



EBC

Supporting the Reform Process

The EBC Report on the Japanese Business
Environment
2001

**The
European Business Community
In Japan**

The European Business Community in Japan

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The EBC is the trade policy arm of the following European business organisations in Japan:

Austrian Business Council
Belgium-Luxembourg Chamber of Commerce in Japan
British Chamber of Commerce in Japan
Danish Chamber of Commerce in Japan
Enterprise Ireland
Finnish Chamber of Commerce in Japan
French Chamber of Commerce and Industry in Japan
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About the EBC:

The European Business Community (EBC) is the trade policy arm of the 13 European National Chambers of Commerce and Business Associations in Japan. First established in 1972, the EBC works to improve the trade and investment environment for European companies in Japan.

The EBC currently represents more than 3,000 local European companies and individuals who are members of their national chambers of commerce. Around 360 of the companies participate directly in the EBC's 27 industry committees and subcommittees, whose work aims to improve the local business environment in a wide variety of economic sectors.

EBC speaks from a platform based on member consensus, representing the common view of companies from a major economic region in the world and one of Japan's most important trading partners.

The EBC works closely with the Delegation of the European Commission in Japan and the embassies of European countries to co-ordinate policy proposals and facilitate European business in Japan.

For more information on the EBC and its activities, please contact the EBC secretariat at the following address:

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Message from the Chairman

The EBC Report on the Japanese Business Environment 2001 has been published by the European Business Community (EBC) to lend support to the current reform process by identifying the unresolved issues affecting European companies doing business in Japan. Reflecting the depth of practical experience, views and recommendations of industry experts within EBC committees and member companies, this publication covers 27 key areas and provides an up-to-date assessment of the current business environment in Japan.



For the most part, European firms face the same issues as their Japanese counterparts – how to cope with stagnant economic growth, how to improve operating efficiency in an increasingly competitive market environment, and how to respond to developments such as the information technology revolution.

And just like its Japanese counterparts, the EBC feels that much more could be done to improve the environment for businesses operating in Japan. The EBC supports the current Cabinet’s apparent commitment to reform, and urges the Japanese Government – as part of the current reform process – to address the priority issues identified in this publication.

I would like to thank the EBC members for their ongoing contribution of time and effort to support EBC’s sector-based committees. Without the valuable insight drawn from their industry experience, this publication could not have been produced.

I would also like to thank the Delegation of the European Commission in Japan and the European National Embassies in Tokyo for their expertise and support of EBC activities.

Many EBC members deserve special recognition for their generous financial contributions that allowed us to produce this report, and I am extremely proud to be able to list these supporters in the Special Sponsors and Sponsors section of this publication.

Isabelle Hupperts

Chairman,
European Business Community



Introduction

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introduction

“Reform” is the new watchword of the Japanese Government. The European Business Community in Japan (EBC) supports efforts by both the private and public sector to address the many challenges companies currently face doing business in Japan. European companies have a long history in Japan and take an intimate interest in its recovery and continued development. Many European countries have undergone similar economic transformations in recent years, and the EBC welcomes every opportunity to share this experience.

Key issues:



- Structural reform** The new Koizumi Cabinet has promised fundamental reform in key areas such as health care, fiscal policy, urban renewal, and corporate restructuring. The EBC supports the goals of these reforms, as set out in official policy statements such as the Fiscal and Economic Policy Council’s blueprint for structural reform in Japan, which was approved by the Cabinet on June 26, 2001. The EBC also feels, however, that the success of policies aimed at privatising government-affiliated corporations, solving the bad-debt problem, redistributing public works spending, and promoting further deregulation will depend to a large extent on the ability of the Japanese Government to overcome vested interests and implement meaningful reform. This will not be easy. The EBC urges the Japanese Government to remain vigilant in its pursuit of reform for the benefit of business and society.
- Regulatory reform** Regulatory reform is high on the new Cabinet’s agenda. The old Regulatory Reform Committee has been upgraded to the status of official advisory council under the Cabinet Office, and its mandate has been expanded to include areas such as education and the environment. The EBC is pleased to report that the regulatory reform process that began under the Hashimoto Cabinet is starting to yield results. There have been noticeable improvements in sectors such as insurance and telecommunications, and the EBC is encouraged by such initiatives as the government-wide introduction of a Japanese-style “no-action letter” system. Having said this, the EBC feels that much more remains to be done. It is easier to get products approved for sale, but it still takes longer and costs more than in Europe. A persistent lack of transparency and clarity in the Japanese regulatory regime also makes it extremely difficult for firms to accurately predict the consequences of business decisions.

Introduction cont'd:

Regulatory reform is still very much needed in order to increase transparency and clarity in the regulatory regime, increase efficiency in the product approval process, increase harmonisation with international standards and practices, and to promote a truly competitive market environment. This would make it easier for companies to predict the consequences of regulatory decisions and introduce innovative new products to the Japanese market quickly and efficiently.

- **Legal system reform** Japan must develop a strong legal environment to support the ongoing reform process. This was the message contained in the final report of the Judicial Reform Council (JRC) released in June 2001. The EBC supports JRC proposals calling for, amongst other things, a more efficient civil trial process, improved disclosure laws, a drastic increase in the number of lawyers and judges, and strengthening of judicial competence. The EBC urges the Japanese Government to remove barriers within the legal profession to make it easier for firms to obtain the integrated legal services required to do business in an increasingly international environment. The JRC proposals should be implemented as soon as possible.
- **Commercial code reform** Major revisions are also being planned for the Japanese Commercial Code, which, if implemented, would drastically change corporate governance practices in Japan. While the EBC is encouraged by proposals to increase the role of independent directors on company boards, the EBC is concerned that other proposed changes would discriminate against foreign firms. Share-for-share exchanges, for example, are still likely to be restricted to domestic transfers. This would seriously inhibit the ability of foreign firms to pursue M&A opportunities in the Japanese market. The EBC is also very concerned that proposed changes would impose the same liability as is imposed on a participant in an unlimited partnership on a foreign company's representative in Japan. This would not only make it difficult for foreign firms to do business in Japan, but would also be ineffective in protecting domestic creditors – the original purpose of the reform.
- **Tax reform** The corporate tax regime in Japan is undergoing a period of fundamental change. Tax facilitated corporate reorganisations were introduced in FY2001, and a consolidated tax system is being planned for FY2002. While the EBC supports the principles underlying these reforms, the EBC also cautions that such substantive change should not be implemented without adequate consultation with the business community. Corporate tax reforms, including the proposed consolidated tax system, should first and foremost support corporate restructuring efforts, and not subject firms to an additional tax burden.



- **Healthcare reform** Healthcare reform continues unabated in Japan. An aging population and fiscal constraints have forced the Japanese Government to completely re-evaluate the medical system, including the money it spends on medical diagnostics, medical equipment and prescription medicines. As this reform process progresses, the EBC urges the Japanese Government to continue recognizing the important role innovative new products play in the deliverance of quality healthcare in Japan. Improvements should be made to the product approval process so that companies are able to introduce new products in a timely and efficient manner. Reimbursement prices set by the Japanese Government should also adequately reflect the economic and clinical benefits of individual technologies.
- **Financial reform** The issue of bad debts and non-performing loans is at the centre of the current Cabinet's reform efforts. The persistence of the bad debt problem has not only weighed heavily upon the Japanese economy, but has seriously undermined confidence in the Japanese financial system. The EBC supports the current Government's apparent determination to finally deal with this problem, but cautions that the slow implementation process is undermining the credibility of Japanese regulators achieved since the creation of the Financial Services Agency.
- **Pension reform** The Japanese Government recently passed legislation overhauling the corporate pension system. The new legislation introduces a defined contribution (DC) pension scheme to supplement the current defined benefit system, giving individuals a more active role in saving for their own retirement. The EBC is worried, however, that these reforms will not be implemented effectively. For one, the underlying general pension plan lacks clarity and suffers from restrictive funding requirements. As for the DC plan itself, the EBC is worried that tax-exempt amounts have been set too low, no matching contributions will be allowed, and individuals will not be able to withdraw reserves before they reach the retirement age of sixty.
- **Labour market reform** The new Cabinet has promised reforms to the Japanese labour market, with the goal of creating 5 million new jobs over the next five years. For this to happen, the EBC feels more emphasis should be placed on securing labour mobility through retraining and further deregulation. In principle, the EBC believes that labour and immigration laws should enable companies to efficiently allocate human resources both within and across national boundaries. The visa and work permit system should be re-evaluated to promote efficiency. Amongst other things, the EBC feels that the re-entry permit system should be abolished and minimum investment requirements for the investor/manager visa relaxed further.



Business

Fundamentals

**E-Commerce
Intellectual Property
Legal Services
Tax**

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e-commerce

Electronic commerce is rapidly becoming a major force in the global economy. As e-commerce continues to grow, there will be an increasing need to address issues in areas such as infrastructure, governance, security, content and consumer trust that will affect its development in Japan and around the world.

Key issues:



- **Internet access costs** The growth of e-commerce depends on the availability of inexpensive internet access for both businesses and residential customers. While costs have been coming down recently in Japan, a gap still exists with much of the industrialized world.

Recommendation: The EBC urges the Japanese Government to continue promoting competition in the provision of access services and the development of telecommunications infrastructure – the backbone of the Internet. Interconnection charges should be reduced further, and concrete measures implemented to secure further unbundling of the local loop.

- **Internet sales regulations** The EBC is pleased that the Japanese Government has adopted a position supporting the use of electronic signatures and independent authentication procedures. However, a number of legal and regulatory hurdles continue to hamper the development of e-commerce in certain sectors.

Recommendation: The EBC urges the Japanese Government to continue deregulating Internet sales activities in sectors such as insurance and the airline industry. The EBC also urges the Japanese Government to work with the international community in developing a global approach to authentication and the recognition of electronic signatures.

- **ISP liability** The Japanese Government is currently drafting legislation to address the issue of Internet Service Provider (ISP) liability. While the EBC supports efforts to clarify the legal issues surrounding this issue, the EBC is concerned that proposals to make ISPs liable for the value or harm caused by the content they carry would severely hamper the future of Internet service provision in Japan.

Recommendation: In principle, the EBC feels that liability should rest with the immediate offender, and not ISP intermediaries. Clear notice and takedown procedures and data disclosure guidelines (amongst other things) should be developed that do not unduly burden the provision of Internet services in Japan.

Background:

EBC E-Commerce Committee Member Companies

Absolutis Global Web Agency
Adcore Japan
Barclay Capital Japan
BT Japan
Cable & Wireless IDC
Coface Japan
DaimlerChrysler Japan
France Telecom Japan
Haarmann, Hemmelrath & Partner
Japon Net
Netprotections
Nippon Ericsson
OneWorld
Skandinaviska Enskilda Bank
STMicroelectronics

E-Japan

The Japanese Government has embarked on an ambitious “E-Japan” strategy with the stated goal of making Japan a powerhouse in the IT field by the year 2005. By that time, the government is aiming, amongst other things, for 30 million people in the country to have high-speed access to the Internet, and for the majority of government functions to be performed on-line. The EBC supports the underlying principles of the E-Japan Action Plan unveiled in March 2001. The success of this program, however, will depend to a large extent on the commitment of the current Japanese Government in implementing the Action Plan’s proposals.

Access to infrastructure

The E-Japan Action Plan clearly recognizes the importance of developing a cheap, reliable, and sophisticated telecommunications infrastructure to support e-commerce and the development of new information technologies. Recent developments include revisions to the Telecommunications Business Law (TBL) introducing asymmetrical regulations, as well as other measures making it easier for firms to access NTT’s fibre optic network, develop ADSL services, and access DoCoMo’s popular I-mode menus. Having said this, NTT dominance continues to inhibit the development of cheap, high bandwidth Internet access in Japan. More needs to be done to reduce interconnection fees, unbundle the local loop, secure access to fibre optic and other networks, and limit NTT’s ability to cross subsidize activities in Internet related activities (e.g. L-Mode).

Promoting user confidence

The development of e-commerce in Japan and around the world will depend to a large extent on the confidence of its users. The EBC supports recent Japanese Government initiatives to secure consumer trust. Legislation designed to protect consumers in e-commerce transactions has recently been introduced and METI has proposed the establishment of an Alternative Dispute Resolution mechanism to help deal with e-commerce disputes.

Intellectual property rights

The Unfair Competition Prevention Law was amended recently in response to an increase in “cyber squatting” disputes in Japan. This change gives the Japan Fair Trade Commission more power to investigate alleged violations and companies the right to claim for damages over trademark infringements. The EBC is also pleased to note that ISP and electronic marketplace providers have become more willing recently to adopt notice and take-down procedures in line with recommendations set out by organisations such as the Global Business Dialogue on Electronic Commerce (GBDe).

Legal environment

Electronic signatures now have the same legal status in Japan as paper-based transactions. Confirmation notices sent via e-mail are also now permitted. While these are very positive developments, the EBC would like to stress the importance of a clear and consistent legal environment to the development of e-commerce in Japan. Issues such as intermediary liability and the responsibilities of ISPs still need to be clarified, as recognized in the E-Japan Action Plan. It is important that this environment balances the interest of rights holders on the one hand, and efficient provision of Internet services on the other.

Deregulation

The EBC firmly supports a report issued in 2000 by the former Regulatory Reform Committee containing a number of practical proposals designed to liberalize the environment for electronic transactions in Japan. The EBC was disheartened, however, at the level of opposition these proposals provoked within the various Agencies and Ministries regarding issues affecting their respective regulatory jurisdictions. These attitudes need to change if Japan is to achieve its goal of becoming an IT powerhouse by the year 2005.

intellectual property

Protection of intellectual property rights is becoming more and more important with the rapid development and incorporation of technology and software into the Japanese economy. In recognition of the increasing importance of intellectual property rights protection to the Japanese economy, the Japanese Government has made an effort in recent years to improve the application process for rights procurement and enforce applicable laws. The EBC is encouraged by these developments and urges the Japanese Government to continue to address the issues outlined below.

Key issues:



- **Legal process** The Judicial Reform Council (JRC) submitted a report in June 2001 recommending, amongst other things, further improvements be made in areas such as disclosure and judicial efficiency relating to intellectual property issues. Despite recent changes to Japanese Patent Law, the JRC recognized that it is still difficult for right holders to identify target goods and to prove there has been an infringement. Patents are commonly given only a narrow scope of protection and it has proven difficult to collect evidence against an infringement.

Recommendation: The EBC encourages the Japanese Government to quickly implement the JRC proposals, placing special priority on strengthening judicial or administrative means for a patent owner to obtain information about suspected infringements, extending the interpretation of design claims to protect against minor modifications, and increasing judicial competence to deal with intellectual property rights issues.

- **Border control** Japanese Customs remains the sole authority for seizing goods imported into Japan. Unlike in Europe, neither rights owners nor defendants have any input in principle into Customs decisions. As the process is subject to an administrative (and not judicial) procedure, it is difficult for rights holders to procure information or trace counterfeiters outside of Japan.

Recommendation: Procedures for seizing suspected counterfeit goods at the Japanese border should be subject to a more transparent judicial process. In order to alleviate Customs liability and workload, the burden of proof should be shared between the importer and the rights holder. As an important first step, the EBC welcomes the recent Customs decision to stop the practice of simply reshipping (refusing) goods suspected of rights infringements.

Background:

Disclosure rules

In the past, inadequate disclosure laws and procedures for collecting evidence have made it extremely difficult for rights holders to both identify and prove infringements. In recognition of this problem, the Japanese Government implemented measures in January 2000 designed to facilitate proof of infringement, such as expanding the order to produce documents and establishing a new special provision for active denial (*sekkyoku hinin*).

Despite these changes, it is still difficult for a right holder to prove there has been an infringement.

The Judicial Reform Council has specifically pointed out the necessity of further improvement in the procedure for collecting evidence, to which the EBC lends its wholehearted support.

Damage awards

Awards for damages in intellectual property right claims should adequately reflect the economic impact of the infringement. This has not always been the case in Japan, where small awards for damage rarely reflect the economic impact a violation has had on the rights holder.

This seems to be slowly changing, however, in part as a result of changes to the Patent Law in January 1999. Damage awards have shifted from a royalties based system to a profit based system and an expert witness system has been established whereby an impartial third party (an expert on damage calculation) reviews documents necessary for the calculation of damages and reports the items necessary for the calculation of damages to the court.

Strengthening the judicial system

The new code of Civil Procedure has granted the Tokyo and Osaka District Courts concurrent jurisdiction for cases related to patent rights, utility model rights, etc. The Judicial Reform Council has further recommended that the specialized functions of these courts be enforced by increasing the number of judges with intellectual property expertise, increasing the number of specialized court research officials, introducing an expert commissioner system, and granting these courts exclusive jurisdiction in cases related to intellectual property right issues. The EBC supports these proposals and urges the Japanese Government to implement these measures as quickly as possible.

Patent Attorneys

The EBC remains concerned that there are not enough lawyers to deal with the amount of intellectual property rights claims in Japan. While the EBC recognizes that reforms to the Patent Attorney Law in 2000 greatly expanded the scope of patent attorney business, strict codes of conduct still prevent *Benrishi* (patent attorneys) from representing clients in court. Again, the EBC supports JRC recommendations that patent attorneys be able to represent clients during infringement proceedings concerning patent issues.

Design interpretation

Japanese courts continue to take a very narrow view in interpreting the similarity of designs under the design and unfair competition law, depriving the law of its primary purpose - effectiveness. Even minor changes prevent counterfeit goods from being accepted as dead copies. Effective protection from counterfeiting will not be achieved until the general attitude of the judiciary towards design interpretation changes.

legal services

Japan's legal infrastructure must continue developing in order to meet the increasing demand for comprehensive trans-national legal services in the wake of economic liberalisation, deregulation, and globalisation. However, structural deficiencies, including restrictions on the freedom of association of foreign and Japanese lawyers, continue to inhibit the provision of integrated legal services in Japan. Many of the recommendations contained in the Final Report of the Judicial Reform Council (JRC) specifically address these issues and the EBC Legal Services Committee urges the Japanese Government to quickly implement these reforms.

Key issues:



- Freedom of association** For purely protectionist reasons, which do not serve the increasingly sophisticated needs of the international business community operating in Japan, the law prevents Japanese lawyers (*bengoshi*) and foreign-admitted registered lawyers in Japan (*gaiben*) from feely associating (e.g. through integrated partnerships), and prevents *bengoshi* from being employed by *gaiben* even though, unequally and unfairly, *bengoshi* are completely free to employ *gaiben*. Clients would receive much better service if Japanese and foreign-admitted lawyers could freely practice together in a single law firm, as in other advanced jurisdictions.

Recommendation: All prohibitions against freedom of association between bengoshi and gaiben should be completely eliminated. Further, bengoshi and gaiben should be equally able to employ qualified lawyers in Japan, whatever their jurisdiction of qualification.

- Equal treatment** There are more restrictions on *gaiben* than on *bengoshi* when, for example, each advises clients in Japan on the law of a jurisdiction in which they are not registered. This is blatantly discriminatory and clearly not designed in the interests of clients. The different level of obligations applied to *gaiben* and *bengoshi* appears to be an attempt to oblige clients to use Japanese lawyers, despite the fact that international law firms are clearly more experienced in co-ordinating legal advice over several jurisdictions and offering integrated legal services.

Recommendation: Foreign-admitted lawyers should be able to practice law without discrimination. Any regulations that do not apply to Japanese lawyers without fair justification, such as those surrounding third country law, should be eliminated.

Background:

EBC Legal Services Committee Member Companies

Allen & Overy
Ashurst Morris Crisp
Clifford Chance
Dalpayrat Foreign Law Office
Freshfields
Haarmann, Hemmelrath & Partner
Komatsu, Koma & Nishikawa
Kioichi Sogo Law Office
Laurent Dubois Foreign Law Office
Linklaters & Alliance
Lovells, Tokyo Office
Sonderhoff & Einsel
Tokyo Aoyama Law Office

Freedom of association

The EBC fully supports the intentions underlying the Judicial Reform Council's Final Report, which was handed over to the Japanese Government in June 2001.

In addition to recommendations advocating (amongst other things) a drastic increase in the number of lawyers, more efficient civil proceedings, and a fundamental review of the legal education system, the EBC was also very pleased to note that the JRC has recommended a review of the collaborative relationships between Japanese and foreign lawyers in order to promote the development and provision of integrated international legal services in Japan. The EBC is concerned, however, that this may only result in further changes to the cumbersome Specified Joint Venture (*Tokutei Kyodo Jigyo*) system, which is clearly not the best solution.

The *Tokutei Kyodo Jigyo* was first introduced at a time when there was probably much uncertainty on the part of Japanese lawyers and Government officials about the need for closer association between *bengoshi* and *gaiben*. However, the increasing number of *Tokutei Kyodo Jigyo* is clear evidence that the Japanese international legal market is changing rapidly. The law must keep pace with these changes to better serve the interests of lawyers (both *gaiben* and *bengoshi*) and their clients.

Those *bengoshi* and *gaiben* who have responded to competitive needs and client demands by forming *Tokutei Kyodo Jigyo* should not be hampered by discriminatory constraints. They should be able to compete, as partners if they choose, on an equal basis with other law firms in Japan and should be able to compete freely for the best young Japanese lawyers by being able to offer attractive career paths and lifestyle enhancing benefits.

The EBC feels that service to clients could be considerably improved if the *Tokutei Kyodo Jigyo* system were to be abandoned and Japanese and foreign lawyers were allowed complete freedom of association and the ability to operate through the single law-firm structure. In addition to satisfying business needs, this would foster in such firms an atmosphere of mutual trust and respect between legal professionals from different jurisdictions. It would also give Japanese lawyers the opportunity to develop skills at the forefront of international legal developments.

Qualifying as a *gaiben*

Regulations should support a system that encourages young foreign-admitted lawyers to work in Japan and facilitates their qualification as *gaiben*. Currently, only one year of experience gained as a foreign-admitted lawyer working in Japan may be credited towards the three-year pre-requisite for qualification as a *gaiben*.

This restriction, which is clearly discriminatory and anti-competitive, increases the costs of foreign law firms in Japan, since it forces firms to hire more senior lawyers and means that if firms want to offer their young foreign-admitted lawyers in Japan the opportunity to become *gaiben* they will need to rotate them overseas for the requisite two-year period.

All time spent in Japan by foreign-admitted lawyers providing legal services in relation to their home jurisdiction should be credited to the three-year *gaiben* qualification requirement.

tax

The corporate tax regime in Japan is undergoing a period of fundamental change. Tax facilitated corporate reorganisations were introduced in FY2001, and a consolidated tax system is being planned for FY2002. While the EBC supports the principles underlying these reforms, the EBC also feels strongly that such substantive reform should be developed through a transparent consultative process (i.e. adequate disclosure and business consultation). The lack of such process considerably hinders realistic assessments and comments on issues such as the forthcoming consolidated tax system.

Key issues:



- **Consolidated taxation** The EBC stresses the urgent need to implement a consolidated tax system no later than FY2002 in order to facilitate corporate restructuring. The EBC is disappointed, however, that current proposals call for only completely owned subsidiaries to be included in such a scheme and the implementation of a new tax on unrealised group profits to make up for an expected decline in government revenue.

Recommendations:

1. In order to accommodate situations where it is impossible for fully integrated companies to achieve whole ownership, the common ownership requirement under the proposed consolidated tax system should be significantly less than 100%.
2. Plans to levy a new tax on unrealised real estate and securities profits at companies whose ownership by a parent firm has been raised to 100% for inclusion in consolidated tax accounting should be abandoned.

- **Corporate reorganisation** The EBC welcomes new tax rules that came into effect April 2001 supporting corporate reorganisation (including share-for-share transfers) now possible as a result of changes to the Commercial Code in 1999.

Recommendations:

1. Taxpayers should be able to obtain formal advance clearance on whether or not an intended reorganisation complies with tax avoidance and continuity requirements (see also "advance clearance" below).
2. For tax purposes, corporate reorganisations involving foreign shares should be treated the same as all-domestic transactions. Share-for-share exchanges involving foreign shares are currently not permitted under the Japanese Commercial Code.

Tax issues continued:

3. *The recognition of goodwill in corporate mergers, which has been eliminated under the new rules, should be maintained in order to avoid the risk of double taxation.*

- **Transfer pricing** The EBC recognizes that with the release of the Sept. 8, 2000 *Special Taxation Measures Law – Related Circular* the gap between Japanese transfer pricing legislation and OECD Guidelines has narrowed. For example, the “Residual Profit Split Method” and the “Comparative Profit Split Method” have been introduced as acceptable profit split methods. Furthermore, the basis of the Profit Split Method is now recognized as “the total amount of operating profits generated by a corporation and a foreign affiliated person” as opposed to only “income” under the former circular.

However, the EBC has been advised by European companies that secret comparables are still used by the Japanese authorities as the basis for transfer pricing adjustments. This practice is unacceptable. Companies have no way of confirming the accuracy of transfer pricing adjustments, which are subject to a compulsory penalty on any additional tax assessed. This penalty cannot be waived, nor reduced, even if the taxpayer was acknowledged by the authorities to have acted in good faith.

While transfer pricing methodology has improved somewhat following the implementation of the Sept 2000 Circular, the gap between Japanese transfer pricing legislation and OECD principles should be further narrowed in terms of methodology, practical guidance and assessments in line with the recommendations outlined below.

Recommendations:

1. *Transfer pricing adjustments should be based solely on information to which the taxpayer also has access, and any penalties imposed should accurately reflect the culpability of the taxpayer's conduct.*

2. *Japanese transfer pricing rules should be amended to a) allow for the use of multiple year data on a consistent basis and ensure consistency between APAs and tax audits, b) apply the three basic transfer pricing methods (CUP, RP and CP) with a focus on function and risk as opposed to product similarity as is currently the case, and c) tolerate transfer prices within certain ranges, rather than insisting that transfer prices should approximate the middle of a given range.*

- **Loss carry forward** Companies in Japan have been operating in a challenging economic environment for much of the last decade. The EBC is pleased that in the corporate reorganisation rules (see above) guidance has been provided on the transfer of losses in the case of a qualifying reorganisation, which was one of the recommendations of the EBC White Paper for 2000. The EBC encourages the Japanese Government to do all that it can to improve the Japanese business and investment environment by helping companies obtain full relief for all losses.

Recommendation: Tax losses should be made available for carry forward indefinitely, instead of the current five-year limit.

EBC Tax Committee Member Companies

Aventis
BASF Japan
Bayer
Ciba Speciality Chemicals
DaimlerChrysler Japan Holding
GCCIJ
Haarmann, Hemmelrath & Partner
Henkel Japan
KPMG Peat Marwick
Loyens & Loeff
Mazars Japan
Mitsubishi Motors Corporation
Nippon Boehringer Ingelheim
Novartis Pharma
Dalpayrat Foreign Law Office
Philips Japan
PricewaterhouseCoopers
Sonderhoff & Einsel
White & Case

Tax issues continued:

- **Benefit taxation** Expatriates in Japan participating in foreign pension plans are assessed on the assumption that a benefit arises at the time of contribution. This often results in a form of “double taxation” as the expatriate will likely be taxed again on the benefit after retirement. Recent changes allowing for taxation of stock-option income at favourable rates only apply to the stock of Japanese companies. This disadvantages employees (both foreign and Japanese) of foreign companies.

Recommendation: Foreign pension plans with characteristics similar to a Japanese "Qualified Pension Plan" should be regarded as equivalent and treated accordingly. Similarly, stock option tax benefits should be extended to stocks irrespective of where issued.

- **Advance clearance** A lack of clear and binding guidance regarding specific tax situations has been a persistent problem for European firms doing business in Japan. As such, the EBC supports the Japanese Government’s initiative in March 2001 to develop a formal clarification and advance clearance process (so-called “no-action letter” system) to help companies navigate the regulatory environment governing commercial activity in Japan. The EBC notes that the NTA has recently introduced new “Written Response” (*Bunsho Kaito*) guidelines in line with this wider Government policy initiative, which the EBC feels is a very positive development. The implementation of these reforms should focus on the following areas.

Recommendation: Any responses received under the new system should be legally binding on the parties involved and represent a form of legal precedent. The EBC welcomes the NTA’s intention to make responses available to the public, but insists that taxpayer confidentiality be maintained at all times. The scope of the reform should be expanded to include not only requests for clarification, but also explicit prior-clearance for specific transactions, including corporate restructuring. There should also be some means available for recourse should taxpayers feel a ruling does not accurately reflect the relevant facts of the case. Finally, the EBC asks that the implementation of this reform be continually monitored to ensure that these new guidelines actually make it easier for taxpayers to receive clear and binding guidance on issues of concern.

- **Taxpayer protection** The right to taxpayer confidentiality is explicitly affirmed by the OECD. In Japan, however, disputes between taxpayers and the tax authorities are frequently published in the media. The EBC views any "leaking" of information protected by taxpayer confidentiality laws with extreme concern, as such disclosure is invariably harmful to the taxpayer's business. On the other hand, rulings dealing with tax issues cannot be easily obtained, thus depriving the public of access to relevant information.

Recommendation: The Japanese Government should forcefully apply existing legislation to fully protect taxpayer confidentiality in all circumstances. Information should be spontaneously and regularly provided to the public on all rulings, while at the same time respecting the confidentiality of the taxpayer and its business.



Consumer Goods

**Cosmetics
Cut Flowers
Liquor**

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cosmetics

The Japanese cosmetics regulatory environment has undergone a fundamental change that will provide all manufacturers with a greater opportunity to develop innovative products for the demanding Japanese market. While the EBC warmly supports the principles underlying this reform, much work remains to be done in order to harmonise regulations with international standards and enforce them in a consistent manner for all parties involved. The EBC is also very eager to expand the scope of deregulation to the Quasi-Drug category.

Key issues:



- **Regulatory reform: Quasi-Drugs** The EBC is disappointed that recent Cosmetics reform efforts did not extend to the Quasi-Drug category. Classification criteria remain obscure, the number of ingredients that may be used for each product category is extremely limited, and it is difficult to get new ingredients approved.

Recommendation: The EBC strongly urges the MHLW to increase transparency for accepted ingredients, ease restrictions on the registration of new actives, allow the use of new cosmetics ingredients, and move to full labelling in the same spirit as recent regulatory reform for Cosmetics. In addition, the EBC urges the MHLW to fulfil a promise made in 1999 to reclassify certain Quasi-Drugs as cosmetics.

- **Regulatory reform: Cosmetics** The EBC very much welcomes reforms enacted in April 2001, but is concerned about its implementation.

Recommendations: The MHLW should

- 1. Liaise with EC regulators and their scientific advisory committee (SCCNFP) in order to harmonise the new Positive and Negative Lists. The same is asked concerning recycling marks.*
- 2. Join with its European counterparts to establish mutually acceptable safety standards for the approval of new ingredients to the Positive Lists.*
- 3. Further liberalise permissible product marketing claims under manufacturer's responsibility, in line with product innovation allowed under the new law.*
- 4. Implement and enforce the new laws in a consistent manner for all parties involved. In particular, the new laws should not provide loopholes for non-law abiding importers. A transparent audit system should be established to ensure that all importers respect the new laws, with results published on the Internet.*

Background:

EBC Cosmetic Committee Member Companies

Beaute Prestige International Japon
Chanel
Clarins
Elle International
Estee Lauder
Guerlain
Nihon L'Oreal
Nippon Lever
Nivea Kao
Parfums Christian Dior (Japon)
Parfums Givenchy
Parfums Nina Ricci Japon
Pierre Fabre Japon
Schwarzkopf
Sephora AAP Japan
The Boots Company Japan
Wella Japan
Yves Saint Laurent Parfums

A new regulatory environment for cosmetics

In April 2001 new laws came into effect introducing a regulatory framework for cosmetics similar to that currently employed in Europe. The use of ingredients has been deregulated, product safety has become the responsibility of manufacturers/importers, a limited Positive and Negative list system has been established, and full ingredient labelling in Japanese is now required on all product containers. The EBC fully supports the spirit of these reforms and feels the new regulatory environment will provide all manufacturers with a greater opportunity to develop innovative products for the demanding Japanese market.

The EBC is also concerned that the contents contained in the three new Positive Lists differ substantially from Europe, even though the categories covered are the same (preservatives, sun-filters and coal/tar pigments). As a result, European cosmetics producers will likely have to continue reformulating products specifically for the Japanese market. The contents of these Lists should be harmonised as soon as possible.

The same is asked concerning recycling marks. This will require close cooperation between the MHLW and European Commission regulators.

Unfortunately, reforms have not made it any easier to add new ingredients to the new Positive Lists. Again, the EBC encourages EU/Japan cooperation to develop mutually acceptable safety standards for the acceptance of new ingredients.

Finally, allowable marketing claims, though expanded from April 1 2000, are still restrictive and reflect poorly on product innovation allowed under the new law, resulting in poor product differentiation.

The EBC is concerned that weak implementation of the new reforms may provide non-law abiding importers with a loophole for illegal activities. The reforms must be implemented in a consistent and transparent manner. All parties should know what is expected of them under the new regime.

Quasi-Drug reform: stalled process

The EBC is also very much concerned that the spirit of Cosmetics reform has not extended to the Quasi-Drug category, an area of increasing importance due to growing health concerns of the Japanese public. The Quasi-Drug category consists of a wide range of products including body deodorants, talc powders, hair growers, depilatories, hair dyes, bath preparations, medicated cosmetics (such as whitenings), medicated dentifrices, and mouth refreshers, in addition to non-cosmetic items such as insecticides, anti-rodents, sanitary napkins and OTC health drinks.

Unfortunately, the number of ingredients that may be used in each QD category is extremely limited and the logic in determining why certain active ingredients and additives qualify a product as a Quasi-Drug remains obscure. Furthermore, it has proven extremely costly and time consuming to obtain approval for new ingredients in this category. Many products considered cosmetics in Europe and the United States are treated as Quasi-Drugs in Japan and are subject to far more restrictions than other cosmetics. This represents a major barrier to bringing new technology to Japanese consumers. Some ingredients that are now allowed for Cosmetics following recent deregulation measures fall under severe scrutiny when used for Quasi-Drugs.

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cut flowers

Non-tariff barriers such as restrictive plant quarantine regulations, limited inspection capacity, and high cost of entry at airports have limited cut flower imports into Japan. While the EBC Cut Flower Committee feels there is great potential in the Japanese cut flower market, imports will not increase until fundamental improvements are made in the plant quarantine system and airport infrastructure.

Key issues:



- **Plant quarantine regulations** Restrictive plant quarantine regulations severely affect the import of phytosanitary products into Japan. Despite recent changes to its Plant Quarantine Law, Japan still does not make sufficient distinction between harmful and non-harmful organisms.

Recommendation: The Japanese list of non-quarantine organisms should be extended to include all non-harmful organisms found in cut flowers. The EBC urges the Japanese Government to focus on the main insects (mites, aphids and thrips) that currently account for 80-90% of all shipment rejections.

- **High cost of airport facility services** A recent JFTC investigation concluded that fumigation and warehouse service providers at Narita Airport colluded to set prices and distribute work in contravention of Section 3 (unreasonable restraint of trade) of the Antimonopoly Act.

Recommendation: The EBC welcomes the JFTC investigation and warning notice and hopes that this will result in lower costs for fumigation, warehousing, storage and cooling.

- **Inspection and handling facilities** The facilities at most international airports in Japan are inadequate for handling large volumes of cut flowers and other perishables. While inspection capacity has improved over the last few years, there is still much room for improvement.

Recommendation: Further improvements are necessary at bonded warehouses and dispatch areas, especially at Narita where the largest volumes of imports are handled. Inspection capacity should be increased during peak seasons and inspection made available from 06:00 hrs.

Background:

The market for cut flowers in Japan

The market for cut flowers in Japan is one of the largest in the world. Annual consumption stands at approximately 800 billion yen per year, and is expected to grow as more and more flowers are bought for home use. While the EBC feels there is great potential in the cut flower market geared towards personal consumption, this situation will not improve significantly until mass-market products can be supplied at prices below present levels. Japanese growers, however, have not yet achieved the economies of scale that have long been a feature of the industry in, for example, the Netherlands. European producers, for their part, have been unable to make use of this comparative advantage due to a number of trade barriers preventing the importation of large volumes of flowers at low prices.

Main barriers to trade

Restrictive Japanese plant quarantine regulations are by far the largest barrier to trade in cut flowers. In theory, zero-tolerance is supposed to be applied to organisms which, on the basis of the SPS chapter of the GATT Uruguay Round Agreement, are considered to be harmful. In 1996 the risk assessment chapter was added to Japan's plant quarantine law. In practice, this revision has so far not had an effect on cut flower imports, as the Japanese Government still does not make a sufficient, nor practical, distinction between harmful and non-harmful organisms. Insects such as thrips and aphids, for example, are not mentioned on the new list of non-quarantine pests, even though they are common in Japan. These main insects are responsible for 80-90% of rejected shipments. The Japanese Government has been studying for some time now EU requests to increase the number of non-quarantine pests, but the decision has been delayed.

The infrastructure at Japan's international airports is also in desperate need of improvement. Fumigation, cooling, and warehousing costs are amongst the highest in the world, due in part to ineffective competition between companies offering airport facility services. The EBC hopes that this situation will change following a recent Japan Fair Trade Commission (JFTC) investigation into anti-competitive practices at fumigation facilities at Narita International Airport. The EBC is keen to see what measures will be taken by the companies involved, and whether or not this will lead to lower port-of-entry costs for importers.

In addition to the high cost of port services, the facilities themselves are highly congested and insufficient to guarantee quick shipment handling. After arrival, it often takes 3-5 hours before a shipment is made available for inspection and customs procedures. This adds unnecessary cost to businesses importing cut flowers into Japan.

The EBC applauds recent attempts to improve airport inspection procedures by extending inspection schedules and increasing the number of plant quarantine inspectors, and urges the Japanese Government to continue working in this direction. Eventually, the EBC would like to see a system of *ad random* inspection replace the current re-inspection of pre-inspected flowers at port of entry.

Other issues

Under Japanese law, perishables have to be inspected at the first point of entry. By using sealed containers perishables can be transported by plane to another airport where plant quarantine inspection is carried out. Transporting sealed containers by road, however, is not permitted. This should be made possible.

Finally, the EBC encourages the Japanese Government to eliminate import duties of 3.7% on greens and leaves, which further increase the cost of importing cut flowers into Japan.

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liquor

In compliance with a World Trade Organisation ruling issued in 1996, the Japanese Government has drastically reduced the tax rate on non-*shochu* liquor over the past four years. This development rewards the EBC Liquor Committee and its European counterpart Confederation Europeenne des Producteurs de Spiritueux for many years of vigorous lobbying. The EBC warmly supports the Japanese Government's commitment to improving market access, and would like to see further progress in the areas outlined below.

Key issues:



- **Product definition** Product definition standards for alcoholic beverages are very loose in Japan. Many brands of Japanese "whiskey" and "liqueur" would never qualify for the use of such terms in Europe. This allows Japanese producers to market lower-cost products that do not meet internationally accepted product specifications, including products with geographical indications. This is misleading to Japanese consumers.

Recommendation: Product definition in Japan should conform to international specifications as defined in the EU and the US and endorsed by the International Federation of Wines and Spirits.

- **Licensing** Several types of wholesale liquor licensing exist, and separate licenses are required for each sales office operated by the manufacturer or importer of liquor products. The Japanese Government has commenced deregulating the retail environment through the elimination in January 1, 2001 of minimum distance requirements between retail licensees.

Recommendation: The EBC strongly endorses the deregulation of liquor retailing in Japan and urges the Japanese government to reduce the number of licenses required to do business and set out a transparent timeframe for reform implementation.

- **Tariffs** Despite liquor tax reform, tariffs still remain a major obstacle to imported European liquor products.

Recommendation: The EBC urges the Japanese Government to work towards the eventual elimination of tariffs on imported liquor products, by continuing to reduce rates in a meaningful and consistent manner.

Background:

The Japanese liquor market

The Japanese market for Western style spirits and wine is one of the largest in the world with approximately 100 million cases (900 million litres) sold per year. *Shochu* accounts for almost 80% of the distilled liquor market (not including liqueurs), with whisky and brandy making up most of the difference. However, despite liquor tax reform greatly reducing the tax differential between *shochu* and other spirits, there has been little change to the market share of imported spirits such as whisky and vodka.

Wine is the only liquor category in which imports command a market share in excess of 50% and on the whole the prospects for wine imports in Japan remain very positive. Consumer interest in wine has increased dramatically and Japanese are increasingly drinking wine with meals. On the supply side, the appearance of a wide variety of reasonably priced wines, retail deregulation, and improved quality control will contribute to an improved market environment for imported wine. The only caveat is that in the current deflationary environment there is strong downward pressure on the shelf price of wines with most of the current demand coming from the under 1,000 Yen per bottle range.

Tax Reform

Japan's liquor tax regime discriminated against imported spirits for over 50 years. GATT Panels ruled against this practice in 1987, but resulted in only minor improvements. The EU, Canada and the US referred the issues to the World Trade Organisation, which upheld the complaint in 1996. As a result, Japan has reduced the tax differential between imported brown spirits and local *shochu* from 600% to just 3% since this ruling. For white spirits such as gin and vodka, tax discrimination has disappeared completely.

Liquor tax reform has significantly changed the whole face of the industry. In an attempt to win back market share from *shochu*, most companies have passed the tax savings onto the consumer. As a result, over the past four years the Japanese spirit market has gone from being one of the most expensive in the world to the one of the least expensive.

Ironically tax reform has not had much effect on the market share of imported spirits. Low-priced domestic whisky, white spirits and RTD's (ready to drink) are the only categories growing. For imported whisky and brandy (cognac) to have a long-term future in Japan, greater efforts are required to stimulate consumer demand and exploit the unique image, character and heritage of these spirit categories.

Product definition

One of the keys to the development of European brand image in the Japanese market is the establishment of meaningful generic definitions for the major categories of internationally traded spirits such as brandy (cognac), gin, vodka and whisky. Currently, product definition standards for spirits are very loose in Japan. This enables Japanese companies to lower production costs by marketing products that do not conform to international product definition standards. The EBC is also concerned that Japan does not provide any recognition or protection for European liquor products with geographic indications such as Bordeaux wines, Scotch Whisky, and Cognac. Japanese producers are allowed to market products using European geographical indications, even though the indication may be completely unrelated to the actual product being sold. Ultimately, this is misleading to the Japanese consumer and represents a significant barrier to the development of the import market for European liquor products.

Financial Services

**Asset Management
Banking
Insurance
Securities**

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asset management

Unrestricted access to professional investment management services is in the best interest of the Japanese consumer. In recognition of this fact, the Japanese Government has taken measures to eliminate pension fund management restrictions and improve efficiency in the regulatory environment. The EBC Asset Management Committee welcomes these developments and hopes to see more progress in the areas outlined below.

Key issues:



- **Access to Yucho/Kampo funds** The custodian for postal life insurance (Kampo) and postal savings (Yucho) funds is still prohibited by law from using professional investment advisors to help maximize investment returns.

Recommendation: The EBC urges the GoJ to eliminate all barriers preventing funds held by the post office from being managed by licensed investment advisors.

- **Asset management deregulation** The regulatory environment for investment trust and investment advisory services prevents the efficient management of investment trust products in Japan.

Recommendation: Regulations governing the asset management sector in Japan should be streamlined to eliminate unnecessary duplication in filing and disclosure requirements, abolish unnecessary licensing procedures, and bring pricing rules in line with international best practice.

- **Pension reform** In June 2001 the Japanese Government passed long awaited legislation reforming the corporate pension system in Japan, including the introduction of a new defined contribution (DC) system. The effectiveness of this reform will ultimately depend on the administrative ordinances that will bring this legislation to life.

Recommendation: The EBC encourages the GoJ to introduce strong ex ante provisions to ensure that pension reform is implemented in an effective manner. Investment advisory firms should be given full, non-discriminatory access to defined contribution asset pools, including those held by the post office.

Background:

EBC Asset Management Committee Member Companies

ABN AMRO Asset Management
Baring Asset Management
BNP Paribas Asset Management
Commerz International Capital Management
Credit Agricole Asset Management
Credit Lyonnais International
Credit Suisse Asset Management
Deutsche Asset Management
Gartmore Investment Management
HSBC Asset Management
ING Asset Management
Jardine Fleming Investment Trust & Advisory
Meiji Dresdner Asset Management
Merrill Lynch Investment Managers
Pictet Asset Management
PPM Asset Management
Rothschild Asset Management
Schroder Investment Management
UBS Asset Management Japan
West LB Asset Management

Market access

As a result of government deregulation initiatives, investment advisory companies (IACs) now enjoy relatively free access to all investment funds, including Tax Qualified Pension Plans, Employee Pension Funds, and Mutual Aid Associations. The EBC very much welcomes these developments and feels that this will lead to improved investment performance. This liberalization should now be extended to include the management of *Yucho* and *Kampo* funds, the last major investment pool in Japan that is prohibited by law from employing the professional expertise of IACs.

Promoting regulatory reform

While regulatory reform has certainly contributed to increased market access opportunities for IACs in recent years, the regulatory environment still inhibits the efficient management of investment trust and advisory services in Japan. For example:

- Even though the management of investment trusts and that of investment advisory services do not differ much in substance, each business is regulated by a separate law with separate licensing, filing and customer disclosure requirements – an effective duplication of administrative procedures. This duplication could easily be avoided by amalgamating these regulations into a single law governing the investment management business.
- IACs need to obtain a license to promote products and services from their overseas affiliates. It can take over 6 months to obtain this approval. The rules governing this procedure should be relaxed.
- Trust banks are currently not allowed to engage in discretionary investment advisory business. Their activity is limited to mandates based on trust agreements, which require trust banks to assume a custodian role. This regulation should be relaxed within a clearly defined timeframe.

Pension reform

The Japanese Government recently passed legislation overhauling the corporate pension system. The new legislation introduces a defined contribution (DC) pension scheme to supplement the current defined benefit system, giving individuals a more active role in saving for their own retirement. The EBC is worried, however, that these reforms will not be implemented effectively. For one, the underlying general pension plan lacks clarity and suffers from restrictive funding requirements. As for the DC plan itself, the EBC feels that tax-exempt amounts have been set too low, no matching contributions will be allowed, and individuals will not be able to withdraw reserves before they reach the retirement age of sixty. The EBC is also concerned that IACs are given free and equal opportunity to manage DC assets, including those held by the post office.

No action letter

In response to a Cabinet Decision issued in March, the FSA recently developed guidelines for a “no-action letter” system in the financial services sector. This is very much a welcome development, but again much will depend on the implementation. The EBC urges the FSA to focus on providing clear guidance in a timely manner in response to applications received under this system. These replies should be legally binding.

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banking

Structural reform in the Japanese banking sector remains high on the government's agenda. A persistent bad loan problem continues to impact heavily on the Japanese economy. The EBC Banking Committee welcomes the current Cabinet's apparent dedication to structural reform in the Japanese financial services sector and hopes that this will contribute to openness and efficiency in the market.

Key issues:



- **Structural reform** The issue of bad debts and non-performing loans is once again at the top of the political agenda. The persistence of the bad debt problem has not only weighed heavily upon the Japanese economy, but has seriously undermined confidence in the Japanese financial system.

Recommendation: The EBC supports the current Government's apparent determination to finally deal with this problem, but cautions that the slow implementation process is undermining the credibility of Japanese regulatory authorities achieved since the creation of the FSA.

- **Statutory joint and several liability** The interim draft of the bill to amend a portion of the Commercial Code proposes to abolish the requirement that a foreign company maintain a branch office and to impose the same liability as is imposed on a participant in an unlimited partnership on the foreign company's Representative in Japan for the purpose of protecting domestic creditors in Japan. It would make the Representative in Japan jointly and severally liable together with the foreign company in the event that the foreign company is not able to meet its obligation out of its assets in Japan.

Recommendation: This amendment might cause serious obstacles to the operation of foreign companies in Japan and will not improve the protection of domestic creditors. The EBC objects to the amendment proposal.

- **Regulatory clarity** A Cabinet Decision issued in March of this year committed the government to introducing a Japanese style "no-action letter" system in the financial services sector.

Recommendation: While the EBC welcomes this development, the effectiveness of this reform will ultimately depend on the willingness of the FSA to give clear and binding guidance on issues of regulatory concern.

Background:

EBC Banking Committee Member Companies

ABN AMRO Bank
Bank Bruxelles Lambert
Barclays Bank
BNP Paribas
Commerzbank
Credit Lyonnais
HSBC
ING Bank
IntesaBci
Sanpaolo-IMI
Standard Chartered Bank
Swedbank
Westdeutsche Landesbank

Big bang?

Unlike in the UK where liberalisation resulted in a financial renaissance, the reform process in Japan continues to be characterised by improvements in some areas and stagnation in others. After nearly 5 years of financial sector reform, Japan still has some way to go before it can consider itself a world-class financial centre. The Japanese “Big Bang”, proudly announced, has not yet led to the results the EBC had hoped for.

Promoting financial transparency

One of the issues that the FSA should stress as the industry fights to clean up its balance sheet is adequate disclosure of important financial information. Despite recent moves to introduce International Accounting Standards (including marked-to-market asset valuations), the EBC is still very much concerned that the information provided by Japanese banks relating to asset quality and bad or non-performing loans still does not meet western standards. As a result, European banks are reluctant to establish adequate credit limits, even for major Japanese banks. Japanese banks are occasionally forced to pay a premium in the money market because of this.

Increasing regulatory clarity

It is imperative that financial institutions clearly understand what is expected of them from the regulator in order to accurately conform to current rules and adequately prepare for new regulatory developments. New interpretations of opaque regulations combined with a reluctance on the part of the regulator to give clear and binding guidance made it difficult for firms to meet new requirements in terms of compliance, audit, financial reporting and procedural organisation. Things continue to improve, however, and the EBC urges the Japanese Government to continue working in this direction. An important test of the GoJ’s dedication to financial sector reform will be the effective implementation of the “no-action letter” system. The acceptance of FSA audits – not only of European Banks – would also benefit from inspection methods more in-line with international practice.

Eliminating artificial firewalls

European universal banks are unable to provide the same level of integrated financial service in Japan as they are in Europe due to the existence of firewall regulations requiring the artificial separation of banking, securities and asset management operations. While recent reforms now allow for a certain amount of “double-hatting” between banks and securities firms, the underlying separation remains. All firewall regulations should be eliminated and firms allowed to operate on an integrated basis. Full liberalisation would accelerate the modernisation of Japanese financial markets, benefit large corporations, and promote cost efficiency at Japanese Banks.

Deregulating the bond market

EBC feels that much more can be done to liberalise the registration procedures for selling bonds in the Japanese market. Such restrictions do not exist in the EU, and the EBC urges the Japanese Government to bring Japanese practice in line with international best practice.

BIS Capital Ratio directives and Japan’s regional banks

The same can be said for adhering to capital ratio directives set by the Bank of International Settlements. Japanese regional banks are still allowed to maintain capital ratios at rates considerably less than the international standard. This puts European banks at a disadvantage when lending in the domestic Japanese market.

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insurance

Regulatory reform continues to improve the business environment for European firms active in the Japanese insurance sector. The product design and approval process is gradually being deregulated, and modest steps have been taken to improve the supervision of critical financial data, including solvency ratios and capital adequacy. The EBC Insurance Committee welcomes this reform-minded attitude, and hopes to see even more progress in the areas outlined below.

Key issues:



- Product approval** The EBC stresses that there is no need for the regulator to be involved in the approval of new products, as this only serves to stifle the introduction of innovative insurance products at competitive prices. Regulation should focus instead on the macro-level supervision of solvency margins and capital adequacy ratio in line with international best practice (see below). While the development in 1999 and subsequent enhancements of a notification system for certain commercial lines was definitely a step in the right direction, the need for comprehensive deregulation of pricing and policies remains.

Recommendation: All remaining requirements for prior product approval and pricing involvement by FSA should be abolished.

- Supervision** It is imperative that insurance companies be in good financial shape in order to meet their obligations to policyholders. Unfortunately, the methodologies used in Japan to calculate solvency ratios do not conform to international practice and it is often difficult for customers to determine the security of products offered for sale.

Recommendation: Accounting, disclosure practices, and solvency methodology should be brought in line with accepted international standards. In particular, the reference to sums insured for catastrophe provision should be removed. Ultimately, the micro-level steering favoured by the Japanese authorities should be discontinued, and supervision refocused on macro-level monitoring of critical financial data such as solvency ratios and capital adequacy.

Background:

EBC Insurance Committee Member Companies

Allianz
Aoba Life
Aon Risk Services
AXA Direct
AXA Life
GeneralCologne Re
Credit Suisse Life
GAN
Gerling
ING Life
Jardine Lloyd Thompson
Lloyd's
London
Marsh
PCA Life
Royal & Sun Alliance
SCOR
Skandia
Swiss Re Services
Watson Wyatt
Willis
Zurich

Yield reductions

Pressure to reform the regulatory environment in the Japanese insurance sector continues unabated due to changing circumstances in the business environment, including a string of bankruptcies that have plagued the life insurance sector in recent years. Many life insurers continue to suffer from what is known as negative spread, which occurs when yields guaranteed to policyholders surpass returns on investment. In order to pre-empt further failures, the Japanese Government has proposed to allow insurance firms to reduce their guaranteed yields, so long as they have the support of policyholders. In principle, the EBC feels this could set a very dangerous precedent that may further erode confidence in the sector. However, if the Government continues to pursue this course of action, the reform should be implemented in a completely neutral way so that it does not disadvantage foreign firms operating in the Japanese life insurance market.

Regulatory reform

The EBC welcomes the reform minded attitude of the current Government, and hopes that this will lead to further improvements in the insurance sector. In addition to the priority issues discussed on the previous page, the EBC recommends the following action:

- The FSA should adopt an open regime that clearly defines what is and is not allowed and enables all participants the freedom to innovate without the uncertainty of possible adverse interpretation. The implementation of “no-action letter” guidelines should focus on the clarity of guidance. Replies should be legally binding.
- Restrictions that prevent brokers and agents from participating on the same policy should be eliminated.
- Regulations preventing insurance companies from selling their products freely over-the-counter through banks should be abolished.
- The Japanese Government should mutually recognize international qualifications such as CII and the international brokers standards of governance.
- The same rules applicable to commission payments for non-life policies should be applied to life policies
- Rules limiting the products that can be sold by agencies in-house should be eliminated.
- Equal access to independent agencies should be ensured.

Consumer protection

The Japanese insurance industry has established a policyholder protection fund to protect consumers in the event an insurance company becomes unable to meet its financial obligations. In principle, the EBC feels that companies who have prudently managed their business should not be required to pay the price of another insurance company's failure, particularly if the problem could have been prevented through more adequate supervision from the regulatory authorities. The EBC believes the best way to ensure consumer protection is to move away from micro-level steering to macro-supervision of solvency ratios, capital adequacy, and appropriate, modern accounting practices, backed up by appropriate penalties and timely sanctions for improper behaviour. This would promote good corporate governance by making individual companies accountable directly to their customers.

Privatising postal and housing loans insurance

Simply put, the EBC feels the Japanese Government should not be in the insurance business. The Government has no role in providing business services that can and are provided by the private sector. As such, the EBC warmly supports the current Cabinet's long term goal of privatising the postal insurance system.

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securities

Nearly five years have passed since the start of Japan’s financial “Big Bang”. Unfortunately, despite noticeable improvements in the financial sector’s regulatory environment, much of the Big Bang’s potential remains unfulfilled. The EBC Securities Committee urges the Japanese Government to rededicate itself to the original principles of financial sector reform, focusing on the issues outlined below.

Key issues:



- **Regulatory clarity** A lack of regulatory clarity still prevents European securities firms from accurately predicting the consequences of many business decisions. A “no-action letter” system has been developed that should, if implemented properly, contribute to greater transparency in the sector.

Recommendation: The EBC encourages the Japanese Government to continue implementing reforms designed to promote transparency and clarity in the regulatory environment. The “no-action letter” system should be implemented in a meaningful and consistent manner.

- **Firewalls** Firewalls continue to inhibit the ability of European securities firms from managing their business on a global, integrated basis in Japan. The FSA is currently accepting applications for the “double-hatting” of certain operations between banks and securities firms – definitely a positive development. However, the underlying divisions remain.

Recommendation: The EBC urges the Japanese Government to work towards the eventual elimination of all artificial barriers (including Article 65 of the Securities and Exchange Law forbidding banks from conducting securities business and vice-versa) within the financial system and allow financial services firms to operate on a global, integrated basis. In the meantime, the EBC asks that all applications for “double-hatting” be processed efficiently.

- **JSDA examinations** The Japanese Securities Dealers Association (JSDA) offers examinations in English for sales representatives, but not for sales manager and administrator positions.

Recommendation: Examinations administered by the JSDA for sales manager and administrator positions should be offered in English.

Background:

EBC Securities Committee Member Companies

ABN AMRO Securities
Barclays Capital Japan
BNP Paribas
Cazenove & Co.
Commerz Securities
Credit Lyonnais Securities
CDC Marches
Deutsche Securities
DG Securities
Dresdner Kleinwort Benson
HSBC Securities Japan
Indosuez W.I. Carr Securities
ING Baring Securities (Japan)
Rabobank
RBS Securities
Société Générale Securities
UBS Warburg
West LB Securities Pacific
White & Case

Clarity and transparency

The creation of the independent Financial Supervisory Agency (now Financial Services Agency) (FSA) was welcomed by the EBC Securities Committee as an important institutional development in the reform of the regulatory environment governing the Japanese financial services sector. These high expectations, however, were quickly replaced by frustration as new interpretations of opaque regulations combined with the reluctance of the new regulators to give clear and binding guidance made it very difficult for securities firms to meet new requirements in terms of compliance, audit, financial reporting and procedural organization.

While regulatory transparency very much remains a key issue for European securities firms doing business in Japan, the EBC is pleased to report that the situation has improved somewhat since last year. For example, the FSA inspection manual is now available in both Japanese and English and has been widely circulated. The FSA has also recently developed guidelines for a “no-action letter” system, a development the EBC has been advocating for some time. While the “no-action letter” system certainly has the potential to greatly increase clarity in the regulatory regime, there is still much concern within the Securities community that sketchy implementation will seriously dilute the value of the reform. The EBC notes with disappointment, for example, that replies received under this system will not be legally binding.

Firewall regulations

Firewall regulations have long inhibited the development of an integrated financial services industry in Japan. These barriers have been particularly detrimental to European securities firms, as most are part of larger banking groups. Article 65 of the Securities and Exchange Law, for example, forbids banks from conducting securities business and vice versa. These barriers contradict the spirit of the “big bang” as they prevent financial services groups from efficiently managing their operations on a global, integrated basis.

The FSA has recently implemented “Double Hatting” measures for certain operations, which will likely alleviate many of the problems European firms have faced in the past. The EBC is pleased to note that European advocacy contributed to making this reform a reality.

However, the underlying divisions between different financial service functions in Japan remain. This has a serious adverse impact on operational efficiency, not to mention the fact that it defies global trends. The EBC notes, for example, that the law on which Article 65 is based, the Glass Steagall Act, has been repealed in the United States.

European financial services firms should be able to operate on an integrated, global basis in Japan. This is in the interest of all concerned. Businesses benefit from increased operational efficiency. Consumers benefit from improved service. All firewalls that create artificial barriers between group entities both within and, in the case of global reporting lines, outside of Japan should be eliminated.

JSDA Examinations

Sales representative examinations administered by the JSDA are now available in English in Japan. Not so for sales manager and administrator positions. These examinations are still only available in Japanese. This has resulted in organisational weaknesses as some individuals are being promoted, for compliance purposes, to managerial positions that they do not deserve.

Health Science

**Animal Health
Medical Diagnostics
Medical Equipment
Pharmaceuticals**

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animal health

The approval process for animal health products in Japan continues to inhibit the introduction of innovative products for use by the Japanese livestock industry, veterinarians, and pet owners. The EBC Animal Health Committee continues to urge the Japanese Government to commit itself to regulatory reform and international harmonisation in line with the recommendations outlined below.

Key issues:



- **Product approval and batch release regulations** The restrictive product approval process in Japan greatly increases the time and money needed to bring a new product to market. This increases costs to both producers and consumers, and restricts timely access to innovative new animal health products.

Recommendations:

- 1. Data requirements and application procedures in the new product approval process not considered relevant or consistent with international best practice should be eliminated. This includes procedures such as the acute toxicity animal test for mycelial (feed grade) products, which is a test unique to Japan.*
- 2. The current mandatory assay for biological products should be replaced with a non-compulsory official batch release, as is common practice in Europe. For in-vitro products, this requirement should be eliminated completely.*
- 3. Reports prepared for New Animal Drug Application (NADA) should be accepted in their original language (in the case of English) with a summary in Japanese, as is currently the practice for pharmaceutical products intended for human use.*
- 4. Maximum Residue Levels and the required withdrawal period should be established at the time of NADA, with all residue studies based on internationally accepted risk-based standards.*
- 5. Minor modifications to already-approved products should be allowed on a notification basis, without the need to navigate the time and energy consuming partial amendment procedure.*

Background:

The animal health industry

The European animal health companies are industry leaders in the research, manufacture, and distribution of products that treat and prevent disease, and improve the health and overall performance of animals. These products make an important contribution to quality of life by keeping pets healthy, promoting the efficient production of livestock, and guaranteeing maximum food safety. Animal health products are the result of intensive research and technological innovation with special emphasis on safety, quality, and product efficacy. A large amount of time, effort, and money goes into the development of new products. Given this situation, it is important that the regulatory environment surrounding new product approval does not add unnecessary delay and costs to the introduction of such innovative products to the market.

Regulatory environment

Animal health medicines are subject to the Pharmaceutical Law and are reviewed and approved by the Ministry of Agriculture, Forestry and Fisheries (MAFF). Product approval procedures for animal health products continue to be streamlined throughout the world (including the European Union). In Japan, however, it is still difficult to bring a new product to market due to approval delays and high costs associated with the approval process. For example:

- Each batch of mycelial (feed grade) product sold in Japan needs to pass a simplified acute toxicity animal test. This test is not only often inaccurate, but also runs contrary to the global movement to reduce the number of animal tests in the product development process.
- The GoJ requires all reports submitted for NADA and Animal Drug Importation Application to be written in Japanese. For human drugs, on the other hand, it is now possible to submit reports written in the original language, accompanied with a summary written in Japanese. Having to translate all original documents written in English based on overseas data obtained during pre-clinical and clinical tests represents a significant cost that could easily be avoided.
- Even minor modifications of approved products are now handled according to the partial amendment procedure, which is both time and energy consuming. This procedure is inconsistent with accepted international practice, which considers such changes the responsibility of the manufacturer, including all claims of liability.
- Most countries evaluate withdrawal periods based on previously established Maximum Residue Limits (MRL) at the time of new drug application. Japan, however, still adheres to a zero-tolerance policy for all but a handful of substances. As a result, if an MRL is set after a new drug is approved, the manufacturer must redo residue trials to determine the new withdrawal period. This represents a total reduplication of effort.
- Every production batch for vaccines and biological feed additives are subject to a mandatory assay in Japan. Existing product liability laws make mandatory testing obsolete, since product safety and efficacy is ultimately the responsibility of the manufacturer. The national assay for pharmaceutical products, for example, has already been eliminated. Most EU Member States do not require manufacturers to submit control reports, nor samples for examination for most vaccines, and thus consider the quality control laboratory of the manufacturer as an approved laboratory.

Despite these continuing problems, the EBC is encouraged by Japan's efforts through forums such as the Veterinary International Co-operation on Harmonisation (VICH) to harmonise Japanese standards with international best practice. The EBC welcomes these developments and encourages the Japanese Government to continue working towards greater transparency and efficiency in the product approval process.

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medical diagnostics

Medical diagnostics play a cost-effective role in preventing sickness, diagnosing diseases, and monitoring treatment. Unfortunately, the Japanese Government does not seem to fully appreciate the value of these products to the overall quality of healthcare in Japan. Diagnostics are still treated as pharmaceuticals under the law and must navigate a time and energy consuming approval process not found in other major jurisdictions. This increases the time and energy needed to bring innovative new products to market. The EBC Medical Diagnostics Committee urges the Japanese Government to focus on product approval reforms in line with the recommendations outlined below.

Key issues:



- **Product approval process** Only 12% of new product approval applications for in-vitro diagnostic products (IVDs) are currently processed within the 6-month period promised by the Ministry of Health and Welfare (now “Health Labour and Welfare” (MHLW)) back in 1985. These delays only serve to increase costs and restrict patient access to innovative new developments in the detection, prevention, and monitoring of disease.

Recommendation: The Japanese Government should develop a clear and detailed strategy for meeting its own goal of processing approvals for in-vitro diagnostic products within six months.

This strategy should include provisions for the following:

- 1. Sufficient human resources should be allocated to deal efficiently with new product approval applications.*
- 2. All application requirements that are unique to Japan and/or have no basis in science (such as the 3 lot / 3 time test data requirement) should either be eliminated or brought in line with international best practice.*
- 3. A product approval process based on risk classification should be quickly established in line with the recommendations of one of the MHLW’s own research committees (The Kawai Committee). Lower risk products should be subject to a simple notification procedure.*

Background:

The role of medical diagnostics in the healthcare system

Medical diagnostic reagents and equipment are used to perform diagnostic tests in hospitals, private laboratories, and blood transfusion centres. They are an essential component of any healthcare regime, indispensable in preventing sickness, detecting and diagnosing diseases, and monitoring treatment. The economic benefit of medical diagnostics is well documented, as techniques such as microbiology testing, viral load testing, and drug efficacy monitoring save costs by reducing nosocomial infection, days of hospitalisation, and pharmaceutical consumption.

The product approval process

Registration requirements for in-vitro diagnostics in Japan are very complex. The major problem stems from the fact that medical diagnostics are classified as pharmaceuticals under the Pharmaceutical Affairs Law, and not as a type of medical device as is common practice throughout the rest of the industrialized world. Due to this classification and its full application, medical diagnostics are subject to strict testing and approval procedures.

Medical diagnostic producers have for a number of years been lobbying for the introduction of a product approval system based on risk classifications, with lower risk products subject to a simple notification procedure. The Office of the Trade Ombudsman (OTO) issued a decision in 1995 calling on the MHLW to “study what types of medical diagnostic products do not need approval and establish a notification system for such products as soon as possible”. Five years have passed, and no such system has been established.

Product launches are also often delayed because of a lack of qualified staff on hand to deal with product approval applications in an efficient and timely manner. Currently, evaluators are seconded from other review sections and often do not have experience dealing with the diagnostic field.

Finally, while the EBC very much welcomes measures taken by the MHLW in recent years to simplify application procedures, a number of requirements unique to Japan still remain that should be brought in line with international best practice.

Harmonisation

The Japanese Government has shown an increasing amount of support in recent years for harmonising domestic regulations with international standards. A good example of this is the recently signed Mutual Recognition Agreement with the EU in selected sectors. The EBC encourages the Japanese Government to extend their stated commitment to harmonisation to include the medical diagnostics field as well. The EBC notes with regret that medical diagnostics are not part of the agenda for activities taking place under the auspices of Global Harmonisation Task Force and the International Conference on Harmonisation.

Health care reform

As with other parts of the healthcare system, the Japanese Government's desire to reduce health care costs has had a serious impact on the medical diagnostic community. The reimbursement price for medical diagnostics has been reduced across the board, which in turn has reduced the incentive for the medical community to use diagnostic products. The EBC feels that Japan's inappropriate reimbursement scheme distorts diagnostic usage, poorly reflects the value of specific diagnostic markers, and prevents the Japanese health care system from enjoying the benefits of appropriate testing for common diseases such as diabetes, osteoporosis, and tuberculosis.

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medical equipment

European producers of innovative medical equipment make an important contribution to the overall deliverance of quality healthcare in Japan. The EBC is working hard to have this contribution recognized as the Japanese healthcare system undergoes fundamental change.

Key issues:



- **Insurance coverage reform** New rules were introduced in October 2000 governing the application procedures for medical insurance coverage for medical devices. While very supportive of the reform process, the EBC is nevertheless disappointed that a number of important issues remain unresolved regarding classification, pricing, and procedural efficiency.

Recommendations:

1. Medical device classifications for insurance reimbursement purposes should be based on form, function, and efficacy. The EBC is disappointed that the classification criteria for a number of functional categories remain obscure (e.g. the A1 and A2 categories), despite requests for clarification.

2. The insurance reimbursement system should adequately compensate producers of medical device technologies with proven economic and clinical benefits. The EBC hopes to see this principle applied to new price calculation rules that will be implemented next year for the C1 and C2 categories.

3. All discrepancies between classification criteria and actual pricing application that have arisen as a result of these reforms should be carefully identified and eliminated.

4. The Ministry of Health, Labour, and Welfare (MHLW) should further promote procedural efficiency in the application process by clearly defining application time-clock criteria and devoting adequate resources to process applications.

- **Mutual recognition** The EBC is disappointed that a Mutual Recognition Agreement (MRA) recently signed between the EU and Japan did not include medical devices.

Recommendation: The EBC urges the Japanese authorities to coordinate medical equipment standards with their European counterparts to avoid unnecessary duplication in the product approval process. A MRA for medical devices should be implemented between the EU and Japan as soon as possible.

Background:

EBC Medical Diagnostics Committee Member Companies

Aesculap Japan
Agfa-Gevaert Japan
Air Liquide Japan
B.Braun Japan
Dornier Medical Systems
Draeger Japan
Edap Technomed
ELA Medical Japan
Elekta
Ernst Hansen Shokai
Fresenius Medical Care Japan
Laerdal Medical Japan
Maquet-Getinge
Nippon BXI
Philips Medical Systems
Radiometer
Siemens-Asahi Medical Technologies
Smiths Industries Japan
Sorin Biomedica
SULZERmedica Japan

The market for medical equipment in Japan

European medical equipment has a long history in Japan, based on a tradition of innovation and superior performance. Japanese companies, unencumbered by research costs, have been quick to make inexpensive copies and adaptations of imported technologies. Historically this has limited the market in Japan for foreign made equipment to technologically superior products, innovative products that are not easily copied, and those where the Japanese market is too small to make the copying of products worthwhile.

Healthcare reform

Japan is currently in the midst of a fundamental overhaul of its healthcare system brought on by a rapidly aging society, rising health care costs, and stagnant economy. Unfortunately, the high cost of advanced medical equipment has often been singled out as one of the main culprits underlying Japan's rising health care cost. The EBC would like to point out that medical equipment represents only a small percentage of Japan's total health care expenditure. The cost of this small investment is overshadowed by the enormous potential medical devices have to improve the quality of patient care and reduce the amount spent on hospitalisation and pharmaceuticals.

Insurance coverage

It is necessary in Japan for producers of medical equipment to file medical insurance coverage applications so that medical institutions using these devices can recover the product cost. Reforms implemented in October 2000 resulted in a number of changes to insurance coverage application procedures for medical devices. Improvements have been made to the application process, which will likely make it easier for firms to have their products approved for sale.

Having said this, the EBC is still very much concerned that the reimbursement price set by the Japanese Government does not adequately reflect the economic and clinical benefits of individual technologies. Part of the problem stems from the classification criteria set out in the insurance system. The EBC feels that if the number of functional categories continues to be reduced, this will further impede the establishment of an effective reimbursement mechanism that recognises the benefits of truly innovative technologies.

In addition to these more general concerns, the EBC is very much interested to know how the MHLW will implement proposed changes to the price calculation method for the C1 and C2 categories in April 2002. Will cost calculation methods for individual products be used? And how will foreign price adjustments fit into this system?

The EBC is also concerned that the new rules introduced a number of discrepancies between the functional categories prescribed by the laws and the actual price determined by the investigating officers at the local inspection offices. The EBC hopes these discrepancies can be eliminated through further consultations between interested parties.

Safety first

The EBC would like to assure the Japanese Government that European medical equipment producers take the issue of product safety very seriously. European producers have always applied strict quality control standards based on internationally recognized best practice and will continue to work hard to ensure that their products are used properly by medical practitioners in Japan.

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pharmaceuticals

Healthcare reform continues unabated in Japan. An aging population and fiscal constraints have forced the Japanese Government to completely re-evaluate the medical system, including prices paid out for prescription medicines. As this reform process progresses, the EBC Pharmaceuticals Committee urges the Japanese Government to continue recognizing the important role effective new medicines play in the deliverance of quality healthcare in Japan.

Key issues:



- **Pharmaceutical pricing reform** Despite the elimination of market distorting price differentials and a drastic reduction in the total proportion of the Japanese healthcare budget devoted to pharmaceutical expenditures in recent years, the Japanese Government continues to search for new ways to contain the amount it pays out for prescription medicines through the National Health Insurance (NHI) system.

Recommendation: The EBC urges the Japanese government to recognize the important role that effective new medicines play in the deliverance of quality healthcare in Japan. The EBC feels strongly that further reform of the drug pricing system should only occur within the context of wider healthcare reform, including medical fee reform, elderly healthcare reform and reform of the medical provision system. The current pricing mechanism should also be strengthened to adequately reward innovation in new drug development.

- **Product approval process** The International Conference on Harmonisation (ICH), a joint Japan/US/Europe effort to standardise the drug approval process, has made great inroads in promoting the acceptance of foreign clinical trial data for use during the drug approval process in Japan. This has made it much easier for European pharmaceutical firms to introduce effective new medicines to the Japanese market in a timely and efficient manner.

Recommendation: The EBC encourages the Japanese government to continue implementing clinical trial reforms and establish a single organisation dealing with issues from the development period (pre-submission) through to review and approval (post-submission) in order to create a more consistent and effective mechanism.

Background:

EBC Pharmaceutical Committee Member Companies

AstraZeneca
Aventis Pasteur
Aventis Pharma
Bayer Yakuhiin
Bracco-Eisai
Degussa Japan
Fournier Japan
Fresenius Medical Care Japan
GALDERMA
GlaxoSmithKline
Guerbet
Itasco
Janssen-Kyowa
Leo Pharmaceutical Products
Lundbeck Japan
Merck Japan
Nihon Schering
Nihon Servier
Nippon Boehringer Ingelheim
Nippon Organon
Nippon Roche
Novartis Pharma
Novo Nordisk Pharma
Pharmacia
Sanofi-Synthelabo
Serono Japan
Solvay Seiyaku
UCB Japan

Pharmaceutical pricing reform

The members of the EBC Pharmaceuticals Committee are dedicated to the creation of effective new medicines for the cure of sickness and disease in Japan. The ability of the industry to fulfil this mission depends to a great extent on the financial incentives available for producing innovative new medicines. As such, the Committee takes a very keen interest in the pricing mechanism used to value pharmaceutical products in the market.

In Japan, most of the cost of prescription medicines is covered by the National Health Insurance (NHI) system. The Ministry of Health Labour and Welfare (MHLW) sets the price of prescription medicines according to the official drug pricing rules. This is the price that the Ministry reimburses the dispensing community for drugs that have been prescribed. In Japan, medical institutions generally purchase pharmaceutical products from wholesalers at a discount and then apply for reimbursement from the government at the NHI price. In the past, the discount rate was excessive. Due to a concerted effort on the part of the Government, manufacturers, wholesalers and the dispensing community, this price differential (*yakka-sa*) has been reduced.

Historically, pharmaceutical costs also accounted for a high proportion of the total Japanese healthcare expenditure in comparison with other nations. Through price reductions and other measures, this proportion has dropped from 29.5% (1991) to 20.1% (1998), which was the original policy goal.

The EBC feels that despite the Government's continued desire to reform the pricing mechanism for pharmaceuticals in Japan, there is not much room to reduce prices further without adversely affecting the ability of pharmaceutical firms to develop new medicines for the benefit of Japanese society. Any further reform of the drug pricing system should only occur within the context of wider healthcare reform, including medical fee reform, elderly healthcare reform and reform of the medical provision system.

The EBC also urges the Japanese Government to further strengthen the current pricing system so that effective new products are adequately rewarded for their contribution to the improvement of healthcare in Japan. The EBC recommends that in addition to the current cost-calculation method used for new products and the comparison method used for drugs with similar efficacy, a new pricing category should be established that rewards truly innovative or breakthrough drugs based on rationale submitted by the manufacturer. Premiums should also be increased for other useful new drugs. The EBC maintains its long held stance that the pricing mechanism should ultimately reward innovative new drugs based on competitive market principles.

Other issues

The EBC believes that pharmaceutical patents and intellectual property rights should be protected and respected in Japan. The EBC is disappointed that generic drug producers are still allowed to start developing before patent expiry. Respect for intellectual property rights and brand names should also extend to the pricing mechanism as well. The EBC is opposed to a system that would apply the same price to drugs with the same ingredients.

The Freedom of Information Disclosure Law was implemented in April 2001 and the MHLW allowed the EBC to comment on specific regulations. Although still too early to judge, the MHLW has carefully implemented this new law and informed relevant parties in a timely manner. The EBC will continue to carefully monitor the MHLW's activities.

Industry

Aeronautics
Automobiles
Automotive Components
Construction
Defence
Environmental Technology
Materials
Space

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aeronautics

European aeronautics firms have recently further consolidated their world-wide success in the field of helicopters, engines and commercial aircraft. Airbus is now the world leader in orders for commercial aeroplanes. Eurocopter is the best-seller of commercial helicopters in Japan. The EBC is also encouraged by the beginnings of tangible, albeit modest, co-operation between European and Japanese firms in commercial aircraft development. The EBC hopes this will lead to new opportunities for European firms to compete in the Japanese commercial aircraft market.

Key issues:



- **Promoting competition** Despite the fact that European manufacturers of commercial aircraft, engines, components, and navigational equipment offer state-of-the-art technology at internationally competitive prices, the European share of the Japanese market for commercial aircraft and related equipment is considerably less than its world-wide average.

Recommendation: Procurement decisions should be made on a competitive basis free from political influence. The EBC would like to encourage Japanese firms to diversify their sources of supply and consider the advantages of European products in this area.

- **Promoting industrial co-operation** Co-operation in commercial aircraft development has also been heavily biased in favour of North America. The EBC is convinced that there are mutually beneficial opportunities for co-operation between European and Japanese firms on projects such as the A380, and in areas such as airframe, propulsion, components, air traffic management, and navigation systems.

Recommendation: The EBC is looking to increase Japanese industrial involvement in the development of European commercial aircraft. Given the difficult political and strategic environment surrounding industrial co-operation on large-scale projects, the EBC recommends that co-operation on a smaller scale also be encouraged to further working relationships and promote mutual trust and understanding.

Background:

EBC Committee of Aeronautics, Space and Defence Member Companies

AgustaWestland
Airbus Japan
Alcatel Japan
Arianespace
BAE Systems
EADS Japan
Eurocopter
Rolls-Royce International
Snecma
Thales Avionics
Thales International Japan
TurboMech Japan

The Japanese market for commercial aircraft

The Japanese market for large commercial aircraft is one of the largest in the world. Historically, this market has been dominated by the United States, but recent American manufacturer consolidation is narrowing supplier alternatives and restricting competition. Japan Airlines (JAL), for example, has found itself with an extensive commercial aircraft fleet from a single source supplier.

The EBC would like to encourage JAL and other aerospace companies in similar situations to secure double sources for the benefit of their customers, shareholders and public in general.

The Japanese aeronautics industry

Since the end of World War II, the Japanese aeronautics industry has been trying to rebuild a domestic capability with support from the Japanese government. The four "heavy industries" have relied heavily on defence contracts, which still account for the majority of their total aerospace turnover, and on partnership with Boeing for the rest.

Attempts by the Japanese Government through the Ministry of Economy, Trade and Industry (METI) to promote Japanese independence in the field of aeronautics through national projects have not been as successful as expected and have more recently encountered resistance from Japanese industry itself.

Co-operation in commercial aircraft development

Japanese industry is now demonstrating more interest in co-operating with European firms on the development of commercial aircraft. The EBC hopes to build on current successful co-operation such as the BK-117 helicopter and increase the scope of joint activities to include future projects such as the A380 and its derivatives.

However, Japanese industrial concerns have yet to enter into substantial new product development relationship with European firms, despite stagnant commercial opportunities in the North American market.

Pro-active collaboration with successful European companies would certainly enable Japanese companies to strengthen their position in commercial aeronautics. By participating in a wider range of projects, Japanese firms would be able to expand their business opportunities and further develop their technological base. Japan would also benefit from co-operation on the quickly evolving fields of air traffic management and ground-based products that will certainly help to enhance the safety of Japanese airspace.

The EBC is encouraged, however, by the increasing interest on the part of Japanese industry in becoming more involved in product development with European aircraft manufacturers.

European companies will work hard to solidify these new relationships and pave the way for more substantial co-operation in the future.

automobiles

European brands dominate the Japanese market for automobile imports. The principal obstacle to an increase in European automobile sales is the weakness of the domestic market. Sales remain well below the peak reached at the height of the bubble. European companies will continue to offer a wide range of attractive new models to stimulate consumer demand.

Key issues:



- **Harmonisation of technical standards** Japan's regulatory regime has changed markedly in response to the globalisation of the automobile industry. Japan's membership of the UN/ECE 1958 Agreement on the Mutual Recognition of Type Approval for Vehicles etc has accelerated the harmonisation of her technical standards with international norms. But there are still some areas where Japan has unique national technical requirements.

Recommendation: The EBC encourages the Japanese government to speed up the adoption of UN-ECE Regulations.

- **Environmental legislation** European importers share the concern of the Japanese government to reduce the impact of the automobile on the environment. The EBC hopes however that fuel efficiency targets, more stringent emission regulations, and legislation for the disposal of End-of-Life Vehicles will be implemented in such a manner that these policies do not put a disproportionate burden on importers.

Recommendation: The EBC urges the Japanese authorities to take full account of the views of automobile importers in formulating its environmental policies.

Background:

EBC Automobile Committee Members

ACEA
Audi Japan
BMW Japan
DaimlerChrysler Japan
Fiat Auto Japan
Ford Motor Company (Japan)
General Motors Japan
Jaguar Japan
Land Rover Japan
Nicole Automobiles
Peugeot Japan
Porsche Japan
PSA Peugeot Citroen
Renault Japon
Volkswagen Group Japan
Volvo Cars Japan

Overview

Japan is the by far and away the largest market in Asia for European car exports. Imports of foreign branded vehicles rose strongly in the early 1990s to reach 311,000 units in 1996. Since then, imports have declined along with the market as a whole. At 248,000 units in 2000, imports were still 20% below the peak. This represents about 6% of the total passenger car market, including mini cars (*kei* cars). European brands have an 87% share of the import car market, excluding cars exported to Japan from the overseas transplants of domestic manufacturers.

The European participation in the Japanese car market is not restricted to direct sales. Several European companies have taken equity stakes in Japanese automakers to work together not only in Japan, but in other markets, especially in Asia. Other European companies have formed alliances with their Japanese counterparts to share R & D or product development.

Global harmonisation

The globalisation of the automobile industry has given European and Japanese automakers a common interest in the international harmonisation of technical standards. While competing fiercely in the market place, the two industries cooperate to reduce the regulatory burden on the industry.

In 1998 Japan became the first country in Asia to accede to the UN/ECE 1958 Agreement on the Mutual Recognition of Type Approval for Vehicles etc, which provides that vehicle devices that have received type approval according to ECE Regulations in one contracting party are exempt from testing in any other signatory country where those regulations have been adopted. Japan has pledged to adopt 30 ECE Regulations by the end of FY 2003. So far 11 regulations have been adopted. By contrast the EU has adopted 78 regulations.

Environmental policies

Diesel technology plays an essential role in reducing CO2 emissions in the EU. In Japan, regulations are under consideration which could result in diesel passenger cars being banned from sale in Japan for the foreseeable future.

Deregulation

The EBC Automobile Committee works closely with the European Automobile Manufacturers Association and the Japan Automobile Importers Association (JAIA) to devise common positions on regulatory issues that affect the interests of European importers. JAIA represents the importers on the various government consultative bodies that discuss policy towards the automobile industry. But the EBC Automobile Committee maintains its own direct links with government officials who are regularly invited to attend informal meetings with committee members.

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automotive components

The EBC Automotive Committee is working hard to improve mutual trust and understanding between independent European automotive component producers and Japanese car manufacturers. European firms offer proven technical expertise, competitive prices and global experience to Japanese manufacturers in this increasingly competitive international environment. The EBC looks forward to increased dialogue with Japanese companies through face-to-face meetings and design-in seminars in order to promote the merits of the European automotive components industry.

Key issues:



- **Promoting information exchange** Face-to-face meetings between the European Association of Automotive Suppliers and Japanese car manufacturers were established in 1995 to promote information exchange between European and Japanese companies. These meetings have proven to be an extremely effective venue to discuss issues of mutual concern relating to products, platforms and other important issues affecting the industry.

Recommendation: The EBC strongly supports the continuation of face-to-face meetings in Europe with representatives from the Japanese automobile industry. The EBC feels that these meetings have led to a greater understanding between European component manufacturers and Japanese carmakers, and hopes that the scope of these meetings will be expanded in the future to include Japanese venues as well.

- **Internationalisation of the automobile industry** The EBC welcomes the opportunity internationalisation presents for innovative European firms to strengthen their relationship with Japanese automobile manufacturers in developing new products and sharing technical expertise.

Recommendation: The EBC urges the Japanese car industry to build on recent globalisation trends by focusing on the technical, commercial and logistical aspects of automobile production. Part procurement should ultimately be based on merit.

Background:

History

The European automotive component industry's relationship with Japan has intensified as a result of the development of Japanese car manufacturers' transplant operations in Europe. This has resulted in increased opportunities for European firms to do business with Japan, as the Japanese domestic market has traditionally been relatively closed to foreign participation due to traditional procurement structures that relied almost exclusively on group companies controlled by the vehicle makers.

New opportunities

Recently, traditional industrial group relationships have started changing due to competitive pressures in the global market. With the internationalisation of the world automobile industry, more and more European companies are dedicating resources to attracting business in Japan by investing in local infrastructure and improving technical competence with the goal of promoting more direct contact and closer relationships with Japanese clients. In the long run, the EBC sees the globalisation of the Japanese car industry as a very positive development – one that will likely lead to increased opportunities for European firms in the future.

In the meantime, however, European automotive component manufacturers continue to face difficulties in promoting European technical expertise to the Japanese automobile industry, mainly due to continued reluctance in outsourcing product development. Japanese firms are still uneasy about divulging proprietary information to outsiders, continuing to favour traditional suppliers for product design and production. European firms, for their part, are striving to meet the high expectations of Japanese manufacturers in terms of product quality and efficient supply.

Promoting mutual understanding

The EBC recognises these concerns and seeks to reassure Japanese companies that European firms are committed and reliable partners in any product development relationship. The EBC is pleased to note that the European Association of Automotive Suppliers (CLEPA) has recently established an office in Japan to further promote information exchange and mutual understanding between Japanese and European firms. In addition, the EBC hopes that annual meetings between the European car parts industry and Japanese carmakers will also one day take place in Japan to broaden European understanding of Japanese manufacturer expectations.

European automotive component producers have much to offer the Japanese car industry. European firms are not tied to specific European automobile manufacturers, and have established a global network of clients. European car parts producers have a reputation for product innovation, technical expertise, efficiency, quality and personal attention that Japanese automobile manufacturers are demanding of their suppliers on an increasingly frequent basis.

The outsourcing of automobile component development has emerged as a clear trend in the European automobile industry. The European system offers lower risks at less cost with greater flexibility and hopes that this system will be adopted more fully in Japan in the future. This would lead to a more competitive structure that would promote lower costs and more innovation.

For its part, the European auto parts industry will also work hard to increase mutual understanding with Japanese firms, with the goal of increasing product development and manufacturing relationships with Japanese operations in both Europe and Japan.

EBC Automotive Components Committee Member Companies

- A. Raymond Japan
- BASF Japan
- Behr Japan
- Benteler Automotive
- BOSCH Automotive Systems
- Delphi Aftermarket Operations - Japan
- Faurecia Japon
- Freudenberg
- GETRAG
- Herberts Shinto Automotive Systems
- Inergy Automotive Systems
- Johnson Matthey Japan
- Magneti Marelli
- Nihon Michelin Tire
- Osram Japan
- Pirelli
- Sachs Automotive Japan
- SERIC
- SiemensVDO Automotive
- SIKA
- TRW Aftermarket
- TRW Automotive Japan
- ZF Japan

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construction

The Japanese construction industry has been particularly hard-hit by Japan's so-called "lost decade". This has simply added to the numerous challenges European construction firms already face doing business in Japan. Despite official Government policy supporting competition and regulatory reform, European firms still face hurdles in bidding for projects, receiving approval for new products, and obtaining the necessary licenses to do business in Japan.

Key issues:



- **Structural reform** Opportunities for European firms to participate in the huge construction market in Japan will not increase until the economic situation improves and a serious attempt is made to address the numerous structural deficiencies in the Japanese construction industry.

Recommendation: The EBC urges the Japanese Government to promote structural reform in the Japanese construction sector through further deregulation, industry consolidation, financial restructuring, competitive bidding (see below), and the introduction of private finance initiatives.

- **Public procurement** European firms have traditionally found it much easier to supply innovative materials, designs, and techniques to the private sector than to the public sector construction market in Japan. Reasons for this include difficulties procuring information on tender offers from commissioning entities, close ties between commissioning entities and incumbent firms, and lack of process transparency – from securing bid qualifications through to the evaluation and awarding of contracts.

Recommendation: The EBC urges the Japanese Government to ensure complete transparency in the tendering process. Contracts should be awarded solely on the basis of cost-effective merit.

- **Product approval** Despite the recent introduction of performance standards to the Japanese Building Code, European firms still face numerous obstacles introducing innovative new building materials to the Japanese market.

Recommendation: Product approval reforms necessitated by recent changes to the Building Code should be implemented in an efficient, transparent, and consistent manner.

Background:

EBC Construction Committee Member Companies

Clestra Hauserman
Currie & Brown (Japan)
Degremont Co.
Forbo-Krommenie Japan
Grohe Japan
Kiwa
LEGRAND
Meiho Corporation
Midas International
Nihon Saint-Gobain
PMC
Ove Arup & Partners Japan
Schal Bovis
Schindler Elevator
Skanska Europe
SKW East Asia
Trespa Japan
Van der Architects

Tough times

The Japanese construction market is becoming increasingly unattractive to European firms involved in the sector. The numerous obstacles European firms have traditionally faced doing business in Japan have simply been compounded by continued economic stagnation and problems that continue to plague the industry in general.

As it stands, there are simply too many firms chasing too little work in Japan. Over 550,000 firms are involved in the sector, including 70,000 general contractors. Only 6,000, however, are capitalized at over 100 million yen. The construction sector also employs over 10% of the Japanese workforce, an unusually high percentage by OECD standards.

Collusive business practices and official government support of the industry has prevented the creation of a market environment based solely on cost-effective merit. All firms, even the efficient ones, have suffered as a result.

This has not gone unnoticed by the Japanese Government. The Ministry of Land, Infrastructure and Transport (MLIT) has been actively encouraging consolidation within the industry and has started to impose stricter qualification criteria on general contractors bidding for public works projects. Facing fiscal constraints itself, the Government has become increasingly interested in the cost effectiveness of the projects that it funds.

Procurement practices

One of the areas that the EBC feels is in particular need of further reform is the procurement process for public works projects. Despite repeated efforts by the Japanese Government to promote competitive bidding practices, including the adoption of WTO GPA provisions and the recent introduction of the Act for Promoting Proper Tendering and Contracting for Public Works, many government contracts remain heavily influenced by politics, lobbying, and collusive business practices such as bid rigging. The EBC, however, does not realistically expect this situation to change substantially until the symbiotic relationship between politicians, bureaucrats and the construction industry erodes.

Regulatory burden

The cost of setting up local representation, obtaining licenses, registering under the *keishin* system, and bidding for projects remains prohibitive for European contractors. The ability of European firms to build using innovative designs, imported materials and modern construction methods - the key to their competitive advantage - is effectively taken away by over-regulation and complicated procedures to obtain the necessary approvals.

As a result of changes to the Building code in June 2000 all materials receiving approval on the basis of performance standards will now be admitted to Japan. It is also now theoretically possible to test these materials in their country of origin, so long as the testing centre is approved by the Japanese Government. The EBC feels that these reforms, if implemented properly, have the potential to greatly improve access for innovative European construction technologies, materials, and techniques. So far the implementation of these reforms has not lived up to expectations, though in fairness it is still too early to pass judgement on the final outcome of the reform process. The EBC urges the Japanese Government to work hard to alleviate the confusion that has resulted from the introduction of these new rules and further promote efficiency in the product approval process.

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Mr. Ramon Terrones

Chair, Committee of
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defence

European producers have remained largely absent from Japan's huge market for defence equipment. A number of barriers persist that have prevented the Japanese security forces and defence agencies from benefiting from state-of-the-art technologies European defence firms have to offer. The EBC is working to increase the presence of European companies in Japan by encouraging a more competitive product development environment and transparent procurement process.

Key issues:



- **Non-tariff barriers to trade** Defence procurement should be based on technological, operational and cost-effective merit. In Japan, bureaucratic interference, time-honoured collusive business practices, and a critical voluntary lack of knowledge about European equipment have limited the effectiveness and scope of the defence procurement process.

Recommendation: The EBC urges the Japanese Government to increase transparency in defence procurement. European companies have much to offer in terms of inter-operability, technical expertise, and real-world operational experience. Defence equipment should be chosen on cost-effective grounds whenever politically possible.

- **Industrial co-operation** With the exception of the US, Japan prohibits co-development involving the exchange of defence related information. Since specifications for military equipment also fall within the scope of this prohibition, it is very difficult for European companies to participate in co-operative ventures with the Japanese defence industry.

Recommendation: The EBC urges the Japanese Government to ease regulations concerning the transfer of information for European companies looking to co-operate on product development in Japan. This will give Japanese industry and governmental agencies access to new technologies and processes, including much needed real-world operational experience.

Background:

EBC Committee of Aeronautics, Space and Defence Member Companies

AgustaWestland
Airbus Japan
Alcatel Japan
Arianespace
BAE Systems
EADS Japan
Eurocopter
Rolls-Royce International
Snecma
Thales Avionics
Thales International Japan
Turbomeca Japan

The Japanese defence market

The market for defence equipment in Japan is the second largest in the world in terms of monetary value. Japan's current five-year defence build-up plan includes an arms procurement budget of around 4.5 trillion yen, of which roughly 75% is expected to be spent on locally built and developed weapons systems. Products built under license from US manufacturers or directly imported from the US make up most of the remaining 25% of Japan's defence hardware market, with imports or licensed production originating in Europe accounting for an estimated 2%. With few exceptions, European defence sales to Japan have consisted mainly of minor equipment or components for Japanese-made weapon systems.

European involvement in Japan's defence market

As with many other sectors of the Japanese economy, the European defence industry faces a number of non-tariff barriers to trade that limit European involvement in the Japanese market. Bureaucratic and protectionist influence have severely reduced transparency in the procurement process. The Japanese defence establishment is reluctant to receive information on European equipment. No representatives are sent to events such as the Paris Air Show or Euronaval. This voluntary lack of exposure leads to narrow views. This situation has been exacerbated by restrictive information transfer practices limiting the opportunity for EU/Japan industrial co-operation in the development and adaptation of defence equipment. As a result, European defence firms face an uphill battle in their efforts to both increase co-operation in product development with Japanese companies, and, when necessary, sell ready-to-use, state-of-the-art equipment to the Japanese Government.

American political pressure surrounding the trade imbalance, the Foreign Military Sales program providing financial incentives to buy American products, and Japanese fears of non-interoperability have further restricted European access to the Japanese defence market.

While the EBC recognises the important role the US plays in the Japanese security structure, the EBC feels that the Japanese attitude towards interoperability is often overstated. Limiting foreign procurement to American products has not guaranteed interoperability with the US. Instead, this attitude has restricted Japanese access to innovative European solutions to inter-operational problems and limited Japan's bargaining position within the US-Japan security alliance. European companies have over 50 years of experience through NATO dealing with the problems of interoperability in near combat or real combat situations and would welcome the opportunity to share this experience with the Japanese defence establishment.

Opportunity for change

Japan's current economic climate, combined with increasing tensions in the region and an expanding array of Japanese missions abroad, offers a good opportunity for the Japanese Government to re-evaluate its procurement policy to focus more on cost-effectiveness. A more competitive procurement process would increase Japanese access to off-the-shelf state-of-the-art defence equipment with proven capabilities. As important, by increasing the scope for product co-development, Japanese industry would gain access to much needed technologies, industrial processes, and operational experience.

In return, European companies offer worldwide market-based pricing and experience. Moreover, since there is no security alliance between Japan and Europe complicating political relations, Europe can offer full technology transfer with no political strings attached. This would be of great benefit to Japan as it searches for ways to improve interoperability, self-reliance, and military readiness in an era of fiscal constraint.

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environmental technology

Interest in Japan in environmental technology has expanded considerably in recent years. The potential market for these products is in fact enormous. However, much of this potential remains unfulfilled due to uncertainties in the regulatory environment and general attitudes towards environmental remediation. European firms have a long history of developing innovative new technologies and processes for solving environmental problems in Europe and around the world. The following issues need to be addressed in order to improve the business environment for European companies in Japan.

Key issues:



- **Transparency** European companies feel that regulations and policies concerning public tender are not transparent in Japan. It is difficult to procure sufficient information from public authorities in order to make reasonable, informed bids on public and other tender offers.

Recommendation: The EBC suggests that information on procurement in the public sector be distributed to suppliers in a more internationally accepted manner.

- **Harmonisation** Japanese rules in areas such as soil remediation often diverge substantially from internationally accepted standards of best practice especially with respect to sampling and analysis methodology.

Recommendation: The EBC encourages the Japanese Government to develop clear soil remediation guidelines based on accepted international best practice in areas such as site characterisation, sample treatment and testing methodologies.

- **Equal opportunity** Many local, regional and central Japanese Government entities, as well as a number of private firms, are developing green purchasing guidelines to encourage the procurement of environmentally favourable products.

Recommendation: While the EBC supports the “green purchasing” concept in principle, it is important that these guidelines are not used to discriminate against European products and services that are acknowledged in Europe as being environmentally favourable, but may not be recognised as such in Japan.

Background:

EBC Environmental Technology Committee Member Companies

Correns Corporation
Degremont Japan
Japan Insite
JBS
Rhodia Japan
Royal Ten Cate
T V Rheinland Japan

With a focus on:

Prevention and remediation of WATER, AIR and SOIL pollution;
Prevention of WASTE, EMISSION and NOISE;
Supply of renewable ENERGY;
Environmental SAFETY.

Environmental technology in Japan: An overview

The potential market for environment technology in Japan is enormous. According to the Ministry of the Environment, there are more than 5300 heavily polluted waste disposal sites in Japan, of which at least 2000 have to be cleaned immediately. It is estimated that over 440,000 other sites require various levels of soil remediation. Japan burns over 80% of its waste, which produces over 400 000 tons of ash per year. Japan treats over 15 billion cubic meters of sewage water on a yearly basis. The market for solar power is estimated to exceed 5000 MW by the year 2020, and only 100 MW is currently installed.

While many expected a boom in the environmental technology field in Japan, in reality the market has not lived up to this promise. Part of the problem lies in the Japanese Government's inability to develop a comprehensive strategy and regulatory framework to deal with many of these problems. Private and public sector entities also remain hesitant to divulge the extent of the environmental problems they are facing. Until this attitude changes, the market potential of the Japanese environmental technology sector is likely to remain unfulfilled.

Government procurement

It is extremely difficult for European producers of environmental technologies such as water treatment plants to procure enough information from regulatory and other authorities in order to make reasonable, informed bids on public and other tender offers. There are essentially two reasons for this. First, there is a large gap between published standards/guidelines and the actual performance expected of equipment producers. For example, if a European firm wants to sell a clarifier, it is difficult to know if the allowable emission level is actually the standard by which the tender will be judged. This situation is exacerbated by the fact that these de facto emissions standards vary greatly between prefectures, increasing the time and energy needed to procure regulatory and tender information.

Soil remediation

The Japanese Government has yet to develop a comprehensive regulatory regime governing soil remediation in Japan, including aspects such as: a transparent and comprehensive list of soil pollutants and acceptable concentration levels, soil standards, site characterisation standards, decision models for determining remediation urgency, timeframes for cataloguing and cleaning up polluted sites, and measures designed to harmonise policies at all government levels. Many testing methodologies used in Japan differ substantially from accepted international practice, and testing costs are much higher than they are in Europe. The EBC feels that increased competition in site assessment and testing services would benefit the environment and help society by reducing the costs associated with remediation.

Green purchasing

Many governmental agencies and private sector entities have started to develop green purchasing guidelines giving preference to suppliers that can provide environmentally favourable products and services. While the EBC generally supports the principles underlying the green purchasing concept, we are concerned that these rules may lead to discrimination against European products and services. The criteria used to determine which suppliers would qualify under this program remain unclear. If a form of eco-labelling is to be used, then European eco-marks should be accepted on a non-discriminatory basis. If ISO 14001 certification is one of the determinants (as has been proposed by the Tokyo Metropolitan Government), then firms certified by ISO certification service providers accredited in Europe should receive equal treatment to those firms certified by certification service providers accredited in Japan.

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materials

High tariff rates on imported industrial materials significantly increase commodity procurement costs and seriously affect the competitiveness of Japanese industry. This simply adds to the problems faced by important Japanese industries in areas such as steel, glass and machining struggling to remain competitive in an increasingly international market. As one of the largest consumers of industrial materials in the world, Japan would greatly benefit from unrestricted access to high quality products at market-based prices. The EBC Materials Committee, representing a large, important sector in European industry, urges the Japanese Government to reduce tariff rates on imported industrial materials and remove all forms of discrimination against European products.

Key issues:



- **Tariffs** Tariffs are by far the largest barrier to trade in industrial materials with Japan. Most common industrial materials are sold worldwide under transparent prices and even the smallest tariff-induced price differential makes it difficult for European producers to compete. The Japanese consumers of industrial materials in industries such as stainless steel, electronic components, battery production, automobiles, and ceramics, face increasingly stiff international competition and would benefit from cheaper commodity procurement. Japan applies tariffs selectively with no other purpose than to support a small number of local companies. This greatly distorts competition in Japan and in export markets abroad.

Recommendation: The EBC urges the Japanese Government to eliminate all tariffs on industrial raw materials. This would give Japanese users access to high quality products at market-based prices.

- **Discriminatory treatment** Many types of industrial raw materials are subject to discriminatory treatment under the Generalised System of Preferences (GSP) whereby imports from certain countries are exempted from paying Japanese duty while imports from other countries are not. European producers do not enjoy this exemption.

Recommendation: The EBC urges the Japanese Government to remove any barriers to trade that discriminate against European producers.

Background:

Reducing tariffs

High tariff rates remain the key factor inhibiting European access to the Japanese market for industrial materials.

Japan has demonstrated a reluctance to further reduce tariff rates on these and other products ahead of the launch of the new round of the WTO. This is unfortunate. The EBC feels that it would be in Japan's interest to take immediate, unilateral action to reduce tariffs on all remaining industrial materials considering the fact that these products represent vital inputs for Japanese industry. For example:

- Processed nickel products, whose market price in Japan is distorted by tariffs ranging from 3.3% to 4.8%, is a vital input in the Japanese steel industry, which is struggling to maintain its international competitiveness. Nickel oxides are also used in the production of specialty batteries such as those used in cellular phones.
- Fused aluminium oxide, also called artificial corundum, is used in the abrasive industry for grinding wheels, sand paper or loose grain applications like grinding and polishing of glass and electric components. Imported corundum is subject to a 3.3% tariff, though most imports come from countries enjoying tariff exemption under the Generalised System of Preferences. However, some categories that are not produced domestically cannot be purchased from tariff-exempt sources. This increases the price for imported corundum and effectively penalises the Japanese end user.
- Lead oxide, which is subject to a 4.7% import tax, is used in the glass industry for TV-tubes, optical glass and crystal glass, in the PVC industry as a stabiliser and dryer, and in the pigment industry for anticorrosive paints. Japan is the largest consumer of lead oxide in the world. As with corundum, almost 100% of lead oxide imports come from countries enjoying GSP privileges. As such, this tariff only really affects European producers who represent less than 1% of the market.

Product classifications

Arbitrary tariff classifications and revisions also continue to make life difficult for European suppliers of industrial materials in Japan. Importers have come up with a number of innovative ways to have their products classified in categories enjoying lower tariff rates. For example, a number of firms currently import nickel to Japan as "scrap" to take advantage of GSP privileges from countries such as South Africa, Russia, China and Zimbabwe. South Africa does not even have a steel industry, which makes the classification of processed nickel imports as "scrap" somewhat unbelievable.

Listing of nickel on the Osaka Metal Exchange

The Osaka Metal Exchange has proposed listing nickel on its exchange, though this has met with a great deal of opposition from Metal Mining Association and the big trading companies. While most EBC members are also opposed to a listing (the needs of the industry are already adequately served by the exchange in London), the EBC was encouraged that one of the reasons given by the Osaka Metal Exchange for listing nickel was to encourage a no-tariff environment.

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space

Government and industry in Japan and Europe maintain good working relationships in the space sector. The European Space Agency (ESA) and Europe's major national space agencies maintain close relations with Japan's space authorities, and industrial co-operation is slowly increasing between European and Japanese companies in the development of satellites and related technology. The EBC hopes that this co-operation will continue to develop, and lead to further opportunities for European businesses in Japan.

Key issues:



- **Promoting industrial co-operation** Significant industrial co-operation in areas such as launchers, space stations, remote sensing devices, navigation, and global information infrastructure, will only be possible if promoted by the European and Japanese agencies responsible for space development.

Recommendation: The EBC supports co-operation between NASDA and European space agencies, and encourages further development of this relationship. This will ultimately lead to greater opportunities for co-operation at the industry level between Europe and Japan.

- **Empowering the private sector** The Japanese Government agencies responsible for Japan's space program still exercise a great deal of control over manufacturers in the space sector. For example, Japanese Government contracts are often split up between many different companies without designating an overall prime contractor. This makes discussion at the industry level very difficult and hinders long-term co-operation between European and Japanese businesses.

Recommendation: The EBC encourages the Japanese Government to give more independence and flexibility to Japanese manufacturers to pursue co-operative ventures with European businesses. European standards should also be accepted without restriction in the co-operative development of space technologies.

Background:

EBC Committee of Aeronautics, Space and Defence Member Companies

AgustaWestland
Airbus Japan
Alcatel Japan
Arianespace
BAE Systems
EADS Japan
Eurocopter
Rolls-Royce International
Snecma
Thales Avionics
Thales Japan
Turbomeca Japan

Japan and the space sector

Japan is among the leading nations in the field of space. The development of heavy-lift launchers has given Japan an independent access to space. Japan has also been building and launching state-of-the-art satellites at the rate of approximately one experimental spacecraft per year.

However, the Japanese space industry now relies almost exclusively on orders from government agencies such as NASDA and the Institute of Space and Astronautical Sciences (ISAS), after American political pressure forced the opening of the commercial satellite market to international competition in 1990.

Japanese satellite manufacturers have been unable to compete in the international satellite market due to low domestic volumes. This forced the 2001 merger of the space divisions of NEC and Toshiba. The commercial side of the Japanese space industry tends to concentrate on ground stations and satellite components. Japanese firms have successfully supplied various components and parts to American and European satellite manufacturers as well.

Commercial satellites

The existence of a bilateral agreement between the US and Japan requiring the international tendering of all commercial satellite projects in Japan has resulted in a relatively free and open commercial satellite market. Despite this situation, European satellite producers have yet to sell a commercial satellite in Japan.

Co-operation in satellite development also remains heavily biased towards the US, particularly for national security concerns. Political influence and pressure have had an adverse effect on the commercial development of both the Japanese space industry and the European space industry in Japan.

The EBC is encouraged, however, by Japan's apparent willingness to pursue opportunities outside traditional relationships, including increased co-operation with Europe. NASDA has invited the European Space Agency to put sensors on its ADEOS satellites, and discussions continue between EGNOS and MSAS regarding satellite navigation.

Europe has much to offer in terms of proven, innovative technologies – with few political strings attached and no particular export restrictions to Japan. The key will be to encourage European and Japanese space agencies to increase co-operative development and empower the private sector to increase industrial co-operation.

Launchers

The Ariane launcher has been very successful in the sale of commercial launch services to Japanese satellite operators. At the same time, Japan has been keen on entering the commercial satellite launch market. Despite recent setbacks to its rocket program, Japan has the technological capability to build advanced launchers.

There is some concern, however, that Japanese companies will internally subsidise their recurring costs in order to be competitive. This has the potential to produce unhealthy competition, especially considering the fact that space represents at most two percent of total turnover for the companies concerned.

Transportation & Communications

Airlines
Shipping
Telecommunication services
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airlines

Landing shortages, restrictive pricing and distribution mechanisms, and high cost structures continue to inhibit the development of the air transport industry in Japan.

Key issues:



- **Landing shortages and slot allocation** The number of slots available to European airlines at Narita International Airport is severely limited due to restrictions on hourly flight movements, a lack of total slot capacity in the high volume Kanto region, and special privileges enjoyed by certain airlines operating in Japan.

Recommendations: A) Flight movement per hour at Narita should be increased to allow for more efficient use of existing facilities. B) Total international capacity should be further expanded to satisfy demand in the overall Kanto area. C) The rules governing access to slots at the opening of the 2nd runway at Narita should not be discriminatory to airlines of Europe, irrespective of aircraft flown. D) European airlines should be given equal opportunity to access slots at Tokyo Haneda if and when it is opened to regular international traffic.

- **Pricing and distribution** The distribution, pricing, and settlement of airfares remains highly regulated in Japan. This has restricted the ability of airlines to publish and sell air tickets and other airline related products directly to consumers, including over the Internet. This is contrary to practice in nearly all countries worldwide and is detrimental to the consumer.

Recommendation: The distribution, pricing, and settlement of airfares in Japan should be deregulated so that carriers can offer market competitive net fares in a transparent fashion directly to the consumer, including over the Internet.

- **High costs** Little has been done to reduce the costs levied on civil aviation service providers in Japan, which remain the highest in the world. These costs severely restrict airlines' ability to offer a wider range of services at lower prices.

Recommendation: The GoJ should strive to reduce the costs associated with air transport provision in Japan by 50%. Prohibitive landing, navigation, and common user fees charged by airport authorities should be substantially reduced. Competition in the operation of airport facilities should be promoted.

Background:

EBC Airline Committee Member Companies

Air France
Alitalia
Austrian Airlines
British Airways
Finnair
KLM Royal Dutch Airlines
Lufthansa
Sabena
SAS Scandinavian Airline System
Swissair
Virgin Atlantic

The cost of doing business

Airlines doing business in Japan are required to pay prohibitive landing fees, navigation charges, airport terminal rents, airport terminal common user charges, and cargo handling fees that make the cost of civil aviation in Japan the highest in the world. The Foreign Airlines Association in Japan (FAAJ) tabled a comprehensive comparative study of these costs in 1999. A review conducted by the FAAJ late last year indicated that the high-cost structure remained largely unchanged. Even more disheartening is the apparent lack of a coordinated government policy designed to reduce vital economic infrastructure costs in the air transport sector.

High costs have forced airlines to scale back, and in some cases even eliminate, services at a number of international airports in Japan. Kansai International Airport has been particularly hard hit. This ultimately has an adverse effect on the Japanese economy, as consumers are unable to procure a wider choice of services at lower prices.

The pricing and distribution mechanism

According to Japan Aviation Law Article 129-2, airlines are only allowed to advertise and sell fares for international travel to and from Japan at rates officially approved by the IATA, or in the case of group travel, lower rates set by the Ministry. This system restricts carriers from offering ticket discounts and package deals directly to consumers. Instead, net fares must be funnelled through licensed travel agents, who ultimately set the market price. This also means that airlines are effectively barred from using the Internet to sell directly to consumers, which is contrary to practice in nearly every other country.

National carriers have sufficient economies of scale to set up their own *de facto* direct distribution channels through captive agencies and affiliated travel offices. This places foreign carriers at a distinct disadvantage. Fairer competition could be promoted by allowing airlines to offer discounted net fares and package deals directly to the consumer, including electronically over the Internet.

The official settlement and clearing system for ticket sales between airlines and IATA travel agencies does not allow the agencies to directly transfer net remittances on all market fares to the airlines. Airlines have incurred extra costs to set up a secondary settlement procedure that is complicated, unnecessary, and time consuming.

Landing shortages and slot allocation

Narita Airport is the only international airport in Japan in which demand for slots exceeds supply. This reflects both the inefficient utilization of existing Kanto area airports and the slow progress of air-traffic infrastructure development in the region. Tokyo Haneda remains off-limits for scheduled international flights, and Narita continues to restrict flight movements on its only runway to 30 per hour, and 79 for any consecutive three-hour period. Other major airports with only one runway, such as Gatwick in the UK, allow many more movements per hour. Unfortunately, the new 2180 metre runway currently under construction at Narita is unlikely to fully satisfy increasing demand.

The total number of slots allocated to European airlines at Narita currently stands at less than 8% of the total number available. When the new runway opens, the EBC fully expects extra slots to be awarded to European airlines in a way that accurately reflects the current level of bilateral economic exchange between Europe and Japan.

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shipping

Managed competition on the waterfront continues to have an adverse effect on the competitiveness of Japanese ports. Under the current system, contractors have little incentive to modernise outdated practices and cut costs. The EBC Shipping Committee urges the Japanese Government to promote real competition on the Japanese waterfront. This would lower costs, improve productivity, and increase the overall attractiveness of the Japanese market.

Key issues:



- **High port costs** Port charges in Japan remain among the highest in the world. This disadvantages not only shipping companies, but also the Japanese economy as a whole. Operational costs will not come down until the Japanese Government commits itself to promoting meaningful competition on the Japanese waterfront. Ultimately, shipping companies should be able to procure port services on a competitive basis, free from undue influence from organisations such as the Japan Harbour Transportation Association (JHTA).

Recommendations:

1. *The Japanese Government should support the establishment of new, competitive terminal operations, including those owned by shipping lines themselves. While the licensing system has recently been replaced by a “permission system” and a commitment from the Ministry of Land, Infrastructure and Transport (MLIT) to process applications within two months of receipt, requirements such as minimum employment levels (set at 1.5 times that of existing operators) continue to hamper the development of a competitive market for port services in Japan. This requirement should be abolished.*

2. *Competitive bidding through open tenders should be supported. While new changes to the Harbour Transport Law implemented in November 2000 do not specifically prevent subcontracting with multiple stevedore firms under confidential rates, in reality the concept of independent, competitive bidding has yet to catch on in Japan.*

3. *The supervision of Japanese port operations should be transparent, efficient, and fair. The JHTA still wields enormous discretionary power in determining how the Japanese waterfront is run. Shipping lines wishing to make changes to their operations require approval from the JHTA. The process lacks transparency and effectively prevents shipping lines from seeking competitive bids for waterfront services.*

Background:

Overview

The major problems faced by European and other foreign shipping lines are in most cases the same as those faced by the Japanese shipping industry. These include restrictive waterfront working practices, lack of competition amongst waterfront industries and associations, lack of operational flexibility, and very high costs. The EBC Shipping Committee works in co-operation with the American Chamber of Commerce in Japan through the Japan Foreign Steamship Association to encourage effective competition on the Japanese waterfront.

Recent developments

Changes to the Harbour Transportation Law that came into effect on November 1, 2000 seem to address (in theory, at least) a number of long-standing issues concerning port operations in Japan. For example:

- The licensing system has been replaced by a permission system, with a commitment from the MLIT to process new applications within two months of receipt
- Multiple contracting of stevedore operations is no longer technically prohibited
- Tariff agreements between stevedores and carriers no longer require prior approval from the MLIT, and now simply must be filed
- Carriers are now allowed to own their own gantry cranes and other terminal related equipment

While these are very much welcomed developments, the EBC notes that in reality much more needs to be done in order to create a truly competitive market environment for the provision of port services in Japan.

One long-standing concern that was not addressed in the recent Harbour Transportation Law amendments concerns the powerful influence of the Japan Harbour Transportation Association (JHTA). The JHTA is comprised of all major waterfront businesses, except shipping lines. All changes that might reduce employment or adversely affect working conditions require approval from the JHTA. Through a process called "Prior Consultation", the JHTA reviews applications for changes to shipping line operations, and, after consulting with labour unions and other relevant parties, hands down a decision that shipping lines are effectively bound to accept. Issues that require JHTA approval through this process 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 shipping line groups.

While the EBC is pleased to note that shipping lines have not reported any major trouble recently with the prior consultation process involving a number of both major and minor issues, the real test will come when a carrier contests a JHTA ruling to the MLIT under the so-called "Three Party Agreement" established in 1997.

Of more immediate concern is the fact that the whole prior consultation system lacks transparency, and effectively gives the JHTA and its members a tool that inhibits shipping lines from seeking competitive bids for waterfront services.

Other issues

The EBC repeats its previous request that the inland transportation of forty-five foot containers be permitted on designated routes in Japan. The use of such containers remains prohibited, despite widespread use throughout Asia and most global shipping markets.

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telecommunication services

The Japanese telecommunications market continues to experience a period of unrelenting change. New legislation promises greater transparency and toughness on anti-competitive behaviour. The EBC Telecom Carriers Committee welcomes the Japanese Government's commitment to telecommunications liberalisation, and hopes to see more progress in the areas outlined below.

Key issues:



- **Dominant carrier regulation** The Diet passed legislation in 2001 reforming the Telecommunications Business Law (TBL) and introducing the dominant carrier concept. Other key provisions address issues such as anti-competitive conduct, structural and accounting separation, the establishment of a dispute resolution commission, and the creation of a universal service fund (see below). The EBC is eagerly awaiting the implementation directives that will bring this new piece of legislation to life.

Recommendation: The EBC urges the GoJ to enact strong ex ante rules that clearly spell out the obligations and expected conduct of the dominant carrier towards its affiliates, its competitors and its customers.

- **Interconnection rates** Despite recent reductions, interconnection rates in Japan are still amongst the highest in the world. Up to 30-40% of all revenues generated by competing carriers go to NTT to connect to its mobile and fixed line networks. The practical effect is high cost of entry, and less competitive services for customers.

Recommendation: Japan should quickly implement a long-run incremental costing (LRIC) system to determine cost-based interconnection rates for fixed line and mobile networks.

- **Universal service** The new TBL contains provisions for the establishment of a universal service fund. While we question that an access deficit exists in Japan, we accept that certain costs, if justified, may be covered by such a fund.

Recommendation: The GoJ needs to demonstrate that there is an unfair burden on one company necessitating the establishment of a fee-based relief fund. If this justification is found, the EBC requests that the calculation of net costs be made transparent, that there is ample opportunity for public comment, and that the burden is shared in a non-discriminatory and competitively neutral way. Small companies that do not meet an agreed contribution threshold should be exempt.

Background:

The reform process

Telecommunications reform is a priority of the Japanese Government, and there is evidence of much positive activity. In addition to the reform of the Telecommunications Business Law (TBL), the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) has consulted on a “no-action letter” resulting in more transparent government processes, a guarantee of a written response and justification for administrative action.

Other government policy initiatives have ensured greater clarity on interconnection, unbundling of local loops and co-location, which help carriers understand what they can demand from essential facilities holders. The TBL also includes a provision for the establishment of a dispute resolution commission that will go some way towards managing the complex relationships that result from a multi-carrier environment.

Dominant Carrier Rules/NTT Group Regulation

While these gains are welcome and necessary for the advancement of telecommunications competition, there are still some aspects of Japanese law and policy that need further attention.

Primary among them is dominant carrier regulation. Revisions to the TBL have not yet been fully implemented, and we would not wish to prejudge the result. The EBC requests the Japanese government to enact implementing rules that recognise the dominance of companies that control essential facilities, that possess market power, and those that have the ability to act in the market without regard for competitors and customers. The ‘dominant carrier’ designation should result in the imposition of asymmetric regulation according to international standards. As long as dominant carriers in both fixed line and mobile are allowed to operate unfettered in the market place, smaller competitors will have difficulty establishing a foothold.

Equally important is the issue of expanding the scope of NTT Group business development. In a condition of dominance, new business ventures should not be permitted without meeting several criteria based on effective competition in existing markets.

Sector supervision

Carriers’ disputes will invariably arise in a competitive environment, and there must be institutions established to handle discord. In some countries, the regulator has the authority to act as arbitrator – in cases regarding failure to conclude interconnect agreements, for example.

In recent years, Japan has come under pressure both internally and from abroad to establish an independent regulator to handle policy implementation and dispute resolution functions. Japan’s answer is a body to be formed within the MPHPT to solve disputes between carriers.

The EBC asks the GOJ to consider carefully the powers and accountability of this body. To establish itself as a bona fide separate entity, the commission needs the power to investigate wrongdoing, including the power to subpoena, and the power to fine license holders for unlawful activity. It must be able to render its decisions free of administrative review by the policy-making structure. It will need to work closely with the Japan Fair Trade Commission to prevent anti-competitive behaviour.

Once established, a dominant carrier system needs proper supervision and enforcement to accomplish its goal – the restraint of the anti-competitive exercise of market power.

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telecommunications equipment

European firms are global leaders in the telecommunications equipment business, especially in wireless technologies. The EBC Telecommunications Equipment Committee very much supports current globalization trends in the telecommunication technology sector and feels that this will lead to further business opportunities in Japan and around the world.

Key issues:



- **Harmonisation** There is a definite global trend towards the harmonisation of telecommunications standards in areas such as 3rd generation (3G) mobile devices, etc. The EBC very much supports this trend and believes this will benefit both product developers and consumers.
Recommendation: The EBC urges the Japanese Government to continue supporting global harmonisation efforts. Proprietary standards for telecommunications systems should be avoided. The harmonisation of technical standards should be industry led.
- **Mutual Recognition Agreement** The EU and Japan recently signed a Mutual Recognition Agreement (MRA) covering 4 areas: GMP for pharmaceuticals, GCP for chemicals, electrical goods, and telecommunications peripheral devices. This agreement must now be implemented by the authorities responsible for product approvals in their respective sectors.
Recommendation: The EBC urges the Japanese Government to implement the MRA as quickly as possible. The outcome of this process should be closely monitored to ensure implementation has achieved the desired results.
- **Procurement** Access to the Japanese private sector market for telecommunications equipment has improved remarkably over the past few years. The NTT group, by far the largest purchaser of telecommunications equipment in Japan, has dramatically increased its procurement of foreign products following its reorganization in 1999. Opportunities in the public sector, however, remain stagnant.
Recommendation: The EBC urges the Japanese Government to procure telecommunications equipment on a competitively neutral basis.

Background:

The market for telecommunications equipment in Japan

The market for telecommunications equipment in Japan has changed dramatically in recent years. Part of this can be attributed to structural reforms that have transformed the telecommunications industry in Japan. Part of this can also be explained by globalisation and the continual developments taking place in information technology throughout the world.

Shifts in domestic policy resulted in more emphasis being placed on competitive factors in the Japanese telecommunications market. NTT was split up in 1999 and other service providers have been given more opportunities to compete in the market. Competition has increased Japanese firms' incentive to procure telecommunications technologies based on technological innovation and competitive costing, rather than on traditional supplier relationships. This has resulted in greater business opportunities for European telecommunication equipment firms in Japan, many of whom are global leaders in their respective fields.

The Japanese Government has recently embarked on a national "IT Strategy" designed to improve information technology infrastructure in Japan, with the goal of making Japan a leader in IT by the year 2005. The EBC very much supports these efforts and feels that this will provide an engine of growth well into the future.

Harmonisation of standards

At the same time, the EBC urges the Japanese Government to respect current trends towards globalisation as it implements its IT policies. The EBC very much supports an industry led, global approach to standards and platform development, and is encouraged by signs that the Japanese Government supports these initiatives as well. The Japanese Government has delegated a number of important standard-setting processes to the private sector in recent years, and the EBC is pleased to note that foreign participation in these deliberations has been welcomed.

The EBC is also very pleased that a planned Mutual Recognition Agreement has been signed between the EU and Japan regarding telecommunications terminal equipment, which the EBC feels is an important first step in the ultimate goal of eliminating all unnecessary product approval duplication in the telecommunications equipment sector. The EBC urges both the EU and Japan to implement this agreement as soon as possible.

The EBC also recommends that the Japanese Government investigate the possibility of introducing Supplier's Declaration of Conformity (SDoC) into the conformity assessment process for telecommunications equipment in Japan. SDoC has already been introduced in the EU, which has made it easier for manufacturers to quickly introduce new products in the rapidly developing telecommunications market. The EBC feels that the adoption of SDoC in Japan would contribute further to the harmonisation of product approval processes, and would benefit not only manufacturers but also consumers as well.

Procurement practices

Fragmented qualifying procedures, sole sourcing, and selectively disclosed specifications for certain projects have inhibited foreign firms from supplying Japanese government entities with telecommunications equipment. The EBC urges the Japanese Government to make further improvements to areas such as disclosure, bid criteria/performance specifications, qualification procedures, and open bidding procedures to ensure public sector procurement of foreign telecommunications equipment keeps pace with the private sector.

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