

JFTC are resolved informally. Whether labeled administrative guidance or informal enforcement, and whether carried out by the JFTC, MITI, or the U.S. FTC and Justice Department, the process is the same.

The two main means of informal enforcement used by the JFTC are publicity and the administrative surcharge. The JFTC regularly publishes its decisions and tolerates media reporting of its searches. Such publicity deters by relying on the moral suasion accompanying a perceived violation of the public order. Publicity has been the most effective deterrent; the surcharge the most effective sanction. It directly responds to the root behaviour, and is thus arguably more acceptable to the culprits than a more arbitrarily assigned fine.

● **Enforcement through administrative guidance**

Administrative guidance is not peculiarly Japanese, therefore, but its ubiquity is. It is a product of Japan's particular historical and social context and endemic as an aspect of the Japanese economy. Although all major studies in English or German recognize that practices analogous to administrative guidance can be found in the West, most emphasize the cultural factors that seem to explain administrative guidance as a peculiar Japanese institution. The underpinnings for administrative guidance are in the neo-Confucian deference to authority and the related desire to maintain harmony and cooperation and to avoid adversarial posturing, in other words, in the special social psychology of the Japanese.

A community or individual sense of the legitimacy of government actions and policies may determine in particular instances whether a party will comply or not. Both the aim of assisting industry and a lack of strong legal sanctions or other forms of formal legal coercion in effect compel officials in Japan to negotiate and seek compromise with respect to policies they want to implement. Japanese industrial policy is comprised more of a series of responses to immediate economic conditions and events than a carefully designed plan implemented by effective government persuasion.

5.6 Corporate governance in Japan