

Operations of the Subcontract Act
and
Efforts to Ensure Fair Transactions for
Small and Medium-Sized Enterprises
(FY2023)

June 5, 2024
Japan Fair Trade Commission



公正取引委員会

Japan Fair Trade Commission

Operations of the Subcontract Act

1. 13 recommendations in FY2023
(Highest in the last 10 years)
2. The Japan Fair Trade Commission (JFTC) is actively addressing socially significant issues in recent times, when price pass-through across the entire supply chain has been a crucial policy objective. For example, in the automobile industry, characterized by a pyramid-like subcontracting structure, the JFTC issued a recommendation addressing a case of reduced subcontract proceeds imposed by automakers at the top of the subcontracting hierarchy.

(Number of surveyed subjective)

Fiscal Year	Main Subcontracting Enterprises	Subcontractors	Total
FY 2023	80,000	330,000	410,000
Manufacturing Contract, etc. (Note1)	46,900	199,138	246,038
Service Contract, etc. (Note 2)	33,100	130,862	163,962
FY 2022	70,000	300,000	370,000
Manufacturing Contract, etc.	37,993	176,799	214,792
Service Contract, etc.	32,007	123,201	155,208
FY 2021	65,000	300,000	365,000
Manufacturing Contract, etc.	37,280	169,318	206,598
Service Contract, etc.	27,720	130,682	158,402

(Note 1) “Manufacturing Contract, etc.” includes Repair Contract. Hereinafter the same.

(Note 2) “Service Contract, etc.” includes Information-Based Product Creation Contract. Hereinafter the same.

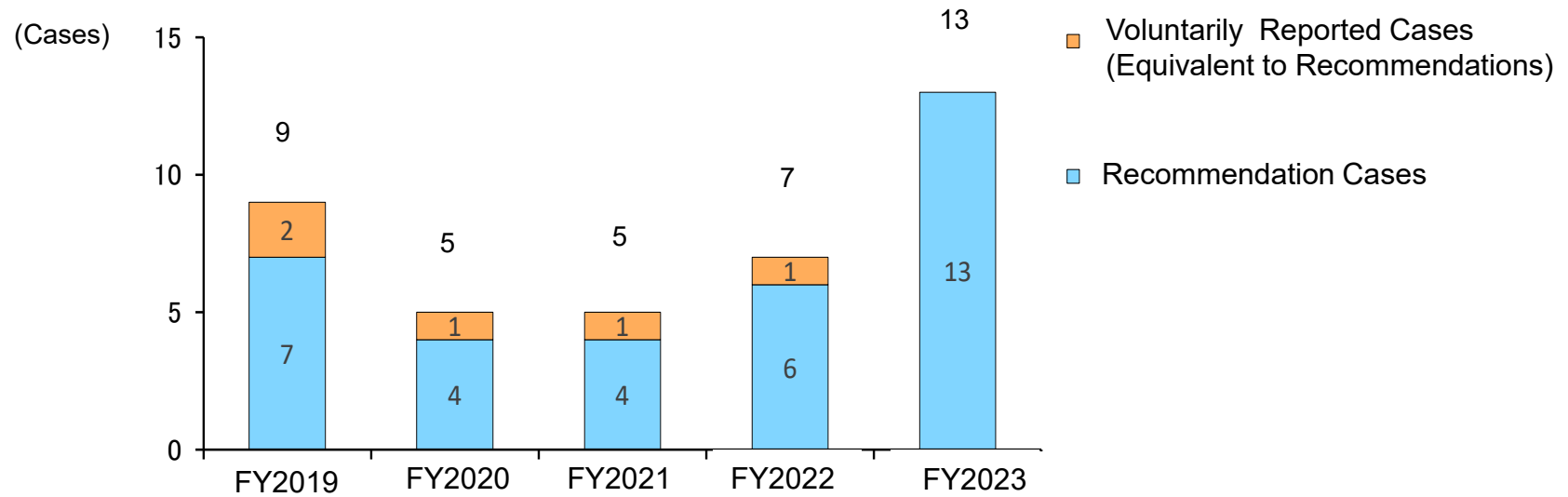
(Cases)

Fiscal Year	Newly Launched Cases (Note1)				Number of Cases				
	Periodic Surveys	Reports	Requests from SME Agency for Measures	Total	Measures			No Action Taken	Total
					Recom-mendations	Guidance (Note 2)	Subtotal		
FY 2023	8,120	112	0	8,232	13	8,268	8,281	47	8,328
Manufacturing Contract, etc.	5,244	62	0	5,306	12	5,329	5,341	21	5,362
Service Contract, etc.	2,876	50	0	2,926	1	2,939	2,940	26	2,966
FY 2022	8,188	79	0	8,267	6	8,665	8,671	86	8,757
Manufacturing Contract, etc.	5,063	44	0	5,107	6	5,305	5,311	53	5,364
Service Contract , etc.	3,125	35	0	3,160	0	3,360	3,360	33	3,393
FY 2021	8,369	94	1	8,464	4	7,922	7,926	174	8,100
Manufacturing Contract, etc.	5,384	61	1	5,446	3	5,146	5,149	113	5,262
Service Contract, etc.	2,985	33	0	3,018	1	2,776	2,777	61	2,838

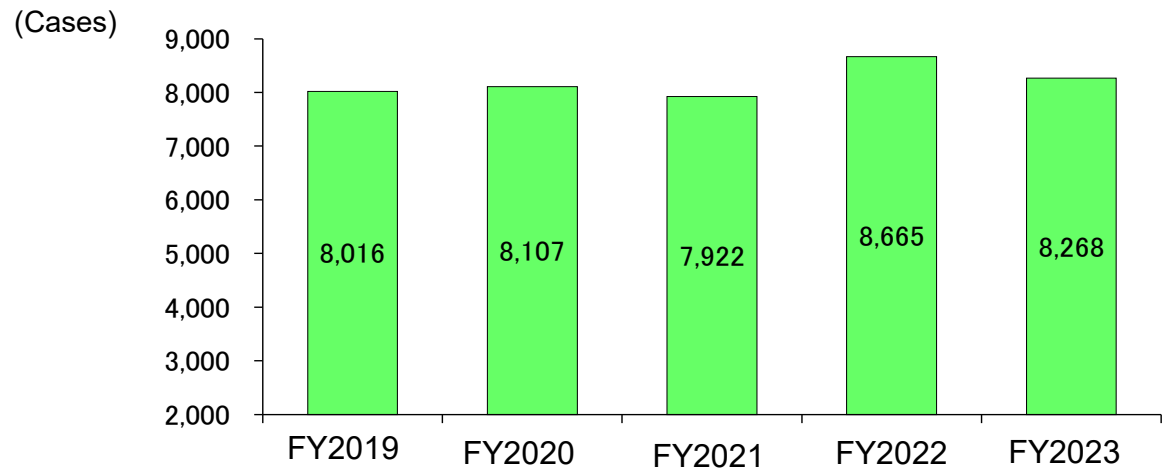
(Note 1) Newly lunched cases include clues obtained from the studies based on the Act on Special Measures for Pass-On of Consumption Tax.

(Note 2) The number of guidance cases includes those which may violate the Subcontract Act.

The Number of Recommendations and Voluntarily Reported Cases (Equivalent to Recommendations)



The Number of Guidance Cases



1. Price Pass-Through Related Case (Reduction of Subcontract Proceeds)

From January 2021 to April 2023, Nissan Motor Co., Ltd. deducted "rebates" from the amounts payable to subcontractors, thereby reducing the subcontract proceeds without any fault attributable to the subcontractors.

The total amount reduced was **3,023,676,843 yen**, affecting 36 subcontractors. Nissan Motor Co., Ltd. paid the reduced amount to the subcontractors before receiving a recommendation from the JFTC.

[Main Points of the Recommendation]

- Confirm through a resolution of the Board of Directors that subcontracting fees will not be reduced in the future.
- Establish an internal compliance management system for the Subcontract Act, centered around senior management.

2. Mold-Related Cases (Unjust Requests for Economic Benefits)

2.1 Sanken Electric Co., Ltd. (Sanken) forced its subcontractors to store Sanken's molds and conduct inventory checks twice a year without compensation, even though Sanken was informed by some subcontractors of their desire to dispose of the molds since they had not received any orders from Sanken for a long time. Sanken's conduct was unfairly harming the subcontractors' interests from at least July 1, 2021 to October 27, 2023.

Before receiving a recommendation, Sanken paid a total of **11,369,160 yen** to 16 subcontractors as compensation for the costs incurred due to the free storage and related activities.

2.2 Sanden Corporation (Sanden), since at least January 1, 2022, had its subcontractors store Sanden's molds and jigs without compensation, even though Sanden had not placed orders for parts made with these molds and jigs for a long period. This unfairly harmed the subcontractors' interests. Before receiving a recommendation, Sanden paid part of the costs incurred due to the free storage to the subcontractors.

2.3 Nidec Techno Motor Corporation (Nidec), since at least May 1, 2022, had its subcontractors store Nidec's molds and other equipment without compensation, even though Nidec could not specify the next order period. Additionally, the subcontractors were made to conduct inventory tasks, including mold inspections, twice a year. These actions were unfairly harming the subcontractors' interests.

Before receiving a recommendation, Nidec paid a total of **18,124,480 yen** to 44 subcontractors as compensation for the costs incurred due to free storage and related activities.

[Main Points of the Recommendations]

- Confirm through a resolution of the Board of Directors that unjust requests for the provision of economic benefits will not be made in the future.
- Establish a compliance system for the Subcontract Act.

3. Order Cancellation Related Case (Unjust Changes in Provision and Requests for Rework)

Oji Nepia Co., Ltd. (Oji Nepia) unfairly harmed the interests of its subcontractor in the orders for FY 2021 by canceling part of the order without any reason attributable to the subcontractor. The cost incurred by the subcontractor due to the order cancellation amounted to over **26,227,735 yen**, affecting one subcontractor. Oji Nepia paid this amount to the subcontractor before receiving a recommendation.

[Main Points of the Recommendation]

- Confirm through a resolution of the Board of Directors that unjust changes in provision will not be made to subcontractors in the future.
- Establish a compliance system for the Subcontract Act.

4. Multiple Violations

BIGMOTOR Co., Ltd. (BIGMOTOR) was engaged in the following activities:

4.1 Unjustly Setting Subcontract Proceeds at a Level Conspicuously Lower than Usual

Around December 2021, under the policy of "persistently bargaining down all business expenses, such as borrowing interest rates and transportation costs," a request was made to a subcontractor to lower the unit price of coating processing. Consequently, a unit price that was 27.7% lower than the previous price was set.

4.2 Forced Purchase

From around December 2021 to around April 2023, under the policy of "asking business partners to purchase cars and introduce vehicle inspections," nine subcontractors were made to buy vehicles or have their own vehicles inspected at BIGMOTOR. Additionally, they were required to contract for the insurance of an insurance company for which the BIGMOTOR acted as an agent.

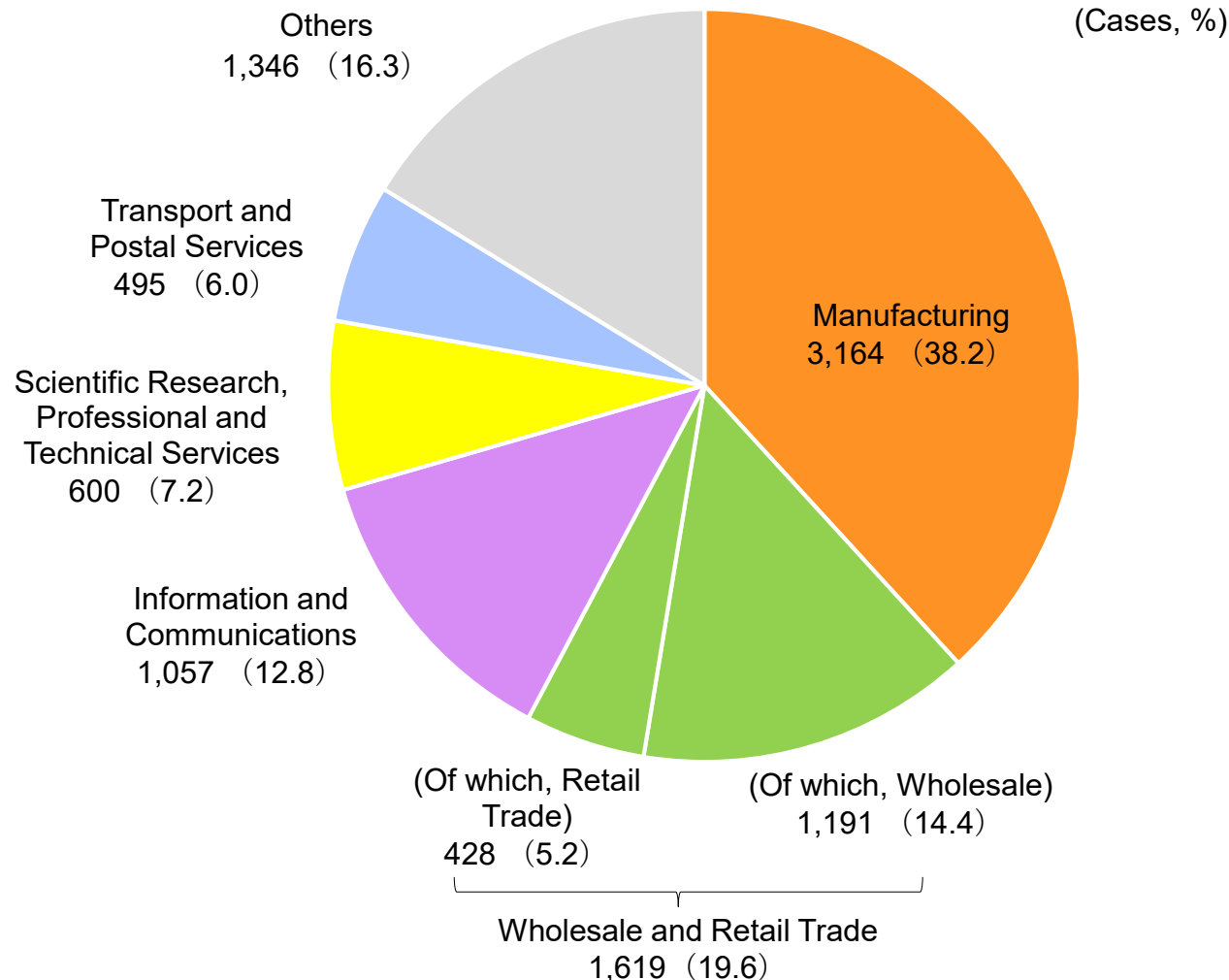
4.3 Unjust Requests for the Provision of Economic Benefits

From at least August 2021 to around June 2023, as countermeasures against itinerant environmental inspections of BIGMOTOR stores by executives, subcontractors were made to perform tasks such as cleaning the stores, removing weeds, and waxing the tires of display vehicles without compensation. Additionally, for new store openings, they were required to provide sponsorship fees for floral arrangements or wreaths and to remove pet hair during interior cleaning of display vehicles, which was an additional task, also without compensation. As a result, five subcontractors were compelled to provide economic benefits without receiving any payment.

[Main Points of the Recommendations]

- **Establish a contact point, composed of independent third party such as legal professionals**, to accept inquiries from subcontractors and check whether they have experienced any actions from BIGMOTOR that may be problematic under the Subcontract Act since August 2021.
- Based on the results of the inquiries, have the independent third party conduct an investigation, and if any issues under the Subcontract Act are identified, take the necessary measures to protect the interests of the subcontractors.
- Report the status of the investigation and the measures taken to protect the interests of subcontractors to the JFTC, and also publicly disclose an outline of these matters.

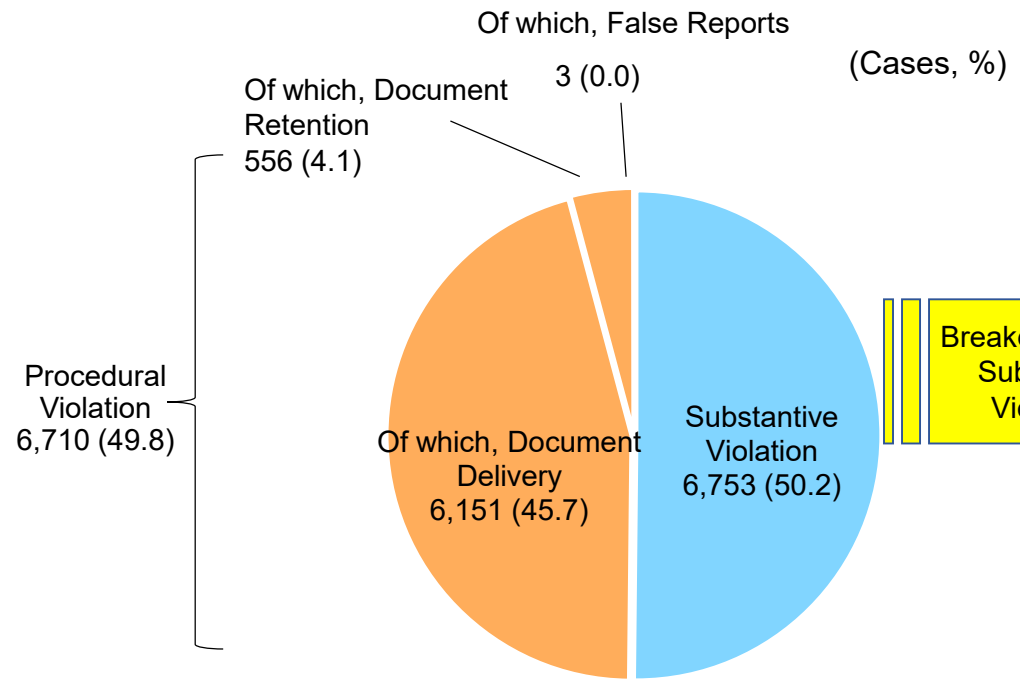
Breakdown of Recommendations and Guidance (8,281 Cases) by Industry



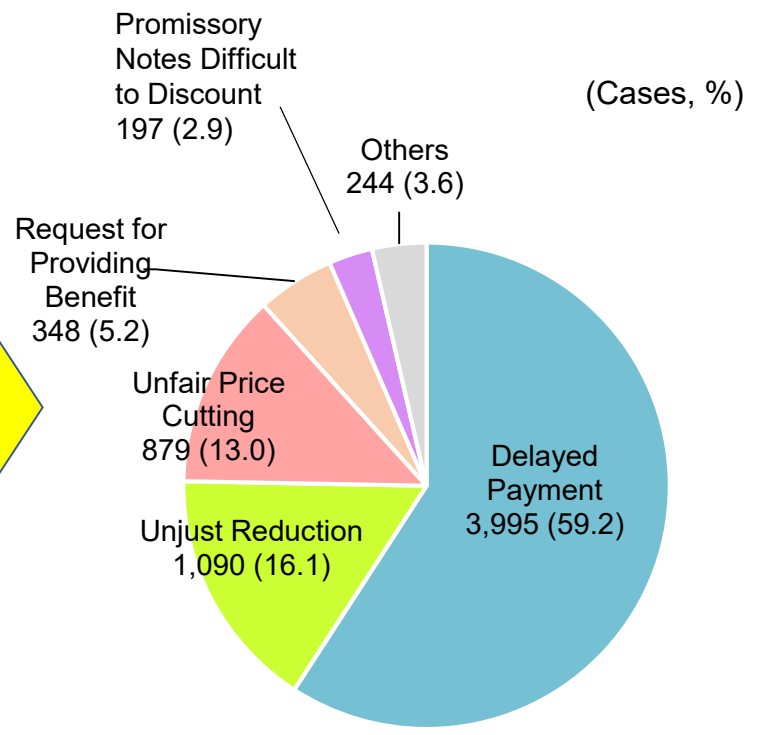
(Note 1) The industries are classified according to the major categories of the Japan Standard Industrial Classification.

(Note 2) The figures in parentheses represent the proportion of the total number of recommendations and guidance. Since the proportion is rounded to the second decimal place, the total does not necessarily equal 100. The same applies below.

Number of Cases by Type (13,463 Cases)



Substantive Violations by Type of Conduct (6,753 Cases)



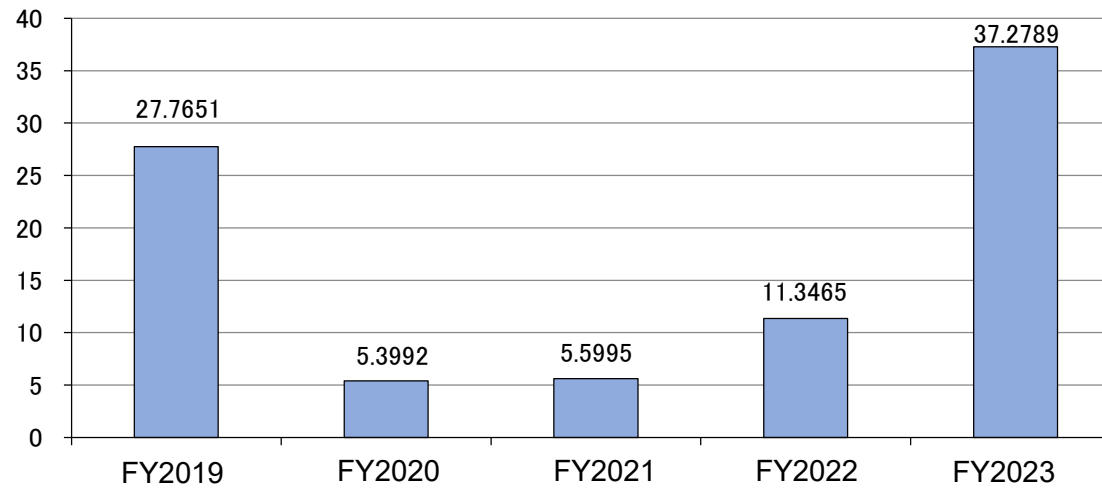
(Note) The figures in parentheses represent the proportion of the total number of cases by type. Since recommendations or guidance may be issued for multiple types of violations in a single case, the total number of cases by type of violation does not match the total number of recommendations or guidance cases on page 5.

(Note) The figures in parentheses represent the proportion of the total number of substantive violations.

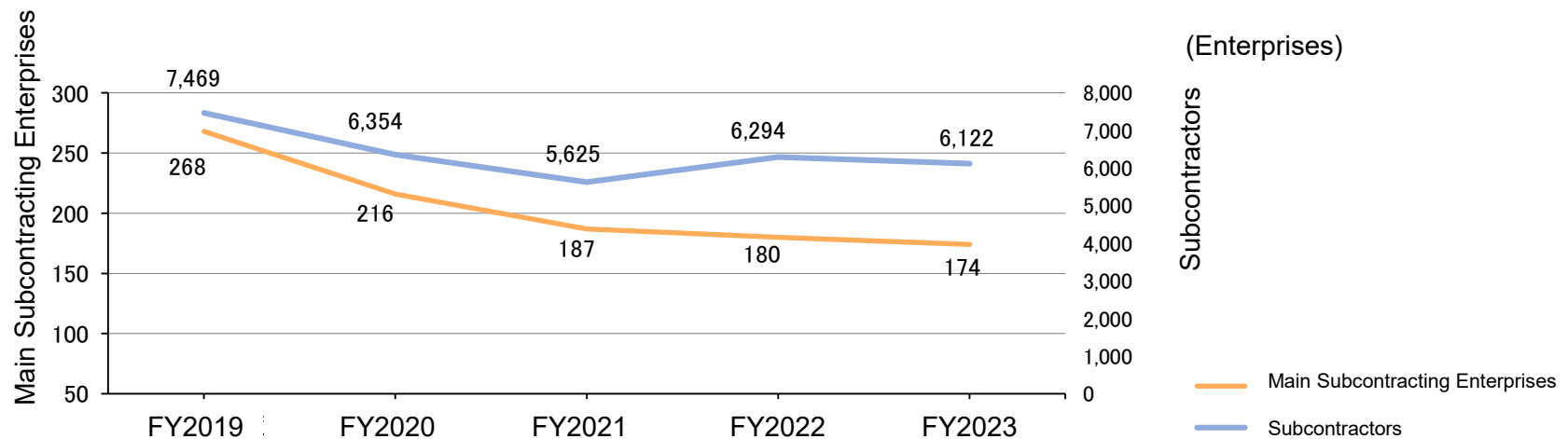


(100 million yen)

Amounts of Restitution



The Number of Main Subcontracting Enterprises Conducting Restitution and Subcontractors Receiving Restitution



The Number of Voluntary Admissions of Violation and the Amount of Voluntary Restitution

	FY2019	FY2020	FY2021	FY2022	FY2023
The Number of Newly Received Voluntary Admissions of Violation	78	24	32	23	39
The Number of Processed Voluntary Admissions of Violation	46	58	34	20	39
Amount of Voluntary Restitution (JPY million)	58.49	144.37	148.96	821.06	77.7
The Number of Subcontractors Receiving Voluntary Restitution	1,926	3,230	433	91	2,158

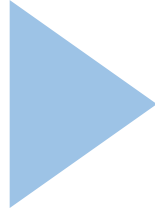
In light of the fact that voluntary improvement measures by the main subcontracting enterprises contribute to the early recovery of the disadvantages suffered by the subcontractors, the JFTC, in cases where it finds reasons such as a voluntary admission of violation and voluntary improvement measures being taken before the JFTC initiates an investigation, encourages compliance with laws and regulations by the main subcontracting enterprises. From the viewpoint of encouraging compliance by the main subcontracting enterprises, the JFTC has decided to treat such cases as not requiring a recommendation to take necessary measures to protect the interests of the subcontractor, and has made a public announcement to this effect (December 17, 2008).

Efforts to Ensure Fair Transactions for Small and Medium-Sized Enterprises

1. Guidelines for Price Negotiations to Appropriately Pass Through Labor Cost (November 2023)

<Contents of the Guidelines>

- ✓ Decide on the policy of efforts at the top management level
- ✓ Regular consultations initiated by the ordering party
- ✓ Use of publicly available documents during price negotiations, etc.

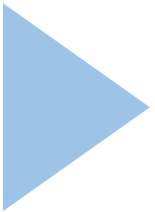


- **Thorough Public Awareness** (Explanatory meetings in eight regions nationwide, utilization of opportunities at “regional labor-management conferences,” etc.)
- **Conduct a Special Study to Follow Up** on the implementation status of the Guidelines
- **Strict Measures Based on the Antimonopoly Act and the Subcontract Act**

2. Special Study on Facilitation of Transferring Higher Costs (December 2023)

< Study Results >

- ✓ Sent letters of warning to 8,175 ordering parties, based on questionnaires
- ✓ The proportion of the letter recipients to the all respondents decreased by 4.1 points compared to the 2022 study.
- ✓ There was a certain degree of progress in facilitating the smooth pass-through of price increases.



- **Public Disclosure of Enterprise Names Based on the Results**

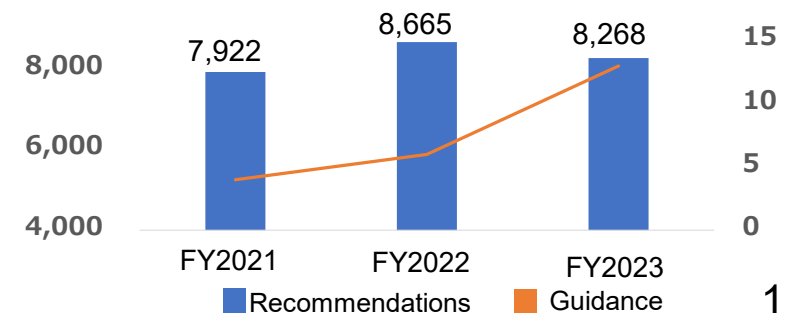
On March 15, 2024, **the names of 10 enterprises were published** under the provisions of Article 43 of the Antimonopoly Act. These enterprises were identified as having left transaction prices unchanged without consultation with a significant number of their contractors.

3. Strict and Proactive Law Enforcement Against Cases of Unfair Price Cutting and Reductions of Proceeds


<Enforcement of the Subcontract Act in FY 2023>

- ✓ 8,268 cases of guidance
- ✓ 13 cases of recommendations (approval of Subcontract Act violations, public disclosure of enterprise names)


The Number of Recommendations and Guidance Cases (Cases)



Change to Guidance Standards

- Since 1966, the JFTC and the Small and Medium Enterprise Agency have been providing guidance to long-term negotiable instruments (including promissory notes, lump-sum settlement methods, or electronically recorded monetary claims, hereinafter referred to as the same) based on a comprehensive consideration of industry business practices and financial conditions. The two agencies have established a "guidance standard" of 90 days for the textile industry and 120 days for other industries. Long-term negotiable instruments exceeding these periods have been guided as potentially falling under "difficult-to-discount negotiable instruments" according to the Subcontract Act.
 - Regarding the above, in recent years the JFTC, jointly with the Small and Medium Enterprise Agency, has requested relevant trade associations to strive to make payments to subcontractors in cash as much as possible and to ensure that the term for negotiable instruments is within 60 days, in order to secure the cash flow of subcontractors.
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- In light of the recent comprehensive reconsideration of industry business practices and financial conditions, the guidance standard **has been changed to 60 days regardless of the industry.**
 - **From November 1, 2024**, the main subcontracting enterprises **will be guided that if it issues long-term promissory notes exceeding 60 days** as a means of paying subcontracting fees, it may be deemed to fall under "difficult-to-discount promissory notes."

Request for Consideration to Relevant Trade Associations

- With the change in the guidance standard, it is important for enterprises using negotiable instruments as a means of paying subcontracting fees to ensure the smooth shortening of their terms. This includes shortening the terms of the negotiable instruments they themselves receive and considering the impact on the cash flow of enterprises working to shorten the terms of these instruments.
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- The JFTC, jointly with the Small and Medium Enterprise Agency, has issued a request to relevant trade associations, government agencies, and financial institutions to consider the cash flow of enterprises working to improve and standardize payment methods throughout the supply chain.

○ Amendment of Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (May 27, 2024)

- (1) When significant cost increases can be identified from published materials, (2) the maintained compensation harms the profits of subcontractors and puts pressure on their management.
- Recently, based on the "Guidelines for Price Negotiations to Appropriately Pass on Labor Costs," it has been clarified that the subcontracting fees falling under the aforementioned (1) and (2) will be treated as "conspicuously lower than the price ordinarily paid for the same or similar content of work."
- However, for it to qualify as unfairly low-priced purchasing, it must also meet the separate requirement of being "unjustly determined."

