ANTI-MONOPOLY ACT AND
COMPETITION POLICY

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CARTEL
AND
BID RIGGING

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1. Introduction

A cartel is a form of union of legally and economically independent companies to limit their competition, based on mutual accord in the form of agreements and within the range of said accord, while maintaining their respective independence. The Antimonopoly Act has many provisions for the control of cartels and actions related to them. The prohibition of unreasonable restraint of trade, as contained in the latter part of section 3, international agreements or contracts, as contained in section 6, and prohibited acts of trade associations, as contained in section 8 of the Antimonopoly Act are regulations relating mainly to cartels. Although there are governmental measures, such as cease and desist orders, pertaining to the above mentioned prohibited unlawful acts, and the same kind of measures pertaining to other unlawful acts, there are still more special regulatory measures in addition to these pertaining to cartels.

(1) Harms of Cartels

Cartels have the aspects of protecting corporate profits and stabilizing the management of enterprises, and they are said to allow enterprises to avoid wasteful use of resources, such as repetitive spending of production or advertising expenses. However, larger wasteful use of resources or harms to parties other than the enterprises concerned arise from cartels.

Harms of cartels manifest themselves in the form of interference with wholesome functions of market mechanisms. First, social welfare loss arises as a result of price increases and curtailment of production volume (generation of dead-weight loss). In addition, efficiency in distribution of resources is hampered because of the retention of non-efficient marginal enterprises, or dynamic economic development is prevented due to the loss of inducement to higher efficiency or due to prevention of innovation. Second, cartels represent the most easygoing method to maximize profit through avoidance of competition among enterprises, and because cartels are directly aimed at completely eliminating competition among cartel participants, they resultantly restrict competition in the entire market. Third, cartels are considered to run counter to justice in distribution in that they impose high prices, secure excessive profits, and compel, on the strength of many parties, the acceptance of arrangements that cannot be forced by a single party.

(2) The Attitude Toward Cartels

A position of overall prohibition is held with regard to cartels. There are two stances with regard to regulations concerning cartels: that of general prohibition regulation and that of abuse regulation. Before the Second World War, both Japan and Germany took the later stance toward cartels, however, the United States, post-war Japan, Germany and the EU etc., now take the former stance. The reason for the adoption of this regulatory posture is that unhidden cartels, such as price cartels and volume restriction cartels, hamper realization of such social merits as efficiency improvement due to attainment of economy of scale. Regarding these kinds of cartels, OECD calls for advanced countries to adopt common handling of these as hard core cartels.

Such a regulatory attitude has the following effects. First, price or volume restriction cartels have no social merits. Second, simplified regulation results in the reduction of legal enforcement expenses, which brings about social merits. Third, cost increases on the part of cartel participants due to enforcement of illegal cartels lessen economic inducement to execution of cartels and have the preventive effect on illegal actions, allowing reduction of law enforcement cost. On the other hand, there are cases in which joint research and development cartels or standard unification cartels have social merits, so exceptional handling of these cartels is desirable.

(3) Problems related to Cartel Regulation -- Problems related to Oligopolistic Markets and Economic Friction/Structural Changes

Present regulations regarding cartels are designed to confront the problems facing the effectiveness of surety measures for the opening of the market which will in turn enhance transitions in the structure of the Japanese economy or the easing of trade friction, and the effectiveness of regulations regarding market oligopoly, problem areas regarding regulations concerning market oligopoly arise from the existence of a cooperative attitude which is a prerequisite for oligopolistic mutual dependence. However, it is thought that an attitude of tolerance toward cartels, reflected in both pre-war and post-war laws and government attitudes in Japan, failure to recognize the negative social and economic implications of cartels, and the fragility of regulations regarding cartels contributed to Japan's predisposition to dependence on them.

The first problem is that even without the actual presence of cartels, the cooperative attitude taken among entities brings about the same kind of results. It is impossible under current law to regulate these activities, which presents a problem of legislation.

The second problem regards the fact that it is easy to form cartels through mutual agreement and as agreements can be made through even the slightest of contacts, even when agreement exists it is difficult to discover or prove. As the requirements regarding proof have

been relaxed, it is becoming easier to deal with this problem.

The third problem concerns the fact that cartels are highly effective and continue in an oligopolistic market. In order to cope with this problem, regulatory measures, such as cease and desist orders etc., are being strengthened.

The effective obstruction of changes in economic structure and of new entrances into the Japanese market through the actions of cartels or through systems of exemptions is pointed out as illustrations of problems relating to the blocking of overseas enterprises or new enterprises from entering the market even after the removal of public or institutional trade barriers. This problem has been dealt with through stricter enforcement of cartel regulation and curtailment of the exemptions system. Curtailment of exemptions is effected through governmental deregulation programs, mainly designed to abolish exemptions based on individual laws other than the Antimonopoly Law.

Finally, there is the problem relating to the antimonopoly laws in industrial sectors and markets in which competition was not possible or at least difficult under former government regulations, but a state of competitiveness is in the process of creation due to deregulation. The following 2 problems are considered to exist. Firstly, there are the problems of the applicability of antimonopoly laws towards the actions of former monopolistic corporations for whom a monopoly was assured by regulations, and of the manner in which how policy should be involved in the creation and maintenance of competition in these kinds of markets. The second problem arises when entrepreneurs and trade associations attempt to undertake joint operations in socially regulated areas in which the relaxation of regulations has been undertaken, or in unregulated fields. Entrepreneurs and trade associations undertaking joint operations with the purpose of preserving the environment, the health of people, and safety, may take steps to prevent the further entry on to the market of such special types of goods specified in standards. How antimonopoly acts should be applied to such actions is also a problem. In addition, in relation to the second problem, the state of cartel regulation is also being questioned. The second problem questions the circumstances surrounding regulations on cartels. The Fair Trade Commission has released its “Guidelines concerning joint efforts relating to recycling etc. based on Anti-Monopoly Acts” (June, 2001).

(4) The Form of Cartels

There are various forms of cartels, including those which restrict price, volume, customers, patents, products and allocation. Up until now, there have been many examples of cartels restricting prices and volumes. In many cases customers restriction are taken in order to effectively restrict prices and volumes, However, due to the attention afforded trading within industrial groupings as a major contribution factor to closed markets at the Japan-US Structural Impediments Initiative (SII) and, since the end of the 1970s, a strengthening of regulations regarding distribution systems (distribution keiretsu systems), a policy of strengthening regulations

regarding cartels to restrict customers was adopted in order to alleviate these problems.

II. The Prohibition of Unreasonable Restraint of Trade (Latter Part of Section 3)

Unreasonable restraint of trade is prohibited under the latter part of Section 3 of the Antimonopoly Act and the definition of such is found in Section 2 Section 6. The main requirements determined in the definition are entrepreneurs, concerted actions (communication of intent, mutual restraint of business activities, joint execution), and substantial restraint of competition in any particular field of trade (amounting to market control) contrary to the public interest.

1. Entrepreneurs

The term ‘entrepreneurs’ as the person engaging in unreasonable restraint of trade is defined in Section 2 Section 1 of the Antimonopoly Act. In the same section, an ‘entrepreneurs’ is defined as a person who carries on any form of business of a commercial, industrial, financial, or any other nature. Business is said to be the action of receiving benefit in return for benefit continuously and repeatedly, regardless of profitability. The question of whether or not free-lance persons, (for instance, men of profession, such as attorneys and certified public accountants, as well as writers and professional sports players) public entities and public associations (in cases in which the central government or public bodies, such as local governing entities, conduct economic activities) should be considered as entrepreneurs’ has become as problem, however presently, they are defined as such. According to the definition of unreasonable restraint of trade, entities carrying out such acts must consist of two or more entrepreneurs. Initially, according to judicial precedents, these entrepreneurs were determined to be those entrepreneurs participating in the same field of business. However, in recent years, a policy which, although limited, is not bound by this interpretation has been announced by the FTC. ("Antimonopoly Act-Based Guidelines Regarding Distribution/Transaction Practices" (1991; Secretariat of the Fair Trade Commission), (hereinafter referred to as "Distribution Transaction Practice Guidelines"), Part I. Antimonopoly Act-based guidelines regarding continual and exclusive nature of inter-enterprise transactions; 2. joint boycott). There was a case whose court ruling was that enterprises in different stages of transactions can exceptionally become parties to unjust transaction restrictions.

2. Concerted Actions (Communication of Intent, Mutual Restraint, Joint Execution).

In order for cartels to be formed, there firstly needs to be mutual consent or agreements between entrepreneurs in some form, such as a contract etc. Mutual consent between entrepreneurs with regard to the formation of a cartel agreement is known as communication of intent. There is no set form for communication of intent. This is regardless of the presence of absence of documents and measures for the maintaining of the effectiveness of agreement or discrepancies in names.

(1) Communication of Intent

(a) What degree of communication of intent is considered illegal under the Antimonopoly Act.

Tacit agreement and understanding are also included under communication of intent as determined by the regulations concerning unreasonable restraint of trade within the Antimonopoly Act. Tacit agreement is determined to be such when there is considered to be sufficient consolidated evidence of actual fulfillment of such agreements. Where evidence of actual conformity of actions is determined by reason of inference, this may also be determined to be tacit agreement.

Where there is no agreement among the parties involved, there may still be price fixing and all-round price increases amounting to price leadership, however, this is not considered to be an unreasonable restraint of trade. In addition, there may be a joint awareness between entrepreneurs which results in market control, however, this is still entrepreneurs which results in market control, however, this is still not considered to be unreasonable restraint of trade.

(b) Legal Problems Regarding the Proof of Communication of Intent

Where there is no documented proof etc. of a cartel agreement, it is difficult to prove the agreement and it is a problem what kind of evidence are required to prove it, especially with regard to tacit agreement. In order to prove communication of intent, the following three facts are employed and officially recognized.

The first is prior contact or negotiations between the parties involved. To a certain degree, specific concrete proof is necessary, but it is preferable if a fact is established by direct proof. However, if it can be shown that there was some kind of artificial factors behind the said action, even if there is no direct proof, it may be still theoretically possible that the results of the concerted action can be deduced as being so. This is known as indirect proof.

The second is the existence of the content of prior contact or negotiations, or in other words, proof of the existence of an exchange of opinions regarding the matter of cartel agreement.

In this case, it is sufficient to show that an exchange of opinions took place. For example, if specific standards can be shown regarding the rate or breadth of price increases, this, however, is even more favorable.

The third is the uniformity of the effect of the action involved. This substantially increases the credibility of proof of prior contact or negotiations, and constitutes circumstantial evidence of tacit understanding,.

(2) Agreement to which the Latter Section of Section 3 is Applicable -- Non-Applicability of the Latter Section of Section 3 to Vertical Restriction --

Most cases to which the latter section of Section 3 of the Antimonopoly Act concern so-called horizontal agreements among competitors. Cases of so-called vertical agreements between enterprises at different stages of transactions are very few, and in particular cases involving vertical agreements between suppliers and purchasers are virtually none. Reasons for restricting the application of the latter section of Section 3 cannot be understood bases solely of the text of Section 2 Section 6, but they are due to rulings regarding the following two requirements:

(2-1) Mutual Restraint

The content of concerted action must include mutual constraint and all related parties must be involved in restraint. Therefore, agreement detailing restraint by only one of the two entities does not constitute unreasonable restraint of trade. For example, a sole agency agreement with a distributor.

(2-2) Common Restraint

Up until this time, the court has ruled that restraint may be imposed on all parties involved but only when the content is different, as in the bestowal of sole selling rights and exclusive marketing of the products of a specific seller, or where one party applies common restraint to numerous other parties, as in the case of resale price maintenance. In these cases, the party issuing the restraint shall not be classified as being a party responsible for unreasonable restraint of trade. The content of restraint had to be the same between all parties concerned and the parties concerned all had to be within the same field of trade. Until now, the FTC has also only dealt with agreement between entrepreneurs of the same field of trade as unreasonable restraint of trade. Therefore, it is said that such vertical restraints should come under the unfair trade practices (Section 19 of Antimonopoly Act). There has been academic criticism of this due to the fact that there is a close relationship between horizontal restraint and vertical agreements between sellers and purchasers, which in effect amounts to restriction of competition. Recently, the FTC has announced a policy which goes against the conventional interpretation of unreasonable

restraint of trade with regard to such vertical agreements and unreasonable restraint of trade.

3. Substantial Restraint of Competition in a Particular Field of Trade

(1) The Problem of Implementing Agreement of Concerted Action

In order to classify an act as an unreasonable restraint of trade, there arises the problems as to whether or not agreement in joint action, which results in a situation of market control, must be present. This is related to the theoretical problem of whether or not joint action and a situation of market control must both exist to be classified as unreasonable restraint of trade, and the practical problem of just when cease and desist orders should be instituted.

There are three lines of thought regarding this ; 1. Unreasonable restraint of trade should be classified as such purely on the basis of mutual consent ; 2. Substantial restraint of competition, in a situation of market control, must exist as a result of mutual consent in order to be classified as unreasonable restraint of trade ; 3. Actual preparatory action etc. carried out by mutual consent must be taken in order to be classified as unreasonable restraint of trade.

Initially, the FTC judged mutual consent in joint action alone as insufficient grounds to be classified as unreasonable restraint of trade. In addition to mutual consent, preparatory action regarding to price rises etc. or some form of resulting effect had to exist (see 1974 FTC Rulings Regarding Unreasonable Restraint of Trade). However, in subsequent court rulings, mutual consent alone was judged to be sufficient ground for actions to be considered as unreasonable restraint of trade.

(2) Particular Fields of Trade

Various particular fields of trade means the market itself, which is the place where the presence or absence of restraint of competition is to be found. Of course, every particular field of trade is unique and is affected by different methods of restraint of competition. In each particular field of trade, the substantial restraint of competition may occur with regard to products or services. Each particular field of trade consists of products (the subject of transactions), areas (the area of transactions), time, stages of transactions, and customers and suppliers.

The Fair Trade Commission issued "Guideline for Interpretation on the Stipulation that ‘The Effect May Be Substantially to Restraint Competition in a Particular Field of Trade ‘Concerning M&As” (Dec. 21, 1998; the Fair Trade Commission). In this document, the FTC disclosed its general views regarding definition of particular fields and substantial restriction in the case of "mergers and acquisitions" (corporate combinations).

(a) Standards for Defining Product Markets (Fields of Trade with the Same or Similar Kinds of Products or Services)

Product markets are classified by analyzing product or service types (hereafter referred to as products). The scope of this market may depend on the final usage of such or substitution. This determined by analyzing the uniformity of final product usage (functionally identical), and by calculating the degree to which consumption volume of identical products is influenced by price fluctuations of the product in question(cross elasticity of demand). If products of a similar nature exist and they have reasonable substitution of final usage, even if they are not completely functionally identical, it is possible for them to be classified as being in the same particular field of trade (reasonable interchangeability). In reality, it is possible to refer to the 'Standard Classification of Industry' or the 'Standard Classification of Products'.

(b) **Standards for Defining Geographical Markets**

The determining of geographical markets is designed to limit the scope of market power by placing geographical limits on product markets. Geographic markets are designed to limit the degree to which a supplier of specific products is able to control the market. In determining these geographical markets, the location and size of the manufacturer and supplier, the degree of development of sales divisions, the degree of development of distribution channels and associated costs and the customs etc. of consumers are all taken into consideration.

It is possible to break down geographical markets into national markets and local markets. There have been cases where the determining of geographical markets has been influenced by the particularly small nature of areas, or by the fact that there are areas in which specific customers are predetermined. With the opening of the Japanese market to foreign countries, it is becoming increasingly necessary to consider products in terms of the global market and not merely national or local markets, as imported items are often more competitive than local items.

(c) Other Standards for Classification of Markets

Where a particular group of suppliers and a particular group of customers exist in any said geographical area and where there is effective restraint of competition, it is possible for the market for a particular product to be divided into a number of smaller markets within that area.

Firstly, it is possible for a particular market to be divided into one for all products of a particular industry and one for a portion of the products of a particular industry. Products of the same kind may be divided into a finished product market and a semi-finished product market.

Secondly, it is possible for the market of a particular product to consist of different

consumers and different trading partners with a large market for purchasers of large volumes, and a small market for consumers who purchase small volumes.

Thirdly, it is also possible for the market of a particular product to be divided into manufacturer, wholesale, and retail markets according to the different stages of purchasing. This finding is possible on the basis of the competitiveness and marketing activities of a manufacturer, and the degree to which industrial grouping is established.

In the U.S. and Europe, the market definition approach based on the measurement of demand variation in response to assumed price increases (referred to as "market redefinition approach" or "5% approach") is adopted in the guidelines of law enforcement authorities. The FTC has not declared a policy to adopt this approach. This setting method has a defect of recognizing excessively wide market definition in the monopolistic or oligopolistic market, which is referred to as "cellophane fallacy." If higher prices than competition prices are set in a non-competitive market due to anti-competitive actions by enterprises, demand flexibility will be high. The reason is that, if the starting point of assumed price increases is put at such non-competitive prices, demand variation will become great. One method to bypass this problem is to adopt a market which was made a target of the anti-competitive actions in the past as the market for the case at issue.

(d) Market Definition in the Regulation of Cartels

In many cases of regulating cartels, when the cartels are actually effective, there occur no problems if the products and areas that are the target of cartels are defined as markets. The market definition problem in the prohibition of cartels is not substantial when compared with other regulatory patterns (for instance, mergers and private monopoly). With regard to bid rigging, however, it is disputed if one case of bidding can be regarded as a market.

(3) Substantial Restraint of Competition

(a) The Legal Definition of Competition

The definition of Competition is found in Section 2 Section 4 of the Antimonopoly Act. This provision stipulates firstly the scope and requisites of competitive relationships, secondly, the connotations of supplier competition and consumer competition, and thirdly, the connotations of actual and potential competition. However, in determining the presence or absence of substantial restraint of competition, as detailed in the definition of unreasonable restraint of trade, this definition is insufficient.

(b) Substantial Restraint of Competition

Substantial restraint of competition means the state of market control and the creation, maintenance and strengthening of that state. Market power is the ability to control prices or eliminate competitors. Court rulings have also determined that 'substantial restraint of competition' has the same meaning as limiting the 'effectiveness' of competition and is the state where the possibility of effective competition is almost no longer possible. In this state, competition itself decreases while specific entrepreneurs or trade groups, through purposely, and to a certain degree, freely influencing price, quality, volume and various other conditions, effectively gain control of the market, or are in a position to potentially gain control as a result of substantial restraint of competition.

(c) Factors Influencing Determination of Substantial Restraint of Competition

According to the theory of traditional industrial organization, standards for determining substantial restraint of competition include factors such as market structure and market conduct. Market performance can be used as supplementary factors. Important factors when considering market structure are the market share ratio, barriers to entry and product differentiation. The greater the market share ratio, the greater the risks are that the parties concerned will be found violation of the Antimonopoly Act as the result of finding existing substantial restraint of competition. Sometimes there is a correlation between market conducts and the substantial restraint of competition. For example, the standards which are considered important with regard to cartels are different from those considered important with regard to mergers. It is impossible to impose objective standards across the board. In practice, the FTC has announced general standards in its guidelines which are applicable under a variety of conditions.

If substantial restriction of competition is regarded as generation, maintenance, and reinforcement of a market power, the market power can be measured based on the measurement of marginal expenses and learner indexes without passing through market definition in terms of economic theory. However, this measurement is difficult for various reasons, and the measurement factor, which was advocated in the context of traditional industrial organization theory, is estimated by using substitutional variables as a directly unmeasurable market power.

(d) Determining Substantial Restraint of Competition with Regard to Cartels

Through cartels, the participants operate together as one body with the result that competition between the members of the cartel is eliminated. However, in addition to that, in order for substantial restraint of competition in a particular field of trade to occur, the participants of cartels need to hold a large share of the market or cartel outsiders in that market follow cartels. In order to determine substantial restraint of trade with regard to cartels, it is important whether there is the following of outsiders, and the market share ratio of both cartels and outsiders is

important.

4. Public Interest

(1) The Meaning and Legality of Public Interest

There are three lines of thought regarding the meanings of public interest. 1.The interest of the whole national economy. In this view, public interest includes not only competition policy but also other values. The considerations of competition must be weighed with other values. This view shows that some cartels to restrict competition should not be illegal because it may serve a useful value. 2. The maintenance of competition. This view may not permit the other considerations to intervene into deciding about competition policy matter. Cartels to make market control always are held as illegal without exception. 3. The maintenance of free and fair competition resulting in the preservation of consumers interests and the democratic and healthy growth of the national economy. This view approves that cartels to restrict competition may be allowed, but the case of allowance is strictly more limited than that of the first view because cartels to restrict competition seldom serve to accomplish the interests of consumers and the democratic and healthy growth of the national economy.

A problem arises regarding the necessity of determining whether or not cartel action is contrary to public interest. There are three lines of thought regarding this. 1. As restraint of competition is, of course, contrary to public interest, it is unnecessary to determine this. 2. In order to determine if an action is illegal, it is necessary to determine whether or not it is contrary to public interest. 3. An action is illegal in principle but there may be exemptions as long as it does not contravene the ultimate purpose of the Antimonopoly Act, which is found in section 1 of it.

If the lines of thought outlines in 2 and 3 of the above paragraph are adopted, the scope of the actions considered illegal under the Antimonopoly Act is relatively narrower. The Supreme Court suggested that it took her opinion likes 3 above in the price fixing case by oil cartels, which was judged not to be exempted. Furthermore, up until this time, there is no record of such actions being judged exempted, and in practice, such actions may be interpreted in much the same way as per se illegal.

(2) The Prohibition of Unreasonable Restraint of Trade and Administrative Guidance

Administrative guidance is where government bodies act to directly influence parties to abstain from or to commission a specific action with the aim of achieving public goals. In such cases the voluntary cooperation of the parties concerned is a prerequisite. The following two problems arise with regard to the Antimonopoly Act. With regard to this problem, the Fair Trade Commission has released “An opinion concerning administrative guidance based on Anti-monopoly Acts” (Fair Trade Commission, 1994).

The first is the problem which arises when the content of administrative guidance or the method of implementing such administrative guidance is against the Antimonopoly Act. On June 30, 1994, the FTC announced its policy with regard to administrative guidance and the Antimonopoly Act. This policy reflects a tendency to disapprove of administrative guidance which restrains competition. In particular, the policy condemns administrative guidance with no specific legal basis which has a detrimental effect on market conditions, such as prices, and also condemns set forms of guidance which give rise to cartels. The Japanese Government also made its policies regarding price cartels and administrative guidance clear in the 72nd Lower House Budget Committee Report released on March 12, 1974.

At the present time, preliminary adjustments (administrative coordination) are in the process of being undertaken between the Fair Trade Commission and the respective government organizations in charge, in order to avoid administrative guidance being given that may conflict with, or contradict the Anti-monopoly Act.

The second problem regards whether or not the actions of entrepreneurs acting in line with administrative guidance are illegal under the Antimonopoly Act. Even if administrative guidance is given, if entrepreneurs themselves act spontaneously and violate the Antimonopoly Act with regard to unreasonable restraint of trade, they shall be guilty of such. When there is concerted action between entrepreneurs, regardless of whether the contents of administrative guidance are strengthened or whether they are carried out without modification by such parties, they shall be guilty of violating the Antimonopoly Act with regard to unreasonable restraint of trade. As a rule, such actions by entrepreneurs are judged to be illegal.

An exception to this is when the actions of entrepreneurs acting in accordance with administrative guidance are determined to be illegal, problems arise as to whether or not such actions are to be determined as contrary to public interest.

There have been cases where the Supreme Court has made exceptions and judged actions which as a rule are illegal, to be legal in certain emergency situations. An example of this was the situation with oil cartels where the Supreme Court judged that even though administrative guidance regarding prices may not have been directly based on specific laws, as long as they fulfill the following three conditions, such administrative guidance need not be considered illegal. 1. There is sufficient reason for such action given the particular circumstances at the time. 2. The administrative guidance given is socially acceptable. 3. It does not contravene the ultimate purpose of the Antimonopoly Act. Furthermore, the actions of entrepreneurs acting in accordance with such administrative guidance should not be considered as illegal, given that they were following and cooperating with legal administrative guidance.

With regard to bid-rigging, there are occasions when government or associated agencies who are in the position of placing an order, have the tenderer partake in bid-rigging. As a subject of criminal punishment, there is a possibility that individuals on the order side might be punished for their involvement in aiding and abetting the bid-rigging, but the undertaking of such procedures is exceptional. In addition to that, it is considered that there are no provisions under Anti-monopoly Act, which aims at regulating such actions of the ordering party. When bid-rigging is undertaken in accordance with the desires and wishes of the ordering party, the situation in which only the bidding party is punished is unbalanced and problematic.

III. Regulations Regarding Trade Associations

1. An Outline of Trade Association

Trade associations are one of the main subjects addressed by the Antimonopoly Act and definition regarding such associations are found in Section 2 Section 2 of the same Act. Firstly, trade associations, as determined in this Act must have as their principle purpose the furtherance of the common business interests of the constituent entrepreneurs. Purely social organizations and religions organizations are not included in this definition. However, organizations for the purpose of research, discussion, and the compilation or distribution etc. of statistics and other information specifically regarding business activities in order to promote the development and communication of such, are included in this definition. The purpose of such organizations is not to be determined by their sections of association, but rather by their actual activities.

Secondly, the trade association must be a combination or federation of combinations of two or more entrepreneurs. A trade association must consist of entrepreneurs who are fully independent from that particular association, have a title which is different from the entrepreneurs concerned, and to a certain degree, have a constant structure. However, the relationship between the constituent entrepreneurs is irrelevant, as is the particular category of business. In addition, when the trade association has branches or sub-branches with their own regulations and executives which are to a certain extent independent from the main trade association, the branches or sub-branches are considered in themselves as trade association.

2. The Purpose and Basis of Regulations Regarding Trade Associations

The purpose or regulations regarding trade associations is in order to regulate the formation and activities or cartels through the structured activities of trade associations. They also have the supplementary function of ensuring the consistency of regulations regarding unreasonable restraint of trade.

In Japan, regulations regarding trade associations have such important roles. The reason is that, firstly, through the structured activities of trade associations restraint of competition easily occurs, and, secondly, since trade associations have a history as controlling bodies which dates back to before the Second World War, traditionally in fact their ability to control is strong.

Regulations regarding the activities of trade associations are found in Section 8 Section 1 of the Antimonopoly Act. Sections 2 and 3 of the same Section contain details regulating the reporting of the formation and dissolution etc. of trade associations. Regulations regarding trade associations were previously contained in the Trade Association Act before being incorporated into the Antimonopoly Act. Section 8 was incorporated into the present Antimonopoly Act in 1953 at the time of the abolition of the Trade Association Act.

3. Prohibited Actions of a Trade Association -- Wider Restriction- Targeted Actions than in the Case of the Latter Section of Section 3 (horizontal restraint/vertical restraint) –

Actions of a trade association are lawful, in principle, and only actions of 5 patterns listed in Section 8 Section 1, are regulated. The regulation in Section 8 Section 1, includes the prohibition of cartel actions conducted by business executors under the instruction/decision by a trade organization to supplement Section 3. The target of this regulation is the case in which a trade association instructs or decides to take the following kinds of actions. Section 8 is applicable to both horizontal and vertical restrictions. Also, Section 8 is applied to cases of competition-restricting actions in which those not in competitive relations are also included as members of the association. There are also cases in which Section 8 can be applied to restrict actions whose competition-restricting effects are weaker than actions regulated under the latter section of Section 3. Thus, there is difference in the scope of application between the latter section of Section 3 and Section 8, with the Section 8 having wider applicability than the latter section of Section 3.

(1) Substantial Restraint of Competition in Particular Fields of Trade (Section 8 Section 1 Paragraph 1)

Firstly, the substantial restraint of competition in a particular field of trade (Section 8 Section 1 Paragraph 1) is prohibited. Although the this regulation is basically the same as those found in Section 3, it has the following distinct characteristics. Firstly, there are no provisions regarding the restriction of various kinds of activities provisions regarding the restriction of various kinds of activities likes mutual consent or joint action within this regulations.

Secondly, there is no mention of actions “contrary to public interest.” From the above-mentioned points we can conclude that all action of trade associations with regard to market

control is considered illegal. Although many of the actions regulated are actions regarding prices, in contrast with the latter half of Section 3 other types of action apart from price restriction are treated to be illegal at a much earlier point.

(2) Entering into an International Agreements or an International Contract Specified in Section 6 (Section 8 Section 1 Paragraph 2) is the Same as Section 6.

(3) Limiting the Present or Future Number of Entrepreneurs in any Particular Field of Business (Section 8 Section 1 Paragraph 3)

A 'particular field of business' is said to be a place or field where entrepreneurs are present or will be present. Limiting the number of entrepreneurs is said to be the action of preventing new entrepreneurs from entering into a particular field of business or eliminating those currently present in that particular field of business. Examples of actions regulated under this paragraph include: restricting access to trade associations even when it is difficult to commence business without being a member of that particular trade association; restricting the construction or expansion of the facilities of entrepreneurs who are not members of that particular trade association through forbidding customers of constituent entrepreneurs from doing business with such non-constituent entrepreneurs.

(4) Unjustly Restricting the Functions or Activities of Constituent Entrepreneurs (Section 8 Section 1 Paragraph 4)

If the number of constituent entrepreneurs in a trade associations is large, an executive organ is often formed which restricts the actions of constituent entrepreneurs. In this case, the action of trade associations with regard to their constituent entrepreneurs is regulated under this paragraph.

Under this paragraph, the unjust restriction of fair and free competition is considered to be illegal. Not all restraints imposed on constituent entrepreneurs by trade association are a problem, but it is the object of this paragraph to regulate those restraints which do impede fair and free competition. This object of this paragraph is to regulate the actions of trade association with regard to their constituent entrepreneurs.

The problem being dealt with in this paragraph is regarding the restraint of 'the functions and activities' of constituent entrepreneurs. In this respect, there are parts of this Paragraph which are duplicated in Paragraph 1 of the same Section. Even though the effect of the actions of trade associations in restricting the activities of constituent entrepreneurs in a particular field of business may not amount to substantial restraint of competition, they are still regulated under paragraph 4. Paragraph 4 deals with less severe impedance of fair and free competition than paragraph 1

Paragraphs 1 and 4 regulated different actions depending on the degree of constraint of competition. Of course, the actions covered by both paragraphs include actions regarding price, volume and customer restrictions.

(5) Causing Entrepreneurs to Employ such Acts as Constitute Unfair Trade Practices (Section 8 Section 1 Paragraph 5)

This paragraph is designed to regulate the actions of trade associations to restraint the activities of entrepreneurs whether or not they are constituent entrepreneurs of trade associations. 'Causing' in this paragraph refers to attempting to influence entrepreneurs to employ such acts that constitute unfair trade practices. In this case, it does not matter whether or not forceful elements were included in the attempt to influence entrepreneurs to employ such acts that constitute unfair trade practices, and the response of the entrepreneurs approached (whether or not they actually acted) is also irrelevant. An example of actions regulated by this paragraph include the actions of trade associations with regard to outsiders in indirectly refusing to do business with outsiders.

2. The Relationship Between the Latter part of Section 3 and Section 8 (especially Section 8 Section 1 Paragraph 1)

Section 8 deals with actions of systematic restraint by trade associations. Section 3 can also deals with the actions of constituent entrepreneurs within the same trade association not related to the activities of it. In an oligopolistic market, as the number of entrepreneurs is few, when decisions are made for the first time as a trade association through the mutual consent of constituent entrepreneurs, if it is possible to prove that this is in contravention of Section 8, even though this is an act of a trade association, it is possible that Section 3 and Section 8 may both be applied. There is a difference between the cease and desist order and no-fault liability for compensation measures of Section 8 Section 1 Paragraph 1 and the latter part of Section 3. Those issues arise due to the fact that the sanction of Section 3 is greater than that of Section 8.

In the mid-1970s, although the application of Section 8 was more common due to fact that it was easier to prove, since the latter half of the 1970s, the application of Section 3 has become more common. However, it is standard practice to apply only one of these Sections with regard to a particular action.

5. Miscellaneous

As the surveillance of cartel activities by trade associations is possible, a system of report has been established by the FTC with regard to the establishment and dissolution of trade associations. In order to define the legal limits of trade association activities, the FTC

announced guidelines regarding its application of these sections in 'Guidelines Regarding the Activities of Trade Association and the Antimonopoly Act'. Further, the Trade Association Research Group released 'Problems Regarding the Activities of Trade Associations and the Application of the Antimonopoly Act – Moving Toward More Open Business Activities', in order to give some idea of – the extent of the problem. The FTC published the new guideline for the activities of trade associations on October 30, 1995.

IV. Regulations Regarding International Agreements and International Contracts

Section 6 declares that, 'no entrepreneur shall enter into an international agreement or an international contract which contains such matters as constitute unreasonable restraint of trade or unfair trade practices'.

1. International Agreements and International Contracts

Section 6 prohibits the participation of Japanese entrepreneurs in international cartels or the conclusion of an ' international agreement or an international contract which contains such matters as constitute unreasonable restraint of trade or unfair trade practices'.

International cartels, technological licensing agreements, joint venture agreements and sole-agency agreements are the main object of these regulations.

In these cases, the parties concerned must include a foreign entrepreneur or a foreign trade association. International prices fixing and the international division of markets are specific examples of this. The effect of restraint of competition should occurs in the field of international trade. The Antimonopoly Act cannot be applied with regard to restraint of competition which does not have any influence on the Japanese domestic market.

2. The Meaning of the Regulations in Section 6 – The Reason for Providing Different Regulations Regarding International Cartels etc . from Section 3.

Section 3 can deal with international cartels which seek to restrain competition within the domestic market. Therefore, why do other regulations regarding this appear in section 6 ?

The first reason is that there is a difference in the penalties applied under Section 3 and under Section 6. The penalties associated with Section 3 are more severe than those associated with Section 6. The second reason is that as the ability of international cartels to restrict the activities of entrepreneurs is somewhat weaker than that of domestic cartels, it is thought more appropriate to prohibit the participation of Japanese entrepreneurs with regard to such international cartels. On

the other hand, it is thought that even if Section 3 alone is implemented, that will be enough for domestic cartels to be completely eliminated.

The regulations in Section 6 have the following characteristics. Firstly, as Section 6 deems participation in cartels itself illegal, cartels themselves are considered illegal even before they are formed. Secondly, as involvement in cartels itself is prohibited, this, of course, includes Japanese entrepreneurs who seek to become involved in international cartels. However, this raises problems regarding foreign parties involved in such cartels to guarantee their procedural rights. Thirdly, as the parties referred to in the latter part of Section 3 must by plural (i.e. more than two), if a single Japanese entrepreneur is involved, then this Section cannot be applied. However, Section 6 can be applied in this case.

The FTC has released guidelines regarding contracts where problems may easily arise. This includes 'The Application of the Antimonopoly Act with Regard to Unfair Trade Practices Regarding Patent and Know-how Licensing Agreements' (FTC Secretariat, 1989) and 'Guidelines Concerning Application of the Antimonopoly Act with Regard to Distribution and Trading Practices'(FTC Secretariat 1991), which include 'Guidelines Concerning Application of the Antimonopoly Act with Regard to Sole Agencies'.

3. Report System

Section 6 Section 2 containing regulations regarding notification to by submitted to the FTC and examination of such notification by the FTC was repealed in 1999.

V. Cease and Desist Orders, Penalties and Compensation for Damages

1. Cease and Desist Orders

Cease and desist orders regarding violation of Section 3 and Section 6 are found in Section 7, and those regarding violating of Section 8 Section 1 are found in Section 8-2. Cease and desist orders are governmental measures for maintaining competition and eliminating illegal conditions in addition to a system of penalties and the imposition of civil liabilities. Where any act exists in violation of the provisions of these Sections, the FTC may order the parties concerned to take appropriate action to alleviate such action.

(1) The Legal Nature of Cease and Desist Orders

As the FTC, which has the authority to issue such cease and desist order, is a government agency, and those orders are a form of administrative action, offending parties must legally comply with such cease and desist order. However, in contrast with the administrative measures of other

government agencies, the FTC must go through quasi judicial procedures and directly issue orders to the offending parties.

(2) The Content of Cease and Desist Orders

In addition to orders regarding the cessation of illegal actions, cease and desist order may include orders regarding the disposal of stock, the prohibition of concurrently serving executives, the dissolution of a trade association, the cessation of habitual practices, the removal of restraints with regard to the sale etc. of factories or facilities, the cancellation of matters regarding personnel, preventative measures to ensure that illegal action does not reoccur in the future, and the notification of measures taken to the FTC.

(3) The Limits of Cease and Desist Orders

Cease and desist orders focus around the cessation and prohibition of illegal actions. However, the economic power might or business relationships which make such restrain of competition possible can also be the object of such cease and desist order. Two problems arise with regard to the relationship between cartels and cease and desist order.

(a) Orders to Reduce Prices

In oligopolistic markets, as even after the cessation of cartel action there is the tendency for high prices to continue, problems arose as to whether or not it was possible to order the reduction of prices. It is thought that it would be difficult to order such reduction of prices under the current system due to the fact that the focus of cease and desist orders is around the cessation of illegal actions, the setting of prices by government agencies would not be consistent with the respect for the function of market mechanism, and that the FTC does not have the ability nor is suitable to perform such roles.

However, in order to effectively prevent the continuance of high prices even after the elimination of cartels, orders regarding reporting of prices fixed after the elimination of cartels, the renegotiation of prices with trading partners, and the fixing of individual prices have been included within the cease and desist order themselves.

(b) Prevention of Reoccurrences

Where the effect of restraint of competition is continuing even after the suspending of causative action, cease and desist order may be ordered regarding this (see Section 7 Section 2). In order to stop the reoccurrence of illegal action, the dissolution of structures and behavior which

form the basis of illegal action maybe ordered. In addition, in order to ensure that illegal action does not reoccur in the future, measures to publicize a certain action to trading partners etc. may be taken.

2. Criminal punishment and the damage compensation system

Actions that violate cartel regulations are subject to criminal punishment. However, the right of prosecution rests solely with the Fair Trade Commission. Also, actions violating the latter section of Section 3, Section 6 and Section 8 may become the target of non-fault damage compensation litigation (Section 25 of Antimonopoly Law). It is also possible to demand damage compensation based on the Civil Code, Section 709, with regard to actions that violate Section 8, Section 6 and Section 3. Regarding criminal punishment and the damage compensation system, the lack of their effectiveness has been pointed out up to the present. (Concerning criminal cases, 7 cases of prosecution occurred until 1990. Of these, the case that was taken up as an important case was prosecution against a petroleum cartel in 1974. Damage compensation cases in which the victim/plaintiff ultimately won up to now are limited to only several cases. Those that can be confirmed by the writer are only 2 cases.)

In recent years, the FTC has announced steps or measures to utilize these systems. For instance, criminal prosecution guidelines (June 1990) and private litigation assistance measures were announced. At present, the FTC is studying the possibility of instituting regulations that clearly call for improvement of the damage compensation system and uphold private citizens' right to begin stoppage litigation (injunction). (Damage compensation cases tend to increase after the start of the 1990s.) Revisions have been made to section 25 of the Anti-monopoly Act (the addition of the acts violating sections 6 and 8 as the subject) and a system of injunction suits was introduced (section 24 of the Anti-monopoly Act), however, injunctions in accordance with section 24 of the Anti-monopoly Act, are limited to cases of unfair trading practices (Section 19 and Paragraph 5, Subsection 1 of Section 8). With regard to damage compensation cases, the number of such cases has been on the increase since entering the 1990's. In particular, the number of cases in which citizens use the system of substitution law suit in an attempt to recover damages as a result of bid-rigging, are increasing.

In the criminal prosecution guidelines, the FTC indicated the principle of enforcing prosecution in the following two cases:(1) vicious and serious cases presumably affecting the people's life, such as price cartels, and (2) cases in which violation is repeated, and the objective of the Antimonopoly Law cannot be attained through administrative actions by the FTC. After the announcement of the criminal prosecution guidelines, the FTC made prosecution of 6 criminal cases against many companies and individuals. Of these, a ruling declaring the prosecuted to be guilty was handed down in 5 cases (the remaining one is a case in which a dispute is going on). In 1992, the law was amended, and the upper limit of penalty payment by an organization was raised

to ¥100 million.

VI. Surcharges (Section 7-2, Section 8-3)

1. The Aim of Surcharges

Although surcharges are administrative measures with the aim of collecting unfair gains acquired by cartels, they are not merely that, but rather are also an effective way of preventing and deterring cartels.

This system of surcharges was established in 1977. It was thought that penalties and the compensation system would act as a deterrent and as a system for recovering unjust gains, however, there was a lack of effectiveness with both systems, which in turn paved the way for the establishment of the surcharge system. This system of surcharges was amended in 1990 due to the necessity of amending the Antimonopoly Act to bring it into line with international standards and to increase its effectiveness as a deterrent.

The object of the regulations found in Section 7-2 is the prohibition of international agreements and international contracts detailed in Section 6 and unreasonable restraint of trade detailed in the latter part of Section 3, and the object of Section 8-3 is the illegal action of trade associations detailed in Section 8 Section 1 Paragraphs 1 and 2.

2. Standards for the Calculation of Surcharges (Section 7-2 Section 1)

(1) Standards for Calculation

Surcharges are calculated in the following way. In principle the amount of the surcharge is equivalent to the total sales amount of the goods sold or the value of the services in question supplied during the period in which the cartel was operational multiplied by 0.06.

Due to the prohibition of dual penalties, the aim of these surcharges is not to apply criminal sanction against cartels, but rather to recover the minimum amount of undisputed profit of cartels within a rational area.

(2) Classification of Businesses by Size and Type

When calculating surcharges, businesses may be divided into two categories according to size and type. The ration of multiplication for businesses other than wholesale and retail businesses is 6% for large enterprises (Section 7-2 Section 1) and 3% for small-medium sized enterprises (Section 7-2 Section 2). The ration for multiplication for wholesale businesses regardless of whether they are large enterprises or small-medium sized enterprises is 1%, while

the ratio for multiplication for retail businesses is 2% for large enterprises (Section 7-2 Section 1) and 1% for small-medium sized enterprises (Section 7-2 Section 2).

(3) The Calculation of Total Sales Amount and Minimum Surcharges

The total sales amount used in calculating surcharges is based on the total sales amount of the goods sold or the value of the services in question supplied during the period in which the cartel was operational. The basis for calculating the total sales amount is, as a rule, the shipping value. Where the calculated surcharge is less than 500,000 yen, the FTC may not order the payment of such.

3. Cartels Subject to Surcharges (Section 7-2 Section 1)

Cartels subject to surcharges are restricted to those types which exert a harmful degree of influence and those types which easily show unjust gains.

The first kind is price cartels which affect the price of goods or services. This kind of price cartel is revealed in such actions as bid rigging, customer restriction, and boycotts. Although boycotts have appeared as a form of unreasonable restraint of trade and surcharges are levied at such, surcharges are only levied in cases where practical restraint of supply volumes has influenced prices and details regarding time periods and the total sales amount of affected products can be specified.

The second kind is those cartels which restrict supply volume and have a direct influence on prices. These have a variety of affects on supply volume through such actions as restricting production and sales and determining shipping rations. However, it makes no difference whether they have directly influenced prices or whether substantial restraint of supply volume has occurred in fact

4. The Operational Period of Cartels, the Object of Orders and the Obligation to Pay (Section 7-2 Section 1)

Surcharges may be levied at entrepreneurs for a period of three years (Section 7-2 Section 1) retroactively from the time the entrepreneur ceased to engage in such cartels. However, when the entrepreneur has ceased to engage in such cartel activities for a period of more than three years, surcharges may not be levied (Section 7-2 Section 6).

Surcharges may be levied at only entrepreneurs who have engaged in unreasonable restraint of trade or those entrepreneurs who have violated regulations regarding trade associations.

The FTC is the government agency which has the authority to order the payment of surcharges and must do so when the conditions for such are satisfied. Surcharges are levied generally after procedures regarding cease and desist orders have been completed. Details regarding the payment of surcharges are found in Section 48-2, and Section 54-2. Surcharges shall be paid to the Treasury.

VII. Parallel Price Increases Notification System (Section 18-2)

1. Purpose

This system is designed to prevent the abuse of power by oligopolistic enterprises by publicizing the reasons for such parallel price increases.

Up until the 1970s, there were many cases of parallel price increases under an oligopolistic markets. Through such cases, the limitations of the Antimonopoly Act as it stood at that time were recognized. Even with the easing of standards for proving the cartels, the strengthening of cease and desist orders, and the strengthening of regulations by structural regulations, there were still legal loopholes through which cartels managed to operate. In order to stop this, Section 18-2 was included in the 1977 amendments of the Antimonopoly Act.

2. Four Conditions Regarding Parallel Price Increases

In order to be classified as parallel price increase the following four conditions must be satisfied. 1. The total sale of products or services supplies in Japan must exceed 60 billion yen per year. 2. The market must be a higher oligopolistic market. 3. The price being increased must be the standard price in business. 4. The increase in prices must be parallel (Two or more leading enterprises, including the top ranking enterprise, in an oligopolistic market must have raised the prices of their products by the same or a similar amount or rate within a period of three months). Guidelines regarding market structural conditions are contained in a separate chart. Those parties who must report parallel price increases are leading entrepreneurs.

3. Report and Publication

Where report regarding parallel price increases is required of leading entrepreneurs by the FTC, the contents of such a report shall include documentation which rationally explains the reason for the price increases in question.

In addition to the annual report of the FTC to the Diet, as outlined in Section 44 Section 1, the FTC may also make public any matters which it deems necessary to ensure the proper

enforcement of the Antimonopoly Act, with the exception of trade secrets of entrepreneurs (Section 43 and Section 44 Section 2).

VIII. Exemptions of Cartels

1. Exemptions to the General Prohibition of Cartels

There are various types of exemption under the Antimonopoly Act. The first is, exemptions regarding monopoly, such as natural monopoly (Section 21) and acts under intangible property rights (Section 23). The second is exemptions regarding cartels and the third is exemptions regarding the Resale of Price Maintenance Contracts (Section 24-2). If these are divided according to laws which regulate exemptions, the first are laws regarding exemptions found in 5 provisions in chapter 6 of the Antimonopoly Act, the second are laws regarding exemptions found in various laws. There was the scope for the exemption, based on the "Act Regarding the Exemption of the Act concerning Prohibition of Private Monopolization and Maintenance of Fair Trade" (= "Exemption Law"). Because this law was abolished in 1999, however, the room for this exemption was eliminated.

Exemption regarding cartels is of four kinds, as explained below.

2. Legitimate Actions based on Business Undertaking Laws/Ordinances (Section 22)

Paragraph 1 of Section 22 provides that, if there is a special law regarding a specific business, the Antimonopoly Act shall not be applied to legitimate actions of a business enterprise or a trade association based on the said law or an order pursuant to the said law. Paragraph 2 stipulates that such special laws shall be specified by a separate law. The "Exemption Law" was instituted based on this provision. In line with the shrinkage and abolishment of the exemption system in 1999, the "Exemption Law" was abolished, and this provision was eliminated.

3.Acts of Cooperatives (Section 24)

The acts of cooperative, which are made up of small-medium sized enterprises and consumers, are exempt from the provisions of the Antimonopoly Act. As the Antimonopoly Act aims at eliminating market control, it is only natural that cooperatives of small-medium sized enterprises and consumers are exempt from the Act. However, as it is possible for such cooperatives to use social and economic power with regard to others, supplementary conditions and limitations are also provided.

(1) Conditions of Exemption

Conditions regarding exemption are found in Section 24 Section 1 Paragraphs 1 to 4 and cooperatives must be formed in accordance with other special laws. In reality, problems arise as to whether or not the entrepreneurs fulfill the requirement of being small-scale. Problems regarding cooperatives based on the Small-medium Sized Enterprises Cooperatives Act are many and varied.

(2) Limitations of Exemption

Exemptions shall not apply when unfair trade practices are employed or when prices are raised unreasonably through substantial restraint of competition in a particular field of trade. As there are no specific standards to govern acts which exceed these limitations, it is a matter which is open to interpretation.

(a) Limitations of the Activities of Cooperatives when They Act as Entrepreneurs

Even though substantial restraint of competition may occur as a result of the joint-ventures of a cooperative with regard to production etc. for cooperative members, this is not considered to be in violation of the Antimonopoly Act. However, the limitations of Section 24 are designed to regulate the actions of a cooperative with regard to its actions as an entrepreneur.

There are three cases which are judged to be illegal. The first is when the prohibition regarding unfair trade practices is contravened. The second is when the prohibition regarding private monopoly is contravened and through unfair trade practices, substantial restraint of competition occurs or when through volume restrictions, market prices are maintained etc. The third is when problems regarding unreasonable restraint of trade or trade association regulations arise. When a cooperative acting as a entrepreneur forms a cartel with another trade association, however this cannot be applied to the cooperative with regard to contravening regulations regarding unreasonable restraint of trade. When a cartel is formed between a cooperative and another entrepreneur, or between two to more cooperatives, Section 8 can be applied with regard to the actions of two or more entrepreneurs with regard to unreasonable restraint of trade.

(b) The Limit of Activities of a Cooperative Association when the Association Acts as a Trade Association

Exemption to a cooperative association was of two kinds: the case based on this Section and the case pursuant to Section 2 of the former Exemption Law. Although these were overlapped, their scope was different. Because of the amendment in 1999, however, the Exemption Law was abolished, and exemption to a cooperative association became based solely on this Section.

4. Recognized Cartels

There were systems of recognized cartels, which refer to cartels that can be subject to the exemption only if approved by the FTC. Such systems were the depression cartel system (based on Section 24-3) and the rationalization cartel system (Section 24-4). These systems were abolished in 1999.

5. Joint Actions for which Exemption of the Antimonopoly Law Is Recognized under Other Laws

A variety of systems regarding exemption of the Antimonopoly Act were instituted in the 1950s, in order to meet the industrial policy targets of stabilization of corporate management and streamlining of corporate structure to strengthen international competitiveness of enterprises for the purposes of protecting and growing industries and coping with trade and capital liberalization. The laws for the institution of these systems included the Export/Import Transaction Law, the Law Related to the Protection of Small and Medium-Scale Enterprises, and extraordinary laws for various industrial promotion (textile industry, machinery industry, electronic industry, etc.). The number of exempted cartels based on individual laws, which totaled 53 cases in 1952, increased to 595 cases in 1959, and further to a peak of 1,079 cases in 1965. These exempted cartels were instituted in line with the aforementioned industrial policy.

However, these exempted cartels were criticized in years after the latter half of the 1960s for allegedly bringing about the stiffening of the price structure and becoming a factor for high prices in Japan. Particularly after the start of the 1990s, exemption systems were reviewed substantially in connection with the necessity of changing the structure of the Japanese economy and economic friction with foreign countries. The review was especially positioned as a matter of improvement actions in the Japanese Government's deregulation program, and the abolition of cartels and related laws was pushed vigorously. The number of exempted cartels was reduced to 12 cases based on five laws as of the end of March 1997. Individual laws providing for exemption were decreased, and exemption systems were curtailed. Due to the review of the exemption, implemented in 1997, the number of exempted systems based on individual laws was diminished to 17 systems based on 12 laws. Through the amendment in 1999, the following revision was carried out with regard to several individual laws that provided for the exemption. First, the scope of exemption was limited (Marine Transport Law, Inland Sea Shipping Association Law, and the Law Regarding Conversion of Environmental Sanitation-related Operations into Suitable Conditions). Second, regarding cases of approving the exemption, a system for consultation between the Cabinet Minister in charge and the FTC was instituted, and regulations concerning procedures, such as notification to the FTC, were set (Marine Transport Law, Inland Sea Shipping Association Law, and Aviation Law).