Regulatory Reform in Japan

Government Capacity to Assure High Quality Regulation

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government Capacity to Assure High Quality Regulation* analyses the institutional set-up and use of policy instruments in Japan. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Japan* published in 1999. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Scott Jacobs, and Rex Deighton-Smith in the Public Management Service of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Japan. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Is the national administration able to produce and apply social and economic regulations that are based on the core principles of good regulation? Regulatory reform requires the development of administrative capacities within the public sector to judge when and how to regulate in a highly complex world. Administrative transparency, flexibility, policy co-ordination, understanding of markets, and responsiveness to changing conditions are increasingly important to achieve results that are both effective and efficient.

Since the early 1980s, and particularly since the Hosokawa government promoted deregulation as key to economic recovery in 1993, regulatory reform has been prominent on Japan's political agenda. It has been a central element in the broad economic structural reform programme underway since December 1996. Indeed, it has become a symbol of a broader economic and social transformation.

Sustained effort has reduced economic intervention in many sectors, among them, large retail stores, gasoline imports, telecommunications, and financial services, and consumers have already seen significant results. Important progress has been made in areas such as increasing the efficiency of pervasive licenses and permits, even though their numbers have increased, by shifting emphasis from ex ante approvals to ex post monitoring of compliance with general rules. There is slow but steady movement toward more transparent and less discretionary regulatory practices, partly driven by market demands and partly by recognition of the gap between traditional and international practices. The framework for competition policy has been strengthened. Several initiatives underway to promote the use of international standards will help expand trade flows, to the benefit of Japan's consumers. Compared to its predecessors, the 1995-1997 deregulation programme was the most successful yet, capitalising on the strength of a reform-minded prime minister and competitiveness pressures to win commitments to reform in key sectors, and the current 1998-2000 deregulation programme should contribute to the progress achieved. The debate over strategies for change has stimulated a continuing examination of the structure and role of government, and of the uses and processes of regulation, in Japan's future. The restructuring of the Japanese bureaucracy currently underway through the Basic Law on the Administrative Reform of the Central Government offers a rare opportunity to build new regulatory capacities and incentives in the public sector.

While recognising the importance of the gains that have been made, this report argues that the size and nature of the problem has been consistently underestimated. Regulatory reform in Japan has struggled against long-standing administrative traditions of economic interventionism, clientelism, relatively uncontrolled administrative discretion, and nontransparent policy processes. These characteristics have meant that regulatory reform has often been episodic, reactive, slow, and incomplete. Intervention by the administration into economic decisions continues on a scale rare in OECD countries, and these interventions are no longer based on any coherent view of the role of regulation in modern government or market economies. As the gap between market needs and regulatory rigidities grows wider, the regulatory system is weakening domestic and international competitive forces, slowing healthy structural change, and contributing to a chronic misallocation of resources throughout the Japanese economy.

A more encompassing view of the nature of reform -- to include not only deregulation, but also restructuring outdated institutions, changing incentives in public sector cultures, and moving the state toward service provision and away from economic management -- is a precondition to progress of the kind needed to adapt Japanese regulation to the needs of modern society. The emphasis should be on organising decision-making systems that are transparent, accountable, and adaptable, in which those who benefit from the current regulatory system do not have the power to block change. With those kinds of reforms, the Japanese government will establish the basis for a dynamic regulatory system that will continue to adapt and meet new challenges into the future.

1. The institutional framework for regulatory reform in Japan

1.1 The administrative and legal environment in Japan

Since the early 1980s, and particularly since the Hosokawa government promoted deregulation as key to economic recovery in 1993, regulatory reform has been prominent on Japan's political agenda. Indeed, it has become a symbol of a broader economic and social transformation. Since December 1996, regulatory reform has been a central element in the broad economic structural reform programme. The goals of regulatory reform are ambitious: to move a deeply entrenched system, in which regulation has been used for decades as an instrument to manage high economic growth, carry out periods of deep structural reform, and promote producer interests, toward a more competitive and flexible economy in which the role of the state is diminished, personal choice and initiative is increased, structural change is driven by market pressures, consumer interests take higher priority, and Japan's markets are more open to international competition.

Such changes threaten many interests. Japan's administrative system is characterised more than those in most OECD countries by decentralised and independent ministries, by powerful bureaucracies armed with broad administrative discretion, and by close and informal links between public servants, producer groups, and political parties. The dominance of a single political party for four decades (the so-called "1955 system" of the LDP) helped to further solidify relations between political and bureaucratic actors through the *zoku* system. This combination, while responsive to social and economic needs that fall within the paradigm of state management, has proven highly resistant to reforms that diminish state control.

The operating principles of Japanese administration are balanced power relations; private negotiations, policy development, and conflict mediation; and, if they are attainable, mutual accommodation and consensus, guided by a cultural preference for pragmatic, non-ideological solutions. Conflict between interests, which is as intense as in any other country, is usually managed through consultation and coordination. This governing approach had advantages: it has supported policy stability through periods of rapid change, encouraged public/private cooperation in reaching mutual aims, spread benefits widely (Japan has highly equal income distribution compared to other OECD countries), sustained legitimacy, and speeded implementation once agreement is reached. The World Bank has found that "(economic) intervention has taken place in an unusually disciplined and performance-based manner", based on the concept of "shared growth," carried out by dedicated, expert technocrats in consultation with business leaders.[1]

Either aided by or hindered by these administrative styles (there is little solid evidence in either direction), the capable and powerful Japanese public administration helped lead a process of extraordinary growth (from 1955 to 1973, Japanese economic growth averaged 10 percent annually) that made Japan a post-war economic miracle and in which rapid social change was accommodated without major political disruptions.[2]

Yet the dangers today are complacency and obsolescence. This governing approach has produced a deeply conservative policy process that slows decision-making, discourages policy debate, encourages clientelism, allows special interests to block needed change, and results in the famous Japanese "incrementalism". These tendencies are amplified by numerous institutional and procedural characteristics of the Japanese administration. Wide discretionary power of public officials has led to opaque decision processes and information monopolies. A life-long career system implemented by official personnel policy strengthens incentives for regulators to maintain close ties with regulated bodies.

Numerous “satellite” semi-public bodies surrounding the ministries -- such as the public corporations and trade associations -- work to maintain special interests, or even to share regulatory authority. Importantly, the disappearance of a coherent and long-term concept for economic management for this phase of Japanese development has left economic interventions more arbitrary, incoherent, and vulnerable to a host of special interests. For this last reason, it is possible that regulation is in general becoming less efficient rather than more efficient.

These characteristics have meant that regulatory reform, while it has produced some results in some sectors and improved administrative transparency (see below) has often been episodic, reactive, slow, and incomplete. Incrementalism in regulatory reform has contributed to a regulatory governance system in Japan that has proved to be in many ways poorly suited to a modern market economy, that is unable to respond quickly enough to the challenges and shocks facing it, that is not responding to evolving needs of Japanese society, and that is hindering the current transition to a sustainable economic growth path. Historical and social context is important: regulatory reform is seen by some Japanese and Western analysts as “essential” to an “historical turning point” in a national modernization process that began over a century ago.[3] This is not yet the public view in Japan. Pervasive regulation has during the post-war period been widely accepted by the public. Social consensus around the need to rebuild the economy and “catch up” with the West in post-war years was reflected in a set of close relationships between government and industry, and among industry players (for example through *keiretsu* structures).

This development strategy grew in part on long-standing economic structures extending into pre-war years, and in part from the legacy of US occupation which imposed comprehensive economic controls on Japan.[4] Importantly, it was also based on social values of harmony (*wa*) that contributed to a scepticism of the value of competition. Bureaucratic anxieties of “excess competition” or “confusion in the market”[5] led to regulatory policies such as tolerance or promotion of cartels, and to contemporary “supply and demand balancing” by the administration. The regulatory system has been shaped as much by these broader social values and historical relationships as by special interests in the public and private sectors, though the latter are probably the dominant factor today in preserving regulations.

An important debate today concerns the implications for governing traditions and public institutions of the possible emergence of new values and interests among Japanese enterprises, consumers, and other interests. Analyses of eroding social consensus, changing values in younger voters, and diminishing trust in government leadership, due in part to recent scandals, suggest that stress is mounting on the capacities of the administration to mediate conflict through traditional tools. There are, for example, more expectations of transparency in decision-making and policy application, and the continuing development of opposition parties in Diet has supported policy debates that are more open and issues-oriented.

In the medium-term, regulatory reform in Japan will require basic changes in structures and policies in public and private sectors to allow more room for market based decisions. The assets for reform include a bureaucracy that is widely recognised as highly talented and educated, which was often able in the past to exploit its broad administrative discretion to national benefit. But the government has noted that changing domestic and world conditions require a more flexible and efficient public administration that is less centralised in Tokyo and less interventionist inside Japan and more open to the international community. The key management challenges to be faced are those of organising a decision-making system that is transparent, accountable, and adaptable, based on concepts of new public management that are being adopted throughout the OECD area. Such a system will reduce the power of those who benefit from the current regulatory system to block change.

The debate over strategies for change has stimulated a continuing examination of the structure and role of government, and of the uses and processes of regulation, in Japan's future. The restructuring of the Japanese bureaucracy currently underway offers a rare opportunity, as yet unexploited, to build new regulatory capacities and incentives in the public sector.

An issue important in many OECD countries, but perhaps even more vital to structural change in Japan is the management of transition periods. Fears about the effect of regulatory reform on employment, on small businesses, on local economies, and on traditional producers have necessitated government transitional initiatives during periods of adjustment. The Administrative Reform Committee's 1995 report addressed this issue in a section titled, "On suffering" that called for "more effective means to overcome the pain while promoting reform." The current issue is how to ensure that transition is not a means of delaying reform, but of supporting timely change.

The Japanese notion of regulatory reform has been narrowly based in ideas of deregulation and smaller government, rather than of establishing the basis for high-quality regulatory regimes that protect public interests in competitive markets. But current calls in Japan for smaller government, while perhaps desirable for other reasons, are insufficient as a regulatory reform philosophy. In part because it has shared social policies (such as employment protection) with the private sector, Japan has a small government by OECD standards (measured in contribution of government to GDP and by government employment as a ratio of total employment). Its role in important areas, such as building social security for an ageing population and labour policies for a society where lifetime employment is becoming less prevalent, may need to increase. Regulations in other areas, such as prudential oversight of the financial sector, consumer protection, and environmental protection, may also need reinforcement -- in terms of either enhanced policy effectiveness or new policies -- rather than reduction.

The key to successful regulatory reform lies partly in eliminating some fraction of Japan's current regulatory stock -- a determined and systematic programme to root out many regulations that interfere with competition is necessary as one element of a broader programme. To sustain real change, however, the key lies in (1) fundamentally changing the role of government toward providing social services not provided by the market and away from economic intervention, and (2) in those cases where regulation is justified, changing the style of regulation from anti- to pro-competitive. Destructive habits of economic control in the public administration will change only if incentives and cultures change, which is why this report places so much emphasis on administrative reform and the opportunities it presents for regulatory reform.

The task ahead is difficult. More so than in many OECD countries, it is difficult to assess the use, quality, and effects of regulation in Japan. The Japanese regulatory system is often characterised by informality in procedures, in instruments, and in relationships between interested parties that increases the difficulty of understanding the scope and structure of the regulatory system, and in designing systematic reform. The Japanese term "regulation" itself is not simple. The Japanese language offers more than a hundred separate terms for regulation depending on its basis, its generality (or specificity), and the degree to which it constrains behaviour. Moreover, administration discretion as to the form of government intervention is virtually uncontrolled. For example, a widely-remarked feature of the Japanese regulatory system is the use of informal "administrative guidance" with regulatory effect, though the frequency of its use today is very hard to determine (see Box 5). The range of administrative instruments that could be considered "regulatory" suggests that it would, perhaps, be more useful in the Japanese context to define regulations as "administrative decisions with regulatory effects".

Box 1. **Good practices for improving the capacities of national administrations to assure high-quality regulation**

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
3. Build regulatory management capacities

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis
2. Systematic public consultation procedures with affected interests
3. Using alternatives to regulation
4. Improving regulatory co-ordination

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(In addition to the strategies listed above)

1. Reviewing and updating existing regulations
2. Reducing red tape and government formalities

1.2. Recent regulatory reform initiatives to improve public administration capacities

Japanese approaches to regulatory reform have become progressively structured and formalised since the early 1980s as reformers grappled with the difficulties of changing a system that gives bureaucrats substantial control over the scope and pace of reform. The objectives of regulatory reform over the years, as expressed by various government offices, included stimulation of economic growth; preservation of international trading relationships; improvement of quality of life for consumers; strengthening of individual liberties and self-reliance; and better government efficiency and openness at national and local levels.

The current "Three-Year Programme for the Promotion of Deregulation" was adopted by the Cabinet on 31 March 1998 to run for three years, from 1998 to 2000. On 30 March 1999, the Cabinet adopted a revised programme that expanded the range of areas under review. The activities in the Programme fall into four broad areas for reform:

- *Promoting Comprehensive Examination and Review.* Several areas for action were identified in 1998, and expanded in 1999. This part of the programme is discussed in section 4 below.

- *Measures Relevant to Specific Fields.* Annexes to the Programme list measures to be taken across a wide range of fields. The choice of deregulatory measures reflects, in large part, the wider policy priorities of the Government's Action Plan for Economic Structural Reform. See section 4 below.

- *Methods Related to the Promotion of Deregulation.* Several measures aimed at enhancing the programme itself and increasing the level of support within Japanese society are presented under this heading. See section 2 below.

- *Measures Related to the Promotion of Deregulation.* The final category of measures is composed of broader, framework reforms that support reform initiatives at all levels, including local government (see section 2.3 below). One such measure is the promotion of "fair and free" competition through improved enforcement of the anti-monopoly law by a strengthened Japanese Fair Trade Commission (FTC) as well as the presentation of positive sector-specific recommendations for further reforms by the FTC. Such emphasis on compliance and enforcement is relatively unusual in regulatory reform programmes and indicates an explicit recognition of the connection between regulatory reform and competition principles (The following report discusses competition policy and enforcement in detail).

The 1998-2000 programme builds on a Deregulation Action Programme (DAP) that was in place from 1995 to 1997, under the supervision of a high-level Administrative Reform Committee. The 1995 DAP included over 2,800 actions during its three-year life. One third of these were identified from the start, while the remainder were added during annual programme reviews. This process of revising and expanding will be continued in the current programme. 174 actions were unfinished when the DAP was wound up. They were elaborated and carried over into the new three year programme, forming about half of its initial 624 items.

The Administrative Reform Programme (ARP), adopted in 1996, is potentially a far-reaching complement to the Programme for the Promotion of Deregulation. Through the Basic Law on the Administrative Reform of the Central Government, Japan expects to complete, by 2001, a reorganisation of the structure of the government administration that is billed as the most fundamental in the post-1945 period and is expected to result in a smaller and more effective administration.

The Administrative Reform Headquarters established to carry out this process is chaired by the Prime Minister. The reforms envisaged by the final report of the Administrative Reform Council[6] (ARC) are intended to reform a government that has "grown excessively large and rigid" and to create a "streamlined, transparent and efficient" government. The ARC argues that the administrative reform process should "initiate comprehensive changes in social and economic systems". The steps recommended by the ARC include reinforcement of Cabinet functions (including adoption of majority voting, appointment of Ministers of State with responsibility for specific issues and Cabinet authorisation of key bureaucratic appointments), and strengthening the powers and policy capacities of the Prime Minister, including the Cabinet Office and Cabinet Secretariat support functions.

The conceptual framework underlying the ARC proposals includes:

- Deregulation, decentralisation and role sharing between public and private sectors, along with streamlining of government and resource allocation better reflecting policy priorities;

- Enhancing policy development capabilities, particularly through functionally separating policy making and implementation, similar to the UK Next Steps reforms;

- Close collaboration between policy-making and implementation arms, with both establishing a framework for policy evaluation.

The Basic Law on the Administrative Reform of the Central Government that implements the ARC recommendations will also reduce the number of ministries to 12, and redefine their roles. It includes a number of major points in relation to each ministry, which would be expected to guide the drafting of the "foundation law" for each Ministry. This is a matter of considerable importance given the prominence of the issue of administrative discretion among the regulatory problems cited by many commentators. The foundation laws establishing the Ministries appear to allow administrative discretion, as they are currently written in very broad terms. A rewriting in more specific terms would clarify how the actions of the ministry serve public interests. Other major points in the Basic Law for Administrative Reform of particular importance to regulatory reform are included in Box 2. The ARC report and the links drawn between administrative and regulatory reform indicate a recognition that fundamental reforms require a cultural shift and that this can be brought about by a major reorganisation of the structures of government and the objectives given to the ministries.

Box 2. **Elements in the Basic Law on the Administrative Reform of the Central Government of particular importance to regulatory reform (new names of ministries are tentative)**

A Ministry of General Affairs is to be established "to strengthen assistance and support for the Cabinet and the Prime Minister". It would evaluate and oversee government activities.

The Ministry of Justice is to support judicial reforms, including the area of administrative tribunals.

The Ministry of Economy and Industry is to "withdraw from or reduce activities relating to promotion of specific business sectors", switching instead to an emphasis on improving the overall business environment while respecting market principles. This orientation, while consistent in direction with the general pro-market orientation of the reform policies, is equivocal in its tone, falling short of a clear rejection of sectoral promotion. In energy policy, the Ministry is to emphasise energy efficiency and new energy sources while "drastically eliminating and loosening regulations aimed at adjusting demand and supply".

The Ministry of National Land and Transport is to "promote systematic efforts aimed at integrated development and utilisation of national land and related resources" and develop an integrated transport system while "drastically deregulating governmental controls over transportation business". It will implement "a thoroughgoing programme of decentralisation and the utilisation of private sector capabilities in relation to the execution of public works projects".

The Ministry of Environment is to unify jurisdiction over matters including "regulations on air, water and soil pollution, waste management etc.", although it will share jurisdiction over "recycling, CO2 emissions, etc.".

The Headquarters for the Administrative Reform of Central Government is working on "Augmenting and Strengthening Evaluation Capacities". This aims to establish evaluation sections within each Ministry as well as a central evaluation body in the Ministry of General Affairs. In addition, transparency is to be assured by the release of the results of evaluations conducted and the strengthening of the Board of Audit.

The Basic Law provided that the government will reduce the number of non-defense employees by at least ten per cent through a Staff Number Reduction Plan that shall be designed in the future. In addition the Law provided that additional reductions be obtained by measures such as transfer of some functions to independent administrative institutions. More recently, the government adopted a reduction target of 25 per cent. In some quarters - for example among some Keidanren members - a reduction in the number of civil servants is seen as an indirect way to control the ability of regulatory ministries to intervene in the economy.

An important but disappointing legislative initiative is the Administrative Procedure Act of 1993, discussed in Section 2.1. below. The Act sought to limit the uses of administrative discretion by defining and limiting the uses of particular mechanisms (notably administrative guidance) and enhancing the transparency of their use and the ability to appeal against adverse uses of discretion. However, there are concerns with the design and implementation of the Act and little evidence that it has significantly improved transparency or reduced administrative discretion.

History of regulatory reform. A prominent analyst of regulatory reform in Japan has traced the use of regulation through three phases: (1) the first structural reforms of 1955-1972, when the government used regulation and many other policy instruments to carry out top-down economic planning based on domestic investment and expert promotion and when the policy of restricting consumption to allocate a maximum of resources to producers was formulated; (2) the second structural reform of 1973 - 1985, when high-tech industries took control of industrial policy, private regulation replaced much public regulation, and industrial concentration increased; (3) the third structural reform of 1986 to the present, in which special industry, agricultural, and financial interests took more prominence, and in which, according to the analyst, industrial policy became fragmented.[7]

As Chapter 1 details, current regulatory reform programmes have their roots in the shocks of the 1970s and policies aimed at boosting growth levels, which had slowed significantly in the late 1970s. There was a view, particularly among exporter industries exposed to global competition, that the need for extensive economic planning and support by government was a feature of the "catch up economy" and that the Japanese economy had now matured to a point where these interventions were no longer necessary -- indeed were likely, on balance, to be harmful. Reduction of government intervention in the economy "to let the market exert its function to the fullest extent" was at the core of the 1980s-era transition policies.[8] The most dramatic and visible steps were the privatisation of three major public corporations, include Japanese National Railways (JNR) and Nippon Telegraph and Telephone Public Corporation, carried out through the 1980s against stiff opposition. These privatisations, "the biggest reform undertaken in [Japan's] history", became the "symbol of reform" because of their size and importance.[9] As in other countries, privatisation has given rise to new regulatory issues. There is considerable debate over the quality of the regulatory regime for some of these sectors where competition is weak due to lingering dominance and cartel problems (see the background reports on The role of competition policy and Enforcement in regulatory reform and on Regulatory reform in the telecommunications industry).

Substantive deregulation programmes began in 1981, directed by the Provisional Commission for Administrative Reform. Concerned that regulation was growing rapidly without any control mechanism, the Provisional Commission recommended initiation of a full-fledged programme of deregulation, and specifically targeted licensing and approval requirements for businesses. The new thinking on a diminished role for regulation was reflected in the "Guideline for the Promotion of Deregulation" adopted by the Cabinet in 1988. The Guideline identified as its central principle that of "*freedom in principle and regulation only as an exception*".

Emphasis on regulatory reform as a precondition to necessary economic restructuring became more pronounced in the 1990s as barriers to international trade and investment fell, and as anxieties grew about the effects on Japanese producers of competition, particularly from dynamic Asian economies. Numerous deregulation packages were announced by the government in 1993, 1994, and 1995. By this time, deep cleavages over regulatory reform became obvious, as export-oriented industries promoted reform in upstream sectors, while small producers and services clung to their regulatory protections.

Despite the rolling programmes of reform, concrete progress through 1995 was patchy. Critics continued to call for wider and faster regulatory reform to bring about economic structural reform. "The actual progress of reform has been much slower than the speed of changes of the real world," concluded the Administrative Reform Committee in December 1995.[10] The Keidanren called in October 1995 for "a bold step [in regulatory reform] to achieve drastic reform of the economic structure...in order to wipe out the sense of 'suffocation' that permeates the Japanese economy."[11] In January 1996, the Prime Minister warned that:

> ...high-cost structural elements are undermining Japan's attractiveness as a place to do business and there are increasing fears of industrial hollowing... [T]he first structural reform here is that of thorough-going deregulation...we will...weed out any that may have become ends in their own right and any that have been perverted into citadels of protection for vest interests. As well as working to rectify the high-cost structure, we will, seeking to eliminate barriers impeding the development of new growth sectors and to promote the revitalisation of the economy, move resolutely to deregulate...[12]

Another principle underlying reform is that of improving the quality of life. This policy is rooted in public expectations, dating from the 1970s, that economic success would be rewarded by construction of a "welfare state," and in the belief that even today the affluence of Japan has not been felt in private life. Japan is "often referred to `as an economic and regulatory superpower with unimpressive living standards,'" the Administrative Reform Committee noted in December 1995.[13]

Japanese consumers have long accepted the costs to them imposed by producer oriented policies in terms of higher prices and less choice, and consumer movements continue today to be focused on quality and consumer protection rather than consumer sovereignty. Yet consumer interests have often been cited by reformers as a primary justification for regulatory reform. In 1991, the Prime Minister's Office argued that the economic goal of overtaking" more economically advanced countries should be reconsidered in light of the need to "respect a variety of consumers' values". For example, deregulation could "narrow the disparities between internal and external prices".[14] This point was also made in the 1991/2 OECD Economic Survey of Japan, which noted that the prices of goods not subject to regulation had fallen considerably more than their regulated counterparts following the mid-1980s yen appreciation. In 1991, a "Sub-Council for Better Quality of Life" was created by an advisory council to the Prime Minister. Its mandate stated, in part, "Public administration which has basically been on the side of producers and industries has induced a large discrepancy between economic power and quality of life".[15]

External pressures for regulatory reform have been sustained and significant, largely due to large trade deficits with the United States, and charges from Americans and Europeans that the style and content of Japanese regulation created non-tariff barriers to trade and foreign investment. Trade pressures in specific product and service markets have in general tended to support the larger goals of economic structural change (see the background report on Enhancing market openness through regulatory reform).

As detailed in Chapter 1, the key domestic factor recently leading to calls for regulatory reform from within Japan has been the prolonged slowdown of the Japanese economy, evident through the 1990s. Microeconomic supply-side reforms - and in large part regulatory ones - are seen to have a major role in restoring Japanese economic growth. Japanese businesses have increasingly focused on the role of regulation in increasing the costs of productive inputs and reducing international competitiveness. The Keidanren (Japanese Federation of Economic Organisations) has supported deregulation as a general concept and has suggested a wide range of specific initiatives. However, the extensive benefits gleaned by business from some regulations means that business support for reform in Japan, as in most countries, remains uneven and at times inconsistent. Generally strong support for deregulation of markets for business inputs is not matched by a similarly liberal view of output markets.

As noted above, the focus on restoring economic dynamism was also a key driver of the earliest Japanese regulatory reform policies almost two decades ago. This is evidence that there is no quick fix to regulatory reform issues in Japan. For the foreseeable future, regulatory reform will be an important element of the policy mix underlying the transition to sustainable growth.

2. Drivers of regulatory reform: national policies and institutions

2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries "adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation."[16] The *1995 OECD Council Recommendation on Improving the Quality of Government Regulation* contain a set of best practice principles against which reform policies can be measured.[17] Recent Japanese regulatory reform programmes, particularly the most recent programme adopted in March 1998 and revised in March 1999, have moved in the direction of embracing these principles. This and the next section consider whether the goals and strategies set out in this programme meet Japan's regulatory needs and priorities, and whether the mechanisms proposed are likely to allow them to be put into practice. The conclusion is that, while progress has been made toward establishing market-based principles for the use of regulatory powers, there is still considerable fragmentation and incoherence in application of these general principles at the ministry level.

One of the great strengths of Japan's regulatory reform programme relative to other OECD countries has been the prominent personal role in both the 1980s and 1990s of a series of Prime Ministers. Given the great difficulty in driving reform forward against entrenched interests, the degree of personal involvement and accountability of the Prime Minister has, and will continue to, determine the degree of success of any programme. Supporting actions at the political level include the work of an LDP study group on reform to advise Diet members on proposals.

In addition, in the 1995-1997 Deregulation Action Plan, the Deregulation Subcommittee was established under the Administrative Reform Committee, a council of the Prime Minister's Office. Legislation provided that the Prime Minister must respect the Council's opinions, either accepting or refusing recommendations made by it. This was widely considered to be among the most successful of the reform approaches developed in Japan, because interests in the ministries had less power to block recommendations. The Cabinet accepted nearly all recommendations. The Subcommittee also pioneered the effective technique of holding its hearings in public, rather than negotiating privately with the ministries.

The Deregulation Committee is the current body overseeing the programme for 1998-2000, and is contributing to progress on regulatory reform. The Deregulation Committee is established under the Administrative Reform Headquarters, a ministerial body. Officials argue that this provides a direct link to the Cabinet and will enhance the Committee's role in providing feasible recommendations that can be quickly implemented, which is an important consideration. In light of the need to accelerate and deepen comprehensive reforms, however, independence from the interests of the line ministries is likely to be equally important, and this aspect should be strengthened. For example, the Keidanren recently stated that "...based on the final opinion of the Administrative Reform Council issued last December, there is a need to reorganize the current Committee on Deregulation into a more significant third party body with statutory responsibility for drafting plans and monitoring the process of deregulation and of reviews of related systems".[18] The Prime Minister's Economic Strategy Council recommended in February 1999 the

establishment of a new "regulatory reform commission" reporting to the prime minister, empowered to review not only regulation, but also taxation and subsidies, with a significant increase in personnel. These would be useful steps. Another possible approach could be that the Committee, like its predecessor, operate under an independent legal mandate. As noted, the Committee's mandate is narrowly focussed on regulation, which has limited its ability to consider other possible impediments to competition as part of a comprehensive reform plan. Consistent with the need to move to more comprehensive sectoral plans, the mandate of the Committee should be expanded. Recent decisions by the Prime Minister in March 1999 to this effect are steps in the right direction. In addition, the Committee does not have the analytical resources or staff (currently around 20) to be truly independent of the information and expertise in the ministries.

The "Three year Programme for the Promotion of Deregulation" adopted by the Cabinet in March 1998 and revised in March 1999 is more far reaching in its objectives than previous programmes. The Programme sets out explicit objectives and a set of core strategic goals aimed at achieving them. The objectives are to:

Implement fundamental reforms in Japan's socio-economic structures;

Create a free and fair socio-economic system which is fully opened to the world and based on rules of accountability and market principles; and

Transform administrative stance from *a priori* regulation and supervision to *ex post facto* checking and scrutiny.

These objectives are a mix of the abstract ("free and fair") and the concrete (the intent to move from approvals to "checking"). The policy direction is explicitly market-based. Consistent with the OECD recommendation that "governments establish principles of 'good regulation' to guide reform," the guiding principles for the pursuit of these objectives provide more operational indications of what is meant by regulatory reform. They are:

As a rule, economic regulations shall be lifted and social regulations minimised as regulations are abolished or otherwise relaxed;

Regulatory arrangements shall be rationalised, such as by the transfer of inspection functions to the private sector;

Regulation shall be simplified and rendered more specific;

Regulation shall be modified so as to conform to international standards;

Regulatory procedures shall be speeded up; and

Transparency shall be increased in the procedures for introducing new regulations.

This set of principles is intended to provide operational guidance to the ministries, but is less concrete than principles used in other countries or the OECD principles accepted by Ministers in 1997, which read:

Establish principles of "good regulation" to guide reform, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals, and effective in achieving those goals; (ii) have a sound

legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

To provide a firmer basis for efforts in the ministries and to hold ministries more accountable for performance, a clearer statement of principles for good regulation, based on the OECD recommendation, would be useful. The problem of making these core principles operational in the ministries is a real one. In part due to the high value placed on pragmatic and concrete action, Japan's reform programmes tend to be based on the accumulation of many individual reform "items", some of which are very significant in economic terms and others which are trivial or recommendations for more study. Oversight consists of tracking ministerial responses to the "items." This system can claim credit for almost all of the reforms that have occurred in Japan, and it has in general improved the transparency of reform and the attention to the programme by ministries.

Yet it is not the model for future reform. The item by item approach has proven slow and not very effective in producing concrete results in economic and policy performance. It is not an adequate basis for coherent, consistent, and sustained programmes of reform, nor for changing deep-seated habits and cultures in the public administration. One reason for this is that ministries and businesses can produce an almost infinite number of "items" for action. The value of these items is quite another matter. The most widely cited fact about the 1995-1997 Deregulation Action Plan is that it contained over 2800 items, and about the 1998-2000 plan is that it starts with 600 items. This focus on numbers has obscured the fact that the importance of the individual items varies widely. There has, as a result, been little in the way of a strategic focus in these deregulation plans to date.[19]

Reliance on ministerial and business proposals to identify items adds other distortions. Ministries tend to propose "items" in areas that do not threaten their authority, or that can be compensated by other ministerial actions or where they have discretion. As a result, many of the items in the 1995-1997 and 1998-2000 reform programmes are unspecific. They require ministries to study particular areas or features of the regulatory system, to report and to propose solutions, or even to implement these proposals directly through administrative guidance. The principles guiding this bureaucratic activity allow very wide latitude in interpretation and action that often frustrates reform.

A notable example is the absence of consistent action to eliminate "supply and demand balancing regulations". The current reform programme has set an overall goal of removing these anti-competitive regulations and considerable progress has been made, but for almost half of them the current commitment is not to elimination in the near future, but to limit their application pending future legal changes, or for further study or review of legal changes.. Current plans for such regulations are as follows:

The current programme aims to eliminate supply-demand balancing regulations in eleven areas: liquor retailing, chartered busing, ordinary busing, taxiing, passenger railways, domestic passenger boats, cargo ferries, harbour transportation, domestic airways, waste-oil disposal (for shipping), customs clearance services. The Government of Japan has stated that these are already eliminated or will be eliminated in the near future. Three other supply and demand balancing provisions – affecting wholesale dealers, credit card companies, and public bathhouses – are nearing elimination and bills are pending before the Diet.

For seven other provisions in various sectors, the relevant ministry has said that it will not apply the provision pending legal reforms not yet scheduled, or has committed only to future legal reforms that are not scheduled. In addition, seven regulations similar to supply and demand balancing were identified in areas that were considered to be natural monopolies. Among these, one has been eliminated. The others are subject to future review.

Incomplete reform can be seen in other areas. For example, the abolition of the domestic shipping cartel was agreed after long discussion at the Deregulation Committee of the Administrative Reform Council, but "temporary" measures which limit competition were put into place for 15 years.

Businesses, on the other hand, tend to identify "items" that affect their operating costs or expansion plans, not those that open up competition. This tends to bias results toward increasing profits, rather than stimulating competitive pressures that benefit consumers and promote economic growth.

Finally, it is important to note that reforming *existing* "items" does not change the quality of the stream of *new* administrative actions, which can simply repeat old mistakes. That is, the current approach neglects the "flow" of new regulations because it focuses on the "stock" of existing regulations. Therefore, it cannot be seen as a long-lasting solution to problems of poor regulation.

The Japanese government has made progress toward establishing market-based principles for the use of its regulatory powers, but there is considerable fragmentation and incoherence in application of these general principles at the ministry level. To improve the coherence of the item by item approach and to ensure that reform principles are applied equally to new and old regulations, the Japanese government should develop more explicit and measurable government-wide criteria for making decisions as to whether and how to regulate, and support those principle with written guidance to ministries. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." This principle is referred to in various countries as the "proportionality" principle or, in a more rigorous and quantitative form, as the benefit-cost test. This test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being "socially optimal" (i.e., maximising welfare).[20] This key principle is insufficiently developed in Japan. The Japanese principles include neither consideration of proportionality nor a benefit-cost test. Thus, there is no standard by which ministries justify the need for regulations, no public testing of these conclusions, and little basis for challenge.

The OECD Report also recommends that governments "ensure that reform goals and strategies are articulated clearly to the public." Engaging the public in a dialogue on the aims, benefits, and costs of regulatory reform has received, and will continue to need, attention in Japan, given opposition from entrenched market interests, and others anxious that "excessive competition" will produce painful change. The current Japanese programme scores high on this recommendation, since it includes several measures aimed at enhancing the Programme and increasing the level of support within Japanese society. The focus of these measures is on monitoring and reporting of progress made, both within government and publicly, and on continuing to revise and update the programme to maintain relevance.

In relation to monitoring, the Economic Planning Agency is required to report on the economic impact of the programme and specifically the impact on demand, productivity and prices. Effective communication with consumers and other interests in society is an important means of building the constituency for reform - a consideration which may be increasingly important in the longer term as the current strong pressure for reform deriving from poor economic circumstances dissipates. To further develop the programme, MCA was required to produce and publish a white paper on deregulation, and did so in August 1998.Through this mechanism, the authors of the programme seek to provide a means for major domestic and international interests to influence the future process of the deregulation initiative.

The OECD principle that regulation "have a sound legal basis" merits examination in Japan, given the extent to which laws empower the administration to apply discretion in interpreting and applying regulation, and the fact that the exercise of this discretion is not widely challenged through administrative law processes. Relative to some other OECD countries, lower level rules and administrative guidance and directions in Japan are prominent. Addressing problems of transparency constitutes a major theme of reform, as indicated by the passage of the Administrative Procedure Act of 1993 to improve transparency in the use of administrative guidance (see below) and the recent introduction of public notice and comment procedures to the regulation-making process.

2.2. Mechanisms to promote regulatory reform within the public administration

Reform mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on schedule, and to avoid a recurrence of over-regulation. As in all OECD countries, Japan emphasizes the responsibility of individual Ministries for reform performance within their areas of responsibility. But it is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based.

Establishing central drivers of reform has been more difficult in Japan than in most other countries, due to the traditional strong independence of the ministries and the relatively weak centre. In this environment, regulatory management in the form of day-to-day oversight of regulatory activities has not developed as a routine function independent of the ministries, although this may be changing. In the late 1980s, the ministries agreed to periodically review certain kinds of existing regulations, and to allow central agencies an opportunity to review some new regulations. Independent review of new regulations outside of regulatory ministries and agencies was increased with respect to Cabinet orders and proposed laws, but not with respect to ministerial ordinances and lower-level rules.

In 1990, after surveying the experience of deregulation, officials of the MCA concluded that it was necessary to "enrich and strengthen the review of existing regulations and examination of newly proposed regulations." In particular, "to promote deregulation forcefully", third parties such as the MCA and independent deliberative parties such as the series of Provisional Councils for the Promotion of Administrative Reform (the PCPARs)[21] should have a greater reviewing role. Following concerns expressed by the Second PCPAR in 1987 about "the expansion of regulatory programs and lack of a built-in mechanism to curb and rationalise regulations," review of proposed and existing regulations received more attention. Most notably, the November 1987 agreement among ministries and agencies "On the Examination and Periodic Review of New and Existing Permissions, Authorizations, etc." committed the ministries and agencies to vigorously review both new and existing permission/authorisation regulations, to involve internal central units such as ministers' offices, and to give three outside agencies an opportunity to comment as needed. This agreement was later adopted by the full Cabinet.

Under the Agreement, the Administrative Management Bureau in the MCA, the Cabinet Legislation Bureau in the Cabinet, and the Budget Bureau in the Ministry of Finance were to independently review new regulatory proposals "on the basis of their respective functions" to ensure "the appropriateness and rationality" of the requirements. These reviewers were to submit their comments -- orally or in writing -- directly to the regulatory body concerned. The Agreement did not include any formal enforcement mechanism. It is difficult to determine the effect of this review process, since a formal assessment has not been carried out. Most regulatory decisions in ministers' ordinances and lower-level rules continue to be wholly the province of the regulatory ministries and agencies themselves.

Rather than interministerial pressures, regulatory reform has depended on high-level pressure brought by a series of short-term advisory councils reporting directly to the Prime Minister. This has had certain advantages: the expert advisory council model has a long and respected tradition in Japanese administration; the council is independent of the ministries and existing administrative structures and has more freedom to examine unpopular options; and, except for the current Deregulation Committee, opinions of the councils were required by law to be "respected" by the Prime Minister. The councils were charged with investigating and making recommendations for administrative reform from a comprehensive and long-term perspective, and with responding to specific requests from the Prime Minister.

The councils -- called the "locomotives of administrative reform"[22] -- have worked at a high and visible level. Their members are approved by the Diet, and they report directly to the Prime Minister, who is required by law to "respect" their opinions and recommendations. The Cabinet has also repeatedly and formally announced its intentions to "pay maximum respect" to their opinions, and has proceeded with most major reforms recommended in key policy areas. Under their mandating laws, the councils have had wide investigative authority. They may, for example, request the submission of information and materials from administrative agencies, hold public meetings and local hearings, or hire experts to study particular issues.

The Deregulation Committee of the Administrative Reform Committee Headquarters is the current body providing independent oversight and direction under the new Programme for 1998-2000. It replaced the Administrative Reform Committee, which worked from 1995-1997. The ARC had a high level of private sector involvement and operated in a relatively transparent fashion, being required to respond formally to inputs received. The current Committee continues a broadly similar function to the ARC, but has new responsibilities based on the development of the deregulation programme. Importantly, the Committee is playing a role in relation to new "horizontal projects" pursued under the deregulation programme (e.g. the requirement to report on public comment procedures) by soliciting input from regulating Ministries and investigating public opinion.

An important mechanism within the responsibility of the Committee is the preparation of annual progress reports on the deregulatory programme for the consideration of the Cabinet. This annual reporting mechanism, which was also followed under the 1995-1997 programme, provides a dynamic element, with additional initiatives being announced (for example, more than half of the initiatives finally included in the 1995-7 programme (over 1800 of a total of 2800) were added after the release of the initial programme. In addition, the annual reports provide a means of ensuring responsiveness to external inputs on regulatory reform. Both domestic and foreign opinions and proposals are expected to be taken into account in the preparation of the progress report. The progress report is also a mechanism for making known the results of the Deregulation Committee's monitoring of the work.

The Management and Co-ordination Agency (MCA) in the Prime Minister's Office is tasked with co-ordination and oversight functions on regulatory reform as the Committee's secretariat. The MCA, created in 1984, is responsible for general oversight and evaluation of administration and has two bureaux for this role. One is the Administrative Management Bureau, which is responsible for the promotion of administrative reform as a whole. The Secretariat of the Deregulation Committee is established within this bureau and its staff includes bureaucrats from other Ministries as well as secondees from the private sector. The other bureau is the Administrative Inspection Bureau, which is the only specialised and comprehensive body for policy and administrative evaluation.

The MCA monitors agency performance, administering questionnaires on reform progress and publishing the results through an annual white paper. Ministries are required to report progress on implementation to the Deregulation Committee of the Administrative Reform Promotion Headquarters. The Deregulation Committee is also required to "promote the process of deregulation" through its surveillance activities and by "addressing new issues and challenges" in co-operation with the "responsible administrative offices". This emphasis on performance monitoring is unusual in regulatory reform programmes and constitutes a potential strength of the Japanese programme.

The Administrative Inspection Bureau has for several years used its inspection activities as an opportunity to examine regulation. In response to the request of the Sub-Committee on Public Regulation of the Second PCPAR, the Bureau carried out in the late 1980s a series of inspections on regulations in the transportation, distribution, financing, and energy sectors. It also examined regulatory requirements on new businesses. A 1989 report from the subcommittee on desirable public regulation of Second PCPAR recommended that the MCA go further by developing a medium-term inspection programme to review the use of regulation by ministries and agencies. The MCA responded that it would begin to use its inspection authority in 1990 to conduct "planned and continuous" surveys on regulatory administration.[23] Since then, the MCA has conducted a series of inspections on deregulatory initiatives such as simplification of permission/authorisation requirements, and simplification of requirements for testing of goods.

The *Ministry of International Trade and Industry (MITI)* promotes regulatory reform as part of national economic policy. Its priorities in regulatory reform include changing economic structures, and encouraging more open and competitive industries.

In addition, the *Economic Planning Agency* is required to undertake and publish quantitative analyses of the economic impact of the deregulation programme, addressing effects on demand, productivity and price levels. The purpose of this is "to enhance people's interest in and understanding of the mitigation and abolition of regulation.[24]

In sum, regulatory reform mechanisms in Japan, faced with the difficulty of governing from the centre, compare favourably with mechanisms in other OECD countries that have not yet established a permanent body responsible for regulatory reform. The independent committees and councils enjoyed a combination of authority, analytical capacity, public credibility, and linkage to political officials that enabled them to animate many important reforms that ministries had not carried out on their own. In fact, almost all significant regulatory reforms since 1981 originated with these councils. Approaches that should be considered by other countries as good practices include:

Direct links to the Prime Minister and Cabinet, combined with legal mandates.

Independence from the regulatory ministries and a horizontal perspective across the entire range of administrative activity. This should not be taken too far. A great deal of coordination and discussion with affected parties ensures that the opinions of the councils have been, as far as possible, palatable to the ministries and political parties. The councils' final opinions have usually been "feasible" rather than "ideal", and represent a compromise position. Hence, the advisory councils are not academic bodies, but are the focal point of a consensus process that integrates political and practical considerations with efficiency objectives. Managing this relationship with the ministries is key to the council's effectiveness: if regulatory ministries have *de facto* veto rights, the contents of reform will be timid, and the pace slow. The relative success of the 1995-1997 ARC is due in part to its relative independence.

- Well-known and respected members who present a credible alternative to ministry views. "The fact that the members of the PCAR, selected from a broad range of candidates, [had] backgrounds in industry, trade unions, academia, government service and journalism, was persuasive enough to secure the trust of the public in the results of the deliberations," noted the MCA.[25]

- Investigative authorities and information collection capacities to pierce the information monopolies of the ministries. The 1995-1997 Administrative Reform Committee strengthened its capacity to initiate reform by pioneering an innovative method in Japan: it met with ministries to examine reform proposals in public, before the media, rather than behind closed doors, as was previously done. Many observers credit the successes of the Committee largely to the openness of discussions with ministries.

- Support from a permanent central administrative agency responsible for inspection and evaluation, and capable of long-term follow-up. A possible weakness is that perspectives of the MCA and the MITI are different and not well coordinated: MCA is concerned primarily with administrative efficiency and effectiveness, while MITI is concerned with economic performance. A more integrated structure for coordinating these concerns could be useful in improving the coherence of the reform programme.

- Public support, considered the key to reform. Public support was reinforced by wide coverage through the media of the councils' hearings and recommendations;

- A three-year sequential mandate, which allowed each succeeding council to follow up on implementation of earlier recommendations.

2.3. Co-ordination between levels of government

The 1997 OECD Report advises governments to "encourage reform at all levels of government." This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and subnational levels. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform.

At the subnational level in Japan, there are 47 prefectures and over 3,000 municipal governments. Most of these bodies have regulatory powers of one type or another. In the deregulation programme of March 1998, the Japanese government encourages local government to play a supporting role in deregulation by investigating and reviewing both those regulations independently enforced by local government and those based on national laws and ordinances. However, the policy implicitly recognises the difficulty in doing this "while paying due respect to local autonomy and the principles of administrative decentralisation". Despite the principle of local autonomy, expansion of mandates and "delegated" functions from national ministries to local governments has created a "highly centralised" regulatory system.[26]

The government has recently renewed policies to promote decentralisation and enhance the administrative autonomy and independence of local public entities. In May 1998 the Cabinet adopted the "Decentralisation Action Plan", based on four reports submitted by the Committee for the Promotion of Decentralisation, which was established in July 1995. No detail on how conflicting government policies -- that is, to both decentralise decision-making and harmonize regulatory reform policies -- will be

reconciled are given. This is an area for further attention, particularly since there are concerns that local government actions could frustrate some important reforms underway, such as deregulation of siting of large scale retail stores.

3. Administrative capacities for making new regulation of high quality

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Transparency also reinforces legitimacy and fairness of regulatory processes. Transparency is a multi-faceted concept that is not easy to change in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; controls on administrative discretion; and implementation and appeals processes that are predictable and consistent.

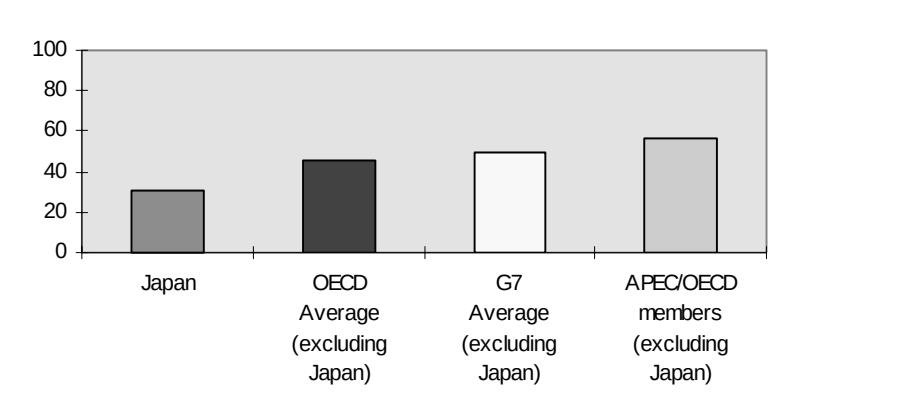
Transparency and predictability are major regulatory reform issues in most countries, but in Japan, they are especially prominent. Concern over lack of transparency and predictability is a central theme for critics of the Japanese regulatory system. A recent US Government submission to the Japanese government on regulatory reform[27] identified enhancement of transparency and accountability as one of seven basic principles for an extended commitment to deregulation. Within Japan, important voices have taken a similar view. Keidanren has strongly supported the current administrative reform proposals, taking the view that a rewriting of the "foundation laws", which are the broad authorising statutes for the Ministries, is an essential step toward limiting the scope of bureaucratic discretion by limiting and better defining their powers.[28]

3.1.1. Transparency of procedures

Three characteristics of regulatory processes in Japan reduce transparency: imprecision in the form of basic regulatory instruments, opaque decision-making, and limited judicial review. As mentioned earlier, there is no authoritative definition of permissible administrative action. In most cases there are neither open hearings nor published criteria on which decisions are based. The US government has charged that "Decision-making on regulatory matters is arbitrary and depends on the integrity and common sense of the individual bureaucrats responsible."[29] These issues are handled in most countries by administrative law, and hence the focus of this section is on the 1993 Administrative Procedure Act (APA), an important instrument. This section also discusses three other issues related to regulatory transparency: the use of administrative guidance, the benefits of moving to a central regulatory registry, and judicial review of administrative actions. Recommendations for improvement are made in each of these areas.

Box 3. **Transparency of regulatory systems in selected OECD countries**

Based on self-assessment, this broad synthetic indicator is a relative measure of the openness of the regulation-making and regulatory review system. It ranks more highly national regulatory systems that provide for unrestricted public access to consultation processes, access to regulation through electronic and other publication requirements, access to RIAs, and participation in reviews of existing regulation. It also ranks more highly those programmes with easy access to licence information, which tends to favour unitary over federal states. Japan has a score of about 30 out of 100 on these criteria, although it would be expected to improve somewhat following implementation of the recently announced public notice and comment process. Some of the recommendations made to improve transparency are based on practices in high scoring countries, such as notice and comment in the United States and Canada, and the central registry in Sweden.



Source: Public Management Service, OECD, 1999.

Administrative Procedure Act. Japan does not have a general law governing the process of rule-making by the ministries, although the APA establishes requirements for making the existence of rules more transparent, and for explanations by the responsible administrators of the reasons for their actions. For many years, observers noted the need for a general administrative procedure law on decision-making processes within the ministries. Two professors noted in 1974 that Japan uses "administration through law interpreted by bureaucrats (*horitsu ni yoru gyosei*)," rather than "rule of law (*hochi-shugi*)."[30] A group of professors of public administration concluded in 1982 that, "Legal control of administrative procedures...is still far from adequate. In this sense, establishment of the general administrative procedure law is an urgent task..."[31] In the early 1980s, the PCAR also pointed out the need for a unified system of administrative procedure.

Work on a draft law began soon after. In October 1988, a preliminary report and draft guidelines were produced by the Second Study Group on Administrative Procedures. The Second PCPAR recommended in 1990 that a "special organ" be established to deliberate on the matter and that its recommendations be implemented as soon as possible. In response, the Prime Minister asked the Third PCPAR to "examine promptly the measures to introduce uniform legislation to improve transparency and to ensure fairness in administrative procedure..."[32] In December 1991, the Subcouncil on Fair and Transparent Administrative Procedure produced a draft bill that would introduce a uniform legal system of administrative procedure.

In 1993, the Diet adopted the Administrative Procedure Act. The law, intended to "secure fairness," "increase transparency," and "protect the rights and interests of the population," covered "dispositions, administrative guidance and notifications". Notably, the purpose clauses specifically limit the scope of the law to those activities not subject to provisions in other laws; in other words, it does not

cover all government activities. The Act deals separately with Dispositions, Administrative Guidance and Notifications, defined in Article 2 of the Act. Dispositions are defined as "involving the exercise of public authority by administrative agencies" while administrative guidance is "guidance, recommendations, advice or other acts by which an Administrative Organ may seek...[certain behaviour in pursuit of administrative aims]". Thus, guidance is seen as having a voluntary element, in contrast with dispositions.

Most of the protections of the APA relate to two kinds of administrative actions: permits and licenses, and administrative guidance. The APA requires ministries and agencies to publish objective criteria for judging applications for licenses and permissions, to explain why applications are rejected, to reduce delays, to guarantee hearing procedures and disclosure of relevant documents, and to ensure that administrative guidance is within legal mandates and that responsibility for such guidance is clear. Key provisions of the Act relating to Dispositions include:

- **Article 5** which requires agencies to develop explicit standards to guide decision making which are "as concrete as possible" and which are (with limited exceptions) available for public inspection.
- **Article 6** which requires agencies to develop and inform applicants of, indicative timeframes for decision-making
- **Article 8** which requires that reasons for adverse decisions be provided.
- **Article 10** providing that, where Acts require the interests of third parties be taken into account, agencies should establish public hearings or other mechanisms for determining their views.
- **Article 13** providing that the subject of an adverse disposition must be given the right to be heard.
- **Article 24** requiring that a record and report be drawn up in cases of formal hearings, and that they can be inspected by the parties.

The definition of "dispositions" provided in the Act is vague and, in part, circular. However, the above provisions seem to include the key elements necessary to an improved level of transparency and predictability in decision-making in this area. Lacking, however, is detail or institutional arrangements for implementing the key requirements: What rules govern public hearings? What mechanisms are acceptable as alternatives? What rules govern the "right to be heard"? There is little information on how the APA is being implemented in practice, though the MCA has issued a positive report annually on its performance. The 1998 deregulation programme commits the government to "strict enforcement and public education with respect to the Administrative Procedure Law".

Use of "Administrative Guidance" in Japan. The use of "administrative guidance"*(gyosei shido*) in all areas of Japanese administration has received considerable domestic and international attention. This type of regulatory instrument has been called "the most informal type of political rulemaking"[33] and as a result there is considerable disagreement about whether it continues to be an important regulatory tool of the administration.

What is administrative guidance? One definition, by a Japanese professor of public administration[34] is "Administrative actions taken by administrative organs, although without legal binding force, that are intended to influence specific actions of other parties...in order to realise an administrative aim". An American scholar has called it "a varied and ill defined combination of informal techniques by which a ministry carries out its responsibilities and gets what it wants"[35]. The techniques of administrative guidance include recommendations, suggestions, requests and warnings.

Administrative guidance may also be routed through third parties, such as trade associations (as when export "self restraint" is needed) (see the background report on Enhancing market openness through regulatory reform). It may affect individual transactions (as when the Ministry of Finance advises against a big loan by a particular bank or a local office suggests that a supermarket reduce its floorspace to resolve its conflict with smaller stores), entire industries or local governments. As these examples suggest, guidance makes possible a network of informal and often invisible influence by the Japanese government on private and public sector entities.

The 1993 APA attempts to reduce the coercive nature of guidance and increase its transparency, very difficult tasks given the inherent ambiguity in distinguishing between "bad" guidance and "good" guidance that helps the public understand its regulatory obligations. Two general principles on administrative guidance are given in Article 32 of the Act:

use of guidance should be strictly confined to matters within the duties and functions of the administrative agency as well as based "solely on the voluntary co-operation of the subject party", and subjects of administrative guidance should not be treated adversely owing to their non-compliance with the guidance in question.

Articles 33-36 deal with substantive requirements. The first three articles clarify the status of guidance and administrative behaviour. Officials are instructed not to continue with attempts at guidance when applicants have indicated they do not intend to follow it. They are instructed not to try to compel compliance with guidance by misleadingly claiming to be able to exercise other, more formal, authority as a means of coercing compliance. They are instructed to make clear to affected parties the purpose and content of the guidance in question and, upon request, provide a written copy of any guidance provided "by word of mouth". Perhaps most importantly, Article 36 requires that, if guidance contains any standards or items that are also applicable to other persons, the content that is uniformly applied is to be made public in advance.

Compliance with administrative guidance has traditionally been high, even where those required to comply do not agree with its contents. Three reasons for the compliance of private businesses have been suggested. Firstly, such an approach is preferred to formal regulation because there is more scope for flexibility in individual responses and more co-operation in the development of the guidance. Secondly, the Japanese state has traditionally intervened in many private activities, leading to state paternalism and "excessive dependence" by businesses (exemplified by their requests to government bodies to mediate disputes between them). The habit of "listening closely" to government seems, however, to be weakening over time. Third, Ministries have at hand "a range of inducements and covert blackmail techniques"[36] including subsidies, loans, loan guarantees, tax advantages, licensing powers and public announcements. Businesses may fear that relationships with the authorities will be strained. Officials have delayed the issue of licences to "non-compliers" - a sanction which has been upheld by the courts - while ministries may also threaten to public announce the names of non-compliers.[37]

The use of administrative guidance can have benefits vis-a-vis formal regulatory standards. Guidance is more flexible and quicker to implement. It is better suited to dealing with localised problems than regulations, which generally have more widespread impact and are less able to distinguish different circumstances. Moreover, guidance encourages co-operative and consultative relationships and avoids the adversarial aspects of formal regulatory proceedings.

Nonetheless, critics of administrative guidance raise several concerns. Accountability is not yet clear. Laws do not designate who can issue guidance or what are its limits. In the financial industry, for example, it has been given both explicitly in the form of a bulletin or notice to banks and as a verbal or

implicit message.[38] Administrative guidance works best in a relatively concentrated market. Such an environment is often created and maintained by regulations. Where regulations authorise restriction of competition by entry licensing, administrative guidance is at its most effective. Administrative guidance has been most prevalent, therefore, in those industries that are most highly regulated. Hence, the opening of markets to competition may be incompatible with its use. Conversely, critics fear that the use of guidance may tend to undermine, in a hidden fashion, the greater scope for new competition apparently provided by new, more flexible, laws.

The thrust of the 1993 APA is toward increasing transparency and public consultation, reducing the use of guidance as a substitute for formal action and providing a means of redress for aggrieved parties. These are positive steps, but the degree of progress in eliminating guidance as a regulatory tool is not clear. According to MCA, it knows of 33 public disclosures of guidance. This small number may mean either that exemptions for cases of "extraordinary administrative inconvenience" are being widely used, that unwritten administrative guidance is not being written down, or, conversely, that the use of administrative guidance is actually rare. There are various views in Japan on this. One possible difficulty in making the APA effective is that an outright challenge to regulatory agencies can look risky to market players, and some private firms have expressed concern about possible retaliatory action from regulators. This is a disincentive to take cases through APA legal procedures. Some stakeholders believe that the use of administrative guidance is likely to continue to be a source of regulatory uncertainty, lack of transparency and fears of unequal treatment, especially if misused. Given the long history of the use of guidance, it seems likely that a robust process to monitor compliance with the APA by administrators will be necessary.

Box 4. **Some examples: administrative guidance in Japan**

MITI stated in 1981 that "administrative guidance has played an important role in the development of the Japanese economy and it will continue to be effective in the future". Working through a network of "policy councils" and working groups composed of representatives of private companies and related interests such as banks, MITI has used guidance to guide patterns of investment in industries according to national priorities, request controls on prices, request voluntary controls on exports to avoid trade friction, recommend production increases in conditions of tight supply, encourage the use of certain technologies (e.g. robotised production) or direct industry consolidation or mergers. In some cases, MITI's guidance has amounted to "micro-economic programmes for the development of specific industries" (see Neary[39], who argues that administrative guidance has been "the principal instrument of industrial development" in the post-war period).

Administrative guidance can also be a more rapid substitute for law, as in the case of Environmental Impact Assessment (EIA). The concept of EIA was introduced in Japan in 1972, when the Cabinet approved guidelines "On the Environmental Conservation Measures Relating to Public Works". However, the guidelines did not describe specific EIA procedures. In 1974, the Environment Agency began to prepare a bill to establish a common EIA procedure. The process of studying systems of EIA, conducting discussions within government, and securing Cabinet approval lasted eight years. When the Diet went out of session in November 1983 without passing the bill, the Cabinet decided to implement EIA processes via administrative guidance. The guidelines "On the Implementation of EIA" were approved in August 1984. Other administrative guidelines were issued by MITI to govern EIA for power plant construction projects. Finally, 45 of 47 prefectural governments have issued their own EIA regulations or guidelines. A new EIA law does not come into effect until 1999 - 25 years after the first attempts to produce a law began.

In some cases, administrative guidance has been converted into more formal regulatory instruments, a positive step that improves transparency but does not necessarily affect substance. As part of the commitment to "fairness" in the Big Bang, the Ministry of Finance announced in June 1998 that it had abolished 400 pieces of administrative guidance (*tsutatsu* and *jimu-renraku*) pertaining to business practices in financial services.[40] This action followed criticism that administrative guidance on business activities and financial products was burdensome and limited innovation in the sector. MOF codified some of the guidance into published ministerial ordinances (*shorei/seirei*) (and reconstituted others as "guidelines" (*gaidorain*), another form of guidance. The latter were compiled in four thick books, one for each major sector of the financial industry -- banking, non-banking, insurance, and securities). In many cases, the substance of the rules were not changed very much. For example, asset allocation guidelines imposed on life insurance companies (so-called 5-3-3-2 rules) were revised to eliminate duplication and make other adjustments, but the basic thrust of the guidelines remains intact -- i.e., insurance companies are subject to quantitative limits on the amount of funds they can invest in certain classes of assets (e.g., stocks, real estate, etc). This example suggests that positive steps toward more transparent regulation should be accompanied by substantive review of policy content.

Registration and codification processes are often a necessary first step to understanding what actually exists in the regulatory system so that systematic reform can commence. Surprisingly, many OECD countries have no registry of existing regulations, or any system to track regulations. Yet it is difficult to see how one can understand or reform regulations without knowing what regulations exist, or who is regulating what. As the French *Conseil d'État* observed in 1992, "it will be impossible to stem the tide without first establishing ways of measuring it."

Japan has publication requirements for regulations. Regulations in the forms of parliamentary laws, cabinet orders (currently numbering around 1,800), ministerial or Prime Minister's Office ordinances (currently numbering around 2,600), commission and agency rules and special orders and notices are published in the Official Gazette (Kanpo), under a 1947 agreement between the ministries. Local bylaws are published in the official bulletin of the issuing local government.

The MCA has compiled a registry of over 9,000 permission, registration, and notification requirements that is a useful management tool for the reform programme, but this registry has no legal status, and other kinds of regulations are not included. Hence, there is no centralised system in Japan for communicating regulations to citizens and firms. Establishment of a central registry would assist the Japanese government in improving transparency and certainty of the national regulatory system for users. The OECD has found that efforts to count, register, and codify regulations are useful management and oversight tools. Their visibility engenders a new sense of responsibility and discipline by making apparent the size and scope of the regulatory system and the rate of growth, which in some OECD countries has become a symbol of over-bureaucratisation and red tape. Codification, therefore, can improve both juridical and substantive regulatory quality. In Spain, for example, codification aims to update existing regulations in accord with modern principles and criteria more fitted to society.[41] Establishing a central registry will also assist the government in making one-stop shops available to businesses, a goal of the current reform programme.

One possible model for Japan is the innovative Swedish approach[42] (other approaches are discussed in Box 5). In the 1980s, Sweden enacted its well-known "guillotine" rule nullifying hundreds of regulations that were not centrally registered. In 1984, the government found that it was unable to compile a list of regulations in force. The accumulation of laws and rules from a large and poorly-monitored network of regulators meant that the government could not itself determine what it required of private citizens. To establish a clear and accountable legal structure, it was decided to compile a comprehensive list of all agency rules in effect. The approach proposed by the Government and adopted by the Riksdag was simple. The Government instructed all government agencies to establish registries of their ordinances by July 1, 1986. As these agencies prepared their lists (over the course of a year), they culled out unnecessary rules. Ministry officials also commented on rules that they thought were unnecessary or

outdated, in effect reversing the burden of proof for maintaining old regulations. When the "guillotine rule" went into effect, "hundreds of regulations not registered...were automatically cancelled," without further legal action. All new regulations and changes to existing ones were henceforth to be entered in the registry within one day of adoption.

This approach was considered a great success. In the education field, for example, 90 per cent of rules was eliminated. The government had for the first time a comprehensive picture of the Swedish regulatory structure that could be used to organise and target a reform programme. The registry may also have had the indirect effect of slowing the rate of growth of new regulations, and by 1996 the net number of regulations had indeed dropped substantially.

Box 5. **"Positive Security" and regulatory registers**

Positive security means that a regulation not listed in a central register is not enforceable. Some countries have found it useful as a way to ensure that registers provide comprehensive coverage of all regulations. This maximises access to regulation and certainty in the market: citizens and businesses can have confidence that they are aware of all relevant regulations.

Many other countries have established registries, tracking systems, and codification programmes to support reform (Jacobs, 1997a, pp. 291-297). In France, an ambitious codification project to be completed by the year 2000 aims at making the law simpler, clearer, and more accessible to citizens and enterprises. In Finland, the Norms Project of 1986-1992 reduced the total number of norms from 7,500 to 5,500, and was concluded with the establishment of a special registry for subordinate regulations. Mexico recently established its first comprehensive Federal Register of Business Formalities. In the United States, regulations are indexed and published in the Code of Federal Regulations. The Code is regularly updated, and regulations not listed in the current edition are unenforceable. In Australia, a Legislative Instruments Bill, currently before the Parliament, will create a Federal Register of Legislative Instruments, in which new regulations must be listed before they can be enforced. "The Register will help reveal outdated or unnecessary regulations, assisting programs of review," stated the Prime Minister.[43]

Information technologies add new possibilities to this work. In 1995, Sweden was building a comprehensive electronic listing of regulations, with text on issues such as motives, magnitude of costs and effects. Many of the federal regulations in the United States are now available to affected parties over the Internet.

In most cases in which such registers are used, listing is a final step in the procedural requirements for making regulations. In other cases, listing is not a formal procedural requirement, but provides a defence to prosecution if non-compliance is due to lack of a reasonable opportunity to know the regulation – including failure to list the rule in the register.

The role of judicial review of administrative actions is very limited in Japan compared to other OECD countries. Japan's "ministries are...unique in one way: they are remarkably free from external judicial accountability," a recent report concluded.[44] Ministries in other countries are subject to various kinds of administrative courts and other forms of judicial review. In France, for example, there is a "barrage" of control mechanisms, such as a network of Administrative Tribunals headed by the Council of State and the Mediator's Office, which are judicial bodies with the task of judging alleged administrative abuses against citizens.[45]

Japan has an active administrative appeals procedure, and a little-used process for litigating administrative cases. About 36 000 administrative appeals were filed in 1994 under the Administrative Appeals Law, but review by the judiciary is not often used in practice. The reasons for lack of judicial review are unclear, but may be related to high costs of court action, fear of retribution by the administration, or cultural issues such as avoidance of adversarial resolutions. The Keidanren has called on the Government to revise the APA and to amend the Law on Suits Relating to Governmental Incidents

and the Administrative Appeal Law to make the system easier to use by citizens.[46] A process of review carried out by the Administrative Inspection Bureau in the MCA is much more frequently used than the two means of redress mentioned above. The MCA accepts complaints, opinions and demands concerning public administration from the public, examines them, and makes recommendations for resolution of the issues. The MCA receives almost 230,000 cases every year. The MCA also inspects administrative operations by the national government and makes recommendations for procedural reform to the administrative bodies concerned. According to the MCA, the aims are to 1) ensure appropriate execution of laws, government ordinances and the budget, and 2) deal with change, ensure comprehensiveness, simplicity and efficiency, and keep the trust of the citizen.

The government has recognised that action is needed to improve access by citizens to judicial oversight of administrative action. There is a commitment in the 1998 regulatory reform programme to develop a greater role for the judiciary in relation to the development of "clear rules of surveillance of compliance with the rules". An increase in the number of new lawyers admitted to the bar is one of the measures. Similarly, the Basic Law on the Administrative Reform of the Central Government commits to judiciary reforms, including reforms to administrative tribunals. How these programmes will develop remains as yet undetailed.

3.1.2. Transparency as dialogue with affected groups: use of public consultation

A strong trend toward renewal and expansion of public consultation in regulatory development is underway in OECD countries. Much has been invested in efforts to make more information available to the public, to listen to a wider range of interests, to obtain more and better information from affected parties, and to be more responsive to what is heard. A well-designed and implemented consultation programme can contribute to higher-quality regulations, identification of more effective alternatives, lower costs to businesses and administration, better compliance, and faster regulatory responses to changing conditions. It can also reduce the risk of capture and undue influence from special interests.

Japan took a major step forward when public comment procedures for new regulations and revisions to existing regulations went into effect in April 1999. Until then, Japan did not have a general law or government policy on the use of consultation in making or modifying regulation. Individual laws and government policies requiring the use of consultation existed in certain areas and a wide variety of forms of consultation (including notice and comment, circulation for comment, information consultation, advisory groups and public hearings) were used. It will be important to ensure that ministries carry out the new procedures systematically and consistently, that draft regulations are published early enough to allow meaningful public review, and that ministries actually respond to public comments, even if only to explain why the comments were not accepted.

Advisory councils, whose views are sought during the drafting process, are particularly important. Each ministry has two to 33 such councils (numbering 212 in all as of 1 October 1998), organised around specific fields and composed of experts, professors and representatives of trade unions, businesses, and consumer interests. The councils are established by law or cabinet order to consider and give recommendations on issues within their expertise. Highly respected and influential with the ministries, they are said to "play an important role in guaranteeing the fairness and appropriateness or neutrality...of administration and the adjustment of policy to the interests of the concerned parties."[47] When a relevant council does not exist, a ministry may hold meetings of an ad hoc study group to perform similar independent advisory functions. While the councils have traditionally worked in private, a Cabinet decision of September 1995 requires that their meetings be open to the public or, at a minimum, that outlines of the proceedings of these meetings be made available.

These arrangements are similar to those used in many OECD countries, and their usefulness in improving policy quality has been repeatedly demonstrated. Yet they fall short of best practice because of the differing degree of access for "insiders" and special interests compared to "outsiders". For example, ministries themselves decide when and how much to consult. Other problems that have been identified are the slowness of advisory bodies, and their lack of accountability for recommendations. For those reasons, complaints about consultation in Japan resemble complaints in corporatist European countries about highly organised but exclusive "social partner" consultation bodies.

The Japanese Government includes reforms to consultation arrangements as a major element of the current deregulation programme. The programme required the MCA, in co-operation with responsible ministries and agencies, to "promptly undertake" a study of public comment procedures and of "current procedures related to the introduction, amendment and abolition of regulations". The study is to draw up its conclusions "as an administrative measure" prior to the scheduled 1999 revision of the programme. Thus, a significant move in the direction of creating consistent and transparent consultative requirements is expected in the short term.

An area where consultation is extensively developed is the regulatory reform programme itself. The previous three year programme was substantially revised and amended on an annual basis. The current programme is intended to be updated in a similar fashion and, as part of this process, the MCA will publish an annual "white paper on deregulation" describing the initiatives being undertaken and their effect on the community. The purposes of publishing the white papers are to inform the public of progress on deregulation and to encourage comment and suggestions on future reform initiatives from both domestic and international sources. In fact, dialogue with major trading partners (notably the United States and the European Union) has contributed to Japanese reform programmes since 1995 and constitutes one of the more open aspects of Japanese regulatory arrangements.

Box 6. **Best practices in consultation: "notice and comment" in the United States**

The 1946 Administrative Procedure Act (APA) established a legal right for citizens to participate in rulemaking activities of the federal government on the principle of open access to all. It sets out the basic rulemaking process to be followed by all agencies of the US Government. The path from proposed to final rule affords ample opportunity for participation by affected parties. At a minimum, the APA requires that in issuing a substantive rule (as distinguished from a procedural rule or statement of policy), an agency must:

i) Publish a notice of proposed rulemaking in the Federal Register. This notice must set forth the text or the substance of the proposed rule, the legal authority for the rulemaking proceeding, and applicable times and places for public participation. Published proposals also routinely include information on appropriate contacts within regulatory agencies.

ii) Provide all interested persons – nationals and non-nationals alike -- an opportunity to participate in the rulemaking by providing written data, views, or arguments on a proposed rule. This public comment process serves a number of purposes, including giving interested persons an opportunity to provide the agency with information that will enhance the agency's knowledge of the subject matter of the rulemaking. The public comment process also provides interested persons with the opportunity to challenge the factual assumptions on which the agency is proceeding, and to show in what respect such assumptions may be in error.

iii) Publish a notice of final rulemaking at least thirty days before the effective date of the rule. This notice must include a statement of the basis and purpose of the rule and respond to all substantive comments received. Exceptions to the thirty-day rule are provided for in the APA if the rule makes an exemption or relieves a restriction, or if the agency concerned makes and publishes a finding that an earlier effective date is required "for good cause". In general, however, exceptions to the APA are limited and must be justified.

The American system of notice and comment has resulted in an extremely open and accessible regulatory process at the federal level that is consistent with international good practices for transparency. The theory of this process is that it is open to all citizens, rather than being based on representative groups. This distinguishes the method from those used in more corporatist models of consultation, and also from informal methods that leave regulators considerable discretion in who to consult. Its effect is to increase the quality and legitimacy of policy by ensuring that special interests do not have undue influence.

3.1.3. The changing institutional basis for regulation

A positive trend in Japan is the emergence of new kinds of regulatory bodies in the direction of functionally separate regulators, though there is no general policy on this, nor any recommendation from the Administrative Reform Committee. Many accountability, transparency, and competition problems in sectoral regulation result from lack of institutional clarity about the source, powers, and purpose of regulation. In addition, key regulatory failures such as the current bad loan banking crises have been blamed in part on inadequate capacities for supervision by the public sector, in this case the Ministry of Finance. The current mix in Japanese ministries of regulatory with policy and industry promotion functions is an outmoded approach that is being rejected in several sectors in many OECD countries (and also in the WTO and the European Union) in favour of institutional designs that functionally separate regulatory from other activities to maintain a competitively neutral regulatory regime.[48] This will be particularly important if Japan wishes at some point to replace public works spending on social infrastructure with private investment in infrastructure.

The financial sector supervisory board set up alongside the Ministry of Finance is the clearest example of how Japanese institutions are evolving in the direction of international best practices, though the independence and enforcement capacities of the new regulator are as yet unproven. A more general approach is needed to provoke change across a broader front, and to ensure that institutions are designed on consistent principles of competition, transparency, and accountability for results. The current Administrative Reform Programme aims to separate policy-making from implementation, as has been done in several countries such as the United Kingdom, but there is little discussion in the ARP of the need to separate policy-making from regulatory functions. It is also necessary to strengthen the role of the Fair Trade Commission in those aspects of sectoral regulation that affect competition policy issues, meaning that institutionalised cooperation between sectoral regulators and the FTC should be designed from the very beginning. This is discussed in more detail in the background report on The role of competition policy and enforcement in regulatory reform.

3.2. Choice of policy instruments: regulation and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory, while respecting principles of transparency and accountability. The range of policy tools and their uses is expanding in OECD countries as experimentation occurs, learning is diffused, and understanding of the markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. A leading role-supportive of innovation and policy learning-must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

The use of alternatives to traditional regulation is, in many countries such as the United States and the Netherlands, most highly developed in the area of environmental protection. The same situation is seen in Japan, where the Basic Environment Law of 1993 and its predecessor, the Basic Law for Environmental Pollution Control of 1967, provide for the use of a range of policy instruments. Instruments used under these laws, in addition to regulation, include voluntary agreements with industry and a range of economic instruments such as financial incentives, subsidies and user charges. Discussion of the environmental field should be seen as best practice in Japan, since the use of alternatives is not widely spread through other regulatory fields where command and control styles are dominant.

Voluntary agreements are generally concluded between firms and municipal or prefectural authorities. According to the Environment Agency.[49] The promotion of voluntary environment management efforts by private enterprises is defined as part of the most important protection measures in the country's "Basic Environment Plan". While voluntary approaches are innovative in many OECD countries, this approach is not new in Japan. "Pollution agreements" started in Japan in 1964 (in Yokohama city) as local government initiatives. The purpose of these agreements was to compensate for the lack of environmental regulations in the early 1960s. Hence, these initiatives were a precursor of regulations, designed to fill regulatory gaps and resolve local conflicts. About 1000-2000 voluntary agreements are concluded every year, and in March 1998, 32,000 agreements were in force. Agreements can relate to pollution control in general or be confined to (or focused on) specific concerns, such as waste water, noise, offensive odours or soot. Authorities may ask enterprises to formulate plans to reduce waste and emissions beyond the legal standards. In many cases, industry associations have adopted sector-wide plans or standards, such as the chemical industry's Responsible Care plan. In addition, the Keidanren adopted a Global Environmental Charter in 1991 which proposed the creation of environmental management systems by its members.

While there has been some public involvement in making these agreements (7 per cent of agreements concluded in 1991/2) the majority are negotiated solely between government and industry and are not available for public scrutiny. On the other hand, about 9 per cent of agreements signed in 1991/2 were concluded directly between companies and the local citizens. Thus, the transparency aspect of voluntary agreements shows a slightly mixed picture, though one which indicate a generally low level of openness. This lack of openness may be problematic in terms of ensuring public confidence in, and hence support for, the use of such voluntary agreements in place of traditional regulation. Mechanisms to ensure that the public has access to information on voluntary agreements should be investigated.

The OECD concluded in 1994 that voluntary agreements have played an important role in improving environmental performance in Japan, to a much greater extent than in most Member countries. Key advantages identified were lower implementation costs and enhanced economic and environmental effectiveness - partly through helping stimulate the use of preventive, rather than remedial, technology.[50]

Economic Instruments are relatively less widely used in Japan. To the extent that they have been used, the focus has been on financial and fiscal incentives, with instruments such as effluent and emissions charges playing little role in Japanese environmental policy. For 25 years, the Government has made low interest loans and tax incentives available to companies for both research and development on pollution control and for actual pollution control investments. But this kind of instrument is not necessarily environmentally sound. Some low interest loans and especially tax breaks are in fact subsidies, in contradiction with the polluter-pays principle. Another mechanism has been to encourage the relocation of existing polluting activities away from residential areas by financing the construction of new plant on a long-term low interest loan basis. Almost 600 billion yen were provided under this latter scheme between 1972 and 1989.

In reviewing the use of economic instruments in Japan in 1994, the OECD noted that there was insufficient information from which to draw conclusions about their economic efficiency. It concluded that "from an economic point of view, a review of the cost-effectiveness of current approaches to achieve standards and the development of cost-benefit analysis, particularly for public projects, would be of benefit, as would be the greater use of economic instruments, such as fees, taxes, charges and deposit refund systems."[51] The situation appears to have changed little since this time, with cost-benefit analysis still being relatively little used in the Japanese government and the new environmental impact assessment processes yet to take effect.

User charging constitutes a particular form of economic instrument, in that the absence of proper pricing arrangements for government provided pollution control services implies a "pollution subsidy". Japan has made some use of user charging, though its extent seems to vary widely in different areas. For example, it is relatively well developed in the waste water area, with industry estimated to be paying up to 1/3 of the construction costs and 1/4 of the operating costs of sewerage systems in some areas. However, municipal waste charges are generally absent, the cost being met from local government budgets. Special landing charges have been levied at airports as a noise control initiative.

Performance has been extremely good in the environmental area in Japan. Between 1970 and 1990, while GDP increased by 122 per cent, sulphur dioxide emissions fell 82 per cent and emissions of oxides of nitrogen fell 21 per cent. This was the best performance of all OECD countries.[52] Nonetheless, the lack of use of cost/benefit analysis to weigh the effectiveness of different policy instruments and the lack of use of potentially effective instruments such as pollution charges suggests that their remains considerable room for improvement. The adoption of government-wide policies to encourage the use of alternative instruments, together with guidance and assistance for regulating ministries in the use of specific instruments in specific circumstances, is necessary to maximise the use of new and unfamiliar instruments in place of "tried and true" - but often less effective - command and control regulation.

3.3. Understanding regulatory effects: the use of Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development, review, and reform of regulations." A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*[53].

The use of RIA is currently in its infancy in Japan. There is no requirement for regulatory impact assessment. While the Japanese government uses quality controls, such as checking by the Ministries of Justice and Finance, that it considers as functionally equivalent to RIA, no economic impact assessment programme exists. The revised regulatory reform programme of March 1999 took a positive step by directing regulators to examine the need for new regulations, their projected effects, and their burdens on the public. The programme also directed that ministries and agencies "work toward the creation of a system" to increase accountability for the effects and burdens of regulations. These directives could well open the door to RIA in future, but no decision has been made to use RIA to implement them. This is a major gap in Japan's quality control procedures, because policy officials are unable to base decisions on a clear assessment of the costs and benefits of proposed government actions, such as impacts on economic activity. In moving to a market-led growth strategy, such impact assessments become all the more important in ensuring that government actions are consistent with market-oriented principles of quality regulation. The following section assesses existing quality control practices against OECD best practice recommendations.

Maximise political commitment to RIA. Use of RIA to support reform should be endorsed at the highest levels of government. The Japanese system does not rate highly on this criterion since the current deregulation programme contains no commitment to RIA.

Allocate responsibilities for RIA programme elements carefully. To ensure "ownership" by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA should be shared between regulators and a central quality control unit. The Japanese system rates poorly in this respect.. To the extent that economic assessment is conducted for lower-level rules it is the sole responsibility of the regulatory ministry, although more general checking on legislative quality is conducted by MCA, MoF and the Cabinet Legislation Bureau, from their various perspectives. Moreover, MCA does not provide training and guidance on economic assessments to Ministries, or otherwise oversee quality.

A significantly enhanced role for MCA in overseeing quality would improve the value of current quality controls in informing policy officials about the impacts of regulations. Other positive steps can be prepared, considering other on-going administrative reform activities. The recommendation of the Administrative Reform Council that ministries set up evaluation bodies could support good RIA if these bodies have the expertise and resources to act as internal RIA consultants to ministerial regulators.

Train the regulators. Regulators must have the skills to do high quality economic assessments, including an understanding of the role of impact assessment in assuring regulatory quality, and an understanding of methodological requirements and data collection strategies. There are currently no formal training programmes in place in Japan in relation to impact assessment. Nor are there formal guidelines on impact assessment. Given the fact that impact assessment is at an early stage in Japan, training should be a high priority, both to develop specific skills and to contribute to longer term cultural changes among regulators. Training and guidance are also essential to ensure methodological consistency between assessments.

Use a consistent but flexible analytical method. Japanese requirements do not include specific methodological standards or guidance. MCA officials have stated that the impact assessments conducted are essentially qualitative in nature.

The absence of a requirement to use quantitative methodologies, combined with lack of guidance and training means that consistency in assessments cannot be assured. Attention to developing detailed methodological requirements for impact assessments, and supporting them with relevant training, guidance and expert assistance, is key if impact assessment is to achieve its potential in improving the quality of Japanese regulation. This report has elsewhere recommended adoption of the benefit-cost principle, and, if Japan adopts RIA, its RIA system should aim in the longer-term to establish benefit-cost analysis as the primary method for assessing regulations.

Develop and implement data collection strategies. As RIA has, to date, been confined to qualitative analysis, data collection strategies have not been developed. Since data issues are among the most consistently problematic aspects in conducting quantitative RIA, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed.

Integrate RIA with the policy making process, beginning as early as possible. Integrating RIA with the policy making process is meant to ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives and choosing policy in accordance with its ability to meet objectives are a routine part of policy development. In some countries where RIA has not been integrated into policymaking, impact assessment has become merely an *ex poste* justification of decisions or meaningless paperwork. Integration is a long-term process which often implies significant cultural changes within regulatory ministries. Given the early stage of implementation of economic assessment in Japan, it is too early to assess progress in this area.

Involve the public extensively. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can provide the data necessary to complete RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the degree of acceptance of the proposed regulation by affected parties. Japanese quality control procedures have not previously contained any provisions for public consultation. However, the newly adopted public comment procedures for regulation provide the opportunity to integrate regulatory impact assessments into public consultation. As the new consultation programme is implemented, Attention to links between the two quality control procedures should be developed as a matter of priority.

Box 7. **Good practices: use of Environmental Impact Assessment (EIA) in Japan**

A high-quality system for EIA recently adopted in Japan provides important precedents for improving regulatory impact analysis. EIA is a widely used process in OECD countries that is closely related to RIA. The two mechanisms are intended to assess and quantify the impacts of projects to guide policy choice. Both methods focus on the identification and weighing of the consequences of alternative options.

Japan's new EIA law[54], to take effect in June 1999, establishes procedures for applying EIA to large scale projects with significant environmental impacts. Three basic principles are identified; careful examination of whether the project meets existing environmental standards, comparison of the project with other, similar, projects to encourage reduction in environmental impacts through identification of better technologies and an obligation on project planners to propose means of reducing the environmental impacts of project proposals.

The EIA law replaces a set of administrative guidelines adopted by the Cabinet in 1984. The key changes include: adopting a screening mechanism to ensure that major projects are subject to EIA, while smaller projects are assessed only as justified; requiring project planners to produce documents describing how EIA will be conducted and to seek public comment on that process; wider opportunities for public hearings on draft EIS; increasing the comprehensiveness of EIS to include the results of surveys, predictions, assessments; follow-up surveys after completing EIA through continuous monitoring arrangements; opinions expressed by the environmental agency; and conducting of additional assessments where new information or circumstances arise.

The changes to EIA are consistent with RIA best practices. Wider opportunities for public hearing are consistent with RIA best practice principles of involving the public extensively. Provision for the Environment Agency to express opinions on EIA to responsible authorities is consistent with the principle of independent oversight to ensure the quality of RIA. The requirement for project planners to take account of opinions by the Environment Agency and competent authority is consistent with the principle of integrating RIA into the policy process.

However, commenters have pointed to weaknesses. The law does not clearly define which bodies will make final EIA decisions. Project documents are submitted in accord with Ministry ordinances on which the Environment Agency has only "consultative" input. This implies that ministries involved will have a larger say in EIA assessment and approval than the Environment Agency and may adopt differing approaches.[55] To this extent, the principles of carefully allocating responsibility and ensuring consistency are not well served by the new law.

The principles followed in the new *environmental* impact assessment are largely consistent with those adopted by the OECD as best practices in *regulatory* impact assessment. The law has undergone an extremely long gestation, perhaps indicating the difficulty of achieving acceptance of these principles. Emphasis on consistency of principles between the two impact assessment systems may point the way forward for Japanese RIA.

4. Dynamic change: keeping regulations up-to-date

Regulations that are efficient today may become inefficient tomorrow, due to social, economic, or technological change. Most OECD countries have enormous stocks of regulation and administrative formalities that have accumulated over years or decades without adequate review and revision. The OECD Report on Regulatory Reform recommends that governments "review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively."

Japan ranks high among OECD countries in terms of the scope and ambition of regulatory review programmes. Review of existing regulations has been the centrepiece of its reform programmes for almost 20 years, and the revolving programme backed up by a series of 3-year independent councils has stimulated most of the major reforms that have taken place, as explained in section 2 above. The 1998 deregulation programme continues the focus on review of existing regulations. An innovative step that is continued in the 1998 programme is the inclusion in new regulations of a fixed schedule for future review, which, if rigorous, should make more systematic the future review of regulations.

The 1998 programme, as revised in March 1999, in "Promoting Comprehensive Examination and Review," identifies several areas for action. The first is review of barriers to entry, and includes commitments to remove barriers to foreign firms and products, and removal of "supply and demand balancing regulations". For the latter, an attachment to the policy details a number of reform areas and makes commitments to remove such regulations by given dates (between 1998 and 2001). In other areas, however, the commitment is to "review" such regulations. The policy falls short of general action to abandon the use of this anti-competitive instrument.

Several review commitments relate to various aspects of government formalities: reviews of government approval and notification requirements; qualifications procedures and systems; standards, specifications, inspection and certification systems; and licensing and permitting. In each case, the goal is to abolish approvals wherever possible and to simplify and rationalise the remainder. A major addition to the March 1999 programme is a review of qualification systems for service activities to stimulate entry and competition in those services.

The programme also states that "as a rule" regulations (and new laws) shall include clauses requiring them to be subjected to *ex post* review after a fixed period of time. Much regulation has already incorporated such requirements, with review periods ranging from about 3 to 10 years after introduction. Ministries and agencies are required to release review findings "promptly after the closing of each ordinary session of the Diet in a format that can be readily understood by the public", thus providing an element of transparency, although there is no specific requirement to take comment from the public. This is a significant reform. According to MCA officials, a significant and increasing proportion of new regulation already incorporates review requirements. This *ex post* review process is a good practice also used in some other OECD countries, but it should be combined with *ex ante* regulatory impact analysis of regulatory proposals to reduce the risk of poor regulations from the very beginning.

The current programme also lists "Measures Relevant to Specific Fields". In many cases, specific commitments are made and implementation timetables given. In other cases, commitments are to review issues without timetables. However, a general instruction under this heading requires all "deliberative councils" to submit their conclusions by September 1999 or, where necessary, to provide an interim report by this date and a final report by end-February 2000. The choice of specific deregulatory measures reflects, in large part, the wider policy priorities of the Government's Action Plan for Economic Structural Reform. This plan identifies 15 "New and Growth Fields" (see footnote[56]) and sets out to develop a more favourable business environment particularly in these fields through means including "deregulation, development of key technologies, resources and other measures".

These review mechanisms and plans rank in some aspects positively against international best practices. Against stubborn opposition, the Japanese government has organised the machinery to identify regulatory problems, include them in structured programmes, and monitor outcomes. The review programmes have become progressively more ambitious, moving toward more comprehensive sectoral reviews based on consistent principles of good regulation. Methods of review have improved, particularly the move by the 1995-1997 Administrative Reform Committee to conduct its discussions with ministries in public, short-circuiting the private negotiations that have slowed and undercut reform in the past. The inclusion in new regulations of fixed review schedules is a positive step that will place future reviews on a more systematic basis, and improve the adaptability of Japanese regulatory regimes.

There are also important weaknesses in the Japanese approach to reviewing existing regulations that should be corrected to permit reform to move forward more quickly, coherently, and transparently. The critical problem of the "item by item" approach based on incrementalism was discussed earlier in this paper, and the suggestion was made to develop a clearer set of principles to guide reform measures, including particularly competition principles. As a further step to support the reviews, general principles should be complemented by standardised evaluation techniques and decision criteria. Cost savings or enhanced benefits likely to flow from reform proposals are frequently quantified, but regulatory impact analysis is not widely used.

Another step already foreshadowed in the 1998 programme and its focus on 15 growth fields, is the development of comprehensive sectoral and cross-sectoral review plans aimed at introducing competition while crafting transition programmes and protecting important public interests through efficient regulation.

As noted in the OECD Report on Regulatory Reform, comprehensive reform is based on a complete and transparent package of reforms (aimed at a single policy area, sector or multiple sectors) designed to achieve specific goals on a well-defined timetable. Comprehensive reform does not mean that all changes occur immediately; rather, it is consistent with sequencing strategies and transitional steps as long as they are temporary and steps and timing are clear. There are several advantages to comprehensive reform: benefits appear faster (which means that pro-reform interests are created sooner); affected parties have more warning of the need to adapt; vested interests have less opportunity to block change; and reform enjoys higher political profile and commitment. Producing an integrated package of reforms also facilitates balancing of multiple policy objectives and interests. Comprehensive reform still requires an effective mechanism for monitoring and implementing reform, because reform may produce unforeseen results that will require adjustment and response.

In contrast, experience in other countries suggests that piecemeal approaches tend to be unplanned and unpredictable. They usually address easy reforms first, even if the more difficult have the most impact. Hence, benefits are delayed. The result is delayed or even lost benefits, a rapid exhaustion of the political resources needed to sustain the process, and vulnerability to blocking or delaying by vested interests. Moreover, some reforms are nearly impossible to introduce gradually without careful and transparent advance planning. For example, it is difficult to manage a gradual evolution to full competition because that generally means there will be a mix of competitive and monopoly elements during the transition. Large investments in regulatory oversight and information will be needed. And private investors are usually reluctant to enter the market when reform is unpredictable and there are risks of reversals and delays. The move to comprehensive reform plans will reduce the risks of these kinds of failures.

Review of permitting and licensing requirements. One of the more damaging forms of regulation is the *ex ante* licensing or permitting requirement. These kinds of regulations increase investment delays and uncertainties, have disproportionate effects on SME start-up, and are very costly for public administrations to apply. Yet they are pervasive in OECD countries. Recent information from Member countries, though not checked for comparability, indicates that national governments implement the following numbers of permits and licenses:

Country	**Number of ex ante permits and licenses required at national level**
United Kingdom	312
Norway	348
Mexico	834
Hungary	1600
Finland	1700-1800
Portugal	2225
Japan	5737

Source: Responses to OECD survey on regulatory indicators, March 1998; response for Japan does not include "weak" requirements such as notifications or reports.

The 1998 deregulation programme continues the policy of moving away from licensing and permitting procedures in favour of *ex post* checking and this policy could lead to substantial change in the future in the market orientation of Japanese regulation.

The MCA has divided regulations into three varieties: (1) regulations of general effect that impose obligations or limit rights; (2) regulations that impose obligations or restrict rights through administrative decisions on specific cases; (3) regulatory administrative guidance. Regulation in category two -- which includes a vast range of regulatory requirements, including licensing, permission, approval, tests, examinations, registration, reporting, attestation, certification, confirmation, retraction, supervision, and so forth -- "represents the core part of public regulation," according to the MCA.[57]

Hence, this category has received considerable attention. In 1985, the Cabinet directed that the MCA should conduct an annual survey of such requirements; the first survey discovered 10,054. In 1987, following concerns expressed by the Second PCPAR about "the expansion of regulatory programs and lack of a built-in mechanism to curb and rationalise regulations,"[58] ministries and agencies agreed to conduct internal regulatory reviews to reduce the burden of permission/authorisation and reporting systems.[59] Principles to be considered in the reviews included a check that new requirements are necessary for public welfare; that requirements have benefits, and burdens on applicants and government agencies are smaller than positive effects; coverage and requirements are the minimum possible to achieve objectives; and administration of permission/authorisation requirements are performed as much as possible by local entities or local branch offices of the national government. The 1988 "Guideline for Promotion of Deregulation" also targeted these sorts of rules, and mandated that the MCA begin to publish in 1989 the results of the ministries' internal reviews. In 1990, a tougher stand was taken. The Second PCPAR recommended that permits and authorisations should be reduced "to essentially half their present level".[60]

Despite these reform efforts, the MCA survey of March 1990 found 10,581 permission/authorisation-type requirements, or a net increase of over 500 since 1986. The number of permissions and authorisations increased each year to 1993, declined in 1994 and 1995, but rose again in 1996 and 1997. According to MCA, the main reason for the increase was deregulation. Activities that had previously been forbidden or restricted were, after deregulation, permitted under certain conditions. These included relaxation of limits and prohibitions; and shifting activities from public to private ownership. Welding tests in nuclear facilities, for example, were shifted to private institutions that had to be certified.

Two other reasons put forward to explain the increase are: (1) New health, safety, environment and business laws required new permissions/authorisations. (2) The numbers do not reveal qualitative improvements, whereas progress has been made in reducing the burden of requirements. By 1990, ministries had reduced the burdens of most of the 500 requirements originally targeted. Some certification periods were extended, reducing the frequency of reporting. More importantly, the MCA noted, "the trend...as a whole can be said to be shifting from strong regulation to weak regulation."[61] Certain varieties of these regulations, particularly permission, approval, and licensing, have very restrictive effects, while "weaker" rules, such as reporting, are less restrictive. Increases have generally occurred in less restrictive requirements, while decreases occurred in the most restrictive. On net, then, these requirements became less restrictive, although the effect on the costs of compliance has not been quantified. An MCA official concluded that, although need and effectiveness were the focus of reform, the "emphasis on numbers has derailed the main point of interest."[62]

5. Conclusions and policy options for reform

5.1 General assessment of current strengths and weaknesses

Regulation in Japan has for decades been part of an economic management policy that had its high point in the 1960s, and that may have helped elevate Japan to the ranks of the richest and most equitable countries in the world. Regulatory reform is only the latest of many profound policy shifts that the Japanese have faced in their remarkable ascendancy, and it is likely that, in the end, the Japanese government will seize the nettle and succeed with regulatory reform.

Tremendous effort has produced real progress in reducing economic intervention in many sectors where consumers have seen results -- among them, large retail stores, gasoline imports, telecommunications, and financial services. Less dramatic but important progress has been made in areas such as increasing the efficiency of pervasive licenses and permits. There is slow but steady movement on many fronts toward more transparent and less discretionary regulatory practices, partly driven by market demands and partly by recognition of the gap between traditional and international practices. Compared to its predecessors, the 1995-1997 deregulation programme was the most successful yet, capitalising on the strength of a reform-minded PM and competitiveness pressures to win commitments to reform in key sectors. The 1998 programme is as yet untested.

While recognising the importance of the gains that have been made, the main point of this report is that the size and nature of the problem has been consistently underestimated. A far more encompassing view of the nature of reform -- to include not only eliminating poor regulations, but also restructuring outdated institutions, changing incentives in public sector cultures, and moving the state toward service provision and away from economic management -- is a precondition to progress of the kind needed to adapt Japanese regulation to the needs of modern society. The emphasis should be on improving transparency, accountability, and adaptability. With those kinds of reforms, the Japanese government will establish the basis for a dynamic regulatory system that will continue to adapt and meet new challenges into the future.

Experiences in Japan offer positive lessons for other OECD countries. One of the strengths of regulatory reform in Japan is that it has enjoyed high levels of political support, an essential condition for success. Political support may have suffered from the tendency to support reform in general but not in specifics, but the extent of personal involvement of a succession of prime ministers has been rarely equalled in other countries.

A second strength is that the framework of a potentially effective regulatory reform system is taking shape, piece by piece. Numerous mechanisms are in place to translate political support into action. These include the independent council system (currently, the Deregulation Committee of the Administrative Reform Headquarters); a flexible and expanding reform programme; articulation of a set of market-based principles for regulation to be applied by regulators in their day-to-day activities; building of reform expertise and capacities in the administration (particularly in MCA, MITI, and the EPA); oversight processes such as annual reports and a database of permits; adoption of an Administrative Procedure Act; and efforts to improve openness, especially with respect to informal regulatory instruments such as administrative guidance.

As one of the main points of regulatory reform, the reduction of unnecessary regulatory burden is essential. The capacities of the private sector freed from such burdens can be used for more constructive activities. Japan has long taken efforts to minimise the regulatory burden (including activities to eliminate unnecessary "sealing" for identification, to extend terms of validity of various licences or permissions, and to admit digital applications and reports). There is, however, still scope for improvement. Making more use of computers in administration, especially in providing information, would open new possibilities to minimise burden on citizens and would simultaneously contribute to enhancing transparency.

This progress is genuine, but it is too slow and reactive. The past 20 years have seen important shifts toward market-based decisions and integration with global markets, but the anti-competitive styles of regulation and the interventionist tendencies of the public administration have changed only marginally. Reform is still hesitant, piecemeal, and reactive, reflecting the "incrementalism" discussed in section 1. Intervention by the administration into economic decisions continues on a scale rare in OECD countries, and these interventions are no longer based on any coherent view of the role of regulation in modern government or globalised market economies. There are still difficulties in persuading ministries of the benefits of reform. As the gap between market needs and regulatory rigidities grows wider, the regulatory system is weakening domestic and international competitive forces and contributing to a chronic misallocation of resources throughout the Japanese economy.

Importantly, the opportunity costs to good government of Japan's pervasive regulatory regimes should be understood. A number of public policy issues -- from ageing populations to environmental protection -- will require more attention from the government in coming years, yet costly regulatory functions are crowding out the capacities of the public sector to take action in other areas.

To improve public sector capacities for good regulation, three major challenges face Japanese reformers today. First, *the need to take bold and comprehensive action* justifies exploration of different strategies and reform institutions.

Second, the *need to rebalance the reform programme* between deregulation and good regulation, particularly sectoral governance and consumer protection, is urgent. The focus of the current programme is deregulation, which is indeed a considerable and necessary task. Yet good regulation based on market principles is also needed to address public policy concerns. Reform of the financial sector has vividly demonstrated that good regulatory governance is a vital component of the regulatory reform programme. Changing the structure of a network based industry such as electricity from monopoly to competitive markets requires a sophisticated regulatory structure. Consumer protection is another important concern. Many countries have neglected to install consumer protection regimes that work well in new market conditions, in areas ranging from taxis to health care to pension plans to food labelling. In some countries, abuses against consumers have caused backlashes against reform itself. This failure stems from the mistaken notion that market liberalisation means less of all kinds of regulation. On the contrary, in some areas it may mean more. For example, consumers faced with more choices may require more information and confidence-building measures. As in section 1, we note that "small government" is an insufficient principle to guide regulatory reform.

Third, a sustained and multifaceted effort is needed to *embed good regulatory practices into the "culture" of the public administration*. Some of the reforms in the Basic Law for Administrative Reform of Central Government such as strengthening the policy capacities of the Cabinet, will greatly boost regulatory reform capacities in the government and reduce the risks of regulatory failures. A great opportunity for change lies in expanding the Basic Law for Administrative Reform of Central Government, and linking it more explicitly to regulatory reform. Professional and cultural change in the administration will not come easily. The policy reforms suggested below will require new training programmes, new skill mixes, and new funding in some cases. Leadership at the top will be essential to encourage risk-taking and innovation in the bureaucracy.

5.2 Policy options for consideration

The policy options below fall into three areas which are the most urgent priorities for improving the capacity of the Japanese government to produce high-quality national regulatory regimes:

Capacities for reform focus on building the organisational structures, policy, and legislative frameworks that are needed to drive and sustain effective reform. These include establishing institutions inside and outside the administration that cut across and challenge narrow interests in line ministries.

Accountability reforms work to make the administration accountable for its use of regulatory discretion and for the policy performance of regulation, measured against the objectives of regulation. They include clear definitions in policy and law of instruments and procedures that are permissible for government action.

Transparency reforms seek to improve the openness and accessibility of regulatory decisions by enhancing the public's participation in the regulatory process and, thereby, to also help strengthen accountability and regulatory quality

These policy reforms represent a balanced but far-reaching reform agenda that are intended to work together to produce a national regulatory environment that is, from cradle to grave, more transparent, accountable, and user-friendly for enterprises and citizens. The strategies recommended are in accord with basic good practices in other countries such as the United States and the Netherlands. If implemented, these reforms will change significantly the style and culture of Japan's public administration, and its relations with society at large. Some of the recommendations can be carried out quickly, while others would take some years to complete.

Included only marginally in these recommendations is the crucial dimension of the capacity of the judiciary to review administrative actions by the public administration. This is the missing link in the overall structure of interlocking institutions that together establish the incentives and pressures for high-quality administrative action. In most OECD countries, the ultimate check on administrative abuses is the potential for review and reversal by the courts under principles of administrative law. Such deterrence must be credible to be effective. Long-standing traditions of administrative discretion by public officials in Japan suggest that the courts will only gradually assume the oversight role needed to improve certainty and due process for the public. It is particularly important in Japan for the government and courts to provide an effective and practical judicial infrastructure for dispute settlement, since the government's role as mediator or arbitrator among interests should be eliminated as economic intervention is reduced.

For these reasons, serious reform to the judicial system to expand its capacities for review and reduce the costs and delays of private actions is essential if the policy reforms are to have their full effect The judiciary is, however, largely outside of the scope of this review, and hence we suggest only preliminary actions pending the actions underway in the current deregulation programme and the Basic Law for Administrative Reform of Central Government.

Strengthening capacities for reform

Current efforts to promote reform by the Deregulation Committee are important to further progress. Further strengthen the leadership of the Deregulation Committee by (i) enhancing its capacity for independent and comprehensive reform recommendations through such means as putting it under the direct control of the Prime Minister or by giving it legal authority to make recommendations; (ii) broadening its mandate to consider the full range of government policies – beyond a narrow definition of regulation -- that impede competition in the sector under reform; and (iii) expanding and strengthening the analytical expertise of the Committee's Secretariat as an interim step to creating a permanent office on regulatory reform responsible to the prime minister...

The work of the Deregulation Committee is central to regulatory reform and should continue while ways of strengthening it are considered. First, the need for enhanced independence from the ministries is paramount to enable the Committee to play a leadership role in making decisive and bold recommendations. There are various ways to strengthen the independence of the Committee. Such independence will help offset sluggishness, delay, and inefficiencies in regulatory reform, which will increasingly penalise Japan as the pace of globalisation and innovation steps up. It is interesting that lack of policy responsiveness and flexibility is also a problem in the United States, although there it is due, not to the search for consensus and mutual accommodation as in Japan, but to excessively adversarial and procedural policy styles. In both countries, however, the role of the central reform unit is critical to driving change.

Second, the Committee should be given a broader mandate to examine all government policies and instruments that have the effect of impeding competition in the sector under reform, as recommended by the Prime Minister's Economic Strategy Council in February 1999. Third, the Deregulation Committee requires expert advice in developing recommendations, and a stronger role in overseeing implementation of recommendations. This requires an expert secretariat with cross-government views. Rather than creating in the short-term a permanent unit to advise the prime minister, such as exists in the United Kingdom (the Better Regulation Unit) and the United States (the Office of Information and Regulatory Affairs), we suggest as an interim step strengthening the independence, policy authority, and analytical expertise of the Secretariat for the Deregulation Committee, which already has representation from major centre of government ministries. Its personnel should be drawn largely from non-regulatory ministries to enhance its "challenge" function; it should have sufficient financial resources to collect and assess information and buy the expertise of private think-tanks and scholars; and its role in the government's legislative and regulatory procedures should be formalised. In the longer-term, the government should consider creating a permanent advisory and analysis body on regulatory reform that is responsible to the prime minister.

The Secretariat would assist the Committee in designing thematic and sectoral programmes of reforms, coordinated across all relevant policy areas. The Secretariat would incorporate performance targets, timelines and evaluation requirements, and would advise the Committee on the likely impact of reform proposals made by regulating Ministries. Representation by the Ministry of Finance would improve coordination of regulatory reform and budget proposals (see below). Inclusion of economic policy and analysis agencies is intended to establish an independent centre of economic analysis to

support the Committee's policy advice, and analytical expertise to oversee greater use of regulatory impact analysis in decision-making. Inclusion of the FTC is intended to ensure that competition principles are kept foremost in the reform programme.

Adopt principles of good regulation based on those accepted by Ministers in the 1997 OECD Report on Regulatory Reform. Eliminate all "supply and demand adjustment regulations" by a specified date.

The regulatory principles in the current deregulation programme are clearer and closer to international best practices than those in previous programmes. The explicit use of market principles is a good step. Yet significant gaps remain in defining the dimensions of regulatory quality, such as the principle that all regulations shall have a sound legal basis, and that regulations shall only be adopted if costs are justified by benefits. Competition principles should be strengthened in the overall policy framework. For example, an overarching principle that "supply and demand adjustment regulations" should be phased out government-wide by a specified date could greatly speed up action in eliminating these anti-competitive policies, as compared to case by case study and recommendations.

Follow up regulatory reform decisions with implementing budget and organisational decisions.

Regulatory reform in some OECD countries operates hand-in-hand with budget offices because many reforms require changes to institutions, personnel, and budgets in the public sector. It is important that reform decisions are coordinated with and reflected in subsequent budget decisions. The cabinet, with the advice of the Deregulation Committee, should advise MOF, MCA and the National Personnel Authority on budget and personnel changes whether reductions or increases are needed to carry out regulatory reform plans in the relevant areas.

Regulatory reform should be expanded and accelerated through development of comprehensive sectoral reform plans containing the full set of steps needed to introduce effective competition, followed by rapid implementation and periodic, public evaluation.

The OECD Report reads, "Regulatory reform should be guided by coherent and transparent policy frameworks that establish concrete objectives and the path for reaching them... Such programmes will both enhance the credibility of reform, and reduce the costs of reform by signalling to the wide range of potentially affected interests what is to come. The emphasis on broad programmes is deliberate, since the likelihood of success is increased by including at the outset the full mix of policies needed to gain full benefits of reform."[63] Japan's traditional "item by item" approach to regulatory reform -- based on a series of actions that aim to remove regulatory restrictions one by one, but with no clear strategy or endpoint for introducing competition into the sector -- has resulted in partial and delayed benefits to consumers. Such review processes work better in analysing individual regulations than in understanding interactions between a group of regulations affecting an economic or social sector, having a cumulative and overlapping impact, originating from different agencies or even different levels of government. These linkages are often not analysed. At the end, this seems a review process focused on pruning each tree rather than improving the health of the forest.

Japan's Big Bang approach in the financial sector demonstrates the effectiveness and speed of more comprehensive sectoral plans based on all policy measures needed for results, including regulations but also other forms of intervention such as subsidies, procurement policies, and tax policies. The "reinvention" of sectoral regimes -- based in part on international benchmarks -- allows reformers to consider policy linkages and related measures needed to make reform effective, to package related reforms into a coherent programme, and to reassure market entrants that reform is credible and predictable. Adopting reform steps in law, as opposed to leaving the timing or steps to the ministries, will further strengthen the accountability, credibility, and sustainability of reform.

The comprehensive reform strategy will raise some trade-offs and additional difficulties, however. Moving forward quickly on a broader front may require more attention to design of transitional programmes that reduce opposition to change. And a comprehensive plan will require reformers to cut across a partitioned and segmented government structure, which will increase transactions costs and upfront delays.

Implement across the administration a step-by-step programme for regulatory impact assessment, based on OECD best practice recommendations, for all new and revised regulations. The analysis should begin with feasible steps such as costing of direct impacts and qualitative assessment of benefits, and move progressively over a multi-year period to more rigorous and quantitative forms of analysis as skills are built in the administration, and should be made public as part of notice and comment procedures.

There is no explicit commitment to the use of regulatory impact assessment in the current reform programme, though the revised programme of 30 March 1999 calls for ministries to "work toward" improving their accountability for the impacts of regulations. This is a useful step that should pave the way for a decision to implement RIA as soon as possible to bring Japan up to international good practices. Two thirds of OECD Member countries now use RIA and the direction of change is universally toward refining, strengthening and extending the use of RIA disciplines. RIA can be a powerful tool to boost regulatory quality by giving policy officials information on which to judge if a regulation is necessary, or if there are better alternatives. Lack of information on impacts means that regulations are vulnerable to influence from special interests and less transparent to outside parties. OECD's best practice principles, in part already reflected in the new Environmental Impact Assessment law, should be the basis for a RIA programme, overseen by an appropriate quality control body with analytical expertise at the centre of government, to ensure that a minimum and consistent level of analysis is applied to new regulatory proposals. While benefit-cost analysis may be a long-term goal, interim steps feasible with current administrative skills, such as user panels and surveys, could be implemented quickly.

Another significant omission from the current programme is its failure to promote the use of market based alternatives to regulation in those areas where regulation is justified. Mention of alternative mechanism is largely restricted to the enunciation of a principle of moving away from prior authorisation procedures in favour of "*ex post facto* checking". The OECD Report on Regulatory Reform[64] documented significant movement toward a range of alternative instruments in numerous Member countries and pointed to evidence on gains in policy effectiveness being achieved. Consideration of alternatives could be gradually built into a RIA programme as the public sector gained familiarity with alternative policy tools.

Enhancing accountability

- *Improve regulatory accountability by (i) defining in a revised Administrative Procedure Act permissible regulatory activities and providing standardised administrative and legal remedies for those aggrieved by administrative action; (ii) establishing further checks on non-permitted forms of administrative guidance by standardising legal due processes for those abused; (iii) defining the limits of ministry action in the foundation laws and laws delegating regulatory authorities to the public administration, and (iv) separating regulatory from policy and industry promotion functions in key infrastructure sectors.*

The current reorganisation of the national government provides a valuable opportunity to address fundamental legal, institutional and cross-cutting regulatory issues not addressed elsewhere.

First, it should be a high priority to define by law a limited set of administrative actions with regulatory effects that are permissible and a minimal set of procedures by which they are to be used, including the rules for delegating regulatory powers to other levels of administration or to non-governmental bodies public consultation, registration, review, and impact assessment. It is also necessary to ensure that aggrieved parties have effective access to a standard set of administrative remedies, through standardised dispute settlement mechanisms, and legal remedies, through judicial review, for parties wishing to appeal administrative actions. While a range of formal procedures exist in Japan, they should be used more effectively. Bringing the backlog of existing administrative actions into conformity with any new quality standards -- potentially a tremendous task -- can be done over time in a phased approach during the establishment of the central regulatory registry recommended below, and during the comprehensive sectoral reviews recommended below.

Second, "administrative guidance", already abolished by law in certain forms as incompatible with transparent regulation, is not consistent with a market-led growth strategy in Japan. While some progress may have been made in curtailing the use of the coercive forms of guidance, the difficulty of monitoring the use of administrative guidance suggests that strong deterrence is needed, and standardised appeals processes through tribunals or the courts -- if their capacity review administrative actions is enhanced -- seem to offer the most credible approach.

Third, ministerial mandates and regulatory powers should be more closely defined in law to avoid abstract powers such as protecting the "public interest".[65] There are two complementary approaches. First, the foundation law of each of the new ministries is being revised as part of a reduction in the number of ministries. Clearer definitions of the responsibilities and missions of the ministries in the Foundation Laws, including the requirement that the ministries avoid unnecessary constraints on competition, would improve political oversight by the Cabinet and the Diet and provide the basis for a more consistent approach across the government to the balance between consumer and producer interests. Second, clear definition of policy objectives and regulatory authorities should be included in each law delegating regulatory power.

Fourth, as noted in section 3.1.3 above, many accountability, transparency, and competition problems in sectoral regulation result from lack of institutional clarity about the source, powers, and purpose of regulation. There is no single organisational model that can be recommended across countries -- and it is not yet clear that the new Financial Supervisory Agency offers a model for other sectors in Japan -- but functional separation should aim at boosting the expertise of regulators; establishing clear performance criteria for the regulator based on maximising consumer welfare in the sector; improving the transparency of regulatory actions; and putting at arms-length any intervention by political officials and policy bureaus into specific regulatory decisions. The expertise and permanence of the staff is of paramount importance, since one of the purposes of this reform is to improve policy stability and reduce reliance on the regulated industry for expertise. Care should be taken to avoid "colonization" of new regulatory bodies by existing ministries, such as through the practice of rotating staff through short-term assignments. This will require attention to personnel and recruiting policies for the new bodies.

Improving regulatory transparency

- *Ensure the effective implementation of public comment procedures, and standardise procedures for openness for the advisory councils..*

Japan has made significant efforts to include a wide range of parties in consultations on regulatory reform. The public notice and comment procedures announced in October 1998, and expected to become effective from April 1999, represent a major step forward. In the procedures, the government is required to make public information on regulations under consideration and give the public an opportunity to comment on it. The new procedures should open regulatory decision-making to a broad range of interests for all significant regulation. It will be supported by the opening of advisory council deliberations which is now underway, with 73% of councils having adopted opening measures. New policies in these areas should include the provision of better information, based on a robust RIA requirement, during the consultation process and the adoption of standard openness procedures for advisory council deliberations. Adoption of notice and comment procedures will also permit a central unit, such as the secretariat of the Deregulation Committee, to review new ministerial regulations against the principles of good regulation..

- *Establish a centralised registry of all regulatory requirements.*

A single authoritative source for regulations would significantly enhance transparency for users in terms of the content and form of permissible regulatory actions, and force a rationalisation of ministry rules. Many OECD countries are adopting new registry requirements, and are using the opportunity to review existing regulations against quality standards before including them in the registry. Some countries have found that "positive security" further increases confidence in the market and reduces search costs for businesses and citizens ("positive security" means that regulations must be included in the registry to have legal effect, which ensures against non-compliance by ministries). *Improve transparency by extending requirements for transparency to non-governmental bodies with delegated regulatory authorities.*

A form of regulation widely used in Japan is that of "co-regulation", or sharing of regulatory functions between government and industry or other bodies. This has been implemented predominantly through trade associations, public corporations, and non-profit organisations. Such industry based regulatory and enforcement systems can have major benefits in terms of cost and effectiveness, but in many countries such bodies have used this role to limit competition and increase incomes and, hence, consumer prices. The incentives that exist for rent-seeking require that governments carefully supervise the use of such delegated regulatory powers.

It is useful that the APA applies to non-governmental bodies with regulatory powers. As part of the 1998 programme's review of "non-governmental restrictions in the private sector", it would be useful to further develop clear governmental guidelines on the use of regulatory powers by non-governmental bodies. A similar recommendation has been made for the Netherlands. Issues include the representation of independent "public interest" advocates, the review role of competition authorities, and the need for specific legislative authorisation of regulatory powers, as well as transparency standards. This is especially important as international market openness develops. Guidelines would improve the transparency of these non-government bodies, enhance their accountability to government and the public, including consumers, and maintain market openness.

5.3 Managing regulatory reform

In some cases, the success of regulatory reform will depend not only on the policy content of the reform, but also on the strategy, pace, sequencing, accompanying targeted policies, and transitional arrangements for reform.

The Japanese experience suggests communication strategies should accompany the policy reforms suggested above. An important determinant of the scope and pace of further reform is the attitude of the general public, and here priority-setting and balance are important. A high priority to motivate support for reform is to deliver visible benefits to consumers, as reform of the large scale retail store law did when discount stores began opening in greater numbers. In the business community, deep cleavages over regulatory reform provide an opportunity to build a constituency for reform. This suggests that urban consumers and export-oriented industries will be the two major reform allies. Reforms aimed at their interests -- such as in important upstream industries, and areas where consumers can quickly see large price reductions -- should come first. Evaluation of the impacts of reform and communication with the public and all major stakeholders with respect to the short and long-term effects of action and non-action, and on the distribution of costs and benefits, will be increasingly important to further progress. Here, the evaluation mandate for the Economic Planning Agency will be important.

Equally important is a balanced reform programme emphasizing both deregulation to allow market forces more space, and better regulation to protect consumers, health and safety, and the environment. At this juncture, it seems that fears about the effects of reform on levels of protection have not been borne out, but continued reform will proceed faster and more deeply if reformers take concrete steps to demonstrate that protection has been maintained.

NOTES

1. World Bank (1993), pp. 157-188.
2. Among the many examinations of the role of the State in Japanese economic, social and political development see, for example, Calder, Kent E (1988), and Richardson, Bradley (1997).
3. Commission on Administrative Reform (1995).
4. Hollerman, p. 243.
5. Lincoln, Edward (1998), Chapter 4 in Gibney, p. 61.
6. Final Report of the Administrative Reform Council (Executive Summary), December 3, 1997.
7. Hollerman (1988*a*), p. 245.
8. Tanaka, Kazuaki and Masahiro Horie (1990), preface.
9. Tanaka, Kazuaki and Masahiro Horie (1990), p. 1.
10. Commission on Administrative Reform (1995), p. 4.
11. Keidanren (1995).
12. Hashimoto, Ryutaro (Prime Minister) (1996) "Policy Speech to the 136th Session of the National Diet," 22 January, Tokyo (unofficial translation, Ministry of Foreign Affairs).
13. Commission on Administrative Reform (1995), p. 1.
14. Administrative Management and Reform in Japan, MCA, (1991), pp. 21-22.
15. Attachment 1 to a decision by the Provisional Council of the Promotion of Administrative Reform, 23 January 1991.
16. OECD (1997), p. 37.
17. OECD (1995).
18. "For the Promotion of Deregulation Aimed at Economic Revival and the Establishment of a Transparent System of Governmental Management" Keidanren submission to Government of Japan, 20 October 1998.
19. Lincoln, Edward (1998).
20. Deighton-Smith, Rex (1997), p. 221.
21. From 1981 to the present, six successive councils have been created in the Prime Minister's Office: the Provisional Commission for Administrative Reform (PCAR), which worked from 1981-1983, followed by three Provisional Councils for the Promotion of Administrative Reform, which worked from 1983-1986, 1987-1990, and 1990-1993 (referred to as First PCPAR, and so forth). The Administrative Reform Committee worked from 1995-1997. The current council is called the Deregulation Committee.
22. Interview with officials of the MCA by the OECD Secretariat, February 1992.
23. Administrative Management and Reform in Japan (1991), p. 123.
24. Written response to OECD from Government of Japan, June 1998.
25. Tanaka, Kazuaki and Masahiro Horie (1990), p. 9.
26. Shindo, Muneyuki (1982), p. 130 and Sato, Isao. (1982), p. 38.
27. "Submission by the Government of the United States to the Government of Japan Regarding Deregulation, Competition Policy and Transparency and Other Government Practices" Office of the United States Trade Representative, Executive Office of the President, November 7, 1997.

28. "For the Promotion of Deregulation Aimed at Economic Revival and the Establishment of a Transparent System of Governmental Management", Keidanren submission to Government of Japan, 20 October 1998.

29. Lincoln, *op.cit*.

30. Isomaru, E and M. Kuronuma (1974) "Gendai Nihon no Gyosei," Teikoku Chiho Gyosei Gakkai, Tokyo, as quoted in Terasawa, Katsuaki and William R. Gates (1997) "Better government versus less government: Relationships between government and economic growth in Japan and other nations," *International Public Management Journal*, Vol 1, No. 2, published on the Internet.

31. IIAS Tokyo Round Table Organizing Committee (1982), p. 23.

32. Speech by the Prime Minister, at the first meeting of the Third Provisional Council for the Promotion of Administrative Reform, 31 October 1990.

33. Harrop, Martin (1992), p. 236.

34. See Shiono, Hiroshi (1982), pp. 221-235, from which much of the material for this section is drawn.

35. Bingman, Charles (1989), p 82.

36. Neary, *op. cit.*, p. 127.

37. Shiono, *op. cit.*, p. 229.

38. Hollerman, Leon (1988*b*), p. 131.

39. Harrop, Martin (1992), p. 63.

40. Press release from the Japanese Ministry of Finance, 8 June 1998.

41. Institut International d'Administration Publique (1997).

42. Reported in Jacobs, Scott, *et al* (1997).

43. Prime Minister P.J. Keating (1994), "Working Nation: Policies and Programs," 4 May, Canberra, p. 37.

44. See Richardson, p. 124, and Upham, Frank (1991), pp. 323-34.

45. Wright, Vincent (1989).

46. "For the Promotion of Deregulation Aimed at Economic Revival and the Establishment of a Transparent System of Governmental Management", Keidanren submission to Government of Japan, 20 October, 1998.

47. OECD (1992). The councils have the discretion to operate in either public or closed session.

48. Jacobs, Scott (1995), "Building Regulatory Institutions in Central and Eastern Europe," Proceedings of the OECD/World Bank Conference on Competition and Regulation in Network Infrastructure Industries, Budapest, 28 June 1 July 1994, Paris, OECD, pp. 301-317. See also Majone, Giandomenico (1996) Regulating Europe, Routledge, London.

49. Japan's Environmental Protection Policy, Environment Agency, Government of Japan, 1997, p. 7.

50. OECD (1994), p. 104.

51. *Op.cit.* p. 113.

52. *Op.cit.* p. 95.

53 OECD (1997), Paris.

54. This discussion is drawn from "Recent Progress on Environmental Impact Assessment in Japan" (English version), Ministry of Foreign Affairs, 1998.

55. Prof. Junko Nakanishi, Professor of Environment, Yokohama University, quoted in International Environmental Reporter, Vol. 20, No. 13, June 25, 1997.

56. The 15 new and growth fields targeted in Japan's 1996 Action Plan for Economic Structure Reform are: Medical care and welfare; Quality of life and culture; Information and telecommunications; New manufacturing technology; Distribution and logistics; Environment; Business support; Ocean; Biotechnology; Improvement or urban surroundings; Aviation and space; New energy sources and energy conservation; Human resources; Economic globalisation; and Housing.

57. Administrative Management and Reform in Japan (1992), p. 131.

58. OECD (1989), p. 48.

59. The November 1987 agreement "On the Examination and Periodic Review of New and Existing Permissions, Authorizations, Etc." committed the ministries and agencies to vigorously review both new and existing permission/authorisation regulations. This agreement was later adopted by the full Cabinet.

60. Final Recommendation, supra fn 11. This goal was reiterated by the Third PCPAR in its 1992 recommendations.

61. Administrative Management and Reform in Japan (1992), p. 136.

62. Interviews with the OECD Secretariat, February 1992.

63. OECD (1997), p. 38.

64. Jacobs, Scott *et al.* (1997), pp. 220-222.

65. See, for example, telecommunications regulation as discussed in Takigawa, Toshiaki (1998).

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