

## **Civil Service Policy Making Process and Competencies in Japan: METI Case**

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### **1. Aim of the Study**

This paper analyzes the policy making process of the METI (Ministry of Trade, Economy and Industry) in Japan, paying attention to the outward looking interaction between the officials of the Ministry and the environment (including the relationship between the officials and the Minister). Especially, two aspects of the policy making process, that is, the information gathering and analysis, and the consultation (=process management), are the focuses of this study.

In addition to the analysis of policy making process, this paper tries to analyze the competency profile of the team of METI officials who contribute to each policy making process case. Under the present movement of the reform of civil service system in Japan, many people began to discuss about the abilities or competencies of individual civil servants. But rarely attentions were paid to the organizational competency.

### **2. Background**

MITI (Ministry of Trade and Industry), predecessor of the METI, was established as a result of the merger between the Ministry of Commerce and Trade Agency after World War . Because of the merger, there was built in tension between vertical industrial bureaus and horizontal trade bureau. This traditional tension between horizontal bureaus and vertical bureaus was strengthened when the Industrial Policy Bureau was established as the main horizontal bureau in the late 1970's. The tension between horizontal bureaus (Industrial Policy Bureau, Minister's Secretariat, etc.) that pursuit overall industrial policies detached from specific sectoral interests and vertical bureaus (in charge of each industrial sector) that pursuit policies based on bottom up analysis of each sector has been a major source of dynamism in the policy making process of the MITI and METI.

Weights of the horizontal bureaus have been further strengthened because of the recent structural reform since mid 90's. The ratio of horizontal organizations became larger as a result of the administrative reorganization enacted in January 2001, when the name of the Ministry was changed from the MITI to the METI. In addition, collaboration with government wide horizontal organizations, such as the Administrative Reform Committee, the Regulatory Reform Commission, and the Fair Trade Commission (FTC) can be found nowadays. But recently there is also criticism that horizontal policies of the METI are shortsighted because the horizontal bureaus try to put new issues on agenda every year using the occasions of annual budgetary process without enough investment in research.

The METI has several regional offices all over Japan, but these are not major policy making organization in the METI. Few of the Type officials, similar to the

first streamers in UK, go to regional offices during young period. On the other hand, some Type 1 officials are seconded to the posts of prefectural governments, but the total number is not large.

In the sense above, the METI does not have strong bases of front line organization. But it can also be said that all the bureaus of the METI are kinds of frontline organizations of overall Japanese government. Bureaus of the METI, especially vertical bureaus, have various contacts with the various facets of Japanese society and industry.

The size of the central headquarter of METI is 2500 officials (Total number including regional offices and the Patent Office are 8500). Among them, 1500 are administrative staffs and 1000 are technical staffs (engineers, etc.). And 1000 (600 administrative staffs and 400 technical staffs) among 2500 are Type 1 officials, which means that ratio of first streamer is too large in the Japanese system.

### **3. Civil Service Competencies**

#### **3-1 Overall Picture- Government Wide Attempts of Reforming Personnel Management System**

Comprehensive administrative reorganization, largest one since the end of World War 2, was undertaken in January 2001. After the major changes of forms of organizations, the argument appeared that there should be the major change of the contents of organizations, that is, personnel management systems.

In December 2001, "Points on the Guidelines for Reform of the Public Servant System" was decided by the Headquarter of the Administrative Reform of the Cabinet Office. Contents of the Guideline were following.

##### **Introduction of the concept of "ability"**

A new ability-based promotion system in which employees are promoted based on ability to conduct jobs will be introduced. Clear standards and procedures will be established. A new wage system will be introduced that consists of "basic wages," "work responsibility allowances" and "work performance allowances" in order to realize wages and compensation providing incentives and appropriately reflecting ability, work responsibility and work performance. A new assessment system based on "ability assessment" and "work performance assessment" will be introduced in place of the current employee assessment system. Prior to the introduction, adequate testing is conducted. The results will be reflected in concrete design of the system.

##### **Separate system for the executive positions- planned development and salary system**

Stringent screening will be implemented for the advancement to executive positions. A mechanism will be introduced for the planned development of individuals with the motivation and abilities appropriate for candidates for executive positions rather than relying on classification based on recruitment examination. For those in upper-level executive positions such as vice-ministers, directors-general and deputy directors-general, given the nature of the positions, an annual salary system and an appointment and wage system separate from ordinary positions will be established rather than applying an ability-based promotion system.

### **Securing diverse human resources- examination, exchange, and public recruitment**

The contents of the Type I examination will be improved and the number of people passing the exam will be broadly increased in order to secure a broad range of persons intending to become public servants, and so that the ministries can hire diverse and talented human resources from a large number of candidates. Human exchanges between the public and private sectors will be proactively promoted to realize open and high-quality administration. Regulations rooted in ideas of an excessively rigid separation between the public and private sectors will be reviewed. While reforming the system in the direction that makes it possible for employees to keep their status as private business employees even when working in the public sector, procedures for preliminary authorization and consultation by the National Personnel Authority will be reviewed and greater flexibility in assigning wages will be realized. With a view to making it possible for employees to actively apply to positions where their own abilities may be utilized and from the viewpoint of organizational revitalization, a public recruitment system will be proactively utilized.

### **Schedule**

The Headquarter of Administrative Reform Secretariat would work on proposals for revisions to the National Public Servant Law, and the proposals will be submitted to the Diet during 2003 and drafts of related bills and Cabinet ordinances will be prepared by the end of FY2005. While securing the time necessary for preparations in order to conduct a smooth transition, a complete transition to a new system by FY2006 will be aimed.

Concerning the reform of recruitment examination, additional document "Points Concerning Modalities for Fundamental Reform of Recruitment Examinations" was adopted in August 2002. Contents are following.

### **From written examination to comprehensive personnel evaluations**

Under the current system, successful applicants are primarily narrowed down through written examinations and selected according to the scores. For Type I, the final number of successful applicants is set as approximately twice the number of positions to be filled. This is narrowed down by interviews of candidates who visit each ministry and agency after the announcement of first round of successful applicants. Due to an excessively stringent selection process, the pool of final successful applicants does not meet the diverse needs of each ministry and agency. Under the proposed system, recruitment will be based on comprehensive personnel evaluations by each ministry and agency of a greater number of successful applicants. The Cabinet will establish common rules concerning personnel evaluations to ensure transparency and fairness. Regarding the final number of successful applicants for Type I examinations, the National Personnel Authority was requested to increase the number up to approximately 2.5 times of positions for FY2002 and by approximately four times of positions for FY2003.

### **Ability based career system**

In order to correct the obstacles inherent in the career system, post-employment strict assessments will be made of Type I public servants, and by paving the way to make Type II and Type III public servants eligible for intensive training, ability-oriented personnel management will be advanced in the Cabinet, ministries and agencies, regardless of the type of recruitment examination taken by public servants.

### **Securing human resources with graduate school level education**

For human resources who have completed at least a certain level of graduate school curriculum including those from law schools to be established in 2004, consideration will be given so that flexible treatment can be possible for the selection of examination subjects and appropriate merit-based remuneration can be applied, regardless of whether or not in administrative or technical fields.

As the discussion above shows, the concept of “ability” will be very important in the new personnel management system and the concept needs to be operationalized. For example, the assessment of ability is different from the assessment of work performance and separate methodology of assessment has to be developed. But the detailed elements and the system of the ability assessment is not clear yet at government wide level. Experiments have been conducted at the each ministry level.

The only clear policy so far is the movement from written examinations to comprehensive personnel evaluations as a major tool for selections. This is a movement to give more discretionary power to each ministry or agency concerning the evaluation of abilities. But the concrete criteria for evaluating applicants from comprehensive perspective is also not clear yet.

### **3-2 Experiments by Ministries - METI case**

In the METI, officials are experimentally categorized into two categories, that is, “policy professional” and “specialist”.

“Ability” of “policy professional” is defined as standards of good practice at each of three stages, that is, section chief stage, deputy division chief stage, and division chief stage. At each stage, there are three levels, that is, base level, professional level, and outstanding level.

As contents of abilities, 6 categories of abilities are identified. Those are the ability of finding issues, the ability of information collection, the ability of articulation and designing of policies, the ability of negotiation and getting agreements, the ability of management for results, and the ability of human resource development. As the ability of negotiation and getting agreement shows, the list of abilities includes outward looking aspect. But among the 6 categories of abilities, new emphasis is placed on the ability of management for results and the ability of human resource development. Traditionally in the METI, emphasis has been placed on the capabilities of setting agenda and outward process management (negotiation). But now it is recognized internally that setting agenda and process management (negotiation) is not enough, and that management capabilities such as the ability of management for results and the ability of human resource development have to be incorporated as important factors for evaluating officials especially in senior posts.

As the inclusion of the ability of management for results and the ability of human resource development in the list of abilities shows, individual capabilities for managing organizations are included in the assessment of abilities. But it is limited in that it still does not include overall assessment of team portfolio of abilities.

Concerning “specialists”, several categories are set so far. Examples of specialists training experimented are following.

#### Financial analysts

There are only a few officials who took the course for becoming specialists of financial analysis. But it is expected that there might be one hundred financial analysts in the near future (Of course, there are various levels of financial specialist. Demands for high level financial analysts who can work as industrial analyst might be limited around ten).

#### Specialists of R&D (Research and Development)

Among the 2500 officials working in the headquarter of the METI, 1000 are technical staffs (engineers and scientists). As the number shows, there seems to be big potential areas where specialists of R&D can work in the future.

#### Nuclear safety specialists

This is the area where specialized knowledge is required for the monitoring and enforcement of nuclear safety regulation. NISA (Nuclear and Industrial Safety Agency) has already about 300 officials working in this area.

In addition to the categories of specialist above, there are several candidate areas for specialists training. Those are information technology, statistics, intellectual property, corporate laws (commercial code, competition law), trade law, and standards and verification/accreditation.

One of the major themes of personnel management system reform is the acceleration of mobility between public and private sectors. The METI also experimented several initiatives in this area. There are 32 officials seconded to prefectural governments. Among them, 22 are Type officials. There are 3 officials seconded to private sector. There are 50 staffs seconded from private sector. There are 60 staffs seconded from prefectural government.

## 4. Cases

### 4-1 Case Selection

As cases for policy making process of the METI, the case of electricity deregulation in 1999 and the case of reintroduction of holding companies in 1997 are analyzed in details. The case of electricity deregulation in 1999 is clearly the energy case comparable to cases in UK and Germany. The case of reintroduction of holding companies is the amendment of anti-trust law and can be identified as part of competition policy, which the UK case and the German case dealt with.

The electricity deregulation in 1999 was the second deregulation following the first electricity deregulation in 1995. Electricity regulatory reform in 1995 was about the partial introduction of IPP (Independent Power Producers) and was the major amendments of Electricity Industry Law after a few decades. The electricity deregulation in 1999 was about the partial liberalization of retail markets. It was easier in that this was second deregulation, but it was more difficult in that this was about the competition in the retail market (In the case of the introduction of IPP, existing

electricity utilities were buyers of IPP services and there was no direct competition between IPP and existing utilities). The issue can be categorized as the case of conflict brokerage. It involved fundamental conflicts between regulators, existing electricity utilities, new entrants into the market and uses, and required the capacity of civil service to muster and manage conflicts.

The reintroduction of holding companies had been unthinkable until recently. Prohibition of holding companies, reminiscent of “Zaibatsu”, concentrated economic powers in Japanese economic order before World War , had symbolic and ideological meaning in the history of Japan after World War . The prohibition by the anti-trust law had been supported strongly by the socialist party in Japan. The issue was also not under the sole jurisdiction of the METI. The issue required the consultation between the METI, FTC (Fair Trade Commission) and Labor Unions (the importance of the last actor was not fully noticed even by the official of the METI at the beginning stage). In addition, the introduction of holding companies required the designing of the process of setting up holding companies, which required the change of commercial code and tax law. Because of the nature of the issue above, the issue can be categorized as the case of handling “wicked issue.”

## **4-2 Electricity Deregulation**

### **4-2-1 Policy Document**

The focus for analyzing the policy making process of the electricity deregulation in 1999 is the Report of the Basic Policy Committee of the Advisory Council on Electricity Industry adopted in January 1999. “Biography” of this report is described and analyzed in the following pages.

There were 29 members in the Basic Policy Committee of the Advisory Council on Electricity Industry. Among them, the chair was the head of Keidanren, Japanese business association, and there were 4 members from existing electricity utilities, 5 members from IPPs, one member from user (a big retail company)s, 4 academic experts “conservative” or “progressive”.

It took relatively long time for drafting this policy document. The Basic Policy Committee was established in July 1997; and final report was adopted in January 1999. It means that it took 19 months to finalize the report. But the new legislation following the report was adopted also in 1999. It took only short time after final report. And the amended law was enacted in April 2000.

### **4-2-2 Competencies Profile**

There were 7 major officials involved in the process leading to the electricity deregulation in 1999. Major officials are following.

Mr. A : Head of Public Utility Department

Mr. B: Head of Planning Division

Mr. C: Head of Public Utility Reform Office

Mr. D: Deputy of Operational Division and double appointed to the Public Utility Reform Office, who was in charge of informal consultation with utilities, tariff reform since Jan 1998

Mr. E: Member of Public Utility Reform Office who was in charge of foreign studies and legislation

Mr. F: Member of Public Utility Reform Office who was in charge of advisory council, and contacts with experts, IPPs and users – relatively formal consultation

Mr. G: Member of Operational Division and double appointed to the Public Utility Reform Office, who was in charge of tariff reform with Mr. D since Jan 1998, and detailed legislation on tariff

Among them, Mr. A and Mr. B came to the position in July 1997 and were key supporters of deregulation movement Mr. C, Mr. D, Mr. E, Mr. F, Mr. G are identified as key members for preparing the Report of the Basic Policy Committee of the Advisory Council on Electricity Industry adopted in January 1999. I interviewed those 5 officials. Through interviews, I identified the major competency characteristics of those officials in the following way.

Mr. C: Head of Public Utility Reform Office

Expertise in strategic and analytical thinking based on economics analysis

Experiences in horizontal bureaus

Mr. D: in charge of informal consultation with utilities, tariff reform

Political deal capability

Previous experiences in 1995 electricity deregulation reform

Networking with key persons in utilities

Mr. E: in charge of foreign studies, legislation

Recent experiences of studying abroad

Mr. F: in charge of advisory council – experts, IPPs and users

Networking with experts, users and newcomers – relatively formal consultation

Mr. G: in charge of tariff reform with Mr. D

Working with Mr. D for administrative reform before this position

Youngest and energetic

#### **4-2-3 Stages of Process and Process Management Skills**

##### **(1) Prehistory**

The Economic Structure Reform Program adopted by the Cabinet in December 1996 required that the cost of electricity would be reduced to the international level by 2001 through measures such as increasing load rate, full use of IPPs and direct competition in the retail market. Following the program, Minister of the MITI, Mr. Sato announced as a political initiative in January 1997 that the separation of power production and transmission should be introduced.

“Old” regime in the MITI responded to this political initiative, promising in the Action Plan of Economic Structure Reform in May 1997 that 20% reduction of the electricity price, full introduction of IPPs and increasing efficiency of grid system would be introduced. The MITI also promised to set up the Basic Policy Committee of the Advisory Council on Electricity Industry and to get agreement within a year about future supply system. But it looked that there seemed to be no idea to introduce competition in the detail market.

##### **(2) Conflict: July to Dec 1997**

Mr. A and Mr. B came to the position of the Head of Public Utility Department and the Head of Planning Division respectively in July 1997. The attitude of the “New” regime in MITI was pro competition. Mr. C also became the Head of Public Utility Reform Office in July 1997 who had expertise in strategic and analytical thinking based on economics analysis.

There was agreement about increasing IPP and increasing efficiency of grid system. But the conflict on supply reform continued. Finally basic policy toward deregulation of supply system was adopted. In July 1997, the Basic Policy Committee of the Advisory Council on Electricity Industry was established, whose members included the head of Keidanren as chair, 4 members from existing electricity utilities, 5 members from IPPs, one member from user, 4 academic expert “conservative” or “progressive”. The committee was open to public, which was still unusual around that time.

For pushing toward deregulation of supply system, “information” played very powerful roles. The information included information about foreign situation collected and analyzed mainly by Mr. E and information about the gap of costs between Japan and foreign countries collected through users by Mr. F. But the disclosure of information above caused serious disputes with electricity utilities about the credibility of data. The announcement by the MITI about possible introduction of regulation about the use of transmission network after deregulation fueled the disputes.

The conflicts between regulators and electricity utilities continued. But the retail liberalization was also mentioned by the Administrative Reform Committee in December 1997. It worked as outside pressure.

### **(3) Convergence: January to May 1998**

Under the conditions of server conflicts between regulators and electricity utilities, Mr. D was transferred to the Deputy of Operational Division and double appointed to the Public Utility Reform Office in January 1998, who was in charge of informal consultation with utilities. Mr. D had political deal capability to deal with these conflicts, and because of his previous experiences in 1995 electricity deregulation reform he had networking with key persons in utilities.

Dr. D took various differentiated consultations with electricity utilities. Concretely, he had detailed informal consultation with each electric utility, that is, TEPCO (Tokyo Electric Power Company) and other utilities. He also talked to various sections in electric utilities, that is, tariff section (traditional center of regulated industry), financial sections and IT sections of electric utilities. Through those informal and differentiated negotiations, TEPCO and other utilities began to show positive attitudes toward deregulation in the detail market.

On the other hand, Mr. C, Mr. E, Mr. F organized transparent discussion about scenarios. They raised three scenarios, that is, no liberalization, partial liberalization and full liberalization. They incorporated inputs by “progressive” experts and adopted the interim report pushing for partial liberalization in May 1998.

### **(4) Tariff reform**

Tariff regulation was potentially major issue under the partial liberalization. There was theoretical possibility of introducing asymmetrical regulations for protection of newcomers, concerning the price of transmission for the use of newcomers and retail tariff of existing utilities, as the case of telecommunication deregulation showed.

But in this case of introduction of competition in the retail market of electricity, no such asymmetrical regulation was introduced. For facilitating the entry of newcomers, the entry approval system was abolished. On the other hand, for the benefits of existing utilities, tariff approval system was partially abolished. That is, it became not necessary to get approval from government concerning the reduction of electricity price. This non introduction of regulatory actions, that is, the respect for “managerial autonomy” was a major factor for getting agreement from electric utilities.

In addition to this general respect for managerial autonomy, permission of inclusion of surplus into capital was an important bargaining chip in the deal, because the capital ratio of utilities, which seemed to become important after deregulation, was weak at that time.

Those negotiations were undertaken by Mr. D and Mr. G.

After finishing those negotiations, the Final Report of the Basic Policy Committee of the Advisory Council on Electricity Industry was adopted in January 1999.

#### **4-2-4 Conclusion**

This case can be characterized as a relative success case as it allowed “partial” liberalization of retail market, even though it did not bring about full liberalization such as the introduction of pool system.

The case clearly shows the importance of two kinds of skills for policy process management. That is, the skill of information gathering and analysis and the skill of social consultation. The role of information about the foreign situation of electricity market and about the electricity price gap between Japan and foreign countries showed the importance of the first skill, and the role of informal differentiated consultation and other skill showed during the process of getting agreement from electric utilities showed the importance of the second skill.

Concerning the team profile of competencies, the team of this case can be characterized as a rare success of project team. The success was made possible partly because of the support of heads of surrounding Divisions on Operation, Development and Safety. They allowed primary role of Public Utility Reform Office for deregulation issue.

But their success concerning the internal combination of competencies seems to be an unintended byproduct. It is true that for this kind of conflict brokerage issue, the combination of raising issues at initial stage using analytical expertise and then getting agreement through the skill of social consultation worked well. But this combination was not a product of intentional decision, except partially intended inputs of Mr. D and Mr. G for dealing with conflict between regulators and electric utilities.

### **4-3 Holding Company Reform**

#### **4-3-1 Policy Document**

The focus for analyzing the policy making process of the reintroduction of holding companies in 1997 is the Report called “New Directions of Corporate Laws” adopted in February 1995 by the Study Group on Corporate Laws. “Biography” of this report is described and analyzed in the following pages.

There were 16 members in the Study Group on Corporate Laws. Among them, 6 were scholars (3 were competition lawyers) including the chair specializing in trade law, and 10 were practitioners mainly from private businesses. .

It took relatively short time for drafting this policy document. The Study Group was established in November 1994; and final report was adopted in February 1995. It means that it took only 4 months to finalize the report. But the new legislation following the report was adopted in 1997. It took long time after final report. And the amended law was enacted in December 1997.

In addition, the introduction of holding companies required the designing of the process of setting up holding companies, which required the change of commercial code and tax law. Concretely commercial code amendments designing the process setting up holding and subsidiary companies using exchange and transfer of stocks was adopted in 1999. So I would like to pay attention also to the policy making process for the commercial code amendment.

The additional focus for analyzing the policy making process of the amendments of commercial code for setting up holding and subsidiary companies using exchange and transfer of stocks is the Report of the Study Group on Commercial Code adopted in February 1998. The Study Group was composed mainly by commercial code specialists and business practitioners in charge of corporate legal affairs. The Study Group was established in July 1997; and final report was adopted in February 1998. It means that it took 8 months to finalize the report. And the new legislation proposal following the report was adopted in February 1999 by the Legislation Council of the Ministry of Justice, and adopted at the Diet also in 1999. .

#### **4-3-2 Competencies Profile**

There were 6 major officials involved in the process leading to the reintroduction of holding companies in 1997 and the related amendments of commercial code in 1999 and others. Major officials are following.

Mr. H: Predecessor of the Chief of Industrial Organization Policy Office  
1992-1994 July

Mr. I: Chief of Industrial Organization Policy Office and later the first Division Chief of Industrial Organization Division  
1994 July to 1996 July

Mr. J: Successor of Division Chief of Industrial Organization Division  
From July 1996 to 1998

Mr. K: Deputy Chief of Industrial Organization Policy Office

From 1993 to 1995

Mr. L: Successor of Deputy Chief of Industrial Organization Policy Office and later the first Deputy Chief of Industrial Organization Division

From 1995 to 1997

Mr. M: Successor of Deputy Chief of Industrial Organization Division

From 1997 July to 1999

Among them, Mr. H, together with Mr. K, reviewed and picked up major issues on corporate laws; and the reintroduction of holding companies was one of the issues picked up. Mr. I and Mr. K are identified as key members for preparing the Report of the Study Group on Corporate Laws in February 1995. After the production of the report, it took time to legislate the reintroduction of holding companies in 1997. In the process leading toward the adoption at the Diet, Mr. J and Mr. L played important roles for making sure agreement with the FTC and getting agreement from the labor unions. Concerning the related amendment of the commercial code finally adopted at the Diet in 1999, Mr. J and Mr. M played important roles for preparation of the report of the Study Group on Commercial Code in February 1998 including the collaboration with the MOJ (Ministry of Justice).

Among them, I interviewed with 4 officials (Mr. I, Mr. J, Mr. K, Mr. M). Mr. I and Mr. K were team for preparing the Report of the Study Group on Corporate Laws in February 1995, and Mr. J and Mr. M were team for preparing the report of the Study Group on Commercial Code in February 1998. Through interviews, I identified the major competency characteristics of those officials in the following way.

Mr. I: Chief of Industrial Organization Policy Office and later the first Division Chief of Industrial Organization Division

Experiences in horizontal departments

Analytical capability for raising and pursuing issues based on logics/ reasons

Mr. K: Deputy Chief

Experiences of relative frontline (agricultural trade)

Young and energetic

Mr. J: Successor of Division Chief

Capability of social consultation for cooperation with FTC and dealing with labor issue

Experience of labor issues

Mr. M: Successor of Deputy Chief

Experience of studying abroad just before the position

Specialist of Law and Economics

Seconded to MOJ afterwards

#### **4-3-3 Stages of Process and Process Management Skills**

##### **(1) Prehistory**

Mr. H, the Chief of Industrial Organization Policy Office from 1992-1994 July, together with Mr. K, reviewed and picked up major issues on corporate laws; and the reintroduction of holding companies was one of the issues picked up. They also organized foreign researches on holding company, collaborating with business enterprises. Mr. K, who was also working on deregulation in general, solicited requests for regulatory reform from business. Keidanren was generally supportive to the issue of reintroduction of holding companies.

## **(2) Production of the Report “New Directions of Corporate Laws”**

Among various issues concerning corporate laws picked up by Mr. H, Mr. I, new Chief of Industrial Organization Policy Office from 1994 July- 1996, selected an issue of reintroduction of holding companies as one of major agenda. The reintroduction of holding companies had been unthinkable until then, because the prohibition of holding companies, reminiscent of “Zaibatsu”, had symbolic and ideological meaning in the history of Japan after World War . Mr. I thought that it was illogical to prohibit holding companies under the age of restructuring. But because of its ideological and delicate political nature, even senior officials in the MITI did not support the agenda so much.

Mr. I and especially Mr. K tried to search for the needs on the sides of business community. It was true that Keidanren was generally supportive to the issue of reintroduction of holding companies, it was very hard to hear about specific and concrete organizational needs from enterprises.

In November of 1994, the Study Group on Corporate Laws was set up. The members of the Study Group were 6 scholars (One trade lawyer=Chair, three competition lawyers, one economist, one attorney) and 10 practitioners (9 from private companies and one from Keidanren). It was very hard to find “authentic” experts of anti-trust law, because it was very hard for them to think out the real and feasible possibility of reintroducing holding companies. Even in the MITI itself, there was skepticism about the feasibility of the idea. The Director General of the Industrial Policy Bureau who officially set up the Study Group did not show up at the first meeting of the Study Group.

After the establishment of the Study Group, discussion was relatively smooth and final report called “New Directions of Corporate Law” was adopted in February 1995. To rule out the image of reintroducing big “Zaibatsu,” drafting team tried to reframe the image of “Zaibatsu” to the image of company divided into holding company and subsidiary companies to adjust to the restructuring needs of the time. The intent of reframing was reflected in the title of the report “New Directions of Corporate Law.”

## **(3) Process Afterwards – Relationship with the FTC and the Labor Unions**

It took relatively short time, four months, for drafting this policy document. But the new legislation following the report was adopted in 1997. It means that it took long time after final report. The issue necessitated inter-ministerial coordination and political compromise. There were mainly two hurdles

First hurdle was the relations with the FTC. After the publication of the report, it got strong support from Minister of International Trade and Industry, Mr. Hashimoto in February 1995 at the Diet session. But at the time, the attitude of the FTC for reintroducing the holding companies was relatively negative.

But the attitude of the FTC began to change since the fall of 1995. The new idea of strengthening FTC (organization and number of staffs) was raised instead of the reintroduction of holding companies, because the needs for strict enforcement of

anti-trust law would be increased under the new system. The FTC itself set up the Study Group on this issue in November 1995 and adopted interim report in December 1995 which showed compromising attitude. The issue of reintroduction of holding companies was also mentioned in the Administrative Reform Committee report in December 1995.

The mistrust between the MITI and the FTC continued because three ruling parties at that time could not make agreement at the beginning of 1996. When Mr. J, successor of Division Chief of Industrial Organization Division came to the position in July 1996, he had informal meeting with the Head of Corporate Merger Division of the FTC, whom Mr. I knew through personal network. They got basic agreement; and the MITI and the FTC had common stands afterwards basically.

Second hurdle was the relations with the labor unions. At the beginning of the discussion about the reintroduction of holding companies, the officials of MITI did not recognize enough the potential implications of this policy for labor issues, and labor unions themselves were relatively quiet on the issues. But in 1996, labor unions recognized the possibility for using the setting up holding and subsidiary companies as an instrument for labor restructuring, and began to declare against the policy.

Originally, government tried to get agreement through negotiation among three ruling parties, one of which was Social Democrat who had influence on labor unions. But in early 1996, ruling parties (LDP, SDP and Sakigake) could not agree with each other. So the issue with labor unions appeared as a major issue since July 1996. Mr. J asked the Ministry of Labor to help for setting forum between business, labor and the MITI. But it did not seem to work well and Mr. J relied on others such as parties for compromise.

In December 1996, the report of Labor Ministry was adopted saying that there would be no legal problem for the reintroduction of holding companies. Finally, in February 1997, the agreement among three ruling parties was realized and the legislation was adopted in June 1997 at the Diet.

#### **(4) Spill Over – Commercial Code and Tax Law**

The introduction of holding companies required the designing of the process of setting up holding companies, which required the change of commercial code and tax law. Concretely commercial code amendments designing the process setting up holding and subsidiary companies using exchange and transfer of stocks was adopted in 1999.

The key document in the policy making process of the amendments of commercial code for setting up holding and subsidiary companies using exchange and transfer of stocks was the Report of the Study Group on Commercial Code adopted in February 1998. The Study Group was set up in July 1997 mainly by Mr. J and Mr. M. The Study Group was composed by commercial code specialists and business practitioners in charge of corporate legal affairs. The Study Group also include observer from the MOJ for facilitating collaboration among the MITI and the MOJ.

It took 8 months to finalize the report in February 1998. And the new legislation proposal included in the report, was adopted in February 1999 by the Legislation

Council of the Ministry of Justice, and adopted at the Diet also in 1999.

By the way, this was not the first involvement by the MITI into the commercial code. The MITI had tendency to draft special laws to exempt some areas from general laws, but have now tendency to be directly involved in the amendment of general laws including the commercial code. Symbolic phenomenon was that Mr. M of MITI, who was in charge of commercial code amendment in 1999, was seconded to the MOJ afterwards.

First such attempt was the setting up of the first Study Group on Commercial Code by Mr. I, in June 1995. Total members of the Study Group were 18, among them, 6 lawyers (5 commercial code experts, 1 tax law expert), 1 management expert, 11 business practitioners. In addition, there were two observers, one tax lawyer and one from the MOJ. The Study Group dealt with the issues of division of companies and issues of simplified mergers, when parallel discussion was going on concerning the reintroduction of the holding companies. Among the issues discussed in this first Study Group on Commercial Code, the simplified merger procedure was adopted in amendment of commercial code in 1997 and the procedure for the division of companies was adopted in the amendment of commercial code in 2000.

To make smooth transition to the system holding company and subsidiary companies, special treatment of tax was necessary, which enabled comprehensive tax on connected incomes among holding company and subsidiary companies. In 1997, the MITI raised the issue, but it was not taken seriously by the MOF (Ministry of Finance). So officials of MITI, including Mr. M, organized research about the situation of foreign countries, by using consulting firms. Partly because of the power of evidences collected, the MOF paid attention to the issue in 1998. Finally the idea was adopted and the legislation was planned to be implemented in April 2003.

#### **4-3-4 Conclusion**

This case can also be characterized as a relative success case as it enabled the reintroduction of holding companies and related involvement of MITI into the amendments of general laws such as commercial code. But it is partial success in that the holding companies are used in different ways (for example, the use by big bank for setting up huge holding companies) compared to the original idea (using holding companies for facilitating division of companies), and there was some delay for introducing corresponding change of tax law.

The case clearly also shows the importance of two kinds of skills for policy process management. That is, the skill of analysis and the skill of social consultation. The role of logical analysis and persistence (repeated claims), as shown by the attitude of Mr. I, was especially important for ideological issue such as reintroduction of holding companies. On the other hand, the skill of social consultation, as shown by Mr. J, was important for getting inter-organizational agreements from the FTC and labor unions.

Concerning the team profile of competencies, the team of this case can be also characterized as a relative success. During the first phase of preparing the report called "New Directions of Corporate Laws" adopted in February 1995 by the Study Group on Corporate Laws, Mr. I, Chief of Industrial Organization Policy Office, had experiences in horizontal departments and provided analytical capability for raising and pursuing

issues based on logics/ reasons. On the other hand, Mr. K, Deputy Chief, young and energetic, had experiences of relative frontline (agricultural trade) and contributed concerning social consultation with businesses. During the second phase of the preparation of the report of the Study Group on Commercial Code adopted in February 1998, Mr. J, successor of Division Chief, showed the capability of social consultation for cooperation (See his role concerning cooperation with the FTC and the labor unions and his cooperation with the MOJ). On the other hand, Mr. M, successor of Deputy Chief, based his experience of studying abroad just before the position, contributed his expertise concerning law and economics and other areas.

This team profile of competencies also seems to be coincidence because the roles played by Chief and Deputy Chief were reverse in those cases, even though combination seems to work well in both cases.

## **5. Overall Conclusion and Future Agenda**

The two cases show the importance of two kinds of skills for policy process management. That is, the skill of information gathering and analysis and the skill of social consultation. The first skill has various components of information gathering, logical reasoning and economics analysis. The second skill has two components of formal consultation through designing advisory council of various stakeholders and informal differentiated consultation.

In the case of electricity deregulation, the argument based on economic analysis provided an important push for the raising issue, and the skill of information gathering concerning the foreign situation of electricity market/ regulations and about the electricity price gap between Japan and foreign countries played important roles. And the skill of informal differentiated consultation was dispensable for getting agreement on the new legislation.

In the case of reintroduction of holding companies, the logical analysis and persistence (repeated claims) was especially important because of the ideological nature of the issue. And the skill of social consultation was important for getting inter-organizational agreements from the FTC and labor unions. In the case of related amendment of commercial code, analytical skill was important for setting agenda and social consultation skill was necessary to involve the Ministry of Justice.

Concerning the team profile of competencies, the teams of both cases case can be also characterized as a relative success. Both teams had officials in charge of analysis and officials in charge of social consultation – good division of work. But the combinations seem not products of intentional decisions, even though intentional elements are partly found in that an official skill full for dealing with political consultation was introduced in the latter half of the electricity deregulation case and that an official who had experience in horizontal bureaus and had analytical capability was introduced in the industrial organization policy area where protectionist atmosphere had been strong before.

One important remaining question seems to be the role of division chiefs. In some cases, division chiefs provided strong analytical inputs to the process, and in other cases

division chiefs provided social consultation skills. What is the role of division chiefs – analytical inputs, social consultation or internal management? At least it can be said that there seems to be no coherent policy.

There seems to be three important agenda for future research and practice. First, more detailed empirical analysis of competencies will be required. Categories of competencies fitted to Japanese context needs to be developed and applied. Second, methodology for assessing competencies of each civil servant in organizational context needs to be developed. Competencies can not be assessed in the organizational vacuum. Assessment has to be done in specific organizational context and specific team of officials. For the development of the methodologies, bottom up analysis and through discussion based on dozens of concrete cases in various situations have to be undertaken. Third, transformation of tacit knowledge to more transparent and institutionalized knowledge has to be facilitated. The case studies in this paper can be a first step for making clear the contents of the tacit skills of policy making and process management. Contents of analytical skill and social consultation skill need to be detailed taking into account of various categories of situations.