5. Treatment of Personnel in Excessive Concentrations

Those individuals who have exercised de facto controlling power in or over any excessive concentration of economic power, regardless of their titular capacity or relationship to such excessive concentrations of economic power, and persons acting on behalf of the individuals described above in such a way as to contravene the intent of this policy, should be

(a) required to relinquish such assets and positions of business and governmental responsibility as might enable them to hinder execution of any phase of the policies proposed in this paper;

(b) prevented from acquiring prior to 1958 such assets and positions of business or governmental responsibility as might enable them to hinder execution of any phase of the policies proposed in this paper.

The number of persons subjected to the above provisions should be relatively small, and the provisions should not be administered in such manner as to deprive Japanese industry of persons with essential managerial or technical skills.

6. Compensation for Divested Holdings.

Individuals covered by the provisions of paragraph 5, above, should be indemnified for their divested assets in such a way as to avoid confiscation of property, provided that such indemnification is not made in a way which will permit the recipient to acquire such power as could be used to hinder execution of any phase of the policies envisaged in this paper. Compensation may be subjected to taxation,

or

or may be deferred by being tendered in government bonds non-saleable for a specified period, or may be restricted insofar as income received by the recipient during this specified period is concerned, as necessary to achieve the above objective.

7. Liquidation of Divested Holdings.

Security holdings and other property divested in accordance with the preceding provisions should be sold to new owners prior to January 1, 1950, so that the duration of any uncertainties associated with the transfer of ownership will be reduced to a minimum, and so that new ownership of Japanese enterprises can be promptly established which will have the freedom and the incentive to make a maximum contribution to Japanese recovery.

8. New Owners of Divested Holdings

(a) In the sale of divested security and property holdings, the overriding objective should be to transfer ownership and control of these holdings to non-governmental purchasers in such a way as to secure a wide distribution of income and of ownership of the means of production and trade, and as to retain or secure the requisite managerial skill.

(b) Divested holdings in excessive concentrations of economic power which are not to be dissolved for technological reasons, and in other enterprises such as public utilities which do not lend themselves to competitive operation, may be subjected to purchase by national and local governments of Japan. When the National Government or a local government purchases

divested

divested equity holdings in a given concern, it should also purchase the remaining equity holdings in that concern.

9. Source of Credit.

As a fundamental measure to encourage competitive operation of the Japanese economy, the number of independent sources of credit should be increased substantially, although not to the point where the individual banks would become financially insecure because of their small size. As may be necessary to achieve this objective, banks of excessive size or of monopolistic position should be broken up into smaller banks, and local credit sources should be strengthened.

10. Financial Alliances.

Alliances between financial enterprises, and between financial and non-financial enterprises, which impede non-discriminatory access to sources of credit on the part of business enterprises should be broken, and the resumption of such alliances prevented. To this end, investments, loans, stockholdings, and redeposits of bank and trust companies should be diffused; and officerships, directorships, and stockholdings of the officers and directors of such banks and trust companies, should be limited.

11. Competition Among Credit Institutions.

To encourage competition among credit institutions:

a. Appropriate measures, such as a system of deposit insurance, should be taken to eliminate the preference of bank depositors for banks formerly associated with excessive concentrations of economic power.

b. Deposits of government-sponsored financial institutions,

institutions, such as the Postal Savings System, should be decentralized with due regard to the areas of Japan from which their receipts originate.

c. All vestiges of private ownership of the Bank of Japan should be eliminated. The Board of Directors should be made representative of finance, trade, industry, agriculture, and of large, medium, and smaller size business.

d. Measures should be taken to ensure non-discriminatory access to commercial credit by business enterprises.

e. Employees performing responsible functions in the Ministry of Finance and government banks should be forbidden to hold the securities of any financial institution, and should be ineligible for employment by private financial institutions for two years after they leave government employment.

12. Elimination of Government Support for Monopolistic Arrangements

Laws and practices through which the Japanese Government has favored the existence or growth of private monopolies should be terminated; to this end, appropriate action should be taken to terminate control associations and to modify or repeal legislation regulating the entry of new enterprises into any industry.

13. Anti-Trust Law.

Japanese law should prohibit, among other things, types of business practices or arrangements which restrain competition, restrict access to markets, or foster monopolistic controls.

14. Patent Law.

Japanese patent law should ensure the patents in Japan cannot be used to support the establishment or perpetuation of excessive concentrations of economic power.

15. Corporate Law.

a. Changes in Japanese corporate law should be effected which would contribute to the growth and survival of competitive enterprise in Japan, in regard to inter-locking officerships, directorships, and auditorships; stockholdings and stock dealings of officers, directors, auditors, and other corporate insiders; and inter-corporate stockholdings.

b. As additional measures which would contribute to the growth and survival of competitive enterprise in Japan, consideration should be given to appropriate changes in those sections of Japanese corporate law pertaining to: disclosure of relevant facts to stock purchasers and stock-holders; practices in corporate accounting and minimum standards of disclosure in such accounting; ultra vires actions by corporations; par values, equal voting rights, and pre-emptive rights respecting corporate shares; and stockholders' rights of suit against management.

16. Tax and Inheritance Laws.

Within the context of other major relevant policies, Japanese tax and inheritance laws should favor the wide distribution of income and ownership, and the growth of competitive private enterprise, envisaged in this paper.

17. Aid to Small Business.

Small entrepreneurs should be assisted by appropriate public

public services so that they may compete more effectively with large scale business.

18. Public Support.

Vigorous efforts should be made by SCAP to create Japanese public understanding of, and support for, this deconcentration program.

19. Japanese Government Personnel.

Appropriate measures should be taken to prevent relations between Japanese Government personnel and private enterprises which would impair non-discriminatory administration of laws and governmental policies.

20. United Nations and Neutral Interests.

In the application of measures specified in this paper, the interests of nationals of members of the United Nations in Japan should be protected insofar as this can be accomplished without contravening the intent of these measures. The objective should be to provide adequate, prompt and effective indemnification for property taken from such interests. Full records should be kept of any change in the status of such interests which may result from the application of these measures.

21. Non-Profit Corporations.

An exception should be made to the provisions of this paper affecting interlocking officerships and directorates, insofar as these provisions concern non-profit corporations which are devoted to public, charitable, and cultural purposes and which do not hold securities of other corporations.

(8)

Review.

A-S Mr. Saltzman

A-S Mr. Claxton

February 13, 1948

Reasons for Continuing With FEC-230.

The following are the reasons why the State Department believes that, either by way of amendments or by the introduction of a substitute paper, the US Government should proceed in FEC with the consideration of FEC-230.

1. During the last few months, a number of cables have been sent to SCAP which, whether intended to or not, can be the effect only of indicating serious concern or uncertainty in Washington regarding not only the terms of SWNCC 302/2 and FEC-230, but of the program actually being carried out by General MacArthur. SCAP has indicated in no uncertain terms his feeling that the program is important and necessary and if, in the face of his expressed views, we abandon the work of revising FEC-230, he and his staff could get no other impression than that they are operating without real Washington support.

2. Abandonment or further postponement of revision of FEC-230 would place the State Department in an extremely embarrassing position vis-a-vis the Congress, and the Far Eastern Commission. We have not seen the end of attempts to blacken not only 230 but the program itself. As late as this morning, Mr. Rudlin was called by a representative of Liberty Magazine who asked the same invidious questions that have previously been presented to us and to the public, eg., "what is the name of the person who wrote FEC-230," and "has Secretary Marshall ever personally approved this policy?"

3. SCAP and interested Japanese know that deconcentration policy is being reconsidered by the US Government. Failure to act on a revised FEC-230 increases the uncertainty surrounding the future of the program and, therefore, jeopardizes still further both its success and Japanese economic recovery. General MacArthur has already (MC-IN-53308 of 10 January 1948, Tab A) emphasized the extent to which apparent uncertainty in Washington is having a bad effect on the implementation of this and other economic programs.

4. The proposed revision of FEC-230 is so general in language that future changes in the extent or manner of the program's implementation could be made without changing this paper. If a basic change in the policy should ever prove desirable, a new policy statement could be prepared in substitution for, or as an addition to this paper. A review made in the State Department of the Japanese laws on this subject, and of other relevant data, indicate that the deconcentration program has not yet been implemented in Japan to such an extent as to render unnecessary US policy statement on this subject. Even if this were not so, the US Government could hardly deny the FEC the opportunity to formulate policy in this field.

894.602/2-1348

5. The State Department has satisfied itself that the US Government can not unilaterally withdraw FEC-230 from the Far Eastern Commission. It would have to seek Commission approval to withdraw, which might but probably would not be granted. If it were not, this would present the US Government with the alternatives of (a) introducing such amendments as would be tantamount to complete disapproval of the substance of FEC-230, or (b) to exercise a veto when the paper comes up for final decision, with all the effects that that would have on opinion in the US, in SCAP, and among the Japanese.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : A-S Mr. Saltzman

DATE: February 13, 1948

FROM : A-S Mr. Claxton

SUBJECT: Reasons for Continuing With FEC-230.

The following are the reasons why the State Department believes that, either by way of amendments or by the introduction of a substitute paper, the US Government should proceed in FEC with the consideration of FEC-230.

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894.602/2-1348

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6. Should the US withdraw the paper without a substitute, there is considerable danger that another member would introduce a paper much less desireable from our point of view - but probably supported by other members.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : A-S/Mr. Wisner

DATE: February 13, 1948

FROM : A-S/Mr. Saltzman

SUBJECT: FEC 230; The Strike Report

This is in further reference to FEC 230.

This Department is now practically agreed on a version of a substitute paper which could be introduced into SANACC and then into the FEC. However, before we can solicit concurrence with such a paper by the Army we must first decide with the Army about the issue as to whether the proper action to take is to withdraw the present FEC 230 from the FEC. There are attached some papers containing arguments against the withdrawal procedure. On the whole I am inclined to think it would be better to substitute a new paper than to withdraw the present FEC 230, leaving a situation where we have no expressed policy for an indefinite period. I think this latter course might have disadvantageous effects in Japan and might prove embarrassing even here when we are called upon to answer questions as to what our policy is in this regard.

As you know, I made an appointment to see General Draper this afternoon but he was unable to keep the appointment. Unless my departure is delayed several days it appears that I will not be able to take it up with him but I think you should at your earliest opportunity.

In my memorandum to you yesterday I neglected to mention the matter of the Strike Report and the Japanese Level of Industry. I ought to remind you that I recently sent to Mr. Lovett various papers on this subject. One was a reply to General Draper's letter of January 12 in which I recommended Mr. Lovett's saying that there was no immediate danger of action by the FEC on the level of industry paper and that we would ask General McCoy to let us know if action should in the future appear imminent. The papers I sent Mr. Lovett included also an historical outline of the events to date in the development of policy respecting the level of industry and reparations in Japan, together with tables and graphs and with a memorandum by Mr. Thorp on the subject. I think that as rapidly as possible the Department should shape up an attitude on this question as we will undoubtedly have to assume a definite position when the Strike Report is received.

A-S:CESaltzman:br

Atts.

A-S

DEPARTMENT OF STATE

ASSISTANT SECRETARY

February 19, 1948

U - Mr. Lovett:

Subject: Zaibatsu Program (FEC 230) and Proposed Army Sponsored Mission to Japan.

In connection with the Congressional "heat" on the subject of the policy of deconcentration of economic power in Japan, and also the mission to Japan which Messrs. Royall and Draper have been discussing for some time with the Secretary and yourself, I believe that you may be interested in reading the attached news item from yesterday's New York Herald Tribune. You will note that although General MacArthur is careful to point out that the policy emanated from Washington, he goes quite far in supporting the soundness of the basic principles underlying the policy of breaking up excessive concentrations of economic power in Japan.

Since this may also have a bearing upon George Kennan's discussions with General MacArthur, the clipping has been brought to his attention.

Frank G. Wisner
Deputy to Mr. Saltzman

Attachment:

Clipping from New York Herald Tribune

New York Herald Tribune

MacArthur Backs Policy of Trust-Busting

Tells Senator 'Blood Bath' Is Ahead in Japan Unless Zaibatsu Are Smashed

By Jack Werkley

WASHINGTON, Feb. 17.—General of the Army Douglas MacArthur forecast today a "blood bath of revolutionary violence" in Japan unless the concentration of economic power there is broken up by occupation forces.

The supreme Allied commander in Japan expressed his view in a letter to Senator Brien McMahon, Democrat, of Connecticut, who read it on the floor of the Senate to counter criticism of American policy in Japan.

General MacArthur left no doubt that he supports the American occupation effort to break the stranglehold of a few Japanese families on the economic resources of Japan which prevailed before the war.

General MacArthur's letter, dated Feb. 1, was in reply to a request from Senator McMahon for a statement of the general's attitude on the American policy, which is fixed by the State Department.

Senator McMahon wrote to the general after Senator William F. Knowland, Republican, of California, had criticized the American policy as "socialization" and expressed doubt that General MacArthur approved of it.

Policy Is "First Essential"

General MacArthur said that the "tearing down of the traditional pyramid of economic power" which gave direct and indirect control of Japan's economy to a few Japanese families "is the first essential" in establishing a "private competitive enterprise" system in Japan.

Destruction of the concentration of economic power, he said, is essential to establishment of democratic government and life, since the pre-war system in Japan "can only thrive if the people are held in proverty and slavery."

The general said the Japanese people "fully understand the nature of the forces which have so ruthlessly exploited them in the past." They know, he added, that the concentration of economic power in partnership with the Japanese military "shaped the national will in the direction of war and conquest."

"These things are so well understood by the Japanese people," he wrote, "that, apart from our desire to reshape Japanese life toward a capitalistic economy, if this concentration of economic power is not torn down and redistributed peacefully and in due order under the occupation, there is no slightest doubt that its cleansing eventually will occur through a blood bath of revolutionary violence.

"For the Japanese people have tasted freedom under the American concept and they will not willingly return to the shackles of an authoritarian government and economy or resubmit otherwise to their discredited masters."

General MacArthur noted that basic American policy for breaking up Japanese economic control was laid down in a policy paper formulated by the State, Navy and War Departments.

This paper, which has become known as F. E. C. 230, was referred by the United States to the other ten members of the Far Eastern Commission, the over-all control agency for Japan, and to General MacArthur for guidance in carrying out occupation policies.

"As the sources of origin, authorship and authority are all in Washington and my responsibility limited to the executive implementation of basic decisions formulated there," he said, "I am hardly in a position ten thousand miles away to participate in the debate."

Recalls Previous Statement

The general noted, however, that he had expressed his views on the basic policy on New Year's Day and that Secretary of the Army Kenneth C. Royall had done so on Jan. 6. Both indorsed the basic policy. The general said it was "difficult to understand" why there had been no cognizance of these previous statements during the Senate debate.

The general's letter today failed to satisfy Senator Knowland, who on a number of occasions had criticized the occupation policy as going "far beyond trust-busting" and tending to "promote socialism or a controlled economy."

In the course of one of the debates in January, Senator Knowland had expressed doubt that General MacArthur indorsed the policy he was charged with executing. Senator McMahon said he would write the general and ask him, if Senator Knowland wouldn't.

Today, after hearing the letter, Senator Knowland said it "confirmed my suspicion that the policy directives came out of Washington—that they were not MacArthur's."

All policy directives are originated by the State Department. The economic policy statement is now before the Far Eastern commission. In the mean time, it is a directive to General MacArthur.

The occupation authorities are well on the way to breaking up Japanese economic control under a few families and firms known as Zaibatsu. Holding companies through which these families dominated all Japanese economy are being broken up. Zaibatsu managers are banned from plant control. Control of industry is being diffused in a number of ways. Zaibatsu families are being partially compensated for their losses.

Whitman
ACTION COPY

DIVISION OF
COMMUNICATIONS AND RECORDS
TELEGRAPH BRANCH

DEPARTMENT OF STATE

INCOMING TELEGRAM

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Action: OFD
Info:
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Control 8754
Rec'd February 28, 1948
2:04 p.m.

FROM: Tokyo

TO: Secretary of State

NO: 42, February 27

(3)

FROM SCAP (OUSRRD) TO DEPT OF ARMY CITE C58905. PASS TO DEPT OF STATE.

FOR WHITMAN OE.

Am advised by CPC sale certain properties Mitsubishi Trading Co. and Mitsubishi Oil Co. referred to in DEPTEL 2, February 16, has been held up. No action contemplated here until after arrival Tidewater Oil representatives.

W. F. Kiessig and C. K. Viland have been cleared for entry Japan.

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HODGE

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RESTRICTED

Dear Mr. Portugal

DEPARTMENT OF STATE

ASSISTANT SECRETARY

March 8, 1948

U - Mr. Lovett

Subject: Secretary Royall's Mission to Japan

Under Secretary Draper informed me Friday that in view of the difficulties of obtaining a group of outstanding businessmen to go to Japan to investigate the question of economic reforms and recovery, Secretary Royall concluded to go himself, taking a small group. He plans tentatively to leave this week. Mr. Draper said the Army Department would be glad to take along some one from the State Department, mentioning specifically Mr. Claxton or myself. Later investigation disclosed that the Army has asked the following persons to accompany Mr. Royall:

Dr. Herbert Feis - definite
Mr. Percy Johnson (retired Chairman of the Board, Chemical Bank) - probable
Mr. Wayne Chatfield Taylor - possible
Mr. Paul Hoffman (Studebaker Company) - possible
Mr. Sidney Scheuer (Tax lawyer) - possible

894.602/3-848

We are not certain as to the terms of reference of this Mission. We understand it stems from the letter (Tab A) which Mr. Royall sent you in December, urging that State and Army "send some top flight man to Japan to take a look at the picture and come to some conclusion as to whether there is indicated the necessity for a change in direction or course." If the Mission is of this character and contemplates a written report on the authority of distinguished private citizens, it would appear to present a very serious problem in the field of policy making responsibility. If the Mission is to be of this kind I believe the State Department should either obtain a firm agreement from the Army Department that the investigation and report will deal only with the implementation of existing policies or ~~that~~ the State Department should insist that the personnel selected for the Mission are proposed and agreed to jointly by State and Army. In this case the additional question is presented of the desirability of such a Mission going until Mr. Kennan has returned and his report has been digested.

It is possible, however, that Mr. Royall contemplates that his Mission will be only a personal one, with personal advisers, and that

no

no report is to be made in which the names of any outside persons would be employed. If this is so, it is desirable to clarify it. In this case it would seem appropriate for the State Department to accept the Army Department's invitation and send along one or two persons.

In view of the importance of this matter it is recommended that you discuss it with Secretary Royall.

Frank G. Wisner

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : NA - Mr. Allison DATE: June 7, 1948

FROM : NA - Mr. Fearey

SUBJECT: Comment on Attached (Handling of FEC-230)

Owen left the attached Friday, saying that it was hoped that Whitman might receive instructions by this coming Friday when the matter will come up again in Committee No. 2. Since you will probably wish to read the paper through I will not attempt to summarize it, but will merely offer the specific comments that occurred to me. The numbers correspond with those pencilled in the margin.

1. There would seem really to be only two alternative courses of action. The first would be for the U.S. member to state that the U.S. Government's position is one of support for the deconcentration program now being carried out by General MacArthur in Japan (including the Review Board set up following U.S. review of FEC-230), that it does not consider an FEC policy decision necessary or desirable at this advanced stage of the program, and that while it would not oppose the preparation of a paper by other members it would be forced to veto in the Commission any paper which might impair the present program. ~~The~~ The argumentation under alternatives "1" and "2" of Whitman's paper, it seems to me, effectively disposes of this course. The second is that set out in his alternative "3".

2. (Page 1 of proposed policy statement.) Suggest the sentence end after "pattern".

3. The stipulation that deconcentration should not be carried to a point where it would cause a "material" (it used to be "substantial") reduction in operating efficiency has always bothered me. Supporters of the program have long claimed that breaking up of the big combinations will increase efficiency. If they mean what they say they should be willing to delete "material". At the very least it might be changed to "significant".

4. Setting a date a year and a half off scarcely seems consistent with the objective of "minimizing the period of business uncertainty". Suggest June 30, 1949, if at all possible.

5. How does one sell securities so as "to secure . . . the greatest possible measure of managerial skill"? The write-in may be closer to the intended thought, though I am not happy about it either. My preference would be for deletion.

6. Suggest

6. Suggest "Japanese laws, with legal and administrative machinery for their enforcement, should be approved . . ."

7. Same point as in "4" above.

8. Suggest introductory phrase be deleted. Some of the succeeding items have nothing to do with encouraging competition among credit institutions.

9. Do the provisions in our corporate law regarding shareholders' powers and their right to information extend to creditors? I thought creditors' rights and powers were set out in the terms of the loan.

10. I should think this type of situation would be covered by paragraph 3(d). If not it would seem important enough to put in the section on Required Action.

If any of these points seem sound I could probably clear them up quite quickly with Whitman and Owen. I don't know what their plans are for clearance with the Army. This paper is really a revision of FEC-230, on which there was so much difficulty with the Army six months ago. Clearance with the Army would be clearly indicated if the paper is to serve as the new "background guidance" on deconcentration envisaged in the Kennan report.

NA:RAF;pm

STANDARD FORM NO. 64

CONFIDENTIAL

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Saltzman - O

DATE: June 7, 1948

FROM : Mr. Whitman - OE

SUBJECT: My Memorandum of June 2 Entitled "Handling of FEC-230 at the FEC".

1. I attached to subject memorandum a copy of a proposed policy statement on deconcentration in Japan, and recommended that the U.S. member of an FEC drafting sub-committee informally try to get the sub-committee to adopt this statement rather than prepare a paper of its own. If you approve this recommendation, I wish to suggest the following procedure for your consideration in connection with its implementation:

(a) It would appear desirable, if it is decided to follow the course of action recommended in my June 2 memorandum, to ask the Army Department if it has any objection to this course of action or any over-all objection (as opposed to suggested drafting changes) to make concerning the proposed paper. Failing such objection, we would submit a copy of the deconcentration policy statement in question to top SANACC at the same time that it was informally submitted to the FEC drafting sub-committee. Prompt SANACC consideration of this paper should indicate in a very few weeks at most what changes, if any, will have to be made in order to render it acceptable to SANACC. FEC sub-committee consideration of the paper is likely to be at least equally prolonged, so that the U.S. member could introduce any changes desired by SANACC while the paper was still in this sub-committee.

(b) SANACC would then have to send the paper out to SCAP for comment. At approximately the same time, the paper would probably be forwarded by the FEC drafting sub-committee to Committee #2. Consideration of the paper in Committee #2 would, in all likelihood, be sufficiently prolonged to enable the U.S. member of this Committee to introduce any changes suggested by SCAP.

(c) Final SANACC consideration of the paper could be initiated immediately after receipt of SCAP's comments.

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It would seem reasonable to expect that such consideration might be concluded in time to enable the U.S. member of the FEC to vote on the paper when it reached the Commission from the Steering Committee. If not, the U.S. member could delay a vote on the paper in the Commission for a few weeks.

2. It would, of course, be preferable if U.S. Governmental consideration of the paper could precede, instead of parallel, its consideration by the FEC. However, the unwillingness of the FEC member governments to delay preparation of a deconcentration policy statement any longer would seem to make this impossible. Once such a statement has been prepared in FEC sub-committee, it should, however, be possible to prolong consideration of the paper within the FEC machinery sufficiently to make possible the procedure outlined above.

OE:

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STANDARD FORM NO. 64 CONFIDENTIAL

Office Memorandum • UNITED STATES GOVERNMENT

TO : O - Mr. Saltzman

FROM : OE - Mr. Whitman RHW

DATE: June 2, 1948

SUBJECT: Handling of FEC-230 at the FEC.

THE PROBLEM

FEC Committee #2, at its meeting of May 27, instructed a drafting subcommittee to prepare a condensed version of FEC-230 and report it to Committee #2 for discussion. The U.S. Delegation to the FEC should be instructed as to the action to be taken by the U.S. members of Committee #2 and of its drafting subcommittee.

ALTERNATIVE LINES OF ACTION

1. The first alternative would be for the U.S. member of Committee #2 to state that his Government does not consider a paper on deconcentration policy to be necessary and that it will veto any such paper that may be produced by the FEC. Such a statement would not deter the other Committee members, who are determined to force action on this issue, from preparing a paper, and from forwarding it to the Commission for approval. A U.S. veto of that paper in the Commission would produce a great deal of resentment on the part of the other FEC governments towards the United States. These governments would not accept the U.S. explanation that a paper was unnecessary, and would consider that the U.S. action substantiated rumors of a U.S. repudiation of deconcentration policy in Japan. The consequent reaction in the Far East would be unfavorable to both Japan and the United States. The effect on public attitudes in Japan towards the deconcentration program would also be unfortunate, to say the least. Finally, the action might be widely misunderstood within the United States by groups and persons favorable to anti-trust policy.

2. An alternative line of action would be for U.S. personnel to abstain from participation in the work of the drafting subcommittee, and to try to continue delaying tactics in Committee #2. The U.S. member of Committee #2 has already persuaded the Committee to delay action on FEC-230 for over 6 months. It is not considered feasible to prevent the Committee from considering this paper any longer, either by persuasion or by promises. Further delaying tactics would fail to prevent the Committee's preparation of a paper on deconcentration, and U.S. non-participation in the drafting of that paper would probably confront the U.S. member of the Commission with the necessity of taking action at a later time on a badly drafted paper. His action would then have to consist of either the highly undesirable course of vetoing the paper or the extremely difficult course of revising it in the Commission. In the meantime, a U.S.

policy

policy of aloofness and attempted delay would prolong the present situation in which the United States, although the principal world-wide exponent of an anti-monopoly policy and the chief occupying power in Japan, has surrendered its natural role of leadership in the FEC on this important policy issue; this situation redounds to our disadvantage without as well as within the FEC.

3. A third line of action would be informal U.S. working level participation in the drafting subcommittee's discussion of FEC-230, in an attempt to get the subcommittee to draft a paper which would be acceptable to the United States. A draft paper is attached which a U.S. participant might ask the subcommittee to use as a basis for its report to Committee #2. Although this paper would not be submitted an an official U.S. view, it is believed consistent with the Department's present Japanese policy. It is also believed that the drafting subcommittee could be persuaded to accept it: the members of this subcommittee are moderate in their views, and would probably be inclined to accept even a relatively short U.S. statement such as this rather than draft one of their own. It is possible, of course, that, even if the drafting committee adopted this paper, the U.S. member of FEC might be compelled to vote against it because of future U.S. inter-departmental differences of opinion concerning the paper. This possibility is believed relatively slight, however, in view of the very general language of the attached paper. If the U.S. member of FEC were forced to vote against this paper, or one very similar to it, earlier U.S. participation in its development might be a cause of embarrassment to U.S. personnel in the FEC. This embarrassment would be slight, however, compared with the alternative and more certain embarrassment that would result from apparent U.S. repudiation of a policy to which this Government is generally committed and which it is urging on all the rest of the world.

RECOMMENDATION.

It is recommended that the third of the alternatives stated above be approved, and that the attached draft policy paper be authorized as the basis for discussion in the FEC working subcommittee.

OE: RHWhitman:mw

IR NA FE

STANDARD FORM NO. 64

Confidential

Office Memorandum • UNITED STATES GOVERNMENT

TO : NA - Mr. Allison DATE: June 7, 1948

FROM : FE - Mr. Hamilton

SUBJECT: Comment on Attached (Handling of FEC 230)

1. In view of the history of FEC 230, it seems clear that Army concurrence would be required on any procedure.

2. Does this proposed paper conform to existing Japanese law which is now being applied? It seems to me that whatever paper is drawn up should reflect only essential provisions or preferably simply the fundamental concept and underlying purpose of that law.

3. As a general rule, I think that any papers drafted for possible presentation to the FEC should go no farther than statements already made in the Basic Post-Surrender Policy for Japan, adopted by the FEC June 19, 1947. This basic paper provides in Part IV - ECONOMIC, paragraph 2 entitled "Promotion of Democratic Forces" that it shall be the policy of the Supreme Commander: "b. To require a program for the ~~disposition~~ dissolution of the large industrial and banking combinations accompanied by their progressive replacement by organizations which would widen the basis of control and ownership." The key sentence of the proposed paper attached hereto goes considerably farther and undertakes "to provide assurances against the recurrence of" excessive concentrations of economic power in Japan.

4. I still haven't seen a draft that looks good to me. I strongly oppose authorizing a U.S. participant in a committee to introduce a paper which "would not be submitted as an official U.S. view". The paper should be approved before its introduction to a committee of representatives of foreign governments.

I would like to see a paper drafted on the basis of paragraphs 2 and 3 above.

5. If statements and principles along the lines of the attached draft have been incorporated in treaties to which the United States is a party, I would like to see the statements in question.

M.M.H.

FE:MMHamilton:fhh

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : FE - Mr. Butterworth

FROM : NA - Mr. Allison

DATE: June 10, 1948

SUBJECT: Proposed Handling of FEC-230.

There are attached herewith two memoranda from Mr. Whitman to Mr. Saltzman making certain recommendations regarding the handling of FEC-230, the paper on the deconcentration policy in Japan. Mr. Whitman also submits with his memoranda a revised FEC-230 which is considerably shorter and more general in character than the original paper. It also avoids many of the bad features of the original paper and specifically provides against confiscatory policies and excessive purging of former Zaibatsu personnel. Mr. Whitman recommends that the Army Department be asked whether or not it has any objections, other than drafting changes, to make concerning the proposed paper, and, failing such objections, he recommends that this copy of the statement in question be submitted to Top SANACC at the same time that it is informally submitted to the FEC drafting subcommittee which has been set up to consider the original FEC-230.

I am also attaching herewith memoranda by Mr. Hamilton and Mr. Fearey commenting on the paper and the proposed procedure. Mr. Hamilton expresses strong opposition to authorizing a U.S. participant in a committee to introduce a paper which would not be submitted officially. I agree with him and feel that unless we can get speedy agreement in the Department of the Army and in State to a paper we should not submit it in any form to the FEC. I personally have great doubts as to whether or not the Department of the Army will approve the submission of any paper.

I have made an informal check with the British, Australian and New Zealand representatives on the FEC in an effort to ascertain their feelings about the necessity of a paper on this subject in view of the fact that the law for the dissolution of the Zaibatsu has already been passed by the Japanese Diet and is now in effect. It was the consensus that the member Governments of the FEC would take it amiss and be extremely critical if the FEC was not allowed to pass a policy decision on this matter. However, all three individuals agreed that the paper need not be lengthy or detailed and that it should be confined primarily to general principles. Mr. Powles of the New Zealand Delegation suggested informally that a good impression would be made if the U.S. would submit to the FEC a report on the present situation with regard to deconcentration policies in Japan. He said this report might well be based upon the relevant portions of the

Basic

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Basic Post-Surrender Directive and show how this had been implemented to date by the laws passed in Japan and the method of carrying out the provisions of the laws. If such a statement were properly prepared, it was Mr. Powles' opinion that it could be followed up by the introduction of a relatively brief paper which would give the FEC an opportunity to express its approval of what was already being done in Japan.

I feel with respect to the paper presented by Mr. Whitman that, while it is a vast improvement over anything that has yet been prepared, it still goes into too much detail and that it could be greatly shortened. My own feeling is that with a few additions to paragraph 1 of the paper which might bring in some of the more general principles treated elsewhere in the paper we would have a document sufficient for presentation to the FEC. However, in the interest of finding out as soon as possible whether or not the Army would be inclined to agree to the presentation of any paper, I suggest that Mr. Saltzman be advised that, while FE and NA cannot at this time give final approval to the draft paper submitted, they have no objection to this draft's being submitted to the Department of the Army for its comments. It should also be made clear to Mr. Saltzman that FE and NA do not agree to any paper's being presented in any way to the FEC by a U.S. representative until it has received the approval of this Government. If you approve these recommendations I will inform Mr. Claxton orally so that immediate steps can be taken to give the paper over to the Department of the Army.

NA:JMAllison/pm

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : O - Mr. Rudlin

FROM : OE - Mr. Owen

DATE: July 6, 1948

SUBJECT: Attached.

1. Here, for your and Phil's advance information, is a copy of the "package" which we have just transmitted officially to NA. This "package" includes:

(a) memo to Saltzman,
(b) enclosed proposed memo to Marshall,
(c) enclosed proposed deconcentration policy statement.

2. I am revising (in the light of SCAP's cable of June 30) the statement summarizing deconcentration actions taken to date which is referred to in the memo to Mr. Saltzman, and will send you a copy for your files as soon as it is re-typed.

3. I am going to New York Thursday afternoon, and will be back Monday morning.

894.602/6-2948

1895

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : O - Mr. Saltzman

FROM : OE - Mr. Whitman

DATE: 29 June 1948

SUBJECT: FEC Policy Paper on Deconcentration

1. FEC Committee #2, at its meeting of May 27, instructed a drafting sub-committee to prepare a condensed version of FEC-230 and report it to Committee #2 for discussion. The drafting sub-committee has not yet met.

2. On June 2, OE reported this to NA and to O, stating that there appeared to be three alternative courses of action open to the U.S. members of Committee #2 and of its drafting sub-committee. These alternatives may be defined substantially as follows:

(a) The first alternative would be for the U.S. member of Committee #2 to try to prevent preparation of an FEC paper on deconcentration by stating that his Government does not consider a paper on deconcentration policy to be necessary and that it will veto any such paper which may be produced by the FEC. Such a statement would not deter the other Committee members, who are determined to force action on this issue, from preparing a paper, and from forwarding it to the Commission for approval. A U.S. veto of that paper in the Commission would produce a great deal of resentment on the part of the other FEC governments towards the United States. These governments would not accept the U.S. explanation that a paper was unnecessary, and would consider that the U.S. action substantiated rumors of a U.S. repudiation of deconcentration policy in Japan. The consequent reaction in the Far East would be unfavorable to both Japan and the United States. The effect on public attitudes in Japan towards the deconcentration program and toward SCAP's prestige would also be unfortunate, to say the least. Finally, the action might be widely misunderstood within the United States by groups and persons favorable to anti-trust policy.]

(b) The second alternative would be for U.S. personnel not to take part in the preparation of an FEC paper on deconcentration. They would abstain from participation in the work of the drafting sub-committee, and might try to continue delaying tactics in Committee #2. The U.S. member of Committee #2 has already persuaded the Committee to delay action on FEC-230 for over 6 months. Further delaying tactics would undoubtedly fail to prevent the Committee's preparation of a paper on deconcentration, and U.S. non-participation in the drafting of that paper would probably confront the U.S. member of the Commission with the necessity of taking action at a later time on a badly drafted paper. His action would then have to consist of either the highly undesirable

course

course of vetoing the paper or the extremely difficult course of revising it in the Commission.

(c) A third line of action would be U.S. participation in the drafting sub-committee's discussion of FEC-230, in an attempt to get the sub-committee to prepare a paper which would be acceptable to the United States. A draft paper is attached which it is believed that the U.S. member could persuade the sub-committee to use substantially as its report to Committee #2. To do this, he might have to submit the attached paper to the sub-committee, or he might be able to achieve his objective without doing more than using this paper as a standard to guide his participation in the sub-committee's work. It is believed that this paper is consistent with the U.S. Government's present Japanese policy, and that it represents the further guidance to SCAP concerning deconcentration which the Department considers is contemplated in Section IV, paragraph 2, of the policy paper on Japan recently submitted to the National Security Council.

OE recommended to NA and to O that alternative (c) be adopted.

3. On June 10, NA, with FE concurrence, expressed the view that there should be presented to the FEC: (a) a description of actions taken to date in implementing the deconcentration program in Japan, for the information of the FEC; and, if necessary, (b) a short policy statement for adoption by the FEC which would have the effect of confirming these actions. NA stressed, however, that no paper should be introduced into the FEC by a U.S. representative until it had received final U.S. Governmental approval. To save time, NA suggested submitting OE's proposed draft policy paper on deconcentration to the Army Department immediately, although noting that it considered this draft too long.

4. OE agreed with the NA recommendation that a review of actions taken to date in Japan be submitted to the FEC, and further agreed with Mr. Saltzman's subsequent suggestion that this review be submitted to the FEC before any policy statement was submitted in order to persuade FEC that such a policy statement was unnecessary. In view, however, of the uncompleted state of the deconcentration program in Japan, and of the consequently dubious prospects of this U.S. statement's persuading the FEC governments, OE also concurred in the NA recommendation that immediate action should be taken to discuss the proposed draft policy statement with the Army Department.

5. On June 23, Mr. Wisner informed Under Secretary of the Army Draper that he wished to send him a letter forwarding the attached draft "as the basis for discussions looking towards an agreed policy." Mr. Draper answered that he did not consider a policy paper on deconcentration to be necessary: SCAP had told him that he did not need policy direction on this subject; and Mr. Draper felt

that

that the further guidance on economic reform programs required under Section IV, paragraph 2, of the NSC Japan policy paper was not meant to include guidance on deconcentration. When it was indicated to Mr. Draper that the possible need for a paper was thought to arise out of the FEC situation described above, rather than out of SCAP's desire for such a paper, Mr. Draper stated that the U.S. Government should veto any paper the FEC might prepare. Mr. Draper recalled the instruction to veto any such paper which was given to General McCoy earlier in the year by the State and Army Departments (although it was specifically understood at the time that this instruction was designed to avoid FEC action until a U.S. position on deconcentration policy could be formulated rather than ad infinitum). Mr. Wisner concluded, as a result of this conversation, that despatch of the letter in question to Mr. Draper should only be undertaken after the State Department had decided that it would, if confronted with a negative reply from Mr. Draper, press the matter at a higher level in the Army Department.

6. It is recommended, therefore, that the Secretary be asked to approve the attached memorandum. Upon his approval of that memorandum, the attached draft deconcentration statement could be sent to Mr. Draper for his consideration, along with a letter outlining the proposed U.S. course of action in the FEC.

OE:HOwen:mw IR NA FE

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DEPARTMENT OF STATE

ASSISTANT SECRETARY

29 June 1948

To: S - Mr. Secretary

From: O - Charles E. Saltzman

1. The Problem. In May, 1947, the U.S. Government submitted to the Far Eastern Commission a proposed policy statement on Japanese deconcentration, which came to be known as FEC-230. In October, 1947, the U.S. Government suspended consideration of this statement within the Commission as a result of U.S. Governmental reconsideration of Japanese deconcentration policy. That U.S. reconsideration has now been completed, and SCAP is currently proceeding with a deconcentration policy somewhat more moderate than that stated in FEC-230. In the meantime, the FEC, impatient at U.S. delay in regard to consideration of FEC-230, has decided to prepare a new policy statement of its own on Japanese deconcentration. If - as seems probable - the U.S. Government fails to persuade the FEC that such a statement is rendered unnecessary by SCAP's actions in this field to date, it will face essentially two alternatives:

(a) It can refuse to participate in the FEC's preparation of a deconcentration statement. In this event, the FEC's statement will probably be more extreme than the U.S. Government's present position, and the U.S. Government may have to veto that statement.

(b) It can participate in the FEC's preparation of a statement, and so get the FEC to adopt a statement acceptable to the United States. This will require that the U.S. member have available a statement prepared by the United States, either to use as a standard in judging the Commission's work or to submit to the Commission for approval.

2. Action Taken. To meet the possible need outlined under 1(b), above, a draft statement on deconcentration policy has been prepared within the State Department. This statement differs from FEC-230 in two major respects:

(a) The points in FEC-230 which aroused controversy have been modified; these modifications are believed to meet the major objections previously voiced to FEC-230's provisions regarding such matters as the treatment of individual Zaibatsu and the impact of the deconcentration program on Japanese economic recovery.

(b) The

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CONFIDENTIAL

(b) The present paper is very much shorter than FEC-230; it now comprises only a statement of general principles, without reference to the steps to be taken in implementing these principles. It has been reduced to a minimum, both in length and in substance.

This revised paper thus merely confirms SCAP's existing program with respect to deconcentration; it will not require changes in, or additions to, that program. Like SCAP's present program, it is consistent with U.S. anti-monopoly policies, which are currently receiving widespread and bi-partisan support in this country.

On June 23, my Deputy, Mr. Wisner, told Mr. Draper that he would like to send him this draft deconcentration policy statement as a basis for discussion. Mr. Draper answered that SCAP had told him he did not need guidance on this subject, and that he (Mr. Draper) felt a deconcentration paper was unnecessary. He felt that the U.S. should veto any paper the FEC might produce on this subject.

We feel that a U.S. veto of an FEC paper on deconcentration would be widely - even though falsely - interpreted as confirmation of the rumored U.S. repudiation of deconcentration policy in Japan. It would thus antagonize the Far Eastern Governments and peoples, which view the Japanese Zaibatsu with distaste and which already suspect U.S. policy in Japan. It would produce a negative Japanese attitude towards SCAP's deconcentration program, and might indicate to the Japanese a rift between SCAP and the U.S. Government. Finally, it would arouse widespread concern within the United States among groups and persons favoring anti-trust policies. For all these reasons, we feel that submission of a U.S. paper to the FEC is preferable to a U.S. veto of a paper prepared by the FEC.

3. Recommendation. We wish to propose to Mr. Draper that:

(a) the U.S. Member of FEC Committee #2 should submit to the Committee a detailed statement of actions taken to date by SCAP and the Japanese Government in implementing the deconcentration program, and should suggest that these actions render an FEC policy statement on this subject unnecessary;

(b) if he fails to persuade FEC Committee #2 not to prepare a statement, the U.S. member should take such action as may be necessary to ensure that any statement adopted by the FEC is consistent with the draft policy statement prepared in the State Department or such modification thereof as may be agreed to within the U.S. Government.

We do not wish to make this proposal, however, unless the State Department is willing to urge it upon Secretary Royall if, as seems highly probable, it is rejected by Mr. Draper. Your approval of this proposal is therefore requested.

OE:HOwen:mw

CONFIDENTIAL

July
June 12, 1948

POLICY WITH RESPECT TO EXCESSIVE CONCENTRATIONS OF ECONOMIC POWER IN JAPAN

1. General Principles. The Japanese Government should be required in accordance with paragraph 2b, Part IV, of the "Basic Post-Surrender Policy for Japan", to terminate excessive concentrations of economic power in Japan and to widen the basis of control and ownership in Japanese industry. An excessive concentration of economic power is defined for purposes of this policy statement 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. Measures in implementation of this policy decision should be consistent with Japan's rapid attainment of a self-supporting status. Vigorous efforts should be made by SCAP and the Japanese Government to build up Japanese public support for the objectives herein set forth, so that their realization will be a permanent feature of an indigenous Japanese economic pattern.

2. Termination of Excessive Concentrations. SCAP should require that the policies specified below be carried out for the termination of excessive concentrations of economic power in Japan.

(a) Excessive concentrations of economic power should be separated effectively into separate individual enterprises which will be independent of each other and no one of which will be covered by the definition of an excessive concentration presented in paragraph 1. The separation of excessive concentrations should not, however, be carried out to a degree which, because of technological considerations, would cause a lasting reduction in operating efficiency. The target date for the complete formulation and public announcement of all measures to be taken with respect to specific excessive concentrations pursuant to this sub-paragraph should be June 30, 1949, so as to minimize the period

a high level board of qualified persons should be established within SCAP Headquarters to ensure that these provisions are fully observed.

period of business uncertainty associated with these measures.

(b) Those individuals who have exercised de facto controlling power in or over any excessive concentration of economic power, and persons acting on behalf of these individuals in such capacity as to be capable of contravening the intent of this policy, should be required to relinquish, and should be prevented from acquiring or re-acquiring such assets and positions of business and governmental responsibility as might enable them to hinder execution of any of the policies proposed in this paper. The number of persons subjected to the above provisions should be relatively small, and the provisions should not be administered in such manner as to deprive Japanese industry of persons with essential managerial or technical skills. Individuals covered by the above provisions should be indemnified for their divested assets in such a way as to avoid confiscation of property, provided that indemnification is not made in a way which will permit the recipient to re-acquire power which could be used to hinder execution of any of the policies envisaged in this paper.

(c) Securities and other property whose ownership is to be transferred as a result of the actions specified under a and b, above, should be sold to non-governmental purchasers in such a way as to secure a wide distribution of income and of ownership of the means of production and trade, without jeopardizing the retention or

Excessive concentrations which, for technological reasons, are not to be separated, and such enterprises as public utilities which do not lend themselves to competitive operation, should either remain privately owned under adequate public regulation or national and local governments should be allowed to purchase divested holdings in such excessive concentrations.

can

period of business uncertainty associated with these measures.

(b) Those individuals who have exercised de facto controlling power in or over any excessive concentration of economic power, and persons acting on behalf of these individuals in such capacity as to be capable of contravening the intent of this policy, should be required to relinquish, and should be prevented from acquiring or re-acquiring such assets and positions of business and governmental responsibility as might enable them to hinder execution of any of the policies proposed in this paper. The number of persons subjected to the above provisions should be [relatively small,] and the provisions should not be administered in such manner as to deprive Japanese industry of persons with essential managerial or technical skills. Individuals covered by the above provisions should be indemnified for their divested assets in such a way as to avoid confiscation of property, provided that indemnification is not made in a way which will permit the recipient to re-acquire power which could be used to hinder execution of any of the policies envisaged in this paper.

(c) Securities and other property whose ownership is to be transferred as a result of the actions specified under a and b, above, should be sold to non-governmental purchasers in such a way as to secure a wide distribution of income and of ownership of the means of production and trade, without jeopardizing the retention or acquisition of the requisite managerial skills. The national and local governments should, however, be allowed to purchase divested holdings in excessive concentrations which are not to be separated for technological reasons, and in other enterprises such as public utilities which do not lend themselves to competitive operation. The target date for completion of the sale of divested assets should be December 31, 1949, so that new ownership of Japanese enterprises can

can be ~~promptly~~ established at the earliest possible date ~~which~~ new ownerships of Japanese enterprises which will have the freedom and the incentive to make a maximum contribution to Japanese recovery.

(d) In the application of measures specified above, the interests of nationals of members of the United Nations in Japan should be protected, in so far as this can be accomplished without contravening the basic intent of these measures. In this connection: (i) in so far as these measures may require the divestiture of property from nationals of members of the United Nations, the objective should be to provide such nationals with adequate, prompt, and effective indemnification for property divested; (ii) full records should be kept of any change in the status of their interests which may result from the application of these measures.

3. Provision Against Future Concentrations. The following measures are commended to SCAP for adoption by the Japanese Government, to ensure that excessive concentrations of economic power do not recur and to meet the requirement in the first paragraph of this policy statement that the basis of control and ownership in Japanese industry be widened. The most urgent of the measures stated in this paragraph are those specified in the first sub-paragraphs a,b,c, and d below; a target date of June 30, 1949, is suggested for execution of these urgent measures so that the duration of any uncertainties associated therewith may be reduced to a minimum.

(a) The number of independent sources of credit should be increased substantially, if this is not being brought about by actions taken pursuant to paragraph 2; this policy should not be carried out, however, to the point where the individual banks would be financially insecure because of their small size.

(b) Alliances between financial enterprises, and between financial and non-financial enterprises, which impede non-discriminatory access to sources of credit on the part of business enterprises should be broken, and the resumption of such alliances prevented.

(c) Laws

(c) Laws and practices through which the Japanese Government has favored the existence or growth of private monopolies should be terminated; to this end, appropriate action should be taken to terminate control associations and to modify or repeal legislation regulating the entry of new enterprises into any industry.

(d) Japanese laws, with legal and administrative machinery for their enforcement, should be enacted which will prohibit, among other things, types of business practices or arrangements which restrain competition, restrict access to markets, or foster monopolistic controls.

(e) Appropriate measures, such as a system of deposit insurance, should be taken to eliminate the preference of bank depositors for banks formerly associated with excessive concentrations of economic power; the Postal Savings System should not be operated in such a manner as unduly to divert the use of the savings of the Japanese people from the areas in which such savings originate; all vestiges of private ownership of the Bank of Japan should be eliminated; such measures should be taken as are necessary to ensure non-discriminatory access to commercial credit by business enterprises; and employees performing responsible functions in the Ministry of Finance and government banks should be forbidden to hold the securities of any financial institution, and should be ineligible for employment by private financial institutions for two years after they leave government employment.

(f) Japanese patent law and patent procedure should ensure that patents in Japan cannot be used to support the establishment or perpetuation of excessive concentrations of economic power.

(g) Changes in Japanese corporate law which would contribute to the growth and survival of competitive enterprise in Japan should be

be effected particularly in regard to such matters as interlocking officerships, directorships, and auditorships; stockholdings and stock dealings of officers, directors, auditors, and other corporate insiders; and inter-corporate stockholdings. Appropriate modifications should be made in Japanese corporate law to ensure that security holders are equipped with sufficient powers and supplied with sufficient information effectively to exercise their rights as owners of Japanese enterprises.

(h) Within the context of other major relevant policies, Japanese tax and inheritance laws should favor the wide distribution of income and ownership, and the growth of competitive private enterprise envisaged in this paper.

(i) Small entrepreneurs should be assisted by appropriate public services, so that they may compete more effectively with large scale business.

(j) Appropriate measures should be taken to prevent relations between Japanese Government personnel and private enterprises which would impair non-discriminatory administration of laws and governmental policies.

DEPARTMENT OF THE ARMY
STAFF MESSAGE CENTER

INCOMING CLEAR MESSAGE

PRIORITY

JAPA
~~NWAB~~
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From: CINCFE Tokyo Japan

To: CSCAD RA

Nr: Z 23196

16 September 1948

Reference your radio WCL 25650 following is complete text of press statement request.

"The SCAP Deconcentration Review Board today met for the first time with the Japanese Holding Company Liquidation Commission for a discussion of problems of procedure in implementation of Public Law Number 207 generally referred to as the 'Deconcentration Law' ".

"At the suggestion of General MacArthur the board members discussed freely the principles of deconcentration and the basic elements of anti-monopoly legislation as internationally recognized. It was emphasized that there is no change in the basic policy of deconcentration in Japan as initially announced by SCAP Headquarters. One of the primary functions of the Deconcentration Review Board is to advise the Supreme Commander on the effect of any specific deconcentration plan on the Japanese economy."

"The board offered the following four basic principles to be followed in implementing the Deconcentration Law:"

1 "The administrative policy and procedure under Public Law 207 should be required to conform to the following interpretive provisions:"

A "That no order should be issued under the

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Deconcentration Law unless there is a showing of a prima facie case that the company 'restricts competition or impairs the opportunity for other to engage in business independently in any important segment of business'. In the absence of such a 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 in 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 Holding Company Liquidation Commission authority to issue and order under Law Number 207.

D "That the action a company is ordered to take by the Holding Company Liquidation Commission under Law Number 207 should be directly related to the facts upon which that company was determined to be an excessive concentration."

"It is expected that the foregoing principles which implement the intial basic policy without change will assist in accelerating the processing of the cases now before the Holding Company Liquidation Commission."

"The meeting was attended by the Deconcentration Review Board: Mr Roger S Campbell, Mr Joseph Robison, Mr E J Burger, Mr William R Hutchinson, Mr B D Woodside; Major General William F Marquat, Chief of Economic and Scientific Section; Mr Alva Carpenter, Chief of Legal Section; Mr E C Welsh, Chief of Anti-Trust and Cartels Division, Economic and Scientific Section. The Holding Company Liquidation Commission was represented by: Mr T Sasayama, Chairman; Mr I Noda, Executive Commissioner;

U. S. GOVERNMENT PRINTING OFFICE: 1947—O-759854

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[G.]

Mr Georgie Kashima, Executive Commissioner; Mr U Kurumatani, Executive Commissioner; Mr Ichikawa, Executive Commissioner; K Moroi, Ordinary Commissioner; Y Wakimura, Ordinary Commissioner; R Minobe, Ordinary Commissioner."

ACTION: CAD

INFO: CAD (STATE), OUS

MC IN 55901 (16 Sep 48) DTG:161057Z dgk/A

U. S. GOVERNMENT PRINTING OFFICE: 1947—O-759854

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

UNITED STATES POLITICAL ADVISER FOR JAPAN

No. 619

Tokyo, September 20, 1948.

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DC/R
File

Subject: Policy Announced by Deconcentration Review Board.

THE HONORABLE
THE SECRETARY OF STATE,
WASHINGTON.

Sir:

1/ I have the honor to enclose a copy of a press release by the Public Information Office of this Headquarters entitled "SCAP's Deconcentration Review Board and Holding Company Liquidation Commission Hold Meeting", and to report on the possible effect of that release on future deconcentration policy.

The Deconcentration Review Board, it will be noted, has submitted four basic principles to be followed by the HCLC in administering Law No. 207 of 1947, "Elimination of Excessive Concentration of Economic Power", which principles, according to Mr. R. S. Campbell, Chairman of the Board, constitute no change in the policy of this Headquarters.

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We find it difficult, however, to agree that there has been no change in policy. The Japanese press and the Anti-Trust and Cartels Section are of the same opinion, pointing out that the new statement has definitely relaxed the application of the Deconcentration Law. The first principle in particular seems to have had that effect; it requires that a prima facie case must be made to show that a company "restricts competition or impairs the opportunity for others to engage in business independently in any important segment of business", and thus apparently discards the standards on the basis of which designation for reorganization has hitherto been made.

Article 3 of the Deconcentration Law provides as follows:

> The HCLC shall designate excessive concentrations of power which exist on the effective date of this law or which shall have been in existence at any time between August 1, 1945 and the effective date of this law, and shall eliminate such excessive concentrations of economic power in the interest of public welfare.
>
> For this purpose, 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

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.

The HCLC shall designate excessive concentrations of economic power in accordance with the foregoing definition and in accordance with standards to be adopted under the provisions of Article 6.

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The last clause, according to Mr. E. C. Welsh, Chief of the Anti-Trust and Cartels Division of this Headquarters, was inserted because of the impossibility under a controlled economy of showing that any company "restricts competition". It was therefore concluded that certain standards, based on such factors as the control by any one company of a large proportion of the productive power in any industry, would be needed to determine excessive concentrations. The HCLC subsequently prepared such standards with the approval of this Headquarters (this Mission's despatch No. 126 of February 27, 1948), which standards became the basis on which designations for deconcentration were made. It is Mr. Welsh's belief that the Deconcentration Review Board has chosen to ignore this critical provision of the law. Although the Board has not offered any clarification of its statement, he feels that this action will make the drafting of any final order for reorganization extremely difficult. It is impossible, Mr. Welsh believes, to show that any company is currently restraining competition, since competition can not exist under a system of price control and allocation of funds and materials; and it may therefore be concluded that large numbers of companies, if not all companies, must be released from designation.

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The Japanese press and businessmen in Tokyo agree in substance with Mr. Welsh's views. Mr. J. P. Boyer, special representative of Westinghouse International Company, for instance, has expressed great satisfaction at what he considers a major change in policy, and one that will probably release Mitsubishi Electric, a pre-war
2/ Westinghouse affiliate, from designation. The Nippon Times, in discussing the recent announcement (clipping enclosed), reports that the principles "are expected to effect considerable changes in the plan for reorganizing holding companies." The same paper, in
3/ the enclosed editorial, notes that the announcement "should serve to allay the disquiet which has been manifest in certain quarters concerning the possible effects of the Deconcentration Law".
4/ Asahi, in an editorial, a translation of which is enclosed, concludes that "these principles will have far reaching effects upon the treatment of the 100 companies which are now subject to division".

At the meeting of the Deconcentration Review Board and the HCLC mentioned in the SCAP release, the HCLC was ordered to review in the light of the new standards the 180 orders it has thus far prepared. The Nippon Soda reorganization, which was discussed as a crucial test of policy in this Mission's despatch No. 596 of September 10, 1948, has accordingly been suspended pending further consideration. The Deconcentration Review Board has found the order in conflict with the new principles, and has ordered the HCLC to show conclusively that the company has operated in restraint of trade. The Board has

further

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further noted that, contrary to the second of the four principles, the Nippon Soda reorganization was based on a voluntary plan submitted by the company, and that operation in non-related lines of business was evidently considered evidence of excessive concentration. The Board has admittedly not limited itself to a finding of the effect of the reorganization on the Japanese economy, which finding was specified as the Board's main concern in its terms of reference.

5/ Hope is expressed in the Japanese press (see the enclosed translation of editorial from the Tokyo Shimbun) and by businessmen in Tokyo that the way has been opened for further revisions in SCAP policy. In particular, it is expected that the Anti-Monopoly Law (Law No. 54 of 1947) will be revised to encourage foreign investments by repealing restrictions on intercorporate holdings and international contracts. Such a revision would of course invalidate many of the orders for stock disposal handed down by the HCLC under the Deconcentration Law.

Respectfully yours,

W. J. Sebald.

Enclosures: att

1. Copy of Press Release from GHQ Public Information Office dated September 11, 1948.
2. Five Copies of Clipping from Nippon Times entitled "Four New Principles Change HCLC Plan dated September 15, 1948.
3. Five Copies of Clipping from Nippon Times entitled "The Deconcentration Review Board" dated September 15, 1948.
4. Copy of Translation of Editorial from Asahi dated September 15, 1948.
5. Copy of Translation of Editorial from the Tokyo Shimbun dated September 15, 1948.

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Enclosure No. 1 to Despatch No. 619 dated September 20, 1948 from the Office of the Political Adviser for Japan, Tokyo, on the subject, "Policy Announced by Deconcentration Review Board".

(COPY)

GENERAL HEADQUARTERS
FAR EAST COMMAND

Press Release: IMMEDIATE 11 September 48

SCAP'S DECONCENTRATION REVIEW BOARD AND HOLDING COMPANY LIQUIDATION COMMISSION HOLD MEETING

The SCAP Deconcentration Review Board today met for the first time with the Japanese Holding Company Liquidation Commission for a discussion of problems of procedure in implementation of Public Law No. 207, generally referred to as the "Deconcentration Law".

At the suggestion of General MacArthur the board members discussed freely the principles of deconcentration and the basic elements of anti-monopoly legislation as internationally recognized. It was emphasized that there is no change in the basic policy of deconcentration in Japan as initially announced by SCAP Headquarters. One of the primary functions of the Deconcentration Review Board is to advise the Supreme Commander on the effect of any specific deconcentration plan on the Japanese economy.

The board offered the following four basic principles to be followed in implementing the deconcentration law:

1. The administrative policy and procedure under Public Law 207 should be required to conform to the following interpretive provisions:

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 a 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 in 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 Holding Company Liquidation Commission authority to issue an Order under Law No. 207.

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

It is expected that the foregoing principles which implement the

initial

initial basic policy without change will assist in accelerating the processing of the cases now before the HCLC.

The meeting was attended by the Deconcentration Review Board: Mr. R. S. Campbell, Mr. Joseph Robinson, Mr. E. J. Burger, Mr. W. R. Hutchinson, and Mr. B. D. Woodside; Major General W. F. Marquat, Chief of Economic and Scientific Section; Mr. Alva Carpenter, Chief of Legal Section; Mr. E. C. Welsh, Chief of Anti-Trust and Cartels Division, Economic and Scientific Section. The Holding Company Liquidation Commission was represented by:

Mr. T. Sasayama, Chairman	Mr. Ichikawa, Executive Commissioner
Mr. I. Noda, Executive Commissioner	K. Moroi, Ordinary Commissioner
Mr. G. Kashima, Executive Commissioner	Y. Wakimura, Ordinary Commissioner
Mr. U. Kurumatani, Executive Commissioner	R. Minobe, Ordinary Commissioner

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Enclosure No. 2 to Despatch No. 619 dated September 20, 1948 from the Office of the Political Adviser for Japan, Tokyo, on the subject, "Policy Announced by Deconcentration Review Board".

NIPPON TIMES: Sept. 15, 1948 EGS

4 NEW PRINCIPLES CHANGE HCLC PLAN

To Re-Examine 275 Firms Under Designation for Applicability

The four basic principles, delineated by the SCAP Deconcentration Review Board to the Holding Companies Liquidation Commission last Saturday, are expected to effect considerable changes in the plan for reorganizing holding companies under the deconcentration law.

Many companies now under examination are expected to be released by the application of the four new principles.

The HCLC will re-examine the reorganization plans for 275 companies including 175 from the B and C classes and 100 others which are expected to be reorganized.

Under the new standards as set forth forth by the four principles the Commission is scheduled to re-examine the plan for dividing the Nihon Soda Company into six separate organizations at its general meeting to be held Thursday.

The first clause specifies that unless concrete facts are cited whereby a company "restricts competition or impairs the opportunities of others to engage in business independently," it should be removed from designation. Designations made heretofore by the Commission must be re-examined in this light.

The second clause stipulates that the mere possession of non-related lines of business does not bring a company within the scope of the law. The monopoly aspect of the Nihon Soda Company, for instance, is only applicable to its activities in connection with the manufacture of soda, leaving its other operations untouched. One hundred other concerns are expected to be similarly affected by this clause.

Under the third clause, the Commission is deprived of its power to issue orders under the deconcentration law, but merely on the reorganization plan submitted by the company itself.

According to the fourth clause, an order of the Commission must be directly related to the concrete facts specified in the first clause. Thus, should the cotton spinning section of a spinning and weaving company be found to come under the law, its other activities, such as silk weaving or rayon spinning, are not required to be reorganized.

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NIPPON TIMES: Sept. 15, 1948 EGS

The Deconcentration Review Board

The SCAP Deconcentration Review Board, in its first meeting with the Japanese Holding Company Liquidation Commission last Saturday, offered four basic principles to be followed in implementing the Economic Deconcentration Law. These four basic principles are of great importance in that they should serve to allay the disquietude which has been manifest in certain quarters concerning the possible effects of the Deconcentration Law.

Of course this disquietude had already been greatly ameliorated during the past several weeks as the actual unfolding of the deconcentration program progressively revealed that the ill effects originally feared in certain quarters would not materialize. The authorities concerned with the deconcentration program have always been very emphatic in pointing out that there never has been any change in the basic policy of deconcentration as initially announced by SCAP Headquarters. They have always maintained from the beginning that the deconcentration program would not injure Japan's productive capacity but would, to the contrary, help production by removing the clutch of the dead hand of monopoly, by eliminating inefficient companies through the stimulus of freer competition, and by providing wider incentives through the democratization of the nation's economic structure.

But however unjustified the suspicions, whether deliberately fed by malicious misrepresentations or whether naturally bred by the difficulty of acquiring detailed and specific knowledge, there have been these suspicions concerning the possible effects of the deconcentration program. These suspicions have died slowly, and their persistence has been a regrettable obstacle to the speedy rehabilitation of Japanese economy.

The appointment of the SCAP Deconcentration Review Board, made up of members with the kind of reputation they possess, was an assurance that the deconcentration program would not be abused. The recent announcement of the product of their work bears out this assurance. This announcement is welcome, because it should clear away any remaining unfounded doubt as to whether the deconcentration program could be misused in any way injurious to Japan's economic welfare.

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NIPPON TIMES: Sept. 14, 1948 EGS

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NIPPON TIMES: Sept. 15, 1948

EGS

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CONFIDENTIAL (FOR DEPT. USE ONLY) Enclosure No. 4 to Despatch No. 619 from the Office of the Political Adviser for Japan, Tokyo, dated September 20, 1948 on the subject, "Policy Announced by Deconcentration Review Board".

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EDITORIALS

ITEM 17 Operation of Deconcentration Law Vital - Asahi - 15 Sep 48.
Translator: J. Wada. (WM)

Full Translation:

Reconstruction and reorganization of enterprises is an important problem which must be solved immediately for the sake of Japanese economy. But, the execution of reconstruction and reorganization has been badly delayed in spite of efforts of quarters concerned. Recently, however, it has been predicted that the Economic Deconcentration Law will be enforced in a more lenient way than originally decided. This, it is believed, will greatly contribute to the solution of the problem.

The problem of reconstructing and reorganizing enterprises was brought up in the form of disavowal of indemnities to munitions enterprises in July, 1946 and was expected to be completed before the end of 1947 at the latest. However, the problem of economic deconcentration, which came to the fore in July, last year, has brought many direct and indirect restrictions upon the execution of reconstruction and reorganization. There have been no prospects of completing reconstruction and reorganization until now. Instead, the inflation has accelerated and the effect of the cancellation of indemnities to munitions companies has been reduced while the new accounts of enterprises have suffered large deficits. These conditions are now endangering the foundations of reconstruction and reorganization.

Therefore, it is earnestly hoped that economic deconcentration will be completed as soon as possible, and that enterprises will be able to make fresh starts under stabilized conditions.

The Economic Deconcentration Review Board of GHQ and the Holding Company Liquidation Commission of the Japanese Government have held a meeting for the first time, and the former has presented four fundamental principles for enforcing the Economic Deconcentration Law. Each of the principles presented is very appropriate and clarifies the constructive meaning of the law, sweeping away the fears long held by the interested parties. It can be easily imagined that these principles will have far reaching effects upon the treatment of the 100 companies which are now subject to division.

Since measures to prevent the evils of monopoly are already set by the Antimonopoly Law, mechanically dividing big enterprises into small units will not serve the cause of economic democratization. As everyone knows, big enterprises have their own merits. Disbanding big enterprises and eliminating the merits of big organizations will impede the natural course of economic development. Of course, if there is positive evidence that "a company restricts competition or impairs the opportunities of others to engage in business independently in an important industrial field", the measure of dividing the enterprise into small units will become necessary in the light of the purport of

the Economic

the Economic Deconcentration Law. The Antimonopoly Law need not necessarily be applied.

We believe that the principle of free enterprise, particularly free creation of enterprises, will hardly be affected, even if big enterprises of the present scale are permitted to exist. If it should be difficult to establish new enterprises, this must be attributed to such general causes as small markets and lack of materials and funds. It would be unreasonable to think that the situation had been caused by pressure of big enterprises. Further, fostering medium and small enterprises is one of the pending problems, but large and small enterprises naturally have different fields of activities. Even in the same business field, medium and small enterprises have a chance of favorably competing with large ones by specialization.

The problem of combining unrelated lines of businesses has been a moot one. It was clarified, in this connection, that combinations of several lines of business, in themselves shall not be regarded as excessive economic concentration. This is a welcome decision. In this country, where enterprises command only small markets, multilateral management is an indispensable condition to increase the ability of enterprises to resist business depression and to allow new enterprises to be established. It has been characteristic of industrial development in this country to produce a commodity on a trial basis with techniques and funds of big enterprises and then to organize that production into an enterprise in the full sense of the word, if trial production proves successful. This point must be remembered.

The above are the keypoints of the fundamental principles presented. The principles are welcome since they have cleared all the existing obstacles and the speedy completion of economic deconcentration has been made possible. This does not mean, however, that these principles alone are sufficient to attain effective reconstruction and reorganization. The following three problems still remain to be solved:

Revaluation of fixed assets: At present, fixed assets are valued according to book prices. This is causing many troubles in business circles. Underdepreciation of assets and the taxation of excessive profits are a particular threat to endanger enterprise management. Therefore, it is a unanimous opinion that revaluation of fixed assets should be effected sooner or later. The only point of controversy is the time and manner to do it. This problem must be solved somehow so that reconstruction and reorganization may be attained.

The second problem, disposition of the deficits of new accounts: The new account deficits of the coal industry alone amount to 20,000,000,000 yen and other industries also have considerable deficits. If these deficits are allowed to accumulate, further reorganization will be unavoidable. It is absolutely necessary, therefore, that managements be reconstructed to prevent future deficits and that the existing deficits be dealt with properly to relieve enterprises of the burden of deficits.

The third problem, increased captial of enterprises: Enterprises are being pressed by the necessity of increasing their capital by tens of billions of yen to renew and repair equipment. However, it is very difficult to raise such a large amount, now that capital accumulation is very slight. But, if the proposed reconstruction and reorganization is impossible without increased capital, the situation must not be left to run its course.

On this occasion when a step forward has been made in economic deconcentration, those concerned should have a clear perspective of the reconstruction and reorganization of enterprises and exert more serious efforts.

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CONFIDENTIAL

Enclosure No. 5 to Despatch No. 619 dated September 20, 1948 from the Office of the Political Adviser for Japan, Tokyo, on the subject, "Policy Announced by Deconcentration Review Board".

(COPY)

EDITORIALS

ITEM 19

Urgent Antimonopoly Law Revisions Impending - Tokyo Shimbun- 15 Sep 48. Translator: J. Ide. (WM)

Summary:

It is reported that the Antimonopoly Law revision will soon be materialized. One of the important problems in this revision is to mollify the prohibition on international agreements and contracts for the purpose of paving the way for the introduction of foreign capital. Another problem is the demand for alleviating the prohibition and restriction on the acquisition of stocks.

The fundamental objective of the Antimonopoly Law is to develop a sound and democratic economy with fair and free competition. No matter how many domestic laws may be created for this purpose, we will be late in participating in international transactions if we should strictly observe this law, since various cartel contracts do exist in international economy. Therefore, those enterprises which can participate in advantageous international trade should be given special consideration.

Furthermore, it is hoped that various restrictions on the conclusion of export agreements for our exporters will be abolished in view of the financial instability of our exporters and the lack of political stability in the Far Eastern districts, our best customers. Since we do not have access to sufficient data to judge the international situation correctly, many doubtful points will remain unsolved. Under these circumstances, it is urged that the Fair Trade Commission pay special attention to Article 6 of the Antimonopoly Law from the viewpoints of actual experiences, lest another revision prove necessary.

Another point which should be revised at this time is the restriction on the acquisition of stocks. Some circles are demanding that this provision must not be applied to foreign corporations, as the result of their great hopes for private foreign capital. In order to preserve the dignity of law and introduce sound foreign captial into our country, foreign corporations should be placed on a levelwith domestic concerns. In introducting foreign capital, the acquisition of stocks by foreign corporations will soon become an important issue. In this case, such a restriction will prove a big obstacle to the smooth introduction of foreign credit. If we treat foreign corporations discriminately, our businessmen will begin evading the law, and the effect of the Antimonopoly Law will be nullified. Therefore, it is urged that the restriction on acquisition of stocks be alleviated, not formally but substantially.

At all events, we sincerely hope to make the Antimonopoly Law more effective, since the acute necessity of democratizing our economy has alienated this law from actual economic conditions.

-0-

CONFIDENTIAL

Form DS-302
(7-2-46)

DIVISION OF
COMMUNICATIONS AND RECORDS
TELEGRAPH BRANCH

DEPARTMENT OF STATE

INCOMING TELEGRAM

PLAIN

9/21 Barnett

ACTION COPY

To: ITP for action

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9R-Vernon

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Action: OFD

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DIVISION OF OCCUPIED AREAS
ECONOMIC AFFAIRS file

SEP 21 1948

TO ED 9/20

DEPARTMENT OF STATE

Control 6484

Rec'd September 20, 1948
5 a.m.

OFFICE OF FINANCIAL AND DEVELOPMENT POLICY
SEP 21 1948
DEPARTMENT OF STATE

INTERNATIONAL RESOURCES DIVISION
SEP 23 1948
DEPARTMENT OF STATE

FROM: Shanghai

TO : Secretary of State

NO : 2060, September 20

Following Central News Agency item datelined Tokyo September 17. "The Economic Deconcentration Law aimed at breaking the 'Zaibatsu' monopolies in Japan is on its way to scrap heap. A most reliable source today opined that instead of reaffirmation of the Far Eastern Commission policy the four basic principles recently laid down by the SCAP deconcentration review board are actually another step towards the laws complete abolition. He quoted a top-ranking Holding Company Liquidation Commission official as saying that the 'law will eventually be scrapped in Japan as in Germany due to the fundamental change of the United States policy in the Far East'."

The official asserted that SCAP's emphasis on the 'Far Eastern Commission policy has not been changed' by announcing the four basic principles on September 11 which was an attempt to avoid opposition from the countries, especially Soviet Russia and China, which have jointly hammered out the policy. Under the four principles Japan's spinning industry and practically all big corporations with the exception of about ten will be kept intact. Ten corporations earmarked for moderate reorganization include the Oji Paper Mill, the Japan Express Nippon Iron Works, the Dai Nippon Beer Company, and the Japan Electric Generation and Transmission Company. As Central News reported earlier the four principles have considerably telescoped the meaning of the word 'concentration'. Contrary to a previous SCAP announcement the new principles stipulate that the 'mere

possession of

PLAIN

possession of non-related lines of business is not in itself sufficient to establish a company of excessive concentration'. The meeting of SCAP's Deconcentration Review Board and the Holding Company Liquidation Commission on September 11 is said to have been attended by a member of the Draper Mission who has just arrived from Washington with new instructions from the United States Government on economic deconcentration."

Sent Tokyo 186, repeated Department 2060.

CABOT

CSS:MHP

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : NA - Mr. Allison

FROM : NA - Mr. Green

DATE: October 13, 1948

SUBJECT: Attached: Tokyo's 619.

State Dept. Reg. dept. of 9/20/48

894.602 XR | 9-2048 894.5034 894.50

The Deconcentration Review Board publicly announced on September 11 that it would follow these four basic principles in implementing the deconcentration law:

(1) No deconcentration 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 a showing the company should be removed from designation.

(2) 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) The submission of a plan of reorganization as a voluntary plan is not in itself sufficient to confer upon the HCLC authority to issue a deconcentration order.

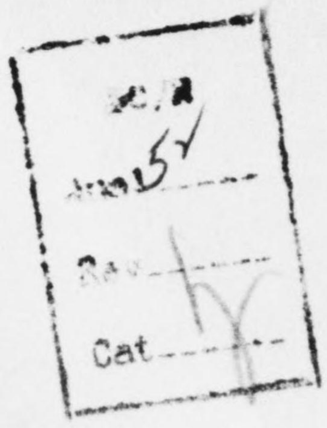
(4) The action a company is ordered to take by the HCLC should be directly related to the facts upon which that company was determined to be an excessive concentration.

USPOLAD comments that it does not agree with the DRB announcement that these four principles "constitute no change in the policy of this Headquarters".

Mr. Welsh, Chief of the Anti-Trust and Cartels Division of ESS, has privately admitted that because of the impossibility under a controlled economy of showing that any company "restricts competition", it is possible that large numbers of companies, "<u>if not all companies</u>", must be released from designation.

Japanese

State Dept. Northeast Asian Affairs Division From Green



F.W. 894.602/9-2048

Japanese press and business circles are highly satisfied with what they regard as a major change in Headquarters policy. They expect that the Anti-Monopoly Law will be revised to encourage foreign investments by repealing restrictions on intercorporate holdings and international contracts.

The Nippon Soda reorganization presents a test case. Previously ordered to reorganize under the Deconcentration Law, the DRB has now found that order in conflict with the new principles and has commanded the HCLC to show conclusively that the company has operated in restraint of trade.

A Nippon Times article is enclosed summarizing the effect which the application of the 4 new principles will have on the Nippon Soda Co. This article is worth reading.

As USPOLAD points out, the DRB has admittedly not limited itself to a finding of the effect of the reorganization on the Japanese economy, which finding was specified as the DRB's main concern by its terms of reference.

FE:NA:MGreen:lt

STANDARD FORM NO. 64

CONFIDENTIAL

DCR file

Office Memorandum • UNITED STATES GOVERNMENT

TO : FE - Mr. Butterworth

DATE: Sept. 23, 1948

FROM : NA - Mr. Allison

SUBJECT: Proposed Course of Action on Japanese Industrial Deconcentration

I.

It would appear from the attached telegrams and newspaper clipping (Tabs B through E) that a partial "reinterpretation" of deconcentration policies and programs has taken place within SCAP Headquarters, partly on the initiative of the Review Board and partly, no doubt, due to pressures from Washington and the logic of events.

It is possible to exaggerate the extent of this reinterpretation, however, which has occasioned more comment, with predictions of the virtual abandonment of the deconcentration program, than the facts would seem to justify. Examination of the Review Board's "four basic principles" in CINCFE's September 16 wire (Tab B) reveals some liberalization but not such as to warrant the sweeping conclusions of the Central News Agency and Burton Crane despatches.

The first of the four principles is in large part, as the quotation marks indicate, a direct quote from Article 3 of the Deconcentration Law (Tab F), with the additional provision 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 . . . '". The requirement that there must be a showing of a prima facie case somewhat narrows the scope of Article 3, but its significance will depend entirely on how clear a case the implementing authorities actually require before taking action.

The second principle is little changed in substance from a provision in the document entitled "Standards for Excessive Concentration in Industrial Fields" (Tab G), issued by the Holding Company liquidation Commission with Headquarters approval in February, 1948, to serve as a guide for interpretation of the Deconcentration Law promulgated two months earlier.

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This provision stipulated that an enterprise should be designated an excessive concentration if, inter alia, it

> "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."

It was originally the Headquarters' desire that the Deconcentration Law should provide that all concerns engaged in unrelated activities should be broken up, but this idea was dropped as a consequence of the exchange of messages with Washington last November and December before passage of the Law. In February the Headquarters went so far as to accept the above quoted interpretive provision, which has been slightly, if at all liberalized by the Review Board's second principle, if considered in conjunction with the first.

The third principle does not appear to involve any important change from previous procedures.

The significance of the fourth, which appears to mean that a company designated an excessive concentration need not entirely reorganize but only eliminate the particular characteristic which caused it to be designated, cannot be accurately judged on the basis of existing information, but again would not seem to constitute a drastic modification of previous procedures and criteria.

Although the four principles themselves, therefore, would not seem to involve a marked change in previous procedures, the fact that they were issued at all, in the almost certain knowledge that they would occasion the wide comment and conjecture which they have, is of considerable significance, and, together with certain other indications, gives evidence of an important change of spirit and outlook on the subject in SCAP Headquarters. It is doubtful if Burton Crane would report in the attached clipping (Tab C) that "It has become clear that the occupation has jettisoned its policy of breaking up undue concentrations of economic power", if there had not at least been a considerable change of attitude among high SCAP officials. Although future developments can alone reveal how important the change has been, it will

probably

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probably prove to be substantial.

II.

The situation thus presented poses two practical problems: (1) What to do about our telegram to SCAP (Tab A), still being held by Mr. Draper, requesting the text of the terms of reference of the Review Board; and (2) What course to adopt on the subject in the FEC.

Regarding the first question, it would appear that the purposes for which we desired the Review Board's exact terms of reference have been largely accomplished without our having had to lift a finger, -- how largely, as just stated, should become clearer in the next month or so. The necessity for the wire would therefore seem to have been much reduced. At the same time, there would seem to be considerable danger if the wire were still sent that it might be misinterpreted in Tokyo as indication of displeasure over the Board's exercise of powers of "reinterpretation" of the basic deconcentration law. If the queries and requests for information added to the wire (underlined in red) by the working levels in the Army were included, there would be the additional danger that the telegram would be interpreted as a needle to SCAP Headquarters and the Board to get busy and break up more companies in accordance with the original program. I would therefore recommend that we inform Mr. Draper that we would like the wire withdrawn.

Regarding the second question, I believe it would be better in the circumstances for the U.S. not to submit any paper on deconcentration to the FEC. It has been proposed, you will recall, that our representative on the Economics Committee read a statement of the actions taken by SCAP in the matter to date in an effort to persuade the Committee that the program has proceeded so far, and in such a satisfactory manner, under the general provisions of the early FEC Basic Directive that a special policy decision is not necessary. This course is subject to the disadvantage, however, that it would require us either to slur over and minimize the recent "reinterpretations" and evidences of a change of attitude in SCAP Headquarters and in Washington, which will be unwelcome to almost all other members, or frankly state that the U.S. Government and SCAP have undergone changes of view

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in the matter. In either case undesirable criticism and controversy would be occasioned, which could be avoided by the alternative course of having the U.S. representatives simply announce that this Government does not consider a policy decision necessary, and would therefore decline to participate in the preparation of a policy paper on the subject if one is desired by other members. We would express our willingness, however, to obtain all information as heretofore on the progress of the deconcentration program desired by other members. There would be no need for us to go into the question of what we would do if such a paper came up for final approval in the Commission, but if this did occur, probably long hence, and it was a brief and general paper such as the British appear to desire, we might be able to approve it. If it was longer and unacceptable we could veto it, unless we decided it could be made acceptable by changes we might decide to suggest.

Attachments:

Tabs A - G.

EAT

FE:NA:RAFearey:lt

Draft Telegram to SCAP

~~(Through Army)~~

Deconcentration of excessive concentrations of economic power progress reporting is subject.

1. Request you furnish (quarterly) reports on progress programs for deconcentration of excessive concentration of economic power. Separate communication will request specific statistics on a quarterly basis respecting sales of securities made as a consequence of deconcentration programs.

2. Further request soonest:

(a) deconcentration progress since arrival D.R.B. to date

(b) full text of terms of reference under which Deconcentration Review Board is operating, and

(c) progress report on Deconcentration Review Board activities to date including standards and procedures adopted and specific cases acted upon and under consideration.

3. Current info along above lines needed soonest to permit determination of most appropriate action in FEC upon resumption of FEC meetings. Continued and increased FEC pressure for action on FEC 230 or substitute paper anticipated. Any comments supplementing info requested above will be appreciated.

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Form DS-302
(2-46)

DIVISION OF
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TELEGRAPH BRANCH

DEPARTMENT OF STATE

INCOMING TELEGRAM

ACTION COPY

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Control 8006

Rec'd September 23, 1948
4:14 p.m.

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Action: OFD
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FROM: Tokyo

TO: Secretary of State

NO: 224, September 23.

According to SCAP's monthly summation of non-military activities for July, released today 20,306,702 shares of corporate securities in former Zaibatsu and other liquidat firms have been sold to the public up to July 24 by the Securities Coordinating Liquidation Committee. The amount realized by these sales totals 1,769,091,358 yen.

The closed Institutions Liquidating Commission closed 47 control associations in June, the SCAP summation states, bringing the total number of closures to 980. Cumulative proceeds from the closures totalled 26,639,889,000 yen by June 25.

Sent 74 to Shanghai; 45 to Nanking; 41 to Manila; 224 to Department.

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P.O.S/J

Form DS-302 (2-46)

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DIVISION OF
COMMUNICATIONS AND RECORDS
TELEGRAPH BRANCH

DEPARTMENT OF STATE

INCOMING TELEGRAM

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A

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Control 8203

Rec'd September 24, 1948
2:21 a.m.

SEP 24 3 45 PM '48
RECORDS & DISTRIBUTION SECTION

FROM: Tokyo

TO: Secretary of State

NO: 224, September 22

PUBLIC AFFAIRS OVERSEAS PROGRAM STAFF
Japan-Korean Branch
POS/J
SEP 24 1948
DEPARTMENT OF STATE

(ZX 23879) DA PASS TO STATE DEPT TOKYO (USIS)

According to SCAP's monthly summation of non-military activities for July, released today 20,306,702 shares of corporate securities in former Zaibatsu and other liquidated firms have been sold to the public up to July 24 by the Securities Coordinating Liquidation Committee. The amount realized by these sales totals 1,769,091,358 yen.

The closed institutions liquidating commission closed 47 control associations in June, the SCAP summation states, bringing the total number of closures to 980. Cumulative proceeds from the closures totalled 26,639,889,000 yen by June 25.

Sent to Shanghai 74, repeated Nanking 45, to Manila 41, to Department 224.

SEBALD

EOC:BH

DEPARTMENT OF STATE
OCT 8 1948
LIAISON OFFICE

~~811.20200 (D)/9-2248~~

894.602/9-2248

SEP 27 1948

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PERMANENT RECORD COPY: THIS COPY MUST BE RETURNED TO DC/R CENTRAL FILES WITH NOTATION OF ACTION TAKEN.

STANDARD FORM NO. 64

CONFIDENTIAL

Office Memorandum · UNITED STATES GOVERNMENT

TO : O - Mr. Saltzman

DATE: Sept. 24, 1948

FROM : FE - Mr. Butterworth DWB

SUBJECT: Proposed Course of Action on Japanese Industrial Deconcentration

DC/R file

I understand that Mr. Draper phoned you on September 17 to inquire whether you still wished him to send our wire requesting the text of the Deconcentration Review Board's terms of reference, in view of the new information provided in CINCFE's September 16 telegram. After reading CINCFE's telegram and the other wires and despatches enclosed with this memorandum, it would seem to me inappropriate and inadvisable to send the wire at this time in view of the delay which has occurred in its despatch and the undesirable interpretation which might be placed upon it in SCAP Headquarters as a result of developments during the period that the wire was being held. I suggest that you inform Mr. Draper that we wish to withdraw the wire for these reasons.

As you know, I have been in doubt for some time whether it was necessary or wise for this Government to submit a new policy proposal on deconcentration to the FEC in place of the old FEC-230. The developments noted in SCAP's wire and, probably with some exaggeration, in the enclosed Burton Crane and Central News despatches, have further strengthened me in this view. Even a recitation to the FEC of action taken to date by SCAP in the field of deconcentration (proposed as a means of persuading other members that a policy decision is not necessary) would probably only serve to arouse undesirable criticism and controversy, particularly in view of the suspicions which news of "reinterpretations" and changes of attitude on this subject in SCAP Headquarters and in Washington must have occasioned in some FEC countries.

I would therefore recommend that the U.S. representative of the Economic Committee simply announce that this Government does not consider a policy decision on deconcentration necessary, and that the U.S. would accordingly decline to participate in the preparation of a policy paper on the subject if one is desired by other members. We would express our willingness

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willingness, however, to obtain from SCAP as heretofore any information on the progress of the deconcentration program desired by other members. There would be no need for us to go into the question of what we would do if a policy paper drafted by other members came up for final approval in the Commission, but if this did occur, probably long hence, and it was a brief and general paper such as the British appear to desire, we might be able to approve it. If it was longer and unacceptable we could veto it, unless we decided it could be made acceptable by changes we might decide to suggest.

I am enclosing a memorandum of September 23 from Mr. Allison to me setting forth in greater detail certain of the considerations giving rise to the above recommendations.

Copy to OFD: Mr. Knapp

FE:NA:RAFearey:lt

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STANDARD FORM NO. 64

CONFIDENTIAL

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Claxton

DATE: October 4, 1948

FROM : W. A. Rudlin WAR

SUBJECT: FEC 230

My reaction to the situation presented by the memoranda to Mr. Saltzman from E and FE on the above subject is as follows:

1. I believe that a statement should be made along the lines indicated by Mr. Nitze. It should, however, be made in FEC, whether or not it is also made outside by Mr. Royall and Mr. Lovett.

2. I believe also a message should be sent to SCAP along the lines indicated by Mr. Nitze. As he indicates, it is important to show both to the Japanese and the Deconcentration Review Board that we are concerned with implementation of the deconcentration program.

3. I am convinced that "1" and "2" above will not happen. FE, and more particularly the Army Department, will never agree to a statement which contains a reaffirmation of the deconcentration objective. Their whole inclination over many months past has been either by statements or by silence to convey the strong impression that not only FEC 230 as a paper, but the actual implementation of SCAP's program should be reviewed, reconsidered, and relaxed. The same is true with the message to SCAP. Any tightening of deconcentration standards and insistence on extension of the program (as distinct from the basic directive) to the fields of banking and finance would, I am sure, be resisted strongly and indefinitely by FE and the Army.

4. If the above pessimism with regard to the Army is realistic, progress along the lines recommended by Mr. Nitze could only be made within a reasonable time by taking this matter up on the highest levels. For this to be possible, we would need a very firm position within State. I am equally sure we will not get this, but there is only one way to find out, which is for Mr. Saltzman to call a meeting of Messrs. Nitze and Butterworth for the purpose of determing (a) whether their positions are as far apart as they appear to be from their memoranda, and (b) to emphasize to them that each should be prepared to compromise since the positions are so widely divergent and since the Department has been for nearly a year, and remains vulnerable in this whole matter.

5. All this boils down to the fact that E wants as much deconcentration as it can get, and FE and Army want as little as possible. This difference is basic, and will have to be resolved on the Assistant Secretary level before any further consideration is given to more or less procedural matters such as what kind of public statement can be made, where, and by whom. Perhaps "procedural" is the wrong word, since the reason for making

a public statement is much the same as for sending a message for the Deconcentration Review Board. The message would tell the Board to get on with things and do a real job. The purpose of the statement would be not only to reaffirm the U.S. objective, but thereby to make sure that the Japanese Government would energetically administer the legislation it already has on the books. As indicated above, therefore, both Mr. Nitze's recommendations would amount to giving the program a strong shot in the arm.

6. The most hopeful thing that I can see, and even this would be a big concession from Army and FE, is agreement on a statement in FEC which recounts in detail what has been done under the program, reaffirms U.S. attachment to the "basic objective", and draws the conclusion that no paper is necessary.

7. Failing such a compromise, I believe Mr. Saltzman can only report to Mr. Lovett that a year's close attention to this problem has produced only a wide split within State and Army, and that no further time should be lost in arriving at a solution on the Secretary level.

O:WARudlin:jcd
10/4/48

SUBJECT OR FILE NO. 894.602/9-3048			DATE DUE 4/14
DATE OF DOC. 9/30/46	DOC. NO. Memo	SECURITY CLASS. —	DATE CHARGED 1/14/53
TO/FROM fr IR-Vernon to E. Nitze re Jarbalow		ENCLOSURES	
CHARGE TO Bushong (Signature)		DEPARTMENT OF STATE	OFFICE SYMBOL L

Form DS-933a (9-1-51) 16—68567-1 GPO

DEPARTMENT OF STATE

ASSISTANT SECRETARY

7 Oct 48

FW 894.602/9-3048

WWB

Attached is the E view of what should be done about FEC 230. It appears to recommend in effect that while taking no further action in the FEC we re-affirm our support of the project in general and take direct action with SCAP to provide for what E considers the essential agenda. (cf IP 2, P.2, Nitze memo).

This is at considerable distance from FE view. I think the Dept should reach some solution because our present position is an exposed one.

I should like to discuss this soon with you and Paul with a view to coming out with an answer, CES.

Charles E. Saltzman

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : O - Mr. Saltzman

DATE: September 30, 1948

FROM : E - Mr. Nitze PHN

SUBJECT: FEC 230

DC/R file

Action to formally withdraw FEC 230 from the FEC, as proposed by Mr. Butterworth in his memo to you, would present to the U.S. Government four problems of substance:

1. Preventing other FEC countries from pushing through the FEC a policy on this subject which would be unacceptable to the U.S., without being prepared to set forth a positive U.S. policy for adoption by the FEC.

2. Preventing the Japanese, on whom we must rely to an increasing extent, as time goes on, to carry out those aspects of the deconcentration program which are essential to U.S. policy, from receiving the impression that the U.S. is no longer interested in deconcentration and that failure by them to implement legislation now on the books will be not only acceptable to but perhaps even desired by the U.S.

3. Ensuring that a relatively small but important part of the deconcentration program having to do with such companies as Mitsubishi Heavy Industries and with the four major banks who control 75 percent of Japanese banking resources gets accomplished, a doubtful project unless the present approach of the Deconcentration Review Board is somewhat strengthened by policy advice from Washington, particularly emphasizing the importance of the political influence of such business organizations as opposed to their economic effects on prices and competition.

4. Providing policy guidance on the difficult but major issue of the way in which the very large volume of securities now in the hands of the Japanese Government is placed on the market.

From

From a long-term standpoint point 2 seems to me to be of the greatest importance. Point 1 seems to be of much less importance and I am willing to disregard it.

In order to protect essential U.S. policy interests I can agree to the formal withdrawal of FEC 230, subject to agreement with the Department of the Army on the following concurrent measures:

1. Issuance of a public statement by Secretary Royall, or by Secretary Royall and Acting Secretary Lovett jointly, lauding SCAP and the Japanese Government for the progress made in the deconcentration of Japanese industry, reaffirming the U.S. objective of preventing the recurrence of the highly concentrated structure of Japanese finance and industry, anticipating the early attainment of a Japanese economy in which ownership and control of industry and finance would be widely dispersed among the Japanese people, and asserting that because the policy issues have been so largely resolved by the timely work of SCAP and Japanese it has been possible to withdraw the policy problem from consideration before the FEC.

2. The dispatch of a message to SCAP from State and Army urging that the final form of the proposed revision of standards recommended by the Deconcentration Review Board be such as would permit designation of a company as an "excessive concentration" for reasons analagous to those which were responsible for the U.S. Public Utility Holding Company Act, e.g., the likelihood that companies dominating particular areas would influence credit, governmental policy, technological progress or labor policy in that area to the detriment not merely of their competitors but also of the optimum development of Japanese political and economic life; and urging, further, that the problem of deconcentration in the field of banking and finance be considered on a priority basis with these considerations in mind.

3. Initiation of a re-examination by State, Army and SCAP of the problem of disposition of securities, recognizing that it has policy implications requiring Washington advice to SCAP.

For your information in considering this proposal, I am attaching a statement of the status of the deconcentration program in Japan. np

Attachment.

SLTP:EMMartin:rc

OFD
Barnett
per Sec.

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : E. - Mr. Paul H. Nitze

DATE: September 30, 1948

FROM : IR - Mr. Raymond Vernon RV.

SUBJECT: Present status of the Zaibatsu program in Japan.

DCR File

I have described below in very brief summary the present status of the Zaibatsu program.

1. Legislative Program

A considerable number of laws, Imperial ordinances, cabinet orders, and other legislative and quasi-legislative enactments relating to the Zaibatsu program are on the Japanese books. As the program has evolved, permanent legislation has replaced interim orders and at some points overlaps appear to have developed. On the whole, however, the legislative program now appears to be fairly well integrated and to consist of the following main features:

a. A Holding Company Liquidation Commission Ordinance creates a Commission which is charged with the temporary task of directing the reorganization of existing "excessive concentrations". More specifically, the Commission is empowered to designate "Zaibatsu" individuals and holding companies, the assets of which are to be sequestered and sold to the public; the plan provides that the proceeds of such liquidation are to be turned back to the individuals involved in the form of non-negotiable Government bonds, after deduction of taxes and other liabilities. The necessary designations under this ordinance have already been completed and involve fifty-six persons, comprising the heads of ten major Zaibatsu families, and eighty-three holding companies. The designated holding companies are primarily family companies organized for the purpose of holding securities of other companies and controlled by the fifty-six designated persons.

b. A "Law for the Elimination of Excessive Concentrations of Economic Power" authorizes the Holding Company Liquidation Commission to designate enterprises, whether of the holding company or operating type, which constitute "excessive concentrations", and to direct their reorganization. In accordance with the terms of its law, the Commission last February promulgated a series of "standards" for determining the companies which would be subject to examination as "excessive concentrations". Pursuant to these

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these standards, some 325 non-financial companies were designated by the Commission for investigation, of which 194 were later removed from the designated list. Accordingly, the Holding Company Liquidation Commission is now concerned with the reorganization of not more than 131 companies, and it is understood that only a minority of these companies at best will actually have to be reorganized.

c. An antitrust law creates a permanent Fair Trade Commission, prohibits unreasonable restraints of domestic and international trade, and lays down certain limitations on interlocking directorates, intercorporate stockholdings, mergers, consolidations, and the like; unlike the other enactments, this is long-run legislation intended primarily to prevent the recurrence of the zaibatsu type of structure in the future. Numerous orders have been issued under the law which are intended to implement one or another of the law's many provisions. Most important among these orders have been those leading to the dissolution of control associations and interlocking directorates, the liquidation of certain intercorporate stockholdings, and the liquidation of certain large individual holdings in competing companies.

d. A revision of the Commercial Code now requires Japanese corporations to make considerably more information available to their stockholders and the public than heretofore has been the case, and prevents certain obvious devices, such as the issuance of classes of unpaid or partially paid shares, from being used as a means of controlling a company without pro rata equity ownership.

e. The Fair Trade Commission is analyzing Japanese laws one by one, to secure the elimination of provisions which confer special privilege or tend to eliminate competition. In the month of April, 1948, for example, the Commission advised the Government that various provisions of the following laws were inconsistent with the Antitrust law: the Salt Monopoly Act, the Savings Bank Act, the Insurance Act Enforcement Regulations, the Dairy Farming Adjustment Act, the Law Regulating the Export of Marine Products, the Forest and Industry Association Law, and others.

While some of the provisions of the various enactments described above will probably need amending in the light

of

of experience, they represent a fairly complete legislative program.

2. Execution of the Program

Various aspects of the program are in very different states of completion:

a. Contracts containing provisions which are in restraint of trade have been declared void. Therefore, except insofar as continuous enforcement will be necessary, this stage of the program is completed. Indications are that there is a substantial disposition on the part of the Fair Trade Commission vigorously to enforce this aspect of the program. Almost every month, important antitrust cases are completed against various persons and groups who have continued to do business on the old stand. In February, 1948, for example, five trade associations and three individual companies submitted consent decrees with respect to charges of violating the Antitrust Act. In the same month the Commission undertook an investigation of restraints of trade in the book distribution field and motion picture field. In the month of May, three motion picture companies were found guilty of having violated the Antitrust Act. Each month important "control associations", heretofore permitted to perform functions in rationing and price control, have been ordered dissolved.

b. It is almost impossible to appraise the extent to which plans have progressed for the dissolution of non-essential intercorporate ties. The top family holding companies have been ordered to dissolve and, according to our information, havefor the most part either submitted plans for their dissolution or actually completed their dissolution. In addition, a very large number of other companies have submitted plans to the Fair Trade Commission for the divestiture of intercorporate stockholdings which fall outside the pale of that law, but it is unclear to what extent these plans have been put into effect. The one area in which there clearly has been little action is in the dissolution of the complex financial and personal ties among the tier of secondary holding and holding-operating companies which typified each of the Zaibatsu structures. Some of these ties have presumably been affected by the general limitations placed on all interlocking directorates and intercorporate share holdings.

However,

However, the Holding Company Liquidation Commission's approach, which consists of appraising the relationship of specific groups of companies in terms of all of the varied intercorporate ties commonly employed in Japan--e.g., central accounting offices, common engineering services, cross-licensing agreements, and the like--has not yet resulted in a significant number of reorganizations. And, finally, with one or two outstanding exceptions, no progress whatever has been made in dealing with oversized and technologically incongruous single companies. Outfits like Mitsubishi Heavy Industry--which under a single corporate charter operates everything from drug stores to steel mills and whose loans and advances from the second largest bank in Japan amount to ten times the capital and reserves of that bank--have not been touched. Whether in fact such companies will be considered at all by the Holding Company Liquidation Commission depends upon the way in which its standards are interpreted. The standards of the Commission, if revised in accordance with recent suggestions of the Deconcentration Review Board, will provide 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. It is unclear whether such a standard will be construed so restrictively as to prevent many necessary reorganizations.

c. Under the various programs outlined above, a number of different groups will have occasion to dispose of large amounts of securities: the Holding Company Liquidation Commission, which has sequestered the securities of Zaibatsu individuals and their family holding companies; various companies which have been or will be ordered to dispose of certain of their portfolio securities; and individual stockholders who, because of sizeable holdings in potentially competing companies, may be subject to a disposal order by the Fair Trade Commission. All existing data on the extent of the necessary liquidation are fragmentary. Information regarding the disposal operations of the Holding Company Liquidation Commission, however, are more complete than for the other groups. As regards the Commission's liquidation program, two facts are clear: (1) not more than 20% of the securities to be sold by the Commission have yet been sold, and (2) the Commission has deliberately refrained from liquidating in large amounts, partly because it prefers not to liquidate the securities of companies which may be subject to considerable future

reorganization

reorganization and partly because it is concerned with minimizing the effects of its sales on market prices. In almost every recent offering made by the Commission, however, the securities offered have been taken up and frequently oversubscribed.

3. Outstanding Issues

The following problems are the chief issues with which we should be concerned in any future action affecting the Zaibatsu program:

a. The program in Japan has a certain amount of indigenous support. If it is to be successful, that support must be retained and extended. Our future actions must be gauged in the light of their effect upon such indigenous support.

b. From the first, major emphasis has been placed upon the importance of increasing the number of independent sources of credit in Japan if any measure of competitive enterprise is to be achieved. The original directive of the Joint Chiefs of Staff stated "...It shall be the policy of the Supreme Commander...to favor a program for the dissolution of the large industrial and banking combinations of a great part of Japan's trade and industry". Except insofar as regulations of general application may have affected the banks, nothing has been done with respect to the existing enormous concentrations of assets in a few Japanese banks. This has been due partly to the fact that the problem of deconcentration as it relates to banks has rested in the Finance Division of SCAP rather than in the Cartels and Antitrust Division. The former Division has been primarily preoccupied with the technical aspects of bank operations and, understandably enough, has been inimical to any program which might disturb the status quo. Nevertheless, the banking system of Japan will perforce exercise a major voice in determining the nature and magnitude of the expansion of Japanese industrial and commercial life; this is particularly true for that country because the Japanese have almost no investment banking machinery other than that controlled by the commercial banks. The remainder of the program may well prove futile if the problem of banking concentration is not properly handled.

c. A very large volume of securities still remain to be liquidated. The problem is to select the proper line

between

between a cautious and necessarily prolonged program of liquidation, on the one hand, and an incautious but briefer period of liquidation on the other. Questions to be answered in this connection are: Will the existence of a supply of stock overhanging the market for a long term have a more depressing effect upon Japanese capital markets, and through them upon Japanese recovery, than a short term but more pronounced depression in Japanese stock prices? In that connection, what is the absorptive capacity of the Japanese public for the offered securities? Will prolonged uncertainty as to the identity of new owners of Japanese industry have a greater or lesser effect upon managerial enterprise than a swifter but less selective determination of such new owners? Will the prolonged possession of securities in the hands of a Government agency stimulate demands for the socialization of enterprise? Two years ago, on balancing these considerations, the Department's answer was to urge strongly the rapid liquidation of the securities involved. The answer may conceivably be different today.

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THE FOREIGN SERVICE
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UNITED STATES OF AMERICA

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UNITED STATES POLITICAL ADVISER FOR JAPAN

No. 644 Tokyo, September 30, 1948.

CONFIDENTIAL

File

Subject: Revision of Anti-Monopoly Law.

D C/R

file cc att
Tel dr. to Tokyo 11-1-48 JPF

THE HONORABLE
THE SECRETARY OF STATE,
WASHINGTON.

Sir:

I have the honor to report on revisions of the Anti-Monopoly Law (Law No. 54 of 1947, published in the Official Gazette of April 14, 1947) as proposed to General Headquarters by the Japanese Government. The proposal, it is reported, will be submitted to a special session of the Diet, probably next month.

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For some months the Anti-Monopoly Law has been subject to severe criticism in the Japanese press, principally on the grounds that it places an obstacle in the way of the introduction of foreign capital. In August, at the instigation of the Anti-Trust and Cartels Division of General Headquarters, the Fair Trade Commission, the agency responsible for administering the law, submitted a series of proposed revisions, which revisions, except for those regarding the highly controversial Article 10 of the law, were considered generally acceptable by the Anti-Trust and Cartels Division. The original draft was subsequently revised, and reached its final form in a paper submitted to General Headquarters on September 16. Though the latter was said to be a synthesis of the views of various interested agencies of the Japanese Government, including the Economic Stabilization Board, the Ministry of Finance, and the Attorney General's Office, it represented a considerable softening of the demands of the press and of foreign and Japanese businessmen.

CS/V

Meanwhile the Deconcentration Review Board had begun to take an interest in the Anti-Monopoly Law, and on September 20 the Board invited the Fair Trade Commission to confer on possible revisions. The Commission immediately withdrew the proposals it had submitted to the Anti-Trust and Cartels Division, and on September 25 offered instead a program that approximated closely the demands of the press and businessmen. It was apparently the Deconcentration Review Board's entry into the discussion that emboldened the Japanese to ask for more drastic revision of the law. Perhaps significantly, the September 16 proposal was drafted under the auspices of the Fair Trade Commission alone, while the September 25 proposal was submitted by the Cabinet.

A comparison of the two proposals shows that the second repre-

represents

represents a more vigorous attempt than its predecessor to bring the Anti-Trust Law into conformity with what the Deconcentration Review Board has called "the basic elements of anti-monopoly legislation as internationally recognized." It would thus satisfy the criticism commonly voiced by American businessmen that monopoly legislation in Japan is more restrictive than that in the United States. The earlier proposal, with some exceptions, approximated the views of the Anti-Trust and Cartels Division on revision of the law.

The heart of the proposal lies in its revision of Article 10. The unamended version (see Enclosure 1, in which pertinent extracts of the law are quoted from the Official Gazette for ready reference) forbids intercorporate holding of securities, with very narrow exceptions. The Commission's plan of September 16, though forbidding intercorporate holdings in restraint of trade, would have allowed companies capitalized at more than 50,000,000 yen to hold stock in other companies after obtaining the approval of the Fair Trade Commission; companies capitalized at less than that figure would have been required only to report stock acquisitions. The September 25 proposal, on the other hand, would in all cases require only subsequent registration. The Anti-Trust and Cartels Division, considering both proposals unacceptable, has drafted an amended Article 10 allowing unrestricted intercorporate holdings, provided that the two companies are not in competition, and that the purchasing company does not already own stock in a company competing with the company whose stock it proposes to acquire.

Article 6, requiring advance approval of international contracts or agreements continuing "for a considerable period of time," would be deleted under the most recent proposal. The earlier proposal would have deleted the final paragraph only; the third paragraph would have been revised to require registration with the Commission within ten days after concluding an international agreement.

Article 11, regarding financial institutions, would have been revised under the old proposal to allow institutions with a capital of no more than 50,000,000 yen to acquire unrestricted holdings in other companies; the present law allows such holdings only by companies with a capital of less than 5,000,000 yen. The later proposal, on the other hand, would require only registration of stock acquisitions by financial institutions. The Anti-Trust and Cartels Division is of the opinion that revision of Article 11 is not pertinent at this time, and should await a general reform of banking legislation.

Article 12, under the original proposal, would have been amended to require registration with the Commission of transactions in which a company acquires debentures of another company in excess of an amount equivalent to 25 per cent of the capital of the second company. Such transactions are now forbidden. The more recent proposal would delete Article 12 entirely, thus allowing unlimited holding of debentures.

Article 13, it was at first proposed, should be revised to

remove

remove the complicated restriction on joint directorships in cases where one fourth or more of the officers of either of the two companies concurrently hold positions in a third company. The restriction on concurrent directorships in more than four companies, however, would have been retained. The more recent revision would ban concurrent directorships only when companies are in competition; there would be no restriction on the number of directorships to be held concurrently.

Ambiguities in Article 14, regarding individual holdings of stock in competing companies, would have been clarified under the earlier draft so that owners of 10 per cent or more of the stock in any one company must obtain the consent of the Commission before purchasing stock in a competing company. The September 26 proposal would require a report to the Commission (rather than advance permission) only if one individual held 10 per cent of the stock in each of two competing companies.

Article 15 would be amended under both proposals to require advance notice to the Commission and a delay of 30 days before consummating a merger; the positive approval of the Fair Trade Commission would not be required.

Amendments to Article 15, according to the September 16 proposal, would have been applied to Article 16, mutatis mutandis; under the September 25 draft, only a report of the acquisition of part of a business would be required.

The earlier draft would have amended Article 17 to allow the issuance of desist orders against evaders of Articles 9 to 16 inclusive. No such proposal is included in the September 25 draft.

The enclosed translation of an article from the Nihon Keizai is fairly typical of opinions expressed by foreign and Japanese businessmen in Tokyo, and it may be surmised that the Japanese Government is influenced by their demands in submitting its more recent proposals. The Government has indeed gone somewhat beyond those demands, apparently feeling that the interest expressed by the Deconcentration Review Board is indicative of a new turn in American policy. Though the Board's stand has not been made public, it is likely to favor somewhat more drastic revisions than those embodied in the earlier draft, on the frequently reiterated grounds that anti-trust policy in Japan should go no farther than that in the United States. It is therefore probable that something akin to the most recent proposal will be approved by General Headquarters and introduced in the Diet.

Respectfully yours,

W. J. Sebald.

Enclosures:

1. Copy

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RRH

Enclosures:

1. Copy of Articles 4,6,9,10, 11,12,13,14,15,16, and 17 of Law No. 54 of 1947.
2. Copy of Article from the Nihon Keizai dated September 17, 1948 on the subject of Monopoly Law Revision.

Original and hectograph to Department

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EGSeidensticker, Jr.:mis

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Enclosure No. 1 to Despatch No. 644 dated September 30, 1948 from the Office of the Political Adviser for Japan, Tokyo, on the subject, "Revision of Anti-Monopoly Law".

(COPY)

LAW NO. 54 of 1947

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 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

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 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, by-products, 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

2. a company which does not own stock in another company.

In addition to such a case as prescribed in the preceding paragraph, in case a company (in case of acquisition of stock of an existing company, 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 stocks, un-paid-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

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.

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

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.

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Enclosure No. 2 to Despatch No. 644 dated September 30, 1948 from the Office of the Political Adviser for Japan, Tokyo, on the subject, "Revision of Anti-Monopoly Law".

ITEM 12 (COPY)

Private Interests Lobby on Monopoly Law Revision - Nihon Keizai - 17 Sep 48. Translator: T. Mitsuhashi. (DD)

Full Translation:

The revision of the Anti-Monopoly Law is imperative in connection with the introduction of private foreign capital, and its early realization is being urged by private circles. The Government, in response to this demand, has been speeding the drafting of an amendment bill under the guidance of the Fair Trade Commission, and the bill is expected to be submitted to the special Diet session if possible.

However, as yet Government and private circles have not reached an agreement on details of the bill. Consequently, it is expected that private business circles will make a strong bid to have their opinions reflected in the revision, and the lobbying surrounding the revision of the Anti-Monopoly Law is attracting keen attention.

Economic organizations, including the Federation of Economic Organizations, the Economic Friends Society, the Tokyo Chamber of Commerce and Industry, and the Japan Industrial Association, are now discussing the revision of the Anti-Monopoly Law. Disputed articles of the law which are directly concerned with the introduction of private foreign capital and the reopening of private foreign trade include (a) the problem of international agreements in Article VI; (b) restricted possession of shares among corporations in Article X; (c) restricted possession of debentures by corporations in Article XII; (d) restrictions on the holding of concurrent posts in Article XIII. These items incidentally will necessitate the revision of Article II, XI and XV.

Opinions of financial circles on the revision of these items are:

1. (a) Article VI, Clause 2 should be revised to read "the preceding provision will not apply in the following cases."

(1) Agreements or contracts with foreign businessmen which are absolutely necessary for the consummation of import contracts on funds, raw materials, equipment, technology and industrial rights, which are essential for domestic production.

(2) When the absence of international agreements and contracts renders trading activities on an international basis unreasonably difficult.

(3) When the effect of an agreement or a contract upon competition in the particular field of transaction is unquestionably considered to be negligible.

(b) The following provision should be prescribed under Article VI, Clause 5:

The provisions under clause 1, 3 and 4 will not be applicable to the activities of businessmen engaged in export trade so long as it does not restrict domestic transactions and the trade of fellow exporters.

Revision

Revision of Article X

2. Article X should be revised as follows: No companies engaged in any business other than banking are permitted to possess more than five percent of the total shares of other companies. The preceding rule will not apply when companies desiring to possess shares of one of the companies listed below apply for permission to the Fair Trade Commission, and the Commission approves it on the grounds that the acquisition of those shares does not constitute unfair competition and will not be detrimental to public interest although it will actually check competition in a certain field of transaction. The companies whose shares may be owned under those conditions are:

(1) Companies which have a perpetual and intimate connection with other companies in regard to the supply of raw materials, semi-finished products, parts, by-products and other materials necessary for business activities as well as for other economic benefits, and those companies whose patents and new designs for practical use can be utilized under certain circumstances.

(2) Companies, more than five percent of whose shares are not possessed by any of other companies rival to those which desire to deal with them.

(3) Article XI, clause 2 should be revised to read, "No companies engaged in banking business are permitted to possess more than 10 percent of the total shares of other companies."

(4) Article XII, clause 1 should be revised to read, "No companies engaged in any business other than banking are permitted to possess other companies' debentures exceeding in amount to 25 percent of their capital." Clause 2 should be eliminated.

(5) Article XIII, clause 1 should be revised to read, "Directors or employees of one company are not permitted to assume concurrent official posts in their rival company. However, this will not be applicable when one company possesses shares of another company with the approval of the Fair Trade Commission under Article X, clause 3, and the concurrent posts refer to either of the two companies involved.

(6) Article XV, clause 1, Nos. 1 and 2 should be eliminated.

(7) Article II, clause 5, No. 3; Article XV, clause 1, No. 2; and other provisions relating to a discriminatory distinction of business capacity should be eliminated.

(8) Article II, clause 1 should be revised to read, "Businessmen referred to in this law are those engaged in commerce, industry, and banking and whose entire assets operated for business purposes exceed 5,000,000 yen." A second clause should be added to read, "Companies referred to in this law designate those whose entire assets exceed 5,000,000 yen."

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Dept requests texts various proposals modification Anti-Monopoly Law URDES 644 Sept 30, for study here.

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STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

TO : FE - Mr. Butterworth

FROM : NA - Mr. Allison

DATE: October 12, 1948

SUBJECT: FEC-230

DC/R file

In his attached memorandum and its enclosure Mr. Nitze agrees to the formal withdrawal of FEC-230 (we withdrew the paper last year for further consideration), ~~but~~ subject to agreement on the following three steps:(1) Issuance by Secretary Royall, or by Secretary Royall and Acting Secretary Lovett, of a public statement reaffirming our support of the deconcentration program as a whole and stating that because the policy issues have been so largely resolved in practice by SCAP and the Japanese Government it has been possible to withdraw the policy problem from consideration by the FEC; (2) Dispatch of a message to SCAP urging that large technologically incongruous companies such as Mitsubishi Heavy Industries, manufacturing everything from parasols to locomotives, be included within the definition of an excessive concentration, and that the problem of deconcentration in the field of banking and finance be considered on a priority basis; and (3) Re-examination by State, Army and SCAP of the problem of the disposition of securities of dissolved or reorganized concerns.

Regarding the first of these proposed steps, there would seem to be considerable justification for E's position that we should not leave the deconcentration program hanging in mid air by withdrawing FEC-230 without indication to the Japanese, SCAP and our Allies whether we continue to support the essentials of the program or not. If we think the program as a whole is bad, we should undertake to change it; but if we do not do that we would seem bound openly and actively to support its essential features. Although drafting of a public statement satisfactory at once to FE and ITP will be a tight-rope operation, I believe it should be attempted, and if it should prove impossible, we had better revise our deconcentration policies so that they accord with the prevailing State and Army view, whatever that may be. Issuance of the statement by such high ranking officials as the Secretaries of State and Army, or the latter alone, however, would seem unnecessary. It is believed the purpose would be equally well served, without

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without magnifying the issue out of proper proportion, if the statement were read by General McCoy to the FEC and then released to the press.

Regarding the second point, it seems extremely questionable whether we should be expanding the scope of the deconcentration program at this time. If large and heterogeneous concerns such as Mitsubishi Heavy Industries can be the cause of the evils suggested in Mr. Vernon's memorandum, forwarded by Mr. Nitze, without coming within the definition of an excessive concentration as developed to date, it is difficult to see how the matter could have thus far been overlooked both in Washington and SCAP Headquarters. Since there is very little supporting argumentation on this point in the memorandum the economic offices might be requested to develop it further before we take a position in the matter. As regards the concentration of banking facilities in Japan, recent newspaper reports indicate that SCAP has decided not to require dissolution of the larger banks but rather to compel the passage of regulatory legislation to prevent abuses of their power. The economic offices might be asked to elaborate their recommendations on this point also.

As to the third proposed step, re-examination of the problem of disposal of the large quantities of securities now held by the Japanese Government would seem entirely in order. Only a very small proportion of these securities have been sold to date, at an average price which I computed on the basis of a SCAP telegram some weeks ago to be about U.S. 35 cents per share.

In view of the length of time which this matter has already dragged on and the difficulties which have been experienced in reaching an agreed position through memoranda and discussions with working level personnel, I suggest that you accept Mr. Saltzman's suggestion of a meeting with him and Mr. Nitze, and, to speed matters further, that Mr. Nitze be asked to bring to the meeting for consideration a draft public statement. You will recall that such a statement has already been prepared for reading by the U.S. member of the Economic Committee of FEC, which with relatively little difficulty might be transformed into the very brief and general statement which would now seem to be required. Mr. Nitze might also be asked to elaborate at the meeting on his proposal to include within the definition of an

excessive

excessive concentration large enterprises producing a variety of unrelated products or exercising undue influence over the political and economic life of a particular area, and to explain further his recommendations on the deconcentration of Japanese banking and finance.

FE:NA:RAFearey:lt

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

ACTION
is assigned to

United States Political Adviser
for Japan

Tokyo, October 28, 1948. DCR

No. 695

CONFIDENTIAL - FOR DEPT. USE ONLY

Subject: Anti-Trust and Deconcentration Policy

The Honorable
The Secretary of State,
Washington.

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Sir:

I have the honor to report on indications of a further modification of SCAP anti-trust policy as previously reported by this Mission, and in that connection to refer to our despatch No. 644 dated September 30, 1948, on the subject of "Revision of Anti-Monopoly Law."

The Holding Company Liquidation Commission of the Japanese Government has recently announced (as reported in the enclosed article from the Nippon Times) that the cases of 175 companies which have been released from designation for reorganization under the Deconcentration Law (Law No. 207 of 1947) but which must nevertheless submit stock-disposal plans, are to be reexamined in the light of the four basic principles recently handed down by the Deconcentration Review Board and reported in our despatch No. 619 of September 20, 1948. Specifically, the Commission is to determine whether the past activities of the companies indicate that they have operated in restraint of trade. If no such findings are reached, designation under the Deconcentration Law is to be cancelled, and the facts of the case are to be transferred to the Fair Trade Commission for consideration under the Anti-Monopoly Law (Law No. 54 of 1947).

The move is theoretically designed to make the position of the Deconcentration Review Board consistent and logical, it being felt by the Board that the 175 companies in question, all of them admittedly lesser concentrations than the 100 still under consideration for reorganization, should in all justice be granted the protection of the four principles to be applied to the latter. Cases involving stock disposal, etc., are therefore to be reconsidered on the basis of whether or not the companies have constituted a combination in restraint of trade.

As the Anti-Monopoly Law and the Deconcentration Law stand

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now, the end result would appear to be the same regardless of which of the two laws is considered applicable. The cases in question are primarily concerned with stock disposal, and, since the Anti-Monopoly Law forbids intercorporate holdings, the results of disposal would be the same even though produced by a different agency.

It is inferred, however, that the move is one designed to gain time pending the revisions of the Anti-Monopoly Law reported in our despatch No. 644 referred to above. If the present orders for stock disposal were to be enforced, the companies in question would have no recourse, even should subsequent revision of the Anti-Monopoly Law occur. If, on the other hand, designation under the Deconcentration Law were to be cancelled and the cases turned over to the Fair Trade Commission, the expected softening of the Anti-Monopoly Law would in many instances obviate the necessity of selling intercorporate holdings.

It thus appears that the Holding Company Liquidation Commission, the Deconcentration Review Board, and the companies in question are counting on the passage of the proposed amendments at the current session of the Diet, now scheduled to end on November 8. Whether or not such will be the case depends on the outcome of the disagreement between the Anti-Trust and Cartels Division of General Headquarters and the Japanese Fair Trade Commission over Article 10 of the Anti-Monopoly Law, which at present prohibits intercorporate holdings. The amendment proposed by the Anti-Trust and Cartels Division would prevent a company from holding stocks in a competing company or in two companies competing with each other. A foreign firm would however be allowed to hold stock in a Japanese company producing the same line of goods as the foreign firm, a provision which, according to the Fair Trade Commission, constitutes a discrimination against Japanese firms. The Fair Trade Commission therefore suggests a general ban on intercorporate holdings by competing companies, but would retain broad interpretive powers for itself. Passage of the amendments at the current Diet session of course depends upon finding a satisfactory compromise, the Anti-Trust and Cartels Division being unwilling to push through a proposal that is unsatisfactory to the Commission.

It is interesting to note that according to the enclosed news item the Holding Company Liquidation Commission has specified that facts of monopoly in the "past activities" of the companies in question must be shown. The Deconcentration Review Board has not clarified its original four principles, and it is therefore not clear at what point in time activity in restraint of trade must be demonstrated. The Anti-Trust and Cartels Division and the Holding Company Liquidation Commission, pointing to the impossibility of showing that such restraint exists under the present controlled economy, have chosen to present evidence of monopolistic activities in the past. Whether or not the Board will accept such a showing remains to be seen; the case of Nippon Soda, on which we have reported previously, is still being held in abeyance,

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