



公正取引委員会

Japan Fair Trade Commission

**2016 ICN Cartel Workshop, Madrid
BOS10**

International coordination to increase the efficiency of multi- jurisdiction cartel investigations

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Part I


The ICN Framework for exchanging non confidential information

Necessity and Significance of Exchanging Information

“...today, competition agencies across the globe recognize cooperation as a vital day-to-day tool in ensuring effective competition enforcement.

...While there has been explosive growth in the number of new competition laws and agencies over the past two decades, only a relatively small number of agencies participate regularly in international enforcement cooperation.”

(ICN Report on OECD/ICN Questionnaire on International Enforcement Cooperation p2)



Good practice from
Anti-Cartel Enforcement Manual III-2

“It is good practice for agencies to develop good working relationships with ... international counterparts and to have regular contact in order to promote cooperation and the sharing of information as far as permitted by applicable laws, treaties and/or cooperation agreements.”

(Chapter4, Cartel Case Initiation p14)

Difficulties for Exchanging Confidential Information

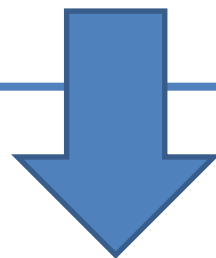
“Most emerging competition agencies operate in jurisdictions that have only recently adopted competition regimes. As a result, there are very few cartel cases that have been investigated by these competition agencies. Many of these competition agencies also lack investigatory powers, such as leniency programs, the ability to conduct raids, etc.”

(Chapter 9, International Cooperation and Information Sharing 6.5 p14)

Possibility of Sharing Non-Confidential Information

the ICN CWG activities in international cooperation

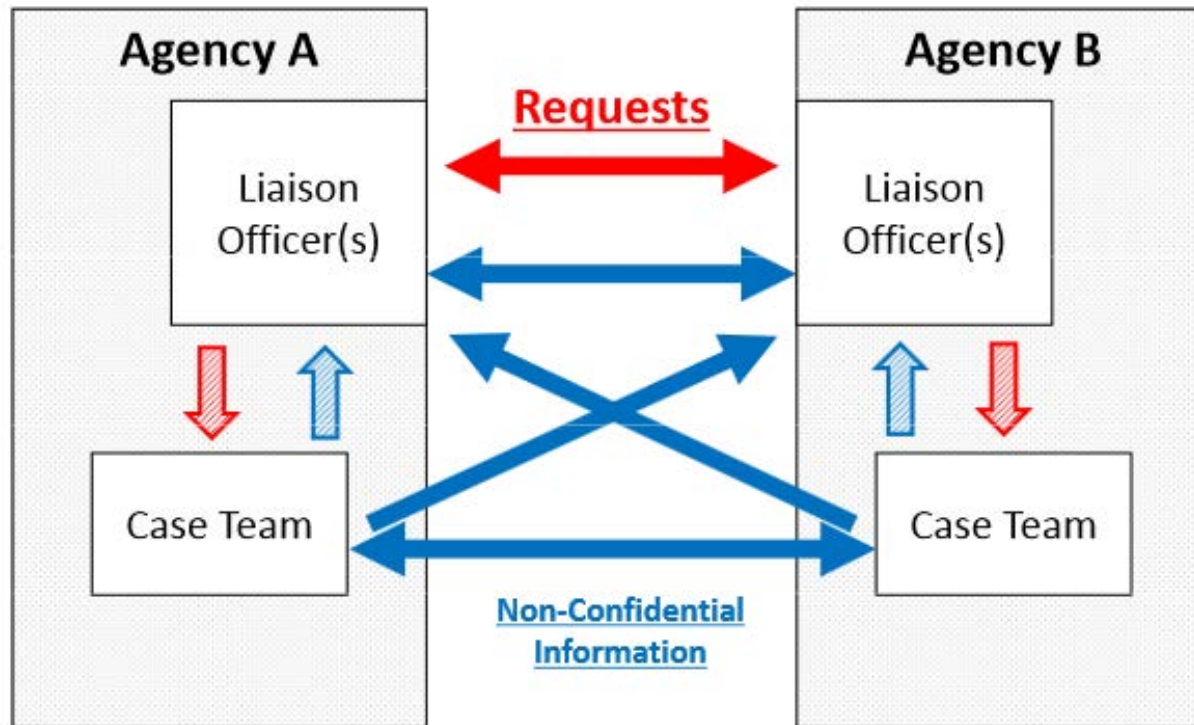
- **Improve interactions between enforcers and establish contacts**
 - ✓ ICN Cartel Workshop
 - ✓ Discussion call series
- **Develop procedures and best practices for more effective enforcement cooperation**
 - ✓ New framework to promote sharing of non-confidential information



**Proposal for Establishing the ICN Framework
for Promotion of Sharing Non-Confidential
Information for Cartel Enforcement**

ICN Framework for Promotion of Sharing Non-Confidential Information for Cartel Enforcement (1)

- Contents of framework



- Participating agencies register liaison officer(s)
- Case team of agencies requests other participating agencies through liaison officer to provide information on specific cartel cases
- Requested agency provides the requested information at its discretion

ICN Framework for Promotion of Sharing Non-Confidential Information for Cartel Enforcement (2)

● Merits of the framework

- Participating agencies can seek information about investigation of other agencies earlier and more easily.
- Younger and smaller agencies may receive support from experienced agencies which provide information about actual cases and experience actual enforcement cooperation.

● Expected effect

Through the framework, CWG could foster

“Pick up the phone relationship”

for improved cooperation for effective cartel enforcement.

Registration Form

Registration Form to ICN's Framework for Sharing Non-Confidential Information for Anti-Cartel Enforcement

* Please send this form by e-mail to the Japan Fair Trade Commission <icn-cartels@jftc.go.jp>

1. Name of Jurisdiction: _____

2. Name of the Agency: _____

3. Website Address of the Agency: _____

Information Request Form

Information Request Form to ICN's Framework for Sharing Non-Confidential Information for Anti-Cartel Enforcement

Addressee (Information of the Requested Agency)

- a. Name of Jurisdiction: _____
- b. Name of the Agency: _____
- c. Name of the Liaison officer: _____
- d. Title: _____
- e. Department: _____

1. Information of the Requesting Agency

- a. Name of Jurisdiction: _____
- b. Name of the Agency: _____

Notes and Desirable Practices for the agencies

33 authorities have been already registered since the launch of framework on Jan. 2016!

- Prepare several liaison officers in case of personnel changes
- In case of changing a liaison officer, make sure to inform the JFTC of a new officer
- Register the representative e-mail address of the agency besides the personal e-mail address
- Further information should be exchanged outside of the framework



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Part II

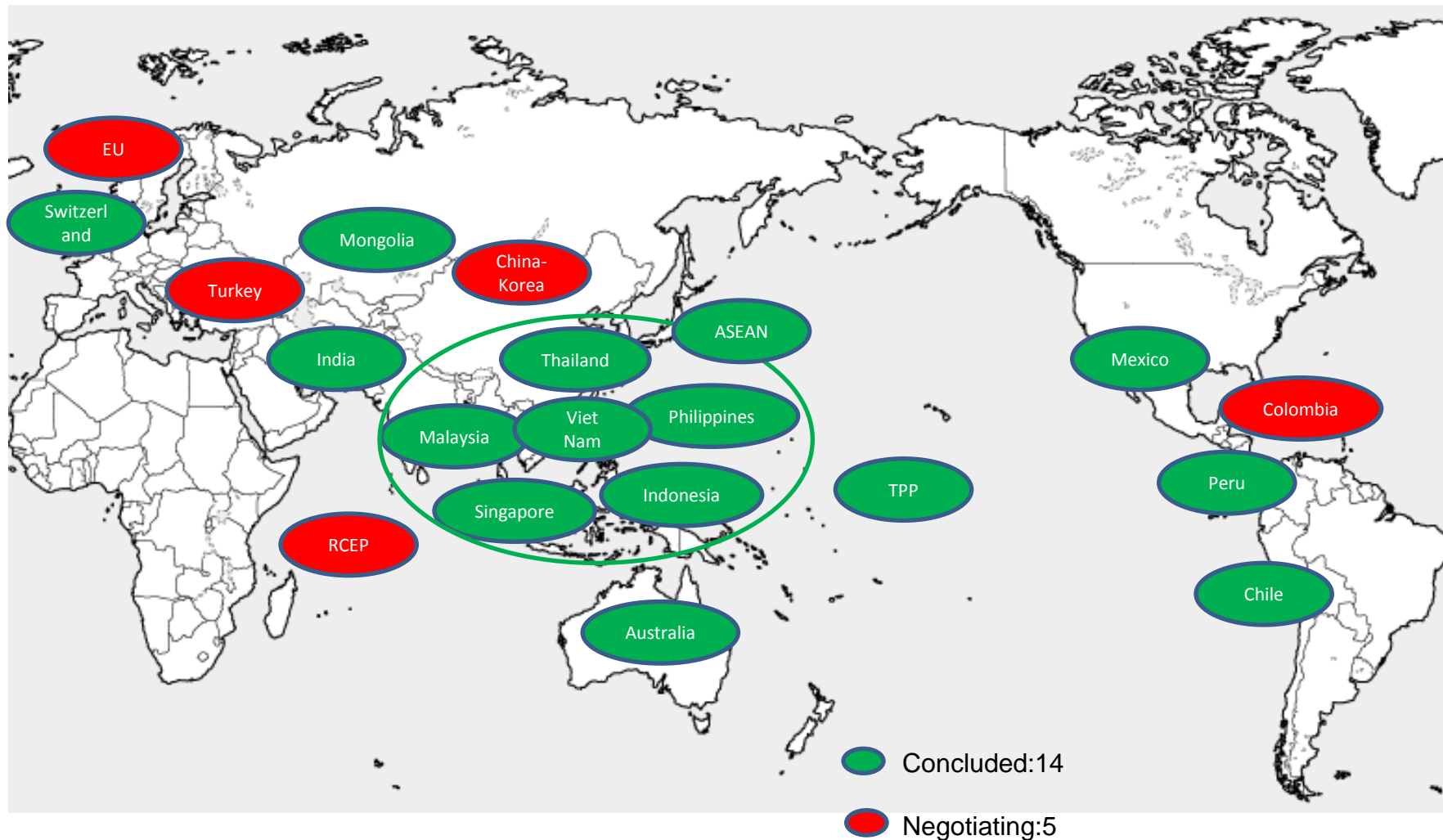
Cooperation and Coordination of the Cross-border Enforcement by the JFTC

Top priority on Int'l cartel and Cooperation

Message from Chairman Sugimoto (January 2015)

- From an international point of view, in the midst of accelerated globalization of business activities, a significant challenge for competition authorities is to deal quickly and effectively with international cartel.
- In addition to that, the number of cases in which competition authorities exchange information in investigation has been increasing.
- In line with this trend, the JFTC will be engaged in building and developing cooperation frameworks such as the bilateral antimonopoly cooperation agreements, the economic partnership agreements and the MOUs to promote case enforcement cooperation further.

EPA and FTA Between Japan and Other Countries and Regions



Formal Framework for Intl Cooperation (Japan)

- **Bilateral Antimonopoly Cooperation Agreement**

Canada (2005), EU (2003), USA (1999)

- **Economic Partnership Agreements - EPA**

(competition chapter only)

Australia (2014), Chile (2007), Vietnam (2008),

Indonesia (2007), Thailand (2007), Singapore (2002)

Colombia (Discussion is ongoing)

- **MOU on Cooperation**

KFTC: Korea (2014), CADE: Brazil (2014),

VCA: Vietnam (2013), DOJ: Philippines (2013)


ACCC: Australia(2015), NDRC:China(2015)

MOFCOM:China(2016), CAK: Kenya(2016)




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..

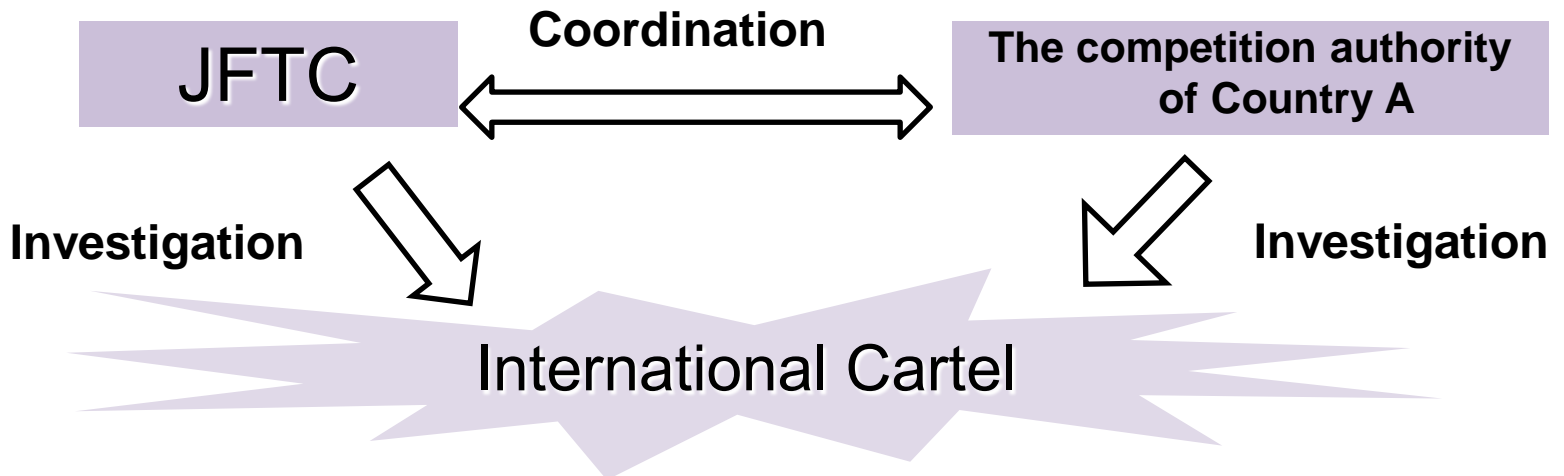
(Examples) Providing information obtained during investigation with respect to anti-competitive activities which may be relevant to the enforcement activities of the competition authority of Country A

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.

Cooperation Arrangement between the JFTC and the ACCC

● Features

- Enable the two authorities to share information obtained during the course of an investigation
 - Contains provisions related to investigative assistance
- } “Second Generation”
Framework

● Background

Both have “Information Gateways”

Article 43-2 of the Antimonopoly Act (AMA)
Article 155AAA of the Competition and Consumer Act 2010

Adoption of the new OECD Recommendation

Recommendation concerning International Co-operation on Competition Investigations and Proceedings (Sep.2014)

Cooperative relationship with the ACCC

Automobile Parts Cartel Conducts

● Sharing information obtained during the course of an investigation

- ▶ Full Discretion
- ▶ Appropriate Safeguards



JFTC's Int'l Case Investigation(1)

Cooperation with other int'l agency

<Before Investigation>

Information Exchange between JFTC and other authority 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



JFTC's Int'l Case Investigation(2)

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 :

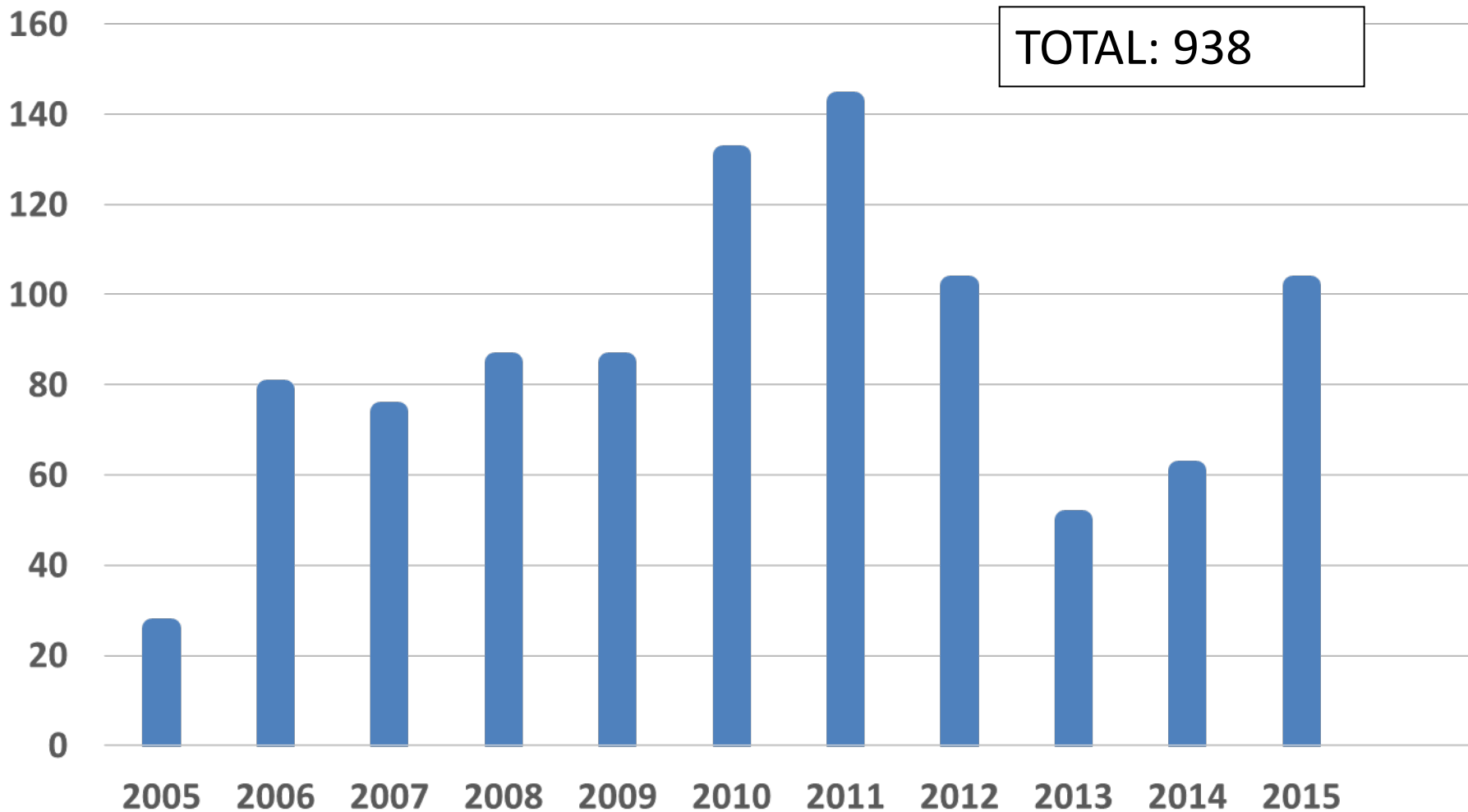
Plastic additives (impact modifiers) (2003)

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



Number of Leniency Applications

Number of application



(Note) Fiscal year is from April to March, except FY2005 which is between Jan. 4 and Mar. 31, 2006.

JFTC's Int'l Case Investigation(3)

- Case against **Marine Hose Manufacturers (2008)**
- Case against **Manufacturers of Cathode Ray Tubes for Televisions (2009)**
- Case against **Bearing Manufacturers (2013)**
- Case against **International Ocean Shipping Companies (2014)**





Thank you for your kind attention!

