

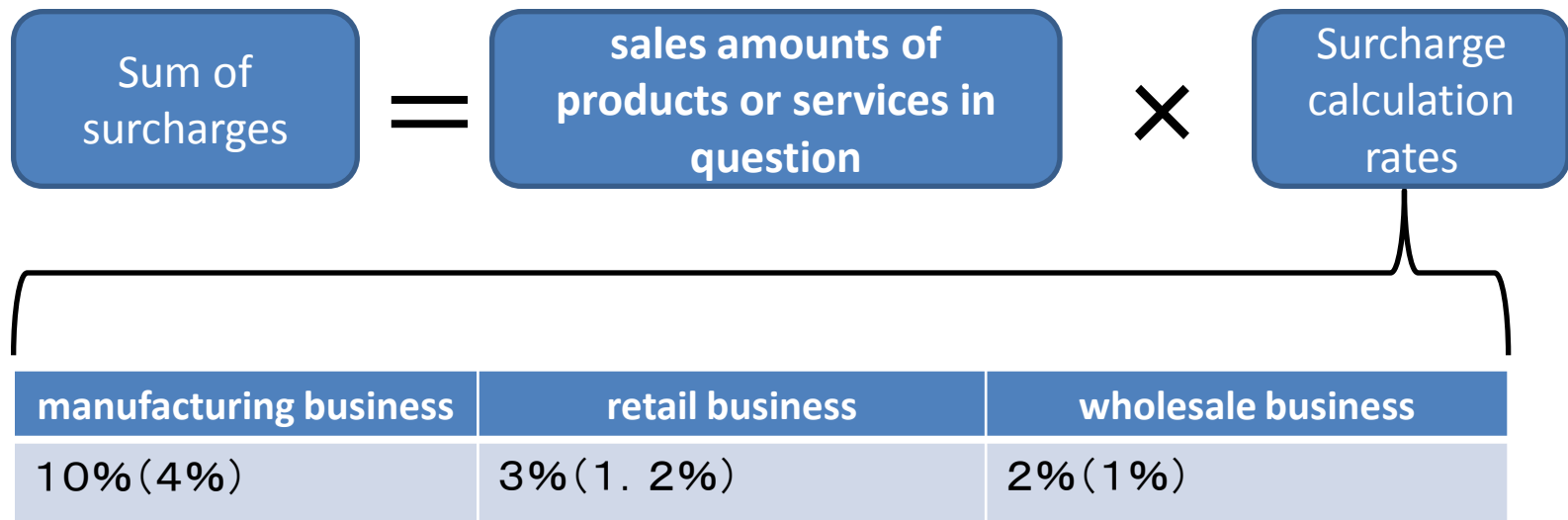
Recent Enforcement Trends of Surcharge Payment Order and Criminal Penalty against Cartel and Bid-Rigging Cases in Japan

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Surcharge Payment Order

- Surcharge payment orders are the administrative measure given to such cases as cartels and bid riggings. Surcharge payment is calculated in accordance with a certain formula and made to the national treasury.



Note: Percentages in parenthesis apply to small and medium-sized enterprises.

Criminal Accusation

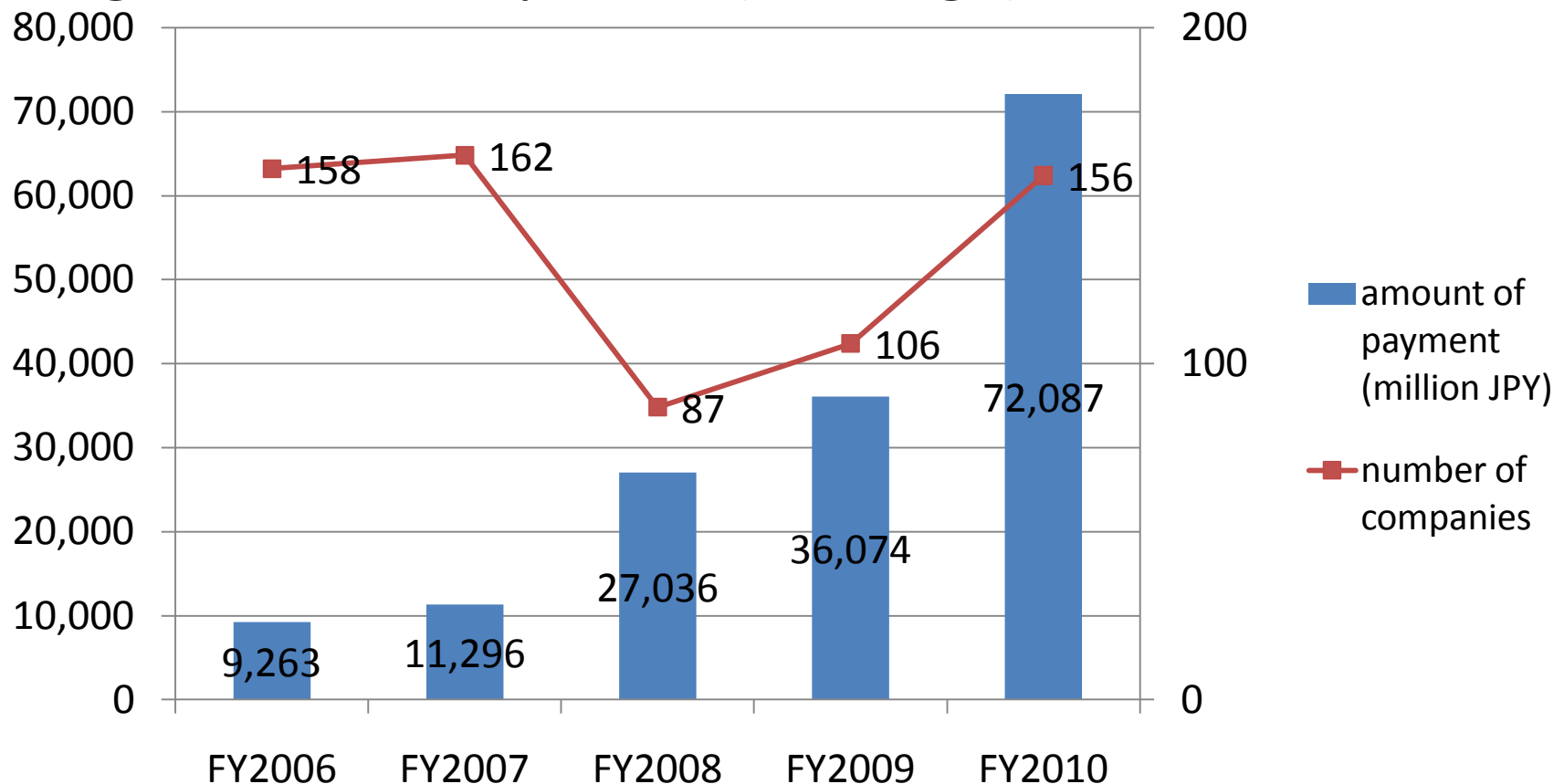
- If enterprises are engaged in cartels, an individual who has decided to carry out such cartels is subject to criminal penalties, and a fine is also imposed on the enterprises.

Individual	Enterprise
Imprisonment with work (not more than 5 years) Fine (not more than 5million yen)	Fine(not more than 500 million yen)

- The JFTC files criminal accusations with the Prosecutor General into vicious and serious cases which would adversely affect the lives of citizens.

Recent Trend of Surcharge Payment Orders

- With respect to surcharge payment orders, the amount of payment in FY2010 was about 72,087 million JPY against 156 companies. (new high)



Criminal Accusation Cases in 1990s

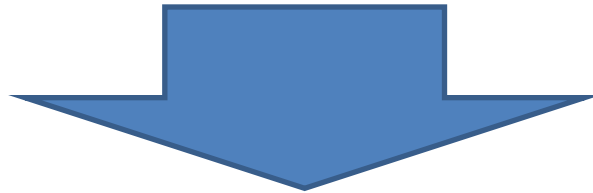
Year of accusation	Respondent	Enterprise	Individual
1991	Mitsui Toatsu Chemicals, Inc and 22 others	6-8 million JPY	Suspended prison term of 6 months to one year
1993	Toppan Moore Co., Ltd. and 3 others	4 million JPY	-
1995	Hitachi, Ltd. and 26 others	40-60 million JPY	Suspended prison term of 10 months
1997	Kimmon Manufacturing Co., Ltd. and 58 others	5-9 million JPY	Suspended prison term of 6 to 9 months
1999	Kubota Corporation and 12 others	30-130 million JPY	Suspended prison term of 6 to 10 months
1999	COSMO OIL Co.,Ltd. and 19 others	3-80 million JPY	Suspended prison terms of 6 months to one and a half years

Criminal Accusation Cases in 2000s

Year of accusation	Respondent	Enterprise	Individual
2003	Aichi tokei denki Co.,Ltd. and 8 others	20-30 million JPY	Suspended prison term of one year to one year and 2 months
2005	Yokokawa Bridge Corp. and 33 others (ordered by Ministry of Land, Infrastructure, Transport and Tourism)	160-640 million JPY	Suspended prison term of one year to 2 and a half years
2005	Yokokawa Bridge Corp. and 12 others (ordered by Japan Road Traffic Information Center)		
2006	Kubota Corporation. and 21 others	70-220 million JPY	Fine of 1.4 - 1.7 million JPY Suspended prison term of one year and 4 months to 2 and a half years
2007	Obayashi Corporation. and 9 others	100-200 million JPY	Suspended prison term of one and a half to 3 years
2007	Japan Forest Engineering Consultants Foundation and 10 others	40-90 million JPY	Suspended prison term of 6 to 8 months
2008	NIPPON STEEL & Sumikin Coated Sheet Corporation. And 8 others	160-180 million JPY	Suspended prison term of 10 months to one year

2005 Amendment of the AMA (1)

- Increasing surcharge rate ;
Manufacturers, etc.: Large-sized enterprises:
6% → 10%
- Imposing a surcharge rate of 150% of the normal surcharge rate on those enterprise that repeat violations that were responsible for the surcharge payment order within 10 years.



The surcharge rate : up to 15%

Case imposed Surcharge Rate of 15%

- Cease and Desist Orders and Surcharge Payment Orders against Manufacturers of Optical Fiber Cable Products (the largest amount of payment in FY 2010; 16,099 million JPY against 14 companies).
- JFTC found that companies engaged in manufacturing and selling optical fiber cable products had been involved in price cartel activities concerning the sales of optical fiber cable products in Japan, and issued cease and desist orders and surcharge payment orders against them (May 2010).

2005 Amendment of the AMA (2)

➤ Introduction of a Leniency Program

- Immunity from or reduction in surcharge payment is applied to enterprises that meet statutory conditions.

e.g. Enterprises committing unreasonable restraints of trade shall voluntarily disclose the existence of violations and provide related information to the JFTC and cease the violation before initiation of an investigation.

1 st applicant before initiation of investigation	Total immunity
2 nd applicant before initiation of investigation	50% deducted
3 rd applicant before initiation of investigation	30% deducted
An applicant after initiation of investigation	30% deducted

Note: The total number of enterprises that may be applied to the leniency program is no more than 3.

➤ Statistics regarding Leniency Program

Budget year	Jan.2006-Mar. 2006	Apr.2006-Mar.2007	Apr.2007-Mar.2008	Apr.2008-Mar.2009	Apr.2009-Mar.2010	Apr.2010-Mar.2011	Total
Application	26	79	74	85	85	–	349
Published [†] leniency applied cases	0	6	16	8	21	7	58
Published [†] leniency applied companies	0	16	37	21	50	10	134

[†] Not all applicants agree to disclose their names and the fact of filing an application for leniency.

2005 Amendment of the AMA (3)

- Introduction of compulsory measures for criminal investigations, etc.
- Compulsory measures for criminal investigation were introduced where a criminal accusation is in being pursued in addition to administrative measures which is indirect compulsory execution.
- Criminal Investigation Department to investigate criminal cases exclusively was established.

2009 Amendment of the AMA (1)

- Increase in Surcharge Rates Applicable to those playing Leading Role
 - Applicable to cartels, bid-riggings
 - Surcharge rates increased by 50 % (e.g., 10 % to 15%)
 - Levied against those that
 - ✓ Originate the illegal scheme, and request other firms to participate in or not to cease from the infringement
 - ✓ Continuously set prices or allocate trade partners, in response to conspirator's request

2009 Amendment of the AMA (2)

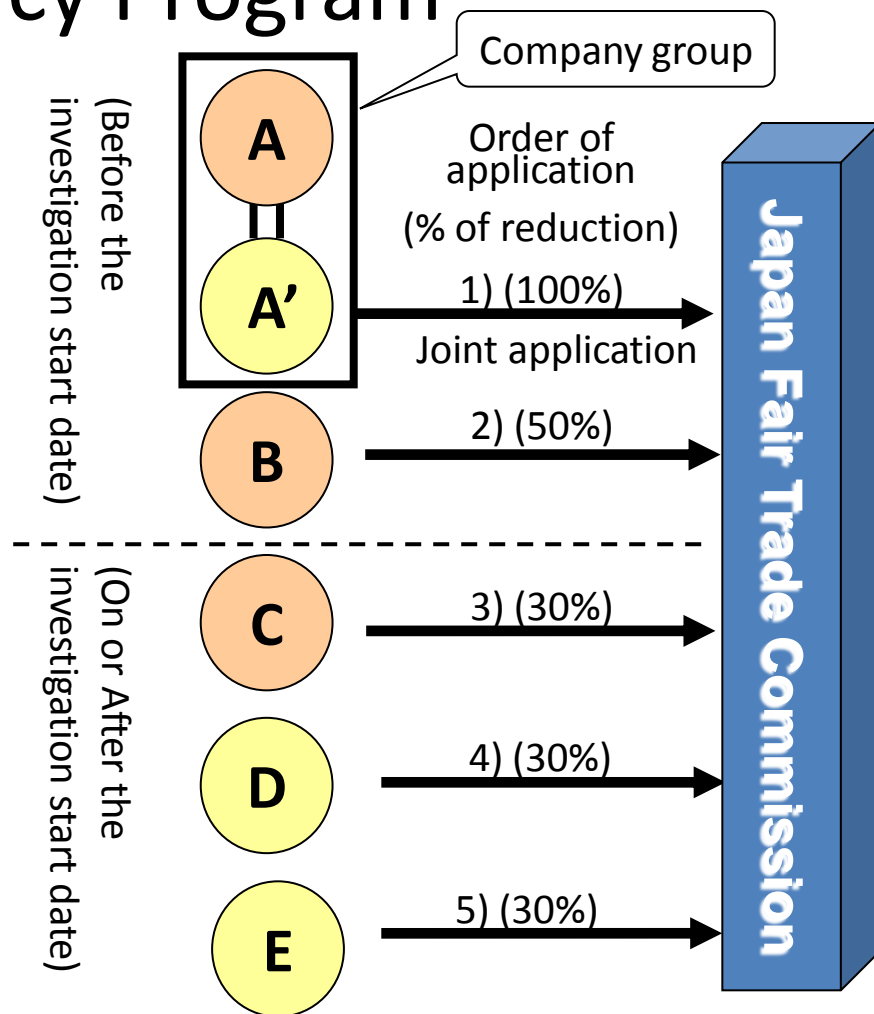
➤ Review of the Leniency Program

◆ Joint Application

Upon certain conditions being met, two or more violators within the same company group will be permitted to jointly file an application for surcharge reduction or immunity. All the applicants will be assigned the same order of application.

◆ Expansion of the Number of Leniency Applicants

A total of 5 (currently 3) violators including before and after JFTC's investigation will be permitted to file an application for surcharge reduction or immunity. (Up to 3 applicants after the investigation start date)



2009 Amendment of the AMA (3)

➤ **Increase in Maximum Jail Term for Cartels and Bid-riggings (3 years to 5 years)**

- There is no end of cartels and bid-riggings, so strengthening deterrence against not only companies, but individuals who actually engage in conspiracy is needed.
- Former maximum term is short compared with those for other white-collar crimes and foreign countries' antitrust penalties.

Act Concerning Elimination and Prevention of Involvement in Bid Rigging by Officials (“Involvement Prevention Act”, 2002)

- The JFTC may demand that the Heads of Ministries and Agencies etc. implement improvement measures on the administration of bidding that is necessary for eliminating the involvement in bid rigging.
- The employees of central or local government who suggested bid riggings or indicated confidential information about bidding will be punished (introduced by 2006 Amendment and come into effect as of 2007).

Major Bid-rigging Cases applied to the Involvement Prevention Act

- Bid-riggings for office furniture ordered by the Air Self-Defense Force of the Ministry of Defense
 - Cease and desist orders and surcharge payment orders were issued in March 2010.
 - In addition, Demand for improvement orders against Minister of Defense were made under the Involvement Prevention Act.
- Bid riggings for engineering work ordered by the City of Aomori
 - Cease and desist orders and surcharge payment orders were issued in April 2010.
 - In addition, Demand for improvement orders against the Mayor of Aomori were made under the Involvement Prevention Act.