

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 777

To establish the United States-Japan Joint Antitrust Consultative Commission for intensive examination of antitrust activities in Japan and the United States.

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## IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 3), 1993

Mr. ROTH (for himself and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

To establish the United States-Japan Joint Antitrust Consultative Commission for intensive examination of antitrust activities in Japan and the United States.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Joint Antitrust Con-  
5       sultative Commission Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds as follows:

1           (1) Antitrust laws are an important legal tool  
2 for opening markets to international competition and  
3 defusing trade tension.

4           (2) All nations should make it a priority to  
5 enact and vigorously enforce strong competition laws  
6 to benefit consumers, encourage international com-  
7 petition and foster growth in jobs, productivity, and  
8 investment.

9           (3) Japanese antimonopoly law is similar to  
10 United States antitrust law, partly as a result of its  
11 formulation during America's post-World War II oc-  
12 cupation of Japan. However, there are observable  
13 differences in the respective antitrust enforcement  
14 environments of Japan and the United States.

15           (4) In Japan—

16           (A) the lenient interpretation and enforce-  
17 ment of the antimonopoly law is insufficient to  
18 prevent business practices which result in sig-  
19 nificant barriers to foreign entry into the Japa-  
20 nese market;

21           (B) private antitrust lawsuits are very dif-  
22 ficult to file and virtually impossible to win in  
23 Japan because of strict requirements stipulat-  
24 ing proof of damages;

1 (C) due to political and bureaucratic pres-  
2 sures, criminal prosecution of antitrust viola-  
3 tions rarely occurs in Japan;

4 (D) many cartels are exempted and legal  
5 under the antimonopoly law in Japan. The  
6 large number of exempted and legal cartels con-  
7 tributes to an environment in which illegal car-  
8 tels become less subject to criticism and scru-  
9 tiny; and

10 (E) the Japan Fair Trade Commission's  
11 capacity to enforce antimonopoly law is limited  
12 by the small size of its staff and the status of  
13 the Commission in the hierarchy of Japanese  
14 bureaucracies.

15 (5) In the United States—

16 (A) corporations may be apprehensive  
17 about participating in certain business activities  
18 such as joint ventures or exclusive distributor-  
19 ship arrangements due to uncertainties concern-  
20 ing the enforcement of antitrust law; and

21 (B) the cost of antitrust litigation, includ-  
22 ing the risk of treble damages, may have a neg-  
23 ative impact on United States corporate com-  
24 petitiveness.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (1) to encourage a review of the antitrust poli-  
4 cies of Japan and the United States in the context  
5 of a changing global economy and to foster ways of  
6 improving competition in both countries;

7 (2) to encourage the Japan Fair Trade Com-  
8 mission and the United States Department of Jus-  
9 tice and United States Federal Trade Commission  
10 toward more comparable levels of enforcement activ-  
11 ity;

12 (3) to ensure that the Japan Fair Trade Com-  
13 mission increasingly enforces the antimonopoly law  
14 based upon antitrust principles of protecting com-  
15 petition;

16 (4) to encourage Japan to end unfair business  
17 practices that result in market foreclosure to foreign  
18 competition;

19 (5) to increase awareness of criminal antitrust  
20 enforcement as a means of addressing anticompeti-  
21 tive business behavior in Japan;

22 (6) to encourage the government of Japan to  
23 increase the investigative power of the Japan Fair  
24 Trade Commission; and

1           (7) to encourage the government of Japan to  
2       reduce the number of cartels exempted from the  
3       antimonopoly law.

4   **SEC. 4. DEFINITIONS.**

5       In this Act—

6           “antimonopoly law” means codes enforced by  
7       the Japan Fair Trade Commission to promote fair  
8       and free competition by prohibiting private monopo-  
9       lization, unreasonable restraint of trade, and unfair  
10      business practices.

11          “antitrust policy” means the general principles  
12      by which government is guided in maintaining com-  
13      petition in commercial activities.

14          “antitrust law” means the body of statutes,  
15      court decisions, and other law designed to ensure the  
16      existence of competition in commercial activities.  
17      Antitrust law in the United States protects trade  
18      and commerce from unlawful restraints such as  
19      price fixing, exclusive dealings, and monopolies.

20          “Commission” means the United States-Japan  
21      Joint Antitrust Consultative Commission established  
22      by section 5.

1 **SEC. 5. JOINT ANTITRUST CONSULTATIVE COMMISSION.**

2 (a) ESTABLISHMENT.—There is established the  
3 “United States-Japan Joint Antitrust Consultative Com-  
4 mission”.

5 (b) AMERICAN DELEGATION.—

6 (1) MEMBERSHIP.—The American delegation to  
7 the Commission shall be composed of the following  
8 members:

9 (A) Members of Congress:

10 (i) The chairman of the Committee on  
11 Finance of the Senate, or the chairman’s  
12 designee.

13 (ii) The ranking minority member of  
14 the Committee on Finance of the Senate,  
15 or the ranking minority member’s des-  
16 ignee.

17 (iii) The chairman of the Committee  
18 on Ways and Means of the House of Rep-  
19 resentatives, or the chairman’s designee.

20 (iv) The ranking minority member of  
21 the Committee on Ways and Means of the  
22 House of Representatives, or the ranking  
23 minority member’s designee.

24 (v) The chairman of the Committee  
25 on the Judiciary of the Senate, or the  
26 chairman’s designee.

1           (vi) The ranking minority member of  
2 the Committee on the Judiciary of the  
3 Senate, or the ranking minority member's  
4 designee.

5           (vii) The chairman of the Committee  
6 on the Judiciary of the House of Rep-  
7 resentatives, or the chairman's designee.

8           (viii) The ranking minority member of  
9 Committee on the Judiciary of the House  
10 of Representatives, or the ranking minority  
11 member's designee.

12           (ix) The chairman of the Committee  
13 on Commerce, Science, and Transportation  
14 of the Senate, or the chairman's designee.

15           (x) The ranking minority member of  
16 the Committee on Commerce, Science and  
17 Transportation of the Senate, or the rank-  
18 ing minority member's designee.

19           (xi) The chairman of the Committee  
20 on Energy and Commerce of the House of  
21 Representatives, or the chairman's des-  
22 ignedee.

23           (xii) The ranking minority member of  
24 the Committee on Energy and Commerce

1 of the House of Representatives, or the  
2 ranking minority member's designee.

3 (B) Executive officers:

4 (i) The Attorney General, or the At-  
5 torney General's designee.

6 (ii) The chairman of the Federal  
7 Trade Commission, or the chairman's des-  
8 ignee.

9 (iii) The Secretary of State, or the  
10 Secretary's designee.

11 (iv) The Secretary of the Treasury, or  
12 the Secretary's designee.

13 (v) The Secretary of Commerce, or  
14 the Secretary's designee.

15 (vi) The United States Trade Rep-  
16 resentative, or the Trade Representative's  
17 designee.

18 (2) LEAD REPRESENTATIVE.—(A) The Attor-  
19 ney General, or the Attorney General's designee,  
20 shall be the American delegation's lead representa-  
21 tive.

22 (B) The lead representative shall—

23 (i) contact the Japanese lead representa-  
24 tive to—

1 (I) set an agenda for the Commis-  
2 sion's meetings; and

3 (II) set mutually convenient annual  
4 meeting dates;

5 (ii) supervise the establishment, proce-  
6 dures, and structure of the Commission with  
7 the Japanese lead representative, except such  
8 procedures shall allow representatives of indus-  
9 tries discussed at such meetings an opportunity  
10 to present their views;

11 (iii) assemble and maintain the reports,  
12 records, and other papers of the Commission  
13 for use by the American delegation and the  
14 public; and

15 (iv) institute the comprehensive review re-  
16 quired by section 8.

17 (c) JAPANESE DELEGATION.—

18 (1) CONTINGENCY ON COMMENCEMENT OF AC-  
19 TIVITIES.—The commencement of activities under  
20 this Act by the American delegation to the Commis-  
21 sion is contingent on the creation by the appropriate  
22 Japanese officials of a Japanese delegation with rep-  
23 resentation from an appropriate range of institutions  
24 and interests that participate in antitrust activities

1 in Japan, as determined by the lead representative  
2 of the American delegation.

3 (2) MEMBERSHIP.—It is the sense of Congress  
4 that the Japanese delegation should have the same  
5 number of members as the American delegation and  
6 be composed of representatives of public, private,  
7 and other organizations involved in antitrust activi-  
8 ties in Japan. It is the sense of the Congress that  
9 such a delegation should at a minimum include the  
10 following members:

11 (A) Members of the Diet:

12 (i) The chairman of the Budget Com-  
13 mittee of the House of Representatives, or  
14 the chairman's designee.

15 (ii) The ranking member of the main  
16 opposition party of the Budget Committee  
17 of the House of Representatives, or the  
18 ranking member's designee.

19 (iii) The Budget Committee chairman  
20 of the House of Councillors, or the chair-  
21 man's designee.

22 (iv) The ranking member of the main  
23 opposition party of the Budget Committee  
24 of the House of Councillors, or the ranking  
25 member's designee.

1 (v) The chairman of the Commerce  
2 Committee of the House of Representa-  
3 tives, or the chairman's designee.

4 (vi) The ranking member of the main  
5 opposition party of the Commerce Commit-  
6 tee of the House of Representatives, or the  
7 ranking member's designee.

8 (vii) The chairman of the Commerce  
9 Committee of the House of Councillors, or  
10 the chairman's designee.

11 (viii) The ranking member of the  
12 main opposition party of the Commerce  
13 Committee of the House of Councillors, or  
14 the ranking member's designee.

15 (ix) The chairman of the Judiciary  
16 Committee of the House of Representa-  
17 tives, or the chairman's designee.

18 (x) The ranking member of the main  
19 opposition party of the Judiciary Commit-  
20 tee of the House of Representatives, or the  
21 ranking member's designee.

22 (xi) The chairman of the Judiciary  
23 Committee of the House of Councillors, or  
24 the chairman's designee.

1 (xii) The ranking member of the main  
2 opposition party of the Judiciary Commit-  
3 tee of the House of Councillors, or the  
4 ranking member's designee.

5 (B) Executive officers:

6 (i) The chairman of the Japan Fair  
7 Trade Commission, or the chairman's des-  
8 ignee, and 1 additional commissioner of  
9 the chairman's choice, or that commis-  
10 sioner's designee.

11 (ii) The Minister of Finance, or the  
12 Minister's designee.

13 (iii) The Minister of International  
14 Trade and Industry, or the Minister's des-  
15 ignee.

16 (iv) The Minister of Foreign Affairs,  
17 or the Minister's designee.

18 (v) The Minister of Justice, or the  
19 Minister's designee.

20 (3) LEAD REPRESENTATIVE.—It is the sense of  
21 Congress that the Prime Minister, or the Prime  
22 Minister's designee, should appoint 1 of the mem-  
23 bers of the Japanese delegation as a lead representa-  
24 tive to contact the United States lead representative  
25 to—

1 (A) set an agenda for the Commission's  
2 meetings;

3 (B) set mutually convenient annual meet-  
4 ing dates; and

5 (C) perform such other duties as may be  
6 assigned to the lead representative.

7 (d) MEETINGS.—The Commission shall convene an-  
8 nually, with the first meeting to take place in Washington,  
9 D.C., in 1994 and the site of the meeting to alternate  
10 thereafter between the United States and Japan.

11 (e) FEDERAL ADVISORY COMMITTEE ACT.—The  
12 Commission shall not be considered to be an advisory com-  
13 mittee under the Federal Advisory Committee Act (5  
14 U.S.C. App.).

15 **SEC. 6. COMMISSION FUNCTIONS.**

16 The Commission shall—

17 (1) discuss and make recommendations on long-  
18 term structural differences in antitrust policy and  
19 short-term antitrust disputes; and

20 (2) serve as an open forum to promote more co-  
21 herent enforcement of antitrust law in Japan and  
22 the United States.

23 **SEC. 7. REPORT.**

24 The recommendations and findings of the Commis-  
25 sion, reflecting the major views expressed during the delib-

1 erations of the Commission, shall be completed and made  
2 public through issuance of a report in English by the agen-  
3 cy from which the lead representative of the American del-  
4 egation is selected, not more than 90 days after the Com-  
5 mission holds its annual meeting. It is the sense of Con-  
6 gress that the Japanese delegation should issue a Japa-  
7 nese language version of the report at the same time as  
8 the English language report is issued.

9 **SEC. 8. COMPREHENSIVE REVIEW.**

10 The lead representative of the American delegation  
11 shall institute a comprehensive review of the activities and  
12 responsibilities of the Commission not later than 180 days  
13 after the second annual meeting of the Commission to de-  
14 termine—

15 (1) whether the Commission is carrying out its  
16 purpose;

17 (2) whether consistent with the purposes of this  
18 Act, responsibilities assigned to the Commission  
19 should be revised; and

20 (3) whether the existence of the Commission  
21 should be continued.

22 **SEC. 9. COMPENSATION.**

23 Members of the American delegation to the Commis-  
24 sion shall not be paid compensation for services performed  
25 on the Commission.

1 **SEC. 10. PAYMENT OF EXPENSES.**

2       The expenses of departments and agencies of the ex-  
3 ecutive branch and of members and committees of the  
4 Senate and of the House of Representatives in carrying  
5 out this Act, including travel expenses and expenses relat-  
6 ing to preparation of the report under section 7, shall be  
7 paid out of general funds that are available and not spe-  
8 cifically appropriated for other purposes.

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