

Corporate Political Activities of MNC in an International Business Context : the case of Japan

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1. Abstract

In this paper, we have proceeded back and forth between several levels of analysis (macro, semi-macro) and periods to gain a picture as complete as possible of the Corporate Political Activity (CPA) phenomenon in Japan. Regarding issues encountered, the variety of non-tariff measures that impede trade is a key element for business. There used to be *gaiatsu* in the past, but, due to the domestic crisis, the globalization and the rise of China, the attitudes have changed for foreign business which is now “inside the castle,” leading to more direct interactions between business and government. Before, trade issues were central whereas nowadays, in globalization times, the biggest problems occur from laws and legislations that have become obsolete in regards of the technical and economic acceleration. The principal elements for CPA emerging from our observations are : nurturing domestic allies, assessing local opposition, having strong industry support, macro-level tools (Super 301, treaty negotiation, etc.), using intra-home country lobbying, proposing benefits for Japan and mobilizing the media for acceptance. The use of state power is becoming more limited whereas the technocratic rationality (as opposed to politics) on the persuasion side is widely used with the help of local collaborative interests.

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2. Introduction

In this paper, we will examine at different levels of analysis, macro and semi-macro, how MNC conduct their Corporate Political Activities (CPA) in an International Business (IB) context. The case of Japan was chosen because, contrary to the US or the EU where CPA by global firms has been widely studied, research in the discipline in this country is limited. We will limit ourselves, in this article, to the above two level of analysis but make reference in the text to a case study published separately⁽¹⁾.

In the first part, we try to identify the major issues encountered by foreign firms in Japan on the basis of several sources among which the most important consist of the publications of the representative bodies of foreign business, the ACCJ for the US and the EBC for Europe.

In the second part, we observe how foreign business attempted to modify the regulatory environment and exert influence in Japan, chiefly with the help of home governments and the above associations. In this section, we rather focus on the US and the ACCJ because archival material and information were available to a higher degree. Furthermore, we adopt a longitudinal perspective to assess how CPA modes have changed across time.

Methodologically, we worked on various publications (ACCJ, EBC, etc.), studies and survey, but also on interviews with firms and CPA practitioners conducted recently in Japan.

2.1. About CPA

Since the 60s an enormous amount of literature and research has been produced on the relationship between business and government, essentially in North America academia. The issue covers interests and actions of corporations and trade associations trying to influence legislative or regulatory processes, on a continuous or episodic (elections) basis with activities widely known as lobbying, Political Action Committees, contributions, coalition building, advocacy, grassroots mobilization, constituency building, etc. The concept is generally referred to corporate political activity (CPA), business political activity, political behavior, non-market activity with related keywords extending to corporate public affairs, political strategy, issue management, etc.

With time, however, the term Corporate Political Activity (CPA) seems to be well established among researchers. Therefore, we will try in this study to unify our terminology under this term though it may happen that we also use the word “lobbying” as a proxy, especially in our interviews, for a better

(1) Lobbying strategies of foreign firms in Japan, Bulletin de la société franco-japonaise de gestion, No.33, Mai 2016

understanding by our interlocutors for which the word CPA is far from familiar. As we will see later, the term lobbying can be strictly defined as an information strategy albeit in the common language it rather evokes money and corruption. Money is also a CPA strategy (contribution for elections etc.) but, as a financial strategy, ranks parallel to lobbying/information strategy under the inclusive CPA concept (Hillmann & Hitt, 1999). Moreover, it seems that there is a difference of connotation between Europe and the US where the term lobbying is essentially used for the provision of information by individual representing the firms' interests, whereas in Europe it implies political action in general.

Turning now to the definition of Corporate Political Activity (CPA), let us examine different contributions of previous researchers. In his seminal work, Epstein (1969) makes first a critical distinction between the most spectacular, but not necessarily the most important part of CPA, the electoral and the governmental activities. Electoral activities with their financial contributions are the most known to the public but are only periodic and not policy-specific from the firm point of view. More relevant are the governmental activities usually associated with interest groups and conducted on a day-by-day basis for the purpose of influencing, modifying, or having introduced new laws, regulations at every level (legislative, administrative, judicial). It also includes activities intending to influence public opinion. Epstein, therefore, proposes the following definition :

“...all interactions by business firms with the formal or informal institutions of government and all efforts by corporations to maximize their position in society...”

Boddewyn and Brewer (1994), referring to political behavior and power relations quote : “acquisition, development, securing, and use of power...to overcome the resistance of other actors”, ”focused on (a) related actors located in the nonmarket environment of the firm, essentially governments, interest groups, the intelligentsia, and public opinion and (b) a variety of actions such as compliance, evasion, negotiation, cooperation, coalition building, and cooptation”. Baron (1995), one of the major promoters of the “nonmarket” concept, adopts an extensive view : “the nonmarket environment includes those interactions that are intermediated by the public, stakeholders, government, the media, and public institutions.” Others like Getz (1997) or Bonardi et al. (2006) summarize it respectively into “any deliberate firm action intended to influence governmental policy or process” or “coordinated actions firms undertake in public policy arenas.”

Taking into account these precursors' clarifications, we would, drawing closely on Salorio et al. (2005), propose the following :

Corporate Political Activities include actions taken to favorably position the firm in its nonmarket environment, by managing those uncertainties and resources linked to the influence and/or resistance of other market and nonmarket actors, with regard to the firm's overall economic performance.

3. Major issues for foreign firms in Japan

3.1. Demands from the business communities and the governments

3.1.1. In the past : a selection of themes from EBC 2000/2001 and ACCJ 2001 White Papers

The subject of CPA is broad and can encompass different levels of analysis as no database exists that would gather and compute micro/firm level CPA activities. We, therefore, have to rely on macro-level information such as bilateral trade and investment negotiations, semi-macro/sectoral issues as aggregated by the foreign Chambers of Commerce in Japan or similar bodies, or surveys conducted by various actors.

Things are evolving ; some issues are solved or cease to be relevant whereas others are still identified as problematic. As an interviewee puts it : “if one wants to find changes, he will find some ; if one wants constants, he will find them either.” We could say that it depends on the lens adopted, the level of analysis, and the expected results. Consequently, to follow the constants and the evolutions, we will try to concentrate chiefly on the semi-macro level as represented by the publications of the American Chamber of Commerce in Japan (ACCJ) and the European Business Council (EBC), which form a trackable thread across time. Other sources will naturally complement this approach.

In Table 1, we have synthesized the major topics found in the 2001 US-Japan Business White Paper (ACCJ) and the 2000 and 2001 Reports on the Japanese Business Environment published by the EBC whose acronym at the time stood for European Business Community. The two issues of the European side correspond to the biennial one of the American side, the total covering the two years of 1999 and 2000. It could have been interesting to go back further in time, but unfortunately, the documentation on the European side is not available with the same level of detail.

The beginning of the new century is an important turning point for Japanese political economy as many reforms engaged under the Hashimoto administration (1996-1998) such as the restructuring of the bureaucratic system went into force in parallel with the arrival of Junichiro Koizumi in 2001. In this context, both American and European Business communities hailed this atmosphere of reform and expressed their support in their respective publications. A particular emphasis is put on structural reforms that are expected to boost the ailing Japanese economy. We will see in more details in a section devoted to the historical perspective how the foreign business stance (chiefly on the US side) has changed, but what can be said here is that, compared to previous publications which were rather comminatory, in 2001 the tone changes to become supportive and constructive. However, when looking at the details under the surface, we found that the issues remain the same. Moreover, they are so similar between the Europeans and the Americans that we discerned no point to distinguish between them and decided to unify their claims in one

single table. There might be arbitrariness and overlap in the process of aggregation, but we consider that the resulting table gives a good general idea of the major topics foreign business complain of, many of them still being still relevant.

Table 1 Major topics from the 2001 US-Japan Business White Paper (ACCJ) and the 2000 and 2001 Reports on the Japanese Business Environment (EBC)

Regulatory/relations with the government/cross-sectoral topics for foreign firms	Product approval	Insurance, animal health, medical diagnostics, medical equipment, etc.
	Regulatory burden	Onerous filing and licensing requirement in diverse sectors such as health sciences, cosmetics, telecommunications, civil aviation, shipping, etc.
	Standards harmonization	Acceptance of foreign data in the approval process, extension of the recognition for medical devices, animal health products, cosmetics and other goods requiring retesting for approval in Japan.
	Regulatory transparency	Lack of transparency making difficult for foreign firms to predict the consequences of business decisions and plan for new regulatory developments (particularly the financial sector and the tax system), bureaucratic arbitrariness, implementation of a government-wide "no-action" letter system
	Government procurement	Lack of transparency and competition in a number of important sectors such as construction, aerospace, defense
	Tariffs	An important barrier to trade in key sectors such as industrial materials and food products
	Taxation	Corporate tax rate, tax reliefs, consolidated taxation, transparency, withholding rates, stock options, etc.
	Border control	Quarantine laws, customs clearance procedure, arbitrary control (applying tariffs, testing products, etc.), inadequate handling facilities, high costs
	Legal environment	Prohibition on partnerships between Japanese lawyers and foreign lawyers, restrictions preventing foreign lawyers from advising on third country law, barriers for transnational legal services provision
Structural/economic reform/investment related	Regulatory oversight	Establishing independent regulatory authorities with pro-competitive mandates such as the FSA in sectors such as telecommunications etc., strengthening of the Japan Fair Trade Commission (JFTC)
	Government influence in the private sector	State-owned or state-sanctioned monopolies in areas as telecommunications, electricity, postal savings, insurance
	Commercial code, corporate governance, corporate transactions	Strengthening of corporate governance, independent directors on company boards, review of cross-shareholdings schemes, allowing cross-border share swaps to facilitate M&As, reducing registration/incorporation fees and simplifying the procedures, reforming accounting practices and enhancing disclosure to better reflect the market value of assets and liabilities, etc.
	Healthcare reform	Improvement on product approval process (speed, harmonized global standards, acceptance of foreign clinical data), adequate price setting encouraging innovation, cost containment
	Pension reform	Reforming the pension schemes to make them more financially sound, improving portability to enhance labor mobility ; implementing effectively the recently passed Defined Contribution (DC) legislation and being careful not to set too restrictive conditions
	Labor market reform	Emphasis should be put on securing labor mobility through education, retraining, increasing of professional service providers, and further deregulation, including immigration laws, visas and work permit to promote efficiency

Particularly, in the category of “regulatory/reasons with the government/cross-sectoral issue,” most topics such as product approval, standards harmonization, regulatory transparency, government procurements, border control, legal environment, etc., are still current. Regarding taxation and tariffs, even if the categories exist as such, the content has evolved with time, and tariffs will be subject to changes with the new trade agreements in the pipelines. The same can be said of structural reforms for which much has been done since 2001 in many of the fields mentioned. However, structural reforms, even if welcomed by the business community cannot be seen at the same level that the “regulatory/reason with the government” type of issues because they concern primarily the domestic actors, are not specific to the foreign business and therefore are not per se direct object of CPA. Similarly, foreign business frequently complains about issues such as the high cost of business/labor/living in Japan, business practices (*keiretsu*, etc.), collusion, the distribution system, etc., but these problems are less dependent on the government, and therefore target of CPA, than market and business structures-related, which cannot be addressed with CPA only.

3.1.2. Now : NTM from EPA/FTA and TPP negotiations, cross-sectoral issues

We turn now to the present state of demands by the European and American side at the time of writing (summer 2016). Despite many similarities between the Europeans and the Americans, whether at the cross-cutting or sectoral level and which, to us, outweigh by far the differences, it seemed interesting to distinguish between the two essentially because the two blocs are not exactly at the same level regarding the advance in their trade and investment negotiations. At the time of writing, the Trans-Pacific Partnership (TPP) deal has just been signed and is reaching the following step of ratification and detailed negotiations whereas the Economic Partnership Agreement/Free Trade Agreement (EPA/FTA) with the EU is still under discussion but expected to be in the final line. As a consequence, we took as a reference the 2015 White Paper for the EU, which emphasizes its commitment to finalize the negotiations within the year 2016 and present of shortlist of its top priorities. For the US side, we based our selection of topics on the latest US Trade Representative report (National Trade Estimate Report on Foreign Trade Barriers) for Japan (2015) and on the Policy Statement of the US-Japan Business Council⁽²⁾ published just after the TPP deal.

Historically, trade conflicts between the US and Japan were centered on the promotion of export to the Japanese market and the sectors of semiconductors, automobiles and their components, pharmaceutical and medical devices, wood products, etc., as well as government procurements and standards/certifications. For cars and semiconductors, bilateral negotiations aimed at the establishment of numerical targets in terms of

(2) US-Japan Business Council: The U.S.-Japan Business Council (USJBC) is a Washington, D.C.-based business association whose mission is to support U.S. business interests in Japan and promote stronger economic ties between the United States and Japan. The council and its member companies act for the mutual benefit of both countries; it has been merged in 2012 with the US Chamber of Commerce to amplify the voice of the American business community on U.S.-Japan economic relations.

share of the Japanese market, with limited results (Ishikawa, 2013). Today, tariffs on industrial goods in the manufacturing sector being already very low in Japan, their elimination is not a top priority for the US but the variety of non-tariff measures that impede trade is. By contrast, tariffs are considered essential in the agricultural trade as well as government-controlled mechanisms and Sanitary and Phytosanitary (SPS) rules, all key themes for the TPP. Compared to this very brief summary of the TPP spirit, the EPA/FTA with the EU is definitely centered on the removal of non-tariff measures as the priorities stated in the Table 2 show.

Hence, we can remark that the EU side put in the initial position its demands regarding the mutual recognition of standards, product certification, marketing authorizations and adoption of international standards in the domains of medical equipment, environmental technology, consumer products, cars, and food. This position and the corresponding difficulties were indeed reflected in many of our cases with several interviewees stressing the important leverage of the EPA/FTA negotiation in their individual situation.

Turning again to the American distinctive requests, we note that they emphasize not only transparency, which is not new but specifically the possibility for a deeper participation to policy making via advisory councils or public comment procedures. Compared to 30 years ago when in spring 1984 the Japanese government agreed to permit foreign representatives to participate in the advisory councils, how should this demand be interpreted? A number of interviewees and a previous survey (Sone, 1987) indicate that indeed participation was possible but that the difficulty was precisely to know whether, how and when the councils would be held not to mention the language barrier, which altogether has actually limited the foreign presence to these fora.

When considering the other cross-cutting issues, we can observe that they are not only fairly similar between the EU and the US but also durable in time. For example, the problem of recognition of foreign lawyers has been on the table for decades without much evolution. Regarding intellectual property, the topic is similarly constant on the agenda but with a different focus for each side : luxury goods for the Europeans and digital piracy for the Americans. The question of customs is equally old but seems to evolve toward a significant reform in the coming years. According to our interviews, this is an area where foreign firms have contributed by various inputs but not limited to them : many Japanese importers face the same problems and have the same interests to a modification of the existing system. Finally, the government procurements also never disappeared from the agenda ; in this field, the Americans give priority to the construction sector whereas the Europeans try to sell their railways systems and related technologies.

Regarding the sectoral level, the major concerns for both sides, are in automotive, medical devices/ pharmaceutical, insurance, express delivery and food industries with fairly similar issues. The important issue of Japan Post straddles on the two domains of insurance and express delivery.

Table 2 European and American demands in 2016 based on the 2015 White Paper for the EU, the US Trade Representative National Trade Estimate Report on Foreign Trade Barriers report for Japan (2015) and on the Policy Statement of the US-Japan Business Council (March 2016)

EU (EBC), in view of an FTA/EPA agreement within 2016		US (USTR + USJP Business Council after TPP signature)	
Cross-cutting issues/ business fundamentals	Shortlist of top EBC priorities for the FTA/EPA		<p><u>Advisory Councils/Committees</u> : Given the opacity in the functioning of the various advisory committees, ensure transparency on the formation and operations of these groups.</p> <p><u>Public Comment Procedure (PCP)</u> : Ensure further revisions to improve the system such as lengthening the comment period for rulemaking</p>
	Legal services	<p>Identify and eliminate impediments to cross-border M&A, ensure that shareholder interests are protected when adopting anti-takeover measures ; improve corporate governance by augmenting the role of outside directors, etc.</p>	<p>Remove restrictions on the ability of foreign lawyers to qualify for provision of international legal services ; limitation to establish branch offices in Japan</p>
	Intellectual property	<p>Remove restrictions on the ability of foreign lawyers to qualify for provision of international legal services ; limitation to establish branch offices in Japan</p>	<p>Continue to improve IPR protection and enforcement, especially against piracy in the digital environment (technological protection, extension of the term of copyright protection, etc.)</p>
	Customs	<p>Continue to improve IPR protection and enforcement, especially against piracy in the digital environment (technological protection, extension of the term of copyright protection, etc.)</p>	<p>Improve processing and facilitate treatment of goods at the border</p>
	Government procurement	<p>Despite the WTOs GPA⁽³⁾ and two bilateral public works agreement in effect, problematic practices such as bid rigging (“<i>dangô</i>”) continue to limit the participation of US firms in the construction sector</p>	<p>Despite the WTOs GPA⁽³⁾ and two bilateral public works agreement in effect, problematic practices such as bid rigging (“<i>dangô</i>”) continue to limit the participation of US firms in the construction sector</p>
	<ul style="list-style-type: none"> • Mutual recognition of standards, product certifications and marketing authorizations, and adoption of international standards, for example in terms of medical equipment, environmental technology, consumer products, cars, and food. • Lifting of barriers, such as high costs and unnecessary bureaucracy that prevent or delay products from reaching the market – for example, in terms of tariffs on materials and foods, and Japan-only product labeling requirements. • Ensuring fair competition and equal treatment for all companies, domestic and foreign, for example in the airline, express delivery and insurance sectors. • Ensuring fair and open tenders for public contracts in the railway and construction sectors. • Improving conditions for foreign direct investments, including the removal of requirements unique to Japan in the banking and asset management sectors 		
	<p><u>Key FTA/EPA issues</u> Recognize foreign lawyers if they are recognized in their home jurisdiction</p> <p><u>Other issues</u> Amend or abolish the restriction on branching</p>		
	<p><u>Key FTA/EPA issues</u> Address in a sufficient depth the issues of counterfeit product (luxury goods) and parallel importation, as well as adopt a tighter definition of “for personal use.”</p>		
	<p>Create a single customs area, streamline the administration requirements, enable greater flexibility</p>		
	<p><u>Key FTA/EPA issues</u> Ensuring fair and open tenders for public contracts in the railway and construction sectors</p>		

(3) GPA : Agreement on Government Procurement

Continuation of the Table 2

EU (EBC), in view of an FTA/EPA agreement within 2016		US (USTR + USJP Business Council after TPP signature)	
Sector-specific	Food and agriculture	<u>Key FTA/EPA issues</u> Tariffs and quotas Additives and enzymes <u>Other issues</u> Maximum residue levels, beef, and by-products (casings, gelatins), listeria monocytogenes, malt, and quota, cured meat	<u>Sanitary and phytosanitary barriers</u> Food safety (beef, food additives, gelatin, and collagen, fungicides, residue limits); plant health (potatoes) <u>Import policies</u> Rice, wheat, pork, beef, fish and seafood, high tariffs (beef, citrus, dairy, processed food, etc.)
	Express delivery	<u>Key FTA/EPA issues</u> Level playing field between Japan Post and private companies (customs procedures, application of Parking Law, inspection of quarantine related goods)	Unequal conditions of competition with Japan Post (customs procedures, subsidization of international express service, privatization)
	Insurance	<u>Key FTA/EPA issues</u> Fair competition and equal treatment; complete privatization of Japan Post; <i>kyōsai</i> ⁽⁴⁾ ; <u>Other issues</u> Harmonization with global solvency; product approvals; bancassurance; Policyholder Protection Corporations (PPC)	Level playing field with the Postal Insurance (access to network for private providers, difference of supervisory treatment, cross-subsidization); <i>kyōsai</i> ; Policyholder Protection Corporations (PPC)
	Other financial services	<u>Key FTA/EPA issues</u> Removal of requirements unique to Japan in the banking and asset management sectors (banking agency system etc.) <u>Other issues</u> Avoid unnecessary administrative burden (multiple supervision); information sharing; globalization of operational platform in asset management, etc.	Reforms in the areas of online financial services, defined contribution pensions, credit bureaus, sharing of customer information; transparent practices and written interpretation of Japan's financial laws.
	Telecommunications	<u>Key FTA/EPA issues</u> True mutual recognition of product certifications; increase the scope of products covered by SVCs ⁽⁵⁾ . <u>Other issues</u> Creation of an independent regulator; fair competition (NTT); harmonization of spectrum for IMT ⁽⁶⁾ systems	Dominant carrier regulation (NTT continues to dominate the "last-mile" connection on fixed-lines). No use of auction in allocating spectrum for mobile wireless licenses
	Automotive	<u>Key FTA/EPA issues</u> Harmonization of technical standards and certification procedures on the basis of UN Regulations, elimination of unique Japanese requirements; take further measures to make it possible for European compact and subcompact cars to compete on a level footing with <i>kei</i> -cars	A variety of non-tariff barriers to be addressed: Transparency (opaque regulatory process, standards, and certification, extension of the Preferential Handling Procedure (PHP), zoning rules for vehicle distribution and repair facilities

(4) *Kyōsai*: according to the FSA, a scheme, formed by residents in the same region or persons engaged in the same occupation, which provides a certain amount of benefits from the pooled financial contributions of the membership for disaster, death or accident. *Kyōsai* are categorized as regulated *Kyōsai* (established by specific laws) and unregulated *Kyōsai* (without specific law for establishment). Regulated *Kyōsai* are exempted from Insurance Business Law, their business operations are under the special laws and supervision of each responsible authority. Unregulated *Kyōsai* are not considered to conduct insurance business as long as *Kyōsai* target specific groups of persons.

(5) SVC: Supplier's Self Verification of Conformity

(6) IMT: International Mobile Telecommunications

Continuation of the Table 2

EU (EBC), in view of an FTA/EPA agreement within 2016		US (USTR + USJP Business Council after TPP signature)	
Sector-specific	Medical Devices and Pharmaceuticals	<p><u>Medical devices :</u> <u>Key FTA/EPA issues</u> Shorten the time required for equipment examination ; harmonize clinical evaluation with ISO 14155, mutual approval and alignment of Quality Management System (QMS), etc. Predictability of the reimbursement system must be improved.</p> <p><u>Pharmaceuticals :</u> Pricing system (continuation of innovation premium and the current biennial repricing system, abolition of the 14-day prescription rule) ; extend the scope of the Existing Mutual Recognition Agreement (MRA) for EU and Japanese Good Manufacturing Practice (GMP)</p>	<p><u>Medical devices :</u> Eliminate Foreign Average Price (FAP) rule for medical device evaluation ; stable reimbursement policy (see below)</p> <p><u>Pharmaceuticals :</u> Predictable and stable reimbursement policy (continue the current biennial repricing system, make permanent the innovative premium program), abolish the 14-day prescription rule, further harmonize on international standards in clinical developments and trials. In general, accelerate the review time to reduce the approval lag.</p>
	Cosmetic and Quasi-Drugs	<p><u>Key FTA/EPA issues</u> Harmonize quasi-drug and cosmetic ingredients ; abolish import notification and accept electronic customs clearance</p> <p><u>Other issues</u> Reform of the quasi-drug approval system</p>	<p>Reform of the premarket approval system of the so-called medicated cosmetics classified as quasi-drugs under the Pharmaceutical Affairs law. Furthermore, restrictions on advertising and complex import notification procedures also are problematic</p>
	Defense	<p>Despite bilateral agreement between some European countries and Japan, the materialization in terms of procurements or industrial partnership remains limited</p>	<p>Despite contracts won by US firms, many contracts for defense equipment are not open to foreign bid</p>

3.2. Surveys from firms

Although the demands expressed in the ACCJ, USTR or EBC documents emanate principally from firms on the ground, they are aggregated with certain priorities to serve as leverage by and toward the respective governments. To examine with a maybe close but also wider lens what kinds of problems firms encountered in Japan in the past, we have searched for surveys and selected three conducted at different points of the time. The results are shown in Figure 1. Attention should be paid to the fact that the questions asked are not exactly the same across surveys as they were organized by different entities, but the essence was similar : which factors inhibit greater trade with Japan, features that affect success or problems encountered with respect to the Japanese government. Consequently, responding firms also indicate factors rather related to structural issues or business practices such as the distribution system or the high cost of Japan. We have distinguished these types of answer to highlight the issues more closely related to our research and found that across surveys, the regulatory environment, the standards/specifications/technical requirements, the taxation system and the customs clearance procedures stand at the top of firms' difficulties in doing business in Japan. Despite certain vagueness and broadness in the terms for the items regulation/regulatory environment, the results of these surveys show a good correspondence with the ACCJ or EBC documents and continuity in time. This is not really surprising but gives a certain level and proxy of quantification to the issues the most encountered and perceived as difficulties, maybe needing CPA in priority.

	AT Kearney 1991	Khan, Yoshihara 1994	US JP Business Council 1997	
Government related	Government regulations	28	Regulatory environment	34
	Intellectual property protection	18	Taxation system	43
	Uneven enforcement of regulations	17	Custom clearance procedures	27
	Product testing regulations	14	Many non-tariff barriers	14
	Government procurement practices	12	Foreign exchange, foreign trade control laws	14
	Tariffs and quotas	11	Intellectual property protection	9
	Lack of financing	9	Difficulties for loan and credit from gvt suppo	4
			Government procurements	3
				Standards and specifications
Structural/ business related	Controlled distribution channels	31	Technical requirements	21
	Non-market driven pricing	25	Taxes	13
	Lack of market opportunities	22	US/JP trade agreements	12
			Tariffs	9
			Intellectual property protection	8
			Custom clearance	7
			Import quotas	7
		Government procurement	6	
		High cost of land, office rental	32	
		High labor costs	32	
		Japanese business practices (keiretsu)	29	
		Acquisition rules and practices	2	

Figure 1 Comparison of three surveys related to firms difficulties in Japan ; figures express the percentage of surveyed firms facing this specific issue. Sources : AT Kearney “Trade and Investment in Japan : The Current Environment” (June 1991) ; Khan S.and Yoshihara H. “Strategy of foreign companies in Japan”, Quorum Books (1994) ; Japan-US Business Council/US-Japan Business Council Special Joint Task Force “Attribute of Success of American Companies in Japan”, ACCJ (1997)

To be fair, it must also be noted, however, that in many of these studies that try to identify the reasons for problems of performance by foreign firms in Japan, the Japanese side is not the only one to be taken into account. They generally also underscore that many foreign firms are unable or unwilling to modify their product to suit the Japanese market, have low-quality products, lack market research, lack pre- and post-sale services, lack an understanding of Japanese customs, pay too much attention to financial targets with a short-term management perspectives etc. (Khan and Yoshihara, 1994). These issues seem to be unrelated to the relationships with the Japanese government and therefore CPA, but when the problem concerns, as often, products approval and/or standards for example, and when the firms have a global strategy not willing to produce a Japan-only version for cost reasons, there indeed may be CPA, often conflictual, to obtain access to the Japanese market.

3.3. Focus on the Non-Tariff Measures

3.3.1. NTM : Technical barriers to trade, sanitary-phytosanitary, standards/conformity assessment

Next, in our attempt to refine the whole picture of possible CPA issues, we focus on a study made by Copenhagen Economics (2009) to assess the existing barriers to trade and investment between the EU and Japan previous to the start of EPA/FTA negotiations. Tariffs being low in Japan, except for agricultural goods, the major question was : what explains the relatively low level of trade with the EU. The focus came to the Non-Tariff Measures (NTM) that have been quoted for a long time in various documents as seen above, but the real problem was to identify precisely, classify and quantify them, which has rarely been done, and this is why this study is interesting.

Before going into the details, we will examine the concept of NTM to get a better understanding of its implications. Table 3 represents the latest classification established by the UNCTAD Multi Agency Support Team (MAST) and can be considered the most complete to date.

Table 3 Major Non-Tariff Measures ; adapted from UNCTAD International Classification of Non-Tariff Measures (2012 Version)

Technical measures	Sanitary and phytosanitary measures	
	Technical barriers to trade	Standards and technical requirements
		Conformity assessment requirements
	Pre-shipment inspection and other formalities	
Non-technical measures	Contingent trade-protective measures	
	Non-automatic licensing, quotas, prohibitions and quantity control	
	Price-control measures, including additional taxes and charges	
	Finance measures	
	Measures affecting competition	
	Trade-related investment measures	
	Distribution restrictions	
	Restrictions on post-sales services	
	Subsidies (excluding export subsidies)	
	Government procurement restrictions	
	Intellectual property	
	Rules of origin	
Exports	Export-related measures	

Of this, Copenhagen Economics retains for Japan the categories of technical measures, border procedures, distribution restrictions, pricing and reimbursement rules, public procurement, intellectual property and other measures. The types and importance of NTMs vary across industries : border procedures are more important for exporters of perishable food products or express delivery whereas pricing and reimbursement rules are essential for pharmaceutical and medical devices.

An important point is that the difference in regulatory environment understood in terms of standards, technical regulations and conformity assessments, often quoted as the most important for international business, cannot be removed simply by identifying them as such, and by arguing that they impede trade. These regulations are established by governments to protect the health, safety and well-being of citizens and the environment ; the essential question and difficulty are to determine whether a norm serves the public interest or protectionism. Many times, both are true in varying degree which leads to conflictual and unsolvable CPA, both sides being right. An interviewee explains that the differences in norms do not necessarily reflect ill will but simply a different scientific history with independent development. Standards are therefore simply different which can be conceptualized under the two subtypes of horizontal and vertical. The vertical dimension implies a different degree of stringency relative to the quality of products, low or high. The horizontal one only indicates that standards are different without the nuance of stringency, and they are probably the more common.

With these distinctions in mind, we can now examine the findings about Japanese NTMs as identified by Copenhagen Economics. Out of the 215 issues found in their study, 194 were NTM related, of which 99 in manufacturing, 62 in services, 29 cross-cutting, and 4 in agriculture. Furthermore, a deeper analysis focused on the locus of solvability shows that issues solvable with traditional trade policy instruments such as treaties are a minority. Indeed tariffs and taxes can relatively easily be removed as it has been done for decades in the case of Japan, but the majority of problems need a domestic reform or a combination, which complicates the situation greatly and explain why international trade and investment treaties are barely sufficient and often found inefficient. This is precisely where the locus for CPA can appear when firms must engage actions on the domestic market, sometimes with the help of their government and of the pending treaties in negotiation, to have their products and services marketed.

In manufacturing the most numerous issues are found in pharmaceuticals, food, office/IT and automobiles (82/99) with the majority (59/82) of them solvable only with a combination of domestic and international action (Figure 2). Classified by nature, the most frequently mentioned issues are related to Technical measures : Technical barriers to trade (65/99) and Sanitary and phytosanitary measures (12/99). The majority (65%) of these Technical measures concern Conformity assessment, that is, certification, testing, quality system registration, inspection, etc. By industry, these Technical measures are concentrated similarly in pharmaceuticals, food, office/IT and automobiles with nearly half in pharmaceuticals and food (44/99).

For services, the financial sector dominates followed by communication services and insurance. Here again, a combination of international and domestic policy is required for a solution (Figure 3).

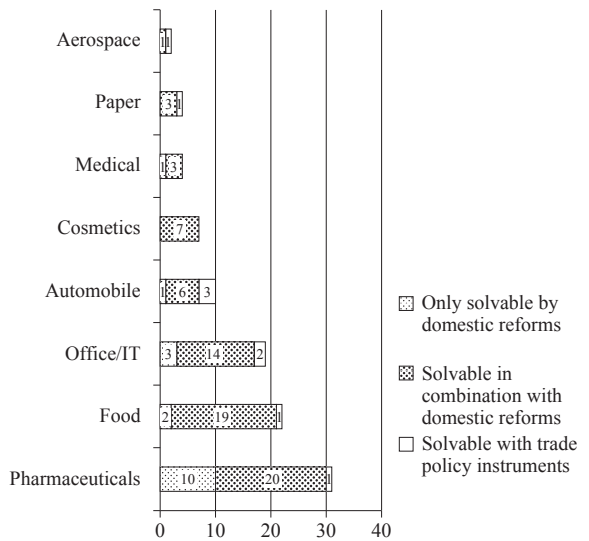


Figure 2 NTM by industries and locus of solvability : manufacturing ; Unit : number of issues ; Source : Copenhagen Economics (2009)

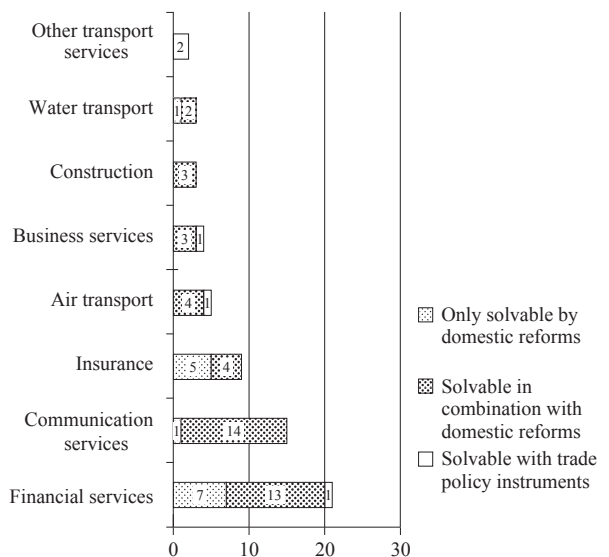


Figure 3 NTM by industries and locus of solvability : services ; Unit : number of issues ; Source : Copenhagen Economics (2009)

4. Evolution in time and changing paradigm for CPA modes

After having focused on the issues encountered by foreign business in Japan at a semi-macro level, we will now, for a while, step back again and have a brief look at the history of US-Japan economic relationships at a macro level. Then we will examine at a semi-micro level the impacts on the ACCJ activity in Japan as well as the changes that occurred in the foreign business-politics relationship. In the light of our micro data, we will operate back and forth between the different levels of analysis to identify the trends and patterns that have emerged the last twenty years.

4.1. A brief history of US-Japan intergovernmental economic relationship

A 1991 A.T. Kearney report analyzes the changing patterns of US-Japan trade and investment relations every decade between 1950 and 1980 as, in historical order, benefactor, facilitator, critic up to the 80s where Japan become a competitor. From 1990 on, the question is left open : partner or protagonist? With the temporal hindsight, we have at least part of the answer that could be described as a mix between the two, but the most significant crossroad for our purpose seems to be from the end of the 90s to the beginning of the 2000s, where foreign business-politics relationships will enter a new stage, driven by factors not depending solely on both countries.

From around 1950, many legal and regulatory changes took place between the two countries beginning with the Foreign Exchange and Foreign Trade Control Law (1949) as well as the Foreign Investment Law (1950) in Japan ; we will just briefly summarize here the major steps from the 80s until now⁽⁷⁾.

In 1985 the Reagan administration introduced, with Prime Minister Nakasone, the first multi-sector negotiating framework, the Market Oriented Sector-Specific (MOSS) talks with an initial coverage of four sectors with potential for US exporters : telecommunications, medical equipment and pharmaceutical, forestry products, electronics, auto parts being added after. Agreements were reached for each of them but with mixed results for US firms in terms of export increase. The Structural Impediment Initiative (SII) (Bush/Uno) was launched in 1989, targeting a broad range of Japanese policies, practices and structural factor working as NTM for US firms. The newness lied in the target of barriers cited not only by American actors but also by Japanese ones (academics, business, etc.), which reinforced the credibility and potential of acceptance. Domestic economic topics such as land policy (high prices), keiretsu, cartels, etc. that were not included in bilateral negotiation until then were thus approached with mixed success, the most representative one being the modification of the Large-Retail Store Law benefiting to Toys R Us.

(7) Cf. Cooper W.H., "US-Japan Economic Relations : Significance, Prospect, and Policy Options", February 18, 2014, Congressional Research Service.

With the Clinton administration's New Economic Partnership, sector-specific as well as macro and structural issues were addressed, with the obligation to meet twice a year for a review of progress based on objective criteria. This element was intended to measure Japan's fulfilling of its obligation but proved to be highly controversial as the Japanese side did not agree to be quantitatively bounded, which resulted in tensions between both countries. Although agreements were reached in many areas (medical equipment procurement, intellectual property rights, financial services and insurance, etc.), frustration heightened for US exporters and investors due to the feeling that the same obstacles, supposed to be already solved, were still in place, leading to the peak of trade frictions. The Japanese answer to this "result-oriented" strategy was that private sector practices do not obey to the same logic as government policies.

After the auto agreement in 1995, this framework was closed and replaced in 1997 by the Enhanced Initiative, less formal and focused on an exchange of views without result-oriented requirements. The issues of that time were centered on telecommunications, medical devices and pharmaceuticals, financial services, etc. As mentioned above, this period of the late 90s is essential because representing a turning point in the relationship between the two countries where the interests shifted from economics to national security issues, due to many factors among which the globalization, the rise of China, the protracted economic stagnation and financial crisis in Japan creating an opportunity for a surge in inward FDI, etc.

In 2001 (Bush/Koizumi) the Economic Partnership was formed around several Initiatives and Dialogues, and including subcabinet-level leaders, members of the business communities : the Regulatory Reform and Competition Policy Initiative, the Financial Dialogue, the Investment Initiative, the Trade Forum, etc. In 2010 (Obama/Kan), the Economic Harmonization Initiative (EHI) was established as a framework similar to its predecessors to discuss the pending issues with several working and high-level meetings. However, since 2011, the TPP has replaced the preceding framework for bilateral issues.

4.2. The ACCJ approaches through times in the context of intergovernmental negotiations

We now focus on the activities of the ACCJ, that is, the American business community in Japan, and its perceptions, on the background of the above intergovernmental negotiations as witnessed by its publications or the interviews of former or active concerned persons. It would have been interesting to follow the evolution of the EBC in parallel, but this was not possible due to the lack of archives.

We begin with the publication called "Making Trade Talks Work," a major issue of the late 1990 and published in parallel with other more traditional booklet such as "US-Japan Trade White Paper." As mentioned above, the background consists of a high level of acrimony after a peak had been reached in trade frictions, together with the recent establishment of the WTO and widely shared opinions that multilateral negotiations represent the future. From the ACCJ point of view, the perspective is slightly different because

anchored in the daily Japanese business realities, leading to the launch of this publication that intends to scan all the agreements to date, to assess whether or not and to what extent they are implemented, and whether or not Japan is fulfilling its obligations, in the spirit of the above “result-oriented” strategy. Consequently, and for the first time, a comprehensive review of trade agreements since 1980 was undertaken with a qualitative and quantitative assessment. The exercise was conducted only twice, in 1997 (45 agreements) and 2000 (63 agreements) due to the burden it represents and, time passing, the change of focus by the business community.

The first observation that can be made is that between 1997 and 2000 the general tone has changed considerably, evolving from a hard to soft approach. In the 1997 version, the US should have “bottom-line objectives clearly in mind and stand firm”, “avoid vague terminology”, “include specific terms, goals, and objective measurement criteria for how agreements will be implemented and reviewed” (p13) because “achieving a written accord often isn’t enough ; what has been agreed sometimes gets forgotten, ignored, or reinterpreted by the other side” (p14). According to the ACCJ, “...no US Government agency has a readily accessible list of all US-Japan trade agreements or their complete texts. This may indicate that it has often been more important for the two governments to reach agreements and declare victory than to undertake the difficult task of monitoring the agreements to ensure their implementation produces results.” (p14). “Despite many recent changes in Japan economic system...Japanese government interventions in the economy remain among the most extensive of any OECD country. Despite years of negotiation over market access and the expressed desire by Japanese officials for real deregulation of their economy, the breadth and depth of this study demonstrate the enormity of the access and deregulation problems that remain.” (p16). Thus, from the ACCJ point of view at ground level, intergovernmental negotiations are one thing and real world a very different dimension that needs to be more than ever firmly addressed. In the concluding section, the following recommendations can be found : “the US government should be more aggressive in finding and nurturing allies with common views and interests...(third-country parties and Japanese domestic constituents)”, “keeping the pressure on the Japanese to make good on their promises is paramount” (p148-149).

Compared to this, in the 2000 version, not only had the tone changed but also the landscape. First, regarding the evaluation of the trade agreements, a final score of 53% of them is found fully or mostly successful but with variation across industries : significant improvement in services, little or no change in manufacturing. Second, a new playing field and new rules are materializing driven by three major factors : dramatic changes in Japan, trends in the world economy and globalization strategy of firms. In Japan, the combination of the domestic economic and financial crisis with the Asian crisis have revealed its structural weakness and forced changes in important policies, especially in the financial sector where, in the preceding years, a record number of mergers and acquisitions has occurred in ailing institutions with a significant

amount of foreign takeover in the absence of domestic savior. Although perceptible changes in labor flexibility, corporate structures, and governance are noticed, the 1997 remark that government intervention scores among the most extensive of any OECD country, is considered still valid with “some plans devised in the name of deregulation look more like re-regulation when examined up close” (p18).

As a result, a new strategic concept, “inside the castle” (p18) emerges around that time, reflecting a breakthrough in the manner foreign firms do business in Japan still valid today. It is not sure exactly how and when it was coined, but the metaphor suggests that, whereas most US firms were basically working from outside the Japanese economy, they are now moving quickly “to take advantage of new opportunities offered by the so-called Big Bang financial reforms.” They adopt strategies “to grow their business with Japanese partners or, more notably, through wholly-owned direct investments” (p18). The phenomenon is however limited to certain industries when construction, telecommunications equipment, building products, sea transport, paper, and agricultural products report little progress.

Consequently, the major lessons drawn here are that it is most effective to deal with trade barriers in Japan when the US government can align with domestic or global trends, have strong industry support, bring other leverage as Super 301 and receive the Congressional support of effective industry lobbying (p19). When leverage is weak, the industry divided, or when the barriers protect strong local constituency, bilateral negotiations are less effective (p19). Finally, the concluding remarks stress that emphasizing the benefit to Japan and work closely with the media (on both side of the Pacific) for social and political acceptance, are key elements for success.

We then have here all the major elements we have synthesized from our case study : nurturing domestic allies, assessing local opposition, having strong industry support, macro-level tools (Super 301, treaty negotiation, etc.), using intra-US lobbying, proposing benefits for Japan and mobilizing the media for acceptance. These elements still form the core of CPA strategy as we have seen, at least for the US side. The fact that they are explicitly synthesized in this 2000 version can be said to represent a landmark in the evolution of US-Japan economic relations.

The same change of atmosphere can be noted in the parallel publication of the US-Japan Business White Paper (2001) newly renamed from the previous US-Japan Trade White Papers because now, “the focus of America’s business interest in Japan has shifted significantly from trading with Japan to doing business in Japan” (p13). Notably, “as more and more American firms operate inside the castle, with or without Japanese partners and employing large numbers of Japanese workers, they are increasingly participating directly in the Japanese policy process. American firms thus can become a part of the domestic *naiatsu* (inside pressure) process for change. In fact, the American business community in Japan has become a

positive agent for change through the exercise of both external and internal forms of advocacy, or to coin a phrase, *nai-gaiatsu*” (p16). Examples are given of this new *naiatsu* or *nai-gaiatsu* strategy such as the common advocacy operations by American and Japanese firms following the bilateral agreement to lower NTT’s interconnections rates or the common actions for legal and tax changes to allow the broader use of stock options or the support for introducing defined contribution pension (p16).

Further in time, the 2006 ACCJ Business White Paper, significantly titled “*Sôri Kyôsei*” (Working together, winning together), explains in its introduction that its aim is to provide an overview of the business environment in Japan, consistent with the ACCJ’s mission as “a supporter of reform...*Kaikaku Oendan*,” its objective not to make “demands” but to offer the best proposals and constructive requests” in a dialogue with the Government of Japan. This spirit is similarly epitomized in the ACCJ’s Core Advocacy Principles stating that “policy recommendations should be constructive, solution-based, cost-effective and founded on sound analysis” with “win-win solutions.”

Recently, the ACCJ stopped publishing these kinds of cross-sectoral Business Paper to focus on specific issues of interest in the above proposal and solution based-spirit, namely in the Health Care and Finance fields.

As several interviewees having participated and experienced this evolution witness, at the time of the first Making Trade Talks Work (1997), the focus was on monitoring, checking, and evaluating the result of *gaiatsu*, and the implementation of trade talks. However, confronted with the lack of effectiveness and the evolution of the environment, this work has been conducted twice only and abandoned ; nowadays no one would be thinking of doing an updated version because much progress has been made in the castle. The Health Policy White Paper, for example, is a good witness to this evolution. In the 80s the focus would have been on tariff reduction for medical equipment, reduction of approval period, etc. whereas the recent versions are intended to provide broad and mutual benefit recommendations from the patient point of view. As one of its major authors explains, the Diet members do not want to hear about specific drug or device from firm A or B ; they want to have the total picture of diabetes, of breast cancer, etc. To meet this demand, the White Paper, disease by disease, define the problems, talk about the current policy, talk about the solutions, plus the specific next steps that all incorporate the devices, the services, the diagnostics, the pharmaceuticals, etc. in one picture without advocating for a specific company or country. However, according to this source, the White Paper does not treat the pricing or regulatory facets that are managed by specific entities (Pharma, Amdd etc.). Nonetheless, it seems to be widely appreciated, especially by politicians belonging to parliament committees related to health, labor or welfare and that do not have a medical background, that is, about 70% of them. And finally, even if it is not read by the majority of politicians, it can serve as perfect access good to meet ministers or any targeted people even with a different purpose.

To finish on the ACCJ approach and the related perceptions, we can also say a word about the external factors that contributed to this transformation, the biggest being the rise of China as an economic superpower. For the US government as well as firms, China offered much more challenges and opportunities than the stagnating Japanese market, for which the actors have begun to realize with time that resistance to reforms would last longer than thought. The investment in time, energy and money could therefore not be worth in the light of the expected return. As an interviewee puts it, in some way, Japan disappeared from the screen in those years where new technologies and business models have enabled corporate activities to become increasingly borderless. As the introduction of 2006 Business White Papers indicates, the priority between Japan and the US has shifted to cooperation on security matters given the threat posed by global terrorism and the development of nuclear arms by North Korea.

4.3. About the role of *gaiatsu*

We have described above the shift that occurred from US-Japan intergovernmental negotiations accompanied by *gaiatsu*, apparently not always efficient, to a direct interaction pattern between industry/foreign business and the Japanese government. There is an abundant literature about *gaiatsu*, and we cannot discuss it all in detail here, but we would like to make some remarks about its efficiency and the manner it was utilized by domestic actors, drawing on the researches of previous analysts.

In a study devoted to the interplay between the domestic and the international level of bargaining, Schoppa (1993, 1997) examines why *gaiatsu* succeeds in Japan in some cases but not others. In his conclusion, he argues that “*gaiatsu* will tend to produce the most positive results when these strategies resonate with domestic politics in certain ways.” In other words, there are cases where domestic actors used external pressure to push their internal agenda. He gives the example of reforms requested by the US in the SII framework, in which success was seen in the distribution system (Large-scale Retail Stores Law) and the land policy reform (tax and regulation) because certain domestic interests were supporting it (record number of application for opening of large stores) and despite a strong opposition. On the contrary, the issue of *keiretsu* went nowhere due to the lack of domestic support and the opposition of all the actors, the business community, economists, bureaucrats, etc. who defended the status quo unanimously as economically rational and not overly exclusionary. In the same vein, Encarnation and Mason (1990) examine the Japanese response to US demands for capital liberalization and argue that Japan agreed to allow selective cases of foreign investment only when domestic constituencies supported it actively. They challenge the consensus that foreign pressure was the principal cause of Japan’s capital liberalization and suggest that this was mediated by Japanese oligopolists in search of assets and skill controlled by foreign firms.

These studies represent only a few example but show that, although *gaiatsu* was widely used up to a point as we have seen, it was not necessarily successful neither straightforward. It might have been used by

domestic interests and even orchestrated by some governmental factions to advance their agenda. In this sense, the evolution of the ACCJ approach to advocacy may well also reflect a deeper understanding of this facet of the Japanese society.

4.4. Other insight from previous surveys

A few other studies offer a view of lobbying in Japan in the past. The first one is a survey conducted by the Sone Yasunori Kenkyukai (Keiô University) in 1987 targeting foreign companies in Japan (85 responding). This survey is one of the few quantitative studies on the subject, and, as such, frequently cited in related researches, notably in the works of Yutaka Tsujinaka, sometimes in association with Peter Katzenstein (1995).

In essence, the Sone survey finds that foreign firms in their majority put emphasis in the bureaucracy and that few lobby the Diet members directly (8.2%). Only 21.2% have set up a devoted Government Relation section. 28.2% of them have hired a retired bureaucrat while 14.1% are sending personnel to the advisory or other consultative committees. 84.7% joined a Japanese industry association. Regarding the efficiency, 44.7% of the firms find that the Japanese industry associations are a good vector to convey their voice to the administration but that their home government and related institutions (embassies, chambers of commerce, etc.) are slightly more efficient (48.2%). However, their first purpose to join a Japanese trade association is obtaining information for nearly 80% of them.

The other study found has been conducted by a committee of the US House of Representative in 1991. Unfortunately, for logistic reasons it had not been possible to access it directly ; therefore the results reported here are taken from the works of Katzenstein and Tsujinaka (1994, 1995) which are quoting it. According to them, the surveyed American firms (130) are aware of the importance of public opinion and the media but attach less importance to politicians, rather exchanging information with bureaucratic agencies for 45% of them. 12% offer positions to retired bureaucrats and 30% send representatives to advisory committees. Regarding the Japanese industry associations, 61% of the firms report having joined one, with a strong focus on establishing personal contacts (60%) or obtaining marketing related information (49%). 26% of the firms declare to have a dedicated section for lobbying. However, concerning usefulness, the USTR, and the American embassy score respectively at 57% and 41%, reflecting a reliance on home government whereas the efficiency of Japanese industry associations on this point ranks low at 36%.

These two surveys give an interesting quantitative picture of the late 80s-early 90s which is by many points not very different from what we could have learned through our research at different levels of analysis. They reveal a clear propensity to interact chiefly with the bureaucracy and limited resort to the elected politicians or the public opinion.

A first slight gap with our main findings could be the level of adhesion to Japanese industry associations. In our cases, interviews and the literature studied, the Japanese industry associations were generally barely judged worth to join because of the time and energy required in the light of the return gained. We must remember that in our case study⁽⁸⁾, many industries have established their own association ; this may be the first explanation : with more industries, the result could have been different. The second point may be that in the two surveys the major interest of joining a local association lays in obtaining information, not in CPA efficiency.

However, the most striking difference with our findings is the rate of firms sending a representative to advisory committees. Again, according to our cases, interviews and the literature studied, the effective participation to advisory committee is seen as something recent and still limited in scope. The participation process used to be closely controlled by the bureaucracy. The simple disclosure of meetings schedules or minutes has been only recently rendered transparent and easily accessible, online for example. According to some press articles⁽⁹⁾, there had been a willingness from the government to open the participation of foreigners in the heights of economic frictions to ease them somewhat. In March 1984, the Japanese government led by Mr. Nakasone agreed after long debates to allow foreign representatives in these councils where the Japanese industrial policy is discussed. A few articles relate this evolution, but many stress that the bureaucracy, as well as the Keidanren, were strongly opposed to it. Moreover, foreigners would only have the right to express opinions or testify, not to participate in decision-making, thus rendering doubtful the real impact of the measure which should rather be taken as symbolic. Indeed, no echo of this proposal is seen in the press for the following years until August 1990 where three foreigners are reported appointed to an advisory council to the Office of Trade and Investment Ombudsman (OTO) in the wake of SII talks and still without the right to decision-making. Therefore, the difficulty is to assess the extent of this evolution. More research is needed to explain this figure, but the material is limited now and in the past. There might have been attempts to participate more in the late 80s with firm sending people, but the question remains : for what results and for how long? Furthermore, as there are a plethora of consultative and studying committees in Japan, is the survey's question effectively understood in the same sense and does it cover the same realities that we are discussing here? Nonetheless, as mentioned at the beginning of this chapter, the possibility of a real and effective participation in the advisory councils is still a key issue for the Americans nowadays.

(8) Lobbying strategies of foreign firms in Japan, Bulletin de la société franco-japonaise de gestion, No.33, Mai 2016

(9) The New York Times, March 12-13 1984, October 31 1984 ; The Wall Street Journal March 13 1984 ; Reuters, August 13 1990.

4.5. Final and synthetic remarks : shift to persuasion and collaboration

To conclude on the question of evolution in time, we will first refer to the witness of several practitioners. First, regarding the level of *gaiatsu*, according to an interviewee, a real change seems to have occurred, compared to the 80s and 90s. In those times, there were real economic friction problems that had to be solved at states level, but now, it seems to be only a matter of fine tuning. This implies that the USTR cannot be mobilized for every small issue. They used to do much *gaiatsu* in the past and do not want to be accused of doing some nowadays. Moreover, as a bureaucratic agency, the USTR seeks rationality as well as efficiency and therefore ask firms to speak with one voice and set up priorities among the hundreds of issues submitted, so that the problems it will advocates are really worth to take the risk to damage the relationship with the Japanese government. Home governments are not almighty ; they have their own priorities and one of their major functions nowadays is to open doors, although it might not be sufficient. However, some firms still want to use *gaiatsu* and push for it, but the only result is often to deteriorate the relation with the Japanese authorities as in the Pay Pal case.

Regarding the content, the focus has also changed. Before, trade issues were central whereas nowadays, in globalization times, the major problems occur from laws and legislations that have become obsolete in regards of the technical and economic acceleration. Many issues are therefore related to the modernization or adaptation of old regulations to new products or services.

In this sense, the role of the intermediate bodies such as the ACCJ or the EBC also receives a mixed appreciation. A practitioner speaks of a double structure, where the association publishes position papers and expresses firms' demands but only on the basis of the lowest common denominator, whereas the real lobbying is conducted as an individual interaction that can be done only step by step and patiently in Japan. These collective entities serve more as communication or networking tools than real influence.

Another point noted by a practitioner is the rise of transparency and professionalization of CPA. In the past, lobbying frequently used to offer special favors to officials, dinners, golf or money as well as mobilizing personal networks from the same region or university. As mentioned above, in the 80s or 90s the advisory committees never published their minutes whereas now the information is open.

Generally speaking, foreign business became more effective and works directly with the Japanese industry and government to achieve goals related to advocacy. Again, the same practitioner explains that this owes much to economic evolution with the Japanese industry facing the same problems in the world than the American, which was not the case in the 80s. As he puts it : "collaboration suddenly became possible." The same sound can be heard at the Keidanren where there used to be a specific committee for foreign firms twenty years ago ; that has disappeared now. In the life insurance industry where foreigners hold a

significant market share, the person in charge for advocacy of European firms explains that the major differences are in competition and strategy rather than in terms of Japanese firms against foreign firms.

To conclude, we draw on Tsujinaka (1994, 1995) analyzing in a comparative approach the ways and means of foreign lobbies in Japan and the US. Questioning the means open to foreign lobbies in Japan, he remarks that they cannot resort to the powerful and traditional constituent votes nor money, and are therefore obliged to use the home state power, local aligning interests or the technocratic rationality consisting in convincing the bureaucracy with the power of information, idea, and analysis. This is exactly what we have been discussing in this study with the major findings that, now, the use of state power is becoming more limited whereas the technocratic rationality (as opposed to politics) on the persuasion side is widely used with the help of local collaborative interests.

5. Conclusion

In this paper, we have proceeded back and forth between several levels of analysis (macro, semi-macro) and periods to gain a picture as complete as possible of the CPA phenomenon in Japan. In the first part, we focused on issues encountered and tried to identify them as perceived at the semi-macro level of the ACCJ and EBC or the macro level of trade negotiations. At this level, tariffs on industrial goods in the manufacturing sector being already very low in Japan, their elimination is not a top priority for the US but the variety of non-tariff measures that impede trade is. Similarly, the EPA/FTA with the EU is definitely centered on the removal of non-tariff measures, with particular demands regarding the mutual recognition of standards, product certification, marketing authorizations and adoption of international standards in the domains of medical equipment, environmental technology, consumer products, cars, and food. A study concludes, however, that the majority of NTM are only solvable in combination with domestic reforms, trade instrument being insufficient.

In the next part, we reviewed the evolution in times as perceived by the ACCJ and a number of practitioners. There used to be *gaiatsu* and external pressures in the past, but, due to the domestic crisis, the globalization and the rise of China, the attitudes have changed for foreign business which is now “inside the castle,” leading to more direct interactions between business and government. Before, trade issues were central whereas nowadays, in globalization times, the major problems occur from laws and legislations that have become obsolete in regards of the technical and economic acceleration. Many issues are therefore related to the modernization or adaptation of old regulations to new products or services.

Here, major elements we have synthesized from our case study are echoed at the ACCJ level : nurturing domestic allies, assessing local opposition, having strong industry support, macro-level tools (Super 301,

Table 4 Major abbreviations used in the text

CPA	Corporate Political Activity	TPP	Trans-Pacific Partnership
MNC	Multi-National Corporation	USTR	US Trade Representative
ACCJ	American Chamber of Commerce in Japan	SPS	Sanitary and Phyto-Sanitary
EBC	European Business Council	IPR	Intellectual Property Right
FSA	Financial Services Agency	UNCTAD	United Nations Conference on Trade and Development
NTM	Non-Tariff Measure	SII	Structural Impediment Initiative
EPA	Economic Partnership Agreement	FTA	Free Trade Agreement

treaty negotiation, etc.), using intra-US lobbying, proposing benefits for Japan and mobilizing the media for acceptance. The use of state power is becoming more limited whereas the technocratic rationality (as opposed to politics) on the persuasion side is widely used with the help of local collaborative interests. Moreover, CPA practices are becoming more transparent and professional in line with the increased transparency in Japanese political life.

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