

The 2nd draft Report of the Study Group
on international shipping market and the Competition Policy (Summary)
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Section 1: Overview of the international shipping market in Japan

International shipping shoulders the majority of international trade, particularly in the case of island countries like Japan, where approximately 70% of the overall value of external trade and 99.7% of imports and exports on a weight basis rely on international shipping. There are two types of international shipping – via liner shipping and via tramp vessel services – with this report focusing on the former, liner shipping, a section of the industry that involves any number of shippers and that makes full use of its exemption from the Antimonopoly Act. Studies have also been carried out to assess the three main routes to and from Japan, namely North American, European and Chinese routes.

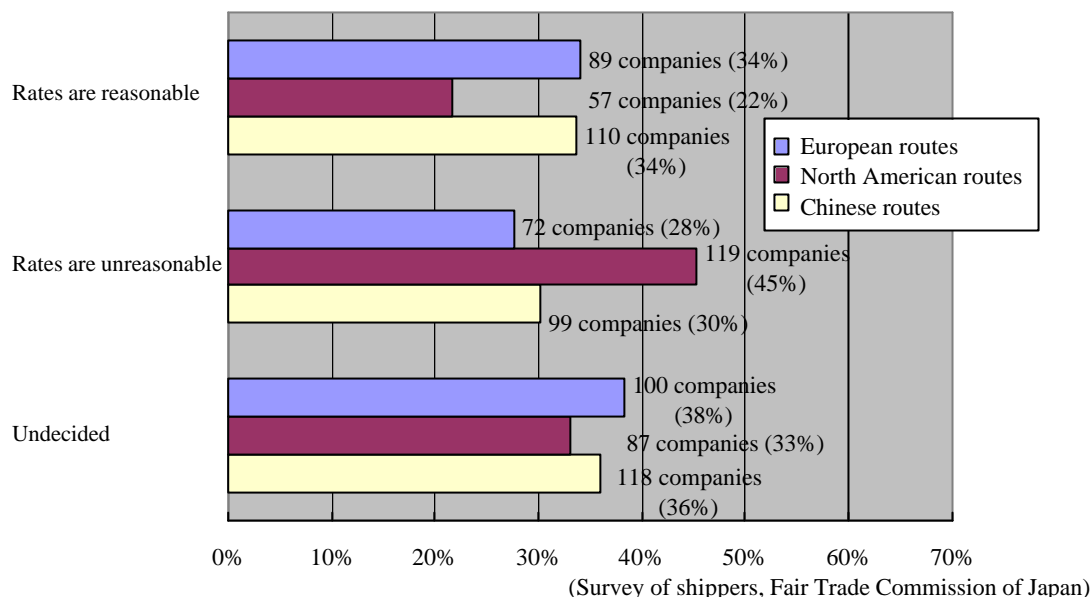
Section 2: History of the international shipping industry and competition policy

As part of the international shipping market, international cartels called shipping conferences have continued to be formed and exempted from competition law in each country for over 130 years. The current international shipping market and the completions are affected by the historical background of international shipping and the framework of competition policies. Therefore, in order to gain a clear understanding of the current international shipping market, the report examines the historical development of the international shipping industry.

Section 3: Competition in the international shipping market

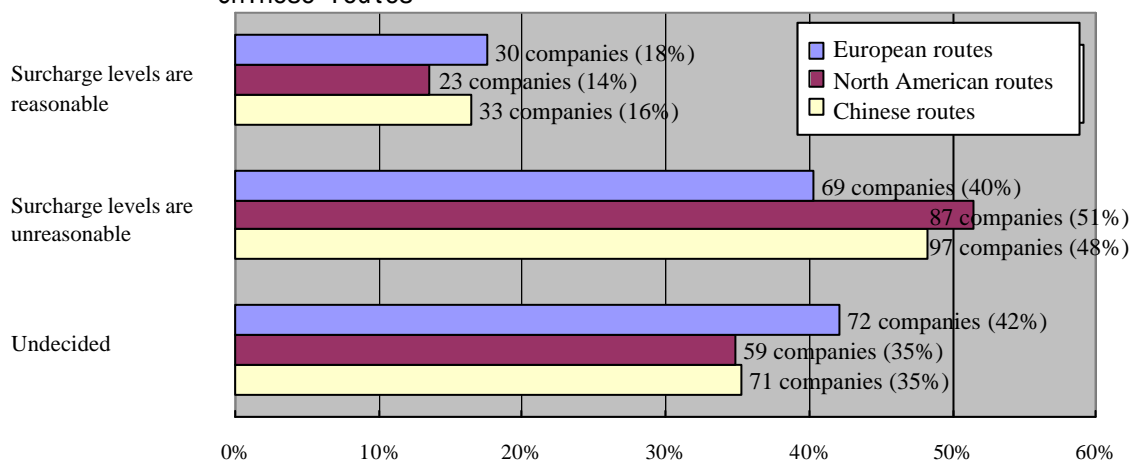
The concentration ratio of the top five firms and the HHI (Herfindahl-Hirschman Index) are on the decline on both European and North American Routes. On routes between Japan and China, although the concentration ratio of the top three firms is high, wild fluctuations in the share of the market have resulted in active competition. According to a survey of shippers asking them to evaluate how reasonable shipping rates are, a far higher percentage of shippers feel that rates on North American routes are unreasonable (45%) than those who feel that they are reasonable (22%).

Figure 1: Evaluation of shipping rates on European, North American and Chinese routes



Between 40% and 50% of shippers feel that surcharge levels are unreasonable, a significantly higher percentage than those who feel that they are reasonable (14-18%). Reasons given for surcharge levels being unreasonable include the following; (1) there is no competition, (2) shippers have no opportunity to negotiate, with charges being revised on a regular basis and (3) there is a lack of transparency stemming from the fact that the calculation methods used and the reasons for imposing surcharges are often unclear.

Figure2: Evaluation of surcharge levels on European, North American and Chinese routes



(Survey of shippers, Fair Trade Commission of Japan)

Section 4: International shipping cartels

The majority of reports regarding international shipping cartels received by the Fair Trade Commission in 2005 were in relation to surcharges such as BAF and CAF or rate revisions carried out by the 30 container liner cartels in operation on routes to and from Japan.

Figure 3: Contents and breakdown of reports regarding shipping agreements
(FY2005)

	Basic agreements signed	BAF	CAF	TFC	Other surcharges	Rate restoration	Members withdrawing	Members joining	Companies changing their	Agreements discontinued	Other	Total
Container liner cartels	0	323	161	5	43	54	9	5	51	0	10	661
Consortiums and alliances	10	0	0	0	0	0	0	1	4	3	4	22
Tramp vessel agreements	0	0	0	0	0	1	0	0	0	0	1	2
Total	10	323	161	5	43	55	9	6	55	3	15	685

(Source: classified and compiled by the Fair Trade Commission of Japan)

Although flat rate shipping conference tariffs imposed by container liner cartels on member shipping companies are no longer effective, cartels still coordinate price rises through a practice called rate restoration. In addition to retaining the power to set surcharges for member companies, container liner cartels are also central to coordinated price action, with outsiders also having to follow suit with cartels' surcharges.

Cartels on some routes are increasing surcharges in a remarkable rate, as in Figure 4, based on rates such as those in Figure 5, which are increased at a rate over and above that of increases in fuel prices. Elsewhere, terminal handling charges (THC), which are supposed to vary according to the necessary costs at each port, are set at a flat rate of ¥28,491/TEU by the European Conference and ¥21,000/TEU by the Transpacific Stabilization Agreement (TSA) at all ports in Japan. Thus there are discrepancies between surcharges and the actual costs incurred by individual shipping companies, prompting fierce criticism.

Figure 4: Trend of BAF and crude oil

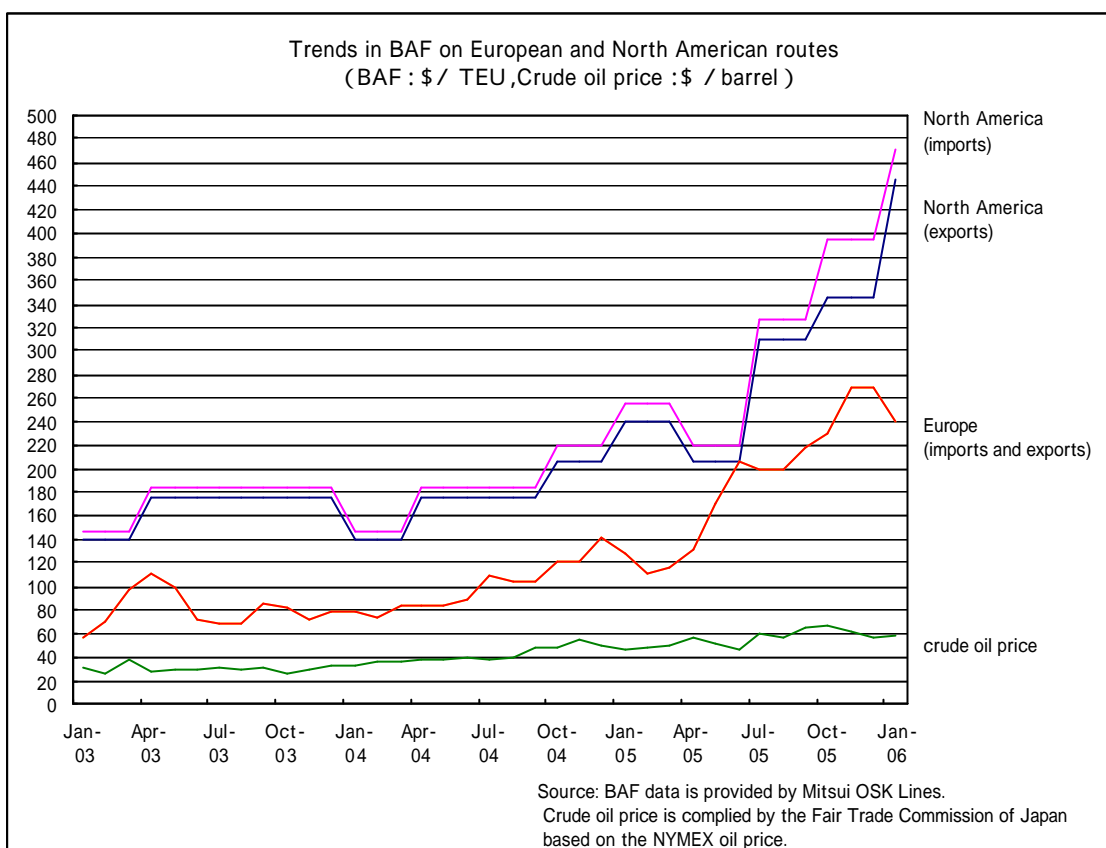


Figure 5: BAF calculation method under the TSA (example)

Fuel price (weighted average price/ton)	BAF charge (per TEU)
Less than \$80	-
\$80-\$99	\$4
\$100-119	\$40
\$120-139	\$70
\$140-159	\$105
\$160-179	\$140
The same pattern continues for prices \$180 and over (i.e. BAF increases by \$35/TEU for every \$20 increase in the weighted average fuel price).	

(Source: compiled by the Fair Trade Commission of Japan based on the TSA website)

Section 5: View points regarding international shipping issues and competition policy

1. Exemption of international shipping from the Antimonopoly Act

The system of exemption for international shipping cartels has been retained for two main reasons; the opinions that they are interests of shippers and the need to preserve harmony with international systems. Customers have responded with strong criticism of the practices of rate restoration and surcharges imposed by container liner cartels, claiming that they are unfair practices that would not be permitted in any ordinary business. Shipping companies on the other hand claim that international shipping cartels contribute to the stability of shipping routes due to the special nature of the international shipping industry, namely that (1) there are seasonal fluctuations in the volume of cargo, (2) it is a large scale process industry and (3) the market is prone to extreme fluctuations in prices due to shifts in supply and demand. However, these qualities cannot be said to be exclusive to the international shipping industry. With respect to the issue of international harmony, Japan needs to think about the future of its competition policy from the point of view of interests of Japanese shippers and, by extension, the interests of consumers in general in order to make the right decision, just as other countries such as the US and EU countries are reassessing their systems at their own discretion.

Based on the above points, it is appropriate to abolish provisions under the Marine Transportation Law exempting cartels from the Antimonopoly Act. If abolishing the relevant provisions however, additional measures should also be taken, including (1) bringing in a fixed moratorium in order to avoid confusion in line with the abolition of exemption and (2) compiling guidelines on the application of the Antimonopoly Act after the abolition of exemption if deemed necessary. Measures such as creating opportunities to exchange opinions with related countries should also be taken into consideration based on the fact that the abolition of exemption would have an effect on other countries as well as Japan.

2. Action to be taken by the Fair Trade Commission under the existing system

The Fair Trade Commission needs to work on abolishing the system of exemption for international shipping whilst at the same time taking countermeasures wherever possible, without waiting for the actual abolition of the exemption system. Under the existing system, the Fair Trade Commission can request that action be taken by the Minister for Land, Infrastructure and Transport if it deems that reported international shipping cartels do not meet the four requirements set out in the Marine Transportation Law. Currently operating cartels need to be examined to determine whether or not they meet two of the requirements in particular, namely that (1) they do not unfairly harm users interests and that (2) they do not restrict competition more than absolutely necessary based on the aim of the relevant agreement. The Fair Trade Commission should therefore request explanations regarding reported international shipping agreements from the Ministry of Land,

Infrastructure and Transport and from the applicant within a certain period of time and screen them as quickly as possible. Having done that, the Fair Trade Commission should then make every effort to actively request that action be taken by the Minister for Land, Infrastructure and Transport in response to the likes of cartels that unfairly harm users' interests, cartels whose activities grossly exceed their aim and cartels whose activities do not fall within the scope of international shipping.

3. Competition policy issues in other international shipping related fields

There have also been requests for improvements to be made in relation to pilot and port transport systems, areas in which close attention needs to be paid to the progress of legislative reform.