



**Asia-Pacific  
Economic Cooperation**

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**2014/SOM1/CPLG/010**

Agenda Item: 6

## **Cooperation and Coordination of the Cross-Border Enforcement by the JFTC**

Purpose: Information  
Submitted by: Japan



**Competition Policy and Law Group Meeting  
Ningbo, China  
21-22 February 2014**

 **公正取引委員会**  
Japan Fair Trade Commission


Cooperation and Coordination of the Cross-Border Enforcement by the JFTC

Roundtable Discussion, APEC-CPLG in Ningbo, China, Feb.21,2014



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 **公正取引委員会**  
Japan Fair Trade Commission

- 1 Int'l Cooperation Nuts & Bolts
- 2 Main Elements of Enforcement Cooperation
- 3 JFTC's Int'l Case Investigation
- 4 Future Trends and Implications

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## 1. Int'l Cooperation Nuts & Bolts

Where trade increasingly flows the border, cross border anticompetitive activities will also increase.

The limit of jurisdiction makes it difficult for a competition authority of one country to collect necessary evidence and information or to enforce its competition law against foreign businesses.



**There is a growing need for international enforcement cooperation among competition authorities.**

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## 1. Int'l Cooperation Nuts & Bolts (2)

### **A. Bilateral Consultations :**

Regularly exchange views and discuss on competition policies and law enforcement, and international cooperation, etc. between top level officials

→ Building trust relationship enabling candid discussion is a basic premise for cooperation

- USDOJ & USFTC (since 1977)
- European Commission (since 1980)
- Canada Competition Bureau (since 1987)
- KFTC (since 1990)

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## 1. Int'l Cooperation Nuts & Bolts (3)

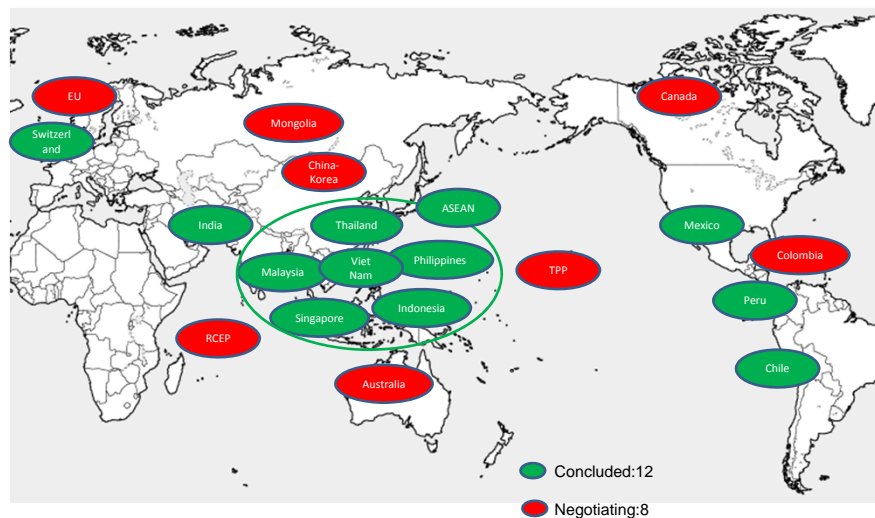
### B. Competition-Related Cooperation Agreements, etc. :

- Memorandum of Understanding (MOU)
  - ⇒ *Agency to Agency*
- Bilateral Agreement concerning Cooperation on Anticompetitive Activities
  - ⇒ *Government to Government*
- Free Trade Agreement (FTA) or Economic Partnership Agreement (EPA)
  - ⇒ *Country to Country (or region)*

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## 1. Int'l Cooperation Nuts & Bolts (4)

FTA/EPAs between Japan and Other Countries and Regions



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## 1. Int'l Cooperation Nuts & Bolts (5)

- Japan–Singapore: Enacted on Nov. 2002 (revision on Mar.2007)
- Japan–Mexico: Enacted on Apr. 2005
- Japan–Malaysia: Enacted on Jul. 2006
- Japan–Thailand: Enacted on Nov. 2007
- Japan–Chile: Enacted on Sep. 2007
- Japan–Indonesia: Enacted on Jul. 2008
- Japan–Philippines: Enacted on Dec. 2008
- Japan–ASEAN: Signed on Apr. 2008 (partly enacted)
- Japan–Vietnam: Enacted on Oct. 2009
- Japan–Switzerland: Enacted on Sep. 2009
- Japan–India: Enacted on Aug. 2011
- Japan–Peru: Enacted on Mar. 2012

### Bilateral Cooperation Agreement

- Japan–US: Enacted on Oct. 1999
- Japan–EU: Enacted on Aug. 2003
- Japan–Canada: Enacted on Oct. 2005

### MOU

- JFTC-the Philippines DOJ: Enacted on Aug.2013
- JFTC-Competition Authority of Vietnam : Enacted on Aug.2013

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## 1. Int'l Cooperation Nuts & Bolts (6)

### **C. Collaboration & Convergence by Multilateral Fora :**

- International Competition Network
  - Active engagements by JFTC
  - Merger Cooperation Framework

#### Key points of the framework

- Facilitate effective and efficient cooperation
- Importance of knowing other agencies reviewing the same case
- Maintain a contact list of liaison officers
- Highlight the potential steps for information exchange

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## 1. Int'l Cooperation Nuts & Bolts (7)

- Regional Cooperative Framework
  - East Asia Top Level Officials' Meeting on Competition Policy

Established in 2005 in order to provide a forum for exchange of experiences and views as well as for promoting cooperation among top officials' of competition authorities in East Asia region

### **The 9th Meeting in Manila, Philippines, August 29, 2013**

Participants: Top level officials of competition authorities of 15 economies in East Asian region


#### Outcomes:

- “Technical Assistance Calendar” (TA Calendar)
- “Task-Force of Technical Assistance on Competition Policy in East Asia” (TA Task-Force)
- “Technical Assistance Needs Survey” (TA Needs Survey)
- “Development Survey”

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## 2. Main Elements of Enforcement Cooperation

### 1. Notification

JFTC  The Competition Authority of Country A  
*Notifying its enforcement activities that may affect the important interest of the other country.*

(Examples) A case in which JFTC has launched investigation against Japanese branch office of a company incorporated under the laws of Country A

### 2. Render Assistance by providing information

JFTC  The Competition Authority of Country A  
*Assisting the other competition authority in its enforcement activities by providing information, within its reasonably available resources..*

(Examples) Providing information obtained during investigation with respect to anti-competitive activities which may be relevant to the enforcement activities of the competition authority of Country A

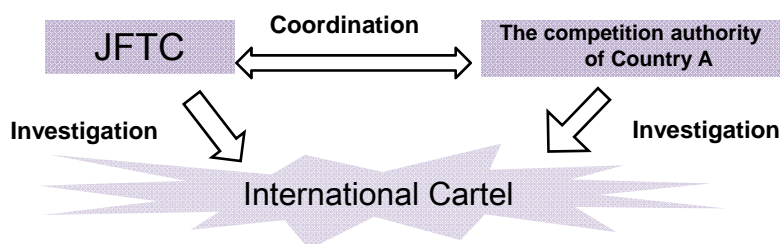
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## 2. Main Elements of Enforcement Cooperation (2)

### 3. Consider Coordination

JFTC ← → The competition authority of Country A

*Consider coordination of the enforcement activities, where the competition authorities of both parties are pursuing enforcement activities with regard to related matters.*



In case the JFTC and the competition authority of Country A are planning to initiate investigation against the same international cartel, they consider coordination of the date of the dawn raids in order to prevent destruction of evidence.

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## 2. Main Elements of Enforcement Cooperation (3)

- Positive Comity

*If the competition authority of Country A believes that the anti-competitive activities within the territory of country B may affect the important interests of the country A, the competition authority of Country A may request the competition authority of Country B for initiation of appropriate enforcement activities.*

- Negative Comity

*The Competition authority of each party shall give careful consideration to the important interests of the other party throughout all phases of its enforcement activities.*

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## 2. Main Elements of Enforcement Cooperation (4)

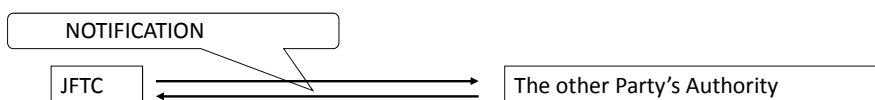
### The Benefits of the Cooperation Framework

#### Effective Enforcement Activities

##### Example

A case in which the JFTC conducts investigation against cartel activities carried out by a Japanese company, whose sales activities are also done in the other Party's territory.

#### If there is cooperation framework...



- ◆ Providing information to the other Party's authority at its own initiative of JFTC or responding to the request of the other Party's authority.
- ◆ Upon request of the other Party's authority, collecting public information and providing it to the other Party's authority.

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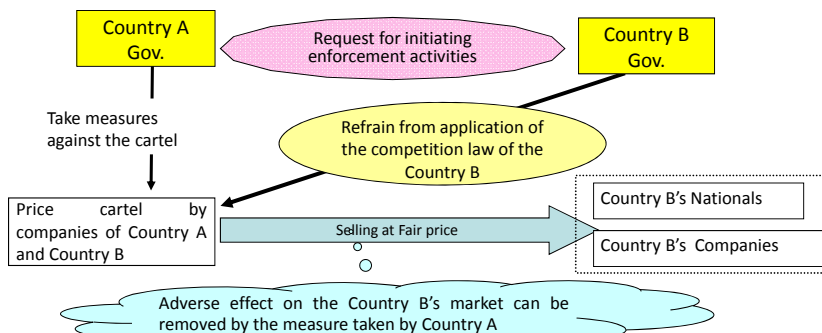
## 2. Main Elements of Enforcement Cooperation (5)

#### Avoidance of Conflicts concerning the jurisdictions

##### Example

A case concerning the conflict of jurisdiction, in which competition authorities of both party applied their respective competition law against same company..

#### If there is cooperation framework...



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### 3. JFTC's Int'l Case Investigation

#### Early Era :

Artificial graphite electrode (1999)、Vitamins (2001)

- Preceded by US & EU agencies employing leniency program
- No coordination for simultaneous dawn raids with other agencies in JFTC investigation
- Violators including Japanese companies were exposed to huge fines in US & EU; In Japan, warnings due to lack of evidence

#### In Transition :

Plastic additives (impact modifiers) (2003)

- First time ever simultaneous dawn raid was coordinated with EU, US and Canada
- Decision to order cease-and-desist measures to violators (Japanese companies)

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### 3. JFTC's Int'l Case Investigation (2)

#### After Introduction of Leniency

	Timing of JFTC'S Measure	International Cartel Case	Main Cooperated Countries
1	Feb, 2008	<b>Bid-rigging by marine hose manufactures</b>	US, EU, etc.
2	Oct, 2009	<b>Price cartel by manufacturers of cathode ray tubes for televisions</b>	US, EU, etc.
3	Jan, 2012	<b>Bid-rigging for automotive wire harnesses</b>	US, EU, etc.
4	Nov, 2012	<b>Bid-rigging for automotive parts</b>	US, etc.

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### 3. JFTC's Int'l Case Investigation (3)

#### Bid-rigging for automotive wire harnesses (2012)

##### <Before Investigation>

Information Exchange among Japan, US, EU by phone conference and email

- Coordination of timing of Dawn Raid
- Coordination of agency who investigates first
- Target Products of Investigation
- Target Companies of Investigation

##### < After Dawn Raid>

Information Exchange on Progress of Investigation

##### <Result of Investigation>

Provide information on Legal Measure

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### 3. JFTC's Int'l Case Investigation (4)

Year	M&A cases	Cooperated Agencies	Results of Reviews
2009	Share Acquisition of Sanyo Electric Co., Ltd., by Panasonic Corporation.	USFTC, European Commission	Accepted on the condition
2010	Share Acquisition of Varian, Inc., by Agilent Technologies, Inc.	USFTC	Accepted on the condition
2010	Joint venture establishment between BHP Billiton and Rio Tinto for producing iron ore	ACCC, European Commission, German Federal Cartel Office, KFTC	The parties abandoned their plan
2011	Two HDD Merger Cases (Hitachi-Western Digital, Samsun-Seagate)	USFTC, European Commission, KFTC	Accepted on the condition
2013	Merger between ASML Holdings N. V. and Cymer Inc.	USDOJ, KFTC	Accepted on the condition

### 3. JFTC's Int'l Case Investigation (5)

#### Joint venture establishment between BHP Billiton and Rio Tinto (2010)

##### Cooperated Agencies

- ACCC, European Commission, German Federal Cartel Office, KFTC

##### Information Exchange

- Obtain Waiver from related companies

##### Ways of Information Exchange

- Interview, telephone, email

##### Contents of Information Exchange

- Schedule of Review
- Points at issue of Review
- View on Market Definition, View on Effect on Competition
- Outline of problem indicated to related companies, etc.

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### 4. Future Trends and Implications

#### <JFTC's International Cartel Enforcement>

- Continuingly strive for active crackdown on international cartels
  - Inaugural message from Chairman Sugimoto in March 2013  
"Need to make right contributions as Japanese competition authority in cooperating/coordinating with overseas authorities for addressing international cartels"
- Well-established leniency program in Japan
  - Effective tool to reveal international cartel schemes

#### <Changes in Leniency Applications>

FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	Total
26	79	74	85	85	131	143	102	725

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## 4. Future Trends and Implications (2)

### <Trends in Global Cartel Enforcement>

- Further deepening cooperation/coordination among competition agencies
  - Increased discussion and convergence among agencies through ICN, OECD, etc. (e.g. projects to facilitate investigative information exchanges)
  - Increased contacts among case handlers (e.g. ICN workshops, telephone conferences, interchanges of case handlers)
  - Increased simultaneous launch of cartel investigations; increased number of agencies involved
  - Expansion of cooperation agreements/MOUs

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Thank you for your kind attention

Disclaimer: the views expressed in this presentation is solely those of the speaker and do not necessarily reflect those of the agency that the speaker belongs to.  
All errors in this presentation are mine.

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