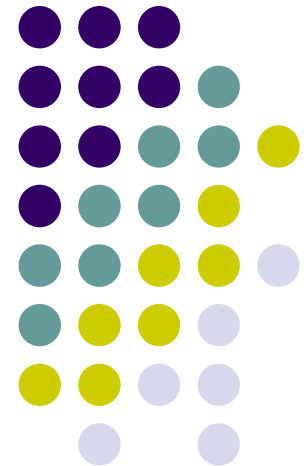


Administrative Surcharge System to deter Cartel Conduct

- Experience of Japan -

Toshiyuki NANBU
Japan Fair Trade Commission





A character of surcharge

- Aim at the effectiveness of cartel prohibition by imposing a monetary burden when a cartel is done.
- Avoid criticism that a surcharge was so-called double jeopardy

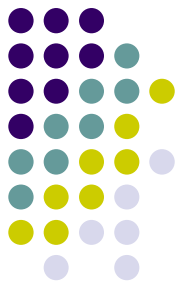
➔ a surcharge

= collect an economic gain derived from a cartel

≠ monetary sanction against a cartel.

General understanding of surcharge system

“the administrative system to find fairness of society and effect a cartel prohibition by a method that the government collects an economic gain derived from a cartel so that cartelists cannot keep it”.

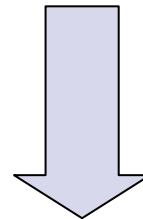


- Correct assessment of the economic gain derived from a cartel is impossible

? An increase in profit from profit if there were not a cartel ?

? “a price just before commencement of a cartel” as the ground for assessment ?

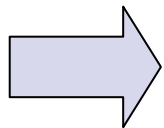
(the amount of sales of goods or services related to a cartel) × (certain rate)



regarded as

Economic gain derived from a cartel

And order to pay to the Treasury



This is a surcharge system.



Grounds of setting a rate

A surcharge calculation rate was set in reference with the average sales amount ordinary profit rate according to a type of industry in the corporate statistics for the past ten years.

| | Surcharge rate |
|---------------|----------------|
| In general | 3.0% |
| Manufacturers | 4.0% |
| Retailers | 2.0% |
| Wholesalers | 1.0% |

$$\left(\begin{array}{l} \text{The amount of sales of} \\ \text{goods or services related} \\ \text{to a cartel} \end{array} \right) \times \left(\text{Surcharge rate} \right) \times \left(1/2 \right) = \text{Surcharge}$$

The way of thinking of multiplying 1/2

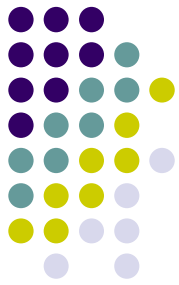
There would be a gain which could have been earned when there had not been the cartel.



The system without discretion for the JFTC

- Surcharge is calculated according to the constant calculation method established by the AMA and imposed automatically.
- The JFTC does not have any room for discretion to increase or decrease the amount of surcharge taking into consideration the individual circumstances of violators.

Revision of 1991



Increase of surcharge calculation rates

| | |
|--------------------|---|
| Manufacturers, etc | Large-sized enterprises: 1.5%(2.0%) → 6.0% |
| | Small and Medium-sized enterprises: 1.5%(2.0%) → 3.0% |
| Retailers | Large-sized enterprises: 1.0% → 2.0% |
| | Small and Medium-sized enterprises: 1.0% → 1.0% |
| Wholesalers | Large-sized enterprises: 0.5% → 1.0% |
| | Small and Medium-sized enterprises: 0.5% → 1.0% |

4 times at
the
maximum

Grounds of calculation rate increase

- Based on the average sales amount operating income rate according to a type of industry in the corporate statistics from 1978 till 1989.
- Operating income rate of small and medium-sized business was lower than that of a big business → surcharge calculation rates for SME were set lower.
- Not multiply a half any more

Revision of 2005



Increase of surcharge calculation rates

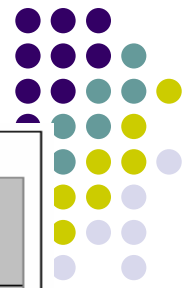
| | |
|--------------------|---|
| Manufacturers, etc | Large-sized enterprises: 6.0% → 10.0% |
| | Small and Medium-sized enterprises: 3.0% → 4.0% |
| Retailers | Large-sized enterprises: 2.0% → 3.0% |
| | Small and Medium-sized enterprises: 1.0% → 1.2% |
| Wholesalers | Large-sized enterprises: 1.0% → 2.0% |
| | Small and Medium-sized enterprises: 1.0% → 1.0% |

- Surcharge for repeated offenders within 10 years is added 50%
- Surcharge for offenders that stopped a violation early is reduced 20%

The grounds of the assumption of the JFTC to raise existing standard of a surcharge rate around 2 times

- The real excessive profit in the past cases
- Provisions of others laws and ordinances
- Existence of not a few repeated offenders
- The situation in foreign countries

Estimate of Cartel Profits



number of cases

