

**Review of the System for Exemption from the  
Antimonopoly Act for International Ocean Shipping**

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**Japan Fair Trade Commission**

# Review of the System for Exemption from the Antimonopoly Act for International Ocean Shipping

## Contents

Part 1	Purpose of Review .....	1
1	The System for Exemption from the Antimonopoly Act in the Market Economy.....	1
2	Establishment of the AMA Exemption System for International Ocean Shipping .....	1
3	Previous Reviews.....	1
4	Principle behind this Review.....	3
Part 2	Method of Fact-Finding Survey.....	4
1	Interview-Based Survey.....	4
2	Questionnaire-Based Survey .....	5
Part 3	Current Situation regarding International Ocean Shipping.....	6
1	Overview .....	6
2	Liner Shipping .....	6
3	Tramper Shipping .....	16
Part 4	Current Situation regarding the Exemption from the AMA for International Ocean Shipping .....	24
1	The Japanese System.....	24
2	Actual Agreements Exempted from the AMA.....	25
3	Systems in Other Countries.....	38
Part 5	Necessity of the System of Exemption from the AMA .....	41
1	Perspectives of Evaluation .....	41
2	International Consistency of the Exemption System.....	41
3	Protection of Shippers' Interest .....	42
4	Implementation of Consortia and Car Carrier Agreements.....	45
5	Conclusion .....	48

## Part 1 Purpose of Review

### 1 The System for Exemption from the Antimonopoly Act in the Market Economy

The purpose of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947. Hereinafter, “AMA”) is to promote fair and free competition in the market and thereby promote the democratic and wholesome development of the national economy as well as secure the interests of general consumers. The AMA prohibits a substantial restraint of competition by enterprises in any particular field of trade, etc. to accomplish the purpose.

In contrast, from the standpoint of accomplishing other policy goals, even in cases where competition is restrained, an exemption system from the AMA has been established that exempts the application of the stipulations on prohibition of the AMA to certain actions in particular fields. However, given that the system of exemption from the AMA should be limited to the minimum extent necessary because the AMA is a general rule in the market economy, it is important to consistently review the exemption system in response to changes in the economic conditions, etc.<sup>1</sup>.

### 2 Establishment of the AMA Exemption System for International Ocean Shipping

The system of exemption from the AMA for international ocean shipping is based on the Marine Transportation Act (Act No. 187 of 1949). The reason for establishment of the exemption system is that it was international custom for shipping companies that undertook liner shipping to conclude agreements known as Freight Conferences (Hereinafter, “conferences”), and it was considered that Japanese shipping industry would not have been able to grow in a sound manner with an AMA prohibition on such conferences, which restrain competition between shipping companies at the time of legislation at the Marine Transportation Act<sup>2</sup>.

### 3 Previous Reviews

The system of exemption from the AMA for international ocean shipping was mainly reviewed three times in 1999, 2006 and 2010 after it was first established in 1949.

#### (1) 1999 Review

On the occasion a comprehensive review of the system of exemption from the AMA in 1999 based on the Three-Year Program for Promoting Regulatory Reform (Cabinet

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<sup>1</sup> Japan Fair Trade Commission, ‘Report by the Study Group on Regulations and Competition Policy Current Status and Future Direction of the System of Exemption from the Antimonopoly Act Review on Exempting Cartels/Re-sale Price Maintenance Systems’ (September 20, 1991)

<sup>2</sup> House of Representatives, ‘Proceedings of the Transport Committee #21’ (May 17, 1949)

Decision March 31, 1998)<sup>3</sup>, an evaluation was also undertaken on the system of exemption for international ocean shipping. This review (Hereinafter, the “1999 Review”) resulted in the maintenance of exemption system because of 1) conferences were considered to be favorable to shippers in a sense that conferences provided stability of freight rate, and 2) the need to sustain international accord with the situations in the US and the EU, etc.

## (2) 2006 Review

In December of 2006, the Japan Fair Trade Commission (JFTC), based on the Report by the Study Group on Regulations and Competition Policy<sup>4</sup> released in the same month, requested<sup>5</sup> the Ministry of Land, Infrastructure, Transport and Tourism (MLIT), which has jurisdiction over the Marine Transportation Act, to review the necessity of the system of exemption from the AMA on the grounds that the reasons of the 1999 Review for maintaining the system of exemption from the AMA for international shipping no longer held: specifically that 1) the common freight rates (tariff) set by conference were no longer effective in practical terms and the conferences no longer yielded a stabilizing effect for freight rates, 2) the calculation grounds of surcharges<sup>6</sup> were not clear, and there would be the possibility that the interests of shippers might have been impaired, and 3) the scope of exemptions varied among Japan, the US and the EU, in particular, decided to abolish the block exemption system for conferences.

In response to this request, the MLIT concluded in December 2006 the system for exemption from the AMA was necessary from the standpoint of 1) securing the stable provision of ocean shipping services for shippers through the prevention of violent fluctuations in freight rates, 2) the rationalization and efficiency of business through international cooperation and partnerships between businesses, and 3) the consistency of international systems while they would conduct a full evaluation in the future<sup>7</sup>.

## (3) 2010 Review

In discussions with the MLIT based on the Policy on Regulatory/Systemic Reform (Cabinet Decision, June 18, 2010), after having conducted interview-based and questionnaire-based surveys of shippers, the JFTC asked the MLIT to abolish the system

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<sup>3</sup> Review pursuant to Act on Abolishment and Rearrangement of Systems of Exemption for the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 80 of 1999)

<sup>4</sup> Study Group on Regulations and Competition Policy, “Issues Concerning the International Shipping Market and Competition Policy” (December 6, 2006)

<sup>5</sup> JFTC, “Regarding the system for exemption of international shipping from the Antimonopoly Act” (December 6, 2006)

<sup>6</sup> These are surcharges levied in addition to base rates due to various reasons, such as compensating for fuel price hikes.

<sup>7</sup> MLIT, “Regarding the system for exemption of international shipping from the Antimonopoly Act” (December 6, 2006)

for exemption from the AMA on the grounds that the reasons given for the system in 1999 Review were no longer hold.

In response to this request, the MLIT decided in June 2011 to remain the exemption system in effect primarily on the grounds that 1) foreign countries as Japan's major trading partners still maintained such exemption systems, and 2) considering large fluctuations in freight rates and other negative changes in maritime routes to and from Europe that took place after the abolition of the system for block exemption from the EU competition law, there were concern about negative effects on Japanese shipping companies, shippers and the economy as a whole that would be caused by the abolition of the exemption system in Japan. While the MLIT announced at the same time that "taking into account the future developments in other jurisdictions on the system, interests of shippers, effects on the Japanese economy, etc., the MLIT would re-examine the system within fiscal year 2015, holding consultations with the JFTC"<sup>8</sup>.

#### 4 Principle behind this Review

Under the system for exemption of international shipping from the AMA, the Japanese economy as a whole would incur harmful effects such as a rise in freight rates to shippers, a reduction in service quality, and disincentive to make businesses more efficient as well as a hindrance to make creative initiative in business activities by shipping companies through a restriction on competition among shipping companies due to the exemption of conferences and other agreements. If the system for exemption from the AMA is to be maintained even in the face these potential disadvantages, the MLIT must, as they announced in 2011, demonstrate positive reasons for maintaining this system for exemption from not only the standpoint of shipping companies, but also shippers and the Japanese economy as a whole.

Considering that over five years have passed since the previous review and the JFTC found that the function of conferences almost disappeared under the investigation of the case concerning international ocean shipping services for automobiles<sup>9</sup>, the JFTC reviews whether the reasons for maintaining the system for exemption from the AMA are still valid today by conducting a fact-finding survey on the actual conditions of international ocean shipping, as well as the actual state of exemption from the AMA for international ocean shipping.

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<sup>8</sup> MLIT, "The revision of the system for exemption of international shipping from the Antimonopoly Act" (June 17, 2011)

<sup>9</sup> JFTC "Cease and Desist Orders and Surcharge Payment Orders against International Ocean Shipping Companies" (March 18, 2014)

## Part 2 Method of Fact-Finding Survey

In order to assess the actual conditions of international ocean shipping and the system for exemption from the AMA for such, from April to October 2015, the JFTC conducted interview-based and questionnaire-based fact-finding surveys of shippers, shipper associations, shipping companies, shipping associations, authorities in other countries, etc. The subjects of these surveys are as follows.

### 1 Interview-Based Survey

As indicated in Chart 1, the JFTC conducted an interview-based survey of a total of 27 shippers, shipper associations, shipping companies, shipping associations, authorities in other countries, etc.

Based on the interview-based survey of Japanese and foreign shipping companies, the JFTC conducted interviews with 11 shippers which were main users of these shipping companies including automobile manufacturers, automobile parts manufacturers, trading companies, forwarders<sup>10</sup>, electric-appliance manufacturers, electronic parts manufacturers, as well as three shipper associations comprised of these primary shippers in Japan and a shipping association in the US.

The JFTC also conducted interviews with shipping companies and shipping associations, including the five primary Japanese and foreign shipping companies as well as a shipping association comprised of the Japanese shipping companies and a shipping association in the US, etc.

Additionally, the JFTC conducted interviews with authorities overseas, which included the Federal Maritime Commission (FMC)<sup>11</sup>, the Antitrust Division of the Department of Justice (DOJ)<sup>12</sup> and the Directorate-General for Competition, European Commission (DG-COMP)<sup>13</sup>.

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<sup>10</sup> In this report, 'forwarder' includes NVOOC (Non-Vessel Operating Common Carrier), which is an entity that does not possess the means of transport, such as a transport ship.

<sup>11</sup> The maritime authority of the United States.

<sup>12</sup> The competition authority of the United States.

<sup>13</sup> The competition authority of the European Union.

Chart 1 Subjects of Interview-based Survey

Subject Type	Numbers
Shippers	11
Shipper Associations	4
Shipping Companies	5
Shipping Associations, etc	3
Total	23
Overseas authorities, etc	4
Total	27

## 2 Questionnaire-Based Survey

As indicated in Chart 2, the JFTC conducted a questionnaire-based survey of a total of 124 individuals, including shippers, shipper associations, shipping companies, and shipping associations, and the JFTC received responses from 114 individuals.

Based on interviews conducted with shippers and shipping companies, the JFTC carried out a questionnaire-based survey with a total of 96 shippers both in Japan and overseas that used international ocean shipping, including automobile manufacturers, automobile parts manufacturers, trading companies, forwarders, electric-appliance manufacturers, electronic parts manufacturers, as well as the associations comprised of these primary shippers in Japan.

For shipping companies and shipping associations, the JFTC carried out a questionnaire-based survey with a total of 28 primary shipping companies in Japan and overseas, as well as shipping associations in Japan<sup>14</sup>.

Chart 2 Number of Questionnaires Sent and Responses Received

Subject Type	Sent	Responses	Response Rate
Shippers	89	82	92%
Shipper Associations	7	5	71%
Subtotal	96	87	91%
Shipping Companies	26	25	96%
Shipping Associations	2	2	100%
Subtotal	28	27	96%
Total	124	114	92%

(Response rate rounded off to the nearest whole number.)

<sup>14</sup> This include a shipping association comprised of foreign shipping companies.

## Part 3 Current Situation regarding International Ocean Shipping

### 1 Overview

International ocean shipping has become an essential transportation means for the foreign trade of Japan, and accounts for 76.7% of the monetary sum and 99.7% of the tonnage of Japanese trade<sup>15</sup>.

There are two types of international ocean shipping<sup>16</sup>, i.e., liner shipping<sup>17</sup> with regular service to pre-determined ports and shipping dates according to publicly-released shipping schedules, and tramp shipping<sup>18</sup> without regular service to pre-determined ports or publicly-released shipping schedules.

Additionally, international ocean shipping can also be divided into cargo transport and passenger transport.

As is stated below in Part 4-2, most of the agreements regarded as exempt from the AMA are those related to cargo transport. Given this, the report focuses on cargo transport.

In the following section, the actual conditions of cargo transport is described by type of shipping (i.e., liner or tramp), based on the interview-based and questionnaire-based surveys.

### 2 Liner Shipping

#### (1) Types of ships used in liner shipping

For liner shipping, container ships<sup>19</sup> specialized in carrying freight in internationally-standard containers<sup>20 21</sup> and conventional cargo ships carrying directly loaded freight without using containers are used. In this report, liner shipping refers to shipping using container ships due to the fact that the majority of ships used for liner shipping by total tonnage are container ships<sup>22</sup>.

#### (2) Primary liner shipping companies and shippers

As is indicated in Chart 3, the liner shipping companies operating worldwide in descending order of shipping tonnage<sup>23</sup> are Maersk Line (Denmark), MSC (Switzerland),

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<sup>15</sup> The Japanese Shipowners' Association, 'The Current Situation of Japanese Shipping (Oct., 2014)'

<sup>16</sup> Ocean Commerce, International Logistics Glossary, 2010

<sup>17</sup> Paragraph 3, Article 2 of the Marine Transportation Act

<sup>18</sup> Paragraph 6, Article 2 of the Marine Transportation Act

<sup>19</sup> Ocean Commerce, *ibid.*

<sup>20</sup> The primary container sizes are 20 feet or 6.09 meters (TEU; Twenty-foot Equivalent Unit) and 40 feet or 12.19 meters (FEU; Forty-foot Equivalent Unit). The tonnage and shipping performance of a container ship is normally calculated in TEU or FEU conversion units.

<sup>21</sup> There are two primary types of containers, dry containers which transport general cargo and refrigerated containers which transport chilled and frozen foodstuff. The majority of freight is transported in dry containers.

<sup>22</sup> Equasis, "The world merchant fleet in 2014", August 9 2015

<sup>23</sup> Shipping tonnage refers to the cargo space of a ship under operation.



CMA-CGM (France) etc.

Additionally, the three Japanese shipping companies that have a major share in the routes to and from Japan are Mitsui O.S.K. Lines (Hereinafter, “Mitsui O.S.K.”), NYK Line (Hereinafter, “NYK Line”)<sup>24</sup>, and Kawasaki Kisen Kaisha Ltd. (Hereinafter, “K Line”)<sup>25</sup>; and, the foreign shipping companies that have the most share in the routes to and from Japan are Maersk Line (Denmark) and Evergreen (Taiwan)<sup>26</sup>.

Chart 3 World’s Top 10 Shipping Companies in terms of Shipping Tonnage<sup>27</sup>  
(As of the end of 2014)

Rank	Name	Country and Region	Shipping Tonnage (TEU)	Market Share (%)
1	Maersk Line	Denmark	2,762,939	15
2	MSC	Switzerland	2,465,309	14
3	CMA-CGM	France	1,606,808	9
4	Evergreen	Taiwan	931,302	5
5	COSCO	China	880,276	5
6	Hapag-Lloyd	Germany	718,294	4
7	CSCL	China	673,292	4
8	Mitsui O.S.K.	Japan	604,743	3
9	Hanjin	South Korea	599,266	3
10	APL	Singapore	570,847	3
Top 10 Company Subtotal			11,813,076	65
Others			6,327,938	35
Total			18,141,014	100

\*Colored portion indicates the Japanese shipping company. (Share percentage is rounded off to the nearest whole number.)

Source: Chart created by the JFTC based on “FACTBOOK I 2015”, NYK Line

The main goods being transported through liner shipping on routes to and from Japan include automobile parts, chemical products, commodities, metal products, electronic equipment. The main shippers using liner shipping on the routes to and from Japan are automobile manufacturers, automobile part manufacturers, trading companies, forwarders, electric appliance manufacturers, and electronic parts manufacturers.

<sup>24</sup> Ranked #13 in the world for liner shipping tonnage (“FACTBOOK I 2015”, NYK Line).

<sup>25</sup> Ranked #17 in the world for liner shipping tonnage (“FACTBOOK I 2015”, NYK Line).

<sup>26</sup> Researched by the JFTC.

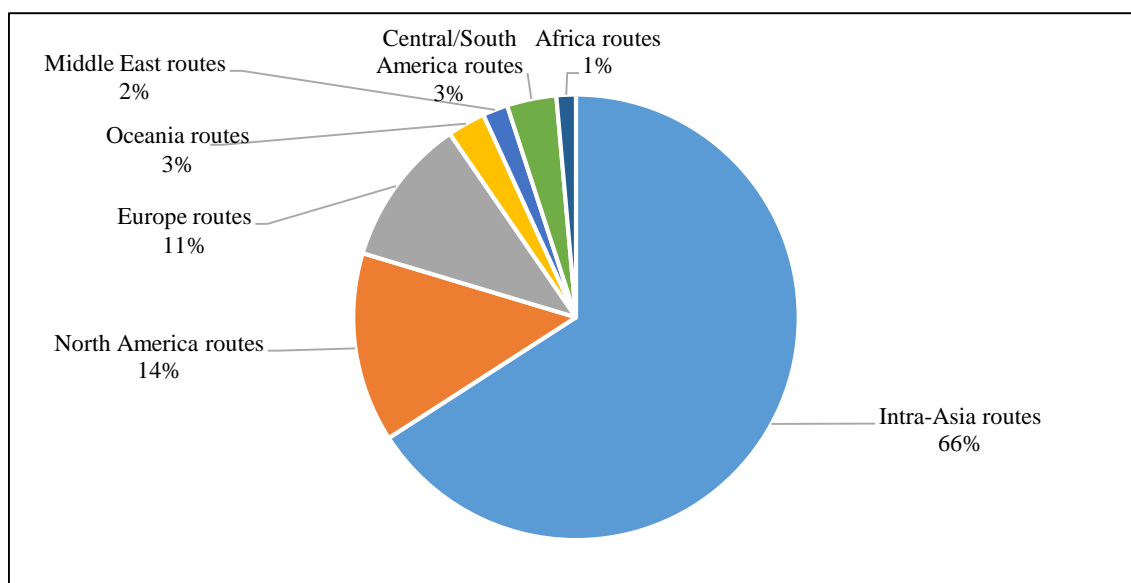
<sup>27</sup> The acquisition of APL by CMA-CGM (NOL operates liner shipping under the APL brand) and the merger of COSCO and CSCL were announced in December, 2015.

### (3) Primary Maritime Routes

Routes of liner shipping can be classified into east-west routes (Asia-North America, Asia-Europe, North America-Europe etc.), north-south routes (North America-Central/South America, North America-Oceania etc.), and intra-regional routes (Intra-Asia etc.). Generally, among the east-west routes, the Asia-North America routes, the Asia-Europe routes, and the North America-Europe routes are the three major trunk routes. The maritime routes with the most traffic in the world are the Intra-Asia routes (21% of the world), which includes Japan, the Asia-North America routes (18% of the world), and the Asia-Europe routes (16% of the world).<sup>28</sup>

Routes with the highest maritime trading volume<sup>29</sup>, combining routes from Japan (outward voyage) and routes to Japan (inward voyage), are Japan-Asia routes<sup>30</sup> (66%, to and from Japan. Hereinafter known simply as “Intra-Asia routes”), Japan-North America routes (14%. Hereinafter known simply as “North America routes”), and Japan-Europe routes (11%. Hereinafter known simply as “Europe routes”). (See Figure 1).

Figure 1 Ratio of Maritime Trading Volume (container freight) by Maritime Route to and from Japan(2014)



(Ratios are rounded off to the nearest whole number.)

Source: Created by the JFTC based on the “Maritime Report 2015”, MLIT.

<sup>28</sup> Calculated from world movement of container goods in 2012 (estimate, TEU base) (“SHIPPING NOW 2014-2015” Japan Maritime Public Relations Center).

<sup>29</sup> Tonnage base.

<sup>30</sup> This includes China routes.

#### (4) Contracts for Liner Shipping

##### a) Contract Parties

Transportation by liner shipping is classified into two types based on contracting parties: 1) a shipper makes a transportation contract directly with the shipping company<sup>31</sup>, and 2) a shipper makes a transportation contract with a forwarder, and the forwarder then makes a transportation contract with a shipping company<sup>32</sup>.

When a shipper makes a transportation contract directly with a shipping company, the shipping company handles the transport between ports, and the transport from the shipping point to the port of departure as well as the transport from the port of arrival to the receiving party is arranged separately by the shipper. When a shipper makes a shipping contract with a forwarder, the forwarder is in charge of transporting the consigned freight from the shipper to the receiving party, and carries out transport from the shipper to the port of departure as well as the transport from the port of arrival to the receiving party. A forwarder makes a separate contract with a shipping company and the shipping company actually carries out the transport from port to port.

In consideration of the fact that the conclusion of an agreement by shipping companies is regarded as exempt from the AMA, this report examines cases where contract parties are shipping companies (This includes cases where forwarders conclude transportation contracts with shipping companies. The same shall apply below.)

In the selection of a party to a transportation contract, a shipper normally obtains competitive bids from multiple shipping companies upon providing them with their shipping plans, and the shipper generally decides on the shipping company to use after negotiating the transport terms, such as freight rates, with the shipping companies that have submitted a bid.

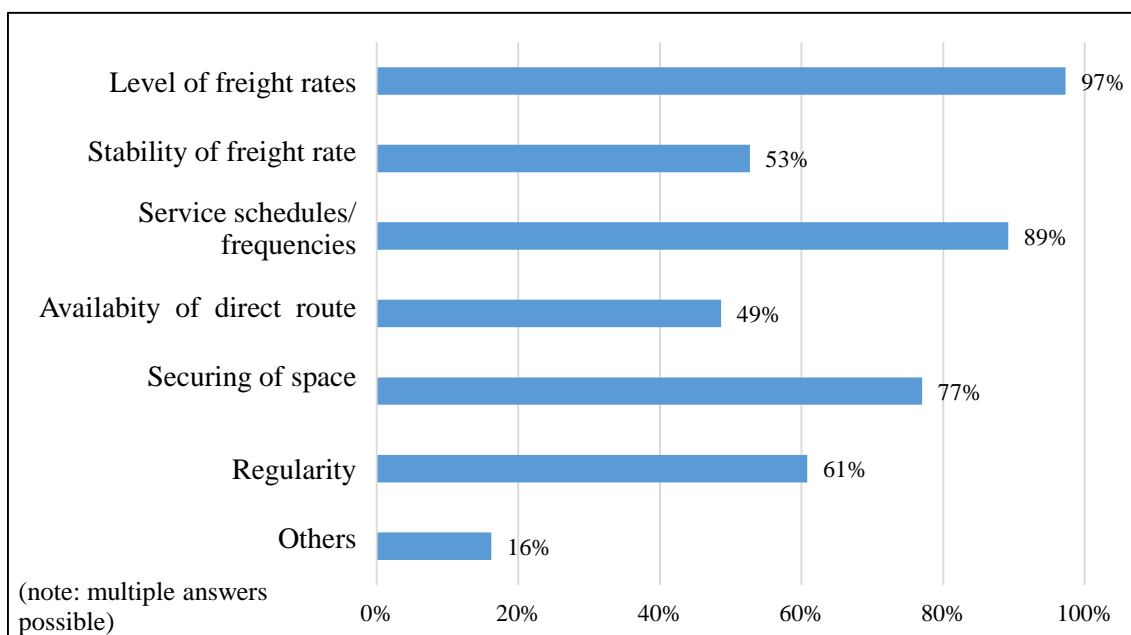
In the questionnaire-based survey conducted by the JFTC with shippers (Hereinafter, “JFTC questionnaire for shippers”), the criteria of selection for shipping companies to be used is, in order of priority: level of freight rates (97% of responses), service schedules/frequencies (89% of responses), the securing of space (77% of responses) (See Table 1).

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<sup>31</sup> Not only consignors but also consignees sometimes conclude transportation contracts with shipping companies.

<sup>32</sup> Not only consignors but also consignees sometimes conclude transportation contracts with forwarders.

Table 1 Criteria for choosing Shipping Companies (Responses: 74 shippers)



\*Others (e.g. Capacity to respond to trouble, provision of various information, ability to accept heavy cargo)

Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

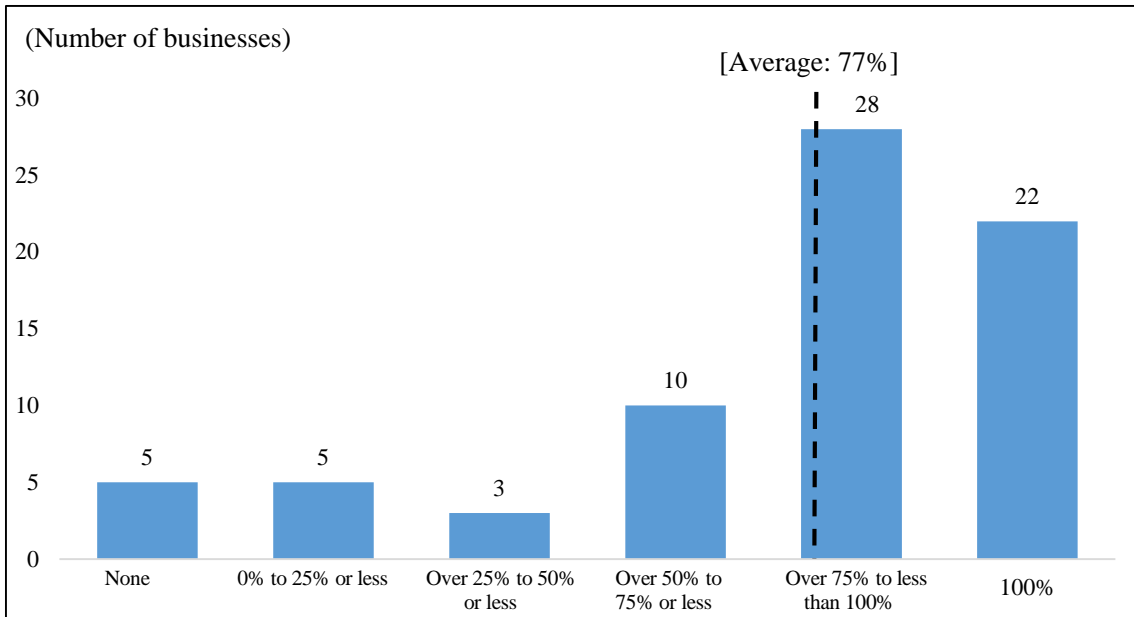
#### b) Types of Contracts

There are two types of liner shipping contracts: a fixed-term contract, in which contract terms, such as freight rates are decided by specifying a period of time, and a spot contract, in which contract terms, such as freight rates only for one passage are decided.

Fixed-term contracts are often made on an annual basis, and with contract periods that begin in April the negotiation period starts at the end of a calendar year or the beginning of a calendar year, with a settlement generally being reached around March. Spot contracts are made as required in response to demands from shippers.

In the JFTC questionnaire for shippers, shippers responded that they made fixed-term contracts with shipping companies for most of transportation of their freight (See Table 2).

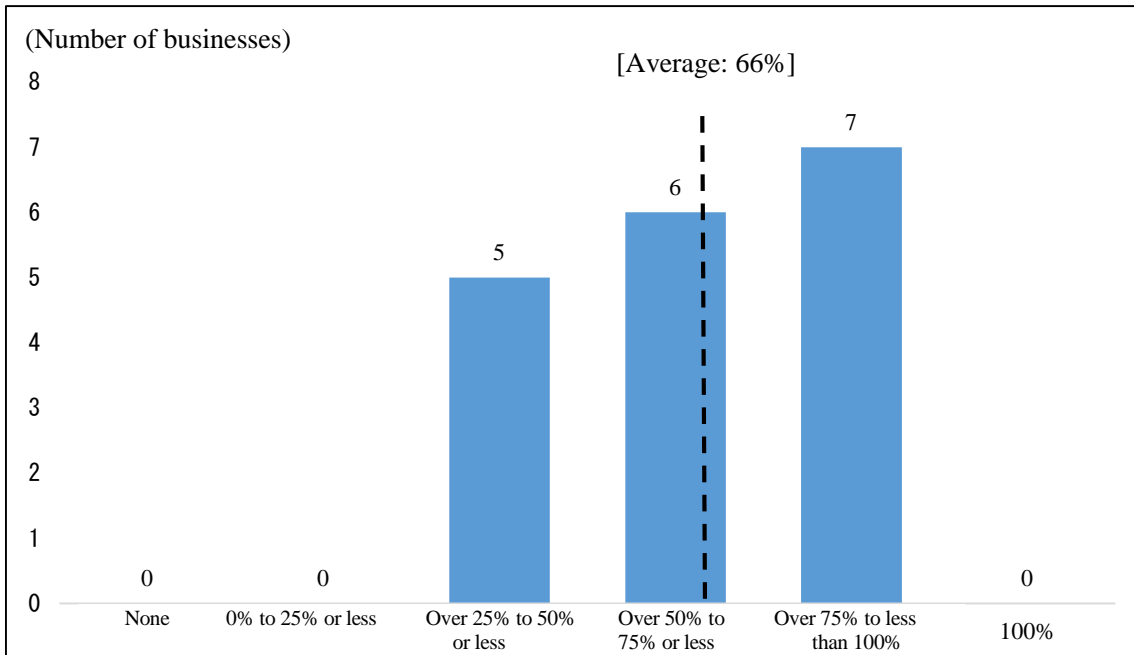
Table 2 Ratio of the amount of Transportation of Freight based on Fixed-Term Contracts for All Shipping Transportation (Responses: 73 shippers)



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

Also in the questionnaire-based survey carried out by the JFTC with shipping companies (JFTC questionnaire for shipping companies), the shipping companies responded that they made fixed-term contracts with shippers for the majority of transportation of their freight (See Table 3).

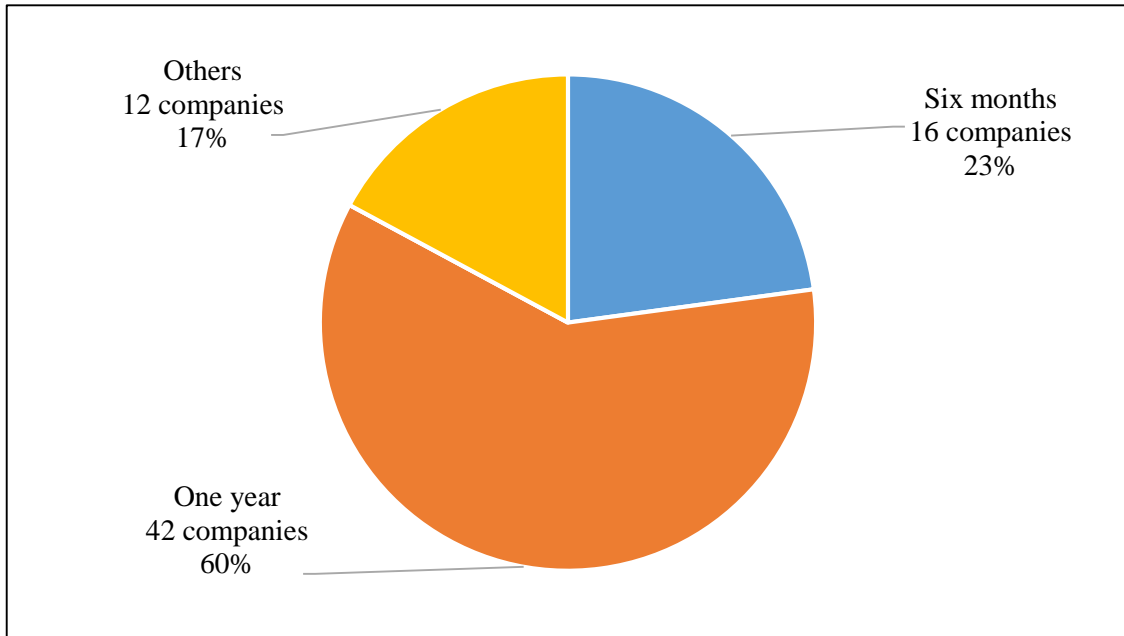
Table 3 Ratio of the amount of Transportation of Freight based on Fixed-Term Contracts for All Shipping Transportation (Responses: 18 shipping companies)



Source: JFTC questionnaire for shipping companies (Percentages are rounded off to the nearest whole number.)

Additionally, in the JFTC questionnaire for shippers, over a majority of responses stated that the general period of fixed-term contracts<sup>33</sup> was 'one year', and combined with the responses of 'six months', these responses reached 83% (See Figure 2).

Figure 2 Period of Fixed-Term Contracts (Responses: 70 shippers)



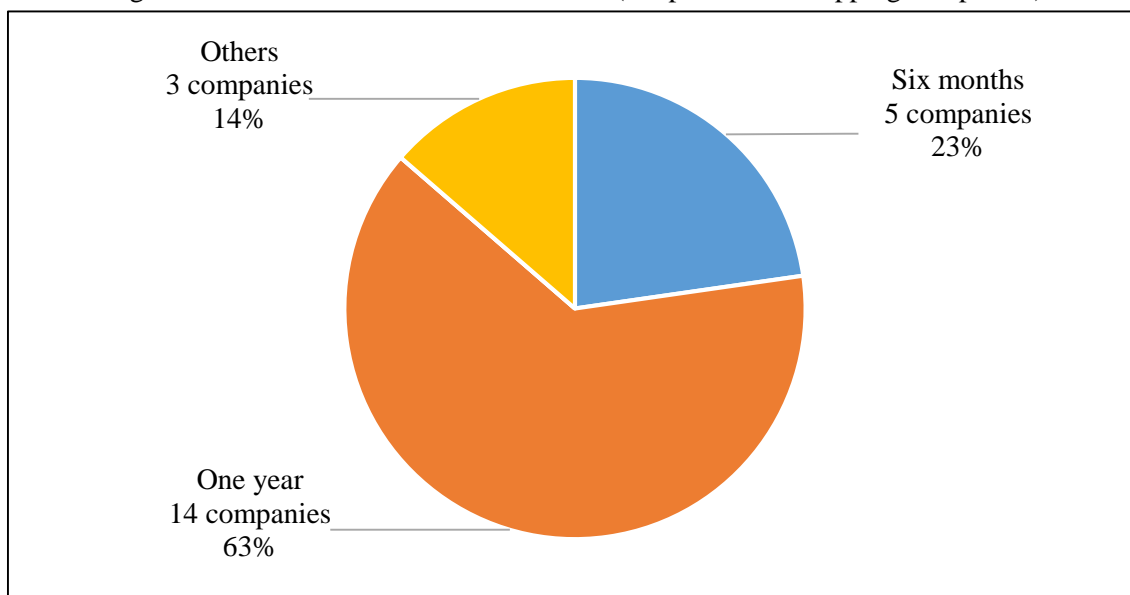
\*Others (e.g. three months, three to six months, irregular)

Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

<sup>33</sup> These (contracts) includes fixed-term contracts with forwarders.

Also in the JFTC questionnaire for shipping companies, over a majority of responses stated that the general period of fixed-term contracts<sup>34</sup> was ‘one year’, and combined with the responses of ‘six months’, these responses reached 86% (See Figure 3).

Figure 3 Period of Fixed-Term Contracts (Responses: 22 shipping companies)



\*Others (e.g. three months)

Source: JFTC questionnaire for shipping companies (Percentages are rounded off to the nearest whole number.)

#### (5) Freight Rates

Freight rates for liner shipping are separated into two categories: base rates and surcharges. The base rates are basic prices for shipping, and surcharges are additional fees added to the base rates for various reasons, such as compensating for fuel price.

##### a) Base Rates

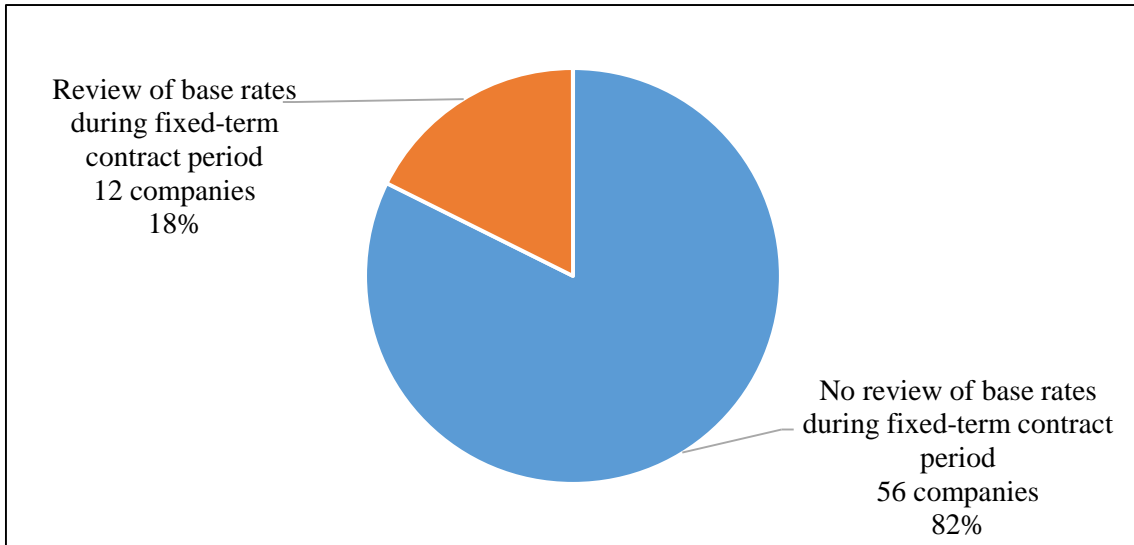
Base rates are freight rates per container units (so called “box rates”) according to the container size and refrigeration capacity etc., regardless of the weight of the cargo to be loaded in the container.

In the JFTC questionnaire for shippers, regarding reviews of base rates during the fixed-term contract period, 82% of responses stated ‘No review of base rates during the fixed-term contract period’ (See Figure 4).

<sup>34</sup> These (contracts) includes fixed-term contracts with forwarders.



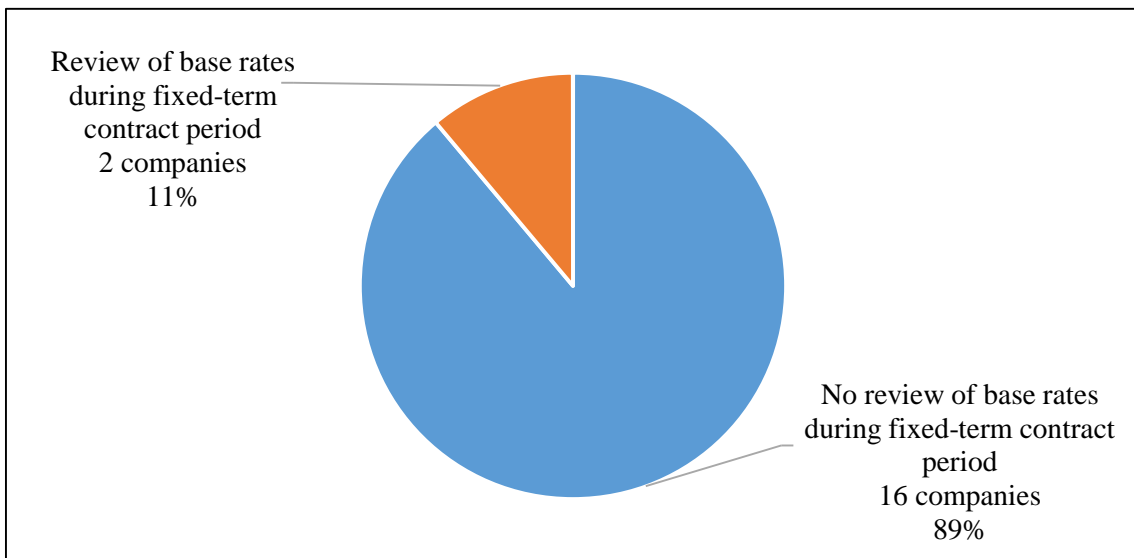
Figure 4 Review of Base Rates during the Fixed-Term Contract Period  
(Responses: 68 shippers)



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

Also in the JFTC questionnaire for shipping companies, regarding reviews of base rates during the fixed-term contract period, 89% of responses stated 'No review of base rates during the fixed-term contract period' (See Figure 5).

Figure 5 Reviews of Base Rates during the Fixed-Term Contract Period  
(Responses: 18 shipping companies)



Source: JFTC questionnaire for shipping companies (Percentages are rounded off to the nearest whole number.)

## b) Surcharges

The primary surcharges on liner shipping are BAF<sup>35</sup> (Bunker Adjustment Factor) applied in response to fluctuations in fuel prices, CAF<sup>36</sup> (Currency Adjustment Factor) applied in response to fluctuations in currency rates, and THC (Terminal Handling Charge) for covering working costs arising in the container yard.

There are also other surcharges, such as Documentation Fee<sup>37</sup> and PSS (Peak Season Surcharge)<sup>38</sup>.

Changes to the level of surcharges are calculated automatically in response to changes in the levels of fuel price or currency based on a given formula, and there are factors that change regularly (BAF and CAF) and factors which rarely change once they are set (THC etc.).

## 3 Tramp Shipping

### (1) Types of Ships Used in Tramp Shipping

Tramp shipping uses different ships for different types of cargo, such as pure car carriers (PCCs)<sup>39</sup>, dry bulk carriers<sup>40</sup> for loose-fill ore/grain, tankers to carry loose liquids such as crude oil, and LNG carriers to carry liquefied natural gas. The percentage of PCCs does not account for a major share of total vessels operated by Japanese shipping companies (merchant fleet) in either vessel numbers or total tonnage<sup>41</sup>; however, as this report indicates in Part 4-2, since the majority of the reports to the JFTC concerning agreements on trampers are those for agreements on PCCs, the following section examines the current conditions of shipping through PCCs.

### (2) PCC

#### a) Major Shipping Companies and Shippers of PCC

As Chart 4 indicates, PCC operators in the world are, in descending order of shipping capacity, NYK Line, EUKOR (South Korea), Mitsui O.S.K. etc.

Additionally, the shipping companies with the largest shipping capacity on routes to and from Japan are the three Japanese shipping companies, Mitsui O.S.K., NYK Line and K Line; other shipping companies operating on routes to and from Japan include

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<sup>35</sup> These are referred to FAF (Fuel Adjustment Factor) with some maritime routes.

<sup>36</sup> These are referred to YAS (Yen Application Surcharge) with some maritime routes.

<sup>37</sup> This is a surcharge that covers the various costs involved in the shipping company drafting shipping documents.

<sup>38</sup> This is a surcharge that covers the increased costs of the peak season.

<sup>39</sup> In this report, PCC include pure car & truck carriers (PCTC), which handle the transport of high/heavy cargo, such as trucks, buses and other oversize vehicles.

<sup>40</sup> This refers to loading cargo directly into a vessel's cargo hold without packing/wrapping it (Ocean Commerce, International Logistics Glossary, 2015).

<sup>41</sup> MLIT, "Maritime Report 2015"

EUKOR, WWL (Sweden/Norway), and Nissan Motor Car Carrier etc.<sup>42</sup>

Chart 4 The World's Largest by Shipping Capacity of PCCs (January 2015)

Rank	Shipping Company	Country	Shipping capacity (units)	Market Share (%)
1	NYK Line	Japan	660,000	17.2
2	EUKOR	South Korea	551,000	14.3
3	Mitsui O.S.K.	Japan	527,000	13.7
4	K Line	Japan	442,000	11.5
5	Hyundai GLOVIS	South Korea	370,000	9.6
Total of Top 5 Companies			2,550,000	66.3
Other			1,293,000	33.7
Total			3,843,000	100

\*Colored portion indicates the Japanese shipping company. (Share percentage is rounded off to the nearest whole number.)

Source: Chart created by the JFTC based on “FACTBOOK I 2015” , NYK Line

Primary shippers of PCC on routes to and from Japan are Japanese automobile manufacturers and trading companies.

#### b) Major Maritime Routes

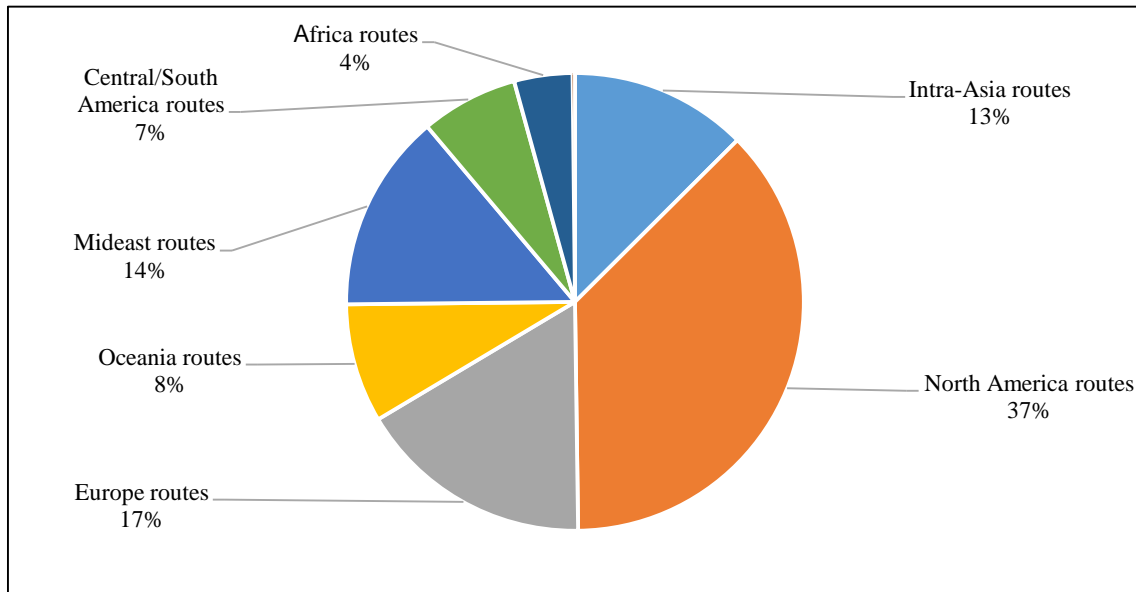
Rather than being determined in advance by shipping companies, routes of PCC are decided as appropriate based on the requests of shippers<sup>43</sup>. Routes from Japan in descending order of cars shipped<sup>44</sup>, the North America routes (37% of the cars shipped from Japan), Europe routes (17%), Japan-Middle/Near East routes (14%. Hereinafter, “Mideast routes”) (See Figure 6).

<sup>42</sup> NYK Line, “FACTBOOK I 2015”

<sup>43</sup> There are also cases where PCC are operated upon advanced public release of a shipping schedule by a shipping company.

<sup>44</sup> According to the results of JFTC questionnaire for shippers and shipping companies, there is a overwhelmingly preponderant number of cars shipped from Japan over the number of cars shipped to Japan.

Figure 6 Percentage of Shipped Cars from Japan by Maritime Route (2014)



(Share percentage is rounded off to the nearest whole number.)

Source: Database from the website of the Japan Automobile Manufacturers Association

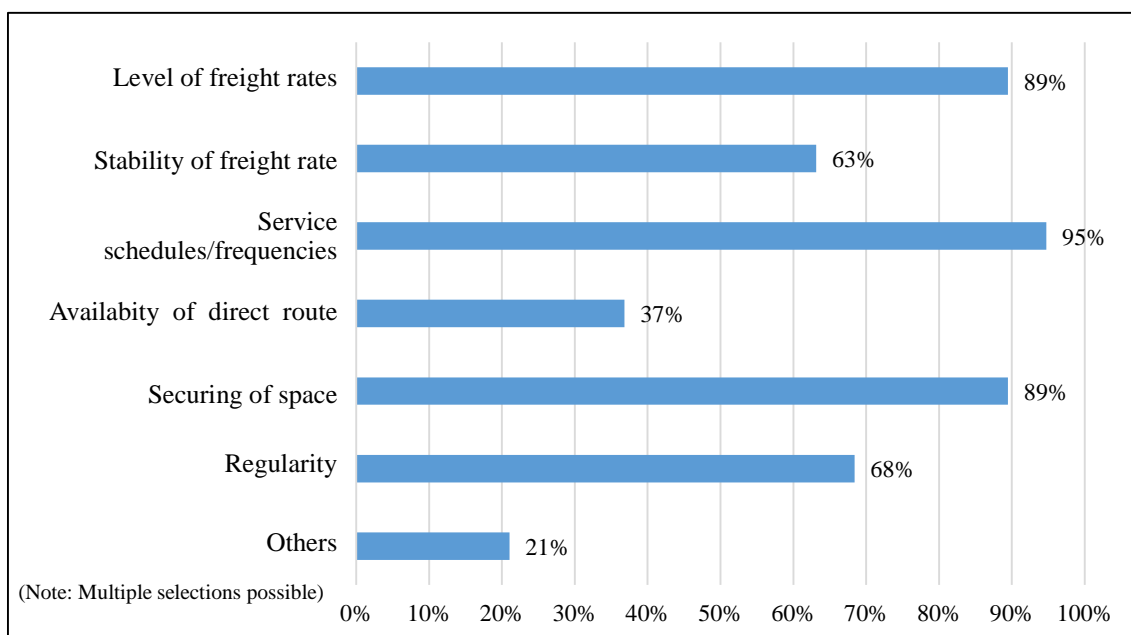
c) Shipping Contracts for PCC

For transportation by PCCs, shippers make almost all shipping contracts directly with shipping companies, rather than contracting with forwarders.

In the selection of a party to a shipping contract, a shipper normally obtains competitive bids from multiple shipping companies upon providing them with their shipping plans, and the shipper generally decides on a shipping company to use after negotiating the transport terms, such as freight rates, with the shipping companies that have submitted a bid.

In the JFTC questionnaire for shippers, the criteria of selection for shipping companies to be used is, in descending order of priority: service schedules/frequencies (95% of responses), level of freight rates (89% of responses), the securing of space (89% of responses) (See Table 4).

Table 4 Criteria for choosing Shipping Companies (Responses: 19 shippers)

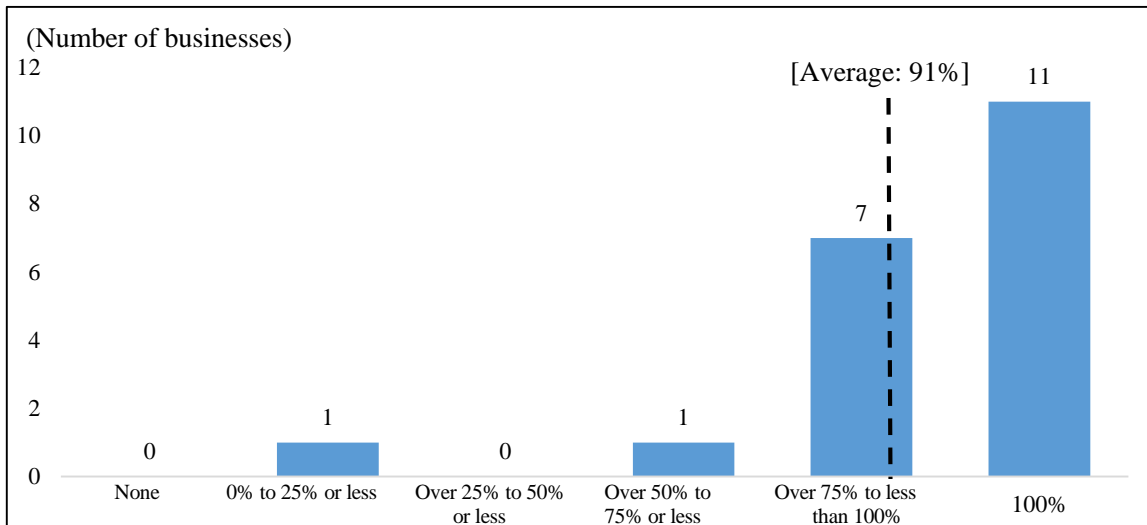


\*Others (e.g. Capacity to respond to trouble, shipping quality)

Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

Similar to liner shipping, there are fixed-term and spot contracts for car carrier shipping; however, in the JFTC questionnaire for shippers, shippers responded that fixed-term contracts are concluded with shipping companies for the majority of shipped cars (See Table 5).

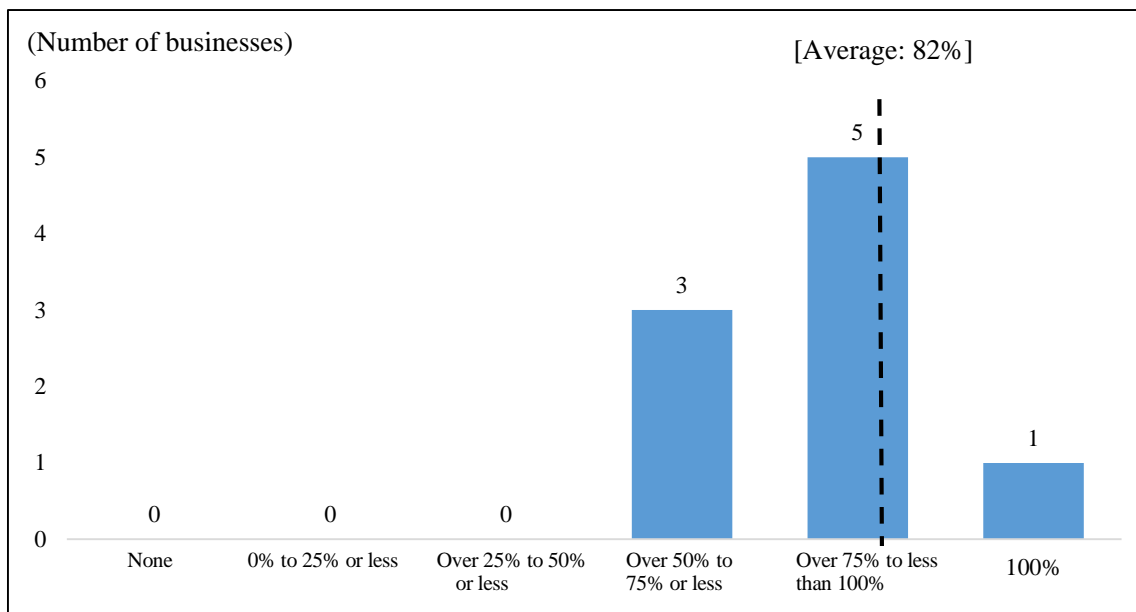
Table 5 Ratio of the Amount of Transportation of Cars based on Fixed-Term Contracts for All Shipping Transportation (Responses: 20 shippers)



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

Even within the JFTC questionnaire for shipping companies, shipping companies responded that fixed-term contracts are made with shipping companies for most shipped cars (See Table 6).

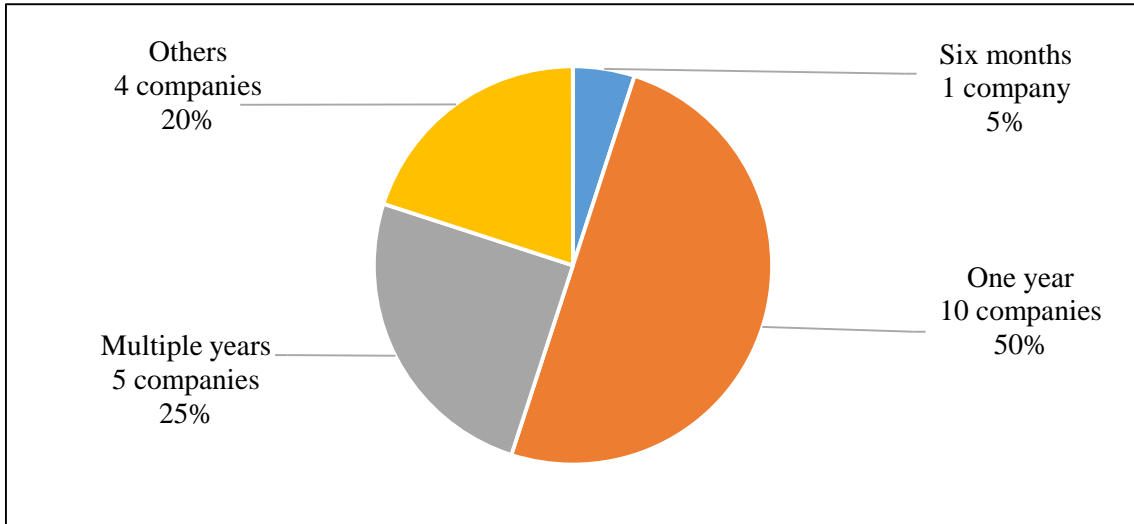
Table 6 Ratio of the Amount of Transportation of Cars based on Fixed-Term Contracts for All Shipping Transportation (Responses: 9 shipping companies)



Source: JFTC questionnaire for shipping companies (Percentages are rounded off to the nearest whole number.)

Additionally, in the JFTC questionnaire for shippers, 50% of responses stated that the general period of fixed-term contracts was ‘one year’, and combined with the responses of ‘six months’, this reached 75% (See Figure 7).

Figure 7 Period of Fixed-Term Contracts (Responses: 20 shippers)

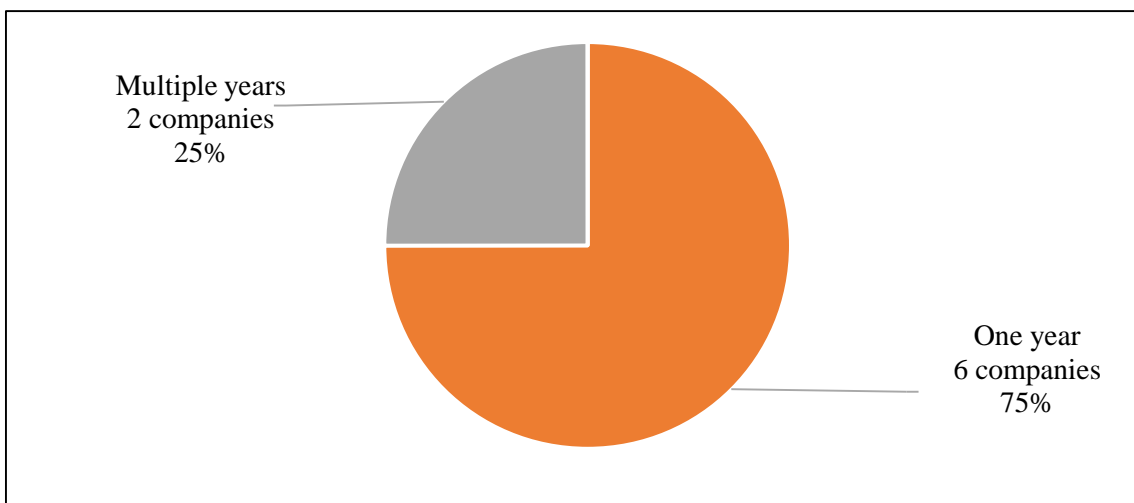


\*Others (e.g. differs by route, as needed)

Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

In the JFTC questionnaire for shipping companies, 75% of responses stated that the general period of fixed-term contracts was ‘one year’, and combined with the responses of ‘multiple years’, this reached 100% (See Figure 8).

Figure 8 Period of Fixed-Term Contracts (Responses: 8 shipping companies)



Source: JFTC questionnaire for shipping companies (Percentages are rounded off to the nearest whole number.)

d) Freight Rates

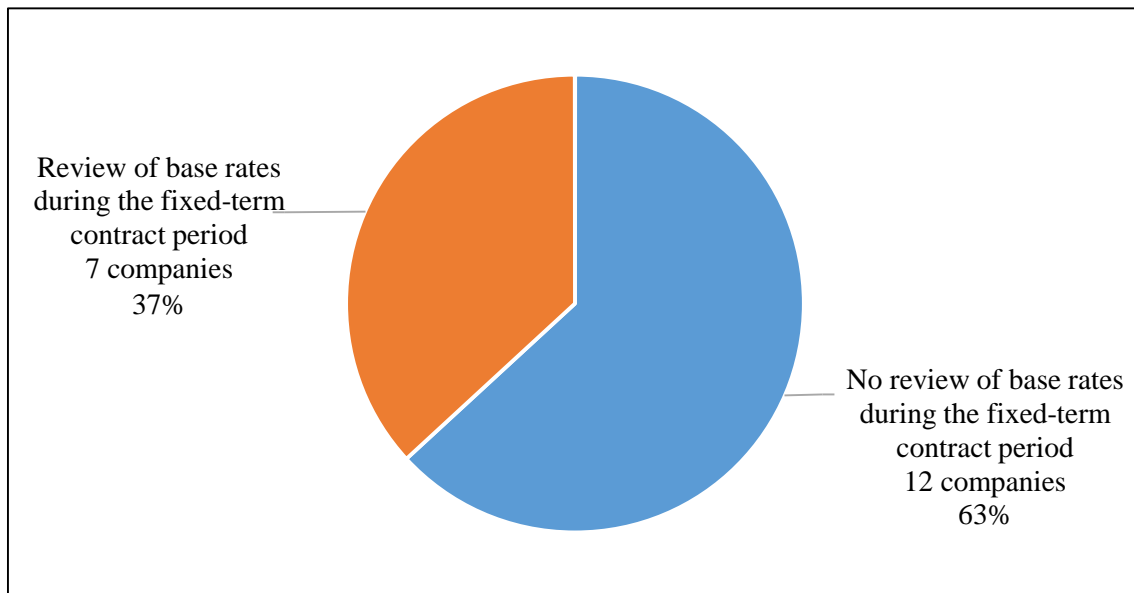
Freight rates for car carrier shipping can, like freight rates for liner shipping, be broken down into base rates and surcharges.

(1) Base Rates

Base rates are freight rates per cubic meter and known as M3.

In the JFTC questionnaire for shippers, regarding reviews of base rates during the fixed-term contract period, the majority of responses (63%) stated 'No review of base rates during the fixed-term contract period' (See Figure 9).

Figure 9 Reviews of Base Rates during Fixed-Term Contract Period  
(Responses: 19 shippers)

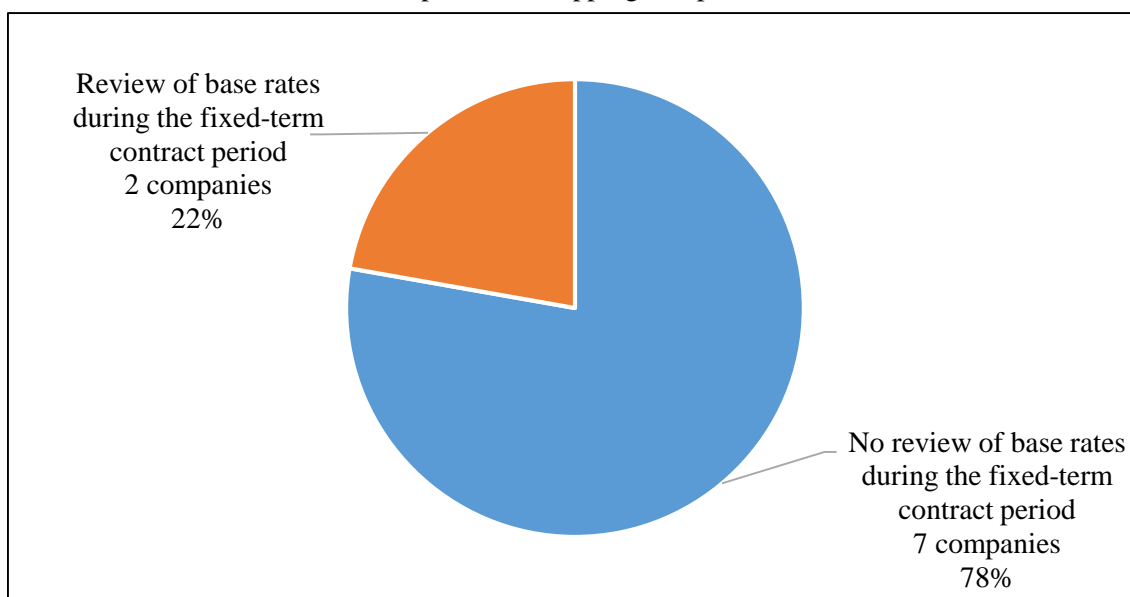


Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

Also in the JFTC questionnaire for shipping companies, regarding reviews of base rates during the fixed-term contract period, 78% of responses stated 'No review of base rates during the fixed-term contract period' (See Figure 10).



Figure 10 Reviews of Base Rates during Fixed-Term Contract Period  
(Responses: 9 shipping companies)



Source: JFTC questionnaire for shipping companies (Percentages are rounded off to the nearest whole number.)

## (2) Surcharges

The primary surcharges on car carrier shipping are BAF (Bunker Adjustment Factor) and CAF (Currency Adjustment Factor). There are additional surcharges<sup>45</sup>, such as the PCS (Panama Canal Surcharge)<sup>46</sup> for the North America routes, and the WRS (War Risk Surcharge)<sup>47</sup> for Mideast routes.

Changes to the level of surcharges are, similar to liner shipping, calculated automatically in response to changes in the levels of fuel price or currency based on a given formula, and there are factors that change regularly (BAF and CAF) and factors which rarely change once they are set (PCS, WRS etc.).

<sup>45</sup> Ocean Commerce, *The Basic Manual of Practical Shipping Operations*, 2014

<sup>46</sup> This is a surcharge transferred to shippers from shipping companies who are charged a toll by the Panama Canal Authority.

<sup>47</sup> This is a surcharge levied when shipping through a potential war zone.

## Part 4 Current Situation regarding the Exemption from the AMA for International Ocean Shipping

### 1 The Japanese System

The system of exemption from the AMA for international ocean shipping was established in Japan based on the Marine Transportation Act, and an overview of its current status follows.

#### (1) Activities Applicable for Exemption from the AMA

To conclude an agreement or contract, or to conduct concerted act (Hereinafter known as “concluding an agreement etc.”) concerning freight rates, fees, other transportation conditions, maritime routes, allocation of vessels or sharing of shipping by a ship operator with another ship operator (Hereinafter known as “freight rates etc.”) on a route between a Japanese port and a port in a region other than Japan (maritime routes related to international ocean shipping)<sup>48</sup> is regarded as exempt from the AMA, conditioned upon advanced notification being submitted to the MLIT (the first sentence in Article 28 and Article 28, Item 4 of Marine Transportation Act). However, the AMA does apply in cases where an unfair trade practices are employed and the interests of users are unduly impaired by substantially restraining the competition in a particular field of trade, or one month has passed since the request by the JFTC to the MLIT to take necessary measures (See (3) below.) was published in the official gazette (the first sentence in Article 28 of the Marine Transportation Act).

Since both liner shipping companies and tramper shipping companies are regarded as ship operators in the Marine Transportation Act, regardless if they carry passengers or cargo, concluding an agreement etc. either on liner shipping or tramper shipping can be regarded as exempt from the AMA.

#### (2) The Role of the MLIT

A ship operator shall, if it intends to engage in concluding an agreement etc. on freight rates etc., or to alter contents thereof, notify beforehand the MLIT (Paragraph 1, Article 29-2 of Marine Transportation Act) to that effect.

Additionally, when the MLIT judges that contents of such agreements in the notification does not conform to any of the following conditions (Hereinafter collectively known as the “four requirements”) (each item of Paragraph 2, Article 29 of Marine Transportation Act), the MLIT shall order the ship operator to alter the contents of the agreement in question or shall prohibit acts based on the agreement (Hereinafter, “measures to alter or prohibit activity”) (Paragraph 2, Article 29-2 of Marine Transportation Act): (1) the

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<sup>48</sup> This refers to both maritime routes to and from Japan.

agreement shall not unduly impair interests of users, (2) the agreement shall not be unduly discriminative, (3) the agreement shall not unduly restrict participation and withdrawal, and (4) the agreement is the minimum necessary in light of the objective thereof.

### (3) The Role of the JFTC

When the MLIT receives a notification, or takes measures to alter or prohibit activity, they must report to the JFTC of this fact without delay (Paragraph 1, Article 29-4 of Marine Transportation Act). The number of reports from the MLIT to the JFTC in the past five years is as indicated on Chart 5.

Chart 5 Number of Reports by the MLIT to the JFTC

Fiscal Year	2010	2011	2012	2013	2014
Number of Reports	411	451	473	401	212

Source: Researched by the JFTC

If the JFTC deems that any contents of any acts based on the agreements in question do not conform to any of the four requirements, the JFTC may demand the MLIT to take necessary measures to order the alteration of the contents of the agreement or to prohibit acts based on the agreement (Paragraph 2, Article 29-4 of Marine Transportation Act). In addition, when the JFTC issues such demands to take necessary measures, the JFTC shall notice to that effect through official gazette (Paragraph 3 of the same Article).

## 2 Actual Agreements Exempted from the AMA

In fiscal year 2014, the JFTC received 212 reports regarding notifications of relevant agreements from the MLIT, and the breakdown<sup>49</sup> of such is as indicated on Chart 6. Agreements that have been subject to notification and exemption from the AMA are broadly divided into four categories: conferences, discussion agreements, consortia, and car carrier agreements. Among these, conferences cover not only liner shipping<sup>50</sup> but also car carrier shipping among tramper shipping. Also, discussion agreements and consortia cover liner shipping, and car carrier agreements cover transportation by PCCs. There are also agreements, outside of the above agreements, that cover dry bulk shipping and oil shipping by tankers; however, due to the low percentage of their total notifications compared with

<sup>49</sup> When a conference on both liner shipping and car carrier shipping, since both notification content for liner shipping (for example, a rate increase for surcharge) and notification content for car carrier shipping (for example, a rate increase for base rate) are included in the single notification for that conference, the total number of agreements by type (262) is actually larger than the actual number of notifications (212).

<sup>50</sup> This includes not only shipping by container ship, but also shipping by conventional cargo ships that carry long cargo known as break bulk.

agreements on car carrier shipping by PCCs (hereinafter simply “car carrier shipping”), the following section examines the current status of the exemption system below into conferences, discussion agreements, consortia and car carrier agreements.

Chart 6 Breakdown of Notifications reported by the MLIT (in fiscal year 2014)

Number of Notifications	Agreement type	Conclusion	Alteration	Participation	Withdrawal	Abolishment	Total	Content of Conclusion or Alteration (※1)			
								Base Rates (including Rate Restorations)	Surcharges	Revenue Pools	Joint Operations (space, schedule, route etc.)
212	Liner shipping	21	144	4	13	4	186	20	110	0	26
	Conferences	-	(78)	-	(7)	(2)	(87)	(1)	(77)	-	-
	Discussion Agreements	-	(61)	(3)	(3)	-	(67)	(19)	(33)	-	-
	Consortia	(21)	(5)	(1)	(3)	(2)	(32)	-	-	-	(26)
	Car carrier shipping	2	50	0	7	3	62	0	49	0	3
	Conferences	-	(49)	-	(7)	(2)	(58)	-	(49)	-	-
	Car Carrier Agreements	(2)	(1)	-	-	(1)	(4)	-	-	-	(3)
	Other tramper shipping	6	0	2	1	2	11	0	0	5	6
	Agreements on dry bulk vessels	(4)	-	-	-	-	(4)	-	-	(4)	(4)
	Agreements on tankers	(2)	-	(2)	(1)	(2)	(7)	-	-	(1)	(2)
	Passenger shipping	0	2	0	1	0	3	0	0	2	0
	Total	29	196	6	22	9	262	20	159	7	35

- \*1 Details of alterations outside of the above include extending the validity periods of agreements, changing the name of participating shipping companies etc.
- \*2 The colored area is the subtotal of agreements on liner shipping, car carrier shipping, other tramper shipping and transport on passenger ships. Numbers inside of parenthesis indicate breakdown by agreement type.

Source: Researched by the JFTC

#### (1) Conferences

Conferences are cooperation agreements between shipping companies that include arrangement on level of freight rates. Conferences are primarily for liner shipping and car carrier shipping among tramper shipping. The main function of conferences is to formulate tariffs that define common base rates and surcharges based on maritime routes and container types. These tariffs are binding, and participating shipping companies must adhere to the freight rates indicated on the tariff on paper.

Currently, as indicated in Chart 7, there are 21 conferences for maritime routes to and from Japan, excluding North America routes and Europe routes. Few conferences do not cover car carrier shipping, and in general conferences cover both liner shipping and car carrier shipping.

Chart 7 Number of Conferences on Routes to and from Japan  
(as of the end of December 2015)

Maritime Route	Number of Agreements
Intra-Asia routes <sup>51</sup>	9
Mideast routes	2
Oceania routes	3
Central/South America, Caribbean Sea routes	2
Africa routes	5
Total	21

Source: Created by the JFTC based on publically-released materials from the Shipping Conference and General Administration (SCAGA)

a) Conferences on Liner Shipping

(1) Status of Reports (See Chart 6)

In fiscal year 2014, the JFTC received 87 reports regarding conferences on liner shipping, and there were 78 among these that were reports regarding alterations. Additionally, there were no reports regarding conclusion of new agreements, and two reports regarding abolishment of agreements.

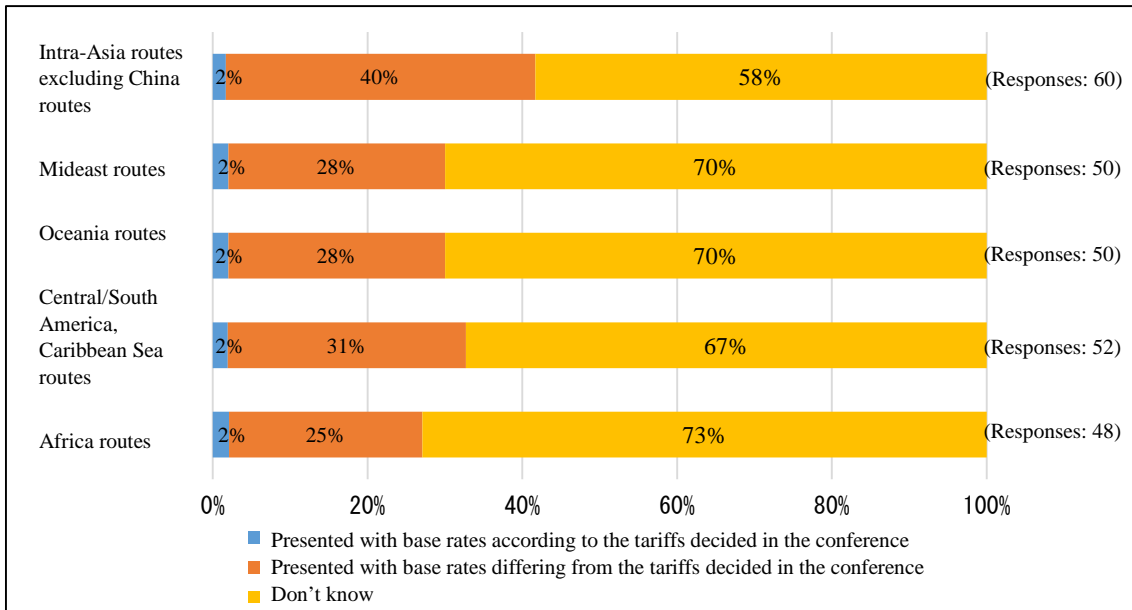
Surcharges accounted for almost all of the breakdown of the reports regarding alterations, and there are almost none regarding base rates. Also, the surcharge level is reviewed regularly based on the calculation formula determined in advance by the conference, but there is no basic review undertaken of this calculation formula and at present alterations to the level of surcharges are notified to the MLIT and reported to the JFTC in a mechanical manner.

(2) Status of Use of Tariffs for Liner Shipping

For liner shipping, as indicated in Table 7, the percentage of shippers who 'are presented with base rates according to the tariffs decided in the conference' is 2% for all maritime routes, and the percentage of shippers who 'are presented with base rates differing from the tariffs decided in the conference' is between 25% and 40% for all maritime routes.

<sup>51</sup> This includes the Russian Far East.

Table 7 Base Rates for Liner Shipping Presented from Shipping Companies on Maritime Routes to and from Japan

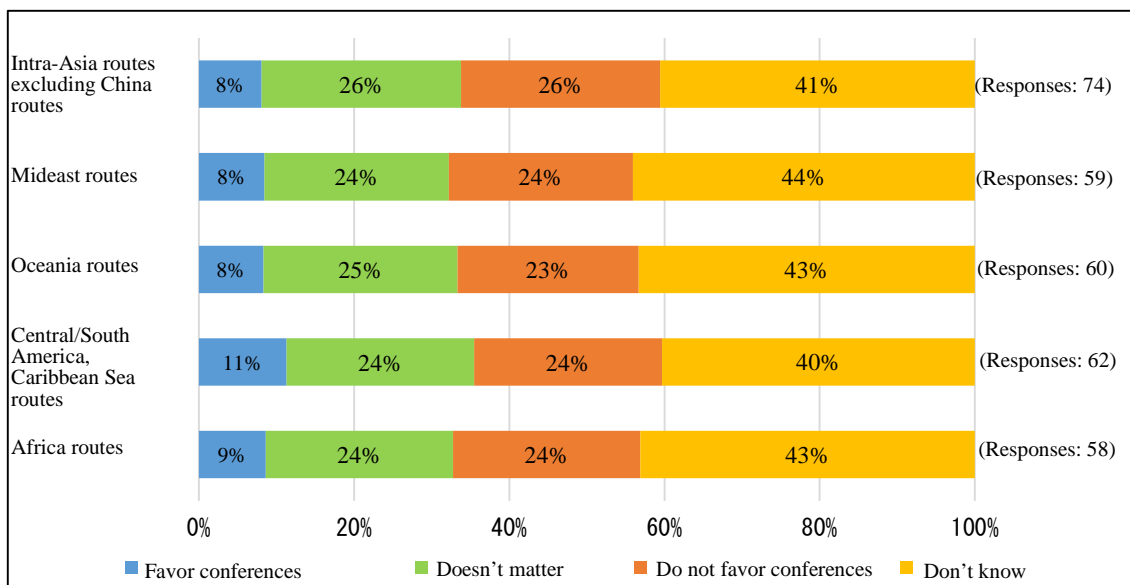


Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

(3) The Necessity of Conferences Covering Liner Shipping

As Table 8 indicates, the percentage of shippers that ‘favor conferences’ ranges from 8% to 11% across all maritime routes, and the percentage of shippers that ‘do not favor conferences’ ranges from 23% to 26% across all maritime routes.

Table 8 The Necessity of Conferences for Liner Shipping on Routes to and from Japan



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

While there were opinions from shipping companies that conferences are necessary to achieve stable freight rates and stable allocation of vessels over the long term, according to the JFTC questionnaire for shipping companies, there were also opinions that the function of the conferences had all but disappeared and that the conferences did not function at all.

#### b) Conferences on Car Carrier Shipping

##### (1) Status of Reports (See Chart 6)

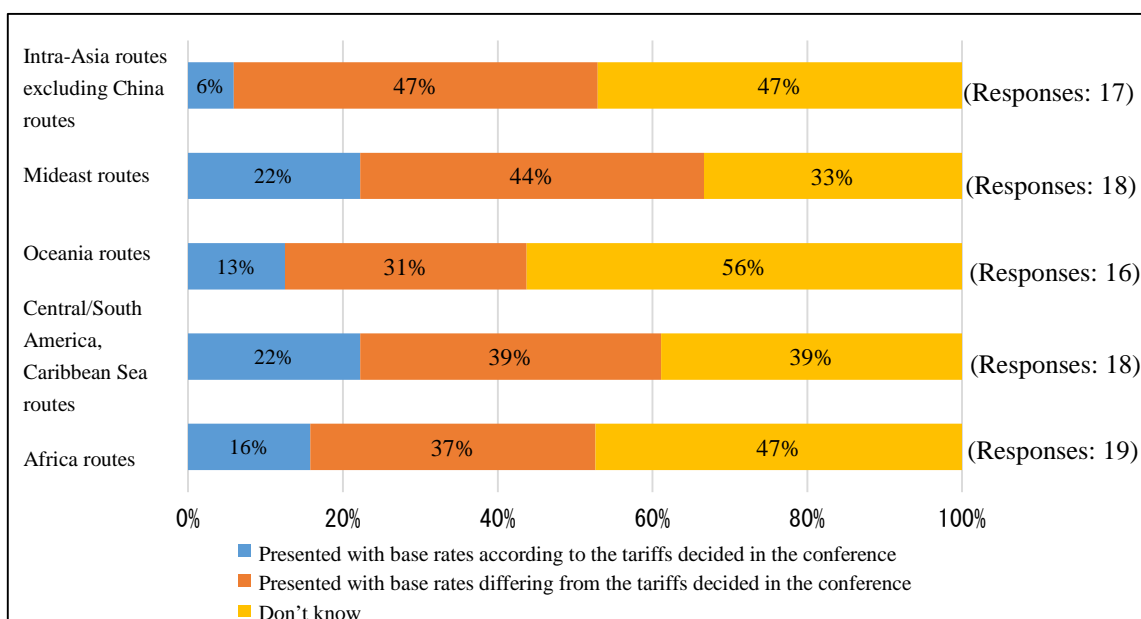
In fiscal year 2014, the JFTC received 58 reports regarding conferences covering car carrier shipping, and there were 49 among these that were reports regarding alterations.

Similar to liner shipping, surcharges accounted for all of the breakdown of the notifications regarding alterations, with the surcharge level being reviewed regularly and at present alterations to the level of surcharges are notified to the MLIT and reported to the JFTC in a mechanical manner.

##### (2) Status of Use of Tariffs for Car Carrier Shipping

For car carrier shipping, as indicated in Table 9, the percentage of shippers who 'are presented with base rates according to the tariffs decided in the conference' ranges from 6% to 22% depending on the shipping route, and the percentage of shippers who 'are presented with base rates differing from the tariffs decided in the conference' ranges between 31% and 47% depending on the shipping route.

Table 9 Base Rates for Car Carrier Shipping Presented from Shipping Companies on Routes to and from Japan



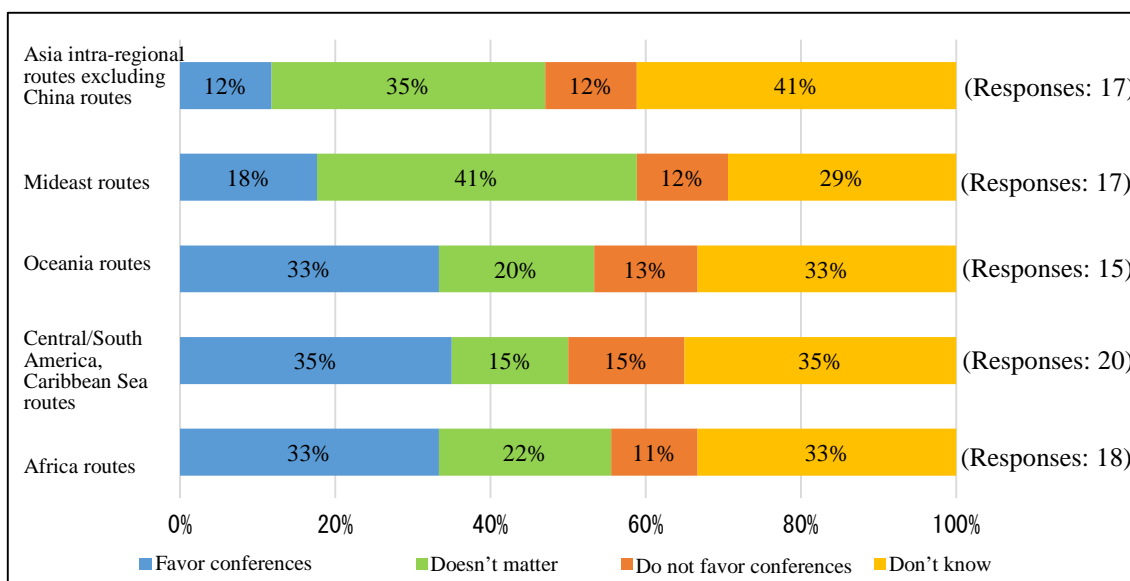
Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

### (3) The Necessity of Conferences Covering Car Carrier Shipping

As Table 10 indicates, the percentage of shippers that 'favor conferences' ranges from 12% to 35% depending on the shipping route, and the percentage of shippers that 'do not favor conferences' ranges from 11% to 15% depending on the maritime route.



Table 10 The Necessity of Conferences for Car Carrier Shipping on Routes to and from Japan (by maritime route)



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

According to the JFTC questionnaire for shipping companies, while there were shipping companies that answered the conferences are not necessary, there were also some shipping companies that responded that conferences are necessary.

## (2) Discussion Agreements

Discussion agreements<sup>52</sup> are cooperation agreements between shipping companies based on discussions between the shipping companies concerning the appropriate level of freight rates etc. The primary functions of discussion agreements are to formulate freight rate guidelines that present a general rate increase for the base rates and surcharges based on maritime routes and container types, and to recommend a general rate increase<sup>53</sup> (rate restoration) to participating shipping companies typically when there are rising shipping costs and actual freight rates are tending to decrease, or during the negotiation period of fixed-term contracts. Since the freight rate guidelines are non-binding, the participating shipping companies use these guidelines as a benchmark to carry out separate negotiations with shippers regarding freight rates. The exchange of information regarding the state of demand and supply and market movements is also another primary function of discussion agreements.

As Chart 7 indicates, there are currently 23 discussion agreements for routes to and from Japan, excluding Europe routes.

<sup>52</sup> These are also known as stabilization agreements or Voluntary Discussion Agreements (VDA).

<sup>53</sup> This is also known as GRI (General Rate Increase) .

Chart 7 Number of Discussion Agreements on Routes to and from Japan  
(as of the end of December 2015)

Maritime Routes	Number of Agreements
North America routes	6
Intra-Asia routes	7
Mideast routes	2
Oceania routes	3
Central/South America, Caribbean Sea routes	2
Africa routes	2
Total World routes <sup>54</sup>	1
<b>Total</b>	<b>23</b>

Source: Created by the JFTC based on publically-released materials from SCAGA

a) Status of Reports (See Chart 6)

In fiscal year 2014, the JFTC received 67 reports regarding discussion agreements, and there were 61 among these that were reports regarding alterations.

Among the contents of the reports regarding alterations, the most frequent report was regarding surcharges, and reports regarding base rates was the second most frequent type of report. Since information exchange does not accompany alterations to agreement content, this is not covered by the notifications to the MLIT and the JFTC.

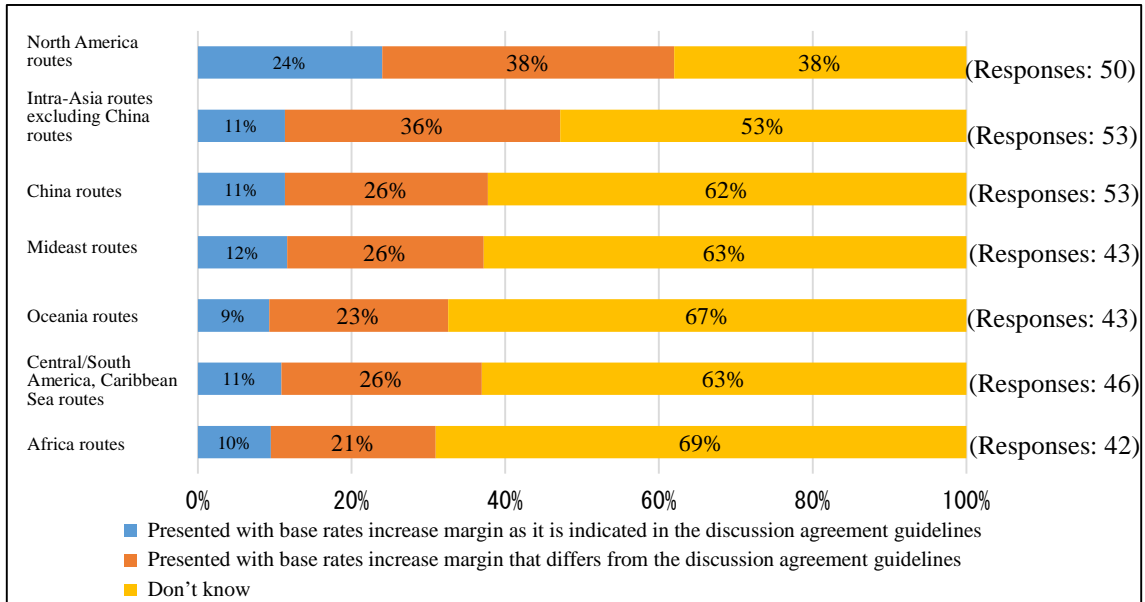
Moreover, there were no reports regarding the conclusion of new agreements or abolishment of agreements in fiscal year 2014.

b) Status of Use of Freight Rate Guidelines

For discussion agreements, as indicated in Table 11, the percentage of shippers who are ‘presented with a base rate increase margin as it is indicated in the discussion agreement guidelines’ ranges from 9% to 24% depending on the shipping route, and the percentage of shippers who are ‘presented with a base rate increase margin that differs from the discussion agreement guidelines’ ranges between 21% and 38% depending on the shipping route.

<sup>54</sup> This excludes Europe routes and India routes.

Table 11 Base Rate Increases for Liner Shipping Presented from Shipping Companies on Routes to and from Japan

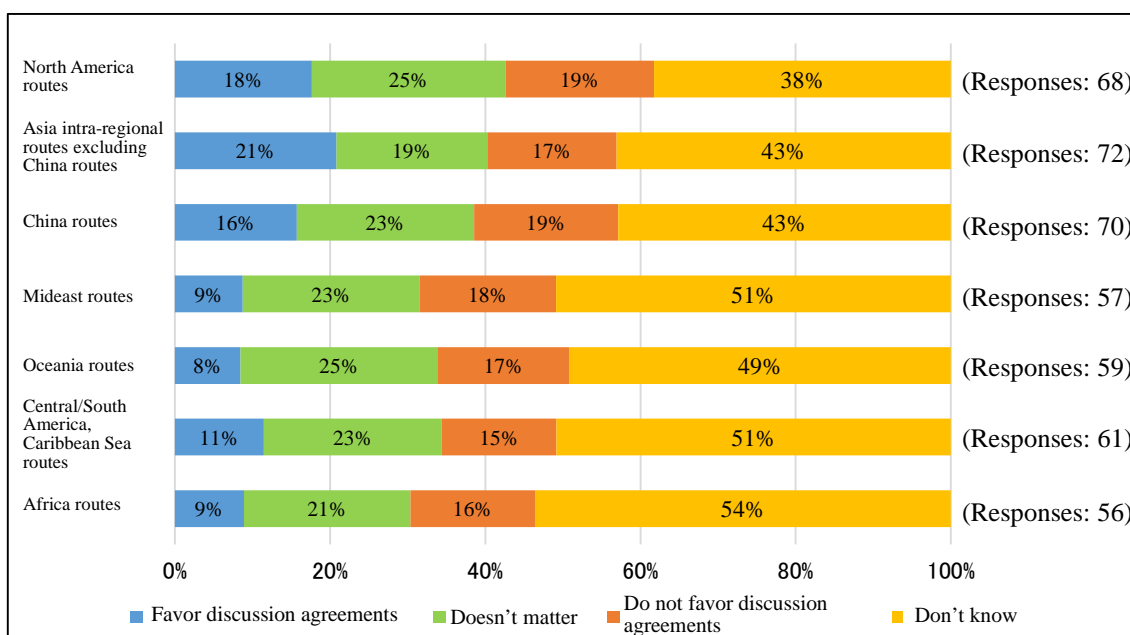


Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

c) The Necessity of Discussion Agreements

As Table 12 indicates, the percentage of shippers that ‘favor discussion agreements’ ranges from 8% to 21% depending on the maritime route, and the percentage of shippers that ‘do not favor discussion agreements’ ranges from 15% to 19% depending on the maritime routes.

Table 12 The Necessity of Discussion Agreements on Routes to and from Japan  
(by maritime route)



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

According to the JFTC questionnaire for shipping companies, shipping companies hold discussion agreements to be necessary for, firstly, achieving sustainably profitable maritime routes by assessing the appropriate freight rate level for shipping companies through the formulation of freight rate guidelines, and, secondly, for carrying out stable allocation of vessels for the long term by sharing suitable information on the market as well as forecasts of supply and demand.

### (3) Consortia

Consortia are cooperation agreements between shipping companies in their shipping services that is not accompanied by a decisions on freight rates and revenue pools. The function of a consortium is joint operations based on the leasing of transport space through slot charters<sup>55</sup>, the exchange of transport space through slot exchanges, and the sharing of transport space through vessel sharing (Hereinafter collectively known as “cooperation or coordination on transportation space”). In carrying out joint operations, shipping schedules, the number of shipping services (This includes adjustment of capacity. The same shall apply below.), and maritime routes are sometimes adjusted in conjunction.

There are various consortia, from small-scale consortia that only carry out slot charters for specified maritime routes, to large-scale consortia that carry out global-level vessel

<sup>55</sup> These are also known as space charters.

sharing on east-west routes, such as Asia to Europe and Asia to North America. The large-scale consortia are also called alliances.

There are currently four major alliances: 2M<sup>56</sup>, G6<sup>57</sup>, CKYHE<sup>58</sup>, and Ocean Three (O3)<sup>59</sup>. Among the consortia currently of the routes to and from Japan (This includes alliances. The same shall apply below.), most are focused on the North America routes, Europe routes and Intra-Asia routes, such as 2M, G6, CKYHE etc.

a) Status of Reports (See Chart 6)

In fiscal year 2014, the JFTC received 32 reports regarding consortia, there were 21 reports regarding the conclusion of consortia, and there were two reports regarding abolishment of consortia.

b) The Necessity of Consortia

As Table 13 indicates, for any maritime route, the percentage of shippers that ‘favor consortia’ ranges from 32% to 43%, and the percentage of shippers that ‘do not favor consortia’ ranges from 3% to 9%.

According to the JFTC questionnaire for shippers, shippers hold that consortia have positive effects in optimizing service schedules, securing choices of maritime routes for use as well as shipping space.

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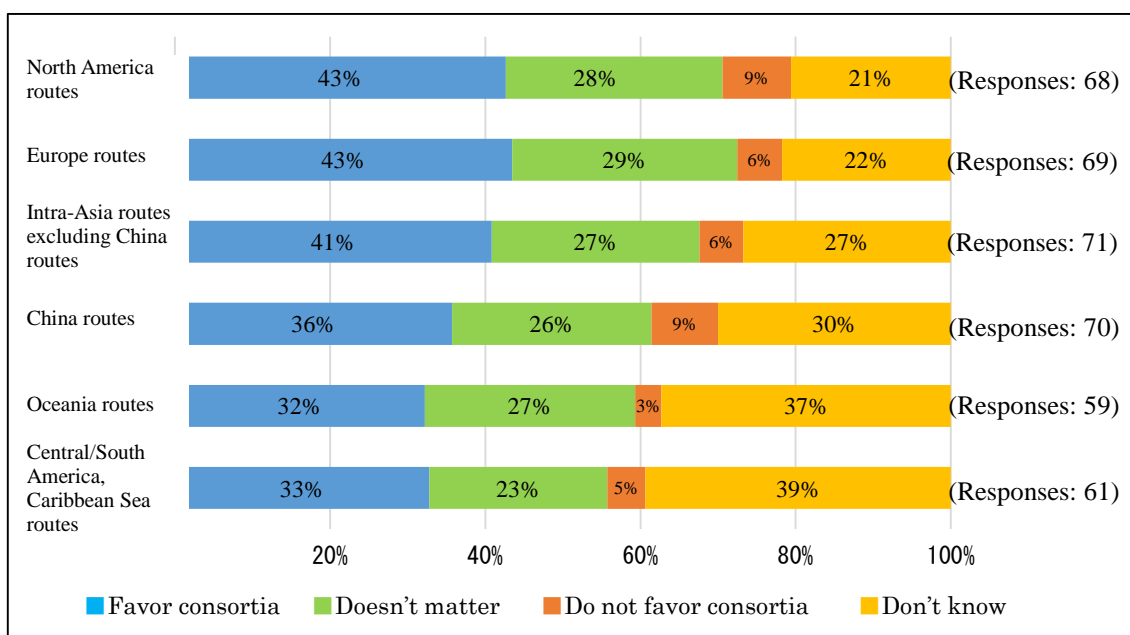
<sup>56</sup> There are two companies: Maersk Line and MSC.

<sup>57</sup> There are six companies: NYK Line, Mitsui O.S.K., APL, Hapag-Lloyd, HHM (South Korea), and OOCL (Hong Kong).

<sup>58</sup> There are five companies: COSCO, K Line, Yang Ming (Taiwan), Hanjin and Evergreen.

<sup>59</sup> There are three companies: CMA-CGM, UASC (six countries in the Persian Gulf) and CSCL.

Table 13 The Necessity of Consortia on Routes to and from Japan  
(by maritime route)



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

Additionally, according to the JFTC questionnaire for shipping companies, shipping companies hold consortia to be necessary to achieve regular and high-frequency allocation of vessels over a broad area that is required for a large investment, as well as to achieve stable allocation of vessels for low-volume destinations.

There was also the opinion among shipping companies that in carrying out consortia, the legal certainty of non-conflicts of consortia with the AMA would be indispensable since long-term major investment will be required.

#### (4) Car Carrier Agreements

Car carrier agreements are cooperation agreements between shipping companies in their shipping services that are not accompanied by a decisions on freight rates. They cover car carrier shipping among tramp shipping. The primary function<sup>60</sup> of car carrier agreements is to carry out joint operations by adjusting shipping schedules (rotational allocation of vessels). The leasing of transport space through slot charters or exchange of transport space through slot exchange is sometimes carried out.

As Chart 8 indicates, there are currently 12 car carrier agreements on routes to and from Japan.

<sup>60</sup> Revenue pooling is carried out for car carrier agreements in Central/South America, Caribbean Sea routes; however, it was decided in 2015 that revenue pooling will be halted.

Chart 8 Number of Car Carrier Agreements on Routes to and from Japan  
(as of the end of December 2015)

Maritime Routes	Agreements
North America routes	2
Europe routes	1
Mideast routes	1
Oceania routes	4
Central/South America, Caribbean Sea routes	4
Africa routes	1
Total	12 <sup>61</sup>

Source: Created by the JFTC based on interviews with shipping companies

a) Status of Reports (See Chart 6)

In fiscal year 2014, the JFTC received four reports regarding car carrier agreements, there were two reports regarding conclusion of new agreements, there was one report regarding an alteration, and there was one report regarding abolishment of agreements.<sup>62</sup>

b) The Necessity of Car Carrier Agreements

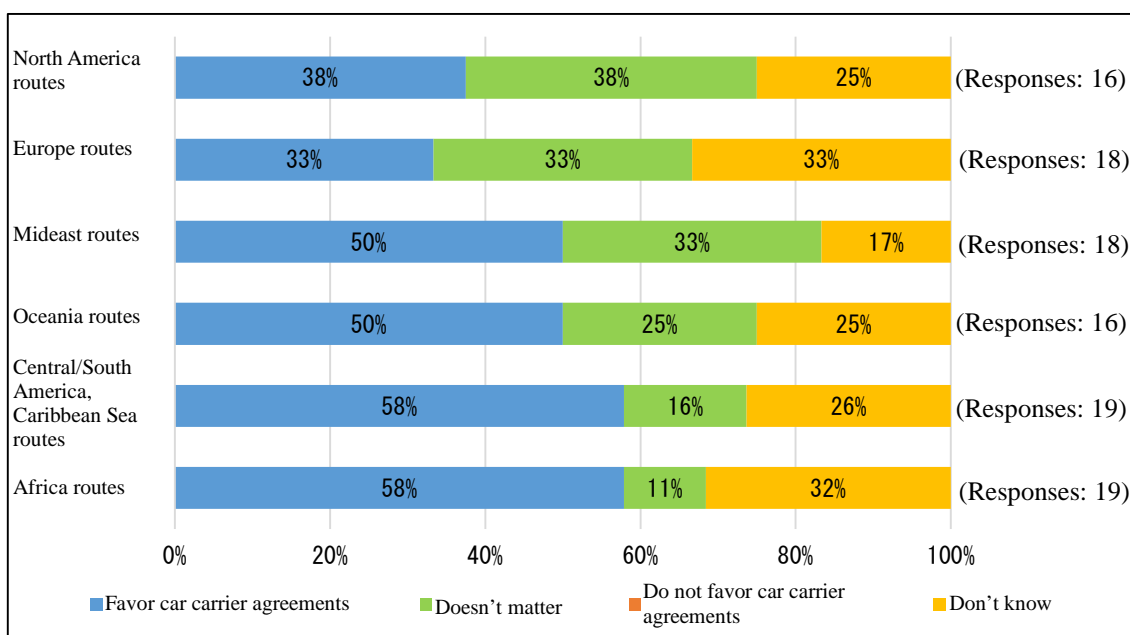
As Table 14 indicates, the percentage of shippers that ‘favor car carrier agreements’ ranges from 33% to 58% depending on the shipping routes, and there are no shippers that ‘do not favor car carrier agreements’.

According to the JFTC questionnaire for shippers, shippers hold car carrier agreements to have positive effects in optimizing service schedules, securing choices for maritime routes for use as well as shipping space.

<sup>61</sup> Since there is one car carrier agreement that covers both North America routes and Europe routes, there are a total of 12.

<sup>62</sup> There were no notifications of decisions regarding freight rates.

Table 14 The Necessity of Car Carrier Agreements on Routes to and from Japan  
(by maritime route)



Source: JFTC questionnaire for shippers (Percentages are rounded off to the nearest whole number.)

Additionally, according to the JFTC questionnaire for shipping companies, shipping companies hold the car carrier agreements to be necessary to achieve stable allocation of vessels over the long term for unstable regions with small load amounts, as well as to achieve long-term high-frequency allocation of vessels in response to the demands from shippers.

### 3 Systems in Other Countries

Regarding the systems in other countries, the JFTC examined the systems in the US and the EU, which both have large maritime trade volume and socio-economic systems and economic development similar to Japan.

#### (1) The United States

The system of exemption from the antitrust laws for international ocean shipping was established in the US based on the Shipping Act<sup>63</sup>. There have been no particular revisions to the exemption system from the antitrust laws after the Shipping Act of 1986 was revised through the Ocean Shipping Reform Act of 1998 (OSRA).

Based on the Shipping Act, ocean common carriers must file international ocean shipping agreements with the FMC in advance, and these agreements etc. are regarded as exempt from

<sup>63</sup> The Shipping Act of 1986 was revised through the Ocean Shipping Reform Act of 1998 (OSRA).



the antitrust laws when they go into effect after a certain period of time has elapsed since the filing. Conferences, discussion agreements and consortia on liner shipping are included in these agreements that are subject to filing and exemption from the antitrust laws; however, agreements on tramp shipping, such as car carrier agreements, while not being subject to mandatory filing, are not regarded as exempt from the antitrust laws.

Among the agreements subject to filing, for conferences, the Shipping Act permits individual conference members to make independent confidential contracts (so called “service contracts”) with shippers regardless of binding conference tariffs. The Shipping Act prohibits conferences from restricting individual conference members to make service contracts<sup>64</sup>, etc. Conferences that bind their members, such as prohibition of making service contracts, are not regarded as exempt from the antitrust laws.

Additionally, consortia would not necessarily be in violation of the antitrust laws in case that they are not regarded as exempt from the antitrust laws. Since consortia are not, similar to conferences, per se illegal under the antitrust laws, when they are not regarded as exempt from the antitrust laws, their legality under the antitrust laws is judged on a case-by-case basis based on the rule of reason and in consideration of the contents of consortia in question and the conditions of competition in the market<sup>65</sup>.

## (2) EU

In the EU, the block exemption system from EU competition law for liner conferences had been established by Council Regulation<sup>66</sup>; however, this was abolished in October 2008. Currently, conferences and discussion agreements do not exist on routes to and from the EU.

The block exemption system from EU competition law for consortia has been established with a term limit after 1995 based on Commission Regulations<sup>67</sup> (Hereinafter, the “consortia block exemption regulation”). In 2014, it was decided that the period of validity for the consortia block exemption regulation was to be extended for five years from 2015 to 2020<sup>68</sup>.

In the consortia block exemption regulation, should the combined market share of ocean common carriers participating in the consortia below 30%, then joint operations, such as coordination of shipping schedules and ports of call, slot exchanges, vessel pooling, as well as capacity adjustments responding to fluctuations in supply and demand are regarded as exempt from the application of EU competition law. The reason why the market share should be below 30% is that if the market share of ocean common carriers outside of the consortium

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<sup>64</sup> As a result of service contracts being permitted, no files were made for conferences on routes to and from the US since 2000, and only three currently remain.

<sup>65</sup> Based on interviews held by the JFTC with the FMC and DOJ.

<sup>66</sup> Council Regulation (EEC) No 4056/86

<sup>67</sup> Commission Regulation (EC) No 906/2009

<sup>68</sup> European Commission, “Antitrust: Commission extends validity of special competition regime for liner shipping consortia until 2020”, June 24 2014

is sufficiently high, they can be deemed to have competitive pressure against the consortium, and the improvement of operation efficiency through the consortium is likely to be linked to the improvement of the interests of shippers and consumers<sup>69</sup>.

Consortia that fix freight rates, restrict capacity (This excludes adjustments of capacity responding to fluctuations in demand and supply), or allocate markets are not subjected to block exemption. Additionally, if block exemption status is not granted due to market share exceeding 30%, this does not necessarily make the consortium illegal under EU competition law. Consortia not subject to the block exemption are evaluated as to their legality under EU competition law on a case-by-case basis and in consideration of the contents of consortia in question and the conditions of competition in the market.

Under the block exemption system from EU competition law for consortia, activities of consortia that are unlikely to restrict competition are regarded as exempt from the application of EU competition law in the sense that there is explicit confirmation that they clearly pose little problem on competition with competitive pressure on the consortia. Therefore, even if the block exemption system from EU competition law for consortia is abolished, consortia would not be necessarily illegal under EU competition law.

Further, there is no block exemption system from EU competition law for agreements on trampers, and EU competition law applies to those agreements.

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<sup>69</sup> Based on an interview held by the JFTC with DG-COMP.

## Part 5 Necessity of the System of Exemption from the AMA

### 1 Perspectives of Evaluation

The system of exemption from the AMA is an exceptional system in the market economy and should be limited to the minimum extent necessary. Taking this principle into consideration, an examination was conducted on the necessity for such a system from the perspective of whether the reasons for maintaining this system still exist at the current time based on the status of international shipping and the status of the system of exemption from the AMA for international shipping.

Firstly, the JFTC examines whether the international consistency of the exemption system and the protection of shippers' interests, which have been cited as the main reasons for maintaining this system, are still valid.

Secondly, the JFTC examines whether consortia and car carrier agreements, which few shippers consider not to be necessary and not a few shippers consider to be necessary, would no longer be able to be implemented on the grounds that in principle these agreements would come into question under the AMA in case that the exemption system is abolished.

Lastly, the JFTC makes a conclusion in light of these examination.

### 2 International Consistency of the Exemption System

In past reviews, one of the primary reasons for the necessity of the system of exemption from the AMA for international shipping is the international consistency of the exemption system. However, in Japan, both agreements on liner shipping and on trampers including conferences, discussion agreements, consortia and car carrier agreements are all regarded as exempt from the AMA, while the scopes of agreements on liner shipping that are regarded as exempt from the antitrust laws in the US and the EU competition law in the EU are different, as of this time, in addition to that any agreements on trampers are not regarded as exempt from the antitrust laws in the US and the EU competition law in the EU (See Chart 9).

Despite conferences and discussion agreements on liner shipping being regarded as exempt in the US, making service contracts not bound by conference tariffs is explicitly allowed under the Shipping Act, so conferences that bind conference members by prohibiting their members from deviating from conference tariffs or making individual service contracts with shippers, etc., are not regarded as exempt from the antitrust laws. In addition, any agreements on tramper shipping such as conferences and car carrier agreements are not regarded as exempt from the antitrust laws.

In the EU, conferences and discussion agreements on liner shipping are not subject to block exemption from EU competition law. Consortia are not regarded as exempt from EU competition law when the combined market share exceeds 30%, with exemption status only granted for five years for consortia with a combined market share below 30%. Additionally,

agreements on trampers shipping such as conferences and car carrier agreements are not regarded as exempt from EU competition law.

Therefore, since the existence and scope of the exemption from the competition laws are different for agreements on liners in the US and the EU, it is not necessary to make agreements on liners exempt from the AMA on the grounds of the international consistency of the exemption system. Also, since agreements on trampers are not regarded as exemption from the competition laws in both the US and the EU, it is not necessary to make agreements on trampers exempt from the AMA on the grounds of the international consistency of the exemption system. Rather, not exempting agreements on trampers from the AMA would be more consistent internationally.

Chart 9 International Comparison of Exemption Systems from Competition Law for International Ocean Shipping (Japan, US and EU)

Country/ Region	Liner Shipping			Tramper Shipping (Car Carrier Shipping)	
	Conferences	Discussion Agreements	Consortia	Conferences	Car Carrier Agreements
Japan	○	○	○	○	○
US	△ Conferences that bind conference members are not regarded as exempt	○	○	×	×
EU	×	×	△ Consortia are only regarded as exempt if the combined market share does not exceed 30%, etc.	×	×

Remarks: ○ indicates exemption, △ indicates partial exemption, × indicates non-exemption.

### 3 Protection of Shippers' Interest

In past reviews, the other primary reasons for the necessity of the system of exemption from the AMA for international shipping is the protection of the interests of shippers, mainly on the grounds that conferences and discussion agreements are effective in stabilizing freight rates, however at the moment few shippers consider conferences and discussion agreements to be necessary<sup>70</sup> (See Tables 8, 10 and 12). The following section discusses how important

<sup>70</sup> According to the JFTC questionnaire for shipping companies, the majority of shipping companies replied that exemption from the AMA is required for conferences and discussion agreements on liner shipping; however, those who replied that exemption from the AMA is required for conferences on trampers shipping (car carrier shipping) were fewer than those who replied that exemption is not required.

stability of freight rate is to shippers, if other means can be used to stabilize freight rates, and if conference tariffs and discussion agreement freight rate guidelines are effective in stabilizing freight rates.

#### (1) Liner Shipping

Firstly, important factors for selecting shipping companies by shippers are, in order of priority, 1) level of freight rates, 2) service schedules/frequencies, and 3) the securing of space (See Table 1). Generally, shippers place priority on the level of freight rates over stability of freight rate.

Secondly, since shippers make a fixed-term contract for six months or one year with shipping companies for most of their cargo and they do not generally review base rates during the fixed-term period (See Table 2, Figures 2 and 4)<sup>71</sup>, shippers who wish for stable freight rates address this issue by making a fixed-term contract without conferences or discussion agreements.

In addition, for liner shipping, there are almost no shippers who are presented with base rates defined by tariffs decided by conferences (See Table 7), and there are also not many shippers who are presented with general rate increases defined by freight rate guidelines formulated by discussion agreements (See Table 11). Given this, it is considered that tariffs in conferences and freight rate guidelines in discussion agreements hardly have a significant impact on freight rates that are actually determined, and actual freight rates are determined through separate negotiations between shippers and shipping companies.

To reiterate the above, it is not essential to keep the stability of freight rates by conferences and discussion agreements because shippers using liner shipping services place greater emphasis on the level of freight rates than on their stability and these shippers who wish for stable freight rates address this issue by making a fixed-term contract. Also, as it seems that there is no effect of tariffs in conferences and freight rate guidelines in discussion agreements on stabilizing rates, and it is marginal if there is any at all, because they hardly have a significant impact on freight rates that are actually determined.

Therefore, it is not necessary to make conferences and discussion agreements on liner shipping exempt from the AMA on the grounds of the shippers' interests through the stabilization of freight rates.

#### (2) Tramp Shipping (Car Carrier Shipping)

Firstly, important factors for selecting shipping companies by shippers are, in order of priority, 1) service schedules/frequencies, 2) level of freight rates or the securing of space (See Table 4). Generally, shippers place priority on the level of freight rates over stability

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<sup>71</sup> This is also similar for shipping companies (See Table 3, Figures 3 and 5).

of freight rate.

Secondly, since shippers make a fixed-term contract for one year or longer with shipping companies for most shipped cars and they do not generally review base rates during the fixed-term period (See Table 5, Figures 7 and 9)<sup>72</sup>, shippers who wish for stable freight rates address this issue by making a fixed-term contract without conferences or discussion agreements. This is particularly true since many shippers using car carrier shipping are Japanese automobile manufacturers or large trading companies and have sufficient negotiating power, there is little need to protect the interests of these shippers by working to stabilize freight rates through shipping company conferences.

Additionally, for car carrier shipping, there are few shippers who are presented with base rates defined by the tariffs decided by a conference (See Table 9). The JFTC found that the function of the tariffs in conferences almost disappeared under the investigation of the case concerning international ocean shipping services for automobiles, which the JFTC issued a cease and desist order and surcharge payment, etc. in March 2014. In consideration of the facts that came to light through this investigation, the JFTC requested<sup>73</sup> the MLIT to review and take any necessary measures against shipping company agreements related to automobiles and construction vehicles and equipment etc. (Hereinafter, “the Agreements in question”). In response to the request by the JFTC, the MLIT ordered all relevant shipping companies to promptly withdraw from conferences from among the Agreements in question, should the conference tariffs not be applied. For the car carrier agreements, the MLIT ordered them to take necessary prompt alterations if a portion of contents of these agreement differs from actual operation<sup>74</sup>. Given these facts, it is considered that tariffs in conferences hardly have a significant impact on freight rates that are actually determined, and actual freight rates are determined through separate negotiations between shippers and shipping companies.

To reiterate the above, it is not essential to keep the stability of freight rates by conferences because shippers using car carrier services place greater emphasis on the level of freight rates, etc. than on their stability and shippers who wish for stable freight rates can achieve such stability easily by making fixed-term contracts in consideration of the negotiating power of shippers on using car carrier services and they actually address this issue by making a fixed-term contract. Also, as it is difficult to claim that the tariffs in conferences work well to stabilize freight rates because tariffs in conferences hardly have a significant impact on freight rates that are actually determined.

Therefore, it is not necessary to make conferences exempt from the AMA on the grounds

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<sup>72</sup> This is also similar for shipping companies (See Tables 6, 8, and 10).

<sup>73</sup> See footnote 9 above.

<sup>74</sup> MLIT ‘Regarding the Review of Agreements Among Shipping Companies Related to Automobiles and Construction Vehicles and Equipment etc.’(July 28, 2015)

of the shippers' interests through a stabilization of freight rates.

#### 4 Implementation of Consortia and Car Carrier Agreements

##### (1) Evaluation under the AMA

In consortia and car carrier agreements, joint operations are implemented by the cooperation or coordination on transportation space through exchanging or chartering the transportation space or slots and sharing vessels, and adjusting shipping service schedules, the number of shipping services, and maritime routes, etc. While few shippers consider the joint operation in consortia and car carrier agreements not to be necessary and not a few shippers consider it to be necessary (See Tables 13 and 14), it is not entirely clear<sup>75</sup> if consortia and car carrier agreements would no longer be able to be implemented on the ground that in principle these agreements would come into question under the AMA<sup>76</sup> in case the exemption system is abolished. The following section discusses the necessity of exempting consortia and car carrier agreements from the AMA by examining the problems under the AMA for these agreements.

##### a) The cooperation or coordination on transportation space

In the cooperation or coordination on transportation space carried out based on consortia or car carrier agreements, shipping companies renting space generally set freight rate for that space independently from shipping companies leasing that space, and make service contracts upon negotiating individually with shippers. In this way, the competition for shippers is likely to be maintained between shipping companies leasing the transport space and the shipping companies renting that space. For example, competition on freight rate for acquisition of shippers between shipping companies to cooperate or coordinate on transportation space is highly likely to be maintained. The cooperation or coordination on transportation space is basically considered to pose little problem under the AMA<sup>77</sup> when it is conducted within the rationally necessary scope for increasing the convenience of shippers unless it restricts quantities of services provided by shipping companies.

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<sup>75</sup> The formulation of tariffs by conferences and freight rate guidelines by discussion agreements would no longer be able to be implemented because these conducts would pose problems in principle under the AMA (Articles 3, 6 and 8 of the AMA) due to restriction on important means of competition such as freight rates and fees if the exemption system is abolished. As is stated above in 3, since these conducts cannot be said to contribute to the protection of the shippers' interest, it is not necessary to make these conducts exempt from the AMA.

<sup>76</sup> This report examines the relationship with the AMA under premise that the activities of shipping companies are not unfairly discriminatory and do not unfairly restrict participation and withdrawal of shipping companies. Should activities of shipping companies be unfairly discriminatory, or unfairly restrict participation and withdrawal of shipping companies, then this poses problems in principle under the AMA.

<sup>77</sup> Should leasing transport space be used as a means to restrict competition to acquire shippers as customers, then this poses problems under the AMA.

Therefore, it is not necessary to make consortia and car carrier agreements exempt from the AMA in order to continue cooperation or coordination on transportation space.

b) Coordination on Shipping Service Schedules, the Number of Shipping Services, and Maritime Routes

The issue of whether coordinating shipping service schedules, the number of shipping services, and maritime routes comes into question under the AMA is considered to depend on the specific conducts performed and the competition situation in the market<sup>78</sup>.

● Coordination posing little problems in principle under the AMA

In international ocean shipping, since it is difficult for a shipping company to flexibly and quickly adjust their own number of operating vessels (capacity)<sup>79</sup>, there are cases where shipping service to meet demand would not be possible alone. When the following coordinations are conducted within the rationally necessary scope for increasing the convenience of shippers unless they found increase of the convenience of shippers by efficiency not possible with a single shipping company, restrict competition as a whole, and unfairly impair the shippers' interests with pro-competitive effect<sup>80</sup> and, then they would pose little problem under the AMA: 1) Securing provision of shipping services during times of low demand by adjusting shipping service schedules when shipping services by multiple shipping companies tend to be concentrated on times of high freight demand, and the convenience of shippers wishing to use international shipping services during times of low freight demand would be lost; 2) Achieving regular shipping services to low-demand ports of call by integrating ports with multiple shipping companies, through the adjustment of maritime routes where it is difficult for a single shipping company to provide shipping service due to low freight demand; 3) Securing the necessary capacity by adjust the number of shipping services with other shipping companies when a single shipping company cannot provide shipping services to meet demand.

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<sup>78</sup> On page 44 of the 2006 Report by the Study Group on International Shipping (See footnote 4 above), "Consortia, alliances or exchange of information regarding supply and demand trends do not necessarily constitute cartels, unless such lead to agreements on freight rates, a market allocation, or restrictions on quantities. If there is no effect in restricting the competition in these...then there is no need to exempt such from the AMA, and it is suitable to carry out such activities under the application of the AMA."

<sup>79</sup> Since port shape differs and scale of suitable vessels differs by lane, there are likely certain restrictions on cascading vessels operating on other lanes.

<sup>80</sup> For example, when achieving regular shipping services to ports of small demand by adjusting maritime routes among shipping companies, there are recognized effects promoting competition by increasing the number of shipping companies that can participate.



- Coordination posing problems in principle under the AMA

In contrast, should the following coordinations be made as a means of substantially restraining competition, then this will pose problems under the AMA in principle: 1) Shipping companies adjust their shipping service schedules to respectively restrict shipping services of other shipping companies with the same timing of their own shipping services; 2) Shipping companies allocate the market by adjusting maritime routes, to restrict shipping services of other shipping services with its own maritime routes; 3) Shipping companies attempt to raise freight rates by adjusting the number of shipping services and restricting capacity.

Thus, even if the exemption system from the AMA were to be abolished, the adjustment of shipping service schedules, the number of shipping services and maritime routes based on consortia and car carrier agreements would not become impossible to be implemented on the ground that they would come into question under the AMA in principle. As long as adjustments do not restrict means of competition as a whole, nor unfairly impair shippers' interest, they are likely to pose little problem under the AMA.

On the other hand, should adjustment of shipping service schedules, the number of shipping services and maritime routes be implemented as a means to substantially restrain competition, then they are likely to come into question in principle under the AMA. However, should these adjustment unfairly impair the interests of users by substantially restraining competition due to their generally detrimental nature to the shippers' interests by causing freight rate increases or lack in transport space etc., then such adjustments constitute the proviso stipulated in Article 28 of the Marine Transportation Act, and would not currently be subject to exemption from the AMA and not be possible to be implemented.

## (2) Securing Legal Certainty

The adjustment of shipping service schedules, the number of shipping services and maritime routes based on consortia and car carrier agreements would not become impossible to be implemented on the ground that they would come into question, in principle, under the AMA even if the exemption system from the AMA were to be abolished. However, this does not mean that such conducts would not constitute a violation of the AMA without doubt. Considering this implication, there are concerns among shipping companies that there would be a loss of legal certainty, and it would become more difficult to implement consortia and car carrier agreements and flexibly alter such agreements were the system of exemption from the AMA to be abolished.

However, it would be possible to cope with the issue of securing legal certainty by means other than maintaining the exemption system from the AMA, for example, the JFTC

can formulate guidelines for international ocean shipping and clarify what kind of conducts would violate the provisions of the AMA.

Therefore, it is not necessary to make conferences and discussion agreements exempt from the AMA on the grounds of securing legal certainty for shipping companies to adjust shipping service schedules, the number of shipping services and maritime routes which do not restrain competition.

## 5 Conclusion

Firstly, as of this time, the existence and scope of the exemption from the antitrust laws in the US and the EU competition law in the EU are different for liners, and, unlike Japan, agreements on trampers are not regarded as the exemption from both the antitrust laws in the US and the EU competition law in the EU. Therefore, it is not necessary to make these agreements exempt from the AMA on the grounds of the international consistency of the exemption system.

Secondly, at present, few shippers consider conferences and discussion agreements to be necessary and shippers place greater emphasis on the level of freight rates than on their stability. Shippers who wish for stable freight rates address this issue by making a fixed-term contract. It is difficult to claim that conferences and discussion agreements work well to stabilize freight rates. Therefore, it is not necessary to make conferences and discussion agreements exempt from the AMA on the grounds of the shippers' interests.

Thirdly, as of this time, while many shippers consider consortia and car carrier agreements to be necessary, the cooperation or coordination on transportation space is basically considered to pose little problem under the AMA if it is conducted within the rationally necessary scope for increasing the convenience of shippers unless it restricts quantities of services provided by shipping companies. The issue of whether adjusting shipping service schedules, the number of shipping services, and maritime routes comes into question under the AMA is considered to depend on the specific conducts performed and the competition situation in the market. However, it is essentially unlikely that the conduct of adjustment will come into question in principle under the AMA unless it restricts means of competition as a whole and unfairly impairs interests of shippers, while it is possible to cope with the issue of securing legal certainty through the formulation of guidelines, etc. by the JFTC. Thus, it is not necessary to make consortia and car carrier agreements exempt from the AMA.

At present, it is not necessary to make conferences, discussion agreements, consortia and car carrier agreements which are mainly exempted by notification to the Minister of the MLIT exempt from the AMA. Therefore, it is considered to be no reason for maintaining the system of exemption from the AMA for international ocean shipping.