There is no need to follow a single pattern in selecting new owners. Of course all forms of application should be screened to eliminate obvious instances in which applicants are undertaking a venture which clearly lies beyond their capacity and resources. When employees desire to become owners, peculiar care should be taken lest zaibatsu influence be preserved through ties of loyalty; 1/ and therefore sale to individual employees should be undertaken more readily than sale to company unions. Within these limits, however, it would be desirable to encourage experiments with various forms of diffused ownership and to permit the establishment of new public utility projects in fields which appear to be unsuited to private competitive control. Where there is a substantial minority of stockholders, respect for their proprietary rights will require the avoidance of new forms of ownership to which they are unwilling to assent. In the case of the wholly-owned subsidiary, however, preference should be given to well conceived ventures such as are mentioned above, instead of to open market sale of securities. 2/ Desirable purchasers should be preferred to higher proceeds from the sale.

Negotiated sales will, of course, bring dangers that members of the Liquidating Commission may feather their own nests or those of their friends. There should be immediately full

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1/ It is noteworthy that several of the outstanding persons in zaibatsu combines have been urging that stock ought to be sold to organizations of employees.

2/ The instances in which cooperative organization or other substantial change in form of ownership is to be adopted should be determined and announced as soon as possible, in order that there may be the minimum number of cases in which such a change is impracticable because of the opposition of independent stockholding interests created by the liquidation of holding companies

publicity of the terms of all negotiated sales, in order to minimize such possibilities.

By the means described above the problem of sale in the open market can be reduced. Nevertheless, open-market selling should be used so far as necessary. The Liquidating Commission should be required, whenever negotiated sales fell below stated quotas, to offer securities for public bid and to accept the highest bids in amounts sufficient to bring total sales up to the quota by the end of the next quarter.

Liquidation will include not only securities but also operating properties of concerns which are primarily holding companies and miscellaneous assets (e.g. patents) both of such concerns and of individual zaibatsu. In some cases the simplest course may be to incorporate these properties separately and sell their securities. In other cases, it will be appropriate to grant special permission for a particular property to be acquired by one of the zaibatsu companies. Properties not dealt with in these ways must ordinarily be sold by negotiation with appropriate buyers. To hasten this process it would be desirable to require that, when the Liquidating Commission receives an offer from an acceptable buyer capable of operating the property, either the offer must be accepted or the property must be advertised under the condition that the best bid within the ensuing 90 days will be accepted.

Both in open market selling and in negotiated sales, all purchases should be subject to approval by SCAP, in order to eliminate buyers who are cloaks for the zaibatsu or who are well on the way toward becoming zaibatsu themselves.

5. Providing for New Management. The recommendations made earlier in this report for the removal of all members of zaibatsu families

families and persons loyal to them from all corporate offices and positions in finance, industry, and commerce, raises a question as to the availability of competent officials to continue the management of operating companies. However, the problem is not as serious as it appears on its face, because family members have been much less active than their official positions would suggest in the conduct of enterprises owned or controlled by them. It has been a common practice for family members to occupy many important offices but, with some outstanding exceptions, to leave the actual management and direction to employed officials.

In general the "old" Zaibatsu have used carefully designed systems for the selection, compensation, promotion, and retirement of employees, and as a result the actual operating officials in such organizations are largely men who over a long period of years have worked their way to top positions. In some instances, because of clan loyalties or exceptional personal relationships, the removal of certain principal officials of operating companies may be necessary even though they are not related to the owning or controlling family or individual. This should be done only through a selective process, and the selections will not be particularly hard to make. In most cases a change in ownership or control plus the self-interest of the individuals will be sufficient to disestablish effectively the former relationships of employed officials with Zaibatsu families or individuals. In the case of combines not founded on family ownership or control, relatively few removals will be needed, and these should also be by a selective process.

Some vacancies in important posts will result from removals of the types mentioned, but many more will result from putting

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an end to the common practice by which officers and directors in one company serve as officers and directors in affiliated enterprises. There will also be vacancies created by the retirement of older officials who held their positions beyond the normal retirement age because of the war. Assuming that the release of finance, industry and trade from the domination of the zaibatsu may result in the organization of new enterprises in the lines of industry and trade in which expansion is needed to sustain the Japanese economy, a further demand for technical and managerial talent may result.

There is a substantial reservoir of experienced managerial and technical talent from which the needs indicated can be supplied. Such places can be filled

(a) By promotion of capable officials in existing companies

(b) By employment of former officials of plants destroyed by military action which will not be rebuilt,

(c) By employment of officials of plants in industries in which future production is to be prohibited or substantially curtailed.

In the case of financial institutions promotion of subordinates must be the chief source of new blood, although a few financial institutions may be dissolved and certain officials from these should be available. However, many junior executives are available for promotion because of the great number of branches maintained by financial institutions.

The change in ownership of Zaibatsu concerns, plus the substantial tendency of Japanese to engage in cooperative enterprises, 1/ may readily produce changes in management.

These

1/ See the chapter above which discusses sources of new ownership of zaibatsu assets.

These changes, however, will be largely the result of an evolutionary process responsive to changes in control rather than of sudden response to compulsion. Hence they are unlikely to create important personnel problems.

There is no reason to believe that the removals suggested will leave Japanese industry without the necessary managerial resources for successful operation. Equally, there is no reason to believe that, with some selected exceptions, retention of the present executives of zaibatsu enterprises will contribute to any continuance of Zaibatsu control if the program recommended in this report is carried out.

6. Destroying Financial Favoritism. Major elements of strength for the zaibatsu have been their control of sources of credit and their intimate connections with government financial agencies If independent enterprises and new ventures are to have an equal chance with zaibatsu companies, means must be found to terminate financial favoritism for companies which have belonged to zaibatsu combines, zaibatsu control of financial institutions, and zaibatsu influence upon the government's financial policy.

Recommendation has been made above, in discussing the liquidation of zaibatsu combines, that industrial companies be required to divest themselves of their stockholdings of all other companies, including financial institutions. Ownership of financial institutions by zaibatsu. indviduals and families should also be terminated.

The plan of liquidation. The means by which the zaibatsu should be divested of their ownership of financial institutions depends in part upon the over-all policy which is to be followed in absorbing Japanese financial insolvency. The financial claims of the world at large on the Japanese nation and of the various

sections

sections of the Japanese economy on one another are so great that large portions of the economy will inevitably have to bear losses relating to the liquidation of such claims. Considerations other than those relating to the zaibatsu problem will be involved in determining what sections of the Japanese economy are to bear these losses--whether it is to be the owners and creditors of financial institutions or industry, tax-payer, or any other group. These larger policy considerations may or may not leave the financial institutions solvent.

If any bank or trust company should prove insolvent, it would appear equitable in the dissolution or reconstitution of the institution to subordinate the stock of related zaibatsu holding companies and related zaibatsu individuals to that of other stockholders. While this would not add to the equity of the insolvent institution, it would permit non-zaibatsu stockholders to share to a greater degree in such equity as might remain. Since the insolvency of these institutions is directly due in some considerable measure to the manner in which the zaibatsu have operated them for their own benefit, the equity of this approach is evident. If, despite such subordination, zaibatsu holders are entitled to stock in any reopened institution, their shares should be turned over to the Liquidating Commission to be accorded the same treatment as any other zaibatsu holdings.

The most practicable and expeditious manner in which to reconstitute insolvent insurance companies is to mutualize them by cutting back the face amount of outstanding policies. If this procedure were adopted, no problem of liquidating zaibatsu holdings in such companies would exist.

Zaibatsu stockholdings in any bank, trust company, or insurance company which is not insolvent should be turned over to the Liquidating Commission. Holders of life insurance policies should be given the opportunity to purchase stock from the Liquidating Commission, either by liberal loans from their companies on their policies or by a write-down of the face amount of their policies in a sum actually equal to the purchase price of their stock.

Increasing the number of financial institutions. The need for new and independent sources of credit in the Japanese economy is self-evident. The numerous mergers in the banking and insurance field, largely inspired by government and zaibatsu influence, have reduced the number of financial institutions to a dangerously low figure. As long as such institutions remain so few in number and so large in relative size, the possibilities of agreements among them in restraint of trade will be very great. The difficulties of commercial and industrial enterprises in finding an adequate source of credit will be much increased.

There are various means for increasing the number of financial institutions. As one expedient, the former owners of such enterprises should be afforded a reasonable opportunity to reenter the fields in which they previously operated. In that connection, a procedure should be set up whereby former owners of merged banks, trust companies, or insurance companies should have the opportunity for a limited period of time to compel the institutions into which their organizations were merged to divest themselves of certain assets and liabilities to the extent necessary to reconstitute the absorbed institutions. The following procedure is recommended but without any intention of foreclosing other procedures:

Wherever

Wherever a group of persons could make a showing that they had held at least 20% of the stock of a bank or trust company which after 1940 was absorbed by another bank or merged with another bank to form a new institution, and wherever such persons were willing to make the necessary minimum capital contribution required by law, they could apply to the Ministry of Finance for the reconstitution of their old enterprise. Such reconstitution could be done by segregating the present deposits of the customers of the old bank and--where the old bank had operated alone in some area--segregating also all other deposits from that area. The reconstituted bank would then assume these deposits and would take over assets in the same proportion as its newly assumed deposits bore to the total deposits of the divesting bank. In identifying the assets to be assigned the reconstituted bank, prime local paper would first be assigned; then--if this were not sufficient--government bonds. Payment for the net assets would be made out of the capital contribution of the stockholders of the reconstituted bank. If they chose, these stockholders could make their capital contribution in the form of stock of the divesting bank; if this occurred, the divesting bank would have to accept and cancel such stock in payment for the net assets assigned to the reconstituted bank. All problems of valuation would be handled by the Ministry of Finance.

The same procedure would be used, mutatis mutandis, for insurance companies.

This proposal is made without prejudice to the use of any alternative procedures for the breaking up of the larger banking institutions. Indeed, if the proposed plan did not appear especially productive of results, it would be desirable and even

necessary

necessary to consider other means of proliferation. Banks in excess of a given size, for example, might be required to split into independent units within a stated period. The technique is secondary to the objective of increasing the number of sources of credit.

Equalizing competitive conditions. One of the great advantages which zaibatsu banks entertained over their competitors was the fact that, lacking any system of deposit insurance, the Japanese people preferred to make their deposits in the larger banks on the theory that such banks enjoyed greater stability. To equalize competitive conditions among banks, a system of deposit insurance should be instituted. 1/ While it would be essential that such a system be guaranteed by the government during its formative period, the insuring body should be independent of the Ministry of Finance or the Bank of Japan, and should maintain its own inspection system. Insurance should be limited in amount for any account; discretion should be left with the persons administering the program to fix that amount. Moreover, as an added safeguard to prevent excessive bigness in Japanese banking, deposit insurance should not be extended to any deposits made in a bank after its statement had been made and published showing assets in excess of some maximum amount--say ten billion yen.

As an added measure to assure adequate deposits for the independent banks, the Postal Savings System should be required to redeposit its funds with the ordinary banks. 2/ Following

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1/ Deposit insurance is desirable for many other reasons not directly related to the zaibatsu problem such as preventing the deflationary effects of currency hoarding, reducing the interest rates on deposits, and reducing the proportion of total savings which is made available to the government by the deposits in the Postal Savings System.

2/ This phase of the program, however, should not be instituted until the problems of inflation are under better control.

a procedure analogous to that used by the American postal savings system, the major part of all postal savings funds collected in a prefecture--say to the extent of 90%--should be redeposited in banks having their head offices in the same prefecture; where more than one eligible bank existed in any prefecture the deposits should be distributed in proportion to the capital and reserves of the eligible banks. Whenever a bank was ineligible for deposit insurance, it should also be ineligible to receive the redeposits of the postal savings system.

But the keystone in any program for the equalization of competition among the banks is to prevent the development of close affiliations either among the banks or between a bank on the one hand and a non-financial enterprise on the other. The destructive effects of such alliances upon competition have already been illustrated in detail. No program for the elimination of zaibatsu domination would be adequate unless it made material provision for the elimination of such tie-ups. However, because the concept of alliances between banking and business is so firmly rooted in the tradition of Japan, nothing short of the most drastic of limitations can be expected to prevent these alliances. Accordingly, it is suggested that no financial institution be permitted to hold any stock in a competitor; and no officer, director, or employee, partner or 5% stockholder of any juridical person also shall hold any such position with, or as much as 5 per cent of the stock of, any bank or trust company. While proper exemptions would be necessary for the employment of persons acting in part-time non-policy capacities, such as the capacity of attorney or certifying accountant, it would be desirable to set out such exemptions as narrowly as possible.

As

As another means of preventing affiliations between banking and business no bank or trust company should be permitted to hold in its proper, savings, and trust accounts the stock of any other corporation in an amount which exceeds 5% of the outstanding shares of the latter, nor to vote any such stock which it may hold. Exemptions should be made for stock acquired in connection with bona fide underwritings or in default of loans, but these exemptions should not be permitted to run for longer than a year. Moreover, no bank or trust company should be permitted to invest as much as 25% of its capital and reserves in the securities, loans, bills, advances, and overdrafts of any one company.

In addition, as a means of preventing a banking institution from becoming wholly dependent on any other institution, no bank or trust company should be permitted to redeposit more than 10% of its deposits in any one institution except the Bank of Japan. This would be a familiar regulation to Japanese bankers, since a similar prohibition already exists with respect to Japanese savings banks.

The Government and banking. As the chapter on credit has pointed out, there have been two dominant features of government operations in the banking and insurance fields which have contributed substantially to zaibatsu growth. One has been the power of the Ministry to administer the laws with the widest latitude for the exercise of personal discretion; the other has been the tremendous power of the special banks, which has been so great as to permit them to encourage the growth of some banks at the expense of others and to finance some sectors of industry at the expense of their competitors.

The banking statutes, like other Japanese statutes, vest tremendous power in the competent minister. Control of the

Ministry

Ministry of Finance, in practice, has meant that the controlling group could afford to disregard banking law. Presumably, one of the tasks of the occupation will be to supervise the overhauling of the Japanese legal structure. In that connection, this mission urges that the legal powers of the Ministry of Finance be greatly reduced. The Minister's present exemptive and permissive powers in the banking field are too great to be consistent with democratic government. Whatever restrictions it is necessary to impose on the banking system, including those already recommended, should be specified in law to the greatest extent possible. The power of the Ministry to grant exceptions to such laws should be whittled down to absolute essentials. However, the effectiveness of the government supervision which remains should be increased by a requirement that bank examinations take place no less frequently than biennially.

The special banking system has been an instrument whereby independent banks have been repressed. In this field, a number of measures are essential: The functions and powers of the special banks should be defined and limited by law. The Ministry's present powers to expand those functions and to operate the banks in such a manner as to have a selective effect upon other Japanese banks should be terminated. All vestiges of private ownership of the Bank of Japan should be eliminated. None of the special banks should be permitted to engage in ordinary banking. This means, in effect, that the Industrial Bank would either have to be liquidated or reduced to the status of an ordinary bank. 1/

1/ In dealing with the Industrial Bank, the problem of developing an adequate capital market mechanism for Japan must be borne well in mind. Up to now, the ordinary banks and the Industrial Bank have performed the function of absorbing commercial and industrial securities. It may be desirable to permit the Industrial Bank to continue to operate as a kind of investment trust and to divest it of its ordinary banking functions.

Competition among banks for customers should be restored. It is essential to abolish the designated bank system at the earliest possible date. The system is incompatible with competition in the banking field. Moreover, control associations in the financial field are no more necessary than in any other field. 1/ Any such associations which have not been liquidated at the time of the adoption of these recommendations should be liquidated forthwith. Private trade associations should be restricted to functions which do not prevent competition either for deposits or for loans.

Employees of the Ministry of Finance, the Bank of Japan, and any other special banks which retain their status as government banks should be ineligible for employment in ordinary banks, trust companies, savings banks, and insurance companies for a period of two years after leaving their government positions. Furthermore, they should be prohibited from holding the securities of any bank, trust company, or insurance company while they are in office.

7. Abolishing Control Laws and Control Agencies. The position of the zaibatsu has been strengthened in Japan by government support for the organization of a large part of Japanese industry on a monopolistic basis. As is common where giant combinations of capital are unchallenged, smaller business men have banded themselves together for monopolistic purposes with government sanction. Government grants of monopoly have been given to special companies, financed in many cases partly by government funds. Industrial mobilization for war was superimposed upon such monopolistic structures, so that before the war ended substantially all phases of the economy which were not directly

controlled

1/ See the recommendations in the following section.

controlled by the Army and Navy or the Munitions Ministry had been placed under nominal government control, exercised through industrial associations to which regulatory powers had been granted.

As the dominant influence in Japanese industry, the zaibatsu held key places and deciding power in this control structure. Executives of their concerns became heads of control associations and sat on the directorates of companies operating under monopoly grants. The controls were used to extend zaibatsu wealth and power. In many cases smaller companies were destroyed by compulsory mergers. There were 1354 such mergers in two years.

It is essential in destroying the power of the zaibatsu that this structure of control be cleared away or that all zaibatsu connections with it be broken. The first course is easier than the second. Moreover, the exercise of broad governmental powers by private business groups is inconsistent with the democratic structure of industrial society which it is our purpose to achieve, and transfer of these broad powers to the government itself would be impractical, short of the establishment of a totalitarian economy in Japan more complete than that which prevailed during the war.

Although the control structure must be completely broken, mere sweeping abolition of existing laws and organizations is not feasible. The control legislation has been used as the means through which wartime allocation of scarce supplies was carried on and whereby adjustment of relative prices was achieved. In the reconversion period, with an acute goods shortage due to bomb damage, reconstruction difficulties, inadequate transportation, and the cutting off of foreign trade, there is need for a temporary continuance of these functions, and in the midst of the

emergency

emergency there is not time to improvise a wholly new structure of governmental controls, particularly since the government itself is being drastically reorganized and its personnel purged during the period. A temporary continuance of mechanisms similar to those which exist under present legislation is therefore inevitable in certain fields.

Moreover, the control legislation has been used in certain cases to govern activities which are obviously not suited for unregulated private business. For example, special companies with monopolistic and coercive powers have been established in the gas industry and the generation and transmission of electricity. In these cases control legislation has become a substitute for public utility regulation such as exist in most industrial countries. The remedy in such cases is to distinguish sharply between public and private functions, to deprive private business men of governmental authority, and to set up proper standards and safeguards.

Under these conditions the objectives of occupation policy should be to abolish now all portions of control laws and control organizations which are not needed for the emergency or are inappropriate to the long run status of public utilities; to eliminate arbitrary and oppressive features of the control structures which remain during the reconversion period; to substitute suitable permament controls as soon as possible within the field appropriate to public utility regulation or public operation; and to do away with the residue of control legislation and control structures as soon as its usefulness for reconversion has passed.

These objectives call for different types of action with reference to different parts of the control legislation. An appropriate program would be as follows:

a. Leave

a. Leave undisturbed those laws antedating the war which set up clear-cut government monopolies, but, to prevent the use of this type of law to evade other portions of the program, prevent the erection of any new government monopolies during the application of the program except with the specific approval of SCAP. In the case of the petroleum and alcohol monopolies, which were created to further the Japanese war effort, require the government to terminate these monopolies as soon as possible.

b. Require the immediate repeal of all legislation which forbids, or requires government approval of, the entry of any new business into an industry or the expansion of any old business. Some of these laws have been repealed already. 1/

c. Require the immediate repeal of the sections of the National Mobilization Law of 1941 and of related laws, ordinances, and regulations which provide the authority for the control associations. In the place of these laws authorize the immediate issuance of an Imperial ordinance (subject to modifications by the Diet after elections) which grants to appropriate government bureaus the authority to exercise powers of allocation and price control in so far as they are needed to cope with the problems of reconversion. This ordinance should be valid for a fixed period, presumably one year, in order to make clear from the beginning that it is not intended to incorporate permament principles of industrial organization. The government bureaus in question should be authorized to delegate to old control associations, or to similar bodies newly organized on a more representative basis, the right to prepare plans, discover and report violations, and carry out similar administrative functions. However, final decisions should be made by the government, and

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1/ Notably the Emergency Funds Adjustment Law of 1937 and the Enterprises Permitting Ordinance of 1942.

rights of appeal to the government against any abuse of powers should be provided. The Japanese Government should be required to indicate for SCAP approval the fields of industry in which this type of control is needed in the reconversion period; and in any field in which allocation is contemplated the program should include measures to locate and redistribute existing stockpiles of the allocated commodity. Except in approved fields, control associations should be promptly abolished. All associations which exercise such delegated functions during the reconversion period should be liquidated upon the expiration of the reconversion ordinance, in order that there may be a clean break between the exercise of public powers by business groups and the subsequent trade association structure of Japan.

It is accordingly recommended:

(1) That the Japanese Government be directed to determine immediately, subject to approval by SCAP, what industries will require the temporary allocation of materials, fuel, equipment or labor in order to produce the maximum amount of commodities necessary to feed, clothe, and house the population.

(2) That the Japanese Government be directed to determine what other industries or commodities will require the temporary allocation of materials, the fixing of prices or other type of regulation in order to assure the companies now in such industries their equitable share of available materials.

(3) That the Japanese Government be directed to designate or establish one or more governmental agencies to function for each industry commodity over which regulation has been found necessary pursuant to paragraphs 1 and 2, which agency or agencies shall be authorized to temporarily perform such necessary functions as are assigned to it by the Japanese Government provided, however, that proper safeguards shall be established

which will assure any individual or company directly affected by the performance of any necessary functions assigned to such agency or agencies the right to be heard on any complaint or grievance it may have concerning the allocation of material, etc., growing out of the performance of any functions of such agency or agencies and provided that final decisions are made by the government. Members or personnel of former control associations should ordinarily be eligible for employment in such agencies.

(4) That all determinations and designations or appointments made pursuant to paragraphs (1), (2), or (3) be subject to review by SCAP, which may order the dissolution at any time of any controls or the revocation of any designations or appointments established or provided for in these paragraphs.

(5) That the Japanese Government be directed to dissolve all control associations not already dissolved as soon as the determination, designation, and appointments provided for in paragraphs (1), (2), and (3) are made.

(6) That all determinations under paragraphs (1) and (2) be made within thirty days from the date of the directive. That a strict and careful supervision be maintained over any newly organized voluntary associations, to make certain that said associations do not attempt to perform functions or engage in activities previously engaged in by control associations. All voluntary associations of every type and character should be subject to the antitrust laws, concerning which recommendations are made in another part of this report.

d. The number and extent of the laws creating special companies, and of the companies formed thereunder, is so broad as to encompass almost the entire range of Japanese commerce and industry.

Many

Many of the companies formed for the colonization and exploitation of territory outside Japan proper ceased doing business with the end of the war and are among the companies closed by order of SCAP. Assets of such companies have been or are being impounded by the various authorities concerned and may be claimed as reparations. For such companies it is recommended that the Japanese Government be directed to repeal the authorizing legislation and that the companies be dissolved. Of the companies in the financial field several are already in the process of liquidation. Recommendations of the Mission covering such financial institutions have been set forth elsewhere in this report. The remaining companies may be considered together as those operating in so-called key industries. Of these many were designated as control companies after passage of the control company ordinances.

In so far as such monopolistic and special companies wholly or partly owned by private interests 1/ are not destined to acquire permanent public utility status, they should be treated like control associations. Where systems of allocation are to be temporarily retained, these companies will need to continue their present functions of assembling scarce supplies subject to allocation and serving as distribution centers for the allocated goods. Companies other than public utilities, if not needed for such purposes, should be abolished promptly and the laws creating them should be repealed. Those which are temporarily needed should be abolished, along with the laws creating them, when the reconversion ordinance expires.

1/ National Policy or Special Companies and all concerns established by the so-called undertaking laws.

Monopolistic and special companies which operate in fields appropriate for public utility regulation or government operation should be continued for the time being, while decision is taken as to how their activities are to be permanently organized. In each such industry control legislation should be replaced as soon as possible by permanent legislation which transfers all public functions to appropriate public agencies.

e. Even the control associations and monopolistic and special companies which are to be temporarily continued should not be left with their full present powers and privileges. Portions of the control laws which provide for government subsidy, tax rebate, and other types of special preference for concerns owned wholly or partly by private interests should be repealed promptly. The reconversion ordinance, which is to take the place of the National General Mobilization Law and its supplements, should not contain provisions authorizing the government to prohibit the establishment of corporations, to exercise blanket authority over capital increases and the disposition of profits, to force consolidations and suspensions of business, and to exercise other types of authority similarly broad and unrelated to the problems of reconversion.

f. Portions of the control laws which establish governmental authority over exports and imports should be continued for the time being in order that the Japanese Government may carry out its responsibility to SCAP for close control of foreign trade. Future disposition of these parts of the laws should be determined after broad policies for the foreign trade of Japan are firmly established. However, existing delegations of authority over exports and imports to private and quasi-private business groups should be terminated as rapidly as suitable public agencies can be established to perform the necessary functions.

Although the control legislation currently is the primary legal basis of zaibatsu power, there are probably other scattered laws and administrative policies which support the zaibatsu through similar grants of money or favored position. Unfortunately, translations of Japanese laws are not readily available, and therefore it has been impossible, in the time at our disposal, to test the truth of this surmise. Nevertheless, the history of zaibatsu enterprises tends to support it.

In the absence of a systematic survey of the various subsidies, preferences, legal monopolies, and trade barrier laws which still serve to consolidate zaibatsu power, we cannot say to what extent the result is a matter of law and to what extent a matter of administrative practice. We do not know how often favoritism is a use of public power for wholly private ends and how often a mere warping of proper governmental functions. Explicit study will be necessary before steps can be taken to terminate the objectionable features of these discriminations. Hence the recommendations herein must be put in the most general terms.

It is recommended that SCAP systematically review all forms of subsidy, legal monopoly, trade preference law, and trade barrier law in order to terminate those which do not have a demonstrable public purpose. It is recommended that, in so far as any subsidies are allowed to continue, provision be made that hereafter their amount, purpose, and effect, be disclosed in annual public reports. It is recommended that outside the field of natural monopolies and closely regulated public utilities all restrictions upon entry into an industry or access to a market be abolished, with the exception of nondiscriminatory restrictions applied for generally accepted public purposes such

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as protecting the public against fraud and protecting public health. It is recommended that no license be required to enter any industry or market except where the license is used exclusively to accomplish such purposes. It is recommended that, wherever limitation is placed upon entry into an industry in the field of natural monopolies and regulated public utilities, the restriction be accompanied by limitations upon prices and profits. It is recommended that principles such as these be made effective not only by changes in substantive law but also by provisions giving the aggrieved persons the right to attack in the courts any discriminatory subsidy or preference and any unreasonable restriction upon their right to enter an industry or gain access to a market.

RECOMMENDATION TO PREVENT THE RISE OF NEW ZAIBATSU

The preceding sections have been concerned with the problem of destroying the present structure of zaibatsu power. When this task is done, however, a second task will remain. The zaibatsu system developed because conditions were favorable to it. It could develop again if the same influences were present. Changes in the environment of law and opinion are needed as safeguards for the future.

The most obvious safeguard is to develop a legal environment better suited to the maintenance of small competitive business and inimical to the development of giant combines and anti-competitive business groups. It was obviously not possible for this mission to discover in the limited time available all the points at which Japanese law should be changed for this purpose. However, the possibility of certain changes is obvious. The clearest needs arise with respect to patent laws, the laws governing company organization, the tax laws, including both

income

income and inheritance taxes, and the complete absence of any type of antitrust legislation.

1. Enactment of a Japanese Antitrust Law. The tendency toward monopolistic organization in Japan has been heightened by the fact that Japanese law, instead of prohibiting restrictive combinations and monopolies, has been devoid of safeguards against them and, indeed, has actually favored them. Trade associations intended to fix prices and allocate production were common in industries with a considerable number of small producers even before the control laws were enacted. Governmental policy toward important industries and large concerns has been directed toward bringing such bodies under surveillance of the state rather than toward fostering competition.

In order to prevent reestablishment of combines like the zaibatsu and of associations like the control unions and control associations, it will be necessary for the Japanese to incorporate in their statutes safeguards against such developments.

Although the legislation of other countries may be drawn upon in formulating such a statute, it should not be closely imitated. For example, the antitrust laws of the United States would be an inadequate model for Japan. American law has been insufficient to prevent the rise of giant industrial combines possessing excessive power because of their size. Moreover, the American statutes are framed in language so general that, against the background of traditional Japanese thinking, the interpretation of a law based exclusively upon similar phrases would be likely to vitiate an antitrust program. Again, the American laws are adapted to a federal system, a tripartite division of powers, a willingness to use quasi-judicial commissions, and independence of the judiciary in matters of

statutory

statutory and constitutional interpretation. The Japanese Government has had none of these features.

The antitrust program for Japan should have as its starting point principles of business freedom from private restrictions which are likely to be generally accepted among democratic industrial countries. The United States Government has recently endeavored to formulate certain principles of this kind and has made them public in the hope that they may become a basis for the work of an international office for business practices to be attached to the United Nations' Organization. 1/ This program furnishes a suitable starting point. The points of view expressed therein should be adapted to Japanese institutions and problems.

The first element in a Japanese antitrust law should be prohibition of types of concerted business activity which burden trade. Where the burden is obvious the activity should be specifically forbidden in the statute. Thus it should be illegal for private business enterprises concertedly to fix prices, restrict output of sales, allocate markets, commodities, or customers, restrict new investments, restrict productive methods, research, or the adoption of new technology, or

exclude

1/"There should be individual and concerted efforts by members of the (United Nations) Organization to curb those restrictive business practices in international trade (such as combinations or agreements to fix prices and terms of sale, divide markets or territories, limit production or exports, suppress technology or invention, exclude enterprises from particular field, or boycott or discriminate against particular firms) which have the effect of frustrating the objectives of the Organization to promote expansion of production and trade, equal access to markets and raw materials, and the maintenance in all countries of high levels of employment and real incomes."
U.S. Department of State, Proposals for Expansion of World Trade and Employment developed by a Technical Staff Within the Government of the United States in Preparation for an International Conference on Trade and Employment and Presented for Consideration by the Peoples of the World. Washington, November 1945, P. 19.

exclude enterprises from any line of industrial activity or from access to any market, customer, or source of supply. In addition to this list of specific prohibitions, the statute should contain a general clause forbidding private concerted activities which burden trade and should provide a means by which additional types of activities which have this effect can be identified, prevented, and punished in particular cases.

The statute should also prohibit activity, concerted or individual, which has the purpose or effect of coercing business enterprises to conform to business policies or participate in programs carried on by the coercing concern or group or which is designed to drive selected enterprises out of any line of business. This provision of the statute, like the prohibition of burdensome restraints, should specify activities which are clearly coercive but should also contain a more general prohibition applicable to additional methods of accomplishing similar results. Among the devices which should be specifically prohibited are intimidation of a rival's customers, concerted cutting off of supplies of materials or credit or channels of distribution, and sale to a rival or a rival's customers at discriminatory prices.

The statute should also prevent industrial combines and single enterprises from attaining or exercising monopoly power in particular industries and from becoming so large in their aggregate size that they seriously jeopardize the opportunity of other business enterprises to compete. This principle should be set forth in general terms, with a provision by which it can be applied to particular cases in the light of their facts.

In addition the law should prevent types of industrial growth and of intercorporate connections which are particularly likely

likely to lead to monopoly or to excessive size. Hence it should prohibit mergers of going concerns which are in competition with one another (possibly exempting concerns of negligible size) and should define a merger so that it includes acquisition of any substantial portion of the capital assets of an enterprise. Mergers of non-competing corporations should be forbidden unless prior notice has been given to an antitrust agency and this agency has found that the project offers affirmative public advantages and entails no substantial risks of monopoly or of excessive size.

The union of going concerns by intercorporate stockholdings and interlocking directorates or officerships should be prevented, with certain exceptions, by a broad prohibition in the company law rather than the antitrust law in accord with recommendations below. However, if any obstacle should appear which makes it impossible to prohibit broadly all such intercorporate connections, the antitrust laws should contain provisions forbidding one concern to hold any stock in a competitor or to have in common with a competitor any officers or directors; and providing that similar connections between non-competing companies shall be permissible only after prior notice and government approval, based upon the same standards as in the case of mergers.

The standard of corporate size which should be used in applying the proposed legislation should not rest upon a mechanical ceiling upon assets, volume of business done, or number of employees. Technological and administrative needs differ from industry to industry as to those matters, and presumably the size appropriate to efficient industrial organization will change from decade to decade with new developments in technology and in managerial devices. Hence any standard which contained a rigid and uniform ceiling would probably be at any one time unduly

unduly loose in its application to some industries or unduly tight in its application to others, and with the passage of time would increasingly become inappropriate.

The purpose of a limit upon size should be to prevent the acquisition of disproportionate bargaining strength based upon such factors as financial resources, ability to sustain a position in one industry from the profits made in another, ability to give discriminatory advantages to affiliated concerns, and ability to overawe suppliers and customers. All appreciable differences in the size and extension of business enterprises are likely to have such results in minor degree; but wherever there is a clear technological gain in large enterprise, exploration of the dynamic possibilities of improved technology appears to be preferable to search for exact equality in market strength. However, there is no need to accept substantial disparities in bargaining power where they are accompanied by no technological advantage. The power of the zaibatsu combines offers one of the world's most striking illustrations of bargaining strength which has outrun economic necessity. The purpose of the law against size should be to bar similar developments in the future.

Hence the rule of thumb to be used in appraising corporate growth should be that of technological and structural unity. 1/ A concern should not be allowed to grow larger than other enterprises by bringing together under a single control activities which are not substantially related in origin of materials, productive operations, distributive channels, or final use. It should not be allowed to assemble related activities when they are so numerous, so extensive, or so diverse in location, production or other factors that common management ceases to be

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1/ A standard of this type is now in force in the United States in the Public Utility Holding Company Act.

feasible. Had such standards been applied in Japan in the past the zaibatsu combines could not have arisen, for in most of these concerns the top management makes no attempt to exercise direct control over productive operations but limits itself to financial strategy and to a loose supervision of subordinate managers. In the absence of coherent central office management and intelligible relation among the productive and distributive activities of a concern, growth should be prevented and the scale of operations reduced in enterprises of substantial size, whether or not monopoly has been attained. Where technological and structural factors offer reasonable grounds for growth, an increase of size should be permitted until danger of monopoly arises, but should be prevented thereafter.

As in the portion of the American antitrust laws which deals with monopoly, these standards cannot be made precise but must rest upon the informed judgment of experts in particular cases. Both for this reason and because vigorous administration of the law is necessary, the Japanese antitrust laws should be enforced by a specialized agency which has no other duties. This agency should operate at a high level of the Japanese government, since the matters with which it deals are of major importance and are subject to the play of very powerful interests.

If enforcement of such a law is to be effective, the responsible agency should have power to initiate investigations and remedial action, to force the production of documents and the attendance of witnesses, and to make public report of its findings. The agency and any tribunals which may be used in carrying on its work should be empowered to prosecute and punish offenses, to enjoin their continuance, to force business reorganizations, and to issue interpretative rules of general

application

application designed to clarify the statutes. It would be premature to express any opinion as to how these functions should be divided between administrative agency and court. Provision should be made for substantial penalties enforceable both against offending enterprises and against their officers.

Since the antitrust statute discussed above is intended to establish a general rule for Japanese business, it should be written in comprehensive terms. However, there will be need to exempt some types of enterprise from certain of its provisions. The full scope of eventual exemptions cannot be foreseen. The law-making powers of the Japanese Government will be available to provide for any omissions. However, it is obvious at the outset that the law against collective private action should carry a provision making it clear that there is no intent to bring under this law the collective bargaining activities of labor unions concerning labor relations, labor conditions, and wages as distinguished from commercial competition, nor the joint activities of members of cooperatives, including producers' cooperatives made up of small producers. In the case of cooperatives, the exemption should apply only where characteristic features of cooperative organization are present, for example, equal votes for all participating members, majority rule in selecting officers, and division of the proceeds either equally or in proportion to the relative volume of business, without allowance, beyond a low, fixed dividend, for contributions of capital. Moreover, it should be made clear that although cooperatives are exempt from the law against collusion with respect to the relations of their members, they are not free to make restrictive arrangements with outside persons or groups, and are not exempt from portions of the law which prohibit monopoly and coercive practices.

Provision should also be made to exempt from the laws against monopoly and excessive size all natural monopolies and public utilities which have been subjected to detailed governmental regulation of their prices, services, and profits. As in the United States, the antitrust laws should remain applicable to coercive, collusive, and monopolistic activities by such concerns in so far as these activities have not been subjected to regulation nor explicitly sanctioned by law.

2. Amendment of the Patent Laws. If Japan is to have an effective antitrust law, Japanese patent law should be altered. Recent experience in the United States has shown that use of patent laws to evade the purpose of antitrust legislation is difficult to prevent, even where antitrust laws are well acclimated. The strength of certain zaibatsu enterprises has been built up partly by use of Japanese patent laws and of restrictive patent agreements, national and international, similar to those which have been made familiar in the United States through recent Congressional investigations and antitrust prosecutions.

Proposals to prevent the momentum supplied by existing patents from maintaining the power of zaibatsu combines have been set forth above, in discussing dissolutions.

On a long run basis, the monopolistic problems of the Japanese patent system and the appropriate remedies are similar to those elsewhere. Patent owners have created by license monopolies on behalf of enterprises which had nothing to do with the invention expressed in the patent. Through restrictive clauses in patent licenses, markets have been eliminated among licensees, and prices and other terms of sale have been rigidly controlled.

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In order to preserve whatever incentive a monopoly grant may give for invention and development, it would be appropriate to permit the inventor or his assignee to retain the right to exclude licensees from the particular fields of activity in which he is engaged; and where the right to exclude is preserved, it may be reasonable to allow the patent owner to admit licensees subject to restrictions as to their prices or the quantities which they may sell. However, the maximum plausible limit for the exercise of such powers is set by the desire of the patent owner to protect his own business under the patent from competition by others who use the patent. It is no proper part of his reward to permit him to grant monopolies to selected licensees in fields of business which they occupy but which he does not, nor to permit him to use the patent as a device by which competition among various licensees is prevented or restricted. A patent owner who uses his patent in this way is not merely exploiting his exclusive right to a patented invention, but instead is using the patent as an excuse to go into the business of selling monopolistic rights to others. If this type of patent privilege were terminated, the change could have no effect upon the incentive to invent or to disclose invention, but would substantially reduce the dangers of commercial monopoly in the exploitation of patents.

Accordingly, it is recommended that Japanese patent law be changed so that the inventor or his first assignee obtains from a patent the right to exclusive use of the patented invention within his present field of business activity and within any additional field which he formally asserts an intention to enter within two years.

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It is recommended that within the reserved field such a patent owner be free to grant licenses restricted as to price or as to the amount to be produced or sold, but that if any licenses are granted all applicants be permitted to obtain licenses on non-discriminatory terms. It is recommended that outside the reserved field the patent owner be required to license all applicants without commercial restrictions upon reasonable and non-discriminatory terms. If during a two year period the patent owner fails to engage in business in any portion of the field which he has reserved, his right to reserve it should be terminated and it, too, should be opened to compulsory licensing without discrimination and at reasonable and uniform rates of royalty. To facilitate enforcement of this type of patent law, assignments of patents and licenses under patents should be publicly recorded, and until recorded should not be valid; and patents used illegally in violation of this policy should be voidable.

Objection may be raised to the suggested policy on the ground that it embraces measures of patent reform which go beyond the present policy of other commercial countries such as the United States and Great Britain. It is noteworthy, however, that dissatisfaction with existing patent policy is being officially expressed in both these countries. Through a special commission of inquiry Great Britain has been reconsidering its own patent policy. In the United States, the Temporary National Economic Committee and the Department of Justice have proposed drastic reforms and the President's National Patent Commission has suggested milder ones. Some of the proposals go far beyond what is suggested here. It is unfortunate that discussion outside Japan has not yet produced general agreement about the

extent

extent of necessary change in patent policy; but uncertainties about how far we should finally go do not justify us in jeopardizing the Japanese anti-monopoly program by preserving a patent system which is clearly unsatisfactory.

3. Amendment of Company Law. The present corporate law of Japan facilitates the concentration of corporate control. It contains no provisions which would restrain the use of interlocking directorates, intercorporate shareholdings, or ultra vires acts as a means of concentrating such control. To be sure, it does provide for the publication of annual financial statements and for regular shareholders' meetings, and even sets up the office of the auditor who is expected to safeguard shareholders' interests by maintaining a constant surveillance over management. But in zaibatsu concerns, the auditors are in fact appointed by the management; financial statements are grossly inadequate and misleading; and annual meetings, since they are conducted without any disclosure of the corporation's affairs, are perfunctory matters lacking in any supervisory significance. None but the most feeble efforts are made by the government to enforce the commercial code and such enforcement efforts are invariably confined to the smaller non-zaibatsu corporations.

Much of this is suggestive of the conditions which existed, and in a measure still exist, in the United States and Great Britain. But the difference in degree between corporate conditions in Japan and those in the western world are so great as to engender consequences of an entirely different order. Yet, because the differences are those of degree rather than of kind, it is possible to draw heavily upon the experience of the United States and Britain in the matter of devising remedies for the

anarchic

anarchic conditions of the Japanese corporate economy. 1/

In the first place, measures are essential to protect the purchaser of securities in any large public offering by an issuer or by persons in control of an issuer. 2/ Adequate publicity is required regarding the affairs of the issuer and of its promoters and the immediate circumstances relating to the offering. The obvious dodges now employed by Japanese corporations to avoid the disclosures which the code seemingly intended to require can easily be prevented; the technique embodied in the Securities Act of 1933--which consists of defining generally the areas in which disclosure must be made and leaving the drafting of precise forms to an administrative body--might well be adopted.

After the organization of the corporation, it is essential that the officers and directors be made to give the stockholders a full and accurate accounting of their stewardship. This objective can be accomplished in part by requirements insuring that adequate disclosure is made to shareholders in connection with any call to a company meeting. Such disclosure would necessarily include not only an account of the prior period's events but also of the matters proposed to be considered at the meeting. The relevant facts essential to an informed judgment of management's past acts and current proposals should be required. Reasonable means should be provided whereby the propositions of dissident security holders could be circulated.

1/ The recommendations of this section apply not only to commercial and industrial corporations but also to financial institutions to the extent that they are not inconsistent with the proposals, set out elsewhere, which specifically relate to the latter.

2/ We do not recommend that the liquidation of zaibatsu securities be delayed in order to place these disclosure recommendations in effect. The objective of liquidating zaibatsu wealth speedily must take precedence over that of protecting Japanese buyers through adequate disclosure.

The accounting practices of Japan need particular attention. Difficulties with these practices are of two kinds. In the first place, Japanese corporate management should be prevented from using fictitious entries in which it characteristically and habitually indulges for the purpose of concealing assets and setting up fictitious reserves. More than that, however, each company's financial operations should be disclosed in sufficient detail to permit stockholders and potential buyers to make an informed judgment on its affairs. In this connection, detailed consolidated financial statements adequately supported by schedules and explanatory notes and verified by independent accountants are essential. Also essential are current data on changes in capitalization, material contracts, and lines of business, and any other substantial development bearing on the conduct of the business.

In view of Japanese corporate tradition, effective provisions are required to insure that directors and other persons who are in a position to shape corporate policy will not be exposed to interests which conflict substantially with their obligations to stockholders. Interlocking officerships and directorates should be prohibited and officers and directors should be prevented from having substantial holdings of shares in other enterprises. Moreover, officers, directors, and persons having a beneficial interest in or control of any equity issue of the corporation in excess of one per cent of the total issue should be required to report their holdings and transactions in all issues of the corporation and such reports should be publicized. Consideration should be given to other means of discouraging the use of inside information in the sale of corporate securities, such as the provision in the American

Securities

Securities Exchange Act that profits of corporate insiders derived from short-term transactions in the corporation's securities are subject to recapture by the corporation.

Consideration has been given to recommending that substantial stockholders in one company should be prohibited from holding a substantial number of shares in other companies as well. In view of the pattern of control exercised by the zaibatsu in the past, such a recommendation could easily be justified. On the other hand, a prohibition of this kind might conceivably constitute a substantial obstacle to the growth of a broader capital market in Japan in the years immediately ahead. Accordingly, our recommendations on this score are confined to limiting the outside interests of substantial stockholders in financial institutions and limiting intercorporate stockholdings; these subjects are discussed elsewhere.

The ultra vires concept, just barely present in the Japanese Commercial Code, should be introduced in something comparable to its American form. An ultra vires act by a corporation should be grounds for remedial action by a stockholder or punitive action by a public agency. Moreover, a corporation should be specifically prohibited from entering partnerships either directly or indirectly.

In laying down requirements with respect to Japanese corporate law, the fact must be recognized that juridical persons in Japan take a number of forms. Accordingly, it may well be necessary to draft somewhat different provisions from one form of juridical person to the next. But in so doing, the risk that managers of enterprise will seek the form of organization which is surrounded by the fewest responsibilities and safeguards must be borne in mind. For example, in Great Britain

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under similar circumstances many public corporations converted to private corporations in order to avoid the disclosures required of the former.

The present law permits Japanese corporations to issue shares on a partially paid-up basis even though other shares in the same company are fully paid up. However, each share, irrespective of the amount paid up, is entitled to one vote. Thus, the issuance of partially paid-up shares to a selected group of stockholders may enable such a group to obtain voting privileges which are much greater than their relative money investment warrants. Moreover, since the unpaid balance on partially paid-up shares may be called at any time, a controlling group has a powerful device for squeezing minority stockholders out of a concern. These possibilities can be eliminated by a requirement that all shares in the same company should be paid up to the same extent. Such a change is recommended.

The auditor institution, while sound in theory, has not worked out well in practice. However, with proper safeguards to insure the independence of auditors, such persons might well exercise effective surveillance over corporate management on behalf of stockholders. Accordingly, it may be desirable to retain that feature of Japanese corporate law. However, auditors should be prevented from having direct or indirect affiliations with management and from having conflicting interests in other concerns. If such safeguards cannot readily be devised, it would be well to abandon the institution altogether.

The conception of common law fraud in the sale of securities should be introduced into the Japanese legal structure. Provisions similar to those of the American statutes should be adopted in order to prevent securities transactions which are

accomplished

accomplished by manipulative, deceptive or fraudulent devices.

Finally, it would be desirable to change the corporation law in such a way as to reduce the opportunity to form intercorporate combinations. Specialized institutions, such as insurance companies and investment trusts, legitimately hold blocks of stock in other corporations. In the case of the ordinary trading or manufacturing corporation, however, the holding of stock in other companies has come to be, in Japan and elsewhere, primarily a device by which pyramids of control are built. There is no need for such concerns to perform investment trust functions, nor is there need for them to keep their temporary balances invested in securities which give them influence upon the policies of other companies. Accordingly it is recommended that, with stated exceptions for banks, investment trusts, insurance companies, and possibly other types of financial institutions, Japanese company law be amended to forbid one corporation to hold the stock of another. This was the rule in the United States before New Jersey led the way in a race among state governments to relax the safeguards of corporation laws.

If, in developing this rule, unforeseen circumstances should make it appear to be desirable to tolerate some forms of temporary intercorporate stockholdings, any such exceptions should be subject to two safeguards: First, a drastic limit upon the percentage of the total stock issue of another corporation which may be held; and second, a provision that any stock thus exempted shall lose its voting power during the period in which it is held by an industrial or trading company. The same two safeguards should be applied to the securities held by banks, insurance companies and investment trusts, to prevent

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these concerns from taking the place of zaibatsu holding companies at the apex of business combinations. Such financial institutions should also be prohibited from holding any stock in a competitor.

These provisions will be mere gestures, however, unless means of enforcements are devised to insure substantial compliance. In the past, the enforcement of statutory provisions by the Japanese has depended on whether they adversely affected the interest of big business or ran contrary to the conceptions of the incumbent ministers. The problem of establishing a Japanese Government which is substantially independent of business interests is an extremely broad one and more is at stake in its solution than the enforcement of the Commercial Code. In any case, the current system whereby the individual views of the minister are controlling and his executive power transcends any legislative enactment must be done away with. Moreover, as another means of insuring the accountability of business to the public, stockholders should not be unduly hampered in bringing suits against management for money damages or for equitable remedies. These provisions, supported and rendered more effective by adequate disclosure of the activities of corporations and corporate insiders, should go far to prevent many of the abuses of the past.

4. Modifications of Tax and Inheritance Laws. It is quite obvious that existing tax laws in Japan bear much more heavily upon the poor and moderately well-to-do than upon the wealthy. The laws should be revised so that the taxes are levied upon a basis of ability to pay, with steeply graduated rates upon both income and inheritance. The favoritism which has been shown towards the head of the House should be abolished and property coming to the head should be subject to the same progressive rates

as

as are applicable to other persons. Diffusion of inherited wealth should be assured by provision for reasonably equal distribution among heirs, in place of the present provision which sets a minimum that must pass to the next head of the House.

The discretionary power over tax policy which has heretofore been left to the Minister of Finance should be greatly reduced. It is entirely incompatible with the tenets of a democratic government that officials, especially non-elective officials, should have the extent of discretion which has been customary in Japan.

5. Amendment of Laws Concerning Cooperatives. The cooperative movement in Japan has been limited by a number of restrictions and subjected to government control. In order to make possible a genuine cooperative movement, it is recommended that:

(1) Membership in the local cooperative associations must be made voluntary instead of compulsory as it now is under wartime legislation.

(2) Legal restrictions which prevent cooperatives from engaging in various kinds of activities should be removed. A cooperative should be free to engage in any enterprise or activity as an individual, partnership or private corporation. Particularly the laws should be changed to permit prefectural and national cooperative associations to engage in activities which will be of benefit to the local cooperatives. The Central Cooperative Bank should be permitted to invest its funds in cooperative enterprises and to make loans to them on a broader basis than at present.

(3) The present participation by Government in the affairs of the Agricultural Cooperative Associations should be terminated.

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The cooperative movement should stand on its own feet and should not be either subsidized or controlled by the Government.

If these changes are made, cooperatives can be given the opportunity to take over a substantial portion of the zaibatsu holdings. This will permit them to compete with private profit-seeking enterprises, and such competition should benefit the general public in Japan as it has in the Scandinavian countries.

CREATING SUPPORT IN JAPAN FOR THE ZAIBATSU PROGRAM

Zaibatsu power can be liquidated and a legal environment which makes acquisition of such power more difficult can be established during the occupation of Japan, unless that occupation is very short; and even in a short occupation the program can be far advanced. Nevertheless, sooner or later the occupying authorities will withdraw and the Japanese will recover relatively full discretion about their domestic and industrial policy.

The years that follow will provide the crucial test for the program recommended herein. If it has won general support among Japanese it probably will be continued; otherwise it is likely to be discarded or weakened so that concentrated industrial control again becomes possible. To foster Japanese understanding of the problem and Japanese sympathy for SCAP's policy toward it should be among our first objectives.

The general pattern of the occupation under which SCAP acts through the Japanese Government rather than directly, has provided an opportunity to influence the opinion of Japanese Government officials. At a cost of delay and of some compromise upon ways and means, the point of view of the occupation authorities is being made familiar to these officials. Requests have come from some of them for suggested readings about the antitrust

laws

laws and for opportunities to discuss informally problems such as the relation of big business to efficiency, the technique of dissolving combines, and the nature of objectionable restraints of trade. Informal discussion groups and conversations with SCAP officials about such matters should be encouraged, and facilities should be provided by which the Japanese Government can gain access to recent literature in English about problems of industrial organization.

Efforts should be made to influence the point of view of the general public as well as that of government officials. Although the term "zaibatsu" is widely used, and many Japanese are hostile to it, very little information is available to the Japanese public about the structure, conduct, profits, and power of the dominant industrial clique. SCAP can do something to reduce the general ignorance by publishing its own findings, but these will necessarily be subject to some discount because they do not come from Japanese sources. Accordingly, it is recommended that interested Japanese be encouraged to organize a commission of inquiry representing diverse points of view, economic interests, political opinions and occupations and that this commission be afforded an opportunity to conduct an extensive investigation of the facts about the zaibatsu and to make public its findings. The function of the committee should not be to make recommendations as to policy but to provide a firm basis of fact upon which Japanese opinion can be developed. In order that its findings may command confidence, SCAP should exercise its control primarily through a veto upon the composition of the committee and thereafter should refrain so far as possible, from guidance or censorship. Information possessed by SCAP should be available to the committee within the widest

practicable

practicable limits. However, under no circumstances should the pendency of studies by such a group be permitted to justify delay in the execution of anti-zaibatsu measures.

In the revision of Japanese educational programs SCAP should encourage attention to problems of industrial organization, the dangers of monopoly, and excessive concentration of economic power, and study of the development of policy in other countries about these subjects.

When an agency has been established in the Japanese Government to administer the proposed antitrust law and possibly other aspects of the program for preventing the rise of future zaibatsu, provision should be made for contact between that agency and similar bodies in other countries. Specifically, its key officials should be given an opportunity to visit the antitrust agencies of the United States and the Combines Investigation Commission of Canada. If American proposals for establishment of an international office for business practices should be adopted by the United Nations, these officials should also be brought into contact with the work of that office. The reports issued by that office and by foreign antitrust agencies should be made available in Japan, preferably not only in foreign languages but in Japanese translations.

By thus supplying information and providing facilities for discussion, opportunity can be created to convert the program against the zaibatsu from an import to a domestic institution. If the venture succeeds the program will be not merely an episode of defeat but a continuing influence upon the future of Japan.