18 January 2011

# Comments of the Japanese Shipowners' Association On the Notice of Inquiry of the Federal Maritime Commission Concerning the European Union's Repeal of the Liner Conference Block Exemption

The Japanese Shipowners' Association (JSA), which is a nationwide shipowners' association consisting of 101 Japanese shipping companies, appreciates this opportunity to respectfully submit to the Federal Maritime Commission (FMC) the following comments, which, we believe, are in line with the intention of the Notice of Inquiry (NOI) issued on 1 November 2010 concerning the effect on international liner shipping of the European Union's (EU) repeal of the liner block exemption from competition laws.

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

The liner shipping industry, which provides regular ocean transportation service to hundreds of ports worldwide, has developed largely because of the carriers' ability to participate in cooperative commercial arrangements dating back over 100 years. These arrangements have contributed to stable freight rates and, as a result, enabled participating shipping companies of carrier agreements such as conferences, discussion agreements and consortia to save significant costs in providing reliable liner shipping services and improve their service quality and efficiency. The JSA believes that the antitrust immunity for carrier agreements (hereafter referred to as the "immunity system") is indispensable for the healthy development of the international shipping industry, as well as the whole international trading industry. The immunity system is the international regulatory norm, as it is permitted in virtually all major trading nations around the world. We therefore fully support the recent decision in Singapore to extend its current immunity system through the end of 2015 without any significant changes to its scope[1].

## 2) The EU's repeal of the liner block exemption

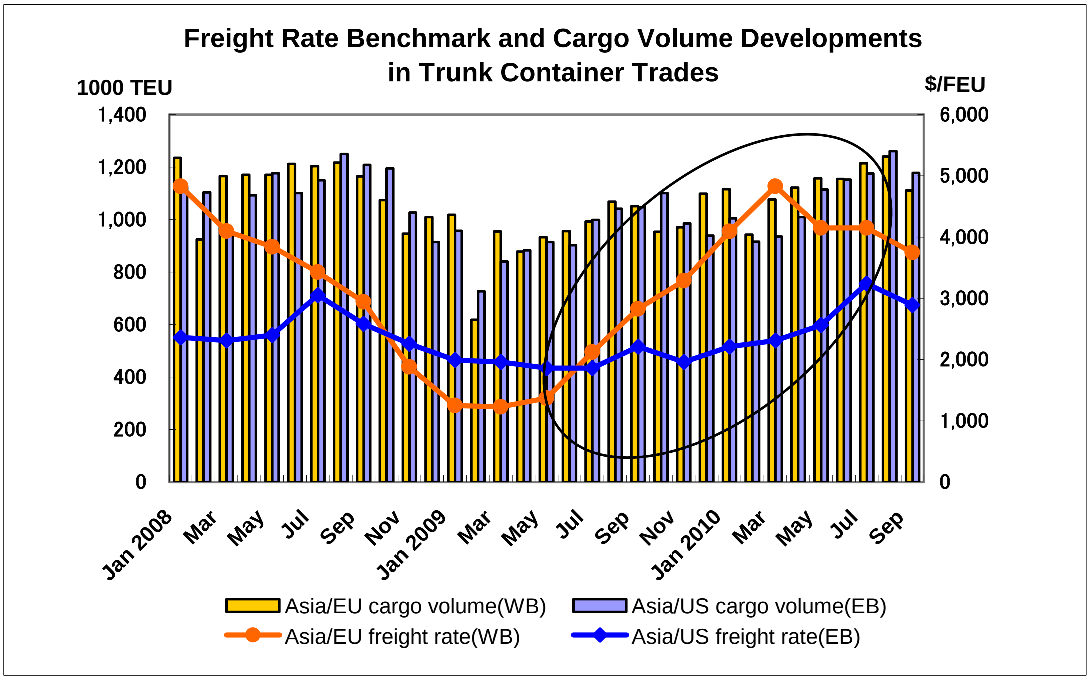
At the time of the repeal of the block exemption in the EU in October 2008, the whole container shipping industry was in a global economic downturn, which has been described as a once-in-a-century recession. During this time, the shipping industry has

[1] http://app.ccs.gov.sg/PC_Archived_BEO.aspx

faced a considerable decline in cargo volumes and rates with operating losses of more than 15 billion dollars in 2009. It is therefore difficult to assess what changes in the industry during the period were attributable to the EU's repeal of the block exemption under such severe economic conditions.

However, it can be at least confirmed from Figure 1 below that the rate volatility of the Asia-EU trade greatly exceeds that of the Asia-US trade, which maintains immunity systems in both port-end countries despite the similar trends in the container cargo movements in both trades. In light of the sharp increase in freight rates in the Asia-EU trade after recording the lowest rate in the spring of 2009, such a view, that the repeal of the conference block exemption is the best available option to lower transport costs, which was argued by the European Commission in the process of reviewing the EU's block exemption[2], does not seem applicable.

Figure 1




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

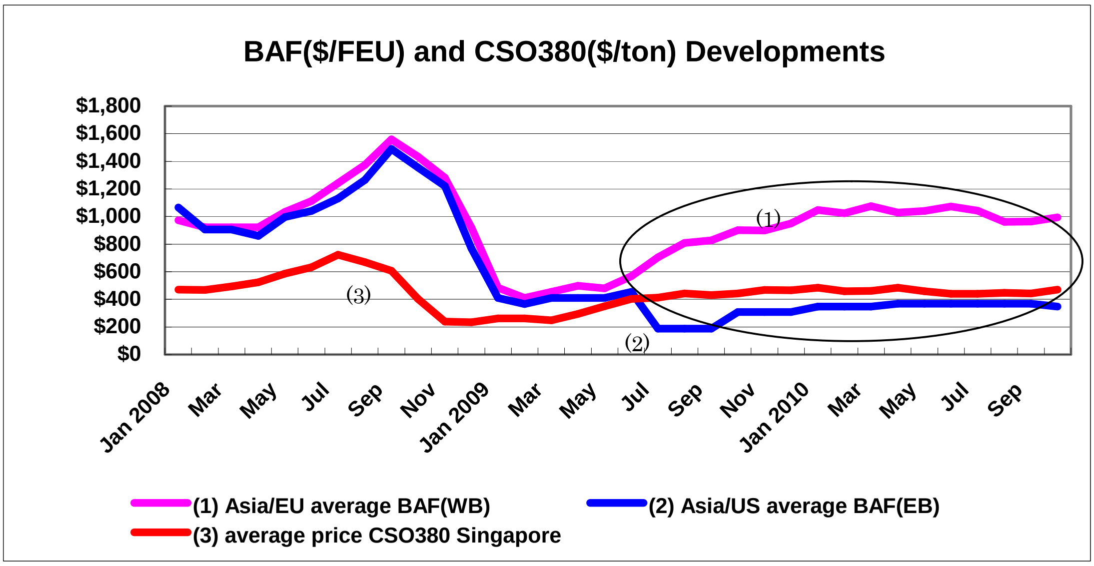
There have also been differences in ancillary charges prior to and after the abolition of the block exemption in the EU. For instance, the Terminal Handling Charge (THC), which has remained virtually unchanged for nearly 15 years in Europe, has recently increased in most European ports around the same time as the repeal as reported in a

2 SEC(2005) 1641 COMMISSION OF THE EUROPEAN COMMUNITIES

competition report[3] which was produced for the European Commission in October 2009.

Furthermore, with respect to the Bunker Adjustment Factor (BAF) as well, we can see different developments in both trades as shown in Figure 2 below. The price of marine fuel, which is mainly CSO 380, reached a record level of more than $750 per tonne in the summer of 2008, and they still stand at a high level of almost $500 per tonne. The full cost recovery by imposing the BAF on customers with a minimal delay is indispensable for ocean carriers. Each carrier sets up its own BAFs in the Asia-Europe trade on an independent basis in the same way as in the case of THCs, while the TSA[4] publishes non-binding guidelines for BAFs with a transparent calculation formula[5] in the Asia-US trade. As a result, it may be said that the average BAF in the Asia/EU trade increases more than that of the Asia-US trade in the case of an increase in marine fuel prices.

Figure 2




Source: Japan Maritime Center

Taking the aforementioned into consideration, it can be found that the removal of the antitrust immunity does not necessarily contribute to lower ancillary charges or consumer benefits.

[3] "Terminal handling charges during and after the liner conference era"
http://ec.europa.eu/competition/sectors/transport/reports/terminal_handling_charges.pdf
[4] Transpacific Stabilization Agreement
[5] http://www.tsacarriers.org/fs_bunker.html

3) Conclusion

The JSA welcomes the pragmatic approach of the FMC to carefully assess the effects of the EU's repeal of the block exemption on the various elements of transport services in trunk lanes. For the foregoing reasons, the JSA is of the view that the repeal of carrier agreements would lead to greater rate volatility and less stable markets, which is not likely to be in the interests of shippers, and eventually consumers, as well. However, in light of the fact that the abolition of the block exemption in the EU coincided with the severe global economic downturn, the JSA believes the FMC should continue to further study its effects before considering any change in action to change the current ocean regulatory system in the US.

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