Unemployment in Japan's Declining Industries: A Re-evaluation of Japanese Employment Adjustment Policy

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I. Introduction

On September 3, 1988, The Japan Economic Journal placed on its front page an eye-catching article entitled "Industrial Restructuring Raises Fear of Endemic Unemployment." The article discussed in some detail Japan's employment situation in the structurally depressed industries and focused on the rising unemployment rate in the "smokestack" regions as a consequence of extensive industrial restructuring. The article also highlighted the need for labor forces to adjust to the ongoing changes in Japan's economic and social structures.

Many people in the West do not readily associate Japan with unemployment and industrial decline, and much of the recent literature on Japan does not address the subject of unemployment at all. Instead, most commentaries on Japan tend to analyze various aspects of Japan's spectacular rise in economic power from its shattered society after World War II to the relative affluence it currently enjoys. There is, however, a growing fascination within academic circles regarding Japan's declining industries and adjustment assistance policy. This interest stems from two considerations: (1) gener-

2. Id. at 1, col. 3. For a brief discussion on Japanese industrial geography, see Y. Kosai, The Era of High-Speed Growth 123 (1981).
3. One scholar proposed that Japan's postwar surge in economic power "was actually only beginning in 1962, when production was just a third of what it would be by 1975. Fully half of Japan's amazing economic strength was to be manifested after 1966." C. Johnson, MITI and the Japanese Miracle 3 (1982).
4. See generally Upham, The Legal Framework of Japan's Declining Industries Policy:
ally, declining industries present serious socioeconomic problems for the industrialized nations; and (2) Japan has achieved a certain degree of success in its policy approach to the adjustment of its declining industries in light of changing economic conditions.

The purpose of this Comment is to re-evaluate Japan's employment adjustment policies for the declining industries in the late 1970s and early 1980s and to assess the prospects for continuing those policies into the 1990s. Section II examines the background of industrial decline and unemployment in the structurally depressed industrial sectors of Japan. Section III explores some of the policy responses of the Japanese government which address unemployment in the troubled industries. Specifically, it discusses the Japanese policy-making process and how the mechanisms within that process provide for a flexible and comprehensive approach to employment adjustment. Additionally, it considers the legislation which has made employment adjustment possible for Japan. Finally, Section IV evaluates Japan's adjustment assistance for unemployed workers in the declining industrial sectors with an emphasis on employment-related legislation and the Japanese government's capacity to implement the purposes of the employment adjustment programs.

II. Background of Japan’s Declining Industries and Unemployment in Those Sectors

A. The Causes of Industrial Decline in Japan

Industries go into decline for a variety of reasons. The most commonly cited cause is the reduced ability of an industry to adjust to changing conditions which result from slower economic growth. Japanese industries, even against the backdrop of vast economic power, are no exception. Industrial decline is not a recent develop-

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6. See Tanaka & Middleton, supra note 4, at 439-40; see generally Uriu, supra note 4.
7. From 1967 to 1972, Japan's economic growth rate in terms of real GNP was approximately 9.3 percent per annum, reflecting the success of the Japanese industrial policy at the time. The growth rate, however, dropped to about 4.4 percent per annum between 1976 and 1984. Economic Planning Agency, Economic White Paper, in NIHON NO HAKUSHO (The White Papers of Japan) 400 (Nihon Jōhō Kyōiku Kenkyūkai ed. 1987) [hereinafter JAPANESE WHITE PAPERS]. But note that "the real economic growth rate which was attained was always more than that projected by the Government." EMPLOYMENT POLICY, supra note 5, at 5.
ment in Japan; it has experienced difficulties in a number of industries following the oil crisis of the mid-1970s.

From the mid-1950s to the late 1960s when Japan had been pursuing an aggressive industrial policy of promoting rapid economic growth, "it was relatively easy to shift industrial resources into the


A list of declining Japanese industries would include rubber, steel, corrugated cardboard, textiles, nonferrous metals, shipbuilding, and some petrochemical sectors. Id. at 280. Note that some of these industries played a significant role in Japan's postwar reconstruction and in her ensuing efforts to become an internationally competitive economy. See also infra note 11. This is because

[t]he development of . . . key industries [such as] steel, nonferrous metals, and chemicals did much to induce the expansion of many affiliated and processing industries . . . [D]espite the heavy emphasis which the Ministry of International Trade and Industry (MITI) had placed up to 1970 on the development of capital-intensive key industries, the less capital-intensive processing sectors, which had acquired little in the way of initiatives and protection, outperformed the key industries.

M. Shinohara, Industrial Growth, Trade and Dynamic Patterns in the Japanese Economy 8 (1982).

A more recent list of declining industries in Japan would also include aircraft, weapons, gunpowder, nuclear power, space exploration, electronic computers, electronic components for the "next generation" of computers, laser-processing and optical communication, innovative materials (amorphous or super-conductive materials), nonmercurial electrolysis of salt, seabed petroleum recovery, and leather and leather goods. Smith, The Japanese Foreign Exchange and Foreign Trade Control Law and Administrative Guidance: The Labyrinth and the Castle, 16 L. & Pol'y Int'l Bus. 417, 467 (1984).


Following the oil shock of late 1973, Japan experienced its worst postwar recession. The index of production for manufacturing dropped by 11.5 per cent in just fourteen months beginning in November 1973. Despite . . . outbacks, manufacturers' inventories piled up precariously. The number of bankruptcies rose by 41 per cent during the first year [of the recession]. The impact of the recession was much heavier in some areas of manufacturing than in others . . . and [h]igh wage settlements in 1973 and 1974 meant the recession in manufacturing did not quickly translate into a stagnation of consumer demand for goods and services.

11. Many experts of Japanese economic history agree that Japan's industrial policy has passed through three distinct phases since the termination of World War II. See J. Abegglen, The Strategy of Japanese Business 102 (1984). In the first stage (1940s to mid-1950s), Japanese industrial policy focused on "reconstruction and on putting in place certain key industries deemed necessary to further economic progress. These included electrical power, steel, and cement—the basic industrial sectors prerequisite to a developed economy." Id.

The second phase (mid-1950s to late 1960s) emphasized international competitiveness. "The heavy industries—steel, metal, oil refining, and machinery—and the chemical industry were given high priority in view of their large income elasticity and their likelihood of productivity in the future." Wakiyama, The Nature and Tools of Japan's Industrial Policy, 27 Harv. Int'l L.J. 467, 468 (1986).

From the 1970s and through the 1980s, the third level, Japan's industrial policy has been oriented "toward a shift to a 'knowledge-intensive industrial structure,' encouraging high-technology industries, sophisticated software industries and other industries generating high value-added content." Id.
[then] emerging industries," such as automobiles and petrochemicals. After the oil crisis of 1973, Japan's economic growth decreased in response to the worldwide recession caused in part by the Organization of Petroleum Exporting Countries (OPEC's) price fixing practices. As a consequence, it became more difficult to reallocate labor and capital resources into the burgeoning higher-growth industries, and some of Japan's already-burdened industries began to feel the increased pressure of an economy in transition.

In addition to reduced economic growth, Japan's declining industries have been adversely affected by trade and competition coming primarily from the newly industrializing economies of Asia. Japanese companies have been further hampered by import restrictions imposed by its trading partners. Factors such as losses in international comparative advantage, increases in costs of labor, energy, and raw materials, price distortions and currency fluctuations, changes in consumer tastes, and sluggish world de-
mand have all afflicted Japan's most competitive industries. Moreover, other considerations such as obsolete industrial infrastructures, excess production capacity, inefficient facilities, and a cumbersome distribution system have not alleviated the declining industries' sometimes painful adjustment experiences.

Regardless of the specific causes of industrial decline, statistics have revealed the extent to which industries in primary and secondary sectors are giving way, in terms of competitiveness, to infant industries in tertiary sectors. While problems associated with industrial decline are not new phenomena, the current difficulties brought on by Japan's slower national economic growth rate are more serious since they appeared more suddenly. Japan's basic industries went from a period of very high growth into a period of crisis quite suddenly, with little or no time to adjust to changed conditions.

With respect to the complications caused by less automatically adjusting industries, one commentator wrote:

Under these circumstances, workers, communities, and companies facing economic changes that erode their competitive positions often have no profitable alternative toward which to shift their resources. Because the process of economic change...

22. See JAPANESE WHITE PAPERS, supra note 7, at 144.
25. Id.
26. Id. at 421.
27. The Japanese distribution system is characterized by a complex network involving manufacturers/producers, wholesalers, retailers, and middlemen at every level. Both wholesale and retail houses tend to be small and extremely numerous. Transactions "wind through long chains of wholesalers," and a substantial number of sales are to other wholesalers. Caves & Uekusa, Industrial Organization, in ASIA'S NEW GIANT, supra note 11, at 513-15.
29. The primary sectors are agriculture, fisheries, and forestry. See BURKS, JAPAN: A POSTINDUSTRIAL POWER 169 (2d ed. 1984).
30. The secondary sectors include mining, manufacturing, and construction. Id.
31. The tertiary sectors include public utilities, wholesale and retail trade, banking and insurance, services, real estate, transportation and communications, and public administration. Id.
32. According to one economic theory, the shift toward the tertiary sectors is a natural process in economic evolution. Chenery, Patterns of Industrial Growth, 50 AM. ECON. REV. 624-54 (1960). Contra Rapp, supra note 15, at 71 ("[The basic manufacturing sectors'] declining viability is neither inevitable nor desirable"). As part of this process, stagnant industries must be streamlined in order to regain or maintain some of their former competitiveness, or be phased out altogether. In doing so, the competitiveness of the emerging industries will be enhanced and capital resources can be absorbed into the faster growing sectors for more profitable use. Reich, Making Industrial Policy, 60 FOREIGN AFF. 852, 862-63 (1982).
33. See INDUSTRIAL POLICY REPORT, supra note 8.
34. J. ABEGGLLEN, supra note 11, at 81.
may seriously threaten their future well-being, they turn to political devices designed to stem the tide, at least temporarily: legislation to stop runaway plants, regulations to prohibit the introduction of new technologies, government-financed bailouts. But protections like these retard future economic growth by encumbering the movement of resources toward more productive uses and the downward cycle perpetuates itself.35

In order to prevent such a potentially vicious cycle from taking place, Japan has concentrated on refining its industrial policies in a way that will adequately address the problems confronting its less competitive sectors. The actions of the Japanese shipbuilding industry in the early 1970s are a good illustration of how concerted effort and determination have eased an industry-wide employment adjustment problem.

Following the oil crisis of 1973, world demand for ships and particularly oil tankers had decreased drastically,36 and competition from shipyards in the newly industrializing economies steadily chipped away the competitive position held by the Japanese.37 As a result, the industry was forced to make structural adjustments in its capital equipment and labor force.38 By 1975 or 1976, the Japanese government recognized the shipbuilding industry as “structurally depressed,”39 and each company in the industry initiated substantial adjustment programs. Employment was reduced or transferred to other industries, and excess capacity in capital equipment was purchased by a credit organization established under the guidelines of the Structurally Depressed Industries Law.40 Additional employment adjustment measures in the form of temporary layoffs and solicitation of early retirement were carried out by 1978.41 This type of ra-

35. Reich, supra note 32, at 852.
36. “The Japanese shipbuilding industry has enjoyed a large share of the world market during the 1950s and 1960s ranging from 50 and 60 per cent in peak times, to 30 to 40 per cent in recessed times ... [After the oil crisis], the volume of demand dropped almost by half between 1974 and 1978.” Wilson, Labor Relations in the U.S. and Japan: The Role of the Enterprise in Labor-Management Relations, 9 Loy. L.A. Int'l & Comp. L.J. 577, 616 (1987).
37. Id.
38. Id.
40. Wilson, supra note 36, at 616-17. One of the measures which the Japanese government took in 1977 to counter structural depression was to allow businesses in the depressed industries to form “depression cartels.” Saxonhouse, supra note 9, at 305-06.
41. Id. at 616.
tionalization of employment conditions in the shipbuilding industry was relatively smooth in the larger Japanese companies owing to "well-planned and carefully organized processes." Smaller and medium-sized companies, however, experienced more difficulties "due to [sustained] union resistance, but [e]mployment was eventually reduced by the beginning of 1979. . . ." Although various problems confront declining industries, generally the problems are common to most, if not all, declining industries. The case of the shipbuilding industry demonstrates that unemployment and employment adjustment are crucial factors which must be taken into consideration when an industry is in decline and a rationalization program is necessary for industrial revitalization.

B. Unemployment in Japan's Declining Industries

There are commonly held beliefs in the West that Japanese workers are docile, subservient, and more eager to promote their companies' interests rather than their own. Non-Japanese people also tend to perceive Japanese enterprises as taking a pervasive and paternalistic attitude toward their workers and their employees' activities. There is still much truth to these observations, but changing economic conditions and the resultant structural reforms are beginning to affect Japanese industrial relations at the most fundamental levels. Particular problems such as unemployment and other fundamental disruptions which were previously obscured by Japan's accomplishments in the international marketplace are now coming to the forefront as major socioeconomic concerns in Japan.

42. Id. at 617-18.
43. Id. at 618.
44. THE ECONOMIST, JAPAN 21 (1983).
45. R. CAVES & M. UEKUSA, INDUSTRIAL ORGANIZATION IN JAPAN 2 (1976). "In contrast to Americans, Japanese are in fact more in favor of company paternalism, more identified with their company, more likely to think employees should participate in its recreational activities . . . ." R. Marsh & H. Mannari, The 'Japanese Factory' Revised 3 (1973) (paper prepared for delivery at the annual meeting of the American Sociological Association) (available in the Dick. J. Int'l Law office).
46. A recent Organization for Economic Cooperation and Development (OECD) study concluded that Japan's total employment has increased by a little less than 1 per cent per annum since 1973, and that Japan maintains one of the lowest unemployment rates in the world. OECD SURVEY, supra note 23, at 71-79.

The Japanese Ministry of Labor has also released statistics which show a drop in Japan's unemployment rate from 3.1 percent in 1987 to 2.4 percent in July 1988. Kitatsumi, supra note 1, at 1, col. 4. Despite the decrease in the overall unemployment rate, the figures are deceptive: the decrease in unemployment occurred mostly in metropolitan areas which had been suffering acute labor shortages; recession-hit smokestack regions still maintain an unemployment rate higher than 3 percent. Id. at 5, col. 2.
47. Examples are in-company and out-company transfers, temporary layoffs, hiring freezes, discharges of temporary workers, reductions in overtime, and early retirement. See infra note 62.
Industrial decline has profoundly affected two interrelated Japanese employment characteristics: career or "permanent" employment, and the seniority-based wage system. The Japanese employment system which is based on these two attributes is of relatively recent origin. Scholars tend to agree that the system developed in the early twentieth century, and certainly after World War I, and that it is the product of a conscious managerial policy based on traditional cultural norms. Japanese workers on the whole have conformed to the practice of permanent employment "not because of any strongly held commitment to the [company] but because of economic reasons, desire for security, lack of alternatives, age, and family ties."

Prior to the energy crisis in 1973, employees of large Japanese enterprises could be reasonably assured of permanent employment with their companies. Since "[t]he pyramid-shaped age structure of the population which pertained in the past featured masses of young workers at the bottom and a relatively small group of workers

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50. Regarding the Japanese wage system, one author wrote:

whereas wage rates in Western countries are based essentially on occupational skill, in Japan they are determined by the worker's age, length of service, and occupational status (and, since World War II, his educational background). In other words, the wage rates of Japanese permanent employees increase by an annual increment that raises the wage of each individual according to his age and length of service.


54. Id. Cited among the motives of managerial policy are employers' desire to secure "a steady supply of skilled and semi-skilled labor," Crawcour, supra note 49, at 229; and "to operate at full or close to full capacity," C. Johnson, supra note 3, at 13. See also R. Cole, supra note 49, at 11-25.

55. R. Cole, supra note 49, at 20. Another commentator observed that the postwar Japanese government's "failure to provide a really viable system of social security external to the firm has also tended to support the lifetime employment system." Crawcour, supra note 49, at 244.

56. Career employment is not a universal concept in Japan. For example, the practice is largely limited to big businesses in the private sector. It also does not generally apply to female employees, temporary workers, and blue-collar labor. Cole, Permanent Employment, in Business and Society in Japan, supra note 53, at 33.
nearing retirement age at the top of the corporate hierarchy, promotions and wages commensurate to length of service in the company took place in an orderly and somewhat predictable fashion.

The effects of the oil crisis, worldwide recession, and slower economic growth, however, forced the Japanese employment system to meet the realities of far-reaching changes in the nation's economic structure. As a result of industrial decline, permanent employment and its corollary, the seniority-based renumeration system, have increasingly become troubled. The problem is basically two-fold.

First, the maintenance of the lifetime employment system has put intense pressures on company operating costs. As company employees become older, their wages are raised. In addition, Japan's rapidly aging work force has become excessive and unproductive at the middle levels of the company hierarchy. Thus, businesses in the declining sectors have had to face a nagging dilemma: Should the customary permanent employment system be scrapped in favor of attempting to keep the company financially afloat? Difficult de-

58. J. ABEggLEN, supra note 11, at 82.
59. See WORKERS & EMPLOYERS IN JAPAN, supra note 50.
60. OECD SURVEY, supra note 46, at 79. The effect of an aging society on Japan's labor forces is potentially grave when the changing population structure is taken into consideration:

[A]ccording to projections by the Institute of Population Problems of the Ministry of Health and Welfare, persons over 65 years of age, a group that represented 10.1 per cent of the population in 1985, are expected to account for 20 per cent of the population by the year 2015. The aging of the population presents a major problem for employers and employees alike; it is affecting the entire employment and work renumeration system and will continue to do so in the foreseeable future.

Ujihara, supra note 57, at 172.

61. Japanese employers tend to be reluctant to discharge their workers, even in times of economic hardship. De Vos, Apprenticeship and Paternalism, in MODERN JAPANESE ORGANIZATION AND DECISION-MAKING 223-27 (E. Vogel ed. 1975) [hereinafter JAPANESE ORGANIZATION]. This partially explains the growth in the population of the so-called madogiwa-zoku (literally, windowside people). This group contains middle-aged employees who outnumber the limited positions available in the management hierarchy, but are nevertheless maintained on the company payroll due to traditional reluctance to discharge workers. These workers come to the office but remain mostly idle throughout the working day. See also Dreyfus, supra note 48, at 32.

62. Japanese firms rely upon a greater combination of labor adjustment schemes than Western firms. These schemes include:

1) restricting overtime hours;
2) making more use of the existing work force at the workshop;
3) reducing or stopping recruitment;
4) transferring idle labor from slack sections to busier sections of the firm;
5) transferring idle labor from a plant with a lower level of activity to one with a higher level of activity;
6) transferring idle labor to subsidiaries or other companies;
7) temporarily laying off regular workers, usually with nearly full payment of regular wages;
8) dismissing temporary workers;
9) soliciting early retirement; and
10) conducting selected designated dismissals.

J. ORR, H. SHIMADA & A. SEIDE, UNITED STATES-JAPAN COMPARATIVE STUDY OF EMPLOY-
Decisions are being made in reference to the permanent employment system, vis-à-vis, the faltering viability of retaining workers on a long-term basis and paying larger salaries each year to an ever-increasing number of aging employees. This dilemma is likely to continue in the future.

Second, as the industrial base shifts toward the "knowledge-intensive" tertiary industries, the problem of adjusting workers from the manufacturing industries to new jobs involving growth-oriented high-technology arises. In many cases, the workers do not possess the requisite skill and education to become fully productive in a tertiary industry. As one author noted, it would be feasible to convert a shipyard worker into an autoworker but transferring that same worker to a job in computers, biotechnology, or fiber optics would be difficult, if not impossible.

The need to formulate and implement policies which will provide unemployed workers in the depressed industries with education, retraining, and opportunities for re-employment will continue as long as stagnant industries are not overhauled and adapted to the changing economy. Japan has already experienced some success in this area, especially at encouraging retraining and relocating workers and extending government subsidies and other incentives, such as tax benefits and loans, to companies in the troubled sectors. Policymakers, however, should also place equal emphasis on long-range goals. Such goals include improving the labor market for older workers and assisting displaced employees in adjusting to an economy that is becoming more and more multi-faceted and specialized.

III. Policy Responses to Unemployment in Japan's Declining Industries

Many literary works on Japan extol the Japanese government's achievements in adjustment assistance and the measures it has taken to reach its objectives. The Japanese government must be accorded due credit for its accomplishments, but the net effect of all the praise gives the illusion that the government's actions have been unilateral in nature and that Japanese industry merely follows the govern-
ment’s wishes. Such an impression would be an inaccurate portrayal of industrial relations in Japan today. On the contrary, Japanese business and government have maintained a relationship which is necessarily bilateral and mutually beneficial. Moreover, individual segments of the Japanese industrial world have played important roles in the policy formulation process and, ultimately, contributed to the successful implementation of adjustment policy.

A. The Policy-Making Process

Article 41 of the Japanese Constitution (Kenpo) provides that the Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State. However, “the Diet exercises its law-making power in a formal rather than a creative sense” since legislative proposals typically originate within the bureaucracy rather than within the Diet itself. This process is commonly known as ringi-sei (ringi system).

The ringi system is a uniquely Japanese decision making procedure. It is a complex process that incorporates many of Japan’s social values and functions along the lines of typical Japanese social behavior. Ringi-sei is broadly described as

the approval-seeking process where a proposal (ringi-sho) prepared by a lower functionary works itself up through the organization hierarchy in a highly circuituous, snail-paced manner; at each step it is examined by the proper officials, whose approval is indicated by affixing a seal, and somehow a decision emerges from the process.

More specifically, the process involves the following basic steps:

69. See infra notes 83-87 and accompanying text.
70. The Diet is a bicameral legislature which was patterned after the Western European model. Trezise & Suzuki, Politics, Government, and Economic Growth in Japan, in Asia’s New Giant, supra note 11, at 757. The Diet is composed of the 491-member lower House of Representatives and the 252-member upper House of Councillors, pursuant to Kenpo (Constitution) art. 42 (Japan). The Diet is also “chosen under a franchise that is universal for citizens aged twenty-one and over.” Id. at 758.
71. Kenpo art. 41. See also Kok’kaiho (Diet Law), Law No. 79 of 1947, translated in 1 EIBUN-HUREI-SHA (EHS) L. BULL. SERIES CA.
73. See infra notes 74-81 and accompanying text.
74. Ringi-sei is generally defined as “the system whereby documents are drafted at lower levels of an organization and then circulated to various units for approval.” Vogel, Introduction: Toward More Accurate Concepts, in JAPANESE ORGANIZATION, supra note 61, at xvii.
75. Yoshino, Emerging Japanese Multinational Enterprises, in JAPANESE ORGANIZATION, supra note 61, at 158.

Note that this decision-making procedure is similar in both the business and government settings. See generally Noda, Big Business Organization, in JAPANESE ORGANIZATION, supra note 61, at 115-45.
1. *Initiation* of a draft idea by an official in the top levels of a bureaucracy.

2. *Drafting* of the bill in the section (ka) that has responsibility for the matter. Informal discussions take place within the section, and there are consultations with other concerned offices.

3. *Consultations and meetings* to revise the draft and to gather support and approval for it.

4. *Circulation* of the completed document up and down through the concerned offices for seals of approval by the office chiefs until the draft reaches the office of the vice-minister.  

5. *Submission* of the ringi-sho to the minister for consideration by the cabinet or submission to the Diet.

The advantage of the ringi system is that it allows for great flexibility and informality in the decision-making process. Consultation occurs at all levels within the bureaucracy, and a consensus for the proposal is gradually built up as the draft is circulated through the various offices. During this complicated, time-consuming procedure, it is possible to "take into account diverse points of view from both the public and private sectors." As one commentator observed, the process "enables various constituencies affected by the proposed legislation to provide input in a largely non-adversarial setting."  

The private sectors are able to participate in the ringi system by means of the shingikai (advisory commission). The shingikai are "official standing organs created by a minister and composed of civilian experts selected by him to inquire into and discuss policies and proposed legislation of his ministry." The civilian experts are usually representatives of various interests such as business, labor, industry, academia, and the mass media. The purpose of the sh-
ingikai is to "provide an open forum for the discussion of differences so that a consensus can emerge and a generally acceptable recommendation [be] made to the appropriate ministry." It should be noted, however, that although the members of a shingikai are attached to a particular ministry, they do not play a part in the actual decision-making process; their role is merely consultative.

Thus, consultation takes place at two levels in the decision-making process for the purpose of achieving consensus for a certain policy: within the bureaucracy itself and in conjunction with the shingikai. The result is a flexible and democratic way of making decisions that affect the country as a whole. This flexibility is especially significant for Japan's declining industries and for pressing issues such as employment adjustment, because it has allowed Japanese policy-makers to formulate rational strategies capable of being adapted to current economic realities and at the same time widely accepted by the affected interests.

B. The Japanese Approach to Unemployment in the Declining Sectors

Scholars of Japan often point out that Japan's comparatively active stance in economic policy has derived from the self-recognition that international trade is crucial to the country's survival. Japan's dependence on foreign trade requires careful allocation and consumption of its resources in order to obtain the maximum possible benefit. Such a requirement calls for centralized planning and policy implementation that are comprehensive.

Generally, Japan has approached industrial decline and its con-
comitant problems—in this case unemployment—in an entirely different manner than that of the United States. In sharp contrast to the American microeconomic approach,\textsuperscript{90} Japanese policy centers around macroeconomic planning.\textsuperscript{91} This process relies on what is known as “indicative planning,”\textsuperscript{92} whereby the Economic Planning Agency (EPA)\textsuperscript{93} assesses factors including trade growth projections, gross national product, production, prices, consumption, government income and expenditure, and deficits.\textsuperscript{94} The EPA then makes general policy recommendations based on its findings.\textsuperscript{95} The importance of the EPA’s planning lies in the fact that “[t]he plans serve to achieve national consensus\textsuperscript{96} on long-term goals and the direction in which the economy should head. Cabinet approval of the plans gives them further meaning in a broad national sense.”\textsuperscript{97}

One of the results of this slow and deliberate planning apparatus is a comprehensive approach\textsuperscript{98} to the problem of employment adjustment.\textsuperscript{99} This approach is made possible by two related factors.

\textsuperscript{90} “American policy is minimalist, fragmented, and negative, focusing on . . . microeconomic . . . problems.” Tanaka & Middleton, \textit{supra} note 4, at 433.


\textsuperscript{92} \textit{Industrial Policy Report, supra} note 8, at 22-23.

\textsuperscript{93} The Japanese Economic Planning Agency (EPA) “has come to be known as a ‘colony agency’ or a ‘branch store of MITI.’ It has no operating functions, but only writes reports . . . EPA’s forecasts and indicative plans are read not so much for their accuracy or econometric sophistication as for official statements of what industries the government is prepared to finance or guarantee for the immediate future.” C. Johnson, \textit{supra} note 3, at 76. The EPA is an independent, noncabinet agency attached to the prime minister’s office and is headed by an appointed minister of state (kokumu daijin). Id.


\textsuperscript{94} \textit{Industrial Policy Report, supra} note 8, at 3-4.

\textsuperscript{95} Id. at 23.

\textsuperscript{96} The basic premise for consensus in Japan is the wide-spread belief that negotiated solutions are superior to conflicts. Lansing & Rose, \textit{supra} note 91, at 258. It is also believed that cooperation and mutual approval by all parties concerned will foster greater commitment to the implementation of a decision. \textit{See supra} note 80.

Consensus, therefore, has evolved into a great social virtue and is an integral part of Japanese thought and behavior; its development was undoubtedly enhanced by Japan’s geographic cohesiveness and ethnic homogeneity. Consensus is sought to promote cooperation and to preserve social harmony in any type of setting, be it family, school, business, or government. The Japanese “consensus economy,” in which “cooperation between government, industry and labor continues as the central focus,” is one of many reflections of this fundamental characteristic. Lansing & Rose, \textit{supra} note 91, at 280-81.

\textsuperscript{97} \textit{Industrial Policy Report, supra} note 8, at 3-4.

\textsuperscript{98} Id. at 66-72. See also Tanaka & Middleton, \textit{supra} note 4, at 433-35.

\textsuperscript{99} Employment adjustment has been broadly defined as the continuing process of “allocating and reallocating workers among jobs in response to changing market conditions.” J. Orr, \textit{supra} note 62, at 6. The relative flexibility that a society in general, or a firm in particular, has in adjusting its labor force is intimately related to the structure of its internal labor market. A variety of background factors determine the shape and efficiency of internal labor markets. Variables such as the historical pattern of industrial development and union evolution, the rate of economic growth, and the relative heterogeneity and dispersed structure of
The first is that the Japanese policy-makers are cognizant of the importance of national consensus in pursuing its intended policy objectives. In other words, they are aware that it is in the national interest to cooperate with business and industry, especially with regard to the growing unemployment problems in the declining industries. Consequently, Japan's economic goals cannot be readily carried out without the support and approval of those sectors. The second factor is that because the Japanese government, particularly the Ministry of International Trade and Industry (MITI), strongly encourages "coordinated joint action between government and industry," it is willing to consult with and obtain the consent of the interested parties in the course of the decision-making process.

These two factors, the necessity for and promotion of consensus-based government-industry relations, provided considerable flexibility in Japan's approach to employment adjustment in the structurally depressed industries. Flexibility was further obtained from the nature of Japanese industrial policy itself, which tends to be purposefully broad in order to be adaptable to dynamic economic conditions. Concerned parties such as unemployed workers in declining industries are given an opportunity to take advantage of the provisions offered them through the government's flexible and comprehensive approach, including, but not limited to, relief through employ-

industries, population, and labor markets have all influenced the characteristics of Japanese and American employment adjustment. Id. at 13-16.

100. Craig, supra note 72, at 27-30.

101. The Ministry of International Trade and Industry, also known as MITI, along with the Ministry of Finance (MOF), is the chief government organ with the responsibility for economic decision-making in Japan. For a general discussion of MITI and its historical development, see C. JOHNSON, supra note 3; for a review of MITI and the decision-making process, see Ojimi, supra note 77.

102. Lansing & Rose, supra note 91, at 267.

103. Curtis, supra note 83, at 44.

104. See infra notes 110-31.

105. There is a view that industrial policy "is an indigenous Japanese term not to be found in the lexicon of Western economic terminology . . . " Ozaki, Japanese Views on Industrial Organization, 10 Asian Surv. 872, 879 (1970). The author further pointed out that "industrial policy" refers to a complex of those policies concerning protection of domestic industries, development of strategic industries, and adjustment of the economic structure in response to or in anticipation of internal and external changes which are formulated and pursued by MITI in the cause of the national interest, as the term "national interest" is understood by MITI officials. Id.

From another point of view, industrial policy is said to be composed of two elements, "corresponding to the micro and macro aspects of the economy . . . ." C. JOHNSON, supra note 3, at 27. The first element is "industrial rationalization policy" (sangyō gōrika seisaku), which refers to state intrusion into the detailed operations of individual enterprises with measures intended to improve those operations (or, on occasion, to abolish the enterprise). Id. The second element is called "industrial structure policy" (sangyō kōza seisaku), which concerns changing the proportions of the various industrial sectors in the nation's total production in ways the government considers advantageous to the nation. Id. at 28.

106. Trezise & Suzuki, supra note 70, at 808-11.
ment-related legislation.\textsuperscript{107}

\textbf{C. The Legal Bases of Employment Adjustment in Japan}

Japan possesses a policy-making system that is capable of speculating on what might happen in the future, while at the same time, being able to discern what must be done for the present. Because the Japanese legal system,\textsuperscript{108} like Japanese industrial policy, incorporates many cultural and societal norms\textsuperscript{109} and reflects Japanese behavioral patterns, it has great capacity to take changing economic conditions into consideration. Based on this foundation, Japanese policymakers have developed an innovative approach to the current problem of employment adjustment in the declining industries.

One method which unemployed workers in the declining industries can utilize to obtain relief is action through the medium of legislation.\textsuperscript{110} The Diet's most favorable reaction to economic change and its effects on industrial workers has been the enactment of two special laws: the Temporary Measures Law Governing Unemployed Workers in Specified Depressed Industries (Employees Law)\textsuperscript{111} and the Temporary Measures Law Governing Unemployed Workers in Specified Depressed Areas (Depressed Areas Law).\textsuperscript{112} This Comment significantly focuses on the first law, which expired in 1983 and was continued by the substantially similar Special Measure Law Governing Employment Stabilization for Workers in Specified Depressed Industries (Employment Stabilization Law).\textsuperscript{113}

The Employees Law provided the legal basis for employment adjustment in Japan and operated in conjunction with the Employment Insurance Law.\textsuperscript{114} The purpose of the Employees Law was to

\textsuperscript{107} See infra notes 108-29 and accompanying text.
\textsuperscript{109} Lansing & Rose, supra note 91, at 239.
\textsuperscript{110} Other methods which labor interests can employ are collective bargaining with employers, participation in union activities, and direct political action. For an in-depth analysis, see R. Cole, Japanese Blue Collar (1971); R. Cole, supra note 49; and Rippey, Alternatives to the U.S. System of Labor Relations: A Comparative Analysis of the Labor Relations Systems in the Federal Republic of Germany, Japan, and Sweden, 41 VAND. L. REV. 627-58 (1988).
\textsuperscript{111} Tokutei fukyū gyōshu rishokusha rinji sochihō (Temporary Measures Law Governing Unemployed Workers in Specified Depressed Industries), Law No. 95 of 1977 [hereinafter Employees Law].
\textsuperscript{112} Tokutei fukyū chiiki rishokusha rinji sochihō (Temporary Measures Law Governing Unemployed Workers in Specified Depressed Areas), Law No. 197 of 1978 [hereinafter Depressed Areas Law].
\textsuperscript{113} Tokutei fukyū gyōshu kankei rōdōsha no kōyō no antei ni kansuru tokubetsu sochihō (Special Measures Law Governing Employment Stabilization for Workers in Specified Depressed Industries), Law No. 39 of 1983 [hereinafter Employment Stabilization Law].
\textsuperscript{114} Kōyō hokenhō (Employment Insurance Law), Law No. 116 of 1974, translated in 8 EHS L. BULL. SERIES HB. Although the Employees Law, supra note 111, does not expressly provide for employment adjustment in conjunction with the Employment Insurance Law, the purposes and procedures for obtaining unemployment benefits under both laws are strikingly
assist in the transfer of excess labor out of the declining industries.115 It was also designed to extend Japan's general unemployment system to include unemployed workers in designated declining industries.116 Under the Employees Law, an unemployed worker was required to participate in government retraining and relocation programs in order to qualify for the unemployment benefits provided by law.117 The "worker [was required to] report to the local Public Employment Security Office, which certifi[ed] his unemployed status,118 and [there] he indicat[ed] his willingness to take a job assigned to him, and the government in turn attempt[ed] to find him a job."119 Refusal to accept a job assigned by the Public Employment Security Office would have cost the worker his right to basic unemployment allowances.120 The Employees Law also provided special allowances for workers who had been discharged from industries certified in advance by the government as structurally depressed.121 Furthermore, "[t]hose workers . . . over forty years old receiv[ed] special extensions of the Employment Insurance Law benefits,122 and employers who retrain[ed,] rather than discharg[ed, their] workers receiv[ed] subsidies."123

With respect to unemployed workers in communities affected by declining industries,124 "the government hoped both to establish [different] industries in the [area] and to provide assistance to displaced workers."125 For the period in which the Employee Law remained in

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115. Uriu, supra note 4, at 101.
116. Comment, supra note 68, at 605. Note that Japan's current unemployment system is modeled after early postwar legislation such as Shitsugyō hokenhō (Unemployment Insurance Law), Law No. 146 of 1947, translated in 8 EHS L. BULL. SERIES HA, repealed by Law No. 116 of 1974, appended art. 2; and Shokugyō anteiho (Employment Security Law), Law No. 141 of of 1947, translated in 8 EHS L. BULL. SERIES GA.
117. Comment, supra note 68, at 605. As part of his unemployment benefits, an unemployed worker could receive an employment promotion allowance and other expenses such as training allowances. EMPLOYMENT POLICY, supra note 5, at 24. See also Employment Insurance Law, supra note 114, at art. 10.
118. In order to become an eligible beneficiary of the basic allowances provided by the Employment Insurance Law, supra note 114, an unemployed worker must "obtain the recognition of the fact of being unemployed," art. 15, § 2 and "appear in the Public Employment Security Office and apply for employment." Id.
119. Comment, supra note 68, at 605-06. See also Employees Law, supra note 111, at art. 4 and Employment Stabilization Law, supra note 113, at art. 11.
120. Employment Insurance Law, supra note 114, at art. 32.
121. Employees Law, supra note 111, at arts. 1, 7, and 9; and Employment Stabilization Law, supra note 113, at art. 4.
122. Employees Law, supra note 111, at art. 18. See also Employment Stabilization Law, supra note 113, at art. 19.
123. Comment, supra note 68, at 606-07. See also Employees Law, supra note 111, at art. 5 and Employment Insurance Law, supra note 113, at art. 61, § 2, cl. 2.
124. "Communities to be aided were designated as such by cabinet order." Comment, supra note 68, at 608. See also Depressed Areas Law, supra note 112, at art. 2, § 1.
125. Depressed Areas Law, supra note 112, at art. 1.
force, the benefits provided

[for firms in [depressed] areas includ[ed] low-interest loans, loan guarantees, extensions of existing loans, and tax advantages. . . . For workers in these areas, the law provid[ed] the already familiar benefits of training and job search assistance . . . .

The provision for indirect employment adjustment assistance in the form of offering subsidies to employers who retrained rather than fired their employees is particularly appealing because it is consistent with traditional Japanese employment practices. Such a provision also has the effect of "encourag[ing] the long-term employment relationships characteristic of Japanese business, while it assure[s] an efficient distribution of the work force throughout the economy." It is, after all, in an enterprise’s interest to retrain its excess work force so that the workers can be productive in other sectors in the company or industry, rather than to discharge its employees in favor of temporary or lower-cost workers, or to allow its surplus regular workers to remain idle.

Japan’s employment adjustment programs have been deemed effective because by tying the program’s benefits to the worker’s participation, the legislation allows the government to offer positive incentives in order to shift human resources into competitive areas of the economy, and by authorizing placement and training facilities, the legislation enables the government to relocate workers from obsolete to growth-oriented industries on a nation-wide scale. Moreover, by incorporating these elements into its basic unemployment package rather than as a special adjustment program, the drafters of the law gave the government the option of training and placing workers displaced by changes in the national—as well as international—economic structure.

The government’s replacement of the Employees Law with the Employment Stabilization Law in 1983 which was designed to en-

126. Comment, supra note 68, at 608. See also Tokutei fukyō chiiki chūhō kigyō taisaku rinji sochihō (Temporary Measures Law Governing the Countermeasures for Small and Medium-sized Industries in Specified Depressed Areas), Law No. 106 of 1978, arts. 4, 5, 6, and 7.

127. Comment, supra note 68, at 608.

128. Note that such a provision also promotes the Japanese worker’s constitutional right to employment. KENPO art. 27. (“All people shall have the right and the obligation to work”).

129. Lansing & Rose, supra note 91, at 270.

130. It should be noted that temporary or lower-cost workers, typically female workers or younger workers, are not paid at rates equivalent to regular, full-time company employees. See Ministry of Labor, White Paper on the Employment of Women, in JAPANESE WHITE PAPERS, supra note 7.

131. Comment, supra note 68, at 607.

132. See supra text accompanying note 113.
hance the overall effectiveness and rationality of Japan’s employ-
ment adjustment program, provided a successful implementation of a
comprehensive approach to problems associated with industrial de-
cline. The question remains, however, as to whether this approach
has adequately addressed the specific concerns of unemployed work-
ers in structurally depressed industries. There are many reasons
which suggest that it has not.

IV. A Re-evaluation of Japan’s Approach to Employment Adjust-
ment in the Declining Industries

The legal mechanisms which merged the specific problem of un-
employment in the declining industries into the broader framework
of the national unemployment system afforded a viable foundation
for long-range policy implementation. In the short run, however, it is
by no means certain that the Japanese unemployment legislation has
extended adequate relief to the growing number of workers displaced
by industrial decline. This is because the law and the government
organs which administered the programs provided by the Employees
Law were ill-equipped to deal with the short-term needs of certain
unemployed workers in Japan’s “sunset” industries.

A. The Incomplete Nature of Japanese Unemployment Legislation
in the Context of Industrial Decline

The 1977 Employees Law133 was enacted in response to the in-
creasing problems encountered by employees in the troubled indus-
tries following the oil crisis in 1973.134 The Employees Law was also
designed to continue the adjustment assistance guidelines established
under the Employment Insurance Law.135 Both laws, however, con-
tained some inadequacies which did not facilitate effective employ-
ment adjustment.

First, the Employment Insurance Law was not a universal law.
Under article 3, the Diet authorized the government to engage in
projects concerned with employment stabilization, abilities develop-
ment, and employment welfare in addition to providing basic unem-
ployment benefits.136 Although the law provided such programs for
unemployed industrial workers who worked on a full-time basis
before being separated from their companies, it did not apply to day
laborers,137 seasonal workers,138 or mariners.139 Furthermore, the

133. See supra note 111.
134. See supra text accompanying notes 11-27.
135. See supra note 114.
136. Employment Insurance Law, supra note 114, art. 3.
137. Id. at art. 6(1).
138. Id. at art. 6(2).
139. Id. at art. 6(3). Note, however, that the Diet passed a law in 1977 to assist unem-
Employment Insurance Law was unclear as to the persons to whom it did apply. For example, except as provided for in article 7, the law did not expressly mention subcontractors or temporary workers who did not fall under the classification of "day laborers" or "seasonal workers." This ambiguity is disturbing because subcontractors and temporary laborers constitute a substantial percentage of Japan's industrial work force, and in times of hardship, these types of workers are likely to be adversely affected as much as full-time company employees.

Subcontractors and temporary workers present a serious problem since they do not have access to alternative employment opportunities like those given to regular company workers. Because they are not employed as workers of a given company, subcontractors and temporary workers cannot be transferred to higher-growth sectors within the business or to an affiliated enterprise, nor can they benefit from employer-initiated employment adjustment programs. Legislation that covers all classes of workers who are unfavorably affected by industrial decline is necessary in order for Japan's approach to employment adjustment to be truly comprehensive and flexible.

Second, the Employees Law provided unemployed workers with allowances for job searching and training from the Employment Stabilization Fund, pursuant to article 22 of the Employment Insurance Law. Eligibility to receive unemployment benefits for a fixed period of time was determined by factors such as age and the number of days a worker had been continuously unemployed in a depressed industry. Extensions of the period of time in which an unemployed worker could receive benefits were available only in certain restricted circumstances. This rigid scheme suggests that the employed mariners. Sen'in no koyo no sokushin ni kansuru rinji sochiho (Temporary Measures Law to Promote the Employment of Mariners), Law No. 96 of 1977.

140. "[A] large proportion of small manufacturers function as subcontractors of larger (often very large) manufacturing firms. Many subcontractors are wholly dependent on a single buyer . . . ." R. Caves & M. Uekusa, supra note 45, at 107.

141. "Temporary workers are taken on for specific, relatively short periods of time, though they may be rehired. They may be doing the same work as regular employees or special work . . . . [They] cannot be members of the enterprise unions, [because union status is] normally reserved for regular workers." Galenson & Odaka, The Japanese Labor Market, in ASIA'S NEW GIANT, supra note 11, at 619.

142. Id. at 619-20.

143. See supra note 62.

144. INDUSTRIAL POLICY REPORT, supra note 8, at 75.

145. The Employment Stabilization Fund is a sum set aside from the national budget for employment adjustment purposes, and its distribution is regulated pursuant to Shokugyo Kunrenho (Employment Training Law), Law No. 64 of 1969, art. 99.

146. Employment Insurance Law, supra note 114, at art. 20.

147. Id. at art. 20, § 1. The fixed period during which workers could receive unemployment benefits could have been extended by the number of days a worker remained unemployed (not including the 30 days required to trigger this provision) as a result of "pregnancy, childbirth, upbringing or other reason prescribed by [a] Ministry of Labor Ordinance . . . ." Id.
Japanese unemployment policy of the late 1970s and early 1980s was relatively inflexible. The law could have established a system whereby any unemployed worker in any depressed industry would not be denied a full opportunity to participate in government-sponsored employment adjustment programs solely because they could not meet the article 20 requirements for extensions to receive benefits. Perhaps the administration of the Employees Law would have been more effective if the Public Employment Security Offices had been granted the power to determine a worker's eligibility to receive extended unemployment benefits on a case-by-case basis.\textsuperscript{148}

Third, the utility and effectiveness of the administration of the programs established pursuant to the Employees Law and Employment Insurance Law have not been concretely ascertained.\textsuperscript{149} A study by one author suggested that the Japanese government may not have been an effective administrator of the employment adjustment projects:\textsuperscript{150}

One indicator of the peripheral role of government policy is that the budgets for its unemployment programs have not been overwhelming: in 1978, of the one trillion yen ($4.2 billion) that was allocated to the Ministry of Labor's unemployment programs, only 1.1 per cent was allocated for labor in the depressed industries, and a mere 0.8 per cent ($33.3 million) was spent for retraining and placement programs. Furthermore...[a]ccording to a 1978 survey by the Trade Union Council for Policy Promotion, only 6.2 per cent of those surveyed had received the extended unemployment benefits, 3.6 per cent the retraining benefits, and 15.6 per cent compensation from the Employees Law... In fact, a surprising number of the respondents indicated that they were unaware that these programs even existed.\textsuperscript{151}

Japan's employment adjustment programs, during the Employees Law period, could have been more successful had they been administered as the drafters of the law had envisioned. It is difficult to speculate what will happen during the current wave of unemployment in the declining sectors regarding the administration of employment adjustment programs. Since the Employment Stabilization Law lapsed in June 1988, it is uncertain as to whether a similar law has been enacted by the Diet. Substantial changes in policy guidelines may be necessary to take into account contemporary economic

\textsuperscript{148}. The Japanese government and the Public Employment Security Offices are under the duty to promote the re-employment of unemployed workers in the depressed industries. Employees Law, supra note 111, at art. 4. Thus, the granting of more discretion to the Public Employment Security Offices in determining workers' eligibility to receive unemployment benefits would have been proper under the Employees Law.


\textsuperscript{150}. Id.

\textsuperscript{151}. Uriu, supra note 4, at 108.
conditions which may or may not be different in nature from those which were present after the energy crisis in the mid-1970s. To this end, clear-cut legislation and government regulations setting forth specific procedural matters, for example, publicizing the availability of and allocating program funds to deserving unemployed workers, may help to overcome several problems in this area.

B. Weaknesses in the Japanese Bureaucracy's Position Regarding Employment Adjustment

Successful policy implementation hinges on bureaucratic efficiency and authority to carry out the goals of the policy. The Japanese government, especially MITI and the Ministry of Labor (MOL), has taken a more active and direct stance towards contemporary industrial problems by "providing a forum for mediation, consensus and cooperation, as well as positive material incentives." In doing so, "[it] has succeeded in cushioning some of the adjustment costs for industry and labor; in the process, it has certainly hastened adjustment." In spite of the government's achievements in the field of economic policy, some Japanese government organs have been losing the control that they had previously exercised over business, industry and labor. The power bases of Japan's economic ministries are proving to be increasingly vulnerable; this is a trend which has had a bearing on the effective implementation of employment adjustment policy. Several factors are responsible for this development.

First, Japanese economic bureaucracies have, in effect, become victims of their own broad administrative discretion. This phenomenon has been caused by the ministries' loss of influence over the Diet and industry. "As a review of almost any legislation relating to the economy reveals, the Diet almost invariably delegates broad authority to the bureaucracy to formulate policy and to enforce it by [informal] means. [During Japan's period of rapid economic growth,] the Diet [did not] limit the bureaucracy's authority and the bureaucracy [did] not [press] for stronger, more effective enforcement power." One scholar explained the changing situation in terms of a balance-of-power analysis:

Although the Japanese bureaucracy during the postwar era has exerted a remarkable influence within the ruling Liberal Demo-

152. Id.
154. Id.
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The political influence of MITI and the other economic ministries has depended perhaps foremost upon a national consensus giving overriding priority to economic growth as well as on the delicate balance within the LDP between party politicians and former bureaucrats, conflicting claims by rival ministries, and the support of various economic interests—the “client” industries of each economic ministry. The influence of the national bureaucracy as a whole has never translated into sufficient political power to gain whatever it desired. The consequence has been the incapacity of MITI or any other ministry to extract significant enforcement powers from the Diet.

The same writer cited the ministries’ repeated efforts “to have the Diet enact legislation to weaken antitrust enforcement in the late 1950s and the Designated Industries Promotion Special Measures bill in the early 1960s [as an example of] the inability of the economic bureaucracies to override industry opposition to any increase in bureaucratic power.”

Second, the failure of the Japanese economic ministries to obtain substantial legal enforcement power from the legislature compelled their increased reliance on extra-legal measures. These informal means of law enforcement lacked force and became a less effective form of law enforcement because they had virtually no formal support. The paucity of formal legal control and the ubiquity of informal means in their stead created conditions under which interest groups, such as unemployed labor forces, could take advantage of being unrestricted by formal procedures in the decision-making process. In fact, the government’s inability to enforce its guidelines through formal measures have appeared to work to the interest groups’ advantage: interest groups stood to gain more from informal bargaining processes than formalized ones.

Third, there has been a widening gap in the political power of declining and emerging industries. “Historically, the declining, noncompetitive industries have placed the heaviest political demands on government, mainly in the form of measures to insulate them-

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155. The Liberal Democratic Party (LDP) is the right-of-center, pro-business and pro-agriculture political party which has been in power for over thirty consecutive years since its inception in 1955. Trezise & Suzuki, supra note 70, at 759-76.
156. Haley, supra note 153, at 118.
157. Id. at 117.
158. Id.
159. See infra notes 182-200.
160. See infra note 191.
161. See infra note 189.
162. Haley, supra note 153, at 114.
163. Id.
164. Uriu, supra note 4, at 99.
selves from foreign competition." This disparity in political power has complicated the policy-making process, especially where declining industries have favored protection over adjustment. Adjustment efforts by the government have been further frustrated in that the declining industries' political influence has not waned with their loss in economic leverage.

Fourth, the economic ministries cannot force industry to accept stabilization or other forms of adjustment assistance. In the first place, declining industries must initiate the adjustment process of their own will, and by the same token unemployed workers must voluntarily opt for employment adjustment assistance. Industries have not always agreed to comply with bureaucratic recommendations, as the Oil Cartel cases, which took place during the 1973 oil crisis, demonstrated. Additionally, industrial commitment to consensus-based policies is not as strong in Japan today as it had been in the past. "When push comes to shove, when the desires of business are directly opposed to those of the government, it is uncertain whose interests will dominate." In the absence of formal legal powers to regulate the adjustment of declining industries, Japanese ministries cannot require an industry and its related concerns to undergo revamping or other forms of adjustment. This is especially so when there is a lack of consensus regarding the issues crucial to the success of the adjustment program. Japan's government functions can therefore only hope to elucidate the urgent need for adjustment.

Finally, uncontrollable economic circumstances have served to undermine the influence of Japan's economic ministries. There have been both foreign and domestic movements to liberalize Japan's trade, and some changes have come about from amendments in trade and investment law. "Increases in international pressure on Japan to reduce its tariffs and quotas and to standardize its non-

165. Id.
166. One writer observed: "Declining industries and their dependents are apt to prefer protection for the simple reason that adjustment subjects them to an uncertain future, while protectionism at least maintains the status quo for a time." Reich, supra note 32, at 872.
167. Uriu, supra note 4, at 99.
168. Id.
169. INDUSTRIAL POLICY REPORT, supra note 8, at 73.
170. See supra note 39.
172. "Industry groups have also come to discredit the informality of the cooperative relationship between business and industry." Id. at 155. The effects of slower economic growth have made decision-making and achieving consensus increasingly difficult. INDUSTRIAL POLICY REPORT, supra note 8, at 96.
174. See INDUSTRIAL POLICY REPORT, supra note 8, at 74.
175. For example, the Japanese government has avoided using import restrictions because "[c]ontinued imports require that an industry face the problems of adjustment as quickly and efficiently as possible." Id. at 73.
176. F. Upham, supra note 171, at 166.
tariff barriers"¹⁷⁷ are becoming more noticeable. Trends such as these have “progressively weakened formal [bureaucratic] power . . . until it [has become] virtually impossible [for the economic ministries] to use [their] power in the traditional manner”¹⁷⁸ to force industry’s compliance with ministerial guidelines.¹⁷⁹

In sum, these factors have caused Japan’s economic ministries, seemingly invincible during the period of rapid economic growth, to gradually relinquish some of their hold over industry. Although ministries such as MITI and the Ministry of Finance (MOF) still command much influence and respect, they have done so only because of their increasing reliance on informal policy enforcement mechanisms collectively known as “administrative guidance.”¹⁸⁰ The question of whether Japan’s “flexible” employment adjustment policies can be carried out more efficiently in the near future than when the ministries were at the apex of their authority in the high-growth period in the 1950s and 1960s¹⁸¹ will remain unresolved until further observation and analysis can be conducted.

C. Bureaucratic Reliance on Administrative Guidance

In order to complete this brief re-evaluation of Japan’s employment adjustment policy of the past decade, it will be necessary to analyze the form of “law enforcement” which the Japanese economic ministries have come to rely upon to a great extent: gyōsei shidô (administrative guidance).¹⁸²

Gyōsei shidô became a formal national policy with the enactment of the Important Industries Control Law in 1931.¹⁸³ It did not, however, become an integral part of Japanese economic life until the 1950s, when the government loosened its antitrust controls over industry¹⁸⁴ in order to stimulate economic growth and to promote the general policy of “catching up with the West” in terms of international competitiveness. In the present day, gyōsei shidô refers to “the means by which administrative organs exercise influence by non-authoritative means without binding legal directives in order to guide the recipient of administrative guidance by positive act or omission.”¹⁸⁵

Administrative guidance is simply an informal process of law

¹⁷⁷..Id. at 188.
¹⁷⁸. See infra note 197.
¹⁷⁹. See infra notes 186-89.
¹⁸⁰. Cf. F. Upham, supra note 171, at 189.
¹⁸¹. See infra notes 183-201 and accompanying text.
¹⁸². See infra notes 183-201 and accompanying text.
¹⁸³. Important Industries Control Law, Law No. 40 of 1931.
¹⁸⁴. Lansing & Rose, supra note 91, at 250.
enforcement. "It is used to implement nearly all bureaucratic policy, whether or not expressed in statute or regulation, at all levels of government and all administrative offices." This form of law enforcement encompasses measures such as directives (shiji), requests (yōbō), warnings (keikoku), suggestions (kankoku), and encouragements (kanshō).187

Administrative guidance is not, however, a concept unique to Japan, for it exists wherever informal law enforcement exists.188 What typifies gyōsei shidō as characteristically Japanese is its ubiquity; its pervasive use suggests that "it is not only a means of governing but the means of governing in Japan."189 It is also important to note that administrative guidance is subject only to a given governmental organ's jurisdiction, and that it cannot violate the law even though it is not based on any explicit law.190

It cannot be emphasized enough that administrative guidance is not legally enforceable; there is not statutory authority which grants enforcement power.191 Administrative guidance "involves neither formal legal action nor direct legal coercion,"192 and this is where its chief weaknesses lie.

In the first place, administrative guidance, "which amounts to an allocation of discretionary and unsupervised authority to the bureaucracy, is obviously open to abuse, and may, if used improperly, result in damage to the market."193 This is especially true where it is suspected that a bureaucracy is engaging in some sort of malpractice while using administrative guidance as a cover for its actions.194

Second, administrative guidance may not be the most cost-efficient method of law enforcement.195 As one writer put it,

The danger in the absence of the concept of the "rule of law,

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186. Haley, supra note 153, at 111.
188. Haley, supra note 153, at 110.
189. C. JOHNSON, supra note 3, at 265.
The legal framework within which . . . administrative guidance operate[s] consists of the statutory basis of MITI's authority and the administrative law doctrines that define its limits. The former delineates the areas in which MITI can exercise its discretion; the latter determines by whom, when, and in what forum that exercise can be challenged.

Id.
192. C. Johnson, supra note 3, at 318.
193. Id. at 267. The author implies that market forces will be disrupted if a ministry is not impartial during arbitration proceedings, if it conceals an illegal cartel under the guise of administrative guidance, and if a ministry is captured by the people it is supposed to be regulating. Id. at 267-68.
195. Id.
as far as business and industrial interests are concerned, lies in the fact that no sensible prediction can be made of the results of certain business transactions, where these involve administrative agencies. Thus rational business planning and operations become more difficult and this could eventually lead to instability in industrial and trade developments.\footnote{196. Id.}

Third, administrative guidance is weak in the sense that it is dependent upon the voluntary compliance of the party receiving the guidance in order to be effective and "enforceable." A bureaucracy can request, cajole, or even threaten an industry to enforce compliance with a certain guideline.\footnote{197. For example, a recipient company's privileges may be withheld, or incentives such as tax benefits, favorable loans, and subsidies for research and development may be extended to solicit compliance. E. Hahn, \textit{supra} note 108, at 116-17.} But as long as administrative guidance has no technical legal force, recipients do not have to fear lawful retaliation for noncompliance.

Finally, the economic bureaucracies almost exclusively rely on administrative guidance\footnote{198. "MITI has plied its administrative guidance through trade associations and industry-wide coordinating groups, and now depends mainly on this technique." R. Caves & M. Uekusa, \textit{supra} note 45, at 150-51.} as a source of law enforcement. \textit{Gyosei shido} is so pervasive in contemporary Japan that policy-makers have become complacent in the belief that recipients will willingly comply with ministry recommendations. While most recipients invariably choose to obey bureaucratic directives,\footnote{199. "Informal enforcement is most effective . . . to the extent that what is requested is viewed as ultimately beneficial or relatively more beneficial to the respondent or that failure to comply is perceived to be likely to result in greater disadvantage than would compliance." Haley, \textit{supra} note 153, at 113.} it does not necessarily follow that all future recipients of administrative guidance will do the same. A recipient is unlikely to comply with a ministry request if it feels that the costs of compliance will substantially outweigh the benefits of compliance.\footnote{200. Id.}

To summarize, the underlying weak nature of informal law enforcement such as \textit{gyosei shido}, the relative lack of formal regulation,\footnote{201. "The lack of contempt power by the courts or an analogue to it . . . precludes effective formal legal enforcement . . . Without significant civil or administrative sanctions, the primary formal legal means in Japan for compelling conduct is the criminal penalty . . . ." Id. at 116.} and the almost total dependence on ubiquitous informal means has significantly affected the economic ministries' ability to smoothly administer Japan's employment adjustment programs. True comprehensiveness and flexibility in unemployment policy for the declining industries will be difficult to achieve if the bureaucracies fail to gain sufficient authority to implement adjustment policy in the future.

\footnotesize{196. Id.} \footnotesize{197. For example, a recipient company's privileges may be withheld, or incentives such as tax benefits, favorable loans, and subsidies for research and development may be extended to solicit compliance. E. Hahn, \textit{supra} note 108, at 116-17.} \footnotesize{198. "MITI has plied its administrative guidance through trade associations and industry-wide coordinating groups, and now depends mainly on this technique." R. Caves & M. Uekusa, \textit{supra} note 45, at 150-51.} \footnotesize{199. "Informal enforcement is most effective . . . to the extent that what is requested is viewed as ultimately beneficial or relatively more beneficial to the respondent or that failure to comply is perceived to be likely to result in greater disadvantage than would compliance." Haley, \textit{supra} note 153, at 113.} \footnotesize{200. Id.} \footnotesize{201. "The lack of contempt power by the courts or an analogue to it . . . precludes effective formal legal enforcement . . . Without significant civil or administrative sanctions, the primary formal legal means in Japan for compelling conduct is the criminal penalty . . . ." Id. at 116.}
V. Conclusion

Japan has succeeded to a large extent in developing a comprehensive and flexible approach to the grave socioeconomic problem of unemployment in the declining industries. No industrial policy, however, can be perfect, regardless of its rationality. This holds true for Japan's employment adjustment policies in the late 1970s and early 1980s. There are weaknesses in the legal bases of the Japanese adjustment assistance programs as well as in the form of enforcement the Japanese government has utilized to implement those policies. For the future, failure to cultivate better methods of carrying out the purposes of employment adjustment may well result in the demise of what is otherwise a rational approach to adjust and stabilize troubled industries and their workers.

The role that Japanese labor unions, currently in a state of disarray due to economic and political weakness, may be able to play in the future rationalization of Japan's declining industries is speculative at best. The unions have the potential to become a powerful medium to implement employment adjustment policies, since Japan's labor problems in the declining sectors are likely to have a long-lasting effect on society, politics, and the economy. It is imperative for the work force to take the initiative in employment adjustment and cooperate with the pertinent authorities in order to contribute to a smoother transition to a post-industrial Japanese economy.

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202. See generally Galenson & Odaka, supra note 141, at 627-33.