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Japanese Foreign Aid: Suggested Legislation to Guide Administrative Distribution of Foreign Aid

Darin R. Greenen†

INTRODUCTION

In 1989 Japan became the largest donor of official development assistance (ODA) in the world.¹ Japan's net disbursements of ODA totaled \$8.96 billion, surpassing the United States, which was second with \$7.66 billion.² Since Japan began disbursing foreign aid in 1954, the amount of aid has doubled roughly every five years.³

Japan has had difficulty managing this mercurial growth. The fast rate of growth combined with inadequate staffing has produced a complicated and inconsistent system of policy formulation and implementation. Numerous examples of ineffective or environmentally harmful projects attest to the waste and harm endemic to Japan's aid program.

Japan's difficulties in coping with the growth have been exacerbated by the absence of legislative standards to guide the aid bureaucracy's pol-

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1. Official development assistance is a standard term which was developed by the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development to describe foreign development assistance that meets certain qualitative standards.

ODA is defined as those flows to developing countries and multilateral institutions provided by official agencies, including state and local governments, or by their executive agencies, each transaction of which meets the following tests:

- a) It is administered with the promotion of the economic development and welfare of developing countries as its main objective, and
- b) It is concessional in character and contains a grant element of at least 25 per cent.

Organisation for Economic Cooperation and Development, *Geographical Distribution of Financial Flows to Developing Countries—Disbursements, Commitments & Economic Indicators* 341 (Organisation for Economic Cooperation and Development, 1990).

2. Margo Grimm, *Japan Ranked as World's Top Aid Donor*, 26B Japan Economic Institute Report 2 (July 6, 1990) ("Top Aid Donor").

3. See generally, Japanese Ministry of Foreign Affairs, *Japan's Official Development Assistance: 1989 Annual Report* (Association for Promotion of International Cooperation, 1990) ("Japan's ODA").

icy-making and administrative branches. In the absence of guiding legislation, several shortcomings have developed: a foreign aid bureaucracy that is often more responsive to pressure from the Japanese private sector than to the development needs of recipient countries, an ineffective project selection and evaluation system, and an inattention to the harmful environmental effects of Japanese aid funded projects.

Japan should adopt a set of basic legislative rules to guide its expenditure of aid. The provisions should outline priorities that are consistent with the development oriented nature of official development assistance and responsive to the Japanese aid program's shortcomings. Once formulated, the legislation should be adopted as soon as possible, because the benefits that will accrue from such a fundamental improvement in the multibillion dollar program will be considerable.

This Comment analyzes the need for guiding legislation in the Japanese foreign aid program. First, the Comment describes the Japanese aid program and its shortcomings. It then suggests guiding legislation and analyzes the improvements such legislation will effectuate.

I. THE JAPANESE AID PROGRAM

A. *The Amount of Development Assistance*

In 1989 Japan became the largest donor of ODA in the world.⁴ Japan's net disbursements of ODA totaled \$8.96 billion. The United States was second with \$7.66 billion, and France was third with \$7.47 billion (see Table 1). In dollar terms, Japanese ODA decreased 1.9 percent between 1988 and 1989, compared to the DAC total decrease of 3.4 percent.

B. *Types of Development Assistance*

Japan's ODA is classified into three categories: grant aid, technical assistance and loan aid. In 1989, of the total ODA Operating Budget of 755.7 billion yen, grant aid accounted for 283.2 billion yen (37.5 percent), technical assistance for 203.8 billion yen (27.0 percent), and loans for the remaining 268.7 billion yen (35.5 percent).⁵

Grant aid is divided into Bilateral Grant Aid, which is distributed to recipient countries, and Contributions to Multilateral Organizations, which is distributed to multilateral organizations, such as the Unicef and

4. *Top Aid Donor* at 1 (cited in note 2).

5. *Japan's ODA* at 120 (cited in note 3).

TABLE 1
ODA as a Percentage of GNP for Major Donor Countries
(in millions of dollars)

1989 Rank	Country	1988		1989*		% Change 1988-1989
		Amount	% of GNP	Amount	% of GNP	
1	Japan	9,134	0.32	8,958	0.32	-1.9
2	U.S.	10,141	0.21	7,664	0.15	-24.4
3	France**	6,865	0.72	7,467	0.78	8.8
4	W. Germany	4,731	0.39	4,953	0.41	4.7
5	Italy	3,193	0.39	3,325	0.39	4.1
6	U.K.	2,645	0.32	2,588	0.31	-2.1
7	Canada	2,347	0.50	2,302	0.44	-1.9
	DAC Total***	48,132	0.36	46,498	0.33	-3.4

* Preliminary

** Including overseas territories and prefectures.

*** The DAC Total also includes amounts from the eleven other countries that comprise the Organization for Economic Development's Development Assistance Committee (DAC). These countries are the Netherlands, Sweden, Australia, Denmark, Norway, Belgium, Finland, Switzerland, Austria, New Zealand and Ireland.

Source: Organization for Economic Cooperation and Development

the Asian Development Bank.⁶ Grant aid excludes grants in support of technical assistance, requires no repayment, and is administered by the Japanese International Cooperation Agency (JICA).⁷

Technical assistance is extended with the objectives of transferring technology to recipient countries and developing their human resources.⁸ It consists of (1) training recipient country nationals in technical skills, such as animal husbandry and medical care, (2) providing technical equipment used in training, (3) dispatching Japanese Overseas Volunteers (the Japanese version of the United States Peace Corps), and (4) undertaking master plan and feasibility studies.⁹ Like grant aid it requires no repayment, and is administered by JICA.¹⁰

Japan extends both concessional¹¹ and nonconcessional loans to developing countries. The Export-Import Bank of Japan (EIBJ) adminis-

6. Association for Promotion of International Cooperation, *A Guide to Japan's Aid* 8 (Association for Promotion of International Cooperation, 1990) ("*APIC Guide*").

7. *Id* at 11-12.

8. *Id* at 8.

9. *Id* at 61-67.

10. *Id*.

11. See generally *Japan's ODA* (cited in note 3). Concessional refers to the extent of subsidization present in a loan. A nonconcessional loan contains no subsidy and therefore carries market interest rates and repayment periods. A concessional loan, on the other hand, is partially

ters nonconcessional loans, which are not classified as ODA. The Overseas Economic Cooperation Fund (OECF) administers concessional ODA loans after the loans have been approved by the Ministry of Foreign Affairs (MOFA), the Ministry of Finance (MOF), the Ministry of International Trade and Industry (MITI) and the Economic Planning Agency (EPA).¹² Most OECF loans are used to purchase equipment and services needed for large capital projects, such as bridges, dams, electrical plants and roads. In addition, the OECF extends loans to support debt relief.¹³

C. Policy

Japan uses its own development experience as a guide to helping developing countries. Following World War II, with money borrowed from the World Bank and the U.S., Japan rebuilt its infrastructure, which it considers a key to its rapid industrialization.¹⁴ As a result, Japan has always emphasized large-scale infrastructure projects. Only in 1980 did Japan include in its policy a basic human needs element emphasizing smaller grass roots projects. However, this element of Japan's overall aid policy and program remains small.¹⁵

Four factors primarily influence Japan's present aid policy: (1) Japan's preference for extending loans, rather than grants, (2) private sector interests and their pressure for tying aid to the procurement of Japanese goods and services, (3) ensuring a steady supply of resources needed by the Japanese economy ("resource diplomacy"), and (4) development objectives.

subsidized. This subsidization takes such forms as lower-than-market interest rates and grace periods during which no interest accrues. To be classified as ODA, loans must have a grant element of at least 25 percent. In other words, the terms of a \$1,000 ODA loan must make it, at least, equivalent to a package that combines a nonconcessional loan of \$750 and a grant of \$250.

12. *APIC Guide* at 70 (cited in note 6).

13. The Overseas Economic Cooperation Fund, *Annual Report 1989* 13 (The Overseas Economic Cooperation Fund, 1990).

14. Gretchen Green, *Japan's Foreign Aid Policy: 1989 Update*, 41A Japan Economic Institute Report 1 (October 27, 1989).

15. Whether a project is a basic human needs project is often difficult to determine. Therefore, it is difficult to determine the exact proportion of Japanese projects that fit this vague category. However, a review of the projects funded by Japan in 1989 reveals that few can be characterized as small grass roots projects or projects which provide for basic human needs. Most of the projects are too large and focus on infrastructure. See generally, *Japan's ODA* at 137-270 (cited in note 3). Even the smaller projects often do not focus on basic human needs. For example, in 1989 Japanese ODA grants paid for musical instruments for the Shanghai Symphony Orchestra. *Id.* at 140.

1. *Japan's Preference for Loans*

Japan has historically preferred to extend loans over grants. Recently, however, Japan has begun distributing a greater share of its aid as grants and technical assistance (about 64.5 percent in 1989). Japan's continued use of loan aid and its reluctance to embrace plans allowing debt-ridden countries to write off part of their debt, arise from deeply-held beliefs among the Japanese that these types of aid are the most successful tools to ensuring successful economic development.¹⁶

2. *Private Sector Interests and Their Pressure for Tying Aid*

Japan's private sector has always heavily influenced Japan's aid policy. In the early years of Japan's aid program, they successfully lobbied the aid bureaucracy to explicitly require recipients to spend aid on Japanese goods and services. As the program has evolved, they have exerted their influence in less visible ways.

The private sector's aim is three-fold. First, it seeks to ensure that Japanese firms receive goods and services contracts for overseas aid projects. Second, it wants Japanese aid funds to be used for projects that service private Japanese facilities. Third, it wants aid to help ensure economic and political stability in developing countries.

In the 1960s and 1970s, Japan tied a majority of its aid to purchases of Japanese goods and services primarily using three methods: officially tied aid,¹⁷ mixed credits¹⁸ and de facto tied aid.¹⁹ However, Japan's use of tied aid declined during the 1980s in response to criticism from devel-

16. Japan's preference for loans stems from its experience following World War II, when it successfully used World Bank and United States loans to rebuild its infrastructure. United States-Japan Relations: The Impact of Negotiated Market Openings, Hearings before the Subcommittees on Asian and Pacific Affairs and on International Economic Policy and Trade of the House Committee on Foreign Affairs, 100th Cong, 2d Sess 165 (1988) (statement of Susan J. Pharr, Harvard University) ("*Pharr Statement*").

17. "Officially tied aid" refers to aid that is distributed to recipient countries on the explicit condition that it be used to purchase Japanese products and services.

18. "Mixed credits" refers to the practice whereby a foreign firm, in conjunction with its government, puts together a package offering a mixture of foreign aid funds and export finance funds as part of an overseas contract bid. The blended funding carries lower interest rates than funding that consists of export finance funds alone, thus making mixed credit project bids more attractive than bids supported only by export financing. See *U.S. Should Develop Mixed Credit Financing Policy*, *U.S. Business Groups Tell House Panel*, 6 Intl Trade Rptr 480 (April 19, 1989). Although tied loans resemble mixed credits, it is important to distinguish between the two. Whereas mixed credit financing is included as part of a project bid, officially tied loans are extended independent of any project bids.

19. "De facto tied" aid, also called "unofficially tied" aid, refers to the practice whereby a Japanese firm steps in to assist a developing country government to select a project and apply for Japanese aid, and then uses its intimate knowledge of the project to gain an advantage over

oping countries, and particularly other donor countries. Only a negligible amount of Japanese loan aid distributed in 1989 was officially tied, and there is little proof that Tokyo is still distributing mixed credits. However, critics claim that a majority of Japanese loan aid is still de facto tied. Grant aid is still tied to the purchase of Japanese goods and services, as is the case for most donor countries.²⁰

During the 1980s, Japan adopted a policy of gradually untying loan aid. In 1988, 77.4 percent of loans were open for universal nonpreferential bidding, and 22.6 percent were LDC untied, which means procurement of goods and services were restricted to bidders from Japanese and developing country firms.²¹

Between 1982 and 1986, approximately 60 percent of the procurement stemming from loans that were open for universal nonpreferential bidding went to Japanese firms, 22 percent to firms from less developed countries, 15 percent to firms from other countries, and the remaining 3 percent to recipient country firms. For LDC untied loans during the same period, about 85 percent of the procurement went to Japanese firms.²² Critics urge Japan to lower the proportion of LDC untied loans, because of the high percentage of procurement that goes to Japanese firms, which is largely due to the inability of LDC firms to compete effectively with Japan. This is especially true in the case of large capital intensive projects, which require expertise that usually cannot be provided by firms from developing countries.²³

An understanding of de facto tied aid requires a description of the role the Japanese private sector plays in Japan's foreign aid system. Japanese construction firms and trading companies have historically played a fundamental role. Their efforts have been beneficial—filling in the many gaps left open in government aid administration. They have also been detrimental—seeking corporate gain at the expense of foreign aid recipi-

competitors in bidding for the projects. Often the advantage stems from the firm's edge in fulfilling bid requirements that it has designed.

20. International Development Study Group, *Shortcomings of the Foreign Aid Program*, Economic Eye 16, 17 (Spring 1989) (translated and slightly abridged from Keizai Semina (December 1988)) ("Economic Eye").

21. Robert Orr, Jr., *The Emergence of Japan's Foreign Aid Power* 65 (Columbia University Press, 1990) ("Foreign Aid Power"). Note that generally untied loans, although officially extended free of any official ties, are often de facto tied.

22. Robert Orr, Jr., *The Rising Sun: Japan's Foreign Aid to ASEAN, the Pacific Basin and the Republic of Korea*, 41 J Intl Affairs 39, 46 (Fall 1987) ("The Rising Sun").

23. Robert Orr, Jr., *The Politics of Japan's Foreign Aid* 18, draft paper presented at conference-workshop sponsored by the Maureen and Mike Mansfield Foundation, Missoula Montana, May 14-17, 1987 ("Politics of Aid").

ents. Construction firms and trading companies are still instrumental in the administration of Japanese foreign aid and will continue to be so in the foreseeable future.

The Japanese private sector and the aid bureaucracy are closely tied for two reasons. First, the Japanese aid bureaucracy is relatively small and employs few development aid specialists.²⁴ Japan has no field missions abroad and is usually represented by only two or three professionals from JICA and OECF and an embassy official.²⁵ Second, Japan's request-based aid policy requires that proposals for all aid projects come directly from recipient governments. Because its first aid flowed to Southeast Asia, Japan adopted this approach to allay fears of Japanese imperialism.²⁶ The further rationale for this policy is that it prevents Japan from forcing unnecessary and unwanted projects onto developing countries, thereby interfering in their internal affairs. Also, in theory, the request policy ensures that each project has the full support of the recipient government, paving the way for the shift of project management to the recipient at a future date.²⁷ The request policy has allowed Japan to maintain a small bureaucracy because recipient governments theoretically handle project selection and implementation.²⁸

The reality bears little resemblance to this no-meddling policy. Developing countries often lack the resources to prepare aid requests and the technicians for drafting plans. They know little about techniques for framing applications so that they have the best chance of winning Japanese government approval. Japanese corporations, therefore, step in to identify and propose projects, putting their own interests first. These corporations often recommend high-priced projects that do not necessarily meet local needs.²⁹ Furthermore, many Japanese trading companies active in developing countries have extensive networks in the Japanese government and provide the additional service of lobbying for acceptance of the project by the Japanese government.³⁰ As a result, the identification of projects is carried out, not by developing nations, but by Japanese consulting firms, trading houses, construction companies and manufac-

24. In 1989 the Japanese government had a staff of approximately 1,600 to oversee aid programs, compared with approximately 5,000 in the United States. Steven R. Weisman, *Foreign Aid Isn't Easy for Japan*, NY Times sec 4 (August 20, 1989) ("*Aid Isn't Easy*").

25. *Foreign Aid Power* at 59 (cited in note 21).

26. *Id.* at 60.

27. *Economic Eye* at 19 (cited in note 20).

28. *Foreign Aid Power* at 60 (cited in note 21).

29. *Economic Eye* at 19 (cited in note 20).

30. *Foreign Aid Power* at 60 (cited in note 21).

turers.³¹ In many cases, by the time an aid project has been requested by the recipient country and approved by Tokyo, Japanese firms have tailored the nature and specifications of the project so that it is exceedingly difficult for non-Japanese firms to bid successfully, even if the bidding process is open.³² Aid officials concerned with improving Japan's aid program performance, such as those within MOFA, have had difficulty preventing de facto tying of aid because of the unofficial nature of the problem.³³

3. *Resource Diplomacy Considerations*

Japan's lack of energy resources and raw materials poses a substantial threat to its economic security. Specifically, Japan's economy is very dependent on a steady supply of oil and other natural resources, such as wood, from overseas. In response, Tokyo has deployed aid to several regions including the Middle East and Africa in an effort to reduce these threats.³⁴ The 1973 oil crisis provides a good example. Following the Yom Kippur War, the Organization of Petroleum Exporting Countries (OPEC) placed an oil embargo on several countries, which included Japan. Japan found itself vulnerable. One month following the embargo's announcement, Japan pledged \$3 billion in aid to regional oil-producing states.³⁵ In the 1980s and 1990s Japan has funded projects in several countries, including Brazil and Malaysia, in furtherance of its interest in securing a steady supply of wood.³⁶

4. *Development Objectives*

Because the Japanese aid program has no legislative guidelines, it is difficult to determine its development objectives. JICA and OECF have stated in annual reports that the purpose of Japanese aid is to contribute to economic and social development in developing countries and to promote international cooperation.³⁷ Otherwise, official materials focus on the amount of ODA, rather than on its objectives or whether those objectives are being accomplished.

31. *Economic Eye* at 19 (cited in note 20).

32. *Pharr Statement* at 161 (cited in note 16).

33. *Id.*

34. *Foreign Aid Power* at 94 (cited in note 21).

35. *Id.* at 54-55.

36. Ellen Hosmer, *Aid Incorporated: The Real Beneficiaries of Japanese Foreign Assistance*, *Multinational Monitor* 15 (November 1988) ("*Aid Incorporated*").

37. Japanese International Cooperation Agency, *Annual Report 1989* 20 (Japanese International Cooperation Agency, 1989). See also *Japan's ODA* at 13 (cited in note 3).

Another basic tenet of the Japanese aid program is the promotion of recipient country self reliance.³⁸ In contrast to the United States, Japan provides little, if any, official or explicit guidance (with the exception of procurement) to recipient countries on how to use foreign aid. Japan appears reluctant to encourage aid recipients to take steps to improve the economic efficiency of projects, regarding such activity as meddling in the domestic affairs of aid recipients.³⁹

D. *The Foreign Aid Bureaucracy*

The Japanese foreign-aid bureaucracy is charged with two clear tasks: the formulation and implementation of Japan's foreign aid policy. However, the bureaucratic structure and procedures are not so clear. The bureaucracy is like a jungle: always growing, always changing, and never easy to find one's way through.

Japan's approach differs significantly from that of the United States, where Congress generally formulates aid policy and the U.S. Agency for International Development (USAID) implements it. In Japan there is no legislature-enacted law establishing guidelines and rules for foreign aid along the lines of the U.S. Foreign Assistance Act (FAA). Rather, numerous executive and legislative entities formulate policy, which several executive departments implement. There are three principal actors in Japan's foreign aid program: (1) the Diet, (2) the policy formulation bureaucracy, which consists of MOFA, MOF, MITI and EPA, and (3) the implementation bureaucracy, which consists of JICA and OECF.

1. *The Diet*

The Diet, Japan's parliament, has always played a limited role in the formation of foreign aid policy. To date the Diet has performed only three legislative functions vis-a-vis foreign aid. First, each year it votes whether to pass the annual budget allocation for aid. Unlike the budget presented to the U.S. Congress, which includes detailed information by recipient and aid programs, the budget presented to the Diet presents only allocations to the various implementation agencies. Second, each year it authorizes the carryover of undisbursed funds, but this is done on a pro forma basis. Third, it occasionally passes resolutions prohibiting the extension of aid for military purposes or to regions where it could worsen

38. *The Rising Sun* at 42 (cited in note 22).

39. *Id.*

ongoing conflicts (which the bureaucracy had been unwilling to support anyway).⁴⁰ The political parties and factions within those parties exert an influence on foreign aid policy, yet their influence has been minimal.⁴¹

2. *The Policy Formulation Bureaucracy—MOFA, MOF, MITI and EPA*

The bulk of Japan's foreign aid policy is formulated by the Ministry of Foreign Affairs (MOFA), the Ministry of Finance (MOF), the Ministry of International Trade and Investment (MITI), and the Economic Planning Agency (EPA).

The Ministry of Foreign Affairs, a strong proponent of expanding foreign aid and using it as a foreign policy tool, is probably the most influential partner in the foreign aid bureaucracy.⁴² MOFA derives its power from several sources: it oversees the entire aid process as the chair of the three ministry/one agency system; it is the window through which developing countries issue their aid requests; it leads and dispatches survey missions to evaluate aid requests from recipient countries; it manages Japan's diplomatic relations; and it oversees JICA.⁴³ MOFA's oversight of JICA gives it considerable influence over technical assistance, subject to the budgetary authority of MOF.⁴⁴ MOFA has sole discretionary power over the administration of grant aid, also subject to the budgetary authority of MOF.⁴⁵

The Ministry of Finance derives its power from its control of the budgetary decision-making process. Since the distribution of the budget affects the amount of power and influence of government organizations, most governmental departments strive to increase their share of the budget pie.⁴⁶ MOF bureaucrats see foreign aid as strictly a budget issue. As a result, MOF focuses on the effectiveness of aid programs versus their

40. *Politics of Aid* at 6 (cited in note 23). See also William L. Brooks and Robert M. Orr, Jr., *Japan's Foreign Economic Assistance*, *Asian Survey* 322, 335 (March 1985).

41. *Foreign Aid Power* at 22 (cited in note 21).

42. *Politics of Aid* at 30 (cited in note 23).

43. *Id.* at 29. Grants are virtually under the sole purview of the Foreign Ministry and are not subject to the three ministry/one agency deliberation system. *Id.* at 18.

44. *Foreign Aid Power* at 30 (cited in note 21).

45. Although grant assistance is the purview of MOF from a budgeting perspective, once MOF has set the overall level of grant assistance, MOFA exercises exclusive discretionary power over the administration of the funds. *Id.* at 20.

46. *Id.*

costs, and is more concerned with waste than other parts of the bureaucracy.⁴⁷

The Ministry of International Trade and Investment, which played a very prominent role in molding aid policy during the 1950s and 1960s, represents Japan's commercial interests. It promotes policy that will benefit Japan's private sector, such as extending tied aid and undertaking projects that will support Japanese businesses located in developing countries. MITI always determines the extent to which aid will help or hurt Japan's overseas market and domestic industry before taking a position on an aid issue. MITI has been highly skeptical of the Basic Human Needs (BHN) approach to aid, preferring large capital projects to the BHN approach's small labor intensive projects. MITI enjoys the strong support of business circles, a powerful constituency in Japan. In MITI, the promotion of Japanese exports and Japanese business in developing countries takes precedence over development concerns. MITI supports tied aid practices and giving priority to countries with abundant natural resources, particularly oil.⁴⁸ Since Japan has begun to increase the proportion of grants in its overall aid distributions, MITI's influence in Japan's foreign aid policy has diminished because MOFA administers Japan's grant assistance.⁴⁹

The Economic Planning Agency occupies an often ambiguous position within the implementation bureaucracy and has little significance compared to the ministries. It sometimes plays a coordinating role in aid policy and has been supportive of expanding and improving foreign assistance. The EPA supervises the OECF, a function from which it derives its principal influence.⁵⁰

3. *The Implementation Bureaucracy—JICA, OECF and EIBJ*

Two executive agencies implement Japan's ODA program. The Japanese International Cooperation Agency (JICA) oversees the distribution of grant aid and the implementation of technical assistance. The Overseas Economic Cooperation Fund (OECF) administers all loans classified as ODA.

The Export-Import Bank of Japan (EIBJ) plays a large role in Japan's trade surplus recycling program, and extends debt relief in the

47. *Politics of Aid* at 14 (cited in note 23).

48. *Id.* at 17-18.

49. *Id.* at 18-20.

50. *Id.* at 24.

form of debt refinancing. However, its activities and structure will not be treated in this paper because its assistance lacks the requisite grant element to be classified as ODA.

II. SHORTCOMINGS IN THE JAPANESE AID PROGRAM

The Japanese aid program suffers from one primary flaw: It lacks statutory guidance. Lacking basic authority to guide it, the program often steers away from development-oriented policies. Three fundamental shortcomings in the program have developed: (1) the funding of projects in response to pressure from the Japanese private sector instead of in response to the development needs of recipient countries, (2) the ineffectiveness of the program's project selection and evaluation system, and (3) the program's inattention to environmental concerns. This section will describe each shortcoming and its effects.

A. *Private Sector Influence*

Because development-oriented policy is not mandated, aid administrators have little guidance in their formulation and implementation of aid policy and are vulnerable to the influence exerted by the Japanese private sector. The influence of private sector interests and the general lack of development-oriented guidelines has contributed to project ineffectiveness and inequity in the economic development stimulated by Japanese aid funded projects.

1. *Project Ineffectiveness*

Examples of ineffective Japanese foreign aid funded projects are legion.⁵¹ The joint Japan-Indonesia Asahan aluminum smelting project provides a complex, yet illustrative example of how the aid bureaucracy's response to Japanese private sector influence contributes to the undertaking of disastrous projects. Following the oil crises of the 1970s, Japan's domestic smelting industry began losing its international competitive edge

51. In one project, Japan extended a \$40 million grant to Indonesia for medical equipment. Ten years later Tokyo discovered that most of the equipment was lying unused because no one in the Indonesian hospitals knew how to operate it. *Aid Isn't Easy* at sec 4 (cited in note 24). There are many stories of similar failed undertakings, such as funding of a new hospital in Pakistan that has no patients, operation of a nearly studentless school for mariners in a remote part of the Philippines, and funding of several dozen commuter-train cars that were soon left abandoned in the streets of Manila due to a lack of repair facilities. Urban Lehner, *Throwing Money: First in Foreign Aid, Japan Still Isn't Sure What Purpose It Serves*, Wall Street Journal 4 (July 3, 1989) ("Throwing Money").

because of the high cost of electricity from petroleum-powered plants. The environmental concerns of local residents also forced the closure of many smelting plants in Japan. In response, Japan's aluminum smelting industry turned its attention overseas, extracting financing for the overseas ventures from the government in the form of ODA. The Japanese government funded much of the \$2.7 billion project built on the Indonesian island of Sumatra. The project, completed in October 1984, included dams, a hydroelectric power plant along the Asahan River, and a giant aluminum smelter, making it the largest project of its kind in Asia. Asahan originally created 2,000 jobs and supplied electricity to Medan, Indonesia's third largest city. The Indonesian government owned 41 percent of Asahan, and Japanese interests owned the remaining 59 percent.⁵²

However, the project has failed in its goal to upgrade the overall level of Indonesian industry and has proven to be a financial debacle. Much of the aluminum remains stacked outside, exposed to the elements, unused for lack of buyers. Indonesia has been unable to generate enough export revenue from the project to repay its costly yen denominated loans. Japan's response has been to dispense several new loans, many of which were nonconcessional, totaling more than \$1 billion in 1987 alone. In addition, difficulties common to Japanese aid and investment projects throughout the world have been present. Japanese have had trouble retaining employees after expending time and money to train them. The Japanese have been reluctant to appoint locals to top local management positions. And they have been reluctant to transfer technology to the Indonesian plant.⁵³

2. *Inequitable Development*

Many Japanese projects promote growth, but often the growth is inequitable. In the Philippines Japan's use of aid often helps Japanese exporters and contractors, but often hinders Philippine economic development. A gross example of this phenomenon involved Japan's financing of a deep water fishing port development in northern Manila.⁵⁴ The port was built to accommodate large trawlers of the type used by Japanese fishing fleets in the region. Most Filipino fisherman use very small trawl-

52. See Kubota Akira, *Foreign Aid: Giving With One Hand?*, 22 Japan Q 142 (April-June 1985). See also Bernard Wysocki, Jr., *Guiding Hand: In Asia, the Japanese Hope to "Coordinate" What Nations Produce*, Wall Street Journal 1 (August 20, 1990).

53. Id.

54. *Throwing Money* at 4 (cited in note 51).

ers.⁵⁵ While the port activities have generated a few jobs, this minor contribution to the development of the local economy was costly and inequitable.

In the 1980s, Japanese grant and loan ODA focused almost exclusively on heavy infrastructure planning and development. In Thailand, Japanese ODA financed the construction of roads, bridges and telecommunications facilities, which have made Thailand attractive to Japanese investors. The eastern seaboard development, where much of the aid investment has been focused, was basically designed by Japanese.⁵⁶ Such development brings wealth to Thailand, but the wealth is distributed inequitably. Those lucky enough to invest in or be employed as a result of the projects benefit from the activity, while the majority of Thais receive no benefit but the sight of a few of their neighbors growing wealthy.

Not all Japanese foreign aid projects suffer from such shortcomings. However, funding for projects that have efficiently and equitably benefited the poor has been inconsistent. The lack of guiding rules leaves discretion to aid bureaucrats who select projects unbridled. Often, whether Japan undertakes an inefficient and perhaps harmful project or an efficient and beneficial project depends solely on the inclination of the particular bureaucrat making the selection that day, and the pressures exerted on him or her by private sector interests.

B. *Selection and Evaluation Ineffectiveness*

Japan's procedures for selecting future projects and evaluating present and past projects are ineffective. MOFA introduced a project evaluation system in 1981. Official reports on Japan's development assistance have been published annually since 1982. In 1985, the Foreign Ministry established a separate forum for outside experts to evaluate aid projects.⁵⁷ Theoretically, evaluations can be made a) before aid is given, b) while a project is under way, c) immediately upon its completion, or d) at some later point in time. Japan's appraisals tend to fall in the last category. Their main purpose is to suggest ways of improving the efficiency of subsequent projects.⁵⁸

55. Id.

56. Charles Smith and Louise do Rosario, *Empire of the Sun*, Far Eastern Economic Review 46, 52 (May 3, 1990).

57. *Economic Eye* at 17 (cited in note 20).

58. Id at 18.

According to one group of critics, the evaluators look mainly at a project's potential for generating profits for the companies involved.⁵⁹ When the project passes this test, the rest of the evaluation is slanted to make the funding look good. The assessments give little weight to environmental impact, and are not designed to elucidate the effects on the general population in the recipient country.⁶⁰

Problems are also present in the process for selecting projects to be reviewed. Unfortunately, the standards by which ODA projects are selected for evaluation have never been made public. Over 100 projects are selected annually by the Economic Cooperation Committee, but how those projects are chosen is known only to the committee members themselves. Since the committee is comprised entirely of MOFA officials, one naturally suspects that they reject those projects that might embarrass the Ministry, particularly when the assessment is to be commissioned to independent reviewers.⁶¹ Roughly one third (about 1,000) of the aid projects implemented between 1981 and 1987 have been evaluated. In a March 1989 report, MOFA determined that approximately 90 percent of 160 foreign aid projects evaluated during 1987 were implemented effectively.⁶²

According to Akira Takahashi, a professor of economics at Tokyo University, "one of the most essential problems in Japan's development aid is that neither the government nor the taxpayers have been serious about the evaluation of impacts of aid projects on recipient communities, though they are very strict about auditing aid activities. What impact a project has had on the people, how the project affected the region, who received the real benefit, and whether there was a negative aftermath are hardly investigated."⁶³

The present evaluation system is inadequate to ensure that Japanese aid is ODA. The evaluation process may be systematic, but it does not judge projects against consistent standards. Some evaluations focus on whether the funds were spent in a timely fashion, some on whether the project was profitable to the implementing firm, some on whether the pro-

59. Id.

60. Id.

61. Id.

62. Gretchen Green, *Japan's Foreign Aid Reviewed*, 14B Japan Economic Institute Report 7 (April 7, 1989).

63. Akira Takahashi, *The Impact of Japanese Aid on Beneficiaries: Observation in Southeast Asia* 18, paper presented at conference-workshop sponsored by the Maureen and Mike Mansfield Foundation, Missoula Montana, May 14-17, 1987.

ject helped to develop the recipient region, and still others focus on a variety of other criteria. An evaluator has no obligation to look at any specific standard and need not even consider whether a project has promoted local development.

C. *Inattention to Environmental Concerns*

Tokyo has come under attack from environmentalists for not taking environmental concerns into account when funding development projects. Most objectionable has been Japan's funding of projects that seemingly support the timber industry, such as the building in wooded areas of roads and bridges which have no apparent use besides serving logging operations.⁶⁴

Japan's loans to Malaysia demonstrate a glaring example of Japan's intransigence. A \$1.5 million loan financed the construction of a road in the Limbang area of Sarawak, which cuts into lands inhabited by the nomadic Penan tribe. Although the indigenous people claim title to the land, logging companies have been able to establish logging operations there. JICA awarded the project to build the road to C. Itoh and Wong, a large Japanese trading company. JICA defends its decision, claiming that the road was meant to assist the local people, make possible a new school and increase medical access for the people of the interior regions. However, a report by the Japan Tropical Forest Action Network points out that the region's school had already been there for nearly 30 years and that medical visits continue to be made by helicopter. In addition, the local people have neither cars nor bikes—and often no shoes—and prefer to walk the paths rather than the hot roads. The impact of the road and the logging it has facilitated has been devastating. Sarawak has lost more than a third of its tropical rain forest, and logging concessions have been given for large chunks of what remains. The Penan people in 1987 and 1988 blockaded many of the logging roads in the area, including C. Itoh and Wong's road, to call attention to the impact that logging was having on their way of life. They claim that their traditional hunting grounds have been decimated, their lands have been deforested, and their rivers have been polluted and clogged with silt from soil erosion.⁶⁵

Under the watchful eye of the world press and other donor countries, Japan has become more sensitive toward environmental issues relating to

64. *Aid Incorporated* at 16-17 (cited in note 36).

65. *Id.* at 16.

aid projects, sometimes at the expense of its noninterventionist policy. For example, in 1990 Japanese aid officials bowed to pressure from environmentalists and human rights activists, withdrawing support for the construction of a dam in India that would have submerged 14,744 hectares of forest land and displaced 100,000 people, mostly ethnic tribesmen. This reversal came in the face of great pressure from the Indian government to support the construction of the dam.⁶⁶

Japan has formally responded to the criticisms by requiring environmental impact studies (EISs) for projects that might have a substantial effect on the environment. Less clear is how aid administrators will use the impact studies. The only guidance given to them is that they must "increase the emphasis on environmental considerations in their aid activities."⁶⁷ It appears that this vague directive has not been effective. So far, the undertaking of EISs seems to have been intended more to alleviate criticism than to address the real problem.⁶⁸

The most egregious examples involve Japan's development activities in Brazil's rain forests. In 1988 the U.S. Foreign Relations Committee revealed that JICA recommended that EISs on the Greater Carrayas Development Project in Brazil be done secretly so as to avoid international criticism.⁶⁹ In 1989 environmental concerns over the effect of development in rain forest areas were raised when it was reported that Japan was considering financing a \$300 million road through a rain forest. Japanese leaders have denied any such plans.⁷⁰

Recently, when the Indonesian government requested a \$148.3 million loan from Japan's OECF to fund a large hydroelectric power plant on Sumatra (total cost of \$257.7 million), OECF officials reportedly stated that they would only make a decision on the loan request after an EIS was conducted.⁷¹ Japan's requirement of an EIS is encouraging. However, substantial progress will only occur when aid administrators are supplied with guidelines by which to judge the project's feasibility based on the findings of the EIS.

66. Edmund Klamann, *Aid Machine Struggles with Ecology Issues*, Nihon Keizai Shimbun (Japan Economic Journal) 1 (June 30, 1990).

67. *Japan's ODA* at 51 (cited in note 3).

68. *Aid Incorporated* at 16 (cited in note 36).

69. *Id.*

70. Douglas Ostrem, *Japan Edges to Center Stage on LDC Debt*, 9B Japan Economic Institute Report 4 (March 6, 1990).

71. *Asia News: Indonesia Assures Japan on Dam Project*, Kyodo News Service (April 23, 1990).

Japan, a country that is very conscious of its image among other countries and that prides itself on its efficiency, should respond to these problems in its flagship aid program. To do so, it must take steps to eliminate the basic flaws underlying these problems.

III. RECOMMENDATION AND ITS IMPACTS

A. *Japan Must Enact Basic Guiding Legislation*

The Japanese leadership must respond to the shortcomings in Japan's aid program by enacting basic and comprehensive guiding legislation. Appropriate guiding legislation would provide guidance to aid bureaucrats in virtually all foreign aid decisions. It would provide a foundation on which the Japanese legislature could enact more directed legislation. It would require the Japanese populace through their legislators to make a fundamental decision on the future direction of their aid program. And, if properly formulated, it would ensure that Japanese foreign aid is properly labeled ODA and would send a firm message to the rest of the world that Japan has adopted a development-oriented aid philosophy. Enactment of such basic guiding legislation is imperative.

The basic guiding legislation should be simple and far-reaching. First, it should require that promoting the equitable economic development and the welfare of developing countries be the primary objective of Japanese aid. This would help ensure that Japan's aid is properly classified as ODA and would provide an over-arching principle to guide aid administrators in their decision-making. Second, the legislation should flesh out the meaning of equitable economic development and welfare by establishing criteria that aid administrators must consider when evaluating past projects and considering future ones.

Based on the above considerations, I propose that Japan adopt the following legislation:⁷²

- (A) Japanese aid shall be administered with the promotion of
 - (1) the *equitable economic development* and
 - (2) the *welfare* of developing countries as its *main objective*.
- (B) Each project funding decision and each project evaluation shall take into consideration, in determining whether the project forwards the main objective stated in part (A), whether the project forwards the following objectives:

72. Ideas for these criteria came largely from Section 102(b)(4) of the United States Foreign Assistance Act of 1961, 22 USC § 2151-1(b)(4) (1982).

- (1) increase in agricultural productivity per unit of land through small-farm, labor intensive agriculture;
 - (2) reduction of infant mortality;
 - (3) control of population growth;
 - (4) promotion of greater equality of income distribution, including measures such as more progressive taxation and more equitable returns to small farmers;
 - (5) reduction of unemployment and underemployment;
 - (6) preservation of the environment; and
 - (7) increase in literacy.
- (C) Projects that do not forward the main objective stated in part A, in light of the objectives stated in part B, shall not be funded.

Such a directive would place the development and welfare interests of the recipient country before all other considerations and would thereby force the aid administration to eliminate funding of nondevelopment-oriented projects.

B. *Impact of the Guiding Legislation*

Such guiding legislation would help eradicate many of the basic flaws present in the Japanese foreign aid program, because the lack of guidance is at the root of many of the flaws. It would establish a hierarchy of interests with development concerns at the pinnacle. Aid administrators would have a frame of reference when deciding whether to fund aid projects, a sharp contrast to the haphazard method presently used. It would limit funding for projects built for the Japanese private sector that either harm or negligibly help the alleged aid recipients. For example, the logging road through Sarawak would not be funded under part C, because its primary objective—to assist the Japanese wood industry—conflicts with the main objective as stated in part A, especially in light of the project's harmful effect on the environment, which conflicts with the sixth criterion set forth in part B. Similarly, the Philippine port facility described above would be denied funding under part C, because its primary objective is to assist Japanese fishing fleets, not the local residents of Manila.

Such basic guiding legislation would give the aid administration a standard around which it could build an effective evaluation mechanism. Further legislation or regulations conforming to the guiding legislation

would be required to flesh out the evaluation process and its specific standards.

This legislation would obstruct the Japanese aid administration's long-standing practice of limiting its contemplation of the environmental effects of aid projects to those instances where it receives pressure from outside groups. It would require aid administrators to balance the harmful environmental effects of projects against their overall contribution to the recipient country's equitable economic development and welfare. Thus, environmentally harmful projects that would only minimally benefit the local recipients would not be funded. Environmental impact statements (EISs) would have a very different function; administrators would have guidance while both undertaking EISs and evaluating their findings. Such legislation would also provide a basis and a focus for further environmental legislation and regulation.

CONCLUSION

Because Japan is the largest aid donor in the world, system-wide shortcomings in its aid program have mammoth negative ramifications throughout the developing world. Requiring Japanese aid to satisfy the internationally determined requirements of Official Development Assistance would bring about sweeping changes in the character of Japanese aid, and the improvements would benefit the developing world on an enormous scale. In the wake of the Gulf War, Japan has deflected criticism that it is shirking its world power duties by pointing to its massive aid contributions to developing countries. Donor and donee countries should use this opportunity to persuade Japan to adopt development and welfare oriented policy by pointing out that Japan's alleged aid flows often do not constitute Official Development Assistance and are often designed to benefit Japan more than recipient countries. In addition, it appears that Japan's foreign aid policy is in a state of flux. In April 1991, former prime minister Toshiki Kaifu, while emphasizing that Japan would still regard a recipient's needs as its primary consideration, stated that Japan has included some new criteria into the calculus of its aid policy; Japan will base future aid decisions on whether it thinks the recipient country spends too much on its military, and on the country's efforts to promote democracy, basic human rights, and a market-oriented economy.⁷³ The

73. Associated Press, *Japan Links Foreign Aid, Peace Policy*, Chicago Tribune 19 (April 11, 1991).

world community must take advantage of this flux and persuade Japan at the very least to adopt basic comprehensive guiding legislation parallel to the language found in the definition of ODA, and if possible to expand the legislation to include the suggested criteria and specific measures directed at solving already identified problems.

