

brought in Japan, none successful, compared with 9,000 in the same time period in the U.S.⁹²

When society sets up a system of governance, it chooses measures that reflect its preferences. The cultural aversion to litigate in Japan is the prime mover behind these hurdles.

5.5.2 Public informal dispute settlement

The private preference for informal dispute settlement extends to the public sphere, especially in competition policy. Japanese government enforcement of the AML has been quite limited by U.S. standards. While the AML empowers the JFTC to take any measures necessary to eliminate acts in violation, there are few such measures available. Injunctive relief, contempt, criminal sanctions and other orders are either non-existent or of a very narrow scope. As a result of the weakness of formal sanctions, Japanese government officials, particularly those with the JFTC, are forced to rely on extra legal sanction.

Regulatory statutes drafted by SCAP authorities, such as the AML, almost invariably contain extensive enforcement provisions reflecting U.S. practice and administrative powers. The lack of a contempt power by Japanese courts, however, precludes effective formal legal enforcement. The investigatory powers of Japanese government agencies are nowhere nearly as extensive as administrative agencies in the U.S.. If criminal penalties are not a realistic deterrent to corporate immorality for the U.S., there seems little chance for their efficacy in Japan.

⁹²The cultural antipathy for formal, legal confrontational controls reduces the demand to go to law, but also reduces the supply of legal facilitators (at last count, there were little more than 12,000 lawyers in Japan), and the supply of legal means to go to law. While demand for legal redress and supply of legal redress are both reduced, price is still high, because demand is greater relative to supply. Both court filing fees and lawyer fees are based on a percentage of the claim (i.e., the amount *claimed*, not eventually awarded). Class actions are almost impossible to coordinate, file and win in Japan. Class action suits are extremely difficult to file because of a very heavy burden of proof required of plaintiffs; not a single case has been won by plaintiffs since 1945. Private damage suits are allowed under section 26 of the Anti-Monopoly Law, but damages are only recoverable after the JFTC has successfully established a violation. Ramseyer, *op.cit.*, pp. 617, 627; see also Yamamura, *op.cit.*, pp. 56-7; Wilks, *op.cit.*, p. 16.