



JAPANESE SHIPOWNERS' ASSOCIATION

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New Zealand Productivity Commission
Level 15, Fujitsu Tower
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Re: Comments of the Japanese Shipowners' Association on the Issues Paper of the
Productivity Commission Regarding International Freight Transport Services

The Japanese Shipowners' Association (JSA), which is a nationwide shipowners' association consisting of 102 Japanese shipping companies, appreciates this opportunity to submit comments to the New Zealand Productivity Commission regarding the portion of the July 2011 Issues Paper relating to international sea freight transport services. We respectfully outline below our fundamental stance on the antitrust immunity for all types of ocean carrier agreements (hereafter referred to as the "immunity system") and touch on the adverse effects on freight rate stability in trades to/from European ports following the repeal of the EU immunity system in October 2008.

1) JSA's fundamental stance on the antitrust immunity for carrier agreements

The liner shipping industry, which provides a regular ocean transportation service to hundreds of ports worldwide, has developed largely because of the carriers' ability to participate in various types of cooperative commercial arrangements for over 100 years. In particular, through participation in voluntary discussion agreements ("VDAs"), ocean carriers exchange and review market data, supply and demand forecasts, trade flows, and industry trends, and discuss voluntary and non-binding guidelines for rates and charges, service contract terms and conditions, and other similar topics. These agreements allow participating carriers an opportunity to mitigate the effects of below cost pricing practices that have historically plagued the liner shipping industry, and have contributed to stable freight rates in what are generally volatile and cyclical markets, consequently helping shipping companies make better overall decisions in providing regular and reliable liner shipping services and preserving competitive choices for importers and exporters. Absent competition law immunity, agreements like VDAs which are of great significance to carriers, shippers, customers, and national economies around the world could not function.

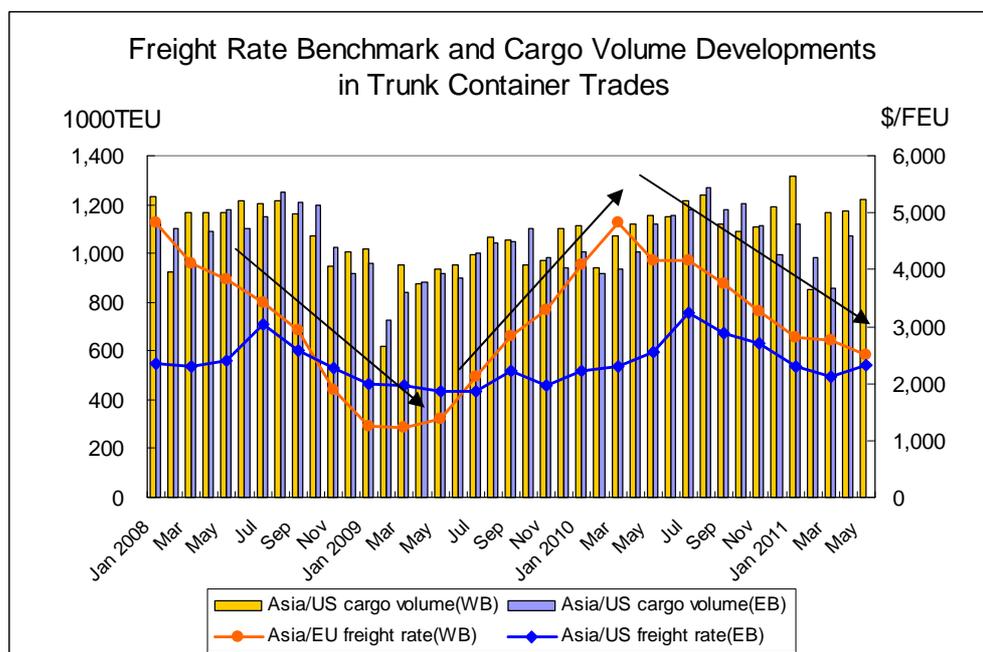
The immunity system that currently exists in New Zealand is still the international standard, as it is permitted in virtually all major trading nations around the world, including the United States, Canada, Japan, China, Singapore, Korea, Taiwan, and Australia. The JSA believes the immunity system is indispensable for the healthy development of the international shipping

industry, as well as international trade generally, and therefore fully supports the recent decisions by Japan and Singapore within the past year to maintain and extend their current immunity systems through at least the end of 2015 without any significant changes to their scope¹.

2) The EU's repeal of the block exemption for conferences

The block exemption for liner conferences in the EU was repealed in October 2008, which is the only major exception to this international standard.² At the time of its repeal, the whole container shipping industry (like most other industries) was in a global economic downturn, facing a sharp decline in cargo volumes and rates with operating losses of more than 15 billion dollars in 2009. While, it is therefore difficult to assess what changes in the industry during this period were specifically attributable to the EU's repeal of the block exemption under such severe economic conditions, the overall negative impacts of the EU's decision on liner shipping rates and services in the EU trades are still cognizable. It has been well documented over the past few years that there has been considerably more rate and service level volatility in EU trades than in comparable trades where there is still antitrust immunity for rate agreements. For example, it can be at least confirmed from Figure 1 below that the rate volatility of the Asia-EU trade greatly exceeds that of the Asia-US trade, which maintains immunity systems in both port-end countries such as the US and Japan despite the similar trends in the container cargo movements in both trades. Asia-EU trade has repeatedly suffered more sharp drops followed by sharp increases during recent years. There have also been a number of service reductions and withdrawals in this trade, as compared to other immunity trades.

Figure 1



Source: Japan Maritime Center "Monthly Container Freight Movement Review"
 Remarks: 40-ft South China-North Continent Europe rate benchmark including surcharges
 40-ft South China-US West Coast including surcharges

¹ Japan (http://www.mlit.go.jp/report/press/kaiji02_hh_000083.html) and Singapore (http://app.ccs.gov.sg/PC_Archived_BEO.aspx)

² Of note, the EU recently extended its antitrust immunity system for consortia and other similar carrier operational agreements until 2015.

In addition to the above, the abolition of the block exemption in the EU has also caused negative changes in ancillary charges, as carriers have sought to recover a number of escalating costs specifically relating to serving this trade. As Figure 2 below shows, the terminal handling charge, for example, which had remained virtually unchanged for nearly 15 years in Europe, substantially increased in most European ports around the same time as the repeal of conference immunity in October 2008, as reported in a competition report³ which was produced for the European Commission in October 2009.

Figure 2

EU Study: Comparison of European THCs Before and After Conference Immunity Withdrawals

Port	Pre-October 2008	Post-October 2008	Percent Change
Zeebrugge	€ 115	€ 144	25%
Klaipeda	€ 69	€ 88	27%
St. Petersburg	US\$ 207	US\$ 257	25%
Algeciras	€ 131	€170	30%
Valencia	€ 132	€ 167	27%
Barcelona	€ 134	€ 163	21%
Le Havre	€ 135	€ 178	32%
Istanbul	\$ 97	\$ 135	39%
Constanza (Import)	\$110	\$159	44%

3) Recent Decisions of Japan and Singapore to Maintain and Extend Their Existing Immunity Systems

In consideration of changes in the business environment of European trade since the EU's repeal, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT), which, in Japan, is responsible for overseeing the antitrust immunity, made an official announcement in June 2011 that the immunity system should be maintained, subject to its review in the fiscal year 2015. As part of this review, the MLIT was asked to consider various factors such as benefits of the immunity system to shippers, impacts on the Japanese economy, and the immunity systems that exist among Japan's major trading partners. After consulting with a number of interested stakeholders, Japan decided to maintain its immunity system because it was unable to find any valid reason for abolishing it, and also due to its concern that a unilateral repeal of Japan's immunity system would have adverse impacts on carriers, shippers and the economy in Japan, especially in light of the effect of the European Union's repeal of its antitrust immunity, which led to the increased volatility of freight rates in European trade, a rise in surcharges levied by individual carriers after the repeal, and a number of potential service problems, including overall service reductions and a lack of available vessel capacity to meet the growing needs of importers and exporters.

³ "Terminal handling charges during and after the liner conference era"
http://ec.europa.eu/competition/sectors/transport/reports/terminal_handling_charges.pdf

Likewise, Singapore's decided in December 2010 to extend its own block exemption for liner shipping agreements until December 31, 2015. This decision was based on studies in 2005 and 2010 by the Competition Commission of Singapore ("CCS"). In making this decision, the CCS noted that "antitrust exemptions remain the regulatory norm for the liner industry globally, and for most of Singapore's trading partners," and "will provide continued certainty to the shipping industry." The CCS concluded, after an extensive year-long review, that liner shipping agreements have a "net economic benefit" and that the presence of these cooperative agreements provides "a higher degree of connectivity and service choice for Singapore's importers and exporters." Similar conclusions have been reached by other countries in the Asia Pacific regions over the past 13 years.

4) Conclusion

For the foregoing reasons, the JSA is of the view that the repeal of carrier agreements would lead to greater rate volatility and less stable shipping markets, which is not likely to be in the interests of shippers, and eventually consumers as well. With antitrust immunity providing legal certainty for the shipping industry to be able to make huge capital commitments in vessels, port facilities and related infrastructure required to operate world wide services, we request the Productivity Commission to recommend that the New Zealand government continue to grant an immunity system for carrier agreements in New Zealand. At a minimum, before taking any action to change the current system in New Zealand, the government should conduct a thorough study similar to Japan, Singapore, and other countries over the past 13 years on the potential negative impacts on removing immunity, and to at least fully gauge the long-term impacts of the EU repeal on shipping companies, as well as shippers in the trade.

Respectfully submitted

The Japanese Shipowners' Association



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