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JAPANESE ANTI-TRUST LEGISLATION

By LESTER N. SALWIN*

On March 31, 1947, the Japanese Diet approved "An Act Relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade." In diverse ways, its enactment represented a distinctive accomplishment of far reaching significance in the economic deconcentration of Japan. Except for a general directive to the Japanese Government on November 6, 1945, calling for submission of a legislative program to "eliminate and prevent private monopoly and restraint of trade," no directive was ever issued by SCAF [Supreme Commander for the Allied Powers] specifically laying down conditions to which the necessary legislation must conform. The important events directly leading to the formulation of the law included the following: The Prime Minister first designated nine Diet members, constituting the Supervisory Committee of the Holding Company Liquidation Commission, a government agency, to act as a Preparatory Commission. On December 11, 1946, they held their first meeting with the Prime Minister at the latter's official residence. On December 14, 1946, certain legislative proposals were submitted for their consideration by the Economic Stabilization Board. The latter agency had been named to coordinate the views of the various interested Ministries and to represent the government in its relations with SCAF on the subject of anti-monopoly legislation. During February and March 1947, several draft bills were transmitted for SCAF's consideration. Suggestions for revision and improvement were evolved

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2. SCAF IN 244, dated November 6, 1945, announces that "the Imperial Japanese Government will promptly present * * * its program for the enactment of such laws as will eliminate and prevent private monopoly and restraint of trade, undesirable interlocking directorates, undesirable corporate security ownership and the segregation of banking from commerce, industry and agriculture, and as will provide equal opportunity to firms and individuals to compete in industry, commerce, finance and agriculture on a democratic basis."
after a series of conferences between SCAP representatives, primarily of the Economic and Scientific Section and Government Section, on the one hand, and Japanese Government officials, on the other. Various issues were intermediately presented to the Cabinet for its approval. For example, on February 18, 1947, the Cabinet decided that the administration of the anti-trust law should be vested in a new and independent government establishment, instead of forming a part of the Ministry of Justice as had originally been planned. On March 11, 1947, as the process of legislative draftsmanship and revision gradually ground to a close, the Cabinet publicly announced that the anti-trust measure would be presented to the Diet with Cabinet and government support.

On March 22, 1947, the bill received the imprimatur of the Emperor's seal, a formality required under the old Japanese Constitution governing the proceedings of this, the last session of the Diet before the new Constitution was to become effective on May 3, 1947. The bill was then submitted to the House of Representatives. News of its introduction and imminent passage attracted considerable attention in the Japanese press (Mainichi, Yomiuri, Asahi, Nihon Keizai, etc.) and radio broadcasts. On March 22, 1947, the Nippon Times, a daily published in the English language, commented editorially that—

"*** the proposed law has been drawn up with great care with the help of expert advice after a long period of study ***, and all responsible quarters are agreed that it should be passed. ***

*** *** the democratization of the nation's economic structure *** calls for the abolition of trusts, cartels, private monopolies and *** restraint of competition ***. It is necessary *** to prevent the resurrection of great * * * concentrations [which] *** might furnish a motivation for aggressive imperialism.

But *** due consideration should be given to those who honestly fear that the anti-trust law *** will *** result in a weakening of Japanese economy. Conditions in Japan are different from countries with vast resources where * * * the most effective utilization is *** promoted by free competition.

Japan * * * cannot afford the luxury of competition, it is claimed. Japan must pool all her available resources * * * under unified control * * *. Anti-trust legislation will mean the end of modern industrial development in Japan and doom her to * * * small-scale enterprises, it is feared.

The public must be assured that the anti-trust law is not aimed against mere bigness in itself, that avoidance of wasteful duplication and economies * * * resulting from large scale operations are not to be banned. *** the aim is merely to prevent the formation of monopolies which could artificially curtail production, arbitrarily
fix exorbitant prices, close the door of opportunity to aspiring enterprisers, and unduly influence politics. The public must be convinced that anti-trust legislation provides a safeguard for economic democracy and economic freedom which adds to the profit of the nation."

SCAP's press release issued on March 22, 1947, stated:

"The proposed legislation provides for the establishment of a Fair Trade Commission composed of seven members appointed by the Prime Minister. The Commission would conduct investigations and public hearings prior to issuance of orders directing cessation of acts violating the law.

Persons adversely affected by unfair trade practices could file complaints with the Commission and have their rights protected against predatory and unfair business practices. Alleged offenders would have full opportunity to present evidence and the right to a review of their cases by a special panel of judges of the High Court of Tokyo, who would have exclusive jurisdiction over all civil and criminal litigation under the law.

The Commission would have authority to pass on applications of companies to merge or consolidate, or to own stock in certain limited types of subsidiaries, or to enter into international trade agreements. It would promulgate industry-wide standards of fair competition."

Finally, on March 31, 1947, the last day of the parliamentary session, after approval of the House of Representatives, the bill passed the House of Peers and became law. On April 1, 1947, Mainichi, one of the leading newspapers, expressed keen awareness of the immediate issues and administrative challenge posed by the new statute. It declared that—

"In order to democratize our economy it is not enough that the existing monopolies be broken but it should be made impossible for all monopolies to be formed. The law enacted by the session of the Diet just ended is aimed precisely at such prevention.

Since Japan must import raw materials, large-scale industrial enterprises would have to be organized, for imports entail production of articles capable of competing on the world market, and this can be done only by large-scale enterprising. Thus the

4. SCAP's press release also quoted the writer's observation that the antitrust measure "culminates a year's efforts to formulate effective anti-trust legislation for Japan. The present bill represents a distinctive accomplishment toward substantially carrying out prohibition of unreasonable restraint of trade and protection of free competition as a part of the permanent legislation of the country. [Enactment will mark] a step of far reaching significance in establishing as part of Japan's legal system a Fair Trade Commission charged with preventing resurgence of combines vested with undue concentration of economic power." Nippon Times, March 27, 1947, p. 3.
delicate question arises as to how to organize large-scale industries without reviving monopolies. Efforts required in this direction would be several times those exerted in breaking up trusts and monopoly. But unless this were achieved, no real reconstruction of economy would be possible."

On April 12, 1947, the Nippon Times, going beyond the qualified approval previously bestowed on the bill, stated categorically that—

"** big business should be the first to welcome the Anti-Monopoly Law **

Most of the business concerns of Japan ** have been designated as 'restricted' companies **. These 'restricted' concerns could not be reorganized nor could the feeling of uncertainty be removed until it could be definitely known ** what sorts of business organizations would be permitted. The new Anti-Monopoly Law furnishes the answer. **

At last **, there has been created a definitive legal basis ** within whose limits business organizations may be established on a permanent basis. Upon conforming to ** the Anti-Monopoly Law, heretofore 'restricted' companies can be removed from this category **. New companies can be formed **. Japanese business can concentrate ** on its primary activities instead of being distracted by ** the purely technical ** matter of its internal organization. This Law should prove to be the go-ahead signal **. ** it should be welcomed as an act of liberation **."

On May 3, 1947, the Oriental Economist, a monthly publication in English, pointed out that—

"The Law ** is designed to amplify ** the spirit of the SCAP directive demanding liquidation of the Zaibatsu **. Hence it prevents not only the extreme centralization of business controls but eliminates unreasonable restraint upon business activities and encourages ** competition and promotion of a sound enterprising spirit. What effects this law will have on the business world remains to be seen, ** those companies which operate contrary to the provisions of this law will have to be liquidated or reorganized, probably one of the most far reaching repercussions this law is certain to cause. ** many 'second' or new companies will be incorporated. The question is: Will these companies offer their stocks for public subscription, or allot part ** preferentially to their employees, or allot pro rata ** to shareholders of the liquidated companies? So far as Japan is concerned, there is no precedent for this kind of business adjustment."

A restatement of the Japanese anti-trust law should prove of

absorbing interest to American readers who may be impelled to make a comparative analysis with our own Sherman, Clayton, and Fair Trade Commission Acts. The paraphrase in the following Appendix is, therefore, offered in the spirit of arousing and helping in some measure to satisfy this natural curiosity.

Appendix

A Paraphrase of Japanese Anti-Trust Legislation

Adopted March 31, 1947

Law No. 54, Official Gazette, English ed., No. 309, April 14, 1947

CHAPTER I

General Rules


"This law, by prohibiting private monopolization, unreasonable restraints of trade and unfair methods of competition, by preventing excessive concentration of power over enterprises, and by excluding undue restrictions of production, sale, price, technology, etc., through combinations and agreements, etc., and all other unreasonable restraints of business activities, aims to promote free and fair competition, to stimulate the initiative of entrepreneurs, to encourage business activities of enterprises, to heighten the levels of employment and national income and, thereby, to promote the democratic and wholesome development of national economy as well as to assure the interest of the general consumer."

Article 2. Definition of Terms.

"Entrepreneur," "competition," "unreasonable restraint of trade," "undue substantial disparities in bargaining power," "unfair methods of competition," are defined as follows:

Entrepreneur: Natural or juristic person which operates a commercial, industrial, financial or other business enterprises.

Competition or competitor: Includes potential competition and potential competitor.

Private monopolization: "Business activities by which an entrepreneur individually or by combination, conspiracy, or any other manner excludes or controls the business activities of other entrepreneurs, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade."

Unreasonable restraint of trade: "Business activities by which an entrepreneur, by contract, agreement or any other manner, in conjunction with other entrepreneurs, mutually restricts or conducts their business activities thereby, causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade."

Substantial disparities in bargaining power: Such substantial disparities in bargaining power, not justified on technological grounds, between an entrepreneur with superior bargaining power, on the one hand, and his competitors, on the other, which render private monopolization possible in any particular field of trade because (1) business operations or materials used therein are controlled to such an extent as to render it extremely difficult for a new enterprise to be initiated; (2) production therein is controlled to such an extent as to render it extremely difficult for another actually to compete; or (3) free competition is restricted to such an extent as to render private monopolization possible.
Unfair methods of competition:
(1) Arbitrary refusal to buy from or to supply other entrepreneurs with commodities, funds, and "other economic benefits."
(2) Supplying commodities, funds and "other economic benefits" at discriminatory prices.
(3) Supplying commodities, funds and "other economic benefits" at unduly low prices.
(4) Unreasonably inducing or coercing competitors' customers by offering benefits or threatening disadvantages.
(5) Requiring others to trade on condition that they shall, without good cause, refuse to accept commodities, funds and "other economic benefits" from a competitor.
(6) Requiring another party, being supplied with commodities, funds or "other economic benefits," to accede to conditions which unduly restrain its relations with (1) competitors or (2) suppliers; or (3) subject the appointment of its officers and directors to prior approval.
(7) Other methods of competition designated by the Fair Trade Commission under Articles 71 and 72 as being contrary to public interest.

CHAPTER II
PRIVATE MONOPOLIZATION
UNREASONABLE RESTRAINT OF TRADE


Every entrepreneur is prohibited from undertaking or effecting any restraint of trade or private monopolization.

Article 4. Concerted Activities Declared Illegal Per Se.

Certain concerted activities are declared illegal per se; e. g. price-fixing in the form of establishing, stabilizing or enhancing prices; and restrictions on production, markets, customers, sales, products, technology, construction or expansion of facilities, adoption of new technology, or methods of production.

Article 5. Control Organizations Outlawed.

Participation by any entrepreneur in any organization which undertakes the allocation of or controls, by methods of excessive purchase or sale, the distribution of materials or products, is prohibited.

Article 6. International Cartel Agreements.

Unless the effect on competition in any particular field of international or domestic trade is negligible, participation in any agreement with a foreign entrepreneur or with a domestic entrepreneur in regard to foreign trade is prohibited, if the contract involves restrictions (1) declared illegal per se under Article 4 (price-fixing or restrictions of production, markets, customers, sales, products, technology, etc.); or (2) relate to exchange of scientific or technological knowledge or necessary business information.

All proposed international agreements with a foreign entrepreneur or with a domestic entrepreneur relating to foreign trade, performance of which will continue for a considerable period of time (excepting those involving extended installment deliveries based on a single transaction) must be submitted, on application, for the Commission's approval. Pending its determination, participation in any such agreement is prohibited for a period of thirty (30) days after the filing of the application.

Article 7. Commission's Authority to Eliminate Restraint.

The Fair Trade Commission may order the elimination of any restraint of trade or private monopolization by directing an entrepreneur to cease per-
formance of certain acts, dispose of a part of its business, or adopt other necessary corrective measures.

CHAPTER III

Undue Substantial Disparities in Bargaining Power


The Fair Trade Commission may order the elimination of substantial disparities in bargaining power by directing an entrepreneur to dispose of a part of its business, or to adopt other appropriate corrective measures. In making its determination, the Commission shall give special consideration to such factors as the following:

1. Capital, reserves and other assets.
2. Income, expenditures and other aspects of operation.
3. Composition of officers and directors.
4. Location of factories, work-yards and offices.
5. Business facilities and equipment.
6. Ownership of patents and other technological factors.
7. Productive and sales capacity, etc.
8. Sources for obtaining credit and materials, etc.
9. Connection maintained with other entrepreneurs through investments and other means.
10. Comparison with competitors on points indicated in items 1 to 9, inclusive.

CHAPTER IV

Stockholdings, Multiple Directorships, Mergers, and Transfers of Business

Article 9. Holding Companies Outlawed.

Holding companies are prohibited. Such organizations are defined as companies whose principal business is to control, by stock ownership, the business activities of other companies.

Article 10. Intercorporate Stock Ownership.

Except for certain limited types of subsidiaries, all non-financial corporations are prohibited from acquiring voting stock in other companies. Corporations, other than trading companies, may file applications with the Fair Trade Commission to create or acquire a 100% owned subsidiary; provided the proposed subsidiary stands in close relationship to the parent. It must have a continuous close connection with the parent in regard to supply of raw materials, semi-finished products, necessary parts, by-products, waste material, "goods or other economic benefits necessary for its business activities," or utilization of patents. The subsidiary cannot, in turn, own stocks in a third company.

Certain additional standards must also be met before a company may acquire less than 100% of the stock of an existing concern. These are limited to the situation where the selling company needs to finance itself by the issuance of stock, other methods of acquiring capital being practically difficult. Stock in the selling company cannot be owned by a competitor of the applicant; the proposed subsidiary cannot own stocks in a third company; and in case it is a trading company, its stocks cannot be held by any other company than the applicant.

The Commission is authorized to approve applications to acquire stocks of another company where the foregoing conditions are fulfilled, provided the purchase does not constitute a substantial restriction of competition in any particular field of trade.
Article 11. Intercorporate Stock Ownership by Financial Institutions.

Banks and other financial institutions cannot own the stocks of competing institutions that operate in the same field of financial enterprise. Financial institutions with assets exceeding ¥5,000,000 cannot acquire more than five (5) per cent of the total issued stocks of any company.

The following exceptions are made to the foregoing limitations upon financial institutions acquiring stocks in other corporations:

1. Securities dealers in the normal course of their business.
2. Underwriters (other than securities dealers) for purposes of public sale.
3. Securities trusts where the cestui que trust is the beneficiary and retains voting rights in the stocks deposited.

Securities dealers and underwriters may hold corporate stocks for a period of one (1) year. Beyond that time, they must obtain the approval of the Fair Trade Commission.

Article 12. Intercorporate Ownership of Debentures.

Intercorporate ownership of debentures (excluding bank financing debentures) in excess of twenty-five (25) per cent of the capital of any given issuing company is prohibited. The same exceptions are made in favor of securities dealers, underwriters, and securities trusts as exist under Article 11 in regard to corporate stocks.

Article 13. Multiple Directorships.

No officer, director, or regular employee of a corporation shall hold any executive office in a competing company or in a non-competing company where one-fourth of the officers or directors of either company hold executive positions in third companies. No person may hold more than three (3) offices or directorships.


No person may own stock in competing companies where the effect is substantially to restrict competition in any particular field of trade. No person may own more than ten (10) per cent of the issued stock of two (2) or more companies without applying to and obtaining the approval of the Fair Trade Commission. No officer of a corporation may invest in or otherwise acquire the stocks of a competing company. Upon assuming office, an officer must report to the Commission any stocks then owned by him in competing companies. The Commission may order disposal of the whole or any part of such stocks or take other necessary action, where such ownership is considered conducive to restraint of competition.

Article 15. Mergers.

Every merger must be approved, upon the filing of an application, by the Fair Trade Commission after a determination that certain stipulated conditions are satisfied; e.g., restraint of competition will not result; and the merger was not dictated by unfair methods of competition; will not bring about substantial disparities of bargaining power; and will contribute to rationalization of production, supply or management.

Article 16. Acquisition of the Business of Another Company.

The Fair Trade Commission must approve, after the filing of an application, and upon the same conditions as are applicable to corporate mergers, transfers of the whole or any part of the business of another concern, the lease of the whole of another business enterprise, the entrustment of the management of one company with another, or the execution of a contract for a joint profit and loss account with another company.

Article 17. Evasions Prohibited.

Evasionary acts, in whatever form, designed to circumvent Articles 9 to 16, inclusive, are prohibited.
Article 18. Suits Against Holding Companies and Unauthorized Mergers.

The Fair Trade Commission is authorized to institute legal action (under the Civil Litigation Law) to nullify unauthorized mergers and prohibited holding companies.

CHAPTER V

UNFAIR METHODS OF COMPETITION

Article 19. Unfair Methods of Competition Outlawed.

Every entrepreneur is prohibited from engaging in unfair methods of competition.


In accordance with procedure outlined in Chapter VIII (public hearings, etc.), the Fair Trade Commission may order an entrepreneur to cease and desist from participation in any unfair method of competition.

CHAPTER VI

EXEMPTIONS


The law does not apply to business enterprises which, by their intrinsic nature constitute natural monopolies, such as railroads, gas and electric power plants, and other similar enterprises.


The law is inapplicable to the legitimate acts of an entrepreneur performed in accordance with the terms of any special law particularly governing the conduct of its business. A list of such special laws will be designated by special law.

Article 23. Patents, Trade-Marks, etc.

The law does not apply to acts recognized as proper and within an entrepreneur's rights under the copyright, patent, model utility, design and trade-mark laws.


This law is not applicable to an association, cooperative, or federation of associations, organized under special law which meets the following overall conditions:

1) Its purpose is mutual-aid among small-scale entrepreneurs or consumers.

2) Participation or withdrawal of members is free and voluntary.

3) Members have equal voting rights.

4) Distribution of profits, if any, to members is in accordance with rules laid down by law, order and/or the articles of association.

The foregoing exemption is rendered inapplicable if the association, cooperative, or federation, employs unfair methods of competition or restrains competition in any particular field of trade to such an extent as to cause an undue enhancement in price.

CHAPTER VII

INDEMNIFICATION OF DAMAGES

Article 25. Liability for Civil Damages.

Any entrepreneur violating the law shall be liable for civil damages to any injured party affected by private monopolization, unreasonable restraining of trade, or unfair methods of competition. The absence of willfulness or negligence on the part of the violator shall not constitute a valid defense.
Article 26. Limitation of Civil Actions.
An injured party cannot sue for private damages until the Fair Trade Commission has rendered a decision that a violation exists under Articles 48 and 52, and its order has become final and conclusive. His right to action expires three (3) years from the date that such decision becomes final.

CHAPTER VIII
FAIR TRADE COMMISSION
Section 1. Organization and Power

Article 27. Establishment of Fair Trade Commission.
Administration of the law is entrusted to a Fair Trade Commission established under the jurisdiction of the Prime Minister.

The Commissioners shall perform their functions "independently."

Article 29. Appointment of Commissioners.
The Fair Trade Commission shall consist of seven (7) members, at least thirty-five (35) years of age, qualified as persons of learning and experience in law or economics, appointed by the Prime Minister with the consent of the House of Representatives. They shall be civil service officials.

Article 30. Term of Office.
The term of office of a Commissioner shall be five (5) years; he shall be eligible for reappointment, but must retire upon reaching the age of sixty-five (65). A Commissioner appointed to fill a vacancy shall serve the remaining portion of his predecessor's term of office. Separate order shall provide such contingencies as a Commissioner completing his term of office, or a vacancy occurring when the Diet is in recess or the House of Representatives is dissolved.

Article 31. Removal from Office.
A Commissioner may be removed from office only on the following grounds:
(1) He has been declared illegally incompetent or quasi-incompetent.
(2) Judgment has been rendered dismissing him from the civil service.
(3) He has been sentenced for violating this law.
(4) He has committed a crime and been sentenced to imprisonment or heavier criminal penalty.
(5) The Fair Trade Commission has determined that he is not capable of discharging his functions because of physical or mental disabilities.

Article 32. Removals by Prime Minister.
The Prime Minister shall remove a Commissioner from office for the causes specified in Article 31, except only dismissal from the civil service after issuance of a judgment to that effect.

Article 33. Appointment of a Chairman.
The Prime Minister shall appoint a Chairman from among the Commissioners who shall preside over the affairs of the Fair Trade Commission and "represent" it. The Commissioners shall designate a Chairman from among themselves to act in place of the Chairman in the event of his incapacity.

Article 34. Quorum.
Meetings cannot be held nor decisions rendered without the attendance of the Chairman and at least three (3) Commissioners. Proceedings of the Commission shall be governed by majority vote. In case of a tie, the Chair-
A man may cast the deciding ballot; provided, however, that the Commission shall not remove a member from office under Article 31, on the ground of his physical or mental disability, except with the unanimous concurrence of all of the Commissioners except the one subject to removal.

**Article 35. Necessary Personnel.**

The Fair Trade Commission is authorized to establish a “staff office” and to hire necessary personnel in order to maintain it. Such personnel, who shall be civil service officials, shall include, among others, public prosecutors, practicing attorneys, and those qualified to become attorneys. The duties and responsibilities of public prosecutors (assigned by the Procurator General to work with the Fair Trade Commission) shall be restricted to the prosecution of criminal offenses under the law.

**Article 36. Compensation.**

Compensation of the Chairman, other Commissioners, and staff personnel shall be prescribed by separate order. The emoluments of the Chairman and other Commissioners shall not be reduced in amount during their tenure of office.

**Article 37. Outside Activities Prohibited.**

The Chairman, Commissioners, and such personnel as shall be named by separate order shall be prohibited from:

1. Actively engaging in politics, or becoming a member of the Diet or any local public body.
2. Performing any other remunerative work, except with the consent of the Prime Minister.
3. Engaging in commerce or any other gainful occupation.

**Article 38. Informal Rulings Prohibited.**

Commissioners and staff personnel named by separate order are prohibited from issuing interpretations or expressing their own views as to the facts or applicability of the law to a given case, except as provided in the law (e.g. official decisions of the Commission), or any conclusions reached in critical studies of the law published by the Commission.

**Article 39. Non-Disclosure of Trade Secrets.**

The Commissioners and staff personnel, as well as former officials and employees, are prohibited from divulging or making surreptitious use of trade secrets acquired in the course of their official duties.

**Article 40. Subpoena Powers.**

The Fair Trade Commission is authorized to order any person or representative of any organization or government office to appear before it and produce necessary reports, information or data relevant to the proper performance of its duties under the law.

**Article 41. Compilation of Data by Outside Agencies.**

Wherever necessary to the proper performance of its functions, the Commission may entrust and delegate to any educational institution, government office, person of learning and experience, etc., the task of compiling necessary reports or research.

**Article 42. Information through Public Hearings.**

Wherever relevant to the performance of its functions, the Fair Trade Commission may order public hearings to be held for the purpose of receiving the views of the general public on any necessary matters.

**Article 43. Publication of Data.**

Wherever the Commission deems it conducive to the proper administration of the law, it may order “necessary matters” to be made public. This, however, does not authorize the disclosure of an entrepreneur's trade secrets.
Article 44. Reports to the Diet.

The Fair Trade Commission shall submit, through the Prime Minister, annual reports to the Diet covering the administration and enforcement of the law. It may also submit, through the Prime Minister, its views and recommendations in regard to matters related to achieving the purpose of the law.

Section 2. Procedure

Article 45. Receipt of Complaints.

Any person may report alleged violations to the Commission and request the facts to be investigated. Upon receipt of such information, or upon its own initiative, whenever it considers a violation to exist the Fair Trade Commission may conduct investigations or take other suitable measures.


In conducting an investigation, the Fair Trade Commission, through staff personnel named by separate order and specially authorized for that purpose, may:

1. Summon, question and require the submission of reports by witnesses and "persons connected with the case."
2. Summon specialists and require their expert testimony.
3. Order the submission and retention of accounting books, documents and other matter.
4. Conduct spot investigations of business operations and establishments and accounting books maintained by "persons connected with the case."

Personnel authorized to conduct spot investigations shall be required to carry a warrant with them.

Article 47. Records of Investigations.

After an investigation is completed, the Commission shall keep a record showing the gist of the case and setting forth the result of any steps taken under Article 46.

Article 48. Consent Orders.

The Fair Trade Commission may recommend to an entrepreneur the adoption of certain measures in order to eliminate private monopolization, unreasonable restraint of trade, unfair methods of competition, or substantial disparities in bargaining power. The party involved shall notify the Commission whether or not it accepts the recommendation. If it is accepted, the Commission may enter an order based on the recommendation without resorting to a formal hearing.

Article 49. Institution of Formal Hearings.

The Fair Trade Commission may initiate proceedings to have a formal hearing held with respect to violations involving private monopolization, unreasonable restraint of trade, substantial disparities in bargaining power, and unfair methods of competition. "The procedure of a hearing" commences from the moment a notice is sent to the entrepreneur informing him of the decision to open proceedings of a hearing.

Article 50. Service of Notice.

The notice requiring an alleged violator to appear at a formal hearing must set forth the charges and essential points of the case, together with the date and place of hearing. The hearing must be held not less than thirty (30) days after date of service.

Article 51. Filing of Answer.

Upon receipt of notice, a reply shall be filed by the alleged violator without delay.
Article 52. Presentation of Evidence.

The alleged violator, or his agent, may introduce supporting evidence to substantiate reasons set forth by him why a proposed order under Articles 7, 8, or 20 would be improper; cross-examine witnesses offered by the Commission; demand the interrogation of necessary witnesses by the Commission; and cause expert testimony to be taken; accounting books and other data in the possession of third parties to be submitted; spot investigations to be conducted; and business operations, property, accounting books or other matters to be examined. The defendant may appoint an attorney or other person to act as his agent.

Article 53. Public Hearings.

Hearings shall be open to the public, unless closed sessions are deemed necessary in the public interest, or in order to protect trade secrets. A stenographic record shall be made of all testimony and statements produced at the hearings.

Article 54. Decisions.

After the completion of a hearing, the Fair Trade Commission shall incorporate its findings that a violation exists in a formal decision ordering corrective measures under Articles 7, 8 or 20.

Article 55. Decision by Majority Vote.

Decisions shall be made by majority vote of the Commissioners taken at a meeting of the Chairman and at least three (3) other members. The Chairman may cast the deciding ballot in case of a tie vote.

Article 56. Meetings of the Commission.

Meetings of the Fair Trade Commission shall not be open to the public.

Article 57. Findings of Fact and Conclusions of Law.

Decisions shall be in writing and incorporate findings of fact and conclusions of law applicable thereto. A minority opinion may be filed.

Article 58. Effective Date of Decisions.

Decisions take effect from the moment copies are served on the defendant.

Article 59. Intervention of Interested Third Parties.

The Fair Trade Commission may require or authorize a third party interested in the result of a case to participate as a “concerned party.” The Commission shall, however, first interrogate the defendant and the interested party before permitting the latter to intervene.

Article 60. Intervention of Government Offices.

If deemed to be in the public interest, any interested government office or public organization may participate in the hearing as a “concerned party.”

Article 61. Expression of Views by Government Offices.

In order to protect the public interest, any government office or public organization may express its views in regard to a case, without formal intervention as a party to the proceedings.

Article 62. Stay Bonds.

A defendant found guilty of violating the law may suspend execution of the Commission’s order by depositing a bond or other security in an amount to be fixed by the High Court of Tokyo. Applications in regard to the filing of stay bonds shall be governed by the Simplified Litigation Procedure Law.

Article 63. Forfeiture of Stay Bonds.

The High Court of Tokyo may order the confiscation of the whole or any part of a stay bond or other posted security after the Commission’s
order has become final and conclusive (e.g., by affirmance in the High Court of Tokyo or the Supreme Court). Proceedings in regard to forfeiture of stay bonds shall be governed by the Simplified Litigation Procedure Law.

**Article 64. Supplementary Investigations.**

Where deemed necessary in special cases, the Commission may conduct supplementary investigations, under Article 46, subsequent to the rendition of its decision.

**Article 65. Disapproval of Applications.**

When an application is filed under Articles 6, 10, 11, 12, 14, 15 or 16 to approve (1) participation in an international cartel agreement or an agreement between domestic entrepreneurs relating to foreign trade; (2) acquisition of stocks or debentures by financial institutions or other companies; (3) individual purchases of more than ten (10) per cent of the stocks of two (2) or more competing companies; (4) corporate mergers; or, (5) transfer or lease of another company's business, or the establishment of a joint profit and loss account with another company, the Fair Trade Commission shall inquire and conduct necessary investigations into the facts of the given case. If considered to be without merit, the Commission shall issue a decision dismissing the application.

**Article 66. Revocation of Approval.**

Approval of applications required to be filed under Articles 6, 10, 11, 12, 14, 15 and 16 may be revoked by decision of the Fair Trade Commission, after a formal hearing held for that purpose, where circumstances justifying the original action have changed or ceased to exist.

All decisions of the Commission may be revoked, after a formal hearing held for that purpose, where their continuance in effect would be unreasonable and contrary to the public interest, because the facts justifying the original action taken have altered or no longer exist due to changed economic or other conditions.

**Article 67. Temporary Restraining Orders.**

The High Court of Tokyo may, upon petition of the Fair Trade Commission, issue a temporary restraining order in case of urgent necessity, directing an alleged violator to cease any act of private monopolization, unreasonable restraint of trade, or unfair method of competition. Proceedings in regard to the issuance, modification or revision of such temporary restraining orders shall be governed by the Simplified Litigation Procedure Law.

**Article 68. Stay of Temporary Restraining Orders.**

A temporary restraining order may be stayed upon the posting of a bond or other security in an amount to be fixed by the High Court of Tokyo. When the decision of the Fair Trade Commission determining that a violation exists becomes final and conclusive, the Court may order the bond or other posted security to be confiscated.

**Article 69. Records of Case Open to Public.**

Any interested person may have access to the records of a given case for the purpose of examining or copying them, and may obtain a copy of the formal decision.

**Article 70. Procedural Regulations Authorized.**

Procedural regulations relating to investigations, hearings, and other action necessary to the disposition of cases, as well as the posting of stay bonds or other security, shall be prescribed by separate order.

**Section 3. Miscellaneous Provisions**

**Article 71. Designation of Unfair Methods of Competition.**

The Fair Trade Commission shall promulgate industry-wide standards of fair competition and designate unfair methods of competition after holding
public hearings at which interested industry representatives and members of the general public may attend and express their views. Proposed standards shall first be published in tentative form, and before finally adopting them, the Commission shall give due consideration to any objections received.

Article 72. Publication of Standards of Fair Competition.

Standards of fair competition and methods of unfair competition designated by the Fair Trade Commission shall become effective thirty (30) days after the giving of public notice.

Article 73. Criminal Prosecutions.

By the filing of an accusation with the Public Procurator General, the Fair Trade Commission may request criminal proceedings to be instituted whenever it believes that the criminal provisions of the statute have been infringed. If the Public Procurator General refuses to prosecute, he shall promptly submit a written report, through the Minister of Justice, to the Prime Minister, setting forth his refusal and supporting reasons therefor.

Article 74. Criminal Investigations Requested by Public Procurator General.

The Public Procurator General may call upon the Fair Trade Commission to investigate and report on any case where he believes a criminal violation of the statute exists.

Article 75. Compensation of Witnesses.

Provision shall be made by separate order for the traveling expenses and other compensation of witnesses and experts summoned under Article 46 to appear and offer testimony at formal hearings.

Article 76. Procedural Regulations.

The Fair Trade Commission is authorized to issue regulations covering its internal organization and procedure for handling cases.

CHAPTER IX
LEGAL SUITS (JUDICIAL REVIEW)

Article 77. Review Proceedings in the High Court of Tokyo.

Within a period of thirty (30) days after the decision of the Fair Trade Commission becomes effective, any party may institute suit against the Commission in the High Court of Tokyo to revoke or modify its order.

Article 78. Transcript of the Record.

Upon the filing of suit against the Fair Trade Commission, the High Court of Tokyo shall without delay require the Commission to submit a complete transcript of the records and evidence in the case, including the testimony of all of the parties, witnesses and experts, together with any other matter that would qualify as evidence in court.

Article 79. No Automatic Suspension of Decision under Review.

The execution of the decision of the Fair Trade Commission shall not be suspended by the filing of a suit in the High Court of Tokyo under Article 77. Upon application of the plaintiff, or upon its own motion, the Court, may, however, order such suspension. The Court may at any time revoke or modify the order of suspension.

Article 80. Findings of Fact Binding on the Court.

Findings of fact made by the Fair Trade Commission, where supported by substantial evidence, shall be binding upon the High Court of Tokyo. The Court shall determine whether or not such substantial evidence exists in the record.
Article 81. Applications to Introduce New or Additional Evidence.

Any party may apply to the Court for leave to introduce new evidence relevant to the case where it affirmatively demonstrates that:

(1) The Fair Trade Commission without good cause excluded or failed to take cognizance of such evidence; or

(2) It was impossible to submit such evidence to the Commission due to no negligence on the part of the applicant.

If the application shall be approved, the Court shall return the case to the Commission with directions to receive said evidence and take such further proceedings as may be appropriate.

Article 82. Reversal or Modification of Commission Orders.

The Court may reverse the decision of the Fair Trade Commission where (1) findings of fact are not supported by substantial evidence; or (2) it is contrary to the Constitution or other law. The Court may make necessary modifications in the decision where its contents include errors of law predicated on an arbitrary or unreasonable application of the Constitution or other law.

Article 83. Modifications by the Commission.

The Court may return a case to the Fair Trade Commission with directions to make such particular modifications in its decision as may be necessary or appropriate.

Article 84. Commission's Views in Private Damage Suits.

When a suit for private damages is filed by an injured party under Article 25, the High Court of Tokyo shall promptly call upon the Commission for its opinion as to the amount of damages caused by the violation in question.

Article 85. Exclusive Jurisdiction of the High Court of Tokyo.

The High Court of Tokyo shall have exclusive jurisdiction over all suits involving decisions of the Fair Trade Commission, claims for private damages under Article 25, and criminal prosecutions under Articles 89 and 90.

Article 86. Additional Jurisdiction of the High Court of Tokyo.

The High Court of Tokyo shall have exclusive jurisdiction over (1) the filing and forfeiture of bonds or other security staying the execution of decisions of the Commission under Articles 62 and 63; (2) the issuance of orders under Article 67 restraining an alleged violator pending the decision of the Commission; and (3) the levying of non-criminal fines under Article 97 for violations of Commission orders.

Article 87. Special Panel of Antitrust Judges.

A special panel of five (5) judges shall be established within the High Court of Tokyo to execute the original and exclusive jurisdiction vested in it by Articles 85 and 86.

Article 88. Appeals to the Supreme Court.

No appeal shall lie from the judgment of the High Court of Tokyo to the Supreme Court except on the following grounds: (1) that the judgment was contrary to law; or (2) involved an unreasonable determination in regard to a law, order, regulation or disposition affecting the case being in conformity with the Constitution.

CHAPTER X

Penalties

Articles 89 to 100.

Provision is made for fines and imprisonment ranging in amount from Y500 to 50,000 and from six (6) months to three (3) years, respectively. Article 95 provides for dual liability of a corporation and its responsible
employees or representatives. At the time a verdict of guilty is rendered, the Court may, under Article 100, order the revocation of a patent or patent license belonging to the offender, and also prohibit the latter from participating in government contracts for a period of six (6) months to three (3) years.

**Supplementary Provisions**

**Article 101. Effective Date of the Law.**

Each article of the law shall become effective and enforceable on the particular date fixed for it by separate order.

**Article 102. Applicability of Existing Contracts.**

Provisions of the statute invalidating certain types of agreements apply to contracts existing on the date when such provisions go into effect.

**Article 103. Enterprise, Reconstruction and Reorganization Act.**

Acts performed pursuant to reorganization plans adopted in conformity with the Enterprise and Reorganization Act or Financial Institutions Reconstruction and Reorganization Act shall be exempt from the provisions of this law.

**Article 104. Corrective Measures Against Control Organizations.**

Separate orders shall provide for corrective measures to be adopted against existing organizations which contravene the provisions of Article 5 prohibiting controlled distribution and allocation of materials or products by methods of exclusive purchase or sale.

**Article 105. Existing Holding Companies.**

Separate order shall provide for the dissolution or other disposition of existing holding companies.

**Article 106. Northeast Development Company, Ltd.**

The Northeast Development Company (Tohoku Kabushiki Kaisha) shall be exempt from the provisions of this law relating to the prohibition of holding companies and intercorporate ownership of stocks and debentures.

**Article 107. Existing Intercorporate Ownership of Stocks and Debentures.**

Special order shall provide for the disposal of existing stocks and debentures owned by non-financial companies in contravention of Articles 10 and 12 at the time the latter provisions go into effect.

**Article 108. Existing Stocks and Debentures Owned by Financial Institutions.**

Special order shall provide for the disposal of existing stocks and debentures owned by financial institutions in violation of Articles 11 and 12 at the time the latter provisions go into effect.

**Article 109. Resignation from Multiple Directorships.**

Every person holding offices or directorships in competing or other companies in contravention of Article 13 shall within a period of ninety (90) days from the effective date thereof resign such position as may be necessary to conform to the provisions of that Article.

**Article 110. Disposition of Stocks Owned in Competing Companies.**

Separate orders shall provide for the disposal of existing stocks owned by a person in competing companies or otherwise in contravention of Article 14 at the time the provisions of that Article go into effect.

**Article 111. Additional Penalties.**

Criminal penalties are provided for violation of the provision of Article 109 relating to resignation of offices or directorships, or violation of orders of the Fair Trade Commission under Articles 104, 105, 107 and 108 directing
corrective action against control organizations or holding companies, or requiring the disposal of stocks and debentures owned by financial and other companies.

Article 112. Dual Liability of Corporations and Their Responsible Representatives.

Corporations and their responsible employees or representatives shall both be liable for violations of orders of the Fair Trade Commission under Articles 104, 105, 107 and 108.

Article 113. Attendance at Meetings of the Holding Company Liquidation Commission.

Members of the Fair Trade Commission may attend and express their views at meetings of the Holding Company Liquidation Commission.

Article 114. Terms of Office of Original Commissioners.

The terms of office of the first panel of Commissioners shall be one (1) year for one (1) Commissioner, two (2) years for two (2) Commissioners, three (3) years for one (1) Commissioner, four (4) years for two (2) Commissioners, and five (5) years for one (1) Commissioner, respectively.