

Report on Fact-Finding Survey on Transactions of Private Brand Products in the Food Sector (Overview)

June 20, 2014

Japan Fair Trade Commission

CHAPTER I : SURVEY PUROPOSE AND METHOD

1. Survey Purpose

The Japan Fair Trade Commission (“JFTC”) has implemented strict and effective law enforcement against practices that may cause unfair disadvantages to business operators and worked to prevent violations based on the Regulation of the Abuse of Superior Bargaining Position (“ASBP”) under the Antimonopoly Act (“AMA”) and the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors (“Subcontract Act”).

As part of efforts to prevent violations of these Acts, the JFTC has surveyed areas of trade where cases are observed that may constitute ASBP or a problem under the Subcontract Act, so as to identify how trade practices are actually carried out in these areas. In the previous fact-finding surveys, the JFTC has found cases of “product returns” or “refusal to receive products” in transactions of some private brand products (“PB products”) that may constitute ASBP or a problem under the Subcontract Act. Violations in connection with PB products have accounted for a share of all violations of the Subcontract Act.

In view of these circumstances, the JFTC considered it necessary to investigate the actual conditions of transactions of PB products to see whether retailers, etc. have conducted practices that may constitute a problem because it is said that domestic sales of PB products have sharply increased since 2008. As a result, the JFTC decided to conduct this survey to determine the actual conditions of transactions of PB products in the food sector which accounts for a large part of all sales of PB products.¹

In view of the fact the rise in the consumption tax rate in April 2014, this time the JFTC surveyed not only the situations concerning ASBP or problems under the Subcontract Act, but also those concerning the refuse of accepting the passing on of the rise in the consumption tax rate, like reducing the amount or abusing of buying power, etc. which are banned under the Act Concerning Special Measures for Correcting Practices Impeding Consumption Tax Pass-on, etc. with the Aim to Ensure Smooth and Proper Pass-on of Consumption Tax

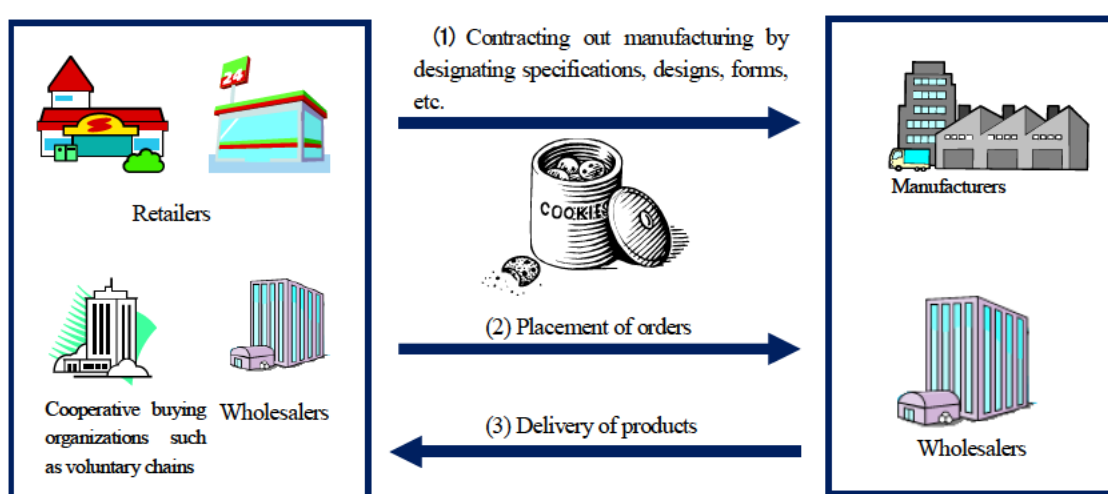
¹ The market of PB products is said to amount to approximately 3 trillion yen (source: “PB Shohin-no Uragawa,” Shukan Toyo Keizai, December 22, 2012). Of this amount, the market of PB products in the food sector is approximately 2.1587 trillion yen in 2009 and approximately 2.6385 trillion yen (forecast) in 2012 (source: “PB Shokuhin Shijyo no Saishin Doko to Shorai Tenbou 2013,” Kabushiki Kaisha Fuji Keizai, December 2012).

2. Survey Method

(1) Written survey

For the purpose of this survey, of “foods” for “retailers (food supermarkets, general merchandise supermarkets, convenience stores, etc.),” “cooperative buying organizations such as voluntary chains²,” “wholesalers” (hereinafter “retailers, etc.”) have contracted out manufacturing by designating specifications, designs, forms, etc., products which have characteristics (original brands of retailers, etc. are indicated; retailers, etc. are indicated as sellers³) are considered to be private brand products (hereinafter “PB products”)

This survey covers transactions of PB products between retailers, etc. who contract out manufacturing or place orders on the one part and manufacturers or wholesalers (hereinafter “manufacturers, etc.”) who work as contractor and supply PB products on the other part.



JFTC then conducted a written survey by sending questionnaires to 500 retailers, etc. who are considered to work as contractors of PB products and 3,000 manufacturers, etc. who are considered to manufacture and supply PB products.

The numbers of business operators 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)
Retailers, etc.	500	334 (66.8%)
Manufacturers, etc.	3,000	940 (31.3%)

² This is an organization which is jointly established by companies independent in terms of capital and aims at enhancing competitiveness through cost reductions due to economies of scale and improvement of operational efficiency by establishing a unified strategy on purchase, sales, product planning, etc.

³ In addition to above example, the survey covers: products on which the names of both retailers, etc. and manufacturers, etc. are indicated; and existing products of manufacturers, etc. on which the names of retailers, etc. are not indicated but for which retailers, etc. designated special specifications concerning interior content and packaging and which cannot be sold by parties other than retailers, etc. which designated specifications.

In this written survey, the JFTC asked retailers, etc. and manufacturers, etc. who currently conduct transactions of PB products to answer questions on the top five clients in terms of trade volume of food PB products. Retailers, etc. noted a total of 978 transactions, while manufacturers, etc. noted 1,835 transactions. The survey results were obtained based on these responses on transactions.

(2) Hearing survey

The JFTC conducted a hearing survey of 27 manufacturers, etc. to the written survey who detailed in their questionnaires the requests, etc. they received from retailers, etc.

3. Survey Coverage Period

- | | |
|-------------------------------|--------------------------------------|
| (1) Date questionnaires sent: | February 21, 2014 |
| (2) Response deadline: | March 20, 2014 |
| (3) Coverage period: | January 1, 2013 to December 31, 2013 |

CHAPTER II: SUMMARY OF SURVEY RESULTS

1. Overview of Survey Results

(1) Practices that may constitute ASBP

a. Requests for establishment, etc. of trading conditions of PB products

(a) Status of requests for establishment, etc. of trading conditions of PB products

The JFTC asked manufacturers, etc. about the time they began transactions of PB products. Of a total of 1,835 transactions surveyed, the response to the effect that “they received a request from retailers, etc. with whom they have transactions of national brand products (“NB products”)” totaled 850 transactions (46.3%) and the response to the effect that “they received a request from retailers, etc. with whom they have no transactions of NB products)” totaled 306 transactions (16.7%).” It turned out that irrespective of the existence or non-existence of transactions of NB products, transactions of PB products started at the request of retailers, etc. in most cases.

For the 1,835 transactions mentioned by manufacturers, etc., the numbers of the responses to the effect that “retailers, etc. conducted practices to establish trading conditions of PB products against them that may constitute ASBPs,” and the ratios of respective transactions to a total of 1,835 transactions surveyed, are classified by type of practice in the following list (see Figure 1).

In Figure 1, even if retailers, etc. conducted two or more kinds of practices in only one transaction, the number of such practices is expressed as multiple numbers. However, if such duplication of practices is eliminated from a total of 1,835 transactions surveyed, the number of transactions where retailers, etc. conducted one or more practices to establish trading conditions of PB products against them that may constitute ASBPs totals 198 transactions(10.8%), as specified in totals column in Figure 1.

Figure 1. Practices to Establish Trading Conditions of PB Products That May Constitute ASBPs

Particulars of practices	Number of transactions for which respondents replied that there were practices that may constitute ASBPs	Ratio to the total number of transactions surveyed
Establishment of disclosure of information, including cost structure and manufacturing process, as a trading condition despite the fact that if such information is disclosed, manufacturers, etc. will be at a disadvantage in negotiations, etc.	156	8.4% (156/1835)
Although manufacturers, etc. were asked to use raw materials of similar quality as those of NB products, they were asked to offer significantly lower selling prices than NB prices.	90	4.9% (90/1835)
Manufacturers, etc. wanted to decline requests for contract manufacturing as its margin was small for example. However, they had to accept such requests because retailers, etc. threatened to cancel transactions of NB products or decrease their transaction volume.	39	2.1% (39/1835)

Although there was no need to make payment, manufacturers, etc. were forced to pay rebate, support money, etc. on the condition that transactions of PB products would be started.	20	1.1% (20/1835)
Others (manufacturers, etc. were forced to agree to bargain sales once a month as a trading condition; manufacturers, etc. were asked to suspend the production of NB products to manufacture PB products)	25	1.4% (25/1835)
Total	198	10.8% (198/1835)

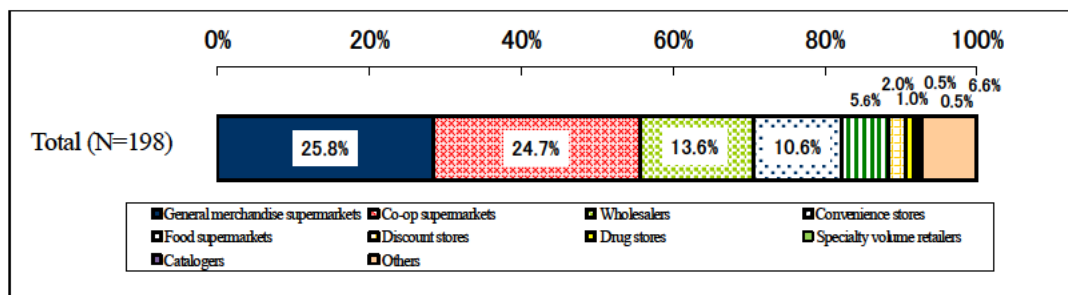
According to Figure 1, with respect to practices to establish trading conditions of PB products that may constitute ASBPs, the largest number of manufacturers, etc. replied that retailers, etc. made the disclosure of information, including cost structure and manufacturing process, as a trading condition despite the fact that if such information is disclosed, manufacturers, etc. would be placed at a disadvantage in negotiations, etc. (156 transactions). For 56 transactions (35.9%) of a total of 156 transactions surveyed, retailers, etc. conducted practices, including one-sided determination or reduction of product prices, even after the start of transactions. In transactions where the disclosure of information was made as a trading condition before the start of transactions of PB products, the bargaining position of manufacturers, etc. tended to become inferior to that of retailers, etc. and therefore retailers, etc. found it easier to conduct practices that may constitute ASBPs even after the start of transactions.

With respect to practices to establish trading conditions for PB products that may constitute ASBPs, the second largest number of manufacturers, etc. replied that although manufacturers, etc. were asked to use raw materials of similar quality as those of NB products, they were asked to offer significantly lower selling prices than NB prices (90 transactions). For 46 transactions (51.1%) of a total of 90 transactions surveyed, manufacturers, etc. replied that they were asked, even after the start of transactions, to lower delivery prices in line with prices of competing companies of retailers, etc. Thus, it seems that manufacturers, etc. are forced to sell PB products at lower prices.

(b) Business categories of retailers, etc.

If 198 transactions for which manufacturers, etc. replied that retailers, etc. conducted one or more practices to establish trading conditions of PB products that may constitute ASBPs as specified in above (1) A (a) are classified by the business category of retailers, etc. who made requests, etc., general merchandise supermarkets accounted for 51 transactions (25.8%), co-op supermarkets⁴ 49 transactions (24.7%), wholesalers 27 transactions (13.6%), convenience stores 21 transactions (10.6%), and food supermarkets 11 transactions (5.6%).

Figure 2.⁵ Business Categories of Retailers, etc. Which Conducted Practices to Establish Trading Conditions of PB Products That May Constitute ASBPs



⁴ Including the Japanese Consumers' Cooperative Union and the consumer cooperatives in Japan as members of the Union.

⁵ The n-value in the figure means the denominator for calculating rates. In the case of Figure 2, the denominator is 198 transactions for which manufacturers, etc. replied that retailers, etc. conducted one or more practices to establish trading conditions of PB products against them that may constitute ASBPs.

B. Other unreasonable requests in transactions of PB products

(a) Other practices that may constitute ASBPs in transactions of PB products

For the 1,835 transactions mentioned by manufacturers, etc., the number of the responses to the effect that “retailers, etc. conducted practices that may constitute ASBPs other than practices specified in above item A” and the ratios of respective transactions to a total of 1,835 transactions surveyed, are classified by type of practices in the following list (see Figure 3).

However, as in the case of above item A, if duplication of practices in Figure 3 is eliminated from a total of 1,835 transactions surveyed, the number of transactions (other than those mentioned in above item A) where retailers, etc. conducted one or more practices to establish trading conditions of PB products against them that may constitute ASBPs totals 162 transactions (8.8%), as specified in the totals column in Figure 3.

Figure 3. Other Practices That May Constitute ASBPs in Transactions of PB Products

Types of practices	Number of transactions for which retailers, etc. conducted practices that may constitute ASBPs	Ratio to the total number of transactions surveyed
Request for purchase or use	42	2.3% (42/1835)
Request for support money, etc.	67	3.7% (67/1835)
Request for dispatch of employee, etc.	30	1.6% (30/1835)
Refusal to receive	10	0.5% (10/1835)
Product returns	12	0.7% (12/1835)
Delay in payment	2	0.1% (2/1835)
Price reduction	7	0.4% (7/1835)
One-sided determination of transaction	16	0.9% (16/1835)
Other unfair requests	40	2.2% (40/1835)
Although there were no contractual provisions, manufacturers, etc. were asked to undergo a new inspection and bear the related expense as a condition to delivery.	22	1.2% (22/1835)
Although retailers, etc. promised, in advance, to place an order for a certain quantity, they sharply reduced the order quantity or canceled the order at their convenience.	17	0.9% (17/1835)
Manufacturers, etc. were forced to remanufacture products because retailers, etc. arbitrarily strengthened the inspection standards which were already established and they claimed that the products did not conform to the order or that the products had defects.	6	0.3% (6/1835)
Manufacturers, etc. procured raw materials, packaging materials, etc. upon receipt of orders. However, retailers, etc. canceled their orders due at their convenience without paying the related expenses needed for such procurement.	6	0.3% (6/1835)
Total	162	8.8% (162/1835)

According to Figure 3, there are some types of practices for which few replies were made concerning unfair requests other than those mentioned in above item A. However, as in the case of past fact-finding surveys, manufacturers, etc. replied for some transactions that retailers, etc. conducted practices that may constitute ASBPs, such as “requested support money, etc.,” “requested for purchase or use” and “requested dispatch of employee, etc.”⁶ In addition, a comparatively large number of manufacturers, etc. replied that retailers, etc. made “other unfair requests.”

With respect to “other unfair requests,” the number of transactions was as many as 22 in which manufacturers, etc. replied that although there were no contract provisions, they were asked to undergo a new inspection and bear the related expense as a condition to delivery. When the JFTC asked manufacturers, etc. to clarify whether or not the acceptance inspection was stated in the original order with respect to the 22 transactions, they replied that no such statement was made in all of the 22 transactions. Therefore, it can be said that if some expenses must be paid for some transactions, retailers, etc. asked manufacturers, etc. to bear such expenses although the payment of such expenses was not specified in the trading conditions in advance.

(b) Business categories of retailers, etc.

If the 162 transactions for which manufacturers, etc. replied that retailers, etc. conducted other practices that may constitute ASBPs in transactions of PB products as specified in above (1) B (a) are classified by the business category of retailers, etc. who made requests, etc., general merchandise supermarkets accounted for 32 transactions (19.8%), wholesalers 26 transactions (16.0%), food supermarkets 24 transactions (14.8%), co-op supermarkets 23 transactions (14.2%), and convenience stores 19 transactions (11.7%).

Figure 4. Business Categories of Retailers, etc. Which Conducted Other Practices That May Constitute ASBPs in Transactions of PB Products



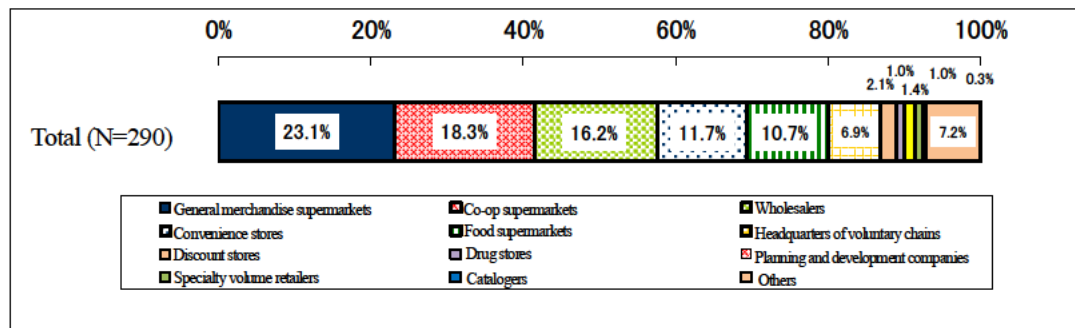
⁶ In the “Report on Fact-Finding Survey on Transactions between Large-Scale Retailers, etc. and Suppliers” (published in July 2012), the number of responses to the effect that retailers, etc. conducted practices that may constitute ASBPs such as the request for support money, etc. accounted for 8.4% of all transactions surveyed, the number of responses concerning the request for purchase or use accounted for 5.4%, and the number of responses concerning the dispatch of employee(s), etc. accounted for 3.3%. Rates of these types of practices were comparatively higher than those of other types of practices.

C. Summary

As seen above, there is duplication between “requests for establishment, etc. of trading conditions of PB products (Figure 1)” and “Other Practices That May Constitute ASBPs in Transactions of PB Products (Figure 3).” If such duplication of practices is eliminated from the total 1,835 transactions surveyed, the number of transactions where retailers, etc. conducted one or more practices that may constitute ASBPs in transactions of PB products totals 290 (15.8%).

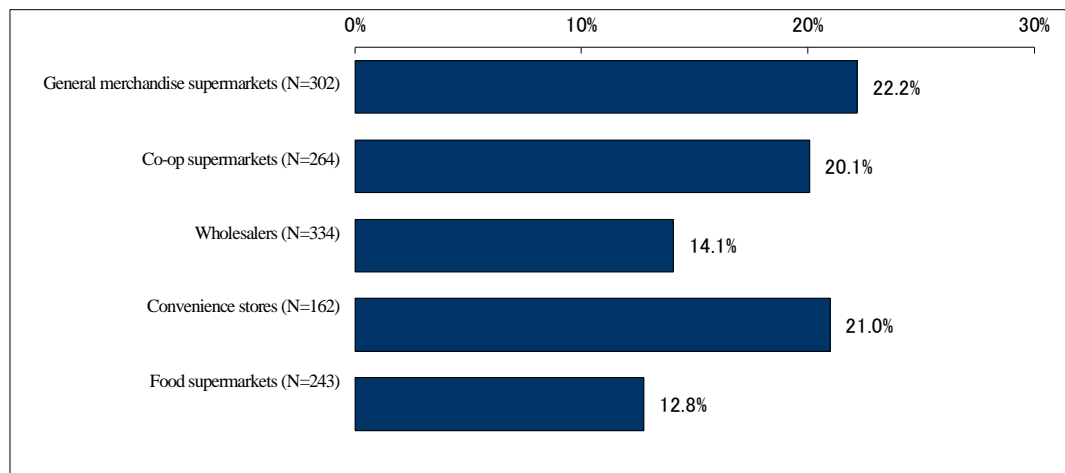
If 290 transactions are classified by the business category of retailers, etc. who made requests, etc., general merchandise supermarkets accounted for 67 transactions (23.1%), co-op supermarkets 53 transactions (18.3%), wholesalers 47 transactions (16.2%), convenience stores 34 transactions (11.7%), and food supermarkets 31 transactions (10.7%).

Figure 5. Business Categories of Retailers, etc. Which Conducted Practices That May Constitute ASBPs in Transactions of PB Products



In this survey, if 1,835 transactions for which manufacturers, etc. replied are classified by the type of business category of retailers, etc., general merchandise supermarkets accounted for 302 transactions, co-op supermarkets 264 transactions, wholesalers 334 transactions, convenience stores 162 transactions, and food supermarkets 243 transactions (see Figure 11 of the text). Of the total 1,835 transactions surveyed, the number of transactions by business category for which retailers, etc. conducted one or more practices that may constitute ASBPs against them is as follows. In the case of general merchandise supermarkets, this number is 67 out of 302 (22.2%). In the case of co-op supermarkets, this number is 53 out of 264 (20.1%). In the case of wholesalers, this number is 47 out of 334 (14.1%). In the case of convenience stores, this number is 34 out of 162 (21.0%). In the case of food supermarkets, the number stood at 31 out of 243 (12.8%).

Figure 6. Ratio of Transactions in Which Retailers, etc. Conducted Practices That May Constitute ASBPs to Transactions by Business Category



(2) Conditions of Transactions to Which the Subcontract Act May Apply

A. Overview of survey results

The act of retailers, etc. to outsource the manufacture of their PB products to other business operators, in principle, falls under the category of “manufacturing contract” under the Subcontract Act. Under the Subcontract Act, transactions under a manufacturing contract to which the Subcontract Act applies are those between retailers, etc. with capital in excess of 300 mil yen and manufacturers, etc. with capital not exceeding 300 mil yen. If an act falling under any of the types of practices which are prohibited by the Subcontract Act is conducted in the category of “manufacturing contract,” the act is, in principle, a violation of the Subcontract Act.

The practices which are prohibited by the Subcontract Act and the practices which constitute ASBPs have a commonality or common types of practices.

Such common types of practices are summarized in the following list (see Figure 7) which shows the number of transactions for which retailers, etc. conducted practices that may constitute ASBPs (1) as in Figure 3 and the number of transactions under a manufacturing contract to which the Subcontract Act applies (2) out of the foregoing transactions (1).

If the duplication of practices is eliminated from Figure 7, the number of transactions for which retailers, etc. conducted practices that may constitute ASBPs is 140, and of this number, the number of transactions to which the Subcontract Act applies is 66.

Figure 7. Of the Number of Transactions for Which Retailers, etc. Conducted Practices That May Constitute ASBPs, the Number of Transactions to Which the Subcontract Act Applies

Type of practice		Number of transactions for which retailers, etc. conducted practices that may constitute ASBPs (1)	Of the number of transactions (1), the number of transactions to which the Subcontract Act applies (2)
Forced purchase or use		42	18
Request for reward	Request for support money, etc.	67	32
	Request for dispatch of employee, etc.	30	15
Refusal to receive		10	7
Product returns		12	7
Delay in payment		2	1
Price reduction		7	4
Beating down of prices (one-sided determination of compensations for transactions)		16	10
Total		140	66

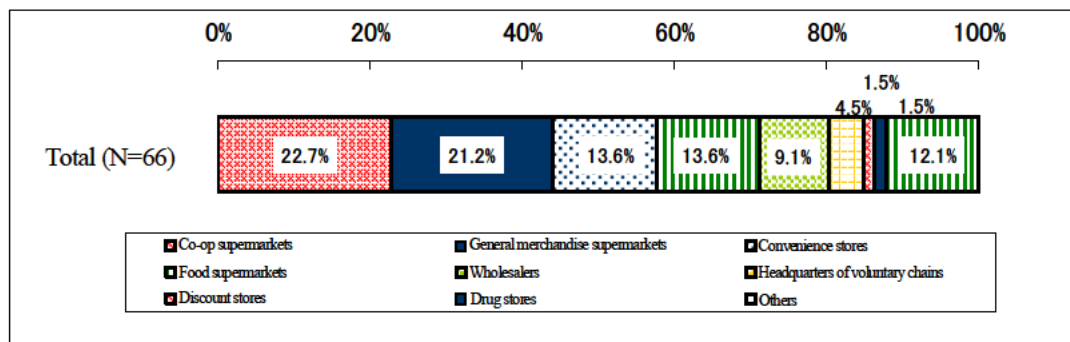
Figure 7 shows that almost half of the practices that may constitute ASBPs fall under transactions to which the Subcontract Act applies.

B. Business categories of retailers, etc.

With respect to 66 transactions

If 66 transactions as mentioned in above (2) A are classified by the business category of retailers, etc. who conduct practices which may violate the Subcontract Act, co-op supermarkets accounted for 15 transactions (22.7%), general merchandise supermarkets 14 transactions (21.2%), convenience stores 9 transactions (13.6%), food supermarkets 9 transactions (13.6%), and wholesalers 6 transactions (9.1%). As compared with Figures 2 and 4, the rate of co-op supermarkets was comparatively large as far as practices which may violate the Subcontract Act are concerned.

Figure 8. Business Categories of Retailers, etc. Which Conducted Practices That May Violate the Subcontract Act



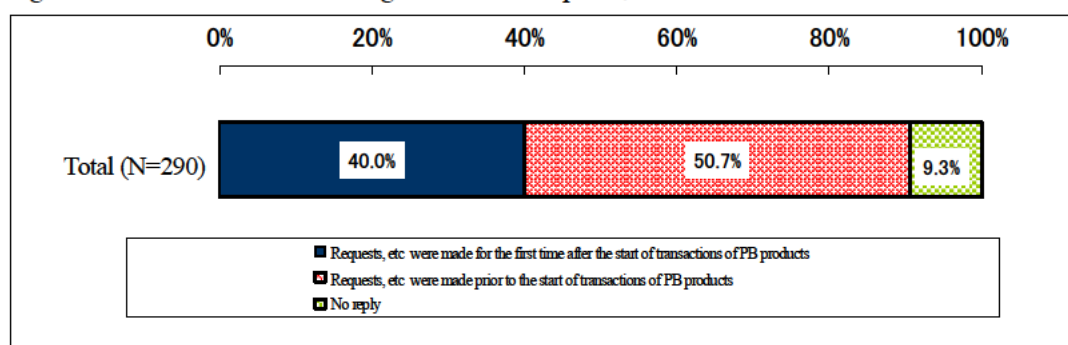
2. Relationship between the time when retailers began transactions of PB products and the time when they began to make requests, etc.

(1) Time when retailers began to make requests, etc.

With respect to the 290 transactions for which manufactures, etc. replied that retailers, etc. conducted one or more practices that may constitute ASBPs against them, the JFTC asked manufactures, etc. about whether they began to make such requests, etc. after the start of transactions of PB products. Their replies were as follows. The reply to the effect that “retailers, etc. began to make such requests, etc. for the first time after the start of transactions of PB products” accounted for 116 transactions (40.0%). The reply to the effect that “retailers, etc. made such requests, etc. prior to the start of transactions of PB products” accounted for 147 transactions (50.7%).

If the 116 transactions are classified by the business category of retailers, etc. who made requests, etc., co-op supermarkets accounted for 28 transactions (24.1%), wholesalers 20 transactions (17.2%), convenience stores 19 transactions (16.4%), general merchandise supermarkets 16 transactions (13.8%), and others 12 transactions (10.3%).

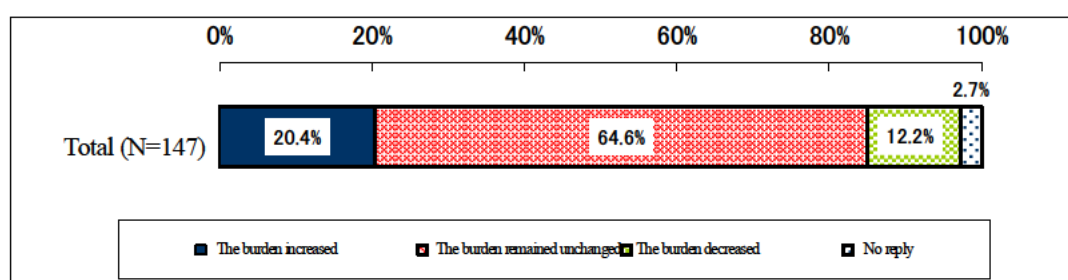
Figure 9. Time When Retailers Began to Make Requests, etc.



(2) Change of the burden of requests, etc.

With respect to the 147 transactions for which manufactures, etc. replied in above 2 (1) that retailers, etc. made such requests, etc. prior to the start of transactions of PB products, the JFTC asked manufactures, etc. about how their burden of request, etc. made by retailers, etc. changed after the start of transactions of PB products. Their replies were as follows. The response to the effect that the burden increased accounted for 30 transactions (20.4%). The response to the effect that the burden remains unchanged 95 transactions (64.6%). The response to the effect that the burden decreased 18 transactions (12.2%).

Figure 10. Change of the Burden of Requests, etc.



3. Trend of transactions in which practices that may constitute ASBPs were seen

(1) Relationship between the annual volume of transactions of PB products with retailers, etc. and transactions in which practices that may constitute ASBPs were seen

With respect to 1,709 transactions (this number is obtained by deducting 126 transactions for which no reply was obtained from manufacturers, etc. concerning annual volume of transactions of PB products with retailers, etc. from the total 1,835 transactions surveyed), classification was made by annual volume of transactions of PB products with retailers, etc. The result of such classification is indicated in the column “numbers of transactions by category” in Figure 11 below.

The “number of transactions for which manufacturers replied that retailers, etc. conducted one or more practices that may constitute ASBPs” among the “number of transactions by category” are indicated in the column “number of transactions that may constitute ASBPs” in Figure 11 below.

The ratios of the “number of transactions for which manufacturers replied that retailers, etc. conducted practices that may constitute ASBPs” to the “number of transactions by category” are the highest in the category of “more than 300 mil.yen” It can be said that there is a trend that as annual volume of transactions of PB products with retailers, etc. increases, the ratio of the “number of transactions for which manufacturers replied that retailers, etc. conducted practices that may constitute ASBPs” increases.

Figure 11. Relationship between Annual Volume of Transactions of PB Products with Retailers, etc. and Transactions in Which Practices That May Constitute ASBPs were Seen

Annual volume of transactions of PB products with retailers, etc.	50 mil. yen or less	More than 50 mil. yen but not exceeding 100 mil. yen	More than 100 mil.yen but not exceeding 200 mil .yen	More than 200 mil.yen but not exceeding 300 mil.yen	More than 300 mil.yen	Total
Ratio of transactions that may constitute ASBPs	10.5%	16.4%	16.0%	17.5%	22.1%	15.7%
	69／657	34／207	38／238	24／137	104／470	269/1709
Number of transactions that may constitute ASBPs	69	34	38	24	104	269
Numbers of transactions by category	657	207	238	137	470	1709

- (2) Relationship between the capital of retailers, etc. and transactions in which practices that may constitute ASBPs were seen

With respect to 1,717 transactions (this number is obtained by deducting 118 transactions for which no reply was obtained from manufacturers, etc. concerning the capital of retailers, etc. from the total 1,835 transactions surveyed), retailers were classified according to their levels of capital. The result of such classification is indicated in the column “numbers of transactions by category” in Figure 12 below.

The “number of transactions for which manufacturers replied that retailers, etc. conducted one or more practices that may constitute ASBPs” among the “number of transactions by category” are indicated in the column “number of transactions that may constitute ASBPs” in Figure 12 below.

The ratios of the “number of transactions for which manufacturers replied that retailers, etc. conducted practices that may constitute ASBPs” to the “number of transactions by category” are the highest in the category of “more than 300 mil.yen” It can be said that there is a trend that as the capital of retailers, etc. with which transactions of PB products are made increases, the ratio of the “number of transactions for which manufacturers replied that retailers, etc. conducted practices that may constitute ASBPs” increases.

Figure 12. Relationship between the Capital of Retailers, etc. and Transactions in Which Practices That May Constitute ASBPs Were Seen

Capital of retailers, etc.	10 mil. yen or less	More than 10 mil. yen but less than 50 mil. yen	More than 50 mil. yen but less than 300 mil. yen	More than 300 mil. yen	Total
Ratios of numbers of transactions that may constitute ASBPs	6.3%	11.6%	12.1%	18.1%	15.9%
	5/80	20/172	35/290	213/1175	273/1717
Number of transactions that may constitute ASBPs	5	20	35	213	273
Numbers of transactions by category	80	172	290	1175	1717

4. Section summary

(1) Current conditions and future prospects of transactions of PB products

In this survey, business operators who replied that they conduct transactions of PB products are as follows: 238 retailers, etc. (71.3%) and 570 manufacturers, etc. (60.6%) (see Figures 1 and 8 of the text). These 570 manufacturers, etc. include 90 business operators with capital of 300 mil yen or more(15.8%).

The JFTC asked the business operators who conduct transactions of PB products about reasons. Many retailers, etc. replied that they did so to differentiate themselves from competitors in the same industry, to improve their brand images, and to respond to low-price seeking consumers (the number of replies is large in this order). Comparatively many manufacturers, etc. replied that they did so to receive orders of constant amounts, to start (or expand) transactions with retailers, etc., and to improve operating rates of production facilities (see Figures 4 and 16 of the text). Therefore, it can be safely said that both retailers, etc. and manufacturers, etc. enjoy advantages in transactions of PB products.

The JFTC asked the business operators who replied that they conduct transactions of PB products about changes of ratios of transactions of PB products to total transaction amounts between three fiscal years ago and the previous business year. Retailers, etc. replied “the ratio increased” for 331 transactions (33.8%) and manufacturers, etc. replied “the ratio increased” for 591 transactions (32.2%)” (see Figures 6 and 82 of the text).

Based on above, it can be safely said that transactions of PB products are conducted by many companies, including large capital manufacturers, etc. and the number of business operators engaged in transactions of PB products and their transaction amounts will continue to increase in the future.

(2) Problems in transactions of PB products

A. Characteristics of cases in which practices that may constitute ASBPs are seen in transactions of PB products

- (a) In this survey, there were comparatively many transactions for which manufacturers, etc. replied that retailers, etc. conducted practices to establish trading conditions that may constitute ASBPs before starting transactions of PB products.

The largest number of manufacturers, etc. replied that retailers, etc. made the disclosure of information, including cost structure and manufacturing process, as a trading condition despite the fact that if such information is disclosed, manufacturers, etc. would be at a disadvantage in negotiations, etc.

As mentioned in above 1 (1) A (a), in the case of transactions in which the disclosure of information is established as a trading condition, the rate of cases in which practices falling under types of practices such as one-sided determination of compensations of transactions⁷ and price reductions to all cases is comparatively high. Therefore, the JFTC needs to keep a close watch on practices to establish the disclosure of information as part of trading conditions.

⁷ In the Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act (“ASBP Guidelines”), it is pointed out as one of the exemplary practices which constitute ASBPs that a party forces the trading partner to submit confidential materials concerning manufacturing cost calculations, materials concerning labor management, etc. and the party analyzes such materials and asserts that “the trading partner’s margin is high and therefore they can accept our request for price reductions” and then the party one-sidedly determines significantly low delivery prices.

The second largest number of manufacturers, etc. replied that although manufacturers, etc. were asked to use raw materials of similar quality as those of NB products, they were asked to offer significantly lower selling prices than NB prices. Since these practices constitute ASBPs, the JFTC needs to keep a close watch on these practices.

- (b) One of the reasons that manufacturers, etc. accept requests from retailers, etc. for establishment of trading conditions before the start of transactions of PB products may be that manufacturers, etc. are concerned about potential adverse influences. In this survey, for 39 transactions, manufacturers, etc. replied that they wanted to decline a request for contract manufacturing as the margin was small but they had to accept such requests because retailers, etc. threatened to cancel transactions of NB products or decrease their transaction volume. At hearings, manufacturers, etc. replied, “During negotiations on trading conditions of PB products, retailers, etc. threatened to discontinue transactions of NB products unless manufacturers, etc. accept contract manufacturing. In fact, they discontinued partial transactions of NB products.” In the case that NB products are already traded before the start of transactions of PB products, manufacturers, etc. accept, in some cases, even disadvantageous requests from retailers, etc. out of the fear that if they decline to accept such requests concerning transactions of NB products, current transactions of NB products may be adversely influenced.
- (c) Frequent practices other than those conducted at the start of transactions of PB products include “requests for purchase or use” and “request for support money” which constitute typical ASBPs, and “other unfair requests.”

Particulars of “other unfair requests” are that: although there were no contractual provisions, manufacturers, etc. were asked to undergo a new inspection and bear related costs as a condition of delivery; although retailers, etc. promised, in advance, to place an order for a certain quantity, they sharply reduced the order quantity or canceled the order due at their own convenience. Since these practices constitute ASBPs as in above (a), the JFTC needs to keep a close watch on these practices.

- (d) In this survey, it was revealed that retailers, etc. comparatively often conducted such practices to establish trading conditions before the start of transactions of PB products, which may constitute ASBPs. One of the reasons may be that retailers, etc. don’t understand that practices to establish trading conditions at negotiations with manufacturers, etc. may constitute ASBPs depending on the particulars of such practices. As mentioned above, if retailers, etc. impose unreasonable disadvantages on manufacturers, etc. by one-sidedly establishing trading conditions, such practices may constitute ASBPs. Since transactions of PB products are expected to expand in the future, the JFTC needs to disseminate related information to prevent such violations.

B. Business Categories of Retailers, etc. Which Conducted Practices That May Constitute ASBPs

If transactions for which manufacturers, etc. replied that retailers, etc. conducted one or more practices that may constitute ASBPs are classified by the business category of retailers, etc., the numbers of such transactions is large in the following order: general merchandise supermarkets, co-op supermarkets, wholesalers, convenience stores, and food supermarkets (see Figure 5).

Therefore, the JFTC needs to keep a close watch on these practices in connection with transactions between retailers, etc. and manufacturers, etc. so as to prevent the occurrence of practices that may constitute ASBP or a problem under the Subcontract Act,

For wholesalers, the JFTC has pointed out in past fact-finding surveys that there are cases in which wholesalers conducted practices that may constitute ASBPs against manufacturers, etc.⁸ In this survey too, however, manufacturers, etc. replied for some transactions that wholesalers conducted practices that may constitute ASBPs against them.

It is possible that wholesalers make requests, etc. partly because to secure their own interests and partly because wholesalers find it difficult to bear all of the expenses as requested by retailers, etc. and therefore they ask manufacturers, etc. to bear the whole or part of such expenses. These requests may constitute ASBPs between wholesalers and manufacturers, etc. Therefore, the JFTC needs to keep a close watch on such requests made to manufacturers by wholesalers, etc.

C. Trends of transactions in which practices that may constitute ASBPs were seen

In this survey, if transactions in which practices that may constitute ASBPs were conducted are analyzed, the frequency of responses of manufacturers, etc. to the effect that retailers, etc. conducted practices that may constitute ASBPs against them is high in: 1) the case of high annual volume of transactions of PB products with retailers, etc.; and 2) the case of transactions with large capital retailers, etc.

In the case that annual volume of transactions of PB products with retailers, etc. is high, or in the case that the capital of retailers, etc. is large, it can be safely said that manufacturers, etc. tend to accept such requests even if the requests, etc. from retailers, etc. are unfair.

⁸ Refer to the “Report on Fact-Finding Survey on Transactions Involving the Use of Logistics Centers” (publicized in August 2013), the “Report on Fact-Finding Survey on Transactions between Large-Scale Retailers, etc. and Suppliers” (published in July 2012), the “Report on Fact-Finding Survey on Transactions between Food Manufacturers and Wholesalers” (published in October 2011), etc.

5. Treatment of Consumption Tax

In this survey, the JFTC asked manufacturers, etc. whether they could pass a rise in the consumption tax rate on to delivery prices. Their responses were as follows. The response to the effect that they could do so (or will be able to do so) in almost all cases accounted for 1,470 transactions (80.1%) of a total of 1,835 transactions surveyed. The response to the effect that they could do so (or will be able to do so) to some degree accounted for 130 transactions (7.1%). These two responses totaled 1,600 transactions (87.2%). On the other hand, the response to the effect that they could rarely do so (or will rarely be able to do so) accounted for 46 transactions (2.5%). The response to the effect that they could not do so (or will not be able to do so) in almost all cases accounted for 53 transactions (2.9%). These two responses totaled 99 transactions (5.4%).

Furthermore, the JFTC asked manufacturers, etc. whether retailers, etc. refused to accept the passing on of the rise in the consumption tax rate. Their responses were as follows. The response to the effect that retailers, etc. refused to accept the pass-on accounted for 22 transactions. In nine transactions among these 22 transactions, manufacturers, etc. replied that they accepted the refusal by retailers, etc.

In five transactions among nine transactions in which retailers, etc. refused to accept the pass-on, manufacturers, etc. replied, “retailers, etc. decided to freeze the unit price after the rise in the consumption tax rate by changing specifications, including a reduction in interior content of products, but as cost reduction effects from the change of specifications were small, retailers, etc. asked manufacturers, etc. to offer products at a cost which was lower than the product cost plus the consumption tax rate after the rise.” In four transactions among the above nine transactions, manufacturers, etc. replied, “retailers, etc. asked manufacturers, etc. to reduce the delivery price by the amount of rise (or the rate of rise) in the consumption tax in view of the fact that the consumption tax will be raised again in the future.”

With respect to the passing on of the rise in the consumption tax rate to product prices, there is a possibility that retailers, etc. will reduce the amount of transactions, or ask manufacturers, etc. to pay support money, etc. when payment will be made for transactions which are conducted after the rise in the consumption tax rate. Therefore, the JFTC needs to actively collect information by conducting written surveys in the future.

CHAPTER III: ACTIONS OF THE JFTC

1. The current survey has revealed that practices which may constitute a problem mainly under the AMA or the Subcontract Act were conducted in part of transactions of PB products in the food sector. Although the number of responses was small, it was also revealed that practices which may constitute a problem mainly under the Act Concerning Special Measures for Correcting Practices Impeding Consumption Tax Pass-on, etc. with the Aim to Ensure Smooth and Proper Pass-on of Consumption Tax were also conducted. Therefore, the JFTC has decided to announce the results of its survey from the viewpoint of preventing violations and ensuring fair transactions, and take the following measures:

(1) Provide retailers, etc. with seminars to explain the results of the current survey, the ASBP Guidelines, and the contents of the Subcontract Act; and

(2) Report survey results to the retailer trade association, etc. and request the associations to take voluntary action toward making transactions fair, including ensuring that the ASBP Guideline, etc. are communicated to their members, so that retailers, etc. will individually take voluntary action toward eliminating problems.

2. The JFTC will continue to monitor actual transactions of PB products in the food sector so as to identify practices which may become issues under the AMA, the Subcontract Act or the Act Concerning Special Measures for Correcting Practices Impeding Consumption Tax Pass-on, etc. with the Aim to Ensure Smooth and Proper Pass-on of Consumption Tax. If any practices violate these Acts, the JFTC will take strict law enforcement measures.