HELEN I. BENDIX*

Interaction of Business and Government in Japan: Lessons for the United States?†

Not long ago, the *New York Times* reported that representatives from the White House economic policy staff and the Labor Department went to Japan.[1] The object of their mission: To determine how the Japanese government has contributed to Japan's celebrated economic success. History has its ironies indeed. Not long ago it was the Japanese who came to the United States to learn at the elbows of American technocrats.

Much has been written on the role of government in Japan's economy, and this article will not add to the wealth of this literature. Rather, this article will highlight one aspect of the government's role — the relationship between business and government in Japan, and how that relationship has enabled Japan to compete so favorably in the international marketplace.

Common parlance refers to this relationship as "Japan, Incorporated," but what is "the government" when one speaks of "Japan, Inc."? Structurally, Japan's system of government is parliamentary. Although the Occupation did not remove the Emperor, it cast him in the role of a ceremonial figurehead. Today, the executive power in Japan resides in the Cabinet. Under the Showa Constitution, a product of the Occupation, the Cabinet is comprised of the Prime Minister and his Ministers. Article 67 of the Con-

---

*The author practices law in Washington, D.C. In Spring 1980 she taught a seminar on Japanese Law at the UCLA School of Law.

†The views expressed by the author herein are personal and are not intended to represent the views of her employer, past or present.

This article was prepared from a speech given by the author at the Second Annual U.S.-Japan Trade Law Conference, sponsored by the Federal Bar Association, in Washington, D.C. on October 9-10, 1980. The author expresses her appreciation to Dr. Eleanor M. Hadley, Patrick Macrory, and Donald Harrison for their comments during the preparation of the speech.

[1]C. Farnsworth, *U.S. Industry Seeking to Restore Competitive Vitality to Products*, N.Y. Times, Aug. 18, 1980, at 1, col. 1.

stitution requires that the Diet, the legislative branch of government, designate the Prime Minister from among its ranks.[2] The Ministers who head the administrative agencies of the Japanese government also have close ties with the Diet, as the Constitution provides that "a majority of their number must be chosen from among the members of the Diet".[3] Currently, there are twelve Ministries: Justice; Foreign Affairs; Finance (MOF); Education; Health and Welfare; Agriculture and Forestry; International Trade and Industry (MITI); Transport; Posts and Telecommunications; Labor; Construction; and Home Affairs.[4]

While Article 41 of the Constitution states that the Diet "shall be the highest organ of state power, and shall be the sole law-making organ of the State,"[5] the Diet exercises its law-making power in a formal rather than a creative sense. Most drafting of public laws occurs at the ministerial level.[6] Generally, policy for legislation is conceived in the upper echelons of one of the Ministries. Thereafter, that section of the Ministry with the substantive expertise regarding the policy may begin to draft enabling legislation. This drafting process is convoluted, involving numerous consultations with other offices within the Ministry to provide an opportunity for additional substantive input, and more importantly, for gathering support for the legislation. Prior to submission to the Diet, the legislation is circulated throughout the Ministry to obtain the approval of appropriate section chiefs, and ultimately, that of the Vice Minister. The draft legislation is then submitted to the Minister for consideration by the Cabinet as a whole and for submission to the Diet. Only rarely does the Diet take an active role in revising draft legislation.[7]

The significance of this process is not only that the bureaucracy plays a major role in formulating and drafting legislation, but also that the drafting

---

[2]In reality, Japan's political parties, notably the Liberal Democratic Party, play a major role in designating the Prime Minister. The Prime Minister's "election to the party presidency automatically is translated by the LDP majority into the prime ministership." P. TREZISE & Y. SUZUKI, *Politics, Government, and Economic Growth in Japan*, in ASIA'S NEW GIANT 763 (H. Patrick & H. Rosovsky eds. 1976) [hereinafter cited as TREZISE & SUZUKI].

[3]SHOWA CONSTITUTION, art. 68(a), *reprinted in* H. TANAKA & M. SMITH, THE JAPANESE LEGAL SYSTEM 10-11 (1976) [hereinafter cited as TANAKA & SMITH].

[4]*Id.* at 42.

[5]*Id.* at 8.

[6]Commenting on the role of the bureaucracy in making policy, Hout observes:

> Middle level and senior Japanese bureaucrats are career men with extraordinarily similar education and professional experience. Policy is generated within the career ranks of the ministries, not by the Diet or executive assistants. Most of the research work done in the United States by congressional committees is done in Japan by permanent councils attached to the ministries. Powerful but transient presidential staff assistants are not yet a part of the Japanese scene.

T. Hout, *Sources of Japanese Economic Performance Relative to the United States*, in PERSPECTIVES ON U.S.-JAPAN ECONOMIC RELATIONS 106 (A. Taylor ed. 1973) [hereinafter cited as Hout].

[7]This process of drafting legislation is described in A. Craig, *Functional and Disfunctional Aspects of Government Bureaucracy*, in MODERN JAPANESE ORGANIZATION AND DECISION-MAKING 21 (E. Vogel ed. 1975).

process enables various constituencies affected by the proposed legislation to provide comments in settings that are far less adversarial than are congressional subcommittee hearings in the United States.[8] The legislative drafting process thus takes into account diverse points of view from both the public and private sectors. Nor is the Japanese government always of one mind with respect to proposed legislation. Often the Ministries make their divergent opinions known during the drafting process.[9] Given this setting, government in Japan is not monolithic; nor is it plausible that any one special interest group, such as big business, may have preemptive influence on government policy. As one noted study has observed:

> To suppose, however, that politicians and officials in league with businessmen were able to plan and guide Japan's explosive economic growth in detail is neither credible in the abstract nor . . . supported by the realities. Japan is, after all, a large and in the main an extremely open society. Its postwar political system has been a quite vigorously functioning democracy, which has had regularly to accommodate the disparate interests of the many groups making up a country of more than 100 million people. . . . Neither officials nor politicians could have been immune to pressures from special interests other than business — and business itself has had its own divisions and differences of interests.[10]

In addition to these structural factors, certain economic realities shape the relationship between government and business in Japan. Japan possesses few natural resources and precious little arable land. In order to provide for its barest necessities, Japan has had to look outward to other nations through international trade. Japan has never had the luxury of being economically self-sufficient.[11] When Japan began to industrialize in the late nineteenth century, its marketplace necessarily was worldwide, and its priorities were in products in which it had a competitive advantage. It is no exaggeration to say that trade is Japan's life-line.

The history of Japan's industrialization also differs from the United States experience. When Japan emerged from the Tokugawa period it was a feudal, agricultural society in an Asia that was rapidly falling prey to European domination. To maintain its political independence, Japan not only imported Western legal traditions, but also sought to industrialize rapidly.[12] To work such a dramatic change in Japan's social and political his-

---

[8]*See* notes 55-56 and accompanying text *infra*.

[9]For example, MITI and the Japan Fair Trade Commission locked horns over the latest amendments to Japan's Antimonopoly Act. *See* Ariga, *Efforts to Revise the Japanese Antimonopoly Act*, 21 ANTITRUST BULL. 703 (1976).

See also H. Patrick & H. Rosovsky, *Japan's Economic Performance: An Overview*, in ASIA'S NEW GIANT 49 (H. Patrick & H. Rosovsky eds. 1976) [hereinafter cited as Patrick & Rosovsky].

[10]TREZISE & SUZUKI, *supra* note 2 at 757.

[11]"Japan's natural resource base is so overwhelmingly deficient that almost all industrial raw materials must be imported; and the land-man ratio in agriculture is so unfavorable that a high degree of food self-sufficiency is not just economically inefficient, but virtually impossible." Patrick & Rosovsky, *supra* note 9 at 56.

[12]For a discussion of the cultural forces that led to Japan's "modernization," *see* G. SANSOM, JAPAN — A SHORT CULTURAL HISTORY 498-531 (1952).

tory, the government took a guiding role. While industrialization in the United States was nurtured in a laissez-faire atmosphere, much of Japan's industrialization was programmed by the government from the very beginning.[13]

Government participation in the Japanese economy has rarely taken the form of direct ownership. To be sure, there are public corporations in Japan. For example, the government operates most of Japan's railroads and postal services. But generally, the government's role in the economy has been indirect.[14] This role begins with a broad indicative plan, often projected for a period as long as ten years, in which the government analyzes the economic sectors in which Japan will have an internationally competitive advantage. As part of the plan, the government formulates industrial policy by which it identifies growth industries; it then provides economic incentives to induce companies to invest in those industries.[15]

Japan conducts its indicative planning through its Economic Planning Agency (EPA). The process of drawing up a plan is complex and, like the legislative drafting process,[16] entails the participation of many members of the bureaucracy and the private sector, including representatives from the Ministries,[17] the business community, academia and the media. Final approval of the plan rests with the Cabinet. Because the Diet is excluded from this process, the bureaucracy, once again, is the dominating governmental organ in the formulation of economic policy in Japan.[18] Although the plan is merely advisory, it encourages business to invest in those sectors of the economy that the plan has earmarked as competitive on the international marketplace, and informs the various Ministries of industries that they should use the range of incentives at their disposal to encourage investment.

What are these incentives? An exhaustive list would be beyond the scope of this paper; the examples described below are merely illustrative. But it is often these incentives that are cited by critics of the business-government relationship in Japan when they use the phrase, "Japan, Inc."

Japan does not profess to have a neutral taxing scheme. Through various taxing measures, promulgated under the Special Tax Measures Law,[19] the

---

TANAKA & SMITH, *supra* note 3 at 194-215, provides a review of Japan's adoption of Western legal codes.

[13]J. ABEGGLEN, BUSINESS STRATEGIES FOR JAPAN 75 (1970) [hereinafter cited as ABEGGLEN].

[14]*Id.* at 72.

[15]For a discussion of industrial policy in Japan, *see* I. MAGAZINER & T. HOUT, JAPANESE INDUSTRIAL POLICY (1980); REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES, UNITED STATES-JAPAN TRADE: ISSUES AND PROBLEMS 172-91 (September 21, 1979) [hereinafter cited as TRADE REPORT]; TREZISE & SUZUKI, *supra* note 2, at 789-97.

[16]*See* notes 5-10 and accompanying text *supra*.

[17]For example, MITI and MOF are active in the formulation of industrial policy. TREZISE & SUZUKI, *supra* note 2 at 792-794; HOUT, *supra* note 6 at 103.

[18]ABEGGLEN, *supra* note 13 at 72-73. *Accord*, TREZISE & SUZUKI, *supra* note 2, at 790.

[19]*Sozei Tokubetsu Setchiho*, Law No. 26 of 1957.

government provides incentives for "rationalizing" inefficient industries and encouraging the development of growth industries. Accelerated depreciation is one such measure. Until recently, Japan provided, in addition to ordinary depreciation, a 25 percent first-year rationalization allowance and bonus depreciation deductions for strong export performance. In some situations, these depreciation benefits allowed a company to deduct almost 50 percent of the cost of capital equipment in the first year. The result of these tax benefits was to give Japanese companies a tremendous cash flow advantage over their foreign competitors.[20]

While Japan has phased out many of these benefits, they still exist in certain sectors such as Japan's burgeoning computer industry. Thus, facilities used to produce "newly developed technologies may be depreciated in the first year by an amount equal to one-third of the initial book value of the facilities, in addition to normal depreciation."[21] Japanese industry also is encouraged to "buy Japanese." Under a program of accelerated depreciation, "end-users" who purchase domestic computers may write off approximately 50 percent of their acquisition costs in the first year.[22]

Besides providing for accelerated depreciation, the Japanese government permits medium and small industries to establish tax reserves for overseas market development. These reserves enable business to defer recognition of gain, and therefore, tax liability. Moreover, the benefits from this program are tailored to increase as an industry's export performance improves. The Japanese steel and automobile industries have been among the greatest beneficiaries of the reserves program. Estimates from 1969-70 indicate that this tax benefit gave Japanese steel companies almost $10 million for market development and Japanese auto-makers approximately $9 million to nurture an American market.[23]

In addition to significant tax incentives, the Japanese government provides access to capital for industries targeted for growth. Again, the medium for granting this incentive is the bureaucracy, especially the Japan Development Bank and the central bank of Japan (Bank of Japan), which is regulated by the MOF. Accompanying the exponential growth of Japan's economy was a commensurate demand for capital — a demand that the commercial banks could not satisfy within their stipulated ratios. To meet this need, banks had to borrow money from the Bank of Japan. At this juncture, the Japanese government conducted "window guidance." By way of window guidance, the government provided credit through the Bank of Japan (and continues to do so) to banks that conformed their loan policies to government priorities. Furthermore, commercial banks could determine which industries the government favored by noting which companies

---

[20] These tax measures are more fully described in the TRADE REPORT, *supra* note 15 at 178-182.

[21] *Id.* at 30.

[22] *Id.* at 30-31.

[23] *Id.* at 182-83.

received loans from the Japan Development Bank (JDB).[24] In this way, "key"industries have been able to procure credit to establish themselves in the international marketplace.[25]

Furthermore, unlike their American counterparts, which rely heavily on equity financing, Japanese companies are financed largely by debt.[26] Because such financing has been readily available through Japan's banking system, Japanese companies have been able to make the capital investments that have enabled Japanese concerns to produce high quality goods at competitive prices.[27] Furthermore, a byproduct of Japanese industry's heavy reliance on debt has been its relative freedom from the vicissitudes of quarterly and year-end balance sheets. Not being dependent on equity participation for financing, Japanese companies are able to reinvest their earnings in the company instead of distributing them to shareholders.[28] Thus, the company may use its own profits to finance the development of new technologies or to improve its productivity, and thereby produce a more competitive product on the international marketplace.

Subsidization of research and development has been another source of government largesse, especially in the computer industry.[29] Thus, the government organized the Very Large Scale Integration Program to enable Japanese companies to compete with IBM's fourth generation computers. Through this program, MITI subsidized 50 percent of selected companies' research and development. Currently, MITI is sponsoring private research and development to develop computers that can process "pattern information," such as drawings and human voices.[30]

Supplementary to the provision of research and development subsidies, the government acts as a clearinghouse for technological information for export industries. In this way, the Japanese government's role is similar to that of the Department of Agriculture in the United States, where the Department provides farmers with extensive information about technological advances and export opportunities.[31]

---

[24]Beyond its immediate role as a long-term lender, the JDB was seen by the MITI as a "catalyst encouraging the types of industrial development aimed at by government policy." A JDB loan, that is, would be a signal to the commercial banks that the government favored the expansion of this or that industry. (Footnote and citations omitted). TREZISE & SUZUKI, *supra* note 2 at 795.

[25]TRADE REPORT, *supra* note 15 at 185.

[26]Hout, *supra* note 6 at 112-13; H. Wallich & M. Wallich, *Banking and Finance* in ASIA'S NEW GIANT, *supra* note 2 at 270-77, 298-300.

[27]Of course, access to financing notwithstanding, Japanese industry would not have been so successful without the organizational skill of its management, its emphasis on efficiency-producing technology, a dedicated labor force and creative international marketing.

[28]Japanese companies are not unique in this respect. American companies like Marriott and IBM also have used corporate earnings to finance their growth.

[29]"The government's direct role in R & D is relatively modest, but directly reflects national priorities." Hout, *supra* note 6 at 105.

[30]For further discussion of government subsidization of research and development in Japan's computer industry, *see* TRADE REPORT, *supra* note 15 at 29.

[31]*Id.* at 188.

Until 1970, Japan had significant tariffs to protect industries, such as automobile manufacturing, which had been earmarked for competitive strength in the international market.[32] While these barriers have come down since then, many people believe that there are still significant non-tariff barriers in Japan that inhibit the entry of foreign goods.[33] Where these barriers are imposed by the Japanese government, they serve as an additional device for stimulating Japanese industry. For example, Japan imposes commodity taxes on automobiles of a certain width wheel base.[34] On their face, these taxes do not discriminate against foreign cars, and may indeed serve valid fuel conservation goals. But because the tax on foreign-sized vehicles at one time was at least double the tax imposed on cars typically produced by Japanese manufacturers, the tax, in fact, imposed extra taxation on large American cars.[35] In addition, foreign producers of automobiles have objected to Japanese safety and environmental standards that require foreign manufacturers to modify their cars before they may enter the Japanese market.[36] These critics argue that such standards increase the price of the foreign product in Japan and thereby make foreign cars less competitive.[37] Critics also note that the Japanese government imposes more onerous procedures for inspection of environmental and safety controls on foreign automobiles than it does on domestic products.[38]

The Japanese legal system also has assisted favored industries from time to time. Japan's antitrust law dates back to the Occupation and is modeled after American law.[39] Until 1977, Japan's Antimonopoly Law exempted or excluded from its prohibitions "depression cartels," rationalization cartels, and certain export cartels with the result that trade practices arguably prohibited under United States law were not prohibited in Japan during a large

---

[32]*Id.* at 43-45, 187.

[33]*See* speech delivered before the Japan Society by then Undersecretary of Commerce Robert E. Herzstein, *reported in* 50 U.S. IMPORT WEEKLY (BNA) A-2 to A-3 (October 29, 1980) ("U.S. investment in Japan is hampered by legal, cultural, and structural barriers . . . and in many cases, U.S. firms find they can only invest through joint ventures and often have to license key technology;)" W. Chapman, *Despite Changes, Japan Remains a Tough Market*, Wash. Post, July 5, 1981 at E1, col. 1.

[34]TRADE REPORT, *supra* note 15 at 48-50.

[35]*Id.* at 48. Furthermore, Japanese road taxes increase progressively with engine size, thereby taxing typically-equipped American cars at a higher rate. *Id.* at 49-50.

[36]*Id.* at 51-56.

[37]To be sure, other countries also impose environmental and safety standards on foreign goods. But because of the relatively low volume of foreign automobile sales in Japan, foreign producers have argued that it is not economical to build cars to Japanese specifications.

[38]*Id.* at 54-56. In effect, Japanese companies may "self-certify" their cars once the Ministry of Transport has approved a company's compliance documentation. By way of contrast, each foreign automobile must be inspected by a government official even after the foreign producer has obtained the government's approval of its compliance documentation.

The Japanese government has begun to respond to complaints arising out of these inspection procedures by sending examiners to the United States to perform "on-site" safety and emission tests. *Id.* at 56.

[39]*See generally* E. HADLEY, ANTITRUST IN JAPAN (1970).

part of Japan's high-growth period.[40] While far more stringent, Japan's present Antimonopoly Law[41] still exempts certain rationalization cartels that "are found by the Japan Fair Trade Commission ("JFTC") particularly necessary for effecting an advancement of technology, an improvement in the quality of goods, a reduction in costs, an increase in efficiency and other rationalization of enterprises."[42] Additionally, the Antimonopoly Law makes exceptions where its application would hinder export performance. For example, measures against "monopolistic situations" may be withheld where "such measures may reduce the scale of business of the said entrepreneur to such an extent that, the costs required for the supply of goods or services, which such entrepreneur supplies, will rise sharply . . . and make it difficult for the entrepreneur to maintain its international competitiveness. . . ."[43]

It is clear that the Japanese government has a panoply of measures to stimulate favored sectors of the economy, and that these measures have contributed to Japan's economic success.[44] To the extent these measures exist, they gave credence to the notion of "Japan, Inc." But the expression, "Japan, Inc.," imparts more than a system of incentives; it speaks of a sweetheart relationship between government and business in Japan where government serves as the business community's handmaiden. If this description were valid, other members of the private sector, whose interests may be adverse to that of the favored industries, would suffer notwithstanding Japan's high productivity. To be sure, business has numerous occasions to influence government policy.[45] The question remains whether interests adverse to favored industrial sectors also have access to the government's ear and largesse. If they do, the nomenclature of "Japan, Inc." is misleading.

Businessmen have little voting power in the Diet. Businessmen account for only 15 percent of the membership of the House of Representatives, the

---

[40] M. Ariga, *International Trade of Japan and the Antimonopoly Act*, 8 J. INT'L L. AND ECON. 185, 186, 192-95 (1973); M. Matsushita, *Export Control and Export Cartels in Japan*, 20 HARV. J. INT'L L. 103 (1979).

In 1980, though, the United States Senate approved a bill, by a vote of 77-0, that would have allowed United States banks to invest up to five percent of their capital in export trading companies. This bill also would have permitted a trading company to seek antitrust clearance from the Commerce Department for export ventures, thereby immunizing the company from antitrust liability. *Bank Ownership in Export-Trade Firms Is Passed by Senate in Unanimous Vote*, Wall St. J., September 4, 1980, sec. 1 at 5, col. 1. For one observer's view on the future of American trading companies, *see* M. Kanabayashi, *Japan's Big and Evolving Trading Firms: Can the U.S. Use Something Like Them?*, Wall St. J., December 17, 1980 sec. 2, at 56, col. 1.

[41] COUNSELOR'S OFFICE OF FAIR TRADE COMMISSION, ANTIMONOPOLY LEGISLATION OF JAPAN (KOSEI TORIHIKI KYOKAI) (1977).

[42] *Id.* § 24-4.

[43] *Id.* § 8-4(1).

[44] *See* H. Stokes, *Can Japan's Aid to Its Industry Guide U.S.?*, N.Y. Times, Aug. 21, 1980, at D1, col. 3.

[45] *See* notes 46-47 & accompanying text *infra*.

lower house of the Diet.[46] Instead, business makes its voice heard in the decision-making processes of the various Ministries.

As noted earlier, businessmen, along with other private groups, advise the Ministries that draft Japan's economic plans. Similarly, business advises the bureaucracy during the legislative drafting process. Numerous outside deliberative councils also advise the government on proposed policies and rules. While these councils are an integral part of the bureaucratic process, their role is *just* consultative and advisory. The councils have no decision-making or administrative power, and business must share membership on them with scholars, persons from the media and other representatives from the private sector who balance the influence that business may otherwise exert on the bureaucracy.[47]

Business has ample opportunity to rub elbows with bureaucrats in other settings. For example, in businessmen's clubs, high-level officials and businessmen are able to talk shop more informally, often in bars and nightclubs. During these meetings, senior businessmen may state views to leading government officials, including the Prime Minister.[48] Trade associations also provide business with access to the bureaucracy in their role as spokesmen for the business community. These associations typically conduct research, organize conferences, and draft policy proposals and recommendations for submission to the bureaucracy.[49]

The fact that persons highly-positioned in industry and the Ministries may often be graduates from the same prestigious universities may also intensify the influence business may exert on government policy.[50] Friendships made in the university between future leaders of business and government arguably are not insignificant in establishing a rapport between business and government that extends beyond informal settings.

Japanese administrative procedure also offers an opportunity for industry to influence public policy in the regulatory process. As noted earlier, the Diet grants the Japanese bureaucracy broad rulemaking power. Supplementary to this broad jurisdiction, the Ministries, under the practice of "administrative guidance," may extend their power to subjects that are not within their *express* statutory authorization but that relate to their substantive administrative jurisdiction.[51] Generally unfettered by strict adherence to doctrines of non-delegation and due process, administrative guidance enables the government and the regulated industry to arrive at a consensus

---

[46] G. Curtis, *Big Business and Political Influence*, in E. VOGEL, MODERN JAPANESE ORGANIZATION AND DECISION-MAKING 41 (1975).

[47] *Id.* at 43-44.

[48] TREZISE & SUZUKI, *supra* note 2 at 769.

[49] *Id.* at 769-70.

[50] ABEGGLEN, *supra* note 13 at 76.

[51] For further discussion of administrative guidance in Japan, *see* Yamanouchi, *Administrative Guidance and the Rule of Law*, 7 L. IN JAPAN 22 (1974); Narita, *Administrative Guidance*, 2 L. IN JAPAN 45 (1968); E. Kaplan, *Japan: The Government-Business Relationship (A Guide for the American Businessman)* 30-35 (1972); M. Smith, *Prices and Petroleum in Japan: 1973-1974—A Study of Administrative Guidance*, 10 L. IN JAPAN 81 (1977).

as to how a particular rule is to be applied to that industry, or indeed, what the rule should be in the first place. The relationship created from that guidance may not always be friendly or cooperative, and Ministries have persuasive — some say coercive — means to impose their views of law or policy on the regulated industry. But the process is not inherently adversarial, and the parties strive to identify the common ground between government and industry.

Certainly, the business community's opportunities to influence public policy are significant, but they should not be overrated. Business is but one constituency in Japan, and one that is increasingly having to share Japan's political scene with other interest groups. The Japan of the 1960s may have placed greater weight on economic growth and on the needs of business than on environmental cleanliness and social welfare. But as Japan has achieved its targeted economic growth, the government increasingly has had to deal with the problems created by that growth.[52] Where research and development subsidies and tax incentives were used to stimulate export industries in the past, they are now being used by the bureaucracy to produce technology to clean Japan's air and streams. In short, there are many voices heard by government in Japan, and part of the genius of the Japanese bureaucracy has been its ability to forge a consensus out of this chorus.

Japan, like the United States, must contend with the reality that "money talks." As in the United States, business in Japan funds the campaigns of spokesmen who espouse its views.[53] However, to focus on this political fact of life would be to overstate its significance. The Liberal Democratic Party (LDP) has been the dominant party in Japan since World War II and draws much political strength from small businesses and agricultural groups, as well as from big business.[54] As priorities other than economic growth start playing a role in public decision-making, the LDP will have to expand its power base if it wants to maintain the dominance it has enjoyed in Japan's political life over the years.

The picture that emerges from this description of the relationship between business and government in Japan is not one where, to paraphrase an American saying, "what's good for Toyota is good for Japan." More fairly described, it is cooperative and non-adversarial, and therein lies its success. The desire to forge a consensus of economic goals forms the common thread among the various inputs that Japanese business has into the bureaucratic decision-making process. Government and business, along with other special interest groups, generally attempt to identify mutually held goals and the means to achieve them; differences among these interests and with the government are minimized. That is not to say that this consen-

---

[52] *See* E. Mills & K. Ohta, *Urbanization and Urban Problems*, in ASIA'S NEW GIANT, *supra* note 2 at 727-39 (1976).

[53] G. Curtis, *Big Business and Political Influence*, in MODERN JAPANESE ORGANIZATION AND DECISION-MAKING 51-52 (E. Vogel ed. 1975); TREZISE AND SUZUKI, *supra* note 2 at 767-68.

[54] *Id.* at 772-76.

sus always exists or that the process is without significant jaw-boning. On occasion, business may be overly represented with respect to a particular policy issue. But basically, the administrative process in Japan seeks to eliminate controversy by a process that relies on trust and compromise.

The administrative process in the United States offers a marked contrast. Instead of identifying common interests, our regulatory process in the United States pits regulator against regulatee. Perhaps this is noted in the American heritage of distrust of government. In the United States, business participation in governmental policy-making often takes place in an administrative rulemaking proceeding that, more often than not, offers business and other special-interest groups an opportunity to present their hostility to a proposed government measure, rather than to make recommendations for improving the nation's, and their own, welfare.

Administrative decision-making in the United States also differs from Japanese regulatory processes in that it emphasizes process as much as substance. Thus, adversariness is built into a system that must comply with strict constitutional requirements of due process and separation of powers — again a product of the traditional American hostility to "the State." The concepts of fairness that seek to protect the subjects of the United States regulatory system also explain, in part, why the United States has not followed the Japanese administrative model to date. And the underpinnings of American constitutional principles are inconsistent with a concept of government largesse that is not available on a uniform basis to all sectors of the economy.[55]

Nor does the legislative forum in the United States provide a more congenial regulatory setting than does the administrative system. Congress plays a much greater role in substantive law-making than does the Diet in Japan.[56] Although it takes a different form, the confrontation between government and business over legislation often does not differ in substance from the face-off between government and business before American administrative agencies. At best, industry makes its views known in the lobbying context, which once again emphasizes the differences among competing special-interest groups. At worst, business approaches congressional subcommittees with a battery of attorneys, and their interchange is recorded in testimony that approximates the record of a court proceeding.

In sum, there is precious little opportunity for rapport, let alone consensus, between business and government in the United States. From the vantage point of business, government regulation is not even a necessary evil; it is an unnecessary cost of doing business.

What can the United States learn from Japan? First and foremost, the United States must come to the economic realization that if it ever pos-

---

[55]These principles may be more honored in theory than in practice. For example, the transportation and oil industries of the United States have been the beneficiaries of special government programs aimed at their development.

[56]*See* notes 5-6 & accompanying text *supra*.

sessed a self-sufficient economy, it no longer does. The Organization of Petroleum-Exporting Countries (OPEC) has made this all too clear. The United States must approach economic policy-making in the role of being an active participant in the world market.

United States policy-makers must focus on exports, *i.e.* on identification of industries in which the United States has a competitive advantage. The emphasis of United States trade policy must shift from import restrictions to consideration of what assistance government can provide business to improve export performance.[57] In short, the United States needs an industrial program to identify growth industries, and to alleviate the dysfunctions that occur if the government were to stop protecting industries in which the United States has no competitive advantage.

The United States, like Japan, must be ready to act on the findings of its policy makers. It must "grow our strong industries" and take care of the casualties that inevitably result in industries that are no longer competitive.[58] To do so would require the United States to drop its penchant for uniform treatment, and to recognize that the government may carry larger carrots than sticks. The government must be willing to provide tax benefits, additional support for research and development, and financing to stimulate the productivity of those sectors of our economy that provide the greatest opportunity for competitive advantage in the international market. While these measures may be seen as inflationary, our economic woes would be greatly alleviated by a dose of increased domestic productivity.[59]

There must be a new detente between industry and government in the United States.[60] To be sure, Japan's cultural traditions and relatively homogenous population provide a strong foundation for consensus-building. While this sociological base is absent in the United States, government

---

[57]H. Rowan, *Imports Made to Take Blame for Mistakes by Management*, Wash. Post, July 27, 1980, at F1, col. 1:

> Trade restrictions (or incentives) are no substitute for the right national economic policy: to encourage a shift away from low-wage semi-skilled industries, where the United States is losing out to dozens of developing nations. What is needed is an emphasis on the high-technology stuff where the United States is now among the leaders.

Id. at F3.

[58]TRADE REPORT, *supra* note 15 at 176-77, 189-90.

This position was also set forth by former U.S. Trade Representative Reubin Askew: "We want to have policies that encourage growth and competitiveness without trying to prop up an industry that's considered a loser, a burden on taxpayers." J. Seaberry, *Askew: No Bailouts for Losers*, Wash. Post, July 31, 1980 at D1, col. 2.

To be sure, such an approach would not be accepted whole-heartedly. Japan has not had to contend with the traditional adversariness that exists between labor and management in the United States. Nor do Japanese employees of big companies, who are protected by "life-time employment," face the same spectre of unemployment when management makes a mistake, or when their company's business becomes obsolete due to foreign competition.

[59]President Reagan's economic recovery program has already adopted some of these measures. *See, e.g.*, Economic Recovery Tax Act of 1981, Pub. L. No. 97-43, 95 Stat. 172 (1981) (providing for, *inter alia*, accelerated cost recovery system depreciation to encourage capital investment and reduction of corporate and individual income tax rates).

[60]This detente is already in the making, as reported in *Working with the Government*, N.Y. Times, Aug. 19, 1980, at D1, col. 3.

and business — whatever their differences may be — share a common interest in strengthening the United States' economic position in the international market.[61] Thus, non-adversarial forums must be found in which government and business, as well as other special interest groups, may arrive at a shared set of policy goals for the United States economy. Our current administrative system is inadequate for this task if the interests of the regulated party are represented largely in adversarial proceedings. In the proper forum, the creative energy generated by the very diversity of America's citizenry could be marshalled in a cooperative — as opposed to a counterproductive — effort to bring renewed vigor to the economy.

Finally, if we are to ask government to establish economic goals for the United States, and to provide the incentives for business to help achieve them, the government itself must be staffed with professionals. Expertise, and not merely political patronage or virgin intelligence, is needed to steer our economic policy. Tenure of office beyond the term of the resident of the White House is essential.[62] Some have advocated the creation of an American counterpart to MITI; and perhaps the restructuring of the Commerce Department was intended to achieve just that. Perhaps an independent commission may be the answer. But more fundamentally, we need government officials who have the expertise and job tenure that would enable them to staff the subcommittees and bureaucratic offices actually responsible for formulating and carrying out economic policy. That is not to say that government officials who possess these qualities do not exist, but only to emphasize that it is to these persons we must look to carry the United States into the international market of the 1980s.

Indeed, the recasting of government's relationship with the business community is a cornerstone of President Reagan's economic policy. *See* H. Raines, *Reagan Reversing Many U.S. Policies*, N.Y. Times, July 3, 1981 at A1, col. 1.

[61] As is implied by the phrase, 'Japan Incorporated,' there is a basic assumption that the objectives of government and business are essentially the same — the maintenance of Japan's economic health and promotion of the nation's interests. It is perhaps no great exaggeration to suggest that a contrary assumption is made in the United States and elsewhere in the West — that somehow the objectives of government and business are inimicable. . . .

ABEGGLEN, *supra* note 13 at 74-75.

[62] Compare United States practice with that of Japan as described in note 6 *supra*.