

**GUIDELINES CONCERNING THE ACTIVITIES  
OF TRADE ASSOCIATIONS  
UNDER THE ANTIMONOPOLY ACT**

**October 30, 1995  
Fair Trade Commission**

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**Introduction**

**1. Objective of the Guidelines**

(1) Purpose of the Antimonopoly Act

The Antimonopoly Act (The Act Concerning Prohibition of Private Monopolization and the Maintenance of Fair Trade [Law No. 54 of 1947]) prohibits private monopolization, unreasonable restraints of trade, and unfair trade practices by firms. At the same time, it prohibits trade associations that are combinations of firms or federations of combinations of firms from engaging in conduct that restrains or impedes competition. The purpose of the Antimonopoly Act is to promote fair and free competition by eliminating such violations when they take place.

(2) Objective of the Guidelines

By describing specific examples of trade associations' activities, these Guidelines aim to facilitate a better understanding of the kinds of trade associations activities that might pose problems in light of the Antimonopoly Act. Through these means, these Guidelines aim to help trade associations to avoid engaging in unlawful activities and serve as a useful resource for taking appropriate actions.

**2. Outline of the Guidelines**

(1) Outline of the Guidelines

Part I of the Guidelines introducing the provisions of the Antimonopoly Act with regard to trade associations by describing the kinds of trade associations' activities prohibited by the Antimonopoly Act, the legal measures that can be taken against such violations, the notification-filing system, and the exemption systems. Part II outlines the interpretations of the provisions of the Antimonopoly Act against trade associations' activities, with reference to the past experience of the Fair Trade Commission (FTC) in enforcing the Act. In addition, examples are given for certain primary categories of conduct.

As to examples given in Part II:

- {1} Examples of conduct "in principle constituting a violation" are, based on the organization of the violation contents of past FTC rulings, judged to intrinsically restrain or impede competition. When such conduct that falls under this description occurs, it is in principle considered to be a violation of the relevant provision(s) of the Antimonopoly Act.
- {2} Examples of conduct "suspected to constitute a violation", while not in itself assessed as immediate violations, nevertheless might become a problem in light of the Antimonopoly Act in terms of content or mode. Such conduct that falls under this description might constitute a violation, depending on the market position of the trade association involved or the conditions under which the conduct occurs. Such conduct includes that which tends to accompany, or that might lead to, violations.
- {3} Examples of conduct "in principle not constituting a violation" of the Act are in themselves deemed violations.

(2) Nature of the Descriptions Given in the Guidelines

The aim of these Guidelines is to explain as plainly as possible how the actual activities of trade associations are regarded in light of the Antimonopoly Act; the examples cited herein are nothing but illustrations, of typical conduct, and the

"specific cases" and "specific cases of violation" given in the reference examples are included to assist clear understanding, on the basis of past FTC rulings, of these examples. In addition, "illustrative examples" given in the reference examples are hypothetical ones and included to assist clear understanding of these examples. Needless to say, judgments will be made on a case- by-case basis, in accordance with the provisions of the Antimonopoly Act, as to whether or not specific conduct of a trade association, including any activities not indicated in these Guidelines, constitutes a violation.

It is not always easy for a trade association to judge whether or not specific activity might present a problem under the Antimonopoly Act. For this reason, the FTC continues to respond to requests from trade associations for specific consultation through the advance-consultation system (see Appendix).

(3) Explanation of Terms Used in the Guidelines

- {1} As an example, a designations of "Sec. 8 (1) (i)" refers to Sec. 8, Subsec. 1, Paragraph 1 of the Antimonopoly Act.
- {2} For the sake of simplification, in Part II of these Guidelines the term "trade association" in reference examples is omitted that refers to the activities by trade associations.
- {3} Also in Part II, for the sake of simplification, the word "association" is used to denote "trade association" in all examples, "specific cases," "specific cases of violations," and "illustrative examples."
- {4} Also in Part II, designations such as "Sec. 8 (1) (i)" or "Sec. 8 (1) (iv)," which appear in paragraphs 7, 8, 11, and 12, refer to the Sections, Subsections, and Paragraphs of the Antimonopoly Act that principally apply to the example being given.
- {5} Also in Part II, the word "user," which appears in paragraphs 7, 8, and 9, is used in connection with a trade association's activities relating to the supply of goods or services. In cases where a trade association receives goods or services, the word "supplier" can be used interchangeably with the word "user" in these Guidelines and the same underlying principles of these Guidelines apply to a trade association's activities relating to either supply or receipt of goods or services.
- {6} Also in Part II, the descriptions included herein of the conduct of "trade associations of small and medium-scale firms," which appear in paragraph 10, relate to those activities of a trade association that consists mainly of small and medium-scale firms targeting such small and medium-scale member firms.

(4) When these Guidelines are adopted, the Antimonopoly Act Guidelines Concerning the Activities of Trade Associations (published on August 27, 1979) will be abolished.

**Part I: Outline of the Antimonopoly Act Provisions Concerning the Activities of Trade Associations**

**1. The Basic Principles of the Antimonopoly Act with Regard to Activities of Trade Associations**

The basic principles of the Antimonopoly Act reflect an intent to achieve the following objectives: to promote fair and free competition, to stimulate the creativity of firms, to encourage business activities, to raise the levels of employment and people's real income, and by virtue of all of the above, to promote the democratic and wholesome development of the national economy and to assure the interests of consumers in general (Sec. 1).

To achieve these objectives, the Antimonopoly Act prohibits activities of trade association that substantially restrain competition, limit the number of firms, unjustly restrict the functions or activities of the members of trade associations (hereinafter referred to as "constituent firms"), or that causes firms to engage in conduct that constitutes an unfair trade practice (Sec. 8 (1)).

## **2. Definition of "Trade Association"**

The term "trade association" refers to any combination or federation of combinations of two or more firms that has as one of its principal purposes the furtherance of the common business interests of those firms. Such associations can take any of the following forms (Sec. 2 (2)).

- {1} Any association, incorporated or not, that has two or more member firms (including any status comparable to membership).
- {2} Any foundation, whether a legal entity or not, of which two or more firms control the appointment or dismissal of directors or managers and the execution or existence of business activity.
- {3} Any partnership that has two or more member firms, or any contractual combination of two or more firms.

For example, trade associations bear such names as *Kogyokai* (a manufacturing association), *Kyokai* (a society), *Kyogikai* (a council), *Kumiai* (an association), and *Rengokai* (a federation of organizations).

The "common business interests of those firms" mentioned above refers to interests that contribute directly or indirectly to the constituent firms' business interests; it is irrelevant whether this benefit is specific to individual firms or general within the industry. In view of this definition, associations such as scientific societies, public service organizations, and religious associations, which, though composed of two or more firms, do not have as their principal purpose the furtherance of the common business interests of firms, are not classified as trade associations.

"Principal purpose" means the most important purpose among several purposes and will be determined on the basis of what an association actually does, regardless of its articles of associations or by-laws.

The term "firms" in the phrase "combination of two or more firms" refers not only to the firms themselves, but includes any officers, employees, or agents who act for the benefit of those firms (Sec. 2 (1)). Therefore, standing committees made up of, for example, directors or section heads of companies are recognized as trade associations if their principal purpose is to promote the common business interests of member companies as firms.

Where individuals with particular qualifications or self-employed professionals are

engaged in economic activities, they are regarded as “firms”. Where the primary purpose of a combination of such individuals is to promote the common business interests of those individuals as firms, such a combination is regarded as a trade association.

In addition, a combination of two or more firms, or a federation of such combinations, which has capital stock or capital subscriptions made by its constituent firms, and whose principal purpose is to run business for profit, and which is actually conducting such business, is itself classified as a firm but not considered as a trade association (Proviso to Sec. 2 (2)). Meanwhile, when a trade association that does not meet the above proviso but that adds the characteristics of a firm to its organization operates its own business, the provisions of the Antimonopoly Act Concerning firms apply to those business activities.

### **3. Notification Filing System**

#### **(1) Filing of Notification of Establishment**

In accordance with the Rules of the FTC (Rules on Filing a Notification under Sec. 8 of the Antimonopoly Act [FTC Rule No. 2 of 1953] (Same applies to (2) and (3) below)), every trade association shall file a notification of its establishment with the FTC within thirty days after the date of its establishment (Sec. 8 (2)).

#### **(2) Filing of Notification of Change**

When any change occurs regarding the matters filed to the FTC, the trade association concerned shall, in accordance with the Rules of the FTC, file a notification of such change with the FTC within two months after the end of the business year during which such change occurred (Sec. 8 (3)).

#### **(3) Filing of Notification of Dissolution**

In accordance with the Rules of the FTC, every trade association shall file a notification of dissolution with the FTC within thirty days after its dissolution (Sec. 8 (4)).

### **4. Prohibited Activities**

Sec. 8 (1) prohibits trade associations from engaging in the following activities.

#### **(1) "Substantially restraining competition in any particular field of trade" (Sec. 8 (1) (i)).**

This paragraph refers to trade association's conduct that involves fixing, maintaining, or increasing prices, or restricting quantities of goods or services supplied or received by that association's constituent firms, or restricting customers or sales channels of constituent firms, or restricting the facilities used by constituent firms in connection with supplies, or restricting the entry of firms thereby causing a substantial restraint of competition in any particular field of trade (i.e., market).

#### **(2) "Entering into international agreements or international contracts as provided for in Sec. 6(1)" (Sec. 8 (1) (ii)).**

This paragraph refers to trade association's entering into international agreements (contracts) with foreign firms or trade associations, the provisions of which result in unreasonable restraints of trade or unfair (trade practices.

Specifically, this paragraph refers the conclusion of international price-fixing agreements and market-allocation agreements.

- (3) "Limiting the present or future number of firms in any particular field of business" (Sec. 8 (1) (iii)).

This paragraph refers to a trade association's limiting the number of firms in any particular field of business, either by blocking new entrants or by forcing out existing firms.

- (4) "Unjustly restricting the functions or activities of constituent firms" (Sec. 8 (1) (iv))

This paragraph refers in general to a trade association's impeding fair and free competition by imposing restrictions on the business activities of constituent firms.

- (5) "Causing firms to engage in conduct that constitutes unfair trade practices" (Sec. 8 (1) (v)).

This paragraph refers to a trade association's compelling or encouraging firms (constituent and non-constituent) to engage in unfair trade practices such as refusing to deal, discriminatory dealing, dealing on exclusive terms, dealing on restrictive terms, or interfering with a competitor's transaction.

This paragraph specifically refers to conduct such as pressuring firms' customers not to engage in transactions with non-constituent firms, or pressuring firms' customers to take disadvantageous measures, such as suspension of shipments, against discount traders.

Note: The term "unfair trade practices" are specific practices that fall under Sec. 2 (9) (i) through (vi) and are designated by the FTC among all practices that may impede fair competition (Sec. 2 (9)).

Among unfair trade practices designated by the FTC, some are applicable to business in general, and others are applicable only to specific fields. The former are designated as "Unfair Trade Practices" (FTC Notification No. 15 of 1982, hereinafter referred to as "General Designations." "General Designations" are complete revisions of FTC Notification No. 11 of 1953 (hereinafter referred to as "former General Designations")). The latter are referred to as "specific designations" that at present issued against five business sectors, including department store business, as well as to the offering of economic benefits through lottery methods in the advertising.

## **5. Measures to Eliminate Violations**

- (1) When there exists any activity in violation of the provisions of Sec. 8, the FTC may order the trade association concerned to file a report, or to cease and desist from such activity, to dissolve the said association, or to take any other measures necessary to cease the violation (Sec. 8-2 (1)).
- (2) Even when a violation of Sec. 8 (I) (i), Sec. 8 (1) (iv), or Sec. 8(1) (v) has already ceased, the FTC may, when it finds it particularly necessary, order the trade association concerned to publicize the cessation of the violation and to take other measures necessary to ensure that the violation does not recur (Sec. 8-2 (2)).

(3) When ordering a trade association to take such measures as indicated in (1) and (2) above, the FTC may, when it finds particularly necessary, order the executive officers, managers, and members of the trade association in question to take relevant necessary measures (Sec. 8-2 (3)).

## 6. Surcharges

When a trade association violates the provisions of Sec. 8 (1) (j) (substantially restraining competition in any particular field of trade) or Sec. 8 (1) (ii) (entering into international agreements or international contracts that contain provisions that constitute unreasonable restraints of trade), and when either violation pertains to the prices of goods or services or affects the prices of goods or services by restraining the supply thereof, the FTC shall order the constituent firms of the trade association in question to pay surcharges.

The amount of surcharges will be calculated according to the following criteria. However, if the calculated amount is less than 500,000 JPY, the FTC shall not order to pay such surcharges. (Sec. 8-3).

The amount of surcharge is calculated by multiplying the sales amount of goods or services involved in the above-mentioned violation, during the execution period of the violation, by the following groups of rates.

	Large-scale firms	Small- and medium-scale firms
Non-retail and non-wholesale	6%	3%
Retailers	2%	1%
Wholesalers	1%	1%

Notes:{1} In principle, the sales amount is the total equivalence of price of goods or services delivered during the execution period of the violation.

{2} If substantial difference exists between the amount contracted for and the amount of the goods or services actually delivered during the execution period of the violation, the sales amount shall be determined according to the total value declared in the contracts undertaken during the period.

(Sec. 5 and 6 of the Enforcement Ordinance of the Antimonopoly Act [Cabinet Ordinance No. 317 of 1977])

When the execution period of the violation is longer than three years, the period for calculation of surcharges shall be three years retroactive from the day on which the violation ceased.

Furthermore, as a general rule, no surcharge payment will be ordered if three years have passed since the end of the execution period of the violation.

## 7. Penal Provisions

(1) Penal provisions are provided for conduct that violates Sec. 8 (1) (i), (ii), (iii), and (iv).

A. The penalty for violating Sec. 8 (1) (i) is a sentence of maximum three years of

- penal servitude or a fine of maximum 5,000,000 JPY (Sec. 89 (1) (ii)). If representatives, employees, or others affiliated with a trade association commit a violation of Sec. 89 in relation to their business, they will be subject to the punishment accordingly; and in such a case, however, the trade association involved will also be punished for the same violation by a fine not to exceed 100,000,000 JPY (Sec. 95 (1) (i) and (2) (i)).
- B. The penalty for violating Sec. 8 (1) (ii), (iii), and (iv) is a sentence of maximum two years of penal servitude or a fine of maximum 3,000,000 JPY (Sec. 90 (i) and (ii)). If representatives, employees, or others affiliated with a trade association commit a violation of Sec. 90 in relation to their business, they will be subject to the punishment accordingly; and in this case, however, the trade association involved will also be punished for the same violation by a fine not to exceed 3,000,000 JPY (Sec. 95 (1) (ii) and (2) (ii)).
- C. Where a violation of Sec. 89 (1) (ii) (see A. above) or Sec. 90 (see B. above) occurs, executive officers, managers, or constituent firms of the trade association involved shall be punished by a fine not to exceed 5,000,000 JPY for a violation of Sec. 89 (1) (ii), or by a fine not to exceed 3,000,000 JPY for a violation of Sec. 90, 205 if they were aware of the planned violation but failed to take necessary preventive measures, or if they were aware of the violation but failed to take necessary corrective measures (Sec. 95-3).
- (2) A violation of Section 8 (2), (3), or (4) shall result in a fine not to exceed 2,000,000 JPY (Sec. 91-2 (ii)). If representatives, employees, or others affiliated with a trade association commit violation against Sec. 91-2 in relation to their business, they shall be punished accordingly; and in this case, however, the trade association involved shall also be punished for the same violation by a fine not to exceed 2,000,000 JPY (Sec. 95 (1) (ii) and (2) (ii)).
- (3) The offenses stipulated in (1) above shall be considered only after an accusation has been filed by the FTC (Note) (Sec. 96).

Note: The FTC has announced its position to actively file accusations seeking for criminal penalties in the following cases:

- (1) Vicious and serious cases such as price-fixing cartels, supply-restraint cartels, market allocations, bid-rigging, group boycotts, and other violations that substantially restrain competition in certain areas of trade, and that are considered to have widespread influence on the lives of people; and
- (2) Cases where due administrative measures of the FTC are not sufficient to fulfill the purpose of the Act, including cases by repeatedly offending firms or industries or those who do not abide by the FTC's elimination measures.  
("The FTC's Policy on Criminal Accusation Regarding Antimonopoly Violations," published on June 20, 1990.)

## **8. The Antimonopoly Act Exemption System for Trade Associations**

Although the Antimonopoly Act prohibits trade associations from engaging in conduct, such as that described in 4 above, that restricts or impedes competition, it



also provides a system that exempts trade associations' activities from the application of the Antimonopoly Act under certain circumstances.

Cooperatives may be established pursuant to the provisions of various statutes for the purpose of providing mutual aid among small-scale firms. If the requirements of Sec. 24 of the Antimonopoly Act are met, joint economic undertakings will generally be exempted from the application of the Antimonopoly Act. This is for the purpose of allowing small-scale firms that are incapable of competing individually with large-scale firms by themselves to form a mutual-aid business union that is economically effective unit of competition. However, cases should not be exempted from the application of the Antimonopoly Act if they are unfair trade practices, or if they substantially restrain competition in a particular field of trade and thereby effect unjust price increases (Proviso to Sec. 24). Similarly, no exemption shall be granted to cooperative federations or other organizations that collude with other organizations or firms to fix prices or to restrict the amounts of goods or services.

In addition, the Antimonopoly Act contains provisions that exempt concerted activities engaged in to combat a depression (Sec. 24-3) and concerted activities to rationalize an industry' (Sec. 24-4).

In addition to the above-mentioned exemption system under the Antimonopoly Act, the Antimonopoly Act Exemptions Act and other laws provide for other exemption systems.

(Translation Notes)

Sec. 24 of the Antimonopoly Act referred to trade associations was moved to Sec. 22 by 2000 amendment. Depression and rationalization cartel systems and the Antimonopoly Act Exemptions Act were abolished in 1999.

## **Part II: The Antimonopoly Act and the Actual Activities of Trade Associations**

- (1) Trade associations engage in many activities, such as educating, training, collecting and offering information, submitting requests to the government, and making public announcements of opinions. These activities are conducted for a variety of reasons, such as responding to societal or public needs, or promoting consumer understanding in their respective industries. Within the broad spectrum of trade association activities, those activities that might restrain or impede competition among firms pose problems with respect to the Antimonopoly Act.

If a trade association's activity might result in some kind of restraint on the business operations of a firm, it is necessary to consider whether or not that activity poses a problem under the Antimonopoly Act.

- (2) Restricting measures posed by a trade association on the price or quantity of goods or services that are either supplied or received, the customers and sales channels for trade, the facility for supply or other important competition means among all facets of business activities of a firm exerts a direct influence on the market mechanism. If a trade association's activity restricts the entry into a market, or expels existing firms from a market, the trade association's activity also exerts a direct influence on the market mechanism.

To substantially restrain competition in a market (Note) by engaging in the conduct

listed in item 1 (Conduct that Restricts Prices) through 5 (Conduct that Restricts the Entry of Firms, etc.) below constitutes a violation of Sec. 8 (1) (i) of the Antimonopoly Act. Even if such conduct does not go so far as to substantially restrain competition in a market, in principle it nonetheless constitutes a violation of Sec. 8 (1) (iii), (iv), (iv), or (v).

Restrictive conduct of the kind described above is considered in principle to constitute a violation of the Act, regardless of the specific form, means, or method involved in such conduct. Moreover, such conduct is considered to constitute a violation in principle regardless of the purpose or intent of the conduct, and is not justified by such purposes as to maintain appropriate price levels, to ensure the quality of goods or services, or to equalize the opportunities of being awarded contracts. (See item 1 (Conduct that Restricts Prices) through 5 (Conduct that Restricts Entry of Firms, etc.) below.)

Note: "To substantially restrain competition means to bring about a state in which competition itself has significantly decreased and a situation has been created in which a specific firm or a group of firms can control the market by determining price, quality, volume, and various other conditions with some latitude at its or their own volition." (Decision of the Tokyo High Court, December 7, 1953).

- (3) Any activity of a trade association that forces a firm to engage in conduct that constitutes an unfair trade practice violates Sec. 8 (1) (v). (See item 6 (Unfair Trade Practices) below)
- (4) In contrast with trade association conduct that restricts prices, and so forth, as described in (2) above, conduct that restricts the variety, quality, or standards of goods or services, or the type, content, or method of business operations may not always have a direct impact on the market mechanism. Nevertheless, the issue is whether these types of conduct might violate Sec. 8 (i) (iii), (iv), or (v), and there might also be a possibility that such restrictive activities violate Sec. 8 (1) (i) if it results in the substantial restraint of competition in a market.

In many instances, a trade association's self-regulation activities that are intended for socially beneficial purposes, and that include the establishment of standards and codes related to the business activities of constituent firms, as well as the use of and compliance with said standards and codes, pose no particular problem in light of the Antimonopoly Act. However, there may be cases in which self-regulation, depending on its content or conditions, impedes or restrains competition in terms of the diversity of goods or services or the manner in which business operations are conducted. (See item 7 (Conduct relating to Variety, Quality, Standards, etc.) and 8 (Conduct relating to the Type, Content, Method, etc. of Business Operation) below.)

- (5) Among the following categories of activities of trade associations are many types of activities that do not necessarily pose particular problems in light of the Antimonopoly Act; these include: information activities, through which trade associations collect and offer various kinds of information concerning their field; management guidance to supplement constituent firms' relative deficiency of management knowledge; and joint undertakings, in which constituent firms engage in cooperative activities.

However, if a trade association collects from or offers to constituent firms information comprised of important and specific competition-related factors (e.g., pricing), or promotes the exchange of such information among constituent firms, such information activities, depending on the content and other elements thereof, might lead to or accompany conduct that restrains competition as described in (2) above, and might pose a problem in light of the Antimonopoly Act. (See 9 (Information Activities) below.)

Similarly, if a trade association provides management guidance that includes setting up common standards concerning important and specific competition-related factors (e.g., pricing), such guidance might lead to or accompany conduct that restrains competition as described in (2) above, and might pose a problem in light of the Antimonopoly Act. (See 10 (Management Guidance) below.)

In addition, joint undertakings, in particular joint sales where prices and other important competition-related factors are determined within such joint undertakings, tend to lead to conduct that restrains competition and to pose a problem in light of the Antimonopoly Act, depending on such factors as the market shares of the participating firms. (See 11 (Joint Undertakings) below.)

- (6) Public regulations concerning firms are established for various social purposes; however, such regulations can have the effect of restraining competition among firms in certain ways. Any trade association activity that restrains needed competition that should take place in regulated fields or that should be revived through deregulation will be considered as restrictive conduct as described in (2) above and shall not be condoned.

In addition, caution should be taken to ensure that trade associations do not engage in conduct that restrains competition when, for example, they are commissioned by the government in order for the implementation of public works, or they are operated under administrative guidance. (See 12 (Conduct relating to Public regulations, Administration, etc.) below.)

- (7) If a trade association assumes the characteristics of firms in conducting its own business operations engaging in unreasonable restraint of trade with other firms or in unfair trade practices, such activities constitute a violation of Sec. 3 or Sec. 19, respectively. (See 6 (Unfair Trade Practices) and others below.)

In addition, if firms unreasonably restrain trade through exchanging information or other activities within a trade association, the firms' activity shall constitute a violation of Sec. 3. (See 9 (Information Activities) below.)

- (8) When a trade association forms an intention Concerning such issues as the restraint of competition, the "decisions" as a trade association are not limited to clearly expressed decision that was brought through deliberations by the trade association's official decision-making body but include de facto decisions based on regular practices, if such regular practices are recognized as the formation of the association's intention.

Note: For example, if a decision or agreement reached by a committee or subcommittee that is not the official decision-making body of the association but is customarily accepted as a decision or agreement of the entire

association, it is regarded as the decision or agreement of the entire association.

- (9) Based on the standpoints discussed above, set forth below is an outline of the FTC's viewpoint concerning the relationship between trade associations' activities, as indicated by examples of trade associations' actual activities, and the Antimonopoly Act. The examples are divided into twelve main categories of activities from item 1 (Conduct that Restricts Prices) to 12 (Conduct relating to Public regulations, Administration, etc.).

### **1. Conduct that Restricts Prices**

A trade association will be found to be in violation of Sec. 8 (1) (i) if it engages in price-related restrictive conduct as described below and substantially restricts competition in a market. Even if such conduct does not lead to the substantial restraint of competition in a market, it shall nonetheless in principle be found to constitute a violation of Sec. 8 (1) (iv) or (v).

#### **1-1. (Fixing prices, etc.)**

Predetermining the prices of goods or services supplied or received by constituent firms, or deciding to maintain or raise such prices

#### **1-2. (Restricting resale prices)**

Restricting the resale price or goods through such conduct as the following: causing a firm to restrict the resale prices of its goods (an activity described as General Designation Article 12); coercing constituent firms to maintain resale prices; and fixing resale prices

#### **[Specific Cases]**

**The Case against X Trade Association of Wholesalers of Knitting and Handicraft Goods (FTC Recommendation Decision No. 4 of 1969)**

In this case, the association ordered in various ways to constituent firms that they shall instruct the retailers to strictly maintain minimum resale prices, and hint that they would break off business connection with such retailers who had offered lower resale prices. The association was found to have caused firms to engage in conduct constituting former General Designation Article 8 and thereby to have violated Sec. 8 (1) (v).

**The Case against Y Trade Association of Manufacturers of Records and Other Goods (FTC Recommendation Decision No. 4 of 1980)**

In this case, the association forced constituent firms to maintain resale prices of records and other goods by ordering the firms to suspend shipments to retailers who refused to stop offering discount resale prices. This conduct was found to constitute a violation of Sec. 8 (1) (iv).

**The Case against Z Trade Association of Milk Manufacturers (FTC Recommendation Decision No. 2 of 1982)**

In this case, the association set minimum retail prices for bulk-milk distributors

who had transactions with constituent firms, and decided that constituent firms shall demand the mass sales distributors strictly maintain those prices. This conduct was found to constitute a violation of Sec. 8 (1) (i).

(1) Conduct that Restricts Prices: Specific Forms and Methods

There are many forms and can be pursued through various method to fix prices (1-1) or restrict resale prices (1-2) (hereinafter collectively referred to as "conduct that restricts prices" in this chapter), such as follows but not limited to. In principle, conduct that restricts prices constitutes a violation, regardless of their actual form or method.

1- (1) -1. (Fixing minimum selling prices)

Fixing minimum selling prices.

[Specific cases]

The Case against X Trade Association of Manufacturers of Meters for Liquefied Petroleum Gas, etc. (FTC Recommendation Decision No. 24 of 1992)

In this case, as a strategy to maintain selling prices, the association set the minimum selling price of microcomputer meters for home use manufactured by constituent firms.

This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Manufacturers of Purification Tank Blowers, etc. (FTC Recommendation Decision No. 17 of 1990)

In this case, the association set the minimum selling price for blowers manufactured by constituent firms for use on small purification tanks. This was found to constitute a violation of Sec. 8 (1) (i).

1-(1)-2. (Setting selling price-increase rates, etc.)

Setting the rate or margin of a price increase.

[Specific cases]

The Case against X Trade Association of School Album Manufacturers (FTC Recommendation Decision No. 10 of 1991)

In this case, the association decided to increase the prices of FY 1990 school photograph albums manufactured by constituent firms by 15 percent over the previous fiscal year. This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Manufacturers of Paint for Road Surface Markings, etc. (FTC Recommendation Decision No. 32 of 1992)

In this case, the association decided to raise the selling price of liquefied paints manufactured by constituent firms by a targeted 16 JPY per kilogram. This was found to constitute a violation of Sec. 8 (1) (i).

1-(1)-3. (Setting standard prices, etc.)

Setting price standards in the forms of standard prices, target prices, etc.

[Specific cases]

The Case against X Trade Association of Propane Gas Distributors (FTC Recommendation Decision No. 14 of 1977)

In this case, at an "explanatory meeting" that all constituent firms had been requested to attend, the trade association distributed three similar standard pricing charts, explained that it planned to raise the retail price of propane gas on the basis of one of those charts, and obtained the approval of the attending firms. This was recognized as a decision to raise prices and was found to constitute a violation of Sec. 8 (1) (1).

1-(1)-4. (Establishing common price-calculation formulas)

Establishing price calculation formulas that, by using specific numerical values, coefficients, and other factors, provide constituent firms with common and specific price standards.

[Specific cases]

The Case against X Trade Association of Meat Processors (FTC Recommendation Decision No. 14 of 1992)

In this case, the association decided the purchasing price of pork to constituent firms, by using wholesale standard prices of pork meat, which were set as the weighted averages of wholesale prices of pork meat in A, B, and C markets at proportions of 50 percent, 30 percent, and 20 percent, respectively. This was found to constitute a violation of Sec. 8 (1) (i).

1-(1)-5. (Setting user delivery prices, etc.)

Setting user delivery prices, retail prices, and standard prices served as reference in setting prices of the goods when constituent firms supply to distributors.

[Specific cases]

The Case against X Trade Association of Producers of Neutral Anhydrous Mirabilite, etc. (FTC Recommendation Decision No. 3 of 1985)

In this case, wherein constituent firms supplied end users with neutral anhydrous mirabilite through distributors and determined the price they charged distributors by subtracting an amount equivalent to the distributors' commission from the price to demanders, the association decided to raise the user delivery price of the neutral anhydrous mirabilite, thereby causing constituent firms to raise the selling price to distributors. This was found to constitute a violation of Sec. 8 (1) (1).

The Case against Y Trade Association of Manufacturers of Cameras and Other Goods (FTC Recommendation Decision No. 1 of 1961)

In this case, under conditions where it was recognized that the wholesale prices of cameras manufactured by constituent firms were regularly determined by multiplying the retail selling prices by a certain fixed percentage, the trade

association set the retail prices of said cameras, thereby fixing the wholesale prices charged by constituent firms. This was found to constitute a violation of Sec. 8 (1)

1-(1)-6. (Price negotiation by group, etc.)

Conducting group negotiation on prices with their trade partners, or forcing constituent firms to negotiate jointly with their trade partners.

(2) Conduct that Restricts Prices and that Ensures the Implementation Thereof

Conduct that restricts prices is sometimes accompanied by conduct, such as the following, that is intended to ensure the implementation of the conduct that restricts prices. In this case, in principle both conduct that restricts prices and that ensures the implementation thereof constitute violations. Even when not accompanied by such conduct, however, conduct that restricts prices in principle constitutes a violation of the Act (Notes 1 and 2).

Note 1: Conduct similar to those stipulated below (for example, 1-(2)-1 and 1-(2)-3) can also be performed to ensure the implementation of conduct that restrains competition in other ways of conduct, including: conduct that restricts quantities; conduct that restricts customers, sales channels, and so forth; conduct that restricts facilities or technologies; and conduct that restricts the entry of firms into a market. In such cases, however, the principle described above applies.

Note 2: Conduct that ensures the implementation of conduct that restricts prices might in some cases in itself violate the Act (Sec. 8 (1) (iv) or (v)). For example, if a trade association forces a firm to refuse to trade with companies that do not cooperate in conduct that restricts prices (as described in 1-(2)-1), that conduct, independently from conduct that restricts prices, might in itself be in violation of Sec. 8 (1) (v).

1-(2)-1. (Inviting or compelling a firm to cooperate in restricting prices, etc.)

Inviting or compelling to convince a firm to restrict prices, or imposing disadvantages on a firm that fails to cooperate in restricting prices, through such means as refusing to trade with it, discriminatingly treating within the trade association, demanding monetary payment from it, or expelling it from the trade association.

[Specific cases]

The Case against X Trade Association of Wire Rope Manufacturers (FTC Recommendation Decision No. 5 of 1980)

In this case, the association compiled a "unified price list" of selling prices for each standard of wire rope, and decided, among other things, that the prices charged by constituent firms for wire rope were to be raised and that there should be no transactions at prices below the listed prices by a certain percentage. To ensure implementation of these decisions, the trade association established a monetary deposit system, and decided that any constituent firm that sold wire rope below the prescribed minimum prices would be punished through such means as refusal of

trade or confiscation of its deposit. This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Taxi Operators (FTC Recommendation Decision No. 10 of 1982)

In this case, relating to taxi fares, the trade association decided on certain fare increases and on the contents of an application to be submitted to obtain government approval of the proposed fare increases, and coerced constituent firms to submit the application. The trade association then expelled firms that did not abide by the decision of the application. This was found to constitute a violation of Sec. 8 (1) (iv).

1-(2)-2. (Buying up discount-priced goods)

Buying up discount-priced goods, or forcing constituent firms do so, to ensure the implementation of conduct that restricts prices.

[Specific cases]

The Case against X Trade Association of Repair Tire Distributors (FTC Recommendation Decision No. 10 of 1970)

In this case, the association decided to raise the selling price of general summer tires sold by constituent firms, and, to ensure that this decision was effectively implemented, established a system to buy up discount-priced tires. This was found to constitute a violation of Sec 8 (1) (i).

The Case against Y Trade Association of Milk Manufacturers (FTC Recommendation Decision No. 2 of 1982)

In this case, the association set minimum retail prices for hulk milk distributors who had transactions with constituent firms, and decided that constituent firms shall make the distributors strictly maintain those prices. If the distributors refused to comply with this demand and sold milk below the minimum prices set by the trade association, the constituent firms went to the distributors' stores and bought up all their milk. This was found to constitute a violation of Sec. 8 (1) (i).

1-(2)-3. (Information activities for monitoring conduct that restricts prices)

Collecting or offering information, or promoting the exchange of information among constituent firms concerning the business operations, including transaction prices and partners, of constituent firms, in order to monitor constituent firms to ensure that they are implementing conduct that restrict prices.

[Specific cases]

The Case against X Trade Association of Manufacturers of Purification Tank Blowers, etc. (FTC Recommendation Decision No. 17 of 1990)

In this case, the association decided to set minimum selling prices for blowers manufactured by the constituent firms for use on small purification tanks. To ensure the effective implementation of the decision, the association forced constituent firms to submit a list of purification tank manufacturers and agents with whom the firms



transacted business to the association, distributed the consolidated lists to all constituent firms, and, for the purpose of raising prices, kept all constituent firms informed concerning such matters as the status of negotiations being undertaken with their major trade partners. This was found to constitute a violation of Sec. 8(1) (i).

The Case against Y Trade Association of Manufacturers of Asphalt Composite Material (FTC Recommendation Decision No. 1 of 1987)

In this case, the association decided to set minimum selling prices for asphalt composite materials manufactured by constituent firms and sold to spot operators. To ensure the effective implementation of this decision, the trade association made the constituent firms engage in various conduct, such as indicating their desire to receive orders from spot traders for composite asphalt materials by registering with the trade association, and reporting the status of the contracts they had won. This was found to constitute a violation of Sec. 8 (1) (i).

(3) "Prices" as used in conduct that restricts prices

The term "prices," as used in the phrase "conduct that restricts prices," denotes any compensation received in exchange for goods or services, regardless of the specific name or form of that compensation such as fees, commissions and interest. It also includes monetary benefits, such as rebates and discounts, that are related to prices.

[Specific cases]

The Case against X and Other Trade Association of Automobile Repairers (FTC Recommendation Decision No. 15 of 1982)

In this case, the association decided to raise the procedural agency fees associated with the continuing automotive inspection services offered by constituent firms. This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Home Electric Appliance Manufacturers and Distributors and the Z Federation of Home Electric Appliance Retailers (FTC Recommendation Decision No. 5 of 1957)

In this case, the Y Association, based on discussions with the Z Federation, set the maximum profit margins of the distributors, the maximum percentage rates of rebates given to the distributors by the manufacturers, and other business factors in order to maintain the retail prices of home electric appliances. This was found to constitute a violation of Sec. 8 (1) (iv).

## **2. Conduct that Restricts Quantities**

A trade association will be found to violate Sec. 8 (1) (i) if it engages in quantity-related conduct as described below, that substantially restrains competition in a market. Even if such conduct does not lead to the substantial restraint of competition in a market, it will nonetheless in principle be found to constitute a violation of Sec. 8 (I) (iv).

## 2-1. (Restricting quantities)

Restricting the quantities of goods or services either supplied or received by constituent firms.

[Specific cases]

The Case against X Trade Association of Manufacturers of Sanitary Ceramics (FTC Recommendation Decision No. 14 of 1973)

In this case, the association decided to increase the selling price of the constituent firms' sanitary ceramics to a set goal, and to restrict the quantities of monthly shipments through volume allocations derived by multiplying the volume of each firm's shipments in the same month of the previous year by a fixed rate. This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Manufacturers of Methanol Formalin (FTC Recommendation Decision No. 36 of 1971)

In this case, the association decided the total quantity of methanol sold in Japan as well as the amounts sold by each constituent firm. This was found to constitute a violation of Sec. 8 (1) (i).

Conduct that restricts quantities (2-1) takes many forms and is pursued through a variety of methods such as the following. However, conduct that restricts quantities (2-1) in principle constitutes a violation, regardless of the specific form or method involved.

### 2-1-1. (Restricting quantities by restricting the purchase of raw materials, etc.)

Restricting the quantities of goods produced and sold, or the amount services provided by the constituent firms, by restricting purchase volume of raw materials from them, operation of facilities or other means.

[Specific cases]

The Case against X Trade Association of Petroleum Refiners, etc. (FTC Recommendation Decision No. 7 of 1974)

In this case, the X association decided the quantity of crude oil to be processed by each constituent firm. This was found to constitute a violation of Sec. 8 (1) (i).

### 2-1-2. (Adjusting quantities by establishing standards that suggest quantitative limits)

Adjusting quantities by establishing standards that suggest specific quantitative limits on individual constituent firms in terms of the goods they produce and sell or the services they provide.

[Specific cases]

The Case against X Trade Association of Woolen Yarn Spinners (FTC Recommendation Decision No. 43 of 1974)

In this case, to adjust the production quantity of worsted yarn and to stabilize the market, the trade association estimated the worsted yarn demand quarterly at the

board meetings held two months before every business quarters. The production goals were then set on the basis of that estimate, and constituent firms were asked to submit quarterly their production plans to the association. At the board meetings held one month before those business quarters, the production plans were reviewed, and approved if judged to meet the production goal, or rejected for resubmission if judged not to meet therewith. Through this system, the trade association decided the amount of worsted yarn produced quarterly by constituent firms. This was found to constitute a violation of Sec. 8 (1) (i).

### **3. Conduct that Restricts Customers, Sales Channels, etc.**

A trade association will be found to be in violation of Sec. 8 (1) (i) if it engages in conduct, such as that described below, that restricts customers, sales channels, and other business factors, and that substantially restrains competition in a market. Even if such conduct does not lead to the substantial restraint of competition in a market, it will nonetheless in principle be found to constitute a violation of Sec. 8 (1) (iv).

#### **3-1. (Restricting customers)**

Restricting customers of the constituent firms by deciding that each constituent firm should not trade with another firm's customers.

[Specific cases]

The Case against X Trade Association of Milk Distributors (FTC Recommendation Decision No. 16 of 1969)

In this case, the association decided that no constituent firm would be permitted to "steal" important customers from other milk distributors by offering them lower prices, and that, in the event of not complying to the decision, the offending firm would return the business with these customers to the original milk distributor; in addition, the trade association forced a non-constituent firm that had taken important customers from its constituent firm to return the business with those customers to that constituent firm. This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Operators of Waste Treatment Plants (FTC Recommendation Decision No. 19 of 1991)

In this case, in order to restrain competition over customers among constituent firms, the trade association decided to have the constituent firms respect each other's existing customers, and to refrain from active attempts to engage in business activities with such customers of other constituent firms. This was found to constitute a violation of Sec. 8 (1) (iv).

The Case against Z Trade Association of Distributors of Propane Gas (FTC Recommendation Decision No. 42 of 1971)

In this case, in order to prevent the customers of a constituent firm from shifting to other constituent firms, the trade association established a system whereby a firm

that sold propane gas to the customers of another constituent firm was forced to pay compensation and therefore restricted the sales channels of the constituent firms. This was found to constitute a violation of Sec. 8 (1) (iv).

The Case against U Trade Association of Platemakers of Engraving Rubber for Printing Applications (FTC Recommendation Decision No. 8 of 1968)

In this case, the association forced the constituent firms to register their trade partners. When a constituent firm was to register its trading partner but that had already been registered by another constituent firm, the association made adjustments based on the principle that the firm with the earlier registration had priority. This was found to constitute a violation of Sec. 8 (1) (iv).

### 3-2. (Allocating markets)

Restricting the scope of sales territories, the variety of products or services, or other business factors of individual constituent firms

[Illustrative Examples]

{1} A trade association of distributors restricts the respective sales territories of the constituent firms, thereby dividing market based on geographical divisions,

{2} A trade association of manufacturers restricts the variety of products manufactured by the constituent firms, thereby making market allocations based on product variety.

### 3-3. (Allocating contracts, predetermining the bidder expected to win a contract, etc.)

Allocating contracts among the constituent firms or predetermining which firm is expected to win a bid, or a procedure for selecting the winner over bids.

[Specific cases]

The Case against X Trade Association of Land Reclamation Construction Companies (FTC Recommendation Decision No. 5 of 1989)

In this case, concerning marine transportation contracts received from a joint enterprise engaged in the construction work for retaining the bank walls for airport island, the trade association set the amount of pit sand to be transported for this project according to the construction area of each constituent firm, thereby deciding the amount of work each constituent firm would undertake. In addition, the trade association decided the unit prices of transportation. These were found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Construction Companies (FTC Recommendation Decision No. 28 of 1994)

In this case, on competitive biddings among designated firms for general contracting of construction work, building work and pavement construction work ordered by City 'A', the association decided that if only one firm desired to win the bid, that firm was designated as the "bidder expected to win;" and if more than one firms desired to win the bid, the bidder expected to win was predetermined through such means as

meetings conducted among the bidding firms. The association also caused constituent firms to adjust their bid prices so that the bidder expected to win would win the bid at the adjusted price. Thus the association decided that the bidder expected to win would be predetermined among the constituent firms and caused the constituent firms to cooperate so that the bidder expected to win would be awarded the contract. This was found to constitute a violation of Sec. 8 (1) (i).

Bid-rigging is one of the methods of allocating contracts, predetermining the bidder expected to win a contract, and so forth (3-3). For more information concerning the relationship between the activities of firms and trade associations with regard to bids and the Antimonopoly Act, "The Antimonopoly Act Guidelines concerning the Activities of Firms and Trade Association in Relation to Public Bids (published July 5, 1994)" shall be referred.

#### **4. Conduct that restricts Facilities and Technology**

A trade association will be found to violate Sec. 8 (1) (i) if it engages in such conduct as described below, relating to facilities and technology, that substantially restrains competition in a market. Even if such conduct does not lead to the substantial restraint of competition in a market, it will nonetheless in principle be found to constitute a violation of Sec. 8 (1) (iv).

##### **4-1. (Restricting the construction or expansion of facilities, etc.)**

Restricting the introduction, expansion, or demolition of facilities that are or will be used to supply or receive goods or services planned by constituent firms, or restricting the operation of said facilities

[Specific cases]

The Case against X Trade Association of Bus Companies (FTC Recommendation Decision No. 9 of 1989)

In this case, concerning applications for approval to change operating plans to increase the number of charter buses, the trade association determined the limit of the number of additional vehicles with which the application could be submitted by each constituent firm complying with the decision. This was found to constitute a violation of Sec. 8 (1) (iv).

The Case against Y Trade Association of Manufacturers of Polyolefine Film (FTC Recommendation Decision No. 2 of 1975)

In this case, after the expiration of adjustment provisions, based on law, that restricted the operation of manufacturing facilities and prohibited the construction of new facilities, the trade association decided, as a means of dealing with market conditions, not to allow constituent firms to build new facilities without the association's approval. Furthermore, the trade association decided that in the case of renovation the production capacity of the renovated facilities should not exceed limits set by the trade association. This was found to constitute a violation of Sec. 8(1)(iv).

The Case against Z Federation of Trade Association of Paper Manufacturers (FTC Recommendation Decision No. 1 of 1973)

In this case, the federation decided that constituent firms would, at regular intervals, stop operation of their paper-coating machines for a certain period set by the federation, and furthermore decided to increase the selling price of coated paper. This was found to constitute a violation of Sec. 8 (1) (i).

#### 4-2. (Restricting the development or use of technology)

Unjustly restricting the development or use of technology by the constituent firms. For more information concerning contracts for joint research and development and their implementation are regarded under the Antimonopoly Act, please refer to “The Antimonopoly Act Guidelines concerning Joint Research and Developments (published April 20, 1993)”.

### **5. Conduct that Restricts the Entry of Firms, etc.**

A trade association will be found to violate Sec. 8 (1) (i) if it engages in conduct such as described below, that restricts the entry of firms into a market and thereby substantially restrains competition in the market. Even if such conduct does not lead to the substantial restraint of competition in a market, it will nonetheless in principle be found to constitute a violation of Sec. 8 (1) (iii), (iv), or (v).

#### 5-1. (Restricting entry, etc)

For example, engaging in conduct such as described in 5-1-1 through 5-1-3 below, to make it notably difficult for firms to enter a market, or that forces firms out of a market.

##### 5-1-1. (Restricting the supply of goods or services)

Causing or pressuring constituent firms or their trading partners to restrict the supply of goods or services to specific firms

[Specific cases]

The Case against X Trade Association of Ready-mixed Concrete Manufacturers (FTC Hearing Decision No. 2 of 1981)

In this case, the association prevented non-constituent ready-mixed concrete manufacturers from building new production facilities within the its business sphere by demanding that cement manufacturers refrain from supplying cement to any non-constituent ready-mixed concrete manufacturer who planned to construct new facilities. This was found to constitute a violation of Sec. 8 (1) (iii).

##### 5-1-2. (Restricting the handling of goods or services)

Causing or pressuring constituent firms or their trade partners to restrict the receipt or handling of goods or services from specific firms

[Illustrative Examples]

{1} To eliminate imported goods, a trade association of distributors prohibits

constituent firms from dealing with any firm that supplies imported goods.  
{2} To prevent competitors of the constituent firms from entering a market, a trade association of manufacturers pressures the distributors who trade with the constituent firms not to handle the goods supplied by newcomers.

5-1-3. (Unjustly restricting entry or unjustly expelling)

Unjustly restricting entry into an association or unjustly expelling a firm from an association where it is difficult to conduct business without joining the association (see Note below).

(1) Conduct strongly suspected of constituting unjust restricting of entry into an association

Conduct such as described below is strongly suspected to constitute "unjustly restricting entry into an association" as described in 5-1-3 above. Therefore, where it is difficult to conduct business without joining the association (see Note below), such conduct is strongly suspected to constitute a violation.

5-1-3-{1}. (Collecting exorbitant entry fees, etc.)

Collecting entry fees or imposing other economic burdens that are exorbitant in light of common practice

[Specific case of violations]

The Case against X Association of Doctors (FTC Recommendation Decision No. 7 of 1980)

In this case, a doctor who wished to open an independent practice without joining the trade association found it difficult to do so because of lack of access to necessary services that association members enjoyed; these included: being recommended to serve as school doctors, receiving assistance in applying for certification as a designated doctor based on the Eugenic Protection Act, and receiving assistance in communicating with appropriate governmental agencies. Also, non-members found it difficult to obtain the cooperation of other doctors regarding the examination and treatment of patients. Under these conditions, the association decided to raise the membership fee to the doctors who were starting up new practices more than twice of the usual fee, with the intention of restricting the establishment of new hospitals and clinics within its business sphere and of strengthening those restrictions. This was found to constitute a violation of Sec. 8 (1) (iii) and (iv).

5-1-3-{2}. (Restricting the number of stores, etc.)

Establishing qualification requirements as membership that restrict the number of stores in a given geographical area or prevent a new store within a prescribed distance from existing members' stores.

[Specific cases of violations]

The Case against X Trade Association of Greengrocers (FTC Recommendation

Decision No. 29 of 1965)

In this case, Companies A, B, and C, which had operated wholesale markets, established a policy of not selling product to brokers who did not belong to the association. This made it impossible to buy greengroceries from the wholesale markets and difficult to conduct business as a greengrocer without joining the association. Under these conditions, the trade association required, as one of conditions of membership, that any new store shall be set up at least 300 meters away from every store of existing constituent firms, and thereby restricted admission into the association. This was found to constitute a violation of Sec. 8 (1) (iii).

5-1-3-3}. (Requiring approval from firms that are direct competitors)

Requiring, as a condition for association membership, the approval from or the recommendation of constituent firms that directly compete in the same geographical area or field of business against the firm that is applying for membership.

[Specific case of violations]

The Case against X Association of Doctors (FTC Recommendation Decision No. 7 of 1980)

In this case, under conditions where it was generally difficult to open a medical practice without becoming a member of the association, the association decided to require hospitals and clinics that wished to commence operations within the association's business sphere to receive permission from the association. Furthermore, the association decided to require that applicants for admission be introduced by a member, and made admission decisions by attaching great importance to the opinions of the constituent firms who were operating in the geographical vicinity of the proposed new facility. This was found to constitute a violation of Sec. 8 (1) (iii) and (iv).

5-1-3-4}. (Restricting membership by nationality)

Establishing qualification requirements that include restrictions by nationality, such as limiting its members to Japanese corporations or persons

Note: For example, when an trade association has been commissioned to carry out public works that have an important influence on business activities, and when that association discriminates against non-constituent firms in implementing those works, it might be "difficult to conduct business without joining the trade association."

(2) Conduct relating to entry requirements that do not in themselves pose problems in light of the Antimonopoly Act

In contrast to the conduct as described in (1) above, setting of qualifications for membership or criteria for expulsion does not in itself pose a problem in light of the Antimonopoly Act, as long as the said qualifications or criteria are reasonable in light of the purposes or content of business of the trade association in question. In addition, the following types of conduct do not in themselves pose a problem in



light of the Antimonopoly Act: the collection of membership fees that are reasonable in light of common practice; the imposition of other economic burdens that are determined on the basis of reasonable calculations; and the establishment of reasonable differences in membership fees or other economic burdens on the constituent firms, based on such factors as scale of business.

## **6. Unfair Trade Practices**

A trade association that causes a firm to engage in unfair trade practices shall be found to violate Sec. 8 (1) (v).

If a trade association assumes the characteristics of a firm when conducting its own business operations and then employs unfair trade practices, it shall be found to violate Sec. 19.

Examples of conduct that, constitute unfair trade practices by trade associations according to the FTC's General Designations are given below.

Note: A trade association that substantially restrains competition in a market through such conduct as the following violates Sec. 8 (1) (i) (see 5-1 and 1-2 above): causing firms to refuse to deal with certain firms (6-1 and 6-2), with the result that the latter firms find it notably difficult to enter a market; expelling firms from a market; imposing restriction on resale prices for firms (6-6).

### **6-1. (Concerted refusal to deal)**

Without proper justification, engaging in conduct specified in one of the following items concertedly with other competing firms (hereinafter referred to as "competitor"):

1. Refusing to deal with a specific firm, or restricting the quantity or substance of goods or service involved in a transaction with specific firms; or
2. Causing other firms to engage in conduct referred to in the preceding item.

(General Designation Article 1)

[Specific cases]

The Case against X trade Association of Lumber Importers (FTC Recommendation Decision No. 16 of 1990)

In this case, to prevent non-constituent firms from importing lumber at Port A, the trade association caused the constituent firms to act in concert to pressure port transport companies to refuse to handle lumber imported by them. The association was found to have caused firms to engage in conduct constituting General Designation Article 1, Item 2, and thereby to have violated Sec. 8 (1) (v).

The Case against Y Trade Association of Automobile Repair Glass Distributors (FTC Recommendation Decision No. 7 of 1967)

In this case, the association pressured manufacturers to sell automobile repair glass only to specified wholesalers, and pressured the specified wholesalers not to sell the

products to non-constituent firms. The association was found to have forced firms to engage in conduct constituting former General Designation Article 1 and thereby to have violated Sec. 8 (1) (v).

6-2. (Other refusals to deal)

Unjustly refusing to deal, or restricting the quantity or substance of a goods or service involved in a transaction with a specific firm, or forcing another firm to engage in one of these conducts. (General Designation Article 2)

[Specific cases]

The Case against X Trade Association of Manufacturers of Ready-mixed Concrete (FTC Hearing Decision No. 2 of 1981)

In this case, the association caused the cement manufacturer that supplied nearly all the cement used by ready-mixed concrete manufacturers in a given geographical area to refuse to sell cement to any non-constituent ready-mixed concrete manufacturer that was planning to build new facilities within the business area, as well as to any non-constituent manufacturer outside the area that was selling ready-mixed concrete inside the area. The association was found to have caused firms to engage in conduct constituting General Designation Article 2, and thereby to have violated Sec. 8 (1) (v).

The Case against Y Federation of Cooperative Associations (FTC Recommendation Decision No. 1 of 1990)

In this case, to maintain or to increase the quantity of cardboard boxes used by greengrocers and supplied through distribution channels provided by the federation, the federation forced designated cardboard box manufacturers (which had signed basic sales contracts with the federation) to refuse to supply undesignated manufacturers with cardboard sheet for cardboard boxes. This conduct was adopted as a means of preventing the undesignated manufacturers from selling cardboard boxes. This was found to constitute General Designation Article 2, and thereby to constitute a violation of Sec. 19.

6-3. (Discriminatory treatment regarding transaction terms, etc.)

Unjustly giving favorable or unfavorable treatment to a specific firm in regard to the terms or execution of a transaction (General Designation Article 4)

[Specific cases]

The Case against X Trade Association of Manufacturers of Pyrethrum Insecticide and the Y Trade Association of Pyrethrum Growers (FTC Recommendation Decision No. 20 of 1963)

In this case, both associations agreed and decided to cause constituent firms of X Trade association to give priority to constituent firms of Y Trade association when buying raw materials (pyrethrum), and furthermore to delay transactions with non-constituent brokers and to employ other treatment that were notably disadvantageous to those brokers. The associations were found to have caused the

constituent firms to engage in conduct constituting former General Designation Article 2, and thereby to have violated Sec. 8 (1) (v).

6-4. (Discriminatory treatment in a trade association, etc.)

Unjustly excluding a specific firm from a trade association or from a concerted activity, or unjustly discriminating against a specific firm in a trade association or concerted activity, thereby causing difficulties in the business activities of that firm (General Designation Article 5).

[Specific cases]

The Case against X Cooperative Trade Association (FTC Recommendation Decision No. 2 of 1957)

In this case, involving a cooperative trade association that shipped all its raw milk to Dairy company A through the federation of cooperative associations, the association engaged in discriminatory actions, such as refusing to lend the cooperative's funds and insisting on cash transactions for the use of trade association facilities even though which is usually clearance transactions, against a member company that had shipped raw milk to Dairy company B. This was found to constituting former General Designation Article 3, and thereby to constitute a violation of Sec. 19.

6-5. (Dealing on exclusive terms)

Unjustly dealing with another party on the condition that the party shall not deal with one's competitor, thereby tending to reduce transaction opportunities for that competitor (General Designation Article 11)

[Specific cases]

The Case against X Trade Association of Manufacturers of Ready-mixed Concrete (FTC Recommendation Decision No. 23 of 1993)

In this case, ready-mixed concrete cooperative associations A, B, and C (cooperatives) were constituent members of the X Trade association, which guided and adjusted their joint sales activities, and which decided that the cooperatives should provide rebates (in actual practices, discounts) to members of the D Cooperative association of construction companies, on the condition that the latter buy all their ready-mixed concrete from the Cooperative association A, B and C and should not provide a rebate to any of D's members who bought ready-mixed concrete from non-cooperative sources. In this way, the X Trade association caused the cooperatives to effectively pressure D's members to stop buying ready-mixed concrete from non-cooperative sources. The X Trade association was found to have forced its members to engage in conduct constituting General Designation Article 11, and thereby to have violated Sec. 8 (1) (v).

The Case against Y Cooperative Association (FTC Recommendation Decision No. 12 of 1981)

In this case, the association supplied milk to dairy companies on the condition that the companies should not accept milk supplies from the association's competitors.

This was found to constitute former General designation Article 7, and thereby to constitute a violation of Sec. 19.

6-6. (Resale price restriction)

Selling goods to another party, while imposing, without proper justification, one of the restrictive terms specified below:

1. Causing the other party to maintain the commodity's selling price that one has determined, or otherwise restricting the other party's free decision on selling price of the goods; or
2. Forcing the other party cause firms that purchases the goods from it to maintain the selling price of the goods determined, or otherwise forcing that other party to restrict the other firm's free decision on selling price of the goods (General Designation Article 12) (See 1-2 above).

[Specific cases]

The Case against X Trade Association of Toy Manufacturers (FTC Recommendation Decision No. 10 of 1972)

In this case, the association decided to cause mass retailers to sell specific toys at a specified list price (a selling price set as a standard for sales by the manufacturer). Based on that decision, the association caused the constituent firms to exact promises from the mass retailers to sell the toys at the list price as a condition of delivery and to refuse to deliver to distributors who did not so promise. The association was found to have caused firms to engage in conduct constituting former General Designation Article 8, and thereby to have violated Sec. 8 (1) (v).

6-7. (Dealing on restrictive terms)

Except for acts referred to in the preceding two paragraphs (6-5, dealing on exclusive terms, and 6-6, resale price restriction), dealing with another party on conditions that unjustly restrict either that party's transactions with other parties or other business activities of that party (General Designation Article 13).

[Specific cases]

The Case against X Trade Association of Retailers of Dental Supplies (FTC Recommendation Decision No. 6 of 1987)

In this case, the association caused the manufacturers of dental supplies to force their distributors to stop the mail-order sales of those supplies. The association was found to have caused the constituent firms to engage in conduct constituting General Designation Article 13, and thereby to have violated Sec. 8 (1) (v).

The Case against Y Cooperative Association (FTC Recommendation Decision No. 12 of 1981)

In this case, to maintain and strengthen its own position, as well as that of Company A (a company that was closely related to the association and that bought raw milk to manufacture dairy beverages), in the prefecture-wide dairy beverage market, the

association supplied raw milk to beverage firms other than Company A, on the condition that they refuse to handle the dairy beverage products of manufacturers who did not receive the supply of raw milk from the association. This was found to constitute former General Designation Article 8, and thereby to constitute a violation of Sec. 19.

6-8. (Abusing a dominant bargaining position)

Engaging in any conduct specified in one of the following paragraphs, in a manner that is unjustifiable in light of normal business practices, by making use of one's dominant bargaining position over another party:

1. Forcing the other party to continue transaction to purchase goods or service other than the one involved in the continuing transaction;
2. Forcing the other party to continue transaction to provide money, service, or other economic benefits to one's firm;
3. Setting or changing transaction terms in a way disadvantageous to the other party;
4. Except for conduct referred to in preceding three paragraphs, imposing a disadvantage on another party regarding the terms or execution of a transaction;
- or
5. Forcing a company with which is one's trading partner to follow one's direction in advance, or to get one's approval, regarding the appointment of officers of that company

(General Designation Article 14)

[Specific cases]

The Case against X Federation of Cooperative Associations (FTC Recommendation Decision No. 1 of 1990)

In this case, using its dominant bargaining position vis-a-vis designated manufacturers (which had signed basic sales contracts with the federation for cardboard boxes used for greengroceries), the federation demanded that the designated manufacturers pay cash needed to cover the difference between the federation price and the lower price offered by non-federation distributors in the area where such a sales promotion took place, and thereby prevented the users from buying cardboard boxes at lower prices through non-federation distribution routes. This was found to constitute General Designation Article 14, Item 2, thereby to constitute a violation of Sec. 19.

6-9. (Interfering with a competitor's transaction)

Unjustly interfering with trade between a firm in competitive relationship domestically and one's firm or companies of which one is a stockholder or an officer, and the other party to such transaction, by preventing the formation of contracts, by inducing the breach of contracts, or by any other means whatsoever (General Designation Article 15).

[Specific cases]

The Case against X Trade Association of Sanitary inspectors (FTC Hearing Decision No. 4 of 1979)

In this case, in response to the capturing of the constituent firms' customers by non-constituent firms the association demanded that the non-constituent firms cease such conduct and return the customers to the constituent firms. If the non-constituent firms failed to comply, the association further caused all constituent firms to promote jointly sales to take back customers from the non-constituent firms. The association was found to have caused the constituent firms to engage in conduct constituting former General Designation Article 11, and thereby to have violated Sec. 8 (1) (v).

The Case against Y Cooperative Association (FTC Recommendation Decision No. 8 of 1989)

In this case, within a certain geographical area where the association engaged in the joint selling of ready-mixed concrete, and under the conditions where it was difficult for construction companies to engage in construction activities only through the use of non-association members' ready-mixed concrete, the association demanded that all construction companies using non-association members' concrete switch to use concrete supplied by the association members. Furthermore, the association, by threatening to cut off the supply of the association members' concrete to those construction companies that refused to abide by the association's demands, prevented construction companies from trading with non-association concrete suppliers. This was found to constitute General Designation Article 15, thereby to violate Sec. 19.

## **7. Conduct Relating to Variety, Quality, Standards, etc.**

### **(1) Conduct that restricts variety, quality, standard, etc.**

The variety, quality, standards, and other aspects of goods or services can serve as means of competition among firms. Therefore, any conduct of trade associations that impedes competition by restricting these aspects constitutes a violation of Sec. 8 (1) (iii), (iv), or (v). In addition, any conduct that might substantially restrain competition in a market by, for example, restricting the varieties of goods with the intention of allocating markets (see 3-2 above) constitutes a violation of Sec. 8 (1) (i).

### **(2) Self-Regulation, etc., Self-imposed Certification, Authorization, etc.**

For such purposes as rationalizing production and distribution systems and enhancing consumer convenience, trade associations establish self-regulation standards regarding the variety, quality, standards, and other aspects of goods and services, and establish quality-related self-regulation, self-imposed certification, authorization, and related activities that are necessary for such socially beneficial purposes as preserving the environment or ensuring safety (Notes 1-4). Although there are some instances in which such activities do not pose any particular problems in light of the Antimonopoly Act, depending on their content or manner of activities, such activities can impede competition in terms of the development or

supply of diverse goods or services, and thereby might violate Sec. 8 (1) (iii), (iv), or (v), even if the activity in question takes the form of self-regulation, self-imposed certification, authorization, and so forth, it violates Sec. 8 (1) (i) if it substantially restrains competition in a market.

The judgments as to whether or not self-regulation or related conduct constitutes an impediment to competition under the provisions of Sec. 8 (1) (iii), (iv), or (v) are made on the basis of the considerations outlined in sub-paragraph A below, "judgments concerning Self-Regulation, etc." Similarly, judgments concerning self-imposed certification, authorization, and so forth are made on the basis of the considerations outlined in sub-paragraph B below, "Judgments concerning Self-imposed Certification, Authorization, etc.," in conjunction with the considerations outlined in sub-paragraph A below.

#### A. Judgments concerning Self-Regulation, etc.

The following factors should be considered when judging whether or not a given self-regulation activity constitutes an impediment to competition.

The following factors {1} and {2} are the main criteria for judgment, and the factor {3} is a sub-element that should be taken into account in making a judgment:

- {1} Whether the activity unjustly harms the interests of users by restricting means of competition (Sec. 8 (1) (iv));
- {2} Whether the activity unjustly discriminates among firms (Sec. 8 (1) (iii), (iv) and (v)); and
- {3} Whether the activity is within the necessity rationalized scope to achieve social or other rightful purposes.

To ensure that self-regulation or similar conduct does not constitute an impediment to competition on the basis of the above considerations, an trade association should, when initiating self-regulation activity, carefully hear the opinions of the constituent firms concerned, and, if necessary, exchange views with and hold hearings from knowledgeable third parties, users of the goods or services in question, and others.

In addition, the use and observance of self-regulation and so forth should be left to the discretion of the constituent firms; a trade association's forcing the constituent firm to use or to obey self-regulation and so forth is likely to pose a problem in light of the Antimonopoly Act (Sec. 8-1-4).

#### B. Judgments concerning Self-imposed Certification, Authorization, etc.

With regard to autonomous certification, authorization, and similar conduct, the following will be considered in addition to the factors described in sub-paragraph A above.

- {1} The use of self-imposed certification, authorization, and so forth should be left to the discretion of constituent firms; a trade association's forcing a constituent firm to use self-imposed certification, authorization, and so forth is likely to pose a problem in light of the Antimonopoly Act (Sec. 8-1-4).

{2} Under conditions (Note 5) where it is difficult for a firm to conduct business without receiving self-imposed certification, authorization, and so forth from the association, the association is likely to be in violation of the Antimonopoly Act if it imposes restrictions on a specified firm with respect to the use of said certification, authorization, and so forth without rightful reasons. Therefore, under such conditions, the use of self-imposed certification, authorization, and so forth should open to firms, including non-constituent firms. (Charging a reasonable amount of money from non-constituent firms as payment for expenses related to the use of self-imposed certification, authorization, and so forth, does not pose a problem.) (Sec. 8 (1) (iii), (iv) and (v))

Note 1:

{1} The term "self-regulation and so forth" as used in Category 7 refers to the following activities of an association: establishing, for purposes that the association considers rightful, self-imposed standards or codes concerning the variety, quality, standards, or other aspects of goods or services supplied or received by firms; working to promote the propagation and dissemination of said standards or codes; and making voluntary commitments, giving guidance, or issuing announcements regarding the use or observance of said standards or codes.

{2} The term "self-imposed certification, authorization, and so forth" as used in Category 7 refers to an association's certifying that goods or services supplied or received by firms that comply with self-imposed standards or codes as mentioned in ill immediately above do in fact satisfy the requirements of such standards or codes, and also refers to an association's authorizing a firm to indicate to the public that compliance with said standards or codes has been achieved with regard to the goods or services supplied or received by said firm.

Note 2:

{1} An association may, for purposes that the association considers rightful, engage in the following activities: establish self-imposed standards with regard to technology, technical skills, knowledge and other characteristics associated with technical personnel; work to promote the propagation and dissemination of said standards; make voluntary commitments, give guidance, or issue announcements regarding the use or observance of said standards or codes.

{2} An association may conduct tests and confer qualifications concerning conformance with said standards.

These activities are considered similar to those described above in {1} and {2} of Note 1; therefore, the principles described in Paragraph 7 herein apply.

Note 3: An association may engage in the following activities for purposes that it considers rightful, including safety and sanitation assurance, environment



conservation, and so forth: establish self-imposed standards or codes with regard to the maintenance and management of the constituent firms' facilities and technology content; work to promote the propagation and dissemination of said standards or codes; make voluntary commitments, give guidance, or issue announcements regarding the use or observance of said standards or codes. These activities are considered similar to those described above in {1} of Note 1; therefore, the principles regarding self-regulation, and so forth described in Paragraph 7 herein applies.

Note 4: An association may be commissioned to issue certifications, authorizations, or public announcements with regard to standards with no legal effect that have been established by government agencies and other public organizations. These activities are considered similar to those described above in {2} of Note 1; therefore, the principles regarding self-imposed certification, authorization, and so forth described in Paragraph 7 herein applies.

Note 5: Conditions under which "it is difficult for a firm to conduct business without receiving self-imposed certification, authorization, and so forth, from the association" can arise as in the following example: An association whose constituent firms have an extremely large market share, pursues, under the administrative guidance of the government, such activities as self-imposed certification, authorization, or public announcements with regard to product quality, and actively advertises the activities to users, so that the public-announcement becomes an important factor for users to choose goods.

### (3) Conduct Suspected to Constitute Violations

Based on the views as described in (2) above, the following types of conduct are suspected to constitute violations of the Antimonopoly Act.

#### 7-1. (Restricting the development or supply of specific goods, etc.)

Deciding that the constituent firms should not develop or supply specific types of goods or services (except for the conduct referred to in item 7-6 below) (Sec. 8 (1) (i), (iv))

#### [Illustrative example]

An association agrees that each constituent firm will produce only specific types of goods and will not produce other types of goods

#### 7-2. (Establishing discriminatory self-regulation, etc.)

Establishing or implementing self-regulation and so forth that discriminates against a specified firm or firms (Sec. 8 (1) (i), (iii), (iv), (v))

#### 7-3. (Forcing firms to use or to comply with self-regulation, etc.)

Forcing constituent firms to use or to comply with self-regulation and so forth, or forcing them to use self-imposed certification, authorization, and so forth (except in cases where it is clear that, based on their contents, the self-regulation and so forth would never impede competition) (Sec. 8 (i), (iv))

7-4. (Restricting the use of self-imposed certification, authorization, etc.)

Restricting, without proper justification, a specific firm's use of an association's self-imposed certification, authorization, and so forth, under conditions where it is difficult for the firm to conduct business without receiving said certification and so forth (Sec. 8 (1) (i), (iii), (iv), (v))

[Illustrative example]

Imposing difficult requirements for non-constituent firms or foreign firms as a condition for using the association's certification and so forth, where a government agency issues administrative guidance that specific goods should receive the association's self-imposed certification, authorization, and so forth upon their sales

(4) Conduct in Principle Not Constituting a Violation

Based on the principles as described in (2) above, the following types of conduct in principle do not violate the Antimonopoly Act.

7-5. (Establishing criteria for standardization)

Establishing self-imposed criteria for standardization that serves the interests of users (except for the conduct referred to in 7-2 and 7-3 above)

7-6. (Establishing criteria based on socially beneficial purposes)

Establishing self-imposed criteria concerning such aspects as the variety, quality, or function of goods or services, as are deemed reasonably necessary to achieve socially beneficial purposes such as environment conservation or safety assurance (as long as the standards do not unjustly harm the interests of users; and except for the conduct referred to in 7-2 and 7-3 above)

7-7. (Self-imposed certification, authorization, etc. in relation to criteria for standardization, etc.)

Promoting the propagation and dissemination of self-imposed standards or codes which do not pose a problem in light of the Antimonopoly Act, such as those described in 7-5 and 7-6 above, or applying self-imposed certification, authorization, and so forth concerning conformance with said standards or codes (except for the conduct referred to in 7-3 and 7-4 above)

**8. Conduct relating to the Type, Content, Method, etc. of Business Operation**

(1) Restricting the Type, Content, Method, etc. of Business Operation

The type, content, method, and other aspects of business operations should serve as means of competition among firms. Therefore, any trade association conduct that impedes competition by restricting these aspects constitutes a violation of Sec. 8 (1) (iii), (iv) or (v). In addition, any conduct that might substantially restrain

competition in a market by, for example, restricting sales methods, constitutes a violation of Sec. 8 (1) (i),

(2) Self-regulation, etc.

Also, trade associations may establish self-regulation standards regarding information concerning such matters as the type, content, or method of business operations that is disseminated through public announcements and advertisements for such purposes as making it easier for consumers to select products; such associations also establish self-regulation to achieve socially beneficial purposes such as environment conservation or protection of minors, or to cope with labor problems (see Note). In some cases these activities do not pose any particular problem in light of the Antimonopoly Act. Depending on their content or manner, however, such activities can impede competition in terms of the diversity, content, or method of business operations, and thereby violate Sec. 8 (1) (iii), (iv), or (v). Even if the activities in question take the form of self-regulation, and so forth, it nonetheless violates Sec. 8 (1) (i) if they substantially restrain competition in a market.

The judgments whether or not such self-regulation and so forth constitute an impediment to competition in terms of Sec. 8 (1) (iii), (iv) or (v), are made in accordance with the principles as described in "7. Conduct Relating to Variety, Quality, Contents and etc.", (2), "A. Judgments Concerning Self-regulation, etc." above.

Note: The term "self-regulation and so forth" as used in Paragraph 8 herein refers to the following activities of an association: establishing, for purposes that the association considers rightful, self-imposed standards or codes concerning the type, content, method, or other aspects of business operations engaged in by firms; working to promote the propagation and dissemination of said standards or codes; and making voluntary commitments, giving guidance, or announcing the expected use or observance of said standards or code.

(3) Conduct Suspected to Constitute Violations

Based on the principles as described in (2) above, the following types of conduct are suspected to constitute violations of the Antimonopoly Act.

8-1. (Restricting specified sales methods)

Deciding that the constituent firms should not employ specified sales methods (except for the conduct referred to in 8-5 below) (Sec. 8 (1) (i), (iv))

[Specific cases involving violations]

The Case against X Trade Association of Dental Supply Retailers (FTC Recommendation Decision No. 6 of 1987)

In this case, the trade association decided that the constituent firms should not sell dental supplies to non-constituent firms via mail-order methods, and, in order to ensure compliance, forced the constituent firms that had sold such supplies to non-constituent firms to stop it. This was found to constitute a violation of Sec. 8

(1) (iv).

The Case against Y Trade Association of Manufacturers of Records and Other Goods (FTC Recommendation Decision No. 4 of 1980)

In this case, the association decided to force the constituent firms to maintain the resale prices of records and other products. It also decided that the sound sources, prices, and sales promotion activities for those records and other products sold by mail order should be handled so as not to hinder the sale of records and other products through ordinary retail channels. This was found to constitute a violation of Sec. 8 (l) (iv).

The Case against Z Trade Association of Greengrocers (FTC Recommendation Decision No. 26 of 1965)

In this case, the trade association decided: {1} that the constituent firms should not engage in cart peddling (using a cart to sell by walking from place to place) without the permission from the association; and {2} that in case of operating a supermarket the constituent firm should obtain the consensus of other constituent firms in the vicinity. This was found to constitute a violation of Sec. 8 (1) (iv).

8-2. (Restricting the content, media, or frequency of public announcements or advertisements, etc.)

Adopting self-regulations and so forth that restricts the supply of information that helps consumers make correct product choices for example, those that restrict the content, media, frequency, or other aspects of public announcements or advertisements of constituent firms. (Sec. 8 (1) (iv), (i))

8-3. (Establishing discriminatory self-regulation, etc.)

Establishing self-regulation and so forth that discriminates against specified firms (Sec. 8 (1) (iii), (iv), (v), (i))

8-4. (Forcing firms to use or to comply with self-regulation, etc.)

Forcing constituent firms to use or to comply with self-regulation and so forth (except in cases where it is clear that the self-regulation, and so forth based on its contents (see Note), never would impede competition) (Sec. 8 (1) (iv))

Note: Examples of "cases where it is clear that the self-regulation and so forth, based on its contents, never would impede competition" might include a code of ethical practices prohibiting conduct connected with criminal or other undesirable behavior that obviously should not be condoned from a social or ethical perspective.

(4) Conduct in Principle Not Constituting a Violation

Based on the principles as described in (2) above, the following types of conduct in principle do not violate the Antimonopoly Act.

8-5. (Establishing criteria based on socially beneficial purposes)

Establishing self-imposed criteria, concerning such matters as the type, content, or method of business operation, as deemed within the necessity rationalized to achieve socially beneficial purposes such as preserving the environment or protecting minors, or to resolve labor problems (as long as they do not unjustly harm the interests of users; and except for the conduct referred to in 8-3 and 8-4 above)

8-6. (Establishing criteria that make it easier for consumers to choose products)

Establishing self-imposed criteria that make it easier for consumers to make correct product choices, such as criteria that prohibit false or exaggerated statement or advertisements, or that set minimum requirements concerning information that should be included in public announcements or advertisements (see Note) (except for the conduct referred to in 8-3 and 8-4 above)

Note: Concerning items related to public announcements and so forth, a fair competition code system exists that ensures fair competition and prevents firms from unjustly inducing customers.

8-7. (Activities that clarify transaction conditions)

Compiling model contracts, encouraging firms to contract in writing, and pursuing other activities that clarify trade terms, without affecting the actual contents of trade terms (see Note) (except for the conduct referred to in 8-3 and 8-4 above)

Note: "The actual contents of trade terms" refers to specific prices, payment terms, due dates, and so forth.

## **9. Information Activities**

(1) The diversity of Information activities

Trade associations engage in information activities in their respective fields for a variety of reasons. For example, they collect objective information concerning products, technological trends, management expertise, the market environment, statistics concerning industrial activities, legislative or administrative trends, and socioeconomic conditions; and they provide this information to the constituent firms, related fields of business, and consumers, in order to develop an accurate understanding of society's demands on their respective fields of business and to accommodate those demands, to improve consumer convenience, or to understand and introduce the actual conditions in the fields of business concerned. There is a wide range of information activities such as these that do not pose any particular problem in light of the Antimonopoly Act.

(2) Conduct Suspected to Constitute a Violation

However, there are also cases where a trade association's information activities make it possible for competing firms to mutually predict the specific contents of such important competition-related factors as pricing concerning present or future business activities. In consideration of this, information activities of the kind

described in 9-1 below are suspected to constitute violations of the Act.

If an information activity of this kind results in the formation of a tacit understanding or common intent among constituent firms to restrain competition, or if it is used as a means or a method of restraining competition, the case shall in principle be found to constitute a violation of the Act.

That is, if a trade association's information activities lead to restrictive conduct by the association, such as described above in 1-1 (Fixing prices, etc.), 1-2 (Restricting resale prices), 2-1 (Restricting quantities), 3-1 (Restricting customers), 3-2 (Allocating markets), 3-3 (Allocating contracts, predetermining the bidder expected to win a contract, etc.), 4-1 (Restricting the construction or expansion of facilities, etc.), and 5-1 (Restricting entry, etc.), or if they accompany such restrictive conduct, such cases shall, as cited in Paragraph 1 (Conduct that Restricts Prices) through 5 (Conduct that Restricts the Entry of Firms, etc.), be found to constitute a violation of Sec. 8 (I).

In addition, if firms, through information activities by a trade association, formulate an agreement concerning restriction of competition with respect to such matters as price, quantity, customers, sales channels, or facilities, and those firms substantially restrain competition in a market, their conduct shall constitute a violation of Sec. 3.

9-1. (Information activities that specifically concern important competition-related factors)

Collecting or offering information from or to constituent firms, or promoting the exchange of information among the constituent firms, where such information specifically relates to important competition-related factors, concerning the present or future business activities of the constituent firms, such as the following: specific plans or prospects regarding the prices or quantities of goods or services supplied or received by the constituent firms; the specific contents of the constituent firms' transactions with or inquiries from customers; the limits of anticipated plant investment

[Specific cases of violations]

The Case against X Trade Association of Distributors of Petroleum Products (FTC Recommendation Decision No. 9 of 1979)

In this case, at a joint meeting of the trade association's presidents' council (comprised of 66 chief executives of the constituent firms) and sales council (comprised of constituent firms' gas station managers and others of similar rank), the association exchanged information concerning a predicted rise in the purchasing price of gasoline, and also considered various measures, such as raising the retail price of gasoline. Also, at joint executive meetings held with other associations, the association exchanged opinions with regard to future increases in gasoline prices. Based on these discussions, the association, through its implementation committee (comprised of 17 executive committee members), decided upon a price that served as a benchmark for an increase in the retail gasoline prices of the constituent firms. This was found to constitute a violation of

Sec. 8 (1) (i),

The Case against Y and Other Vinyl Tile Manufacturers (FTC Recommendation Decision No. 8 of 1979)

In this case, four companies, at successive meetings that included board meetings of the association to which they belonged, exchanged information concerning market conditions and exchanged opinions regarding the range of selling price increases for vinyl tile market goods as well as the price levels after such increases had been implemented. As a result of further discussions, the companies involved entrusted the task of determining specific prices to Company Y, which served as the head company of the association. Accordingly, Y indicated specific prices for each participating company. Furthermore, each company informed the others of the planned date of implementation of the price increases, and then increased the selling price of market goods. This was found to constitute a violation of Sec. 3.

The Case against Z and Other Manufacturers and Distributors of Paint Emulsions (FTC Recommendation Decision No. 5 of 1988)

In this case, ten companies established a group called Council A in order to facilitate mutual cooperation. For some time, the companies exchanged price-negotiation information at the district meetings of Council A whenever the prices of paint emulsions were revised. In order to cope with a rise in the cost of monomer, a raw material used to make emulsions, at the Council A's central committee, the companies exchanged information concerning the estimated range of the price increase. They then offset the cost increase by increasing the selling prices of their paint emulsions, and also set the standard range of price increase for each type of product. To ensure these price increases, the companies also decided to exchange information concerning the status of price-increase negotiations. This was found to constitute a violation of Sec. 3.

(3) Conduct in Principle Not Constituting a Violation

In contrast to the conduct cited in (2) above, types of conduct such as those described below usually do not have the effect of restraining competition, and therefore in principle do not constitute violations of the Antimonopoly Act.

9-2. (Offering information about products, etc., to the consumers)

Offerings, for purposes of improving their convenience, information concerning such matters as the proper use of products or services supplied in the field concerned to the consumer

9-3. (Collecting and offering information about technological trends, management expertise, etc.)

Collecting and offering general information that concerns such matters as technological trends, management expertise, market environment, legislative or administrative trends, and socioeconomic conditions in the field concerned, and that is provided by government agencies, private research organizations, and so

forth

9-4. (Collecting and disseminating information about past business activity)

In order to obtain and disseminate information on general business performance in the field concerned, collecting, at the discretion of the constituent firms, general information regarding the previous business performance of those firms, including collecting data relating to such matters as the quantities or monetary value of previous production, sales, and plant investment; statistically and otherwise objectively processing such information; and publicly disseminating that information in a rough form, without disclosing the actual quantities or monetary amounts relating to individual constituent firms (except for information concerning prices) (except for the conduct referred to in 1-(2)-3 above)

However, in cases where the constituent firm in question has already publicly announced its specific quantities or monetary amounts, the association may disclose relevant information.

9-5. (Collecting and offering price-related information to users)

For the purpose of providing users and the constituent firms information concerning previous prices, collecting, at the discretion of the constituent firms, general information about those firms' previous prices; statistically and otherwise objectively processing such information; deriving an accurate indication of price distributions and trends; and offering such general information to the constituent firms and users without disclosing the prices of individual constituent firms (except for the conduct referred to in 1(2)-3 above, and except for giving any common standards regarding current or future prices)

9-6. (Offering informational materials regarding quality and so forth of products or services whose prices are difficult to compare)

Offering the constituent firms and users informational materials, or materials concerning technical standards, that enable fair and objective comparisons of price-related matters such as expense items, degree of difficulty of operation, and quality of goods or services whose prices are difficult to compare in the market (except for giving any common standards regarding prices)

9-7. (Formulating and disseminating rough forecasts of demand)

Collecting and offering general information concerning overall demand trends in the field of business concerned; or formulating and disseminating rough forecasts of demand, based on objective facts (except for giving common specific standards concerning future quantities of supplies of the constituent firms)

9-8. (Collecting and offering information concerning customers' credit standings)

Collecting and offering to the constituent firms objective information concerning the credit standings of customers, for the purpose of ensuring safe transactions by the constituent firms (except for the making of agreements among constituent firms either not to deal with specified firms or to deal exclusively with specified firms [see



Note)

Note: For example, compiling and distributing a list of specific firms with a financial rating of each firm either inferior or superior (including so-called black list) might cause the formulation of such agreements among constituent firms.

## **10. Management Guidance**

### **(1) The Nature of Management Guidance**

Because small and medium-scaled enterprises (SMEs) have relatively insufficient managerial knowledge, trade associations comprised of SMEs may provide management guidance that will help those constituent firms to improve their business operations on their own decisions. Such guidance in principle does not pose a problem in light of the Antimonopoly Act.

### **(2) Conduct suspected to Constitute a Violation**

However, a trade association's guidance activities such as described below, which provide firms with specific common standards concerning prices and other important competition-related factors connected with present and future business activities, are suspected to violate the Act, even if the activities take the form of management guidance.

If a trade association's guidance leads to restrictive conduct by the trade association, such as that as described in 1-1 (Fixing prices, etc), or if it accompanies such restrictive conduct, the case shall, as cited in 1 (Conduct that Restricts Prices) and so forth, be found to constitute a violation of Sec. 8 (1).

#### **10-1. (Providing cost accounting guidance by publishing uniform make-up standards, etc.)**

Providing guidance regarding computation or cost accounting through such methods as indicating the average cost, uniform make-up standards, and so forth; or indicating standard quantities, or working amounts and so forth, accompanied by the unit prices of required materials associated with goods or services supplied by the constituent firms

[Specific cases of violations]

The Case against X Trade Association of Propane Gas Wholesalers (FTC Recommendation Decision No. 17 of 1965)

In this case, because it had been discovered that a majority of the part-time propane wholesalers belonging to the trade association had been computing the selling price of propane gas without using proper cost accounting on security and depreciation costs, the association formulated a standard cost-accounting table and directed constituent firms to sell at a price that included estimated fixed amounts for operating expenses and profits. Thus, by adding these fixed amounts to the purchase price of the gas, the trade association decided the standard wholesale prices of propane gas sold to retailers and used in home and businesses. This was found to constitute a violation of Sec. 8 (1) (i).

(3) Conduct in Principle Not Constituting a Violation

In contrast so the activities described in (2) above, management guidance of the types cited below, which are engaged in by associations comprised of small and medium-scaled enterprises and which do not affect competition among them, does not in principle violate the Antimonopoly Act.

10-2. (Disseminating general management knowledge and providing technical-skills training)

Disseminating general knowledge concerning management and providing technical-skills training

10-3. (individualized management guidance)

In response to a request from constituent firms, providing management guidance tailored to the actual management conditions of individual firms

10-4. (Formulating general methods for cost accounting, etc.)

Formulating general methods that list standard items for cost accounting or computation, and providing general guidance or instruction concerning these methods (except for providing firms with common standards for prices)

**11. Joint Undertakings**

(1) The Diversity of Joint Undertakings

Trade associations sometimes engage in activities that have the characteristics of joint activities by the constituent firms (hereinafter referred to as "joint undertakings"). There are types of these activities that either serve to promote competition or that have no direct impact on competition. These include: joint undertakings carried out by a legally established cooperative association, comprised of small and medium-scaled firms that cannot successfully compete against large companies by themselves, that was formed for the purpose of forming an effective competitive unit; and joint undertakings, carried out by an association, concerning social, cultural or other types of activities not directly related to the main line of business of constituent firms. At the same time, however, an association engaging in joint undertakings has the potential to become a business operator in the field concerned, and thereby to affect competition in a market; and it also has the potential to restrict the business activities of individual constituent firms. Therefore, depending on their content and form, such joint undertakings might violate Sec. 8 (1) (i), (iii), (iv), and (v), as well as Sec. 19.

(2) Basic principles

Judgments as to whether or not a trade association's joint undertakings pose any problem in light of the Antimonopoly Act will be made through overall consideration of the factors listed in A, through C. below.

A. The Content of Joint Undertakings

Consideration will be given to whether or not the joint undertakings have an impact on competition-related factors such as the price or quantity of the goods or services in question.

For example, the joint sale, joint purchase, or joint production of goods or services can determine, with regard to the process of the joint undertakings, important competition-related factors relevant to the undertakings such as price, quantity, or choice of customer; therefore, these types of joint undertakings are more likely than other types of joint undertakings to pose a problem in light of the Antimonopoly Act.

On the other hand, joint undertakings relating to transport or storage, where such activities are incidental to a firm's main business, are in themselves expected not to affect the intrinsic price or quantity of goods, or the choice of customers, and are therefore less likely than the type of joint sales and so forth described above to pose a problem in light of the Antimonopoly Act. However, care must be taken to ensure that such undertakings do not result in restrictions on competition-related factors such as price, quantity, customers, or sales channels in relation to goods associated with constituent firms.

In contrast to the above, joint undertakings such as the following, which have little impact on competition in a market, in principle do not pose a problem in light of the Antimonopoly Act: public relations activities designed to promote general understanding of a given business Held overall; welfare work; or social and cultural activities (Sec. 8 (1) (i), (iv)).

#### B. The Total Market Share of Firms Participating in Joint Undertakings, etc.

If the total market share of the firms participating in joint undertakings is large, or if the firms otherwise are, as a group, in a position to influence the market, their joint undertakings are more likely to pose a problem in light of the Antimonopoly Act. Conversely, if the total market share of the participating firms is low, or if the firms, as a group, are not in a position to influence the market, their joint undertakings are less likely to pose a problem in light of the Antimonopoly Act (Sec. 8 (1) (i), (iv)).

#### C. The Manner of Execution of Joint Undertakings

If a trade association forces its constituent firms to participate in or to use joint undertakings, or if it discriminates among firms with regard to their participation in or use of such undertakings, the association's activity might pose a problem in light of the Antimonopoly Act (Sec. 8 (1) (i) (iii), (iv), (v), and Sec. 19).

### (3) Conduct Suspected to Constitute a Violation

On the basis of the basic principles described in (2) above, the following types of conduct are suspected to constitute violations of the Antimonopoly Act.

#### 11-1. (Joint sale, etc.)

Jointly selling, purchasing, or producing goods or services (except for the conduct

referred to in 11-4 below) (Sec. 8 (1) (i), (iv))

[Specific cases involving violation]

The Case against X Trade Association of Concrete Block Manufactures (FTC Recommendation Decision No. 1 of 1995)

In this case, the trade association decided to implement a joint-sale business that included the following conditions: {1} the association would buy up and sell all concrete blocks for engineering works handled by the constituent firms; and {2} the number of concrete blocks the association would buy from each constituent firm was allocated on a monthly basis in terms of the proportion of each firm's shipments, as decided by the association. This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Y Trade Association of Tissue Paper Manufacturers (FTC Recommendation Decision No. 14 of 1969)

In this case, the trade association established trademark "A" for the brown tissue paper it sold through joint sales, and decided that the constituent firms should not sell "A" tissue paper outside the association and manufacture any brown tissue paper other than "A" goods. The association then established limits on the amount and selling price of the tissue paper purchased from the constituent firms, and furthermore bought up and sold all tissue paper entering its business area from outside sources. This was found to constitute a violation of Sec. 8 (1) (i).

The Case against Z Trade Association of Platemakers of Engraving Rubber for Printing Applications (FTC Recommendation Decision No. 8 of 1968)

In this case, the trade association engaged in the joint purchase of raw materials used by the constituent firms to manufacture rubber plates for printing applications. Enjoying complete control of the supply of the materials within its business area, the association decided that the constituent firms should buy them exclusively from the association so that non-constituent firms could not enter the market. This was found to constitute a violation of Sec. 8 (1) (iv).

#### 11-2. (Joint transport and joint storage)

Affecting the price or quantity of goods, or the constituent firms' choice of customers, while implementing joint-transport or joint-storage operations (Sec. 8 (1) (i), (iv))

#### 11-3. (Forcing participation in joint undertakings, etc)

Forcing the constituent firms to participate in or to use joint undertakings, or discriminating against firms with regard to their participation in or use of such undertakings (Sec. 8 (1) (i), (iii), (iv), (v) and Sec. 19)

#### (4) Conduct in Principle Not Constituting a Violation

On the basis of the basic principles described in (2) above, the following types of conduct in principle do not violate the Antimonopoly Act (except for the conduct referred to in 11-3 above).

11-4. (Joint undertakings by firms with a small collective market share)

Joint undertakings by firms whose collective market share of the goods or services is too small to have any impact on competition in a market

11-5. (Joint undertakings to enhance customer convenience)

Operating joint parking lots to enhance customer convenience or establishing joint exhibition facilities to promote industry-wide sales

11-6. (Joint undertakings that have little impact on competition)

Joint undertakings, including public relations activities designed to promote general understanding of the field of business overall, welfare work, or social and cultural activities, that have little impact on competition in a market

**12. Conduct relating to Public regulations, Administration, etc.**

The public regulations have been made against private firms for a variety of reasons, for example, socially beneficial purposes such as the health and safety assurance and the environment conservation, and purposes for rectifying the capital allocation with regard to goods or services for which market mechanisms do not effectively function. Such restrictions on the business activities of firms, however, can also have the effect of imposing certain restrictions on competition among firms.

Even in cases where the public regulations are needed for the realization of a certain policy goal, it is important to minimize the restrictive effects of such regulations on competition, and to leave as much room as possible to ensure function of competition. If a trade association restricts competition among firms in the regulated fields, those activities will pose a problem in light of the Antimonopoly Act. In cases where public regulations are relaxed or abolished, free competition among firms should be restored to the extent of such relaxation or abolishment. Therefore, it goes without saying that any attempt by a trade association to restrain competition in such fields will also pose a problem in light of the Antimonopoly Act.

It is worth noting that, when government agencies commission a trade association to undertake public works, the association, in undertaking such works, has the potential to engage in such conduct as discriminatory treatment, and that such conduct might pose a problem in light of the Antimonopoly Act.

In the process of exercising their administrative functions, government agencies sometimes provide administrative guidance to trade associations and they act on the basis of that guidance. However, it is worth noting that, even when such guidance is considered necessary for smooth functioning of governmental administration, it is possible that the guidance will lead to activities on the part of the association that restrain competition, depending on the content or method of the guidance, as well as on the content or manner of activities undertaken by a given association on the basis of that guidance.

(1) Restrictive Conduct Concerning Approval, Permission, Notification, etc.

Public regulations sometimes require firms to obtain approval or permission, or to

comply with procedures concerning notification or other requirements before business activities may be undertaken. Under such conditions, if a trade association engages in the following types of conduct that restrict prices, facilities or other matters relating to the constituent firms, and that thereby substantially restrain competition in a market, the association will be found to violate Sec. 8

(1) (i). Even if such conduct as the following does not lead to the substantial restraint of competition in a market, the association will nonetheless in principle be found to violate of Sec. 8 (1) (iv).

It should also be noted that under approval or notification systems the activities of trade associations likely lead to restrictive activities of this kind such that applications or notifications agencies by firms are submitted to government in a single bundle by associations, or when the firms are forced to submit via such associations.

#### 12-1. (Restricting applications for approval, etc.)

Restricting the content of applications for approval or notifications that relate to the business operations of the constituent firms

[Specific cases]

The Case against X Trade Association of Taxi Operators (FTC Recommendation Decision No. 16 of 1982)

In this case, the association decided what should be the content of applications submitted by constituent firms with regard to increasing taxi fares, and made the said firms submit applications that complied with that decision. This was found to constitute a violation of Sec. 8 (1) (iv).

The Case against Y Trade Association of Bus Companies (FTC Recommendation Decision No. 9 of 1989)

In this case, concerning applications for approval to change operating plans so that the number of chartered buses could be increased, the association limited the number of additional vehicles for which applications could be submitted, and made the constituent firms submit applications that complied with that decision. This was found to constitute a violation of Sec. 8 (1) (iv).

The Case against Z Trade Association of Taxi Operators (FTC Recommendation Decision No. 4 of 1981)

This case, concerning applications for approval to change operating plans so that the number of taxis could be increased and so that operating facilities could be either constructed or moved, the association decided that all such applications shall be discussed in advance at the association's headquarters. Based on these discussions, the association further decided the number of additional vehicles that each constituent firm could apply for, and decided, on a case-by-case basis, whether or not it was acceptable for each constituent firm to apply to build or to move its operating facilities. This was found to constitute a violation of Sec. 8 (1) (iv).

12-2 (Fixing, within a range of approved fees, the amounts of fees to be received, etc.)

In cases where the constituent firms have the right to set their fee within an approved range between maximum and minimum fees (hereinafter referred to as an "approved range of fees"), deciding the amount of the fees to be received by the constituent firms or deciding to maintain or to raise fees within that range.

[Specific cases]

The Case against X Trade Association of Bus Companies (FTC Recommendation Decision No. 9 of 1989)

In this case, bus operators were allowed to freely set their fares for chartered buses within 15 percent above or below from the standard fare approved by government agency. Under these conditions, the association decided the minimum fares that had to be charged by the constituent firms for bulk transport with chartered buses. This was found to constitute a violation of Sec. 8 (1) (i).

12-3. (Fixing the amounts of fees to be received at the level lower than the approved fees)

In cases where the transactions in which the actual transaction fee is below the minimum level of the approved range of fees, or below the fixed amount when approved fees have been established with such a fixed amount, have been conducted peaceably and openly on a constant basis, and in spite of such circumstances, no legally effective measures have been taken against such conduct by the competent authorities for no short period of time, deciding the amount of the fees to be received by constituent firms or deciding to maintain or raise fees to a level lower than the minimum or a specified fee that has been approved.

12-4. (Fixing the amounts of fees to be received, where notification, etc. is required)

Fixing, maintaining, or increasing the amounts of fees to be received by the constituent firms and for which notification or display is required under public regulation

[Specific cases]

The Case against X Trade Association of General Travel Agents, etc. (FTC Recommendation Decision No. 13 of 1991)

In this case, the Travel Agent industry Law stipulated that travel agents shall display the handling charges received from travelers using their services and that the agents were prohibited from charging more than the amounts displayed. In actual practice, however, many travel agents had been charging less than the displayed fees for their services, or had been charging no fee. In response to this situation, the association decided to set a goal of charging fees to travelers as displayed, indicated this intention to its constituent firms, and notified them that when they received handling fees they should use an itemized statement showing the amount of receipt equivalent to the displayed amount. This was found to be in violation of Sec. 8 (1) (iv).

(2) Restricting Business Activities That Are within the Regulated Fields but Not Directly Subject to The Regulation

While the business field itself is subject to public regulation, prices and certain other important competition-related factors are not subject to public regulation. With regard to such factors if an association engages in restrictive activities such as those described in 1-1 (Fixing prices, etc.) above, it will be found to be in violation of Sec. 8 (1), as described in Paragraph 1 (Conduct that Restricts Prices) and elsewhere (see illustrative example {1} below). The same principle applies to restrictive conduct in business fields for which public regulations have been relaxed or abolished (see illustrative example {2} below).

[Illustrative examples]

{1} Despite the fact that there are regulations regarding the entry of new firms and the construction of facilities, but not regarding fees in a certain business sector, the association in question decides the fees for services provided by its constituent firms, based on information exchanged among those firms.

{2} Despite the fact that public regulations regarding fees for services provided have been abolished and the fee setting is liberalized for constituent firms, the association in question decides the fees for service provided by its constituent firms, based on past practices or on information exchanged among those firms.

(3) Conduct that Constitutes a Violation with Regard to Commissioned Public Work, etc.

When a government agency commissions a trade association to carry out certain works for the implementation of public projects (hereinafter referred to as "public work"), that association is possibly to engage in conduct, including discriminating treatment against certain firms, that might pose a problem in light of the Antimonopoly Act. Specific cases involving this type of violation are as following.

In addition, when a government agency provides administrative guidance that requires a firm to join an association or to receive an association's approval before it plans to enter a market, the administrative guidance in itself should be deemed to cause problems in light of the Antimonopoly Act. In such cases, an association is possibly to engage in conduct that might pose a problem in light of the Antimonopoly Act regarding the approval of membership by a association or its entry into a market. Specific cases involving this type of violation are also described below.

12-5. (Unjustly restricting business activities that accompany public work, etc.)

Using unfair trade practices, such as imposing conditions that unjustly restrict the business activities of particular firms, when conducting association's activities that accompany public work (Sec. 19)

[Specific cases]

The Case against X Cooperative Association (FTC Hearing Decision No. 1 of 1978)

In this case, the association lent money to cooperative members on the basis of the



Law concerning the Fund for Subsidizing Agricultural Modernization. Without proper justification, however, upon granting such a loan the association attached conditions that the members of cooperative refrain from buying agricultural machinery from any of the association's competitors. This was found to constitute former General Designation No. 7, and thereby to constitute a violation of Sec. 19.

12-6. (Restrictive conducts concerning the implementation of public work, etc.)

Unjustly restricting the entry of specific firms into a market, forcing firms out of a market, or unjustly restricting the functions or activities of the constituent firms, by practicing discriminatory treatment against specific firms, including non-constituent firms, in the course of implementing public work or making decision regarding the acceptance of joining the trade association or entering a market, in accordance with administrative guidance issued by a government agency. (Sec. 8 (1) (i), (iii), (iv))

[Illustrative examples]

- {1} In accordance with certain governmental administrative guidance, only firms that have signed contract of surety ship with the association are permitted to provide services to certain government agencies. Without a rational reason, the association refuses to sign contracts of surety ship with non-constituent firms, thus restricting their entry into the business of supplying the said services.
- {2} In accordance with the governmental administrative guidance, a firm seeking to build a new store is required to ask for consent of the association's regional committees. Without a rational reason, a regional committee of the association refuses to consent to the firm, thus restricting the firm's entry into business.
- {3} In accordance with the governmental administrative guidance, a firm is required to ask for consent of the association when applying for public financing for facility investment. Under these conditions, the association unjustly restricts the content of the facility investment proposed by the constituent firms in giving its consent.

(4) Conduct Caused by Administrative Guidance

Government agencies sometimes provide trade associations with administrative guidance in order to realize certain public-policy goals. However, even when an association's activities are caused by governmental administrative guidance, this will not hinder the application of the Antimonopoly Act.

The basic principle of the Antimonopoly Act with regard to administrative guidance is clarified in *Interpretations Concerning Administrative Guidance under the Antimonopoly Act* (published on June 30, 1994). Based on these principles, the FTC will, as necessary, consult in advance with concerned government agencies in cases where administrative guidance relating to an association's activities might cause problems in light of the Antimonopoly Act.

(5) Bid-rigging

In the case of an association whose constituent firms are participating in a public bid, the association's predetermining an expected winning bidder, the minimum bid price, or other aspects concerning the bid will be considered bid-rigging. Such conduct undermines the purpose of the bid system and violates the provisions of the Antimonopoly Act.

For more information concerning the basic principles of the Antimonopoly Act regarding the bidding activities of firms and trade associations, see *The Antimonopoly Act Guidelines Concerning the Activities of Firms and Trade Association in Relation to Public Bids* (published July 5, 1994).

(6) Expressing Demands or Opinions to National or Regional Governments, etc.

Trade associations may express their general demands or opinions to national or regional governments concerning the content of laws or systems or the way these are applied. Such expression does not in itself pose a problem in light of the Antimonopoly Act.