

Cartel Enforcement in Japan

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Illegal conducts prohibited by the Antimonopoly Act

**Private
Monopolization**

**Unreasonable Restraint of
Trade**

(Price fixing cartel/ Bid-rigging ,etc.)

Unfair Trade Practices

Merger which may be
substantially to
restrain competition

Subcontract Act

Supplementary Act

Legal measures against violations of AMA etc.

Conducts	Legal Measures
Private Monopolization	Cease and Desist Order Surcharge Payment Order Criminal Accusation
Unreasonable Restraint of Trade (Price fixing cartel /Bid-rigging, etc.)	Cease and Desist Order Surcharge Payment Order Criminal Accusation
Unfair Trade Practices	Cease and Desist Order Surcharge Payment Order*
Anticompetitive Merger	Cease and Desist Order
Violation of Subcontract Act	Recommendation

*Only certain types of Unfair Trade Practices

Prohibition of unreasonable restraint of trade in AMA

- Art.3 No entrepreneur shall effect private monopolization or **unreasonable restraint of trade**.
- Art.2 (6) The term "unreasonable restraint of trade" as used in this Act shall mean such business activities, by which any entrepreneur, by contract, agreement or any other concerted actions, irrespective of its names, with other entrepreneurs, mutually restrict or conduct their business activities in such a manner as to fix, maintain, or increase prices, or to limit production, technology, products, facilities, or customers or suppliers, thereby causing, contrary to the public interest, **a substantial restraint of competition in any particular field of trade**.

Surcharge calculation rates

Cartels and Bid-riggings

$$\begin{array}{|c|} \hline \text{Surcharge} \\ \text{calculation} \\ \text{rates} \\ \hline \end{array}
 \times
 \begin{array}{|c|} \hline \text{Sales amounts of products in question} \\ \text{during the period of violation} \\ \text{(3 years at a maximum)} \\ \hline \end{array}
 =
 \begin{array}{|c|} \hline \text{Sum of surcharges} \\ \hline \end{array}$$

	Normal	Repeated violation/Leading entrepreneur	Early termination
Manufacturing	10% (4%)	15%(6%)	8%(3.2%)
Retail	3% (1.2%)	4.5% (1.8%)	2.4%(1%)
Wholesale	2% (1%)	3% (1.5%)	1.6%(.8%)

*Rates in case of medium and small enterprises in parenthesis

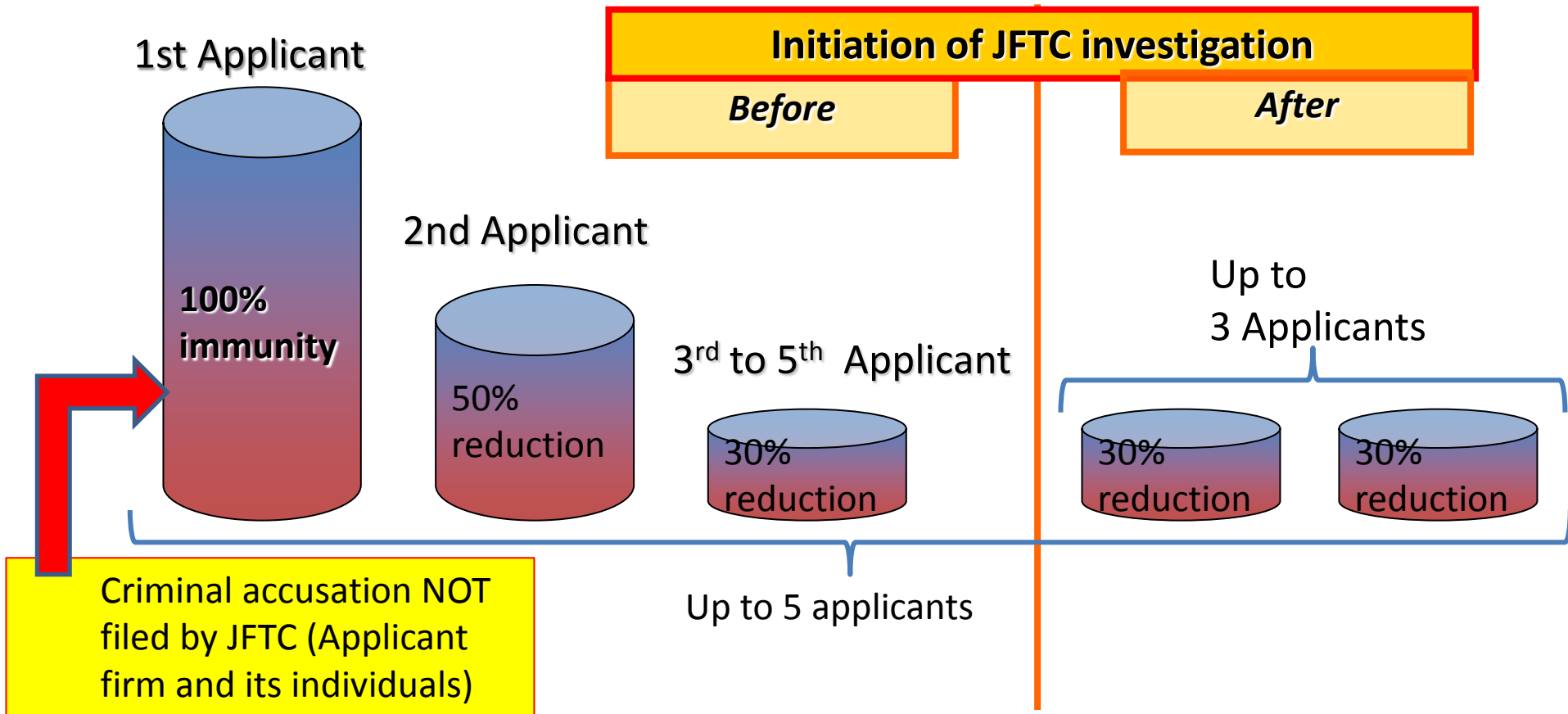
- “Early termination” means that the period of illegal acts is less than 2 years, and such acts are discontinued not later than one month before the commencement of investigations.
- “Repeated violation” means cases where surcharge payment orders have been given during the period of 10 years before the commencement date of investigation.
- “Leading entrepreneur” means entrepreneur who plays a leading role, such as “organizer” in bid-rigging, cartel, etc.

Criminal penalties

Cartels and Bid-riggings

Individuals	Imprisonment with work of up to 5 years or fine of up to 5 million yen
Entrepreneurs	Fine of up to 500 million yen

Overview of leniency program in Japan



Requirements of leniency program in Japan(1)

- For immunity
 - The first firm to come forward before the first day of the investigation
 - Not commit the relevant violation on or after the first day of the investigation
- For reduction
 - 2nd to 5th firm to individually report to JFTC
 - Not commit the relevant violation on and after the first day of the investigation for pre-investigation applicants, or on and after the reporting date for post-investigation ones
 - Submit reports and documents unknown to JFTC (for 4th and 5th applications before the investigation begins, or for applications after the investigation begins)
 - Report is due the twentieth day from the first day of the investigation (for applications after the investigation begins)
 - Maximum Number of Applications after the investigation begins : Three (but The total of applications including before and after the investigation are limited to no more than 5)

Requirements of leniency program in Japan(2)

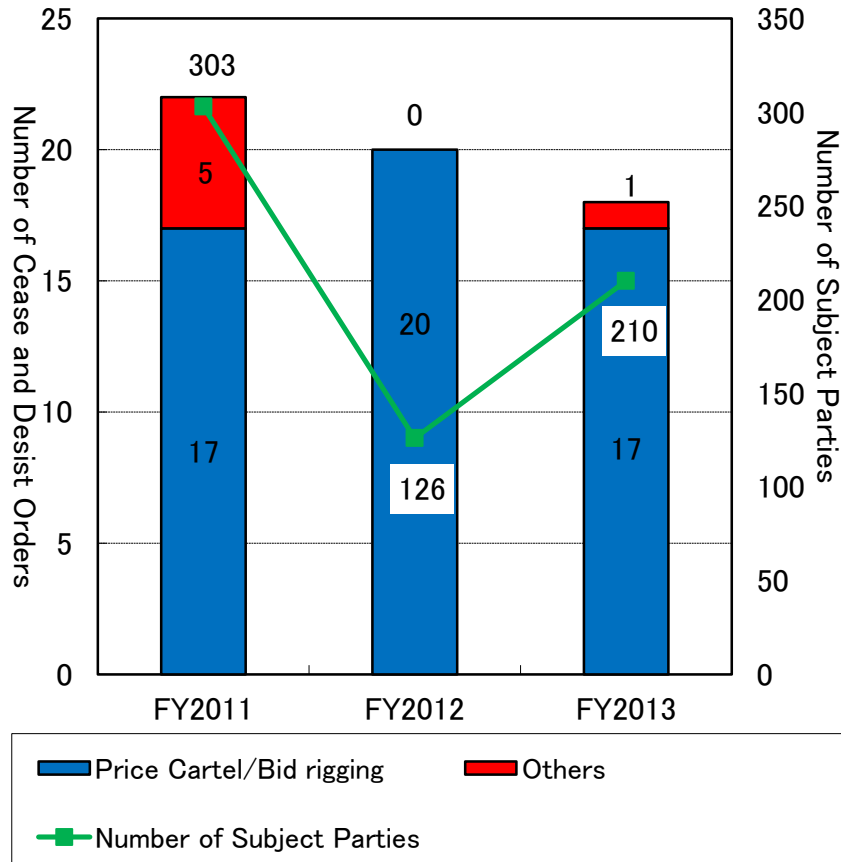
- Both for immunity and reduction
 - Form No.1 (for pre-investigation) and Form No.3 (for post-investigation) must be transmitted only in facsimile
 - 03-3581-5599 (+81-335815599 from overseas, but Japanese language only)
 - Reports and documents submitted not contain false information
 - Submit reports or materials responding to JFTC's additional requests
 - Not coerce others to commit the infringement or block others from ceasing
 - Not disclose the fact of application to third parties without justifiable reasons

Implementation of leniency program in Japan

- Many applications
- Variable sources of information
- Increases of surcharge imposed
- Effective compliance program
- Enhanced Inter-agency cooperation

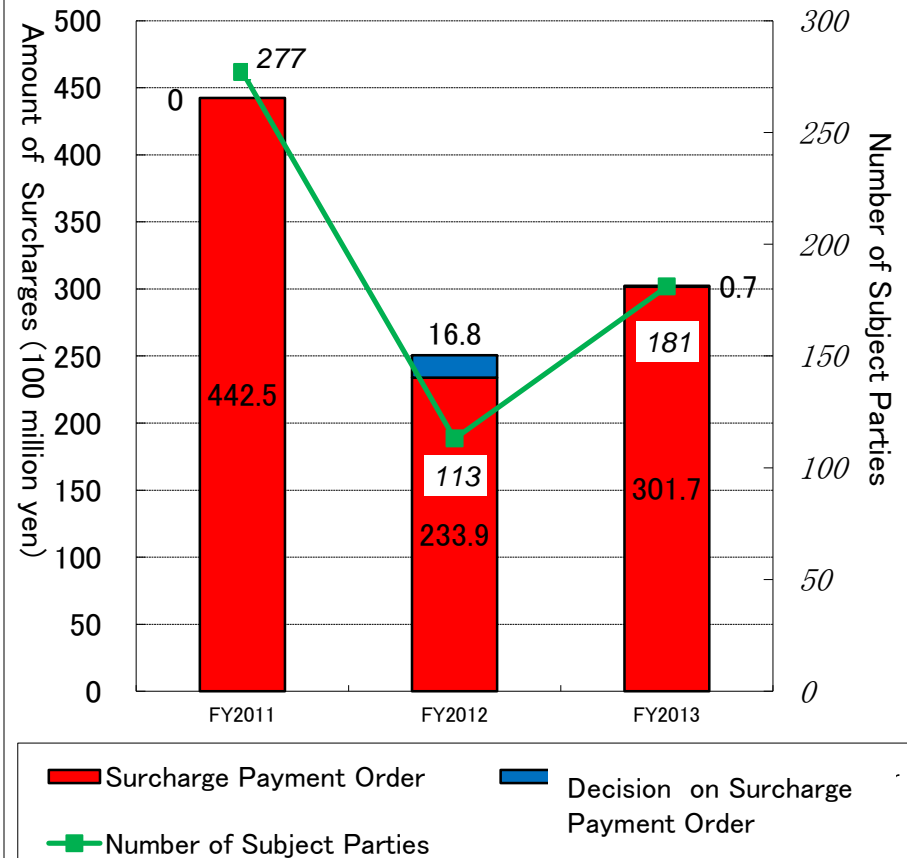
Recent Enforcement by JFTC

Change in Number of Cease and Desist Order



Change in the Surcharge Amount

(*Amounts less than 1 million yen are omitted)



Recent international cartel enforcement by JFTC

1. Auto parts

Total surcharge amount: Approx. 34.3 billion yen**

Type of Auto Parts	Violators	Surcharge Amounts* (million yen)
Wire harness	Yazaki Corporation	9,607
	Sumitomo Electric Industries Ltd.	2,102
	Fujikura Ltd.	1,182
	Furukawa Electric Co., Ltd.	Immunity
Generators and starters	Mitsubishi Electric Corporation	1,410
Starters, windshield and wiper systems	Mitsuba Corporation	1,108
Radiators and electrical fans	T.RAD Co., Ltd.	672
Radiators and electrical fans	Calsonic Kansei Corporation	198
Headlamps and rear combination lamps	KOITO MANUFACTURING CO., LTD.	3,428
	ICHIKOH INDUSTRIES, LTD.	1,250
	Stanley Electric Co., Ltd.	Immunity

*Amounts less than 100 thousand yen are omitted.

**It includes surcharge for cartel of industrial machinery bearings. 12

1. Auto parts (continued)

Total surcharge amount: Approx. 34.3 billion yen**

Type of Auto Parts	Violators	Surcharge Amounts* (million yen)
Bearing (automotive and industrial machinery)	NTN Corporation	7,231
	NSK Ltd.	5,625
	NACHI-FUJIKOSHI CORP.	509
	JTEKT Corporation	Immunity

**It includes surcharge for cartel of industrial machinery bearings.

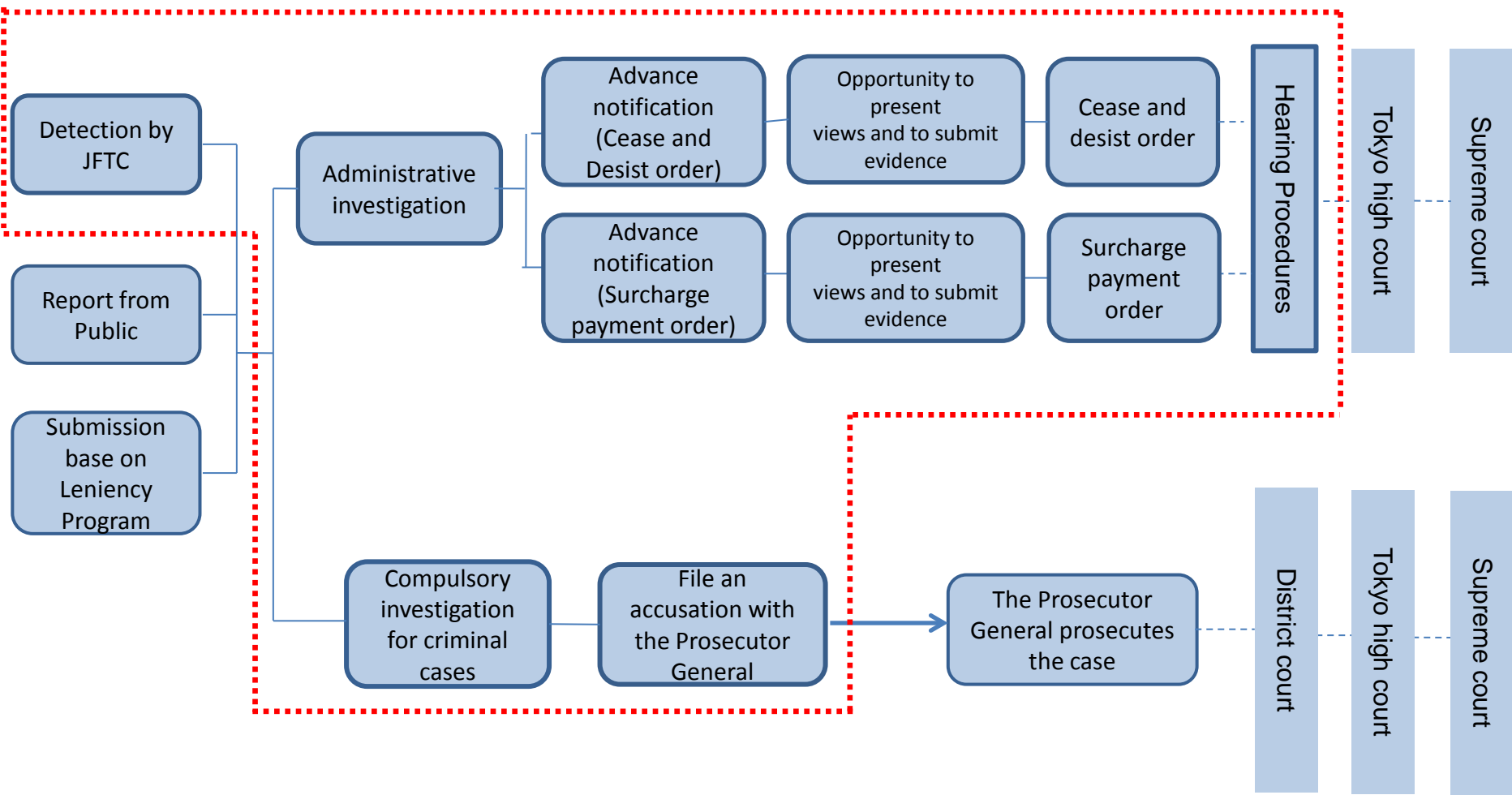
2. International ocean shipping services for cars

Total surcharge amount: Approx. 22.7 billion yen

Violators	Surcharge Amounts* (million yen)
Nippon Yusen Kabushiki Kaisha	13,101
Kawasaki Kisen Kaisha, Ltd.	5,698
Wallenius Wilhelmsen Logistics, AS	3,495
Nissan Motor Car Carrier Co., Ltd.	423
Mitsui O.S.K. Lines, Ltd.	Immunity

*Amounts less than 100 thousand yen are omitted.

Flowchart of procedures of AMA for handling cartels and bid-riggings



Outline of the Amended Antimonopoly Act

- The JFTC's hearing procedure for administrative appeal is to be abolished, and appeals against administrative orders issued by the JFTC (cease and desist orders, etc.) is to be heard at the Tokyo District Court as appeal suits.
- Notification procedures prior to issuing an administrative order by the JFTC is to be further developed.

1. Abolition of Hearing Procedure and Preparation of Court Proceedings pertaining to Cease and Desist Orders, etc.

(1) Abolition of the Hearing Procedure

- ① The JFTC's hearing procedure for administrative appeal is to be abolished. (Article 52 to Article 68 and other relevant provisions of the current act)
- ② The substantial evidence rule is to be abolished. (Article 80 of the current act)
- ③ Restriction on offering new evidence is to be abolished. (Article 81 of the current act)

(2) Preparation of Court Proceedings pertaining to Cease and Desist Orders, etc.

- ① The first instance functions to be transferred to a district court (Article 85 of the amended act)
- ② Ensuring the expertise of the court (concentration of jurisdiction in the Tokyo District Court) (Article 85 of the amended act)
- ③ Ensuring careful examination at the court (Articles 86 and 87 of the amended act)

2. Development of Advance Notification Procedures pertaining to Cease and Desist Orders, etc.

(1) Development of advance notification procedures presided over by an officer designated by the JFTC (Article 49 and following articles of the amended act)

① Presiding officer of advance notification procedures (Article 53 of the amended act)

② Explanations by investigators, etc (Article 54, Paragraph 1 of the amended act)

③ Appointment of representative (Article 51 of the amended act)

④ Presentation of opinions, questions to investigators, etc. at hearings (Article 54, Paragraph 2 of the amended act)

⑤ Preparation of records/reports by designated officers (Articles 58 and 60 of the amended act)

(2) Inspection and copy of evidence to facts found by the JFTC (Article 52 of the amended act)

① Inspection of evidence

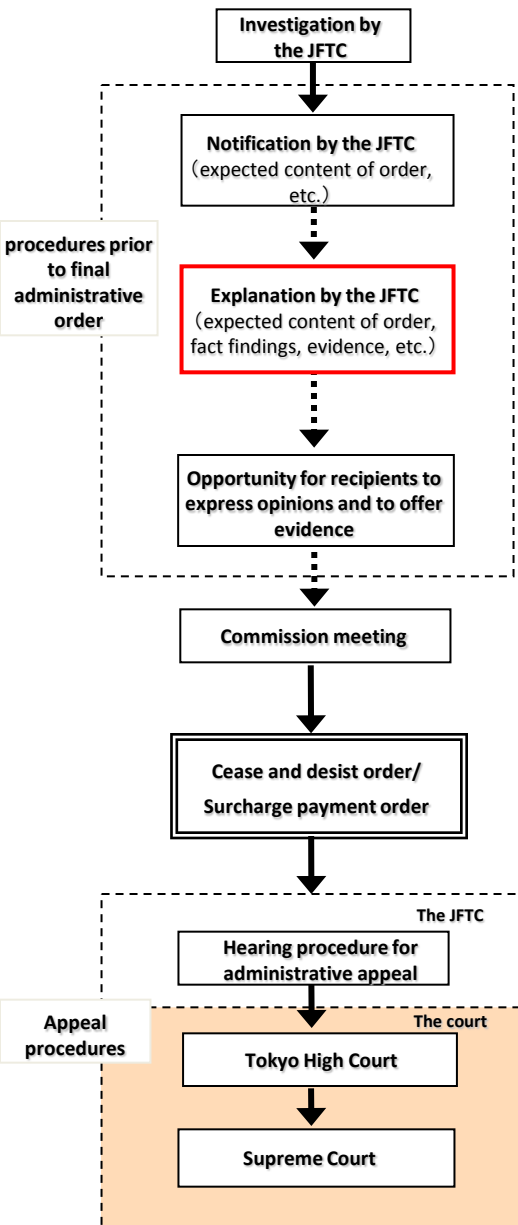
② Copy of evidence

3. Supplementary Provisions

The investigation procedures of the JFTC is to be considered from a point of view to ensure that a party concerned with a case defends itself, maintaining consistency with other administrative procedures in Japan. The government is to aim at drawing the conclusion of the consideration within one year in principle from the promulgation of the amended act and is to take appropriate measures as necessary.

Revisions of the procedures prior to issuing final orders and the appeal procedures

current procedure



【 Outline of the Revision 】

<procedures prior to issuing final orders>

Improving sufficiency and transparency of the procedure

- Inspection and copy of evidence which proves facts found by the JFTC is to be sanctioned.
Note: recipient is to be allowed to copy only its own property and the written statements of its employees.
- Introduction of the advance notification procedures presided over by an officer designated by the JFTC.
- Asking of questions and oral presentation of opinions will be allowed in the advance notification procedures.

Abolition of the hearing procedure for administrative appeal

Addressing the criticism that the JFTC plays the role of both prosecutor and judge in the current JFTC hearing procedure

<Appeal procedures>

Introduction of the trial at the District Court

- Only Tokyo District Court has jurisdiction over the appeal suit pertaining to the cease and desist order/surcharge payment order as the court of first instance (ensuring expertise in the court.)
- Panel of three judges hears the case in Tokyo District Court (a five-judge panel may be set.)
- Setting a panel of five judges is to be allowed in Tokyo High Court when the court hears the case.
- Abolition of the substantial evidence rule and the restriction on offering new evidence.

New procedure

