

The Fair Trade Commission In the Age of Internationalization

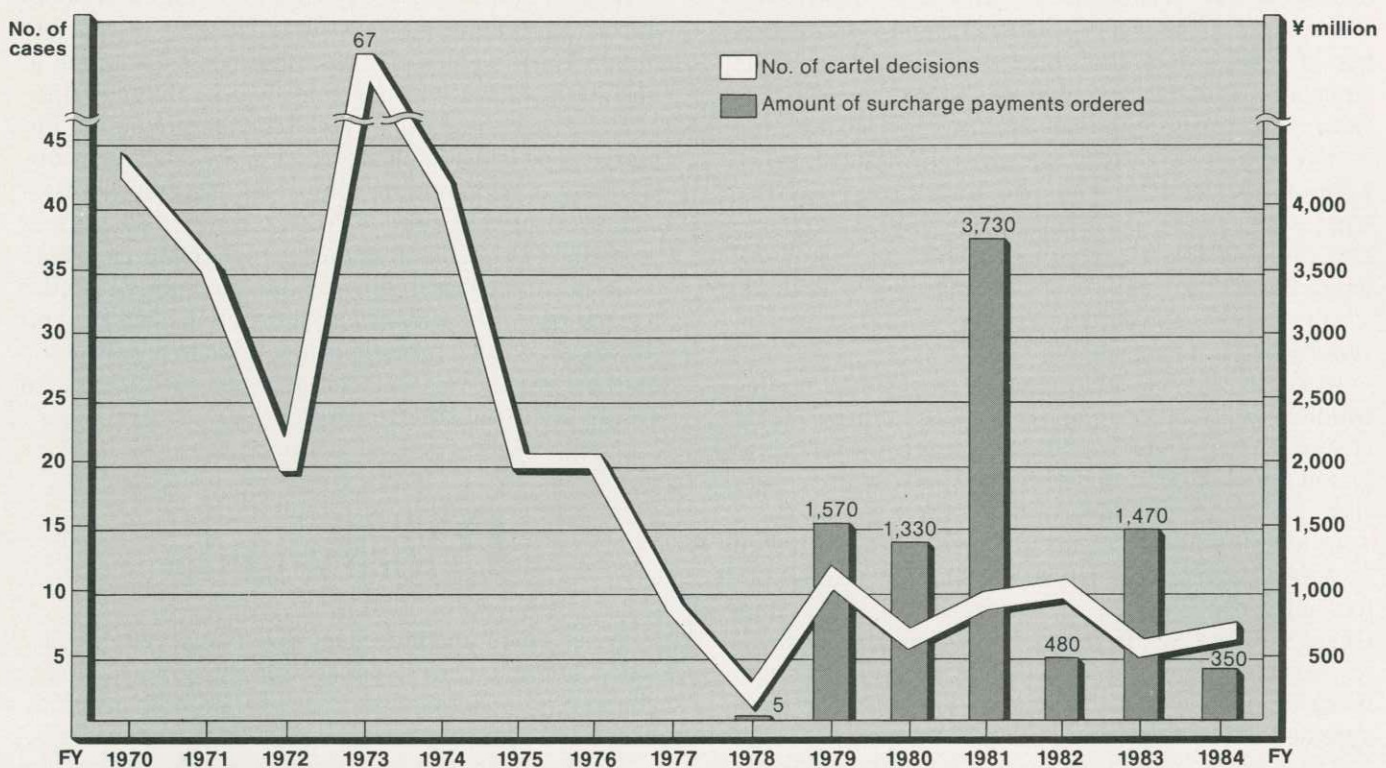
By Gen Takahashi

One of the prime movers of Japanese economic development has been active competition. Both for its own development and for the sake of the free trade system, the Japanese market must be a place of open, free competition where domestic and foreign businesses can coexist. The role played by Japan's Antimonopoly Act, which sets the basic rules for free competition, is becoming increasingly important.



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No. of Cartel Decisions and Amount of Surcharge Payments Ordered



Japan's Antimonopoly Act

Maintenance of the free trade system is essential to the development of international trade. As a precondition for this, it is necessary for countries to mutually improve the confidence of their trading partners in their respective markets. In this sense, the enforcement of antimonopoly laws can be seen as one indicator of a nation's efforts to maintain free competition.

Countries with laws aimed at ensuring free competition number 39 at present, including 21 of the 24 member nations of the Organization for Economic Cooperation & Development (OECD) and some Asian and Latin American countries; it deserves attention that these countries account for about 70% of the world's total trade value.

In order to improve confidence in Japan—the third largest trading nation in the world after the United States and West Germany—as an internationally open market, the Fair Trade Commission (FTC), a government agency responsible for implementing the Antimonopoly Act, seeks to promptly investigate and eliminate illegal practices. Given the controversial issue of Japan's trade imbalance with the rest of the world, the FTC views competition from an international perspec-

tive and probes any suspected anticompetitive practices which could work to restrict imports.

Japan's Antimonopoly Act, enacted in 1947—two years after the end of World War II—has 38 years of history behind it. During the period of rapid economic growth beginning in the 1960s, the Antimonopoly Act was recognized as playing a central role in supporting fair and free competition, and accordingly it was applied more actively. In 1977, the law was revised to drastically strengthen controls on anticompetitive practices, indicating a firm awareness in Japanese society of the Antimonopoly Act as being basic to a free economic community.

The Japanese Antimonopoly Act prohibits private monopolization, cartels and unfair trade practices, restricts the activities of industry associations, and curbs mergers. The FTC, which applies the law, consists of a chairman and four commissioners. Besides a secretariat in Tokyo, it has regional offices in Sapporo, Sendai, Nagoya, Osaka, Hiroshima, Takamatsu, and Fukuoka, and a 430-member staff.

The FTC applying law steadily

Unauthorized cartels provide a good example of FTC activities aimed at eliminating anticompetitive prac-

tices. The FTC has been exercising strict controls on illegal cartels. The accompanying chart shows the number of FTC orders abolishing illegal cartels and the surcharges ordered paid. Introduced in the 1977 revision, surcharges imposed against price-fixing and output-restricting cartels are generally equivalent to 1.5% of sales (2% for manufacturing firms, 0.5% for wholesalers and 1% for retailers). The largest surcharge ever imposed was ¥1,170 million (about \$4.93 million) per case and ¥351 million (\$1.48 million) per business. The surcharge system is increasingly effective in preventing cartel arrangements.

In February 1984, the Supreme Court found oil distributors guilty of forming a price cartel during the oil crisis of 1973. It sentenced 10 senior company officials to prison terms of up to 10 months (with two-year suspension) and fined nine firms a total of ¥18.5 million.

In March this year, a court handed down a ruling in favor of consumers in a damages suit against oil distributors allegedly involved in a price cartel. The Akita Chapter of the Sendai High Court held the oil firms responsible for damage to consumers who had bought home-heating oil at cartel prices. The case has been appealed to the Supreme Court.

These cases show that Japan's Antimonopoly Act permits administrative, criminal and civil action against unauthorized cartels, action that has become increasingly effective.

Equitable application of law

The FTC applies the Antimonopoly Act, like similar laws in the U.S. and EC nations, without discrimination between Japanese and foreign businesses; it welcomes the entry of foreign companies and imports of foreign products which promote market competition. Accordingly, the FTC will act against any anticompetitive practices hindering foreign entry or imports. In March 1983, the FTC ordered the dismantling of an import cartel organized by four Japanese soda ash manufacturers to fix import volumes, company shares, and import channels for U.S. natural soda ash.

Anticompetitive practices by Japanese firms are sometimes cited abroad as a barrier to foreign penetration of the Japanese market and a factor aiding export drives by Japanese companies. In fact, these allegations do not necessarily prove true given the prevailing active competition among Japanese businesses. The FTC hopes that concrete evidence will be made available, rather than simple speculation, to help it determine the presence of anticompetitive practices.

Besides controlling illegal practices, the FTC conducts fact-finding surveys into factors obstructing imports or the entry of foreign businesses planning to operate in Japan, and has published its findings since 1982. In 1983, the FTC surveyed the distribution of imported goods, including the activities of sole import distributors, general trading companies and industry associations related to imports. More recently, a survey was conducted last June on domestic manufacturers which act as exclusive distributors for foreign products similar to their own. The survey was designed to shed light on the impact of such cases on competition in the domestic market. The FTC will continue its surveillance to ensure fair competition.

Priority tasks

Policy on competition does not change year by year, but it is implemented under ever-changing economic conditions, resulting inevitably in shifting priorities. The FTC currently has a number of priority tasks.

The first is to devise a competition policy in keeping with such socioeconomic change as technological innovation and the information revolution. It is necessary to respond promptly and appropriately to new trends in economic activity. This is all the more true in view of today's diversifying consumer needs and the drastic structural changes represented by the rising weight of software, services, and information in the economy.

Second, the FTC must cope with competition policy problems arising in the course of ongoing review of government regulations and subsequent decontrol. Deregulation is a global trend. In Japan, the Telecommunication Industry Act took effect early this year, liberalizing the telecommunications business in April, while financial liberalization is under way. Deregulation is aimed at encouraging the private sector to display its vitality, but to fully realize this goal it is essential to establish a climate permitting fair and free competition.

A third priority is adoption of competition policy that reflects the internationalization of Japan's economy. The need for expanding international cooperation is growing ever more urgent at a time when resolving trade friction remains a major task. Japan has been holding regular consultations on competition policies not only through the OECD and other international organizations, but also bilaterally with the antimonopoly authorities of leading industrial countries and blocs, including the U.S., the EC and West Germany. By collecting up-to-date information through these and other avenues of international cooperation, the FTC will continue to contribute to the international application of competition policy. ●