公正取引委員会
Japan Fair Trade Commission

Market Study Report on Business Practices in the Food Supply Chain (Summary)

May 2025

Purpose and Method of the Study

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Purpose of the Study

- Food loss in the Food Supply Chain (Note1) raises the cost of waste disposal, and food and beverage manufacturers, wholesalers, and retailers must bear the costs associated with disposal, and <u>business practices in the Food Supply Chain have been pointed out as a factor contributing to food loss, which in turn leads to unnecessary social costs.</u>
- The Japan Fair Trade Commission (JFTC) has paid attention to the trade practices in the Food Supply Chain and has conducted various market studies (Note2) . Given that a considerable time has passed since the previous study and that actual <u>concerns have been raised about competition policy issues regarding business practices in the processed food industry.</u>

- The JFTC has conducted another market study on business practices that also lead to food loss. The study aims to <u>improve transactions in the Food Supply Chain</u> and <u>promoting the reduction of food loss</u>, while also <u>presenting JFTC's view under the Antimonopoly Act (AMA), etc.</u>

Method of the Study

(Study period: September 2024 - March 2025)

(1) Web-based questionnaire survey

Target group	Number of subjects	Respondent (Response rate)
Food and beverage manufacturers	11,600 companies	4,706 companies (about 27.2%)
Food and beverage wholesalers	5,845 companies	
Total	17,445 companies	

(3) Interview survey

Target group	Number of subjects
Food and beverage manufacturers	72 companies (Note3)
Food and beverage wholesalers	
Retailers	15 companies

(2) Information Submission Form [223 items of information provided]

(Note 1) The series of food distribution transactions from the production and manufacturing to the sales and consumption of food and beverages.
(Note 2) A Market Study on the Distribution Practices in the Processed Food Industry in 1992, a Market Study on Transactions between Food Product Manufacturers and Wholesalers in 2011 and a Market Study on Transactions of Private Brand Products in the Food Sector in 2014.
(Note 3) Total of 66 manufacturers/wholesalers responded to the Web-based questionnaire survey and 6 wholesalers selected based on the results of the Web-based questionnaire survey.

Business Practices in the Food Supply Chain that were the Subject of This Study ("Business Practices")

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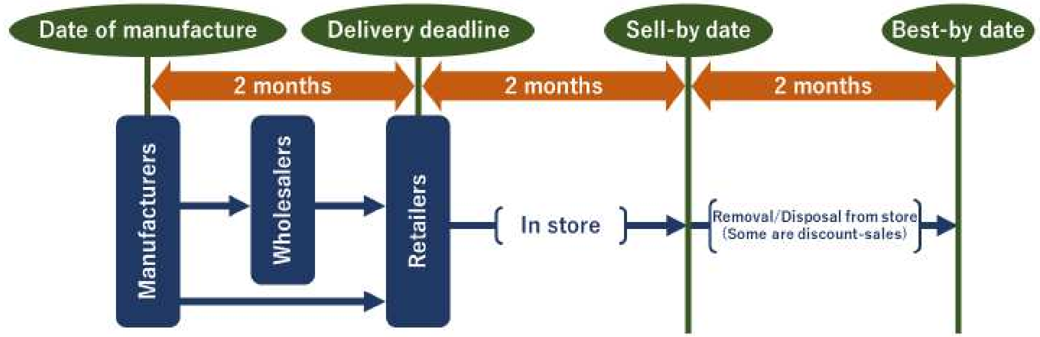
(1) One-third rule (Business practice regarding delivery deadline)

The period from the date of manufacture to the best-by date of food and beverage products is divided into three equal parts, and the manufacturer (including the wholesaler), retailer and consumer each share one-third of this period. Under this business practice, the first third of the period is the “delivery deadline”, by which the manufacturer must deliver the product to the retailer; the second third is the “Sell-by date”, during which the retailer may keep the products in store; and the final third is the “Best-by date”,which is ensured as the period during which the consumer can still enjoy the product.

[Example of 6 months Best-by date]



(2) Short lead times (Business practice regarding delivery deadline)

A business practice that presumes it is a matter of course to accept orders with short delivery deadlines—deadlines that cannot be met unless a make-to-stock production process is implemented, (i.e., the quantity to be ordered is forecast in advance, before the retailer actually places the order).

(3) Prohibition of delivery of reversed-date products (Business practice regarding the order of delivery)

A business practice in which reversed-date products —that is, products whose best-by date (or date of manufacture) is even one day earlier than that of products already delivered to the retailer— are not permitted to be delivered to the same retailer.

(4) Prohibition of delivery of mixed-date products (Business practice regarding the order of delivery)

A business practice in which mixed-date products—that is, products containing items with different best-by dates (or date of manufacture)—are not permitted to be delivered to the retailer or wholesalers.

(5) Out-of-stock penalty

A business practice whereby, in the event of a out of stock—i.e., when the manufacturer or wholesaler fails to deliver the quantity ordered by the retailer by the delivery deadline—, the manufacturer or wholesaler is required to pay compensation or other financial penalties to the retailer, regardless of the reason, for the loss of sales opportunity.

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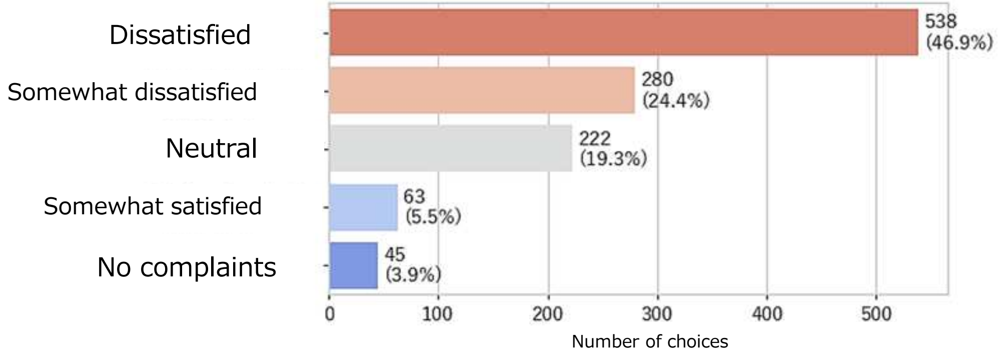
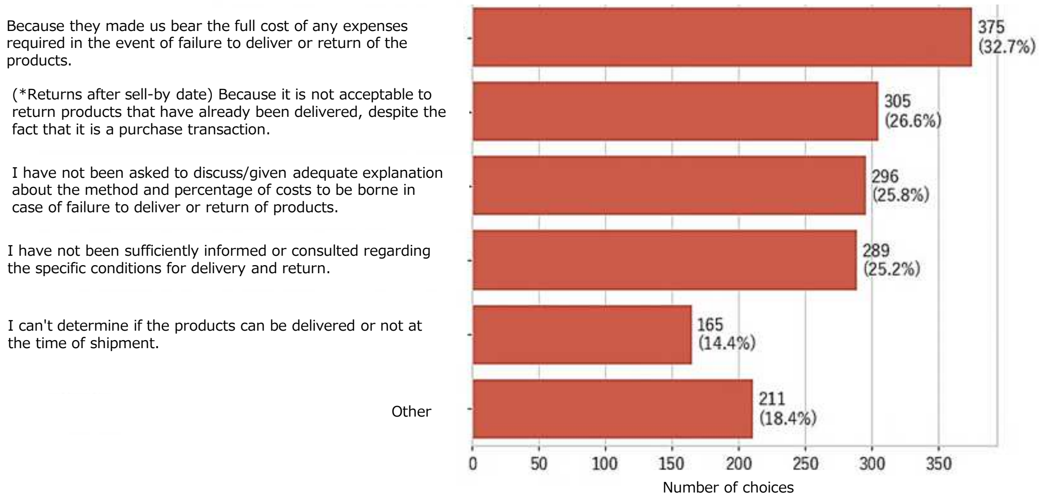
(1) One-third rule



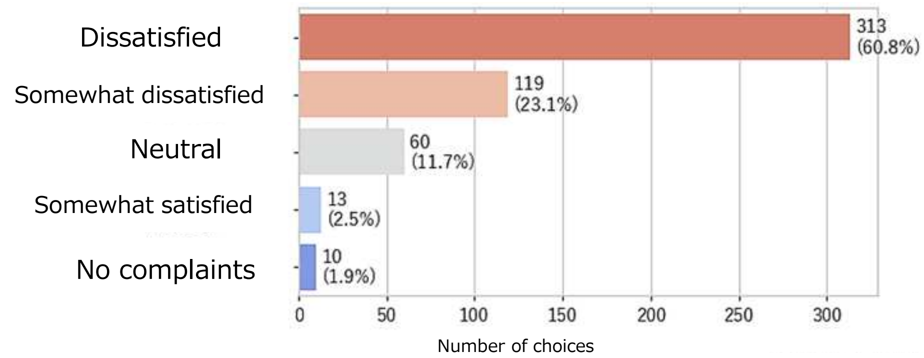
Reasons for being dissatisfied or somewhat dissatisfied



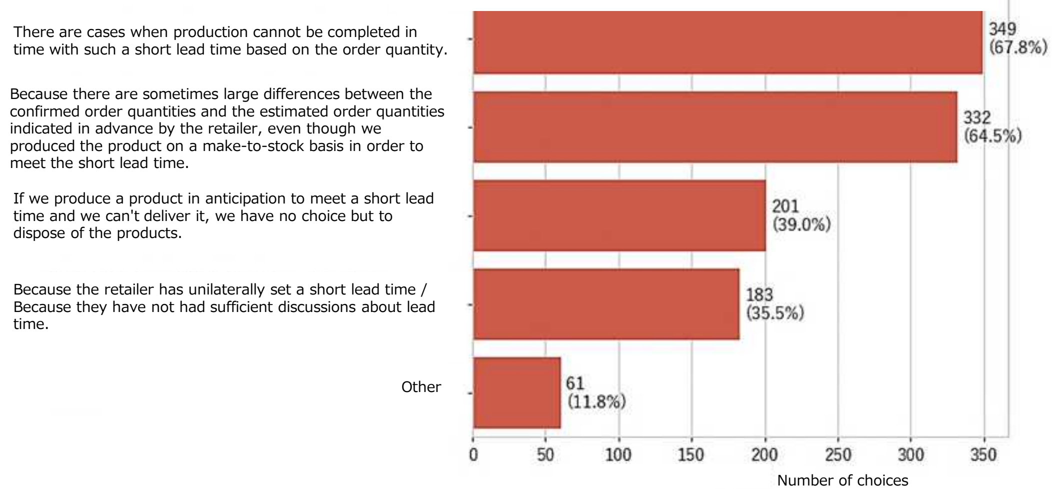
<Results of interview survey with respondents>

- As a business practice, we are unilaterally enforced by wholesalers and retailers and have no choice but to comply.
- The wholesaler's logistics center has a retention period for inventory, but due to the wholesaler's mismanagement, the retention period becomes long and the one-third delivery deadline to the retailer is exceeded, and the wholesaler is sometimes unable to deliver to the retailer and returns the product to us (manufacturers). In such cases, the costs for transportation and disposal are borne by us, which is a heavy burden.

(2) Short lead times



Reasons for being dissatisfied or somewhat dissatisfied



<Results of interview survey with respondents>

- Since the order quantity is determined the day before the special sale date and products must be delivered the following day, the only way to achieve this is through make-to-stock production. Moreover, since the forecasted order quantity does not always match the actual order quantity, production adjustments are extremely difficult, resulting in shortages or excess inventory, which inevitably increases production costs.
- Frequent small-lot deliveries are often required in combination with short lead times, but the resulting increase in transportation costs is not discussed, and the price is not passed on to the customer.

Dissatisfaction with the Business Practices and the Reasons for Such Dissatisfaction, etc. ②

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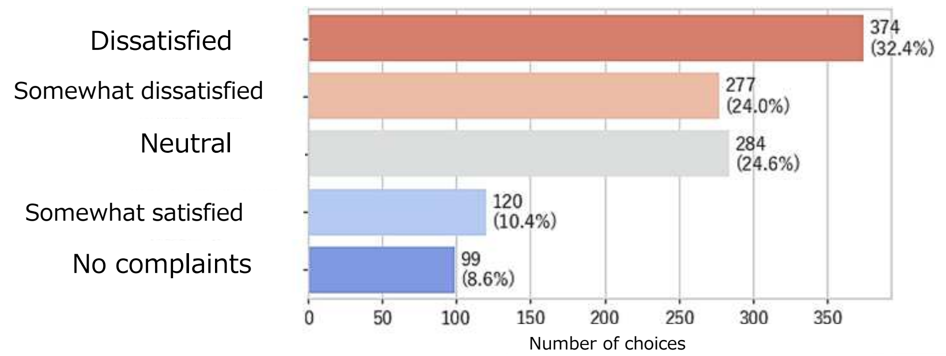
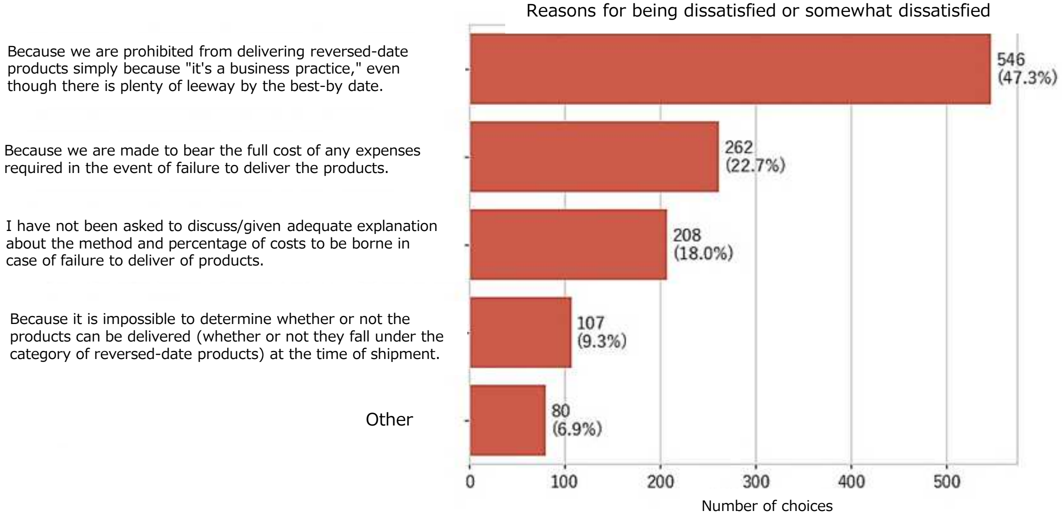
(3) Prohibition of delivery of reversed-date products

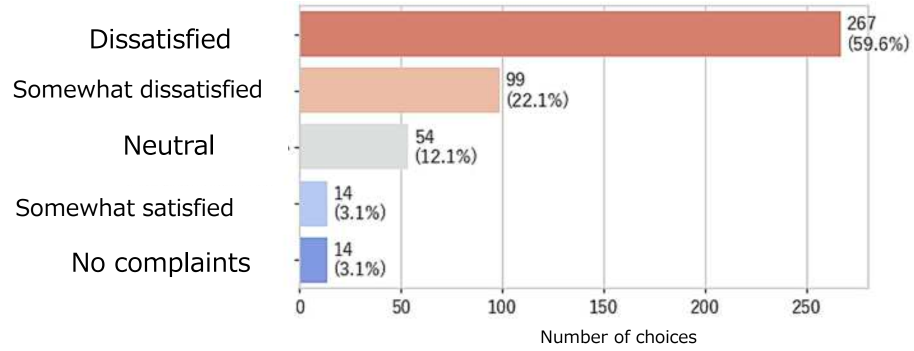


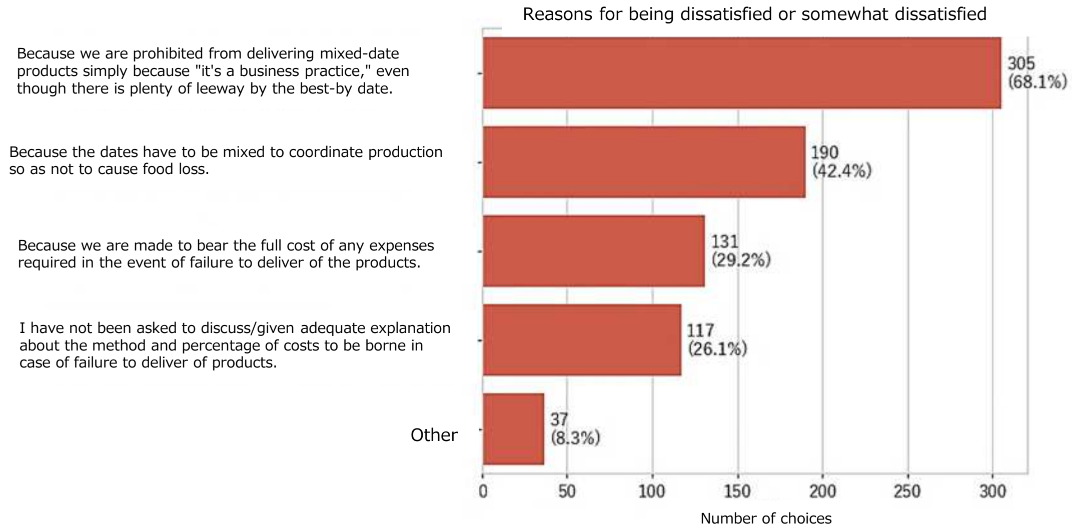


<Results of interview survey with respondents>

- In some cases, such as when reversed-date products are found during the delivery stage from the wholesaler to the retailer, the wholesaler returns the products to us (the manufacturer) despite the fact that it was the wholesaler's error.

(4) Prohibition of delivery of mixed-date products

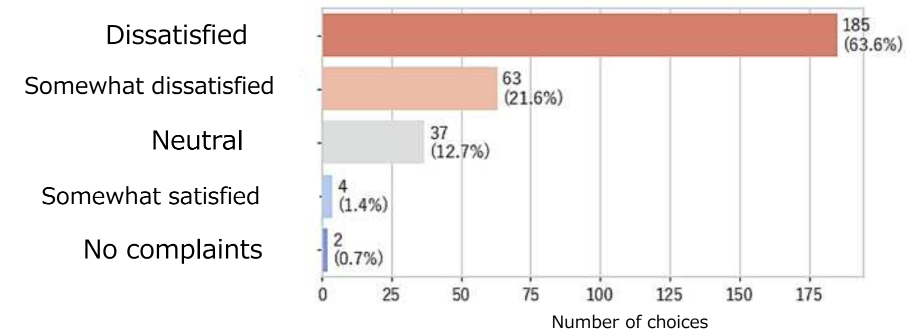


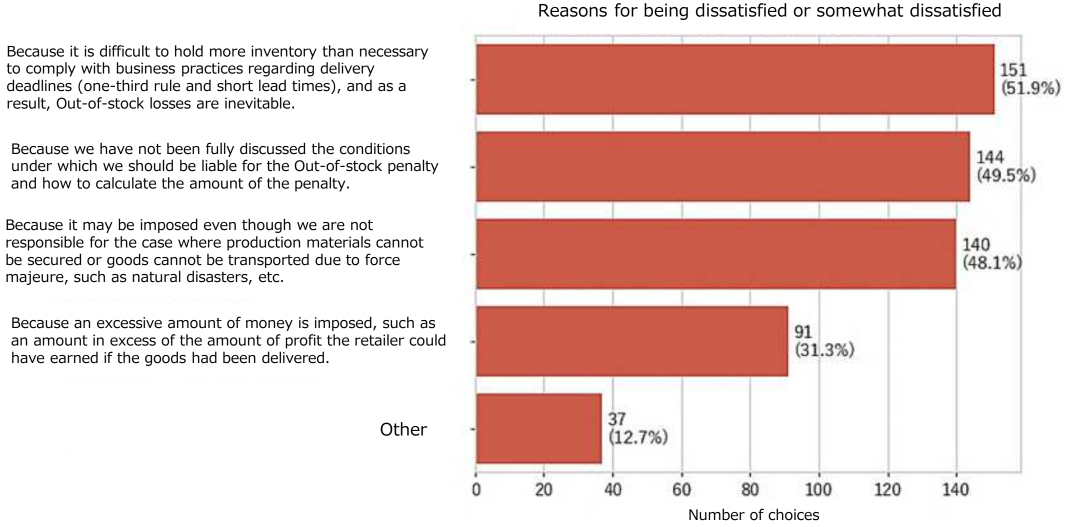


<Results of interview survey with respondents>

- The orderer does not adhere to the delivery unit (lot) agreed upon in advance. For example, although we take orders and produce in units of 50, only 10 units are ordered, and we (the manufacturer) have no choice but to accept it. When 100 units are ordered at a later date, we want to include remaining 40 units in the delivery, but they do not allow it. If we are unable to deliver this leftover inventory to another orderer, we are forced to dispose of it and bear the disposal cost ourselves.

⑸ Out-of-stock penalty





<Results of interview survey with respondents>

- The Out-of-stock penalty may be imposed even if the Out-of-stock is caused by force majeure, such as a natural disaster for which we (the manufacturer) cannot be held responsible.

1 General Discussion

It is problematic, as an abuse of a superior bargaining position under the AMA, for a party who has superior bargaining position against the other transacting party to make use of such position to impose a disadvantage on the transacting party, unjustly in light of normal business practices.

JFTC's views under the AMA to disadvantageous acts taken on account of the Business Practices is as described in 2(1) through (5) below, but in any case, the following points should also be noted regarding the terms and conditions of the trade.

- It is important that sufficient discussions are held between the orderer and the supplier, and that the supplier agrees satisfactorily.
- Even if it is agreed upon through prior discussion, it may be a problem if the orderer imposes disadvantage on the supplier that cannot be calculated in advance or that exceeds a reasonable scope.

It should be noted that the term "normal business practices" means business practices that are endorsed from the viewpoint of the maintenance/promotion of the said fair competition. Therefore, an act is not immediately justified merely because it complies with the currently existing business practices.

2 JFTC's View on Each of the Business Practices

If an orderer (a retailer, wholesaler, etc. to whom a supplier delivers products) who has superior bargaining position against a supplier (manufacturer or wholesaler) acts that falls under any of the following (1) to (5), it unjustly imposes a disadvantage on the transacting party in light of normal business practices and therefore cause a problem as abuse of superior bargaining position.

(1) One-third rule

In the following cases, if it is unavoidable for the supplier to accept the request due to concern about the possible effects on future transactions, etc.:

- If, after having entered into a contract to purchase products from the supplier, the orderer refuses to accept all or part of the said products without justifiable reason.
- In the case of returning products received from a supplier, when it is not clearly agreed upon with the supplier as to when and under what conditions the products are to be returned, and when this causes the supplier , etc. a disadvantage that cannot be calculated in advance, or when the return is made without any other justifiable reason.

<Specific examples>

- Unilaterally notifying the manufacturer that the retailer and wholesaler will set the delivery deadline based on the one-third rule without discussion with the manufacturer and that the manufacturer must adhere to this rule.
- Unilaterally refusing to accept products despite prior consultation from the manufacturer regarding the manufacturer's inability to meet the delivery deadline due to natural disasters or other circumstances for which the manufacturer is not responsible.

2 JFTC's View on Each of the Business Practices

(2) Short lead times

- When the orderer places an order with a short lead time, and despite the fact that the manufacturing cost has increased due to the short lead time, also with a unilateral request on a transaction at a significantly lower price, and if it is unavoidable for the supplier to accept the request from concern about the possible effects on future transactions, etc.
- In the case where the supplier has already procured raw materials, etc. but the orderer cancels the order for unilateral reasons without paying the costs incurred by the supplier for the production, etc., and when it is found that the order for the production, etc. of the products was placed substantially in advance.

<Specific examples>

- Even placing an order for a product that takes one week to produce and having the manufacturer deliver the product the next day of the order, which leads to make-to-stock production, there are cases where the actually orders only a smaller quantity than the estimated production quantity and unilaterally charges the manufacturer for the resulting disposal costs, etc.
- Unilaterally setting the same unit price as that for an order with a normal delivery deadline, even though the suppolier's production costs, etc. have increased significantly due to an order with a delivery deadline shorter than the time required for production.

(3) Prohibition of delivery of reversed-date products

The concept of refusing to accept or returning products without justifiable reason because of a business practice prohibiting the delivery of reversed-date products is the same as in (1) above.

<Specific example>

- A case such as refusing to accept delivery of reversed-date products without discussion with the supplier and unilaterally requiring the manufacturer to bear the costs of returning or disposing of the products, even though the cause of the reversed-date product was due to road conditions or other circumstances for which the supplier is not responsible.

(4) Prohibition of delivery of mixed-date products

The concept of refusing to accept or returning products without justifiable reason because of the business practice of prohibiting the delivery of mixed-date products is the same as in (1) above.

<Specific example>

- Placing an order without complying with the pre-agreed order lot (e.g. placing an order for 250 pieces even though the order lot is for 100 pieces) and then unilaterally making the manufacturer comply with the order, thereby making it difficult to manage deliveries in order of production date, while not allowing delivery of mixed-date products and requiring the manufacturer to bear the costs associated with disposal, etc.

JFTC's Views on the Business Practices under the AMA, etc.③ and the Response by the JFTC

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2 JFTC's View on Each of the Business Practices

⑸ Out-of-stock penalty

- A case when the orderer unilaterally sets a penalty for the lack of delivery without sufficiently discussing with the supplier the amount of the penalty and the basis for its calculation with respect to the supplier's failure to deliver by the delivery deadline, and imposes a penalty in excess of the amount of profit that would have been earned if the products had been delivered and sold.
- The price is substantially reduced by deducting an amount equivalent to a Out-of-stock penalty without changing the consideration stipulated in the contract without justifiable reason after the products have been purchased.

<Specific example>

- A case where the orderer makes the manufacturer unilaterally compensate for an Out-of-stock situation caused by circumstances beyond the manufacturer's control, such a s natural disasters, by paying an amount equivalent to the planned profit or sales.

3 JFTC's Views under the Subcontract Act

It should be noted that when an orderer, such as a retailer, commissions a supplier to manufacture private brand products, the transaction may also be subject to the Subcontract Act.

Response by the JFTC

- Based on the results of this study, from the perspective of prevention from violations and improvement of transactions, the study results shall be made public and this study report shall be disseminated to the food and beverage industry in cooperation with the relevant ministries and agencies.
- The JFTC will continue to closely monitor the trade practices in the Food Supply Chain, strive to grasp any acts that may be problematic under the AMA, etc., and strictly respond against any violations.