

**ACCJ Competition Policy Task Force**  
**Public Comment regarding the Japan Fair Trade Commission's Rules on**  
**Administrative Investigations**

The American Chamber of Commerce in Japan (ACCJ) thanks the Japan Fair Trade Commission (JFTC) for the opportunity to comment on this important legislation.

**Comments on Proposed amendments Division IV: Warning.**

The ACCJ applauds the proposed changes that have been made to Section 31 concerning warnings by the JFTC, which provide for official written notice, a “sufficient period” to submit opinions and evidence in response to a warning, and the right to appoint a representative.

All of the above are to be applauded from the view of harmonization of due process. However the ACCJ would like to caution that information that can identify the subject of the warnings should not be made public. At the warning stage, no actual violation has been confirmed. Nevertheless, the issuance of a public warning is likely to have a severe detrimental effect on the business activities of the entrepreneur and the brand image of their product. Furthermore, if a written warning is publicly available it may be misused as evidence in other jurisdictions. The ACCJ therefore recommends that there be a provision added to the amendment that states that information identifying the subject of the warning will not be made public.

In addition, the ACCJ recommends that a “reasonable” period of time to respond to a notice of warning should be at least 20 business days.

**Comments on proposed amendments regarding Designation of Unfair Trade Practices**

The ACCJ supports the JFTC's efforts to further clarify what activities constitute unfair trade practices. Businesses can operate with greater certainty and efficiency if they clearly understand what actions are permitted or not. Greater certainty lowers risks (and therefore costs) for businesses and can spur increased investments. This ultimately benefits consumers through lower prices and higher output.

However, the ACCJ respectfully notes that the proposed amendments could better distinguish between unfair trade practices and exclusionary private monopolizations. It is important to differentiate (and consequently set appropriate standards) between the two categories of conduct due to the higher penalties for exclusionary private monopolizations, compared to unfair trade practices. In addition, the rules should set forth a clear distinction between those unfair trade practices subject to potential surcharges under the recent amendments and those that are not.

The following are some additional comments with respect the proposed amendments:

(6) Unjust Low Prices – The ACCJ shares similar concerns here as articulated in our comments to the proposed Exclusionary Private Monopolization Guidelines. Namely: (1) There should be a cost test (utilizing an appropriate measure of costs) before judging an offer of low prices to be an unfair trade practice. Removal of the existing words, “which is excessively below the cost incurred” from the current language is contrary to that direction. The ACCJ respectfully believes that those words should be reinstated and clarified accordingly. (2) “Causing difficulties to the business activities of other entrepreneurs” is not a complete test. Instead, the proper test should be whether there is injury to competition (not just competitors), and the protection of consumer welfare should be paramount. (3) The duration of any low price program or other investigated sales activity should always be considered when analyzing possible injury to competition.

### **General Comments**

We would like to take this opportunity to restate our request for a longer period to comment. The recent guidelines on “Exclusionary Private Monopolization” provided a sixty-day period in which to comment and we would like to respectfully request the same time period for other draft guidelines as well.

We appreciate that the JFTC provided a courtesy English translation of the rules, etc. As business becomes increasingly more global, international entrepreneurs need to be aware of differences, if any, in the Competition law arena. It would be helpful if JFTC could kindly continue the effort to provide English translations in a timely manner for all draft guidelines, rules, designations, etc open to public comment so that international organizations like the ACCJ can take advantage of the opportunity and provide effective comments on draft legislation.