Review of Foreign Laws*

The following summaries of national laws relating to industrial policy do not attempt to catalogue every law or program that arguably falls under the rubric of industrial policy. Rather, to varying degrees, they pay special attention to several themes that recur in all discussions of industrial policy: the promotion of certain industries and the management of the decline of others; the formation of a consensus between labor and management on an industry's future; and the creation of a plan for future development.

These summaries illustrate the diversity of the legal tools that various countries use to promote industrial development. This diversity suggests at least one conclusion: The type of legal tools a country chooses to implement its industrial policy is not a phenomenon of development. The laws of the Federal Republic of Germany (FRG or West Germany), the United Kingdom, Canada, and Japan illustrate the diverse forms that industrial policy can take in developed nations. The laws of Malaysia, the Republic of Korea (ROK or South Korea), and the Ivory Coast demonstrate that the governments of developing nations promulgate rules which are no less diverse than those of highly industrialized countries.

CANADA

Laws


* The Michigan Yearbook of International Legal Studies gratefully acknowledges the assistance of the embassies of Canada, the Federal Republic of Germany (West Germany), the Ivory Coast, the Republic of Korea (South Korea), Japan, Malaysia, and the United Kingdom.


**Synopsis**

Canada has articulated specific industrial development objectives since the 1950s. In 1982, the multitude of programs instituted to accomplish various goals was reorganized to reflect a clearer industrial policy.

The Cabinet Committee on Economic and Regional Development (CCERD) coordinates federal programs concerning energy, industrial, and regional development. The CCERD supervises the formulation and implementation of all policies as well as the budget of each program. Two departments, whose ministers report to the CCERD, are in charge of day-to-day decisions: The Department of Regional Industrial Expansion oversees domestic programs (including small business and tourism programs), while the Department of External Affairs oversees export promotion programs and the development of international trade policy.

Canada has traditionally protected domestically manufactured goods through its tariff system. Although adherence to the General Agreement on Tariffs and Trade (GATT) has lowered tariffs, Canada continues to protect manufactured goods through a system of non-tariff barriers. However, these do not appear to have been imposed according to a comprehensive plan. The industries protected are typically those in which Canada has no competitive advantage.

Canada promotes its exports through a number of government programs. The Export Development Corporation provides loans, loan guarantees and insurance, and foreign investment insurance to those firms whose exporting plans are consistent with the government's industrial policy objectives. The Program for Export Market Development will contribute up to 50 percent of project costs for firms entering new or expanding export markets. Funds are available for major capital projects, marketing expenditures, and the formation of export consortia. Firms applying for aid under these programs must fulfill certain requirements such as a showing of a lack of available private funding and a demonstrable benefit to Canada. Canadian exporters can obtain marketing advice, general information, and introduction to the procurement officials of foreign governments through the Trade Commissioner Service. Both the Canadian Commercial Corporation and the Canadian International Development Agency help companies sell their products abroad. The former assists sales to foreign governments and the latter ties the foreign aid it provides developing countries to purchase of Canadian products.

A number of programs promote manufacturing without regard to export potential. The Federal Business Development Bank, a subsidiary of the Bank of Canada, provides technical services, loans, loan guarantees, and equity financing to firms that can acquire sufficient capital from other sources to ensure a continuing interest in a venture's success. The Regional Development Incentives Pro-
gram provides direct incentives to manufacturing firms operating in specified regions. Small businesses may receive general assistance, including technical services, from the Small Business Loans Program. The government from time to time also institutes special programs for particular industries. For example, the government subsidized the building of an auto plant in Windsor, Ontario by Ford Motor Company. The federal government has also formed the Canadian Industrial Renewal Board to assist the textile and apparel industries.

The Canadian Government assists research and development projects through various programs and tax incentives. Current tax incentives for research and development include an immediate income tax deduction of capital research and development expenses in the year incurred with a two year carryback and indefinite carryover; a 50 percent additional allowance for any increase in research and development expenditures over the average research and development expenditures of the firm in the last three years; and direct research and development tax credits which vary according to the size and geographical location of the business. The government has proposed several changes in this system including a higher tax credit for increases in research and development expenditures.

Four other government programs support the research and development activities of Canadian businesses. The Enterprise Development Program (EDP), begun in 1977, provides loan guarantees to research and development projects that will provide direct, tangible, and significant benefits to firms engaged in manufacturing or processing. The program mainly helps small and medium-sized firms cope with structural market adjustment. Before the EDP underwrites a project it searches for alternative private or public financing. If none is available, the EDP can provide up to 90 percent of the cost of the project. The Defense Industry Program provides similar assistance to research and development projects related to national defense. Two programs support research efforts through wage subsidies to personnel involved in research and development projects. The Industrial Research Assistance Program subsidizes salaries of professionals and technicians. The New Technology Employment Program provides employment subsidies to firms that hire recently graduated scientists, engineers, and technicians who are unable to find work in their fields.

The Federal Business Development Bank, the Enterprise Development Program, and the Regional Development Incentives Program aid workers and firms suffering the effects of structural change. These programs are supplemented by the Manpower Consultative Service, which helps laid-off workers make full use of government programs. The Canada Manpower Mobility Program provides job search and relocation assistance to displaced workers unable to find new employment where they live. The Adjustment Benefits Program provides income support to workers displaced by imports in the clothing or textile industries or by the restructuring programs of the government in the footwear and tanning industries. The Canadian Manpower Training Program trains workers directly; the Canada Manpower Industrial Training Program and the Critical Trade Skills Program provide subsidies to employers that retrain employees. Through 1985 these programs will be supplemented by the Industry and Labor Adjustment Program, which aids displaced workers through training incentives, wage subsidies, relocation assistance, and early retirement benefits. This supplemental program
also uses grants and interest-free loans to encourage firms to build facilities in communities adversely affected by recent plant closures.

In addition to grants and loans, the government uses its procurement practices to promote Canadian businesses. The tender lists of the Departments of Transportation, Communications, and Defense, and the Crown corporations explicitly discriminate against foreign firms. Even in those departments that do not explicitly discriminate against foreigners, the Procurement Review Mechanism requires that the government accept, not the lowest priced good or service, but the good or service which will foster industrial growth, high technology, or regionally balanced growth. These requirements must be met for every purchase over two million dollars. The Committee on Megaproject Industrial and Regional Benefits reviews all procurements for energy megaprojects on Canadian lands. The Committee has attempted to increase domestic sourcing, to diversify regional industrial bases, to increase Canada's competitive position in world markets, and to expand markets for Canadian high technology products. The Committee insists that suppliers and sponsors provide it with manpower statistics, procurement information, the identity of competitive Canadian suppliers, and other basic information to ensure that the firms perform up to the government's expectations.

At one time the Canadian Government regularly purchased Canadian manufacturing companies owned by foreign interests. With the exception of energy companies, the Canadian Government has ceased this practice. Instead, the government has curbed foreign investment through the Foreign Investment Review Act of 1973 (FIRA), which created the Foreign Investment Review Agency. Foreigners proposing to buy or establish a business in Canada must obtain the approval of the Agency. Approval depends upon a demonstration that the investment will be of "significant benefit" to Canada. In recent years, the Agency has approved about 75 percent of the applications it has reviewed.

Public ownership of companies in selected industries is another method used by the Canadian Government to control industrial development. The steel, pulp and paper, potash mining, petroleum and natural gas, and aircraft industries are subject to growing public ownership. Similarly, the government owns companies involved in overseas telecommunications, transportation, utilities, television, and radio. The Canadian Development Corporation, through its holding company, CDC Ventures, Inc., manages the largest pool of venture capital in Canada and has encouraged Canadian ownership and management of small and medium-sized corporations through selected equity investments. It has been most active in mining, petrochemicals, oil and gas, health care, electronics, and fishing and has developed plans to increase its investment in high technology industries.

The federal government is not the only source of industrial development. Each Canadian province pursues a separate industrial policy which may include: ownership of mineral resources; collection of royalties from mineral resource production to pay for provincial development; monopolies on transportation; loans; loan guarantees to encourage investment within the province; "buy provincial" programs; ownership of stock in various corporations; and the rationing of low-priced hydroelectric power to large industrial users on the basis of their contribution to provincial development. The Board of Industrial Leadership
and Development is the liaison between these provincial programs and the federal government.

SECONDARY SOURCES


Walker, David F. *Canada’s Industrial Space Economy.* London: Bell & Hyman (1980).

FEDERAL REPUBLIC OF GERMANY (WEST GERMANY)

LAWS

*Grundgesetz* (GG) art. 91a(1) (Constitution).


Betriebsverfassungsgesetz (BetrVG) 1972 BGB1 I 13. (Works Constitution Act).

Mitbestimmungsgesetz (MitBG) 1976 BGB1 I 1153. (Codetermination Act).

AGREEMENTS


SYNOPSIS

The Federal Republic of Germany first established a comprehensive industrial policy in the 1969 document "Principles of Sectoral Structural Policy." The policy is guided by three principles. First, enterprises are primarily responsible for coping with structural change. Second, the government should reduce impediments to structural change and facilitate structural adjustment by creating an economic and legal framework that benefits the whole economy rather than individual industries or companies. Finally, only in special cases should the government act to speed or slow the adjustment process. Believing in competition and the free working of the market, the government seeks to implement a flexible policy that facilitates rather than plans change.

The Federal Republic's industrial policy is also influenced by its state governments, industry-wide trade associations, labor groups, and the European Economic Community. The federal and state governments work together to improve the economies of particular regions. They develop comprehensive plans setting out areas of intervention, goals to be achieved in each area, and measures to be used in achieving those goals.

Government and industry work closely in the formulation and implementation of industrial policy. Industry-wide associations, sponsored to a limited extent by the government, are recognized as the official representatives in policy-making sessions.

Labor also plays an active role in the planning and implementation of the Federal Republic's industrial goals. At the national level, the major unions have an important influence on policy decisions. Legislation also provides for employee representation on corporate boards in individual enterprises. Such corporate representation influences the implementation of policy changes.

The Federal Republic's membership in the European Community has a significant impact upon its industrial policy. In addition to the Community's regime of free movement of goods, there are free trade agreements between the EEC Member States and all other European Free Trade Area countries. Therefore, the Federal Republic cannot on its own use tariffs to protect its industries. The Treaty of Rome also requires the free movement of workers, services, and capital within the Community. The Federal Republic retains control over workers coming into the country from outside the Community. Monetary policy is highly regulated by the European Monetary Fund. In addition, the European Coal and Steel Community has broad powers to regulate the coal and steel industries and has an industrial policy of its own for steel.

Despite the Federal Republic's reluctance to intervene directly in the industrial adjustment process, it has guided the contraction of the steel and shipbuilding industries and provided aid to certain targeted industries. In shipbuilding, the Federal Republic provides interest subsidies to reduce credit costs to customers. For 1984 and 1985, the maximum interest subsidy is 2.5 percent. From 1979 through 1981, the government also provided direct aid for securing contracts. In keeping with the Federal Republic's policy of limiting direct intervention, this program was not renewed when it expired in 1981.

In recent years, the Federal Republic's steel industry has suffered a crisis. To cope with this problem, the Investment Allowance Act for the Steel Industry
became effective January 1, 1982. The Act provides ten percent of the purchasing and production costs for restructuring, rationalization, and modernization programs. In 1983, the government began to directly subsidize the steel industry.

The Federal Republic also uses its tax powers to encourage investments which further industrial policy objectives. Industry earns a major tax benefit when it allocates funds for basic and applied research and experimental development. In addition, there are special investment and depreciation allowances for investments in areas which, for political reasons, are economically depressed. The government also provides an investment allowance for specific energy conservation investments and special depreciation for sewage treatment plants, air purification plants, noise abatement programs, and antivibration facilities.

Although the Federal Republic does not directly subsidize infant industries, its policies reflect a commitment to the promotion of research and development. The Federal Ministry for Research and Technology contributes large sums of money for basic research in the areas of nuclear technology, space research, electronics, communications, transport, non-nuclear energy generation, environmental research, health research, and bioengineering. This research is carried out through the joint efforts of the federal government, state governments, and industry. In 1980, the federal government provided DM 10.4 billion, the state governments provided DM 6.2 billion, and industry provided DM 17 billion. The government makes special efforts to include small and medium-sized enterprises in the innovation process.

The Law to Promote Economic Growth and Stability encourages certain targeted industries. The Law has three objectives: the preservation of employment and productive capacity; the promotion of structural change and the minimization of the resulting social costs; and the stimulation of productivity growth and the development of growth sectors within the economy.

SECONDARY SOURCES

Federal Minister for Research and Technology. SIXTH REPORT OF THE FEDERAL GOVERNMENT ON RESEARCH. Bonn (1980).


IVORY COAST

LAWS

SYNOPSIS

Industrial policy in the Republic of Ivory Coast (Ivory Coast) is formulated within an economic system that is often characterized as "state capitalism." The government is currently seeking to liberalize this system which already ranks as one of the most market-oriented in Africa. The emphasis on a strong private sector is a result of both President Felix Houphouet-Boigny's philosophy of "Houphouetism" and short-term economic necessity.

The system of state capitalism has used some traditional dirigiste techniques, echoing the economic orientation of France, the Ivory Coast's former colonial ruler and its largest trading partner. The prevailing ideology in the Ivory Coast, however, holds that state capitalism is only a transitory stage of development before "mass capitalism." According to President Houphouet-Boigny, this step will "transform a population of peasants into a population of shareholders."

Recent economic difficulties have strengthened the emphasis on the private sector. A number of factors, including decreases in the prices of coffee and cocoa, caused negative real growth for 1981 and 1982. This decline represented a sharp departure from the threefold increase in the gross domestic product and the doubling of real earnings per capita between 1960 and 1975. This shift from growth to contraction illustrates how closely linked the Ivory Coast's industrial policy is to the success of its rural economy.

Agriculture dominates the Ivory Coast's economy. Eight agricultural and forestry products account for nearly all of its export earnings. Public investment, the "motor of development" in the 1970s, was largely funded through these earnings. With this earnings surplus gone, the government cut the 1983 investment budget by 25 percent and reduced its overall budget in real terms.

The economic policy of the Ivory Coast contains a number of significant departures from the market economy model. For example, the Ivory Coast maintains a system of fixed profit margins, prices, and interest rate ceilings. An increase in either profit margins or prices requires government approval. A recent law authorizing the government to regulate profit margins and prices by specifying a range of permissible variance represents a degree of liberalization. The government also reorganized the pandemic network of state enterprises which contributed to the public debt. These enterprises were abolished, sold, reorganized into private concerns on government contract, or integrated into the ministries.

decrease in the export of agricultural goods but an increase in other primary goods. The government's industrial policy seeks to profit from the strong agricultural sector by promoting complementary industries such as those that process primary goods.

The Ivory Coast reached energy self-sufficiency in 1983 through the development of offshore oil fields where it has granted concessions to foreign oil companies. A new local refinery exports petroleum to Burkina Faso (formerly the Republic of Upper Volta) and Mali. The Ivory Coast hopes for a modest increase in its petroleum exports by refining on contract for West African nations.

The promotion of export industries depends largely on private investment and foreign expertise. The government is currently following a pattern common in developing countries where exports of primary goods attract foreign exchange which in turn permits the importation of intermediate and capital goods needed for local production. The Industrial Development Office tries to attract foreign investment by providing information abroad about investment opportunities in the Ivory Coast.

The key piece of legislation on private investment, Loi 59–134 of 1959, benefits businesses deemed to be "priority enterprises." Article 2 specifies certain classes of enterprises as priorities, including realty enterprises, industrial farming enterprises, those related to agricultural raw materials, enterprises which process local plant or animal products, manufacturing and assembly plants for high consumption products, mineral exploitation enterprises, and power plants. In addition, Article 3 gives the government broad discretion to designate an enterprise as a priority enterprise. The Act details the benefits that priority enterprises receive, including a degree of restriction on competition, five to 25 year exemptions from the income tax, and exemptions from customs duties and other import taxes.

The government has enacted a number of other laws to encourage local enterprises and investment. For example, enterprises which the government wants to promote often benefit from tax legislation. Ten percent of a business' annual net profits are put into the National Investment Fund and may be recovered upon reinvestment in certain activities.

The government has also sought to promote small and medium-sized enterprises and enterprises producing handicrafts by acting as guarantor on a loan for $12.6 million from the World Bank. This loan requires majority Ivorian participation and management in the small and medium-scale enterprises.

Although no formal policy requires the employment of nationals, the government's policy of "Ivoirianization" favors such hiring, particularly for management positions. In the government's view, this is one of the most significant aspects of its economic policy. The government can exert pressure to hire Ivorians by considering the degree of Ivoirianization within an enterprise when a firm seeks licenses or priority status, by making it more costly to hire foreigners than nationals, and by urging companies to submit their plans for Ivoirianization of their staffs. In the past this has resulted in the hiring of inadequately trained employees. In response to this problem, the educational system is being reformed to reflect more closely the needs of the market.

The Ivory Coast is part of the West African Monetary Union (UMOA). The
currency of the UMOA, the CFA franc, is pegged to the French franc and guaranteed by the French Treasury to be convertible into French francs. In addition to guaranteed convertibility, the foreign investor benefits from the absence of restrictions on repatriation of capital and profits.

The Ivory Coast is a party to the General Agreement on Tariffs and Trade, the Custom Nomenclature of the West African Economic Union (CEAO), the Lome I and II Conventions, and the treaty establishing the Economic Community of West African States (ECOWAS). The CEAO agreement provides that approved goods produced in one member country may be imported into another with only a nominal regional tariff rather than the higher ordinary rate. The Lome Conventions provide for reciprocally favorable trading privileges between developing country members and the European Common Market. ECOWAS promotes regional economic development.

A number of entities in addition to the government participate in the economic policy-making process in the Ivory Coast. Individuals associated with both the private and public sectors are represented in an Economic and Social Council provided for in the Constitution. The country's three unions have ties to the governing party and consequently participate in the policy-making process. A number of professional organizations established by law give advice on all major economic decisions. The most important of these organizations are the Chambers of Commerce, Industry, and Agriculture. Regional commissions composed of representatives of public and private sector concerns in the region and local officials also participate in the elaboration of the Five Year Plan as it affects their region.

SECONDARY SOURCES


Organizing and Operating a Business Enterprise in the Ivory Coast, 948–1000. Ivory Coast: Government of the Ivory Coast.

République de la Côte d'Ivoire. LE SYSTÈME BANCAIREIVOIRIEN.

The Republic of Korea (ROK or South Korea) has adopted a wide range of statutes and programs to further its goals of modernization and industrial development. Specifically, the ROK seeks to develop sources of capital, to establish heavy and high technology industries which are competitive in the world market, and to counteract balance-of-payments problems by encouraging exports.

South Korea has promulgated several statutes aimed at developing domestic capital sources and improving financial structures. The Act Concerning Fostering the Capital Market was enacted in 1968 to make it easier for enterprises to attract...
investment capital by going public. The Open Corporation Act, adopted in 1972, also promotes and regulates publicly owned corporations. It established the Open Corporation Deliberation Committee which may order corporations to go public and punish those corporations that do not comply. Incentives offered to encourage the public ownership of corporations include reductions in the corporate and global income tax.

To attract foreign capital investment, the government amended the Foreign Capital Inducement Act in 1983. Originally enacted in 1966, the revised Act offers incentives and guarantees to encourage investment in many industries. Enterprises eligible for the incentives include those that improve the country's balance-of-payments, introduce advanced technology or large amounts of capital, or are located in the Free Export Zones. Benefits include either a five year income tax exemption or an accelerated depreciation plan for fixed assets. Investors may also receive exemptions from the acquisition tax, property tax, value-added tax, customs duties, and other taxes. In addition, the government guarantees repatriation of profits and equity investments.

The program to attract foreign capital is fairly flexible, allowing the government to decide on a case-by-case basis whether to give favorable treatment. This flexibility allows the authorities to funnel capital into specific areas as it is needed. In addition, the government targets certain high priority industries such as shipbuilding, electronics, and chemicals by offering greater benefits under the Tax Exemption and Reduction Control Act. These privileges include extensive tax breaks and double depreciation allowances.

To improve its balance of payments, the ROK tries to encourage the export of products manufactured in the country. In 1970, the government enacted the Free Export Zone Establishment Act setting up two free trade zones. Enterprises within the zones may import raw materials, parts, equipment, and semi-finished products without paying duty on them. The government has developed factory sites and built port facilities in these areas. Goods produced in the zones may not be sold in the domestic market except in limited circumstances.

Most international transactions are subject to the Foreign Exchange Control Act. This Act requires government approval of many international transactions prior to performance. Government officials thus have the authority to prohibit certain commercial transactions by simply withholding approval. Non-compliance with the controls can affect a party's ability to enforce its legal rights under the contract, or make it subject to civil or criminal sanctions. The Foreign Exchange Control Act also regulates the possession, export, and import of foreign exchange.

South Korea attempts to foster research and development within the country through a number of measures. The Ministry of Science and Technology has prepared a long-term plan for development of science and technology. The government has funded numerous research institutes, including the Korea Institute of Science and Technology, and encourages the establishment of private institutions. The government also provides financing for research and development through the Technology Development Preparation Fund. Firms that engage in research and development efforts enjoy tax credits and low interest, long term loans. In addition, when a domestic firm has invested in the commercial application of
Korean research, the government may restrict the importation of similar products to protect the results of domestic research. The South Korean Government has also implemented measures to induce South Korean scientists and engineers working abroad to return to the ROK.

The ROK does not now have indigenous capabilities for rapid technological development. Consequently, it relies upon technology imports from foreign countries. To encourage the flow of technology from abroad, the South Korean Government offers tax exemptions to licensors on income generated from licensing contracts. The Economic Planning Board must authorize technology inducement contracts.

SECONDARY SOURCES


JAPAN

Laws


Law No. 163 of 1950. Translated in 5 EHS, DA. (Foreign Investment Law).

Law No. 26 of 1957. Translated in 4 EHS, BA. (Special Taxation Measures Law).


**Synopsis**

Japan's wide-ranging and successful industrial policy is chiefly the product of its Ministry of International Trade and Industry (MITI). Established in 1952 after Japan gained its full postwar independence, MITI plays several roles in forming Japan's industrial policy. It coordinates and influences existing policies through indirect means and also directly initiates and executes precise policies. Its activities demonstrate the extent to which government and business can cooperate in formulating a successful industrial policy.

Other governmental organizations also influence Japan's industrial policy. Among the most important of these is the five-member Japanese Fair Trade Commission (JFTC), established by the Antimonopoly Act of 1947. JFTC is responsible for antitrust policy and some aspects of technology transfer and development. The number of ministries and programs involved in industrial development, as well as MITI's own size, sometimes leads to different parts of the government promoting inconsistent objectives. For example, JFTC's antimonopoly stance has sometimes conflicted with MITI's encouragement of industrial concentration.

The formulation of a broad industrial policy often begins with an indicative plan which may analyze specific sectors of the Japanese economy for the approaching decade. MITI's Economic Planning Agency directs the plan's formulation, but the drafting usually involves members from both the private and public sectors. The plan identifies growth industries and then develops policies to encourage investment in these industries. The Japanese Cabinet has the final word on the plan. Although the indicative plan is only advisory, it identifies the important industries of the Japanese economy and suggests to the ministries policy proposals to encourage further growth in these industries.

Wide publication of industrial strategies helps to create a broad consensus on the issue in Japan. Such strategy reports help business and government leaders set their priorities and to coordinate their efforts in formulating industrial policy.

MITI uses a variety of tools to implement strategies it favors. It has historically exercised enormous influence through its administrative guidance (*gyosei shido*) or moral persuasion over businessmen. MITI can encourage, discourage, or shape the form of foreign investment and technology transfer. It also molds tax, trade (tariff and nontariff), subsidy, and adjustment policies.

Foreign investment in Japan is controlled by the Foreign Exchange and Foreign Trade Control Law (Law No. 65 of 1979). The type and degree of control that the government exerts on foreign investors depends on the nature of the investment. Portfolio investments of less than ten percent of the aggregate outstanding shares of a listed corporation are subject to a notice requirement and a twenty-day waiting period. The organs and agencies which receive notification in all cases include the Foreign Exchange Council, the Ministry of Finance, and the ministry...
overseeing the industry in which the investment is taking place. JFTC review follows approval by these other bodies. The notification requirements are not as encompassing when the shares are purchased through a designated securities company.

For direct domestic investments (ten percent or more of the aggregate outstanding shares in a listed corporation, or any number of shares in an unlisted corporation), a notification statement must be filed, in a manner similar to the portfolio investment procedure described above. There then follows a thirty-day waiting period, which can often be accelerated to fifteen days. If, however, the government believes the transaction might imperil the national security or cause substantial adverse effects in related Japanese industries, the waiting period is five months. The government can suspend or alter the transaction if it finds that these adverse consequences will take place.

For acquisitions of controlling ownership, the government screens acquisitions of shares by foreigners by designating certain issuers for special treatment. The government has the power to designate issuers for this special screening process when it appears necessary to determine whether foreign share holdings of 25 percent or more might imperil Japan's national security, disturb the maintenance of public order, hamper the protection of public safety, or cause substantial adverse effects in the national economy.

The Foreign Exchange and Foreign Trade Control Law also governs technology transfer. Notification to and approval by several ministries are required for all patent and know-how transfers and licenses. A report of the contract normally must be filed with the JFTC within thirty days of the contract's conclusion. The JFTC can intervene to alter contract terms that it finds to be too restrictive or unfair to the Japanese licensee.

Development of domestic technology is encouraged in a variety of ways. Taxation measures under the Special Tax Measures Law also allow the government to encourage (or discourage) investment in a particular industry. The government also provides access to capital through the Japan Development Bank and the Bank of Japan. MITI often carries out plans of direct subsidization for promoting Japanese technology. While it is difficult to pinpoint the precise standards used when deciding to promote one industry or another, the long-term goals of the Japanese Government in the promotion of domestic technology continue to be economic growth, improved international competitiveness, and prestige. Two domestic industries that the government is currently promoting are computers and aircraft.

Of all the industrialized nations, Japan has had one of the most successful adjustment assistance programs. Given new scope during the 1970s, the current program continues the basic unemployment insurance system. Eligibility for government funds, however, depends on the employee's willingness to participate in the government's training and placement programs. The worker reports to the local Public Employment Security Office, which certifies the worker's unemployed status. Once the worker expresses the willingness to take an assigned job, the state official assists in assigning the unemployed worker to a job. A computer network allows for placement around the country.

In 1977, the government narrowed the focus of part of job security assistance
by passing the Temporary Measures Law Governing Unemployed Workers in Specified Depressed Industries. This measure gave workers laid off by structurally depressed industries (as certified in advance by the government) special allowances if they participated in the government's training and placement programs. Workers over forty years of age received special extensions of Employment Insurance Law benefits, and employers that retrained rather than discharged workers received special subsidies.

A year later, the government extended these benefits to entire communities built around industries which had recently lost their competitiveness. Firms in these communities were eligible for low interest loans, loan guarantees, extensions of existing loans, and certain tax advantages. The specific standards which the Japanese Government uses for deciding which communities or industries to help are unclear. Concerns of economic growth, population density, environmental protection, and dependence on imported natural resources have guided the government's decision making in the past.

**SECONDARY SOURCES**


MALAYSIA

LAWS


Industrial Coordination Act 1975, Act 156. Summarized in 6 INVESTMENT LAWS 15.


Customs Act 1967, § 65A. Summarized in INVESTMENT IN MALAYSIA 42.


SYNOPSIS

While agriculture, fishing, and forestry continue to dominate the Malaysian economy, in recent years the industrial sector has grown in importance. The Malaysian Government has, in part through its fourth Five Year Plan (1981-1985), continued its successful forestry and agriculture programs while promulgating an ambitious program to promote industrialization. Incentive and regulatory schemes seek to broaden the ownership of economic resources, stimulate foreign investment, lending, and technology imports, spur hiring and promotion of Malaysians, protect the domestic market, and increase exports.
Currently, industry and commerce are primarily controlled by the large ethnic Chinese minority which enjoys a much higher per capita income than the ethnic Malaysians (Bumiputras). Malaysianisation and the elimination of the economic disparity between ethnic groups are the primary objectives of the government according to its "New Economic Policy." The goals are 30 percent Bumiputra and 70 percent Malaysian (including Bumiputra) ownership of industry by 1990. These goals are for the nation as a whole and are not intended to be applied to individual enterprises. The government will not compel the divestiture of stock to achieve these ends.

The government has established guidelines for the amount of foreign participation allowable in new projects. Projects dependent on the domestic market generally require majority Malaysian ownership. Projects involving extraction and primary processing of nonrenewable domestic resources must generally have at least 70 percent Malaysian equity participation, including 30 percent Bumiputra. For enterprises manufacturing primarily for export, majority foreign ownership is permissible, and even 100 percent foreign ownership will sometimes be allowed. The exact ratio of Malaysian and foreign equity in any particular project depends on a variety of factors, including the amount of the investment, the technology involved, the location of the plant, what amount of the production will be exported, the development of the industry within Malaysia, the extent of the project's integration with existing industries, and the benefits accruing to Malaysia through the spinoff effects of the project. Enterprises may achieve the agreed-upon equity ratio over a period of years.

The Malaysian Government has implemented a number of regulations in an effort to keep capital in the country. Permission is needed for all payments to a foreign country above M$ 5,000 ( Malaysian ringger). Payments under M$ 2 million can be approved by a commercial bank; payments over M$ 2 million must be approved by the Controller. All payments legitimately due, including repatriation of capital and remittance of profits, are freely permitted. In addition, all proceeds of goods exported from Malaysia must be repatriated to Malaysia within six months from the date of export.

Foreign-controlled businesses may not finance their operations primarily with funds obtained in Malaysia. Thus, they must obtain the permission of the Controller for all loans within Malaysia over M$ 500,000. In addition, foreign-controlled businesses that borrow in foreign currencies must use the funds for business and productive purposes in Malaysia, such as payment for imports. The funds cannot be used for investment abroad without the consent of the Controller.

To promote the hiring of Malaysian employees, Malaysian law requires that all enterprises obtain the approval of the Malaysian Industrial Development Authority (MIDA) to use foreign employees. In order to safeguard their interests, companies whose foreign capital participation is M$ 500,000 or more can place foreign employees in certain "key posts." The exact number of key posts is negotiable. Expatriates may be employed in executive posts which require professional qualifications for up to ten years and in nonexecutive posts which require technical skill for up to five years provided that Malaysians are trained to take over the posts. These requirements are often relaxed for government desig-
nated priority industries, including labor-intensive industries and manufacturing industries that are wholly export-oriented.

Under the Investment Incentives Act of 1968, Malaysia offers a variety of tax incentives, which are available to both foreign and domestic companies. The granting of "Pioneer Status" allows complete exemption from income and development taxes for four years if the product to be manufactured is on Schedule "A" of the Investment Incentives Act and two years if it is not. Products on Schedule "A" include electronic goods, photographic and optical goods, watches and clocks, musical instruments, scientific and medical instruments, and office machinery. For a company to gain "Pioneer Status," the industry must either not be carried out within Malaysia or not be carried out on a scale suitable to the economic requirements and development of Malaysia. In addition, the industry must enjoy good prospects and it must be in the Malaysian public interest to establish the industry.

The Labor Utilization Relief incentive provides two years of tax relief for projects involving at least 51 employees. The exemption can be extended for more than two years depending on the number of people employed and the amount of capital expended. Firms are also eligible for incentives if they locate in designated areas. The basic incentive period is five years, but the period can be extended to up to ten years for certain levels of investment and employment.

Other incentives include the Investment Tax Credit, the Increased Capital Allowance, and export incentives. The Investment Tax Credit allows a deduction from taxable income of at least 25 percent of the qualifying capital expenditure. The credit is available to all firms; the size of the deduction is determined by the government. The Increased Capital Allowance incentive allows a company to depreciate its assets at an accelerated rate. Export incentives consist of an accelerated depreciation allowance, double deductions for expenses incurred in overseas promotion, and an export allowance.

The Ministry of Trade and Industry must approve all transfer of technology agreements to ascertain whether the agreements impose serious and unjustifiable handicaps on the local party, whether they are prejudicial to the national interest, and whether the fees are commensurate with the technology to be transferred. The Ministry also tries to ensure that the technology to be supplied is the latest and most modern available and that sufficient time is allowed for proper absorption of the technology.

To encourage the flow of funds from abroad, interest paid to nonresidents for foreign deposits or loans of three years or longer is exempt from taxation. Interest paid on loans from abroad of less than three years is exempt from taxation if the Treasury approves the loan. To be approved, the terms, conditions, and interest rate of the loan must be reasonable, the funds from the loan must be used to finance the purchase of fixed capital or for development, the debt-equity ratio of the borrower must be acceptable, and the repayment period must be one year or more.

Companies can apply to MIDA for tariff protection or import restrictions. MIDA will grant tariff protection to a company that can supply a major portion of the domestic market, provided that the quality of its products is acceptable and it
offers a reasonable price to consumers. The labor intensity of the industry, whether it uses domestic raw materials, and the level of local value added are the major factors in MIDA's decision. The Malaysian Government grants temporary import protection to prevent dumping and when it fears large scale speculative importing may take place before the industry commences production.

The Malaysian Government assists exports by granting a drawback or exemption from customs duties and surtaxes on imported components of the exports. Goods imported into government-established Free Trade Zones (FTZ) or Licensed Manufacturing Warehouses (LMW) are not subject to customs duties. Companies are eligible to locate in a FTZ or LMW if their entire output is intended for export, or, in some cases, if at least 80 percent of their products are targeted for export. Companies importing raw materials to manufacture products for domestic sale can also escape the import surtax if the final product is not dutiable or if its price would not be competitive with imported goods without the exemption. Companies wishing to take advantage of this exemption must comply with the New Economic Policy's goals for equity participation, management, and employment.

SECONDARY SOURCES


UNITED KINGDOM

Laws

Industrial Training Act, 1964, ch. 16.
British Shipbuilders Act, 1983, ch. 15.
Shipbuilding Act, 1982, ch. 4.
Transport Act, 1981, ch. 56.
Shipbuilding (Redundancy Payments) Act, 1978, ch. 11.
FOREIGN LAWS 537

Industrial Training Act, 1982, ch. 10.
Industry Act, 1981, ch. 56.
Companies Act, 1980, ch. 22.
Iron & Steel Act, 1982, ch. 25.
Industrial Development Act, 1982, ch. 52.
Industry Act, 1972, ch. 53.
Industry Act, 1975, ch. 68.
Coal Industry Act, 1983, ch. 60.
Scottish Development Agency Act, 1975, ch. 69.
Welsh Development Agency Act, 1965, ch. 70.

SYNOPSIS

Instead of a single, coherent industrial policy and scheme for its implementation, the British Government has myriad programs, incentives, and subsidies designed to assist and guide British industrial development. The shape of these devices depends to a large extent on the political party in power, but many programs and schemes have remained in place through changes in governments and the implementation of different economic philosophies.

In 1961, the Conservative Government established the National Economic Development Council (NEDC) composed of representatives of trade unions, employers, and the government. The NEDC produces targets and policies for industrial growth. The NEDC also coordinates the Sector Working Parties (SWPs), tripartite committees organized by industrial sectors which are also composed of representatives of labor, government, and management. The SWPs make recommendations to improve the health of industrial sectors and to promote cooperation among competing firms and between labor and management.

The Labour Government elected in 1964 established the Department of Economic Affairs (DEA) to implement a stronger system of planning. The DEA produced the National Plan in 1965, but when National Plan's goals became unrealistic, both the DEA and its attempt at national planning lost credibility. The NEDC has continued to produce studies advocating industrial policies and growth strategies, but these policies have generally not been implemented.

The next major effort to implement an industrial policy came in 1966 with the establishment of the Industrial Reorganisation Corporation (IRC). The IRC promoted the rationalization of British industry by encouraging and funding mergers. The IRC had a hand in about 50 mergers, the best known being the merger forming British Leyland and the takeovers of English Electric Company and Associated Electrical Holdings by General Electric Company. These two mergers led to a single dominant firm in both the automobile and electronics industries. The IRC attracted much criticism when it took sides in a takeover contest between two private manufacturers attempting to take over a third company, and the new Conservative Government abolished the IRC in 1971.

The Labour Government attempted to negotiate planning agreements under the authority of the Industry Act of 1975 in an effort to coordinate industrial policy.
The planning agreements were voluntary agreements between the government and companies on the strategic plans of the company for future development within the United Kingdom for a specified period. Only one private company, Chrysler, ever signed an agreement at the time it was trying to obtain assistance from the British Government. After it came to power in 1980, the Conservative Thatcher Government repealed that part of the Industry Act that had authorized such planning agreements.

Among the wide variety of industrial incentives the British Government provides, the most important are the regional development grants originally established by the Industry Act of 1972. The Secretary of State for Industry has designated certain regions as either special development areas, development areas, or intermediate areas. Areas with these designations, which together cover a third of the country, are generally either industrialized areas dependent on declining heavy industries, such as South Wales and parts of southern Scotland and northern England, or rural areas with almost no industry, such as the Scottish Highlands. Firms that make capital expenditures above specified levels for buildings, machinery, or plants located on premises used for qualifying activities receive tax-free grants of 22 percent in special development areas and 15 percent in development areas. Qualifying activities include manufacturing, repairs, maintenance, scientific research, and training. There are minimum but not maximum levels of expenditures for grant eligibility.

Discretionary assistance to industry is chiefly funded under sections 7 and 8 of the Industry Act of 1982 and is administered by the Department of Industry. These provisions have made assistance possible for a wide variety of troubled industries.

Industrial projects undertaken in special development, development, or intermediate development areas or in Northern Ireland are eligible for assistance under section 7. The assistance will generally be in one of four forms. Grants for fixed and working capital costs are available for projects in manufacturing, mining, and construction. Training grants are available for the training costs of a project and usually cover 80 percent of such costs (40 percent by the British Government and 40 percent by the European Community). Grants are available for nonindustrial and service activities of industries under the Office and Service Industries Schemes. These activities include the construction of offices, research and development facilities, training centers, and warehouses for insurance, banking, and professional services excluding retailing. The amount of a grant is based on the number of jobs the project is expected to create. The fourth form of assistance available under section 7 is the Exchange Risk Guarantee Scheme whereby the government assumes the risk of fluctuations in the exchange rate by guaranteeing a certain sum in pounds. The borrower pays the government an annual premium. Other forms of assistance authorized by section 7 are secured and unsecured loans, including interest-free loans, loan guarantees, and the acquisition of loans or share capital in a company.

To receive assistance under section 7, projects must be viable and must create new jobs or safeguard existing jobs. In addition, applicants must show that without the assistance, the project will either not proceed at all or will not proceed as proposed. The grant must lead to a significant change in the nature or
scale of the project, a significant advance in its timing, or a desirable change in its location.

Assistance under section 8 is available throughout the United Kingdom. Assistance can be in the form of grants, loans, guarantees, or, as a last resort and with the permission of the company, the acquisition of debt or equity in a company. The assistance is typically in the form of grants paid in installments linked to capital expenditures. Assistance is provided at the discretion of the Department of Industry, and will be given only for projects that are commercially viable and would not be undertaken without assistance. Assistance will also be considered for projects for which there is a genuine choice of international location. Assisted projects must lead either to substantial improvement in performance or productivity or to the introduction of new products by the business. Improvements in quality or reliability of the product also constitute improvements in performance. Eligible project costs include building, plant, machinery, working capital, development costs, licensing arrangements, and training costs. The government can acquire and condemn land and erect and restore buildings as part of the assistance provided.

In addition to grants for major projects, many programs exist to assist particular industries or to promote the achievement of particular industrial objectives. These schemes generally assist smaller firms and projects and last for a limited period of time.

The Support for Innovation (SFI) program coordinates a variety of section 8 projects designed to promote research and development. Five research and development boards, each dealing with a broad industrial sector, advise the Department of Industry on the balance and direction of its support for research and development. The standard assistance consists of up to one-third of qualifying costs and preproduction orders. In some cases, the Department will enter a shared cost contract with the manufacturer whereby the Department contributes 50 percent of the cost which is recovered through a levy on commercial sales. SFI schemes have in the past encouraged the application of computer design and manufacturing techniques in the mechanical and electrical engineering and electronics industries through grants for research and development and for first-time users of these techniques.

Other entities for policy implementation include the English Industrial Estate Corporation, which builds factories, warehouses, and offices for sale or lease to private companies. The Corporation also provides government mortgages for purchase and construction of such facilities and guarantees private bank loans. The British Government has also established enterprise zones to encourage investment in declining areas. Projects in the enterprise zones receive a ten-year property tax holiday and a 100 percent capital allowance for commercial and industrial buildings. They also enjoy relaxed and streamlined regulations.

The British Government promotes research and development and innovation with a variety of other programs in addition to SFI. The Laboratory of the Government Chemist, the National Engineering Laboratory, the National Physical Laboratory, and the Warren Spring Laboratory are government research facilities. The British Technology Group, composed of the National Research Development Corporation (NRDC) and the National Enterprise Board (NEB),
provides support for private sector investment in technological innovations. The NRDC finances the development of new methods and products through the prototype stage by providing venture capital loans or taking a minority equity interest in a joint venture.

The NEB was originally set up by the Labour Government in the 1975 Industry Act as a holding company for government-controlled corporations. The NEB has no power of compulsory acquisition, but it can acquire equity interests in companies and make or guarantee loans. Under the Labour Government, the NEB acquired holdings or set up firms in the electronics, computer, and aviation industries as well as other high technology industries as part of its effort to restructure key industrial sectors.

The NEB was intended to be profitable, but in practice it became a method of subsidizing companies in difficulty as the Labour Government placed Rolls Royce and British Leyland under NEB control. Much of the NEB’s resources went to supporting troubled firms. The Thatcher Government removed British Leyland and Rolls Royce from the NEB in the 1980 Industry Act and sold many of the NEB’s other holdings. In 1981, the Thatcher Government established Oakwood Investments as a subsidiary of the NEB to assist with loans of up to £50,000 to small firms that have difficulty raising capital but have the potential for rapid growth.

The Scottish and Welsh Development Agencies are similar to the NEB, but have a wider range of functions, including the management and construction of industrial estates, urban renewal, and industrial promotion. These activities are more important than their industrial investment activities.

The Industrial Commercial Finance Corporation (ICFC) and the Finance Corporation for Industry (FCI) are private enterprises that provide assistance under the supervision of Finance For Industry Limited (FFI). The Bank of England holds a 15 percent interest in FFI; the London Clearing and Scottish Banks hold the rest. The government makes funds available to the FFI through the Bank of England but does not guarantee the repayment of the loans.

The ICFC provides medium- and long-term financing to expanding small and medium-sized firms who lack access to the financial market. The ICFC also acquires stock on a temporary basis, advises entrepreneurs, and provides technical and management counseling. The ICFC’s subsidiary, Technical Development Capital (TDC) encourages the marketing of technical innovations. The TDC can provide financing through the manufacturing stage of processes and products that the NRDC helped to develop. Similarly, the FCI provides loans to heavy industry having difficulties in obtaining financing.

The British Government subsidizes industrial training through the Industrial Training Boards, which build and finance the building of training facilities throughout the country. The Manpower Service Commission coordinates the Industrial Training Boards and is responsible for the formation of a national manpower policy.

The British Overseas Trade Board (BOTB) provides subsidies for research of foreign markets, assists firms in attending trade fairs, and organizes seminars in foreign countries on British products. The BOTB also subsidizes the cost of bringing to the United Kingdom foreign businessmen, journalists, and other
persons who can promote and influence exports. For a fee, the BTOB's market advisory service will research prospects for selling particular goods or services in foreign markets, show firms how to exploit market opportunities, and sometimes provide names of possible purchasers.

Marketing assistance is also provided by the Aid and Trade Provision (ATP), whose purpose is to match firms with aid-assisted foreign credit facilities. The ATP is administered by the BTOB and helps British companies secure important orders from developing countries. The Export Credits Guarantee Department insures exporters against the risk of nonpayment by their overseas customers and gives guarantees to banks through which exporters can obtain financing.

The Invest in Britain Bureau (IBB), part of the Department of Industry, provides information to overseas firms considering investing in Britain. The IBB provides information on national and regional incentives and introductions to possible partners or suppliers. It also helps to establish contact with the central and local governments and nationalized industries.

British industrial policy has often focused on the issue of nationalization. Much of Britain's heavy industry has been nationalized either by Labour governments implementing a socialist philosophy (steel and coal) or by governments, both Labour and Conservative, trying to prevent the collapse of the industries (British Shipbuilding and British Leyland). Most of these industries are under the supervision of the Department of Industry, and many industries have been heavily subsidized for over a decade. As part of its plan to return as much industry as possible to private control, the Thatcher Government has "denationalised" a number of industries, including British Airways, the National Freight Corporation, British Aerospace, Cable & Wireless, British Telecom, and British Petroleum. Two difficulties have prevented the denationalization of other industries: the government wants to ensure that certain strategic industries remain under British control, and certain industries are in such financial difficulty that their sale is not possible.

The Thatcher Government has begun restructuring programs in many heavy industries including coal, steel, and shipbuilding in an effort to reduce government subsidies. However, the expenditures continue. Indeed, in 1981 it guaranteed a £200 million loan to the ailing British computer firm, ICL. The government also assists workers who have lost their jobs due to industrial restructuring. In addition, the Department of Industry aids smaller firms under the Employment Subsidies Act of 1978 by paying employers to enable them either to retain employees who otherwise might be laid off, or to hire new employees.

**SECONDARY SOURCES**


* The Michigan Yearbook of International Legal Studies gratefully acknowledges the assistance of the embassies of Canada, the Federal Republic of Germany (West Germany), the Ivory Coast, the Republic of Korea (South Korea), Japan, Malaysia, and the United Kingdom.