Northwestern Journal of International Law & Business

Volume 4
Issue 2 *Fall*

Fall 1982

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Northwestern Journal of
International Law & Business

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Passage of the Export Trading Company Act of 1982 provides new opportunities for American business to organize and operate general trading companies. After presenting a thorough history and description of the Japanese sogoshosha, *Mr. Dziubla gives several compelling reasons for Americans to establish export trading companies. He also examines the changes in United States banking and antitrust laws that have resulted from passage of the act, and offers suggestions for drafting guidelines, rules, and regulations for the Export Trading Company Act.*

For several years, American legislators and businessmen have warned that if America is to balance its international trade—and in particular offset the cost of importing billions of dollars worth of oil—she must take concrete steps to increase her exporting capabilities.[1] On October 8, 1982, the United States took just such a step when President Reagan signed into law the Export Trading Company Act of 1982,[2] which provides for the development of international general trading companies similar to the ones used so successfully by the Japanese. The Japanese success in exporting goods is primarily a result of the operation of a specific type of trading company, the *sogoshosha*, or gen-

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1 *E.g.*, Cole, *Establishing American Trading Companies*, 2 Nw. J. INT'L L. & BUS. 277 (1980) (excellent article providing a general overview of the Export Trading Company Act and Japanese trading companies).

2 The Export Trading Company Act of 1982, Pub. L. No. 97-290, 96 Stat. 1233 (to be codified in scattered sections of 12 and 15 U.S.C.).

eral trading companies. While there are thousands of Japanese trading companies, the vast majority of these are small- to medium-sized firms specializing in a particular product or industry (*senmonshosha*).[3] Only nine out of these thousands, however, qualify as *sogoshosha*.[4]

The ability of the *sogoshosha* to export goods in enormous quantities and thus help Japan maintain a trade surplus is undeniable. The Japanese overall trade surplus is expected to climb from $16 billion for 1981 to $20 billion in 1982, and its trade surplus with the United States is expected to reach $15 or $16 billion, up from $9.91 billion.[5]

Former Senator Adlai Stevenson III, the chairman of the Senate Subcommittee on International Finance and formerly the primary proponent of the Export Trading Company Act, noted that in June 1980 the United States had a trade deficit of $2.28 billion, the fiftieth consecutive monthly trade deficit, and that the "success of trading companies in exporting United States products has already been demonstrated by foreign trading companies. Mitsui Trading Company is America's sixth largest exporter."[6]

While this statistic is both impressive and disturbing, it nevertheless fails to convey the true enormity and marketing ability of the *sogoshosha*. One revealing statistic is that in 1979 these nine companies accounted for 54.5% of Japan's imports and 48.2% of her exports.[7] Further figures showing the size of the *sogoshosha*, the scope of their activities, and their importance to manufacturers will be considered below.

Two important questions face American businessmen and their counsel as they consider the establishment of export trading companies. First, why should American business go to the expense and trouble of trying to establish general trading companies that could compete with companies such as Mitsui or Mitsubishi when these same companies are doing so well at exporting American products, for a commission of only 2-3%? In other words, would it not be cheaper for American companies to use the Japanese *sogoshosha* and pay their small commission, or alternatively enter into joint ventures with them, rather than spend millions of dollars to set up their own general trading company? Second, if, as this article will demonstrate, there are compelling reasons

[3] Y. TSURUMI & R. TSURUMI, SOGOSHOSHA: ENGINES OF EXPORT-BASED GROWTH 1 (1980) [hereinafter cited as SOGOSHOSHA]; Cole, *supra* note 1, at 281.

[4] SOGOSHOSHA, *supra* note 3, at 1; Cole, *supra* note 1, at 281 n.22.

[5] Asian Wall St. J. Weekly, Nov. 23, 1981, at 2, col. 1.

[6] 126 CONG. REC. S11587 (daily ed. Aug. 26, 1980) (Statement of Senator Stevenson).

[7] Kanabayashi, *Japan's Big and Evolving Trading Firms: Can the U.S. Use Something Like Them*, Wall St. J., Dec. 17, 1980, at 58, col. 2.

why America should establish general trading companies, then how can American business develop general trading companies?

Six reasons compel American business to develop its own general trading companies rather than to rely on the existing Japanese export companies. First, although it will require enormous capital investment to establish an American trading company that could compete with the *sogoshosha* in an area where the *sogoshosha* have a definite experiential advantage, an American general trading company would have only one goal: to export American goods, particularly those manufactured by small- to medium-sized firms, which have traditionally been sold only within the United States. Thus, America's trade deficit would improve. Moreover, because the trading companies would require an extensive network of international offices, they would presumably provide many valuable jobs, particularly for liberal arts graduates and especially for those with foreign language ability.[8]

Second, because the *sogoshosha* already are tied to their own—largely Japanese—sources of supply of manufactured goods, they are unable to give total commitment to exporting American goods.[9] As will be seen below, the *sogoshosha* have developed an integral network of subsidiary and affiliated companies that provide component parts and distribution services for finished goods ultimately exported by the *sogoshosha.* Because all of these companies belong to a particular trading company group, because the core trading company has a financial interest in seeing each of these companies prosper, and because the trading company is often under a long-term obligation to purchase the component parts from its affiliates, it cannot devote itself completely to exporting American goods. Thus, it cannot devote itself wholeheartedly to its American customers, and exportation of American goods would be of secondary concern at best.

8 The interaction of these American trading company personnel with the peoples of the world would, in turn, presumably lead to a greater understanding of and appreciation for the foreign and domestic policies of America's trading partners.

Congressman Paul Simon recently remarked on the dire need for foreign language training in America. He stated further that the lack of trained personnel has greatly hurt the export activities of many American companies. P. SIMON, THE TONGUE-TIED AMERICAN 1-40 (1980).

A recent article trenchantly notes that over 12,000 Japanese are currently studying in the United States, with more than 50% of them studying technical subjects. The most popular subjects are electrical engineering and computer science. In sad contrast, however, only 500 Americans are currently studying in Japan, and most of these students are studying the arts or social sciences. Shinn, *Technical, Language Skills Give Japanese Edge Over U.S. Rivals*, Asian Wall St. J. Weekly, Oct. 26, 1981, at 15, col. 1.

9 SOGOSHOSHA, *supra* note 3, at 83. *See also* Abbott & Totman, *"Black Ships" and Balance Sheets: The Japanese Market and U.S.-Japan Relations*, 3 NW. J. INT'L L. & BUS. 103, 132-34 (1981).

Third, because the *sogoshosha* are already in fierce competition with each other and beset by internal and external problems that will be discussed more fully below, they probably cannot be induced to undertake the additional problem of developing separate joint ventures with nascent American trading companies,[10] especially when the American trading companies eventually could produce the strongest threat to the hegemony of the Japanese trading companies within the field of international trade.

Fourth, the overwhelming preoccupation of *sogoshosha* personnel with sales volume, which is a necessary evil given the low commission rates which the *sogoshosha* charge, has rendered them insensitive to the needs of small- and medium-sized firms.[11] Although the *sogoshosha* have had long experience exporting the goods manufactured by small- and medium-sized Japanese companies and thus have learned how to handle the concerns of such customers, the *sogoshosha* have limited experience with American manufacturers of comparable size. Therefore, they would be likely to ignore the needs of their American customers in order to maintain sales and, thus, profit levels.

Fifth, a United States general trading company would be best suited for barter trade. As one author has stated in concrete terms easily appreciated:

> In dealing with China, American manufacturing firms will soon discover that China's ability to balance her imports through barter-trade exports will require sogoshoshalike internal exchanges of diverse commodities and services. How else can American manufacturers who want to export tractors receive payment in kind in the form of Chinese apparel and sorghum-based "white lightning" called Mao-tai?[12]

In short, American trading companies would be an important means of establishing mutually beneficial trade relations with many third world nations that are short on foreign exchange reserves.

Finally, and perhaps most importantly, American trading companies would presumably be very profitable. In 1971, the average return on equity achieved by the Japanese trading companies was 27%.[13] American trading companies should be able to achieve similar returns.

For the foregoing reasons, American business should take advantage of the opportunity to form general trading companies provided by the Export Trading Company Act. Many Japanese executives, how-

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10 SOGOSHOSHA, *supra* note 3, at 83.

11 *Id.*

12 *Id.* at 74.

13 *See* M. YOSHINO, NOTE ON THE JAPANESE TRADING COMPANY 15 (1973) (Harvard Business School Case No. 9-374-136); *see also infra* text accompanying note 210.

ever, question the ability of American business to develop international trading companies. This is because long-term investment in both capital and personnel is required. As Akio Morita, chairman of Sony, Inc., remarked in 1973:

> A member of our company may be stationed in some faroff land, struggling to learn in a country with entirely different customs and characteristics. But he realizes that with the knowledge he has gained in five years or so he might become chief of the department in our head office that deals with this area. . . . He, therefore, is keenly interested in how strong the company will be in five or ten years from now. . . . As a result, Japanese enterprises steadily move ahead. . . . American companies are constantly concerned with figures, and if rapid returns are not produced, the rating of the company drops. Except for very large corporations therefore, I wonder whether American companies are willing to embark on worldwide marketing ventures that require long term investments.[14]

Similarly, the managing director of Marubeni Corp., the third largest *sogoshosha*, commented that "[i]t would be very difficult for the U.S. to establish trading firms like those in Japan because Japanese firms are based on Japan's unique industrial structure."[15]

What is this "unique industrial structure" and, assuming that it provides the basis for the Japanese success in forming export trading companies, how can America develop successful trading companies within the context of its own business and industrial structure? The remainder of this article attempts to answer this question. Only one previous article has even addressed this question,[16] but given the novelty of the Export Trading Company Act and the dearth of information on the *sogoshosha*, several questions remain unanswered.

For example, will the modifications of United States antitrust laws by the Export Trading Company Act provide American trading companies with immunity from antitrust laws comparable to that enjoyed by their Japanese counterparts? Will the modifications of United States banking laws permit United States banks to become as financially involved with their client trading companies as is possible for Japanese banks under the Japanese banking laws and system? Why did the *sogoshosha* develop in Japan over 100 years ago while the same concept is only now beginning to arouse interest in the United States? Can this 100-year gap in experience be closed, and, if so, what form will American trading companies assume?

In attempting to answer these and related questions, this article first defines general trading companies and establishes a framework for

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14 Quoted in Y. TSURUMI, JAPANESE BUSINESS 4 (1978).

15 Kanabayashi, *supra* note 7, at 56, col. 2.

16 Cole, *supra* note 1.

analyzing them. This framework is simply a statement of the three crucial functions that all trading companies must perform to be successful. Then a review of the pre-World War II development of the *sogoshosha* within this framework shows how the Japanese social and legal structures provided the basis for the phenomenal growth of the *sogoshosha*. Incidentally, this review may also provide a preview of the possible stages of development facing American trading companies.

The next section of this article describes the postwar development of the *sogoshosha* and their current functions. Included in this section are discussions of the Japanese antitrust laws and how they affect *sogoshosha* operations; the financial structure of the *sogoshosha*; the degree of intercorporate ownership and interlock which prevails; and the fundamental role that large commercial banks fulfill by making enormous low-cost loans to the *sogoshosha* and by owning significant percentages of their stock. The section then concludes with an analysis of the changes adopted by the *sogoshosha* within the past eight years in order to cope with significant developments in international investment and trade.

The last section of this article examines the modifications of United States banking and antitrust laws that have resulted from passage of the Export Trading Company Act. It compares the American and Japanese laws to determine if American trading companies will have the same freedom and flexibility of operation as their Japanese models.

In conclusion, this article offers suggestions for the drafting of guidelines, rules, and regulations for the Export Trading Company Act and describes the most likely course that American businesses—especially American multinational banks—may follow in creating their own trading companies under the new Act.

I. International Trading Companies: What Are They and How Do They Make All That Money?

A general trading company is an economic organization whose functions are:

1. to minimize the risks involved in international transactions (the risks of fluctuation in demand and fluctuation in exchange rates) by spreading these risks over many transactions and many customers;
2. to reduce transaction costs by taking advantage of economies of scale; and
3. to make efficient use of capital because of the preceding two

functions.[17]

A sampling of the descriptions of the *sogoshosha* provided by other scholars may help expand and explain this proposed definition and analytical framework.

One author has attempted to describe the essence of the *sogoshosha* by declaring that "its ability to bring about synergistic impact is the success secret of trading companies."[18] Another has described the *sogoshosha* as "market intermediaries for the domestic and international distribution of Japanese manufacturing firms."[19] A third scholar has focused on the integrative function of trading companies within groups of corporations:[20] the trading company taps the financial resources of the group bank and acts as the purchasing and sales agent for all of the group's manufacturing enterprises.[21] A recent work has described the *sogoshosha* as "primarily large-volume, first-stage wholesale traders of industrial raw materials and grains and of such standardized intermediate products as steel, synthetic fiber, and fertilizer."[22] One of the most thorough scholars in the area of Japanese multinational business operations, Michael Yoshino, believes that the

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[17] Yamamura, *General Trading Companies in Japan: Their Origins and Growth*, in JAPANESE INDUSTRIALIZATION AND ITS SOCIAL CONSEQUENCES 165 (H. Patrick ed. 1976).

Two other authors have tried to define what the *sogoshosha* are by proffering a profile of their fundamental activities. One writer states that the "vital functions" provided by the *sogoshosha* are: (1) territorial knowledge of both domestic and international markets; (2) dynamic and static economies of scale; (3) a large internal market, that is, the ability to barter goods and services within the *sogoshosha* itself because of the huge number of goods and services handled; and (4) financing services using capital from the international capital markets. SOGOSHOSHA, *supra* note 3, at 11-14.

Another author states that the main strengths of the *sogoshosha* are: (1) group affiliations revolving around the central trading company and including various manufacturing firms, (2) an international information network, (3) excellence in management, and (4) financial services. M. YOSHINO, *supra* note 13, at 11-12.

Both of these authors have overlooked the central role that the large Japanese commercial banks have played in the growth of the *sogoshosha*. For a description and analysis of these "bank-centered conglomerates," see *infra* text accompanying notes 218-236.

[18] M. YOSHINO, *supra* note 13, at 6.

[19] SOGOSHOSHA, *supra* note 3, at 5.

[20] Throughout its history Japan has been noted for the importance of groups. In the business world, this national characteristic is demonstrated by the common practice of corporations grouping around a large commercial bank. For more information, see *infra* text accompanying notes 218-236.

[21] M. YOSHINO, JAPAN'S MULTINATIONAL ENTERPRISES 6-7 (1976) [hereinafter cited as JAPAN'S MULTINATIONAL ENTERPRISES].

[22] A. YOUNG, THE SOGO SHOSHA: JAPAN'S MULTINATIONAL TRADING COMPANIES 6 (1979). Mr. Young further states that price, speed of information, and economies of scale "are of primary importance in these kinds of sales, which require little engineering service to manufacturers, minimum sales promotion, and minimal repair and other after-service to retail customers." *Id.* Each of the *sogoshosha* handle between 10,000 and 20,000 products. *Id.* at 4.

true strength of the *sogoshosha* lies in their ability to coordinate the activities of small, independent manufacturing firms so that these firms complement each other's skills in performing a variety of specialized manufacturing and distributing functions.[23] One example of the successful *sogoshosha* operations that he provides is the synthetic fibers field. This example will help illustrate the previously proposed definition by providing a concrete explanation of the contribution of the *sogoshosha* to the development of successful export trade.

The two firms that pioneered synthetic fibers had many problems marketing their new products, and one of the main obstacles was the reluctance of the spinning, weaving, dyeing, and manufacturing firms to use the synthetic fibers. Most of these firms were small and family-owned. Their reluctance was understandable because they were unsure of market response and lacked technical expertise. To overcome this reluctance, the synthetic fiber manufacturers organized a select group of the small firms into a hierarchical manufacturing system and provided technical and managerial expertise. The trading companies took over the movement of the goods among these firms and provided credit at every stage. Finally, with the help of the trading companies, the fiber manufacturers developed a hierarchical system among fiber wholesalers and distributors. The result was vertical integration from the manufacturer through processing firms to retail outlets.[24]

The trading companies also gave export advice to the fiber manufacturers. When import restrictions abroad began threatening the export position, the trading companies were the first to perceive this threat because they were the export agents. The trading companies then put together a hierarchical organization abroad by convincing and helping the small manufacturers—who had hesitated to locate abroad by themselves—to set up foreign subsidiaries. Generally, the fiber manufacturer held 20-30% of the equity in the foreign subsidiary. The trading company held 15-25%, other firms in the group held 5-10%, and the remainder was locally owned.[25] These foreign subsidiaries then became captive outlets for the export of intermediate materials. This method succeeded because the import restrictions were imposed on goods in the final stages of production—spun, woven, or completed manufactured goods—rather than the fibers themselves. By exporting fibers to their subsidiaries and manufacturing the restricted goods in the foreign country, the manufacturers avoided all or most of the im-

23 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 69.
24 *Id.*
25 *Id.* at 70.

port restrictions.[26]

The fiber manufacturers provide a concrete example of how the activities of the *sogoshosha* can help to solve the export problems of a particular industry. It is now necessary to examine how these activities fit into the three-part analytical framework proposed at the beginning of this section.

A. Minimizing the Risks of International Trade

One of the three functions of the *sogoshosha* is to minimize the risks inherent in international trade. These risks fall into two categories: fluctuation in exchange rates and fluctuation in demand.

The *sogoshosha* minimize the risks that result from fluctuations in exchange rates by importing and exporting simultaneously. Thus, they are able to buy and sell in local currencies. This, according to at least one author, reduces transactions across different currencies to "a fraction of the total import and export business."[27] For example, a trading company will make a commitment to buy goods from a Japanese producer in yen, even though the export sales contract is in dollars. Although the trading company might thus absorb a foreign exchange loss for its customer, it can internally offset this exchange loss against an exchange gain resulting from the purchase of goods in America in dollars and the sale in Japan in yen.[28]

Another benefit accruing to the trading companies because of their dealing in several currencies is the ability to speculate in the foreign exchange markets. Because the *sogoshosha* have large supplies of many foreign currencies on hand to finance their various projects, they are able to sell at a profit—or at least avoid a loss—on a currency that is about to decline in value vis-à-vis other currencies that the *sogoshosha* possess. Thus, when the *sogoshosha* expect the American dollar, for example, to decline in value against the Deutschmark, the *sogoshosha* will sell their dollars for Deutschmarks. The trading companies are particularly well suited to benefit from trading in the foreign

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26 *Id.*

27 Yamamura, *supra* note 17, at 163-66. Another author, however, contends that the trading companies are able to "marry" their exchange transactions only about 15% to 25% of the time. The reason, he explains, is that "[t]he tendency for import payments to be short-term and export receipts to be medium to long-term results in a lower ratio of 'marriages' than would be possible if export receipts and import payments were more in phase." W. MONROE, JAPAN: FINANCIAL MARKETS AND THE WORLD ECONOMY 51 (1973). He goes on to remark that the trading companies are both the major customers of the authorized foreign exchange banks and the major *de facto* foreign exchange dealers for the majority of Japanese firms. *Id.*

28 Krause & Sekiguchi, *Japan and the World Economy*, in ASIA'S NEW GIANT: HOW THE JAPANESE ECONOMY WORKS 391 (Patrick & Rosovsky ed. 1976).

exchange markets because of their vast international intelligence networks that often provide advance knowledge of political and economic changes affecting international exchange rates.[29]

The *sogoshosha* minimize the risk of fluctuation in demand primarily through their ability to spread this risk over many transactions and many customers. Although no concrete data exist on the number of *sogoshosha* transactions or customers, each of the *sogoshosha* handles 10,000 to 20,000 different products.[30] The number of individual transactions would obviously be much higher.

The *sogoshosha* also reduce fluctuations in demand through their unique ability to create long-term supply and demand, to ensure long-term stability in supplies of products and materials, and to generate new business. The *sogoshosha* create supply and demand by organizing huge joint ventures, such as overseas development of industrial raw materials like iron ore, coal, or bauxite, with giant producers. On the one hand, these ventures supply raw materials which the *sogoshosha* can sell[31] and, on the other hand, they create demand for transportation, construction, and mining equipment. Naturally, the *sogoshosha* are willing to provide such equipment, either as principals or agents.

B. Economies of Scale

The second function of the *sogoshosha* is to take advantage of economies of scale. Although trading companies effect economies of scale in numerous areas, the most significant one is the development and transmission of market information.

The production of information about market opportunities includes the costs of gathering and disseminating such information. These costs, however, are fixed and independent of the use to which the information is put. Thus, the key to lowering the costs is to increase the size of the market for such information.[32] The costs of assembling this information are distributed among its users. Nonetheless, as a whole these costs are staggering. For example, in 1973 Mitsui spent 3,000 million yen (about $13,333,333) on information and communications, and 2,000 million of this amount (about $8,888,888) was spent on telecommunications alone.[33] It is this magnitude of expenditure that

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29 *Id.*

30 A. YOUNG, *supra* note 22, at 4.

31 *Id.* at 3-4.

32 This is true because the "search costs per unit of information" decline as the market expands. Yamamura, *supra* note 17, at 164.

33 H. FUKUDA, JAPAN AND WORLD TRADE: THE YEARS AHEAD 68 (1973). The dollar figures are based upon a July 1981 exchange rate of 225 yen to one dollar.

makes Mitsui's communications system second only to the Pentagon's.[34]

Within the realm of market information, the *sogoshosha* "thrive on both dynamic and static economies of scale."[35] The static economies of scale derive from their domestic and worldwide network of market contacts. Once the initial investment in large-scale informational networks is made, the incremental costs of processing territorial information are marginal to the trading companies and their clients. The *sogoshosha*'s average general selling and administrative expense is very low—about 1.3% of revenues. By contrast, in small enterprises this figure can be as high as 25%.[36] Hence, even small- and medium-sized firms, in Japan or abroad, which often are too weak financially and managerially to have any market contact points, can simply hook up with the vast informational network of a *sogoshosha* for a small fee. This fee covers only the incremental costs and incremental contributions to the *sogoshosha*'s overhead. Often even large firms use the *sogoshosha*'s information and distribution networks for developing uncertain markets and for servicing existing but inaccessible markets.[37]

The dynamic economies of scale enjoyed by the *sogoshosha* derive from the cumulative ability of both the organization and its individual employees to identify, screen, process, and translate into business opportunities the political, economic, social, and even climatic events occurring within domestic and international markets.[38] This ability stems from what one author has termed "the process of learning by doing that takes place inside sogoshosha."[39] According to this author, the accumulated experience of a *sogoshosha*'s past successes and failures is passed on to its recruits, who join the trading company's internal efforts to increase the firm's "informational stock."[40] This information in turn reduces negotiation costs because buyers and sellers are aware of their alternatives—they have greater certainty about the world price structure and their own opportunity costs.[41]

While the range of information supplied by the *sogoshosha* is as

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34 A. Young, *supra* note 22, at 77-79. During fiscal year 1976, the top six *sogoshosha* spent about $192 million on expenditures related to information and communication. *Id.* at 77.

35 Sogoshosha, *supra* note 3, at 12.

36 M. Yoshino, *supra* note 13, at 16.

37 *Id.*

38 Sogoshosha, *supra* note 3, at 12.

39 *Id.* Stated another way, this specialization of trading company personnel in international trade results in savings because specialization, and the resultant increase in productivity, is a function of the volume of transactions. Yamamura, *supra* note 17, at 165.

40 Sogoshosha, *supra* note 3, at 12.

41 Yamamura, *supra* note 17, at 164.

broad and diverse as the needs of their clients, there are fairly standard areas covered by all the firms. These areas include: size of potential markets; competitive manufacturers in the export country; current prices and profit potential; foreign exchange rates and likely financial fluctuations; distribution channels; the credit ratings of potential wholesale and retail distributors; current attitudes of industrial users, consumers, competitors, labor unions, or government officials toward the proposed export products; foreign import regulations and other tariff and nontariff trade barriers; and the various export permits required by the government.[42] For those manufacturers dependent upon advanced technology, the *sogoshosha* provide information on current scientific and technological advances in the United States and Western Europe, on the latest equipment available, on market potential, and on technology licensing or joint venture requirements.[43]

The *sogoshosha* also benefit from economies of scale in the areas of transportation, warehousing, and insurance. Because the *sogoshosha* handle diverse goods, and more importantly, at diverse locations, they are able to charter an entire freighter, aircraft, train, barge, or other mode of transportation and fill it by consolidating the goods supplied by many clients.[44] In this way, the *sogoshosha* do not have to pay a premium for guaranteed, timely shipment of a cargo. Moreover, even if they do not charter an entire vehicle, they can negotiate bulk discounts for volume shipping. Finally, the *sogoshosha* can obtain favorable shipping rates from carriers with excess capacity because the *sogoshosha* can guarantee return business.[45] The trading companies also receive beneficial rates on insurance and warehousing because they can guarantee a high volume of transactions. Indeed, many *sogoshosha* find it profitable to own their own shipping, warehouse, and insurance companies.[46]

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42 A. Young, *supra* note 22, at 61.

43 *Id.*

44 Sogoshosha, *supra* note 3, at 13.

45 *Id.* at 13.

46 A. Young, *supra* note 22, at 66. Mr. Young notes that:

> The big trading companies own many warehousing subsidiaries, including rolled steel warehouses, grain elevators, and refrigerated warehouses. They also own large ore carriers, log carriers, and general cargo ships. Firms such as Nippon Kokan K. K., Nisshin Flour Milling Co., and Sapporo Breweries, Ltd., to use the Fuyo group as an illustration, can often employ group railways such as Keihin Electric Express Railway Co., or Tobu Railway Co., Marubeni Corporation warehouses such as Marubeni Reizo K. K. at the Tokyo harbor, and Marubeni-owned cargo boats or transports operated by group member Showa Shipping Company.

Id.

C. Efficient Use of Capital

The third and last major function of the *sogoshosha* is to make the most efficient use of capital possible; their ability to accomplish this is based upon their success at reducing risks and effecting economies of scale. Simply stated, "[b]y reducing risks (that is, reducing the variance of expected returns) in using capital, the trading companies are able to obtain capital (and create credit) which would not have been available to a single trader, or available only at a higher price."[47] Furthermore, because the economies of scale described above substantially reduce the costs to the customers of the *sogoshosha*, the amount of capital employed by the customers is increased substantially.[48] That is, because the *sogoshosha* can extend credit and long-term financing and because they can provide export services at the lowest cost, they reduce their clients' costs. The money saved is capital, which otherwise would have been unavailable. Even larger manufacturers "would have to allocate a substantial amount of capital to provide or purchase these services independently at a higher cost."[49] Japanese industry benefited greatly from exactly this type of increased available capital during the boom times of the 1960s and 1970s when capital was scarce.[50]

The foregoing analysis of how the *sogoshosha* export competitively and yet make a substantial profit should provide the reader with an understanding of the essential functions and operations of the *sogoshosha*. It should also provide a basis for understanding how American business—within both the industrial and service sectors of the economy—could benefit from the formation of American trading companies. Yet the foregoing description inadequately details the intricacies of international trade as practiced by the *sogoshosha* and the close, intergroup coordination and interdependence that are crucial to the *sogoshosha*'s success.

The following description of the historical development of the *sogoshosha* is intended to fill these gaps. At the same time, the description provides an insight into the role that various historical occurrences and accidents played in the evolution of the *sogoshosha*. It should also give the reader the means to assess the possibility and the methods for development of American trading companies.

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47 Yamamura, *supra* note 17, at 165.

48 A. YOUNG, *supra* note 22, at 67.

49 *Id.* at 68.

50 *Id.*

II. HISTORICAL EVOLUTION OF THE *SOGOSHOSHA*

The modern day *sogoshosha* evolved from two different sources. The first was in the Japanese trading and banking houses that began to expand so rapidly during the 1870s and 1880s and that ultimately were called *zaibatsu*.[51] The course of this expansion was largely vertical and involved expansion from trading and banking into manufacturing activities. The predominant examples are the Mitsui and Mitsubishi families,[52] followed by Sumitomo and Yasuda.

The *zaibatsu*, defined as a "group of giant diversified companies under the control of a family-owned holding company,"[53] sprang up at this time primarily for two reasons. First, in the 1880s the Japanese government decided to dispose of most of the commercial enterprises it had begun and run under government control since Commodore Perry had opened Japan to the West, and it was the *zaibatsu* that acquired most of these operations.[54] Second, during the 1880s, the *zaibatsu* adopted the radical Western notion of the joint stock company.[55] Thus, the *zaibatsu* were able to expand their supply of capital by selling their stock publicly.

The owners of the *zaibatsu*, having imposed a corporate form on their multifaceted operations, controlled their empires in the following manner. First, they established a holding company at the pinnacle of their corporate pyramids.[56] They then segregated their various commercial operations into corporate subsidiaries and affiliates. These were linked together in an extensive network by means of intercorporate stockholding, interlocking directorates, management agents, and easily available bank credit, which the *zaibatsu* extended to their affiliates to facilitate the expansion of their production and to increase their dependence upon the *zaibatsu*.[57] One author has remarked that the *zaibatsu* were patterned closely after the Japanese concept of the family: a network of related households, all of whose members were subject to the authority of a single head.[58]

It was at this point that the trading companies as we know them

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51 Y. TSURUMI, THE JAPANESE ARE COMING: A MULTINATIONAL INTERACTION OF FIRMS AND POLITICS 132-35 (1976) [hereinafter cited as THE JAPANESE ARE COMING]; M. YOSHINO, *supra* note 13, at 2.

52 J. ROBERTS, MITSUI: THREE CENTURIES OF JAPANESE BUSINESS 4-5, 119-20 (1973).

53 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 4.

54 *Id.* at 4-5.

55 *Id.* at 5. This type of company is called *kabushiki kaisha*, and the initials K.K. are often placed after a joint stock company's formal name.

56 *Id.* at 6.

57 *Id.*

58 *Id.*

today began to appear. They sprang up because the *zaibatsu* lacked an integrative element, that is, a central organization within the *zaibatsu* to coordinate production and intergroup transportation of component parts and finished goods, and to arrange financing.[59] By tapping the financial resources of the group bank, utilizing the existing shipping and warehousing arms of the group, and serving as the purchasing and sales agent for all of the group's manufacturing enterprises, the trading company was able to coordinate and integrate all of the various activities carried on by the diverse companies under the control of the *zaibatsu*.[60] The trading company provided essential links within the *zaibatsu* by skillfully organizing a large number of small enterprises to produce for the export market.[61] This relationship between the trading company and the smaller affiliated firms was called *keiretsu*.[62] The trading company would supply its *keiretsu* firms with raw materials, technical and management assistance, and credit.[63] Moreover, it was the trading company that allocated the credit of the *zaibatsu*.[64]

The second source from which the *sogoshosha* evolved was the *senmonshosha*, or the small- to medium-sized trading companies specializing in one product or industry.[65] Some of these *senmonshosha* have their origins in the textile industry and date from the late 1880s, when the cotton spinning industry developed in Japan. The necessity of procuring raw cotton from foreign sources gave rise to specialized trading companies in that field.[66] Then, as the cotton spinning industry became large enough to export, the trading companies that had specialized in cotton procurement abroad began to handle the exports as well.[67] Gradually, they diversified into other products and industries because of their experience in the cotton industry.

The *sogoshosha* grew rapidly during the period from 1900 to 1945. By the turn of the twentieth century they had established an extensive network of branches and offices in every major market in the world.[68] Through this network the trading companies exported cheap, labor-in-

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59 *Id.* at 6-7.

60 *Id.*

61 *Id.* at 7.

62 *Kei* means "lineage" and "group," while *retsu* means "arranged" in order. Thus, *keiretsu* means an organization that is well-ordered. *Id.*

63 *Id.*

64 *Id.*

65 M. YOSHINO, *supra* note 13, at 2; THE JAPANESE ARE COMING, *supra* note 51, at 132-35.

66 M. YOSHINO, *supra* note 13, at 3.

67 *Id.* C. Itoh and Marubeni developed in this way. Nisho-Iwai and Ataka developed in a similar fashion, but within the steel industry. *Id.*

68 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 7.

tensive, highly-standardized products that were distributed in a foreign market by local wholesalers and retailers.[69] The role of the trading company in exporting these cheap, standardized products was quite simple: "neither technical services nor advertising and sales promotion was required. Of overriding importance for trading in these products was the simple communication of information on price and volume."[70] In addition to functioning as an export conduit, these distribution networks abroad served another purpose by identifying new technology and products and feeding them back to the main company.[71]

As the *sogoshosha* gained more experience in international trade, their internal structure became more refined. During the early 1900s, a trading company was a unified operation in which all employees handled all types of trading. But, as time passed, the trading company divided along major product lines.[72] A concomitant change in management style also occurred: managers were sent abroad for long periods of time, and division managers and heads of foreign branches were given considerable autonomy.[73] The means by which these foreign-based managers were controlled, however, remained traditional. They were bound by a long-socialized and deeply engrained sense of loyalty to the *honsha*, the main company, which in most cases was the holding company at the top of the *zaibatsu* pyramid.[74] Moreover, their loyalty was rewarded because ultimately they were promoted back into the *honsha*.

Two questions remain to be answered before this historical analysis will be complete: why was it that general trading companies developed in Japan during this period and did not develop elsewhere, and why did certain trading companies develop into *sogoshosha* while others did not? The answers to these questions may provide helpful insights for Americans contemplating following the Japanese model.

In trying to answer the first question, it is important to note at the outset that Japan is tragically poor in natural resources, and it is this characteristic which most influences Japan's economic relations with other nations.[75] This scarcity of natural resources provided a strong impetus to engage in international trade. Furthermore, because the Japanese government was determined to avoid the economic domina-

69 *Id.* at 8.
70 *Id.*
71 *Id.* at 7.
72 *Id.* at 8.
73 *Id.*
74 *Id.*
75 Krause & Sekiguchi, *supra* note 28, at 386.

tion of the kind that befell the Chinese in the 1800s, it decided to industrialize. The trading companies were simply a necessary result of this desire to industrialize and of "the ignorance of the Japanese about foreign markets, their lack of knowledge of foreign languages, and their desire to become a participant in the world economy."[76]

General trading companies did not develop in the West because there was no need for them. First, the West's institutions for international trade had already developed over an extended period of time, and the formation costs were spread out during the entire time. In comparison, Japan had placed itself in national isolation (*sakoku*) for 200 years and was required to develop quickly after the Open Door policy was imposed upon it by Commodore Perry.[77] Second, Western linguistic and cultural similarities, as well as geographical proximity, made the absolute costs of information, of negotiation, and of enforcement of contracts much lower for the West than for Japan.[78] Third, the West had a highly developed capital market in which corporations could obtain necessary funds. In Japan, however, the capital market was virtually nonexistent.[79] Finally, while the industrial system of the West was composed of many large corporations that could market their own goods, the Japanese industrial structure was a dual-style system in which the majority of manufacturing occurred in a cottage-industry setting and required other large corporations to market the manufactured goods.[80]

Why is it, though, that Mitsui and Mitsubishi and the other *sogoshosha*, out of all the thousands of trading companies in Japan, became the behemoth general trading companies?[81] The answer is simple: historical placement and access to capital. For example, Mitsui and Mitsubishi were some of the first entrants into the import/export field. Moreover, Mitsui was an established and respected name from the Tokugawa era (1615-1868), had been made the fiscal agent of the Meiji government (1868-1912), and had the backing of the Mitsui Bank.[82] Thus, it was already well established and well known. In comparison, Sumitomo Shoji, which was the trading company for the Sumitomo group, a comparative late-comer into the import/export

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[76] *Id.* at 389.

[77] Yamamura, *supra* note 17, at 193-94.

[78] *Id.*

[79] *Id.*

[80] Caves & Uekusa, *Industrial Organization*, in ASIA'S NEW GIANT: HOW THE JAPANESE ECONOMY WORKS 508 (Patrick & Rosovsky ed. 1976).

[81] Yamamura, *supra* note 17, at 192.

[82] *Id. See also* J. ROBERTS, *supra* note 52.

field, had access to large amounts of capital and large markets (mostly firms within its group) because it was a member of the solid, closely-knit Sumitomo group.[83] In sum, the present-day *sogoshosha* had their origins in the Japanese industrialization process which began in the late 1800s.

By 1945 the *sogoshosha* had attained a crucial role in the world-wide operations of the *zaibatsu* by functioning as the central mover of goods and credit within the *zaibatsu* and by marketing the products manufactured by the *zaibatsu* throughout the world. The conclusion of World War II and the Allied occupation of Japan, however, caused significant changes in the structure and operation of the *sogoshosha*. The following section details those changes and shows the course of development followed by the *sogoshosha* from 1945 to the present.

III. POSTWAR DEVELOPMENT OF THE *SOGOSHOSHA*

After World War II, the military occupation authorities, and in particular General Douglas McArthur, the Supreme Commander for the Allied Powers in Asia (SCAP), were faced with the task of trying to help Japan rebuild, while eradicating the causes which the Allies believed had contributed to Japan's imperialistic and violent expansion in the Pacific Basin. To accomplish the first task, SCAP began a study of the war-shattered Japanese economy. A group of American scientific advisors reported that Japan's economic reconstruction would depend heavily upon intensive scientific and technological development, because only then could manufacturing productivity increase.[84]

To eradicate Japanese imperialism, SCAP ordered the dissolution of the *zaibatsu* because—SCAP believed—they were one of the moving forces behind the Japanese war effort. In July 1947, SCAP specifically dissolved Mitsui Bussan Trading Co. and Mitsubishi Shoji Trading Co., the most important enterprises within the Mitsui and Mitsubishi *zaibatsu*.[85] Mitsui Bussan was divided into 200 companies and Mitsubishi Shoji into 139.[86]

Because the *zaibatsu* no longer existed, no one remained to conduct Japan's international trade. Hence, Allied military authorities conducted all such trade until 1948.[87] Beginning in 1948, however, private Japanese trading firms resumed the responsibility for international

83 Yamamura, *supra* note 17, at 193.
84 S. OHKITA, GIJUTSU-SHIGEN-KEIZAI [Technology-Natural Resources-Economy] 4 (1949).
85 H. IYORI, ANTIMONOPOLY LEGISLATION IN JAPAN 12 (1969).
86 *Id.*
87 THE JAPANESE ARE COMING, *supra* note 51, at 135.

trade.[88] It was at this time that the current structure of the *sogoshosha* also began to develop, for it was during the early 1950s that Japan's leading manufacturing firms and largest commercial banks—encouraged and supported by the Japanese government through its Ministry of International Trade and Industry (MITI)—began to develop a new system of *keiretsu* groups.

The manufacturing firms found this system particularly suited to their immediate postwar needs. Their equity capital had been severely depleted by the war effort and they had to contend with galloping postwar inflation.[89] Hence, they had to rely extensively upon their banks to satisfy their needs for both long- and short-term loans.[90] These needs resulted in an extremely high debt to equity ratio of about three to one and made the manufacturing firms even further dependent upon their banks, which were in turn completely dependent upon the Bank of Japan.[91]

It was this unique relationship between manufacturing enterprises and banks—a structure that evolved as an historical accident—that provided the Japanese government and the Bank of Japan with effective levers to use both monetary policy, such as the central bank's supply of money, and fiscal policy, such as the government's investments and industrial promotions, to stimulate the Japanese economy.[92] The government had already decided to implement a long-term growth policy whereby MITI would aid mainly a few large and growth-minded firms in key industries such as steel, chemicals, and automobiles.[93] These large businesses, nourished by MITI, in turn were to pull up smaller manufacturers which were part of their group.[94] As part of this long-term growth plan for selected industries, MITI let weaker firms

88 *Id.*

89 THE JAPANESE ARE COMING, *supra* note 51, at 13.

90 *Id.*

91 *Id.*

92 *Id.*

93 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 63.

94 THE JAPANESE ARE COMING, *supra* note 51, at 13. The role that MITI played in Japan's post-war economic recovery is of great interest to political economists and businessmen alike. One scholar notes that MITI "has presided over. . .the fastest growing industrial economy that ever existed and has administered the growth of Japanese foreign trade at a rate some three times greater than the growth rate of all international trade during the postwar generation. . ." Johnson, *MITI and Japanese Economic Policy*, in THE FOREIGN POLICY OF MODERN JAPAN 227 (Scalapino ed. 1977). Some foreigners have even called MITI the "ministry of one-way trade" and "the corporate headquarters of Japan, Inc." *Id.*

Other authors have commented that "Japan must be the only capitalist country in the world in which the government decides how many firms should be in a given industry, and then sets about to arrange the desired number." K. OHKAWA & H. ROSOVSKY, JAPANESE ECONOMIC GROWTH 223 (1973). *See also* R. CAVES & M. UEKUSA, INDUSTRIAL ORGANIZATION IN JAPAN and industries die a natural death at each downturn of the economy.[95]

As a result of this policy, the growth of the selected firms and their trading companies began to increase. At first, the trading companies were forced to execute barter trades because of the dollar shortage.[96] Because they had to exchange finished products for raw materials, they were forced to develop adequate internal abilities to effect barter trade.[97] Then, as the domestic demand increased, these selected firms attained sufficient size and economies of scale, enabling them to compete in the world market.[98] Their rapidly growing export market then provided them with the opportunity to increase their economies of scale and thus become even more competitive.[99]

This change in the composition of the Japanese export system in favor of capital intensive and technological industries presented the trading companies with an opportunity to restructure the *keiretsu*. The trading companies began linking the large-scale oligopolistic enterprises that produced intermediate materials to the small enterprises that performed various downstream operations.[100] For example, in the synthetic fiber industry the trading companies integrated the large fiber manufacturers with firms performing spinning, weaving, dyeing, and apparel manufacturing.[101] In the steel industry the trading companies integrated the producers with various types of steel fabrication firms.[102] The trading companies used the familiar techniques of partial equity ownership, management and technical assistance, and credit extension to secure these *keiretsu* ties.[103]

The trading companies benefited greatly from this newly restructured *keiretsu* system. The most important benefit was the great flexibility in the mix of export products. Depending on consumer demand, the trading companies could export fiber directly, yarn from associated spinning firms, woven cloth, or even clothing.[104] Another benefit was the favorable position of *keiretsu* firms established abroad. Because these firms imported most of their intermediate needs from the larger

148-54 (1976) (description of MITI's "administrative guidance" through use of trade associations and industry-wide coordinating groups).

95 THE JAPANESE ARE COMING, *supra* note 51, at 13.

96 *Id.* at 136.

97 *Id.*

98 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 63.

99 *Id.*

100 *Id.* at 17.

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

firms with which they were associated, they gained from the economies of scale enjoyed by the affiliate back home. In return, this affiliate had a fairly captive buyer in Japan.[105] These affiliated firms also were able to receive favorable credit from the trading company and to take advantage of the trading company's distribution economies of scale in the host country.[106] Finally, these firms had direct access to new technological developments generated by the *keiretsu* parent company in Japan.[107] As a result of these advantages the *keiretsu* firms abroad flourished, and their trading companies also flourished as they strove to fulfill their clients' needs.

A. Current Functions of the *Sogoshosha*

As we have seen, the *sogoshosha* act as one-stop exporters for their clients: they provide financing, market research, management expertise, shipping, insurance, warehousing, and wholesale and retail distribution. In doing so, the top nine trading companies had total sales of $287 billion for fiscal year 1980, or sales totalling about one-quarter of Japan's gross national product (GNP).[108] The *sogoshosha* thus accounted for 54.5% of Japan's imports and 48.2% of her exports.[109]

As the size and scope of activities conducted by the *sogoshosha* expanded during the 1960s and 1970s, their internal structure and operations became more refined. During the 1960s they vigorously pursued a strategy of creating supply and demand through upstream integration into the areas of production, prospecting, and development, and through downstream integration into the areas of processing, wholesale distribution, and retail sales.[110]

To manage this expansion effectively, the *sogoshosha* organized into divisions along major product lines, each of which had considerable autonomy.[111] This increased autonomy was necessary because each division had to conduct negotiations and consummate deals throughout the world under varying conditions; each required a detailed knowledge of essential products and markets and an ability to respond quick-

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105 *Id.* at 70-71.

106 *Id.* at 71.

107 *Id.*

108 Kanabayashi, *supra* note 7, at 56, col. 2. In fiscal year 1976, the top ten trading companies had total sales of $155 billion, representing 31% of Japan's GNP. They accounted for 56% of Japan's imports and exports and almost 20% of total domestic wholesale trade in Japan. Their export and overseas transactions represented slightly over 5% of total world trade. A. YOUNG, *supra* note 22, at 4.

109 Kanabayashi, *supra* note 7, at 56, col. 2.

110 A. YOUNG, *supra* note 22, at 110.

111 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 98.

ly to changes.[112] In return for this autonomy, each division underwent rigorous evaluation including a sales volume check at least semi-annually.[113]

Further changes have occurred as the trading companies and their client manufacturing firms began facing increased competition from Taiwan, Hong Kong, and Korea in textiles and metal fabrications because of the relatively low entry costs into these fields.[114] First, the manufacturing firms upgraded and expanded their product lines.[115] They increased their product differentiation by promoting brand names, beginning vertical integration abroad, and seeking system-wide benefits by building multinational networks.[116] The primary material plants that were established abroad as part of the vertical integration program began producing for the world market, not just the domestic market of the host country, because the domestic market was too small for efficient production.[117]

The *sogoshosha* and their client manufacturing firms also started affiliating with competitor foreign multinationals, as well as other Japanese firms, in various joint ventures. Several reasons made this course of action popular: it allowed each firm to learn from the others' operations and gave the firm access to the others' cost and pricing structures; it built a community of interest among rivals, thereby increasing the propensity for cooperation, which could provide important business information (e.g., cost structures) unknown to unaffiliated domestic rivals also operating abroad; and it provided already established distribution channels at a comparatively lower cost.[118]

To take full advantage of these changes, the *sogoshosha* rearranged their internal structure. First, they made a limited effort to switch from a commodity-based organization (e.g., coal or oil, with di-

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112 *Id.*

113 *Id.* at 99. This emphasis on sales volume and rapid turnover of goods results from the need to offset the high fixed cost of supporting global networks of personnel, offices, and telecommunications. *Id.* at 98-99. For the annual turnover per employee, see Table A-7 in the appendix.

114 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 72-75, 95-105.

115 *Id.*

116 *Id.* The trading companies' own affiliates are a critical component of the corporate structure. "Affiliates" refers to both subsidiaries in which the trading company has majority ownership, and related firms in which the trading company owns between 10% and 50% of the stock. The Japanese call subsidiaries *kogaisha* (children firms), and related firms *keiretsu kigyo* (related firms). A. YOUNG, *supra* note 22, at 45-46.

117 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 72-75, 95-105. Tables A-1 and A-4 in the appendix show the extent to which the *sogoshosha* and their clients have established subsidiaries abroad.

118 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 72-75, 95-105.

visions thereof) to a system-wide organization (e.g., energy).[119] This step eliminated double staffing for procurement and marketing and afforded major customers better service because of vertical integration from the development of sources to the marketing of finished products.[120]

Next, the *sogoshosha* established corporate development groups to help product divisions find new areas of activity. These groups had a better capacity for project analysis and development and were better able to resolve interdivisional conflicts that arose as products cut across traditional product lines.[121] They also aided the product division by mobilizing external resources. For example, they identified potential partners both local and domestic, negotiated the terms of participation, organized new business entities, and recruited key executives.[122]

Finally, the *sogoshosha* established regional headquarters staffed with senior executives to expedite the cross-hauling of goods among foreign units.[123] For example, in 1974 Mitsui organized regional centers in North and South America, Europe, and Oceania, while Marubeni established a European regional headquarters in Brussels to manage and coordinate six wholly-owned subsidiaries, three branches, and five offices in Europe, as well as one branch and twelve offices in Africa.[124]

Although the foregoing shows that the *sogoshosha* have been successful in adapting to adjustments in the international trade arena and have made changes to complement the changes that occur within their customers' operations, the question remains as to how the customers themselves assess the contributions of the trading companies. The data presented in Table 1, below, generally show that in all areas except exportation, the perceived value of the *sogoshosha*'s contributions declines as the customers become more sophisticated.

119 *Id.* at 116-17.
120 *Id.*
121 *Id.* at 117.
122 *Id.*
123 *Id.*
124 *Id.*

Table 1: Managers' assessments of the contributions of trading companies as partners in joint ventures by stages of development.*[125]

	Average Rating				Normalized Rating		
CONTRIBUTION	TOTAL	LESS THAN 4 VENTURES	5-9 VENTURES	10 OR MORE VENTURES	LESS THAN 4 VENTURES	5-9 VENTURES	10 OR MORE VENTURES
GENERAL KNOWLEDGE	4.63	5.31	4.82	3.57	0.97	1.45	1.47
CAPITAL AND CREDIT	4.23	5.13	4.10	3.36	0.71	0.87	0.85
GOVERNMENT RELATIONS	3.86	5.17	3.92	2.19	0.71	0.65	−2.92
IMPORT OF RAW MATERIALS, EQUIPMENT AND MACHINERY	3.78	5.42	3.35	2.11	1.12	0.00	0.37
MARKETING POLICY	3.61	5.21	3.65	2.07	0.12	0.37	0.72
SELECTION OF JOINT VENTURE PARTNERS	3.58	3.72	3.67	3.21	0.72	0.37	0.72
LOCAL LOGISTICAL SUPPORT	3.30	4.91	2.67	2.20	0.52	−0.56	−0.51
GENERAL MANAGEMENT	3.05	4.01	3.02	1.98	−0.42	−0.37	−0.61
EXPORT	0.92	1.07	0.62	1.47	−3.42	−2.62	−0.13

* The scales used are as follows: 6 = Very important; 0 = Not important at all. "Joint ventures" refers to manufacturing operations undertaken by the firm in conjunction with a sogoshosha.

As seen in Table 2 below, an apparent corollary of this decline in importance is a concomitant increase in perceived conflicts with the trading companies as their customers develop.

[125] Table Source: M. YOSHINO, JAPAN'S MULTINATIONAL ENTERPRISES 124 (Harvard University Press, 1976). *Reprinted with permission.*

Table 2: Managers' assessments of the conflicts associated with trading companies as partners in joint ventures by stages of development.*[126]

		Average Rating			Normalized Rating		
Area of Conflict	Total	Less than 4 Ventures	5-9 Ventures	10 or more Ventures	Less than 4 Ventures	5-9 Ventures	10 or more Ventures
Source of supply	2.24	1.31	2.15	3.54	0.35	0.44	0.80
Expansion	2.18	1.43	1.95	3.46	0.48	0.20	0.05
Marketing policy	2.11	1.01	2.05	2.61	0.03	0.29	0.24
Transfer Price	2.05	0.87	2.20	3.31	−0.08	0.45	0.56
Disposition of earnings	2.04	0.81	2.40	3.00	−0.15	0.15	0.26
Selection of expatriate Japanese Executives	1.70	0.69	1.85	2.92	−0.27	0.08	0.18
Financial Policy	1.67	0.56	1.10	2.38	−0.31	−0.60	−0.35
Export	1.30	0.68	1.20	2.23	−0.27	−0.55	−0.51
Payment of royalties and fees	1.08	0.44	0.90	2.15	−0.52	−0.85	−0.74

* The scales used are as follows: 6 = Very important; 0 = Not important at all. "Joint ventures" refers to manufactureing operations undertaken by the firm in conjunction with a sogososha.

In any event, it is clear that at least in the early and middle stages of joint venture participation the *sogoshosha* play a highly valued role in helping their clients. Moreover, because the data reflected in Tables 1 and 2 are somewhat dated, they may not be a completely accurate assessment of the *sogoshosha*'s current value, for the *sogoshosha* have made recent changes in their structure and operations to accomodate changes in the conduct of international trade during the past decade.

B. Antitrust Policy and Enforcement as a Factor in *Sogoshosha* Growth

As we have seen, the *sogoshosha* are enormous business organizations comprised of many related firms, both in Japan and abroad. In many instances the *sogoshosha* have deliberately organized various firms within a given product area into vertical structures running from raw material production through fabrication and marketing to retail distribution in all markets of the world. No doubt such an arrangement by an American corporation would violate antitrust laws against

126 Table Source: M. Yoshino, Japan's Multinational Enterprises 125 (Harvard University Press, 1976). *Reprinted with permission.*

vertical mergers, or at least would be the subject of law suits or other action by the Justice Department or the Federal Trade Commission. This is not the case in Japan.

Despite this, some scholars contend that the *sogoshosha* are not even oligopolistic—much less monopolistic. For example, one writer contends that:

> Japan's ten largest trading companies are definitely not monopolies, nor are they oligopolies if oligopoly is strictly defined as "a market situation where sellers are so few that any one of them can affect the market price. . ." Neither the big six, nor for that matter the big two, are oligopolies in that sense.[127]

This unsupported assertion, however, is undercut by the data presented below.

Another author argues that although the risk of oligopoly is present among the *sogoshosha*, there are at least four factors militating against the creation of an oligopoly.[128] First, he argues, there are thousands of trading firms. While this statement is indeed true, there are only nine general trading companies. The "thousands" of trading firms refers to the small trading firms which specialize in a given product (*senmonshosha*). The author's second reason is that the larger manufacturers can market their goods directly. This assertion also is true to a degree, but it fails to consider that even the large manufacturers use the *sogoshosha* and that there can be but few manufacturers who control as much market share as the *sogoshosha*. Third, the author argues, it is easy to enter the *sogoshosha* field. Perhaps this statement is true of the field in which the *senmonshosha* participate, but doubtful with respect to the *sogoshosha*. After all, their ranks have changed little in the past thirty years. Moreover, few firms have the capability to amass the amount of capital and the number of trained personnel necessary for success. Finally, the author contends that the *sogoshosha* do not set the prices for the products they sell. Rather, they merely set the commission fees. This argument overlooks the ability of the *sogoshosha* to advise their clients, who may be ignorant of foreign markets, as to appropriate marketable prices for their goods in foreign countries. Therefore, they may be setting prices indirectly.

In any event, all of the foregoing arguments ignore the reality of the *sogoshosha*'s market share for various products. In fiscal 1975, the big ten *sogoshosha* had 82% of the market share for exported metals, 65% in chemicals, 61% in textiles, and 47% in machinery.[129] They had

127 A. YOUNG, *supra* note 22, at 49.
128 Krause & Sekiguchi, *supra* note 28, at 394.
129 A. YOUNG, *supra* note 22, at 50.

an 81% share in Japanese imports of foodstuffs, 71% in chemicals, 74% in textiles, 54% in metal ores and fuels, and 33% in all other commodity groups.[130] Moreover, in some cases the *sogoshosha* control the sources of supply so strictly that it is virtually impossible for distributors to buy except through the *sogoshosha*.[131]

Surprisingly, the Japanese antitrust laws, which apparently pose little, if any, threat to such concentrations of market share, were originally very similar to the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. The history of the development of antitrust laws in Japan also shows that they were intended to perform a function similar to the American antitrust laws.

Before the Second World War there was no antitrust legislation in Japan.[132] After the surrender of Japan to the Allies, however, the Occupation authorities quickly disbanded the *zaibatsu* and passed the Law Relating to the Prohibition of Private Monopoly and Methods of Preserving Fair Trade (Antimonopoly Law).[133] The purpose of the law was to forestall any return to the prewar oligopolistic structure of Japanese industry in which cartels controlled almost every major industrial activity.[134]

The substantive provisions of the Antimonopoly Law as originally enacted[135] prohibited the following: (1) private monopolization or unreasonable restraint of trade (section 3); (2) formation of stock holding companies, the principal business of which would be to control the business activities of corporations whose stock they hold (section 10); (3) the holding by financial institutions of more than 10% of the stock of another corporation (section 11); (4) interlocking directorates among companies in a competitive position (section 13); (5) an officer of a company from becoming an officer of another company if one fourth or more of the officers of his company were officers of that other company (section 13); (6) any person from being an officer of four or more com-

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130 *Id.*

131 M. YOSHINO, *supra* note 13, at 7.

132 *Foreign Trade and Antitrust Law: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess. 977 (1965) [hereinafter cited as *Antitrust Hearings*]. To combat the monopolies of the four *zaibatsu*, during the 1920s and 1930s the Japanese government enacted laws that permitted cartels of traders, producers, wholesalers, and retailers. *Id.* In 1937, the government authorized the formation of import and export associations. *Id.* These various cartels could establish quotas, curtail production, allocate markets, and fix prices. *Id.*

133 Law No. 54 of 1947; *see Antitrust Hearings*, *supra* note 132, at 977-78.

134 *Antitrust Hearings, supra* note 132, at 978. *See also* H. IYORI, *supra* note 85, at 8-17.

135 *See Antitrust Hearings, supra* note 132, at 979-80; *see also* H. IYORI, *supra* note 85, at 14-15, 147-88.

panies (section 13); (7) any company from holding more than 25% of another company's debentures (section 12); and (8) the merger or transfer of any business without the prior approval of the Japanese Fair Trade Commission (sections 15, 16). The Japanese Fair Trade Commission (JFTC), the first independent regulatory agency in the history of Japan, was established by the same law and was charged with its enforcement.[136]

The penalties for violation of the Antimonopoly Law were, in comparison to its American counterpart, very lenient. The maximum criminal penalty for violation of the law was a fine of 500,000 yen and penal servitude of not more than three years.[137] With the exchange rate averaging about 225 yen to the dollar during July 1981, this fine was equivalent to about $2,222. Although this fine was increased ten-fold in the mid-1970s to 5 million yen, or about $22,222.00,[138] it still pales in comparison to the American fines of $1,000,000.00 for corporations and $100,000.00 for individuals and up to five years imprisonment.[139]

The civil damages provisions of the law also are comparatively weak. The most striking difference is that the Japanese law does not allow treble damages.[140] Moreover, a person who has been damaged by unreasonable restraint of trade, private monopolization, or unfair business practices may not sue for damages until the JFTC has formally found a violation, whether by JFTC decision, a consent decree, or formal JFTC recommendations.[141]

Despite its comparative moderation, the Antimonopoly Law as enacted quickly came under attack. Many businessmen contended that the law fostered excessive competition, and, indeed, one scholar notes that the Japanese never use the word "competition" unless it is preceded by the word "excessive."[142] In any case, however, the Antimonopoly Law was amended three times by 1953. The prohibition against intercorporate ownership of debentures in excess of 25% was abolished;

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136 H. IYORI, *supra* note 85, at 15, 163.

137 Law No. 54 of 1949, § 89 (as amended), *reprinted in* H. IYORI, *supra* note 85, at 182.

138 Haley, *Antitrust in Japan: Problems of Enforcement*, in CURRENT LEGAL ASPECTS OF DOING BUSINESS IN JAPAN AND EAST ASIA 123 (J. Haley ed. 1978).

139 15 U.S.C. § 2 (1976).

140 Haley, *supra* note 138, at 123.

141 Law No. 54 of 1949, § 26 (as amended), *reprinted in* H. IYORI, *supra* note 85, at 163. *See also* Haley, *supra* note 138, at 123. Most Japanese legal scholars believe that this provision of the Antimonopoly Law does not preclude a tort action under the Civil Code, but proof of negligence or willful conduct would be required to prove a violation. *Id.*

142 *Hearing on Foreign Trade and the Antitrust Laws Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 88th Cong., 2d Sess. 150 (1964) (testimony of Dr. Eleanor M. Hadley) [hereinafter cited as Hadley Testimony].

the restrictions on intercorporate shareholding, interlocking directorates, and multiple directorates were relaxed so that they are now prohibited only if they result in a substantial restraint of competition in any particular field of trade; and the prohibition of mergers and transfers without prior JFTC approval was replaced with a prior notification system that decreed automatic approval unless the JFTC acted within thirty days.[143]

Another important modification of the Japanese antitrust laws during this period was the enactment of a provision allowing for the formation of depression cartels, rationalization cartels, and export/import cartels. Under section 24-3 of the Antimonopoly Act, entrepreneurs may engage in "concerted activity" and form depression cartels without violating the Act when an extreme disequilibrium of supply and demand for a particular commodity exists and when:

> 1. the price of such commodity is below the average cost of production and a "considerable part" of the entrepreneurs in the trade concerned may eventually be forced to discontinue production; and
> 2. it is difficult to overcome such circumstances as mentioned in the preceding paragraph by the rationalization of individual enterprises.[144]

In order to qualify for this depression cartel exemption, the entrepreneurs must receive prior approval by the JFTC.[145] They also may enter into price fixing agreements if their concerted activities are unsuccessful and if they receive JFTC approval.[146]

Producers can lawfully form rationalization cartels and engage in concerted activities when such activities are found "particularly necessary for effecting an advancement in technology, an improvement in the quality of goods, a reduction in costs, an increase in efficiency and any other rationalization of enterprises."[147] As in the case of depression cartels, prior JFTC approval is necessary.[148]

The final permissible cartel activity is in the export/import area. Under the Export and Import Trading Act of 1952,[149] "[e]xporters may

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143 H. Iyori, *supra* note 85, at 18-20; *Antitrust Hearings, supra* note 132, at 981-83.

144 Law No. 54 of 1953, § 24-3(1), *reprin'ed in* H. Iyori, *supra* note 85, at 160. The terms "concerted activity" and "considerable part" are not defined in the Act. While the term "rationalization is not defined explicitly in the Act, section 24-4(1) discussing rationalization cartels indicates the intended meaning. That section states:

> The provisions of this Act shall not apply to concerted activities of producers approved in accordance with the following subsection, where they are found particularly necessary for effecting an advancement in technology, an improvement in the quality of goods, a reduction in costs, an increase in efficiency and any other rationalization of enterprises.

Id. § 24-4(1), *reprinted in* H. Iyori, *supra* note 85, at 161.

145 *Id.* § 24-3(2), *reprinted in* H. Iyori, *supra* note 85, at 160.

146 *Id.* § 24-3(3), *reprinted in* H. Iyori, *supra* note 85, at 160.

147 *Id.* § 24-4(1), *reprinted in* H. Iyori, *supra* note 85, at 161.

148 *Id.* § 24-4(2), *reprinted in* H. Iyori, *supra* note 85, at 162.

149 Law No. 229 of 1952, *reprinted in* H. Iyori, *supra* note 85, at 212.

enter into an agreement on price, quantity, quality, design or any other matter in relation to commodities of a particular kind to be exported to a specific destination" by notifying the Ministry of International Trade and Industry (MITI) within ten days from the date of conclusion of such agreement.[150] MITI may modify or prohibit such agreement if it violates a treaty or other international agreement, if it injures the interests of importers or enterprises at the destination, if it gravely injures international confidence in Japanese exporters, if it injures the sound development of export trade, if it discriminates unjustly, if it unjustly restricts participation or withdrawal, or if it unjustly injures consumers or concerned enterprises.[151] Similarly, importers may "enter into an agreement on price, quantity, quality or any other matters in regard to import by obtaining the authorization of the Minister of International Trade and Industry," when, in essence, there exists: excessive import competition and international agreement requiring importation from the specific place of shipment, high import prices from said location compared to other locations, a difference in the quality of imports from such location compared to other locations, or uncertainty of continuous importation of commodities to be produced by exploitation of resources in a foreign country.[152]

Although no data exist to show whether these cartelization laws have given Japanese manufacturers a competitive advantage over their American counterparts who do not have the benefit of any laws allowing such cartels—except for the Webb-Pomerene Act[153]—it is instructive to note that during the period from 1955 to 1968 there were twenty-six depression cartels[154] and eleven rationalization cartels.[155] In short, it is evident that Japanese manufacturers can engage in concerted activity that would be illegal in America, and that such activity benefits them to some degree.

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150 *Id.* § 5, *reprinted in* H. IYORI, *supra* note 85, at 212-14.

151 *Id.* § 5-bis, *reprinted in* H. IYORI, *supra* note 85, at 212.

152 *Id.* § 7-2, *reprinted in* H. IYORI, *supra* note 85, at 214-15.

153 Webb-Pomerene Act, 15 U.S.C. §§ 61-65 (1980). This Act grants an exemption from the United States antitrust laws to

> an association entered into for the sole purpose of engaging in export trade; or an agreement or act done in the course of export trade by such association, provided such association, agreement or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association. . . .

Id. at § 62.

154 H. IYORI, *supra* note 85, at 135-36.

155 *Id.* at 136. Moreover, one scholar has noted that America actually promotes cartelization in Japan because of American insistence on "voluntary" quotas: the "only way a 'voluntary' quota can operate in the exporting nation is for the exporters of the industry in question to get together and decide upon quotas." Hadley Testimony, *supra* note 142, at 154.

Another significant difference between the Japanese and American antitrust laws is the degree to which they are enforced. From 1966 to 1975, the JFTC—under the Antimonopoly Law and two other laws over which the JFTC has primary jurisdiction—used the formal adjudication process through completion of hearings and issuance of administrative judgments only twenty-one times.[156] Adding consent decrees and three instances in which proceedings were dropped, there were still only thirty administrative litigations over an entire decade.[157] Obviously, there could have been no more than thirty civil suits for antitrust violations during that decade because, as noted above, a private litigant cannot sue until the JFTC has taken formal action.[158]

Given the foregoing, it is not surprising that the *sogoshosha* and their group firms and banks engaged in significant merger activity during the 1960s and 1970s. From 1963 to 1964 the number of major mergers doubled.[159] The consolidation of Mitsubishi Nippon Heavy Industries, New Mitsubishi Heavy Industries, and Mitsubishi Shipbuilding and Engineering into Mitsubishi Heavy Industries was one of the largest mergers.[160] Apparently this merger was successful: in the fiscal year ending March 31, 1981, Mitsubishi Heavy Industries had sales of $6.5 *billion*.[161]

These trading company merger activities were part of a larger movement, spearheaded by the Mitsubishi, Mitsui, Fuji, Daiichi, Kangyo, Sumitomo, Tokyo, and Sanwa Banks to consolidate the major

156 Rabinowitz, *Antitrust in Japan*, in CURRENT LEGAL ASPECTS OF DOING BUSINESS IN JAPAN AND EAST ASIA 106 (J. Haley ed. 1978).

157 *Id.* The usual pattern of antitrust enforcement in Japan has been termed, by at least one writer, as a process of "law enforcement by bargaining." Haley, *supra* note 138, at 125. This process of "administrative guidance" is informal advice by the JFTC to a party that the Commission believes is engaged in prohibited activity. The guidance takes various forms, from informal suggestion to written directives or warnings, and is then followed by voluntary compliance only because neither a legally binding order nor other formal disposition is issued. It may be either promotional or restrictive and backed by an implicit or explicit promise of either reward or sanction. *Id.* at 124.

The power of the JFTC to issue formal orders, to bring criminal proceedings, or to publicize alleged violations supports this administrative guidance. To the extent, though, that other governmental agencies believe the JFTC to be acting improperly, the party to whom guidance is given still has significant room to maneuver, for unlike MITI or the Ministry of Finance, the JFTC lacks the arsenal of carrots and sticks available to the other ministries. The JFTC does not license occupations, approve imports or foreign exchange, or give subsidies. *Id.* In sum, "at the outset there is a general acknowledgement that the [JFTC's] position is relatively weak, leaving room for both sides to negotiate to reach an *informal* resolution." *Id.* (emphasis supplied).

158 *See supra* text accompanying note 141.

159 A. YOUNG, *supra* note 22, at 115.

160 *Id.*

161 *Mitsubishi, A Japanese giant's plans for growth in the U.S.*, BUS. WK., July 20, 1981, at 128 [hereinafter referred to as *Mitsubishi plans for growth*].

Japanese conglomerate enterprise groups by means of expanded mutual stock holdings and transactions among group firms.[162] Each of these banks envisioned a highly consolidated conglomerate-group centered on one main bank and one core *sogoshosha* and containing one giant corporation from each major industrial sector.[163]

These visions have borne fruit. In 1971, the Daiichi Bank and the Kangyo Bank merged to form Daiichi Kangyo Bank, thus becoming the largest commercial bank in Japan.[164] This new bank then became the main bank of a large new group bearing its name, consisting of firms that previously belonged to the Kawasaki (Kawasaki Heavy Industries, Kawasaki Locomotives, and Kawasaki Aircraft Industry) and Furukawa groups, and having C. Itoh & Co. as the core *sogoshosha*.[165] Other such mergers also were successful. For example, concentration of the Mitsubishi group[166] provides a representative picture of the corporate consolidation which prevails in Japan:

Table 3: Corporate Members of the Mitsubishi Group[167]

Industrial Sector	Corporations	Sales in Billions of Dollars
Trading	Mitsubishi Corp.	$68.3
Cement, Glass, Paper	Asahi Glass	$ 2.3
	Mitsubishi Mining and Cement	$ 1.2
	Mitsubishi Paper Mills	$ 0.7
Chemicals and Fibers	Mitsubishi Chemical Industries	$ 3.9
	Mitsubishi Petrochemical	$ 2.0
	Mitsubishi Gas Chemical	$ 0.9
	Mitsubishi Rayon	$ 0.9

162 A. YOUNG, *supra* note 22, at 115.
163 *Id.*
164 *Id.*
165 *Id.*
166 *Mitsubishi plans for growth*, BUS. WK., *supra* note 161 (fiscal year ending March 21, 1980).
167 This table was compiled from data contained in the article in BUS. WK., *supra* note 161. Of these sales, $16 billion were with the United States, including $13.9 billion of trading by the American subsidiary of the Mitsubishi *sogoshosha*. *Id.*

Table 3, continued

	Mitsubishi Monsanto Chemical	$ 0.7
	Mitsubishi Plastic Industries	$ 0.4
Electrical and Optical	Mitsubishi Electric	$ 6.0
Equipment	Nippon Kogaku	$ 0.6
Transport	Nippon Yosen Kaisha	$ 2.8
	Mitsubishi Warehouse and Transportation	$ 0.3
Machinery, Ships, and Arms	Mitsubishi Heavy Industries	$ 6.5
	Mitsubishi Kakoki Kaisha	$ 0.2
Autos	Mitsubishi Motors	$ 5.4
Foods	Kirin Brewery	$ 4.2
Insurance	Meiji Mutual Life Insurance (premium income)	$ 3.5
	Tokyo Marine and Fire Insurance (premium income)	$ 2.5
Metals	Mitsubishi Metal	$ 1.6
	Mitsubishi Steel	$ 0.4
	Mitsubishi Aluminum	$ 0.4
Banking	Mitsubishi Bank	$84.1 (assets)
Real Estate and construction	Mitsubishi Trust and Banking	$18.9 (assets)
	Mitsubishi Estate	$ 0.7
	Mitsubishi Construction	$ 0.4
Oil	Mitsubishi Oil	$ 6.5

In sum, the 28-member Mitsubishi group had sales of $123 billion and banking assets of $103 billion in 1981.

At various times the Japanese government has attempted to restrict the activities and concentration of the *sogoshosha* and other oligopolistic or monopolistic industries. After the "oil shock" of 1973 and 1974, during which the Japanese public complained vociferously of excess oil profits and hoarding of oil by the *sogoshosha*, the government became especially concerned. In January 1974, the JFTC completed a study of the *sogoshosha* and declared an intent to revise the antitrust laws. The revision would have restricted the stock holdings in other companies by firms whose capital stock exceeded 10 billion yen and by firms that had total assets exceeding 200 billion yen.[168] The proposed antitrust law revision would have limited the size of a stock investment by a Japanese firm in another domestic firm to the investor firm's capital stock or one-half of its total assets, whichever was larger.[169] There was little doubt that the JFTC's main target was the *sogoshosha* because eleven of them were among the forty-nine target firms and because the excess stock holdings of these eleven *sogoshosha* were two and one-half times larger than the excess stock holding of the other thirty-eight firms that were targeted.[170] This revision, however, never became law and thus the *sogoshosha* were able to retain about $2.9 billion in domestic stocks, which otherwise would have been sold.[171]

Several other proposed modifications of the Antimonopoly Law arose in the mid-1970s. Among these were: (1) splitting up monopolistic enterprises, i.e., where one firm controlled 50% of the market or where three firms had 75%; (2) rolling back prices set by illegal cartels (currently the law only allows the JFTC to nullify illegal price-fixing agreements); (3) imposing surcharges on profits made by unlawful price-fixing cartels; (4) lowering from 10% to 5% the amount of stock in other domestic firms which a financial institution can hold; and (5) increasing the criminal penalty for violation of the antitrust laws from 500,000 yen to 5 million yen.[172] The business community rigorously opposed all of these proposals,[173] and only the last of them became law.[174]

In sum, it is evident thai the Japanese antitrust laws impose far fewer restrictions upon the concentration and consolidation of Japanese business, especially given the government's minimal efforts at enforcement, than the American antitrust laws and their enforcement impose upon American business. Antitrust suits like the recent ones in the United States against IBM or AT&T are unheard of in Japan. Similarly, there is no case in the history of Japan's antitrust law to compare

168 A. YOUNG, *supra* note 22, at 172.

169 *Id.*

170 *Id.*

171 *Id.*

172 Ariga, *Efforts to Revise the Japanese Antimonopoly Act*, 21 ANTITRUST BULL. 703, 709-14 (1976).

173 *Id.* at 724.

174 1 DOING BUSINESS IN JAPAN § 10.03[6], at 10-19 (Kitagaiva ed. 1980).

to the civil damage suit filed by Westinghouse against the alleged uranium cartel. Furthermore, cartelization appears to be a way of life among Japanese businesses, though many of the activities associated therewith would be in flagrant violation of American antitrust laws and subject to quick and severe governmental retaliation. Cartelization is important because, as we have seen above, one of the three major functions of a general trading company is to take advantage of economies of scale. By having the freedom to consolidate, coordinate, and cooperate legally, the *sogoshosha* are better able to achieve their enormous economies of scale.

C. Financial Structure of the *Sogoshosha*

One of the crucial services performed by the *sogoshosha* for their customers is providing the money necessary to produce and market their goods, both domestically and internationally. In order to extend vital credits, loans, loan guarantees, and venture capital to customers and suppliers, the *sogoshosha* must amass a phenomenal amount of capital, both owned and borrowed.[175] In fiscal year 1974, the ten largest trading companies employed a total capital (total liabilities plus net worth) of 16,614 billion yen, or $55,379 million.[176] Mitsui and Mitsubishi employed larger capitals (3,426 billion and 3,201 billion yen respectively) than Nippon Steel Corp. (2,271 billion yen), which is the largest steel producer in the world and the largest industrial corporation in Japan.[177]

1. Debt-Equity Ratios

A staggering 97% of the total capital employed by the *sogoshosha* is comprised of liabilities,[178] a ready indicator that the trading companies borrow heavily. For example, during fiscal year 1974 alone Mitsui borrowed $11,086 million, or 97.2% out of a total employed capital of $11,420 million; and Mitsubishi borrowed $10,397 million, or 97.4% out of total employed capital of $10,671 million.[179] This practice of borrowing up to 97% or more of total capital and maintaining a 1:1 current ratio (current ratio = total current assets to total current liabilities) has been the accepted method of business among the *sogoshosha* since World War II.[180] This pattern of business has had the support, and

175 A. YOUNG, *supra* note 22, at 71.
176 *Id.*
177 *Id.* at 71-72.
178 *Id.* at 72.
179 *Id.* at 72-74.
180 *Id.* at 74. Two other authors have noted that the assets/liabilities ratio in Japan is about 1.1

even the encouragement, of financial institutions, which in turn have had the strong backing of the Bank of Japan.[181] Although this way of financing operations might horrify Western businessmen, it has enabled the *sogoshosha* to provide their customers with the financial services described above.

The *sogoshosha* came to rely primarily on bank loans to finance their operations for several reasons. During the 1950s and 1960s, the largest problem facing Japanese corporations was capital procurement. The Japanese stock market could provide only a limited amount of capital because it was underdeveloped.[182] Moreover, equity financing in Japan was and still is very expensive, both because of the corporate tax deduction which is allowed for interest payments but not for dividend distributions and because new stock in Japan is generally issued at par value rather than at or near its market price. When a new stock is sold at par value, a greater number of shares must be sold to raise a given sum, and, as a result, more money must be paid out in dividends, assuming that the dividend rate is left unchanged.[183] Furthermore, the larger number of dividends creates a special problem for Japanese business, making equity financing even more expensive. Dividend rates in Japan usually exceed interest rates because Japanese firms like to maintain high dividends as a matter of prestige.[184] Another reason for expensive equity financing in Japan is that the high growth rate of corporate profits is combined with moderate price/earnings ratios—thus, "a firm selling new stock is turning over to stockholders a fixed share of a rapidly growing earnings stream."[185]

Because equity capital was so costly and because there was no mature market for debentures and other long-term debt instruments,[186] the *sogoshosha* turned to approximately ten large commercial banks, commonly called "city banks," for money.[187] These banks gave preferential treatment to selected firms, which in turn placed their deposits with the banks.[188] Out of this arrangement grew the bank-centered

to 1 and that Japanese banks will lend money at this ratio. In America, however, bankers usually demand a 2 to 1 assets/liabilities ratio before lending money. Wallich & Wallich, *Banking and Finance*, in ASIA'S NEW GIANT: HOW THE JAPANESE ECONOMY WORKS 272 (Patrick & Rosovsky ed. 1976).

181 A. YOUNG, *supra* note 22, at 74.

182 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 15.

183 Wallich & Wallich, *supra* note 180, at 268.

184 T. ADAMS & I. HOSHII, A FINANCIAL HISTORY OF THE NEW JAPAN 128 (1972).

185 Wallich & Wallich, *supra* note 180, at 269.

186 Caves & Uekusa, *supra* note 80, at 4.

187 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 15.

188 *Id.*

trading groups, of which the most dominant ones were Fuyo, Fuji Bank, Daiichi Kangyo, and Sanwa.[189]

The amount of debt carried by the *sogoshosha* is staggering by American standards. Table 4 shows that in 1978 the debt/equity ratio of the nine *sogoshosha* ranged from 8.7 to 15.6, and the average was over 12.5.

Table 4: Debt-Equity Ratios of Nine *Sogoshosha*, 1978[190]

Firm	Total Debt	Equity	Debt-Equity
Mitsubishi	1,379	159	8.7
Mitsui	1,694	159	10.7
C. Itoh	1,071	70	15.3
Marubeni	1,067	84	12.7
Sumitomo	587	64	9.2
Nissho-Iwai	628	50	12.6
Tomen	469	30	15.6
Kanematsu	356	23	15.5
Nichimen	296	25	11.8

In comparison, the debt/equity ratios of American companies average between 1.0 and 2.0.[191] This debt carried by the *sogoshosha* takes two major forms: short- and long-term loans and trade credit.[192]

The short-term loans account for about 40% of the total debt of the *sogoshosha*.[193] These loans, which fall due within one year, are perpetually rolled over by bank creditors and thus are equivalent to long-term loans with lower short-term interest rates.[194] Long-term loans comprise 27% of *sogoshosha* debt.[195] The interest payments on loans extended to the trading companies often exceed their operating profit. For example, in the second half of 1971, the net operating profit of the *sogoshosha* was 98 billion yen.[196] Total interest paid by the *sogoshosha* on their loans, however, was 123 billion yen.[197] The only other form of debt carried by the *sogoshosha*, trade credit (credit extended to custom-

189 *Id.*

190 Table *reprinted with permission* of the Brookings Institution from Y. TSURUMI & R. TSURUMI, SOGOSHOSHA: ENGINES OF EXPORT-BASED GROWTH 10, © 1980 by the Brookings Institution. *Cf.* M. YOSHINO, *supra* note 13, at 13 (debt/equity ratios average about 15 to 1).

191 *See, e.g.*, CASES AND MATERIALS ON CORPORATE FINANCE 314-405 (Brudney & Chirelstein 2d. ed. 1979). In America, if the debt/equity ratio exceeds 4.0 the debt may be reclassified as equity. John Kelley Co. v. Commissioner, 326 U.S. 521 (1946).

192 M. YOSHINO, *supra* note 13, at 12-13.

193 *Id.* at 13.

194 SOGOSHOSHA, *supra* note 3, at 11.

195 M. YOSHINO, *supra* note 13, at 13.

196 *Id.*

197 *Id.*

ers), generally is equivalent to three or four months worth of sales.[198]

The tendency of Japanese corporations, especially the *sogoshosha*, to borrow heavily is probably the most distinctive feature of corporate finance in Japan. As seen in Table 5, Japanese corporations borrow 49% of their funds, while American corporations borrow only 12.4%. Japanese corporations also rely on debt more than corporations in the United Kingdom, West Germany, and France. Conversely, Japanese corporations have the lowest rate of internal finance and American corporations have the highest.

Table 5: International Comparison of Corporate Finance, 1966-1970 (in percentages)[199]

Country	Internal Finance	Borrowed Money	Securities Issued	Total External Finance	Total
Japan	40.0	49.0	11.0	60.0	100
United States	69.4	12.4	18.2	30.6	100
United Kingdom	51.4	10.3	38.3	48.6	100
West Germany	63.1	29.6	7.3	38.9	100
France	65.0	27.4	7.6	35.0	100

This unique characteristic of Japanese corporate finance has been termed "overloan;" it is defined as the condition when central bank money, less borrowed funds, is negative.[200] That is, the banks have loans and investments funded from sources other than deposits and equity capital. Thus, reserve assets (the sum of central bank money plus second-line reserve assets such as call loans, short-term government securities, and commercial bills circulating in the bills discount market, minus borrowed funds) are consistently negative.[201] The overloan phenomenon results from considered government policy and derives primarily from direct loans to the city banks by the Bank of Japan.[202]

The prime beneficiaries of this overloan policy are the city banks, the corporate sector, and the *sogoshosha*. The city banks' loans and

198 *Id.* In 1974, the big six extended a total trade credit to suppliers and customers of $7,400 billion, a sum that exceeded the total loans made by the largest Japanese commercial bank by $2,700 billion. *Id.*

199 Table *reprinted with permission* of Yale University Press from Y. Suzuki, Money and Banking in Contemporary Japan 14, © 1980 by Yale University Press.

200 Y. Suzuki, Money and Banking in Contemporary Japan 5 (1980).

201 *Id.* at 3-8.

202 *Id.* at 21. Another author has noted that because of the readiness of the Bank of Japan to give credit to the commercial banks, liquidity has little practical significance in Japanese bank lending. The Japanese financial managers not only allowed the overloan situation to arise but also permitted it to continue for long periods of time without fear of panic or insolvency. T. Adams & I. Hoshii, *supra* note 184, at 127.

investments regularly exceed their deposits and capital, while non-city banks must restrict their loans and investments to their range of capital and deposits. Therefore, "the commercial banking system in Japan is comprised of one group of institutions that are regularly net lenders and another group that are normally net borrowers, a phenomenon not generally seen in Europe or the United States."[203] The city banks exploit this difference and use the funds readily available from the Bank of Japan to compete aggressively for the business of the *sogoshosha*, because the *sogoshosha*'s sheer volume of business transactions makes them excellent clients.[204]

Conversely, the *sogoshosha* benefit greatly from this easy credit market and the eagerness of the city banks to lend money. The *sogoshosha* have access to large amounts of capital that they use discriminatingly as trade credit for members of their *keiretsu* group, thereby maintaining tighter control of the group.[205] The *sogoshosha* also use this borrowed money as a source of loans and loan guarantees for customers and related firms.[206]

This symbiotic relationship between the city banks and the *sogoshosha*—in which the banks have overloaned and the *sogoshosha* have overborrowed—prevailed until the mid-1970s. Indeed, one author has gone so far as to argue that it was "inevitable in the *export-oriented, investment-led rapid growth economy*, and the *low interest dominated, noninternational* financial structure of Japan that overloan and overborrowing should become inextricably entwined."[207] With the advent of the 1970s, however, this relationship began to change. The government and the public acknowledged that the policy of maintaining sub-equilibrium interest rates that had been designed to promote ex-

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203 Y. SUZUKI, *supra* note 200, at 15-16. For an international comparison of overlending in December 1972, see appendix, Table A-11.

204 M. YOSHINO, *supra* note 13, at 14. The city banks also pursued *sogoshosa* business so avidly because the amount of foreign exchange a bank handled was an important consideration for obtaining Ministry of Finance approval to open new foreign branches and offices. *Id.* Obviously, the *sogoshosha* could provide the banks with a great deal of foreign exchange.

The banks are able to hedge their loans in several ways: (1) a corporation borrows from several banks, with the leading bank carrying less than 30% of the company's debt, (2) the risk of default is spread widely, and (3) the Bank of Japan would assist a failing company. Caves & Uekusa, *supra* note 80, at 480.

205 For example, in fiscal year 1974, the top six *sogoshosha* extended a total trade credit to suppliers and customers of $7,400 billion, a sum that exceeded the total loans made by the largest commercial bank by a margin of $2,700 billion. Although not all of this money went to *keiretsu* companies, a substantial portion of it did. JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 17.

206 M. YOSHINO, *supra* note 13, at 13. Table A-12 in the appendix more clearly shows which banks lend the money and to which trading companies.

207 Y. SUZUKI, *supra* note 200, at 14 (original emphasis).

ports and corporate investment had fulfilled its purpose.[208] This acknowledgement was prompted by the depreciation (in real terms) of household savings, by the internationalization of the Japanese money markets, and by the expansion in size of government debt.[209]

The most strident clamor for change came from consumers. Because real interest rates fell below the severe inflation rate that prevailed from 1973 to 1975, the household sector, which was a net lender, lost money. Yet the corporate sector, which was a net debtor, reaped huge profits.[210] The consumers believed that increased corporate investment or profit no longer raised personal income and thus the artificially low interest rates caused an unfair transfer of income from households to the corporate sector.[211]

In order to counteract this transfer, the Bureau of Banks of the Ministry of Finance enacted a plan in December 1974 to limit severely the amount of money a financial institution could lend to a Japanese corporation. The plan restricted the loans of commercial banks to 20% of their equity (*jiki shihon*), those of long-term credit banks and trust banks to 30% of equity, and those of foreign exchange banks to 40% of equity.[212] Although sound banking and depositor protection were the official reasons offered by the Ministry of Finance for the plan, the *sogoshosha* were the main target. The plan forced eight trading companies (all of the top ten except Kanematsu Gosho, Ltd., and Nichimen Co.) to redeem approximately 600 billion yen, or $2,000 million, worth of bank loans.[213]

Notwithstanding the enormous debt service of the *sogoshosha*, they are still profitable, albeit not to the extent of American corporations. From an average profit-to-sales point of view, the performance of the trading companies is poor. For the top four *sogoshosha*, this ratio is about 0.2%.[214] The ratio of profit to total capital employed is also low. For example, for Mitsubishi it was 0.6% and for Mitsui it was

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208 *Id.* at 236. A recent article stated that this tendency of Japanese corporations to rely primarily on debt as their chief source of funds is changing because, "[f]lush from years of booming sales, and increasingly conscious of costs, some of Japan's premier manufacturers are relying less on bank borrowings to finance their growth and more on long-term bonds and even common stock." Kanabayashi, *Switch in Way Japan Firms Raise Funds May Threaten Foreign Rivals and Banks*, Asian Wall St. J. Weekly, Sept. 20, 1982, at 23, col. 1-3.

209 *Id.*

210 *Id.*

211 *Id.*

212 A. YOUNG, *supra* note 22, at 172.

213 *Id.* Table A-12 in the Appendix lists the loans that Japanese banks made to the ten general trading companies, and the amount in excess of the limits imposed by the Ministry of Finance, as of March 31, 1974.

214 M. YOSHINO, *supra* note 13, at 15.

0.5%.[215] The reason for these low figures is the very low gross profit margin made by the trading companies: this margin is seldom over 5% and in large volume transactions can be as low as 2%.[216]

The *sogoshosha*, however, are quite profitable when measured by a return on equity. In 1971, the average return for the top ten trading companies was 27%.[217] In short, although the *sogoshosha* make little on each sale, they compensate through the number of transactions they conduct—and they are able to handle numerous transactions because of the capital they easily and extensively borrow from the city banks, which in turn receive their funds from the Bank of Japan.

2. *Bank-Centered Conglomerates: Interlocking Directorates and Intercorporate Shareholdings*

The *sogoshosha* can carry on their extensive international trade due in large part to their close affiliation with several major Japanese commercial banks, which not only own a significant portion of the stock of the *sogoshosha* but also extend enormous low-interest loans to the *sogoshosha*. An examination of the intricate and mutually beneficial relationship between the *sogoshosha* and these selected banks shows that this *sogoshosha*-commercial bank grouping is the core relationship underpinning the entire *sogoshosha* operation. Moreover, bank participation is essential to successful international trade, at least as conducted by the Japanese.[218]

As noted above, the Occupation authorities dissolved the *zaibatsu* and divided the *sogoshosha* into hundreds of independent companies. When the Occupation officially ended in the spring of 1952, however, the *sogoshosha* began to regroup along their former *zaibatsu* lines because of feelings of kinship, common loyalties and mutual obligations, common corporate cultures and experiences, and close business relations built up during the prewar years.[219] The new and unique feature of this postwar regrouping was the formation of the "bank-centered" conglomerate group.[220]

These groups formed in the 1950s and accelerated during the 1960s with the active backing of, and often under pressure from, three banks that had not belonged to the big three prewar *zaibatsu*: Fuji

215 *Id.*

216 *Id.*

217 *Id.*

218 While reading this section, it would be useful for the reader to bear in mind that the Export Trading Company Act allows banks to own 100% of the stock of American trading companies.

219 A. YOUNG, *supra* note 22, at 36.

220 *Id.*

Bank, Daiichi Kangyo Bank, and Sanwa Bank.[221] They and other financial institutions came to play a central role in Japan's postwar development because they were exempt from the Occupation's dissolution order and antitrust law.[222] Moreover, many firms became very dependent on them because of: (1) their practice of giving preferential loans to selected firms, (2) the never ending shortage of capital in the rapidly expanding Japanese economy, and (3) the inability of the stock market to provide the capital necessary for growth.[223] This dependence upon banks as a source of capital led to the highly leveraged capital structure described above.

The development of the bank-centered groups was also promoted by the ability of the banks to own stock in non-financial organizations. Although it was generally illegal in the United States for a bank to hold stock for its own account in any other corporation which was not a bank,[224] the same is not true in Japan. The Antimonopoly Law as enacted in 1949 prohibited companies in financial businesses (banking, mutual banking, trust, insurance, mutual financing, or securities) from acquiring or holding more than 5% of the stock of any Japanese company.[225] The law, however, was amended in 1953 to raise the limit to 10%.[226] Thus, a Japanese bank can own up to 10% of the stock of any other Japanese company, including a general trading company.

It is not surprising, given the foregoing, that financial institutions are the largest shareholders of *sogoshosha* stock. For example, in 1975, financial institutions owned 48.47% of Mitsubishi's stock, 61.56% of Marubeni's stock, and 47.62% of Toyomenka's stock.[227] What is surprising, though, is that through their ownership interests in the *sogoshosha*, the banks are able to control completely thousands of other firms that are subsidiaries of the *sogoshosha*. After all, a *sogoshosha* is not limited in how much of another corporation's stock it can own. The only limitation is that posed by section 10(1) of the An-

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221 *Id.*

222 *Id.*

223 *Id.*

224 The Glass-Steagall Act generally prohibits a national or member state bank from owning "any shares of stock of any corporation." 12 U.S.C. § 24 (1976). The Bank Holding Company Act of 1956 generally prohibits a bank holding company from engaging in non-banking activities or from owning or controlling shares of any company that is not a bank. 12 U.S.C. § 1843(a) (1976 & Supp. V 1981). *See generally* Clark, *The Regulation of Financial Holding Companies*, 92 HARV. L. REV. 787 (1979).

225 Law No. 54 of 1949, §§ 11(1), 10(2), *reprinted in Antitrust Hearings, supra* note 132, at 980.

226 Law No. 54 of 1953, § 11(1), *reprinted in* H. IYORI, *supra* note 85, at 153.

227 A. YOUNG, *supra* note 22, at 52.

timonopoly Law prohibiting a stock acquisition that would substantially restrain competition.

Equally surprising is that different banks and insurance companies within the same *keiretsu* group can each own up to 10% of a *keiretsu* corporation's stock. For example, in 1973, Mitsubishi Bank owned 7.84% of Mitsubishi Corp., Mitsubishi Trust and Banking owned 3.50%, Meiji Life Insurance (a Mitsubishi *keiretsu* firm) owned 4.82%, and Tokyo Marine and Fire Insurance (another *keiretsu* firm) owned 7.90%.[228] Thus, four Mitsubishi financial institutions owned 24.06% of the stock of Mitsubishi Corp. Three other Mitsubishi firms owned another 9.62%.[229] Table 6 below presents similar data for the big six *sogoshosha*.

Table 6: Major Shareholders in Six General Trading Companies and Their Ownership Interests (1973)[230]

Mitsubishi Corporation

Shareholders	Percent share
Mitsubishi Bank	7.84
Tokyo Marine & Fire Insurance	7.90
Mitsubishi Heavy Industries	5.14
Meiji Life Insurance	4.82
Mitsubishi Trust & Banking	3.50
Daiichi Kangyo Bank	2.69
Nippon Yusen	2.43
Bank of Tokyo	2.37
Mitsubishi Electric	2.05
Sanwa Bank	1.58
Tokai Bank	1.58
Total share	41.90

228 *Id.* at 54.

229 Mitsubishi Heavy Industries owns 5.14%, Nippon Yusen 2.43% and Mitsubishi Electric 2.05%. *Id.*

230 Table *reprinted by permission of* Westview Press from THE SOGO SHOSHA: JAPAN'S MULTINATIONAL TRADING COMPANIES 54, by Alexander Young. Copyright © 1979 by Westview Press, Boulder, Colorado.

Table 6, continued

Mitsui & Co.

Shareholders	Percent share
Mitsui Bank	6.49
Fuji Bank	4.91
Bank of Tokyo	4.22
Taisho Marine & Fire Insurance	3.67
Mitsui Life Insurance	3.30
Toyo Trust & Banking	3.03
Mitsui Trust & Banking	2.89
Mitsui O.K. Life	1.73
Toray	1.62
Daihyaku Life Insurance	1.51
Total share	33.37

Marubeni Corporation

Shareholders	Percent share
Fuji Bank	8.09
Yasuda Fire & Marine Insurance	5.45
Nissan Motor	4.55
Kobe Bank	3.67
Tokyo Marine & Fire Insurance	3.63
Sumitomo Bank	3.29
Nippon Fire & Marine Insurance	2.91
Yasuda Trust & Banking	2.91
Bank of Tokyo	2.51
Daiwa Bank	2.49
Total share	39.50

Sumitomo Shoji

Shareholders	Percent share
Sumitomo Bank	8.40
Sumitomo Chemical Co.	6.26
Sumitomo Life Insurance	4.81
Sumitomo Metal Industry	4.78
Sumitomo Trust & Banking	3.82
Nippon Electric	3.34
Sumitomo Marine & Fire	3.28
Sumitomo Metal Mining	3.01
Nippon Life	2.63
Sumitomo Electric Industry	2.44
Total share	42.77

Table 6, continued

C. Itoh & Co.

Shareholders	Percent share
Sumitomo Bank	8.72
Daiichi Kangyo Bank	8.72
Bank of Tokyo	5.23
Nippon Life Insurance	3.50
Fuji Bank	3.43
Tokyo Marine & Fire Insurance	3.36
Nippon Fire & Marine Insurance	3.20
Sanko Steamship	2.85
Sumitomo Marine & Fire Insurance	2.84
Asahi Life Insurance	2.74
Total share	44.59

Nissho-Iwai Co.

Shareholders	Percent share
Sanwa Bank	7.47
Daiichi Kangyo Bank	7.31
Daiwa Bank	3.78
Tokyo Marine & Fire Insurance	3.57
Kobe Steel	3.22
Bank of Tokyo	3.13
Nippon Fire & Marine Insurance	2.23
Asahi Life Insurance	2.14
Nippon Life Insurance	2.14
Nissin Fire & Marine Insurance	1.97
Total share	36.96

The intercorporate shareholding data in Table 6, though itself indicative of the power bankcentered groups wield, becomes even more intriguing when reviewed in conjunction with the data in Table 7. This Table matches firms with the groups to which they belong. Although firms bearing the same name as their *sogoshosha* are easily identified, this is less true of firms belonging to groups with non-*zaibatsu* origins.

Table 7: Members of the President Clubs of the Six Conglomerate Groups, March 31, 1974[231]

	Mitsubishi Group	*Mitsui Group*	*Sumitomo Group*	*Fuyo Group*	*Daiichi Kangyo Bank Group*	*Sanwa Bank Group*
Financial	Mitsubishi Bank; Mitsubishi Trust & Banking; Tokyo Marine & Fire Insurance; Meiji Mutual Life Insurance	Mitsui Bank; Mitsui Trust & Banking; Taisho Marine & Fire Insurance; Mitsui Mutual Life Insurance	Sumitomo Bank; Sumitomo Trust & Banking; Sumitomo Marine & Fire Insurance; Sumitomo Mutual Life Insurance	Fuji Bank; Yasuda Trust & Banking; Yasuda Fire & Marine Insurance; Yasuda Mutual Life Insurance	Daiicho Kangyo Bank; Nissan Fire & Marine Insurance; Taisei Fire & Marine Insurance; Fukoku Mutual Life Insurance; Asahi Mutual Life Insurance; Nippon Kangyo Kakumaru	Sanwa Bank; Toyo Trust & Banking; Nippon Mutual Life Insurance
Agriculture and forestry					Furukawa Forestry	
Mining		Mitsui Mining; Hokkaido Colliery & Steamship	Sumitomo Metal Mining; Sumitomo Coal Mining		Furukawa Mining	
Construction		Mitsui Construction; Sanki Engineering		Taisei Construction		Ohbayashi Gumi; Toyo Construction
Manufacturing						
Foods	Kirin Brewery	Nippon Flour Mills		Sapporo Breweries; Nissin Flour Milling; Nippon Reizo		
Textiles	Mitsubishi Rayon	Toray Industries		Nisshin Spinning		Teijin; Unitika

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Table 7 (cont.)

	Mitsubishi Group	*Mitsui Group*	*Sumitomo Group*	*Fuyo Group*	*Daiichi Kangyo Bank Group*	*Sanwa Bank Group*
Chemicals	Mitsubishi Chemical Industry; Mitsubishi Petrochemical; Mitsubishi Gas Chemical; Mitsubishi Plastics Industry; Mitsubishi Monsanto	Mitsui Toatsu Chemicals; Mitsui Petrochemical Industries	Sumitomo Chemical	Showa Denko; Kureha Chemical Industry; Nippon Oil & Fats	Asahi Denka; Electro Chemical Industrial; Toa Paint; C.I. Chemical; Sanyo; Nippon Noyaku; Shiseido	Ube Industries; Tokuyama Soda; Kansai Paint; Sekisui Chemical; Hitachi Chemical; Tanabe Seiyaku; Fujisawa Pharmaceutical
Glass and Cement	Asahi Glass; Mitsubishi Mining Cement		Nippon Glass; Sumitomo Cement	Nippon Cement		Osaka Cement
Steel	Mitsubishi Steel	Nippon Seiko Sho	Sumitomo Metal Industries	Nippon Kokan	Kawasaki Steel	Kobe Steel; Nakayama Steel Works
Nonferrous metals	Mitsubishi Steel	Mitsui Kinzoku			Nikkei Kin; Furukawa Magnesium	
Metal products	Mitsubishi Aluminum				Furukawa Electric; Furukawa Aluminum; Nikkei Aluminum; Nippon Seihaku; Tokai Kinzoku; Furukawa Metal Industries; Furukawa Founding	Hitachi Metals; Hitachi Cable
Machinery	Mitsubishi Kakoki		Sumitomo Shipbuilding & Machinery	Kubota Tekko; Nippon Seiko	Nigata Engineering	Toyo Bearing Manufacturing

Table 7 (cont.)

	Mitsubishi Group	*Mitsui Group*	*Sumitomo Group*	*Fuyo Group*	*Daiichi Kangyo Bank Group*	*Sanwa Bank Group*
Electric machinery	Mitsubishi Electric	Tokyo Shibaura Electric	Sumitomo Electric Industries; Nippon Electric Co.	Hitachi Manufacturing; Oki Electric Industry; Yokogawa Electric Works	Fuji Electric; Yasukawa Electric Manufacturing; Fujitsu; Fuji Electrochemical; Kurokawa Communication; Furukawa Battery; Nippon Columbia; Supersonic Industry; Fujitsu FACOM: Fujitsu Electric Industries; Fujitsu FANUC; Fujitsu Ten; Fujitsu Kiden	Hitachi Manufacturing; Sharp; Iwasaki Tsushinki
Transportation equipment	Mitsubishi Heavy Industries; Mitsubishi Motor	Mitsui Shipbuilding & Engineering		Nissan Motor	Kawasaki Heavy Industries; Fuji Diesel	Daihatsu; Shin Meiwa Industry; Hitachi Shipbuilding & Engineering
Others	Mitsubishi Oil; Nippon Kogaku			Toa Nenro; Canon Camera	Yokohama Rubber; Kanemachi Rubber; Nippon Jeon	Maruzen Oil; Toyo Rubber
Wholesale	Mitsubishi Corporation	Mitsui & Co.	Shumitomo Shoji Kaisha	Marubeni Corporation	C. Itoh & Co.; Kanematsu Gosho; Furukawa Sangyo; Nikkei Shoji	Nissho-Iwai Co.; Nichimen Company; Iwatani Sangyo
Retail		Mitsukoshi			Seibu Department Store	Takashimaya
Real Estate	Mitsubishi Estate	Mitsui Real Estate	Sumitomo Real Estate	Tokyo Tatemono	Daiichi Kaihatsu	

Table 7 (cont.)

	Mitsubishi Group	*Mitsui Group*	*Sumitomo Group*	*Fuyo Group*	*Daiichi Kangyo Bank Group*	*Sanwa Bank Group*
Transportation and Communication	Nippon Yusen Kaisha; Mitsubishi Warehouse	Mitsui O.S.K. Lines; Mitsui Warehouse	Sumitomo Warehouse	Keihin Express; Tobu Railway; Showa Shippings	Nippon Express; Kawasaki Kisen; Shibusawa Warehouse	Nippon Express Hankgu Electric Railway; Shimo Shin Nippon Shipping
Service					Dentsu; Korakuen Stadium	Orient Lease

Note: Toyota Motors joined the Mitsui group after the completion of the second study by the Japan Fair Trade Commission, Hitachi, Ltd., is a member of two groups, Fuyo and Sanwa.

This data, however, is not indicative of the full extent of intercorporate shareholding. At the end of March 1974, the big six held stock in a total of 5,390 companies, of which 1,848 were listed on the stock exchanges.[232] They also were the largest shareholders in 1,057 companies having a combined capitalization of $440 billion and total sales of $6,250 billion—or about 30% of the parents' combined sales.[233] Over six hundred of the firms in which the big six held stock were subsidiaries, two-thirds of them in Japan and one-third overseas.[234] About half of these subsidiaries were in sales, distribution, or transportation and about one-third were in a broad range of manufacturing industries.[235] The *sogoshosha* maintained control over these subsidiaries by controlling their sources of supply. Thus, 43% of the subsidiaries owned by the big six depended on their parent companies for both supplies of raw and other materials and sales of their finished products, while 40% of these subsidiaries relied on the parent firms for either supplies or sales of manufactured products.[236]

In sum, intercorporate shareholding is as distinctive a feature of the Japanese corporate scene—especially among the bank-centered groups—as their characteristically large debt/equity ratios. Several banks and other related financial institutions may each own up to 10% of a *sogoshosha*'s stock and, through this ownership of the "control block" of stock, control the *sogoshosha*. In turn, the *sogoshosha* may own up to 100% of the stock of hundreds, perhaps even thousands, of other corporations. The *sogoshosha* will then borrow huge amounts of money from its stock-holding group of financial institutions and relend this money to, or use it as a trade credit for, the firms in which it has an interest. In return, the customer or related firm will give the *sogoshosha* equity ownership, finished goods, or both. And the bank, through its control of a given *sogoshosha*, will wield significant influence over the customers and related firms of the given *sogoshosha*.

IV. PROBLEMS IN THE 1970S: THE *SOGOSHOSHA* RESPONSE

As the 1970s unfolded, the general trading companies faced several new problems. The traditional strength of the *sogoshosha* resided in their ability to manage large scale transactions involving highly standardized goods for which price was the primary consideration.[237] Be-

232 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 17.
233 *Id.*
234 A. YOUNG, *supra* note 22, at 46.
235 *Id.*
236 *Id.*
237 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 18.

cause their experience had been largely in the area of basic commodities, they had little experience in handling technological products[238] and they were ill-equipped to provide marketing or technical services.[239] In fact, the *sogoshosha* typically relied on local wholesalers within a foreign market and seldom involved themselves beyond the level of primary wholesalers.[240]

New consumer goods, however, required intensive marketing and back-up service organizations, both of which the *sogoshosha* lacked. To mitigate these weaknesses, manufacturers of highly technical and complex goods (electronics, cars, heavy machinery, and precision instruments), which were and to a large degree still are the more attractive growth products, undertook their own marketing activities at home and abroad.[241] Sony is the best known example of an electronics firm that has succeeded without the aid of the *sogoshosha*.[242] Moreover, even those manufacturers who had relied on the export expertise of the *sogoshosha* were able to assume the bulk of their export marketing operations as they became larger and more sophisticated.[243] In short, the *sogoshosha* were losing customers.

The trading companies faced another threat from within. By the early to mid-1970s they had learned that their initial strategy of establishing small joint ventures in defense of the export market[244] was endangered. The early advantages of the joint ventures had eroded quickly, and to recapture their competitive advantages, the *sogoshosha* began to pursue new strategies, including adding new products, stressing product differentiation, seeking vertical integration, entering into cooperative arrangements with rivals, and seeking system-wide benefits through building an integrated logistical program.[245] As the

238 M. YOSHINO, *supra* note 13, at 16.

239 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 18.

240 *Id.*

241 M. YOSHINO, *supra* note 13, at 16.

242 *Id.*

243 *Id.* at 17. Large-scale trading in standardized products required no real understanding by *sogoshosha* personnel of the customs of the host countries, and the personnel seldom dealt with anyone except primary wholesalers. Manufacturers, on the other hand, developed deeper knowledge, greater expertise, and better local contacts as they became more involved in foreign manufacturing activities. JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 111.

244 Confronted with the choice of either setting up customer service networks with or for Japanese manufacturers, or of being reduced to handling low-technology products and bulky commodities, the *sogoshosha* tried to combine their financial and marketing strength with the technical expertise of manufacturing firms by involving themselves in sales subsidiaries in the industrialized countries. In this way, they dealt with the newer consumer and industrial products that Japanese manufacturing industries began exporting in increasing quantities after the mid-1960s. THE JAPANESE ARE COMING, *supra* note 51, at 144.

245 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 110.

subsidiaries began to follow these strategies, the influence of the *sogoshosha* declined further because the manufacturing enterprises controlled most of the skills—product knowledge, knowledge of manufacturing technologies, and marketing know-how—necessary to implement them.[246] As a result, the *sogoshosha* continued to lose customers.

The *sogoshosha*'s response to these problems, though different in degree, usually entailed five common policies. The first was to shift from small scale joint ventures to large scale projects involving petroleum, petrochemicals, and aluminum refining.[247] The trading companies are uniquely suited to these types of projects because of their close connections to manufacturing firms and financial institutions, their capacity to implement large scale foreign projects, their ability to amass large amounts of capital, and their international commercial networks.[248] The *sogoshosha* benefit greatly from these large-scale projects because they not only provide the various types of equipment and other supplies necessary for the project, but they then have an almost captive source of supply for the commodity produced.

The second strategy of the *sogoshosha* was to strengthen their multinational commercial networks in order to facilitate trade among their foreign units in markets outside Japan.[249] To enhance their "third country trade," the *sogoshosha* took the unprecedented step of appointing executive vice-presidents to head major foreign operations and granting these personnel increased autonomy.[250] Another important action was to expand the financial resources of these major overseas affiliates. For example, Mitsubishi increased the capital stock of Mitsubishi International Corp. by $50 million between 1974 and 1976; Mitsui raised the capital stock of Mitsui & Co. (U.S.A.), Inc., from $65 million to $133 million during the same period; and C. Itoh & Co. (America), Inc., had its capital stock boosted $52 million from 1973 to 1976.[251] Thus, the capital stock of the American affiliates of the big ten either equaled or exceeded that of the head offices in Japan.[252]

246 *Id.*

247 *Id.* at 114.

248 *Id.*

249 *Id.* at 115. One author contends that (1) it is this third-country trade that marks the difference between a multinational corporation and the *sogoshosha*, and (2) this type of business has been the most important single specific target of all *sogoshosha* since the early 1970s. A. YOUNG, *supra* note 22, at 197. The third-country trade of the *sogoshosha* has increased from just $35 million in 1956 to $15.4 billion in 1976. *Id.* at 197-202. This third-country trade by the *sogoshosha* exceeds the total foreign trade of the People's Republic of China. *Id.* at 202.

250 A. YOUNG, *supra* note 22, at 188-91.

251 *Id.* at 189.

252 *Id.*

The third policy was to seek vertical integration on a global scale.[253] One facet of this policy was to establish specialized supply, distribution, and project bases in order to achieve global sourcing and marketing.[254] These international procurement and service corporations collect information, secure orders, and procure materials and equipment for their customers from the entire world.[255] Another facet was to link upstream and downstream operations within key industries worldwide. For example, Mitsui purchased a 50% interest in American Metal Climax, thus gaining access to bauxite reserves in Australia and refining facilities in America and elsewhere.[256] To secure volume purchases of foods abroad, the *sogoshosha* have purchased warehouses, grain elevators, and cold storage plants in key purchasing bases.[257]

The fourth step taken by the *sogoshosha* was to strengthen and diversify their operations in key markets.[258] Thus, the trading companies expanded the number of host country incorporated subsidiaries[259] and encouraged them to diversify their operations beyond large scale trading in standardized products.[260] To achieve this diversification, the *sogoshosha* have begun marketing products under their own brand names through their newly established foreign sales subsidiaries. One example is C. Itoh & Co., which established C. Itoh Electronics, Inc., in 1973 in Los Angeles, and which was to begin marketing personal and office computers in the United States under its own brand name in 1982.[261]

The final policy implemented by the *sogoshosha* was to revamp their Overseas Enterprise Departments (OEDs). During their postwar development, the trading companies allowed each division of the company to make foreign investment decisions; the managers within these product divisions had almost unlimited autonomy in deciding where and when to commit funds to foreign operations that were designed and established to defend export markets or to effect large sales of machinery or equipment. Because many of these decisions were poorly

253 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 115.

254 A. YOUNG, *supra* note 22, at 189.

255 *Id.* at 190.

256 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 115-16.

257 THE JAPANESE ARE COMING, *supra* note 51, at 145-46. Mitsui & Co. bought eight United States grain elevators in 1978 upon 48-hour notice, and the other trading companies are not far behind. Wall St. J., July 31, 1981, at 40, col. 2.

258 THE JAPANESE ARE COMING, *supra* note 51, at 116.

259 A. YOUNG, *supra* note 22, at 189.

260 JAPAN'S MULTINATIONAL ENTERPRISES, *supra* note 21, at 116.

261 Asian Wall St. J. Weekly, Aug. 10, 1981, at 6, col. 4. The annual sales of this subsidiary have already reached $189 million. *Id.*

planned, however, they were often unprofitable.[262] Thus, the *sogoshosha* established OEDs.

Initially, the OEDs' involvement with new overseas investments was limited to preparing an investment proposal after the division had decided to make an investment.[263] To this end, the OEDs prepared routine financial analyses and pro forma statements, checked the credit of proposed local partners, submitted appropriate documents to the governments concerned, drafted joint venture contracts, and initiated the routine intrafirm procedure for formal approval of the investment.[264] Gradually, the OEDs realized that the only way to ensure a substantive role in the initial investment decision itself was to make themselves invaluable through project analyses and feasibility studies. Thus, they honed their planning and analytical skills and eventually persuaded either the product divisions or top management to establish committees to screen new foreign investments.[265] The end result was that the OEDs, having standardized their data collection procedures and having proven the need for their project analyses and feasibility studies, assumed a central role in foreign investment decisions. Indeed, the reports prepared by the OEDs were welcomed by the governments of host countries and relied upon by foreign partners in preparing their own proposals.[266] In this way, the *sogoshosha* were able to consolidate their foreign investment decisions and make them more profitable.

V. Prospects for the *Sogoshosha*

Although the *sogoshosha* have grown enormously in the past thirty years, several authors have reservations about the ability of the *sogoshosha* to maintain, much less increase, their level of sales. Two basic reasons explain these reservations. First, the traditional strength of the *sogoshosha* was the scale on which they could procure and distribute goods. As the Japanese industrial structure shifted, however, from textiles and standard goods to capital-intensive goods such as steel, chemicals, oil, and petrochemicals, the type of marketing structure also shifted. These newer types of exports require technical services, extensive marketing efforts, and after-sales service. The trading companies, though, lack the ability to provide these services[267] and, as a result, more and more manufacturers who formerly used the

262 Japan's Multinational Enterprises, *supra* note 21, at 99-103.
263 *Id.* at 103.
264 *Id.*
265 *Id.* at 103-04.
266 *Id.* at 104.
267 *Id.* at 118-19.

sogoshosha are now buying their own supplies directly and marketing their own products independently.[268]

The *sogoshosha* have reacted to this problem with different degrees of rapidity and intensity, but the basic reaction of all has been to integrate their operations. In doing so, they have followed six closely interrelated business strategies: growth, diversification, creation of supply and demand, organization and coordination of new growth industries, consumer market penetration, and consolidation of affiliates. The expansion of C. Itoh & Co. into the United States computer market through a local subsidiary and the consolidation by Mitsui & Co. of its twenty-eight affiliated corporations—discussed above[269]—are but two examples.[270]

The second reason for reservations about the future of the *sogoshosha* is, according to at least one author, their inability to produce more Japanese managers culturally and socially comfortable in foreign languages, customs, and manners.[271] Because the overseas activities of the *sogoshosha* have become extensive, Japanese expatriate managers and their local clerical staff are increasingly unable to handle all the work. Moreover, to penetrate overseas markets more deeply, the trading companies need local experts well-versed in the "ins and outs" of local business and politics—an area in which Japanese expatriates are at a distinct disadvantage.[272]

Mitsubishi International Corp., the United States subsidiary of Mitsubishi Corp., is the only *sogoshosha* that has made a serious effort to remedy this shortcoming. By the spring of 1979, it had made formal attempts at retraining both its Japanese and American managers in or-

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268 A. YOUNG, *supra* note 22, at 100.

269 *See supra* text accompanying notes 160 and 261.

270 Useful examples of some of the activities are: (1) growth—introduction of three-year economic programs based upon macroeconomic indices, the economic plans of major customers, and internal *sogoshosha* data on past performance; (2) diversification—establishment of sales companies to handle specialized products and acquisition of smaller trading companies (*senmonshosha*); (3) creation of supply and demand—achieving both upstream and downstream integration in the same industry or product line; (4) organization and coordination of new growth industries—organizing large complex projects such as natural resource development or urban and regional development; (5) consumer market penetration—expansion into the consumer food industry (by purchasing chicken and pig farms, the products of which go to group firms for processing, packaging, distribution, and retail sale), or by entering into joint ventures with foreign firms seeking to enter Japan (e.g., Mitsubishi and Kentucky Fried Chicken (1970) or Marubeni and Dairy Queen (1973)); (6) consolidation of affiliates—the merger of Mitsubishi Nippon Heavy Industries, New Mitsubishi Heavy Industries, and Mitsubishi Shipbuilding and Engineering into Mitsubishi Heavy Industries. A. YOUNG, *supra* note 22, at 106-17.

271 SOGOSHOSHA, *supra* note 3, at 57.

272 *Id.* at 55.

der to integrate the latter more fully into the company.[273] Efforts such as this one are essential to the continued success of the *sogoshosha* because they will be unable to exploit fully their key strength—economies of scale in communications and organization—unless foreign managers are integrated into the operation.[274] Furthermore, these foreign managers will probably be dissatisfied and unwilling or unable to devote all their time and capabilities to their jobs until they are integrated. After all, the *sogoshosha*'s organizational strength is based on informal but substantive cooperation among professionals who share the values and goals of the firm.[275] And the foreign managers, who are becoming increasingly important in the overseas operations of the *sogoshosha*, will not share these values and goals unless they are socialized in the "corporate style" (*shafu*) and integrated into the company's mainstream activities.

Although the foregoing reservations apply in varying degrees to all of the *sogoshosha*, there is little doubt that they are, and will continue to be in the forseeable future, engines of export-based growth. They have taken concrete steps to move into new consumer markets and handle goods that complement or replace standardized, less complex ones now being manufactured more cheaply in Hong Kong, Taiwan, and Korea.

VI. Development of American International Trading Companies

The concern of American business and the United States government over the ability of American industry to export its products at levels sufficient to balance United States imports—if not to provide a basis for positive growth—greatly contributed to enactment of the Export Trading Company Act of 1982.[276] In title I of the Act, Congress specifically found, *inter alia*, that although exports are vital to maintaining American jobs, trade deficits contribute to inflation, and that although America has many exportable products, especially in the agricultural sector, "export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters."[277] Thus, the

[273] *Id.* at 57.
[274] *Id.* at 55.
[275] *Id.*
[276] Export Trading Company Act of 1982, Pub. L. No. 97-290, § 102(a), 96 Stat. 1233, 1234 (to be codified at 15 U.S.C. § 4001).
[277] *Id.* § 102(a)(6), 96 Stat. 1233, 1234 (to be codified at 15 U.S.C. § 4001).

purpose of the Act is to increase United States exports by providing more efficient export services through the use of export trading companies (ETCs) and by permitting bank holding companies, bankers' banks, and Edge Act corporations to invest in ETCs.[278] In short, Congress has amended the antitrust and banking laws to allow financial institutions to own stock in and make loans to American trading companies and to grant these trading companies a limited exemption from the operation of the American antitrust laws, all to increase American exports.

A. Revision of American Antitrust Laws

Although two different titles within the Export Trading Companies Act have a direct and substantial impact on United States antitrust laws, as a practical matter one of them may render the other unnecessary.

1. Limitation of Sherman Act and Federal Trade Commission Act Applicability

Title IV of the Export Trading Companies Act is itself called the "Foreign Trade Antitrust Improvements Act of 1982,"[279] and it has amended both the Sherman Act[280] and the Federal Trade Commission Act.[281] These amendments will create sweeping changes in antitrust enforcement in international trade.[282] The amendments' practical effect is to exempt export trade from the prohibitions of the Sherman Act against monopolistic practices and the prohibition of the Federal Trade Commission Act against unfair methods of competition, unless the exempted activity has a "direct, substantial, and reasonably forseeable

[278] *Id.* § 102(b), 96 Stat. 1233, 1234 (to be codified at 15 U.S.C. § 4001).

[279] *Id.* § 401, 96 Stat. at 1246 (to be codified at 15 U.S.C. § 6a).

[280] 15 U.S.C. § 1 *et seq.* (1976), *as amended by* Export Trading Company Act of 1982, *supra* note 276, § 402, 96 Stat. at 1246 (to be codified at 15 U.S.C. § 6a).

[281] 15 U.S.C. § 45a (1976 & Supp. IV 1980), *as amended by* Export Trading Company Act of 1982, *supra* note 276, § 403, 96 Stat. at 1246 (to be codified at 15 U.S.C. § 6a).

[282] The text of the amendments is as follows:

SEC. 402. The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 6 the following new section:

"SEC. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably forseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

effect" on domestic trade or commerce.[283]

Although it can be argued that the "reasonably foreseeable effect" language is simply a codification of pre-existing case law,[284] the required finding of a "direct" and "substantial" effect, nonetheless, will alter the conduct of antitrust cases involving export trade. Moreover, the requirement of a finding of "reasonably forseeable effect" arguably will allow courts less leeway to infer intent from the defendant's actions. A further analysis of the effect which these required findings will have on United States antitrust litigation is beyond the scope of this article, but no doubt numerous legal articles will be forthcoming.[285] In any case, several practitioners have predicted that the presence of title IV will discourage companies from seeking certification as an ETC because ETC certification poses problems that might outweigh its benefits.[286]

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States."

SEC. 403. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

"(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

"(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

"(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

"(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States."

Export Trading Company Act of 1982, *supra* note 276, §§ 402-403, 96 Stat. at 1246-47 (to be codified at 15 U.S.C. § 6a).

283 *Id.*

284 *See, e.g.*, United States v. Griffith, 334 U.S. 100 (1948) (a finding of specific intent is unnecessary; if a restraint occurring as a result of the defendant's conduct is sufficient); International Org., United Mine Workers v. Red Jacket Consol. Coal & Coke Co., 18 F.2d 839 (4th Cir.), *cert. denied sub nom.* International Org., United Mine Workers v. Carbon Fuel Co., 275 U.S. 536 (1927) (questions of willful purpose or conscious design are unnecessary because persons combining or contracting are presumed to have intended the necessary and natural consequences of their acts and agreements).

285 Indeed, the passage of the Export Trading Company Act has already generated several articles. *E.g.*, Moore, *Late Addition May Prove to be Key to Export Act*, Legal Times, Oct. 11, 1982, at 1, col. 3-4; Farnsworth, *Trade Bill is Expected to Spur Exports*, N.Y. Times, Oct. 5, 1982, at 31, col. 1-4. *See also Export Trading Companies: A New Tool for American Business*, Business America, Oct. 18, 1982, at 1-14 (Business America is a newsletter published by the United States Department of Commerce) [hereinafter cited as *ETCs, A New Tool*].

286 Moore, *supra* note 285, at 1, col. 3-4. For example, certification subjects the ETC to liability for reimportation. *Id.*

2. *Certificate of Review: Limitation of Antitrust Liability and Damages*

Title III of the Act is entitled "Export Trade Certificates of Review," and its basic purpose is to limit the antitrust liability of entities possessing a certificate of review. Section 306 details the protection conferred by a certificate of review and provides, in pertinent part, that: (1) no civil or criminal action will lie against a certificate-holder for conduct which is specified in and complies with the terms of the holder's certificate; (2) any person suing for relief from the activities of a certificate-holder is limited to *actual damages* (rather than treble damages), plus injunctive relief, interest on actual damages, cost of suit, and reasonable attorneys' fees; (3) suit must be commenced within two years of notice of the damage and in any event within four years of its occurrence; (4) a rebuttable presumption exists that a certificate-holder's activity, as specified in the certificate, does not have an anticompetitive effect; and (5) a successful certificate-holder can recover attorneys' fees and costs of suit.[287]

To obtain a certificate of review, an applicant must demonstrate to the Secretary of Commerce that the applicant's specified export trade,[288] export trade activities,[289] and methods of operation[290] will, in

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[287] The actual language of Section 306 is as follows:

> SEC. 306. (a) Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 303 which certificate was in effect when the conduct occurred.
>
> (b)(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 303(a). Any action commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act, except that the standards of section 303(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.
>
> (2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 303(a) but in any event within four years after the cause of action accrues.
>
> (3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 303(a).
>
> (4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 303(a), the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).
>
> (5) The Attorney General may file suit pursuant to section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

Export Trading Company Act of 1982, *supra* note 276, § 306, 96 Stat. at 1243 (to be codified at 15 U.S.C. § 4016).

[288] Section 311(1) of the Export Trading Company Act states that "the term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation." *Id.* § 311(1), 96 Stat. at 1245 (to be codified at 15 U.S.C. § 4021).

essence, have no anticompetitive effect in the United States and will not result in resale of the applicant's goods or services in the United States.[291] Within ninety days of receipt of an application, the Secretary is required to evaluate the potential for anticompetitive effects or resale, and if no anticompetitive effects or likelihood of resale exist, the Secretary, with the concurrence of the Attorney General, will issue a certificate of review to the applicant specifying the export trade, export trade activities, and methods of operation to which the certificate applies.[292] An applicant or any other aggrieved person has a right to judicial review of the Secretary's grant or denial, whether in whole or in part, of a certificate.[293]

Other, less important provisions of title III state that the Secretary, with the Attorney General's concurrence, may issue guidelines about the application of the antitrust laws to export trade.[294] In addition, a certificate holder must file an annual report with the Secretary.[295] Finally, any information submitted by any person in connection with the issuance, amendment, or revocation of a certificate is generally exempt from the public disclosure which is required of executive agencies.[296] A review of the foregoing provisions' potential effect on the establishment and operation of American ETCs follows.

B. Revision of American Banking Laws

The Export Trading Company Act made provision for bank ownership and involvement in ETCs primarily by amending[297] the Bank Holding Company Act of 1956.[298] The pertinent definitions are contained in title I of the Export Trading Company Act.[299] General provisions and operative provisions are found in title II, called the "Bank

289 Section 311(3) of the Export Trading Company Act states that "the term 'export trade activities' means activities or agreements in the course of export trade." *Id.* § 311(3), 96 Stat. at 1245 (to be codified at 15 U.S.C. § 4021).

290 Section 311(4) of the Export Trading Company Act states that "the term 'methods of operation' means any method by which a person conducts or proposes to conduct export trade." *Id.* § 311(4), 96 Stat. at 1245 (to be codified at 15 U.S.C. § 4021).

291 *Id.* § 303(a), 96 Stat. at 1241 (to be codified at 15 U.S.C. § 4013).

292 *Id.* § 303(b), 96 Stat. at 1241 (to be codified at 15 U.S.C. § 4013).

293 *Id.* § 305(a), 96 Stat. at 1243 (to be codified at 15 U.S.C. § 4015).

294 *Id.* § 307(a), 96 Stat. at 1244 (to be codified at 15 U.S.C. § 4017).

295 *Id.* § 308, 96 Stat. at 1244 (to be codified at 15 U.S.C. § 4018).

296 *Id.* § 309(a), 96 Stat. at 1244 (to be codified at 15 U.S.C. § 4019).

297 *Id.* § 203, 96 Stat. at 1236 (to be codified at 12 U.S.C. § 1843).

298 12 U.S.C. §§ 1841-1850 (1976 & Supp. IV 1980), *as amended by* Export Trading Company Act of 1982, *supra* note 276, § 203, 96 Stat. at 1236 (to be codified at 12 U.S.C. § 1843).

299 Export Trading Company Act of 1982, *supra* note 276, § 103, 96 Stat. at 1234 (to be codified at 15 U.S.C. § 4002). The reader should be aware that there are two sets of definitions in the ETC Act, those in section 103, which apply to bank export services (i.e., title II), and those in section

Export Services Act."[300]

An ETC is defined as a company doing business in the United States *principally* for the purpose of exporting goods and services produced in the United States and assisting unrelated companies to export their products overseas.[301] An ETC can either export goods and services for its own account or provide facilitating services for unrelated exporters, but cannot do both.[302] Even though an ETC is a company "principally" engaged in exporting, it can engage in importing and trade with third countries. Moreover, the Act permits foreign ownership of ETCs.[303]

Bank holding companies[304] and bankers' banks may invest up to 5% and loan up to 10% of their consolidated capital surplus in an ETC.[305] They may also own up to 100% of the stock of an ETC, and the ETC may have the same name as its bank organization parent.[306] Although the Federal Reserve Board (FRB) must approve any investment, an investor company simply needs to notify the FRB of the intended investment and, if the FRB fails to object within sixty days, the bank may proceed with the intended investment.[307] Finally, it should be noted that a bank is exempted from the collateral requirements in the Federal Reserve Act for loans to its ETC.[308]

311, which apply to export trade certificates of review (i.e., title III). *See id.* §§ 103, 311, 96 Stat. at 1234, 1245 (to be codified at 15 U.S.C. §§ 1234, 1245).

300 *Id.* § 201, 96 Stat. at 1235.

301 *Id.* § 103(4), 96 Stat. at 1234 (to be codified at 15 U.S.C. § 4002). This section states that:

> the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—
>
> (A) exporting goods or services produced in the United States; or
>
> (B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. . . .

302 *Id. See also ETCs, A New Tool, supra* note 285, at 5.

303 *ETCs, A New Tool, supra* note 285, at 5.

304 12 U.S.C. § 1841(a) (1976 & Supp. IV 1980). Section 1841, in essence, defines a bank holding company as a company that owns or controls, either directly or indirectly, a bank or another bank holding company. In addition to its normal meaning, "control" also is deemed to include ownership or voting control of 25% or more of the voting securities of a bank or bank holding company.

305 Export Trading Company Act of 1982, *supra* note 276, § 203, 96 Stat. at 1236 (to be codified at 12 U.S.C. § 1843).

306 H.R. REP. No. 294, 97th Cong., 2d Sess. (Conference Report on S.734, *Export Trading Act of 1982*, and Conferees' Explanatory Statement on Bill), *reprinted in* 43 ANTITRUST & TRADE REG. REP. (BNA) 719, 724 (Oct. 7, 1982) [hereinafter cited as Conference Report].

307 Export Trading Company Act of 1982, *supra* note 276, § 203(3), 96 Stat. at 1236 (to be codified at 12 U.S.C. § 1843).

308 *Id.* Other provisions of title II, although interesting, are largely unrelated to this article; they cover such problems as export-import guarantees of loans to ETCs, *id.* § 206, 96 Stat. at

This revision of the United States banking laws should make available to ETCs the financial support and international trade experience that have helped make the *sogoshosha* successful. As we have seen, city banks are the main source of capital for the *sogoshosha*, both through stock ownership and the extension of loans. For example, in 1973 Mitsubishi Bank owned 7.84% of the stock in Mitsubishi Corp.[309] and provided 14.8% of its loans.[310] In short, Mitsubishi's main bank provided 22.64% of its total funds in 1973. C. Itoh & Co. is an even more interesting example, in that two main banks accounted for 41.24% of its loans and equity; Sumitomo Bank owned 8.72% of its stock and held 12.9% of its debt, while Daiichi-Kangyo Bank also owned 8.72% of its stock and held 10.9% of its debt.[311] In total, the Sumitomo Bank group and the Daiichi-Kangyo Bank group accounted for 50.04% of C. Itoh's equity and debt.[312]

Similar ownership patterns are not impossible for American ETCs, because under the Act a bank holding company may own an ETC completely. The only limitations on such ownership are that: (1) the investment by a bank holding company in the stock of an ETC not exceed 5% of the bank holding company's consolidated capital and surplus, and (2) the total extensions of credit by a bank holding company to an ETC at any one time not exceed 10% of the bank holding company's consolidated capital and surplus.[313] The Act specifically provides that "an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company."[314]

As we have seen, the ability of the *sogoshosha* to export goods successfully is closely tied to the amount of funds they have to loan to their related firms and customers and that they can use to integrate the various operations involved in exportation. The Export Trading Company Act will allow ETCs to receive significant amounts of their funds from banking organizations. It also ensures that banks will be able to participate in ETCs and thus make available to ETCs the knowledge and facilities which the banks have developed in their international dealings. Thus, the ETCs should have the financial ability, trained person-

§ 1239 (to be codified at 12 U.S.C. § 635a-4) and bank acceptance of ETC drafts or bills of exchange, *id.* § 207, 96 Stat. at 1239 (amending 12 U.S.C. § 372 (1976)).

309 A. YOUNG, *supra* note 22, at 54.

310 *Id.* at 43.

311 *Id.* at 43, 54.

312 *Id.*

313 Export Trading Company Act of 1982, *supra* note 276, § 203(3), 96 Stat. at 1236 (to be codified at 12 U.S.C. § 1843).

314 *Id.*

nel, and physical presence necessary to compete efficiently with the *sogoshosha* and to export American products in large quantities.

C. Competitive Limitations on American Export Trading Companies

Although the Export Trading Company Act should help significantly to increase United States exports—assuming, of course, that American industry and agriculture take advantage of export markets and the presence of ETCs—several structural and operational differences will exist between American and Japanese trading companies. These differences could have an enormous impact upon the success of American export trading companies.

The most bothersome problem is that, although all export trade organizations, whether they have the statutory certificate of review or not, will enjoy a limited exemption from the operation of the Sherman Act and the Federal Trade Commission Act, the exemption may be construed by the Department of Commerce, the Attorney General, or the courts to apply *only* to export trade activities. As previously explained, however, one of the three major functions of an international trading company is to minimize the risk in international trade of fluctuations in demand and fluctuations in exchange rates. One method by which the *sogoshosha* accomplish the latter is to "marry" the exportation of goods from Japan under one contract with the importation of goods from abroad under a different contract.[315] They thereby limit transactions across different currencies to minimal levels and thus reduce the risk of fluctuations in exchange rates. In other words, to minimize the risk of exchange rate fluctuations, the *sogoshosha* must engage in both export and import activity. And, it is not always possible for them to keep exports above imports because international demand rates change continuously and because changes in exchange rates may at times require imports greater than exports. Thus, during the period 1963 to 1972, for example, the *sogoshosha* imported 62-65% of all Japanese imports and exported 47-52% of all Japanese exports.[316] In no year during this period, however, did the exports of the *sogoshosha* exceed their imports.[317]

Neither the certificate of review procedure set forth in title III nor

[315] *See supra* text accompanying notes 27-28.

[316] Krause & Sekiguci, *supra* note 28, at 392.

[317] By fiscal year 1976, the export to import ratio had improved. In that year only two of the big ten had imports exceeding exports, and exports amounted to 21.3% of their sales while imports amounted to 20.9%. A. YOUNG, *supra* note 22, at 29. For a breakdown of this data by *sogoshosha*, see Table A-5 in the appendix.

the limited antitrust exemption for export trade set forth in title IV establishes clear guidelines for ETCs with certificates of review or export trade organizations lacking such certificates to determine the amount of *import* trade in which they can engage without losing their antitrust exemption. This uncertainty within the Export Trading Company Act will hamper seriously the ability of such companies to "marry" their transactions and thereby reduce the risk of exchange rate fluctuations. Their overall effectiveness may thus be hindered from the start.[318]

ETCs must deal with the inevitable fluctuations in international demand and in foreign exchange rates by engaging in varying levels of import activity so as to maximize their effectiveness. Therefore, the Secretary of Commerce and the Attorney General, in drafting the various guidelines, rules, and regulations called for by the Export Trading Company Act,[319] should pay particular attention to the need to balance domestic antitrust concerns with the need of ETCs to engage in both import and export trade.

Perhaps the most difficult problem facing the government and the courts in determining whether the activities of a certificate-holding ETC have a domestic anticompetitive effect, in violation of the four antitrust standards of section 303(a) of the Act,[320] is factoring into the

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318 The experience of the Japanese *sogoshosha* in this area, however, may be inapplicable to "American *sogoshosha*" and requires the following qualification. Japan is woefully lacking in natural resources and the raw materials necessary for the construction of finished products. Therefore, she must import vast amounts of raw materials that are processed and then used in the industrial process. The *sogoshosha* play a key role in importing these raw materials and then exporting the finished products manufactured therefrom.

In contrast, America has an abundance of raw materials and is able to manufacture many of her finished goods largely from domestic sources. Thus, it may be necessary for American trading companies or their client firms to import more than 50% of the fair market value of the finished goods eventually exported by them.

319 Under section 307 the Secretary of Commerce may, with the concurrence of the Attorney General, draft guidelines regarding the application of the antitrust laws to export trade. Export Trading Company Act of 1982, *supra* note 276, 96 Stat. at 1244 (to be codified at 15 U.S.C. § 4017). Section 310 requires the Secretary, with the concurrence of the Attorney General, to promulgate any rules or regulations necessary to carry out the purposes of the Act. *Id.*

320 The certificate of review is issued to any applicant that has established that its specified export trade, export trade activities, and methods of operation will:

> (1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,
>
> (2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,
>
> (3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and
>
> (4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

Id. § 310, 96 Stat. at 1245 (to be codified at 15 U.S.C. § 4020). § 303(a), 96 Stat. at 1241 (to be codified at 15 U.S.C. § 4013).

decision-making processes the very competition from the Japanese *sogoshosha* and their counterparts in China, Korea, and Brazil that spurred the development of the Export Trading Company Act.[321] Arguably it is the very existence and operation of the *sogoshosha* which, having contributed to the necessity for development of American ETCs, will operate to prevent the formation of American monopolies and the imposition of anticompetitive and monopolistic practices upon American consumers. In other words, it is the competition from the *sogoshosha* and their foreign counterparts within the American market that has hurt the American trade balance and that thus encouraged passage of the Export Trading Company Act. In their various activities, the American ETCs' challenge is to contend with the competition that helped foster their creation. The process of determining whether the export trade, export trade activities, and methods of operation of an ETC substantially lessen competition, restrain trade, or unreasonably affect prices within the United States, therefore, necessarily requires an evaluation of *sogoshosha* activity within the United States in the same relevant product market areas as the export trade activity under evaluation.

The same problem of determining how much import activity an ETC can engage in without running afoul of the Act plagues title II, which covers bank investment in ETCs. The definition of an export trading company, regardless of whether it is the section 103(a)(4) or section 203(3)(F)(i) definition, states that an ETC must be "organized and operated principally for the purposes of exporting goods or services produced in the United States or facilitating the exportation of goods or services produced in the United States by unaffiliated persons."[322] Nowhere in the Act, however, is the word "principally" defined.

Presumably, the Secretary of Commerce, with the concurrence of the Attorney General, will clarify this deficiency in the guidelines, rules, and regulations mentioned above. Given the need of ETCs both to import and to export, however, it would probably be best if the Secretary's pronouncements adopt a flexible approach, rather than simply declare that ETCs must generate more than 50% of their annual revenues from export activities. One possible method by which the Secretary could help ensure the success of the ETCs, thereby promoting the purposes of the Act, while at the same time making sure that ETCs are principally engaged in export trade as required by the Act, would be to

321 *See infra* text accompanying notes 323-26.

322 Export Trading Company Act of 1982, *supra* note 276, §§ 103(a)(4), 203 (3), 96 Stat. at 1234, 1236 (to be codified at 15 U.S.C. § 4002, 12 U.S.C. § 1843).

draft regulations imposing a specific limitation on the number of years in a given period during which an ETC could have imports in excess of exports. For example, the regulations could require an ETC to maintain exports greater than imports on a rolling five-year basis. This approach would give ETCs greater flexibility in "marrying" their export trade to import trade and thereby increase the ability of the ETCs to minimize the risks of international trade.

A similar result could be reached by requiring an ETC to have average exports greater than average imports during a given period of, perhaps, three, four, or five years. In this way, the ETC would be able to take advantage of any unexpected drop in prices for large quantities of component raw materials found abroad late one year and incorporated into a finished product that would be exported early the following year. Thus, not only would the trading company be able to minimize the fluctuations in exchange rates, it would also be able to effect economies of scale—another crucial function of an export trading company.

VII. CONCLUSION

The Export Trading Company Act should provide American business with the apparatus necessary to export its goods more aggressively, easily, and cheaply. No longer will small- and medium-size firms be forced to confine their sales to the domestic market, for the ETCs should provide the same type of funding, expertise, and facilities that have made Japan the second largest economy in the world and that have allowed Japan consistently to post a trade surplus. The only serious impediment is that the ETCs may constantly have to maintain exports above imports. This may not be possible given the risks of fluctuation in both international demand and international exchange rates with which the ETCs must cope.

Despite these limitations, the ETCs now have a framework that should allow them to minimize these risks, to reduce transaction costs by taking advantage of economies of scale, and to make efficient use of capital because of the preceding two functions. The ETCs will also be positioned to benefit greatly from the Japanese experience—they will know how successful trading companies such as the *sogoshosha* are organized, how they have handled shifting patterns in international trade, and how they have expanded their operations. If the American ETCs can build on the Japanese experience, American business may not regret that it has sold large amounts of technological knowledge to Japan, which Japan has improved upon and marketed throughout the world.

Given the undeniable success of the *sogoshosha* in exporting Japanese goods worldwide on a massive scale, thereby allowing Japan to maintain an enormous trade surplus, it is possible that American trading companies organized and operating in a similar fashion will alleviate America's trade deficit to a large extent. American trading companies should be able to reach new markets with many American goods already sold abroad and establish markets for American goods that have heretofore been sold only in the United States. In doing so, American trading companies presumably will create many new job opportunities, both within their own organizations and for their customers, who would be producing for the world market rather than for the American market alone.

The only apparent alternatives to American development of privately held ETCs are to tolerate a continuing trade deficit or to rely on massive government involvement in marketing American goods abroad. These options appear infeasible, yet successful international trade is a complex, expensive undertaking. The solution may lie in the establishment of American ETCs similar to those of the United States trading partners. In addition to the Japanese *sogoshosha*, the Koreans have built similar organizations.[323] China has begun organizing and supporting state-run trading companies.[324] In 1971, Brazil's Minister of Finance helped found a trading company (Cobec), which was 30% owned by the government's Banco di Brasil, with the remaining shares primarily held by commercial banks from around the world.[325] Not surprisingly, Brazil's exports of manufactured goods rose 115% from 1976 to 1977.[326]

The passage of the Export Trading Company Act was a major legislative step toward making America a powerful exporting nation. It is now the responsibility of the government and of American business leaders to develop the structures and methods necessary to realize the Congressional hopes for export-based growth.

323 SOGOSHOSHA, *supra* note 3, at 67-72.
324 Asian Wall St. J. Weekly, Oct. 26, 1982, at 6, col. 1-4.
325 SOGOSHOSHA, *supra* note 3, at 65-67.
326 *Id.* at 66.

APPENDIX

Table A-1. The Multinational Presence of the Ten Leading Trading Companies (March 31, 1973)*

COMPANY	BRANCHES	WHOLLY-OWNED SUBSIDIARIES	SUBUNITS OF THE BRANCHES OR BRANCHES OF THE SUBSIDIARIES	NUMBER OF PERSONNEL FROM THE PARENT COMPANY	NUMBER OF LOCAL PERSONNEL
Mitsubishi	14	23	82	763	2,460
Mitsui	15	20	79	802	2,133
Marubeni	15	17	65	592	2,041
C. Itoh	8	11	90	584	1,500
Nissho-Iwai	5	12	87	560	1,120
Sumitomo	8	10	68	476	973
Tomen	9	11	55	334	632
Nichimen	9	12	46	306	572
Kanematsu-Gosho	6	9	44	330	850
Ataka	6	7	50	234	407

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Table A-2. Product Categories of the Two Leading Trading Companies in Percent*

MITSUBISHI** CATEGORY		MITSUI CATEGORY	
Machinery	20.4	Machinery	18.6
Iron and steel	19.4	Metals	33.6
Foodstuffs	12.7	Foodstuffs	13.6
Nonferrous Metals	11.1		
Textiles	9.8	Textiles	9.5
Fuel	7.9		
Chemicals	7.2	Chemicals	10.8
Construction Materials	6.8		
Other	4.2	Other	13.9

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** Because of rounding, Mitsubishi percentages do not add exactly to 100 %.

Table A-3. Major Activities of Subsidiaries of the Ten Leading Trading Companies (March 31, 1973)*

Activity	Number	Percent
Manufacturing	455	65.4
Sales (other than general trading)	85	12.2
Service	83	11.9
Extractive	36	5.2
Resource development (other than extractive)	37	5.3
Total	696	100.0

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Table A-4. Foreign Subsidiaries of the Ten Leading Trading Companies by Industry (March 31, 1973)*

Industry	Number of Subsidiaries	Percent
Textiles and related products	144	31.6
Metal	83	18.2
Machinery	68	14.9
Chemicals and related products	53	11.6
Food	37	8.1
Sundry goods	34	7.5
Pulp and paper	12	2.6
Other	24	5.3
Total	455	100.0

* *Reprinted by permission of* Harvard University Press from M. YOSHINO, JAPAN'S MULTINATIONAL ENTERPRISES 123 (1976).

Table A-5. Sales of the Ten General Trading Companies by Types of Trade for FY 1976 (in percent)*

	Export	*Import*	*Third-country trade*	*Domestic trade*	*Total*
Mitsubishi Corporation	17.3	29.1	6.5	47.1	100.0
Mitsui & Co.	21.5	20.4	7.2	50.9	100.0
Marubeni Corporation	26.1	17.3	12.9	43.7	100.0
C. Itoh & Co.	20.3	19.1	10.9	49.7	100.0
Sumitomo Shoji	21.4	14.2	5.7	58.7	100.0
Nissho-Iwai Co.	23.1	19.4	10.6	46.9	100.0
Toyomenka	22.7	17.3	18.4	41.6	100.0
Kanematsu Gosho	18.0	26.0	8.0	48.0	100.0
Ataka & Co.	20.2	17.5	5.5	56.8	100.0
Nichimen Company	27.8	24.5	7.4	40.3	100.0
Total	21.3	20.9	9.0	48.8	100.0

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Table A-6. Percentage Breakdowns of Annual Turnover of Ten Largest General Trading Companies by Product and by Activity (1974)*

	Annual Turnover by Product						*International Trade to*
Trading Company	*Textile*	*Metals*	*Machinery*	*Food*	*Chemicals*	*Others***	*Total Turnover*
Mitsubishi	9%	32%	14%	13%	14%	18%	46%
Mitsui	9	34	16	15	12	14	44
Marubeni	20	27	20	13	10	11	44
C. Itoh	30	15	16	12	11	16	46
Sumitomo	—	36	18	12	17	9	41
Nissho-Iwai	10	39	19	11	—	21	49
Tomen	22	23	21	14	8	6	35
Kanematsu	26	23	11	19	—	22	49
Ataka	17	36	12	—	15	20	40
Nichimen	19	25	13	20	11	12	56

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** "Others" include the importation of timber trade and of crude oil, coal, and pulp products.

Table A-7. The Ten Largest General Trading Companies of Japan (1974)*

Company	*Annual Turnover 1973 (A)*	*Number of Employees (B)*	*Annual Turnover Employee (A)/(B)*	*Annual Profit After Taxes*
Class A				
(Largest)	¥*18,035* Bil	*20,539*	¥*878* Mil	¥*28.0* Bil
Mitsubishi	9,408	10,064	935	14.0
Mitsui	8,627	10,475	824	14.0
Class B				
(Medium Large)	*19,903*	*28,603*	*696*	*26.0*
Marubeni	5,548	8,040	690	9
C. Itoh	5,232	7,717	698	4
Sumitomo	5,181	5,775	886	7
Nissho-Iwai	6,006	7,071	566	6
Class C				
(Least Large)	*8,929*	*15,449*	*578*	*9.0*
Tomen	2,444	4,094	697	2
Kanematsu	2,321	3,901	595	2
Ataka	2,095	3,498	599	3
Nichimen	2,069	3,956	503	2

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Table A-8: Sources of Loans of the Ten General Trading Companies, March 31, 1973 (Shares of Loans in Percent)*

Borrower trading companies	*First main bank* [a]	*First main bank's group financial institutions* [b]	*Second main bank* [c]	*Second main bank's group financial institutions* [d]
Mitsubishi Corporation	Mitsubishi Bank (14.8)	Mitsubishi Bank group financial institutions (25.3)	Bank of Tokyo (9.5)	Bank of Tokyo group financial institutions (—)
Mitsui & Co.	Mitsui Bank (12.2)	Mitsui Bank group financial institutions (19.4)	Fuji Bank (10.9)	Fuji Bank group financial institutions (12.1)
Marubeni Corporation	Fuji Bank (14.1)	Fuji Bank group financial institutions (23.8)	Bank of Tokyo (12.1)	
C. Itoh & Co.	Sumitomo Bank (12.9)	Sumitomo Bank group financial institutions (20.5)	Daiichi Kangyo Bank (10.9)	Daiichi Kangyo Bank group financial institutions (12.1)
Sumitomo Shoji	Sumitomo Bank (15.7)	Sumitomo Bank group financial institutions (31.2)	Bank of Tokyo (7.5)	
Nissho-Iwai Co.	Sanwa Bank (17.8)	Sanwa Bank group financial institutions (24.2)	Daiichi Kangyo Bank (14.5)	Daiichi Kango Bank group financial institutions (15.0)
Toyomenka	Tokai Bank (14.3)		Mitsui Bank (10.0)	Mitsui Bank group financial institutions (13.5)
Kanematsu Gosho	Bank of Tokyo (27.6)		Daiichi Kangyo Bank (9.3)	
Ataka & Co.	Sumitomo Bank (15.8)	Sumitomo Bank group financial institutions (29.9)	Kyowa Bank (11.6)	
Nichimen Co.	Sanwa Bank (20.0)	Sanwa Bank group financial institutions (27.9)	Bank of Tokyo (9.0)	

Note: [a] and [c] = percent share of total loans to trading company.
[b] includes [a]'s share; [d] includes [c]'s share.
[b] and [d] do not add up to 100% because of trading company's borrowing from other financial institutions.

Table A-9. Profit Rates of Japanese General Trading Companies, Manufacturers, and all Industries, 1962-1971*

	Profit-total asset rates [a]			*Profit-owned capital rates* [b]		
Year	*Trading companies*	*Manufacturers*	*All industries*	*Trading companies*	*Manufacturers*	*All industries*
1962	1.15	4.70	3.93	16.84	15.06	13.92
1963	1.27	5.35	4.40	18.76	17.94	16.32
1964	0.72	4.68	3.96	16.76	16.93	15.68
1965	0.98	3.41	3.10	17.69	13.02	12.82
1966	0.89	4.86	4.05	17.82	19.14	17.41
1967	0.96	5.90	4.68	21.48	24.38	21.24
1968	0.90	5.63	4.58	22.66	24.84	22.06
1969	1.01	6.24	5.04	25.12	26.94	24.52
1970	1.00	5.34	4.34	25.20	23.45	21.82
1971	1.10	3.26	2.92	29.10	14.88	15.44

a. Current profits before tax divided by total assets.

b. Current profits before tax divided by the sum of retained earnings reserved plus paid-in capital plus net profit after tax before dividends. Annual figure is an arithmetic average of semiannual reports.

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Table A-10. The Six Largest Trading Companies (1973)*

NAME	TOTAL SALES (¥ BILLION)	NET PROFIT (¥ BILLION)	TOTAL NUMBER OF EMPLOYEES
Mitsubishi	612	31.2	10,001
Mitsui	574	28.9	10,948
Marubeni	361	30.4	8,039
C. Itoh	340	32.7	7,454
Sumitomo	312	17.3	5,564
Nissho-Iwai	297	6.8	7,096

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Table A-11. An International Comparison of Overlending, December, 1972*

Country	Unit	Deposits of Financial Institutions at the Central Bank (A)	Central Bank Loans to Financial Institutions (B)	A - B
Japan	Yen billion	374	2,122	−1,748
United States	$ million	28,667	2,088	26,570
United Kingdom	Pounds million	343	41	302
West Germany	D.M. million	46,388	20,178	26,210
France	Francs million	48,539	11,352	37,187

* Source: Y. SUZUKI, MONEY AND BANKING IN CONTEMPORARY JAPAN 8. © 1980 by Yale University Press. *Reprinted with permission*.

Table A-12. Loans of Japanese Banks to the Ten General Trading Companies and Amount in Excess of the Limits Imposed by the Ministry of Finance as of March 31, 1974*

Bank	Mitsubishi Corporation	Mitsui & Co.	Marubeni Corporation	C. Itoh & Co.	Trading Company Sumitomo Shoji	Nissho-Iwai Co.	Toyomenka	Kanematsu Gosho	Ataka & Co.	Nichimen Company
1. Ratio of loans to bank's net worth + reserves (percent):										
Nippon Kogyo Bank	9.6	15.8	10.4	10.6	8.7	1.7	1.2	2.1	2.5	1.0
Japan Long-Term Credit Bank	14.6	17.1	7.6	21.1	11.9	2.4	3.0	1.0	4.4	—
Japan Real Estate Bank	—	16.9	—	—	20.3	—	1.4	0.9	—	1.4
Daiichi Kangyo Bank	20.8	8.6	—	16.0	—	11.5	—	4.6	0.6	1.2
Fuji Bank	2.5	36.0	24.6	3.3	—	0.5	1.5	—	—	—
Sumitomo Bank	1.4	14.2	—	21.5	17.5	—	—	—	13.8	—
Mitsubishi Bank	42.9	11.2	5.4	—	—	1.2	—	—	2.4	1.2
Sanwa Bank	19.3	8.6	3.0	1.1	—	19.2	—	—	—	16.3
Bank of Tokyo	54.1	69.0	44.9	43.5	18.3	17.4	3.4	25.9	9.0	12.3
Tokai Bank	25.4	8.2	8.5	2.1	—	1.3	22.1	3.5	—	—
Mitsui Bank	—	69.9	—	5.1	—	1.6	12.9	—	2.9	2.6
Taiyo Kobe Bank	12.3	—	18.4	5.6	—	4.3	—	8.0	—	—
Kyowa Bank	—	—	7.3	18.6	6.1	4.0	—	—	27.7	3.4
Daiwa Bank	—	16.8	9.3	—	—	16.7	5.2	2.4	—	6.8
Saitama Bank	—	—	9.3	9.5	7.7	3.9	3.4	4.1	5.5	—
Hokkaido Takushoku Bank	7.5	—	—	—	—	—	2.3	7.6	—	—
Mitsubishi Trust & Banking	67.9	—	13.2	7.5	6.5	—	—	2.2	—	9.0
Sumitomo Trust & Banking	—	—	17.2	43.3	·34.4	—	3.8	—	34.0	—

Table A-12 (cont.)

Bank	Mitsubishi Corporation	Mitsui & Co.	Marubeni Corporation	C. Itoh & Co.	Trading Company Sumitomo Shoji	Nissho-Iwai Co.	Toyomenka	Kanematsu Gosho	Ataka & Co.	Nichimen Company
Mitsui Trust & Banking	—	62.6	—	—	—	—	7.2	6.2	—	—
Yasuda Trust & Banking	—	—	67.8	—	—	—	7.7	—	—	—
Toyo Trust & Banking	41.8	21.6	—	—	—	38.1	—	—	—	23.2
Chuo Trust & Banking	—	—	—	—	—	—	85.1	—	—	—
2. Amount exceeding the 20 percent loan ratio (i.e., 20 percent of bank's net worth + reserves) for city banks (other than the Bank of Tokyo) imposed by the Ministry of Finance in 1974 (million Yen):										
	92,769	164,266	16,700	5,418	—	—	4,490	—	11,278	—
3. Amount exceeding the 30 percent loan ratio for long-term and trust banks (million Yen):										
	92,390	101,247	52,610	38,902	4,796	4,322	9,855	—	4,354	—
4. Total amount exceeding the limit imposed by the Ministry of Finance (million Yen):										
	185,159	265,513	69,310	44,320	4,796	4,322	14,345	—	15,632	—