

# JAPAN'S EXPERIENCE IN GOVERNING LINER SHIPPING

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## ABSTRACT

The article continues a series of publications [1–3] on regulatory framework for linear navigation of the world's major maritime countries. Domestic researchers [4, 5] periodically turned to the topic of functioning of Japan's maritime transport, regulation of its activities and significance for foreign trade. Nevertheless, the authors consider it necessary to return to it again, since there have been serious changes in the world shipping

in the past. The new analytical work provides information on the largest Japanese shipping companies, their participation in carrier associations. The activities of the regulator, the principles of its activities and individual cases from practice are considered. An additional relevance of the article is given by the discussion that has unfolded in connection with the discussion of the draft law on introducing amendments to the Merchant Shipping Code of the Russian Federation.

**Keywords:** sea transport, linear conferences, linear navigation, sea transportation in Japan, economy, trade, foreign markets.

**Background.** Despite the very specific way of Japanese national shipping, one cannot speak of its self-isolation. Japanese carriers are focused on servicing foreign trade, deeply integrated into the structures of powerful financial and industrial groups and have become an important part of the global maritime shipping market in general and liner transportation in particular. Being dependent on foreign markets, they are influenced by regulations enacted in the US and the EU. Orientation to the national cargo base reduces, but cannot completely exclude, the effects of processes that occur in world shipping. Japanese companies, like any others, face negative phenomena, including the impact of the crisis on the cargo base, pressure from competitors.

The authors hope that the article will be a useful addition to the previously published works and will serve, perhaps, as a signal to deeper research in this business area, which is difficult for political economy analysis.

**Objective.** The objective of the authors is to consider Japan's experience in regulating linear navigation.

**Methods.** The authors use general scientific methods, scientific description, comparative analysis, economic assessment method, evaluation approach.

### Results.

#### Background to leadership

The history of the Japanese sea transport, in its modern view, originates from the middle of XIX century. Soon after Japan abandoned the policy of self-isolation, the well-being of the state largely depended on the viability of the military and civilian navy. The foreign policy of the state was aimed at active regional expansion. Moreover, during the 1874 military expedition to Taiwan, the government came to the conclusion that it was necessary to have a merchant fleet with a high mobilization capacity.

By the beginning of the Second World War, there were over 200 shipping companies in the country. The

concentration processes characteristic of finance capital and industry were fully applicable to maritime transport. The share of 16 companies accounted for 60 % of tonnage (by gross tonnage). After the complete destruction of the transport fleet during the Second World War, navigation in Japan was recreated at the expense of national resources and with the direct participation of American capital. In 1964, the state concentrated almost all the assets of the merchant marine fleet in six key companies that united 97 shipping companies and owned 81 % of the country's linear tonnage.

Six mega-companies are Mitsui O. S.K. (MOL O.S.K.), controlled by the Mitsui and Sumitomo groups; Nippon Yusen (NYK), controlled by Mitsubishi; Kawasaki (K Line), controlled by Kawasaki; Japan Line, controlled by the Japanese industrial bank; Yamashita-Shinnihon, controlled by Sanva, and Showa, controlled by Fuji.

Data on the composition of the fleet after the unification of 1964 are shown in Table 1 (in thousands of tons of DWT).

In 1989, two of six companies, Yamashita-Shinnihon Steamship Co. Ltd and Japan Line Ltd, have teamed up to create the Navix Line. In 1998, NYK merged with Showa Line Ltd. In the same year, Mitsui O. S.K. Lines Ltd (MOL O.S.K.) has teamed up with Navix Line. As a result of these mergers, the number of companies decreased to three: NYK, MOL O.S.K. and K Line.

Returning to the events of 1964, it should be noted that they represented a state-monopoly intervention in the functioning and development of maritime transport. There were, however, good reasons for this.

Firstly, the fleet was of exceptional importance for the country's economy as a whole. Secondly, the losses incurred during the Second World War were so serious

Table 1

Composition of the fleet after the unification of 1964 [6]

Группы	Linear fleet	Tramp universal	Tramp specialized		Total
			dry cargo	tanker	
Mitsui O.S.K.	1121	507	213	477	2318
NYK	835	335	314	795	2279
K Line	607	133	146	645	1531
Yamashita-Shinnihon	308	312	148	346	1114
Japan Line	234	219	179	446	1078
Showa	49	175	445	348	1017
Total	3154	1681	1445	3057	9337



that Japanese companies did not have the opportunity to overcome problems without significant support from the state. Thirdly, the financial oligarchy of Japan sought to increase the competitiveness of the national fleet in a situation of tough competition between carriers and pressure from foreign countries. The situation in the world shipping, which developed at that time, was described in detail in previous articles [1–3]. And finally, fourthly, despite the demilitarization of the country, its merchant fleet was of great importance both from the point of view of Japan's military-strategic goals and to its new allies, primarily the United States.

The main forms of state-monopoly regulation in the field of maritime transport, marked by G. A. Levikov in 1969 [4], were as follows:

- state property;
- state crediting and subsidizing of private companies;
- regulation of private investments through tax policy;
- economic programming.

The meaning of the term «economic planning» needs to be clarified. According to Yuji Sava, then deputy director of Japan's maritime transport bureau, «planned economy in Japan is not practiced. Therefore, in the strict sense, this is only an «assessment» with a more or less high probability of implementation ... However, according to this «assessment», the Japanese government is developing budgetary assumptions for implementing programs to increase the share of public investment in public capital. Projects of state budgets in terms of assistance to private enterprises are also drawn up according to the «assessment» ... The government annually allocates for assistance in construction of new vessels of a certain (total) tonnage. At the discretion of private enterprises, the decision remains to build ships in the amount of the specified tonnage and about their types» [7]. Therefore G. A. Levikov, aware of the interpretations of ministerial officials, concludes that with the tentative-desirable nature of economic planning, it has come close to imperative planning [4].

Among the instruments of state regulation, the central place was held by the financial and credit system. The state financed the reconstruction of the ports and the construction of the fleet through a common account created for the purpose of carrying out «public works». This account was formed through the central state budget, as well as through contributions from individuals and legal entities – the clientele of maritime transport. The total share of the latter did not exceed 10 %.

The Japanese Development Bank was responsible for integration of shipping companies, although, as we can see, this was a large-scale modernization of the industry, rather than simply adding the shipping assets of individual companies. As a result, for a relatively short period of time, Japanese companies' positions on the global freight market increased significantly both in the linear segment and in the tramp transportation segment. Integrated structures have taken their place among the largest enterprises on a global scale and retain their positions to the present day.

#### **A modern perspective**

To assess the current policy of Japan in the field of linear navigation, let us turn to the report of the Japanese national delegation at the Organization for Economic Cooperation and Development forum on competition in the field of sea liner transportation and held in June 2015 in Paris [8].

The delegation noted that the economic development of Japan as an island state largely depends on foreign trade. Logistic support of foreign economic activity is based on participation of national companies in the international transportation of goods, 99.7 % of which are

carried by sea transport. All three major Japanese shipping companies – NYK, MOL O.S.K. and K Line – provide both linear and tramp transportation.

Regulation of the shipping industry is carried out by the national regulator – Japan Fair Trade Commission (JFTC). It defines linear transportation as services of sea carriers on certain routes with the declared number of vessels, between certain ports, with fixed dates of calls and without limiting the amount of cargo accepted for transportation. JFTC claims that the specificity of organization of sea liner container transportation, consisting in the management of a significant number of its own offices and representative offices of shipping companies, ships, containers and terminals, leads to a large capital intensity of the industry and, as a result, the formation of an oligopoly in the market involving a small number of companies.

Despite the fact that Japanese national companies are among the largest shipping companies in the world, the share of services rendered by them in the container transportation segment is relatively small. So, in the total sales of NYK containers have 21 %, MOL – 40 %, K Line – 41 %. As a result, the share of Japanese companies in the world container fleet totals about 8 %.

As of mid-2016, Japanese companies are involved in several carrier associations – conferences and alliances. The most significant conferences of shipowners, in which there are all or some of the Japanese carriers, are:

- Australia New Zealand / Eastern Shipping Conference (ANZESC);
- Far East / South Asia – Middle East Conference (FESAMEC);
- Japan / Gulf of Aden & Red Sea Ports Conference (JGARSPSC).

With the participation of Japanese carriers there are following alliances:

- G6 = Grand Alliance (NYK) + New World Alliance (MOL);
- CHYKE (K Line).

However, these alliances are in the stage of serious transformation due to the next significant mergers and acquisitions that took place in the industry in 2015–2016.

Antitrust regulation of the activities of sea linear carriers is carried out on the basis of the Maritime Transport Act of 1949 [9], which main task is to promote the development of the navy and, as a result, to increase public welfare through access to adequate and fair transport services for foreign trade.

According to the law, shipping companies are exempted from the antimonopoly law provided that preliminary information on freight rates is submitted to the Ministry of Transport (currently the Ministry of Land, Infrastructure, Transport and Tourism). The exemption applies to both conferences and alliances. Nevertheless, in some cases, when the interests of consumers are violated as a result of any violations or abuses on the part of carriers, which excludes or illegally restricts competition in certain areas, antitrust laws can be applied. In such cases, the Ministry alone or at the request of JFTC has the right to restrict or prohibit the operation of any international association of maritime carriers. The decision on the activities of associations is based on a preliminary study of the content of their agreements.

As a result of changes in Japan's antitrust laws, in 1999 the Shipping Act of 1949 was amended and supplemented. Exemption from the antimonopoly legislation for maritime carriers has been preserved, but the Ministry has been able to evaluate the agreements of carriers and their tariffs on the basis of clearly defined criteria:

1. The agreement should not infringe the rights of consumers.
2. The agreement should not be discriminatory.
3. The agreement should not restrict the right to join or exit.

4. These conditions are minimally necessary.

In a study conducted by JFTC in 2005, it is noted that the general tariffs established by the conferences are no longer of practical importance. Although some carrier actions, including an increase in the base rate (General Rate Increase GRI or General Rate Restoration GRR), still remain an effective tool for influencing the rate level. At the same time, such increase in rates is accepted by carriers unilaterally and does not have a clear method for determining the GRI value.

JFTC carefully studies international practice, that is, the procedure for resolving such issues in other important jurisdictions, from the point of view of the organization of sea liner container transportation. Among the key factors having an impact on the development of the container shipping industry, JFTC has singled out the implementation of the US Shipping Act – OSRA (1998) [10] and the termination of the exemption for maritime carriers in the EU (2008, 2013) [11].

In recent years, the most significant case of violation of the antimonopoly legislation, to which Japanese shipping companies (NYK, K Line) are related, concerns sea liner transportation in the segment of cars and other self-propelled vehicles. As a result of the investigation conducted by the antimonopoly authorities of several states, it was established that in order to prevent a reduction in freight rates in 2008, a number of carriers agreed among themselves on the minimum acceptable level of rates for certain consumers on four ocean routes. In addition, it was agreed that consumers who had a relationship with one of the carriers, when they contacted other carriers, could not receive lower prices than they had from the first carrier. JFTC has established that, having reached such an agreement, carriers significantly limited competition for the sea delivery of cars in defiance of public interest. Thus, the companies violated Article 3 (prohibition on unreasonable restriction of free trade) of the antimonopoly law. The investigation of this case was completed in 2014.

In general, Japan's policy in the field of linear navigation takes into account the features of state-monopoly capitalism, primarily the availability of powerful financial-industrial groups and wide diversification of their activities. It is aimed at creating and maintaining the most favorable conditions for comprehensive servicing of national foreign trade by its carriers, while strengthening and increasing Japan's position among the world's leading naval powers.

#### Examples of the impact of regulators

One might think that the development of linear navigation in Japan is a series of continuous achievements and successes that are the result of a wise decision taken in the mid-1960s, and then carefully and consistently executed. However, this is not quite true. Japanese shipping has achieved success and is currently a powerful tool for ensuring the interests of national foreign trade. But over the past fifty years, capitalist linear shipping has been constantly facing serious crises, becoming a subject in the struggle for influence on a system that ensures the movement of goods in global markets. These phenomena have not bypassed and Japan. Let us dwell on the cases that point to obvious problems related to the great dependence of Japanese companies on access to the American market.

On October 17, 1997, US President William J. Clinton made a presentation on the Japanese-American

agreement on the use of Japanese ports. He said: «I am glad that our negotiators have reached a principled agreement that makes possible the work of American companies in Japanese ports. For a long time, we exerted pressure on Japan to make it a firm commitment to liberalize the working conditions in its ports. Now we can say – they did it. Japan agreed to ensure the preparation and speedy development of licensing procedures that allow US vessels to visit Japanese ports and use an alternative port service that Japan Harbor Transportation Authorities will not participate in. This agreement, after the completion of a detailed discussion, will allow US companies to participate and win in the fight in global markets ...» [12].

Turning to the history of this issue, we find that the starting point is the desire of some American companies to provide the best conditions for working in Japanese ports, which, in their opinion, could be obtained through the liberalization of the market of port services and the creation of commercial companies alternative to the Japanese port authorities. However, the Japanese authorities abandoned the idea of liberalizing the market of port services. As a result, US companies applied to the US Federal Maritime Commission (hereinafter – the FMC). The Commission recognized the actions of the Japanese authorities in Japanese ports (!) contrary to the spirit of free competition, and accused them of discriminatory actions against American companies.

In order to put pressure on Japan, the US FMC decided to impose «retaliatory» penalties on the three largest Japanese companies – NYK, MOL O.S.K. and K Line. In accordance with this, they were forced to pay fines of 100,000 dollars for each call of a liner to American ports. The total amount of the penalty for the year could reach \$40 million. What connection existed between the activities of Japanese shipping companies and the liberalization of the market of port services in Japan?

In the American press, the opinion was widely spread that US trade can in principle abandon the services of Japanese line companies and this will not have any serious impact on it. In turn, Japanese companies cannot refuse to work in the US market, which is the largest and most important for them. As a result, the parties reached the agreement mentioned above.

The following year, the US FMC fined the Japanese company NYK for \$425,000<sup>1</sup> for violation of paragraphs 1, 3 and 4 of paragraph 10 of the Shipping Act 1984 [13], which manifested itself in discriminatory actions against certain shippers [14].

On December 23, 2013, the US FMC reported that it had reached an agreement on the settlement of the claim against two Japanese shipowners, which arose in connection with the activities of these companies in the Ro-Ro transportation market, which lasted several years (since 2008). In this case, the investigation was initiated in Chile, but soon the center of gravity moved to the United States. Company NYK has committed to pay a fine of 1225000 dollars and, K Line – 1100000 dollars.

The essence of the offense charged consisted of concerted actions, contrary to the antimonopoly legislation, as was mentioned earlier. Interestingly,

<sup>1</sup> Author's note: data in this article are taken from the citation from press-release of FMC: «...the carrier violated sections 10(b)(1), 10(b)(3) and 10(b)(4) of the 1984 Act by failing to charge those rates publicly held out to shippers, and by permitting others to obtain transportation at less than applicable rates through false or unfair devices or means, including commodity misdescription, improper equipment substitution practices, and by other service contract abuses».





the amount of initial claims to these carriers was 59.4 million and 67.7 million dollars, respectively. In addition, the US authorities accused US citizen Hiroshige Tanioka, who was the head of the K Line office in the United States, of violating US law. The maximum penalty for the crime that was charged to Mr. Tanioka is 10 years in prison and 1 million dollars in fine. However, in the case of a justified claim on the part of the victims, the punishment may be doubled. As a result of the agreement reached between Mr. Tanioka and the US authorities, he was given a sentence of imprisonment of 18 months and a fine of 20 thousand dollars. In this case, the court took into account the desire of the accused to provide maximum assistance in the investigation of the offense. Simultaneously with the decision of the US FMC, the companies named JFTC found guilty of violating Japanese law and fined them with 22 billion yen.

Thus, despite the outstanding success of the Japanese maritime transport, its daily work is far from idyllic and represents a tough struggle to maintain its positions in the very specific conditions of the global market.

**Conclusion.** The study of the regulation of merchant shipping in Japan is of considerable interest primarily because of its features. Like any positive regulatory framework, the Japanese law on shipping creates convenient conditions for the operation of maritime transport and transport infrastructure. It is characterized by systematic and deep understanding of the main tasks facing the industry. Timely changes and additions included in the law make it modern and clearly define the place of the merchant fleet in the country's economy and on the global market. The Japanese system of regulating merchant shipping is based on the traditional island system of economic life and fully takes into account the national specifics.

The experience of Japan's post-war development is unique. The results achieved after the consolidation of shipping enterprises, which took place under the control and with the direct participation of the state, are impressive. In a short time, Japanese ship owners managed to return to the number of world leaders and maintain their leading positions to date.

Despite the absolute orientation of Japan's maritime transport to the maintenance of national trade, it is seriously dependent on access to foreign markets and, above all, the US market. It's no secret that Japan is one of the closest allies of the United States. Nevertheless, Japanese companies repeatedly faced pressure from the authorities of the United States on each of the issues that somehow affected the interests of American companies.

The timeliness of the study of foreign experience, including the experience of Japan in regulating the market of sea liner transportation, indicates the course of the discussion that has unfolded in our country in connection with the discussion of the draft Federal Law [15] on amendments to the Merchant Shipping Code of the Russian Federation [16]. In the project, in addition to the topic of linear shipping, the

activities of stevedoring companies and their tariff regulation by the state are affected. The article offered to the attention of readers just points out the fact that all the issues under discussion are closely interrelated.

## REFERENCES

1. Rusinov, I. A., Gavrilova, I. A., Nelogov, A. G. The activity of linear conferences on the eve of adoption of the UN convention on the code of conduct of linear conferences [*Dejatel'nost' linejnyh konferencij nakanune prinjatija konvencii OON o kodekse povedenija linejnyh konferencij*]. *Vestnik Gosudarstvennogo universiteta morskogo i rechnogo flota imeni admirala S. O. Makarova*, 2016, Iss. 2, pp. 56–66.
2. Rusinov, I. A., Gavrilova, I. A., Nelogov, A. G. The issue of regulation of linear navigation based on the analysis of the provisions of the UN Convention on the Code of Conduct for Linear Conferences [*Vopros regulirovanija linejnogo sudohodstva na osnove analiza polozhenij konvencii OON o kodekse povedenija linejnyh konferencij*]. *Vestnik Gosudarstvennogo universiteta morskogo i rechnogo flota imeni admirala S. O. Makarova*, 2016, Iss. 3, pp. 53–64.
3. Rusinov, I. A., Gavrilova, I. A., Nelogov, A. G. Briefly about linear conferences [*Korotko o linejnyh konferencijah*]. *Morskoy vestnik*, 2016, Iss. 2, pp. 113–116.
4. Levikov, G. A. Sea transport of post-war Japan [*Morskoy transport poslevoennoj Japonii*]. Moscow, Nauka publ., 1969, 263 p.
5. Latysheva, N. N. Maritime transport of modern Japan [*Morskoy transport sovremennoj Japonii*]. Moscow, Nauka publ., 1985, 112 p.
6. Japan Shipping and Shipbuilding, 1964, volume 8, № 11.
7. Japan Shipping and Shipbuilding», 1965, volume 10, № 2.
8. Organisation for Economic Co-operation and Development. Competition Issues in Liner Shipping. Japan. Document DAF/COMP/WP2/WD (2015) dated 19.06.2015.
9. Japan Law 187 of 1949 (Maritime Transport Act).
10. The Ocean Shipping Regulation Act of 1998 The United States of America. 14.10.1998.
11. Federal Maritime Commission, Bureau of Trade Analysis. Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law, 2012.
12. Public papers of the Presidents of the United States, William J. Clinton. Statement on the Japan–United States Trade Agreement on Access to Japanese Ports. October 17, 1997.
13. The Shipping Act Of 1984 The United States of America. 10.03.1984.
14. Federal Maritime Commission. Compromise Agreement with NYK Line. Press Release NR98–01, January 8, 1998.
15. Draft Federal Law No. 929151–6 «On Amendments to Certain Legislative Acts of the Russian Federation with respect to Liner Shipping»: adopted by the State Duma on first reading [*Proekt Federal'nogo zakona № 929151–6 «O vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossijskoj Federacii v chasti linejnogo sudohodstva»: prinjat Gosdumoj v pervom chtenii*].
16. Code of Merchant Shipping of the Russian Federation dated 30.04.1999 No. 81-FZ [*Kodeks torgovogo moreplavaniya Rossijskoj Federacii ot 30.04.1999 goda № 81-FZ*]. *Rossiyskaya Gazeta*, 1999, May 1–5.

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