

## 【 Abstract 】

This CPRC Report analyses the process of enactment of "An Act Relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade" passed in 1947, with regard to that of the procedural and institutional provisions; the organ of JFTC, judicial system, and civil and criminal procedures.

Based on the various original documents, including those of Japanese and US's, this Report shows that institutional and procedural provisions of the original Japanese Anti-Monopoly Act were finally enacted going through the intensive negotiation between the US and Japan, and this Report finds the original intent of the main institutional and procedural provisions as follows.

First, as to the institution enforcing the Anti-Monopoly Act, how this institution could be organized as the independent administrative commission was the most critical and political issue, because the two parties, Ministry of Industry and Commerce and Ministry of Justice, stood in opposition to each other with regard to which Ministry had the jurisdiction of the Commission. Consequently, the Fair Trade Commission was under the jurisdiction of the Prime Minister as Ministry of Industry and Commerce insisted.

Second, the role of the Commission and its decision are extremely important not only because the body of administrative agency would enforce the Act but, in the private damage suit, the damage claim would be possible only after the decision of the Commission was decisive and final, and this suit was to bring to the High Court of Tokyo. However, because the judicial review of the decision made by Commission was also to be held at the same Court, the procedural continuity of the administrative and judicial body was also designed at the early stage of the legislation.

Third, this Report infers that the recommendation provision that was abolished by the 2005 amendment had been enacted by the Japanese drafters to solve the trivial illegal conducts by the informal procedure for enforcing the Act effectively and efficiently.

Forth, on the topic of the antitrust damage suits, this Report clarifies that there were prominent changes during the drafting as to the provisions of damage claims, strict liability, and jurisdiction. We find that the provision of the limitation of civil actions closely relates to that of jurisdiction of High Court of Tokyo and request Commission's view. by the Court.[Request of Court's:omitted?] These were provided in order to maintain the consistent damage claim decisions between the Court and the Commission, and we now need to discuss how this original intent would affect the current antitrust damage actions.

Finally, in spite of a large number of the original documents, we find that there are unsolved questions, i.e. the reason that the penalty provision against the unfair trade practices was abolished, the penalty against the attempted offense was legislated, and so on.