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Government Regulations in Japan -- Towards Their International Harmonization and Integration --

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Introduction

On April 28, 1989, the United States Trade Representative (USTR) published the "Report on Impediments to Trade" which was to form the basis for determining the future implementation of the "Super 301" clause of the Omnibus Trade and Competitiveness Act. The report pointed amongst other things to 34 separate impediments to trade and investment in Japan in seven principal areas. The seven areas are: 1) import restrictions in areas such as agricultural produce, timber and tobacco; 2) validation of standards for telecommunications equipment, pharmaceutical products and medical equipment; 3) government procurement programs for supercomputers and satellites; 4) length of protection and screening periods in respect of intellectual property rights (patents, trademarks and copyright); 5) restrictive practices in various sectors such as services, constructions, transportation and finance; 6) governmental protection in high tech areas; 7) exclusive corporate trade practices in terms of financing, distribution and sub-contracting. The first five of the above points relate either directly or indirectly to government regulations.

During the subsequent structural impediments talks held in September between Japan and the United States, the American team specified six main areas which needed to be looked at further: (1) saving and investment patterns; (2) land ownership system; (3) pricing mechanisms; (4) distribution system; (5) corporate groupings; (6) exclusive trade practices. Of these, particular mention was made by the American side of the validation of standards for the use of timber along with factors such as access and price regulation in the distribution and financial sectors, all of which are subject to governmental regulation. In essence, the Super 301 clause is directed at regulations, administrative policies and trading practices which unfairly restrict or discriminate against United States businesses and it is thus quite natural that governmental regulation should be one of the main topics for discussion during the course of these Structural Impediments Initiative talks. While a large number of regulatory items are to be covered during these talks, this paper is designed to throw some light on the nature of governmental regulation in

Japan and to provide an academic's view of prospective approaches at the conference.

There is unfortunately no single comprehensive source of information covering the body of regulations instituted by the Japanese government. For this reason, there have been quite a number of misunderstandings and false claims made both in Japan and overseas. It is not, of course, possible in such a short paper to offer an exhaustive review of Japanese government regulations Instead, I shall endeavor to summarize the government's basic approach to regulation, to shed some light on current trends towards deregulation, and to assess from the point of view of an academic what should be the future course of deregulation and administrative reform. Finally, I will offer some comments concerning related problems that are the subject of discussion in the context of the current talks. More specifically, Section 1 outlines the scope of the governmental regulations which form the subject of this paper and at the same time explains the content of each of the principal areas of regulation, the procedures required for the implementation of such regulations, and some of the distinctive features of government regulation in Japan. Section 2 examines the trends towards the relaxation or abolition of regulations against the background of the internationalization of the Japanese economy and technological innovation, and assesses the successes and the problems which have accompanied these moves. Section 3 is devoted to the writer's perception of the most appropriate future course for regulatory reform and the four principal concerns which will determine this course. Finally, Section 4 discusses problems related to governmental regulations which are currently the subject of joint scrutiny by the Japanese and American sides in these discussions.

Before moving on to the central thesis of the current paper I should like first to clarify my basic economic orientation. Points 1) through 7) and (1) through (6) above relate specifically to that portion of the Japanese legal system concerned with Japanese industry or to the organization and practices of Japanese business. If all these points are subsumed under a single global heading then we may call this "the system." The system itself can be broken down into a "formal system," which is enshrined within the law (in other words the codified body of the law, the legislative, judicial and executive organs of the

state, and the implementation of law and formulation of legal policy) and an "informal system," which consists of privately developed forms of organization (business organizations and corporate groupings, subcontracting system and other intermediary systems such as the distribution system) and of traditional practices. All the above points specified by the United States Trade Representative thus fall squarely within the scope of one or other or both of these formal and informal systems. The reason that these Japanese systems have been raised as points of contention in the present talks is that they differ quite fundamentally from their counterparts in the United States and are furthermore perceived to be "unreasonable" in that they seek to protect Japanese business from the full force of international competition and to inhibit the access of overseas business interests to Japanese markets. There is, of course, ample scope for further deliberation as to the accuracy of such perceptions, but I think we may certainly agree on one point – that the deepening international interdependence in the economic sphere today is intensifying needs for an international harmonization and integration, at least as regards "systems of economic activities (and specifically rules of conduct)."

To a great extent, national systems are shaped by the ethnic, linguistic, religious, cultural and climatic characteristics of the country in question. They also reflect a country's level of economic development and the nature of its political and economic institutions. For these reasons, it would obviously be impossible to achieve a total harmonization or systematic integration between countries. This point is of critical importance and is certainly deserving of repetition. Surely it is to the world's advantage to preserve these differences among nations and cultures as far as possible. However, the growth of the multinational dimension of industry worldwide and the rapid increase in the amount of transborder business activity has made the formulation at governmental level of a mutually agreed international code of business conduct unavoidable if we are to promote the further harmonization and integration of the international economic system. Of particular importance in this respect is the integration and harmonization of international rules (notably antitrust laws and government regulations) governing the activities of businesses. Japan has an increasingly important role to play in the international economic community and it is therefore up to us to take the initiative in first reviewing

our domestic systems in order to create an environment within which businesses will enjoy fair and equal opportunities to compete regardless of national origin. It is equally up to governments across the world to ensure that their domestic economic systems conform with established international norms as far as possible. Thus the first major pillar of my economic philosophy is the requirement for reciprocal guarantees of equal opportunity in (i.e. equal access to) each others' domestic markets.

However, as I mentioned earlier it not going to be possible simply to wave a magic wand to integrate and harmonize individual national systems. It is, in fact, difficult to prevent the formation of at least some barriers to trade and direct investment. In creating a free and fair system of trade and direct investment certain linguistic and cultural barriers are inevitable and must as such be permitted to exist within "reasonable bounds." Where on the other hand a country has deliberately erected barriers in terms of "absolute costs" in order to limit access to its markets by overseas corporations, then the principal requirement is to obtain a modification of the offending system along with a dismantling of the barriers via a ruling, on the basis of furnished "evidence," by an international organ such as GATT. Furthermore, even though systemic changes may ostensibly affect only two specific countries, it is nevertheless the case that international trade is not a two-way street and national systems must in principle always be modified to reflect the complex weave of business relationships existing between a multitude of different countries. For example, right of trademark is based on a pragmatic, de facto approach in the United States, whereas the Japanese and European systems generally prefer to award precedence to prior claims. If Japan were, for example, to revise its right of trademark system in order to bring it into line with the American system, this would still leave the Europe system intact and undoubtedly make international coordination in this area even more difficult to achieve. It is thus obvious that where the United States invokes Super 301/304 in order to persuade a particular country to revise some part of its system, this request must be premised on the clear understanding that the issue cannot be treated simply as a bilateral affair. This is the second pillar on which may argument rests.

The third pillar consists in the recognition that the system of any nation may include elements which are generally recognized to be outstandingly

effective in economic terms (for example, the Japanese subcontracting and distribution systems). If such a system is found to be an impediment to international trade and direct investment, every effort must, of course, be made to modify it in such a way as to provide adequate access to all comers. This, however, is very different from demanding the complete dismantling of any system which is found to form a barrier to outside access. This is a destructive argument and should be replaced by considerations of how such a system could be transplanted onto foreign soil to help stimulate the development of recipient economic systems.

The fourth pillar on which my argument is founded is the need to recognize that, while the restoration of balanced Japanese and American trading patterns is the goal of the current Structural Impediments Initiative talks, the vast American trade deficit is quite firmly rooted in the inability of the United States to cover its investment requirements and government expenditures out of savings and tax revenues. These are macro-economic factors and no amount of juggling with micro-economic factors such as the Japanese government's regulatory framework can ultimately provide a cure for such problems (for an elaboration of this theme please refer to the Komiya paper also presented to this conference). While no effort must be spared in bringing the Japanese domestic system into line with agreed international standards (in particular the economic code of conduct), even if this effort proves completely successful, it will, in my opinion, still not go very far towards rectifying the current imbalances on our trading accounts.

Section 1: Outline of government regulatory framework

(1) The scope of government regulations

In an economy whose strength derives primarily from private business formation the roles of government economic policy are many and varied. On the macroscopic level these are: (1) fiscal and financial policies capable of fostering economic growth and stability; (2) system of taxation, government expenditures and property rights sufficient to ensure an equitable distribution of the national cake; (3) public works policies designed to provide a framework within which to secure the formation and growth of indirect social capital; (4) trade, direct investment and foreign exchange policies sufficient to guarantee the continuance of the international trading system. On the microscopic level they are: (5) antitrust policies which form the basis of the market economic system; (6) direct regulation policies designed specifically to secure the efficient allocation of resources in mainly the natural monopoly sector, the provision of adequate antipollution measures and the health and safety of the nation as a whole; (7) an industrial policy designed to nurture and support specific industries, to adjust and assist those in decline and to promote the upgrading of the industrial structure as a whole; (8) a scientific and technological policy designed to encourage the growth of scientific and technical skills and to protect intellectual property rights; (9) a resource policy which will help develop, secure and conserve natural resources; (10) a labor policy which will protect the individual rights of workers and at the same time provide the means of developing and educating the labor force; (11) a policy for the provision of public goods to supplement the natural supply of the market economy where this is found wanting.

In so far as the provisions outlined in points (1) to (11) above are all designed to correct in some way market failure taken in its broadest sense and to the extent that they all involve government intervention in the economy in some form or other, they may all be deemed to fall within the general definition of government regulation. Normally, however, the term government regulation is understood in academic circles to refer only to those specific types

of direct regulation covered by point (6) above. I therefore intend to restrict myself in this paper to areas of direct government regulation as so defined.

Direct regulation normally aims to control business activity by exerting direct influence over business planning through a complex of permit and licensing arrangements. This approach is "a priori" in the sense that it is intended to control corporate activity by operating at the decision-making stage, unlike antitrust measures, which operate on "a posteriori" basis, i.e., when decisions already taken are found to be in violation of law.

Direct regulation can be broadly divided in terms of its objectives into two distinct types: "economic regulation" and "social regulation." Economic regulation can in turn be broken down into those regulations designed to deal with natural monopolies and those designed to deal with areas of economic activity which are prey to destructive competition. A prime target for the regulator has always been those areas of goods and services characterized by their indispensability within the system. Regulations have been designed to control entry into and exit from the industry in question, pricing, the quality of services provided, mergers, investment and financing, in order ultimately to ensure an efficient allocation of resources and an equitable distribution of income. Social regulation, on the other hand, has always been intended to guarantee the safety of the life and property of the population, to protect the environment and to prevent disasters of various kinds. It not only functions to prohibit certain specified actions and to circumscribe commercial activity in general but also provides the basis for the establishment of innumerable systems of inspection, standard validation, certification and screening. The actual regulations have frequently been designed to deal with more than one objective, and are often difficult to classify as exclusively economic or social in intent. The determination of the precise boundaries of economic and social regulation is in itself fraught with problems. For example, direct regulation (licensing) is often used as a means of industrial and resource policy, and income distribution policy on the macroscopic level frequently takes the form of direct regulatory activity particularly in the agricultural sector. With these points in mind we can now turn to the more specific areas covered by Japanese government regulation.

(2) Economic regulation

Economic regulation is designed to afford the government direct control over the decision-making process in specified sectors of industry. The body of statute law enacted to achieve this purpose is known as "business law." Table 1 lists those industries which are governed by economic regulations in one form or another, specifying the name of the relevant law along with details of areas covered, particular methods of entry and price regulation, and finally the name of the competent regulatory body. While economic regulations have, of course, a wide variety of objectives as they relate to a specific industry, the industries at which they are targeted can themselves be broadly classified as follows.

Table 1. Outline of Economic Regulation (at the end of 1989)

Industry		Regulatory Area		Regulatory Law	Regulator
		Entry	Price		
Public Utilities	Electricity	P	A	Electricity Industry Law[a]	Agency of Natural Resources and Energy (ANRE)
	Gas	P	A	Gas Industry Law[a]	ANRE
	Steam	P	A	Heat Supply Industry Law[a]	ANRE
	Water	P	P	Water Supply Law[a]	Local Government
Communications	Postal services	Mono	LS	Postal Services Law[a]	National Diet
	Telecommunications (Common Carriers)	P	A	Telecommunications Industry Law	Min. of Posts and Telecommunications (MPT)
	Broadcasting	L	LS(NHK)	Radio Wave Law, and Broadcasting Industry Law	MPT
	Cable broadcasting	N	A	Cable Broadcasting Law	MPT
Transportation	Rail	L	A	Railways Industry Law[a]	Min. of Transport (MOT)
	Air	L	A	Air Transport Law[b]	MOT
	Marine	L	A	Water Transport Law[b]	MOT
	Road	L/P	A/N	Road Freight Transport Law[b]	MOT
	Freight forwarding	P	A	Freight Forwarding Law	MOT
	Warehousing	P	N	Warehousing Law[b]	MOT
Finance and Insurance	Banking	L	G	Bank Law, Temporary Money Rates Adjustment Law	Min. of Finance (MOF)
	Securities	L	G	Securities Industry Law	MOF
	Life insurance	L	G	Insurance Industry Law[b]	MOF
	Non-life insurance	L	G	Insurance Industry Law[b], and Damage Insurance Rate Association Law[b]	MOF

Table 1. Outline of Economic Regulation (at the end of 1989)

Industry		Regulatory Area		Regulatory Law	Regulator
		Entry	Price		
Manufacturing	Ship building	N		Shipbuilding Industry Law	MOT
	Oil refining	P		Petroleum Industry Law	Min. of International Trade and Industry (MITI)
	Tobacco manufacturing	M		Tobacco Industry Law	MOF
Wholesaling and Retailing	Large-scale retailing	N		Large-Scale Retail Store Law	MITI
	Rice wholesaling & retailing	P		Grain Food Control Law	Min. of Agriculture and Forestry (MAF)
	Beverage retailing	P		Liquor Tax Law	MOF
	Tobacco retailing	R	P	Tobacco Industry Law	MOF
	Gasoline retailing	R		Gasoline Sales Law	MITI

Notes: The meaning of the alphabetic notation in the "Entry" column is as follows: P = permission, L = licensing, R = registration, N = notification and M = legal monopoly. The meaning of that in the "Price" column is as follows: A = authorization, N = notification, G = guidance and LS = legal sanction by the National Diet. The legal sanction of price in the broadcasting industry is applied to only NHK (Japan Broadcasting Company).
In the "Regulatory Law" column, the 'a' superscript indicates general exemption from the operation of the Antitrust Law in accordance with clause 21 of the Antitrust Law, and the 'b' superscript indicates exemption from the operation of cartel regulations in accordance with statutes providing for exemption from the operation of the Antitrust Law.

Sources: The Provisional Council for the Promotion of Administration Reform, "Deregulation" (Tokyo: Gyousei, 1988), pp. 128-134: the Compendium of Laws published annually by each Ministry; and Fair Trade Commission, Annual Report--1988.

(A) Public utilities (electricity, gas, water and heat), postal services, telecommunications (particularly urban telephone networks), broadcasting and railways: Each of these industries has in large measure the characteristics of a natural monopoly in terms of the economies of scale which are available at the

production stage, the economical efficiency of their distribution networks, the scale of the sunk costs of both production and/or distribution and their utilization of scarce resources. Governmental regulations at once sanction such supply side monopolies (or highly concentrated oligopolies), be they at national level or local level, but at the same time attempt to circumscribe the ways in which they use their power to dominate their respective markets.

(B) Transportation except where covered in section (A) above and finance (banking, securities business and insurance): Regulation is designed to prevent the sort of disadvantage to the consumer which results from the uneven distribution of information and cut-throat competition between businesses.

(C) Distribution and marketing (regulation specifically connected with the Large-Scale Retail Store Law plus the rest of the wholesale and retail distribution industry): Regulation is designed to protect small- and medium-sized retailers in view of the power of the large-scale retailers and at the same time to reduce the incidence of excessive competition among the small- and medium-sized retailers themselves.

(D) Shipbuilding and oil refining: Regulations are designed primarily to promote a comprehensive restructuring within these industries.

(E) Tobacco manufacturing and sales: Regulations are designed primarily to ensure an adequate level of tax collection.

The industries covered in (A) and (B) above are subject to governmental regulation in all advanced industrialized countries (with the exception of the American aviation industry) and are fundamentally suited to such forms of direct control. The industries listed under (C) through (E) above are, on the other hand, not perfectly suited to such direct regulation. Those in (C) and (D) are included for the purpose of industrial policy-making and that in (E) is brought in to supplement the government's financial policy. For this reason, some countries (specifically, some countries of Europe and Japan) count the industries covered in (C) through (E) above as legitimate targets for economic regulation, while others (notably the United States) do not. The specific methods and targets of regulation also vary from country to country[1].

If we confine our observations to the specific target areas of market entry and pricing we find that Japanese government regulations apply in both these areas in respect of public utilities, communications and transportation. The methods by which regulation is achieved include, in the case of market entry, specific permission, licensing, registration and notification (regulatory procedures becoming less onerous and the regulations themselves less prohibitive in the same order as they have been listed here) and, in the case of pricing, authorization, permission and notification. Regulation of both market entry and pricing also exists in the financial field[2]. In the banking industry, for example, the banks are theoretically at liberty to set their own interest rates on loans but are in practice regulated via Bank of Japan circulars and notifications from the Ministry of Finance (administrative guidance) which derive their authority from a special law called the Temporary Interest Rate Adjustment Law. (The specific role of administrative guidance in the Japanese regulatory structure will be discussed in more detail later.) In the case of the manufacturing and distribution industries (with the exception of the tobacco industry), regulation relates principally to market entry and has little to say on the subject of pricing[3].

In Japan these various regulated industries are by and large privately owned, but many contain public enterprises as well. The public enterprises are of three broad types: (1) governmental undertakings which form part of the central or local government; (2) public corporations which are wholly owned by the public via the government; (3) mixed enterprises taking the form of limited companies. Postal services and water supply basically fall within the domain of governmental undertakings. Public enterprises of the other types are found to some degree in the fields of public utilities, communications (particularly telecommunications and broadcasting), transportation (particularly rail), finance (particularly banking) and the tobacco manufacturing industry. These public enterprises are subject not only to economic regulation as outlined above but also to regulation in respect of, for example, personnel, work routines and financial and accounting matters. The principal regulatory bodies for public enterprises are the National Diet in the case of governmental undertakings and public corporations and the appropriate government department in the case of mixed enterprises[4].

There are a number of industries which do not appear in Table 1 but which are nonetheless subject to price control, the most notable of these being the agricultural industry. Agricultural products are the subject of governmental regulation in many countries in order to ensure self-sufficiency in foodstuffs and to protect the farming community. Such regulation takes the form of specific government purchasing policies, price support schemes and price stabilization mechanisms. In Japan government purchasing and selling prices for such crops as rice and wheat are determined by the Diet on the basis of the Staple Food Control Law. Similarly, livestock products such as beef, pork and poultry are subject to price support and deficiency payment schemes while carbohydrate foods such as sugar, sweet potatoes and Irish potatoes benefit from the existence of price stabilization mechanisms. The objectives of these particular systems are not the economic objectives of efficient resource allocation which predominate in the case of, for example, the natural monopolies nor are they of an "a priori" nature. However, since they all involve price regulation in one form or another, they must be included as being similar in nature to purely economic regulations.

However, in political terms, economic regulation can substitute for antimonopoly policy. For this reason, in various countries, most industries subject to economic regulation are exempted from the application of antimonopoly law(5). In Japan too most of the industries which are subject to economic regulation as per Table 1 are exempted from the application of the Antimonopoly Law. The superscript 'a' which has been added to a number of the entries in the Regulatory Law column of Table 1 indicates that the law in question covers an industry which is exempt from the general application of the Antimonopoly Law by virtue of Clause 21 of the Antimonopoly Law itself. Superscript 'b' indicates a law relating to an industry which benefits from the exemption of a specified activity (normally the formation of cartels) from the effects of the Antimonopoly Law by virtue of the application of a special Antimonopoly Law Exception Law. Laws designated with an 'a' are specifically designed for the regulation of areas of natural monopoly. Laws designated with a 'b' are targeted at industries which are deemed to require regulation despite an ostensibly competitive market structure. There are, however, some industries with fully competitive structures which nevertheless fall within the

ambit of the Antimonopoly Law due to the inherent vagueness of the exemption criteria themselves (this point will be discussed in more detail later).

(3) Social regulation

There is no specific discipline in Japan which takes as its objective the study of systems of social regulation and I will therefore keep my observations in this area as brief as possible. According to figures published by the General Affairs Agency, the statute books at the end of 1988 contained some 453 laws reserving to the government the right to issue permits or other forms of authorization. Of these, 220 (49%) related specifically to economic regulation, 173 (38%) related to social regulation and 60 (13%) could not easily be categorized[6]. The laws falling into the social category can be divided by objective into the following sub-categories:

(a) Occupational safety and health (the Labor Standard Law, the Labor Safety Law, etc.)
(b) Consumer protection (basic consumer protection laws, consumer product safety laws, etc.)
(c) Public health and hygiene (The Drug, Cosmetics and Medical Instruments Act, medical treatment laws, The Food Sanitation Act, The Infections Diseases Prevention Act, etc.)
(d) Narcotic control (The Narcotic Control Act, The Hemp Control Act, The Opium Control Act, etc.)
(e) Environmental protection (The Natural Environment Conservation Act, national park laws, mining laws, etc.)
(f) Pollution prevention (The Air Pollution Control Act, The Water Pollution Prevention Act, noise prevention laws, mining laws, etc.)
(g) Public safety (nuclear fuel and reactor laws, high pressure gas control laws, construction industry laws, etc.)
(h) Disaster prevention (coastal laws, The River Act, The Fire Services Act, mining laws, etc.)
(i) Protection of cultural assets (The Cultural Properties Protection Act)

It is clear from the above list that social regulation has a wide variety of different objectives, more than one of which may be targeted within a given

law. In order to achieve these objectives social regulation not only prohibits certain actions and circumscribes business activity in general but also supplements these rules with a range of requirements for specific qualifications to be obtained, inspections to be carried out and authorized standards to be met. There are, for example, a whole series of medical treatment laws which require amongst other things that practitioners obtain the qualifications appropriate to their particular area of competence. Inspection systems are designed to ensure the maintenance of adequate safety levels by requiring that equipment inspections, for example, are carried out at regular intervals. Authorized standard systems are similarly designed to ensure adequate product quality by requiring that specified standards be met in terms of the quality of the products themselves and also the ways in which they are utilized.

It is clear from the above outline of its objectives, social regulation in the broad sense is aimed at promoting the public welfare, but it must not be overlooked that, like economic regulation, it is in nature a form of entry regulation. As in the case of economic regulation, the laws relating to construction, mining and medicine, for example, provide the government with the right to control entry to these fields, and the qualification system itself also functions as a means of regulating access. The inspection and authorized standard systems withhold the right to engage in business from those companies which do not meet the requirements. As such they too function as market access regulators to a certain degree. However, the degree to which social regulations restrict access varies in accordance with the actual content of the numerous regulations and with the ways in which they are actually applied. It would therefore be a mistake to think that such regulations uniformly represent insurmountable barriers to access.

(4) Regulated industrial sector weightings

The above considerations show that not only economic regulation but also social regulation undoubtedly constitutes an impediment of sorts to access to particular industries, although the level of impediment varies considerably from industry to industry. But what proportion of Japanese industry as a whole is in fact subject to the types of entry requirements imposed by this combination of economic and social regulation? The figures in Table 2 are drawn from a

study carried out by the Economic Planning Agency and represent the composition ratios of various industries within Japanese industry as a whole plus the weighting of those sectors of each industry which are subject via statutory economic and social regulation to both entry and price control or at least to some form of restricted entry requirement. Clearly, in 1985 close to 34% of the value-added element of Japanese industry as a whole was subject to some form of government regulation. Unfortunately a lack of suitable materials prevents me from making appropriate international comparisons and it is not therefore possible to evaluate the size of the Japanese figure in a global context.

Table 2. Regulated Industry Weightings (1985)

Industry	Value-added (VA) as a percentage of total VA in all industries (A)	VA for regulated industries as a percentage of total VA in all industries (B)	(B/A) * 100
Agriculture	3.0	2.3	78.0
Mining	0.4	0.4	100.0
Construction	6.8	6.8	100.0
Manufacturing	29.4	3.9	13.2
Wholesaling and Retailing	12.5	-	-
Finance and Insurance	5.2	5.2	100.0
Real Estate	10.0	0.3	3.2
Transportation & Communications	6.1	5.9	96.3
Public Utilities	3.0	3.0	100.0
Services	19.7	5.9	29.8
Government and Miscellaneous	4.0	0.0	0.0
Total	100.0	33.6	33.6

Note: "Regulated industries" refers to those industries which are subject to economic regulation and to entry-related social regulation.

Sources: The same as for Figure 1, p. 137

(5) Effects of government regulations in restricting access of overseas corporations to Japanese markets

The above figures indicate quite clearly that a not inconsiderable proportion of Japanese industry is subject to government regulation. However, it would be quite improper on the basis of these figures alone to jump to the conclusion that Japanese markets are closed. In other words, it is not possible to make this particular inference simply from the fact that governmental regulation exists in certain areas. On the contrary, the inference that a Japanese market is closed may be drawn if and only if government regulation constitutes an absolute barrier to access of overseas corporations to that market. Let us look a little more closely at this point. There are two main ways in which a foreign concern may gain access to the Japanese market: (i) the foreign concern (or its Japanese agent) exports its product to Japan; (ii) the foreign concern gains entry by investing directly in the Japanese market.

There are two main areas which are subject to government regulation, namely tradable goods and non-tradable goods. In case (i) above we need only concern ourselves with tradable goods and can safely ignore the non-tradable kind (public utilities, real estate and a large part of the construction sector). With respect to tradable goods there are a number of ways in which imports can in practice be restricted. These include the restriction of import volumes, the imposition of quotas or high import tariff rates and the establishment of tight controls over entry to the import industry itself. However, as is evident from Table 3, with the single exception of the volume restrictions and import quotas which have been implemented in the agricultural sector, these types of import regulations do not exist. The various requirements placed on importers to obtain permits or to register with the authorities or to submit the appropriate notifications in respect of imports of refined oil, medical products and tobacco sales are certainly not open to interpretation as import restrictions. As for the type of market access referred to in case (ii) above, there are regulations controlling entry to the Japanese market by means of direct investment only in the telecommunications and financial sectors (see Table 3). Foreign companies have, however, already broken into both these markets and clearly therefore the regulations which do exist cannot be said to constitute an insuperable barrier to access. If any, the areas in which a substantial amount of entry

regulation exists are the legal monopolies of the postal services and tobacco manufacturing industries. The comparative lack of governmental restrictions on imports and direct inward investment into Japan is due primarily to the success of the Kennedy and Tokyo rounds of talks on the lowering and abolition of various tariff and non-tariff barriers and of the talks which have focused on areas of trade friction between Japan and the United States.

Table 3. Regulation of Imports and Entry of Foreign Companies into Japanese Market

Industry		Regulatory laws	Import Regulation	Regulation of Entry of Foreign Companies etc.
Communi-cations	Telecom-munica-tions (Common carriers)	Telecommunications Industry Law		If foreigners account for more than 1/3 of directors, entry is not be permitted.
Finance and Insurance	Banks	Bank Law		Each bank branch must be licensed. Each residence office must file a notification. Each branch must be licensed.
	Securities	Securities and Exchange Law, Law on Foreign Securities Brokers and Dealers		
	Insurance	Law on a Foreign Insurance Company		Each company must register.
Manufac-turing	Oil refining	Petroleum Industry Law, Temporary Law for Specified Oil Products Import	Notification of import business Registration of import business Permit for import business	
	Drugs and medical equip-ment	Pharmaceutical Law		
Wholesal-ing and Retailing	Tobacco	Tobacco Enterprise Law	Registration of import business	
Agricul-ture	Rice & other grain	Staple Food Control Law	Permit for import business	
	Silk yarn	Silk Yarn Industry Law	Import restriction	
	Grain, dairy products, oranges, and so on	Law to Control Foreign Exchange and International Trade	Import restriction (22 commodities)	

(Source) The same as for Table 1.

The conclusion to be drawn from the above is that, on the whole, Japan's regulated industries cannot be regarded as particularly closed to access by foreign concerns. On the other hand it is undeniable that there are still many areas subject to numerous regulations and complicated regulatory procedures, which in effect act to bar access. This has been duly criticized along with the lack of transparency inherent in the system of administrative guidance, which is probably peculiar to Japan. Here too, however, some improvement has already been seen as a side effect of deregulation. For that reason I shall now say a few words on the subject of deregulation itself.

Section 2: Deregulation

(1) Background of deregulation

As is well known, the late 1970s saw the implementation of a bold program of industrial deregulation in the United States which has had far-reaching effects in many other countries such as the United Kingdom and Japan. In the 1980s Japan too began implementing its own program of deregulation, which has made steady progress to date. There are a number of common factors which go some way towards explaining the attraction of deregulation in both Japan and the United States.

First, the occurrence of two oil crises during the seventies braked the growth of the Japanese economy and triggered an expanding budget deficit which in turn generated a desire to "reduce the weight of government." To this end the government was obliged not only to reduce the size of the government machine, which was weighed down by a huge burden of financial subsidies and administrative costs, but also to reactivate and streamline those areas of business and industry which had become sluggish and inefficient under the weight of governmental regulation.

Second, the seventies also saw what was effectively a technological revolution centered principally around information technology and other "high-tech" areas which in turn created basic technological conditions conducive to the entry of new players into what had traditionally been areas of natural monopoly or oligopoly. The economic foundations on which these monopolistic market structures rested within the government's supporting regulatory framework were starting to crumble (particularly in the field of telecommunications). The net effect of these developments was a rapidly growing need for the easing or abolition of governmental regulations which could prove detrimental to the formation and development of the new industrial structure (an industrial structure where the information and service sectors carried a substantially increased weighting) and the new form of industrial organization (based on networks and new business sectors).

Third, from the 1970s onwards Japan had been strengthening its links with the rest of the international community in a variety of different areas

including personnel, goods, finance and information and it had become imperative to relax regulations if further progress in this direction was not to be stifled.

Fourth, while the government had through regulation made a substantial contribution towards ensuring the efficient and equitable allocation of resources, it had at the same time generated substantial "regulatory failures" in that it had created fertile conditions for the growth of corporate structures riddled with inefficiencies, the burgeoning of regulation-related costs, the incidence of business losses due to delays resulting from over-regulation, the stifling of innovative activity, the slowing of diversification of the service sector and of pricing structures and delays in the reduction of prices.

In order to tackle these problems the government set up a series of advisory bodies reporting directly to the Prime Minister which included the Provisional Commission for Administrative Reform (or *Rincho*) (1981-83), the Provisional Council for the Promotion of Administrative Reform (commonly known as the Old *Gyokakushin*, 1983-86) and the Provisional Council for the Promotion of Administrative Reform (commonly known as the New *Gyokakushin*, 1987-90). These bodies were charged with reforming the administration and at the same time with easing the burden of governmental regulation. The *Rincho* took as its primary objective the reduction of the scale of government finance. To this end, it promoted the rationalization of the governmental machine through a program of organizational consolidation, the reform of the pension system, and the privatization of a certain publicly owned enterprises to run parallel with the process of deregulation. I shall confine my subsequent observations to the privatization of publicly owned enterprises and deregulation. Some 16 public enterprises were privatized in all including three public corporations (Japan National Railways, Nippon Telegraph and Telephone and the Japan Tobacco and Salt Public Corporation) and Japan Air Lines, which had previously been partly in the private sector and partly in the public sector[7]. The Commission also proposed the injection of the element of competition into the telecommunications sector as the counterpart to the privatization of NTT along with a series of measures for the deregulation of banking, non-life insurance, freight traffic, petroleum, liquor sales and silk production. Unfortunately, however, the *Rincho* devoted its best efforts to

privatization and made very little progress in the area of deregulation with the exception of the telecommunications sector.

The Old *Gyokakushin*, faced as it was with an ever increasing intensification of trade friction with the United States and the EC, adopted as its central theme the improvement of access to the domestic market. To this end, it proposed the lowering of various import tariffs and the removal or relaxation of non-tariff barriers. In addition it also proposed 254 specific deregulation measures directed first and foremost at standard and authorization requirements in the area of social regulation and at the financial markets in the area of economic regulation. After the general thrust of these proposals was accepted by the government, the Cabinet Secretariat in Charge of Special Order Issues established an advisory committee on external economic problems, thereby initiating what was later to be dubbed the "Action Program." The Program itself covered 6 main areas: (1) import tariff reduction and abolition (1,853 items); (2) reduction in number of items subject to specific import restrictions; (3) procedural improvements in the area of standards and authorizations and in the processing of imports (254 items); (4) the opening of government procurement programs to overseas concerns (particularly aircraft and telecommunications); (5) liberalization of financial markets; (6) promotion of the import of services such as legal services. In 1982 the government also set up the OTO (Office of Trade and Investment Ombudsman) to act as a forum for the airing and settlement of grievances by foreign corporations experiencing difficulties in gaining access to the Japanese market[8]. During the period February, 1982 to July, 1989 some 372 such grievances had been settled through the OTO which has thus played an important part in improving access to Japanese markets.

The Old *Gyokakushin*, acting independently of the advisory committee, made its own recommendations for deregulation of the financial sector (banking, securities and insurance), the transportation sector (trucks, buses and taxis, air and marine transportation) and the energy sector (oil, electricity and gas). Notable progress has been made in the financial, aviation and oil industries.

The New *Gyokakushin* took as its primary objective the relaxation of a wide range of governmental regulations in both the economic and social spheres, and established the "Subcommittee on Governmental Regulation" to advise on the most appropriate form which this kind of regulation should take. The subcommittee made a number of recommendations for deregulation in the economic sphere:

(1) Wholesale and retail marketing (large-scale retail stores, liquor sales, salt monopoly, sales of medical and pharmaceutical products, etc.)
(2) Distribution (trucks, freight handling, marine transportation, harbor transportation, warehousing, etc.)
(3) Information and communications (telecommunications, broadcasting)
(4) Finance (banking, securities, insurance)
(5) Energy (oil, electricity, gas, LPG sales)
(6) Agricultural produce (agriculture, agricultural equipment)
(7) New businesses (finance, vehicle leasing, manpower, package delivery, films, etc.)

After due consideration had been given to the various proposals presented by the *Rincho*, Old *Gyokakushin* and New *Gyokakushin*, the government identified the areas of prime concern and has since been steadily putting the relevant proposals into effect. Currently, with the exception of some of the medium-to-long term recommendations, the government has taken steps in almost every case whether it be to revise the law itself or alternatively to effect changes by means of departmental and ministerial ordinances, circulars or other forms of notification. A summarized version of the proposals of the *Rincho*, Old *Gyokakushin* and New *Gyokakushin* along with the corresponding regulatory modifications and principal legal revisions is presented in Table 4. Clearly a large number of different industries have benefited in some way from the implementation of deregulatory measures. Since space would not permit a detailed resume of all the regulatory changes which have been made to date here, I have selected three main areas for closer attention. These are telecommunications, finance (particularly banking) and transportation (air, trucks)[9].

Table 4. Outline of Deregulation in Japan

Industry	Revision proposed by:			Revised Law	Deregulation		
	R.	Old G.	New G.		Entry	Price	Others
Communications							
Telecomm. common carriers	○		○	1985 Telecommunications Industry Law	◎	◎	Privatization of NTT
Broadcasting			○		○		Increased utilization of radio frequencies
Transportation							
Trucking	○	○	○	1989 Freight Carrier Transport Law	◎	◎	Extensive revision of regional service areas
Chartered buses		○			◎	◎	Relaxation of rate and service regulations for routed buses
Taxi cabs		○			○		Revision of regional service areas
Airlines		○	○	1986 Final Report of Air Transport Policy Council	◎	○	Complete privatization of JAL
Water transp.		○	○		○	○	Relaxation of merger regulation
Freight forwarding			○	1989 Freight Forwarding Industry Law	◎	◎	
Harbor trans.			○			○	
Warehousing			○			○	
Finance & Insurance							
Banking	○	○	○	1981 Revised Bank Law		○	Relaxation of regulations concerning business scope, branch openings and business hours
Securities		○	○		○		Relaxation of regulations concerning scope and branch openings
Life insurance	○		○		○	○	Relaxation of regulations concerning business scope and portofolio selection
Non-life insurance		○	○		○	○	Relaxation of regulations concerning business scope and portfolio selection

Industry	Revision proposed by:			Revised Law	Deregulation		
	R.	Old G.	New G.		Entry	Price	Others
Energy							
Oil refining	○	○	○				Relaxation of regulation concerning facilities, production and imports
Gasoline retailing		○	○		○		Relaxation of regulations concerning facilities
Electricity and gas		○	○				Promotion of peak load pricing and other rate reduction
Wholesaling & retail							
Large scale retailing			○		○		Relaxation of regulations concerning facilities and business hours
Alcohol retail	○		○		○		
Tobacco retail	○			1985 Tobacco Industry Law	◎		Privatization of NMC
Agriculture							
Rice and other grains			○		○		Relaxation of price and production control by Food Control Law; simplification of the rice inspection system; relaxation of regulations concerning business territory, enlargement of the quota of semi-rationed rice; relaxation of regulations concerning import of specified agricultural products
Agri. equipment supply			○	1989 Law to Abolish the Temporary Law to Stabilize Fertilizer Prices	◎	◎	
Others							
Silk yarn	○				○		Abolition of facility regulations; privatization of the public inspection system
New Business			○	1989 Temporary Specified Law for New businesses			Promotion of new businesses

Notes: Second column: R = Deregulation measures proposed by *Rincho*, Old G. = proposed by old *Gyokakushin*, New G. = proposed by new *Gyokakushin*.
Deregulation column: ◎ = A significant deregulation with revision of the relevant law, ○ = relaxation of enforcement of the law.

Sources: The Secretariat of the Provisional Commission for the Administrative Reform and the Provisional Council for the Promotion of Administration Reform (1987); The Provisional Council for the Promotion of Administrative Reform (1988); and Fair Trade Commission (1989)

(2) Nature of deregulation

Deregulation of the telecommunications industry

Prior to the enactment of the Telecommunications Industry Law in 1985 the Japanese telecommunications industry was divided between two monopolies, with Nippon Telegraph and Telephone (NTT) (a public corporation) controlling domestic business and KDD (a private concern) controlling international business. The rapid expansion in the use of computer-based data processing services in the 1960s gave rise to calls for the establishment of VAN services by the main market players. In response, the government took steps in 1971 and again in 1982 to provide a measure of access for such companies to the public telephone and telegraph networks. Full-scale deregulation in this sector, however, did not take place until the incorporation into statute of the Telecommunications Industry Law in December, 1984. The principal effect of this law was to divide telecommunications service companies into three main classes: Primary Operators, Special Secondary Operators and General Secondary Operators. The deregulations in respect of each of these separate classes were then modified to suit the class concerned. New entry in the class of Primary Operators (businesses like NTT which utilize their own telecommunications network for the supply of telecommunications services) is now possible subject to the issue of a permit which is awarded only after taking full account of such factors as ability to handle that type of business and the overall supply and demand situation. A system of authorization has been instituted for the purpose of validating all proposed charge schedules. New entrants in the class of Special Secondary Operator (businesses which do not possess their own telecommunications network but instead lease the facility from a Primary Operator in order to provide nationwide communication processing services such as VAN services) are obliged to register with the competent authority but charge schedules need only be notified in advance. New entrants in the class of General Secondary Operators (suppliers of VAN services to small- and medium-sized companies) are not subject to regulation in respect of their operations or charge structure. Sales of terminal equipment has also been freed completely from regulatory controls.

The effect of this deregulation has been the emergence since June, 1989 of some 42 new common carriers (NCC) (including two in the sector of international communications) in the class of Primary Operators, 25 companies in the class of Special Secondary Operators and 668 companies in the class of General Secondary Operators. There has thus been a dramatic shift from a monopolistic to a competitive structure in both the domestic and the international communications market. Foreign concerns have also gained entry to both the domestic carphone market and the international telecommunications market through the formation of joint ventures with Japanese companies.

Deregulation of the bank sector

Regulation in the bank sector can be broadly divided into regulation relating to the content and prosecution of banking business and regulation relating to interest rates. The former is effected via (industry) laws such as the Banking Law, Long-Term Credit Bank Law, Foreign Exchange Bank Law, Mutual Loan and Savings Bank Law and Credit Association Law. The latter is effected via Ministry of Finance Notifications based on the Temporary Money Rates Adjustment Law, which is designed to control the whole range of interest rate levels. The principal industry law is the Banking Law since it governs mutatis mutandis the application of all the other industry laws. Its central provisions encompass entry regulation (license), withdrawal regulation (authorization), branch regulation (authorization), mergers and transfers (authorization), business content, business hours and holidays (limited), advertising (duty) and capital increase (notification).

The 1981 Banking Law was the first major overhaul of the law relating to the banking industry in more than half a century. It grew out of the developments which had overtaken the industry in the latter half of the seventies in the form of the rapid diversification of banking business, the growth of the Japanese government bond market and the increasing internationalization of the financial field as a whole. The law itself provided for deregulation in a number of specific areas:

1) the expansion of the content of banking business as a whole was one of the new law's principal themes. Under the old law the main business of banking was defined as the acceptance of deposits and the provision of loan and foreign exchange facilities. No express provision was made with respect to peripheral business activities. The new law on the other hand provided specifically for 10 different peripheral activities thereby indicating clear acceptance of the diversification of banking business; 2) it approved the involvement of the bank sector in securities business (specifically the handling of public issues of corporate bonds and dealing in the said bonds); 3) a new section was introduced in order to bring the law into line with the requirements of financial internationalization by catering for the presence in Japan of foreign bank branches and companies incorporated overseas. This effectively paved the way for the entry of foreign banks into the Japanese market; 4) abolition of the authorization system for changes in trust capital; 5) shift from a system of authorization for capital increases to one of prior notification; 6) shift to a system of prior notification for the establishment of a representative office; 7) relaxation of regulation relating to branch offices and the installation of CD (cash dispenser) facilities.

Not only was the law itself changed in many respects but the whole business of banking was made much freer and more flexible than it had been before. This was particularly true in the case of point 7) above.

Further deregulation followed in response to the reports submitted by the *Rincho* and *Gyokakushin* and to renewed demands from abroad for additional domestic market-opening measures. Specific measures in respect of interest rates, for example, included the introduction in 1979 of free interest rate CDs (negotiable certificates of deposit), the introduction in the spring of 1985 of MMCs (money market certificates), a move which was clearly influenced by the *Rincho* and Old *Gyokakushin* reports, and the freeing in the fall of the same year of interest rates on large time deposits. Time deposits and MMCs have subsequently been subject to further deregulation in that the size of the minimum deposit (issue denomination) and maturity have been considerably reduced and issue conditions eased in both cases. In 1989 small lot MMCs were introduced and the minimum size for large time deposits was brought right down to JPY 10 million. The New *Gyokakushin* has also proposed the repeal of

the Temporary Money Rates Adjustment Law. This is due to come into effect in the very near future thereby maintaining the strong forward momentum of interest rate deregulation.

Deregulation of the air transport industry

Entry, exit, transportation charges and other matters relating to the air transport industry are regulated on the basis of the Air Transport Law (enacted in 1972 and revised several times in the period to 1987). Regulation of entry to the regular air transportation business is achieved by requiring the airlines to apply for a license for each separate route. Licenses are then granted on the basis of, for example, the appropriateness of the airline for the route in question, its ability to cope with the business, its public accessibility and overall supply and demand conditions. On the other hand, while permission must be obtained for temporary exit from a route, permanent exit can be effected simply by notifying the competent authority in advance. Fares and other charges must be authorized, with attention typically being paid to such traditional principles as that of a fair level of return and the limitation of discriminatory pricing policies. Authorization is also required if discounts are to be given. Matters such as total numbers of aircraft, numbers of flights and departure and arrival times must all be entered in the business plan and will be subject to investigation when application is made for a license. Modifications to business plans must also be authorized in advance, and are evaluated by the same standards applied in licensing. In this way even such elements of the service as flight frequency have become the subjects of governmental regulation. International airlines are also subject to similar regulation in respect of entry and exit whilst fares between one country and another are set by IATA (International Air Transport Association) on receipt of the appropriate authorizations from each of the countries concerned. Japanese airlines are, of course, also subject to IATA rulings.

On the strength of recommendations made by the Old *Gyokakushin*, the Air Transport Policy Council issued its Final Report in 1986. This report outlined its proposed program of deregulation for the air transport industry. The main points of the program were as follows: 1) full privatization of Japan Air Lines (previously a mixed enterprise falling partly into the private sector

and partly into the public sector); 2) creation of a structure giving access to two or three airlines to the same route (the so-called double / triple tracking system); 3) the opening up of international routes to more than one company; 4) incentives to the introduction of fare discount systems.

Triple tracking referred to in point 2) above was introduced on routes where annual passenger figures exceeded the 1 million mark and double tracking on routes where the annual demand for seats exceeded 700,000 (or 300,000 on certain specified routes). International routes had previously been open only to Japan Air Lines but some were now opened up to two other carriers, namely All Nippon Airways and Nippon Air Systems. In the case of fare discount systems, the need for Air Transport Policy Council authorization was dispensed with in two cases: 1) discount rates of 35% or less; 2) discount systems instituted for a period of 1 year or less.

Deregulation of the trucking industry

Access to the trucking industry, freight charges and other related matters had for long been regulated by the Road Freight Transport Law (enacted in 1952 and revised several times in the period to 1986). The trucking business was divided into two main categories, namely route business (regular collection of small lot shipments to make up a full load for the same destination) and zone business (single truck charter for shipment anywhere within the zone) and for each type of operation a separate license was required. For route business there was in fact a separate license required for each route operated whereas zone businesses were licensed just once for operations anywhere within the relevant zone, be it town, city, prefecture or whatever. Zone businesses were, however, restricted in respect of mixed load carriage. The principal criterion for the allocation of licenses was the overall supply and demand situation. Freight charges were subject to a system of authorization. For route businesses standard freight charges had to be authorized by each local transport authority in accordance with both truck type and route length.

Both the *Rincho* and the Old *Gyokakushin* had pointed out a number of major defects in the regulation of the trucking industry, such as the overly complicated entry procedure, the exorbitant cost of administration to both the

public and the private sector, the distortions created in favor of existing operators by an entry system based on supply and demand criteria and the creation of obstacles to the formation of a genuinely effective transportation network and to the provision of innovative new kinds of service. Although these reports led to a series of deregulatory measures, the New *Gyokakushin* was finally obliged to call for a completely new law for the industry. This led to the passage of the Truck Transportation Law through the Diet in December, 1989.

The main thrust of this law was to abolish the supply and demand entry criteria, to shift the basis of regulation to a system of entry permits to be granted to all suitably qualified applicants and to radically restructure the old system of restricting entry on the basis of business category. The old system of authorization for freight charge schedules was replaced by a notification system. While we are on the subject of the deregulation of the trucking business, it would be appropriate to comment on the effects deregulation has had on the freight forwarding business. The regulatory standing of intermodal transportation was clasified in order to promote the growth of such business. In addition, the old Express Business Act was repealed and replaced in December of 1989 with the new Freight Forwarding Industry Law in order to encourage the formation of a comprehensive freight forwarding industry. The effect of the new law was to institute a permit system for entry similar to that established for the trucking business via the Truck Transportation Law and which applied to freight forwarding companies utilizing trucks for part of their business. Those freight forwarding companies which did not utilize trucks for their business were required simply to register their intention to enter the business with the competent authority. Freight charges had now only to be notified to the authorities in advance.

(3) Evaluations of deregulation in Japan

It is clear from the above overview that there has been a considerable amount of deregulation taking place in Japan over the past few years in a wide range of different industries. The gratifying outcome in some of these industries (notably the telecommunications industry) has been spectacular progress in terms of reductions in overall levels of prices, the active provision of

new services and a diversification of price structures. These developments have served both to boost economic growth by stimulating increased demand (domestic demand) and to generate a measure of rationalization and increased efficiency within the industries concerned[10]. Unfortunately, however, such positive effects have not been evident right across the board.

If we look at the banking industry, for example, we find that the denominations of free interest rate CDs have been steadily reduced, as have the minimum sizes of large time deposits, thereby contributing to the gradual reduction of the regulated area. However, while this may be the case with large time deposits (JPY 10 million or more) the situation with even the largest of small deposits (marginally short of JPY 10 million) is quite different; every bank is offering the same rate of interest and showing no apparent inclination to compete with its rivals. This is a reflection of regulation based on the Temporary Money Rates Adjustment Law, the effect of which has been to block any attempt by a bank to set an independent rate (for further information please refer to the 1989 report of the Fair Trade Commission). Another example is to be found in the air transportation industry. In 1986 the Air Transport Policy Council made strong recommendations in its report on the airlines in favor of the introduction of a fare discounting system but there has to date been very little evidence of any positive attempt by the airlines themselves to adopt such a system. And yet a comparison of Japanese domestic air fares with those of other advanced nations shows them very clearly on the high side. We must, of course, take account of such contributing factors as competitiveness with the rival Shinkansen (high speed rail link), the high utilization rate on the main air routes (a reduction in air fares would only aggravate a potentially chaotic situation) and the relatively high levels of charges and fuel costs borne by the air lines. This said, however, there is still ample scope for rationalization leading to reductions in air fare levels. An active introduction of discounting schemes would make its own very considerable contribution to this process. The reason for the airlines' reluctance to introduce any kind of discounting scheme, however, would appear to be a desire to coordinate their actions in order to guard against the sorts of problems cited above. This attitude is supported by the overall stance of the administration.

From the above three cases it will be clear that deregulation still has a long way to go in many areas of Japanese industry. But what is the reason for this?

First, the *Rincho* and the Old and New *Gyokakushin* made a wide range of proposals for the deregulation of Japanese industry across the board which were duly put into effect by the government. Unfortunately, however, with the exception of the telecommunications and trucking industries, the implementation of these measures has been half-hearted, fragmentary, or lacking in practicability. If we focus our attention specifically on economic regulation we find that there is insufficient recognition of the fact that the domestic regulatory structure must be brought into line with the predominant international structure. This has led to a situation where considerable attention is being paid to deregulation on the home front while concrete plans and positive moves towards integration and harmonization on a supranational level are tending to be left very much in abeyance. In the banking sector, for example, there are regulations which serve to separate the short- and the long-term capital markets and to restrict interest rates. In the securities markets there are still regulations whose net effect is to exclude foreign companies and which continue to support a system of fixed commissions for securities transactions. It is well known that none of these restrictions apply to corresponding markets in the United States or the United Kingdom and yet there still seems little inclination on the Japanese side to make any kind of change.

Second, there are also industries such as the banking and air transportation industries cited above where, despite the implementation of quite radical changes in the regulatory framework, there is little evidence of actual change. That the regulations have been relaxed to permit a more competitive market to develop no one would dispute, but the anticipated growth of competition has failed to materialize. In such cases, it may be inferred that the effects of deregulation have been to a large extent mitigated by the effects of administrative guidance. In the banking sector, for example, the imposition of guidelines with respect to maximum fine rate levels by the Bank of Japan and the notifications issued to the financial institutions by the Ministry of Finance recommending strict compliance with the said guidelines may well derive their

ultimate authority from the Temporary Money Rates Adjustment Law. There is, however, considerable doubt as to whether a realistic interpretation of the law would really justify such thoroughgoing interference in the working of the industry. There are many areas of Japanese industry where administrative guidance undoubtedly goes far beyond the letter of the law in order to restrict the level of competition which would naturally develop in the wake of deregulation.

Third, there are quite a number of industries where the dampening of competitive forces following deregulation is attributable to a certain amount of cooperation between members of the industry themselves. As was pointed out earlier, a number of industries fall outside the general scope of the Antimonopoly Law and the competent government department has long promoted agreement among the entrants on such matters as rate uniformity and permanency. Thus despite the theoretical freedom introduced into the system by deregulation, there is still a very real danger that the inclination to coordinate activities remains. A review of the laws relating to exceptions referred to above should be part and parcel of the deregulation process. At the same time, the Antimonopoly Law itself must be rigorously applied in respect of any industry which lies within its scope and which is found to be operating a cartel system.

Section 3: Current direction of government regulatory reform

(1) Moves towards further deregulation

The government must continue to forge ahead with further deregulation in order to generate further industrial activity on the domestic front and continue to expand domestic demand, and to smooth the access of overseas concerns to Japanese markets and stimulate imports of goods and services. This point has already been made in consecutive reports by the New *Gyokakushin* published in December, 1988 and in November, 1989. Although a number of the points made in these two reports are repeated here the writer hopes, by incorporating his own views into the narrative, to offer an original vision for the future course of the deregulation process.

Economic deregulation

A number of measures would seem appropriate to the furtherance of economic deregulation.

First, I should like to deal with the deregulation of the natural monopolies (public utilities, telecommunications, postal services and rail transportation). Considerable progress has been made in all these areas. The telecommunications industry in particular has already been subject to a considerable amount of deregulation which has to a great degree produced the desired result, but there is a need for further relaxation of rate schedule regulations imposed on Primary Operators. Recent spectacular advances in radio and broadcasting techniques also suggest a need for deregulation in the industries which make use of these technologies. With respect to the water industry, there would seem to be no easy way of dismantling the present structure of local monopolies without causing severe disruption to the stable supply of water and the ongoing program of expansion of the sewage disposal system. The most appropriate way forward would therefore seem to be guaranteeing the survival of the current structure of local monopolies while reforming the regulatory environment in order to promote an adequate level of yardstick competition in terms of standards. The energy field which encompasses the supply of electric power, gas and heat along with the refining and sale of oil, has seen a dramatic rise in the level of competition among rival forms of energy, particularly in response to

industrial and commercial demand. There is thus a clear need for deregulation of the entry and pricing structure of the industry as a whole, particularly in the areas where competition is currently hottest. In the case of the electric power industry earlier economies of scale are no longer available and the time has therefore come to look at ways in which restrictions on entry to the industry can be relaxed. There is currently much which could interest Japan in the ways in which the EC is tackling the problems of its own electric power industry, in the current break up and privatization of the CEGB (Central Electricity Generating Board) in the United Kingdom and in the trend towards giving new operators access to this industry.

Second, I should like to look at those industries (particularly transport and finance) which ostensibly inhabit a competitive market environment but where, as explained above, the anticipated benefits of deregulation have to date fallen well short of our expectations. New laws such as have been enacted in relation to the trucking and freight forwarding industries (namely, the Freight Carrier Transport Law and the Freight Forwarding Industry Law of 1989) are clearly also required in respect of the air and marine transportation industries. The banking industry too would benefit greatly not only from a continuation of the current trend towards the deregulation of individual markets but also from the repeal at the earliest possible date of the Temporary Money Rates Adjustment Law, provided that this is preceded by the establishment of an effective deposit insurance system and a system for auditing the financial position of each individual bank. In addition, there should be an abolition of the system of fixed commissions currently operated by the securities industry and substantial deregulation of the premium rate and insurance dividend systems which apply in the insurance industry.

Third, there would seem to be little to gain from the application of political pressure for the relaxation of regulations designed to protect small- and medium-sized members of the distribution industry (in particular regulation based on the Large-Scale Retail Store Law and regulation relating to the sale of rice, alcohol and volatile oils). It is also true, however, that these regulations have had the undesirable consequence of allowing some existing members of the industry to secure "entry restriction rent"[11] and are also

blocking modernization and improved efficiency in the industry. As such, they should be investigated with a view to abolition at the earliest possible date.

Fourth, regulation of the shipbuilding and oil refining industries, which was originally designed to promote a substantial restructuring of these industries, has been transformed into a vehicle for the direct control of these industries. Such direct controls resting on business law should be abolished.

Fifth, the wide variety of regulations which apply to the agricultural sector are similar in type to the economic regulations referred to above but are frequently motivated by political considerations and as such will be very hard to reform. However, the low productivity and high prices of the agricultural and dairy farming sectors have just about reached their limits and the result has been a rapid increase in the volume of imports permitted by the exploitation of various loopholes in the law and an equally rapid decline in the international competitiveness of the agricultural and dairy product processing industries. A further factor is the clamor from abroad for the opening up of the Japanese market for agricultural produce. The time has surely come for a radical reform of the whole system, from import volume restrictions to the wide variety of price support and stabilization measures currently in operation.

Social deregulation

In the sphere of social deregulation the three areas outlined below clearly warrant our immediate attention.

First, viewed in its broadest sense, the primary objective of social regulation is the promotion of the public welfare in terms of, for example, the protection of the lives and safety of the population, the conservation of the environment and the prevention of major catastrophes. This being the case any form of deregulation must clearly be approached with extreme caution. At the same time, however, social regulation must always regenerate itself in order to keep pace both with changes in the socioeconomic environment and also with the rapid rate of technological innovation. Social forms of regulation must therefore be kept under continuous review. This could be achieved through a system of periodic administrative reviews to be carried out by each government

department using existing departmental machinery. The results of these reviews could then be presented for the consideration of the government.

Second, the implementation of the "Action Program" referred to above has brought with it a considerable amount of deregulation in terms of standard validation and inspection procedures in respect of imported goods, we must continue to press ahead with further such market-opening measures. The key to success in this direction would be the institution of a second "Action Program" designed to facilitate bold measures along the same lines as the first. At the same time a separate (third-party) body entirely independent of the administration (maybe even an international body) should be set up to provide an international perspective and mutual authorization mechanism in respect of the aforementioned standard validation and inspection systems.

Third, in industries (mining, construction, medical and pharmaceutical products, etc.) for which the business laws represent first and foremost a means of social regulation and where there exist within those laws sections which restrict entry to that industry (the permit system), careful precautions must be taken to ensure that the entry restrictions in question fulfill only the social regulatory task for which they were originally designed and do not devolve into a vehicle for the perpetuation of vested economic interest in the form of, for example, the protection of small- and medium-sized operators within the industry. There are also regulatory provisions which are designed to achieve social objectives (for example, the entry permit and tender systems common in the construction industry) but which in practice serve to promote the growth of cartels. In principle such areas of social regulation should be rooted out and dismantled.

(2) Stricter enforcement of the Antimonopoly Law

As explained above the Fair Trade Commission would be best employed in carrying out a radical review of all the laws relating to exceptions to the application of the Antimonopoly Law (most of them relate to one or other of the regulated industries) and in repealing all those laws or sections of laws which fall into this category. The Committee could also carry out a detailed investigation into the activities of those industries which are covered by the

Antimonopoly Law and have been deregulated, but have failed to become as competitive as expected. Since there is reason to believe that they are controlled at least in part by cartels.

(3) Towards securing transparency in respect of administrative guidance--the encoding of new laws governing administrative procedure

The Japanese administrative guidance system is well known throughout the world but the mechanisms through which it operates are many and various, and the nature of the system as a whole is not very well understood even by many Japanese. It is not, of course, part of my purpose to explicate the whole of this system and I shall confine myself here to observations relating specifically to the role of administrative guidance insofar as it affects governmental regulatory activity. The laws which regulate our society specify amongst other things the objectives of regulation (cf. natural monopoly regulation, etc.), the subject of regulation (specific industries), the scope of such regulation (entry regulations, pricing regulations, etc.), the method of regulation (authorization, permit, etc.) and the appropriate regulatory procedures (procedure for making application to revise charge schedules, for example). The law also makes it clear that the details of all such procedures may reasonably be left to the various competent ministries and government departments to work out. The whole range of regulatory media from ministerial ordinances to departmental notifications thus clearly have the force of law. Administrative guidance on the other hand does not carry the force of law but is used by the administrative bodies (government departments) charged with the day-to-day implementation of statutory regulatory controls as a means of inducing compliance on the part of those regulated by securing their cooperation in either undertaking or refraining from a specified course of action. The inducement itself may take a variety of forms such as recommendation, advice, guidance, direction, warning and so on. Administrative guidance finds its raison d'etre in the achievement of a finely tuned response to the requirements of the administration which in turn permits the realization of administrative flexibility and the smooth attainment of administrative objectives. However, in the final analysis administrative guidance has no foundation in the law. If abused, there is a grave danger that it could degenerate into an empty legalistic form utilized by an administration devoid of any transparency or fairness and simply serving to obscure the

rationale underlying such guidance along with the ultimate source of responsibility. In such a situation the body subject to guidance may find itself without legal redress in the event of an unexpected setback or reversal of fortunes. It has in fact been pointed out that it is even now difficult to obtain a legal remedy in face of opaque or unfair entry regulations, or cartel based pricing arrangements in view of the uncertain basis of the guidance received and the difficulty experienced in pinpointing the ultimate source of responsibility.

Nevertheless, the use of the technique of administrative guidance has continued unabated in Japan despite dire warnings of the type outlined above. This is due partly to a widespread respect for the responsiveness of the system which derives ultimately from the high quality of the administrators themselves but more importantly to the fact that there is no written law governing administrative procedures which could act as a guarantee of the transparency and ultimate fairness of the system. The Provisional Council for the Promotion of Administrative Reform has already pointed out the need for the enactment of an "Administrative Procedures Act" and has provided an outline of the possible contents of such a law. This view was fully supported by the New *Gyokakushin* which actually proposed the enactment of an "Administrative Procedures Act"(12). From the point of view both of guaranteeing fair and democratic administration and also of responding to foreign criticisms of the lack of transparency in Japanese administrative practices the writer too has made very clear his solid support for the urgent enactment of an "Administrative Procedures Act."

There are already a number of systems in existence in Japan which act to guarantee a democratic administrative decision-making process: 1) access to administrative litigation in the event of unacceptable behavior on the part of the administration; 2) public hearings in the case of charge schedule revisions; 3) commissions of inquiry in respect of all policy decisions; 4) monitoring of administrative activity by the General Affairs Agency; 5) an administrative ombudsman. These systems are all well and good but there is also a need for legislation which will act to prevent the excesses of administrative guidance and in so doing to bolster the democratic nature of the administrative process as a whole. The "Administrative Procedures Act" will be designed as a

codification of all the fundamental legal principles relating to governmental administration and as such will not necessarily be related to specific industrial requirements. There will therefore be a need for radical revision of all those sections of existing acts which currently fulfill this particular function. This will inevitably take a considerable amount of time. The government must therefore waste no time in putting in place the core legislation in the form of the "Administrative Procedures Act" and in the meantime ensure that all "administrative guidance" (in particular that which relates to regulatory practices) is provided in writing with a clear indication of where the decision-making authority actually resides.

(4) Changing the stance of the administration

No one taking part in discussions with Japanese bureaucrats in order to bring about a reform of the regulatory system could fail to be amazed at the degree of pragmatism informed by experience, the moderatism and piecemeal reformism which is willing to countenance a broad spectrum of opinion, the forbearance and tolerance which characterizes the advocacy of a particular line of argument, all of which serve to mitigate what is still at bottom a thoroughgoing attitude of obdurate conservatism. At the same time, however, the Japanese bureaucracy is highly reform-minded, as evidenced by the fact that it has been one of the major forces behind the rapid socioeconomic development and change over the more than 100 years since the Meiji Restoration. These two apparently incompatible characteristics of the Japanese bureaucracy are not actually quite the contradiction in terms that they at first appear. The fact is that the greater the degree of upheaval in socioeconomic terms engendered by any given reform, the greater the need for a rigorous administrative approach to control any unwanted side effects. In other words, in order to quell socioeconomic disorder the bureaucracy has put in place and vigorously implemented a multi-faceted regulatory system. The result has been a considerable reduction in the degree of disorder which may otherwise have attended the development of the modern Japanese state (for example, there has never been a serious supply side breakdown in the regulated industries and prices have been relatively stable except during the time of the two oil crises). This also enabled those industries protected by the administration to minimize the level of the stabilization expenditures which

fell to their own account. Once a Japanese company (or foreign-affiliated corporation which has established itself in Japan) has launched itself into a particular domestic market, it is in a position to benefit from a broad range of protective mechanisms guaranteed by the administration and enabling it to carry on its business within a more or less stable environment. The other side of the coin, however, is the huge cost which this stability has imposed on the nation, as reflected in the burgeoning costs of administration (including those costs borne by corporations in order to make "captured persons" of those bodies regulating them), the high price support mechanisms masquerading as stabilization measures and the huge gaps which have inevitably developed between domestic and overseas prices for similar goods(13).

It is therefore incumbent upon us to do all in our power to alter the basic stance of a bureaucracy which is even now employing a wide range of regulatory mechanisms and extending all manner of generous assistance to regulated industries ostensibly for the purpose of reducing confusion in the markets. Our aim must be to create an environment in which both industry and the consumer are able to take responsibility for their own actions and where outside interference is reduced to the lowest possible level. Japanese industry and the Japanese consumer are both quite adequately possessed of the ability and the wherewithal to cope with such an environment. On the other hand, without such a change in the administrative stance we cannot expect to enjoy the full benefits of an open Japanese market. This is one of the most pressing problems facing Japan today.

Conclusions

If the bold measures proposed in this thesis can be effected, at least with regard to the governmental regulatory framework, it is my conviction that we could look forward to achieving great progress in improving access to Japan's market. The problem, of course, is to what extent and with what speed these measures can actually be put into practice. Negotiations relating to matters of trade friction, for example, have thus far been conducted between representatives of foreign governments and the representatives of the individual Japanese government department concerned. Unfortunately, as mentioned earlier, there is a deeply rooted conservatism which manifests itself particularly at the departmental bureau and section level which could conceivably stand in the way of bringing such negotiations to their most beneficial possible conclusion. It would indeed make more sense for the government not to entrust such negotiations to the departments most closely involved but to handle them at the most senior government level. Other useful steps which could be taken towards the creation of a framework for the reform of the regulatory structure would be the establishment of another special committee of inquiry with full executive powers similar to the earlier *Rincho* and *Gyokakushin* along with the active utilization of a Cabinet Secretariat in Charge of Special Order Issues as was the case when the first "Action Program" was implemented.

If the government is in fact to achieve the above reforms, it must first attend to each of the following matters. As mentioned at the outset, the deepening economic interdependence in the international community demands the formulation of a set of universal rules to govern the conduct of international business. There is already, however, a multitude a laws in the form of, for example, governmental regulations and antitrust laws which govern corporate activity and it would be foolish to imagine that these could easily be harmonized and integrated into a single set of universal norms. The varying levels of economic development and the intricate web of trade and capital movements between countries also suggest that the establishment of such a universal code of conduct applicable in all countries across the board is next to impossible. The first requirement is therefore some form of international negotiation held under the auspices of a suitable international body (a summit

meeting of the advanced countries, GATT, OECD, etc.) and designed to produce a uniform code of corporate conduct which is duly adapted to the various levels of economic development and the complex of trade and capital movements referred to above. It is, of course, a fact that a wide variety of different matters have already been discussed through the medium of such international bodies but as yet there have been no talks specially designed to formulate a set of international business rules. Now is surely the most opportune time to initiate such a round of discussions as the time is rapidly approaching when the EC will formally establish its own integrated set of internal business rules.

The situation with respect to basic business rules in general and governmental regulation in particular is fairly obscure in many countries. There is clearly ample scope here for cooperative research through the medium of governmental organs and academic conferences eventually leading to the kind of international integration and harmonization on which we have set our sights.

Finally I would like to say a few words on the subject of supercomputers, satellites and timber product standard validation each of which have become significant themes during the current round of Structural Impediments Initiative talks.

First, with respect to supercomputers, the American side has asked Japan to put a stop to the practice of Japanese companies of offering large scale discounts and also to take certain steps at the budgetary level in respect of government procurement activity. The Japanese government has apparently accepted these strictures in principle and taken certain countermeasures already. It would therefore appear that matters will be resolved on this front[14]. Satellites fall basically into the realms both of industrial policy (including scientific and technological policy) and governmental procurement policy and do not as such fall within the scope of this paper. Nevertheless, I should like to take this opportunity to point out that domestic Japanese satellite development must be regarded as part and parcel of a wider program designed to expand the scientific and technological base. Unfortunately, however, satellite research expenditures have a tendency to spill over into related domestic industries and in this way to acquire the complexion of

expenditure designed to nurture the growth of a domestic satellite industry. This in turn tends to invite accusations of "targeting." MITI has confirmed that targeting policy was in fact held in check voluntarily from the late seventies into the early eighties. However, those responsible for the satellite development program, led by the Science and Technology Agency, did not seem to realize that this program could be constructed as a manifestation of "targeting." The Japanese government should clearly have pursued two distinct policies, one of independent domestic satellite development and the other of government procurement of foreign satellites currently available. The way in which the Japanese government has actually handled this problem is quite beyond my understanding.

Japan's timber product standard validation procedures are based on the Building Standards Law which forms part of the body of social regulation designed to protect the safety of the nation. Safety factors in the construction sector are, of course, of vital importance, but this does not alter the fact, which I have already stressed on numerous occasions during the course of this paper that the regulations themselves are in urgent need of review if they are to be integrated into an international framework. I should like to take this opportunity once again to urge the government to take action before it is too late. The Japanese government is currently faced with two tasks. The first is the decisive integration of the bulk of the regulatory system with that of the international community and the second is the formulation of a genuine response to those criticisms which have been leveled at us from overseas.

Notes

(1) There is no research providing a detailed comparative analysis of regulatory systems applying to the above industries in the world's advanced industrialized countries. However, there is a useful reference work called *Deregulation* (1988) pp. 305-326 published by the Provisional Council for the Promotion of Administrative Reform.

(2) Regulations relating to the Japanese banking industry are outlined below. For a more detailed analysis please refer to Iwata and Horiuchi (1985) or the report published by the Fair Trade Commission, the Study Group of Government Regulation and Competition Policy (1989).

(3) For details of the content of economic regulation by industry refer to publications by the Planning Bureau of the Economic Planning Agency (1989), the Fair Trade Commission, the Study Group of Government Regulation and Competition Policy (1989) and recent publications by Uekusa.

(4) For details of Japanese public enterprises see Uekusa (1983) (1989).

(5) For a detailed analysis of industries excepted from the general application of the American antitrust laws see Keysen and Turner (1959), Chap. Ⅵ.

(6) Provisional Council for the Promotion of Administrative Reform (1989), p. 225.

(7) For names of the 16 public enterprises which have been privatized, plus details of the privatization process and the eventual outcome, see Uekusa (1989).

(8) For an account of the "Action Program" refer to the Cabinet Secretariat in Charge of Special Order Issues (1985).

(9) For details of deregulation by industry refer to the publication of the Secretariat of the Provisional Commission for Administrative Reform (1987), the Provisional Council for the Promotion of Administrative

Reform (1988) (1989), the Fair Trade Commission (1989) and the Economic Planning Agency (1989).

(10) Kahn (1988) calls these the "fruits of deregulation" and provides a comprehensive analysis of the benefits which have accrued from deregulation in the United States. For details of the benefits of deregulation in Japan refer to the report of the Provisional Council for the Promotion of Administrative Reform (1989). For details of the deregulation of the American securities industry, airlines, railroads, trucking, energy sector, banking, telecommunications, etc. from the late seventies through the early eighties see Swann (1988). It would, of course, be perfectly possible to make comparisons between the American experience of deregulation and deregulation in Japan during the 1980s but I should prefer to avoid the inevitable oversimplifications inherent in an industry-by-industry comparison since this may easily lead to unnecessary misunderstandings.

(11) There is quite a body of research relating to this particular point. Useful reference works include Miyazawa (1989) along with recent publications by Miwa and Nishimura.

(12) For details of the proposals made by the Research Committee into the Administrative Procedures Laws and the New Provisional Council for the Promotion of Administrative Reform refer to the report of the Provisional Council for the Promotion of Administrative Reform (1989), pp. 233-235 and pp. 29-30. Administrative procedures laws, simply speaking, comprise a broad range of procedures which cater for the enactment of directives, for the formulation of planning decisions, for interpreting the application of the regulations, for the institution of retroactive reliefs, etc. From the standpoint of ensuring transparency and evenhandedness in the application of the governmental regulatory system the most important of these procedural areas is that covering the application of the rules. In other words, the administrative agencies have the power to seek a modification or withdrawal of an application for permission, authorization and so on, and even to rescind existing permits, etc. There are times when such activity goes beyond the letter of the law and enters

the realm of administrative guidance. We must therefore clearly demarcate the boundaries of regulation (including regulation by administrative guidance) and the nature of the administrative procedures to be employed. Amongst the more important requirements are the following: (a)the clear and public definition of the criteria upon which applications of the rules are based; (b) the streamlining of procedures for the handling of applications and action to ensure the appropriateness and promptness of their handling; (c) the adoption of procedural techniques which will ensure: 1) that the applicant is informed of the way in which his application is being handled by the administrative body in question; 2) the applicant has the opportunity to present his case in writing; 3) the applicant has a formal hearing with respect to his application; 4) a clear explanation is given regarding the nature of a decision and the grounds upon which the decision was based.

(13) Most goods and services which exhibit large differentials between their domestic and overseas prices fall within the scope of governmental regulation (see the Economic Planning Agency *Price Report* (1989) and report by the Provisional Council for the Promotion of Administrative Reform (1989).

(14) Current action by the Japanese government is not likely to produce a final solution to the supercomputer problem. It has already become apparent that the software for some of the American supercomputers leaves something to be desired and the scope for improvement is considerable. If the American supercomputer industry fails to attend to this problem, there is little reason to suppose that the Japanese industry will not develop a better range of machines. If this fundamental difference of approach between the United States and Japan to the development and improvement of products (or, in a broader sense, the difference between American and Japanese corporate behavior and structure) in fact underlies the current trade friction, the assertion at Prestowitz (1988) that resolution of such friction is intrinsically very difficult could unfortunately prove correct.

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