

Cease and Desist Order and Surcharge Payment Orders against
Manufacturers and Distributors of Air Separation Gases
(Tentative Translation)

May 26, 2011

Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC), under the provisions of the Antimonopoly Act (AMA), has investigated companies of manufacturing and distributing air separation gases (Note 1), and found that they had engaged in activities that violate Article 3 (prohibition of unreasonable restraint of trade) of the AMA. Accordingly, the JFTC today issued a cease and desist order pursuant to Paragraph 2, Article 7 of the AMA and surcharge payment orders pursuant to paragraph 1, Article 7-2 of the AMA as detailed below.

(Note 1) The term “air separation gases” means oxygen, nitrogen and argon which are manufactured by the air.

1. The violating companies, the number of the cease and desist order and the surcharge payment orders, and the amount of the surcharge.

The violating companies		The amount of surcharge
1	Taiyo Nippon Sanso Corporation	5,144,560,000 yen
2	Air Liquide Japan Ltd.	4,822,160,000 yen
3	Air Water Inc.	3,639,110,000 yen
4	Iwatani Corporation	499,020,000 yen
Total amount of surcharge		14,104,850,000 yen

2. Summary of the violation

The Four companies —Taiyo Nippon Sanso Corporation, Air Liquide Japan Ltd.,

Air Water Inc. and Iwatani Corporation made the agreement, at latest by January 23, 2008, to raise the selling price of specified air separation gases (Note 2) by approximately 10% than at present price from April 1, 2008 and thereby substantially restrained competition in the field of sales of specified air separation gases in Japan, contrary to the public interest.

(Note 2) The term “specified air separation gases” means air separation gases which are distributed by tank truck (except for medical purpose).

3. Summary of the cease and desist order

- (1) The Four Companies shall respectively adopt a resolution at their Board of Directors confirming that
 - a) they have terminated the action in item 2 above,
 - b) each company shall individually determine the selling price of specified air separation gases, without consulting mutually or with any other companies in the future,
 - c) neither company shall exchange information about revision of the selling price of specified air separation gases with each other nor with any other companies in the future.
- (2) The Four Companies shall each notify the measures taken in accordance with item (1) above to other three companies and to manufacturers, their own distributors and customers of specified air separation gases, and shall have such measures thoroughly disseminated to their employees.
- (3) The Four Companies respectively shall not determine the selling price of specified air separation gases through mutual consultation nor in collaboration with any other companies in the future.
- (4) The Four Companies respectively shall not exchange information about their revision of the selling price of specified air separation through mutual consultation nor with any other companies in the future.
- (5) The Four Companies shall respectively take measures necessary to do the following:
 - a) Fully disseminate to their employees the guidelines of activities with regard to compliance with the AMA in relation to sales activities for their own products (Iwatani shall revise and fully disseminate.).
 - b) Implement a regular training program for the staff engaged in sales of specified air separation gases and regular audits by the legal department, with regard to compliance with the AMA in relation to the sales activities for specified air

separation gases.

4. Summary of the surcharge payment orders

- (1) The Four Companies shall respectively pay the amount by August 29, 2011, described in item 1 above (14,104,850,000yen in total).
- (2) Pursuant to Paragraph 7, Article 7-2 of the AMA, 50% higher rate is applied to the sales amount of the violating company who had previously received a surcharge payment order which has become final and binding related to another case within 10 years retroactively from the starting date of this case investigation.