required to carry out this Order shall be submitted to the Commission for its prior approval.

20. That the new companies provided for in the plan shall in no way violate the provisions of Law No. 54 of 1947: Law Relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade; nor shall the approval of the plan be construed to authorize or sanction any such violation; nor shall such approval be construed to limit in any way the power and authority granted to the Commission by virtue of the provisions of Imperial Ordinance No. 233 of 1946 pursuant to which Nippon has been designated as a holding company for dissolution.

21. For the purpose of supervising execution of this Order, any duly authorized representative of the Commission or its successor, on reasonable notice to Nippon or any one of the new companies, their successors or assigns, shall be allowed (1) reasonable access to their books, ledgers, accounts, correspondence, memoranda and other records and documents (2) to interview their officers or employees, who may have counsel present, and (3) request reports as may from time to time be reasonably necessary for the execution of this Order.

22. Jurisdiction of this proceeding is retained for the purpose of enabling any interested party to apply to the Commission or its successor for such further orders or directions as may be appropriate for the construction or execution of this Order, and for the amendment, modification or termination of any of the pro-

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visions thereof, and for punishment of violations thereof.

(Tadao Sasayama)

Chairman
Holding Company Liquidation Commission

Dated, Tokyo, Japan

22 July 1948

Concurrences: ESS/IND /s/ W. S. Vaughan Date 19 July 1948

PH&W /s/ Sidney F. Ascher Date 17 July 1948

SCHEDULE A - SANWA SODA K. K.

ASSETS

Current Assets		
Cash and Deposits	¥ 9,439,000.00	
Short-term Loans and Notes Receivable	35,066,000.00	
Advance Payment (Trade)	7,859,000.00	
Accounts Receivable	33,262,000.00	
Inventory Assets	204,428,000.00	¥290,054,000.00
Investment		15,000.00
Fixed Assets		
Land	¥ 3,403,000.00	
Buildings	24,971,000.00	
Other Structures	5,867,000.00	
Machinery	33,814,000.00	
Vehicles	914,000.00	
Tools, Implements	388,000.00	
Office Furniture	612,000.00	
Construction in Process	9,092,000.00	79,061,000.00
Deferred Charges and Prepaid Expenses		
Prepaid Expenses	¥ 4,340,000.00	
Research & Experimental Expenses	164,000.00	
Development Expenses	648,000.00	5,152,000.00
TOTAL ASSETS		¥374,282,000.00

SCHEDULE A - SANWA SODA K.K.

LIABILITIES

Current Liabilities		
Short-term Loans and Notes Payable	¥ 33,590,000.00	
Accounts Payable	49,911,000.00	
Accrued Liabilities	4,590,000.00	
Employees' Deposits	128,000.00	
Accrued Tax	10,139,000.00	¥198,358,000.00
Long-term Loans and Notes Payable		32,640,000.00
Other Liabilities		
Guaranty	¥ 181,000.00	
Other Liabilities	12,450,000.00	12,631,000.00
Net Worth		
Capital Stock Authorized	¥230,000,000.00	
Special Reserves	653,000.00	230,653,000.00
TOTAL LIABILITIES		¥374,282,000.00

SCHEDULE B - NIPPON KAGAKU KOGYO K.K.

ASSETS

Current Assets			
Cash and Deposits	¥ 3,529,000.00		
Short-term Loans and Notes Receivable	2,721,000.00		
Advance Payment (Trade	4,931,000.00		
Accounts Receivable	1,873,000.00		
Accrued Income	15,000.00		
Inventory Assets	15,271,000.00	¥ 28,340,000.00	
Investment			10,000.00
Fixed Assets			
Land	¥ 7,804,000.00		
Buildings	8,393,000.00		
Other Structures	2,163,000.00		
Machinery	23,513,000.00		
Ships & Vessels	39,000.00		
Vehicles	198,000.00		
Tools, Implements	65,000.00		
Office Furniture	170,000.00		
Construction in Process	3,626,000.00	45,971,000.00	
Deferred Charges and Prepaid Expenses			
Prepaid Expenses	¥ 625,000.00		
Research & Experimental Expenses	252,000.00		
Development Expenses	3,000.00	880,000.00	
Other Assets			95,000.00
TOTAL ASSETS			¥ 75,296,000.00

SCHEDULE "B" - NIPPON KAGAKU KOGYO K.K.

LIABILITIES

Current Liabilities		
Short-term Loans and Notes Payable	¥ 10,459,000.00	
Accounts Payable	3,967,000.00	
Accrued Liabilities	857,000.00	¥ 15,263,000.00
Long-term Liabilities		10,000,000.00
Net Worth		
Capital Stock Authorized	50,000,000.00	
Special Reserve	33,000.00	50,033,000.00
TOTAL LIABILITIES		¥75,296,000.00

SCHEDULE C - NIPPON DENKI SEIKO K.K.

ASSETS

Current Assets		
Cash and Deposits	¥ 16,797,000.00	
Short-term Loans and Notes Receivable	3,833,000.00	
Advance Payment (Trade)	13,213,000.00	
Accounts Receivable	82,612,000.00	
Accrued Income	401,000.00	
Inventory Assets	120,467,000.00	¥237,323,000.00
Fixed Assets		
Land	¥ 5,595,000.00	
Buildings	11,145,000.00	
Other Structures	1,542,000.00	
Machinery	16,104,000.00	
Ships & Vessels	5,000.00	
Vehicles	508,000.00	
Tools, Implements	504,000.00	
Office Furniture	241,000.00	
Construction in Process	3,118,000.00	38,762,000.00
Deferred Charges and Prepaid Expenses		1,403,000.00
Other Assets		179,000.00
TOTAL ASSETS		¥277,667,000.00

SCHEDULE C - NIPPON DENKI SEIKO K.K.

LIABILITIES

Current Liabilities		
Short-term Loans and Notes Payable	¥ 52,909,000.00	
Accounts Payable	33,586,000.00	
Accrued Liabilities	22,352,000.00	
Employees' Deposits	150,000.00	
Other Short-term Loans	31,600,000.00	¥140,597,000.00
Liabilities Reserves		
Reserve for Tax	¥ 61,000.00	
Reserves for Retirement Allowances	82,000.00	
Other Reserves	1,423,000.00	1,546,000.00
Other Liabilities		340,000.00
Net Worth		
Capital Stock Authorized	¥135,000,000.00	
Special Reserve	184,000.00	¥135,184,000.00
TOTAL LIABILITIES		¥277,667,000.00

SCHEDULE D - NIPPO KOGYO K.K.

ASSETS

Current Assets		
Cash Deposits	¥ 8,191,000.00	
Short-term Loans and Notes Receivable	6,258,000.00	
Advance Payment (Trade)	11,979,000.00	
Accounts Receivable	4,399,000.00	
Accrued Income	13,909,000.00	
Inventory Assets	10,140,000.00	¥ 54,876,000.00
Investment		23,000.00
Fixed Assets		
Land	¥ 857,000.00	
Buildings	78,264,000.00	
Other Structures	24,620,000.00	
Machinery	40,419,000.00	
Ships & Vessels		
Vehicles	8,855,000.00	
Tools, Implements	549,000.00	
Office Furniture	352,000.00	
Construction in Process	1,161,000.00	155,657,000.00
Deferred Charges and Prepaid Expenses		712,000.00
TOTAL ASSETS		¥218,819,000.00

SCHEDULE D - NIPPO KOGYO K. K.

LIABILITIES

Current Liabilities

Short-term Loans and Notes Payable	¥ 34,990,000.00	
Accounts Payable	5,686,000.00	
Accrued Liabilities	14,022,000.00	
Employees' Deposits	1,182,000.00	
Other Short-term Loans	14,000.00	¥ 55,894,000.00

Long-term Loans and Notes Payable 144,669,000.00

Liability Reserves

Reserve for Tax	¥ 397,000.00	
Reserves for Retirement Allowances	1,033,000.00	
Other Reserves	666,000.00	2,096,000.00

Net Worth

Capital Stock Authorized	¥ 16,000,000.00	
Special Reserve	160,000.00	16,160,000.00

TOTAL LIABILITIES ¥218,819,000.00

SCHEDULE E - NISSHIN KOKO K.K.

ASSETS

Current Assets			
Cash and Deposits		¥ 850,000.00	
Short-term Loans and Notes Receivable		235,000.00	
Advance Payment (trade)		3,407,000.00	
Accounts Receivable		6,919,000.00	
Accrued Income		100,000.00	
Inventory Assets		36,570,000.00	¥ 48,081,000.00
Fixed Assets			
Land		¥ 537,000.00	
Buildings		898,000.00	
Other Structures		238,000.00	
Machinery		2,682,000.00	
Vehicles		13,000.00	
Tools, Implements		74,000.00	
Office Furniture		27,000.00	
Construction in Process		746,000.00	5,215,000.00
Deferred Charges and Prepaid Expenses			286,000.00
TOTAL ASSETS			¥ 53,582,000.00

SCHEDULE B - NISSHIN KOKO K.K.

LIABILITIES

Current Liabilities

Short-term Loans and Notes Payable	¥ 21,833,000.00	
Accounts Payable	4,065,000.00	
Accrued Liabilities	3,155,000.00	
Employees' Deposits	285,000.00	
Other Short-term Loans	4,099,000.00	¥ 33,437,000.00
Liability Reserves		73,000.00
Net Worth		
Capital Stock Authorized	¥ 20,000,000.00	
Special Reserve	72,000.00	20,072,000.00
TOTAL LIABILITIES		53,582,000.00

SCHEDULE F - TOHOKU KOZAN K. K.

ASSETS

Current Assets		
Cash and Deposits	¥ 500,000.00	
Short-Term Loans and Notes Receivable	950,000.00	
Advance Payment (Trade)	200,000.00	
Accounts Receivable	34,000.00	
Inventory Assets	4,166,000.00	¥ 5,850,000.00
Fixed Assets		
Land	¥ 5,000.00	
Buildings	427,000.00	
Other Structures	484,000.00	
Machinery	639,000.00	
Vehicles	223,000.00	
Tools, Implements	16,000.00	
Office Furniture	7,000.00	
Construction in Process	69,000.00	1,868,000.00
Deferred Charges and Prepaid Expenses		30,000.00
Intangible Assets		437,000.00
TOTAL ASSETS		¥ 8,185,000.00

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SCHEDULE F - TOHOKU KOZAN K. K.

LIABILITIES

Current Liabilities

Short-term Loans and Notes Payable	¥ 3,167,000.00	
Accounts Payable	774,000.00	
Accrued Liabilities	565,000.00	
Employees' Deposits	135,000.00	¥ 4,641,000.00
Reserve for Tax		10,000.00
Net Worth		
Capital Stock Authorized	¥ 3,500,000.00	
Special Reserve	34,000.00	¥ 3,534,000.00
TOTAL LIABILITIES		¥ 8,185,000.00

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DECONCENTRATION REVIEW BOARD

19 August 1948

MEMORANDUM FOR: Supreme Commander for the Allied Powers

FROM: Deconcentration Review Board

SUBJ: Findings and Recommendations in the Matter of Nippon Soda Kabushiki Kaisha (Nippon Soda Co., Ltd.) HCLC Order No. 172 - Proposed Order Approving Voluntary Reorganization Plan.

Please find herewith, dated 19 August 1948, the Findings and Recommendations of the Deconcentration Review Board in the above entitled matter.

Roy S. Campbell, Chairman

1 Incl.
as indicated

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DECONCENTRATION REVIEW BOARD

19 August 1948

MEMORANDUM FOR: Supreme Commander for the Allied Powers

FROM: Deconcentration Review Board

SUBJ: Findings and Recommendations in the Matter of:
Nippon Soda Kabushiki Kaisha (Nippon Soda Co., Ltd.)
HCLC Order No. 172 - Proposed Order Approving
Voluntary Reorganization Plan.

1. HCLC Order No. 172 was officially referred to the Deconcentration Review Board on 20 July 1948, and the public hearing before the Holding Company Liquidation Commission on such Order was held on 10 August 1948.

2. In paragraph 16 of the Proposed Order the HCLC finds that the Company

> "by reason of relative size in its principal line of business and the cumulative power of its position in many lines, restricts competition and impairs the opportunity of others to engage in business independently in important segments thereof; and is therefore an excessive concentration of economic power within the meaning of Law No. 207 of 1947, Elimination of Excessive Concentrations of Economic Power Law."

3. The Board having reviewed the Proposed Order and the basic file accompanying the Order, and having interrogated officials of the Company and of the HCLC, finds:

a. The facts and evidence submitted to the Board do not establish a prima facie case that the Nippon Soda Kabushiki Kaisha (Nippon Soda Company, Ltd.) "restricts competition or impairs the opportunity for others to engage in business independently in any important segment" * of the Company's field or fields of operation. The Board believes that there must be such a showing in every case in order to establish that a company is subject to the Law. Unless a company is subject to the Law, the HCLC has no authority to order its reorganization.

b. The facts and evidence indicate that the HCLC may be of the opinion that the possession of non-related lines of business is sufficient in itself to subject the Company to the Law. With this opinion the Board could not agree. In our opinion the mere possession of non-related lines of business is not in itself sufficient in any case to establish that a company is an excessive concentration within the law.

(*Article 3, of Law 207)

c. The facts and evidence indicate that considerable importance has been attached to the submission by the Company of a "voluntary" plan of reorganization which action was apparently construed as substantive evidence that the Company is an excessive concentration. The fact that a plan is a voluntary plan is not, in the opinion of the Board, entitled to any weight. If the HCLC is without authority to order a plan of reorganization under Law No. 207, such authority is not acquired merely because a plan of reorganization is submitted as a voluntary plan. The Board feels that it is unwise for the HCLC to lend the weight of its Order, and for SCAP to lend the weight of its sanction, to a plan of reorganization in a case that does not fall within the law.

4. RECOMMENDATIONS:

On the basis of the record, and for the foregoing reasons, the Board recommends that SCAP stay this Order and that the Nippon Soda Company, Ltd., be removed from designation.

DECONCENTRATION REVIEW BOARD

Roy S. Campbell, Chairman

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cc: to All Members

STANDARDS FOR EXCESSIVE CONCENTRATION IN INDUSTRIAL FIELDS

Excessive Concentrations: Any private enterprise conducted for profit, or combination of such enterprises, will be considered an excessive concentration if it meets any of the following criteria. Each company designated under the Deconcentration Law must furnish a statement explaining carefully the extent to which it meets the following criteria.

1. Produce or have capacity to produce a sufficient portion of the total supply of a commodity or service that a substantial price increase or hardship to potential buyers or to the general public would result if such supply were withdrawn from an uncontrolled market.

2. Distribute sufficient supply of commodity or commodities that a substantial price increase or hardship to potential buyers or to the general public would result if it withheld such supply from the market.

3. Has sufficient influence and power in its field of operations that it could take action which would make it very difficult for another entrepreneur to enter the same field of activity with reasonable opportunity to compete successfully.

4. Acquired other organizations, operating untis or concerns or any part thereof and enjoyed special monopolistic privileges and dominating controls as a result of war mobilization policy since 1937.

5. Has sufficient cumulative influence and power through its activities in unrelated fields of operations to restrict competition or impair opportunity for others to engage in business independently.

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DECONCENTRATION REVIEW BOARD

28 August 1948

MEMORANDUM FOR: Supreme Commander for the Allied Powers

FROM: Deconcentration Review Board

SUBJECT: Recommendations with reference to certain aspects of the Deconcentration Program

1. Japanese Public Law No. 54 (Law Relating to Prohibition of Private Monopolies and Methods for Preserving Fair Trade) and Japanese Public Law No. 207 (Law for the Elimination of Excessive Concentrations of Economic Power) were enacted pursuant to Allied Policy in Japan.

2. The Board believes that the basic principle of this policy, as it relates to the Deconcentration Program, and as expressed in Article 1 of Law No. 54 and in Article 3 of Law No. 207, is to eliminate and prohibit monopolies, combinations in restraint of trade and commerce, and excessive concentrations which prevent or restrict competition.

3. The Board views with apprehension the present status of the Deconcentration Program and the apparent failure to observe the basic principle stated in paragraph "2" above in administering Law No. 207.

4. The Board believes that the administrative policy and procedure under Law No. 207 should be required to conform to that principle. The Board believes -

a. That no Order should be issued under the Deconcentration Law unless there is a showing of a prima facie case that the company "restricts competition or impairs the opportunity for others to engage in business independently in any important segment of business"(*). In the absence of such showing the company should be removed from designation.

b. That the mere possession of non-related lines of business is not in itself sufficient in any case to establish that a company is an excessive concentration within the Law.

c. That the submission of a plan of reorganization as a voluntary plan is not in itself sufficient to confer upon the HCLC authority to issue an Order under Law No. 207.

(*) Article 3, Law No. 207

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d. That the action a company is ordered to take by the HCLC under Law No. 207 should be directly related to the facts upon which that company was determined to be an excessive concentration.

(We have been advised that ESS/AC and the HCLC do not consider such a relationship necessary. In our opinion Orders issued contrary to this principle involve the arbitrary interference with and invasion of fundamental property rights and freedom of action and exceed the authority granted under the Law.)

5. The Board recommends that the Supreme Commander for the Allied Powers direct that the principles stated in the preceding paragraphs "2" and "4" be followed in the administration of the Deconcentration Law.

6. The Board is advised that Orders have been issued under this Law to approximately 144 companies and that such Orders, in some instances, directed substantial changes in those companies without ordering the companies to break up. These cases have not been submitted to the Board for review. It is the opinion of the Board that the principles stated in the preceding paragraphs "2" and "4" should have been applied in the disposition of these cases. The Board recommends that these cases be reviewed by the HCLC in the light of those principles and appropriate action taken.

7. The Board has examined Law No. 54 (Law Relating to the Prohibition of Private Monopolies and Methods for Preserving Fair Trade) and its relationship to the Deconcentration Law. This Law, in our opinion, contains provisions and language that are inconsistent with the basic intent expressed in Article 1 of the Law and which go far beyond a reasonable program for the elimination and prohibition of monopolies and combinations in restraint of trade that prevent or restrict competition. Since this law is material to the successful implementation of the Deconcentration Law, we recommend that it be reviewed by competent persons familiar with the United States antitrust legislation for the purpose of determining whether the provisions of this Law should be revised to conform with the intent expressed in Article 1 thereof.

8. The Board recommends the early adoption of an appropriate Corporation Law and an appropriate Reorganization Law as essential to the success of the Deconcentration Program and to the over-all economic program in Japan.

DECONCENTRATION REVIEW BOARD

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Roy M. Campbell, Chairman

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31 August 1948

MEMORANDUM FOR: Major General Marquat

SUBJECT: Proposed Memorandum from Deconcentration Review Board for the Supreme Commander for the Allied Powers, Subject: "Recommendations with Reference to Certain Aspects of the Deconcentration Program," dated 28 August 1948.

1. Reference is above memorandum upon which comment has been requested. The memorandum is hereinafter quoted paragraph for paragraph with comments following quotation of each paragraph.

2. Paragraph 1 of the memorandum states: "Japanese Public Law No. 54 (Law Relating to Prohibition of Private Monopolies and Methods for Preserving Fair Trade) and Japanese Public Law No. 207 (Law for the Elimination of Excessive Concentrations of Economic Power) were enacted pursuant to Allied Policy in Japan."

Comment: This general statement is believed to be substantially correct.

3. Paragraph 2 states: "The Board believes that the basic principle of this policy, as it relates to the Deconcentration Program, and as expressed in Article 1 of Law No. 54 and in Article 3 of Law No. 207, is to eliminate and prohibit monopolies, combinations in restraint of trade and commeree, and excessive concentrations which prevent or restrict competition."

Comment: Article 1 of Law No. 54 (Anti-Monopoly Law) provides: "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 111 of Law No. 207 (Deconcentration Law) provides:"... an excessive concentration of economic power shall be defined as any private enterprise conducted for profit, or combination of such enterprises, which by reason of its relative size in any line or the cumulative power of its position in many lines, restricts competition or impairs the opportunity for others to engage in business independently in any important segment of business."

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From a review of the foregoing, it may be concluded that the statement of the Board as quoted above is substantially correct as a general statement of over-all basic principle relative to the deconcentration program.

4. Paragraph 3 states: "The Board views with apprehension the present status of the Deconcentration Program and the apparent failure to observe the basic principle stated in paragraph "2" above in administering Law No. 207."

Comment: This paragraph does not require comment.

5. Paragraph 4 states: "The Board believes that the administrative policy and procedure under Law No. 207 should be required to conform to that principle. The Board believes -

a. That no Order should be issued under the Deconcentration Law unless there is a showing of a prima facie case that the company 'restricts competition or impairs the opportunity for others to engage in business independently in any important segment of business'. In the absence of such showing the company should be removed from designation.

"b. That the mere possession of non-related lines of business is not in itself sufficient in any case to establish that a company is an excessive concentration within the law.

"c. That the submission of a plan of reorganization as a voluntary plan is not in itself sufficient to confer upon the HCLC authority to issue an Order under Law No. 207.

"d. That the action a company is ordered to take by the HCLC under Law No. 207 should be directly related to the facts upon which that company was determined to be an excessive concentration."

Comment: As to Sub-Paragraph 4a, Legal Section has heretofore taken the position that under the Deconcentration Law companies should not be designated for investigation to determine whether or not they constitute excessive concentrations; but rather that companies should be investigated and if found, as a result of such investigation, to constitute an excessive concentration then, and not until then, should they be designated under the Law. This procedure, which it is submitted is the only procedure provided for under the Law, has not been followed, if information available to Legal Section is correct, Legal Section understands that company after company has been designated and thereafter investigated to determine whether or not it actually constitutes and excessive concentration. If the Board is

referring to orders designating a company as an excessive concentration, then there is no legal objection to the language used in the sub-paragraph under discussion. It is only reasonable to provide that designation, as to an excessive concentration, should be made after establishment of a prima facie case that the particular company comes within the orbit of prohibition. However, since Legal Section is advised that companies have heretofore been designated without a prima facie showing of the existence of an excessive concentration having been made prior to designation, it is proper to analyse what authority the HCLC has to proceed to issue orders providing for a reorganization under the law. The fundamental requirement under the law for issuing an Order providing for a reorganization is that the company be an excessive concentration within the definition of the law. Therefore, if no prima facie case had been established at the time of designation and if no further evidence has been presented to the HCLC since the time of designation establishing a prima facie case that the company is an excessive concentration, then the HCLC has acquired no jurisdiction under the law under which it may issue an order approving or directing any plan of reorganization. It follows then that any Order providing for the approval of a plan of reorganization is without validity if that order is based upon a finding of fact that the company is an excessive concentration when insufficient evidence has been presented to the HCLC establishing a prima facie case that the compan y is such a concentration. Therefore, subparagraph 4 a. applies and is subject to no legal objection.

As to subparagraph 4 b, there is no legal objection, since the statement of the Board is in accord with previously expressed opinion of this Section.

As to subparagraph 4 c, there is no legal objection.

As to subparagraph 4 d, the language used would infer that if a determination of the existence of an excessive concentration is made, predicated upon the existence of certain facts, thereafter no HCLC order not directly related to the facts established by the investigation should be issued. There appears to be no objection, legally or otherwise, to the Commission, once having established the existence of an excessive concentration, taking all action reasonably necessary to correct existing violations of the law, even though they might not directly relate to the facts upon which the determination of the existence of an excessive concentration was made. It is not meant that the Commission may arbitrarily take action once the existence of an excessive concentration has been established but rather that it may take action consistent with the provisions of the Law. This does not necessarily limit the Commission to issuing orders directly related to the facts upon which the determination of excessiveness was made. It is not believed that any difficulty will be encountered in reconciling the language used by the Board with the foregoing.

6. Paragraph 5 states: "The Board recommends that the Supreme Commander for the Allied Powers direct that the principles stated in the preceding paragraphs "2" and "4" be followed in the administration of the Deconcentration

Law."

Comment: There is no objection to this paragraph in view of our opinion pertaining to Sub-Paragraph 4 a, and expressed in Paragraph 5 of this memorandum.

7. Paragraph 6 states: "The Board is advised that Orders have been issued under the Law to approximately 144 companies and that such Orders, in some instances, directed substantial changes in those companies without ordering the companies to break up. These cases have not been submitted to the Board for review. It is the opinion of the Board that the principles stated in the preceding paragraphs "2" and "4" should have been applied in the disposition of those cases. The Board recommends that these cases be reviewed by the HCLC in the light of those principles and appropriate action taken."

Comment: On 1 May 1948, SCAP released or removed 194 companies from designation. Fifty were released as not actually constituting excessive concentrations and 144 others as relatively minor concentrations whose operations were to continue under surveillance or concurrently with the accomplishment of organizational readjustments. Legal Section does not have the benefit of the specific Orders issued to the individual companies so that it is unable to comment on the Board's statement that in some instances substantial changes in the companies were directed. In "Releasing the companies" after preliminary examination only, there was no objection interposed by Legal Section to at the same time directing the companies to correct existing prohibited practices. The non-objection of Legal Section was predicated on the presumption that the existence of an excessive concentration was established and the orders were predicated thereon. It is believed now, as then, that there is no objection to this procedure so long as the orders issued are consistent with the basic principle of the Deconcentration and Anti-Monopoly Law and so long as the orders are consistent with the principle set out in Sub-Paragraph 4 a, quoted in Paragraph 5 of this memorandum. Therefore, the HCLC would then have established jurisdiction and would have authority to delegate* its functions to FTC pursuant to Article 20 of the Deconcentration Law. Legal Section has no objection to the HCLC reviewing these cases with a view to determining the correctness of the presumption stated above.

8. Paragraph 7 states: "The Board has examined Law No. 54 (Law Relating to the Prohibition of Private Monopolies and Methods for Preserving Fair Trade) and its relationship to the Deconcentration Law. This Law, in our opinion, contains provisions and language that are inconsistent with the basic intent expressed in Article 1 of the Law and which go far beyond a reasonable program for the elimination and prohibition of monopolies and combinations in restraint of trade that prevent or restrict competition. Since this law is material to the successful implementation of the Deconcentration Law, we recommend that it be reviewed by competent persons

*rather than "release"

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familiar with the United States antitrust legislation for the purpose of determining whether the provisions of this Law should be revised to conform with the intent expressed in Article 1 thereof.

Comment: There is no objection to the statement of opinion in the 2nd sentence of this paragraph. However, in the 3rd sentence it is stated that the Anti-Monopoly Law is material to the successful implementation of the Deconcentration Law. Legal Section presumes the Board meant that the Deconcentration Law was enacted to accomplish certain aspects of the Anti-Monopoly law at the earliest possible time and that as the Anti-Monopoly Law antedates the Deconcentration Law, therefore it is material to the implementation of the Deconcentration Law. Therefore, the Board apparently believes that the Anti-Monopoly law, being the basic legislation, should be reviewed for possible amendment. There is no objection to such a review.

9. Paragraph 8 states: "The Board recommends the early adoption of an appropriate Corporation Law and an appropriate Reorganization Law as essential to the success of the Deconcentration Program and to the over-all economic program in Japan."

Comment: There is no objection to this paragraph.

S/ Alva C. Carpenter
ALVA C. CARPENTER
Chief, Legal Section

(cc: All Members)

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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Economic and Scientific Section

MEMORANDUM:

SUBJECT: Meeting held 11 September 1948, at 0930 hours, in General Marquat's office concerning findings of the Deconcentration Review Board in the case of the Nippon Soda Company.

Present were:

General Marquat, Chief, ESS
ESS Antitrust & Cartels Divn.
Mr. Welch
Mr. Bush
Mr. Scheier
Deconcentration Review Board
Mr. Campbell
Mr. Burger
Mr. Robinson
Mr. Woodside
Mr. Hutchinson
SCAP Legal Section
Mr. Carpenter
Mr. Straitiff

Holding Company Liquidation Commission
Mr. T. Sasayama, Chairman
Mr. I. Noda
Mr. G. Kashima
Mr. U. Kurumatani
Mr. Ichikawa
Mr. K. Moroi
Mr. Y. Wakimura
Mr. R. Minobe

The meeting was opened by General Marquat stating that the agencies of the U.S. and the Japanese governments present were each familiar with the responsibilities and functions of the respective agencies represented. It was agreed Mr. Noda would serve as interpreter and spokesman for the HCLC.

General Marquat continued -

The Deconcentration Review Board has examined a number of cases and plans referred to it in its function as a review agency for SCAP. It has reached a finding in connection with the Nippon Soda Company. The Supreme Commander felt that since this was the first action of the Board it would be appropriate to hold a meeting with the HCLC for the purpose of familiarizing the HCLC, which is the Japanese Government agency charged with responsibility for implementation of Public Law 207, with the concepts of the deconcentration program held by the Deconcentration Review Board. A thorough understanding of these concepts should be of great assistance to the HCLC in guiding its future proceedings. The Supreme Commander and the Deconcentration Review Board have expressed great satisfaction with the efficient manner in which the HCLC has performed its duties to date.

The finding of the Deconcentration Review Board after reviewing all papers on the Nippon Soda case are as follows:

"The facts and evidence contained in the basic file submitted do not establish that the Nippon Soda restricts competition or impairs the opportunity for others to engage in business independently in any important segment of the company's field or fields of operation within the meaning of the definition

Ex 11
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of an excessive concentration of economic power set forth in Article 3 of Public Law 207. It is recommended therefore that the HCLC be instructed to stay its above order 172 unless evidence is presented that the company is an excessive concentration within the meaning of Article 3 of Public Law 207, then the company should be removed from designation under the law."

During its deliberations on those of the cases presently submitted to the Board, the Board has arrived at four general points which it offers for consideration of the HCLC as a guide to its future deliberations on the subject. The Board believes that the administrative policies and procedure under Law 207 should be required to conform to the principle that the basic proposal of the law is "to eliminate and prohibit monopoly combinations in restraint of trade and commerce and excessive concentrations which prevent or restrict competition". The Board believes that:

(1) No order should be issued under the Deconcentration Law unless there is a showing of a prima facie case that the company "restricts competition or impairs the opportunity for others to engage in business independently in any important segment of business". In the absence of such showing the company should be removed from designation.

(2) That the mere possession of non-related lines of business is not in itself sufficient in any case to establish that a company is an excessive concentration within the law.

(3) That the submission of a plan of reorganization as a voluntary plan is not in itself sufficient to confer upon the HCLC the authority to issue an order under Public Law 207.

(4) That the action a company is ordered to take by the HCLC under Public Law 207 should be directly related to the facts upon which that company was determined to be an excessive concentration.

These four points just given to you will influence the decisions of the Board in review of subsequent cases referred to it. These have been presented to you for your information and as a basis for further discussion in order that you may understand thoroughly the basic conception of the Review Board as to the method in which Public Law 207 should be implemented. You have the decision on the Nippon Soda case and these four points and we invite you to ask any questions that you would care to submit in further development of consonant operating procedures.

At this point I would like to emphasize that nothing that has been presented to you indicates any change in the deconcentration procedures. GHQ contemplates no change in the law, the standards or implementation procedures. This is the concept of the way it was originally intended that the deconcentration procedure be accomplished, and it is no change in policy.

Discussion follows:

Mr. Noda asked if the recommendations submitted by the Review Board and presented to HCLC for further implementation of Public Law 207 were to be taken as a final order.

General Marquat replied that these recommendations had been accepted by SCAP and that they would be taken as final unless evidence was presented to the satisfaction of the Board that Nippon Soda was an excessive concentration.

Mr. Noda stated that the procedures to be followed by HCLC were understood and if they agreed they must stay order 172. That of the number of designated companies under Public Law 207, designation of 50 had been cancelled. That no structural reorganization has been required on 175 companies. On most of them orders have been issued by HCLC stating that they are concentrations, but no structural reorganization is required and therefore these 175 companies have not been removed from that list and designation has not been cancelled. He asked if the Board intended to review these cases.

Mr. Campbell replied that the Board had not been able to fully examine these cases as they had had orders on them only since this past week when they asked for them as it was felt that the orders on the Nippon Soda case might conflict on decisions made at a later date.

Mr. Noda stated that since some action might have to be taken on the 175 companies if they were cancelled it was felt there should be some announcement from GHQ advising the Japanese public that some change in policy had occurred.

General Marquat stated: There had been no change in policy and unless a company was an excessive concentration it should not be broken up. However, the possibility of apprehension by HCLC was recognized and that was the reason why HCLC had been presented with the four basic principles on which the Board is reviewing the implementation of the law. It was suggested they utilize these principles in re-examining the 175 companies and in examining the remainder of the cases before them. It has always been the position of GHQ that efficiently operated big business was an asset to a democratic nation, and that size of plants, capitalization, volume of basic output and similar considerations are not in themselves monopolistic. It is only when a business of any size discourages free enterprise and restricts open competition that it is a monopoly. This is the concept of directives received from Washington and it must be interpreted in that light that any other position taken is faulty. In the implementation of the law by the Japanese Government, it is up to HCLC to issue, revoke or revise their orders as they see fit and that there is no Japanese agency which can control their actions if within the scope of the law. It is believed that a further review on their part of the orders in the light of the facts presented by the Deconcentration Review Board should be in no way embarrassing to them, HCLC is merely re-examining the orders and revising conclusions which it can do at any time. It was stated that there had been no change in administrative setup and that the HCLC would continue to work with and deal with ESS through Antitrust and Cartels Division and to benefit by the advice and council of Mr. Welch and his experts.

Mr. Noda stated that they had worked in close guidance and cooperation with ESS and had established a certain prestige in the nation not only on deconcentration law but several other important missions and therefore whatever action may have to be taken with the 175 companies they would like to be given an opportunity to study out any change occurring in their orders as if they were to announce to the Japanese public that a mistake had been made in

the administration of the law and procedure not only in one company but in 175 companies it would greatly injure their prestige. They would like to present a complete method for consideration and approval if such change in order takes place.

Mr. Campbell replied that the Review Board was very sympathetic with these feelings and would be glad to cooperate in any way possible.

General Marquat suggested that HCLC permanently discard the attitude that they have made mistakes. Implementation of a law is primarily a matter of interpretation of the provisions of the legal statute and not a personal position assumed on a basis of advocacy or opposition to the purpose of the legislation. The Supreme Commander has been good enough to make available to the HCLC the basic principles upon which the Deconcentration Review Board had reached their findings. There was no intention to indicate that the HCLC had made an error. A re-examination of the 175 companies in the light of the interpretations submitted by the Board should be taken advantage of and could be referred to without any loss of prestige by the HCLC. It was suggested that they use the conference as a basis for reviewing the cases and that any consequent action taken should be clear and taken without any hesitation whatever.

Mr. Noda stated that there seemed to be some difference in the standards HCLC had followed under the law and in the 4 points set forth by the Review Board and that they would like to study that fact.

Mr. Campbell replied that he didn't think such had arisen in the Nippon Soda case, but it might in the future and that the Board would be glad to discuss it with HCLC. The Board had looked into and investigated the standards when they first arrived. They were found to be quite general and it was felt that it was possible for the Board to make their recommendations without changing the standards at that time.

Mr. Noda asked if HCLC could have copies of the 4 points, and these were furnished him by the Deconcentration Review Board.

General Marquat stated that these standards were guides for designation and were not rigidly binding upon HCLC.

Mr. Noda stated that in the event any important question arose in the future they would like to be permitted to have another conference or to get in touch with the Board.

General Marquat advised Mr. Noda that the Board will be available at any time to discuss any questions that might come up. The approach should be made through Mr. Welch. Insofar as ESS was concerned the Board was independent of ESS. Mr. Carpenter of the Legal Section had offered his services. In addition Mr. Welch was available for advice.

Mr. Noda expressed his thanks for the meeting and the most valuable discussion of the recommendations of the Board. He stated that the HCLC would follow the instructions and that anything important enough would be submitted informally for the advance consideration of the Deconcentration Review Board.

Mr. Noda was again assured by Mr. Campbell that the Board was willing to give them advice at any time. That they recognize that before recommendations are made a lot of ground had been covered and a lot of work and time consumed.

The meeting was closed with General Marquat stating that he would like to repeat that the Supreme Commander had expressed his admiration for the manner in which HCLC had functioned. Further on behalf of Mr. Welch and his Division and the Deconcentration Review Board, a similar statement was in order. Lastly, that he would like to express his own personal appreciation.

* * * * * * * * *

(CC: all members)

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DECONCENTRATION REVIEW BOARD

2 November 1948

MEMORANDUM FOR: Major General W. F. Marquat
Chief, Economic and Scientific Section

SUBJECT: Findings and Recommendations in the matter of Nippon Kokan Kabushiki Kaisha (The Japan Steel Tube Co., Ltd.) HCLC Order No. 156

Please find herewith for transmittal to General MacArthur the Board's above findings and recommendations dated 1 November 1948.

DECONCENTRATION REVIEW BOARD

By: _____
Roy S. Campbell, Chairman

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EXHIBIT

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DECONCENTRATION REVIEW BOARD

1 November 1948

MEMORANDUM FOR: General Douglas MacArthur
Supreme Commander for the Allied Powers

SUBJECT: Findings and Recommendations in the matter of Nippon Kokan Kabushiki Kaisha (Thr Japan Steel Tube Co., Ltd.) HCLC Order No. 156

1. Japan Steel Tube Co., Ltd. is engaged in the production of iron and steel and iron and steel products, the operation of shipbuilding and ship repair facilities, and in the manufacture of fire brick. The company is one of the few large iron and steel companies in Japan having substantial pig iron and steel making capacities. It is one of two large producers of steel pipe in Japan and has the bulk of the productive capacity in this field. The company's position and capacities in shipbuilding and ship repair, and in fire brick manufacture, are not particularly significant in relation to the capacities of its competitors, or in relation to the national capacities in these lines.

2. The HCLC has issued its Proposed Order and Plan of reorganization in which this company is required to form three (3) new companies and thereafter dissolve. Each of the new companies would acquire the business of one of the divisions of the present company.

3. The HCLC in paragraphs 12 and 13 of its Order finds the Japan Steel Tube Co., Ltd. to be an excessive concentration of economic power under Article 3 of Law 207 and in paragraph 14 determines that the proposed Plan of reorganization will eliminate such excessive concentration.

4. It is to be noted that under the HCLC Plan of Reorganization the character and scope of activities of each of the divisions of the present company will remain unchanged upon the creation of the new companies.

5. It appears, however, although the Order and Plan are silent on the subject, that action to diminish the relative position of the company in the steel pipe field by a division of its iron and steel business would be impracticable in view of the physical aspects of the company's plants and the concentration of its steel pipe operations in a single integrated plant.

6. In the opinion of the Board the data submitted by the HCLC and ESS/AC fail to establish that this company by reason of the possession of unrelated lines of business could restrict competition in one of its lines or impair the opportunity for others to engage in business independently in any important segment of its business. The Board believes, therefore, that the HCLC Plan providing for the separation of the company's unrelated lines of business is not an action required by the provisions of Law 207.

7. The Board has received a memorandum from ESS/AC in which it is stated that the company has been, or is now, a party to agreements with other steel producers, the effect of which is to limit competition, control production and prices, and allocate market areas and fields of activities. The HCLC Order and Plan do not mention these agreements.

8. The Board recommends that the HCLC refer the files on this company to the Fair Trade Commission with the recommendation that a further investigation be made for the purpose of requiring that the company cancel or revise any contracts or agreements which it may have with other companies that are contrary to provisions of the Anti-Trust Law. The Board further recommends that the company not be required to divide into separate companies, and that it be removed from designation under Law 207.

DECONCENTRATION REVIEW BOARD

By: _____
Roy S. Campbell, Chairman

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DECONCENTRATION REVIEW BOARD

14 October 1948

MEMORANDUM FOR: Supreme Commander for the Allied Powers

FROM : Deconcentration Review Board

SUBJECT : Findings and Recommendations in the matter of Nissan Kogaku Kogyo Kabushiki Kaisha (Nissan Chemical Industry Co., Ltd.) HCLC Order No. 122 - Proposed Order Approving Voluntary Plan of Reorganization.

1. The above Order was referred to this Board on 2 October 1948.

2. In Paragraph 10 of the Proposed Order the HCLC finds "That Nissan is an excessive concentration of economic power within the meaning of Law No. 207 of 1947" and in Paragraph 11 orders the company to reorganize into five or six new companies.

3. The Board has reviewed the Proposed Order and the basic file accompanying the Order, and has interviewed officials of the HCLC and of ESS/AC.

4. In the opinion of the Board the facts and evidence reviewed do not, in the light of the four principles approved by the Supreme Commander, and announced by Major General W. F. Marquat 11 September 1948, establish that this company should be designated and reorganized under Law 207.

5. RECOMMENDATIONS: The Board, therefore, recommends that the company be removed from designation under Law 207.

DECONCENTRATION REVIEW BOARD

By: _____
Roy S. Campbell, Chairman

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EX 13A

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DECONCENTRATION REVIEW BOARD

4 November 1948

MEMORANDUM FOR: Major General W. F. Marquat
Chief, Economic and Scientific Section

SUBJECT: Findings and Recommendations in the matter of Kabushiki Kaisha Kobe Seikosho (The Kobe Steel Works, Ltd.) HCLC Order No. 71

Please find herewith the Board's above findings and recommendations for transmittal by you to General MacArthur.

Roy S. Campbell,
Chairman

cc all members
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EXHIBIT A

COPY

DECONCENTRATION REVIEW BOARD

4 November 1948

MEMORANDUM FOR: General Douglas MacArthur
Supreme Commander for the Allied Powers

SUBJECT: Findings and Recommendations in the matter of Kabushiki Kaisha Kobe Seikosho (The Kobe Steel Works, Ltd.) HCLC Order No. 71

1. The Kobe Steel Works, Ltd. is engaged primarily in the production of steel and iron and steel products. It also manufactures industrial machines, electrical apparatus and appliances. In addition, the company produces rolled, forged and cast copper and copper alloys and light metal products. It produces only a small amount of pig iron and has no blast furnace capacity. The company is ranked as the fifth largest steel company in Japan.

2. The HCLC has issued its proposed Order and Plan of reorganization in which this company is required to form three (3) new companies and thereafter dissolve. Each of the new companies would acquire the business of one of the divisions of the present company.

3. The HCLC in paragraphs 11 and 12 of its Order finds the Kobe Steel Works, Ltd. to be an excessive concentration of economic power within the meaning of Law 207 and in paragraph 13 determines that the proposed Plan of reorganization will eliminate such excessive concentration.

4. It is to be noted that under the proposed Plan of reorganization the character and scope of activities of each of the divisions of the present company will remain unchanged upon the creation of the new companies.

5. In the opinion of the Board the data submitted by the HCLC and ESS/AC fail to establish that this company by reason of the possession of unrelated lines of business could restrict competition in one of its lines or impair the opportunity for others to engage in business independently in any important segment of its business. The Board believes, therefore, that the HCLC Plan providing for the separation of the company's unrelated lines of business is not an action required by the provisions of Law 207.

6. The Board has received a memorandum from ESS/AC in which it is stated that the company has been, or is now, a party to agreements with other steel producers, the effect of which is to limit competition, control production and prices, and allocate market areas and fields of activities. The HCLC Order and Plan do not mention these agreements.

7. The Board recommends that the HCLC refer the files on this company to the Fair Trade Commission with the recommendation that a further investigation be made for the purpose of requiring that the company cancel or revise any contracts or agreements which it may have with other companies that are contrary to provisions of the Anti-Trust Law. The Board further recommends that the company not be required to divide into separate companies, and that it be removed from designation under Law 207.

DECONCENTRATION REVIEW BOARD

By: _____
Roy S. Campbell, Chairman

cc all members
hd

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DECONCENTRATION REVIEW BOARD

4 November 1948

MEMORANDUM FOR: Major General W. F. Marquat
Chief, Economic and Scientific Section

SUBJECT: Findings and Recommendations in the matter of Fuso Kinzoku Kogyo Kabushiki Kaisha (Fuso Metal Industries Co., Ltd.) HCLC Order No. 36

Please find herewith for transmittal to General MacArthur, the Board's above findings and recommendations.

Roy S. Campbell,
Chairman

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EX 15-A

COPY

DECONCENTRATION REVIEW BOARD

4 November 1948

MEMORANDUM FOR: General Douglas MacArthur
Supreme Commander for the Allied Powers

SUBJECT: Findings and Recommendations in the Matter of Fuso Kinzoku Kogyo Kabushiki Kaisha (Fuso Metal Industries Co., Ltd.) HCLC Order No. 36

1. Fuso Metal Industries Co., Ltd. is engaged in the production of steel and steel products, non-ferrous metals and metal products, chinaware, and dairy products. The company's steel division is its largest and most important operation and the company has been ranked as the fourth or fifth largest among Japanese steel producers. It has substantial capacities for the manufacture of steel castings, steel forgings, and steel pipe. In the steel pipe business it ranks second in capacity and in present production. As a result of war losses, the company's non-ferrous operations are much less significant in relation to the national totals. The company's operations in the pottery and dairy business are relatively insignificant.

2. The HCLC has issued its proposed Order and Plan of reorganization in which this company is required to form four (4) or five (5) new companies and thereafter dissolve. Each of the new companies would acquire the business of one of the divisions of the present company.

3. The HCLC in paragraphs 11 and 12 of its Order finds Fuso Metal Industries Co., Ltd. to be an excessive concentration of economic power within the meaning of Law 207 and in paragraph 13 determines that the proposed Plan of Reorganization will eliminate such excessive concentration.

4. It is to be noted that under the proposed Plan of Reorganization the character and scope of activities of each of the divisions of the present company will remain unchanged upon the creation of the new companies.

5. In the opinion of the Board the data submitted by the HCLC and ESS/AC fail to establish that this company merely by reason of the possession of unrelated lines of business could restrict competition in one of its lines or impair the opportunity for others to engage in business independently in any important segment of its business. The Board believes, therefore, that the HCLC Plan providing for the separation of the company's unrelated lines of business is not an action required by the provisions of Law 207.

6. The Board has received a memorandum from ESS/AC in which it is stated that the company has been, or is now, a party to agreements with

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BASIC: Memo for Gen. MacArthur, subj: Fuso Metal Industries Co., Ltd., HCLC Order No. 36 DTD 4 Nov 48

other steel producers, the effect of which is to limit competition, control production and prices, and allocate market areas and fields of activities. The HCLC Order and Plan do not mention these agreements.

7. This company was controlled by the Sumitomo interests and a material amount of its debt is held by financial institutions formerly controlled by or affiliated with the Sumitomo combine. The HCLC in paragraph 9(i) of its proposed Order specifies that neither Fuso nor the new companies shall sell or issue stock of the new companies to these financial institutions. In making the recommendation set forth in the following paragraph, the Board is not suggesting that the HCLC in its capacities under other laws or ordinances should not deal with this matter consistent with established policy.

8. The Board recommends that the HCLC refer the files on this company to the Fair Trade Commission with the recommendation that a further investigation be made for the purpose of requiring that the company cancel or revise any contracts or agreements which it may have with other companies that are contrary to provisions of the Anti-Trust Law. The Board further recommends that the company not be required to divide into separate companies, and that it be removed from designation under Law 207.

DECONCENTRATION REVIEW BOARD

By: _____
Roy S. Campbell, Chairman

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DECONCENTRATION REVIEW BOARD

15 November 1948

MEMORANDUM FOR: Major General W. F. Marquat
Chief, Economic and Scientific Section

SUBJECT: Findings and Recommendations in the Matter of: Nippon Seitetsu Kabushiki Kaisha (Japan Iron and Steel Co., Ltd.)
HCLC Order #166 - Proposed Order of Reorganization

Please find herewith for transmittal to General MacArthur the Board's above findings and recommendations.

Roy S. Campbell,
Chairman

cc all members
hd

Ex 16A

DECONCENTRATION REVIEW BOARD

15 November 1948

MEMORANDUM FOR: General Douglas MacArthur
Supreme Commander for the Allied Powers

SUBJECT: Findings and Recommendations in the Matter of: Nippon Seitetsu Kabushiki Kaisha (Japan Iron and Steel Co., Ltd.)
HCLC Order #166 - Proposed Order of Reorganization

1. The Board has reviewed the Proposed Order and the basic file accompanying the Order, conferred with officials of ESS, the HCLC, and the Japan Iron and Steel Co., and has studied the Japanese steel industry.

2. The Board concurs in the Finding of the HCLC that the Japan Iron and Steel Company is an excessive concentration of economic power within the meaning of Article 3 of Law 207.

3. The Board is of the opinion that the proposed division of the plants and facilities of the company as ordered by the HCLC in the Proposed Order is in general a rational subdivision of the present operating company and that the establishment of two (2) new companies free of Governmental ownership should improve the competitive situation in the production of pig iron and semi-finished steel in Japan.

4. The Proposed Order of Reorganization does not, however, include a complete plan of Reorganization. Accordingly the Board cannot at this time concur with the provisions of paragraph 5 of the Proposed Order which purports to prescribe the capital structures of the new companies and paragraphs 10, 11 and 12 which outline the liquidation procedures for the old company.

5. The Board recommends that the Japan Iron and Steel Company be ordered to prepare a definitive plan of reorganization, providing for the establishment of two (2) new companies as outlined in the Proposed Order, under the direction and supervision of the HCLC. Every effort should be made to devise a plan which will provide a reasonable opportunity for each new company to operate successfully and which will be fair and equitable to the stockholders and creditors of the old company. In this connection, the Board is of the opinion that the provisions of the Proposed Order relating to the

BASIC: Memo. for General Douglas MacArthur, subj: Findings and Recommendations in the Matter of: Nippon Seitetsu Kabushiki Kaisha (Japan Iron and Steel Co., Ltd.) HCLC Order #166 - Proposed Order of Reorganization, DTD 15 Nov 48

capital of the new companies, restrictions on ownership of new shares except by the Japanese Government, method of distribution and sale of new securities and the allocation of proceeds of such securities to the old stockholders and creditors should be reviewed and modified to the extent necessary to achieve an equitable and feasible plan of reorganization.

6. The Board will be glad to review and comment upon a definitive plan of reorganization prior to the issuance of any final Order.

DECONCENTRATION REVIEW BOARD

By: _____
Roy S. Campbell, Chairman

cc all members
hd

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Deconcentration Review Board

2 July 1948

MEMORANDUM FOR: Supreme Commander for the Allied Powers

FROM: Deconcentration Review Board

SUBJ: The Yasuda Bank, Ltd., The Teikoku Bank, Ltd., The Mitsubishi Bank, Ltd., The Sanwa Bank, Ltd., The Sumitomo Bank, Ltd., of Japan

1. The Board has considered the question on which its opinion is asked in the Memorandum dated 5 June 1948, from Major General W. F. Marquat, Chief, Economic and Scientific Section, namely, "whether it is advisable or necessary to break up these five banks into smaller units".

2. The Board has examined all documents and data submitted by the Economic and Scientific Section dealing with the subject under review, and has taken counsel on the legal points involved.

3. Through enforcement of the "Law for the Termination of the Zaibatsu Family Control", known as Law No. 2 of 1948, "The Holding Company Liquidation Commission Ordinance", known as Imperial Ordinance No. 233, and the administrative acts under them to date, control of the above banks by the Zaibatsu and designated Holding Companies through stock ownership has been removed and is being removed.

4. The Fair Trade Commission, under the permanent "Law Relating to Prohibition of Private Monopolies and Methods for Preserving Fair Trade", known as Japanese Law No. 54 of 1947, has the power to prohibit or remedy any act, practice or relationship that can be prohibited or remedied by the Holding Company Liquidation Commission under the temporary law for the "Elimination of Excessive Concentration of Economic Power, known as Japanese Law No. 207 of 1947.

5. In the Board's opinion, it is not necessary under existing conditions and it is inadvisable to break up the Yasuda, Teikoku, Mitsubishi, Sanwa and Sumitomo banks, all of which are presently under reorganization pursuant to the "Financial Institutions Reconstruction and Reorganization Law", known as Japanese Law No. 39 of 1946. Breaking up these banks would be almost certain to cause a loss of public confidence. Division of these banks would produce a group of smaller banks, the deposits in each of which would be insufficient to serve adequately the loan requirements of large borrowers. The ratio of money on deposit to money in circulation is already low. Breaking up these banks would further aggravate this condition. Moreover, each of these banks is now under-capitalized and is faced with the necessity of raising additional equity capital. A break-up would increase the difficulties of attracting this capital.

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EX 17

6. The remedial actions of the Fair Trade Commission with respect to these banks would be less precipitant than proceedings under the Holding Company Liquidation Commission Ordinance, and would be of a permanent regulatory nature. For these reasons the Fair Trade Commission is believed to be the appropriate agency to assume jurisdiction.

7. Accordingly, the Board recommends that the Yasuda, Teikoku, Mitsubishi, Sanwa and Sumitomo banks not be broken up and that they be remanded to the Fair Trade Commission for effective application to them and enforcement of the prohibitions and remedial measures provided by, and lying within the "Law Relating to Prohibition of Private Monopolies and Methods for Preserving Fair Trade".

8. The legal opinion of the Chief, Legal Section, Supreme Commander for the Allied Powers, confirming the adequacy of the law herein relied upon, is attached.

Respectfully submitted,

DECONCENTRATION REVIEW BOARD

Roy S. Campbell
Chairman

(cc: all Members)

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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Washington, D.C.

3 January 1949

SUBJECT: Report on Japanese Public Law No. 54
(Law Relating to the Prohibition of Private Monopolies and Methods for Preserving Fair Trade)

TO: William H. Draper
Undersecretary, Department of Army

Pursuant to paragraph B(2) under Recommendations, page 14 of "Report and Summary of the Activities of the Deconcentration Review Board and The Deconcentration Program in General", dated 3 January 1949, I herewith submit a written report covering the above subject matter in five copies, together with properly marked exhibits, attached thereto.

Walter R. Hutchinson

Walter R. Hutchinson
Member, Deconcentration Review Board
Washington, D.C.

Encl 2

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Washington, D.C.

3 January 1949

SUBJECT: Report on Japanese Public Law No. 54 (Law Relating to Prohibition of Private Monopolies and Methods For Preserving Fair Trade), the Japanese Anti-Trust Law.

TO: Department of Army Officials
Washington, D.C.

1. The law was enacted by the Japanese Diet and promulgated on 12 April 1947 and amended on 31 July 1947. Under this law a Fair Trade Commission was established composed of a Chairman and six Commissioners. This Commission has been in existence now for more than a year and has acquired considerable experience and knowledge of the workability of the provisions of the law it is enforcing.

2. The Deconcentration Review Board, during its deliberations since its organization has become familiar with the applicability of several of the provisions of Law No. 54 to situations arising as a result of the enforcement of Japanese Public Law No. 207 (Law for the Elimination of Excessive Concentration of Economic Power).

3. The experience of the Japanese Enforcement Agency and of the Deconcentration Review Board have shown the need for further study of Law No. 54 for the purpose of recommending certain needed amendments.

a. The Fair Trade Commission has made a study of the provisions it believed required amendment and has prepared the amendments, together with an explanation of the principal amendments suggested; it likewise has considered the related effect of the enforcement of Japanese Public Law No. 191 of 1948 (The Trade Association Law), and believes it, likewise, requires amendments and has prepared the amendments, together with an explanation of the principal amendments suggested. There are attached to the original of this report, for reference, the following:

1) A copy of Japanese Public Law No. 54 (Law Relating to Prohibition of Private Monopolies and Methods For Preserving Fair Trade), as Exhibit 1.

2) An explanation of the principal amendments to the Anti-monopoly Law as prepared by the Fair Trade Commission of the Japanese Government, as Exhibit 2;

3) A copy of Japanese Public Law No. 191 of 1948, (The Trade Association Law), as Exhibit 3;

4) Copy of the explanation of the proposed amendments of the Trade Association Law as prepared by the Fair Trade Commission of the Japanese Government as Exhibit 4.

b. The Deconcentration Review Board determined that it was not within its jurisdiction to conduct a detailed examination of the Japanese Anti-Trust Law No. 54. However, based upon its experience with the application of those provisions that were related to the enforcement of the Deconcentration Law No. 207, it concluded that the law should be reviewed by competent authorities and so recommended to the Supreme Commander for the Allied Powers, on 28 August 1948, as follows:

"7. The Board has examined Law No. 54 (Law Relating to the Prohibition of Private Monopolies and Methods for Preserving Fair Trade) and its relationship to the Deconcentration Law. This Law, in our opinion, contains provisions and language that are inconsistent with the basic intent expressed in Article 1 of the Law and which go far beyond a reasonable program for the elimination and prohibition of monopolies and combinations in restraint of trade that prevent or restrict competition. Since this law is material to the successful implementation of the Deconcentration Law, we recommend that it be reviewed by competent persons familiar with the United States antitrust legislation for the purpose of determining whether the provisions of this Law should be revised to conform with the intent expressed in Article 1 thereof."

c. It was believed that Articles 6, 10, 11, 13, 15 and 16 present serious questions as to whether or not they are in accord with fundamental Anti-Trust principles of legislation and whether, in fact, they go beyond those principles;

d. It was further believed that the Articles referred to in the previous paragraph presented restrictions that raised the following questions:

1) Do they deter or interfere with foreign

capital investment and do they prohibit such investment?

2) Do they create an obstacle to Japanese economic and industrial recovery and the success of the Occupation program?

4. The Anti-Trust and Cartels Division of ESS, GHQ, SCAP through Edward C. Welsh, its Chief, presented to the Chairman of the Fair Trade Commission its views, a copy of which is attached hereto as Exhibit 5.

5. That all activities which are engaged in for the purpose of establishing a new Japanese Corporation Law and Japanese Reorganization Law (Bankruptcy) be coordinated and completed in conjunction with all steps taken in reviewing Japanese Public Law No. 54 (Law Relating to Prohibition of Private Monopolies and Methods For Preserving Fair Trade).

C O N C L U S I O N

1. That Japanese Public Law No. 54 (Law Relating to Prohibition of Private Monopolies and Methods for Preserving Fair Trade) should be reviewed by a competent lawyer familiar with Anti-Trust Laws for the purpose of recommending any amendments required;

a. To make the law consistent with fundamental Anti-Trust principles;

b. To promote the economic and industrial recovery of Japan and to contribute to the success of the occupation program.

RECOMMENDATIONS

1. That the Department of the Army consider the advisability of requesting that the Attorney General of the United States make available for temporary assignment to SCAP, a competent lawyer of top level, familiar with fundamental Anti-Trust principles.

2. That the said lawyer be assigned directly to the Chief of ESS, GHQ, SCAP and given complete authority to review Japanese Public Law No. 54 (Law Relating to Prohibition of Private Monopolies and Methods For Preserving Fair Trade) and related legislation for the purpose of recommending through channels to the Japanese Government any amendments necessary,

a. To make Japanese Public Law No. 54 consistent with fundamental anti-trust principles,

b. To make any related laws consistent with such amended law,

c. To promote the economic and industrial recovery of Japan and the success of the occupation program.

3. That the said lawyer shall be responsible only to the Chief of ESS, after consulting with all necessary divisions of ESS and of the Japanese Government; that all recommendations should be made to the Chief of ESS, GHQ, SCAP for clearance with Legal Section, GHQ, SCAP, before being submitted to SCAP for approval and transmission to the Japanese Government.

It is my opinion that the foregoing recommendations require immediate consideration, and if adopted and properly cleared with the Supreme Commander for the Allied Powers and his Chief of ESS, GHQ, should be put into effect at once.

Walter R. Hutchinson

Walter R. Hutchinson
Member, Deconcentration Review Board
Washington, D.C.

EXPLANATION ON THE PRINCIPAL AMENDMENTS TO THE ANTI-MONOPOLY LAW

1st December 1948

I. Basic grounds for the proposed amendments

Without going into detail, the following reasons may be said to be the basic grounds for the present consideration of amending the present Anti-monopoly Law which was promulgated on 12th April 1947 and went into effect as a law from 20th July 1947.

1) Experience in enforcing the law for the past year and a half has shown that the so-called preventive measures (Articles 10 through 16) of the law are unnecessarily severe. With so many provisions of the law calling for prior permission of the Fair Trade Commission, its work has been encumbered by ordinary administrative detail and the real enforcement of the law on the provisions relating to private monopoly and undue restraints of competition has suffered more or less. Trimming the law down to the barest necessary prior permissions is thought to be required if real antitrust enforcement is to be carried out without any large-scale expansion of the staff of the Commission which the present state of public finance of the nation could not allow.

2) Prohibitions and restrictions on corporate stockholdings were unduly severe under the present law. With the reorganization of Japanese economy calling for new capital, it is believed that a reasonable alleviation of the provisions of Articles 10 and 11 was required to enable existing accumulations of capital to participate in the job of absorbing this new issue of capital stock.

3) One of the major features of post-war Japanese economy is that its future development and stabilization will depend to a large degree on the success of its foreign trade and on the volume of foreing investments. It goes without saying that this country must make every effort to enhance its foreign trade and induce foreign investments. Whatever statutory obstacles that exist in the way of attaining this purpose must be removed whenever feasible and necessary. From this viewpoint, it is strongly felt that amendment of the provisions of the present Article 6 of the Anti-monopoly Law is required.

II. Brief explanation of the principal amendments

A brief explanation of the principal proposed amendments to the Anti-monopoly Law is given as follows, pointing out how the amendments differ from the present provisions of the law.

1) International agreements or contracts (Article 6)

In addition to concerted activities of entrepreneurs prohibited by Article 4, the present law prohibits restrictions on exchange of scientific or technical knowledge necessary for business activities. This has been cut down to only concerted activities as prohibited by Article 4. Moreover, where the present effect on competition in any particular field of trade is negligible, the proposed amendment calls for exemption of those whose effects are not substantial in nature.

A minor amendment is that, in place of a prior permission system, a post reporting system has been proposed. This will do away with the necessity of processing thousands of applications and, at the same time, enable the Commission to retain a firm grasp over the foreign trade situation.

2) Corporate stockholdings (Articles 10 and 11)

The principle behind the present provisions of Article 10 is that corporate stockholdings are as a rule prohibited. In other words, exception is made to this rule only in cases of legitimate subsidiaries as defined by the law. Contrary to this, the principle employed in the proposed amendment is that corporate stockholdings are allowed and that they are prohibited or restricted only when any danger of a restraint of competition may occur. The question of to what degree corporate stockholdings should be allowed from the standpoint of sound corporate finance is being left to the Corporation Act or the Commercial Code; it is believed that this is not an anti-trust legislation problem.

In line with other amendments, the prior permission system on corporate stock acquisitions is being scraped and in its a comprehensive filing system is being proposed which will, it is believed, enable the Commission to discover any pyramiding or concentration by means of corporate stockholdings.

Furthermore, it is believed that the proposed amendment will enable foreing companies to invest in Japanese companies without any undue apprehension from the viewpoint of the Anti-monopoly law. It will place foreign companies on equal footing with Japanese companies without any question of preferential treatment or bias in either way. As the outright prohibition on a company from acquiring stocks in a competing company has been amended so that it is not prohibited when the effect of such corporate stock ownership would be insignificant on competition in any particular field of trade,

foreign companies will be freer to invest in t heir Japanese counterparts.

For financial institutions, the present law prohibited acquisition or ownership of more than five percentain (5%) of a single issue of a company. The proposed amendment will permit a greater single stockholding where there is no danger of any restraint of competition by means of such stockholdings. The amended Article 11 has also provided that financial institutions may, notwithstanding the prohibitions and restrictions of this Article, acquire stocks in case of legitimate foreclosure or satisfaction of liens, which the present law does not clearly allow and leaves to construction.

3) Debenture holdings by companies (Article 12)

This Article has been deleted in toto in the proposed amendments as this Commission believes that it is heady inconceivable that debentures may be used a means of control.

4) Multiple directorates (Article 13)

The present law has gone far beyond the requirements of normal anti-trust legislation on the subject matter of this Article. It absolutely prohibits holding multiple directorships in competing companies, a person from becoming an officer (including directors) in four (4) or more companies and more than one fourth of a single company to be officers in another company. The purpose of the proposed amendments is to bring this Article within the requirements of Anti-trust legislation as in the case of corporate stockholdings.

5) Mergers and transfers of business, etc. (Article 15 and 16)

The present provisions on the subject matter call for prior permission of all mergers and transfers of business, etc. This has turned about to impractical from an administrative point of view as the majority of applications received to date have been of small companies. It is believed that the original purpose of these provisions can well be attained even if a post reporting system is adopted for companies with less than ten million yen (Y 10,000,000) in assets.

The provisions of Article 16 on transfers of business etr. has been made clearer by adding transfers of a substantial portion of the fixed assets of a company.

6) Remedial measures (Article 17-2)

Under the present law no remedial measures other than an actual, un official administrative recommendation on part of the Commission may be taken with regard to violations of

Articles 10 through 16. The proposed Article 17-2 provides that necessary remedial measures may be taken by the Commission in case of violation when such measures are called for and would be more effective than ordinary criminal penalties.

PROPOSED AMENDMENT OF THE ANTI-MONOPOLY LAW

(LAW No.54 of 1947)

1st December 1948

The Fair Trade Commission

ARTICLE 4

1. No entrepreneur shall participate in any one of the following types of concerted activities:

1) establishment, stabilization or enhancement of prices;

2) restriction on volume of production or that of sales;

3) restrictions on technology, products, markets or customers;

4) restrictions on construction or expansion of facilities or on adoption of new technology or methods of production.

2. The provisions of the preceding paragraph shall not apply in case the effect of said concerted activities on competition in any particular field of trade is not substantial.

ARTICLE 6

1. No entrepreneur shall participate in an international agreement or an international contract with a foreign entrepreneur or participate in an agreement or contract on foreign trade with a domestic entrepreneur with regard any agreement or contract which contains therein any matter coming under any one (1) of the Items of Paragraph 1 of Article 4.

2. The provisions of the preceding paragraph shall not apply in case the effect of said agreement or contract on competition in any particular field of trade is not substantial.

3. Every entrepreneur shall, when he has participated in an international agreement or an international contract with a foreign entrepreneur or an agreement or contract on foreign trade with a domestic entrepreneur, which agreement or contract is to continue for a considerable length of time (excluding such agreement or contract where the delivery of the object due to one (1) transaction takes place over a considerable period of time or such agreement or contract which merely provides for the appointment of a foreign or domestic entrepreneur as the agent of the principal), file a report with the Fair Trade Commission within twenty (20) days of the day of participation in said agreement or contract.

ARTICLE 9

1. No person shall establish a holding company or convert a company into a holding company.

2. The term "holding company" as used in the preceding paragraph shall mean a company whose principal business is to control, by holding stocks (including partnership shares; hereinafter the same), the business activities of another company.

ARTICLE 10

1. No company shall acquire or own stocks (excluding those without voting rights; hereinafter the same) of another company where the effect of such acquisition or ownership may result in a substantial restraint of competition in any particular field of trade and thereby be contrary to the public interest, or where the acquisition is due to the employment of unfair methods of competition.

2. No company whose business is other than financial shall acquire or own stocks of another company coming under any one (1) of the following Items:

   1) a company engaged in competition with it in any particular field of trade;

   2) a company engaged in competition with a company whose stocks are owned by it;

   3) a company engaged in competition with a third company, one or more of whose officers or employees (referring to persons in regular employment of a company who are other than officers; hereinafter the same) are also officers of the acquiring company.

3. The prohibition of the preceding paragraph shall not apply to only such cases where the aggregate business

capacities of the two (2) or more competing companies involved in the acquisition, if combined together, would have an insignificant effect on competition in any particular field of trade.

4. No company principally engaged in buying and selling of goods shall acquire or own stocks of another company in excess of ten percentum (10%) of its own capital (excluding unpaid-up capital stock, unpaid-up partnership share or claim rights against unpaid-up fixed funds).

5. Every company whose business is other than financial and whose total assets (excluding unpaid-up capital stock, unpaid-up partnership share or claim rights against unpaid-up fixed funds) exceed five million yen (¥ 5,000,000) shall, when it has acquired stocks of another company, file a report with the Fair Trade Commission within twenty (20) days of the day of acquisition of said stocks.

6. Every company whose business is other than financial shall, when its total assets come to exceed five million yen (¥ 5,000,000) after the day of acquisition of stocks of another company, file promptly a report of all stocks owned by it with the Fair Trade Commission.

ARTICLE 11

1. No company whose business is financial shall acquire or own stocks of another company with which it is engaged in competition and which operates in the same field of financial business.

2. No company whose business is financial shall acquire or own stocks of another company in excess of five percentum (5%) of the total issue of stock of said company unless permission of the Fair Trade Commission has been obtained after making an affirmative showing warranting a finding that said acquisition or ownership does not violate the provisions of paragraph 1 of the preceding Article.

3. The provisions of the preceding two (2) paragraphs shall not apply to any one (1) of the following cases:

1) acquisition of stocks by a company engaged in the securities business in the normal course of its business;

2) acquisition of stocks by acceptance of a security trust only wherein the trustor is the beneficiary and said trustor exercises the voting right;

3) acquisition of stocks as the result of legitimate foreclosure or satisfaction of a lien or claim, or pursuant to a final reorganization plan approved in accordance with the provisions of special law.

4. In case the period of ownership of stocks coming under Item 1 or Item 3 of the preceding paragraph will exceed one (1) year from the day of acquisition, prior permission of the Fair Trade Commission shall be obtained.

ARTICLE 12

This Article shall be deleted in whole.

ARTICLE 13

1. No officer or employee of a company shall hold concurrently a position as an officer in another company where the effect thereof may result in a substantial restraint of competition in any particular field of trade and thereby be contrary to the public interest, or where the holding of such office concurrently is due to the employment of unfair methods of competition.

2. No officer or employee of a company shall concurrently hold a position as an officer in another company coming under any one (1) of the Items of Paragraph 2 of Article 10, which are hereby incorporated by reference.

3. The provisions of Paragraph 3 of Article 10 shall apply mutatis mutandis to such cases as come under the preceding paragraph.

4. Every officer or employee of a company whose total assets exceed five million yen (¥5,000,000) shall file a report with the Fair Trade Commission within twenty (20) days of his assuming concurrently a position as an officer in another company.

ARTICLE 14

1. No person (excluding a company; hereinafter the same for this article only) shall acquire or own stocks of two (2) or more companies engaged in competition with one another where the effect of such acquisition or ownership may result in a substantial restraint of competition in any particular field of trade and thereby be contrary to the public interest.

2. Every person shall, when he comes to own stocks of two (2) or more companies engaged in competition with one another in excess of ten percentum (10%) of the total issue of stock of any one (1) of said companies, file a report with the Fair Trade Commission within twenty (20) days of his acquiring said stocks.

3. No officer of a company shall acquire stock of another engaged in competition with said company.

4. No officer of a company shall, in case he owns stocks of another company engaged in competition with the company in which he is assuming office at the time of his assuming office, continue to own such stocks when the effect of such ownership may result in a substantial restraint of competition in any particular field of trade.

5. In case an officer of a company, when assuming office, owns stock of a company engaged in competition with said company, he shall file a report, giving an affirmative showing that said continued ownership of stock will not violate the provisions of Paragraph 1, with the Fair Trade Commission within twenty (20) days of his assuming said office.

ARTICLE 15

1. No company shall effect a merger in any one (1) of the following cases, thereby being contrary to the public interest:

   1) where substantial disparities in bargaining power will arise due to the merger;

   2) where the merger may cause a substantial restraint of competition in any particular field of trade;

   3) where the merger has been coerced by unfair methods of competition.

2. No company whose total assets exceed ten million yen (¥ 10,000,000) shall be apparty to a merger unless permission of the Fair Trade Commission has been obtained after making an affirmative showing warranting a finding that said merger will not come under any one (1) of the Items of the preceding paragraph.

3. With the exception of such cases coming under the preceding paragraph, every company shall, when it has effected a merger, file a report with the Fair Trade Commission within twenty (20) days of the day of said merger.

ARTICLE 16

1. The provisions of the preceding Article shall be applied mutatis mutandis to such cases where a company receives transfer of the whole or a part of the business of another company, it receives transfer of a substantial por tion of the fixed assets of another company, it leases the whole or substantial portion of the business of another company, receives entrustment of the whole or substantial portion of the management of another company or it enters into a contract which provides for a joint profit and loss account with another company; provided that "merger" shall read as "receive transfer of the whole or a part of the business of another company, receive transfer of a substantial portion of the fixed assets of another company, lease the whole or substantial portion of the business of another company, receive entrustment of the whole or substantial portion of the management of another company or enter into a contract which provides for a joint pwofit and loss account with another company."

ARTICLE 17-2

1. In case there exists an act in violation of the provisions of Article 9, Article 10, Article 11, Article 15, Article 16 or Article 17, the Fair Trade Commission may order the entrepreneur concerned, in accordance with the procedures as provided for in Section 2 of Chapter 8, to take any measure necessary for eliminating such violation.

2. In case there exists an act in violation of the provisions of Article 13 or Article 14, the Fair Trade Commission may order said violater to take any necessary measure for eliminating such violation.

3. The procedure provided for by Section 2 of Chapter 8 shall be applied mutatis mutandis to such cases as provided for by the preceding paragraph; provided the terms "entrepreneur" and "said entrepreneur" shall read as "said violater".

PROPOSED AMENDMENT OF THE TRADE ASSOCIATION LAW

(LAW No.191 of 1948)

1st December 1948

The Fair Trade Commission

EXPLANATION OF THE PROPOSED AMENDMENTS OF THE TRADE ASSOCIATION LAW

1st December 1948

I. Basic grounds for proposed amendments

The Trade Association Law was drafted and submitted to the Diet in June of this year, It passed both Houses of the Diet in July and was promulgated and enforced from 29th July 1948. In spite of the fact that it is such a new piece of legislation, this Commission believes that certain amendments are already called for. By following faithfully the final recommendations of the TNEC report, it cannot be denited that that too much has been attempted at one time.

This Commission believes that this law must also be amended in line with the present proposed amendments to the Anti-Monopoly Law. In consideration of this as well as the foregoing, this Commission has prepared an amendment to this law.

II. Principal proposed amendments

The major defect in this law has been in that it included companies in its definition of trade associations. It goes without saying that trade associations do not usually take the form of companites. They will take that form only where an evasion of the law is contemplated. In view of the fact that a major post-war characteristic of Japanese economy has been for small-scale enterprises to own and operate common facilities in form of cooperative associations and companies, it is believed that to disallow the latter will place an undue hardship upon small business. The proposed amendments provide for the exclusion of companies from the definition of a trade association.

Certain existing prohibitions in Article 5 of the law such as arbitration and owning or operating common natural science research facilities have been removed or made permissible under certain conditions. It is believed that the proposed amendments on these provisions are reasonable and required.

Other minor amendments have been made to bring the law into line with the proposed amendment to the Anti-monopoly Law. It is believed that such amendments are self-evident and require no further explanation.

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PROPOSED AMENDMENT OF THE TRADE ASSOCIATION LAW

1st December 1948

ARTICLE 2

Paragraph 1 This paragraph shall be amended as follows:

1. The term "trade association" as used in this law shall mean any grouping or federation of groupings (excluding companies) of two (2) or more entrepreneurs having among its purposes the furtherance of their common interests as entrepreneurs, in whatever form, whether established pursuant to any law, ordinance, order or contract, as a juridical or non-juridical entity; for profit or non-profit purposes, with or without requirement for registration, and whether composed of large or small scale entrepreneurs, including but not limited to trade associations taking the following form:

1) any juridical associational entity (SHADAN HOJIN) or non-juridical associational entity (SHADAN) whose partnership shareholders (or persons or parties similar thereto) consist of two (2) or more entrepreneurs;

2) any juridical foundation (ZAIDAN HOJIN), or non-juridical foundation (ZAIDAN) the appointment or dismissal of whose directors, or administrators or the execution of whose business is controlled by two (2) or more entrepreneurs;

3) any association (KUMIAI) whose members consist of two (2) or more entrepreneurs or any contractual combination of two (2) or more entrepreneurs;

Paragraph 2 The following new paragraph shall be inserted and the present Paragraphs 2 and 3 shall become Paragraphs 3 and 4:

2. Any company whose stockholders or partnership shareholders include two (2) or more entrepreneurs and whose purpose includes the furtherance of their common interests as entrepreneurs shall, when its purpose is to carry out one (1) or more of the activities described by Item 1 to Item 7 inclusive of Article 4 or when it carrys out any act or acts provided for by Item 1 to Item 8 inclusive, Item 12 or Item 13 of Paragraph 1 of Article 5, be deemed to be a trade association under this law. In such cases, the term "constituent entrepreneurs" as provided for in said provisions shall be read as "entrepreneurs which are stockholders or partnership shareholders of a company."

ARTICLE 3

Paragraph 1 The following new Item shall be inserted as Item 4:

4) in case the trade association (excluding one provided for by Article 6) owns or operates facilities for carrying research in any field of natural science or it owns stocks, patents or patent license rights, a statement of said fact.

Paragraph 2 This paragraph shall be amended as follows:

2. In case a trade association dissolves itself or undertakes any change in the matters coming under the provisions of Item 1 to Item 3 inclusive of the preceding paragraph, or in case a trade association other than one provided for by Article 6 comes to own or operate facilities for carrying out research in any field of natural science or comes to own stocks, patents or patent license rights, the said trade association shall, within thirty (30) days of the day of dissolution, change or ownership, file a report thereof with the Fair Trade Commission.

Paragraph 3 The following new paragraph shall be inserted and the present Paragraph 3 shall become Paragraph 4:

3. The provisions of the preceding two (2) paragraphs shall be applied mutatis mutandis to a company whose stockholders or partnership shareholders include two (2) or more entrepreneurs and whose purpose includes the

furtherance of their common

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futherance of their common interests as entrepreneurs.

Paragraph 4 The term the preceding two (2) paragraphs shall be amended to read as "the preceding three (3) paragraphs".

ARTICLE 4

Paragraph 1 The term "only" as used in this paragraph shall be deleted.

Item 1. The term "without disclosing business information or conditions of particular entrepreneurs" shall be deleted.

Item 3. The term " (including the use of various benefits arising from the ownership or operation of natural science research facilities) " shall be deleted.

Item 4. The term "quality standards, specifications" shall be amended to read as "commodity quality standards and specifications".

The term "only by means of voluntary contributions" shall be amended as "on behalf of".

Item 7. This Item shall be deleted.

Item 8. This Item shall become Item 7 and the term "a foreign entrepreneur, on the one hand" shall be deleted.

Item 9. This Item shall become Item 8.

Item 10. This Item shall become Item 9 and the term "any act permitted by the Fair Trade Commission" shall be amended to read as "any act which does

not violate the provisions of the Anti-Monopoly Law or these of each Item of Paragraph of Article 5.

Paragraph 2 This paragraph shall be deleted.

Paragraph 3 This paragraph shall be deleted.

ARTICLE 5

Paragraph 1 This Item shall be amended as follows:

Item 2.

2) participating in or under taking any contract or agreement the contents of which include such matters as coming under any one (1) of the Items of Paragraph 1 of Article 4 of the Anti-Monopoly Law (including any contract or agreement provided for by Paragraph 1 of Article 6 of said law).

Item 3. The term "controls prices, or which will have the effect thereof" shall be deleted.

Item 9. This Item shall be amended as follows:

a) controlling the business activities of any company by means of ownership of stocks (including partnership shares);

Item 10. and Item 11. These Items shall be deleted.

Item 12. This Item shall become Item 10

Item 13. This Item shall become Item 11 and the term "or owning or operating any business facilities" shall be newly inserted.

Item 14. This Item shall become Item 12.

Item 15. and Item 16. These Items shall be deleted.

Item 17. This Item shall become Item 13 .

Item 18. This Item shall become Item 14 and the term "participating in" shall be deleted.

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Paragraph 2 The following new paragraph shall be newly inserted and Paragraph 2 shall become Paragraph 3.

2. The provisions of Item 2, Item 4 and Item 8 of the preceding paragraph shall not apply to such cases where the effect of said act will not result in a substantial restraint of competition in any particular field of trade or no danger of such effect exists.

Paragraph 3 to Paragraph 5

These paragraphs shall be deleted.

ARTICLE 6

Paragraph 1 The term "(except Article 3)" shall be amended to read as "(except Article 3 for trade associations other than those coming under Item 2 to Item 5 inclusive hereunder)."

Item 2. The following law shall be inserted after "r":

s. Law No.96 of 1948: Civil Service Employees Mutual Aid Association Law (KOKKA KOMUSHA KYOSAI KUMIAI HO)

Item 3. The term "securities associations and federations thereof" shall inserted after "securities exchanges".

Item 4. "D" of this Item shall be deleted.

Item 8. This Item shall be deleted.

ARTICLE 7

Item 4 to Item 7 inclusive shall be deleted.

ECONOMIC AND SCIENTIFIC SECTION
Antitrust and Cartels Division

2 October 1948

MEMORANDUM TO: NAKAYAMA, Kikumatsu
Chairman, FAIR TRADE COMMISSION

SUBJECT: Proposed Revision of Anti-Monopoly Law

1. Careful attention has been given to re-examination of various provisions of Law. No. 54. In so doing, draft proposalas submitted by the Fair Trade Commission have received considered analysis and evaluation.

2. The primary purposes of the re-examination referred to are to ascertain if any changes in language are warranted in light of the experience of operation under the law and in light of legislative and economic developments since the Law's passage. The purposes of the Law, per se, are not to be changed but language adjustments may bring the various provisions of the Law even closer to the expressed objectives of anti-monopoly legislation.

3. Various public statements regarding the relationship of the Law to the question of foreign investment have been noted. It is considered that many features of such statements indicate efforts to weaken the Law as regards its basic objectives and are expressed under the concealing cloak of the recognized need for foreign investment. It is urged that the Commission take cognizance of this and devote its full attention to the purposes for which the Law was passed and the Commission was established.

4. Attached are copies of proposed language for certain articles of the Law which have been examined for change by the Commission. It is requested that the attached proposals be studied carefully by the Commission and that, after such study, the Commission meet with the Chief of the Anti-Trust and Cartels Division for consultation.

EDWARD C. WELSH
Chief, Antitrust and Cartels Division

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Article 6

No entrepreneur shall participate in an international agreement or an international contract with a foreign entrepreneur or participate in an agreement or contract on foreign trade with a domestic entrepreneur with regard to any of the following items:

1. Any matter which comes under any one of the items of Article 4, Paragraph 1;

2. An agreement or a contract relating to restrictions on exchange of scientific or technological knowledge or information necessary for business activities;

The provisions of the preceding paragraph shall not apply in case the effects of such agreement or contract on competition in any particular field of international or domestic trade is negligible.

Any entrepreneur, contemplating participation in an international agreement or an international contract with a foreign entrepreneur, or in an agreement or contract on foreign trade with a domestic entrepreneur, including such agreements or contracts provided for in the preceding paragraph, which agreement or contract shall continue for a considerable period of time (excluding such where delivery of the object due to one (1) transaction takes place over a considerable period of time), shall, within twenty (20) days after execution of or participation in said agreement or contract, file with the Fair Trade Commission a copy of said agreement or contract, a statement setting forth the contents thereof.

2 October 1948

Article 9.

The establishment of a holding company is hereby prohibited.

The term "holding company" as used in the preceding paragraph shall mean a company whose principal business is to control, by the holding of stock (including partnership shares; hereinafter the same) the business activities of another company; or a company principally engaged in the buying and selling of goods which holds stock of another company.

Article 10

1. No company shall own or acquire securities, directly or indirectly, in another company where the effect of such ownership or acquisition may be to lessen competition or to restrain trade in any market or tend to create a monopoly.

2. No company shall own or acquire securities, directly or indirectly, in two or more companies where the effect of such ownership or acquisition may be to lessen competition between such companies or to restrain trade in any market or tend to create a monopoly.

3. For the purposes of this Article, ownerhsip or acquisition of securities by one Japanese company in another Japanese company or companies engaged in competition with it, is deemed to lessen competition and is prohibited.

4. For the purposes of this Article, ownership or acquisition of securities by a foreign company in more than one Japanese company in a competitive line or lines of business with the foreign company is deemed to lessen competition and is prohibited.

5. For the purposes of this Article, no foreign company shall own or acquire securities, directly or indirectly, in two or more Japanese companies where the effect of such ownership or acquisition may be to lessen competition between such companies or to restrain trade in any market or tend to create a monopoly or to create a holding company.

6. For the purposes of this Article, ownership or acquisition of securities by a foreign company producing goods in Japan for sale in competition with products of a Japanese company in which such foreign company owned securities is deemed to lessen competition and is prohibited.

7. For the purposes of this Article, the term "securities" includes all types of stocks, partnership shares, bonds, debentures, and other evidences of equity or debtor-creditor relationships, however, debtor-creditor relationships between companies in the normal course of business of such companies, (as contrasted with relationships for control purposes) and acquisition of securities for trust accounts in the normal course of business, are not included in the term "securities" for the purposes of this Article.

8. The provisions of Article 479 to 485 of the Commercial Code shall not be construed or applied in any manner to obstruct enforcement of the provisions of this Article relating to acquisition of securities by foreign companies.

Article 11. Any company whose business is financial shall not own stocks in a company with which it is competing and which operates in the same field of financial business.

No company whose business is financial and whose total assets (excluding unpaid-up capital stock, unpaid-up partnership share or claim rights against unpaid-up fixed funds) exceeds five million (5,000,000) yen shall acquire stock of another company in case by so doing it holds in excess of five percent (5%) of the total issued stock of said company.

The provisions of the preceding two paragraphs shall not apply to cases coming under any of the following items:

1. in case of ownership of stocks by a company engaged in the securities business in the normal course of its business.

2. In case of ownership of stocks by a company other than one engaged in the securities business and whose business is financial by underwriting for the purpose of public sale.

3. in case of ownership of stocks by acceptance of a security trust wherein the truster is the beneficiary, provided that the foregoing shall apply only when the truster exercises the voting right.

4. in case ownership of stocks in excess of the foregoing percentage limit is acquired as a result of the enforcement of bona fide liens or pursuant to a final reorganization plan approved under the provisions of special law pertaining thereto.

In case of ownership of stocks coming under items 1, 2 or 4 of the preceding paragraph, said stocks may be held for purposes of expeditious disposal for such time as may be reasonably necessary to accomplish transfers thereof; Provided, however, that if such stocks are to be held for more than one (1) year from date of acquisition, the prior permission of the Fair Trade Commission, for good and sufficient cause shown, shall first be obtained.

Article 12. No company shall own debentures (excluding bank financing debentures) of another company in case by so doing it holds in excess of an amount equivalent to twenty-five percent (25%) of the capital sotck, total amount of partnership shares, aggregate amount of total capital stock and total amount of partnership shares, or total fixed funds) of said company.

The provisions of paragraph 3 and paragraph 4 of the preceding Article shall apply mutatis mutandis to such a case as provided for by the preceding paragraph. In this case, "stocks" shall read "debentures".

2 October 1948

Article 13.

No officer or an employee of a company (the definition of which shall be a person other than an officer in the regular employment of a company) shall hold concurrently a position as an officer in another company which is in competition with it.

No officer of a company shall, in any case hold a position of officer in more than three companies.

Article 14.

No person shall own or acquire, directly or in-directly, securities of two (2) or more companies in competition with each other, when the effect of such ownership or acquisition may be to lessen competition, restrain trade in any market, or tend to create a monopoly.

No person shall own or acquire, directly or indirectly, securities of two (2) or more companies in competition with each other, where such ownership or acquisition will exceed ten percent (10%) of the issued securities of one of said companies, without receiving the permission of the Fair Trade Commission. Such permission shall be granted only upon satisfactory proof by the applicant that the effect of such ownership or acquisition is not to lessen competition, restrain trade in any market, or tend to create a monopoly.

No officer of a company shall own or acquire, directly or indirectly, securities of another company engaged in competition with the one in which he is an officer.

Article 15.

No company shall effect a merger without the permission of the Fair Trade Commission.

The Fair Trade Commission, in case it receives an application for permission as provided for by the preceding paragraph, shall not grant permission when the applicant fails to show that said merger does not fall under any one of the following items:

1. In case substantial disparities in bargaining power will arise due to the merger.

2. In case the merger may cause a substantial restraint of competition in any particular field of trade.

3. In case the merger has been coerced by unfair methods.

Article 16.

No company shall, without receiving permission of the Fair Trade Commission, receive transfer of the whole or part of the business of another company, receive transfer of a substantial portion of the fixed business assets of another company, lease the whole or a substantial part of the business of another company, receive entrustment of the management of another company, or enter into a contract which provides for a profit and loss account with another company.

The provisions of paragraph 2 of the preceding Article shall apply mutatis mutandis to such a case as provided for in the preceding paragraph, provided that "said merger" shall read "said act".

2 October 1948

Article 17-2

In case there exists an act in violation of the provisions of Article 9, Article 10, Article 11, Article 12, Article 15, Article 16, or Article 17, the Fair Trade Commission may order the entrepreneur concerned, in accordancewith the procedures as provided for in Section 2 of Chapter 8, to take any measures necessary for eliminating such violation.

In case there exists an act in violation of Article 13 or Article 14, the Fair Trade Commission may order the violator to take any measures necessary for eliminating such violation. The procedure provided for by Section 2 of Chapter 8 shall be applied mutatis mutandis to such cases as provided for in the preceding sentence; provided that the terms "entrepreneur" or "said entrepreneur" shall be read as "said violator".

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LAW

I hereby give My sanction to the Law relating to the Prohibition of Private Monopoly and Methods of Preserving Fair Trade, for which the concurrence of the Imperial Diet has been obtained, and cause the same to be promulgated.

Signed: HIROHITO, Seal of the Emperor

This twelfth day of the fourth month of the twenty-second year of Showa (April 12, 1947)

Countersigned:

Prime Minister
YOSHIDA Shigeru
Minister of Justice
KIMURA Tokutaro
Minister of Welfare
KAWAI Yoshinari
Minister of Finance
ISHIBASHI Tanzan
Minister of Transportation
MASUDA Kaneshichi
Minister of Commerce and Industry
ISHII Mitsujiro
Minister of Agriculture and Forestry
KIMURA Kozaemon

Law No. 54

Law relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade

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Law relating to Prohibition of Private Monopoly and Methods for Preserving Fair Trade

Chapter I. General Rules

Article 1. 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. The term "entrepreneur" as used in this Law shall mean a person, natural or juridical, who operates a commercial, industrial, financial or any other business enterprise.

The term "competition" or "competitor" as used in this Law shall include potential competition or potential competitor.

The term "private monopolization" as used in this Law shall mean such 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 restaint of competition in any particular field of trade.

The term "unreasonable restraint of trade" as used in this Law shall mean such 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.

The term "undue substantial disparities in bargaining power" as used in this Law shall mean such substantial disparities in bargaining power which, when they exist between an entrepreneur and his competitors, the superior bargaining power of said entrepreneur is not justified on technological grounds, and whereby the said substantial disparities in bargaining power are of such extent as to render private monopolization possible for any one of the following reasons:

1. because an entrepreneur controls the business in such particular field of trade or controls the materials used therein to such extent as to render it extremely difficult for another entrepreneur to start a new enterprise;
2. because an entrepreneur controls production in a particular field of trade to such extent as to render it extremely difficult for another entrepreneur actually to compete;

3. because an entrepreneur restrains or restricts free competition to such extent as to render private monopolization possible.

The term "unfair methods of competition" as used in this Law shall mean such methods of competition which come under any one of the following items:

1. unwarranted refusal to receive from or to supply to other entrepreneurs commodities, funds and other economic benefits;
2. supplying of commodities, funds and other economic benefits at unduly discriminative prices;
3. supplying of commodities, funds and other economic benefits at unduly low prices;
4. inducing or coercing, unreasonably, customers of a competitor to deal with oneself by means of offering benefits or that of threatening disadvantages;
5. trading with another party on condition that said party shall, without good cause, refuse acceptance of supply of commodities, funds and other economic benefits from a competitor of oneself;
6. supplying of commodities, funds and other economic benefits to another party on such conditions that shall unduly restrain transactions between said party and his suppliers of commodities, funds and other economic benefits or customers or that shall unduly restrain relations between said party and his competitors, or on condition that the appointment of officers (hereinafter referring to directors, unlimited partners who are executive, auditors or persons similar thereto, manager or chief of the main or branch office) of the company of said party shall be subject to prior approval on part of oneself;
7. methods of competition other than those stipulated by the preceding items which are contrary to the public interest and which are designated by the Fair Trade Commission in accordance with such procedure as provided for by Article 71 and Article 72.

Chapter II. Private Monopolization and Unreasonable Restraints of Trade

Article 3. No entrepreneur shall effect a private monopolization nor shall be undertaken any unreasonable restraint of trade.

Article 4. No entrepreneur shall participate in any one of the following types of concerted activities:

1. establishment, stabilization or enhancement of prices;
2. restriction on volume of production or that of sales;
3. restrictions on technology, products, markets or customers;
4. restrictions on construction or expansion of facilities or on adoption of new technology or methods of production.

The provisions of the preceding paragraph shall not apply in case the effects of such concerted activities on competition within a particular field of trade is negligible.

Article 5. No entrepreneur shall establish, organize or become a party to or a member of a juridical person or any other organization which controls distribution of all or a part of materials or products by methods of exclusive purchase or sale or which undertakes the allocation of all or a part of materials or products.

Article 6. No entrepreneur shall participate in an international agreement or an international contract with a foreign entrepreneur or participate in an agreement or contract on foreign trade with a domestic entrepreneur with regard to any one of the following items:

1. any matter which comes under any one of the items of Article 4, paragraph 1;
2. an agreement or a contract relating to restrictions on exchange of scientific or technological knowledge or information necessary for business activities.

The provisions of the preceding paragraph shall not apply in case the effects of such agreement or contract on competition in any particular field of international or domestic trade is negligible.

Any entrepreneur, when contemplating participation in an international agreement or an international contract with a foreign enterpreneur, or in an agreement or contract on foreign trade with a domestic entrepreneur, which agreement or contract shall continue for a considerable period of time (excluding such where delivery of the object due to one (1) transaction takes place over a considerable period of time), shall file an application with the Fair Trade Commission and receive its permission.

In such a case as provided for by the preceding paragraph, an entrepreneur shall not participate in said agreement or contract for a period of thirty (30) days from the day of filing said application.

Article 7. In case there exisits any act which comprises a private monopolization or an unreasonable restraint of trade, the Fair Trade Commission may order the entrepreneur concerned, in accordance with the procedures as provided for in Section 2 of Chapter 8, to cease such act, to transfer a part of his business, or take any other necessary measures for eliminating private monopolization or unreasonable restraints of trade.

Chapter III. Undue Substantial Disparities in Bargaining Power

Article 8. When undue substantial disparities in bargaining power exist, the Fair Trade Commission may order the entrepreneur concerned, in accordance with the precedures as provided for in Section 2 of Chapter 8, to transfer a part of his business facilities, or to take any other necessary measures for eliminating said substantial disparities in bargaining power.

In issuing an order prescribed in the preceding paragraph, the Fair Trade Commission shall give special consideration to the following items with respect to the entrepreneur concerned:

1. capital, reserves, and other aspects of the assets;
2. income and expenditures, and other aspects of operation;
3. composition of officers and directors;
4. location of factories, work yards and offices and other locational conditions;
5. aspects of business facilities and equipment;
6. existence or non-existence of patents, and other

details thereof as well as other technological features;

7. capacity for and aspects of production and sales etc.;
8. capacity for and aspects of obtaining funds and materials etc.;
9. relations with other entrepreneurs through investments and other means;
10. comparisons with competitors on all points enumerated in the above items.

Chapter IV. Stock Holdings, Multiple Directorates, Mergers, and Transfer of Whole Business

Article 9. The establishment of holding company is hereby prohibited.

The term "holding company" as used in the preceding paragraph shall mean a company whose principle business is to control, by holding stock (including partnership shares; hereinafter the same) the business activities of another company.

Article 10. Any company whose business is other than financial (the definition of which shall be banking, trust, insurance, mutual financing or securities business; hereinafter the same) shall not acquire stocks (excluding those without voting rights; hereinafter the same) of another company.

The provisions of the preceding paragraph shall not apply to such a case where the Fair Trade Commission has concluded, when it receives application for acquisition of the whole stocks of a company which comes under all of the following conditions from a company (excluding one principally engaged in buying and selling of goods), that it does not constitute a substantial restraint of competition in any particular field of trade, and thereby is not contrary to the public interest and has granted permission:

1. a company which stands in continuous close relation with regard to the supply of raw materials, semi-finished products, accessory parts, byproducts, waste material or goods or other economic benefits necessary for its business activities, or a company which stands in relation of utilization of patent invention or model utility,
2. a company which does not own stock in another company.

In addition to such a case as prescribed in the preceding parapraph, in case a company (in case of acquisition of stock of an existing company, the company which desires to acquire stock and the company issuing the stock) desiring to acquire stock has explained the fact that such acquisition of stock complies with the conditions contained in each of the following items, the provisions of the preceding paragraph shall apply if it complies with other conditions prescribed in said paragraph although it will not own the whole stock of said company.

1. acquisition of stock issued to raise necessary funds,
2. acquisition of stock issued because acquisition of capital by means other than issue of stock was practically difficult,
3. acquisition of stock is not due to unfair methods of competition,
4. acquisition of stock of a company whose stock is not owned by a company standing in competition with the company which desires to acquire the stock; provided that, with regard to acquisition of stock of a company whose principal business is the purchase and sale of commodities, the foregoing shall apply only in case a company other than the company which desires to acquire stock does not own such stocks.

Article 11. Any company whose business is financial shall not own stocks in a company with which it is competing and which operates in the same field of financial business.

No company whose business is financial and whose total assets (excluding unpaid-up capital stock, unpaid-up partnership share or claim rights against unpaid-up fixed funds) exceeds five million (5,000,000) *yen* shall acquire stock of another company in case by so doing it holds in excess of five percent (5%) of the total issued stock of said company.

The provisions of the preceding two paragraphs shall not apply to such a case coming under any one of the following items:

1. in case of ownership of stocks by a company engaged in the securities business in the normal course of its business,
2. in case of ownership of stocks by a company other than one engaged in the securities business and whose business is financial by underwriting for the purpose of public sale,
3. in case of ownership of stocks by acceptance of a security trust wherein the truster is the benificiary, provided that the foregoing shall apply only when the truster exercises the voting right.

In case of ownership of such stocks as coming under item 1 or item 2, of the preceding paragraph, said ownership of stocks for a period in excess of one (1) year from the date of acquisition of said stocks shall be limited to such a case where previous permission of the Fair Trade Commission has been obtained.

Article 12. No company shall own debentures (excluding bank financing debentures) of another company in case by so doing it holds in excess of an amount equivalent to twenty-five percent (25%) of the capital (the definition of which shall be total capital stock, total amount of partnership shares, aggregate amount of total capital stock and total amount of partnership shares, or total fixed funds) of said company.

The provisions of paragraph 3 and paragraph 4 of the preceding Article shall apply mutatis mutandis to such a case as provided for by the preceding paragraph. In this case, "stocks" shall read "debentures."

Article 13. No officer or an employee (the definition of which shall be a person other than an officer in regular employment of a company in business) of a company shall hold concurrently a position as an officer in another company in any one of the following cases:

1. in case both of the companies are in competition with one another,
2. in case one fourth (1/4) or more of the officers of either of the two (2) companies are holding concurrently positions as officers in a third company.

No officer of a company shall, in any case, hold a position of officer in a company in four (4) or more companies.

Article 14. No person shall acquire stock in two (2) or more companies in competition with one another, when the effect of such ownership will substantially restrain competition in any particular field of trade and thereby is contrary to the public interest.

Any person whose ownership of stocks of two (2) or more companies in competition with one another will be in excess of ten percent (10%) of the issued stock of said companies shall receive the permission of the Fair Trade Commission with regard to acquisition of said stocks.

No officer of a company shall acquire stock of another engaged in competition with said company.

In case an officer of a company, when assuming his position as an officer in said company, owns stock of another company in competition with said company, he shall file a report of said fact with the Fair Trade Commission.

The Fair Trade Commission may, in case it receives such a report as provided for in the preceding paragraph, and when it deems that such ownership of stock may substantially restrain competition in any particular field of trade and thereby be contrary to the public interest, order the disposal of the whole or a part of said stocks or to take any other necessary measures.

Article 15. No company shall effect a merger without the permission of the Fair Trade Commission.

The Fair Trade Commission, in case it receives an application for permission as provided for by the preceding paragraph, shall not grant permission when the said merger falls under any one of the following items and thereby is deemed to be contrary to the public interest:

1. in case the merger does not contribute to the rationalization of production, supply or management,
2. in case substantial disparities in bargaining power will arise due to the merger,
3. in case the merger may cause a substantial restraint of competition in any particular field of trade,
4. in case the merger has been coerced by unfair methods of trade.

Article 16. No company shall, without receiving permission of the Fair Trade Commission, receive transfer of the whole or a part of the business of another company, lease the whole of the business of another company, receive entrustment of the management of another company, or enter into a contract which provides for a joint profit and loss account with another company.

The provisions of paragraph 2 of the preceding Article shall apply mutatis mutandis to such a case as provided for in the preceding paragraph, provided that "said merger" shall read "said act."

Article 17. No act, in whatever form or manner, shall be committed to evade such prohibitions or restrictions as provided for in Article 9 to the preceding Article inclusive.

Article 18. The Fair Trade Commission may, when a company is established in violation of the provisions of paragraph 1 of Article 9, or when companies have merged in violation of the provisions of paragraph 1 of Article 15, institute a suit to have said establishment or merger be declared null and void.

Chapter V. Unfair Methods of Competition

Article 19. No entrepreneur shall employ unfair methods of competition.

Article 20. In case there exists an act in violation of the preceding Article, the Fair Trade Commission may order the cessation of said act in accordance with the procedure provided for by Section 2 of Chapter 8.

Chapter VI. Exemptions

Article 21. The provisions of this Law shall not apply to such business activities relating to production, sales or supply of persons or parties operating railroad, electricity, gas and other enterprises whose business constitutes, by the very nature of said business, a monopoly.

Article 22. The provisions of this Law, in case a special law exists for a certain enterprise, shall not apply to such legitimate acts of an entrepreneur as are executed in accordance with the provisions of said Law or order under said Law.

Such special Law as mentioned in the preceding paragraph shall be stipulated by separate law.

Article 23. The provisions of this Law shall not apply ro such an act as recognized to be within the execution of rights under the Copy-right Law, the Patent Law, the Model Utility Law, the Design Law and the Trade-mark Law.

Article 24. The provisions of this Law shall not apply to an association (including federation of associations) which conforms with each of the following qualifications and which, moreover, has been established in accordance with the provisions of seperate law, provided that the foregoing shall not apply to such a case where there is employment of unfair methods of competition or a restraint of competition in any particular field of trade resulting in an undue enhancement of price.

1. the purpose shall be mutual-aid among small-scale entrepreneurs of consumers,
2. establishment shall be voluntary, and participation and with-drawal of members shall be at will,
3. each member shall possess equal voting rights,
4. in case distribution of profits among members is executed, limits for distribution shall be fixed by law or order, or under the articles of association.

Chapter VII. Indemnification of Damages

Article 25. Any entrepreneur who has effected private monopolization or undertaken unreasonable restraints of trade, or who has employed unfair methods of competition,, shall be liable of indemnification of damages caused by said act to the person or party who sufferred damages.

No entrepreneur shall be exempted from the liability prescribed in the preceding paragraph by certification of the non-existance of wilfulness or negligence on his part.

Article 26. The right to claim indemnification of damages as provided for by the prepeding Article may not be exercised in court until the decision under the provisions of paragraph 3 of Article 48

or Article 52 has been declared final and conclusive.

The right stipulated in the preceding paragraph shall be barred by limitations after the elapse of three (3) years from the day of the decision in said paragraph has become final and conclusive.

Chapter VIII. The Fair Trade Commission

Section 1. Organization and Powers

Article 27. In order to ensure proper operation of this Law, there shall be established the Fair Trade Commission.

The Fair Trade Commission shall be under the jurisdiction of the Prime Minister.

Article 28. The Commissioners of the Fair Trade Commission shall perform their functions independently.

Article 29. The Fair Trade Commission shall be composed of seven (7) Commissioners.

The Commissioners shall be appointed by the Prime Minister with the consent of the House of Representatives from among persons whose age is thirty-five (35) years or more and who are of learning and experience in legal or economic fields.

The Commissioners shall be civil service officials.

Article 30. The term of office for the Commissioners shall be five (5) years. The term of office for a Commissioner who has been appointed to fill a vacancy shall be the remainder of the term of office for his predecessor.

A Commissioner may be reappointed.

A Commissioner shall retire from office upon reaching the age of sixty-five (65) years.

Measures to be taken when a Commissioner finishes his term of office or when a vacancy occurs during the period of time that the Diet is in recess or the House of Representatives is dissolved, shall be provided for by separate order.

Article 31. A Commissioner shall not be removed, against his will, from office during his tenure of office except in such a case coming under any one of the following items:

1. when he has been declared legally incompetent or quasi-incompetent,
2. when he has been dismissed from civil service by judgment,
3. when he has been sentenced for a violation of the provisions of this Law,
4. when he has been sentenced to imprisonment or heavier penalty,
5. when the Fair Trade Commission has decided that he is incapable of discharging his duties on account of Physical or mental disabilities.

Article 32. With respect to such a case as provided for in item 1 or item 3 to item 5 inclusive of the preceding article, the Prime Minister shall remove from office the Commissioner concerned.

Article 33. The Prime Minister shall appoint the Chairman of the Fair Trade Commission from among the Commissioners.

The Chairman shall preside over the affairs of the Fair Trade Commission and represent it.

The Fair Trade Commission shall select in advance a person from among the Commissioners who will act in place of the Chairman in case he is incapacitated.

Article 34. Meetings of the Fair Trade Commission shall not be opened nor shall decisions be made without the attendance of the Chairman and three (3) or more of the commissioners.

The proceedings of the Fair Trade Commission shall be decided by a majority vote. In case the votes are evenly decided, the Chairman shall have the power to decide.

Decisions of the Fair Trade Commission with respect to the provisions of item 5 of Article 31 shall be made, notwithstanding the provisions of the preceding paragraph, with the unanimous concurrence of all the commissioners except that of the commissioner concerned.

Article 35. In order to execute the business of the Fair Trade Commission, a staff office shall be established and attached to it, and necessary personnel shall be maintained.

Personnel provided for in the preceding paragraph shall be civil service officials.

Public prosecutors, attorneys practicing at the time of appointment and those qualified to become attorneys shall be included in the personnel as provided for by paragraph 1 of this Article.

Duties of public prosecutors included in the personnel as provided for in the preceding paragraph shall be limited to criminal offenses in violation of the provisions of this Law.

Article 36. Emoluments of the Chairman, other commissioners and personnel of the Fair Trade Commission shall be prescribed by separate order.

Emoluments of the Chairman, and other commissioners shall not be reduced in amount against the will of the recipients during their tenure of office.

Article 37. The Chairman and other commissioners as well as such personnel of the Fair Trade Commission as designated by separate order shall not engage in the following activities:

1. to become a member of the Diet or that of an assembly of a local public body or to engage actively in political activities,
2. to engage in any other remunerative work except in such a case as permitted by the Prime Minister,
3. to engage in commerce or any other occupation for pecuniary gain.

Article 38. Persons provided for in the preceding Article shall not express their views to the public on the existance or non-existence of facts pertaining to a case, or on the application of law to a case. However, the foregoing shall not apply where provided for in this Law and to publication of conclusions reached in critical studies on this Law.

Article 39. The Chairman and other commissioners and personnel of the Fair Trade Commission or persons who have held such positions in the Fair Trade Commission shall not divulge or make surreptitious use of trade secrets of entrepreneurs which they may have acquired in course of execution of their duties.

Article 40. The Fair Trade Commission may, if necessary for the performance of its functions, order government offices, juridical persons established by special law or ordinance, entrepreneurs or organization of entrepreneurs, or their person-

nal to appear before the Fair Trade Commission, or may require them to submit necessary reports, information or data.

Article 41. The Fair Trade Commission may, if necessary for the performance of its functions, entrust government officers, juridical persons established by special law or ordinance, educational institutions, entrepreneurs, or organizations of entrepreneurs, or their personnel or persons of learning and experience with the work of compiling necessary reports or research.

Article 42. The Fair Trade Commission may, if necessary for the performance of its functions, hold public hearings and obtain views of the general public.

Article 43. The Fair Trade Commission may, in order to ensure proper operation of this Law, make public necessary matters with the exception of the trade secrets of entrepreneurs.

Article 44. The Fair Trade Commission shall submit to the Diet, through the Prime Minister, an annual report on the various aspects of the enforcement of this Law.

The Fair Trade Commission may submit to the Diet, through the Prime Minister, its views on matters necessary to attain the purpose of this Law.

Section 2. Procedure

Article 45. Any person may, when he considers that a violation of the provisions of this Law exists, report said fact to the Fair Trade Commission and demand necessary measures to be taken.

In case such a report as provided for by the preceding paragraph is received, the Fair Trade Commission shall make necessary investigations with respect to the case.

The Fair Trade Commission may, when it considers that a violation of the provisions of this Law exists, take upon its own authority suitable measures.

Article 46. The Fair Trade Commission may, in order to conduct necessary investigations with regard to a case, take the following measures:

1. summon and question persons connected with a case, or witnesses or cause them to submit their views or reports.
2. summon experts and cause them to give expert testimony.
3. order persons possessing accounting books, documents, and other matter to submit the same, and detain any submitted matter.
4. conduct spot inspections of any place of business or other necessary places of the persons connected with a case and examine conditions of business operation, accounting books, and other matter.

The Fair Trade Commission may, in case it deems it to be proper cause such of its personnel as prescribed by separate order to take such measures as provided for by the preceding paragraph.

In case a spot investigation is to be conducted by said personnel in accordance with the provisions of the preceding paragraph, they shall be required to carry with them a warrant.

Article 47. The Fair Trade Commission shall, when necessary investigation of a case has been made, make a record of the gist thereof and, in case any measures as provided for in the preceding Article have been taken, specifically set forth plainly any result thereof.

Article 48. The Fair Trade Commission may, when it deems that an entrepreneur has effected a private monopolization or has undertaken an unreasonable restraint of trade or has employed unfair methods of competition, or when it deems that undue substantial disparities in bargaining power exist, recommend said entrepreneur to take suitable measures.

In case a recommendation has been made pursuant to the provision of the preceding paragraph, the entrepreneur shall notify the Fair Trade Commission whether or not he will accept the said recommendation.

In case the entrepreneur has accepted the recommendation, the Fair Trade Commission may, render a decision on the lines of the recommendation without resorting to the procedure of a hearing.

Article 49. With respect to any case coming under paragraph 1 of the preceding Article, the Fair Trade Commission may, in case it deems that to put the case to the procedure of a hearing would be in the public interest, open proceedings to hear the said case in a hearing.

The procedure of a hearing shall commence from the time a notice of decision to open proceedings of a hearing is sent to an entrepreneur.

Article 50. The notice of decision to open proceedings of hearing shall state the essential points of the case, and the date and place of hearing as well as the fact that the entrepreneur is required to attend.

The date of the hearing shall be fixed on a day later than thirty (30) days after the day that the notice of decision to open proceedings of a hearing is sent.

Article 51. An entrepreneur shall without delay, upon receipt of the delivery of the notice of decision to open proceedings of a hearing, file a reply with the Fair Trade Commission.

Article 52. An entrepreneur or his agent may, in the hearing, state its reasons why an order of the Fair Trade Commission to take measures in the particular case pursuant to the provisions of Article 7, paragraph 1 of Article 8 or Article 20 should be unreasonable, submit supporting evidence, demand of the Fair Trade Commission to interrogate necessary witnesses, to order expert testimony of experts, to order holders of accounting books and other matter to submit them or to make necessary spot investigation and examine aspects of operation and property, accounting books and other matter, or may interrogate witnesses or experts who have been ordered to attend the hearing by the Fair Trade Commission.

An entrepreneur may appoint an attorney or any other appropriate person as his agent.

Article 53. All hearings shall be open. However, in case it is deemed necessary to protect the trade secrets of an entrepreneur or necessary in the public interest, a hearing may be closed to the general public.

A stenographer shall attend all hearings to record statements made therein.

Article 54. The Fair Trade Commission shall, when it is deemed after a hearing that an entrepreneur has effected private monopolization, has undertaken an unreasonable restraint of trade, or has employed unfair methods of competition or that substantial disparities in bargaining power exist, by a decision, order the party connected with the case to take such measures as provided for by Article 7, paragraph 1 of Article 8 or Article 20.

Article 55. Decisions shall be made by a meeting of the Chairman and other commissioners.

The provisions of paragraph 1 and paragraph 2 of Article 34 shall apply mutatis mutandis to such a meeting as provided for in the preceding paragraph.

Article 56. Meeting of the Fair Trade Commission shall not be opened to the public.

Article 57. Decisions shall be rendered in writing together with such findings of fact made by the Fair Trade Commission and application of law thereto, and the Chairman and the commissioners attending the meeting shall sign them and affix seals thereto.

A minority opinion may be attached to the written decision.

Article 58. Decisions shall take effect from the time copies thereof are served upon the entrepreneur.

Article 59. The Fair Trade Commission may, if deemed necessary, on its own authority, require a third party interested in the result of the decision to participate in the proceedings for a decision as a concerned party, provided that it shall previously interrogate the entrepreneur and said third party.

Article 60. Any government office or public organization concerned with a case may, if deemed necessary in the public interest, participate in the proceedings for a decision as a concerned party.

Article 61. Any government office or public organization concerned with a case may, in order to protect the public interest, express its views to the Fair Trade Commission.

Article 62. In case the Fair Trade Commission orders the cessation of a violating act or any other measures to be taken in accordance with the provisions of Article 54, an entrepreneur may stay execution of said order until said decision becomes final and conclusive by depositing such bond of security as fixed by the Court.

Court action as provided by the preceding paragraph shall be executed in accordance with the Simplified Litigation Procedure Law.

Article 63. In case an entrepreneur posts bond in accordance with the provisions of paragraph 1 of the preceding Article and when such a decision as provided for by paragraph 1 of the preceding Article becomes final and conclusive, the Court may, upon representation on part of the Fair Trade Commission, confiscate the whole or a part of such bond or security as posted.

The provisions of paragraph 2 of the preceding Article shall apply mutatis mutandis to the court action stipulated in the preceding paragraph.

Article 64. The Fair Trade Commission may, after it has rendered a decision in accordance with the provisions of Article 57, if deemed specially necessary, take such measures as provided for by Article 46, or may have its personnel take said measures.

Article 65. The Fair Trade Commission shall, when it receives an application for permission or approval in accordance with the provisions of paragraph 3 of Article 6, paragraph 2 or paragraph 3 of Article 10, paragraph 4 of Article 11 (including where it is applied mutatis mutandis in paragraph 2 of Article 12), paragraph 2 of Article 14, paragraph 1 of Article 15, or paragraph 1 of Article 16, and when it deems said application to be without grounds, dismiss said application by a decision.

The provisions of paragraph 2 of Article 45 shall apply mutatis mutandis to such a case of application for permission as provided for in the preceding paragraph.

Article 66. The Fair Trade Commission may, with respect to an application for permission or approval as provided for by the preceding Article, revoke by a decision, after procedure of a hearing said permission or approval when conditions for said permission or approval have ceased to exist or have changed.

The Fair Trade Commission may, when certain facts serving as the basis for a decision have ceased to exist or have undergone a change due to changes in economic conditions and other reasons, and when it becomes apparent that further support of said decision is unreasonable as well as contrary to the public interest, revoke or modify its decision by separate decision after procedure of a hearing.

Article 67. The Court may, if deemed of urgent necessity, upon complaint of the Fair Trade Commission, order an entrepreneur temporarily to cease an act suspected of private monopolization, unreasonable restraint of trade or unfair method of composition, or may revoke or modify said order.

The provisions of paragraph 2 of the Article 62 shall apply mutatis mutandis to the court action stipulated in the preceding paragraph.

Article 68. Any entrepreneur may, by depositing such bond or security as fixed by the Court, stay execution of an order as provided for by paragraph 1 of the preceding Article.

The provisions of Article 63 shall apply mutatis mutandis to confiscation of such deposited bond or security as provided for by the preceding paragraph.

Article 69. Any interested party may demand of the Fair Trade Commission perusal or copying of the records of a case or may ask the Fair Trade Commission for the original, the copy or abridged copy of the decision.

Article 70. Necessary matters with respect to procedure for investigation and hearings of the Fair Trade Commission and other dispositions of cases as well as those with respect to deposits prescribed in paragraph 1 of Article 62 and paragraph 1 of Article 68 other than those provided for in this Law shall be prescribed by separate order.

Section 3. Miscellaneous Provisions

Article 71. When the Fair Trade Commission designates unfair methods of competition in accordance with the provisions of item 7 of paragraph 6 of Article 2, it shall hear the views of such entrepreneurs as operating the same line of business as that of an entrepreneur who employs those methods of competition it is about to designate, and hold

a public hearing to obtain the views of the general public and thereupon draw up a tentative plan for designation which shall be published, and should there be any objection by an entrepreneur to such tentative shall make the designation after giving due consideration to said objection.

Article 72. Designation of unfair methods of competition in accordance with the provisions of item 7 of paragraph 6 of Article 2 shall be executed by public notice.

Such designation as provided for in the preceding paragraph shall come into effect thirty (30) days after the date of its public notice.

Article 73. The Fair Trade Commission shall, if it considers that a criminal violation of the provisions of this law exists, file an accusation with the Public Procurator-General.

In case disposition has been made not to prosecute a case which is the subject of such accusation as provided for in the preceding paragraph, the Public Procurator-General shall, without delay, submit through the Minister of Justice a written report, stating the said fact as well as reasons therefore, to the Prime Minister.

Article 74. In case the Public Procurator-General considers that a criminal violation of the provisions of this law exists, he may notify the Fair Trade Commission of this fact and obtain an investigation and a report on the results thereof.

Article 75. Witnesses or experts who have been ordered to appear to give expert testimony in a hearing in accordance with the provisions of item 1 or item 2 of paragraph 1 or paragraph 2 of Article 4 may claim such travelling expenses and allowances as provided for by separate order.

Article 76. The Fair Trade Commission may, with respect to its internal rules and to its procedure for handling cases, establish separate regulations.

Chapter IX. Legal Suits

Article 77. Any party having objection to a decision of the Fair Trade Commission may institute a suit for revocation or modification of such decision before the Court, provided that the foregoing shall not apply when thirty (30) days have elapsed after the day on which the decision has become effective.

In suits instituted under the preceding paragraph, the Fair Trade Commission shall be the defendant.

Article 78. In case a suit is received by the Court, it shall without delay call on the Fair Trade Commission for transmission of the records (including testimonies of parties concerned with a case, witnesses or experts and stenographic records and any other matter that may be used as evidence in court).

Article 79. Institution of a suit as provided for by paragraph 1 of Article 77 shall not suspend the execution of a decision of the Fair Trade Commission, provided that the Court may, if deemed necessary, at any time, upon complaint from the interested party or on its own authority order suspension of execution of the whole or a part of a decision of the Fair Trade Commission, or may revoke or modify such Court action.

Article 80. Finding of facts made by the Fair Trade Commission, when substantial evidence exists to prove said finding, shall be binding upon the Court.

Whether such substantial evidence as provided for in the preceding paragraph exists or not shall be determined by the Court.

Article 81. A concerned party may plead to the Court to submit new evidence relevant to the said case only in such a case as coming under either of the following two items:

1. in case the Fair Trade Commission failed to take cognizance, without good cause of said evidence,
2. in case, at a hearing of the Fair Trade Commission, it was impossible to submit said evidence, without negligence on the part of the party.

In either of the two cases provided for by both items of the preceding paragraph, the concerned party shall bear burden of showing cause for reasons thereof.

In case the Court deems that a necessity for examining such new evidence as provided for by the provisions of paragraph 1 of this Article exists, it shall return the case back to the Fair Trade Commission and order it to take suitable measures after examining said evidence.

Article 82. The Court may revoke any decision of the Fair Trade Commission when it comes under either one of the following items:

1. in case the facts upon which the decision is based are not supported by substantial evidence,
2. in case the decision is contrary to the Constitution and other law.

The Court may, when it deems that the contents of a decision with respect to application of the Constitution and other law is arbitrary or unreasonable, modify said decision.

Article 83. The Court may, when it deems that a decision of the Fair Trade Commission should be modified, return the case to it indicating such modifications to be made.

Article 84. When a suit for indemnification of damages has been filed in accordance with the provisions of Article 25, the Court shall without delay obtain the opinion of the Fair Commission with respect to the amount of damages caused by such violation of said Article.

In case a claim for indemnification in accordance with the provisions of Article 25 is being filed in Court in order to off-set a cross or counter claim, the provisions of the preceding paragraph shall be applied mutatis mutandis.

Article 85. Jurisdiction of primary trials of any suit coming under any one of the following items shall rest with the Tokyo High Court:

1. a suit concerning a decision of the Fair Trade Commission,
2. a suit concerning indemnification of damages as provided for by Article 25,
3. a suit concerning an offence as provided for by Article 89 and Article 90.

Article 86. Any case provided for by paragraph 1 of Article 62, paragraph 1 of Article 63, (including such a case where said provisions are applied mutatis mutandis in paragraph 2 of Article 68), paragraph 1 of Article 67 and Article 97 shall be-

come the exclusive jurisdiction of the Tokyo High Court.

Article 87. A panel of judges invested with the jurisdiction to hear exclusively all suit cases under Article 85 and such cases as provided for by the preceding Article shall be established within the Tokyo High Court.

The number of judges of the panel provided for in the preceding paragraph shall be five (5).

Article 88. No appeal shall be allowed against court proceedings in such cases as provided for in the preceding Article except on grounds that an unreasonable determination was made during said court proceedings to whether any law, order, regulations or disposition was in conformity with the Constitution, or that a court judgment was contrary to law.

Chapter X. Penalties

Article 89. Any person or party who, in violation of the provisions of Article 3, effects a private monopolization or undertakes an unreasonable restrain of trade shall be punished by a penal servitude for not more than three (3) years or by a fine not more than fifty thousand (50,000) *yen*.

Any attempted offense of the preceding paragraph shall be punished.

Article 90. Any person or party coming under any one of the following items shall be punished by a penal servitude for not more than two (2) years or by a fine not more than thirty thousand (30,000) *yen*:

1. one who, in violation of the provisions of paragraph 1 of Article 4, undertook a concerted action,
2. one who, in violation of the provisions of Articie 5, establishes or organizes a juridical person or other organization or participates in such organization,
3. one who, in violation of the provisions of paragraph 1 of Article 6, participated in an agreement or contract,
4. one who fails to abide by such a decision as provided for by paragraph 3 of Article 98 or Article 54 after it became final and conclusive.

Article 91. Any person or party coming under any one of the following items shall be punished by a penal servitude for not more than one (1) year or by a fine not more than twenty thousand (20,000) *yen*:

1. one who, in violation of the provisions of paragraph 3 or paragraph 4 of Article 6, participated in an agreement or contract,
2. one who established a holding company in violation of the provisions of paragraph 1 of Article 9,
3. one who acquired or owned stock in violation of the provisions of paragraph 1 of Article 10 or paragraph 1, paragraph 2 or paragraph 4 of Article 11,
4. one who acquired or owned debentures in violation of the provisions of paragraph 1 of Article 12 or paragraph 4 of Article 11 as applied mutatis mutandis pursuant to the provisions of paragraph 2 of Article 12,
5. one who assumed a position as an officer of a company in violation of the provisions of Article 13,
6. one who acquired stock in violation of the provisions of paragraph 1 to paragraph 3 inclusive of Article 14 and failed to report said fact in violation of the provisions of paragraph 4 of Article 14, or who failed to abide with an order of the Fair Trade Commission as provided for by paragraph 5 of Article 14 after said order became final and conclusive,
7. one who, in violation of the provisions of Article 16, received transfer of the whole or a part of the business of another company, leased the whole business of another company, received entrustment of management of another company, or entered into a contract providing for a ioint profit and loss account with another company,
8. one who violated the provisions of Article 17.

Article 92. Any person or party guilty of any of the offenses prescribed in the preceding three (3) Articles, may, according to circumstances, be punished by both penal servitude and a fine.

Article 93. Any person or party who has violated the provisions of Article 39 shall be punished by penal servitude for not more than one (1) year or a fine not more than five thousand (5,000) *yen*.

Article 94. Any person who refuses, obstructs or evades such inspection as provided for by the provisions of item 4 of paragraph 1 or paragraph 2 of Article 46 shall be punished by a penal servitude for not more than six (6) months or by a fine not more than one thousand (1,000) *yen*.

Article 95. When a representative of a juridical person or an agent, an employee, or any other person in the service of a juridical person or of an individual has committed a violation as provided for by Article 89, Article 90, item 1 to item 4 inclusive as well as item 6 to item 8 inclusive of Article 91, or Article 94 with respect to the business or property of said juridical person or individual, not only shall the offender be punished but said juridical person or said individual shall also be punished by such fine as provided for by the respective Articles.

Article 96. Any offience under Article 89 or Article 90 shall be considered after filing of an accusation by the Fair Trade Commission.

Such accusation as provided for in the preceding paragraph shall be made in writing.

The Fair Trade Commission may, when filing such accusation as provided for in paragraph 1 of this Article in case it deems that such sentence as provided for in item 1 of paragraph 1 of Article 100 is called for with respect to an offience in said accusation, state said fact in such written accusation as provided for in the preceding paragraph.

Such accusation as provided for by paragraph 1 of this Article shall not be revoked after institution of public prosecution.

Article 97. Any person or party who has violated a decision given under paragraph 3 of Article 48 or Article 54 shall be liable to a non-criminal fine for not more than fifty thousand (50,000) *yen*, provided that the foregoing shall not apply when said act should be punished by criminal penalty.

Article 98. Any person or party who has violated a