

Regulatory Reform in Japan

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Japanese governments have been actively engaged in regulatory reform since the Koizumi Cabinet in the early 2000s. They held a common expectation that the regulatory reform, as a key element of structural reform, would enhance the corporate sector's investment and infuse more competitive ingredients into their rigid market structure, and by doing so enable them to escape from the long-lasting economic recession. In a similar vein, the Abe Cabinet announced the promotion of regulatory reform as part of its growth strategy, in June 2013.

This research, in the first place, examines the theoretical background and significance of the mitigation of social regulations conducted by the Koizumi Cabinet in the early and mid-2000s, and then address why the Abe Cabinet's growth strategy stresses the mitigation of social regulations and launched regional- and firm-level regulatory reform alongside conventional measures. Based on this framework, we follow up on the progress made in these three types of regulatory reform, to evaluate

the Abenomics growth strategy.

1. Regulatory Reform in the Early 2000s: Mitigation of Social Regulations

The debate on the distinction between economic and social regulations in Japan traces back to the Hosokawa Cabinet's announcement in 1993. The gist of it was that the government should deregulate all economic regulations in principle, while keeping the deregulation of social regulations to a minimum. According to the Cabinet, economic regulation indicates the government's involvement in the market through, for example, price control and entrance barriers, in order to promote strategically important industries and protect consumers' interests. Meanwhile, social regulation relates to government regulation for the protection of consumers and workers' safety and health, environmental preservation, and the prevention of disasters.

In Japan, the government already administered, since the 1980s, the mitigation of economic regulations and/or privatization in the sectors of finance, electronic communication, and railways and airlines, benchmarking the U.K. and U.S. This implies that technological advances in those sectors rendered implausible the theoretical rationale behind government involvement for preventing market failure due to natural monopoly and external economies or diseconomies. However, the government still remained passive about the mitigation of social regulations.

Many social regulations have been regarded as disguised economic regulations. These social regulations were initially introduced, for example, to protect consumers and workers' safety and health; however, they functioned as barriers to entry into the market, as if they were economic regulations. These economic regulations in disguise, furthermore, can be exemplified according to the type of regulation: whether they belong to restrictions on market entry or price control. First, the adjustment of supply and demand of regional taxi services and hospital beds, and restrictions on private corporations' market entry into the agricultural and medical sectors can be illustrated as examples of direct restrictions on market entry. Secondly, government subsidies to NPOs (Non-Profit Organizations) in the education and elderly medical care sectors, and restrictions on floor area ratio in the construction sector relate to indirect restrictions on market entry. Thirdly, the policy on reducing rice production and regulations on regional taxi fares can be classified as direct price control. Lastly, the ban on mixed medical care services¹ can be regarded as a

representative case of indirect price control.

In the early 2000s, the Japanese government realized the necessity for the reform of economic regulations disguised as social regulations in the realms of agriculture, medical and welfare, education, and jurisdiction. However, the government decided not to simply abolish the regulations, but to change the arbitrary regulations into *ex post facto* or rule-based ones.

The main agenda on regulatory reform by the Koizumi Cabinet (2001-2006), as seen in Table 1, reveals that the government concentrated its efforts on the deregulation of economic regulations disguised as social ones. The Koizumi Cabinet accomplished remarkable achievements in some areas; for example, in 2006 the government allowed retail stores, such as convenience stores and drugstores, to sell medicine without doctor prescriptions, and in 2003 eliminated the limit on the period for which workers can be dispatched by temporary employment agencies for '26 occupations', while stretching the period for other occupations from one year to three years. However, the government failed to permit private corporations to manage medical institutions, to deregulate mixed medical care services, and to allow private corporations to rent or acquire agricultural land.

¹ The ban on mixed medical care services in Japan means that if even one treatment not covered by health insurance is combined with treatment covered by health insurance, the treatment originally covered by health insurance will be excluded from insurance coverage, thus meaning that the entire expense must be paid by the patient.

Table 1. Main Agenda on Regulatory Reform by the Koizumi Cabinet (2001-2006)

Sector	Agenda on Regulatory Reform
Medical Care & Medicine	<ul style="list-style-type: none"> - Permission of private corporation's management of medical institutions - Permission of mixed medical care services - Allowance of retail store sales of some medicines
Welfare	<ul style="list-style-type: none"> - Unification in the management of nurseries and kindergartens - Permission of private corporation's management of elderly nursing homes
Education	<ul style="list-style-type: none"> - Permission of private corporation's and NPO's school management - Liberalization of college department creation
Employment	<ul style="list-style-type: none"> - Expansion of the type of business to which temporary employment agencies can dispatch workers - Permission of the public employment agency business to private corporations
Agriculture	<ul style="list-style-type: none"> - Permission of agricultural land acquisition to private corporations - Permission of agricultural land lease to private corporations
Urban Renewal	<ul style="list-style-type: none"> - Mitigation of restrictions on floor area ratio in the construction sector

Source: Council for Regulatory Reform, *the 3rd reply to regulatory reform schedule*, December, 2003.

2. Growth Strategy and Regulatory Reform by the Abe Cabinet

The Abe Cabinet, constituted in December 2012 following the victory of the House of Representatives election, set its growth strategy in June 2013 and revised it once every year since. In its growth strategy, the government made it clear that regulatory reform could enhance industrial competitiveness.

For instance, the growth strategy aims to promote the medicine and medical instrument market, which was considered to have been left behind in global competition, partly because Japanese pharmaceutical companies were thwarted in their attempts to develop new medical products due to government regulations. In the agricultural sector, the strategy presents plans to gradually abolish the policy on reducing rice production, and to restructure public agricultural organizations such as the Ja-

pan Agricultural Cooperatives (JA) and Agricultural Affairs Committee, which have been criticized as impediments to private sector participation in agricultural management. These plans aim to infuse market competition and to utilize economies of scales in the agricultural sector.

The growth strategy presents a framework consisting of conventional regulatory reform, regional regulatory reform, and firm-level regulatory reform. In particular, the Abe Cabinet's regulatory reform can be characterized as an experiment of regional and firm-level deregulation, minimizing conflicts of interest by narrowing target areas, while pursuing conventional regulatory reform of which the effects are huge and extensive although slow in speed due to conflicts of interest.

In the area of conventional regulatory reform, the government established an advisory body for the Prime Minister, the Council on Regulatory Reform, and selected the medical care and medicine, employment, energy and envi-

ronment, tourism and agricultural sectors as major targets. As for regional regulatory reform, the government introduced the National Strategic Special Zones Act in December 2013 and revised the Act in July 2015. The government first designated six areas as Special Zones - Tokyo, Kansai, Nigata, Yabu, Fukuoka, and Okinawa - and added three more in a second round of designations; Senboku, Sendai, and Aichi. At the same time, the government introduced the System to Remove Gray Zone Areas, and Special Arrangements for Corporate Field Tests under the provisions of the Industrial Competitiveness Enhancement Act in December 2013.

3. Conventional Regulatory Reform by the Abe Cabinet

As mentioned above, since the early 2000s the Japanese government concentrated its endeavors on the reform of economic regulations disguised as social regulations, in the sectors of medical care and medicine, welfare, education, employment, agriculture, and urban renewal. The Abe Cabinet also identified these sectors as fields with deep roots of ‘bedrock regulations’, and added sectors such as energy and environment, start-ups, and IT to the list. We picked the three sectors of medical care and medicine, employment, and agriculture, to investigate the progress made in conventional regulatory reform by the Abe Cabinet.

In medical care and medicine, a laudable achievement made by the government was the allowance of internet sales on more than 10,000 medicines. This online sales allowance, as well as retail sales which commenced in 2009, is remarkable since the Korean government has failed to achieve this consensus among stakeholders. The Abe cabinet also

made progress in simplifying the government approval system on medicines, medical instruments, and regenerative medical products. As a result, government approval now takes six months, instead of one year.

However, the government has yet to completely abolish the system on mixed medical care services, mainly because the Ministry of Health, Labor and Welfare objects to deregulation, due to concerns about excessive medical expense burdens on the part of patients as well as on the government. Regional regulation on the number of hospital beds, introduced in 1986, also remains in effect, despite criticism that it causes a regional imbalance between supply and demand in medical care services, and protects inefficient medical institutions. Furthermore, arguments for the commercialization of medical institutions and the deregulation of telemedicine and telecare services were unable to reach a social consensus.

In employment, the Abe Cabinet maintains the existing regulatory framework that not only protects permanent employees, but also restricts the hiring of temporary workers. Regarding the protection of permanent employees, the Japanese government has followed the case law established by courts in the 1950s, which strictly prohibits the dismissal of workers. The Abe Cabinet tried but failed to introduce the system of pecuniary compensation for unfair dismissal, which allows corporations to offer monetary compensation to their permanent workers when the court rules that their layoff is illegitimate.

Meanwhile, regarding the transition of non-regular workers into regular ones, the government maintains the Labor Contract Act, revised in 2013, which extends work days required for the transition from three years to five. Also, regarding the dispatch of workers,

in September 2015 the Abe Cabinet eliminated the distinction in the period for which workers are dispatched depending on whether the occupation belongs to the '26 occupations' or not. Instead, the newly introduced system restricts the period to only three years for temporary workers contracted with temporary employment agencies. This measure was rather aimed to restrict the use of dispatched workers, by expanding the proportion of regulated temporary workers from 60 percent to 80 percent.

Lastly, the Abe Cabinet has paid special attention to regulatory reform in the agricultural sector, to prepare for the opening of the domestic market under the TPP agreement. In November 2013, the government decided to gradually abolish the policy on reducing rice production from 2018, to induce more competition in rice farming. Regarding the entry of large private enterprises, the government revised the Agricultural Land Act in 2009 to allow them to lease and acquire farmland, even though acquisition would be permitted only indirectly, that is, by way of their investment in Agricultural Production Corporations. Furthermore, the revision of the Act in August 2015 allowed enterprises to invest in Agricultural Production Corporations with a stake of up to 50 percent. As a result, many large enterprises such as Orix and Toyota have participated in agricultural management via these Agricultural Production Corporations.

4. Regional and Firm-level Regulatory Reform by the Abe Cabinet

The Abe Cabinet has been undertaking regional regulatory reform under the framework of National Strategic Special Zones (*Kokkasenryakutokku*), which replaced Special Zo-

nes for Structural Reform (*Kozokaikakutokku*) launched by the Koizumi Cabinet. The system of National Strategic Special Zones is well equipped with centralized implementation organizations. The government established a Special Zone Advisory Council led by the Prime Minister in December 2013, and a Special Zone Council in the authorized areas comprising the respective governors or mayors and private business operators, in order to advance business projects from the top down. The government enumerated the regulatory exceptions in the National Strategic Special Zones Act enacted in December 2013, and added the exceptions to the revised Act in July 2015.

The government first designated six areas as Special Zones - Tokyo, Kansai, Nigata, Yabu, Fukuoka, and Okinawa - and added in a second round of designations; Senboku, Sendai, and Aichi. With consideration to regional industrial comparative advantages, the government empowered these authorized zones to select the regulatory exemptions. Some tangible achievements that should be acknowledged are, for example, the urban renewal projects in the Tokyo zone, the development of the medical industry in the Kansai zone, and the corporate entry into the agricultural sector in the Niigata and Yabu zones. However, the Fukuoka and Okinawa zones, which are each seeking the enhancement of global startups and employment, and tourism, respectively, diverged from their initial aims and failed to show particular accomplishments.

Regarding firm-level regulatory reform, the government introduced the System to Remove Gray Zone Areas, in which the ministry in charge checks if the existing laws properly apply to the firm's innovative products and services. One of the attractive features of the system is that the ministry should give the re-

sponse within a month. The government expects the system to provide a minimal-risk environment for new businesses, helping enterprises devote themselves to technological innovation and the development of new products and services.

The System of Special Arrangements for Corporate Field Tests (*Kigyoushissyoutokureiseido*) is another firm-level regulatory reform measure employed by the Abe Cabinet, which allows regulatory exceptions for individual enterprises on conditions that they satisfy safety and other requirements in developing and commercializing their innovative products.

As of December 2015, the government responded to 34 applications under the System to Remove Gray Zone Areas, and approved 10 applications under the System of Special Arrangements for Corporate Field Tests. Judging by such performance, firm-level regulatory reform still seems to fall short of government expectations, despite its willingness to support innovative businesses in new growth engine industries. 