Industrial Policy, Legal System and Function of Administrative Office in Japan*

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I. Introduction

As to economic and political analysis of Japanese economic development, there are many theories that purport to lay bare the "secret" of Japanese economic miracle. There, the notion is that industrial policy held its key. In my view, this is partly right. While those theories hold several big grains of truth for the 1950s and 1960s, it does not go far in recognizing continuing industrial dynamism in the 1970s and 1980s.

Many theories sometimes point out, analizing the policy-making and its carrying process, that the administrative bureaucracy has been the most contributive factor, and it comes from the personal and well-organized bureaucracy's ability. This is also a right recognition.

However, to speak more accurately, the fact that the bureaucracy has a key-function is seemed to be a natural thing. It is not peculiar to Japan. The key problem is that how it functioned in and through the interrelation of other factors.

There are various factors in the realities of policy-making processes. And it is not so easy to make clear what factor was decisive to it. Furthermore, it depends on what kind of measures are prepared, in order to secure effectiveness. It is because the policy-making process is also that of making consensus. Anyway, it can be said, in such a complicated structure, that the government officials perform as an actor, sometimes as a coordinator, and substantially guide as a "co-operator".

What particurality may we find out in such a structure? The fact will be pointed out that, at the bottom of the structure, the close

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connection lay between the LDP (Liberal Democratic Party), the government officials, and the giant companies' managements. After the 1970s down to the present, the giant companies' managements have gained their hegemony. In other words, they have acquired the relatively independent position from the government control.

In this article, I don't purport economic analysis of policy itself,[1] but from viewpoint of the rule of law, especially the law of competition, draw a sketch on the functions of the administrative guidance in the industrial policies, and its recent legal problems.

II. Various factors contributive to economic growth

In the first place, I should like to brief major contributive factors to development of Japanese economy.

The first is that highly educated university graduates are supplied as the companies staffs and executives. Effective management and successful performances in market economy would be assured by those staffs and well-trained workers.

Secondly, the LDP, established as the result of conservative merger in 1955, secured its governing power after that time down to the present. And financially sponsored by leading companies, the LDP has kept its power for a long time. This structure stabilized political climates and economic policies.

Thirdly, the administrative offices, such as the Ministry of International Trade and Industry (MITI), have taken its initiatives in the policy-making and executive process. As I mentioned above, one of the factors of success owes to the well-trained and throughly experienced staffs.

Lastly, the most successfull companies persued completely the economic efficiency. And those companies made efforts to introduce foreign technologies and took labor managements, which is called "harmonization". The vertical integration of distributors by manufacturing companies, which is usually called distributive "KEIRETSU", is a typical type of efficiency-seeking policies. However, it must be noted that such achievement of high productivity, tough stability of the giant companies like as Toyota and Matsushita, largely owe to activities of the small firms. Those firms have been well-organized

and controlled as their subcontractors. Those firms provide skilled labor and managerial ability to supply their products, keeping up an appointed date of delivery, and even with relatively low level of costs.

III. The charcteristics of the industrial policies and legal systems

The weights of the policies were put upon promotion of foreign trade, particuraly upon the imports of fundamental resources and exports of manufactured products.

In this process, a variety of administrative measurements were taken, for example, tax exemptions, low-rate finance, supply of location of manufacturing and so on. Those are substantially protective and "paternalistic " to the companies.

The application of laws by the administrative offices was effectively enforced. Particuraly, the MITI usually employed the administrative guidances, so called "GYOUSEI SHIDO".[2]

The "GYOUSEI SHIDO" is thought of as the most effective instrument of the government intervention to the economic world. And it must be notified that those interventions have, as its background the cozy relations between the administration office and companies.[3] And a kind of close network of information has been established in those process.

The industrial policies and their legal systems are usually made up under initiative of the administrative offices concerned. As it is because democratic proceedings must be taken, as far as the important policies are concerned, the Government usually convenes and refers to the deliberate councils (eg. the Council for Industrial Structure). Even in that case, it must be noticed to the facts that the framework of policies is prepared and the council is expected to function to approve it. Such a structure may be said as background of "Superiority of the Administration".

IV. Recent state of affairs concerning with industrial policies and legal systems

As the results of the policies, application of laws, and behaviours of companies in the market, the following present market structures

have been made up.

One of the features of present market structure is that oligopolistic market control has gradually been grown in various industries.

Another is that supra-corporate groups have been shaped. The first type of the groupings is the cooperative business confederations. Their members are all independent giant capital sized companies. And between the companies there are cross-ties, e.g. mutual shareholdings, mutual tradings, and liaison plannings. They would be, in economic terminology, conglomerate concentration or Konzern.

The second type of groupings is "Keiretsu", in which many relatively small companies are owned or dominated by the major manufacturing company (e.g. Toyota Motor Manuf. Co. and its groups). The "distributive Keiretsu" is the same type, in which wholesellers and retailers are integrated by the same manufacturing company (e.g. Keiretsu by manufacturing company of electric household appliances).

The Antimonopoly Act (The Act concerning Prohibition of Private Monopoly and Maintenance of Fair Trade, 1947) was partially amended several times and mitigated. Particularly, revision in 1953 was intended to mitigate the regulations, which strictly prohibited for shareholding by company. As the result of it, the above-mentioned groupings of companies became possible.

In 1977, the Act was revised and put teeth into regulations by introduction of new provisions on (1) surcharge on undue profits made by illegal cartel; (2) division of the giant company in a "monopolistic situation"; (3) (although in limited conditions) restriction of shareholdings by giant companies.

The newly revised provisions in 1977 were not effective, excluding the provision on surcharge, to regulate the market reality. For the Fair Trade Commission's power to division of giant company is limited by many gateways. Even under the provision which regulates shareholdings, the above-mentioned groupings of companies are, as a rule, not taken as illegal. For the provision prohibits to substantially lessen competition among competitors in the market concerned and the groupings are, as a rule, not combines of competitors.

However, the Commission have, since 1980, strengthened its application by setting up guidelines over such groupings.[4]

In the field of international tradings, a number of problems have grown in accordance with their rapid progress. The Commission have prepared its guidelines relating to the provision which regulates international contracts or agreements.

With regard to the guideline, the tests relating to the trading of technology, such as on patent and "know-how", are important. It prohibits a various type of agreements, which include clauses unduly restricting workable competition in the market concerned.

V. Deregulation of the government regulations and privatization of the public corporations

Since the latter half of 1980's, deregulations of government regulations have been progressed, in the field of industry such as banking and airlines. Those movements are based on the idea to liberate the industry from the government regulations, which have become unreasonable or unnecessary in the light of growth of the internal markets or progress of international liberation of trades.

Generally speaking, this policy is to be sustainable as far as it would make the market behaviours more competitive, and consumer benefits would be increased.

The Government emphasizes that the companies should establish in its management the principle of "self-reliance".

Deregulation policy will proceed on year by year and the scope of freedom of business activities will certainly be widened.

However, it must be emphasized that in the first, in order to make the business world more independent of the administration, the competition policy to the deregulated industries should make more effective than ever. And that, in the second, attention must also be paid to the necessity of regulations, from the viewpoint of consumer protections and social welfare.[5]

Privatization of the public corporations has been progressed. The major and important examples are the birth of the NTT (The Nippon Telegraph and Telephone Corporation) and the JR (The Japan Railway Corporation). The basic and common reason or ideal back-

ground of both privatizations is said to be derived from the liberation of activities, and the competition policy.

However, comparing with both corporations, impetus of its privatization is different. In case of the JR, rationalization of management and independency of finance from the government were the first thing. Therefore, the old state owned corporation was divided into the several territorial independent corporations, and relatively drastic labor management has been taken in the reforming process.

As to the other case of the NTT, it is the largest corporation in scale of its assets and employments and its business was successfull. Therefore, its privatization policy is based on the considerable changes in its business surroundings. That is, the rapid progress of telecomunication technology and increase of demands for new service by its customers. In other words, basing on its established nationwide networks of cables, expansion of business activities was its target.

VI. On recent movement of the reformation of administrative proceedings

The term of "GYOUSEI SIDOU", which means administrative guidance, is famous even in the world. That guidance functions as an effective tool for administrative intervention, particularly in the field of industrial policy.

It is said that it is a product of the close and mutually dependent relations between the administration and businesses. And it works as flexible application of laws in accordance with changeable economic conditions, without revising any provision of laws.

The administrative offices expect smooth attainment of their policy objects by cooperation of business. And for the business, even if it is thought of as disadvantageous, they accept it. For they expect from the administration other oppotunities to access some advantages. In such manner, among them, a kind of structural mutual dependent relationship is made up.

Even if it is undeniable that it overcomes inflexibility of laws and produces efficient attainment of policies, there exist vices. In the first, it will lead to abuse of discretion of the administration. This is against the principle of "rule of law". And the second, as it is expressed

to the particular companies concerned, and usually in unofficial documents or very often orally, it makes the range of laws indefinite, and as a result, it would lead to unfairness, impartiality, and to lack of clearness of applications of laws.

Relating to the administrative guidance and other various public interventions, the recent important move is that of reform for administrative proceedings. The government is going to prepare the Bill of the Act for reform of Administrative Proceedings, which is drafted on the base of the Report submitted in 1992 by the Temporary Council for the Administration Reforms. The Bill is, based on the view of the rule of law, intended to establish the common rules on the administrative proceedings. The essential points of the Bill are as follows: 1) as regards to the application proceedings of approvals or licenses, the competent administration office shall provide its concrete standards necessary to its decision and, as a rule, shall open it on public; 2) as regards to the administrative guidance, voluntariness of civil action shall be secured, and as the method of guidance, its object and subject matter shall be made clear. Where it is an oral guidance, it shall be, on demand, in writing.

If the Bill is passed, the present critical situation, "cozy relations", would gradually be overcome. And it would be expected to go far to make narrow a room of intervention into the proceedings by the MP.

VII. Conclusion

The assigned goal of the industrial policy is to serve to establish and maintain, in various markets, economic conditions necessary for the market economy. The basic principle of market economy, free and fair competition, is to be that of industrial policy, that is, free and fair competition should also be relied upon in the field of industrial policy. However, in the historical stages, in the past, even in post war, there was the confrontation between the competition policy and the industrial policy. This situation is said to be the main stream of the industrial policy up to 1970s, and it seemed to come from the fact that the industrial policy aimed at making up industrial structures more durable in the sphere of international competition.

However, in '80s, the various markets, as a whole, have been said matured. The policy movement of de-regulations, which are progressing in the various fields, explains it.

Therefore, the industrial policy for the future, should be focused upon its primary objective. More concretely, in respect of its proceedings it must be kept its fairness and transparency, to make market structures easier to access.

Furthermore, there are various new tasks for the FTC. It must enhance its ability to get hold of the realities of various markets and to take effective actions more positively against anti-competitive trade practices. And in term of international competition policy, it has to cooperate to harmonize the legal systems and its applications.

1. Recently, among Japanese economists, though they are minority, some kinds of introspecting theories have been proposed. One of those theories asserts the idea of "social common capital". According to this theory, "the social common capital" is composed by the following various concepts of capitals; "the natural capital" such as forests and rivers; "the social infrastructures" such as roads, railways, electric and atomic power stations; and "institutional capital" such as educaiton system, medical and finance businesses etc. It asserts that private ownership over "the social common capitals", as a rule, should not be admitted and put on under any control systems of social standards and distribution. This model, as its theoretical backgrounds, is recognizing "the second crisis of economic theory in the 20th century". For the economic law, this recent economic thesis would be an innovative proposition. See Uzawa, H., "21 seiki ni okeru kindai keizaigaku no kanousei" ("Possibility of modern Economics in the 21st century", Ekonomisto (Economist), April '93).
2. As regards to necessity and legitimacy of the administrative guidance, the bitter confrontation was there between the MITI and the FTC. The trigger was the FTC's prosecution against the agreements of prices and reductions of production, which were committed by the oil refinery companies and their trade association in 1972.

   The MITI asserted an efficient function for its industrial policy, necessity and merits of the guidance.

   The Supreme Court held, in this case, that the guidance instructed those agreements, as a rule, illegal as against the Antimonopoly Law. However, it held, in the same decision, that the guidance shall be admitted under the exempted conditions or situations, such as 1) where there is necessity of it, from a view of execution of the policy; 2) where there is reasonablenes in its method; and 3) where it is not against the idea of the Antimonopoly Law.
3. Disgusted and angered at the political scandal case by the Tokyo SAGAWA KYUBIN (one of the dominant truck transportation companies), Kanemaru's

(the former vice-president of the LDP) alleged huge tax evasion, and illegal speculative activities in the stock market, the public demanded sweeping political reforms and establishment of economic systems for the fair competitive corporate activities.

In May '90, as a kind of response of it, the KEIZAI DOYU KAI (The Japan Association of Corporate Executive) manifested its manifesto, entitled "90nen dai no kigyou no koudou kakushin" (Renovative corporate activities in '90's). In that paper, they emphasized fair and competitive market activities, "corporate citizenship" and idenpendency from the Government's administration.

4. Regarding to efficient regulation against illegal agreements, one of the most important problems is how to regulate the activities of trade associations. This is because, most of the illegal cartels are brewed in and promoted by those associations, in a manner of exchange of information or price agreements, and even in public tender as "DANGOU" (conference on the bidding).

   Directing its attention to such a situation, the ad hoc working group, which is organized in the FTC, announced its report in May 1993. The report emphasized that the trade associaiton should take measures to make their activities more transparent to their outsiders and to the public. The more important is, as it points out, that the administrative guidance, directed to the association, concerning with prices and uniformed applicaiton of various licenses or approvals, would be liable to create collaboration among members of the associations.

   In response to the report, the FTC should take more practical and more effective measures. It is to be said as the urgent task.

5. As one of the financial liberation measures, banking systems reform was adopted, under the Act for Reform of Financial Systems, in April 1993. The Act is made for the entry of banks or other finance institutions into securities business, through the method of their subsiduaries. With this liberation, the market of securities business will be expected to be more competitive. The FTC, in order to secure competitive performances in this new and "fused" market, has pronunced the guideline for application of the Antimonopoly Law. The guideline prohibits, as unfair trade practices of the parent banking or financial company; 1) to enforce its subsidiary to trade with itself, and 2) to enforce its subsidiary to trade with or to restrict the trade with its subsidiary's rival, etc.