

Report on Fact-Finding Survey on Transactions Involving the Use of Logistics Centers (Overview)

August 8, 2013

Japan Fair Trade Commission

CHAPTER I: SURVEY PURPOSE AND METHOD

1. Survey Purpose

The abuse of superior bargaining position (“ASBP”) was set forth in Article 2, paragraph (9), item (v) of the Antimonopoly Act (“AMA”) and became subject to surcharge payment orders under Article 20-6 of the AMA by the amendment thereof effective as of January 1, 2010. In response to this, the Japan Fair Trade Commission (“JFTC”) developed and published the Guidelines Concerning the Abuse of Superior Bargaining Position under the AMA (“ASBP Guidelines”) on November 30, 2010, from the viewpoint of further securing transparency of law enforcement and improving predictability for businesses. The JFTC has since worked to prevent violations by clarifying the concept of ASBP. The JFTC also has implemented strict law enforcement against cases of violation concerning ASBP, by imposing cease and desist orders and surcharge payment orders.

The JFTC has surveyed areas of trade where cases are observed that may constitute ASBP, so as to identify how trade practices are actually carried out in these areas. In the previous fact-finding surveys, the JFTC found issues concerning “center fees”¹ pointed out by survey respondents, who said “we were not provided with an opportunity to discuss a center fee,” and “the burden of a center fee exceeded the benefits arising from the use of the logistics center.”

Because of the involvement of a logistics center, retailers may request wholesalers or manufacturers (collectively, “suppliers”) to pay a center fee, without even specifying the amount to be paid, the basis for the calculation thereof, and the intended use, etc. thereof; or to pay more than the amount deemed reasonable by suppliers considering the possible direct benefits² that they may obtain from use of the logistics center. Such requests often cause ASBP-related problems that create unreasonable disadvantages for the suppliers. Besides center fees, it has been pointed out that retailers created disadvantages for suppliers in relation to products for which the retailers ordered the suppliers to maintain certain quantities in their logistics center. The retailers imposed on the suppliers terms and conditions of trade for their own unilateral convenience, such as directing the suppliers to store products in excessive quantities or actually ordering quantities considerably lower than the inventory amounts.

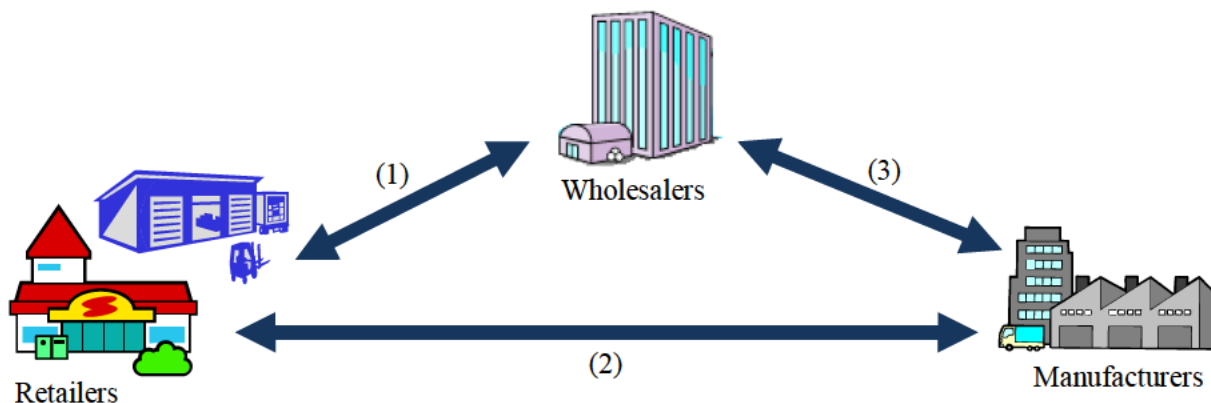
In light of these circumstances, the JFTC decided to conduct this survey focused on transactions involving the use of logistics centers, in order to determine the actual facts concerning such transactions.

¹ A fee that a retailer who operates a logistics center requests wholesalers or manufacturers delivering to its logistics center to pay for using the center. The same shall apply hereinafter.

2. Survey Method

2.1 Written survey

This survey covered three types of transactions: (1) wholesaler-retailer (“WR”) transactions; (2) manufacturer-retailer (“MR”) transactions; and (3) manufacturer-wholesaler (“MW”) transactions.



The JFTC conducted a written survey by sending questionnaires to 2,000 wholesalers and 2,000 manufacturers, each mainly dealing with food or daily sundries, that the JFTC confirmed had reported sales of 1 billion yen or more for the previous year.

Survey questionnaires were also sent to 500 retailers that had undertaken business with any of these wholesalers and manufacturers who the JFTC confirmed had reported sales of 10 billion yen or more for the previous year.

The numbers of businesses to which questionnaires were sent and which responded to the surveys are as follows:

Type of business surveyed	No. of questionnaires sent (A)	No. of responses (B) (B/A)
Wholesalers	2,000	865 (43.3%)
Manufacturers	2,000	857 (42.9%)
Retailers	500	306 (61.2%)

For reference, respondents dealing in food or daily sundries were:

- 462 wholesalers having ongoing direct transactions with manufacturers or retailers
- 509 manufacturers having ongoing direct transactions with retailers or wholesalers
- 259 retailers having ongoing direct transactions with manufacturers or wholesalers.

2.2 Hearing survey

The JFTC conducted a hearing survey on 25 respondents to the written survey who detailed in their questionnaires the requests that they had received from their retailers or their wholesalers.

3. Survey Outline

The survey focused on ongoing direct business-to-business transactions, and aggregated the results. For example, if a wholesaler answered that it had business with three retailers; the wholesaler was deemed to have three transactions.

The survey asked the wholesalers to answer about the top five retailers and manufacturers in terms of food or daily sundry trade volumes with whom the wholesalers had ongoing direct transactions. Likewise, the manufacturers were asked to answer about the top five retailers and wholesalers in trade volume; the retailers about the top five manufacturers and wholesalers in trade volume.

Of the above three types of transactions, type (1) transactions were compiled based on the responses from the wholesalers, while types (2) and (3) transactions were based on those from the manufacturers.

The survey covered:

- Type (1): 1,926 WR transactions
- Type (2): 1,370 MR transactions
- Type (3): 2,130 MW transactions

If transactions were made in multiple product categories between the businesses, the survey asked the respondents to answer on transactions in the product category with the most trade volume.

Products can be categorized as follows:

Divisions	Major categories	Subcategories
Foods	Processed foods	Seasonings, cooking oil, dairy products, prepared food, soup, frozen food, canned food, noodles, bread, processed meats, etc.
	Fresh foods	Aquatic, livestock, agricultural food products, etc.
	Confectionery	Cakes, ice creams, yogurts, etc.
	Drinks/Liquor	Tea & coffee, juice drinks, general soft drinks, milk-based drinks, alcoholic beverages, etc.
Daily sundries	Sundries	Oral hygiene goods, soap, sanitary products, clothing and kitchen detergents, air fresheners and deodorants, etc.
	Cosmetics	Cosmetics, perfumes, hair care products, small cosmetic articles, etc.
	Household products	Food parcel materials, cleaning equipment, washing and drying equipment, kitchen utensils, kitchenware, bathroom and toilet items, etc.
	Do-it-yourself products	Building and painting equipment, building and painting materials, gas and water facility parts, garden supplies, etc.
	Pet products	Products for dogs, cats, aquarium fish, small birds, small animals, insects, reptiles, amphibians, etc.

*According to the JICFS classification codes³

4. Survey Coverage Period, etc.

(1) Date questionnaires sent: February 21, 2013

(2) Response deadline: March 22, 2013

(3) Coverage period: January 1, 2012 to December 31, 2012

CHAPTER II: ASSESSMENTS OF SURVEY RESULTS

1. Practices That May Constitute ASBP

1.1 Summary of survey results

The following table (Figure 1) summarizes the findings of type (1) WR transactions, type (2) MR transactions, and type (3) MW transactions. Type (1) transactions were compiled based on responses from wholesalers, while types (2) and (3) transactions were compiled based on those from the manufacturers.

Figure 1. Summary of Survey Results*¹

	WR transactions	MR transactions	MW transactions* ²
No. of transactions surveyed	1,926	1,370	2,130
(1) Request for payment of center fee			
Transactions not involving a logistics center	753	365	453
Transactions where the supplier was requested, and had no choice but, to pay a monetary contribution or equivalent for use of the logistics center	22 2.9% (22/753)	6 1.6% (6/365)	/
Transactions involving a logistics center	1,159	990	1,660
Transactions where the supplier was requested to pay, and paid, a center fee	945	684	437
Transactions where the supplier was requested to pay a center fee without preliminary discussions or information such as calculation basis and intended use, etc.	367 38.8% (367/945)	191 27.9% (191/684)	81 18.5% (81/437)
Transactions where the suppliers was requested to pay an amount more than the direct benefits despite remaining unconvinced after discussions	45 4.8% (45/945)	26 3.8% (26/684)	52 11.9% (52/437)
Transactions where the supplier was requested to pay an increased center fee (rate) without preliminary discussions or information such as calculation basis and intended use, etc.	21 2.2% (21/945)	4 0.6% (4/684)	19 4.3% (19/437)
(2) Retailer-warehoused inventories			
Transactions with retailer-warehoused inventories	182	96	/
Transactions where there were one or more cases of disadvantages to the supplier as they had retailer-warehoused inventories under the retailer's instructions	33 18.1% (33/182)	28 29.2% (28/96)	/
(3) Request for compensation for center fee			
Transactions where the wholesaler requested the manufacturer to compensate for any part or whole of the center fee paid to the retailer, and the manufacturer had no choice but to compensate it	/	/	290 13.6% (290/2,130)

*1. The numbers of responses to the individual questions are contained with non-responses uncounted.

*2. For MW transactions, the terms "logistic base" and "usage fee or equivalent" are read as "logistics center" and "center fee," respectively.

1.2 Categories of Practice

A. Request for payment of center fee

(A) WR transactions

a. Transactions not involving a logistics center

In the case of transactions not involving a logistics center, where the wholesaler answered in the questionnaire that it was requested by its retailer counterpart to pay a monetary contribution or equivalent for utilizing the logistics center, and had no choice but to agree, such request could be seen as constituting ASBP.

Of the 1,926 WR transactions, 753 transactions “not involving a logistics center” contained 22 transactions (2.9%) where the wholesaler answered that it received requests falling under the above.

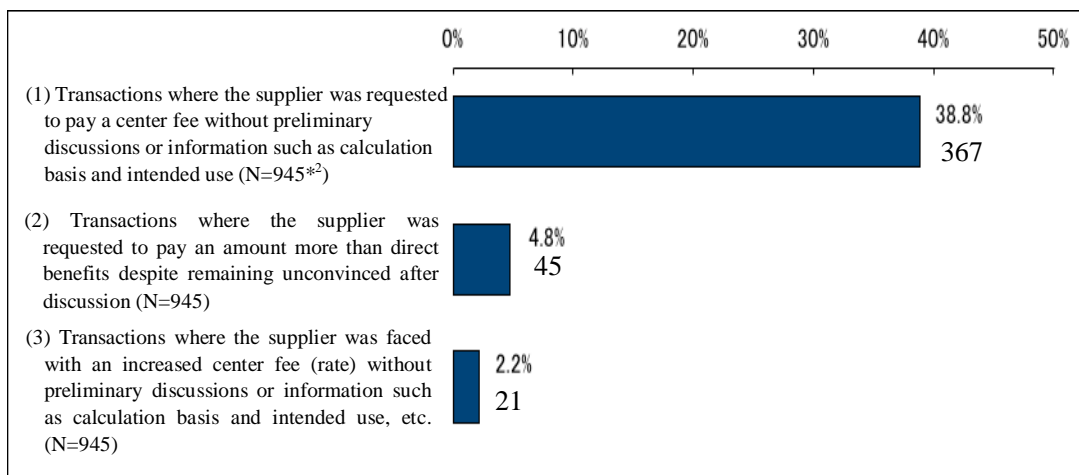
Looking at these 22 transactions by type of retailing operations, the top three types of operations were food supermarkets with 10 transactions, specialized mass merchandisers with 6 transactions, and drugstores with 4 transactions and so on.

b. Transactions involving a logistics center

In the case of transactions involving a logistics center, where the wholesaler answered in the questionnaire that it was (1) was requested to pay a center fee without preliminary discussions or information such as calculation basis and intended use; (2) was requested to pay an amount more than the direct benefits despite remaining unconvinced after discussions; or (3) was requested to pay an increased center fee (rate) without preliminary discussions or information such as calculation basis and intended use, such requests could be seen as constituting ASBP.

Of the 1,926 WR transactions, there were 945 transactions where the respondent paid a center fee upon a request from its retailer counterpart. These transactions included 367 transactions (38.8%) where the wholesaler answered it experienced conduct falling under (1), a significant number, followed by 45 transactions (4.8%) associated with (2), and 21 transactions (2.2%) associated with (3).

Figure 2. Request for payment of center fee that may constitute ASBP (Multiple answers allowed*¹)



*1.As to 21 transactions in (3), some of those are overlapped with (1) and (2). Of the 21 transactions, 18 and 2 transactions overlap those in (1) and (2), respectively.

*2. The N value in the figure indicates the denominator used for percentage calculation. In Figure 2, 945 WR transactions were adopted as the denominator where the wholesaler was requested by the retailer to pay, and paid a center fee. (The same applies hereinafter.)

In addition, looking by type of retailing operations at the transactions where the wholesaler answered it experienced conduct falling under (1), (2), or (3), the top three types of operations for the 367 transactions associated with (1) were food supermarkets with 188 transactions, general merchandisers with 54 transactions, and drugstores with 40 transactions. Those for the 45 transactions associated with (2) were food supermarkets with 14 transactions, drugstores with 12 transactions, and general merchandisers with 10 transactions. And those for the 21 transactions associated with (3) were food supermarkets with 11 transactions, general merchandisers with 5 transactions, and discount stores and drugstores, each with 2 transactions and so on.

(B) MR transactions

a. Transactions not involving a logistics center

The same concept of transaction that may constitute ASBP as mentioned above for the WR transaction should apply to this type of transaction.

Of the 1,370 MR transactions, 365 transactions “not involving a logistics center” contained 6 transactions (1.6%) where the manufacturer answered that it received requests falling under the above.

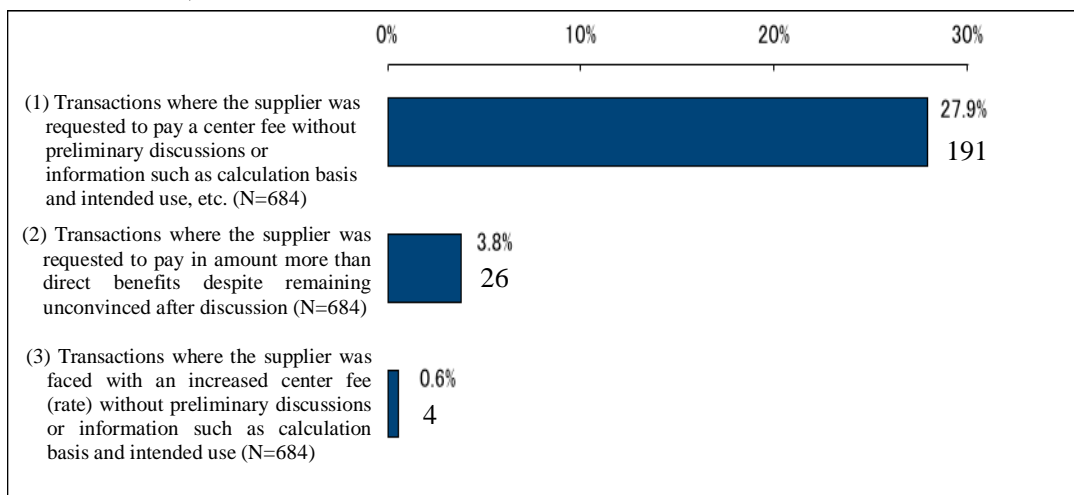
Looking at these 6 transactions by type of retailing operations, the top three types of operations were food supermarkets with 4 transactions, and a mail-order retailer and a specialized mass merchandiser each with 1 transaction.

b. Transactions involving a logistics center

The same concept of transaction that may constitute ASBP as mentioned above for the WR transaction associated with (1) to (3) should apply to this type of transaction.

Of the 1,370 MR transactions, there were 684 transactions where the respondent paid a center fee upon request from its retailer counterpart. These transactions included 191 transactions (27.9%) where the wholesaler answered it experienced conduct falling under (1), a significant number, followed by 26 transactions (3.8%) associated with (2) and 4 transactions (0.6%) associated with (3).

Figure 3. Request for payment of center fee that may constitute ASBP (Multiple answers allowed*)



* 4 transactions in (3) overlap some of those in (1) and (2). Of the 4 transactions, 1 transaction overlaps with (1).

In addition, looking by type of retailing operations at the transactions where the manufacturer answered it experienced conduct falling under (1), (2), or (3), the top three types of operations for the 191 transactions associated with (1) were food supermarkets with 80 transactions, general merchandisers with 48 transactions, and

convenience stores with 25 transaction. Those for the 26 transactions associated with (2) were general merchandisers with 9 transactions, food supermarkets with 8 transactions, and convenience stores with 7 transactions. And those for the 4 transactions associated with (3) were food supermarkets and convenience stores, each with 2 transactions.

B. Retailer-warehoused inventories

Retailer-warehoused inventories generally refer to products that the supplier keeps under its own name in the retailer's logistics center, and of which sales are generated by volume shipped from the logistics center, not to the retailer's logistics center.

In the case of retailer-warehoused inventories, unlike transactions where sales are generated to the supplier upon acceptance by receiving inspection of products delivered to the logistics center, transactions often may give disadvantage to the supplier, who should bear inventory risk for damage and of inventory expenses.

Therefore, if the supplier answers (1) that it keeps retailer-warehoused inventories under the instructions of its retailer counterpart, and (2) that it suffers disadvantages arising therefrom, saying "we have to pay for storage of retailer-warehoused inventories that we have no choice but to keep at specified quantities under the directions of our retailer," "our retailer places on us a unilateral order in a quantity significantly lower than the inventory quantity although we keep our products in stock as directed by the retailer," or "our retailer returns our products that pass a sell-by date established by the retailer itself," transactions may constitute ASBP.

(A) WR transactions

Of the 1,926 WR transactions, there were 182 transactions where the respondent answered that it had retailer-warehoused inventories. These transactions included 33 transactions (18.1%) where the wholesaler answered it experienced conduct falling under (1) and (2).

In addition, looking by type of retailing operations at these 33 transactions, the top three types of operations were convenience stores and food supermarkets, each with 9 transactions, and general merchandisers with 6 transactions.

(B) MR transactions

Of the 1,370 MR transactions, there were 96 transactions where the manufacturer answered it had retailer-warehoused inventories. These transactions included 28 transactions (29.2%) where the manufacturer answered it experienced conduct falling under (1) and (2) above.

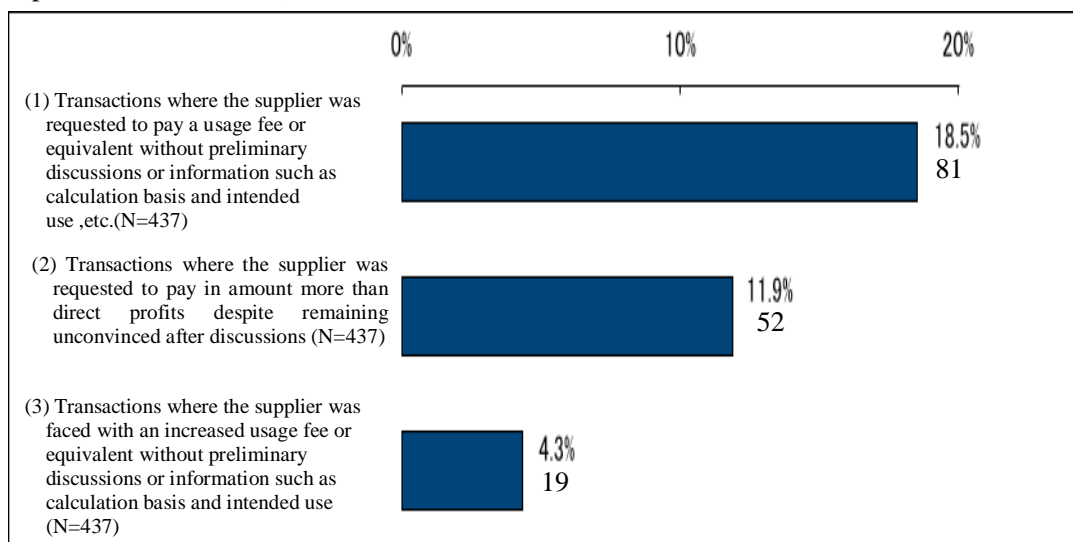
In addition, looking by type of retailing operations at these 28 transactions, the top three types of operations were general merchandisers with 7 transactions, food supermarkets with 6 transactions, and home improvement centers with 4 transactions and so on.

C. Request for payment of usage fee or equivalent. (MW transactions)

In the case of transactions involving a distribution base operated by a wholesaler (equivalent to a logistics center operated by a retailer; the same applies hereinafter), where the manufacturer is requested to pay a fee for use of the distribution base (equivalent to the center fee the retailer requests a wholesaler or manufacturer to pay; the same applies hereinafter), and where the manufacturer responds it is (1) requested to pay a center fee without preliminary discussions or information such as calculation basis and intended use, etc., (2) is requested to pay a center fee at an amount more than the possible direct benefits from use of the logistics center despite remaining unconvinced after discussions, or (3) is faced with an increased amount (rate) of a usage fee without preliminary discussions or information such as calculation basis and intended use, etc., transactions associated with any of the above responses may constitute ASBP.

Of the 2,130 MW transactions, there were 437 transactions where the respondent paid a usage fee upon request from its wholesaler counterpart. These transactions included 81 transactions where the manufacturer answered it experienced conduct falling under (1) (18.5%), followed by 52 transactions associated with (2) (11.9%) and 19 transactions associated with (3) (4.3%).

Figure 4. Request for payment of usage fee or equivalent that may constitute ASBP (Multiple answers allowed*)



*As to 19 transactions in (3), some of those are overlapped with (1) and (5). Of the 19 transactions, 9 and 5 transactions overlap those in (1) and (2), respectively.

In addition, looking at the types of products mainly traded in these transactions where the manufacturer answered it experienced conduct falling under (1), (2), or (3), the top three types of products for the 81 transactions associated with (1) were processed food with 39 transactions, drinks/alcoholic beverages with 13 transactions, and confectionery with 11 transactions; those for the 52 transactions associated with (2) were processed food with 25

transactions, confectionery with 20 transactions, and drinks/alcoholic with 7 transactions; and those for the 19 transactions associated with (3) were processed food with 13 transactions, and drinks/alcoholic with 5 transactions, and fresh food with 1 transaction.

D. Request for compensation for center fee. (MW transactions)

If the manufacturer answers that it has no choice but to compensate, upon a request by its wholesaler counterpart, a part or whole of the center fee paid by the wholesaler to its retailer counterpart, transactions may constitute ASBP because in most cases, no direct benefits may arise for the manufacturer from such compensation.

Of the 2,130 MW transactions, there were 290 transactions (13.6%) where the manufacturer answered that it received requests falling under the above.

In addition, looking at the types of products mainly traded with the wholesaler at these 290 transactions, the top three types of products were processed food with 152 transactions, confectionery with 85 transactions, and drinks/alcoholic beverages with 43 transactions.

1.3 Tendencies in practices that may constitute ASBP (“potential ASBP practices”)

A. WR transactions

The 1,926 WR transactions include 446 transactions where the wholesaler answered that it experienced any of the potential ASBP practices mentioned in subparagraphs A and B of 1.2 of Chapter II, excluding overlapping responses (23.2%).

(A) Correlation between the wholesaler’s degree of trade dependence (“DTD”) on the retailer and the retailer’s potential ASBP practice to the wholesaler

Of the 1,926 WR transactions, excluding 83 transactions where the DTD cannot be calculated because the wholesaler did not provide in its questionnaire the annual value of transactions (“AVT”) with its retailer counterpart or its own sales, 1,843 transactions can be categorized by the wholesaler’s DTD on the retailer as shown in Figure 5. The “NT by category” row shows the number of transactions (NT) in each category (2).

Of the above mentioned 446 transactions where a potential ASBP practice is identified, excluding 20 transactions where the DTD also cannot be calculated, 426 transactions can be categorized by DTD. The “NT where potential ASBP practice is identified” row shows the NT in each category (1).

And the percentage formed by the NT (1) of the NT (2) in each category is provided in the “Percentage of NT (1) of NT (2)” row, showing that wholesalers with higher DTD tend to answer at a higher rate that they experienced a potential ASBP practice.

Figure 5. Percentage of transactions where a potential ASBP practice is identified, by the wholesaler’s DTD on the retailer

DTD	Below 1%	1% to below 3%	3% to below 5%	More than 5%	Total
Percentage of NT (1) of NT (2)	12.3%	20.4%	29.6%	26.8%	23.1%
	41/334	91/447	97/328	197/734	426/1843
NT where potential ASBP practice is identified (1)	41	91	97	197	426
NT by category (2)	334	447	328	734	1843

* The column with the highest percentage is shaded darkly, and that with the second highest percentage is shaded less darkly. (Hereinafter, the meaning of differently shaded columns like above in the same type figures shall be interpreted as above)

(B) Correlation between the wholesaler’s AVT with the retailer and the retailer’s potential ASBP practice to the wholesaler

Of the 1,926 WR transactions, excluding 42 transactions where the AVT cannot be calculated because the wholesaler did not provide in its questionnaire the AVT with its retailer counterpart, 1,884 transactions can be categorized by each wholesaler’s AVT to each retailer as shown in Figure 6. The “NT by category” row shows the number of transactions (NT) in each category (2).

Of the above mentioned 446 transactions where a potential ASBP practice is identified, excluding 20 transactions where the AVT also cannot be calculated, 426 transactions can be categorized by the AVT. The “NT where potential ASBP practice is identified” row shows the NT in each category (1).

And the percentage formed by the NT (1) of the NT (2) in each category is provided in the “Percentage of NT (1) of NT (2)” row, showing that wholesalers with higher AVT tend to answer at a higher rate that they experienced a potential ASBP practice.

Figure 6. Percentage of transactions where a potential ASBP practice is identified, by the wholesaler’s AVT with the retailer

AVT	10 mil. yen or below	More than 10 mil. yen to 50 mil. yen	More than 50 mil. yen to 100 mil. yen	More than 100 mil. yen to 300 mil. yen	More than 300 mil. yen	Total
Percent of NT (1) of NT (2)	9.6%	15.1%	19.2%	21.1%	27.4%	22.6%
	12/125	31/205	37/193	92/435	254/926	426/1884
NT where potential ASBP practice is identified (1)	12	31	37	92	254	426
NT by category (2)	125	205	193	435	926	1884

B. MR transactions

Of the 1,370 MR transactions, there were 246 transactions (18.0%) where the manufacturer answered that it experienced any of the potential ASBP practices mentioned in subparagraphs A and B of 1.2 of Chapter II, excluding overlapped responses.

(A) Correlation between the manufacturer’s DTD on the retailer and the retailer’s potential ASBP practice to the manufacturer

Of the 1,370 MR transactions, excluding 78 transactions where the DTD cannot be calculated because the manufacturer did not provide in its questionnaire the AVT with its retailer counterpart or its own sales, 1,292 transactions can be categorized by the manufacturer’s DTD on the retailer as shown in Figure 7. The “NT by category” row shows the number of transactions (NT) in each category (2).

Of the above mentioned 246 transactions where a potential ASBP practice is identified, excluding 12 transactions where the DTD also cannot be calculated, 234 transactions can be categorized by the DTD. The “NT where a potential ASBP practice is identified” row shows the NT in each category (1).

And the percentage formed by the NT (1) of the NT (2) in each category is provided in the “Percentage of NT (1) of NT (2)” row, showing that manufacturers with higher DTD tend to answer at a higher rate that they experienced a potential ASBP practice.

Figure 7. Percentage of transactions where a potential ASBP practice is identified, by the manufacturer’s DTD on the retailer

DTD	Below 1%	1% to below 3%	3% to below 5%	More than 5%	Total
Percent of NT (1) of NT (2)	11.5%	19.4%	19.0%	26.7%	18.1%
	57/497	62/319	30/158	85/318	234/1292
NT where potential ASBP practice is identified (1)	57	62	30	85	234
NT by category (2)	497	319	158	318	1292

(B) Correlation between the manufacturer’s AVT with the retailer and the retailer’s potential ASBP practice to the manufacturer

Of the 1,370 MR transactions, excluding 62 transactions where the DTD cannot be calculated because the manufacturer did not provide in its questionnaire the AVT with its retailer counterpart, 1,308 transactions can be categorized by the AVT as shown in Figure 8. The “NT by category” row shows the number of transactions (NT) in each category (2).

Of the 246 transactions above where a potential ASBP practice is identified, excluding 4 transactions where the AVT also cannot be calculated, 242 transactions can be categorized by the AVT. The “NT where potential ASBP practice is identified” row shows the NT in each category (1).

And the percentage formed by the NT (1) of the NT (2) in each category is provided in the “Percentage of NT (1) of NT (2)” row, showing that manufacturers with higher AVT tend to answer at a higher rate that they experienced a potential ASBP practice.

Figure 8. Percentage of transactions where a potential ASBP practice is identified, by the manufacturer’s AVT with the retailer

AVT	10 mil. yen or below	More than 10 mil. yen to 50 mil. yen	More than 50 mil. yen to 100 mil. yen	More than 100 mil. yen to 300 mil. yen	More than 300 mil. yen	Total
Percent of NT (1) of NT (2)	7.9%	9.7%	12.0%	23.2%	30.0%	18.5%
	15/190	27/277	22/183	66/285	112/373	242/1308
NT where potential ASBP practice is identified (1)	15	27	22	66	112	242
NT by category (2)	190	277	183	285	373	1308

C. MW transactions

Of the 2,130 MW transactions, there were 359 transactions (16.9%) where the manufacturer answered that it experienced any of the potential ASBP practices mentioned in subparagraphs C and D of 1.2 of Chapter II, excluding overlapped responses.

(A) Correlation between the manufacturer’s DTD on the wholesaler and the wholesaler’s potential ASBP practice to the manufacturer

Of the 2,130 MW transactions, excluding 70 transactions where the DTD cannot be calculated because the manufacturer did not provide in its questionnaire the AVT with its wholesaler counterpart or its own sales, 2,060 transactions can be categorized by the manufacturer’s DTD on the wholesaler as shown in Figure 9. The “NT by category” row shows the number of transactions (NT) in each category (2).

Of the above mentioned 359 transactions where a potential ASBP practice is identified, excluding 8 transactions where the DTD also cannot be calculated, 351 transactions can be categorized by the DTD, The “NT where a potential ASBP practice is identified” row shows the NT in each category (1).

And the percentage formed by the NT (1) of the NT (2) in each category is provided in the “Percentage of NT (1) of NT (2)” row, showing that manufacturers with higher DTD tend to answer at a higher rate that they experienced a potential ASBP practice.

Figure 9. Percentage of transactions where a potential ASBP practice is identified, by the manufacturer’s DTD on the wholesaler

DTD	Below 1%	1% to below 3%	3% to below 5%	More than 5%	Total
Percent of NT (1) of NT (2)	12.7%	12.0%	17.9%	21.4%	17.0%
	47/369	58/485	62/346	184/860	351/2060
NT where potential ASBP practice is identified (1)	47	58	62	184	351
NT by category (2)	369	485	346	860	2060

(B) Correlation between the manufacturer’s AVT with wholesaler and the wholesaler’s potential ASBP practice to the manufacturer

Of the 2,130 MW transactions, excluding 45 transactions where the DTD cannot be calculated because the manufacturer did not provide in their questionnaire the AVT with its wholesaler counterpart or its own sales, 2,085 transactions can be categorized by the manufacturer’s AVT with the wholesaler as shown in Figure 10. The “NT by category” row shows the number of transactions (NT) in each category (2).

Of the above mentioned 359 transactions where a potential ASBP practice is identified, excluding 3 transactions where the AVT also cannot be calculated, 356 transactions can be categorized by the AVT. The “NT where a potential ASBP practice is identified” row shows the NT (1) in each category.

And the percentage formed by the NT (1) of the NT (2) in each category is provided in the “Percentage of NT (1) of NT (2)” row, showing that manufacturers with higher AVT tend to answer at higher rate that they experienced a potential ASBP practice.

Figure 10. Percentage of transactions that may constitute ASBP of transactions where a potential ASBP practice is identified, by the manufacturer’s AVT with the wholesaler

AVT	10 mil. yen or below	More than 10 mil. yen to 50 mil. yen	More than 50 mil. yen to 100 mil. yen	More than 100 mil. yen to 300 mil. yen	More than 300 mil. yen	Total
Percent of NT (1) of NT (2)	7.5%	11.6%	11.5%	19.3%	21.0%	17.1%
	7/93	37/320	36/312	108/559	168/801	356/2085
NT where potential ASBP practice is identified (1)	7	37	36	108	168	356
NT by category (2)	93	320	312	559	801	2085

2. Notes on transactions involving a logistics center

2.1 Status of use of logistics centers

The current survey indicates 95.4% of the retailers operated logistics centers within their WR and MR transactions (Figure 11). In addition, 60.2% of the wholesalers and 72.3% of the manufacturers used logistics centers in WR and MR transactions, respectively, showing wide use of logistics centers (Figures 12 and 13).

Figure 11. Operation by retailer of logistics center

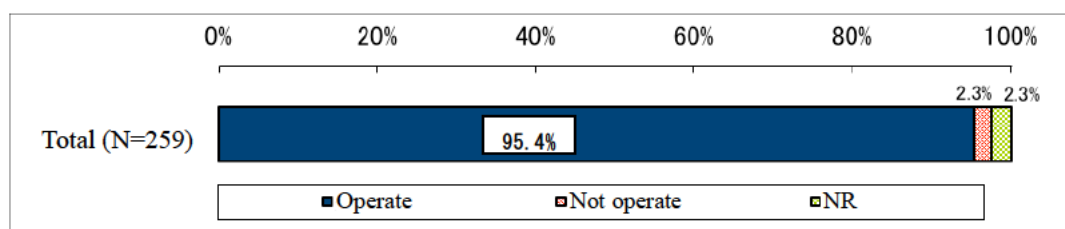


Figure 12. Use by wholesaler of retailer's logistics center

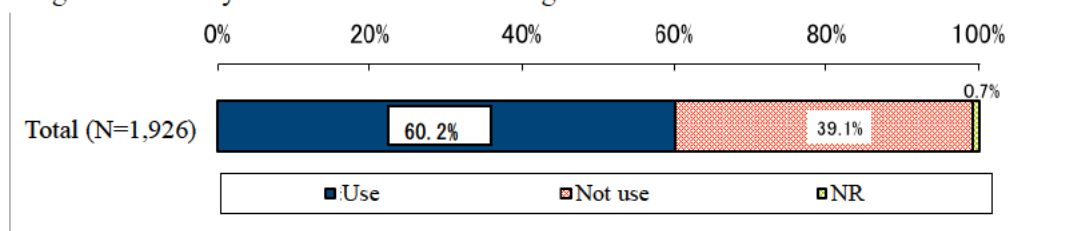
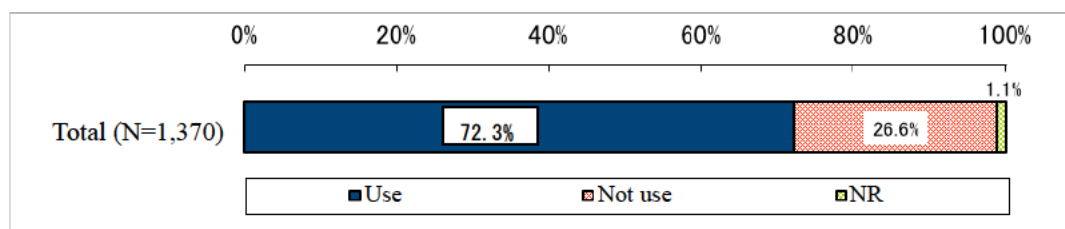


Figure 13. Use by manufacturer of retailer's logistics center



2.2 Request for payment of a center fee

A. Request for payment of a center fee

The 1,159 WR transactions include 952 transactions (82.1%) where the wholesaler was requested to pay a center fee. Of these, there are 945 transactions where the wholesaler answered it accepted the payment request.

The 990 MR transactions include 692 transactions (69.9%) where the manufacture was requested to pay a center fee. Of these, there are 684 transactions where the manufacturer answered it accepted the payment request.

It can be seen that almost all the suppliers accepted requests by their retailer counterparts for payment of a center fee in both types of transactions.

B. Findings on requests for center fee payments

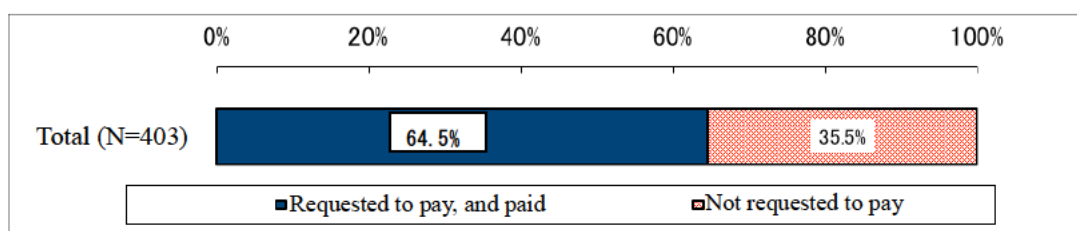
(A) Grounds for request for payment of a center fee

Responses regarding center fees include: “Before the logistics center was put to use in transactions, the supplier performed logistics services including delivery to the retailer’s stores” etc. while transaction price the retailer and the supplier employed included cost of delivery to “the retailer’s store”. Since when the retailer has become to establish and operate the logistics center, the supplier has become to delivery products to the logistics center. Instead, the retailer has become to perform logistics services such as sorting and delivery etc. On the other hand, as to transaction prices, some retailers transact at transaction prices that include, as before, costs of delivery to “retailers’ stores”. At the same time, some retailers had reviewed transaction prices and have become to transact at transaction prices that include costs of delivery to “retailers’ logistics centers”. In the cases where transactions are performed at transaction prices that include costs of delivery to “retailers’ stores”, in some cases, retailers explain a center fee as one that retailers request suppliers to pay as costs required for logistics services etc. at logistics centers retailers have become to perform instead and for delivery etc. to stores.”

The 1,159 WR transactions involving a logistics centers include 403 (34.8%) transactions where the wholesaler performed transactions with its retailer counterpart at transaction whose scope of cost of delivery, which includes a transaction price of a transaction with the retailer, covers “delivery to the retailer’s logistics center.” and 742 (64.0%) where the wholesaler performed transactions with its retailer counterpart at transaction whose scope of costs of delivery, which includes a transaction price for transaction with the retailer, covers “delivery to the retailer’s store”.

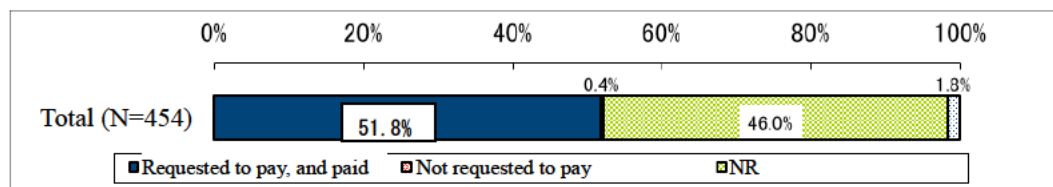
If a center fee would have been such a cost required for logistics services etc. the retailer has become to perform in replace of the supplier, in a transaction at transaction price that includes costs of delivery to “the retailers’ logistics center”, any requests for payment of center fee could not have been made to the supplier. Nevertheless, in reality, of these 403 transactions, there were 260 transactions (64.5%) where the respondent answered that it was “requested to pay, and paid” a center fee to the question asking whether it was requested and agreed to pay a center fee for use of the logistics center (Figure 14).

Figure 14. Request for payment of center fee in transactions (WR transactions) including cost of delivery to retailer’s logistics center



In addition, the 990 MR transactions involving a logistics centers include 454 transactions (45.9%) where the manufacturer performed transactions with its retailer counterpart at transaction whose scope of cost of delivery, which includes a transaction price of a transaction with the retailer, covers “delivery to the retailer’s logistics center.” Of these 454 transactions, there were 235 transactions (51.8%) where the respondent answered that it was “requested to pay, and paid” a center fee to the question asking whether it was requested and agreed to pay a center fee for use of the logistics center (Figure 15).

Figure 15. Request for payment of center fee in transactions (MR transactions) including costs of delivery to retailer’s logistics center



Furthermore, despite transactions not involving a logistics centers, some respondents answered that they were requested to pay a financial contribution or equivalent for the use of a logistics center. The 1,926 WR transactions include 753 transactions not involving logistics centers, 22 (2.9%) of which involved such request. The 1,370 MR transactions include 365 transactions not involving logistics centers, 6 (1.6%) of which involved such request.

Given this fact, as to center fees, differed from the retailers’ explanations in the above, the number of case where a request for payment of a center fee was made to a supplier is not small among the transactions at transaction prices that include costs of delivery “to retailers’ logistics centers” or, also, among the transactions that have never used logistics centers in the first place.

(B) Notes in requesting payment of a center fee

Like previous fact-finding surveys, the current survey finds that the supplier (1) was requested to pay a center fee without preliminary discussions or information such as calculation basis and intended use, etc., or (2) was requested to pay a center fee at an amount more than the possible direct benefits from use of the logistics center, despite remaining unconvinced after discussions. In particular, transactions with (1) made up 38.8% of the WR transactions, and 27.9% of the MR transactions (See (1) in Figures 2 and 3, respectively). In relation to (2), the suppliers cited as the most common reason for being unconvinced of payment of a center fee that “the retailer imposed unilateral terms and conditions of the amount (rate) of center fee without providing rational grounds

therefor.” (Figures 16 and 17). Furthermore, in some cases, the use of a logistics center led to the suppliers bearing increased delivery and production costs.

Figure 16. Reasons for being unconvinced (WR transactions)

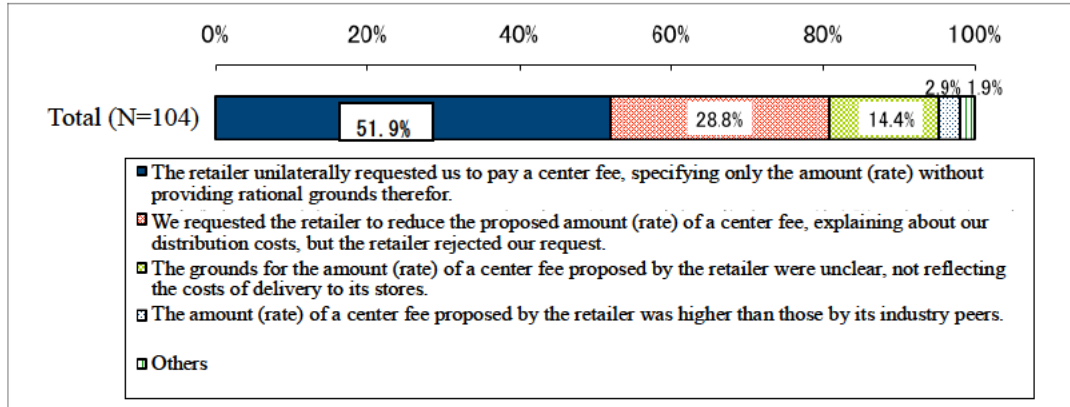
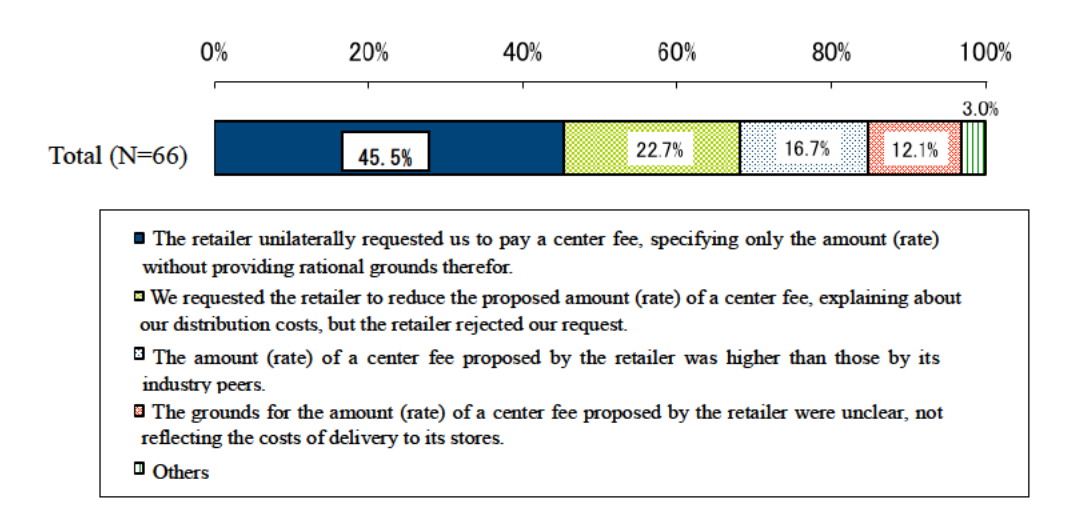


Figure 17. Reasons for being unconvinced (MR transactions)



[Request for payment of a monetary contribution or equivalent in the case of transactions not involving a logistics center]

- After its logistics center started operations, a specialized mass merchandiser announced its policy that it might refuse to do business with those who would not use its logistics center. However, since we deal with products that are difficult to buy in from the manufacturer on a stable basis, we explained to the specialized mass merchandiser that we could not keep a certain quantity of products within the logistics center and make deliveries from the logistics center to the merchandiser’s stores within a specified period of time. We are therefore

allowed to, upon receipt of an order, deliver directly to the merchandiser's stores. Although we do not use the logistics center, we have to pay an amount of our turnover multiplied by a certain ratio as a center fee to the merchandiser.

This payment offers nothing for us. Considering that this specialized mass merchandiser is our main business contact, however, we agreed to pay the fee, believing we have no choice but to do so to continue to have business with the merchandiser.

- We do not use the logistics center of our retail partner but pay a monetary contribution under the name of a center fee. Although we obtain nothing beneficial from such payment, we are afraid we may be faced with cancellation of trade with the retailer if we refuse to pay it. The retailer is our main business contact with the largest volume of our sales, and we need to continue to do business with the retailer partly because of the need to achieve the sales figures requested by our manufacturing partner. Therefore, we have no choice but to accept the retailer's request for the payment.

[How the retailer determines the center fee rate]

- When the retailer asks a supplier to use its logistics center, the retailer notifies the supplier of the center fee rate that the retailer has unilaterally determined without discussions thereon. We have never been provided with rational grounds for the rate determined by the retailer. Since the cancellation of trade would have a great impact on our business management, we have no choice but to accept the payment rate specified by the retailer so that we can continue to do business with the retailer.

[Increased payment for use of logistics center]

- Our place of business is located within an hour's distance for delivery from the distribution base to each store of the food supermarket. However, as the food supermarket set up a logistics center geographically further from the store locations, we have had to bear increased delivery costs. Moreover, we have to pay the center fee requested by the food supermarket. The use of the logistics center therefore offers no benefits such as reduced logistics costs.
- When we delivered directly to the retailer's stores, we could manufacture more efficiently, for example, by continuously manufacturing products of the same type or by first manufacturing products that were to be delivered to a more distant store. However, since the retailer started operating its logistics center, we have had to deliver all types of ordered products by specified deadlines, which has reduced production efficiency and thus increased manufacturing costs. But we have no chance to ask the retailer to revise transaction prices.

Considering these survey results, center fees are unclear in themselves. In some cases, the retailer requested the supplier to pay such a fee without giving rational grounds

therefor. In other cases, the supplier had no opportunity to discuss beforehand and was not provided with information, such as calculation basis and intended use, etc. Suppliers were also requested to pay a center fee in amounts that were more than any possible direct benefits from use of the logistics center, which might constitute ASBP.

Therefore, before requesting the supplier to pay a center fee, the retailer should give the supplier an opportunity to sufficiently discuss the proposed amount, such as calculation basis and intended use beforehand so that such payment will not unjustifiably create disadvantages to the supplier. The retailer must also keep in mind that the center fee should not become a burden more than the amount deemed reasonable considering possible direct benefits that the supplier may obtain from use of the logistics center.

As well as when the retailer determines the amount (rate) to start transactions or logistics center operations, the same provisions should apply if the retailer raises the established amount (rate) of the center fee.

2.3 Request for payment other than of center fee

In some cases, the retailer requested the supplier, in addition to paying a center fee, to pay expenses incurred from use of its logistics center.

Many suppliers keeping retailer-warehoused inventories under the retailer's directions answered that they suffered disadvantages arising from transactions involving such inventories. Comments included: "We have to pay for storage of retailer-warehoused inventories that we have no choice but to keep at specified quantities under the direction of the retailer"; "The retailer placed on us a unilateral order of a quantity significantly lower than the inventory quantity although we kept our products in stock as directed by the retailer"; and "The retailer returned our products because they passed the sell-by date established by the retailer itself."

There are also some cases where the retailer requested the supplier when delivering to its logistics center, for example, to buy labels designed for use in sorting products by store, to use exclusive containers, and/or to carry out certain tasks within the logistics center.

Although these cases are less frequent than requests for payment of a center fee, due care should be paid that the retailer should avoid unilaterally establishing terms and conditions of trade that may put the supplier at disadvantage.

[Retailer-warehoused inventories]

- We were ordered by the home improvement center to carry inventories in its logistics center at quantities equivalent to about 7 days' worth of average shipments, and make deliveries as ordered. Our sales are generated not when we make delivery to the logistics center, but when we ship from the logistics center to their stores. We have to maintain inventories of products in the logistics center.

Once delivering products to the retailer's logistics center, we cannot relocate them to other retailers' logistics centers and have to pay for their storage in the logistics center in full.

[Returns of retailer-warehoused inventories]

- Products kept in stock in the logistics center which have passed the first one-third of the period from production to consume-by date should be returned to us, not normally shipped to the retailer's stores. Products that have passed the first one-third of that period will be sold for disposal at the retailer's stores or returned for clearance sale by us.

[Request for use of standardized crates]

- Several major general merchandisers introduced standard crates (boxes in which to store the products) two or three years ago. They established a policy that after the date of introduction, they would not accept delivery of products to their logistics centers unless suppliers rent the standard crates for delivery. The merchandisers lay down this policy, introducing it unilaterally in writing without providing suppliers with an opportunity to comment thereon.

We have no choice but to use the standard crates as instructed. Every month, we have to pay 1.5 million yen on average for crate rental.

This crate rental offers no benefits to us. We cannot use our own crates to ship products to retailers. Besides the expensive rental costs, we have to bear extra personnel costs needed for inventory quantity management of the rented crates.

Furthermore, the merchandisers have not made the larger scale manufacturers use standard crates, although they insist that the use of standard crates are intended to increase efficiency in their logistics centers. Only small and medium sized manufacturers are forced to use the crates while major manufacturers are still allowed to use their own crates.

Therefore, we are bound to say that the merchandisers just bully small and medium-sized manufacturers who have to be obedient.

[Request for work in distribution base]

- Although we contractually agree with the major general merchandiser only to deliver products to its logistics center, the general merchandiser has requested us to have our employees sort products by store and by shipment deadline within the logistics center during their delivery visit.

We understand that shipment work in the logistics center costs the general merchandiser a significant amount because shipment work is needed every day for our delivered products due to their short expiry dates. However, we pay the center fee which was originally intended to cover the costs of such work in the logistics center. In this sense, a double burden of payment and work is being imposed on us.

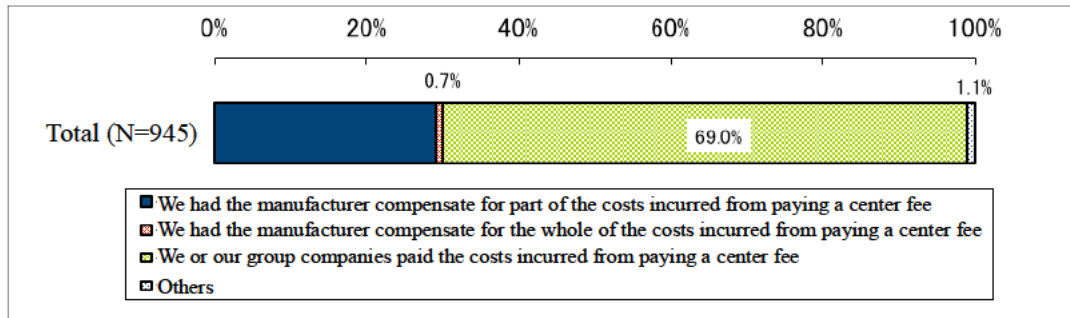
2.4 Findings of WM transactions

The current survey reveals that, just as for the transactions with retailers described above, requests were made in WM transactions that might constitute ASBP. For example, a supplier (1) was requested to pay a fee for use of a distribution base without preliminary discussions or

information such as calculation basis and intended use; or (2) was requested to pay a usage fee at an amount more than the possible direct benefits from use of the distribution base, despite remaining unconvinced after discussions (Figure 4).

In addition, the survey finds 29.2% of wholesalers indicate that “we had the manufacturer compensate for part of the costs incurred from paying a center fee” was chosen as the method to pay costs incurred from paying a center fee (Figure 18).

Figure 18. How to redeem the costs incurred from payment of a center fee



Some manufacturers also answered: “The cause lies with the retailers. Wholesalers request their manufacturer counterparts to compensate for the center fee paid because requests received from their retailer counterparts are severe.” Therefore, some wholesalers alone cannot pay the fees requested by their retailer counterparts and, therefore, ask their manufacturer counterparts for compensation.

Due care should be paid that such requests for compensation might constitute ASBP between the wholesaler and the manufacturer.

[Request for compensation]

- The wholesaler issues a statement of the amount unilaterally offset by the compensation due to our billing of accounts receivable. Such a statement contains the term “CF” or “Center fees” in its remarks row, showing that the amount provided therein result from offsetting the account receivable, but we have not received any explanation in advance about the amount to be offset. Given that not all our wholesaler partners request us to compensate them, we believe the cause lies with the retailers. Wholesalers request their manufacturer counterparts to compensate for the center fee paid because the requests that the wholesalers have received from their retailer counterparts are severe.

Some manufacturers stated that requested compensation for various monetary contributions or center fees put so much pressure on profits that “fewer manufacturers can invest in the development of novel products.” In this case, the manufacturer will be driven further into the disadvantageous position in transactions with a decline in its competitive edge. In addition, this may diminish benefits, including business innovations and profits thereby returned to consumers.

Furthermore, requests for compensation are made to those in disadvantageous positions in trade like a chain reaction. In some cases, the burden of compensation requested by the wholesaler goes through the manufacturer to the distributor to which the manufacturer contracts out delivery work. From such a standpoint, it is necessary to pay due care that retailers, who have possible widespread impact on the entire trade infrastructure, should not make any unfair request that may constitute ASBP.

2.5 Notes on transactions where a potential ASBP practice is identified

The current survey reveals in (1) WR transactions, (2) MR transactions, and (3) MW transactions that transactions with partners with higher DTD or AVT tend to have a higher percentage of transactions where a request made was identified as a potential ASBP practice.

If the retailer or the wholesaler requests a supplier that has a high DTD or AVT with the said retailer or wholesaler, the supplier may have no choice but to accept the request, even though it is potentially disadvantageous to them, due to concerns about possible impact on future transactions with the retailer or the wholesaler. Retailers or wholesalers should keep in mind such possible concerns of suppliers when they request payment of a center fee or equivalent.

CHAPTER III: Action Being Taken by the JFTC

1. The current survey has revealed potential ASBP practices not only in some WR and MR transactions but also in MW transactions.

Therefore, the JFTC has decided to announce the results of its survey from the viewpoint of preventing violations, thereby encouraging retailers and wholesalers to inspect the transaction status with their supplier partners. The JFTC also will take the following measures to the retailers' and wholesalers' trade associations concerned:

- 1.1 Provide retailers and wholesalers with seminars on ASBP, explaining the results of the current survey, and preventing violations and making transactions fair;
 - 1.2 Report survey results to the trade associations concerned to prevent retailers and wholesalers from abusing their superior bargaining position, as well as requesting the associations to take voluntary action toward making transactions fair—including ensuring that ASBP Guidelines and other relevant rules are communicated to their members—so that retailers and wholesalers individually take voluntary action toward eliminating problems.
2. The JFTC will continue to monitor transaction realities of retailers and wholesalers so as to identify practices that may become issues relevant to the AMA. In the event of identifying any practices suspected to be against the AMA, including ASBP, the JFTC will implement strict law enforcement thereto.