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On the Trend Toward Consumer-Oriented Policy and the Social Structure in Japan

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Why the present emphasis on the consumer?

The Japan-US Structural Impediments Initiative (SII) trade negotiations, which began in the late 1980s and continued from the Bush and through the Clinton terms of administration, are referred to as comprehensive economic talks or new economic conferences. SII have sent different messages to us about proceeding towards an open economic system for the Japanese market. The former US Trade Representative, Carla Hills, repeatedly stated, interestingly enough, that "the Structural Impediments Initiative trade negotiations were for the benefit of the Japanese consumer." During course of these trade negotiations, it appears to have been a strengthening of both the Antitrust Law¹⁾ and a social structure a particular emphasis on the consumer. Aside from these so-called outside pressures, the Five-Year Plan to improve the standard of living (Seikatsu-Taikoku-Gokanen-Keikaku) was initiated by the Miyazawa Cabinet largely in response to the Economic Council meeting held in June 1992²⁾. Such phenomenon of social change appeared one after the other and were even inherited by the later Cabinets. As one of the key concepts to improve the standard of living, there is no doubt that the goal for a better social structure has been established. A social structure where the quality of life-style, meaning, and the value of the consumer is emphasised. The maintenance of liberal trade doctrines of the world trade system in which the categorical imperative directly lies in the establishment of comprehensive rules is, in hindsight, the result of the more than seven years of the GATT Uruguay Round talks.

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1) The Antimonopoly and Fair Trade Maintenance Act of Japan (Shiteki Dokusen no Kinshi oyobi Kōsei Torihiki no Kakuho ni kansuru Hōritsu, shortly called Dokkin Hō) was enacted in 1947 as Law No. 54.

2) See Report of Keizai Shingikai (Economic Council) under Economic Planning Agency, published on June 25, 1992.

Those of us caught in the midst of external and internal pressures are truly forced to re-evaluate the place of the consumer within this market economic system.

Internationalization, Information, Service Orientation, Old Age and the Consumer

When experts on consumer problems currently discuss the place of the consumer, they usually use phrases like "The Consumer in the Era of Internationalization", "The Consumer in the Information Society", "The Consumer in a Service-Oriented Society", or "The Graying of the Consumer".³⁾ In many cases, in the midst of all these discussions related to the features of modern society, it is probable that we are viewing the world through rose-colored glasses. Doubts arise one after the other, however, in the analysing these points of view. These doubts rise the following questions: "The liberalizing of trade is acceptable but are the standards of basic protection afforded the consumer strong enough with regard to imports?"; or, "Can we really rely on the safety of imported food?"; or, "Are we in an age where the consumerism is all-mighty to the point where when we select a product, we consider the big gap in the information available to us as compared to the corporation, we are weak in front of the charismatic forces of the news media?" "We have recently become so service-oriented, our life-styles seem to have really become more convenient, but why are there still an endless number of problems involving undue contracts?"; or, "With the many different product labels around and the gradual aging of the consumer, is real concern shown?; or, "What explanation can be given for the continual existence of unethical business practices which take advantage of insecurity associated old age?". If the main goal within the bureaucracy is the " -ization" of society, then it must create a better image in this age of change. In reality, these four monsters surround the consumer and society are turning out to be somewhat frightening.

On March 15, 1962, John F. Kennedy read his special message on the "Protection of the Consumer" before the US Federal Congress. Within this message the famous four rights of the consumer were enunciated.⁴⁾ This declaration reflects the maturity associated with the American society and the rise of consumerism. There is a change occurring in the "education mama" type of

3) See the Record of Shōhisha Hogo Kaigi (Consumer Protection Conference) in Prime Minister's Office.

4) The right to safety, the right to be informed, the right to choose and the right to be heard.

consumer protectionism we have had up until now in Japan. Japan is at that point where she must re-evaluate Kennedy's legacy of the Declaration of Rights of Consumers.

What has the Basic Consumer Protection Law Provided for the Japanese Within the Last Decades?

The Basic Consumer Protection Law came into being on May 30, 1968.⁵⁾ It was supposed to function as the *Consumer's Constitution*. This law has, however in reality, not received much attention and has largely stayed buried among the Compendium of Laws. It provides for the administration of Japanese-style consumer protection and the basic foundation of a "triumvirate" system among administration, corporations and the consumer. It also saw the establishment of the Consumer Protection Council (Shōhisha-Hogo-Kaigi), the highest governing body which determines consumer-related policies. The Consumer Protection Council is, however, far from the image of a *Ministry for the Consumer* as envisioned by many citizens. It meets for a short time once a year, and then it is nothing more than a administrative ceremony. An even more fatal flaw is that the law does not contain a single reference to the rights of the consumer. Certainly there are the detailed policies in consumer protection enumerated in the provisions which leave no stone unturned. It can be said that it is however not unlike the crafted food samples in a restaurant's display case.

In other words, the menu does not give something which the consumer can be satisfied with. Compared to many legal systems of the more advanced Western nations, the Japanese consumer has basically up to now been content with a situation that does not grant them any rights. Even in the special revision of the Unfair Competition Prevention Act in 1993, which attracted attention in the West, the result was that provisions pertaining to the proposed consumer's right to watch over company activities of the within the market place and to file an action in order to prevent anti-consumer activities were not introduced. There exists a deeply-rooted distrust among consumer groups which leaves a bone-chilling feeling.

The March 7, 1968 issue of the Asahi Shimbun carried an article conveying the details of the housewives' federation and the Japan cooperatives' federation efforts to try and stop the enactment of the Basic Consumer Protection Bill. Ultimately we

5) Shōhisha Hogo Kihon Hō (Fundamental Law on Consumer Protection) was enacted on May 30, 1968 as Law No. 78.

must go back to the basics, and to the Basic Consumer Protection Law where there must be a complete re-evaluation of its provisions and from there move toward the establishment of consumer rights.

Do We Have An Economic Constitution?

Among corporations in a free economic system, that is, a market economy system maintains and promotes the advancement of fair and free competition is considered to be a basic principle. It is widely accepted in the legal systems of the advanced nations that the competition among corporations, like a sports game, must be conducted in the spirit of fair play (the unspoken rules which forbid the use of unfair methods while competing), and that there must be no activities to stop competition and monopolize the market, or to make collusive bids and profit unfairly (the unspoken rule which forbids monopolization and cartels). It is well-known that in Japan underwent Three Great Revolutions after the World War II (That is, first, land reform; second, training and development of the labor unions; and finally, the eradication of the zaibatsu business groups). The Anti-Monopoly Act (1947) was enacted as one of the pillars of these revolutions. At that time it was also referred to as the Industrial Constitution. Even later the Anti-Monopoly Act was frequently said to compose the "Traffic Rules of Business". The 50-year history of the Anti-Monopoly Act is however one of strife and more often than not official records have recorded these periods of strife and difficulty. There have been calls recently, however, to strengthen the Anti-Monopoly Act in regards to among other provisions the escape clauses of the rules. These calls have resulted from both external and internal pressures. There are moves in that direction, but as consumers we are very indifferent and leave everything in the hands of the Fair Trade Committee (Kōsei-Torihiki-Iinkai), the supposed watchdog of the Anti-Monopoly Act.

The Anti-Monopoly and Fair Trade Maintenance Act, that is, the Antitrust Act states in its first provision:

The benefit to the regular consumer shall be guaranteed.

This is clearly the primary objective of the Antitrust Act. After the nation's economical and political destruction as a result of World War II, she chose the path of democracy. Japan's Antitrust Law arose, without doubt, was the natural outcome in this economic democratization process. Together with political

democratization, Japan had a strong Constitution worthy to support for her economic democratization. Usually when democracy is referred, it is touted as the system that engenders the biggest and the largest number of good. It is an undeniable fact that the biggest and the largest number of people in an economy are its consumers. In order to obtain the biggest and the largest number of good in an economy, there must be concern with its circumstances. Political and economic democracies are like the wheels of a car, in that if they do not rotate smoothly, Japan will not be recognized as a real democratic nation by other countries. I believe that there is an urgency among the citizens of Japan to dig into the preamble of the *Economic Constitution* that is the first provision of the Antitrust Act.

Are We Protected Legally as Consumers?

In the realm associated with consumer problems, the word "independent consumer" has now become as self evident slogan. If an economic democracy has become the national policy for that country, with regard to the rules of *fair and free competition* in the market, the question for whose benefit these accrue will have clearly visible. The one responsible for monitoring unfair practices of corporations is unquestionably the consumer. When compared with the consumer ombudsman system as found in the Scandinavian countries, however, the Japanese legal system is not as effective. From the Meiji era, the Japanese bureaucratic system has been incomparable with the rest of the world's. Within the field of consumer protection legislation, the all-important market monitoring system has depended almost solely on these "able" central and regional bureaucratic organizations. Even in this field, it is as if the administration, like the education mama has stretched the holes of the net too wide. "Should the administration always be like the education mama?" The English commentator J. Bryce has stated that local government is a school of democracy. When we think of economic democracies, the results of consumer protection regulations at the local government level, including Osaka, have certainly been very good. Despite the utmost efforts of consumer administration, however, the number of case of questionable marketing unfairness of corporations in Japan is great when compared to international statistics.

As the 21st century quickly approaches, consumer participation in the legal system, even in the area of consumer protection, is inevitable in order to promote social reform through a shift from a producer-dominated and corporation-centered system to the direction of placing the priority on the consumer. This is especially the case, as has already been mentioned, that under even the basic traditional and

classic economic law, that is, the Unfair Competition Prevention Act,⁶⁾ there is no recognition of the consumer's right to file for action. This is at the same time many different countries with liberal economic systems, such as Germany⁷⁾ which has a legal system very similar that of Japan, do recognize this right. The opportunity for the consumer to ask for compensation in a damage suit after the fact remains but it accounts for only a very small part of consumer participation in the legal system. That would mean that the establishment of the consumer's rights, which is the revival of true consumer authority, must be realized both on the national and local government level.

A Forecast of Consumer Problems

Together with the establishment of the GATT (WTO from 1995), the world economic order has been moving tremendously toward a global dominance. Even the former socialist economic systems have been dissolved and these countries are promoting liberalization. In the age of internationalization, the fate of mankind depends on the strong development of a global market economic system. Consumer problems should not thus be considered as only part of a domestic and closed market, but there must be regular efforts to look for an international consensus.

As has been already mentioned Japan must first go back to the basics of economic democracy, and consumers themselves must be furnished with legal weapons. At the same time however the following two points must be remembered:

First, the consumer is a human being. It so often happens that in the modern model of *corporation vs. consumer*, the weakness of an individual consumer is like as a mere sand particle small and easily blown away by the wind. In the 1970s, a new marketing law in Sweden, "Marknadsföringslagen",⁸⁾ ruled out "premiums" business and the like, and it was ruled unlawful that a corporation's profit be made as a result of taking advantage of psychological weakness of the consumer. I was impressed to learn that the protection of the indecisive and weak consumer's human

6) The new Prevention of Unfair Competition Act (Fusei Kyōsō Bōshi Hō) was enacted on May 19, 1993 as Law No. 47, abolishing the old Law of March 27, 1934 as Law No. 14.

7) Cf. Gesetz gegen den unlauteren Wettbewerb (1909), Art. 13. See also a recent legislation of Spanish Unfair Competition Act of January 10, 1991, Art. 19.

8) The new Swedish Marketing Act entered into force on January 1996. It has been made clearer and more powerful than the original 1975 Act.

rights lay behind this decision. The legal system for the protection of the consumer should start from this fundamental stage. It must be realized that the call is to place priority in the consumer as a human being and therefore to protect their rights.

Secondly, the frequently mentioned IOCU⁹⁾ concept of *6 billion consumers* as one of the key words to solve the consumer problems of today has to be emphasized. That is, we are now in an age of a borderless economy and corporations go beyond a country's borders to engage in economic activities. Consumer problems must always be considered in an international setting. In each country's domestic market, it is undoubtedly important to establish standards within the legal system for corporate activities. However, in these times when, true to their billing, transnational corporations move around the world, there must be a monitoring system for corporate activities that will be conducted in the true spirit of an international federation. Through that, we will learn the lesson that the good fortune of the consumers of one advanced country will not be the misfortune of the consumers of developing another country.

9) International Organization of Consumers Unions was established in 1960 as NGO for international protection of consumers and now called CI (Consumers International).

