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Foreign Public Officials Bribery and Global Compliance of Japanese Corporations

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Abstract: The risk faced by Japanese firms in bribing foreign public officials has increased following the strict regulation by the United States government and the foreign business expansion of Japanese corporations. Japanese corporations, however, are yet to adopt an effective countermeasure against the risk. The main concern of this paper is to answer the following core question: Why does the management of Japanese corporations not take action against the bribery of foreign public officials? In general, the management is considered to be influenced by the characteristics of the following three sectors: the corporate sector, the government sector, and the market sector. Keeping this in mind, the reasons will be analyzed from the viewpoints of each sector. The conclusion of this analysis will help us to gain a structured understanding of the environmental problems that fundamentally cause managerial problems.

Key words: foreign public officials bribery; foreign corrupt practices; internal control; Japanese corporation
JEL code: M140

1. Introduction

The United States (US) government has advanced a reform of the business law system based on the idea that companies should be allowed to carry out free economic activities, albeit along with strict compliance with the rules. The best example of such regulations is the Foreign Corrupt Practices Act (FCPA). The act was enacted in 1977, making it unlawful for individuals and corporations to provide illicit benefits to foreign officials for the purpose of obtaining or retaining businesses.

The FCPA has a significant impact on the global business community because it strictly prohibits individuals and corporations from bribing foreign public officials with a vast amount of sanctions. It also provides the US enforcement authorities with the extraterritorial jurisdiction to punish individuals and corporations around the world. It is potentially applicable to companies all over the world: A large amount of sanctions would be imposed on them once it is applied. Hence, it is clear that the risks associated with the bribing of foreign public officials by multinational corporations, including Japanese firms, has increased.

Meanwhile, many Japanese corporations have been trying to expand their businesses into countries where the bribery risk is considerably high — namely east and south-east Asian nations. However, it seems that the internal control systems of Japanese corporations are not responding to foreign bribery risks. In this regard, it is necessary

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to analyze why Japanese corporations do not take action to prevent the bribing of foreign public officials.

2. Literature Review

Based on the above-mentioned insights into the business environment surrounding Japanese corporations, it is important to further explore the relationship between foreign bribery and Japanese companies. We will take an overview of the existing studies concerning this matter with the help of the three following points of view: (1) the trend of the risk; (2) how to deal with the risk; and (3) what countermeasures Japanese corporations are taking against such risk.

Many researchers claim that companies have become increasingly exposed to the risk of foreign bribery because of the FCPA (Crook, 2011). Japanese corporations are no exception to this (Taka, Kunihiro, & Gomi, 2012). This is because they are relocating stages of their business activities from the domestic market to the overseas market, in response to the growing demand for infrastructure construction in Asian nations. Companies in infrastructure business are usually faced with many opportunities to contact foreign officials. In this regard, Japanese companies are required to construct a global compliance system to abide by the anti-bribery laws such as the FCPA.

Several studies have already revealed the way to deal with the risk of foreign bribery. The US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), in particular, issued "A Resource Guide to the US Foreign Corrupt Practices Act" (Resource Guide) in 2012 (DOJ & SEC, 2012). This guide provides significant information for corporations to comply with the FCPA. It shares the judgment standards of the DOJ and the SEC — the execution authorities — for opening and declination of investigations and prosecutions. These standards provide critical information to corporations when they attempt to prevent foreign bribery.

Some Japanese studies have also reached similar conclusions. Among them, Taka (2014) has issued "R-bec 013", a guideline for Japanese corporations for constructing an internal control system to prevent giving bribes to foreign public officials. R-bec 013 refers to the Resource Guide and offers useful information to improve in-house rules for several kinds of business activities including donations, gift giving, business partner contracts, mergers and acquisitions, and so on.

Although such useful information is already publicly available, most Japanese corporations refrain from taking a rational countermeasure (Fujino, 2014). In fact, these corporations bear serious prosecution risks because of their globalized nature. Hence, it is important to clarify why they do not take any action. We regard this as the core question of this study.

3. Framework

To answer the above-mentioned question, we need a framework to describe the relationship between managers of such corporations and their surroundings. The issue of bribing foreign public officials has to be managed by corporations on a company-wide basis. Therefore, the top management holds the key for a company to deal with this risk.

In dealing with the risk there are three management stages: "risk perception", "rational decision", and "information utilization". During the first stage the managers carry out a risk assessment to identify the risk and its degree. If they find a significant degree of risk, they naturally recognize the necessity to prevent foreign bribery.

After being perceived, the managers may seek a way to handle the risk. It is rational for them to construct an internal control system because the US authorities strongly require them to do so. Hence, a decision to construct such a system is necessary as the second management stage.

Finally, the managers try to find out which elements the internal control system has to possess. Several documents have already revealed these elements. In 2012 the DOJ and the SEC jointly published "A Resource Guide to the US Foreign Corrupt Practice Act". It is the most detailed and concrete guideline for FCPA compliance. If the managers have access to such a guideline, they can obtain practical information to realize an efficient internal control system.

As we confirmed, there are three stages of dealing with the risk. This perspective delivers the three following questions: (1) "Why is the risk perception of managers of Japanese corporations insufficient?" (2) "Why managers of Japanese corporations do not make a rational decision?" and (3) "Why directors of Japanese corporations cannot gain information for the construction of an effective internal control system?"

We need to find answers to these three questions to answer the previously mentioned core question. In this paper we adopt the perspectives of the government sector, the market sector, and the corporate sector. These perspectives are combined with the questions mentioned above, thereby constructing the matrix for an analysis that works as an integral framework.

However, considering that Japanese corporations do not take any action against the risk, most managers are supposed to have failed to implement all these processes. Accordingly, this paper focuses, above all, on the first and the most important process, namely "risk perception", and explores the reasons from the three given perspectives.

4. Analysis

From now on, we will discuss the issue in line with the three following points. First, we will focus on the globalization of Japanese corporations from the corporate standpoint. As we all know, many Japanese corporations have been developing overseas businesses. What we should note here is the pace of their expansion and the reality of businesses abroad.

Second, we will adopt the government perspective. Generally speaking, trends in legislation and law enforcement have a significant impact on the risk perception of managers. For this reason, we will focus on the legislative history of the Japanese anti-foreign bribery law and its current enforcement situation.

Third, we will take the market viewpoint. Once a corporation is punished for violation of law, it may suffer a loss for various reasons including a fine. If the fine is sufficiently large, it inflicts damage on shareholder value. Shareholders may sue managers and demand compensations for such damage — it is called shareholder litigation — which is a grave threat to managers. We will analyze the Japanese situation in this regard.

4.1 Corporate Sector

Once a corporation enters a foreign market, it faces a strikingly different business environment because business conditions — such as institutions, customs, and cultures — differ from one country to another. The more rapidly the companies expand their business overseas, the more radically the business environment changes for them. Based on such a background, we will first see how rapidly Japanese corporations are expanding themselves overseas and then describe the context in which they operate their businesses.

4.1.1 Overseas Expansion of Japanese Corporations

If the environment changes drastically for these corporations, managers may face difficulty in keeping with the change and adapting their perception to the new surroundings. As a result, they will suffer from a gap between perception and reality. As for foreign activities of Japanese corporations as a whole, we can characterize them by rapid globalization. It can be restated that most managers of Japanese corporations still do not have much experience in foreign businesses. Accordingly, we suppose that they have not gained sufficient information about foreign legislations, especially anti-bribery regulations, which could be applied to their corporations.

Affirming this point, we should first pay attention to the "foreign sales ratio" of Japanese major-listed companies. It is the indicator that shows a rough trend in foreign businesses of these corporations. As we can see in Figure 1, the ratio has risen from 33.6% to 43.9% from 1998 to 2012. From this data, we understand how rapidly Japanese businesses are expanding abroad.

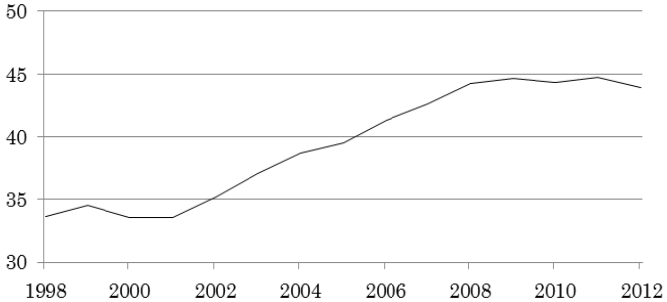

Figure 1 Foreign Sales Ratio

Source: Needs Financial Quest (2016, May 10). *Foreign Sales Ratio*, Chiyoda, Tokyo, Japan.

However, what we observe with the foreign sales ratio is nothing more than a superficial trend in the globalization of Japanese corporations. Globalization is considered to develop through several processes. The higher the phase proceeds, the more globalization intensifies. For this reason, if we try to see the intensification of globalization, we need to check the number of companies that are incorporated abroad. As we can see in Figure 2, the number of subsidiaries and affiliates that are incorporated abroad by Japanese corporations has increased from 15,000 to 24,000 between 2004 and 2013. This data shows not only the fact that Japanese corporations are globalizing at a superficial level but also that globalization is also intensifying as these companies are proceeding higher in the process of globalization.

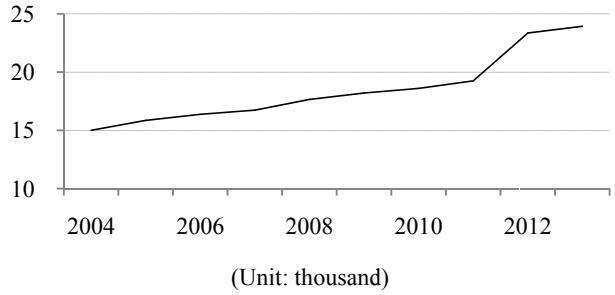

Figure 2 The Number of Corporations Incorporated Abroad

Source: METI (2014). *Dai-44-kai Kaigai-jigyo-katsudo Kihon-chosa Kekka Gaiyo: Overview of the 44th Basic Survey of Corporate Foreign Activities*, Chiyoda: Ministry of Economy, Trade and Industry.

The two above-mentioned datasets show strong evidence of the rapid overseas expansion of Japanese corporations. Nevertheless, there is still a possibility to criticize this trend. The number of companies incorporated abroad includes those registered in foreign countries as paper companies. In this sense, what the number shows us is just an assumption, not a reality. In order to capture the reality, we should finally look at the number of employees of such local affiliates. As we can see in Figure 3, the number of employees of local foreign affiliates has increased from 4 million to 5.5 million between 2004 and 2013. From this data, we can recognize that Japanese foreign businesses are practically localizing.

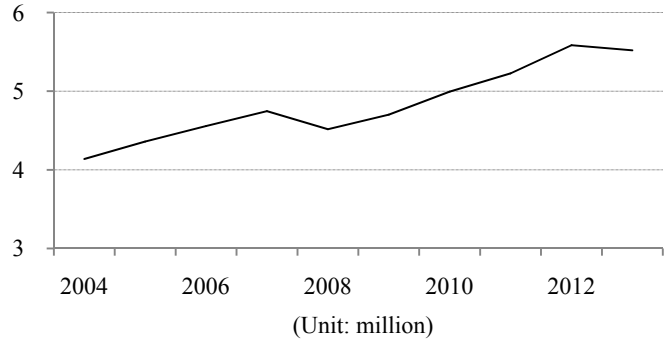

Figure 3 The Number of Employees of Foreign Local Affiliates

Source: METI (2014). *Dai-44-kai Kaigai-jigyo-katsudo Kihon-chosa Kekka Gaiyo: Overview of the 44th Basic Survey of Corporate Foreign Activities*, Chiyoda: Ministry of Economy, Trade and Industry.

We have seen three datasets to see how rapidly Japanese corporations are expanding their business abroad. From this, it can be inferred that such corporations are in the very middle of the process through which they globalize their business. However, it also implies that many Japanese corporations had stayed in the domestic market for a long time.

What impact does this situation has on the risk perception of managers? As long as a company operates in a domestic market, it is unlikely to be prosecuted by foreign authorities. Accordingly, most managers do not have a chance to take an interest in the existing laws in foreign countries and the associated risks. Notably, in modern Japan, a corporation hardly bribes domestic public officials for commercial purposes. It is the reason why most managers do not even imagine that bribing officials may present a prosecution risk for corporations.

4.1.2 Environment that Surrounds Japanese Overseas Business

We have already confirmed that Japanese corporations are in the very middle of globalization. The progression is so rapid that most of the managers of these corporations have trouble matching their perception with the change in the business environment. However, this situation does not consistently apply to all Japanese corporations because it is only a general trend in the Japanese corporate sector. In fact, some managers are comparatively well experienced in foreign businesses and accordingly get familiar with local business customs.

Then, do these managers take advantage of their experience to raise awareness about the foreign bribery risk? To provide answer to this question, we need to understand the business conventions existing in those countries where most Japanese corporations operate and their influence on managers.

First of all, we need to mark countries to which most Japanese corporations expand their businesses. As we can see in Table 1, they are mostly Asian developing nations such as China and Indonesia. Also, a trend relating to the number of employees of local foreign affiliates leads us to the same conclusion. As we seen in Figure 4, the increase in the number of employees in Asia has increased their number in the whole world. This implies that

expansion of business into Asian countries has led Japanese corporations to rapid globalization.

Table 1 Countries Where Japanese Corporations Expand Their Business Abroad

	2007	2008	2009	2010	2011	2012	2013
1	China	China	China	China	China	China	China
2	U.S.	U.S.	U.S.	India	India	Indonesia	Indonesia
3	Thailand	Thailand	Vietnam	U.S.	Thailand	Thailand	India
4	India	India	Thailand	Thailand	U.S.	U.S.	Vietnam
5	Vietnam	Vietnam	India	Singapore	Indonesia	Vietnam	Mexico
6	Korea	Taiwan	Hong Kong	Hong Kong	Vietnam	India	Korea
7	HongKong	Singapore	Korea	Vietnam	Singapore	Singapore	Thailand
8	U.K.	Korea	Singapore	Korea	Korea	Korea	U.S.
9	Dutch	Germany	Germany	HongKong	HongKong	HongKong	HongKong
10	Mexico	HongKong	Russia	Taiwan	Taiwan	Malaysia	Taiwan

Source: Fukagai Y. (2013, July 18). Saishin kaigai shinshutsusaki ranking top 50 (Latest overseas advance ranking top 50). Retrieved August 6, 2015, from Toyo keizai online: http://toyokeizai.net/articles/-/15578.

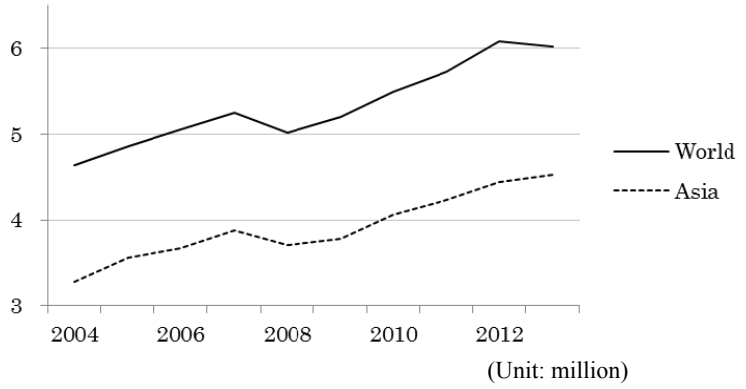

Figure 4 The Number of Employees of Foreign Local Affiliates in Asia and the World

Source: METI (2014). *Dai-44-kai Kaigai-jigyo-katsudo Kihon-chosa Kekka Gaiyo* (*Overview of the 44th Basic Survey of Corporate Foreign Activities)*, Chiyoda: Ministry of Economy, Trade and Industry.

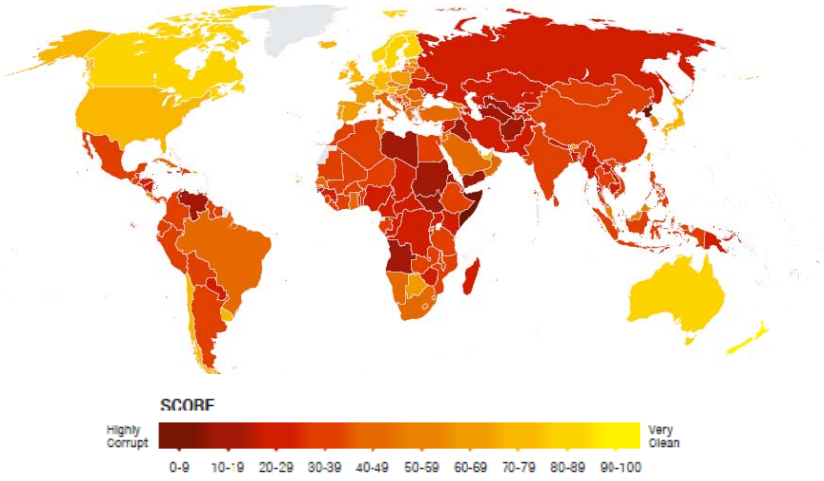

Figure 5 Corruption Perception Index

Source: Transparency International (2014). *Corruption Perceptions Index 2014: Results*, retrieved May 28, 2015, from Corruption Perceptions Index: http://www.transparency.org/cpi2014/results.

Now, what business convention exists in Asian developing countries? To conclude, there are many business practices that no longer seem to exist in advanced nations. One such practice is corruption, which is one of the most serious social problems in developing countries. Local officials in those countries crudely ask for bribes from people. Transparency International, a major international non-governmental organization fighting against corruption, reports every year an index that measures the perceived levels of public sector corruption worldwide (Transparency International, 2014). According to this, most of the highly corrupt countries are located in Asia, Africa, and South America (see Figure 5).

One of the most important points here is that these countries are high-risk areas where corruption is prevailing. In such countries, even if a car driver is responsible for a fatal accident, he/she sometimes runs away as if nothing had happened. He/she can go scot-free by bribing police officers. Though this is, of course, an extreme example, we understand that paying a bribe may provide you with special benefits, which is rather common in almost all developing countries.

This problem raises another question. Do managers of the corporations operating in such countries perceive the risk properly? The answer is no. We understand the reason in the following manner. Even the FCPA, the most important anti-foreign bribery law, had not been implemented sufficiently before 2000, which means that it is not until the beginning of 21st century that the global regime has enhanced its function to fight against foreign bribery (Working Group on Bribery, 2014).

In other words, corruption in developing countries has been left unresolved for a long time. In fact, only a few people in those countries deem bribery as an unlawful activity. In this regard, if managers actively try to familiarize themselves with local customs, it is all the more natural for them to get involved in bribery cases.

To sum up, even managers with sufficient experience in foreign businesses are not supposed to always understand the illegality of foreign bribery. Rather, they possibly tend to regard bribery as one of the socially accepted business customs or even a business strategy to win a competition.

4.2 Government Sector

To shatter the corrupt relationship between foreign public officials and corporations, a rule issued by the government is essential. However, foreign governments themselves malfunction because of pervasive bribery, which, in turn, causes further corruption. The global community has long tried to get rid of such situations, with developed nations being urged to introduce some rule to prevent foreign bribery. In effect, most developed countries have legislated anti-foreign bribery rules (Working Group on Bribery, 2014). Accordingly, it is natural to focus on the impact of the government sector — especially the process of legislation, amendment, and execution — to analyze the risk perception of the management of these corporations. We will discuss these points in the following fashion:

First, we will analyze the attitude of the Japanese government regarding this problem. If the Japanese government takes a positive stance, it should gain more attention. For this reason, we will see the history of legislation and amendments regarding the Japanese anti-foreign bribery law and its impact on the risk perception of the management of Japanese corporations carrying out business activities abroad.

Second, we will analyze how the enforcement authorities have executed the law since its enactment. The more aggressive the prosecution authorities are in enforcing the law, the more chance there is of the corporations being prosecuted. The managers naturally perceive the risk more acutely. Based on this assumption, we are going to analyze the contemporary enforcement situation of the Japanese anti-foreign bribery law and its impact on the risk perception of the management.

4.2.1 The Amendments to the Anti-foreign Bribery Law in Japan

It was not until the late 1990s that the problem of foreign bribery began to attract attention in Japan, albeit insufficiently. What motivated the argument, then, was the conclusion of the OECD treaty in 1997. For ratification, the treaty required the Japanese government to consolidate the anti-foreign bribery law system. The Ministry of International Trade and Industry (METI) started this argument mainly for the reason that it holds jurisdiction over the economic laws (Kitajima, 2011).

METI was not forward enough on this issue, even though it was expected to play a crucial role. The anti-foreign bribery law was eventually included in the Japanese "Unfair Competition Prevention Act" (UCPA) in 1998, more than 20 years after the US government legislated the FCPA in 1977. Also, as it turned out, the content of the law was so insufficient that we can regard it as a measure of avoiding the pressure exerted by the OECD treaty (Working Group on Bribery, 2005). In the first place, METI policies have always been passive to globalization. The amendment process of the UCPA was heavily tinged with such behavior of the METI.

Now, let us take a look at the overview of the UCPA. First, it sets the punishment for corporations up to only three million yen. It is much less than the penalty for violation of the FCPA accounting provision (25 million dollars). Although the statute of limitation for both laws is five years, the US government can reach conduct having occurred before the five-year limitations period applicable to conspiracies in case of the FCPA conspiracy. For conspiracy offenses, the government only has to prove that one act in furtherance of the conspiracy took place during the limitations period, thereby enabling the government to prosecute the payment of bribery or accounting violations that occurred more than five years within the filing of formal charges (DOJ & SEC, 2012). Accordingly, the government may demand investigations into the criminal liability of corporations retroactively as long as the actions are successively conducted. A comparison between the US and Japanese anti-foreign bribery laws easily shows us how permissive is the latter. Hence, Japanese managers naturally underestimate the penalty of foreign bribery (see Table 2).

Table 2 A Comparison between FCPA and UCPA

	FCPA		UCPA
	Anti-bribery Provision	Accounting Provision	—
Establishment Year	1977	1977	1998
Maximum Corporate Criminal Fine	2 million dollars	25 million dollars	300 million yen
Maximum Individual Criminal Fine	250 thousand dollars	5 million dollars	5 million yen
Maximum Imprisonment	5 year	20 years	5 years
Statute of Limitation	Five years since the last action took place		5 years

4.2.2 Enforcement of the Anti-foreign Bribery Law

Have all directors of Japanese corporations underestimate the penalty against foreign bribery? Of course, we cannot say this confidently. Recently, some media outlets have covered this issue, which has attracted more attention to the issue in Japanese society. We can assume that some managers have begun to realize the importance of fighting against foreign bribery.

However, there remains some doubt that managers of Japanese corporations regard foreign bribery as a risk. Though these managers certainly recognize the illegality of foreign bribery, or at least understand it being unethical, they may not imagine that the Japanese authorities would prosecute corporations and give penalties. To confirm this doubt, we need to check how often the Japanese authorities execute the UCPA and how managers perceive the execution.

According to statistics, the number of UCPA execution is surprisingly small. Though it has been more than 10 years since its enactment in 1999, there have been only six individual and two corporation cases (Working Group on Bribery, 2014). These figures are much smaller than the ones in the US and Germany (see Figure 6). Though the OECD Working Group on Bribery in International Business Transactions has pointed this out several times, the Japanese government has not made any attempt to improve the situation. It is common sense in the international community that the Japanese government has left the foreign bribery issue unresolved.

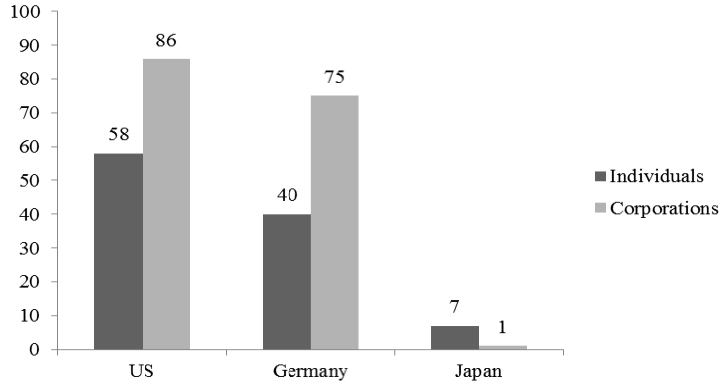

Figure 6 The Number of Anti-foreign-Bribery Law Enforcements

Source: Working Group on Bribery (2014). *Annual Report 2014*, Paris: OECD.

In general, laws do not act as a deterrent against criminal activities unless the authorities execute them. They gain proper influence only with execution by enforcement authorities. Only then, unlawful activities come to be perceived as a risk. The Japanese authorities have not prosecuted the UCPA, which has negatively affected the risk perception of managers of Japanese corporations.

Now, what about the judgments in each prosecution case? Though there are not many cases in Japan, we should take a close look at the contents. What sanction did they give in each instance of the application of the UCPA? As of September 2015, there are four cases of the UCPA application: the Kyudenko case, the PCI case, the Futaba Industrial case, and the JTC case. As we take a brief look at all these cases, the amounts of penalties have been small and the lengths of incarceration short (see Table 3). In effect, the foreign bribery charge in the UCPA is merely nominal.

Table 3 Cases of the UCPA Execution

	Contents of illegal act	Corporate sanction	Individual sanction
Kyudenko	Two employees gave illegal profit to a Philippino public official regarding the company's business in the Philippines (Kitajima, 2011).	—	500 thousand yen fine 200 thousand yen fine
PCI	Two former directors gave illegal profit to a Vietnamese public official about ODA project in Vietnam (Kitajima, 2011).	70 million yen	Two years and six-month incarceration (suspension of three years) One-year and six-month incarceration (suspension of 3 years) One year and eight-month incarceration (suspension of two years)
Futaba Industrial	Former managing director gave tens of millions of bribery to Chinese government official (Transparency Japan, 2014).	—	500 thousand yen fine
JTC	The company paid about 70 million bribery to several Vietnamese government officials regarding ODA project in the country (JTC, 2014).	90 million yen	Two-three years incarceration (suspension of three-four years)

Witnessing such a situation in Japan, managers of Japanese corporations naturally think that the damage suffered by their corporations is insignificant and they are not likely to be held responsible for it. As a natural result of the above analysis, we can understand that the Japanese government did not play any major role to correct the managers' misperception of the risk in all the aspects of enactment, amendment, and execution of the UCPA.

4.3 Market Sector

Shareholders are one of the most important stakeholders of companies. For managers, it possibly undermines their position to make mistakes in decision-making with little regard to shareholders' opinion. Now that foreign bribery has become a severe global risk, we cannot ignore its impact on shareholders. Accordingly, we will focus on the recent trend of shareholders of Japanese corporations regarding foreign bribery on the following two accounts.

First, we will make sure what role shareholders are required to play concerning the risk perception of managers and then consider if the shareholders of Japanese corporations actually fulfill the role. Second, we will look at the significance of foreign investors. Recently, more and more foreign investors are investing in the stock of Japanese corporations. These foreign investors are able to supersede the role of Japanese shareholders, if necessary. In this regard, we will think about these investors' influence on the risk perception of the managers.

4.3.1 The Role of Shareholders' Representative Action

In case the managers make illegal or unsatisfactory professional conduct, which in effect gives sanction to their corporations, the shareholders suffer a loss because of a fall in stock prices and a decrease in dividends. In this case, the companies (especially company auditors) have the right to claim compensation from the managers. If the company does not file a suit against the directors, a shareholder can sue them on behalf of the enterprise — it is called the "shareholders' representative action".

What we expect from this action is not only a direct function, which amounts to making managers compensate the corporate damage, but also an indirect function, which comes down to forcing them to pay proper attention to prevent illegal corporate activities by threatening them with legal proceedings and making them take more responsibility in this regard. It is one of the most important roles for shareholders regarding corporate governance. Then, the question is: do Japanese shareholders fulfill this role?

As far as domestic bribery cases, they surely fulfill the role. As a representative example, we examine the Kajima Corporation case. Kajima Corporation, a major Japanese construction company, was ordered to pay the administrative penalty and banned from bidding for public work. As a result, the company suffered a loss amounting to three billion yen. In response to the damage, two shareholders instituted legal proceedings against five members of its board of directors (Shouji-houmu Kenkyukai, 2001). In this civil case, both sides came to the settlement because the former CEO admitted his unsatisfactory professional conduct and agreed to pay compensation for it. In this case, Japanese shareholders recognized the fact that bribery brings damage to the corporation. It is natural for us to consider that such behavior of shareholders would prevent managers from getting involved in domestic bribery. So, how about the case of foreign bribery?

As we look at the cases of foreign bribery by Japanese corporations, we realize that there are two different types. The first type is the cases in which the Japanese authorities have prosecuted the corporation because of a breach of the UCPA. The other is the case in which the US authorities have prosecuted them because of the FCPA breach. In the former case, the sanction is not so severe and hence there is no need to discuss them. In the latter case, corporations have to pay an enormous amount of sanctions. As we get a quick overview of the five FCPA

cases of Japanese corporations, the US authorities gave the corporations a wide range of sanctions (see Table 4). In these cases, the shareholders are rightfully able to pursue the managers' responsibilities and they should do so.

However, in any of these cases, the shareholders neither sued the managers nor initiated the shareholders' representative litigation. To confirm this fact, we will take a look at the JGC case. The US authorities prosecuted JGC in 2011 because it violated FCPA by bribing public officials of Nigeria regarding local oil business and ordered the company to pay 200 million dollars as penalty (Office of Publica Affairs, 2011). In this case, the DOJ clarified that the company's directors had committed the illegal activity. Nevertheless, as long as we can avail public information, there is no evidence that the shareholders of JGC tried to pursue the directors' responsibility.

Of course, we cannot conclude only from this case that shareholders of Japanese companies do not regard foreign bribery as an important issue. However, we can at least understand that the company has permitted foreign bribery in the practical sense. With such a permissive attitude of shareholders in mind, the managers hardly imagine that shareholders would pursue their responsibility regarding foreign bribery, even if the US authorities prosecute the company. In effect, the managers regard the risk of foreign bribery as something that is none of their business.

4.3.2 The Impact of Cross-Shareholding

We have already seen that shareholders permitted foreign bribery by Japanese corporations. However, it is not limited to Japanese or Japanese companies that could become shareholders of Japanese corporations. Foreigners and foreign corporations have the right to invest in shares of Japanese corporations. In practice, foreign shareholders are recently increasing their share in the Japanese stock market (see Figure 7).

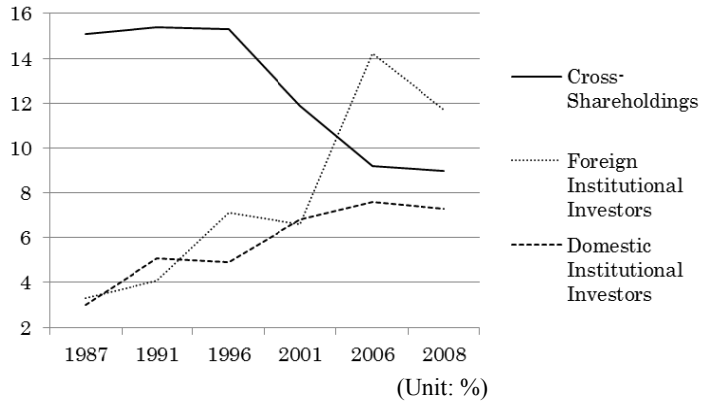

Figure 7 The Structure of Stock Holding in Japanese Corporations

Source: Miyajima N., & Nitta K. (2011). *Kabushiki-shoyu Kouzou no Tayouka to sono Kiketsu: Kabushiki-mochiai no Kaishou, Fukkatsu to Kaigai-toushika no Yakuwari (Diversification of Stock Holdings Structuire and Its Results)*, Chiyoda-ku, Tokyo: Research Institute of Economi, Trade and Industry.

In general, the US pays more attention to the issue than Japan, as the former has strict rules to prevent foreign bribery. For shareholders, in particular, the accounting provisions of the FCPA should become something that they cannot ignore regarding the size of the penalty. They suffer a significant set of sanctions if the company violates the accounting provisions. Hence, we can conclude that foreign investors, especially US investors, recognize that foreign bribery brings to the enterprise.

Now let us think about their impact on the risk perception of managers. To conclude, the impact is still quite limited. One reason for this is that there has long been cross-shareholding in the Japanese stock market (see Figure

7). While such cross-shareholdings, which Japanese corporations maintained for long after World War Two, brought a stable management to Japanese firms, it holds some deficits including malfunction of shareholders' monitoring (Maruyama, 2000). This is because cross-shareholding completely separates the management from the commitment of shareholders. Thus, even if shareholders perceive the risk of foreign bribery, they could not convey the risk to the managers properly. Foreign shareholders have been no exception to this.

Indeed, the rate of foreign shareholders has risen in Japan as many corporations gradually canceled their cross-holdings since the 1990s. However, cross-shareholdings still exist to some extent in Japan (Miyajima & Nitta, 2011). Hence, shareholders still face difficulties in voicing their opinions to the managers because they eventually get blocked by cross-holdings. As a result, it is reasonable to conclude that even if shareholders try to inspire the managers to develop a proper risk perception, their voices do not reach the latter.

5. Conclusion

We have hitherto considered the three following points. First, we focused on the corporate sector and confirmed two facts: most managers could not gain sufficient information regarding foreign laws because Japanese corporations have expanded their business abroad at a rapid pace, and even managers with sufficient experience in foreign business tend to regard bribery as a means of lubricant for business relationship because corrupt activities are prevalent in developing countries where most Japanese corporations are carrying out their business activities.

Second, we focused on the government sector and found two facts. First, METI acted so passively that the foreign bribery issue did not attract any attention in Japan. Also, since the Japanese authority did not execute the UCPA actively, managers of Japanese corporation did not take the law seriously.

Third, we focused on the market sector and checked two facts: Japanese shareholders do not pursue managers' responsibility regarding foreign bribery. There is also a problem regarding cross-shareholding in the Japanese stock market, which prevents even foreign shareholders from voicing their opinions to managers of Japanese corporations.

Having analyzed these points, we can answer the basic question. Problems in the three sectors are the reason why managers of Japanese corporations do not perceive the risk of foreign bribery. However, there remain two other questions to be answered: "why managers of Japanese corporations do not make a rational decision?" and "why directors of Japanese corporations do not obtain information for the construction of an effective internal control system?" Analyzing these questions will help us to gain a structured understanding of problems faced by contemporary Japanese firms regarding foreign bribery. It is also expected to help managers to recognize their challenges and the situations surrounding them, which would eventually lead them to proper management practices for preventing foreign bribery.

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