

Guidelines on Administrative Investigation Procedures under the Antimonopoly Act (Tentative Translation)

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Introduction

From the perspective of further ensuring the appropriateness of administrative investigation procedures ^(Note 1), the Japan Fair Trade Commission (“JFTC”) decided to ensure that standard steps and key points to note in the JFTC’s administrative investigation procedures are clarified in the Guidelines, taking the past practices into account, and inform the Guidelines to officers engaged in administrative investigations of alleged antitrust cases (hereinafter referred to as “Case Investigations”). In addition, from the same perspective as above, in order to enhance transparency of the JFTC’s investigation procedures and contribute to the smooth implementation of Case Investigations, the JFTC decided to formulate and publish the Guidelines so that their content is shared widely among the public. ^(Note 2)

(Note 1) The JFTC’s investigation procedures for alleged antitrust cases are classified into two categories: administrative investigation procedures (procedures taken to investigate alleged antitrust cases potentially subject to administrative measure such as a cease and desist order, etc.) and compulsory investigation procedures (procedures taken to investigate alleged antitrust cases potentially subject to prosecution seeking criminal punishment). Of the above two procedures, the Guidelines are designed to cover the JFTC’s administrative investigation procedures.

(Note 2) In line with the formulation and publication of the Guidelines, reference material about the standard steps etc. in implementing the JFTC’s administrative investigation procedures for alleged antitrust cases that has been prepared for companies and other parties taking into account the content of these Guidelines (“Overview of Administrative Investigation Procedures for Alleged Antitrust Cases” [the JFTC, December 25, 2015]; hereinafter referred to as the “Reference Material for Business, etc.”) has been published.

I. General remarks

1. Purpose of the Antimonopoly Act and mission of the JFTC

The purpose of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter referred to as the “Antimonopoly Act”) is to promote fair and free competition and secure the interests of general consumers and thereby promote the democratic and wholesome development of the national economy by prohibiting private monopolization, unreasonable restraint of trade and unfair trade practices, etc. and eliminating unjust restrictions on business activity and taking other measures.

To achieve the purpose of the Antimonopoly Act, the JFTC was established and is expected to implement the Antimonopoly Act, which is the basic rule of the market, strictly and properly, and take measures to recover fairness of competition in the market quickly.

To clarify whether the Antimonopoly Act is violated or not and to issue an order to take necessary measures to eliminate violations, the JFTC is authorized to investigate companies involved in an alleged violation ^(Note 3) and, in its administrative investigation procedures, take measures such as on-site inspection, order to submit documents, retention, order to appear and

to be interrogated, order to report, based on the JFTC's authority with indirect enforcement which indirectly guarantee performance of investigation by punishment, while ensuring the appropriateness of the procedures in accordance with the applicable laws and regulations. In addition, the JFTC conducts Case Investigations by means of interviews, requests to report based on voluntary cooperation from companies involved in an alleged violation.

(Note 3) "Companies involved in an alleged violation" refer to persons concerned with a case such as companies (including sole proprietors), trade associations and their officers and employees suspected to be involved in a violation, as well as witnesses.

2. The JFTC's case investigation system and responsibilities of supervisors

- (1) In accordance with Article 47, Paragraph 2 of the Antimonopoly Act, the JFTC appoints its official as an investigator to investigate cases. At the JFTC, the Investigation Bureau is in charge of Case Investigations, and, the Director General of the Investigation Bureau orders a Director of the investigation division or senior investigator to investigate cases with support from the Deputy Director General of the Bureau. In a case that the Director of the investigation division and senior investigator are in charge of, they instruct and supervise investigators, etc. (meaning investigators and other officials engaged in Case Investigations; hereinafter the same).
- (2) The Director General of the Investigation Bureau, the Deputy Director General, the Director of the Investigation Division, the Senior Investigator (including the Investigation Supervisor at the regional office) are engaged in Case Investigations in accordance with the Guidelines, instruct and supervise their investigators, etc. so that they conduct Case Investigations in accordance with the Guidelines. In addition, if the Director of the Investigation Division, the Senior Investigator, etc. receive, directly or through an agent, from a company involved in an alleged violation a request regarding investigation methods or other opinions on a case they are in charge of, they shall faithfully respond to such request and opinion, provided that they are not bound by such request and opinion.

3. Attitude of JFTC officials engaged in Case Investigations

JFTC officials engaged in Case Investigations shall take note of the following matters when conducting their duties.

(1) Attitude toward Case Investigations

JFTC officials engaged in Case Investigations always keep the purpose of the Antimonopoly Act in mind and conduct Case Investigations steadily with sober judgment and firm conviction to find facts so that the JFTC's mission of enforcing the Antimonopoly Act strictly and properly is fully achieved.

(2) Maintaining discipline, dignity and confidentiality

JFTC officials engaged in Case Investigations shall endeavor to maintain discipline and dignity at all times to secure the confidence and trust of the public and shall not divulge confidential information they acquire in the course of conducting their duties (Article 39 of the Antimonopoly Act).

(3) Compliance with due process

JFTC officials engaged in Case Investigations must be aware that they are in a position of exercising legal authority over companies involved in an alleged violation, and that it is important to ensure the appropriateness of the procedures. In conducting Case Investigations, the officials give necessary explanations about relevant Case Investigation procedures in order to secure the understanding and cooperation of companies involved in an alleged violation. Further, the officials must always exercise the authority by due process of law, without taking an attitude that may be recognized as intimidation, coercion, etc.

(4) Efficient and effective Case Investigations and multi-faceted consideration

JFTC officials engaged in Case Investigations shall sincerely listen to explanations given by companies involved in an alleged violation and endeavor to find the facts through efficient and effective Case Investigations. In addition, to prove facts of an alleged violation, the officials shall endeavor to collect material evidence and an adequate amount of other evidence related to alleged facts, carefully listen to the contents of the statement from testifying parties without any prejudice, and thoroughly consider factors, such as the reasonableness of the statements and their consistency with objective facts so that the officials judge their credibility.

II Case Investigation Procedures

1. On-site inspection

(1) Grounds and legal nature

The JFTC has a power to enter a business office of companies involved in an alleged violation or other necessary sites to inspect conditions of their business operation, and property, books, documents, and other materials in accordance with Article 47, Paragraph 1, Item 4 of the Antimonopoly Act (hereinafter referred to as the “On-site Inspection”). Further, in accordance with the provisions of Item 3 of the same paragraph, the JFTC has a power to order the person who holds books, documents and other objects which are deemed necessary for Case Investigations to submit such materials and a right to retain them at the JFTC.

On-site Inspection and other dispositions under Article 47 of the Antimonopoly Act are indirectly enforceable in a sense that for administrative purposes, companies involved in an alleged violation are bound by the obligation to cooperate with the investigation and the performance of the obligation is guaranteed by punishment (Article 94 of the Antimonopoly Act). Therefore, in the context that punishment may apply, such dispositions are not of a nature that allows companies involved in an alleged violation, on their own discretion, to decide whether or not to cooperate with the investigation, but if the party concerned willingly refuses to accept the investigation, the JFTC is not able to directly or physically exercise its power to conduct the investigation.

It should be noted that companies involved in an alleged violation that refuse to accept the investigation without justifiable reasons may be subject to punishment.

In addition, the JFTC may visit a business office of companies involved in an alleged

violation or other places to request them to, for example, submit materials based on their voluntary cooperation, instead of conducting an indirectly enforceable On-site Inspection under Article 47 of the Antimonopoly Act.

(2) Procedures and explanations given for On-site Inspection

At the time of an On-site Inspection, the investigator shall present its identification card to a person in charge of the place subject to On-site Inspection and then deliver a notification (Section 20 of the Rules on Administrative Investigations by the Fair Trade Commission [Fair Trade Commission Rule No.5 of 2005; hereinafter referred to as the “Investigation Rules”]) that contains provisions that authorize the administrative investigation (Article 47 of the Antimonopoly Act), the title of a case, main point of the alleged fact of violating provision of the Act, applicable provisions of the Act, etc. and make a request for cooperation to ensure smooth implementation of inspection. Further, the investigator shall explain to the person in charge that if the party concerned refuses to cooperate with the inspection, punishment (Article 94 of the Antimonopoly Act) may be imposed. At the same time, the investigator shall deliver the Reference Material for Business, etc. in person.

Note that when an investigator, etc. visits a business office of companies involved in an alleged violation or other places, and makes a request to submit materials with the consent of the party concerned, the investigator, etc. shall first present its identification card, etc. to a person in charge of the place subject to investigation and convey the purpose of the relevant investigation to the person in charge and explain that the investigation is not based on Article 47 of the Antimonopoly Act but on voluntary cooperation from the party concerned, and then conduct the investigation after obtaining the consent of the party concerned.

(3) Scope of On-site Inspection

On-site Inspection is conducted at a place that the investigator reasonably considers to be necessary for Case Investigations, regardless of the name of the place such as the sales department, accounting department, etc. of the company involved in an alleged violation. Thus, even a residence of its employee becomes subject to an On-site Inspection if materials related to alleged violation are suspected to be present there and the investigator reasonably considers it necessary for Case Investigation.

(4) Procedures related to submission and retention of materials

- (i) An order to submit materials is given to the extent that the investigator reasonably considers such materials are necessary for Case Investigations. Thus, the investigator will issue an order to submit even goods that are generally considered highly private, such as personal belongings (day planner, mobile phone, etc.) if such goods are suspected to contain information useful to prove an alleged violation and the investigator reasonably considers it necessary for Case Investigation.

In the case of giving an order to submit, the originals of relevant materials are ordered to be submitted on an as-is basis. As for electronic data stored on a server, client’s PC, etc. (including data such as emails), the investigator will order to be submitted those that are

copied and stored on recording media (including client's PC itself as necessary).

- (ii) When an order to submit materials is given and materials are retained, a list of the retained material shall be attached to a writ of submission and notice on retained materials. (Sections 9 and 16 of the Investigation Rules). Such list shall contain the titles, etc. of accounting books, documents and other materials with the information specified by the locations where they were present, the persons who held or managed them, etc. In the case of retention, the investigator shall show each item to a person in charge, etc. of the site subject to On-site Inspection and all the materials shall be checked against the descriptions in the list.
- (iii) Although it is not recognized as a right of companies involved in an alleged violation to copy materials to be submitted on the day of On-site Inspection, materials that are deemed to be necessary for their daily business activities shall be allowed to be copied as long as it does not affect the smooth implementation of such On-site Inspection. In addition, upon the request of companies concerned, they are allowed to peruse and copy submitted (retained) materials at a place designated by the JFTC on or after the day following the date of the On-site Inspection with a schedule adjusted to the extent that it does not affect the Case Investigation (Section 18 of the Investigation Rules). In adjusting the schedule, the investigator shall take into consideration the opinion of companies concerned so that they can peruse and copy the relevant materials as soon as possible.

Note that not only a copier owned by a company involved in an alleged violation but also a digital camera, scanner or other electronic devices may be used to make copies.

- (iv) Any retained material that no longer needs to be held in custody shall promptly be returned (Section 17 of the Investigation Rules).

(5) Presence of an attorney during On-site Inspection

During an On-site Inspection, the investigator shall have a person in charge of the place subject to an On-site Inspection be present and, upon the request of a company involved in an alleged violation, shall allow its attorney to be present as long as it does not affect the smooth implementation of the On-site Inspection. However, since such presence of an attorney is not recognized as a right of companies concerned, the investigator need not delay the start of an On-site Inspection until their attorney arrives.

2. Interview

(1) Grounds and legal nature

Interviews are classified into voluntary ones and interrogations based on authority with indirect enforcement; voluntary interview are conducted with voluntary cooperation from testifying parties; and in the case of interrogations, in accordance with Article 47, Paragraph 1, Item 1 of the Antimonopoly Act, an order to appear is issued to testifying parties before an interview is taken from them. As for interrogations, a testifying party who fails to appear or make statements without justifiable reasons or makes false statements may be subject to punishment (Article 94 of the Antimonopoly Act).

(2) Procedures and explanations given for interview

(i) Voluntary interview

- (a) As for voluntary interview, the investigator, etc. confirms the schedule of testifying parties, directly or through the company involved in an alleged violation or its agent, makes clear in each case that the interview is based on voluntary cooperation and then obtains the consent of the party before the interview.
- (b) When taking a voluntary interview, the investigator, etc. initially (at the opening of the first session if there are several sessions in the interview) presents its identification card to a testifying parties and explains to them that the interview is taken on a voluntary basis and that even in the case of voluntary interviews, the testifying parties needs to testify facts based on its experience and recognition so that the facts of relevant cases can be found and the purpose of the Act can be achieved. In addition, the investigator, etc. explains as necessary that if the testifying parties do not cooperate with a voluntary interview, an interrogation procedure may be initiated.

(ii) Interrogation

- (a) If in accordance with Article 47 of the Antimonopoly Act, an interrogation is conducted by issuing an order to appear to testifying parties, writ of appearance shall be sent the parties in each case (Section 9 of the Investigation Rules). The writ of appearance shall contain relevant provisions of the Act, the date and place of appearance, and punishment imposed if the testifying parties disobeys the order (Article 94 of the Antimonopoly Act).
- (b) When conducting an interrogation, the investigator initially presents its identification card to testifying parties and explains to them about the legal nature of interrogation (the fact that interrogation is based on Article 47 of the Antimonopoly Act) and that if the party refuses to make statements or makes false statements, punishment (Article 94 of the Antimonopoly Act) may be imposed.
- (iii) At the time of advance notification of voluntary interview or issuance of an order to appear for interrogation, the investigator, etc., directly or through the company involved in an alleged violation or its agent, informs testifying parties of the location of the webpage where the Reference Material for Business, etc. is posted, and if the party does not check the content of such material in advance, the investigator, etc. delivers the Reference Material for Business, etc. to the party in person when the first session of interview is commenced for the party .
- (iv) When taking an interview, the investigator, etc. beforehand and as necessary explains to testifying parties that records may be subject to perusing and copying in procedures for hearing of opinions (under Article 49 of the Antimonopoly Act, etc.) and also explains about the intent and purpose of the viewing and copying system (including the fact that use for other than the intended purpose is not permitted) ^(Note 4).

(Note 4) If companies, etc. that receive a notice of procedures for hearing of opinions may possibly treat employees of the company unfavorably by, for example, imposing disciplinary action against them or take actions such as pursuing retaliation against another company based on the content of records of statement, etc. viewed or copied in procedures for opinion hearing, such treatments and actions fall under “likely to infringe on the interests of a third party or unless there are any other justifiable grounds” (Article 52, Paragraph 1 of the Antimonopoly Act) and the JFTC has a power to refuse

their request for perusing and copying of such records, etc. As seen above, if companies, etc. that receive a notice of the hearing procedures peruse and copy records, etc. and use them for purposes other than the hearing procedures or preparation for litigation against a cease and desist order, etc., such companies are deemed to have used them for purposes other than the intended purpose. Therefore, an application form for viewing and copying contains a sentence pledging that the applicant agrees not to use records, etc. for purposes other than the intended purpose.

(3) Points to note in an interview

- (i) When taking an interview, the investigator, etc. shall not use intimidation, coercion or other means that may cause any suspicion about the voluntariness of interview. In addition, the investigator, etc. shall not induce a statement without good reason by, for example, implying to the testifying parties such statement as the investigator, etc. expects or desires, the investigator, etc. shall not promise to provide benefits in exchange for a certain statement or otherwise use means that may undermine the credibility of statement.
- (ii) Presence of third parties including an attorney during interview (except for an interpreter, attorney, etc. that the investigator, etc. request from a view point of securing the appropriate and smooth implementation of the interview), audio / video recording of the process of taking interview, issuing of copies of records to a testifying parties at the time of preparation of records, and note taking by testifying parties during an interview (excluding brief minute taking by testifying parties as permitted by the investigator, etc. from a perspective of securing the appropriate and smooth implementation of the interview) will create a concern that the JFTC's fact-finding ability could be impaired, and therefore are not permitted.
- (iii) When testifying parties are officers and employees of a company that has reported the facts and has submitted the materials regarding immunity from or reduction of surcharges (Article 7-4, Paragraphs (1) to (4) of the Antimonopoly Act [including when these are applied mutatis mutandis pursuant to Article 8-3 of the Antimonopoly Act following the deemed replacement of terms]), upon the request of the testifying parties, the investigators, etc. shall allow the testifying parties to take notes related to the contents of statements of the testifying parties, and take questions from the testifying parties to the extent necessary for taking notes, on the spot after the interview.

(4) Length of interview and break times

- (i) As a general rule, an interview shall not span more than 8 hours (excluding breaks) per day and if the interview exceeds 8 hours per day, the consent of the testifying parties shall be obtained. In addition, unless there is an unavoidable reason, the investigator, etc. should prevent the interview from continuing until late at night (after 10:00 pm).
- (ii) If an interview continues for long hours, the investigator, etc. shall ensure that testifying parties have a break time appropriately and in a timely manner, considering the party's physical condition, etc.

As a general rule, during the break time, the investigator, etc. shall not impose any restriction on activities of testifying parties, and shall not prevent the testifying parties from making contact with their attorneys and other external persons or taking notes

based on their memories during the break time designated by the investigator, etc. However, for example, in the case of taking interview from multiple parties concerned at times of the same day that are close to each other, if there is a possibility that a testifying party may contact other parties concerned and make arrangement to tell the same story, etc. the investigator, etc. shall accompany the parties concerned during the break time on an exceptional basis.

Further, if there is a relatively longer break time for such as meal, as long as it does not hinder the interview, the investigator, etc. shall properly ensure that during such break time the testifying parties may consult with their attorney, etc. if necessary.

(iii) When taking an interview, the investigator, etc. shall record the length of the interview and break times.

(5) Procedures for preparing records and affixing signatures and seals

(i) When a testifying party makes a voluntary statement, the investigator, etc. shall prepare records of statement, if he/she deems it necessary to do so. In addition, when interrogating a testifying party in accordance with Article 47 of the Antimonopoly Act, the investigator must prepare records of interrogation (Sections 11 and 13 of the Investigation Rules).

(ii) To prove the facts of an alleged violation, the investigator, etc. shall accurately record the content of statements given by testifying party that are related to the relevant case and are deemed necessary, and shall prepare records of statement or records of interrogation, taking into comprehensive consideration various material evidence and statements, etc. that have been collected so far. It is not necessary to record the contents of statements given by a testifying party word by word, as in the case of shorthand notes.

(iii) When preparing voluntary records of statement or records of interrogation, the investigator, etc. shall read out the records to the testifying party or have the party read peruse it and ask the party whether it contains any error in the record. If the party says that there is no error, the investigator, etc. shall have the party affix his/her signature and seal on the records to complete them. If the testifying party makes a request to add, delete or change the statement he/she made, the investigator, etc. shall confirm the intent of the party properly and then record the content as the party requests or modify relevant portions and then have the party affix his/her signature and seal on the records. In addition, if the testifying party refuses to affix his/her signature and seal despite the party saying that there is no error, the investigator, etc. shall write down such fact in the records (Sections 11 and 13 of the Investigation Rules).

3. Order to report

(1) Grounds and legal nature

In accordance with Article 47, Paragraph 1, Item 1 of the Antimonopoly Act, the JFTC has a power to order companies involved in an alleged violation to report information necessary for Case Investigation (hereinafter referred to as the "Reporting Order"). If a company involved in an alleged violation disobeys the order and fails to make a report or makes a false report, punishment (Article 94 of the Antimonopoly Act) may be imposed.

Note that the JFTC may request a company involved in an alleged violation to make a report based on voluntary cooperation from the company, rather than issuing an indirectly enforceable Reporting Order under Article 47 of the Antimonopoly Act.

(2) Procedures for an order to report

If the JFTC issues the Reporting Order to a company involved in an alleged violation in accordance with Article 47 of the Antimonopoly Act, it shall do that by serving a writ of report (Section 9 of the Investigation Rules). A written order to report shall be attached with a report (response) form and contain relevant provisions of the Act, the reporting deadline, and punishment imposed if the company disobeys the order (Article 94 of the Antimonopoly Act).

Note that if the JFTC requests a company involved in an alleged violation to make a report based on voluntary cooperation from the company, it shall, in principle, take measures such as sending documents (e.g., a written request for report containing the reporting deadline, attached with a report (response) form).

4. Motion for objection against measures taken by the investigator and complaint about voluntary interview

If a party who has been subjected to an On-site Inspection, interrogation or other measures taken by the investigator in accordance with Article 47 of the Antimonopoly Act is dissatisfied with the relevant measures, the party may make a motion for objection to the JFTC within one week after the measures were taken by a document stating the grounds. (Section 22 of the Investigation Rules).

In addition, if a party subject to voluntary interview or other parties argue that the language and behavior of the investigator, etc. went against “II. 2. Interview” of these Guidelines during the interview process, such party may make a complaint in writing to the JFTC within one week of the date of the interview.

The investigator, etc. should always exercise his/her authority by due process of law, and is required not to behave in a manner that may cause an objection or complaint. However, should an objection or complaint be made in connection with the investigator, etc., he/she shall faithfully respond to examination of such objection or complaint.

Related Clauses (Excerpts)

Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of April 14, 1947))

(duty to keep secret)

Article 39

The chairman, commissioners and staff members of the Fair Trade Commission and any person who once held such a position must not divulge to others or make surreptitious use of the secrets of enterprises that came to their knowledge in the course of their duties.

(Compulsory disposition for investigation)

Article 47

(1) In order to conduct the necessary investigation with regard to a case, the Fair Trade Commission may take the following measures:

(i) Order persons concerned with a case or witness to appear to be interrogated, or collect their opinions or reports

(ii) Order expert witnesses to appear to give expert opinions

(iii) Order persons holding books and documents and other object to submit such objects, or keep such submitted objects at the Fair Trade Commission

(iv) Enter any business office of the persons concerned with a case or other necessary sites, and inspect conditions of business operation and property, books and documents, and other materials

(2) If the Fair Trade Commission finds it to be appropriate, it may designate a staff member of the Fair Trade Commission as an investigator pursuant to Cabinet Order, and cause the staff member to take the measures set forth in the preceding paragraph.

(3) If the Fair Trade Commission causes a staff member to conduct an on-site inspection pursuant to the provisions of the preceding paragraph, the Fair Trade Commission shall instruct the staff member to carry an identification card and to present it to the persons concerned.

(4) The authority to take measures pursuant to the provisions of paragraph (1) must not be construed as being granted for criminal investigation.

(Hearing pertaining to Cease and Desist Orders)

Article 49

If the Fair Trade Commission seeks to issue an order pursuant to the provisions of Article

7, paragraph (1) or (2) (including when they are applied mutatis mutandis pursuant to Article 8-2, paragraph (2) and Article 20, paragraph (2)); Article 8-2, paragraph (1) or (3); Article 17-2; or Article 20, paragraph (1) (hereinafter referred to as a “cease and desist order”), it shall conduct a hearing of opinions with the would-be addressee of the cease and desist order.

(Inspection and copy of evidence)

Article 52

(1) The party concerned may, between the time when notice of a hearing is given pursuant to Article 50, paragraph (1) and the time when the hearing is concluded, submit a request to the Fair Trade Commission to inspect or copy the evidence proving the facts found by the Fair Trade Commission with respect to the case for hearing (as for copy, only limited to a copy prescribed by the Rules of the Fair Trade Commission as one that was submitted by the said party concerned or its employees or that records the statements of the said party concerned or its employees; hereinafter the same applies in this Article). In such a case, the Fair Trade Commission may not refuse to allow the person to inspect or copy the evidence unless this is likely to infringe on the interests of a third party or unless there are any other justifiable grounds.

(2) The preceding provisions shall not prevent the party concerned from further requesting inspection or copy of the evidence, which becomes necessary in the course of the procedures for hearing.

(3) The Fair Trade Commission may designate the date, time and place for inspection or copy set forth in the preceding two paragraphs.

(Crimes such as obstructing an inspection)

Article 94

A person who falls under any of the following items is punished by imprisonment with work for not more than one year or by a fine of not more than three million yen:

(i) A person concerned with a case or any witness who, in violation of the measures taken against him/her pursuant to the provisions of Article 47, paragraph (1), item (i) or paragraph (2), has failed to appear or to make a statement, or has made a false statement, or failed to submit a report, or submitted a false report

(ii) An expert witness who, in violation of the measures taken with regard to him/her pursuant to the provisions of Article 47, paragraph (1), item (ii) or paragraph (2), has

failed to appear or to give an expert opinion, or submitted a false expert opinion

(iii) A holder of the materials who, in violation of the objects taken with regard to him/her pursuant to the provisions of Article 47, paragraph (1), item (iii) or paragraph (2), has failed to submit the objects

(iv) A person who has refused, obstructed or evaded the inspection pursuant to the provisions of Article 47, paragraph (1), item (iv) or paragraph (2)

Rules on Administrative Investigations by the Fair Trade Commission (Fair Trade Commission Rule No.5 of 2005)

(Measures Taken by Investigator)

Section 9

(1) The investigator shall, when taking the measures as provided for in Section 47 (1) of the Act pursuant to the provision of Section 47 (2) of the Act, take measures by serving the document indicated in each of following paragraphs, according to the classification indicated in each of the paragraphs.

(i) In the case of ordering persons concerned with a case or witnesses to appear for interrogating them; a writ of appearance

(ii) In the case of hearing to present their opinions or collecting reports from the persons indicated in the preceding Paragraph; a writ of report

(iii) In the case of ordering experts to appear for giving expert testimony; a writ of expert testimony

(iv) In the case of ordering persons holding accounting books, documents, and other materials to submit the said materials; a writ of submission

(2) The documents described in the preceding Subsection shall include the following matters, and each leaf of the documents shall bear a seal stamped across both it and the contiguous leaf.

(i) Title of the case

(ii) Name of the party to be served

(iii) Requested matters

(iv) In the case of a writ of appearance or a writ of submission, date and place of appearance and submission

(v) Penal provisions of the Act in the event of default

(3) A writ of submission shall include the materials to be ordered to submit or shall attach the list of the articles of them.

(Record of Interrogation)

Section 11

- (1) The investigator shall, when having interrogated persons concerned with a case or witnesses in accordance with the provision of Section 47 (1) (i) of the Act pursuant to the provision of Section 47 (2) of the Act, prepare the record of interrogation, read it to the deponent or have the deponent peruse it, and ask the deponent if there is no mistake in the record. If the deponent makes a motion for any addition or deletion, the deponent's statement shall be entered in the record.
- (2) When the deponent makes a motion that there is no mistake in the record stipulated in the preceding Subsection, the investigator may ask to sign and seal the record.
- (3) In the case of the preceding Subsection, when the deponent is unable to sign, another person shall sign on behalf of the deponent. When the deponent is unable to seal, the deponent shall be fingerprinted. However, where another person signs on behalf of the deponent, the said person shall state the reason in the record and sign and seal it.
- (4) In the case of Subsection 2, where the deponent refuses to sign and seal the record, that effect shall be entered in the record.

(Record of Statement)

Section 13

- (1) In the case where a person concerned with a case or a witness makes a voluntary statement, when the staff member of the Commission deems it necessary, a record of statement that shall record the statement shall be prepared.
- (2) The provisions of the preceding two Sections shall be applied to the record stipulated in the preceding Subsection.

(Record of Retention)

Section 15

- (1) The investigator shall, when he has retained any submissions in accordance with the provision of Section 47 (1) (iii) of the Act pursuant to the provision of Section 47 (2) of the Act, prepare a record of retention.
- (2) The record stipulated in the preceding Subsection shall incorporate the title of the case, the name, occupation and address or workplace of the owner and the person who provided the retained materials, and the date and place of retention.
- (3) The record stipulated in Subsection 1 shall attach a list of the articles of the retained materials.

(Notice on Retained Materials, and Others)

Section 16

- (1) The investigator shall, when he has retained any submissions in accordance with the provision of Section 47 (1) (iii) of the Act pursuant to the provision of Section 47 (2) of the Act, notify in writing that he retained the said materials to the person who provide the materials.
- (2) The documents stipulated in the preceding Subsection shall attach a copy of the list stipulated in Subsection 3 of the preceding Section.
- (3) A copy of the list stipulated in Subsection 3 of the preceding Section shall, when the owner of the retained materials request, be issued.

(Return or Temporary Return of Retained Materials)

Section 17

- (1) Any retained material that no longer needs to be held in custody shall be returned without waiting for the closure of the case.
- (2) Any retained material may be temporarily returned upon the request of its owner or the person who provided it.

(Peruse and Copy of the Materials to be Ordered to Submit)

Section 18

- (1) A person, who was ordered to submit accounting books, documents, and other materials in accordance with the provision of Section 47 (1) (iii) of the Act, may peruse or copy the said materials. However, where perusing and copying the materials may be to provide a particular trouble in the investigation of a case, the foregoing shall not apply.
- (2) In the case of perusing or copying pursuant to the provision of the preceding Subsection, the investigator shall designate the date and time, place, and method with taking into consideration the opinion of person who was ordered to submit the said materials.

(Notice of Alleged Fact and Others)

Section 20

The investigator shall, when carrying out an inspection in accordance with the provision of Section 47 (1) (iv) of the Act pursuant to the provision of Section 47 (2) of the Act, make available the document stating the following matters for concerned persons.

- (i) Title of a case
- (ii) Main point of the alleged fact violating the provision of the Act
- (iii) Applicable provisions of the Act

(Motion for Objection Against Measures Taken by Investigator)

Section 22

(1) Any person, who was subject to the measures as provided for in any paragraphs of Section 47 (1) of the Act, which was taken by the investigator pursuant to the provision of Section 47 (2) of the Act, may make a motion for objection to the Commission within one week from the day subject to the measure by a document stating the grounds, when being dissatisfied with the said measure.

(2) The Commission shall, when recognizing that there are grounds for the motion for objection, order the investigator to withdraw, cancel, or change the measure against which the motion for objection was made, and notify thereof to the petitioner.

(3) The Commission shall, when having rejected the motion for objection, notify thereof to the petitioner. In this case, the reasons for the rejection shall be given.