

# **Guidelines Concerning Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers**

## **Introduction**

1. The Fair Trade Commission has established and implemented the Designation of Specific Unfair Trade Practices in the Department Store Business (Fair Trade Commission Notification No. 7 of 1954, set to be abolished on November 1, 2005, hereinafter referred to as "the Former Notification") as a basic rule for regulating any abuse of the dominant bargaining position of large-scale retailers over suppliers.

The Former Notification was chiefly aimed at regulating department stores and supermarkets. However, the business styles of large-scale retailers have been diversifying, and now encompass not only department stores and supermarkets but also do-it-yourself stores, mass retailers specializing in clothing, home electronics and other items, drugstores, convenience store headquarters and mail order businesses. At the same time, the sizes of these businesses have been growing.

Meanwhile, many suppliers have reported numerous questionable conducts in connection with their deliveries to large-scale retailers that are not subject to the Former Notification and some examples of conduct not prescribed in the Former Notification, such as unjust requests for monetary contributions made by these retailers. A survey on transactions conducted by the Fair Trade Commission uncovered problems similar to those described above. The Former Notification is no longer necessarily effective in the current distribution environment.

With respect to transactions between large-scale retailers and suppliers, there are many cases in which large-scale retailers exploit their buying power to coerce suppliers into offering monetary contributions or into accepting the unjust return of goods, irrespective of prior agreements, or into entering into transactions under different business terms from those previously agreed. This conduct by large-scale retailers prevents suppliers from freely and independently making decisions on trading, creates disbenefits for suppliers that cannot be calculated in advance and places them in disadvantageous positions in competition with other suppliers. In contrast, benefiting from this unjust conduct, large-scale retailers obtain a competitive edge over other retailers. This conduct is detrimental to competition among suppliers and also to competition among retailers.

In addition, the conduct is at odds with rational management based on cost awareness, as it hinders market players from setting reasonable trade conditions. This leads to the conclusion that fair trade based on the market mechanism is inhibited, that market efficiency is degraded and that consumers are hampered from reaping the benefits of an efficient market.

In light of these circumstances, the Fair Trade Commission has reviewed the Former Notification to ensure effective regulation of the abuse of dominant bargaining positions of large-scale retailers. On May 13, 2005, the Commission made the "Designation of Specific Unfair

Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers" (hereinafter referred to as "the Notification") a new rule for regulating abuse of trade positions in accordance with the actual nature of supply transactions. To ensure the transparency of the application of the Notification and the predictability for business operators, the Fair Trade Commission has also developed the "Guidelines Concerning Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers" (hereinafter referred to as "the Guidelines").

2. The Guidelines consist of two parts. Part I defines the scope of large-scale retailers and suppliers to which the Notification applies. Part II specifies conduct prohibited by the Notification, by providing examples which may pose a problem.

As a guide to what conduct is in conflict with which provisions of the Notification, Part II has examples which may pose a problem, in each section. These are provided as examples only.

Whether or not a specific case not covered in the Guidelines complies with the Notification will be decided on a case-by-case basis and in a specific manner in accordance with the provisions herein. It is the Designation of Unfair Trade Practices (Fair Trade Commission Notification No. 15 of 1982) that applies to any abuse of dominant bargaining position not provided for in this Notification.

## **Part I: Definition of large-scale retailers and suppliers**

1. Section 1 in the Remarks (Definition of large-scale retailers)

- (1) A "large-scale retailer" means an entrepreneur that engages in retail sales of goods that are used by general consumers on a daily basis and either [1] has sales of at least 10 billion yen in its last completed fiscal year (Item 1) or [2] owns a store with a store floor space that reaches or exceeds a predetermined level (Item 2).

Here, an "entrepreneur that engages in retail sales" means an entrepreneur that sells goods that are used by general consumers on a daily basis. A consumer cooperative association or an agricultural cooperative association corresponds to an "entrepreneur that engages in retail sales" defined in this section if it actually engage in sales to consumers. A business that deals in goods in its service provision business does not correspond to a business that engages in retail sales if sales are objectively deemed to be incidental to the service provision business.

- (2) The provision in this section stipulates that any entrepreneur engaging in a designated chain business stipulated in the Act Concerning the Promotion of Small and Medium Retail Business is considered an "entrepreneur that engages in retail sales". An entrepreneur engaged in a designated chain business defined therein refers to one that runs such a business and that actually engages in retail sales. The franchiser of a designated chain business, such as a convenience store chain, which is deemed to provide franchisees with a specific trademark, control, instruction and assistance in the sale of their goods in a uniform manner to ensure that

the franchiser and the franchisees engage in sales to consumers under a specific trademark in an integrated manner, corresponds to an "entrepreneur that engages in retail sales" as defined in this section.

The range of the store floor space defined in Item 2 is the same as the range of store floor space in Item 2, Article 2 of the Large Scale Retail Location Law.

## 2. Section 3 in the Remarks (Definition of suppliers)

- (1) A "supplier" means an entrepreneur that supplies a large-scale retailer or its franchisees with goods for their own sale or sale on consignment, excluding any such entrepreneur whose bargaining position is recognized as not being inferior to that of the large-scale retailer in question.

Here, an "entrepreneur that supplies goods" means an entrepreneur that engages in transactions of delivering goods and which is confirmed to have real business relations. In other words, not only a wholesaler but also a manufacturer that supplies a large-scale retailer with goods via a wholesaler refers to an "entrepreneur that supplies" (even though the supply contract is formally signed between the wholesaler and the large-scale retailer) provided that the manufacturer had substantial negotiations concerning the terms of business with the large-scale retailer and that the wholesaler supplies goods to the retailer in question under the terms that have thus been settled.

From the perspective of large-scale retailers, there are generally three types of procurement: purchase, consignment and purchase at the point of sales to consumers. An entrepreneur that adopts any of these types for supplying goods to a large-scale retailer corresponds to a "supplier" as defined in the section in question.

The supplier defined in this section refers to an entrepreneur that supplies a large-scale retailer with goods that the retailer sells. For instance, an entrepreneur that supplies a large-scale retailer with goods not for sale, such as consumable articles used in its internal operations, does not fall under the definition of a "supplier" in this section.

- (2) Whether or not a specific supplier has a bargaining position that "is recognized as being not inferior to that of the large-scale retailer" is decided based on an overall consideration of a number of factors including [1] the sales earned by the supplier, [2] business dependency of the supplier on the large-scale retailer, [3] importance of the status of the large-scale retailer as a customer of the supplier and [4] the demand-supply relation of the goods handled by the supplier.

The level of business dependency stated in [2] is generally calculated by dividing the value of transactions with the large-scale retailer by the sales of the supplier. If the supplier handles a wide range of goods, it may be necessary to assess the dependency in every separate product group.

The importance of having the large-scale retailer as a customer as stated in [3] is determined in consideration of, for example, the position of the large-scale retailer in the market (See Note), such as its market share, its rank and its brand power, future growth potential, the value of transactions with the large-scale retailer and the possibility of shifting to any other retailers.

The demand-supply relation of the goods handled by the supplier mentioned in [4] is based on the popularity of the goods handled by the supplier among consumers for their brand power for example.

Hence, small- and medium-scale suppliers with limited sales generally fall under the definition of "supplier" in the Notification with some exceptions, such as those whose products have strong brand power. Even large-scale suppliers with high sales fall under the definition of "supplier" in the Notification if they are heavily dependent on the large-scale retailer or if it is important for them to have the large-scale retailer as a customer.

(Note) Depending on the actual transactions, the market may be seen on the nation level, along with the regional level.

## **Part II: Prohibition**

### 1. Section 1 of the Notification (Unjust return of goods)

- (1) This section generally prohibits any large-scale retailer from "returning goods purchased from suppliers to them in whole or in part."

Exceptionally, the return of goods is permitted in any of the following cases.

- [1] Return of goods to a supplier for a reason attributable to the supplier (Item 1)
- [2] Return of goods to a supplier in accordance with fixed conditions for return based on an agreement with the supplier at the time of purchasing the goods (Item 2)
- [3] Return of goods to a supplier upon obtaining the supplier's prior consent, provided that the large-scale retailer bears a loss that should normally occur to the supplier due to the return of goods already delivered (Item 3)
- [4] Return of goods to a supplier at the request of the supplier, provided that the disposal of the returned goods leads to direct benefits for the supplier. (Item 4)

- (2) a. Below are examples of unjust return of goods stipulated in this section. However, they are not regarded as unjust when Item 1 or 3 is applicable.

- ? Return of goods which became dirty because of display.
- ? Return of goods with any price tag for retail purposes that is hard to remove without damaging the goods
- ? Return of goods for reasons of expiration of the sales deadline independently predetermined by the large-scale retailer, which is earlier than the sell-by date set by the manufacturer (See Note 1)
- ? Return of any private brand product of a large-scale retailer
- ? Return of goods for the purpose of inventory adjustment at the end of a month or a term

- ? Return of goods left unsold after a sale (See Note 2)
- ? Return of goods for reasons of refurbishment of the store or the section or a display change at the discretion of the large-scale retailer (See Note 3)

? Return of goods for reasons of return from a purchasing customer to a large-scale retailer

(Note 1) Except when there is a short period left before the sell-by date in view of a certain interval normally present between consumers' purchase and consumption and where Item 2 applies.

(Note 2) Except a case in which the returned goods were supplied by the supplier for the purpose of clearing its products from stock by means of the sale and where Item 2 applies.

(Note 3) Except for a case in which the return of goods follows a display change at the end of the selling season for seasonal goods and where Item 2 applies.

- b. The return of goods mentioned in the section includes a case of returning goods by "changing the contract from a purchase contract to a consignment sales contract." It applies when the large-scale retailer returns delivered goods by changing the contract from a purchase contract that has been signed with the supplier to a consignment sales contract, when unmarketable goods are effectively returned through coercing the supplier to replace them with other commercially successful goods.
  - c. Some large-scale retailers engaging in designated chain business may have a business from which to purchase goods as a franchisee. Even in a chain like this, this section applies to return of goods with an instruction from the large-scale retailer to the franchisee, because the large-scale retailer coerces the supplier to accept the return of goods. (The same principle applies to Sections 5, 9 and 10.)
- (3) a. Among the exceptional cases in which return of goods is permitted, the "reason attributable to the supplier" in Item 1 refers, for example, to delivery of faulty goods or the incorrect goods or a failure to deliver goods, such as seasonal goods, in time and the consequent failure to fulfill the purpose of selling them.

However, the return of goods is only permissible "within a reasonable period from the day of receipt" and "within a quantity limit deemed appropriate." Here, the length of a "reasonable period" should be decided depending on the circumstances of a specific case. For example, if the goods delivered have any flaw that can be immediately found or if the goods are different from those ordered; it is necessary to immediately return them within the standard period required for inspection of the goods after receipt. Even in a case like this, it is not permissible to return goods without limit. For example, it is acceptable to return faulty items or the incorrect items alone, but if any other product, except that which can only be sold in the form of a set, is additionally returned, it is not considered to be "within a quantity limit deemed appropriate."

- b. The "fixed conditions for return based on an agreement with the supplier at the time of purchasing the goods" in Item 2 refers to fixed conditions for return agreed with the supplier in advance of purchasing the goods, which means that no return of goods in accordance with

the agreement reached after purchasing the goods is permitted.

Here, the "agreement" refers to a substantial harmony of ideas between the parties based on the conviction of the supplier following full consultation. A pro forma agreement without substance is not sufficient. (The same applies to "agreement" in other sections.)

Even when such conditions for return are agreed with the supplier, it is acceptable to return the goods only when "it is the normal trade practice in general wholesale trade, excluding trade between large-scale retailers and suppliers, to return goods within a fixed period after the date of receipt" and "in which the conditions for the return of goods are set out within the scope of normal trade practice" and if the return is "within a given quantity limit, or within a quantity in given proportion to the total quantity received" (hereinafter referred to as "return within the fixed scope"). Here, "general wholesale trade, excluding trade between large-scale retailers and suppliers" mainly refers to wholesale trade between small or midsize retailers excluding large-scale retailers and suppliers. And the "normal trade practice" denotes the trade practice that is approved from the standpoint of maintaining and bolstering fair competition. Compliance of business conduct with an existing trade practice does not in itself justify the conduct.

The case in which "it is the normal trade practice in general wholesale trade, excluding trade between large-scale retailers and suppliers," to return goods within a fixed scope means that this return is broadly perceived as a trade practice and that the risk-taking associated with this return is not disadvantageous to the supplier in light of the conditions of the transaction.

- c. Item 3 stipulates that "obtaining the supplier's prior consent" is necessary. Here, "obtaining the supplier's prior consent" means having approval expressed by the supplier. This approval must be based on the conviction of the supplier and, as in b., pro forma approval is not sufficient. In respect of time, it is not relevant to obtain consent just before the large-scale retailer returns the goods. "Prior" implies that sufficient time for the supplier to consider whether or not to grant approval must be allowed before obtaining consent. (Same terms in other sections have the same implication. Therefore, "the supplier's consent" is not recognizable when the large-scale retailer is deemed to effectively compel the supplier to give its consent.)

"A loss that should normally occur" refers to the loss that arises from the return of goods within a limit expected reasonably in relation to the cause. For instance, it includes [1] the cost commensurate with a loss of values of goods due to the shortened usable period thereof after the fall of the market values or the lapse of time, [2] the cost required in the transport for the return of goods, and [3] the cost of disposal of the goods returned.

If the large-scale retailer does not cover the loss that is objectively deemed appropriate, it is not considered to "bear a loss that should normally occur" even with the supplier's consent, and Item 3 is not applicable. (The provision in Section 5 must be construed in the same manner.)

d. An example of the cases that fall under Item 4 is the case in which the supplier collects old goods left unsold at a store of the large-scale retailer, among those which it supplied for the purpose of sales promotion of new goods and where the supply of new goods benefits the supplier. Here, the "direct benefits" mean those benefits which actually come into being. They do not include any indirect benefit, such as an advantage in future transactions with the large-scale retailer expected after acceptance of the return of goods.

## 2. Section 2 of the Notification (Unjust price reduction)

(1) This section prohibits any large-scale retailers from "coercing a supplier to accept a price reduction of the delivery price of goods purchased by the retailer, etc. after purchasing the goods from the supplier," except when there is a reason attributable to the supplier.

(2) a. Below are examples of unjust price reduction in the absence of a reason attributable to the supplier:

? After a large-scale retailer sold goods at a reduced price in a sale, it coerces a supplier into reducing the price by the amount commensurate with the discount.

? When a large-scale retailer sells goods in stock at a price reduced from the original displayed price, it coerces a supplier into lowering the delivery price by the amount necessary to cover the loss of profit resulting from the discount sales.

? A large-scale retailer coerces a supplier into lowering the price by the calculated amount necessary to attain a fixed level of profit rate every month.

b. Here, the timing of "purchasing" refers to when the sales contract is executed. Once it has been executed, whether verbally or in writing, it is "after purchasing" even before the goods delivered are accepted by the large-scale retailer.

c. To "cause the supplier to accept a price reduction of the delivered price of goods purchased by the retailer" includes a case in which a large-scale retailer engaging in a designated chain business causes the supplier to accept a reduction of the price of goods purchased by and delivered to a franchisee thereof. (Sections 3 and 4 must be construed in the same manner.)

(3) The "reason attributable to the supplier," which is recognized as allowing an exception, reflects the same principle as in 1-(3)-a. Even in a case in which a price reduction is duly allowed for a reason attributable to the supplier, it is not permissible to make an unlimited reduction but is acceptable to make reduction "within a reduction limit that is deemed appropriate." For example, if the goods are defective, it is necessary to ensure that the price reduction is within the limit of the value properly estimated in view of the degree of the defect. As prescribed in the section in question, it is not permissible to make any reduction in excess of the limit.

## 3. Section 3 of the Notification (Unjust consignment sales contract)

(1) This section prohibits any large-scale retailers from coercing a supplier to accept a consignment sales contract with the retailer "under conditions excessively disadvantageous to the supplier in light of normal trade practices."

(2) a. "Conditions excessively disadvantageous to the supplier in light of normal trade practices" includes the condition under which the commission on consignment is equivalent to the gross margin in the purchase procurement. When the mode of procurement is switched from purchase to consignment, the commission on consignment would be set at a somewhat lower level than the gross margin on purchase procurement in normal negotiations covering the terms of business, in consideration of the fact that in purchase procurement it is the large-scale retailer that bears the risk of unsold goods and other risks.

b. Below is an example of unjust consignment sales contract stipulated in this section:

? Originally, the large-scale retailer purchased Product X from the supplier with a gross margin of A yen. It suddenly changed the procurement method from purchase to consignment and the commission on consignment is set at A yen, equivalent to the gross margin, although the other terms of business are unchanged.

#### 4. Section 4 of the Notification (Beating suppliers down on prices for bargain sales, etc.)

(1) This section prohibits any large-scale retailers from "setting delivery prices of particular goods excessively lower than the ordinary delivery prices of equivalent goods to the retailer, etc." for the purpose of bargain sales and the like and cause a supplier to delivery the goods at the said price.

(2) a. Whether or not the "delivery price set is excessively lower" is determined mainly in consideration of the gap with the ordinary delivery price. However, for this determination, the purchase cost of the supplier, the delivery price of other companies and the state of negotiations with the supplier are also taken into account.

A lower price than the ordinary delivery price set for purchasing a larger quantity of goods than usual for the purpose of bargain sales and the like corresponds to a so-called volume discount. It does not immediately constitute an infringement of this section.

b. Below is an example of beating suppliers down on prices for bargain sales, etc. stipulated in this section:

? Without having talks with a supplier, a large-scale retailer sets a delivery price of particular goods for its bargain sale that is lower than the purchase price of the supplier and unilaterally orders the supplier to deliver the goods at the said price, which is thus set at an excessively lower than its ordinary delivery price.

#### 5. Section 5 of the Notification (Refusal to receive specifically ordered goods)



- (1) This section prohibits any large-scale retailers from refusing to receive goods after having entered into a contract in which the large-scale retailer designates specific standards and other requirements of the goods to be delivered, except in cases in which there is a reason attributable to a supplier or in which the large-scale retailers bears a loss that should normally occur to the supplier due to its refusal.
  
- (2) a. Given that the goods to which the section refers are those for which "the large-scale retailer designated specific standards, designs, types, etc.," they include so-called private brand goods. Non-private brand goods for which the large-scale retailer designates special specifications to the supplier fall under this section.  
b. Below are examples of a refusal to receive specifically ordered goods stipulated in this section:
  - ? A large-scale retailer refuses to receive private brand goods, for reasons of poor sales, which are manufactured and about to delivered by a supplier in accordance with an order placed by the retailer.
  - ? A large-scale retailer refuses to receive private brand goods which are manufactured and about to delivered by a supplier in accordance with an order placed by the retailer because the goods are no longer needed after a revamp of the selling section or a display change.
  
- (3) As in 1-(3)-a, the "reason attributable to the supplier," which is recognized as an exception, refers, for instance, to the delivery of defective goods or the incorrect goods or a failure to deliver goods, such as seasonal goods, in time and the resulting failure to meet the purpose of selling them. The "loss that should normally occur" refers to a loss arising from the refusal of receipt within the limit expected reasonably in relation to the cause.

#### 6. Section 6 of the Notification (Coercion to purchase, etc.)

- (1) This section prohibits any large-scale retailers from "coercing a supplier into purchasing any goods or services designated by the said retailer" by taking advantage of business relations, unless there is any "just reason."
  
- (2) a. An example of the "just reason" is seen in a case in which a supplier commissioned to manufacture and deliver private brand goods by a large-scale retailer is forced to purchase raw materials for the goods reasonably necessary to ensure uniform quality.  
Goods or services "designated by the retailer" that the supplier is coerced into purchasing include not only those sold by the retailer itself but also those handled by an affiliate of the retailer as long as they are designated by the retailer.  
b. If a supplier is coerced into purchasing any goods or services from a large-scale retailer or anyone designated by the retailer in any of the following manners, the conduct of the retailer

is deemed to correspond to coercion to purchase, etc. stipulated in this section.

- ? Personnel that may influence purchase transactions, such as purchase staff, make a request for such purchase (See Note). For example, purchase staff asks the supplier to purchase a seasonal gift item sold by the large-scale retailer.
- ? The supplier is asked to purchase goods or services in an organized or systematic manner. For instance, after different purchase sections set their respective sales volume targets, they hold a fair to display and sell new goods for suppliers and purchase staff ask the suppliers to purchase the goods.
- ? After the supplier stated that it had no intention of making any purchase or when it is evident, without any statement, that it has no intention to purchase, the large-scale retailer makes repeated requests for purchase or sends a product unilaterally.
- ? The large-scale retailer makes a request that may be interpreted as meaning that future purchases will be affected if no purchase is made or uses a selling method that may be interpreted in that way.

(Note) A request for purchase with a certain quota assigned to the supplier or a request made to the delivery staff falls under the request stipulated therein.

#### 7. Section 7 of the Notification (Unjust assignment of work to employees of suppliers, etc.)

(1) This section generally prohibits any large-scale retailers from coercing a supplier into dispatching employees to assist with the ordinary operations of the retailer or to bear the labor costs of employees hired by the retailer, etc. except when any of the following conditions apply:

- [1] With the prior consent of the supplier, the large-scale retailer assigns dispatched employees solely to sales operations of those goods delivered by the supplier. (Item 1)
- [2] The large-scale retailer reaches a prior agreement with the supplier with respect to the dispatch terms and condition and it bears the cost generally required for the dispatch of employees. (Item 2)

(2) a. Below are examples of unjust assignment of work to employees of suppliers, etc. stipulated in this section:

- ? On the occasion of launching a new store, a large-scale retailer unilaterally requests a supplier to undertake the task of displaying and restocking with the goods that the supplier delivers and to dispatch any of employees of the supplier for this task without prior consent of the supplier. (See Note 1)
- ? On the occasion of reopening a store after refurbishment, a large-scale retailer assigns a dispatched employee of a supplier to sell any other company's goods despite a prior agreement with the supplier that the dispatch would be on the condition that the dispatched employees are solely assigned to sales operations of the goods delivered by

the supplier. (See Note 1)

? A large-scale retailer requests a supplier to undertake inventory operations for the retailer and to dispatch any of employees of the supplier for that purpose, although it does not bear the dispatch cost. (See Note 2)

? Despite that fact that the dispatch of employees entails the cost of transport, accommodation and the like, depending on the circumstances of individual suppliers, a large-scale retailer determines the daily pay at a uniform amount and coerces suppliers into dispatching any of its employees without bearing the cost of transport, accommodation and the like. (See Note 2)

? A large-scale retailer coerces a supplier into paying the wages of part-time workers hired by the retailer's inventory operations.

(Note 1) See (3)-a and (3)-b.

(Note 2) See (3)-d.

b. Pursuant to this section, any large-scale retailer generally prohibits from "coercing a supplier into dispatching employees." The "employees" herein include not only those officially employed by the supplier but also [1] temporary personnel from temporary employment agencies commissioned by the supplier and [2] temporary personnel from temporary employment agencies introduced by the large-scale retailer.

(3) a. Item 1 refers to the assignment of dispatched employees of the supplier solely to "sales operations" of the goods delivered by the supplier upon the consent of the supplier as a case in which large-scale retailers are exceptionally permitted to deploy suppliers' employees. The "sales operations" stipulated therein refers to the operations in which the personnel serve consumers and sell goods to them. They may exceptionally include the operations of displaying and restocking with goods but do not include any other operations. Specifically, they do not include installation of any furniture including display shelf before a new store is launched, unloading of goods from trucks, conveyance to the storage space on the back side of a store, providing assistance to cashiers after a store is opened, rearranging shopping carts, back office operations, control at parking areas, loading of goods onto trucks for transport to other stores, dismantlement of furniture or cleaning of the store.

b. The operations of displaying and restocking with goods that may be considered as a part of the "sales operations" stipulated in Item 1 refer, for example, to the display of goods delivered by the supplier at the time of newly launching or re-launching a store and to the work of restocking the shelves with them, incidental to the operations of serving customers. In either case, the operations are deemed to fall under Item 1 only if they "allow for the effective use of sales techniques or other abilities possessed by the dispatched employees that leads to direct benefits for the supplier." Restocking operations alone without serving customers or displaying goods are not considered to fall under Item 1 because they are normally not linked with "sales techniques or other ability possessed by the dispatched

employees." The "direct benefits" refer, for instance, to an increase in sales of goods from the supplier or direct acquisition of information about trends in customers' needs as a result of the supplier's personnel dispatch. They do not include any indirect benefit such as advantage in future transactions with the large-scale retailer.

Deployment of employees from a supplier is permitted only when they are solely assigned to sales operations of "those goods delivered by the supplier." If they are assigned to sell any other company's goods as well, the deployment cannot be recognized as falling under Item 1.

- c. Item 1 authorizes the assignment of employees of suppliers to "sales operations" alone. It also permits the assignment of the dispatched employees of the supplier that are "regularly stationed at a store of the large-scale retailer" to inventory operations in addition to sales operations.

The case in which "dispatched employees of the supplier are regularly stationed at a store of the large-scale retailer" refers, for instance, to the continuous long-term dispatch of employees of a supplier to a special section with the brand name of the supplier set up by the supplier in a store of the large-scale retailer (for example, in the form of a brand shop or a store of noted confectionary items).

- d. Item 2 provides as a requirement for the exceptionally authorized deployment of employees from a supplier that the large-scale retailer must "reach a prior agreement with the supplier with respect to the dispatch terms and conditions, such as the types of duties assigned to dispatched employees, their working hours and their dispatch period." The "prior agreement with the supplier with respect to the dispatch terms and conditions" does not mean that it suffices to reach the agreement just before asking a supplier for dispatch. The large-scale retailer has to allow a substantial length of time that enables the supplier to decide whether or not to dispatch employees. In addition, it is preferable to reach a separate agreement on dispatch terms and conditions including the assignment depending on the occasion of dispatch every time it asks the supplier for dispatch.

For the purpose of ensuring that the agreement is more smoothly reached with suppliers, it is advisable to obtain the consent of individual suppliers on whether or not personnel dispatch takes place and, if it takes place, on basic matters including the assignment.

Moreover, deployment is not permitted unless the large-scale retailer "bears the cost generally required for the dispatch of employees." The "cost generally required" refers to the cost of transport, accommodation and the like, in addition to the actual personnel costs of the dispatched employees. When a large-scale retailer merely bears part of the cost stated above, it fails to meet the requirement for bearing "the cost generally required for the dispatch of employees" even if it is agreed with the supplier and the deployment is not deemed to fall under Item 2.

Naturally, given that it is the large-scale retailer that bears the cost generally required for the dispatch of employees, the prior agreement on dispatch terms and conditions must include provisions for the cost.

8. Section 8 of the Notification (Unjust receipt of economic benefits, etc.)

(1) This section prohibits any large-scale retailers from coercing a supplier into providing the retailer with economic benefits that "the supplier definitely should not need to offer," such as monetary contributions for reasons related to the retailer's adjustment of account settlement, or with those, even such as a charge for the use of the logistics center that helps the supplier cut costs, which "exceed the limit recognized as reasonable in consideration of the benefits reaped by the supplier."

(2) a. Below are examples of unjust receipt of economic benefits, etc. stipulated in this section:

- ? A large-scale retailer makes a request for monetary contributions for reasons related to an adjustment of the account settlement and coerces a supplier into offering such contributions.
- ? On the occasion of launching a new store, a large-scale retailer coerces suppliers into offering a fixed percentage of the value of delivered goods by them to the retailer for a certain period of time with the aim of securing a gross margin for the store without providing a prior explanation of the amount, grounds for calculation or the objective of the contributions.
- ? Under a prior arrangement in which rebates shall be provided to the large-scale retailer if a certain volume of sales are attained by the retailer over a certain period, the retailer requests such rebates and coerces the supplier into providing them despite a failure to attain the volume.
- ? To run an advertisement for a bargain sale that coincides with the launch of a store, a large-scale retailer requests a supplier and coerces it into providing monetary contributions in excess of the cost actually required for it.
- ? Without sufficient consultation with a supplier on the amount or grounds for the calculation of the charge for use of facilities for distribution such as a logistics center, a large-scale retailer unilaterally makes a request for the charge and coerces the supplier into paying the amount that exceeds a reasonably payable portion of the cost of running the facilities that is commensurate with the actual degree of use of the facilities and other factors.
- ? Without sufficient consultation with a supplier on the amount or grounds for calculation of the penalty imposed on a supplier at the time of delayed deliveries, a large-scale retailer unilaterally sets the penalty to coerce the supplier into bearing the amount that would be earned if the goods were delivered in time and sold.
- ? While alteration of the transit terms, such as an increase in the frequency of deliveries of smaller-lot deliveries, leads to a substantial rise in the costs incurred by a supplier, a large-scale retailer unilaterally requests an alteration to the transit terms without sufficient

consultation with the supplier and coerces the supplier into delivering goods under the same terms of business as before without taking into consideration the cost increase resulting from the change in the transit terms.

- b. As mentioned in this section, "money that the supplier definitely should not need to offer" specifically refers, for instance, to monetary contributions for reasons related to an adjustment in the account settlement of the retailer to ensure its profit or for an event, renovation of a sales section or an advertisement that is not directly helpful to sales promotion of the goods of the supplier. Contributions for an event or advertisement that does not relate to the goods of the supplier or those for renovation of a sales section at a place that has nothing to do with the section where the goods of the supplier are displayed fall under this definition, irrespective of what the money is called, including contributions, cooperation money, rebates and donations.
- c. As mentioned in this section, the "economic benefit including money and services" that "exceeds the limit recognized as reasonable in consideration of the benefits reaped by the supplier" specifically refers, for example, to contributions and higher-frequency smaller-lot deliveries (i.e. to reduce the amount delivered at each delivery and to increase the frequency of deliveries) that lead to sales promotion of the goods delivered by the supplier, and to a charge for use of a logistics center that helps the supplier implement slash costs, either of which exceeds the limit that is recognized as reasonable in consideration of the benefits enjoyed by the supplier.

The term ",etc." in the expression "in consideration of the benefits reaped by the supplier, etc." involves the purpose for which the large-scale retailer asks the supplier to provide an economic benefit, the details of the economic benefit; such as the amount of monetary contributions or the charge for use of a logistics center and the frequency of deliveries in high-frequency small-lot deliveries, and the ground for calculation of the economic benefit and the consultations between the retailer and the supplier. For example, contributions for advertising, which makes up part of the cost of creating and distributing an advertisement that includes the goods delivered by the supplier, are deemed directly beneficial to the supplier, given that the advertisement leads to sales promotion of the goods delivered by the supplier. However, if a large-scale retailer asks the supplier for any amount in excess of the cost required for the advertisement, the monetary burden is considered to exceed the limit recognized as reasonable.

In addition to those discussed above, other monetary benefits that may be questioned include the charge for use of the online ordering system, the system for master registration of the goods, the planogram data system for the placement of goods at the store or a system for offering POS data and a history of purchases made by visiting customers as well as stock-out penalty. And "services" includes, for instance, to preparation of materials and data process that should be performed by the relevant staff of the large-scale retailer.

9. Section 9 of the Notification (Unfavorable treatment in response to refusal of request)

(1) This section prohibits any large-scale retailers from giving unfavorable treatment including the delay of payment for goods delivered and suspension of trade to a supplier, etc. for the reason that has refused any request as defined in Sections 1 to 8.

(2) a. The "requests as set out in one of the preceding sections" refer, for instance, to a request to a supplier for accepting the return of goods in the case of unjust return of goods stipulated in Section 1 and to a request to a supplier for accepting the large-scale retailer's refusal in the case of refusal to receive specifically ordered goods stipulated in Section 5.

The "delay of payment for goods delivered" as an example of unfavorable treatment to suppliers includes not only the delay of the entire payment for the goods but also the delay of part of the payment due. The "reduction in trade volume" and the "suspension of trade" also include reduction in volume of part of the trade and suspension of part of the trade respectively.

"Unfavorable treatment other than the delay of payment for goods delivered and suspension of trade" includes the display of goods at a less favorable place where they are less noticeable to consumers than before.

b. Below are examples of unfavorable treatment in response to a refusal of requests stipulated in this section:

? A large-scale retailer unilaterally stops placing orders for part of the goods purchasing from a supplier, because the supplier has refused a request for the dispatch of employees.

? A large-scale retailer unilaterally reduces the quantity of goods purchasing from a supplier, because the supplier has refused a request for monetary contributions for reasons related to adjustment of the account settlement.

10. Section 10 of the Notification (Unfavorable treatment in response to notification to the Fair Trade Commission)

(1) This section prohibits any large-scale retailers from giving unfavorable treatment including a delay of payment for goods delivered and suspension of trade to a supplier " for the reason that the supplier notified, or was about to notify the Fair Trade Commission of the fact" as prescribed in Sections 1 to 9.

(2) Whether the supplier "notified or was about to notify the Fair Trade Commission" verbally, in writing or by any other means, this section is applicable. Notification of a violation at the time of replying to a written survey conducted by the Fair Trade Commission also falls under this section. The "delay in payment for goods delivered, reduction in trade volume and suspension of trade" must be construed in the same manner as in Section 9.