



公正取引委員会
Japan Fair Trade Commission

New System under the Amended AMA

Act on Prohibition of Private Monopolization and Maintenance of Fair Trade

Japan Fair Trade Commission (The JFTC)

Past Revisions of the Surcharge System

	Revision in 1977 (Introduction of the surcharge system) (Promulgated in June 1977 and enforced in December 1977)	Revision in 1991 (Promulgated in April 1991 and enforced in July 1991)	Revision in 2005 (Promulgated in April 2005 and enforced in January 2006)	Revision in 2009 (Promulgated in June 2009 and enforced in January 2010)																																																																		
Subjects	<p>Acts subject to surcharges</p> <p>Unreasonable restraint of trade</p> <ul style="list-style-type: none"> Those related to the price Those affecting the price 		<p>Expansion of acts subject to surcharges</p> <ul style="list-style-type: none"> Private monopolization by control Purchasing cartel 	<p>Expansion of acts subject to surcharges</p> <ul style="list-style-type: none"> Exclusionary private monopolization Concerted refusal to deal Unjust low price sales Discriminatory consideration Resale price restriction Abuse of superior bargaining position 																																																																		
Calculation rates	<p>Calculation rates by business type</p> <table border="1"> <thead> <tr> <th></th> <th>calculation rates</th> </tr> </thead> <tbody> <tr> <td>Manufacturing business</td> <td>2%</td> </tr> <tr> <td>Wholesale business</td> <td>0.5%</td> </tr> <tr> <td>Retail business</td> <td>1%</td> </tr> <tr> <td>Other than the above</td> <td>1.5%</td> </tr> </tbody> </table> <p>(Note) Calculation rates are set based on the ordinary profit ratios in the Financial Statements Statistics of Corporations by Industry.</p>		calculation rates	Manufacturing business	2%	Wholesale business	0.5%	Retail business	1%	Other than the above	1.5%	<p>Raising of calculation rates</p> <p>Introduction of reduced calculation rates for SMEs</p> <table border="1"> <thead> <tr> <th></th> <th>In principle</th> <th>SMEs</th> </tr> </thead> <tbody> <tr> <td>Manufacturing business, etc.</td> <td>6%</td> <td>3%</td> </tr> <tr> <td>Wholesale business</td> <td>1%</td> <td>1%</td> </tr> <tr> <td>Retail business</td> <td>2%</td> <td>1%</td> </tr> </tbody> </table> <p>(Note) Calculation rates are set based on the ordinary profit ratios in the Financial Statements Statistics of Corporations by Industry.</p>		In principle	SMEs	Manufacturing business, etc.	6%	3%	Wholesale business	1%	1%	Retail business	2%	1%	<p>Raising of calculation rates</p> <table border="1"> <thead> <tr> <th></th> <th>In principle</th> <th>SMEs (Note 2)</th> </tr> </thead> <tbody> <tr> <td>Manufacturing business, etc.</td> <td>10%</td> <td>4%</td> </tr> <tr> <td>Wholesale business</td> <td>2%</td> <td>1%</td> </tr> <tr> <td>Retail business</td> <td>3%</td> <td>1.2%</td> </tr> </tbody> </table> <p>(Note 1) Calculation rates are set based on the estimated amounts of unjust enrichment from past violations. (Note 2) Not applicable to private monopolization by control</p>		In principle	SMEs (Note 2)	Manufacturing business, etc.	10%	4%	Wholesale business	2%	1%	Retail business	3%	1.2%	<table border="1"> <thead> <tr> <th colspan="2"></th> <th>Manufacturing business, etc.</th> <th>Wholesale business</th> <th>Retail business</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Unreasonable restraint of trade^(Note)</td> <td></td> <td>10% (4%)</td> <td>2% (1%)</td> <td>3% (1.2%)</td> </tr> <tr> <td>Private monopolization</td> <td></td> <td></td> <td></td> </tr> <tr> <td rowspan="2">Private monopolization</td> <td>By control</td> <td>10%</td> <td>2%</td> <td>3%</td> </tr> <tr> <td>Exclusionary</td> <td>6%</td> <td>1%</td> <td>2%</td> </tr> <tr> <td rowspan="2">Unfair trade practices</td> <td>4 categories of Unjust low price sales, etc.</td> <td>3%</td> <td>1%</td> <td>2%</td> </tr> <tr> <td>Abuse of superior bargaining position</td> <td colspan="3">1%</td> </tr> </tbody> </table> <p>(Note) Figures in the parentheses are for SMEs.</p>			Manufacturing business, etc.	Wholesale business	Retail business	Unreasonable restraint of trade ^(Note)		10% (4%)	2% (1%)	3% (1.2%)	Private monopolization				Private monopolization	By control	10%	2%	3%	Exclusionary	6%	1%	2%	Unfair trade practices	4 categories of Unjust low price sales, etc.	3%	1%	2%	Abuse of superior bargaining position	1%		
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Increases and decreases			<p>Repeated violations: Increase by 50%</p> <p>Early discontinuance: Decrease by 20%</p> <p>Introduction of the Leniency Program</p> <ul style="list-style-type: none"> Reduction of or immunity from surcharges for up to 3 enterprises 	<p>Enterprises playing a leading role: Increase by 50%</p> <p>Expansion of the Leniency Program</p> <ul style="list-style-type: none"> Increase of the number of applicable enterprises → Up to 5 enterprises Joint application by enterprises in the same group 																																																																		
Others	<p>Exclusion amount: Less than 200,000 yen</p> <p>Period of exclusion: 3 years</p>	<p>Raising of the exclusion amount: Less than 500,000 yen</p> <p>Limit of the period subject to surcharges: Up to 3 years</p>	<p>Raising of the exclusion amount: Less than 1 million yen</p>	<p>Extension of the period of exclusion: 5 years</p>																																																																		

Developments Leading to the Revision in 2019

Challenges

Under the former surcharge system, surcharges were calculated and imposed uniformly and impartially. Therefore,

- ❑ The JFTC could not consider the degree of the enterprise's cooperation for the JFTC's investigation, when making decisions on the reduction of the amount of surcharges.
- ❑ The JFTC could not calculate or impose an appropriate amount of surcharges according to the nature and extent of the violation.

The direction of the revision

- The AMA was amended to introduce the system which increases the enterprises' incentives for cooperating in the investigation by the Japan Fair Trade Commission, which will promote efficient and effective fact findings and the investigation process by cooperation between the enterprises and the JFTC, and allow the JFTC to calculate and impose an appropriate amount of surcharges according to the complicated economic environments.

Outcome of the revision

- Enterprises and the JFTC will cooperate each other, not standing in opposition, to eliminate the infringements of the AMA.
- The deterrence against infringements will be strengthened by imposing necessary and sufficient surcharges according to the complicated economic environments.

 Promoting fair and free competition will invigorate the economy and enhance consumer interest.

The Amended AMA was enacted on June 19, 2019 (Act No. 45 of 2019, promulgated on June 26, 2019).
Enforced in three stages, on July 26, 2019, January 1, 2020, and December 25, 2020
Additionally, Determination Procedures were newly introduced to ensure effective functioning of the New Leniency Program.

Major Points

□ Introduction of the Reduction System for Cooperation in Investigation

- ✓ Adding the reduction rate according to the degree of the enterprise's cooperation for the JFTC's investigation to the rate according to the order of application
- ✓ Abolishing the limitation on the number of applicants(All the enterprises under the JFTC's investigation have the opportunity to voluntarily cooperate in the investigation)
- ✓ Conferring between an enterprise and the JFTC on the content of enterprise's cooperation and the JFTC's addition of the reduction rate

□ Revision of the Calculation Method of Surcharges

- ✓ The calculation period was extended and the estimation provision which allows the JFTC to estimate the basis of calculation when the part of the amounts of sales is unknown due to the dissipation of relevant documents, etc. was introduced.
- ✓ Prices of closely connected trade and collusion benefits, etc. were added to the basis of calculation.
- ✓ Revision of reduced calculation rates and increased calculation rates

□ Others

- ✓ Extension of the period of exclusion regarding cease and desist orders and surcharge payment orders
- ✓ Lowering the rate of delinquency charges, raising the limit of the amount of fine for juridical person charged with the offence of obstructing the investigation and introducing procedures for gathering electronic record in the investigation of criminal cases, etc.

Methods to make the New Leniency Program more effective

□ Determination Procedures

- ✓ The JFTC has established the procedures to return to the enterprise, without waiting for the closure of the case, the objects recording the contents of the confidential communications between the attorney and the enterprise without the investigators or other staff members engaged in the investigation of the relevant case having access to the contents of the object as long as satisfaction of certain conditions is confirmed (Determination Procedures).

□ Creation of a memo after the hearing of statements

- ✓ Employees, etc. of the applicant for the leniency program may note down on the spot after the completion interview conducted by investigators.