EU producers are well placed to benefit from this trend.

Key problems

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

Duty rate an impediment

Duty rates in Japan remain unreasonably high. Under the GATT Uruguay Round the Japanese Government 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 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 effect of the duty is compounded by a tax rate on gin, rum, vodka, etc. which is currently two to three times that levied on shochu.

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 and regulations are policed unevenly.

Recommendations

- Product definition 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)

- 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.

- 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 m^2 to 3,000 m^2 or less. Moreover, simple and transparent licence approval criteria for retail stores below the threshold should be introduced.

- Licences should be geographically "border-less" 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 licence-holder. Simple and transparent application vetting criteria should be established and regulations uniformly enforced.

Transport and Communications

Airlines

Background

Efficient international air transport is vital to the economic life of a highly industrialised country such as Japan. An expansion of trade between Japan and other countries requires an increase in airline services to meet the needs of the business community. However, the problems mentioned in this paper, which are confronting European airlines doing business in Japan, are reducing their efficiency and consuming a great amount of energy, time and money.

Over-regulated and arbitrary procedures
Strictly regulated procedures imposed on services by the Ministry of Transport (MoT) are fully acceptable when they 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

Since December 1990, Narita Airport Authorities have rejected additional slot requests by European carriers due to the limited number available. It is well known that new landing slots are not being made available at New Tokyo International Airport (Narita) for flight frequency increases, due to environmental reasons. However, it is less well known that there are as many as 3,000 slots annually that have been assigned to airlines but are not being used. Narita does not comply with the universally accepted practice that requires airlines to return unused slots to the airport administration for reassignment. This results in extremely high landing fees and significant economic wastage in tourism and trade revenue for Japan and is unacceptable at a slot congested airport like Narita. The EBC believes the MoT should give high priority to investigating and correcting this problem to bring Narita in line with international practice. Furthermore, increasing airport access only seems possible by a stronger 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, such as Hong Kong and Gatwick, allow many more movements per hour than Narita Airport.

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

Foreign carriers disadvantaged in distribution
The MoT requests all airlines to apply only the official IATA fares, or in case of group travel, the lower tariffs set by the MoT, even though the actual market prices are much lower. In any case all tickets have to show the official IATA fare for which the agency Commission has to be paid, regardless of the actual net fare charged by the airline. The consumer price is decided by the travel agency and is beyond the airlines' control. The present system requires foreign carriers to offer discounts only on ticket sales through travel agencies and these airlines are not able to offer discounts directly through their own outlets. Compared to the Japanese national carriers, foreign airlines are at a disadvantage. The national carriers have sufficient economies of scale to set up their own "de facto" direct distribution channels through captive agencies and affiliated travel offices. Fairer competition could be implemented if greater freedom in pricing was allowed, to enable direct distribution by promoting net fares to the consumer.

Inefficiencies related to bank settlement
Restrictions on the "Bank Settlement Plan", the official settlement and clearing system for ticket sales between the airlines and IATA travel agencies, do not allow the agencies to market net remittances on all market fares to the airlines. Instead a complicated procedure has to be implemented which means airlines incur extra costs and are compelled to set up a secondary settlement procedure. Agents also incur cash flow problems.

Incompatibility of Future Air Navigation Systems (FNAS)
The MoT is following the International Civil Aviation Organisation (ICAO) recommendations for the FNAS, by implementing the Japanese aeronautic satellite navigation system MSAS. (MSAS is a name). However, even though the MoT specifically requested it to be compatible with the US system, it did not do so for other international systems, such as the European Geostationary Navigation Overlay system (EGNOS), hence raising the risk of non compatibility and non homogeneous security.

Recommendations

- EBC requests that a clear statement be made by the MoT to explain the principles behind slot assignments.
- The commitment to IATA accepted practices for the assignment, transfer and withdrawal of airport slots should be confirmed.
- Consent from the MoT should be given for adjusting and refilling of all passenger tariffs nearer the market level, and administrative support made available for acceptance of timely fare adjustments.
- Current restrictions should be eliminated in airfare settlement procedures and airlines allowed to use chosen facilities at their own risk.
- Specification of intercompatibility of MSAS navigation system with EGNOS.

Aeronautics

Background

The Japanese market for large commercial aircraft is amongst the prime markets in the world, but it has so far been largely dominated by the USA. Airbus, with 61 out of 380 aircraft over 100 seats presently flying in Japan, has a market share substantially below its world average. Clearly a major factor in this is that Japan utilises large B747 aircraft fleets in a unique way, as short sector (1 hour) commuter transports. Another reason is that Airbus has not historically had a competing large capacity aircraft. Also of note is that JAL, the main company and former national carrier, has never bought any European aircraft or engine for its fleet. As the Airbus consortium continues to define the plans for its very large aircraft, A3XX, we will be keen to see whether the previous pattern of Boeing dominance can be changed.

The Japanese Aeronautics Industry, which was disbanded after the war, has been striving ever since to rebuild, with the help of MITI, an indigenous capability. The strategy of the four "heavy industries" has been to rely on defence contracts, which still account for 75% of their turnover, and on partnership with Boeing for the rest. Attempts by MITI to promote the sector's independence through national projects have not been very successful in the past (60 seat turboprop YS-11) and have more recently encountered a lot of resistance from the industry (75-100 seat jet YS-X).

Some co-operation agreements exist at company level in aircraft fuselage, engines and helicopters. MITI is also successfully promoting international co-operation programs mostly in the field of propulsion. Also in the area of Future Air Navigation Systems (FANS), the MOT has agreed to work closely with Europe to ensure inter-compatibility of their respective systems.

However, these co-operation programmes remain limited in scope and cannot hide the fact that for major projects across the product range from the smaller 100 seat to the very large transport aircraft, the Japanese industry and MITI have up to now focused their efforts on co-operation with Boeing.

Key Problems

In sales of large aircraft and related engines as well as equipment, U.S. manufacturers have a great advantage over European competitors, because of their ability to exert pressure at government, industrial and commercial level.

European industries and officials have tried, so far unsuccessfully, to convince their Japanese counterparts to depart from their "pro-Boeing" industrial strategy and to balance their partnerships. In spite of the mutual benefits of a greater proposed Europe-Japan co-operation, and in spite of the announcement by Boeing of the suspension of their 747/X in early 1997, many obstacles remain to co-operation on large projects such as Airbus's A3XX (550-650 seat, very large transport aircraft). One of the reasons could be the lack of effective communication channels between European and Japanese industries, but another problem could be the existence of some form of exclusivity agreement between Boeing and Japan.

Recommendations

- As far as procurement is concerned, the Japanese authorities, agencies and companies in the field of aircraft, engines, components and ground navigation infrastructure, should allow European manufacturers to compete with the U.S. on a fair basis, and offer Europe equal opportunities of success.

- Deregulation needs to be promoted whenever possible. Creation of new companies should be encouraged, and limitation of access to foreign companies in the equity of Japanese airlines should be relaxed. Registration of aircraft and equipment by foreign owned companies should be allowed, and such regulations as the 60 seat limits for commuters be eased.

- The EBC is convinced that there are mutually beneficial opportunities of co-operation between European and Japanese manufacturers on future projects such as the A3XX or the "Supersonic transport" in the fields of airframe, propulsion and navigation systems. Given the political and strategic difficulties of co-operating on large scale projects, the EBC recommends that in parallel, smaller scale common projects be pursued and encouraged in order to create the working relationship and mutual trust which appear insufficient at the moment.

Space

Background

Japan is among the leading nations in the field of space with a total budget of approximately half that of Europe. Successful launches of the H-II rocket have given the country an independent access to space. In the field of satellites, Japan has been building and launching state of the art satellites at the rate of approximately one experimental spacecraft per year. However, due to American pressure and the signing of the so-called "Super 301" agreement with the USA in June 1990, the Japanese operational satellite market has been opened to international competition and US manufacturers have in effect acquired a monopoly on this market.

Consequently, and contrary to developments in Europe or the USA, the commercial side of the Japanese space industry is extremely reduced, and manufacturers are relying almost exclusively on orders from government agencies such as the National Space Development Agency (NASDA) or the Institute of Space and Astronautical Sciences (ISAS).

The three Japanese satellite manufacturers are unable to compete on the world satellite market due to their low volume of domestic business. They therefore concentrate on ground stations and satellite components, successfully supplying American and European satellite integrators as well.

Until recently, there has been little co-operation between European and Japanese agencies, and few business exchanges between space industries. The only relevant European success in the commercial area has been the sale of launch services to Japanese satellite operators by Arianespace.

However, since 1995, NASDA, which so far had been pursuing goals of strict technological independence with no real economic impetus, has now taken a new direction towards cost cutting and is allowing, and even encouraging, foreign purchases and co-operation.

In parallel, co-operation on significant programmes has been initiated at the agency level, such as the decision to launch the European experimental satellite ARTEMIS in 2000 on the first H-II A Japanese launcher. Other possible projects are being discussed between European agencies and their Japanese counterparts in fields such as "Gigabit Satellites" for multimedia applications, small satellites, and micro gravity.

In the commercial field also, the Japanese private sector has shown more willingness to support global satellite ventures such as Globalstar, Inmarsat ICO, Skybridge, etc.

Key Problems

Japan has proven that it has the technological capability to build advanced launchers, and has shown determination to enter the commercial launch market. Although European industry recognizes this to be a legitimate wish, there is some concern that the Japanese companies, for whom space represents no more than one or at most two percent of total turnover, subsidize internally their recurring costs in order to be competitive, and thereby introduce unhealthy competition.

The Government agencies still exercise control over the manufacturers in the space sector, which makes discussion at the industry level very difficult and hinders long term co-operation strategy. The EBC therefore welcomes the co-operation between NASDA and its European equivalent, the European Space Agency (ESA).

In the scientific and research field, the policy of the Japanese government bodies of splitting contracts between many companies without designating a real overall prime contractor leaves little room for international co-operation.

Recommendations

- The Japanese agencies should give more independence and flexibility to the Japanese manufacturers, and international co-operation at industry level should be encouraged further. European standards should be accepted without restrictions by these agencies.

- In such fields as launchers, space stations, remote sensing, navigation, global information infrastructure etc., significant industrial co-operation will only be possible if it is promoted by the respective European and Japanese government agencies. Defence

Defence

Background

Japan, with its pacifist post World War II constitution, has a comparatively small defence budget of around 1% of GNP. However, due to the size of the Japanese economy, that budget is significantly larger in monetary terms than those of France, Germany or the UK.

Over the years Japan has developed a defence industry, first through licences and technology transfers, but now increasingly through indigenous development, which covers most of the needs of the armed forces. However, the limited production volumes make costs high compared to world market standards.

Imports represent approximately 25% of total equipment purchases, including licence fees and components. As a result of the Security Agreement between Japan and the USA, this foreign part of the Japanese defence market is a near American monopoly.

Like the rest of the world, Japan is facing a reduction in the defence budget without a corresponding decrease in the missions required by the armed forces. Japan will therefore have to change some of its procurement policies in order to meet this challenge.

Key Problems

European manufacturers are, for political reasons, generally limited to sales of less important equipment, and in areas where there are no Japanese or American competitors.

The Japanese Government prohibits exports of weapons or military technologies to all destinations, and, with the exception being the USA, also prohibits co-development involving the exchange of military technologies. Since specifications for military equipment also fall within the scope of this prohibition, participation in JDA procurement is very difficult for European companies, and co-development is out of the question.

It is apparent that, after the end of the Cold War, American defence industries are aiming, with the help of their government, at a world monopoly. That this is already the case for the imports of a country as important as Japan is a matter of concern to the EBC, and it would be of mutual interest to ensure that the monopoly is being challenged, even if only in a limited way.

The emergence of the US aerospace and defence giants — Boeing McDonnell, Lockheed Martin and Raytheon — will not make this challenge any easier.

Recommendations

- The EBC requests that the regulations concerning technology transfer be eased for European companies, in order to facilitate participation in public procurement and to allow industrial co-operation.

- In the few cases when European companies are in a position to compete, the EBC recommends that the supplier be chosen on merit and not on political grounds.

Automobiles

Background

The strong position which the Japanese car industry occupies today, both in its domestic market and in the global market place, 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-1930s through to the mid-1970s, 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."

That protectionist policy was resurrected after the Occupation. Through the use of high tariffs, a commodity tax regime which discriminated against imports, foreign exchange control 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 1950s it was primarily the European car makers who tried and failed to set up manufacturing operations in Japan.

Gradual Liberalisation of a Protected Market

Only when the Japanese industry was capable of standing on its own feet, and the domestic market had effectively matured, 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 liberalised in 1973 and tariffs were progressively 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. During this period two generations of young Japanese grew up with little awareness of foreign cars. This contributed to the slow acceptance of imports when the market was gradually opened.

Slow Acceptance of Imports

In more recent years, the Japanese authorities have made considerable efforts to facilitate the growth of passenger car imports, notably the 1985 Action Programme to Promote Imports. Other measures such as the conversion of commodity tax into sales tax and a major reduction in import car insurance acted as the catalyst for increased sales of imports. By the early 1990s many of the technical barriers had been removed. In 1995 substantial progress was made in resolving outstanding issues relating to motor vehicle standards and testing, and the certification of European cars and commercial vehicles for export to Japan.

Japan intends to adhere, by the end of 1998, to the United Nations-Economic Commission for Europe (UN-ECE) Revised 1958 Agreement on the mutual recognition of motor vehicle regulations. Provided that Japan adopts a substantial number of existing UN-ECE regulations, this will reduce the cost to European manufacturers of complying with Japanese certification requirements.

Market Size

The automobile industry was one of the few relatively bright spots in the Japanese economy in 1996. Although the automobile market grew more slowly than in 1995, the Japan Automobile Manufacturers Association (JAMA) estimates that in 1996 the domestic demand for cars, trucks and buses expanded by 2.3% to 7,020,000 units, the first time since 1991 that the market has exceeded 7 million units. Under the twin impact of the rise in consumption tax and the slow down in economic growth, in 1997 the market is again likely to fall below 7 million units.

Pure imports of passenger cars (i.e. excluding re-imports from 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 in 1993. Pure imports have subsequently rebounded to 310,180 units in 1996, of which European manufacturers accounted for 257,155, an increase of 16.3% over the previous year. In 1997 the growth in pure imports has dropped sharply. For the year as a whole pure imports may not exceed 315,000 units.

Japan: New Registrations of Imported Passenger Cars — 1996

	Units	Percentage Rate of Increase over 1995	Share of Japanese Passenger Car Market (Including Mini-cars)
Europe	257,155	16.3	5.6
US	53,025	39	1.1
Total	310,180	19.6	6.7
Imports from Japanese Transplants	82,113	-19.4	1.8
Total Imports	393,392	8.6	8.5

Growth of Imports Post — 1985

This growth is attributable to a multiplicity of factors. The importers have significantly reduced prices and invested heavily in infrastructure and the development of brand recognition. For its part the Japanese Government has clarified the contractual rights of domestic dealers to take on import franchises, relaxed residential planning regulations to allow imported car dealers to offer better coverage in high population areas and introduced tax incentives to encourage imports.

But Still Relatively Low Share of Imports in Japanese Market

Nonetheless, Japan (together with Korea) still has the lowest share of automobile imports among major industrialised countries. Whereas Japanese manufacturers took 10.7% of the Western European market (EU, Norway, and Switzerland) in 1996, pure imports only accounted for 6.7% of the total Japanese passenger car market, including mini cars. European manufacturers took a 5.6% share of this market. For every European car sold in Japan, Japanese manufacturers sell 5.3 cars in Western Europe, even though the output of the European industry is considerably larger than that of the Japanese.

The imbalance in the trade in automobiles has contributed largely to Japan's persistent trade surplus with the EU. Japan's surplus on the trade in automobiles rose sharply from $3.8 billion in 1990 to $7.4 billion in 1992. Between 1990 and 1993 the surplus on the trade in automobiles also rose as a proportion of Japan's total trade surplus with the EU from 18% to 24%. But after 1992 both Japan's overall trade surplus with the EU and the surplus on the trade in automobiles began to decline. By 1995 Japan's bilateral trade surplus in automobiles had fallen to $2.6 billion, less than half the peak of 1992 both in absolute and proportional terms. Unfortunately, in 1997 these trends have gone into reverse. Japan's surplus on trade in automobiles with the EU is once again rising rapidly.

Japan is however becoming an increasingly important market for the European automobile industry. Whereas in the early 1990s Japan took only 6% of Europe's passenger car exports, by 1995 the Japanese market accounted for 10% of the EU's automobile exports.

Key Problems

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

Dealers of domestic manufacturers are hesitant about handling imported cars even though their contracts do not prevent them from doing so. Further import growth will be crucially dependent upon the ability of foreign manufacturers to develop their distribution networks, especially by recruiting domestic dealers.

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:

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

- Abolish the Automobile Acquisition Tax to offset the impact on automobile sales of the increase in Consumption Tax from April, 1997.

- 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.

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

- Co-operate closely with the European Commission, both bilaterally and within the framework of the UN-ECE, to harmonise Japanese and European standards and testing procedures.

Automotive Components

Background

The Japanese automotive industry was protected from imports for 40 years, and during that time managed to take control of more than 35% of world car production to become the second largest producer in the world after Europe.

The 11 Japanese vehicle manufacturers have relied exclusively on domestic parts and equipment supply, traditionally organised into associations controlled by the vehicle makers. Until the early 90s the exclusive nature of this system effectively barred foreign participation in domestic programmes. Despite the recent close links developed by European suppliers with Japanese vehicle manufacturers, no substantial results in terms of higher imports have been achieved. Imported components still account for less than 3% of the Original Equipment Manufacturer's (OEM) parts used in Japan.

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, including Japanese transplant operations, with a value of US $19 billion in 1994. Intensive activities such as one-on-one meetings (five in a period of four years) and design-in seminars were organised to expand business opportunities between US suppliers and Japanese 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 market shares for European suppliers from 38% in 1990 to 12% in 1995. During this period, however, no fundamental change occurred in the massive Japanese parts trade imbalance. (See appendix figures and chart).

The first JAPAN-CLEPA Business Conference one-on-one meeting, which took place in March 1995 in Paris, was welcomed by the EBC Automotive Components Committee as a first sign of equal treatment of European suppliers. The success of this meeting encouraged the organisers to hold a second Business Conference in May 1996 in Berlin and to prepare the third conference in November 1997 in London.

The bilateral US-Japan Agreement on Auto and Autoparts of June 1995 almost by definition increases the risk of discrimination against European interests. Its application continuous to be carefully monitored by the EBC.

Key problems

High quality at competitive prices

Access to the Japanese automotive market is particular difficult due to the intimate relationship between suppliers and manufacturers. European suppliers are operating with a long term approach and have improved their competitiveness in recent years. 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 purchasing from foreign suppliers, but the reluctance of Japanese manufacturers to build up strong relationships with foreign parts manufacturers, by accepting them not only as suppliers for their transplants but also for their domestic operations, is still apparent and mirrors the extremely low level of foreign imported parts.

The EBC is also aware of increasing competition in Japan due to the decline in car production. However, taking into account the strong value of the yen in 1995 and 1996 - not only against the US$ but also against the European ECU - a much higher share of imported parts would have been expected.

The recent trade figures clearly indicate the caution exercised by Japanese automotive manufacturer on collaboration with foreign parts suppliers regardless of quality, stable supply and price.

The EBC considers the market share of imported automotive components to be too low compared with the US and Europe and supports all efforts, including those on deregulation, which will ease access to the Japanese market and reduce the extreme trade imbalance for automotive components.

The EBC will continue to oppose all bilateral activities which discriminate against European suppliers or jeopardise their business efforts in Japan.

Recommendations

The EBC Automotive Components Committee will:

- Liaise with European organisations, e.g. EC, CLEPA, national industry associations, chambers of commerce, to work for fair trade and fair purchasing decisions.
- Create a dialogue with Japanese industry associations including the automotive components subcommittee of JAMA and CLEPA in order to establish trust and a constructive relationship at industry level.
- Promote ties between European suppliers and Japanese manufacturers in cooperation with JAMA and CLEPA.
- Promote further face to face meetings, design-in seminars and quality support centres in Europe and 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 Motor Show, and maintain pressure to ensure adequate floor space for European exhibitions at the Tokyo Motor Show.
- Continue to monitor trade in automotive components to and from Japan in order to measure the results of these efforts.

Shipping

Background

The EBC Shipping Committee focuses solely on the container shipping industry, although many types of European ships including liners, bulk carriers, tankers, cruise ships and other specialized vessels operate to and from Japan.

European carries 50% of container trade

The following EU member state container operators serve Japan today: Compagnie Maritime d'Affretement (CMA), DRS-Senator, Hapag-Lloyd, Lloyd Triestino, Mærsk Line, P&O Nedlloyd, and P&O Swire Containers. Other European container carriers include Norasia and Wilhelmsen Lines. European carriers lift more than 50% of the container trade between Japan and Europe and vice versa. They also play a very significant role in cross trades, i.e., between Japan and non-European countries such as USA, Australia, New Zealand, Africa and Latin America.

No discrimination

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 "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 those faced by the Japanese shipping industry. These are restrictive working practices on the waterfront resulting in lack of competition amongst waterfront industries and associations, lack of operational flexibility and very high costs.

JHTA controls the waterfront

The key influence on the waterfront is exercised by the Japan Harbor Transportation Association (JHTA or Nikko-kyo). The membership of JHTA comprises all major waterfront business, except shipping lines, and it is JHTA's policies and decisions which control the operation of the waterfront. There may not be any international parallel to this exceptionally powerful organization.

The EBC Shipping Committee represents the interests of European carriers and liaises with the Transport Directorate in Brussels through the EC Delegation in Japan. The principal organization 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.

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 Harbor Management Fund a few years ago. In 1995 the EU presented a Demarche in the form of a 'note verbale' to the Japanese Government regarding prior consultation and mandatory weighing and measuring of container cargo. An agreement was reached in 1996 to phase out mandatory weighing and measuring of full container loads over a period of 5 years. In respect of Prior Consultation, DGVII in Brussels initiated consultations with MOT a step towards dispute settlement before the WTO. A number of such consultations have taken place.

MoT's involvement

During 1994 and 1995 the Ministry of Transport has taken the initiative to arrange 'Transport Forums' in Japan with both European and US lines. While the opportunity for additional dialogue with MOT is welcomed, no tangible progress toward resolving the main issues has resulted. Al-

though the MOT regulates waterfront activities, the ministry has declined to become involved on the basis that the issues under discussion are "commercial matters" in which it cannot intervene. Since 1996 the MOT has been forced to assume a stronger role, following the announcement of sanctions against the 3 Japanese container carriers by the US Federal Maritime Commission. Also under pressure from the US authorities, the MOT has meanwhile declared that it will accept applications from foreign shipping lines for a licence to operate as a general contractor/stevedore on the Japanese waterfront.

Key Problems

"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 absence of free competition has far-reaching consequences. Contractors, both management and labour, have little if any incentive to eliminate or modernise practices which are outmoded or which merely preserve the status quo.

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

Changes influences employment

Prior Consultation is the process by which JHTA actually exercises its 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 should be Prior Consultation on any changes that might influence employment or adversely affect working conditions.

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.

Lack of transparency

The present system is that lines submit their applications to JHTA. Then, in a process which totally lacks transparency, JHTA "consults" as necessary with the unions and hands down a 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. JHTA's policy is to ensure the continuation of the status quo, as far as individual terminal operator/line relationships are concerned. This is an accepted but resented reality, and is now under attack through a diplomatic (EU) process and through more forceful means (FMC sanctions).

This has been partially occasioned by the pressure from the EU, but the real sense of urgency for reform of the system comes from the FMC sanctions which came into effect on September 4, 1997. The sanctions require the three Japanese container carriers (NYK, Mitsui OSK and K-Line) to pay a penalty of USD 100,000 each time one of their vessels calls at a US port. It is estimated that the magnitude of the sanctions amounts to about USD 40 million annualized. As the resolve of the sanctions is a matter between the governments of Japan and the US, the focus is on Japan's MOT to come up with a solution to satisfy the American demands.

Sunday work

Foreign shipping lines, politically supported by the EU and by the FMC, have been exercising pressure to permit Sunday work in the major Japanese container ports in a structured manner and on an ongoing basis. Since the Kobe Earthquake in January 1995, Sunday work has been permitted, however, neither in a structured manner nor on an ongoing basis. This is inhibiting the efficient scheduling of vessels. Currently, Sunday work is permitted until end March 1998.

Extremely high costs

Port and associated charges in Japan have long been among the highest in the world. JFSA has drawn the attention of Government authorities in Japan and the respective contractors, to the excessively high costs of operating in Japan where charges are far higher than in other major ports in the world. So far, little reaction has been obtained, but the JFSA and EBC will maintain an active campaign on this issue. Pilotage, tugs, wharfage charges and tonnage dues have been targeted in particular.

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.

Containers

Despite lengthy discussions, no progress has been achieved in relation to the ability of lines to transport 2 x 20 foot containers on one chassis over the roads in Japan. Such operation would improve efficiency and reduce costs. The position is complicated by the fact that the relevant rules of the Japanese Government Departments concerned (Ministry of Transport, Ministry of Construction, National Police Agency) are not co-ordinated.

Japanese road weight limitations for containers on chassis are less than those applicable in Europe and the USA, which causes problems for the vast majority of containers which move outside container terminals.

Recommendations

- The EBC believes there is an urgent need for the Japanese government to use its 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.

- The Prior Consultation system should be simplified and modernised to allow free competition on the Japanese waterfront.

- The temporary agreement permitting Sunday work should be made permanent beyond the current expiration date of end March 1998.

- Operational costs in Japan should be reduced to a level which will restore the competitiveness of Japanese ports.

- European shipping lines should be granted the freedom to carry their own containers, full or empty, from one Japanese port to another.

- Japanese Government regulations should be harmonised, such that the carriage of 2 x 20 foot containers on one chassis is permitted and made operationally feasible.

- Japanese road weight limitations for containers on chassis should be relaxed to European levels.

Telecommunication and Information Processing

Background

The European Business Community is generally satisfied with the last deregulation update and the progress made by the Ministry of Post and Telecommunications (MPT) in this respect, and appreciates the attention given to the comments expressed in the 1996 EBC White Paper. However, the EBC wishes to see further deregulation, and requests the MPT to deliver more. The EBC understands that a considerable volume of deregulation requests are handled within the WTO negotiations, but is still concerned about delays in deregulation, and the lack of a clear schedule and transparency in the implementation process.

Key Problems

It is expected that the interconnection rules between Nippon Telegraph & Telephone Corp. (NTT) and NCC's are valid for special 'type II' carriers, whether the scope of business is domestic or international.

Break-out services are approved by MPT under a revision of the rules applying to break-out on 1 July 1995, but only for 'type I' international carriers.

Resale of international private lines is permitted with no interconnection to PSTN, including VPN services. The MPT has announced that before the end of December 1997 it will review the remaining restrictions on the resale of international private lines interconnected with PSTN at one or both ends. However, measures may have some restrictions in order to avoid "accounting rate circumvention".

Conditions and procedures describing spectrum allocations for mobile communications do not seem transparent or easily accessible. Experience indicates that it is not always easy for interested parties to obtain precise information.

The scope of business of 'type II' carriers is evolving rapidly due to technological changes and a regulatory environment evolution. Therefore the current classification of 'type I', 'type II' and special 'type II' carriers is no longer relevant.

At present the MPT requires 'type I' carriers to file for authority to set and change tariffs. However in December 1996 mobile 'type I' operators alone gained approval for simply notifying their tariffs to the regulator.

Special 'type II' carrier services are not tied to national life, economy or security, and their services are extremely competitive.

It seems that Japanese international carriers, IDC and ITJ, are still not free to manage their existing networks and to freely reroute their outgoing traffic. They might not be authorised to switch existing costly direct routes to more economical rerouting using overseas services.

The definition of value added services is not clear and is mainly related to US/Japan bilateral agreement on the matter. Authorisations are complex and following several paths, according to the service.

Recommendations

- "Type I' carriers should be permitted to lease national and international circuits with special 'type II' carriers, under wholesale rates, as soon as possible. Precise details on the access to directory information from local and mobile operators should be clarified. Special 'type II' carriers should get the same treatment of interconnection as 'type I' carriers.

- MPT should authorise special 'type II' carriers to provide break-out services without any restrictions, except those required by the countries where break-out is taking place.

- Clear, official information on the matter should be advised immediately. ISR should be implemented in early 1997. The access code number scheme to carriers for calling/dialling should be fairly attributed to the applicants and its implementation in the NTT switches smooth and fast.

- Frequency allocation should be conducted in a fair and timely manner, and attributed regardless of the system of technology that will be used.

- Abolition of the 'type I'/'type II' classification for all types of carriers in Japan. Other widely adopted classifications such as dominant/non dominant carriers with asymmetric regulations could be implemented.

- Already granted to mobile operators, the tariffs notification should be extended to all carriers, except the dominant one. Any new dominant carriers should be allowed to simply notify the MPT of the new service introduction, new tariffs and tariff changes.

- The international service provision that automatically imposes special 'type II' status should be phased out and a general 'type II' status for the international service be implemented, as 'type II' regulations are far more competition oriented. In a broad perspective, all services from special 'type II' carriers should be unregulated from a tariff and services conditions perspective, even for services provided to a large customer base (many and unspecified persons).

- Recommendations by the Telecommunication Council should be offered for public comment and broad discussion, with at least two weeks advance notice. A draft summary of the documents, in English, should be produced in order to encourage quick comments from outside Japan, and to take into account the global character of the telecommunications business on which domestic regulations and policies have a bearing. Implementation conditions of measures and licensing procedures on any telecommunications and broadcasting services should be well defined and published.

- MPT should move quickly to put in place the regulatory structure to underpin full liberalisation in 1998 and to ensure effective competition. The time frames to 1999 implied, by MPT Study Group for interconnection pricing and accounting methodologies, should be reviewed, and more ambitious targets set. Effective regulation in the areas of interconnection terms and cost-based pricing, none-discrimination principles, accounting separation, independent instructional oversight etc., should accompany liberalisation and not follow it. The commitments of Japan and other signatories under the regulatory principles papers of the 15 February 1997 WTO Telecommunications accord are consistent with such action.

- Clarification and simplification of the definition of the different kind of licences and the licensing procedures on satellite-based telecommunications services are requested. For example, broadcasting services, TV transmission services and communications services licenses should be clarified. The spectrum of such activities should be broadened and the types of licence less numerous. A public document on satellite based 'type I and II' carriers classification should be made, with clarification on the limit of such licences, especially on the use of international satellites.

- The restrictive Operating Agreement between members of the same group of companies should be abolished.

- Any limitations imposed on international 'type I' carriers for the implementation or the running of connections with the operators of other countries should be abolished.

- MPT is requested to ensure that existing and future similar agreements between 'type I' international carriers and overseas carriers are fair, reasonable, and allow overseas carriers to offer a full and competitive range of services to their customers.

- There are currently restrictions on foreign ownership of 'type I' carriers. To be consistent with the deregulation of satellite 'type I' carriers these restrictions, including those concerning NTT and KDD, should be removed.

- On the definition of services, value added services should be defined by default. A set of basic services should be specified. All other services should be assumed to be value added by default. Definition should not be related to the specific bilateral agreement, but on a uniform worldwide basis. Harmonization and simplification of the procedure should also take place.

- For leased line half circuits there should be no tariff discrimination between Europe and Japan, as compared to the US and Japan.

- Clarification of the impact of the Administrative Procedures Law on the Telecommunication Business Law is requested.

Procurement of Telecommunications Systems

Background

The import of telecommunication product in Japan has significantly improved in recent years, thanks to the dynamic market opening measures taken by the government and the telecommunications carriers. According to the trade figures, import of telecommunications equipment in Japan amounted to 352 Billion yen (TBC) in the year ending December 1996, up 45% compared to the previous year. Moreover, it is to be noted that this corresponds to 8% (TBC) of the domestic production (4300 Billion yen in 1996 according to the Electronic Economic Research Institute), stable from last year. Out of this import volume, only 25% comes from the European Union, compared to 46 % coming from North America. This does not represent the relative strength of the European industry in the world market.

Standardization
The import of Telecommunications equipment and systems is impaired by public standards (TTC/ ARIB/NCTEA/JATE/EIAJ), applied for telecommunication equipment in Japan, which differ substantially from international standards. In addition, NTT and certain other operators impose some proprietary specifications.

The multimedia world of tomorrow requires adoption today of common global and open standards. This is a difficult challenge, concerning all the regulatory bodies throughout the world. In Japan, the various studies groups and standardization committees, as well as NTT, try to follow the international evolution as much as possible, but sometimes decide finally for specific "Japan-only" standards. This induces increased cost for equipment, which is the opposite of the purpose of standardization. Such is the case for public telephony, ISDN, mobile communication, optical transmission, data communication, video communications, network management, etc. Even though these decisions are generally based on some sound technical reasons, they dramatically reduce the freedom of choice of competitive telecommunication products for Japanese users, and hinder the global free trade both for export of Japanese products and import of foreign products.
NTT mandate

NTT, under a mandate from the Ministry of Post and Telecommunications (MPT) to promote national research and development in the field of telecommunications, developed specific technologies and equipment. NTT was also given the mandate to build up the national communications network for which NTT imposed its own specifications. Following the privatisation of NTT, these specifications became proprietary and still today they are not known in detail by the MPT, nor by the standardization bodies.

Key Problems

As a result of the NTT specifications, substantial interfaces and protocols in Japan are proprietary and a manufacturer cannot supply equipment without implementing essential adaptation, even if the equipment is not meant for NTT. In certain telecommunications area such aspects as service functions are not specified public standards, as the standards are defined internally among the operators.

Technical aspect favour dominant operators
This dominant technical control of the market by NTT will become even more imbalanced when the nationwide fibre-to-the-home broadband networks are implemented using NTT's developed equipment and systems. The overwhelming power of the resources of NTT for research and development

compared to the rest of the industry, and the lack of regulation imposing open standards in the national network, impair effective competition and force the non-NTT carriers to depend on NTT for the technical aspect of their network. It also impairs fair competition for the procurement of telecommunication systems, since equipment not manufactured according to NTT specifications is not usually accepted for the national network.

Reduction of production right

To date, manufacturers can participate in NTT's procurement tenders for new equipment only and, assuming they are successful, thereby acquire long term continuity as an NTT supplier. This, however implies the manufacturers carry out extra specific developments and implement upgrades according to detailed instructions from NTT, without necessarily improving the performance of their own products. Such collaboration with NTT will include the use of components and equipment from a third party approved by NTT, into the suppliers' systems, resulting in reduced product rights for the suppliers. This affects not only suppliers from overseas but Japanese suppliers as well. It also tends to raise the cost of the national telecommunications network to a level which is much higher than the normal cost in the open market.

Recommendations

- The MPT and the telecommunications industry should encourage the Japanese standardization bodies to avoid "Japan-only" standards, by participating more actively in the international effort to promote global and open standards, as well as by putting less emphasis on some domestic technical particularism.

- It is expected that the laws guiding NTT will be changed and that NTT will become a holding company, with the responsibility for research and development in the hands of the holding company itself. Before this change in the law, NTT-unique equipment specifications should cease to be proprietary; they should become public and be made available free of charge to any telecommunications operator or manufacturer.

- Various new rules are currently being considered for the interconnection of networks of different operators. On the technical aspects of the connection interfaces, it should be mandatory that the interface standard not be a proprietary specification of a particular dominant operator, but be instead an open standard defined by the Telecommunications Technology Committee (TTC), and in accordance with the standard recommended by the International Telecommunications Union (ITU). This rule should become part of the Telecommunications Business Law.

- NTT should be requested in particular to provide open interfaces to their network and inside their network (V.51/V.52,SDH,TIM-Q3), and to accept use of existing communications equipment and systems in its own network, so that it will be possible for manufacturers to become suppliers to NTT of equipment which has not been co-developed with NTT.

Legal Services

Legal Services

Background

As a general rule, only Japanese qualified lawyers, "Bengoshi", are permitted to practice 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 firms need increasingly to have legal advice on international transactions or disputes. The resources available to them are limited. There are some 14,000 Bengoshi and, although there are no reliable statistics, it is thought that only about 500 have a practice in international transactions.

Foreign law firms are permitted only to practice through designated lawyers "Gaikokuho Jimu Bengoshi" (GJB) who have been licensed in Japan. These GJB can act in matters which involve the law but only of the 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.

American and European lawyers together raised, in the context of the GATT negotiations, a number of problems affecting their ability to practice in Japan. As a result, some amendments have been made to the law, but they are by no means enough. These issues were considered by a Ministry of Justice Study Commission which published a Report of its findings in November 1997. The main issues are described below:

Partnership and Employment

The service to clients could be vastly improved, especially in areas such as financial services if GJB and Bengoshi could practice together in a single law firm. The current law does not permit GJB and Bengoshi to form partnerships and prohibits GJB from employing Bengoshi. There are few other countries that impose such prohibitions (even if there are restrictions in limited areas such as appearance in court).

The Deregulation Sub-Committee, having had submissions from interested parties, reported in December 1995 that the Nichibenren have sought to justify the prohibition on employment of Japanese lawyers by overseas lawyers on the basis that Japanese lawyers under the direction of overseas lawyers may be required to perform illegal acts. The Committee noted that in such event the overseas lawyer would himself be penalised for the illegal act and concluded that there was therefore no logical or specific basis for the exclusion. The Committee also stated that it was thought that this restriction indirectly constituted a barrier to foreign companies' expansion in Japan, and concluded that there is a need to permit employment of Japanese lawyers by foreign lawyers.

A change in law in 1995 permits a joint arrangement between a foreign firm and Bengoshi, but it is highly restrictive. Although it is being used by some foreign law firms it is the EBC's belief that it is unlikely to work unless used as a facade for a more workable partnership. The reasoning of the Deregulation Sub-Committee can be applied equally to this issue. There is no logical justification for preventing overseas lawyers practising with Bengoshi in the same form of partnership used now between Bengoshi.

The Study Commission Report's recommendations extend only to a change in the scope of business which may be handled by joint enterprises (tokutei kyodo-jigyo) under the existing legislation. The Report does not address the fundamental issues of the prohibitions on ordinary partnership and employment relations between Japanese and non-Japanese lawyers.

The reasons why the "joint enterprise" is a highly unsatisfactory arrangement are significant, but not easy to explain. Also, the foreign lawyers in Tokyo who have adopted such arrangements (and who are therefore best placed to comment) are in a difficult position because negative comments cold be interpreted as criticisms of their own operational efficiency. Nevertheless, the fact that so few joint enterprises have been set up, and that none has had any significant success (even in areas, such as capital markets work, where the benefits of blending Japanese and foreign law advice are most obvious) is witness to this inability.

The cooperative team spirit within a legal partnership is one of the key factors underlying the preference of clients for, and the consequential pre-eminence of, the major international law firms. It is essential that the partners of such a firm see themselves as equally members (whether at partner or associate level) with an equal say and equal prospects to share the firm's success. Any senior lawyer joining a large international partnership would wish to do so on the basis that he or she would be an equal partner with others around the globe: any associate joining such a firm would want to know that his or her ambition to become such a partner is attainable. The kyodo-jigyo arrangements strike at the heart of the viability of the joint enterprise by enforcing divisive distinctions which deny these ambitions, and thus reduce significantly the attractiveness to any Japanese Bengoshi of joining forces with an international firm.

International law firms with an ability to offer integrated services in a liberalised market-place have the potential to make a major contribution to the overall success of the deregulation effort. However, we do not believe that the Japanese Government can expect to see kyodo-jigyo firms filling this important role. This could well have the effect of placing significant restrictions of the potential success of the deregulation measures, particularly in key sectors such as financial services.

We are aware that the Nichibenren and others have likened the kyodo-jigyo to a partnership and have claimed that in practice there are no real differences. That is like saying that putting a corridor between two buildings will bring about a merger between the two companies within them.

Japanese lawyers have also been arguing for some time that the concepts of "partnership" and employee associates are alien to the Japanese system.

However, all of the most successful Tokyo law firms handling international business have in practice adopted the partner/associate structure with which we are all familiar. They know that it is the best way to run a law firm. It is for that very reason that there is a reluctance among the protectionist members of the Japanese bar to allow further liberalisation. The firms which would emerge if true partnership between Bengoshi and gaiben were permitted would undoubtedly be in a position to offer the best services in international transactions and would pose a serious competitive threat to the international practices of the purely domestic firms.

The EBC urges the Ministry of Justice to reject the Study Report's recommendations in this respect and take further steps to ensure the implementation of legislative changes consistent with the findings of the Deregulation Sub-Committee.

Five Years' Experience

Five years' experience in the country of principal qualification is a requirement for a GJB license. 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 experience requirement is unnecessary, but even if it remains, the additional restriction requiring all that experience to be physically within the home jurisdiction, apart from the two years in Japan exception, is contrary to the interests of clients and serves no purpose

other than to be a further barrier to bringing suitable lawyers into Japan.

In December 1995, the Deregulation Sub-Committee of the Administrative Reform Committee, which considered a written submission by the EBC, said in its report to the Administrative Reform Committee and the Prime Minister that there seemed to be no logical basis for setting any condition, as to qualification, other than the acquisition of a qualification in the home country. In December 1996, the Ministry of Justice established a Foreign Lawyers Issue Committee with the Japanese Federation of Bar Associations ("Nichibenren") to further consider this issue with a view to making a recommendation in 1998.

The Study Commission Report has recommended a relaxation of the requirement for five years' post-qualification experience for obtaining a gaikokuho-jimubengoshi licence in Japan. The proposal is that the requirement should be reduced to three years, and that this experience may be gained in any country provided that the lawyer is practising the law of the country of his original qualification.

However, only one year of time spent practising law in Japan may count towards the required three years. No rationale is given as to why professional experience in Japan should be less valuable than in any other country in the world.

Whist welcoming the proposed relaxation in the regulations, the position of the EBC continues to be that the qualification requirement is unnecessary and should be abolished.

The Ministry of Justice should, in any event, reject the unusual and discriminatory proposal which limits the amount of working time in Japan that may count towards the overall requirement.

Third Country 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.

The Deregulation Sub-Committee reported that this system was in place to protect the interests of clients but that there was no systematic guarantee of specialist knowledge being provided by either Japanese or overseas lawyers and that there was no persuasive reason for retaining the system.

The Study Commission Report has recommended that gaikokuho-jimubengoshi be permitted to provide advice to clients on the laws of countries other than the country of the GJB's original qualification, provided this is based on the written advice of a lawyer qualified in the relevant jurisdiction.

Again, the EBC welcomes the proposed relaxation but is disappointed that a complete abolition of the restriction which does not apply to Japanese *Bengoshi.*

Recommendations

- Abolish the years of experience requirement for lawyers wishing to work in Japan. Alternatively, remove the limit on the number of years spent working in Japan which may count towards the required period of experience.

- Remove the restrictions on the formation of law firms with partners who are foreign lawyers and Bengoshi, and on the employment of Bengoshi by foreign lawyers.

- Remove the discriminatory treatment of foreign lawyers with respect to the handling of third country law.

Patents, Trademarks and Licences

Background

The economic value of intellectual property rights has increased significantly because of the rapid incorporation of high technology and software applications into the economy over recent years. A consequence of this has been a pronounced increase in the frequency of infringement of these rights, raising the need to reinforce regulatory safeguards.

Having been accused by other industrialised countries for its abusive and discriminatory use of the intellectual property system, Japan has worked over the last twenty years to improve its image as a fair protector of foreign techniques and know-how. Reform of the intellectual property laws has been far-reaching, so that Japan is now one of the most advanced countries in this regard.

Japan has followed the predominant trend towards global harmonisation and has been actively involved in different rounds of negotiations within the World Intellectual Property Organisation (WIPO) and 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 by police and customs

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 1, 1992. Penalties against infringers were substantially raised in 1994. Protection of notorious trademarks and against dead copies was granted in the same year. The latest revision of the Patent Law will greatly alleviate criticism of the Japanese system, by introducing 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. Further, the latest revision of the Trademark Law will greatly improve the registration process and provide for better protection of foreign trademarks.

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 enhancement of the law was 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 one of the obstacles faced by foreign companies in Japan.

Key Problems

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

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 proceedings have been accelerated.

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

The rule of application of similarity of trademarks is often contravened by Japanese companies applying for registration of confusing trademarks.

The design law is almost unusable because of the length of the examination, as well as the high cost of registration fees.

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.

Investigations into counterfeiting at customs houses have improved, however, in many cases, importers are still 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 Trademark 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, enforcement of the copyright law in the field of software remains difficult in Japan. According to reliable sources (Business Software Alliance), in 1994 pirated software accounted for 67% of software business in Japan.

Recommendations

- The EBC is pleased with 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.
- Prohibit registration of trademarks confusingly similar to foreign trademarks.
- 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 ease the issue of "preservation of evidence" orders.
- Enforce effective economic sanctions against counterfeiting.
- Accelerate 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.

Others

Capital Goods, Engineering and Machinery

Background

The European Union, the United States and Japan are the world's largest machinery markets. In 1993 respective market volume was about equal in value in the three regions, i.e. 210 billion ECU for EU, 203 billion ECU for the US, and 200 billion ECU for Japan. In 1994 machinery demand in the USA, where economic recovery had already started, pulled ahead of that in the EU and Japan, where the recession had barely ended. These divergent demand evolutions caused a further deterioration of the persistent US trade deficit in machinery, whilst the EU and, in particular, Japan were able to increase their export surplus.

The Japanese machinery industry is highly competitive in respect of product quality as well as price and after sales service, with a domestic market whose customers are probably the most demanding in the world, making Japan a difficult market to compete in.

The total amount of Japanese imports of machinery was 1,852 billion Yen in 1994 which is approximately 9.4% of the total market volume. Compared with other industrialised countries this is a relatively low figure. For example the comparable figure for the EU was 20.3%, with Germany, the largest machinery market in the EU, having an import quota of 34.3% in 1994. It should be noted, however, that over recent years there has been a steady increase in sales by foreign companies and an improved import penetration ratio in the Japanese market. The figures for 1995 confirm a large increase in market share for imported products.

The European share, however, of total machinery imports was approximately 20% in 1994, decreasing somewhat from c. 23% in 1992. This trend is partly attributable to the increasing competitiveness of Newly Industrialized Countries in Asia, but may also be due to a lack of major European initiatives.

Key problems

The Japanese market is sophisticated, demanding, and requires long-term vision. Any lack of support in the short term to local subsidiaries presents problems. However, foreign companies which have been in the Japanese market for a long time and have attuned to its requirements are usually quite satisfied with their overall performance.

In addition, there still seems to be resistance by Japanese companies to use imported foreign industrial equipment. The possibility that imports may create a "win-win" situation for both sides needs to be better emphasized, understood and encouraged, particularly from the Japanese side.

It is essential to increase efforts on harmonization between Japanese Industrial Standards and ISO-Norms to improve the chance of success for imported machinery.

Recommendations

- European companies should be encouraged to invest in Japan. Investment campaigns such as the "Gateway to Japan" programme or the recent initiative by the German Industry Association (BDI) could be expanded.

- The Japanese authorities should accelerate the process of harmonization of industrial standards with other countries within the framework of ISO recommendations.

- Registration procedures for new products should be harmonized with those existing in Europe and the USA.

Construction

Background

The EBC Construction Committee was established in 1993 and embraces the following sectors of the Japanese construction industry market: General Contracting; Architecture, Planning, Engineering and Services; Construction Materials and Prefabricated Housing.

The Action Plan for the construction sector, introduced by the Ministry of Construction (MoC) in 1994, encourages open and competitive bidding and introduced simplified procedures for procurement of design and consulting services for projects above a specified threshold, and additionally announced an annual procurement plan. The Action Plan has not, however, resulted in any increase in the participation of foreign companies.

No competition

Despite the leading position of European Contractors in international markets, there has been no significant participation by European contractors in Japanese construction projects in fiscal 1995. As a direct result of the lack of international competition, construction costs for public works projects are acknowledged to be at least 30% higher than in comparable European markets. In addition, the utilization of innovative European designs, construction materials and construction techniques remains low in Japan. Although the cost of construction is higher in Japan, the quality of the finished product is judged to be lower than in comparable markets. This prevailing situation imposes a heavy burden on Japan's economy as well as significantly impacting Japanese quality of life.

General Contractors

The general construction sector in Japan is valued at approximately 80 trillion Yen annually. The market was virtually closed to foreign companies until 1988 when a limited measure to open the design and construction sectors was facilitated through the Major Projects Arrangement agency (MPA). The MPA system was replaced in 1994 by the Action Plan on Construction (APC), but this change has not led to any increase in the value of contracts awarded to foreign construction companies. In fact the value of foreign participation has fallen to approximately 3 billion yen, whereas Japanese contractors were awarded contracts worth about 50 billion yen in Europe in 1995.

Architecture, Planning and Engineering Services

The Japanese market for Architecture, Planning, Engineering and other consultancy services is potentially a very large market, but underdeveloped by international standards and not open to foreign participation. The result is a lower quality of design and higher costs than in other major markets.

Construction Materials

The construction materials market in Japan has massive potential for innovative European products. There has been some increase in sales, but market penetration of European products remains very low. As a result of the low level of foreign participation, the cost of construction materials remains high and the range of materials rather poor. Some progress has been achieved in 1996, as MoC and MITI have become increasingly aware that European suppliers can contribute to better housing and construction methods at lower costs. A point of contact has been identified within MoC for standards-related problems, and there have been improvements in the specification and testing requirements for imported construction materials.

Prefabricated Housing and Building

In 1995, approximately 1,470,000 prefabricated housing units were constructed, and European suppliers have seen an increase in demand for low priced prefabricated homes components. However,

only about 7,000 units were imported in 1996, of which a very small proportion came from Europe. EBC welcomes the decision of the Japanese Government which aims to reduce the cost of home construction in Japan by 33% by the year 2000 and favours imports in this sector.

Key Problems

General Construction

The MoC's dual role as industry regulator and major client to the industry produces inevitable conflicts of interest. This position inhibits any criticism of MoC policy or practices and acts as an impediment to change.

The cost of setting up local representation, obtaining licences, registering under the *"Keishin"* system, and of bidding is seen as prohibitive to many European contractors, given the historically closed nature of the market.

The ability of European contractors to build innovative designs using imported materials and employing modern construction methods - the key to their competitive advantage - is effectively taken away by over-regulation and unclear procedures to obtain the necessary approvals.

Architecture, Planning and Engineering Services

Design and engineering are commonly included in a package with construction costs *(sekkei-seko)*, which makes separate bidding difficult.

Consulting services to the public and private construction sectors are not as well developed in Japan as in other industrial countries. These services are still considered to be additional costs rather than a means to control costs and improve quality.

In Japan, the professions of Architecture and Structural Engineering are combined for the purposes of licencing by MoC, despite the differences between the two professions. Conditions for obtaining the Japanese first class architectural and structural engineering licence are severe, even though European architects and engineers are recognised internationally as being innovative and experienced especially in energy saving design.

Construction Materials

Japanese professional associations are generally empowered to recognise the validity of tests carried out abroad on construction materials and can thereby prevent the use of foreign products. This often results from conflicts of interest between members of the associations representing domestic interests and importers of European products.

Importers and architects face problems in obtaining Japanese validation of products (even if they comply with specifications) and in convincing job-site managers to use more competitive, innovative and energy-saving imported materials. The main reason given is that these goods are not well known in Japan, and the managers are reluctant to guarantee execution of work even though the goods have been approved by the relevant Japanese authorities.

Prefabricated Housing and Building

Building codes ensure the safety and strength of buildings in Japan by establishing specifications governing the permissible type of building material used. In most EU countries, performance requirements, such as the strength and durability of a building or component, are generally specified. Construction materials and methods newly introduced from Europe are subject to the approval of the Minister of Construction. It has often been pointed out that this constitutes a barrier to entry into the Japanese market and increases housing costs.

Recommendations

General Construction

- The EBC recommends the Japanese Government adopts international bench marking of construction costs to identify and prioritise areas where it can stimulate competition and thereby reduce current costs.

- European firms should collaborate to develop, and seek sponsorship for, a series of model projects to demonstrate the design innovations and cost savings possible.

- Move rapidly toward recognition and harmonisation of international standards

- Extend the new WTO compatible public work bidding system to all local administrative areas such as municipalities, prefectures, third sector companies and those special project companies receiving significant public funding. The threshold under which the system applies should also be lowered.

- The pre-qualification system should be standardised, such that criteria are the same for every municipality, public institution and third sector company.

- The licensing burden for foreign contractors should be reduced by drastically simplifying the procedure for obtaining licenses and for "Keishin" registration.

- Encourage submission of tenders which combine innovation with alternative proposals, processes, design and materials, and could subsequently reduce costs while maintaining or enhancing quality.

- Procedures for validation of foreign techniques already proven successful in other countries should be simplified.

Architecture, Planning and Engineering Services

- Promote transparent pricing of construction services and increased utilisation of independent, third party architects and consultants as an effective means to control construction costs and on-site quality. Encourage the submission of alternative designs in tenders. Provide intellectual copyright and patent protection for innovative design submissions.

- Promote product service descriptions that provide a basis for comparison with alternative equipment.

- Architecture and Structural Engineering should be recognised as complementary but very different professions, as recognised by the International Union of Architects.

- Acknowledge and approve European architectural licence equivalence to the first class architect licence in Japan.

Construction Materials

- Promote harmonised performance-based international standards (ISO) leading to automatic acceptance of "international equivalent standards" for construction related products and services.

- Changes to specifications and standards should be widely publicised, preferably before these changes come into force, so that there is time to adapt to the new regulations.

- Fire resistance tests should be simplified.

- Japan's existing elevator standards should be modified in line with modern international standards as promulgated under ISO TC 178.

- Standards for Electrical Equipment should be aligned with those of the International Electromechanical Committee (IEC).

Prefabricated Housing and Building

- "Article 38" requirements for system approvals should be eased by reducing the number of test data required and moving towards a performance specification based system.

- Eliminate defacto requirements for "JIS", "JAS", or "BL" marks as a condition of preferential financing by official housing loan institutions.

- Imports of European structural wood products should be permitted.

Lead Oxide

Background

Japan is the biggest market for Lead Oxide, Litharge and Red Lead in the world, consuming more than 90,000 metric tons (mt) annually. Lead Oxide, containing about 93% of lead metal, is used mainly in the glass industry for TV-tubes, optical glass and crystal glass, in the PVC industry as stabiliser and dryer, and in the pigment industry for anticorrosive paint.

Over recent years there has been a decline in the local production of lead metal in Japan. The number of domestic producers of Lead Oxide has reduced from 5 in 1994 to 2 in 1997. Current annual domestic production is just above 30,000 mt, which represents one third of the market. The decreasing domestic supply of Lead Oxide, against the background of increasing demand, reflects the decline of Japan's competitive situation in this field. One explanation for the domestic decline is the stringent environmental legislation of industrialised countries. The growing Japanese demand has been counterbalanced by increased imports from South-East Asia and Mexico.

Key Problems

European producers account for less than 1,000 mt out of nearly 60,000 mt of Lead Oxide imports by Japan — the balance coming entirely from newly industrialised countries. This is all the more disturbing as the major European producer is not only one of the biggest producers worldwide, but also has substantial sales to Japanese transplants in the Far East.

Discrimination against Europe
The reason for this situation lies in the fact that product of European origin is subject to a 5% import tax. However, recent experience has proven that this import tax is totally inappropriate to protect Japanese domestic production. Almost 100% of Lead Oxide imports are supplied by countries enjoying Generalised System of Preferences (GSP) treatment, thus being exempt from import taxes. In fact the import tax affects exclusively European producers who represent less than 1% of market share.

Furthermore, this market access barrier has had a negative impact on the environment. Over the last 5 years, new production capacities have developed in geographical areas, particularly South East Asia, where pollution control remains far below European and Japanese standards. China, Taiwan, and Mexico have benefited in terms of market share from this distortion of international trade.

The GATT Uruguay Round has defined a reduction of import tariffs from about 5% in 1997 to 4.7% in 1999 which is completely unsatisfactory, and the fact that only European producers are penalised by import duties is unacceptable. This duty does not protect domestic Lead Oxide producers, it is merely discriminatory.

European Lead Oxide producers are further penalised by the fact that they only have influence on the treatment charge from lead metal to lead oxide, representing approximately 20% of sales value, whereas the import duty applies to 100%. This constitutes a formidable leverage multiplying the effect of the duty fivefold.

Recommendations

- The EBC requests the total abolition of any taxes on Lead Oxide which penalise European producers.

Fused Aluminium Oxide (Corundum)

Background

After China, Japan is the largest market for Fused Aluminium Oxide in all Asia, consuming annually more than 160,000 metric tons (mt). Fused Aluminium Oxide, also called Artificial Corundum, is used mainly in the abrasive industry for grinding wheels, sand paper or loose grain applications like grinding and polishing of glass, and electronic components. It is also used in the refractory industry for the production of refractory bricks, and the ceramic industry for special components used in diverse industries, such as isolators, electronic components, etc.

The number of domestic producers has declined steadily, from seven in 1985 to four in 1997. Actual domestic production is well below 50,000 mt annually, and limited to certain product types. Out of 12 categories, only four are still produced "melted" in Japan. Some categories cannot be purchased from countries enjoying the Generalized System of Preferences (GSP). This penalises the Japanese end users and increases the price for imported Corundum.

Electricity costs and environmental legislation are among the expenses which have aggravated Japan's competitive position. As domestic demand has remained stable during the last ten years, the balance is covered by imports from diverse sources like China, CIS, Brazil, Hungary and others.

Key Problems

Western European countries supply only 3,500 mt of Japan's annual average imports of 120,000 mt. European producers, who are among the worldwide leaders in the field, have much larger market share in other lower consumption countries. The reason for this situation in Japan is the 3.5% Import Tax levied on materials of European origin.

Material imported into Japan is almost all supplied by countries enjoying the Generalized System of Preferences, and is exempt from import duty. The current import tax effectively impacts only the European producers and does not even protect domestic producers. The recent cosmetic reduction in the import tax from 3.7% down to 3.5%, as part of further reductions in the coming years, will have no positive influence on the development of the market by European producers.

Recommendations

- EBC requests that the current 3.5% duty be removed for all countries exporting Fused Aluminium Oxide to Japan, creating fairer competition between exporting countries. The duty of 3.5% is not very high, but as Fused Aluminium Oxide is sold worldwide under transparent prices, the lower quality product line is particularly sensitive to the slightest price differential.

- Abolition of the duty would benefit Japanese users as well as Japanese producers, who would be able to use the superior quality European product, thereby enhancing end-product quality, and making it more attractive to customers worldwide.

Nickel

Background

The annual world consumption of Nickel is 800,000 tons of which 60% is used in the manufacture of stainless steel. The availability of Nickel has increased dramatically in recent years. The collapse of the USSR has given the world access to major Nickel quantities in Russia, in addition to large deposits being discovered in Canada. There will therefore be no shortage of Nickel for years to come.

Japan's annual consumption of Nickel is about 200,000 tons, and as there are no minerals in Japan which can be used for Nickel production, all raw materials have to be imported. Japan currently imports Nickel minerals as Matte or Nickel ore for its own Nickel production.

Domestic Nickel production is only 130,000 tons, the maximum possible from present facilities, and therefore Japan must import 70,000 tons of processed Nickel.

Key Problems

Imports of Nickel Matte and Nickel ore are exempt from duty, as is Nickel imported from countries enjoying the Generalized System of Preferences (GSP), however, Nickel imported from Europe and USA is penalised by a 5% duty.

The world Nickel price is based on the London Metal Exchange quotations. A 5% import duty on an average Nickel price of 3.50 US$/Lb represents 0.18 US$/Lb, which is far too high a premium for a major customer to accept.

The duty was originally imposed to support the Japanese Nickel manufacturing industry and Japanese Nickel producers have utilised this protection to increase their production facilities by 30% since 1991, whereas Japanese consumption increased by only 20%.

Not only are Japanese Nickel customers disadvantaged by the artificially high price of Nickel manufactured in Japan, but Japanese Nickel producers are now selling their excess Nickel to third countries at the lower world price level. Japanese stainless steel manufacturers are thereby indirectly subsidising sales of less expensive Japanese Nickel to their main competitors.

Korea and Taiwan have over the last ten years built a new, modern and very competitive steel industry, and they are still in the process of expanding the sector. This has created an oversupply of stainless steel in Asia which has triggered a strong and continuing reduction in price. Most Japanese stainless steel producers, whose mills are relatively small compared to the new Asian rivals, are suffering losses as well as seeing their markets in Asia and at home under strong pressure.

Recommendation

- Japan should lift the import tax on all Nickel products in line with other major consumer countries.

Appendices

Overview of European Companies Market Shares in Japan

Sector	EBC % share	ACCJ* % share	Japanese % share	Total Market in ¥ Bill.
Helicopters	19	24	57	-
Passenger aircrafts	25	75	-	-
Satellite	2	20	78	100
Airline	7	-	-	-
Agro	40	30	30	400
Animal-Health	35	30	35	-
Assets M. Pension	0.8	0.3	98.9	224,000
Assets M. Mutual	2	2	96	45.00
Auto-Parts	1.1	1.7	95	9,700
Automobiles	5.6	1.1	93.3	-
Banking	<1	-	-	-
Construction	<1	<1	>98	80,000
Cosmetics	9.4	-	-	1,463
Cut-Flowers	2	-	-	800
Food	10	30	32	-
Insurance	0.2	2.5	88	40,000
Liquor	5	3	92	6,656
Med.-Diagnostics	16	18	66	254
Med.-Equipment	18	-	-	-
Pharmaceuticals	18	-	-	6,500
Securities	11	12	-	-
Shipping	20	20	35	-

**American Chamber of Commerce in Japan*

Abbreviations

ACCJ	American Chamber of Commerce in Japan
ARIB	Association of Radio Industries & Business
BL	Better Living Code or Standard
BoJ	Bank of Japan
CLEPA	Liaison Committee, Automotive Components, Equipment Industry
CSIMC	Central Social Insurance Medical Council
EBP	Employment Benefit Pension
EC	Electronic Commerce
EIAJ	Electronic Industry Association of Japan
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
ISAS	Institute of Space and Astronautical Sciences
ISDN	Interpreted Service Digital network
ITM	Investment Trust Management
ITU	International Telecommunications Union
IVD	In-Vitro Diagnostics
JACR	Japan Association of Clinical Reagents Industries
JAMA	Japan Automotive Manufacturers Association
JAS	Japan Agricultural Standards
JATE	Japan Approval Institute for Telecommunication Equipment
JFSA	Japan Foreign Steamship Association
JIS	Japan Industrial Standards
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
NTT	Nippon Telegraph & Telephony Corp.
OTO	Office of the Trade and Investment Ombudsman
SDH	Synchronous Digital Hierarchy
TNM	Telecommunication Network Management
TQP	Tax Qualified Pension
TSE	Tokyo Stock Exchange
TTC	Telecommunication Technology Committee
WIPO	World Intellectual Property Organisation

Japanese words used in the text

Bengoshi	Lawyer
Chosakai	Investigation Sub-committee Examination
Dango	Manipulated bidding
Gaikokuho jimu bengoshi (gaiben)	Foreign lawyers licensed in Japan to practice international law
Gaikoku ho	Foreign law
Kansai	West Japan, Osaka area
Kansenken	National Institute of Infectious Disease
Keidanren	Federation of Economic Organizations
Keiretsu	Collusion by affiliated companies
Keishin	New Evaluation Rule for Construction
Nichibenren	Japanese Federation of Bar Associations
Nikko-kyo	Japan Harbor Transportation Association
Sekkei-seko	Design and construction
Shizensui	Natural water
Tanshi	Money market dealers
Tokute kyodo-jigyo	Manipulated bidding
Iyakuhin kiko	Organization of Adverse Drug Reaction Relief, Research and Development Promotion and Product Review
Yoken	Documentation and laboratory testing
Zaitech	Companies playing the stock market

Presidents and Executive Directors of National Chambers of Commerce and Industry in Japan

Austria

Mr Horst Mueller
President
Hoerbiger Nippon K.K.
87-4, Honjo
Narita City
Chiba 286-01
Tel: 0476 35 4011
Fax: 0476 33 0833

Mr Wolfgang Penzias
Austrian Trade Commissioner
Commercial Section
Austrian Embassy
13-3, Motoazabu 3-chome
Minato-ku, Tokyo 106
Tel: 3403 1777
Fax: 3403 3407

Belgium-Luxembourg

Mr Laurent Swinnen
Chief Representative
Petrofina Japan
Nishikawa Building, 6F
3-5-19, Kojimachi
Chiyoda-ku, Tokyo 102
Tel: 3237 1803
Fax: 3237 1804

Mr Yukihiko Sato
Executive Director
Ichibancho Central Bldg., 802
22-1, Ichibancho
Chiyoda-ku, Tokyo 102
Tel: 3237 9281
Fax: 3237 9282

Denmark

Mr Niels Horn
President
The East Asiatic Company (Japan) Ltd.
SVAX TS Building 5F
1-22-12, Toranomon
Minato-ku, Tokyo 105
Tel: 3503 5321
Fax: 3503 3297

Mr Claes Devantier
DCCJ Secretary
Maersk K.K.
Palace Bldg.
1-1-1, Marunouchi
Chiyoda-ku, Tokyo 100
Tel: 3211 7611
Fax: 3211 7819

Finland

Mr Rauno Sirola
President
Vaisala K.K.
42, Kagurazaka 6-chome
Shinjuku-ku, Tokyo 162
Tel: 3266 9611
Fax: 3266 9610

Mr Kimmo Jarvinen
Executive Director
Embassy of Finland, Trade Office
3-5-39, Minami-Azabu
Minato-ku, Tokyo 106
Tel: 3442 2391
Fax: 3440 6013

France

Mr Gaël Austin
Representative Director
PMC Co. Ltd
PMC Bldg, 6F
1-23-5, Higashi Azabu
Minato-ku, Tokyo 106
Tel: 3585-1135
Fax: 3585-1134

Mr Alain Soulas
Executive Director
Iida Building
5-5, Rokubancho
Chiyoda-ku Tokyo 102
Tel: 3288 9621
Fax: 3288 9558

Germany

Dr Ludwig H. Bonacker
President & Chief Executive Officer
Boehringer Mannheim K.K.
3-10-11, Toranomon
Minato-ku, Tokyo 105
Tel: 3432 4340
Fax: 5472 8179

Mr Manfred Dransfeld
Executive Director
Sanbancho KS Building, 5F
Sanbancho, 2 Banchi
Chiyoda-ku, Tokyo 102
Tel: 5276 9811
Fax: 5276 8736

Ireland

Mr Declan Collins
Director
The Irish Trade Board
Ireland House
2-10-7, Kojimachi
Chiyoda-ku, Tokyo 102
Tel: 3263-0611
Fax: 3263-0614

Italy

Mr Diego Delorenzi
Deputy General Manager
Assicurazioni Generali
Ark Mori Building W30F
1-12-32, Akasaka
Minato-ku, Tokyo 107
Tel: 5562-8695
Fax: 5562-8690

Mr Eliano Fiore
Executive Secretary General
Kojimachi Tsuruya-Hachiman Bldg. 4F
2-4 Kojimachi
Chiyoda-ku, Tokyo 102
Tel: 5276 3388
Fax: 5276 3325

The Netherlands

Mr H. van Noord
Chief Executive Officer
P&O Nedlloyd (Japan) K.K.
Omori Bellport D-Wing, 13F
6-26-3, Minami-Ohi
Shinagawa-ku, Tokyo 140
Tel: 5764 0351
Fax: 5764 0399

Mrs Maaike Evers
Secretary
c/o KLM Royal Dutch Airlines
Yurakucho Denki Bldg., N-15F
1-7-1, Yurakucho
Chiyoda-ku, Tokyo 100
Tel: 3211 5390
Fax: 3211 5390

Sweden

Mr Jan Heiniö
President
Pharmacia-UpJohn K.K.
Shuwa Kamiyacho Building
3-13, Toranomon 3-chome
Minato-ku, Tokyo 105
Tel: 5402- 8600
Fax: 5402-8603

Ms Yuko Nikaido
Secretary
Kioicho Fukudaya Building
6-12, Kioicho
Chiyoda-ku, Tokyo 102
Tel: 5211 2101
Fax: 5211 2102

Switzerland

Dr Felix Bossert
Chief Representative
Swiss Reinsurance Company
Representative Office Tokyo
Otemachi First Square, 9F
1-5-1, Otemachi
Chiyoda-ku, Tokyo 100
Tel: 3272 2877
Tax: 3271 0990

Ms Kiyoko Harris
Secretary
CS Tower
1-11-30, Akasaka
Minato-ku, Tokyo 107
Tel: 3587 1122
Fax: 3587 2266

United Kingdom

Mr Richard J. B. Neal
President
John Swire & Sons (Japan) Ltd
Swire House
14, Ichibancho
Chiyoda-ku, Tokyo 102
Tel: 3230 9300
Fax: 3234 5107

Mr Ian de Stains, OBE
Executive Director
3rd F, Kenkyusha Eigo Centre Bldg.
1-2, Kagurazaka
Shinjuku-ku, Tokyo 162
Tel: 3267 1901
Fax: 3267 1903

The Executive Operating Board (EOB)

Chairman	Mr Peter Woods
Vice Chairmen	Ms Isabelle Hupperts Dr Koen Kruijtbosch Mr Nils Hornmark Mr Pierre Sevaistre Mr Rudolph Chytil Mr Wolfgang Haas Mr Alberto Montanari Mr Claus Eilersen Mr Jukka Suomela
Executive Director	Mr Keld Hammering
Secretary to the Council	Ms Catharina Robson

EBC Sector Committees

Aeronautics & Space Committee

Chairman: Dr J-L. Claudon	Arianespace
Members:	Aerospatiale
	Airbus Industrie
	Air Liquide Teisan
	Alcatel ITS Japan Ltd.
	British Aerospace International Ltd.
	Daimler-Benz Aerospace (Dasa)
	Eurocopter
	Finmeccanica/Agusta-Alenia-FIAR-OtoBreda
	GEC-Marconi (Japan) Ltd.
	GKN Westland Helicopters Ltd.
	Pechiney Japon
	Rolls-Royce International Ltd.
	Sextant Avionique
	SNECMA Tokyo Liaison Office
	Thomson-CSF Japan K.K.

Airlines Committee

Chairman: Mr R. Kaptur	Lufthansa German Airlines
Members:	Air France
	Alitalia Airlines
	Austrian Airlines
	British Airways
	Cargolux Airlines International
	Iberia, Lineas Aereas de Espana
	KLM Royal Dutch Airlines
	Lufthansa Cargo AG
	Sabena Belgian World Airlines
	Scandinavian Airlines System
	Swiss Air Transport Co.
	Virgin Atlantic Airways

Animal Health Committee

Chairman: Mr A. G. Amend	Bayer Ltd.
Members:	Intervet K.K.
	Janssen-Cilag K.K.
	Nippon Hoechst Marion Roussel, Ltd.
	Nippon Roche K.K.
	Novartis Agro K.K.
	Rhone Merieux
	SDS Biotech K.K.

Asset Management Committee

Chairman: Mr P. H. Wolton — Schroders Investment Management (Japan) Ltd.

Members:
- Baring Asset Management (Japan) Ltd.
- Commerz International Capital Management (Japan) Ltd.
- Credit Lyonnais International
- Deutsche Morgan Grenfell Asset Management (Japan) Ltd.
- Dresdner RCM Global Investors Japan Limited
- Indosuez Asset Management (Japan) Ltd.
- Jardine Fleming Investment Trust & Advisory Company Ltd.
- Lazard Japan Asset Management K.K.
- Mercury Asset Management Japan Ltd.
- NatWest Gartmore Investment Management Japan
- Paribas Asset Management Japan Ltd.
- Pictet Asset Management (Japan) Ltd.
- Rothschild Asset Management (Japan) Ltd.

Automotive Components Committee

Chairman: Mr H. Hornberger — Mannesmann Japan Corporation

Members:
- A.P. Japan Ltd.
- AVL Japan K.K.
- BASF Engineering Plastics K.K.
- Bertrand Faure Japon K.K.
- Bosch K.K.
- Freudenberg & Co.
- Générale de Belgique - Recticel
- Getrag
- Hoechst Japan K.K.
- Hoerbiger Nippon K.K.
- ITT Aumotive Europe
- Johnson Matthey
- Keiper Recaro K.K.
- Lebranchu - Sofedit
- Lectra Systems Japan Ltd.
- Lemförder Metallwaren International GmbH
- Lucas K.K.
- Magneti Marelli S.P.A.
- Michel Thierry
- Nihon Michelin Tire K.K.
- Nihon Saint Gobain K.K.
- Nippon Solvay K.K.
- Pirelli K.K.
- Plasto (Fournier Group) Japan
- PMC (for ECIA) K.K.
- Raymond K.K.
- Seric K.K.
- Siemens Automotive
- Sika K.K.
- Teksid
- Telma-Labinal
- Valeo Japan K.K.
- Waeles
- ZF Japan K.K.

Automobile Committee

Chairman: Mr R. G. Murray	Inchcape Peugeot Japan Co., Ltd.
Members:	ACEA European Automobile Manufacturers Assoc.
	BMW Japan Corp.
	Citroen Japon Co., Ltd.
	Fiat Auto Japan Ltd.
	Mercedes-Benz Japan Co., Ltd.
	Nicole Automobiles Co., Ltd.
	Opel Japan
	Renault Export Japon
	Renault Tokyo Liaison Office
	Rolls-Royce Motor Cars Ltd.
	Rover Japan Ltd.
	Volkswagen Group Japan K.K.
	Volvo Cars Japan Corp.

Banking Committee

Chairman: Mr R. Stenram	Swedbank
Members:	ABN AMRO Bank N.V.
	Banca Commerciale Italiana
	Banco Central Hispanoamericano
	Banco di Roma
	Bank Austria Aktiengesellschaft
	Bank Bruxelles Lambert, S.A.
	Banque Nationale de Paris
	Barclays Bank
	Credit Lyonnais
	Den Danske Bank
	ING Bank N.V.
	Unibank A/S
	Westdeutsche Landesbank

Construction Committee

Chairman: Mr A. Abut
Members:

Atlantis Associates Co., Ltd.
Berthier Associates Co., Ltd.
Ca et la
Clestra Hauserman K.K.
Currie & Brown
Dic-Degremont Co.. Ltd.
Entreprise Co., Ltd.
Grohe Japan Ltd.
Hamon Japan
Junkers
Kvaerner
Legrand
Midas International
Nihon Saint Gobain K.K.
Pechiney Japon
PMC (Rocamat)
Rockwool International
Schal Bovis
Sika Ltd.
S'International Architects
Siplast
Ten Cate Nicolon
Trenité van Doorne
Vest Tech Ltd.

Cosmetics Committee

Chairman: Mr D. Ashley
Members:

Nihon L'Oréal K.K.
Chanel K.K.
Clarins K.K.
CTF Marketing Co., Ltd.
Elle International Co., Ltd.
Guerlain K.K.
Mary Cohr Japon Inc.
Parfums Christian Dior (Japon) K.K.
Parfums Givenchy K.K.
Parfums Nina Ricci Japon K.K.
Pierre Fabre Japon Co., Ltd.
Schwarzkopf K.K.
Thalgo Cosmetic Japon Co., Ltd.
The Boots Company Japan K.K.
Wella Japan Co., Ltd.
Yves Saint Laurent Parfums K.K.

Capital Goods, Engineering and Machinery Committee

Chairman: Mr H. Wittich — JBS Inc.
Members:
Bosch K.K.
C. Correns & Co., Ltd
Cosa Liebermann K.K.
Frigoscandia K.K.
Irisu Shokai K.K.
Marposs K.K.
Svenska Höganäs K.K.

Cut Flower Committee

Chairman: Mr J. van der Valk — Greenwings Japan Inc.

Food Committee

Chairman: Mr J. Partos — Nichifutsu Boeki K.K.
Members:
Arcane Limited
Bresse Bleu Japon K.K.
Copenhagen Pectin Factory
Crédit Agricole Indusuez
Cultor Food Science K.K.
Danisco Ingredients Japan
Danone International Brands Japan Co. Ltd.
DMV Japan
ESS Food Japan
Finland House Co.
Food From Britain
Foodane
Francexpa Japan
French F & B Japan Co., Ltd.
Fromageries Bel
GEO. Wehry International
Japan Europe Trading Co., Ltd.
Marie Brizard Japon
MD Foods Ingredients (Japan) Ltd.
Nestlé Japan Ltd.
Nippon ESS Food
Nippon Lever B.V.
Perrier Japon K.K.
Royal Greenland Japan Ltd.
SOPEXA
Sorinter Corporation

Insurance Committee

Chairman: Mr G. Mordret	Union des Assurances de Paris (UAP)
Members:	Alexander Howden
	Allianz Fire & Marine Insurance Japan Ltd.
	Aon Risk Services
	Assicurazioni Generali S.p.A.
	Assurances Generales de France (AGF)
	AXA Representative Office
	Bain Clarkson Japan Ltd.
	Cologne Re Tokyo
	Commercial Union Assurance Co. plc
	Eagle Star Insurance Co., Ltd.
	GAN Incendie Accidents
	Gerling-Konzern
	ING Life
	Jardine Insurance Agency Ltd.
	Le Blanc de Nicolay Reassurance
	Minet Ltd.
	Royal Exchange Assurance
	Royal Insurance/BIG
	SCOR Asia-Pacific Office
	Sedgwick Japan Ltd.
	Skandia AFS
	Willis Corroon Japan
	Zurich Insurance Co.

Investment Committee

Chairman: Mr W. Kortekaas	Euroact B.V.
Members:	A.T. Kearney
	Banca di Roma
	Dr. Neumann & Partner
	Finmeccanica
	Gambit International Co. Ltd.
	Hastex International Co. Ltd.
	KPMG Corporate Finance
	Merita Bank Ltd.
	Roland Berger & Partners Ltd.
	Schroders Japan

Legal Services Committee

Chairman: Mr J. Inman	Linklaters & Paines
Members:	Allen & Overy
	Ashurst Morris Crisp
	Clifford Chance
	Denton Hall
	Dr. Neumann & Partner
	Freshfields
	Gide Loyrette Nouel
	Haarmann, Hemmelrath & Partners
	Lovell White Durrant
	S & E Ltd.
	Tokyo Aoyama Law Office
	Trenité van Doorne
	White & Case
	Wilde Sapte

Liquor Committee

Chairman: Mr B. Fitzgibbon	United Distillers Japan Limited
Members:	Allied Domecq Spirits & Wine (Overseas) Limited
	BB & R Japan Ltd.
	Heublein Japan Limited
	Jardine Wines & Spirits K.K.
	Kirin Seagram Limited
	Nippon Hellenika Co., Ltd.
	Pernod Ricard Japan K.K.
	PMC Co., Ltd.
	Remy Japon K.K.

Medical Diagnostics Committee

Chairman: Dr U. Deneke	Boehringer Mannheim K.K.
Members:	bioMérieux-Vitek Japan, Ltd.
	CIS Diagnostics K.K.
	Hoechst Behring Diagnostics Ltd.
	Nippon Roche K.K.
	Nippon Sanofi Co., Ltd.
	Organon Teknika K.K.
	Ortho-Clinical Diagnostics K.K.
	Pharmacia & Upjohn Diagnostics
	SCETI Co., Ltd.
	Tecan Japan Co., Ltd.

Medical Equipment Committee

Chairman: Dr E. Lee — Siemens-Asahi Medical Technologies Ltd.

Members:
- Aesculap Japan Co., Ltd.
- Afga-Gevaert Japan, Ltd.
- AVL Medical Instruments
- Boehringer Mannheim K.K.
- CIS Diagnostic K.K.
- Dornier Medical Systems Co., Ltd.
- Draeger Japan Ltd.
- ELA Medical Japan Co., Ltd.
- ELEKTA MANSSON K.K.
- Japan BXI Incorporated
- Odelft Japan Limited
- Philips Medical Systems Corporation
- Radiometer K.K.
- Smiths Industries Japan Ltd.
- SULZERmedica Japan K.K.
- Teisan K.K.

Patents, Trademarks and Licences Committee

Chairman: Mr L. Dubois — Gide Loyrette Nouel

Members:
- Bekaert Japan N.V.
- Dr. Neumann & Partner
- Petrofina Japan
- Philips Japan
- Sonderhoff & Einsel Law Office

Pharmaceutical Committee

Chairman: Mr P. Borgas
Members:

Boehringer Ingelheim Japan
Astra Japan Ltd.
Bayer Yakuhin Ltd.
Boehringer Mannheim K.K.
CIS Diagnostic K.K.
Degussa Japan Co., Ltd.
Fournier Group Japan
Fujisawa-Fisons Co., Ltd.
Itasco A.G. Representatives
Janssen-Kyowa Co., Ltd.
Knoll Japan K.K.
Laboratoire Guerbet
Merck Japan Limited
Nihon Schering K.K.
Nihon Servier Co., Ltd.
Nippon Glaxo Ltd.
Nippon Hoechst Marion Roussel Ltd.
Nippon Organon K.K.
Nippon Roche K.K.
Nippon Sanofi Co., Ltd.
Nippon Wellcome K.K.
Novatis Pharma K.K.
Novo Nordisk Pharma Ltd.
NYCOMED K.K.
PASTEUR MÉRIEUX Sérums & Vaccins K.K.
Pharmacia & Upjohn Ltd.
Rhone-Poulenc Rorer Japan, Inc.
SCETI Co., Ltd.
Serono Japan Co., Ltd.
SmithKline Beecham Seiyaku K.K.
Solvay Seiyaku K.K.
Synthélabo Pharmaceuticals K.K.
UCB Japan Co., Ltd.
ZENECA K.K. Pharmaceuticals

Raw Materials Committee

Chairman: Mr M. Teuscher	Treibacher Schleifmittel East Asia
Members:	Elkem Japan K.K.
	Eramet Japan
	Heraeus K.K.
	Höganäs Japan K.K.
	Lafarge Svenska Höganäs K.K.
	Outokumpu Japan K.K.
	Pechiney Japon
	Rhone-Poulenc
	SKW East Asia Ltd.
	Sogem Japan K.K.
	Thyssen Nippon Co. Ltd.
	Uddeholm K.K.

Securities Committee

Chairman: Mr A. W. Simmonds	BZW Securities (Japan) Limited
Members:	ABN AMRO Securities (Japan) Ltd.
	Bank Brussels Lambert
	BNP Securities (Japan) Ltd.
	BV Capital Markets (Asia) Ltd.
	Cazenove & Co. (Japan) Ltd.
	Commerzbank AG
	Credit Lyonnais Securities (Japan)
	Den Danske Bank
	Deutsche Morgan Grenfell Capital Markets Ltd.
	DG Securities Tokyo Branch
	Dresdner Kleinwort Benson (Asia) Ltd.
	HSBC James Capel Japan Ltd.
	Indosuez W.I. Carr Securities (Japan)
	ING Baring Securities (Japan) Ltd.
	Jardine Fleming Securities (Asia) Ltd.
	Mees Pierson N.V.
	NatWest Securities Japan Ltd.
	Paribas Capital Markets Ltd.
	SBC Warburg Japan Ltd.
	Schroders Japan Ltd.
	Société Générale Securities
	UBS Securities Limited
	Unibank A/S
	West LB Securities Pacific Ltd.

Shipping Committee

Chairman: Mr H. Van Noord	P&O Nedlloyd
Members:	Hapag-Lloyd (Japan) Ltd.
	Mærsk K.K.

Tax Committee

Chairman: Dr A. Paufler
Members:
Mercedes-Benz Japan Co., Ltd.
Arthur Andersen & Co.
BASF Ltd.
Bayer Ltd.
Ciba Speciality Chemicals K.K.
Haarmann, Hemmelrath & Partner
Jardine Wines and Spirits K.K.
KPMG Peat Marwick
Loyens & Volkmaars
Nestlé Japan Ltd.
Novartis Japan K.K.
Price Waterhouse
Rhone-Poulenc Japan Ltd.
Sonderhoff & Einsel
Union Bank of Switzerland Ltd.
Volkswagen Audi Nippon K.K.

Telecommunications, Information Processing Committee

Chairman: Mr D. McGarva
Members:
ICL Japan Branch
Access PlanNet
Alcatel
Arianespace
Barco Co., Ltd.
British Aerospace International Ltd.
British Telecom Japan
Bull K.K.
Cable & Wireless Japan Ltd.
Chorus Systems K.K.
Daimler-Benz, Technology Japan
Deutsche Telekom K.K.
France Telecom Japan Co., Ltd.
GN Great Northern Telegraph Company
GEC-Marconi (Japan) Ltd.
International Digital Communications, Inc.
Jenkyn Associates International K.K.
Nippon Ericsson K.K.
Nokia Mobile Phones (Japan) K.K.
Olivetti Corporation of Japan
Philips Japan Ltd.
PTT Telecom Netherlands
Schneider
SGS-Thomson Microelectronics K.K.
Siemens K.K.
Tecnomen Japan
Telecom Italia
Telia Asia (Japan) Ltd.
Thomson CSF Japan K.K.
Unisource Japan Ltd.
Wandel & Goltermann K.K.