

---

---

# WHAT IS THE REASON (SECRET) WHY ADMINISTRATIVE GUIDANCE HAS BEEN SO SUCCESSFUL IN JAPAN?

---

---

*CHARNNARONG HARNAMORNSET\**

## Introduction

---

The successful in developing the country of any nation in the world consists of various variables or factors especially, administrative functions. In generally, administrative functions mainly are administered by government. The capability of administration is very important factor in order to implement the national plan achieving to the nation's goals. In case of Japan, Japan's success in economic development has been always recognized by the world community as a miracle. Some countries try to take Japan as a model for developing the country. For instance, Malaysia announced "Look East Policy." In fact, behind Japan's success is administrative capability of Japanese government. In order to administer the whole nation effectively, government needs various kinds of instruments or tools to conduct or carry out the action plan. One of the famous or well-known instruments which is always referenced as the main or important instrument of the government in bringing Japan to be one of the economic super power in the world is "Administrative Guidance"

This paper aims to examine what is the reason behind administrative guidance's success.

---

\* Graduate student, Saitama University, Japan

## Definition

Administrative guidance is defined by many scholars. Hiroshi Shiono defines that administrative guidance is “administrative actions taken by administrative organs, although without legal binding force, that are intended to influence specific actions of other parties (feasance or nonfeasance) in order to realize an administrative aim”<sup>1</sup> Michael K. Young defines that “it is a common Japanese regulatory technique that, although generally nonbinding seeks to conform the behavior of regulated parties to broad administrative goals”.<sup>2</sup> Yoriaki Narita specifies that administrative guidance composes of 4 essential elements, that is<sup>3</sup>: (1) administrative organs are concerned with specific administrative fields; (2) not only coercive measures, but also voluntary action is involved; (3) some administrative actions may have no statutory authority; and (4) administrative organs exercise influence over the parties’ concurrence through the expression of expectations and wishes. Paul A. Davis defines that “administrative guidance is a request by an administrative body for voluntary cooperation”<sup>4</sup> According to the government view defines that “administrative guidance refers to the function of an administrative agency acting within the scope of a duty under the laws establishing the agency or within the scope of its jurisdiction—to persuade and guide a party to conduct its business in a certain way, in order to realize an administrative goal through the party’s cooperation”<sup>5</sup>

According to the above definition, we can summarize that administrative guidance is a non-juristic act done by administrative organs to request the regulated parties for voluntary cooperation in order to achieve administrative goals.

## The Characteristics of Administrative Guidance

Administrative guidance has its own characteristics with can be conclude as follows :—

1. Administrative guidance lacks of legal effect. It is a non-juristic action and it will be effective whenever the regulated parties conform or pay attention to cooperate with. In this sense, it has no direct legal effect.
2. Administrative guidance bases on voluntary compliance of the regulated parties. This means that the regulated parties can either accept or refuse to comply administrative guidance.
3. Administrative guidance leads the nation by means of the positive influence of administrative organs upon the people in general and by aiming at the formation of a definite order which administration hopes for.
4. Administrative guidance directed toward specific individuals, juristic persons, and other organizations.

5. Administrative guidance is normally conducted by means of Directions (shiji), Requests (yōbō), Warnings (keikoku), Suggestions (kankonu), and Encouragement (kanshō). Even circulars (tsūtatsu) and instructions (kunrei), though primarily dericted by a superior organ of an administrative organs to a subordinate organs, can constitute administrative guidance.

## Reasons for Necessity of Administrative Guidance

Why administrative Guidance is necessary can be summarized as follows :-

1. The increase in administrative functions and the growing importance of administrative duties.
2. Since the society changes rapidly in various aspects, a legislative process which wants to amend the law cannot to be completed in time. So administrative guidance is to be needed in order to cope with administrative problems timely and flexibly.
3. Advantages of voluntary measures make it easy for administrative organs in order to employ administrative guidance making a request for voluntary cooperation.
4. Providing information and techniques. Individual, group and organization need definite information and techniques from government for their benefit.

In this case, there are many guidances inform to them, for instance, guidance for improved management of small and medium enterprises, guidance for an improved agricultural structure and so on.

## Types of Administrative Guidance

Administrative guidance can be classified into 2 categories

- (1) This category classifies administrative guidance according to the existence or absence of statutory provisions which give it a statutory basis, it can be divided into 3 types :-

1. Administrative guidance is conducted on the authority of statutes which provide for suggestion, requests, and advice.
2. Administrative organs can conduct administrative guidance because there is some sorts of authority, for instance, orders, permission or approvals, licensing, revocation, and suspension behind it.
3. Administrative guidance is conducted on the role basis of the general authority provided by the law establishing administrative organs.

- (2) This category classifies administrative guidance according to its functions, it can be divided into 3 types :-

1. Administrative guidance is conducted in order to regulate, prevent and suppress acts which are obstacles to the maintenance of order and obstruct the public good.

2. Administrative guidance is conducted in order to harmonize and effect agreement between conflicting interests.
3. Administrative guidance is conducted in order to promote and assist regulated parties. For instance, guidance for the rationalization and modernization of medium and small industries, crop and livestock guidance for farmers.

## Behind Administrative Guidance's Success

Many scholars in academic circles always mention and raise the question that why administrative guidance in Japan has been so successful. What are the reasons behind this successful? There are many reasons for this matter which we can analyse as follows :-

### 1. Culture of vertical society

In Japan, historically, the relationship between members of a family has been vertical, with the head of the household at the top followed by other members of the family in order. The same structure is applied in social relations outside the family, the decision of who takes the higher and the lower positions being made on the basis of family, age, university, year of graduation, occupation and company. This relationship is expressed in the traditional terms "oyabun and kobun"<sup>6</sup> Oyabun means the person with the status of oya (parent) and kobun means with the status of ko (child). The traditional oyabun-kobun relationship took the form of patron

and client, landowner and tenant or master and disciple. These expressions are still used today, although more informally. In relationship between government organs and a subject, the government is automatically given the higher position and the subject the lower. In this sense government is oyabun and subject is kobun. This kind of relationship are influenced by Confucianism. Even on a person-to-person basis, the fact that the government attracts top graduates of top universities means that in the relationship between a government official and a company officer, the government official generally takes the higher position.

Moreover, this relationship are linked and supported by the old spirit of government over people (kanson mimpi). This old spirit began in Meiji period and still existed in the present day. In this sense, the administration was referred to as "okami" (almighty one).

Under this kind of Japanese tradition behind, administrative guidance has been so successful.

### 2. National interest.

Both public and private sector hold the national interest as a first priority of the country. Private sector always recognized that government organs do everything in order to bring progress and prosperity to the nation. And as a matter of fact that the private sector can not exist if the nation collapses. In this situation, both public sector and private sector have mutual interests. Even in the case of administrative guidance, they use administrative guidance as the

effective measures to promote their mutual interests (that means no one loss, both win).

3. Administrative guidance has been based on bylaws

Bylaws are general rules enacted by local assemblies. It is incorporated within the system of national law. There is a group of important bylaws which are called "administrative affairs by laws"<sup>7</sup> In puts restrictions on the liberties and rights of people to maintain social order, good environment, etc. of the communities. The Outline Guidance Concerning Housing Development in the City of Musashino is an example of administrative affairs by laws.

4. Administrative guidance armed with other legal power which will be used as a last resort.

Administrative guidance by itself has no power but it armed with other legal power which will be used when ever administrative guidance fail to work. For example, the so called voluntary restraint on automobile exports to the United states lasting from 1981 to 1985 was made by MITI'S administrative guidance. Recently, in order to reduce huge trade surplus with the U.S. and to calm down protectionist moves in the U.S. Congress, MITI'S administrative guidance on voluntary restraints on automobile exports will continue in 1986. Michio Watanabe, Minister MITI, said he will inform each of eight major Japanese automakers of the decision in writing.<sup>8</sup> In response government announced Shoichiro Toyoda, President of Toyota Motor Corp said that "Although I consider the decision unfortunate, we cannot help but accept it as it is"<sup>9</sup>

5. Administration guidance is made in conjunction with executive of legal powers. For instance government provides financial aid to companies in term of loans by commercial banks which is discounted by the Bank of Japan, sometime in term of subsidies. Moreover, in fact that government MITI in particular, has extensive jurisdiction to grant or refuse (or shelve) applications for licenses, approval etc. in the field of industry and trade including foreign exchange and finance. In addition, the close relationships between the government and the press in Japan means that fear of adverse publicity is also an effective finger on the arm. In the above sense, any company would feel uneasy about not accoupling with administrative guidance could give the administrative organs a reason to refuse any future discretionary approvals, licenses, etc.

6. Administrative guidance supported, as a leverage of persuasion by other more powerful policy to is only partially or indirectly related to it.<sup>10</sup> This type of administrative guidance was made in 1965 to a steel manufacturer to curb its production to prevent excessive supply. When the company refused, to do according to administrative guidance, MITI threatened to cut the import quota of cooking coal of the company and finally persuade the company to follow its request.

7. The long and close relationships between government and companies is the key to success in administrative guidance. As a matter of fact that since Meiji Restoration (1868-1912), government invested a huge capital to establish public sector, factories

and sale to the private sector.<sup>11</sup> This tradition still exists in present day as we can be seen in case of Nippon Telegraph and Telephone (NTT) was transferred to private sector according to government policy in 1985.<sup>12</sup> This long and close relationships make it easy to form consensus between administrative organs and companies.

#### 8. Avoidance of Confrontation

Japanese people prefer informal means or extra-judicial of settling a controversy. Particularly to be avoided the situation of loss of face which must be suffered by one self or caused to the other in a confrontation. Cooperation is much more in keeping with the Japanese system of action by consensus. The harmony of society originated in circumstance which people gathered in a relatively small land area over many years. Their situation has led to an emphasis on harmony as a way of life. In this case of administrative guidance regulated parties must accept it because of harmony of society.

#### 9. Legal Consciousness

Japanese people tends to think of law as existing to impose obligations rather than to give rights. When hearings are held before administrative organs, it is still common for people to think of the purpose of the hearing as being to instruct or warn them and of the notice of hearing as a legal summons. Similarly, with administrative guidance, say by *tsutatsu*. Although strictly speaking not based on legislation and of no legal effect, everyone, even lawyers, think of *tsutatsu* as legal instrument with juristic effect and so they have become a form of customary law, failure

to obey being generally treated the same as a breach of law.

10. Administrative guidance as a means to initiate for making solution. In some case administrative guidance used as government initiative in order to make unanimous among companies when there is unanimous consent about their business. For example, suppose many toy manufactures are making toys which are selling well but suspect to be dangerous to users. In this situation each manufacturer wishes it could stop making them but does not wish to do so until its competitors do likewise. The only thing need is someone's initiation. When government initiate with administrative guidance, it is so effectiveness and success.

## Conclusion

Administrative guidance is well-known as a typical mean of public administration in Japan. As it is informal and flexible mean which helps administrative organs to cope with problems that always happen in rapidly changing society as Japan. The success of administrative guidance cannot separate from an effort and responsibility of administrative organs in order to make social in order and cooperation and consciousness in responsibility of regulated parties. However, behind administrative guidance's success has traditional culture which plays an important role in order to make the society harmony existed as a circumstance. Under these components that make administrative guidance has been so successful in Japan,

### Footnotes

1. Hiroshi Shiono "Administrative Guidance" in kiyoakiai Tsuji, Public Administration in Japan. (Tokyo : University of Tokyo Press, 1984), pp. 204.
2. Michael K. Young, "Judicial Review of Administrative guidance : Governmentally Encouraged Consensual Dispute Resolution in Japan", *Columbia Law Review*, vol. 84, No. 4, May 1984, pp. 926.
3. Yoriaki Narita, "Administrative Guidance", *Law in Japan*, Vol. 2, 1968 (translated by James L. Anderson), pp. 46.
4. Paul A. Davis, "Administrative Guidance in Japan : Legal Considerations" *Sophia University Socio-Economic Institute Bulletin*, No. 41, 1972, pp. 1.
5. Kenji Sanekata, "Administrative Guidance and the Antimonopoly Law, *Law in Japan*, Vol. 10, 1977, pp. 68.
6. Chie Nakane, Japanese Society (New York : Panguin book Ltd., 1984) pp. 44-45 and Edwin O. Reischauer the Japanese (Harvard University Press, 1982), pp. 131.
7. Local Autonomy College, Ministry of Home Affairs, Local Government in Japan (Tokyo), 1985, pp. 41.
8. Mainichi Daily news, February 14, 1986, pp. 1.
9. Ibid, pp. 1.
10. Takahashi Wakiyama, "The Nature and Tools of Japan's Industrial Policy" Supplementary sheet on Trade and Industrial Policy, 1985, pp. 11.
11. Takafusa Nakamura, Economic Development of Modern Japan, (Singapore, 1985), pp. 31.
12. Moriya Koyama, "Competition in Telecommunication : The Japanese Experience and Outlook. Supplementary sheet on Post and Telecommunication Policy, 1985, pp. 4.

### Bibliography

- Davis, Paul A. Administrative Guidance in Japan considerations. Sophis University Socio Economic Institute B No.41, 1972.
- Koyama, Moriya. Competition in Telecommunication : The Japanese Experience and Outlook. Supplementary sheet on. Post and Telecommunication Policy, 1985.
- Local Autonomy College, Ministry of Home Affair, Local Government in Japan, Tokyo, 1985.
- Mainichi Daily News, February 14, 1986.
- Nakamura, Takafusa. Economic Development of Modern Japan Singapore, 1985.
- Nakane, Chie. Japanese Society New York : Kenguin Books Ltd., 1984.
- Navita, Yoriaki, Administrative Guidance Law in Japan. Vol. 2, 1968.
- Reischaver, Fedwin O. The Japanese Harvard University Press, 1982.
- Sanekata, Kenji, Administrative Guidance and the Antimonopoly Law. Law in Japan Vol. 10, 1977.
- Tsuj, Kiyoaki. Public Administration in Japan Tokyo University of Tokyo Press, 1984.
- Wakiyama, Takahashi. The Nature and Tools of Japan's Industrial Policy Supplementary sheet on Trade and Industrial Policy, 1985.
- Young, Michael K. Judicial Review of Administrative Guidance : Government Encouraged Consensual Dispute Resolution in Japan Columbia Law Review, Vol. 84, No. 4, May, 1984.