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Tokyo Conference on International Economy and Competition Policy

The Tokyo Conference on International Economy and Competition Policy, which took place from September 19 to 22, 1973, was jointly sponsored by the Japanese Government, Japanese Scholars' Group on Competition Policy and the Japanese Institute of International Business Law, and was patronized by the Organization for Economic Cooperation and Development (OECD). It was attended by about 120 Japanese and 90 non-Japanese participants, including leading antitrust enforcement officials and authorities from 18 countries, the OECD and the European Economic Community. Heading the U.S. delegation were Assistant Attorney General Kauper, head of the Antitrust Division, and Chairman Engman of the Federal Trade Commission. The OECD was represented by M. Gilmer, head of its Taxation, Competition and Consumer Policy Service. When the 35 or so papers given at this conference are published, the resultant volume will be of value and interest to everyone concerned with restrictions on international trade, technology and investment and with comparative and international antitrust law and economics.

In getting away from the purely legal aspects of competition policy and developing the economic and policy factors involved, the Tokyo Conference represents an advance over the three prior international antitrust conferences of a similar nature: those held in Chicago in 1958,¹ Frankfurt-am-Main in 1960,² and Cambridge, England in 1969.³ This was largely to be expected, because the Cambridge meeting was of limited scope and the antitrust provisions of the Rome Treaty of 1957, which were still legal abstractions in 1960, have since been

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¹See PROCEEDINGS, INTERNATIONAL CONFERENCE ON CONTROL OF RESTRICTIVE BUSINESS PRACTICES (The Free Press of Glencoe, Ill. 1960).

²See the 2-volume summary of the papers presented to this Conference, reprinted as CARTEL AND MONOPOLY IN MODERN LAW (C. F. Muller, Karlsruhe, 1961).

³(DEPARTMENT OF TRADE AND INDUSTRY, INTERNATIONAL CONFERENCE ON MONOPOLIES, MERGERS AND RESTRICTIVE PRACTICES (J. B. Heath, ed., Cambridge, 1969).

transformed into full-scale ongoing programs bearing directly on the economic functioning of the nine members now constituting the European Economic Community.⁴ In addition, antitrust policy has been a matter of continuing debate and reappraisal in many countries, including the United Kingdom and Germany, which have recently expanded the coverage of their antitrust legislation,⁵ and Canada and Australia, which are considering thoroughgoing modification of their existing antitrust laws.⁶

The papers were discussed by five working groups, the chairmen of which brilliantly summarized their respective deliberations to the Conference as a whole. One working group, chaired by Prof. Dr. Gunther, the President of the German Federal Cartel Office, dealt with international trade and competition policy. Here, as elsewhere, there can be noted only a few papers that would have the greatest interest for the U.S. antitrust observer; this does not derogate from the quality and significance of the other papers presented. Using this single criterion, which unfortunately eliminates some good analyses of Japanese antitrust law prepared by Japanese scholars, the reader is referred to the impressive summary by Dr. Schlieder, the E.E.C. Director for Competition, of the current status and future prospects of antitrust enforcement in the European Community, and a comprehensively researched paper by Prof. Robert Smith of Oregon University entitled "Current Challenges to Competition Policy."

The second working group, chaired by Mr. Whiteley, a member of Canada's Restrictive Trade Practices Commission, discussed the international transfer of

⁴See Hawk, *Antitrust in the EEC—The First Decade*, 41 *FORDHAM L. REV.* 229 (1972); Timberg, *Antitrust in the Common Market: Innovation and Surprise*, 37 *DUKE, LAW & CONTEMPORARY PROBLEMS* 329 (1972).

⁵The best current source of information as to recent national antitrust developments is a 5-volume looseleaf *GUIDE TO LEGISLATION ON RESTRICTIVE BUSINESS PRACTICES*, published by the Organization for European Cooperation and Development. For an authoritative over-view of the English law, see the statement by Sir Rupert Sich, Registrar of Restrictive Trading Agreements, *The British Approach to Antitrust: Developments During the Last Fifteen Years*, 40 *ANTITRUST L. J.* 909 (1971), and for the most recent U.K. statute, enacted July 25, 1973, see *Fair Trading Act 1973*, Elizabeth II, c. 41. For the German experience, see statement by Prof. Mestmacker before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, *International Antitrust Hearings*, 93rd Cong., 1st Sess., Oct. 2, 1973; an earlier statement by Prof. Dr. Gunther to the same Subcommittee, in *Hearings on Economic Concentration*, 90th Cong., 2d Sess., Pt. 7 at 348; and a comprehensive volume, *BUSINESS REGULATION IN THE COMMON MARKET NATIONS*, Vol. 3, Germany (Blake ed., McGraw-Hill 1970).

⁶In 1971, the then pending Canadian bill was discussed by Judge David Henry, then Director of Investigation and Research, Department of Consumer and Corporate Affairs, in *Current Trends in Canadian Antitrust Enforcement*, 40 *ANTITRUST L. J.* 780 (1971). For an analysis of the more recent Canadian Bill C-227, introduced November, 1973, see *Proposals for a New Competition Policy for Canada—First Stage, Consumer and Corporate Affairs*, briefly summarized in 639 *ANTITRUST AND TRADE REGULATION REPORT A-14* (Nov. 10, 1973). For the Australian experience under its 1965 Restrictive Trade Practices Act, see Pengilly, *Australian Experience of Antitrust Regulation—A Vindication of the Per Se Approach*, XVIII *THE ANTITRUST BULLETIN* 355 (1973). A new and more encompassing Australian proposal, Trade Practices Bill 1973, No. 146, was introduced September 27, 1973.

technology and competition policy. The American reader will be interested in four imaginative papers presented to this group, by Prof. McQueen of York University, Canada, on "Learning, The Multinational Corporation and the Further Development of Developed Economies"; by Prof. Doi of Waseda University, Japan, on "International Transfer of Technology and Available Means of Effecting Competition Policy"; by Prof. Turner (the former head of the Antitrust Division) on "Territorial Restrictions in the International Transfer of Technology"; and by Prof. Silberston of Nuffield College, Oxford, evaluating the effect of restrictive licensing provisions on competition on the basis of an inquiry into the international patent licensing practices of five important British industries.

Working Group III was chaired by Prof. Irwin Edwards (formerly Chief Economist of the Federal Trade Commission) and discussed the complicated competition policy issues raised by international enterprises, international mergers and international joint ventures. Of the papers presented to this group, the most exhaustively documented were those of Prof. Scherer of the International Institute of Management, Germany, on "Trans-National Mergers as a Source of Production Scale Economies" and of Prof. Dunning of Reading, U.K., on "Multinational Enterprises, Market Structure, Economic Power and Industrial Policy." Also interesting is an analytic paper by Prof. Caves of Harvard, relating the multinational corporation to national competition policy.

The fourth working group, chaired by Prof. van Hecke of Louvain, Belgium, dealt with a subject of special interest to the international lawyer—that of the international adjustment of the antitrust laws of various countries. It featured papers of Prof. Matsushita of Sophia University, Japan, on "The Japanese Antimonopoly Act and International Transactions"; by Mr. Jacobs of the United Kingdom bar, on basic differences in the operation of six national antitrust legal systems; by Mr. Hunter of the United Kingdom bar, discussing the work of The International Law Association's Committee on Extra-territorial Application of Restrictive Practices Legislation;⁷ and by Sigmund Timberg of the United States proposing an international antitrust convention as a method of adjusting conflicting national antitrust policies.

The fifth working group, presided over by Mr. Clement of the French Ministry of Economy and Finance, dealt with the overlaps and conflicts inherent in price policy, consumer policy and competition policy. Even more than the other sessions, this elicited vigorous comments and questions, particularly from well-informed Japanese participants. Note may be taken of a

⁷This paper endorsed the approach taken by a majority of the Committee (but voted down at the ILA general meeting) opposing the "objective territorial" principle of jurisdiction, as set forth by Judge Learned Hand in the *Alcoa* case and in Section 18 of the American Law Institute's Restatement of the Law of Foreign Relations.

study in depth by Prof. Yamey of the London School of Economics on oligopoly problems; a paper by Justice Westerlind of the Swedish Market Court, discussing the congruities and contradictions among national price, competition and consumer policies; and a paper by Mr. Tanaka of the U.S. bar on the legal and consumer aspects of antidumping legislation. The extent to which the governmental administration of antitrust and consumer protection policies is becoming unified was symbolized by the presence at the Conference of John Methven, then about to take office in the United Kingdom as Director of Fair Trading under the extensive powers vested in that office by a recently adopted statute.

Both the continuity and the internationalization of antitrust policy formation was illustrated by the presence of two Americans who had helped prepare a report on the Japanese *zaibatsu* (combines) that was part of the climate accompanying the originally drastic antitrust measures adopted by the MacArthur military government in Japan. They were Prof. Edwards, the Chairman of the third working group, and Prof. Vernon of Harvard, who in a keynote address related the functioning of the multinational corporation to new perspectives in competition policy.

In describing (somewhat incompletely) the rich intellectual banquet afforded the participants in the Tokyo Conference, one should not overlook the master chefs who were responsible for this performance. They were the Council of the Conference, chaired by Hon. Masatochi Yokota, ex-Chief Justice of the Japanese Supreme Court and ex-Chairman of its Fair Trade Commission, and the Secretariat, particularly Mrs. Michiko Ariga, Honorary Secretary General of the Conference, Japan's first woman lawyer and until recently a member of its Fair Trade Commission.