

# Guidelines for Promoting Proper Transactions in Port Transport Services

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Port Management and Operation  
Division, Ports and Harbours Bureau,  
Ministry of Land, Infrastructure,  
Transport and Tourism (MLIT)

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## **Chapter 1: The Necessity of Promoting Proper Transactions in Port Transport Services**

### **1. Background and Necessity for Formulating Guidelines for Promoting Proper Transactions in Port Transport Services**

In Japan, where 99.5% of trade volume and 38.3% of domestic transport pass through ports, port Transport Services play a vital and indispensable role in smoothly connecting maritime and land transport. On the other hand, the port transport industry faces a severe shortage of workers in recent years. This shortage stems from demanding working conditions and environments at ports aligned with vessel arrivals/departures and cargo handling (long working hours, night shifts, hazardous tasks, weekend/holiday work, responding to quick dispatch requests, irregular work schedules based on customer demand), as well as the decline in Japan's working-age population and the application of overtime work limits.

MLIT conducted a survey on the actual situation regarding the shortage of port workers, etc., in formulating the “Action Plan 2025 for Addressing Port Worker Shortages, etc.” published in June 2025. In this result, the proportion of business operators responding that there was a “shortage” or “slight shortage” of workers for fiscal year 2023 and later exceeded 70%. This indicates that a persistent shortage of workers in port transport is anticipated. Furthermore, regarding the “collection status of freight rates and charges from clients who have properly transferred appropriate labor costs,” responses indicating “not sufficiently collected” or “not collected at all” reached 40%. This highlights a significant situation where many voices express that price transfers necessary for wage increases and equipment investments to improve worker shortages are insufficient.

If this situation persists, Japan's logistics functions, which rely heavily on maritime transport for the bulk of its imports and exports, could come to a standstill, potentially causing significant impacts on people's lives and economic activities. To avoid such situations, it is necessary to establish a transaction environment where Shipping Companies, Cargo Owners, and port transport operators can negotiate freight rates and charges on an equal footing, ensuring that necessary costs, such as labor expenses commensurate with working conditions and environments, are appropriately reflected in the rates and charges set.

### **2. Background of the Guidelines Formulation**

The background to cases where price transfers are difficult involves not only long-standing transaction practices but also the fact that port transport operators are in a weaker bargaining position compared to Shipping Companies and Cargo Owners.

Therefore, from September 2025, the “Committee for Considering Guidelines to Promote Proper Transactions in Port Transport Services” <sup>(Note)</sup> convened over four sessions. It conducted hearings with both port transport operators and Shipping Companies/Cargo Owners, clarified the application of relevant legislation to specific transaction cases, and subsequently formulated guidelines proposing desirable transaction structures.

### **3. Setting and Collection of Appropriate Freight rates and Charges, and Correction of Improper Transactions, etc.**

The freight rates and charge system under the Port and Harbor Transportation Business Act underwent deregulation through amendments in 2000 and 2005, shifting from an approval system to a prior notification system, with aiming to enhance operational efficiency and facilitate the development of diverse services. Under the prior notification system, port transport operators are required to set freight rates and charges based on consultations with the consignor (Shipping Company or Cargo Owner) and appropriate costs and then submit these for notification. However, as mentioned above, the nature of Port Transport Services, which provide services based on the demand of Shipping Companies and Cargo Owners using the port, means that long-term business relationships with specific Shipping Companies and Cargo Owners are common, and these relationships tend to become fixed. Consequently, even when labor costs and property expenses rise, there are cases where freight rates and charges cannot be revised or cannot be raised sufficiently. In fact, some operators have been confirmed to still be using the rates last approved by the government in 1995.

To achieve the setting and collection of proper freight rates and charges, it is necessary for each port transport operator to negotiate with Shipping Companies and Cargo Owners on an equal footing based on proper cost accounting. To achieve this, it is essential that Shipping Companies, Cargo Owners, and port transport operators (hereinafter referred to as “stakeholders”) share information and exchange opinions to understand the current status of port transport. Based on this understanding, they must comply with proper transaction rules and share knowledge about desirable transaction structures. This guideline is expected to contribute to this effort. Furthermore, to promote understanding of these guidelines and foster proper transactions not only among parties directly involved in port transport but also throughout the entire supply chain benefiting from port-based logistics, MLIT will collaborate with relevant ministries and industry associations to actively and effectively disseminate and promote the use of these guidelines.

Additionally, within the port transport industry, to promote proper transactions and etc., the industry are required to advance the formulation of a “voluntary action plan” while also reviewing and improving long-standing business practices.

Note that the specific types of problematic conduct, required business practices, and desirable transaction examples outlined in these guidelines are merely illustrative, and it is necessary to recognize that various challenges may arise depending on the context of the transaction. We plan to encourage many stakeholders to utilize these guidelines, incorporate the feedback received, and simultaneously strive to collect and analyze objective, quantitative data to continuously monitor the actual situation as well as make revisions as necessary.

(Note) List of Members, etc., of the “Committee for Considering Guidelines to Promote Proper Transactions in Port Transport Services”

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The Japan Harbor Transportation Association  
National Federation of Dockworkers Unions of Japan  
All Japan Dockworker's Union  
The Japanese Shipowners' Association  
Japan Federation of Coastal Shipping Associations  
Japan Foreign Steamship Association  
Japan Automobile Manufacturers Association, Inc.  
The Japan Iron and Steel Federation  
Japan Foreign Trade Council, Inc.

< Relevant Ministries and Agencies >

General Secretariat, Trade Practices Department, and Economic Affairs Bureau, Japan Fair Trade Commission  
New Business and Food Industry Department, Minister's Secretariat, Ministry of Agriculture, Forestry and Fisheries  
Commerce and Service Industry Policy Group, Ministry of Economy, Trade and Industry  
Business Environment Department, Small and Medium Enterprise Agency  
Maritime Bureau, MLIT

< Secretariat >

Ports and Harbours Bureau, MLIT

## Chapter 2: Legislation Relevant to Proper Transactions

### 1. Relationship between Legislation Concerning Promotion of Proper Transactions in Port Transport Services and These Guidelines

In addition to the Port and Harbor Transportation Business Act, the following legislation applies across industries to promote proper transactions in Port Transport Services.

- The Act Against Delay in Payment of Fees, etc. to Small and Medium-sized Entrusted Business Operators in Manufacturing and Other Specified Fields(formerly the “Act against Delay in Payment of Subcontract Proceeds, etc. to sub-contractors”; hereinafter referred to as the “SMETA”)
- Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as the “Antimonopoly Act”)
- Act on Promotion of Entrusted Small and Medium-sized Enterprises (formerly the “Act on the Promotion of Subcontracting Small and Medium-sized Enterprises”; hereinafter referred to as the “Promotion Act”)

These guidelines outline more desirable transaction practices to further promote proper transaction, while assuming compliance with these legislations.

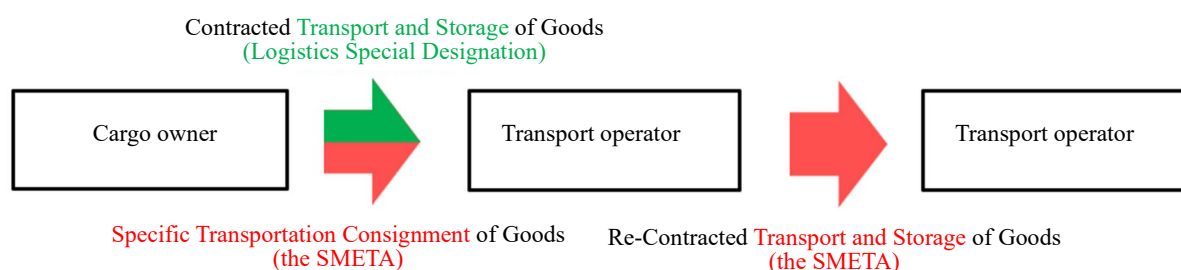
In promoting proper transactions within the port transport industry, stakeholders must not only comply with relevant legislation but also actively pursue “industry-led initiatives” including, for example, imposing similar rules on transactions falling outside the scope of the Port and Harbor Transportation Business Act.

Furthermore, under the Port and Harbor Transportation Business Act, port transport operators are required to establish the amount and method of application for freight rates and charges prior to setting or changing them for consignees, and to submit this along with a cost statement including appropriate labor costs, etc., upon request by MLIT.

MLIT conducts regular audits against port transport operators to ensure enforcement of the Port and Harbor Transportation Business Act, and provides guidance or imposes administrative sanctions if it is found that operators have collected fees or charges not based on the notified rates. Additionally, if such freight rates or charges constitute improper discriminatory treatment against specific users, or if they are likely to cause improper competition with other port transport operators, MLIT may order their revision.

### 2. Transactions Covered by the SMETA and the Antimonopoly Act

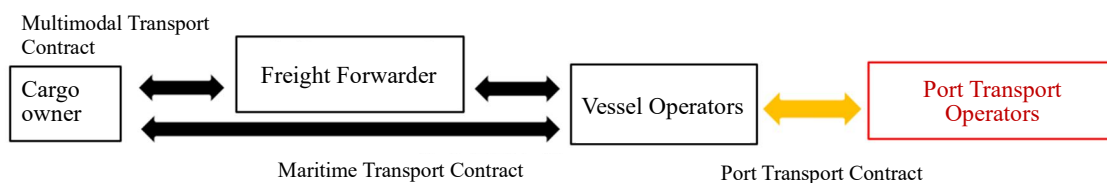
Transactions related to port transport can be roughly categorized into two main types: (1) transactions between transport operators and (2) transactions between Cargo Owners and port transport operators.



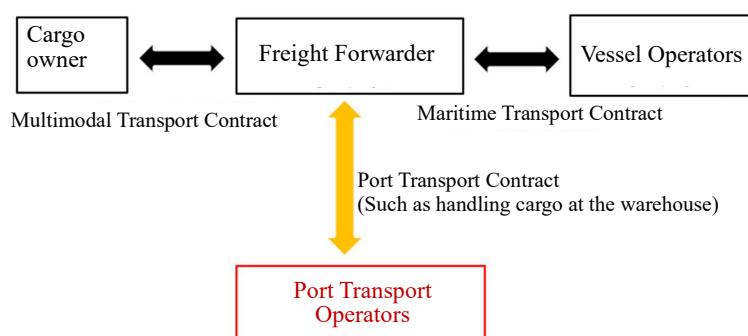
## (1) Transactions between Transport Operators

Transactions between transport operators related to Port Transport Operators include: ① transactions between Vessel Operators and Port Transport operators, ② transactions between Freight Forwarders and Transport Operators, and ③ transactions between Port Transport Operators themselves. Both the SMETA and the Antimonopoly Act (abuse of superior bargaining position) may apply to these transactions.

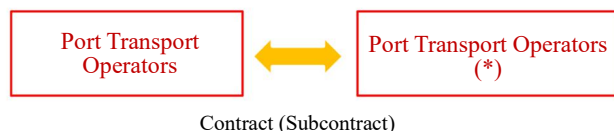
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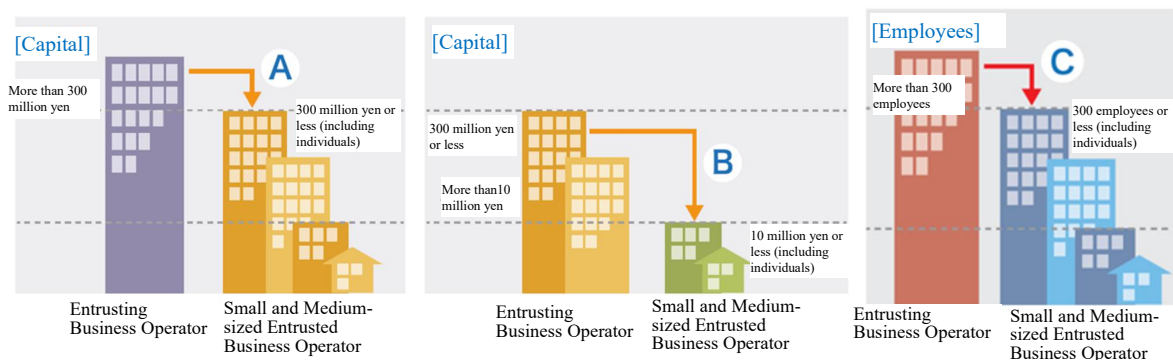
\* Including port transport-related business operators

## < Application of the SMETA >

### ○ Transactions covered by the SMETA

The SMETA defines its coverage depending on the nature of the transaction and the scale of the business operator (capital or number of regular employees). For example, when a business operator (entrusting business operator) that meets the capital or regular employee requirements subcontracts part or all of the services it provides, such as transport or storage of goods contracted by a Cargo Owner, to another business operator (small or medium-sized entrusted business operator), such transaction falls under the scope of the Act.

In any of the following transactions: ① between Vessel Operators and Port Transport Operators, ② between Freight Forwarders and Port Transport Operators, or ③ between Port Transport Operators themselves, if services are subcontracted, it may constitute a service contract under Article 2, Paragraph 4 of the SMETA, although individual judgment is required.



### 【Capital and Employee Criteria Under the SMETA】

(\*1: Either the capital requirement or the employee number requirement shall be met.)

(\*2: The above figure shows criteria for transport, warehousing, and information processing services under service contract. For other service contract, the criteria of 50 million yen in capital and 100 employees apply.)

### < Application of the Antimonopoly Act (Abuse of Superior Bargaining Position) >

#### ○ Transactions covered by the Antimonopoly Act (Abuse of Superior Bargaining Position)

The Antimonopoly Act, which aims to promote fair and free competition, applies to all transactions between private businesses, regardless of the amount of capital or number of employees. Abuse of superior bargaining position is one of the “unfair transaction methods” prohibited by the Antimonopoly Act. It refers to acts where one party, possessing a superior bargaining position over the other, takes advantage of that position to impose unfair disadvantages on the other party to the transaction, contrary to normal business practices.

#### ○ Superior Bargaining Position

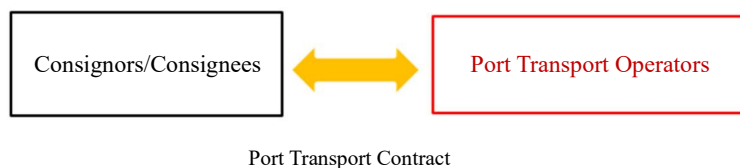
The situation where one party to a transaction (Party A) holds a superior position over the other party (Party B) means a situation where Party B has no choice but to accept significantly disadvantageous demands from Party A, as the discontinuation of transactions with Party A would cause major operational difficulties for Party B. In judging this, the transaction dependency of Party B on Party A, the market position of Party A, the possibility for Party B to change business partners, and other specific facts showing the necessity for Party B to transact with Party A are comprehensively considered.

#### ○ Normal Business Practices

“Normal business practices” are acceptable from the standpoint of maintaining and promoting a fair competitive order and do not immediately justify an act merely because it conforms to existing business practices. Furthermore, “unfair in light of normal business practices” refers to cases where there is a risk of hindering fair competition, and is determined on a case-by-case basis, taking into account the degree of disadvantage and the range of the act.

### (2) Transactions between Cargo Owners and Port Transport Operators

Transactions involving a Cargo Owner contracting services to a port transport operator may be subject not only to the SMETA and the prohibition against abuse of superior bargaining position (Antimonopoly Act), but also to Special Designation for Distribution Systems under the Antimonopoly Act.



#### < Application of the SMETA >

##### ○ Transactions covered by the SMETA

By the amendment in 2025 (effective January 1, 2026), the act of a business operator engaged in the sale of goods as its own business contracting a transport of its goods to its counterparty has been newly added as a subject of regulation (Specific Transportation Consignment). As a result, effective January 1, 2026, in addition to transactions between Transport Operators (service contract) as previously defined, certain transactions between Cargo Owners and Transport Operators (Specific Transportation Consignment) will also fall under the scope of the SMETA.

#### (Examples of Transactions Falling Under Specific Transportation Consignment)

- An automobile manufacturer (capital: 10 billion yen) contracted the port transport of its finished vehicles manufactured in-house to a domestic Port Transport Operator (capital: 100 million yen) in order to sell those vehicles to overseas business operators.

##### ○Transportation

“Transport for the counterparty (including persons designated by such counterparty)” in the Specific Transportation Consignment means to make movement of goods, such as the items subject to the transaction, under the possession of a business operator to its counterparty in its specific business (sales, etc.), and does not include ancillary acts such as loading, storage, or customs clearance.

On the other hand, when ancillary acts such as loading, storage and customs clearance are included in a transport contract alongside the transportation itself, whether the transaction involving the contract of these ancillary acts falls under the scope of the SMETA as the Specific Transportation Consignment shall be determined based on the individual transaction circumstances. For example, when a transportation and ancillary acts contracted under a contract with the Shipper are inseparably integrated, transactions related to the contract of such ancillary services may also fall under the scope of the SMETA.

#### < Application of the Antimonopoly Act (Abuse of Superior Bargaining Position) >

##### ○ Transactions covered by the Antimonopoly Act (Abuse of Superior Bargaining Position)

As mentioned in (1), since the Antimonopoly Act applies to all transactions between private business operators, even in transactions between Cargo Owners and port transport operators, conduct by one party that holds a superior bargaining position over the other, where that party uses its position to impose unfair disadvantages on the other party contrary to normal business practices, is subject to regulation.

< the Antimonopoly Act (Special Designation for Distribution Systems ) >

○ Transactions covered by the Special Designation for Distribution Systems

The Special Designation for Distribution Systems (official name: “Unfair Trade Practices When Specific Cargo Owners Entrust the Transport or Storage of Goods” (Japan Fair Trade Commission Notice No. 1 of 2004; hereinafter referred to as the “Notice”)) was established to effectively regulate the abuse of superior bargaining position in transactions between Shipper and logistics operators.

The Special Designation for Distribution Systems applies to transactions that meet both of the following conditions ① and ②.

① The nature of the transaction contracted by the Shipper is one that continuously entrusts the transport or storage of goods

② The relationship between the Shipper and the logistics operator falls under one of the following three conditions (\*1)

- The Shipper's capital exceeds 300 million yen, and the logistics operator's capital is 300 million yen or less.

- The Shipper's capital is more than 10 million yen but 300 million yen or less, and the logistics operator's capital is 10 million yen or less.

- The Shipper holds a superior bargaining position, while the logistics operator holds an inferior bargaining position (\*2)

\*1: Shipper's Subsidiaries

When a Shipper entrusts transport or storage to its own logistics subsidiary, that logistics subsidiary may be deemed a specific Shipper. (Excluding Specific Transportation Consignment.)

On the other hand, even if the contracted business operator is a logistics subsidiary, it does not qualify as a specific Shipper under the Special Designation for Distribution Systems when it has received a transport order from a Shipper other than the parent company.

\*2: Superior Bargaining Position

The situation where one party to a transaction (Party A) holds a superior position over the other party (Party B) means, similar to the Antimonopoly Act (Abuse of Superior Bargaining Position), a situation where Party B has no choice but to accept significantly disadvantageous demands from Party A, as the discontinuation of transactions with Party A would cause major operational difficulties for Party B. In judging this, the transaction dependency of Party B on Party A, the market position of Party A, the possibility for Party B to change business partners, and other specific facts showing the necessity for Party B to transact with Party A are comprehensively considered.

(3) Transactions with Overseas Business Operators

When overseas business operators entrust transport to domestic transport operators, transactions with such overseas operators may also fall under the scope of the SMETA and the Antimonopoly Act (Abuse of Superior Bargaining Position, Special Designation for Distribution Systems). Therefore, from the perspective of ensuring proper transactions, proper consultation and pricing are required.

Furthermore, transactions conducted between a Japanese subsidiary established by an overseas business operator and a domestic transport operator may also fall under the jurisdiction of the SMETA and the Antimonopoly Act.

(Transaction Examples)

- A domestic port transport operator has entered into a direct port transport contract with an overseas Shipping Company.
- A domestic port transport operator entered into a port transport contract with the Japanese subsidiary of an overseas Shipping Company or Cargo Owner.

### **3. Prohibitions Under the SMETA and the Antimonopoly Act**

The following acts are prohibited for Contractors under the SMETA, for operators in a superior bargaining position under the Antimonopoly Act (Abuse of Superior Bargaining Position), and for specific Shipper under the Antimonopoly Act (Special Designation for Distribution Systems).

| SMETA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Antimonopoly Act (Abuse of Superior Bargaining Position)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Antimonopoly Act (Special Designation for Distribution Systems)                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rejection of Acceptance (Article 5, Paragraph 1, Item 1)<br>Delayed Payment of manufacturing consignment, etc. (Item 2)<br>Issuance of Promissory Notes, etc. (Item 2)<br>Reduction of payment for manufacturing consignment, etc. (Item 3)<br>Return of Goods (Item 4)<br>Setting the payment amount at a significantly lower price (Item 5)<br>Forced Purchase/Use (Item 6)<br>Retaliatory Measures (Item 7)<br>Request for Provision of Unjust Economic Benefit (Paragraph 2, Item 2)<br>Unjust Change or Redo of Deliverable or Service (Paragraph 2, Item 3)<br>Unilateral Price Determination without Consultation (Paragraph 2, Item 4) | Forced Purchase/Use (Article 2, Paragraph 9, Item 5(a))<br>Request for Contribution of Money, etc. (Item 5(b))<br>Request for Dispatch of Employees, etc. (Item 5(b))<br>Request for Provision of Unjust Economic Benefits (Item 5(b))<br>Rejection of Acceptance (Item 5(c))<br>Return of Goods (Item 5(c))<br>Delayed Payment (Item 5(c))<br>Reduction of Price (Item 5(c))<br>Unilateral Transaction Price Determination (Item 5(c))<br>Request for Redo (Item 5 (c))<br>(*Even if an act does not fall under the above categories, it may still constitute an abuse of superior bargaining position when a business operator in a superior bargaining position unilaterally sets, changes or implements transaction conditions, thereby imposing an unfair disadvantage on the counterparty to the transaction, as measured against normal business practices.) | Delayed Payment of Price (Paragraph 1, Item 1 of the Notice)<br>Price Reduction (Item 2)<br>Trade at a significantly lower price (Item 3)<br>Forced Purchase/Use (Item 4)<br>Issuance of Non-Discountable Promissory Notes (Item 5)<br>Request for Provision of Unjust Economic Benefit (Item 6)<br>Unjust Change or Redo of Deliverable or Service (Item 7)<br>Retaliatory Measures (Item 8 Paragraph 2) |

Furthermore, the SMETA requires entrusting business operators to perform the following actions.

- Obligation to Explicitly State Order Details (Article 4)

When placing an order, explicitly state the order details (Deliverable or Service provided, amount payable, payment due date, payment method) in writing or by electronic means such as email.

- Obligation to Prepare and Store Documents (Article 7)

Upon completion of a transaction, prepare records pertaining to the transaction, including details of Deliverable or Service provided and the amount of payment, in either paper or electronic format, and store them for two years.

- Obligation to Specify the Payment Date (Article 3)

Regardless of whether an inspection is conducted, specify the payment due date within the shortest possible period not exceeding 60 days from the date of receipt of the ordered goods, etc.

- Obligation to Pay Delayed Interest (Article 6)

In the event of delayed payments or reductions, pay delayed interest (annual rate of 14.6%) based on the number of days delayed or the amount reduced.

#### **4. Measures against Violations of the SMETA and the Antimonopoly Act**

- Measures against Violations of the SMETA

The Japan Fair Trade Commission, the Small and Medium Enterprise Agency, and the relevant ministry or agency (for port Transportation Businesses, MLIT) may, in certain circumstances, respectively require the entrusting or the small and medium-sized entrusted business operators to submit reports or undergo inspections regarding the contracted transaction.

Furthermore, these administrative authorities may provide guidance and advice to entrusting business operators when deemed necessary. If the Japan Fair Trade Commission find acts violating the provisions of Article 5 of the SMETA, it shall request the entrusting business operators to cease the violation and restore the original state, while also recommend to take necessary measures such as recurrence prevention. When a recommendation is made, such fact shall be publicly announced in principle.

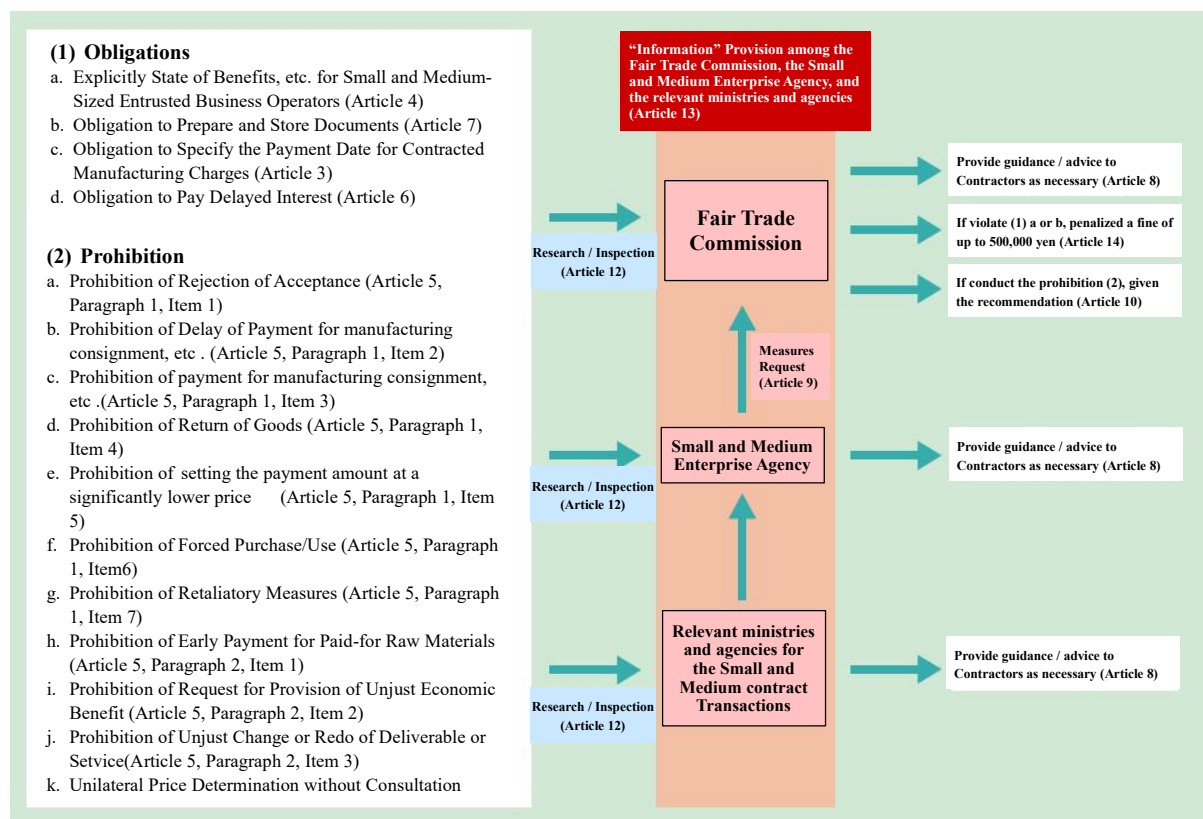
Additionally, the Japan Fair Trade Commission, the Small and Medium Enterprise Agency, and the relevant ministries and agencies may mutually provide information on entrusting operators and small and medium-sized entrusted business operators that is particularly necessary to ensure fair transactions between entrusting business operators and small and medium-sized entrusted business operators or to protect the interests of small and medium-sized entrusted business operators.

If an entrusting business operator commits any of the violations specified in Articles 14 and 15 of the SMETA, both the individual violator and the corporate entrusting business operator may be penalized and subject to a fine of up to 500,000 yen.

- Violation of the obligation to explicitly state order details, etc. , in writing or by electronic means t
- Violation of the obligation to prepare and store documents or electronic records detailing transaction contents
- Refusal to submit reports or submission of false reports in response to requests for reporting

- Refusal, obstruction, or evasion of a site inspection

To ensure an environment where small and medium-sized entrusted business operators can easily report, the designated reporting Entities for “prohibition of retaliatory measures” are the Japan Fair Trade Commission, the Commissioner of the Small and Medium Enterprise Agency, and the competent ministers of the relevant ministries and agencies.

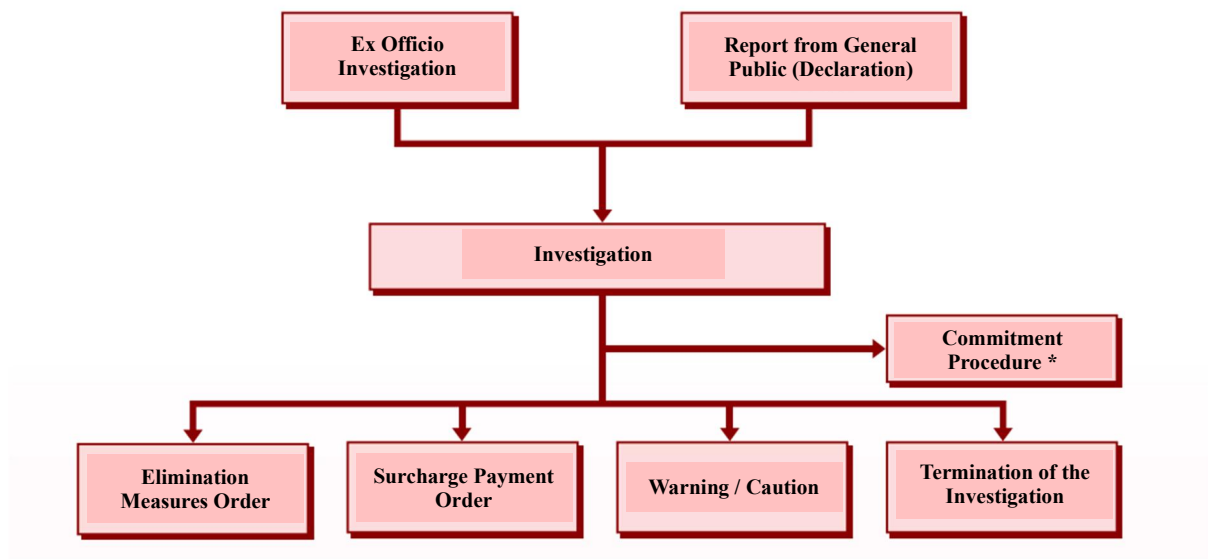


#### ○ Measures against Violations of the Antimonopoly Act

Even if the SMETA does not apply because the capital, employee, or transaction content requirements specified therein are not met, engaging in an improper act in a transaction may constitute an “abuse of superior bargaining position” (Article 2, Paragraph 9, Item 5 of the Antimonopoly Act), which is one of the unfair trade practices under the Antimonopoly Act.

When the Japan Fair Trade Commission confirms violations through the ex officio investigation or reports, it may impose administrative sanctions on the violating business operators, such as elimination measures orders requiring prompt cessation of the violation or surcharge payment orders.

● Procedures for Addressing Violations



\* The Commitment Procedure is a procedure for voluntarily resolving suspected violations of the Antimonopoly Act by the Japan Fair Trade Commission and the business operator. The business operator prepares a commitment plan detailing the necessary measures to eliminate the act that caused the suspected violations and applies for its certification.

## **Chapter 3: Issues in Transactions and Desirable Transaction Structures**

This chapter outlines the transactional challenges in Port Transport Services, key points to be considered based on relevant legislation (SMETA, Antimonopoly Act, Promotion Act, and Port and Harbor Transportation Business Act), and desirable transaction structures.

Unless otherwise defined by applicable legislation, the following terms shall apply: the party requesting cargo transport is referred to as the “Transport Contracting Entity,” and the party accepting such request is referred to as the “Transport Contractor” and “Transport” shall mean “Port Transport.” Furthermore, unless otherwise specified, examples will involve Port Transport Operators who are in a weaker bargaining position relative to the Transport Contracting Entity.

### **1. Setting of Freight rates and Charges, Appropriate Consultation on Freight Rates and Charges**

#### **(1) Examples of Specific Acts to be Problems**

- Despite presenting cost calculations (including those based solely on direct costs such as labor expenses; the same applies hereafter), unilaterally lower prices were set without necessary explanation, using as references freight rates and charges from other port transport operators with different cost structures, or from other ports, historically low freight rates and charges, or general indicators. Considering future business relationships, however, there was no choice but to accept.
- A Shipping Company, as the Transport Contracting Entities, have been raising the port handling charges billed to general Cargo Owners year after year. Meanwhile, when the Transport Contractors present cost calculations based on rising labor costs and inflation, requesting negotiations to revise freight rates and charges, the Transport Contracting Entity refuse to engage in such discussions, and instead, it unilaterally maintains freight rates and charges at previous levels or set new freight rates and charges with only minor increases, without providing any specific explanation.
- When requesting negotiations to review freight rates and charges, the Transport Contracting Entity stated that if the freight rates and charges were revised, it would skip ports. Finally, it was necessity to maintain the current prices.
- Since holiday work requires payment of premium rates to workers, requested setting premium rates to transfer costs but was unable to do so, and had to perform cargo handling at insufficient freight rates and charges.
- Even when requesting additional costs for safety measures such as heatstroke prevention for site workers or cybersecurity measures, negotiations are refused, and transactions proceed at the previous freight rates and charges.
- Despite using a dolly designed for heavy loads, additional freight rates and charges were not accepted, and requested to transport cargos at the ordinary rate. However, considering future business dealings, there was no choice but to accept.
- In contracts with volume-based freight rates and charges (based on container count or cargo weight), discussed setting charges corresponding to labor costs incurred when deploying additional gangs

based on Transport Contracting Entity's requests such as quick dispatch. However, such request was refused without providing sufficient explanation.

- For cargo handling on conventional vessels with volume-based freight rates and charges, the decline in handling heavy cargo (such as steel materials) and the increase in small-volume, diverse cargo types have increased labor hours. However, the rates have not been adjusted to reflect these increased labor costs.
- Particularly in transactions with overseas corporations, responses were much delayed under the reason that consultation with the overseas headquarters requires time, preventing sufficient discussion.
- For long-term ongoing transactions, large handling volume cargo and low cost cargo, freight rates and charges are unilaterally set at levels below necessary costs without adequate explanation.

## (2) Points to Consider Regarding Related Legislations

### ○ Points to Consider Regarding SMETA

When conducting transactions subject to the SMETA, if a contracting Entity, when determining the amount of the contract price upon placing an order, unreasonably sets an amount that is significantly lower than the consideration normally paid for the provision of services of the same or similar type as those ordered, this constitutes violation as the “Setting the payment amount at a significantly lower price ” under Article 5, Paragraph 1, Item 5 of the SMETA.

Furthermore, since costs such as labor expenses, raw material prices and fuel costs rise, and the contracting Entity refuses to engage in negotiations requested by the Small and Medium-Sized Entrusted Business Operator regarding price increases, or unilaterally determines transaction prices without providing necessary explanations during negotiations, such fact constitutes a violation as “Unilateral Price Determination without Consultation” under Article 5, Paragraph 2, Item 4 of the SMETA.

### ○ Points to Consider Regarding Antimonopoly Act (Abuse of Superior Bargaining Position)

A business operator in a superior bargaining position who unilaterally demands transactions at significantly low or significantly high prices from its counterparties, where the counterparties have no choice but to accept due to concerns about the impact on continuing the business relationship, such situation constitutes a violation as the unfair transaction method defined in Article 2, Paragraph 9, Item 5(c) of the Antimonopoly Act.

Furthermore, the following actions violate the Antimonopoly Act: ① maintaining transaction prices unchanged without explicitly consulting in price negotiations regarding the necessity of reflecting increases in costs such as labor expenses, raw material prices, and fuel costs, and ② maintaining transaction prices unchanged without providing a written or email response explaining the reasons for not transferring the price increase, even when the counterparty requested a price increase due to these cost increases.

### ○ Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)

In transactions subject to the Special Designation for Distribution Systems, if a specific Shipper unjustly sets a payment price significantly lower than the price normally paid for transport or storage services of the same or similar nature as those provided by a specific logistics operator, such situation constitutes a violation of the Antimonopoly Act as specified in Article 1, Item 3 of the Notice.

○ Points to Consider Regarding Promotion Act

Transaction price shall be determined through sufficient consultation between the Contracting Entity and the Small and Medium-Sized Entrusted Business Operator, based on a reasonable calculation method that includes appropriate profits for the Operator and enables improvements in working conditions such as wage increases and reduced working hours at the Operator. In such consultations, the Contracting Entity shall not determine a price lacking in reasonableness or sufficient consultation.

○ Points to Consider Regarding Port and Harbor Transportation Business Act

Under the Port and Harbor Transportation Business Act, the Minister for MLIT may issue an order to change freight rates and charges when it is determined that such rates and charges constitute unfair discriminatory treatment against specific users, or when it is determined that they are likely to cause unfair competition with other Port Transportation Business Operators.

(3) Required Transaction Practices / Desirable Transaction Examples

- The Transport Contracting Entity and the Transport Contractor shall regularly share information and exchange opinions regarding their respective business environments and economic conditions to ensure mutual understanding.
- The Transport Contractor shall explain and discuss the necessity of securing personnel and improving the efficiency of cargo-handling machinery, etc., as well as the need to transfer these costs to freight rates and charges. The Transport Contracting Entity shall respond sincerely and consider accepting necessary price transfers.
- The Transport Contractor shall identify its own labor costs, fuel expenses, depreciation costs and etc. related to the transport, including any increases, present a quotation, and conclude a contract after thorough consultation with the Transport Contracting Entity.
- The Transport Contractor explains the validity of price transfers to the Transport Contracting Entity by utilizing not only its own data but also general indicators, data from other industries, and etc.
- Even when using past approved freight rates, own cost calculations shall be performed to implement necessary price transfers.
- The Transport Contracting Entity shall recognize changes in the business environment, such as rising labor costs and labor shortages, as well as expenses for worker safety measures, to consider accepting price transfers based on respective circumstances.
- In particular, Shipping Companies shall ensure fair price transfers to freight rates and charges related to maritime transport billed to Cargo Owners, etc. by making port transport costs transparent. Port

cargo handling charges collected from Cargo Owners shall be appropriately transferred to the freight rates and charges paid to the Transport Contractors.

- For cargo handling during nighttime or short time periods requested by the Transport Contracting Entity, additional personnel, cargo handling equipment, and shift changes are required. Therefore, appropriate freight rates and charges, including premium rates, shall be set.
- When negotiating freight rates and charges, the Transport Contracting Entity shall clearly specify all necessary data without omission or excess. If a response requires time, the Entity shall indicate the anticipated timing to facilitate planning for the negotiations.
- The Transport Contracting Entity shall recognize that refusing to engage in freight rate and charges negotiations while suggesting the suspension of transactions such as port skipping may constitute a violation of the SMETA, and shall respond sincerely to requests for negotiations.
- The Transport Contracting Entity, regardless of whether it is an overseas corporation, shall set a reasonable response deadline during negotiations and provide quantitative reasons if it cannot accept a sufficient price increase.
- For multiple-year contracts, provisions shall be included in advance to enable appropriate setting and revision of freight rates and charges in response to economic conditions such as rising prices. For single-year contracts renewed repeatedly, consultations shall be held to revise freight rates and charges when a request for price transfer is made at the time of contract renewal.
- Even for volume-based freight rates and charges, consider implementing a rate and charge structure that allows billing for additional labor costs when extra workers are required, as well as establishing minimum charges.

## **2. Reduction of Freight Rates and Charges**

### **(1) Examples of Specific Acts to be Problems**

- The Transport Contracting Entities request reductions in freight rates and charges based on reasons such as their own deteriorating business performance, decreased cargo volumes, designation of collection fees and cooperation fees, and conditions for handling large-volume cargos.
- In the event of cargo damage occurring under a strict work schedule requested by the Transport Contracting Entity, a fixed amount exceeding the damage value is deducted from the freight rates and charges without disclosing the basis for calculating the damage amount.
- In a single contract for transport and storage services, the storage charges are unilaterally reduced, and the free-of-charge storage period is set for an extended duration.

### **(2) Points to Consider Regarding Related Legislations**

#### **○ Points to Consider Regarding SMETA**

When conducting transactions subject to the SMETA with Small and Medium-Sized Entrusted Business Operators, reducing the amount of payment determined at the time of order placement without any reason attributable to the Operators, regardless of whether an agreement exists with the Operators,

constitutes a violation as the “Reduction of payment for manufacturing consignment, etc.” under Article 5, Paragraph 1, Item 3 of the Act.

Additionally, if a Contracting Entity subcontracts transport it has undertaken to a Small and Medium-Sized Entrusted Business Operator, and then claims that the cargo was damaged during transport and is being asked by the Cargo Owner to compensate for the loss, deducting a fixed amount exceeding the damage amount from the contract price without disclosing the basis for calculating the damages constitutes a price reduction under the SMETA.

○ Points to Consider Regarding Antimonopoly Act (Abuse of Superior Bargaining Position)

A business operator who holds a superior bargaining position over a transaction counterparty and reduces the price without justifiable reason, in a situation where the counterparty has no choice but to accept the reduction due to concerns about the impact on future transactions, constitutes a violation of the Antimonopoly Act as the unfair transaction method defined in Article 2, Paragraph 9, Item 5(c) of the Act.

○ Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)

When conducting transactions subject to the Special Designation for Distribution Systems, reducing the amount of payment predetermined by a specific Shipper without cause attributable to the Specific Logistics Operator constitutes a violation of the Antimonopoly Act defined in Article 1, Item 2 of the Notice.

○ Points to Consider Regarding Port and Harbor Transportation Business Act

Under the Port and Harbor Transportation Business Act, the Minister for MLIT may issue an order to change freight rates and charges when it is determined that such rates and charges constitute unfair discriminatory treatment against specific users, or when it is determined that they are likely to cause unfair competition with other Port Transportation Business Operators.

(3) Required Transaction Practices / Desirable Transaction Examples

- When a Transport Contracting Entity unilaterally requests a reduction of freight rates and charges, demand justification for such a request, not accept contracts at freight rates and charges below cost and negotiate persistently.
- Payment terms, application of freight rates and charges, liability and compensation details in the event of an accident, etc., shall be thoroughly consulted in advance, with specific details exchanged in writing. In the event of an accident, the cause and responsibility shall be clearly verified.
- Regarding reductions in charges for work incidental to transport, if such work is ordered as an integral part of the transport contract, it constitutes a reduction in freight rates and charges and may be a violation of the SMETA, therefore, the Transport Contracting Entity needs to appropriately consult with the Transport Contractor.

### **3. Changes in Transport Details**

#### **(1) Examples of Specific Acts to be Problems**

- Despite the need for workers to stand by until receiving the notice of delay or cancellation of works due to the vessel's delay caused by weather, etc., Transport Contracting Entity fails to pay standby charges or cancellation charges.
- Despite additional workers and equipment to complete works are required due to the vessel's delay, the Transport Contracting Entity fails to pay the additional costs.
- After placing an order, the Transport Contracting Entity verbally requested changes in the work details but, at the time of payment, claims for additional costs incurred due to these changes in the work details are not accepted.
- Due to the Transport Contracting Entity's circumstances, the starting date of the pre-determined free storage period for the cargos was changed, effectively forced a longer free storage period than originally ordered.

#### **(2) Points to Consider Regarding Related Legislations**

##### **○ Points to Consider Regarding SMETA**

When conducting transactions subject to the SMETA, making changes in cargo volume or storage period after placing an order without bearing the associated costs constitutes a violation as “Unjust Change or Redo of Deliverable or Service” under Article 5, Paragraph 2, Item 3 of the Act. Furthermore, failing to explicitly state the order details in written documents or emails at the time of ordering constitutes a violation of Article 4 of the Act, “Obligation to Explicitly State Order Details.”

##### **○ Points to Consider Regarding Antimonopoly Act (Abuse of Superior Bargaining Position)**

Where a business operator in a superior bargaining position unilaterally sets or changes transaction terms with its counterpart, causing an unfair disadvantage contrary to normal business practices, this constitutes a violation as the unfair transaction method defined in Article 2, Paragraph 9, Item 5(c) of the Antimonopoly Act.

##### **○ Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)**

When conducting transactions subject to the Special Designation for Distribution Systems, if a specific Shipper, without bearing the necessary costs, changes the details of the initial transport request, changes the details of the transport, etc. provided by a specific logistics operator, or causes the operator to redo after performed, thereby unfairly harming the interests of the specific logistics operator, this constitutes a violation of the Antimonopoly Act as defined in Article 1, Item 7 of the Notice.

#### **(3) Required Transaction Practices / Desirable Transaction Examples**

- Regarding claims for costs related to the cancellation or change of a transport request, the method of

cost allocation shall be clearly stipulated in the port cargo handling service contract, its annexes, memoranda, quotations, etc. (hereinafter referred to as “contract documents”), including cases due to force majeure such as weather conditions.

- Depending on the type of cargo and vessel, advance preparation of workers and equipment is required. Therefore, deadlines for cancellation or change notifications shall be specified in the contract documents.
- To accommodate urgent requests from the Transport Contracting Entity that are not covered by the contract, a provision stating “such matters shall be discussed on a case-by-case basis” shall be included in the contract.
- If additional charges arise due to changes in the transport details or urgent requests, the work will commence only after the details have been clearly specified via email, etc., in addition to the verbal request.

#### **4. Provision of Ancillary Services Related to Transport**

##### **(1) Examples of Specific Acts to be Problems**

- Compensation is not paid for ancillary tasks such as moving containers within the ship or container yard, or the compensation provided is not sufficient for the work performed.
- Despite performing ancillary work, it is deemed to fall within the scope of the prearranged freight rates and charges, and no additional charges are paid.
- Despite not included in the order, asked to provide security for the carpool vehicle free of charge.
- Required to perform tasks unrelated to Port Transport Services free of charge.
- At container yards operated by the Transport Contractor, the Operator is forced to store cargo free of charge for extended periods unilaterally determined by the Transport Contracting Entity, causing disruptions to cargo handling operations or congestion in the drayage area.
- Required to advance expensive costs such as port charges, demurrage, and detention charges, which should be borne by the Shipping Company or Cargo Owner, for extended periods.

##### **(2) Points to Consider Regarding Related Legislations**

###### **○ Points to Consider Regarding SMETA**

In transactions subject to the SMETA, the Contracting Entity forces the Small and Medium-Sized Entrusted Business Operator to provide labor services free of charge for the entrusting business's own benefit constitute a violation of the Act as “Request for Provision of Unjust Economic Benefit” under Article 5, Paragraph 2, Item 2 of the Act.

###### **○ Points to Consider Regarding Antimonopoly Act (Abuse of Superior Bargaining Position)**

When a business operator in a superior bargaining position demands the provision of economic benefits without justified reason from its transaction counterpart, and the counterpart has no choice but to accept due to concerns about the impact on continuing the transaction, this constitutes a violation of

the Antimonopoly Act as an unfair transaction method under Article 2, Paragraph 9, Item 5(b).

○ Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)

In transactions subject to the Special Designation for Distribution Systems, acts by a specific Shipper that improperly harm the interests of a specific logistics operator by inducing the provision of money, services, or other economic benefits constitute a violation of the Antimonopoly Act as specified in Article 1, Item 6 of the Notice.

(3) Required Transaction Practices / Desirable Transaction Examples

- In contract documents, clearly and specifically define the scope of work and responsibilities. Establish provisions such as “Other Incidental Services” to prepare for tasks not explicitly listed, enabling separate claims for actual expenses.
- Even when a Shipping Company grants Cargo Owners a certain period of free storage (free time), the Shipping Company must understand that the container yard is not inherently a storage facility. The Transport Contractor shall request the Shipping Company to set appropriate free time and bear necessary costs if it is exceeded. Cargo Owners shall also recognize that the container yard is not their own cargo storage facility.

**5. Overtime Work Schedule, Response to Natural Disasters and Severe Weather, Improvement of Standby Time**

(1) Examples of Specific Acts to be Problems

- Despite having agreed at the time of order placement that premium rates would apply for transport during overtime hours (midnight, late night, weekends, and holidays), the premium rates are not paid. Furthermore, even when no premium rate was stipulated in the previous contract, despite requesting negotiations regarding the establishment of a premium rate, such negotiations were not accepted.
- Despite the vessel being delayed beyond the previously notified time and requiring an extended stand-by period, the stand-by charges are not paid.

(2) Points to Consider Regarding Related Legislations

○ Points to Consider Regarding SMETA

In transactions subject to the SMETA, when the Entrusting Business Entity changes the content of an initial transport request to the Small or Medium-Sized Entrusted Business Operator without bearing the costs, this constitutes a violation of the Act as “Unjust Change or Redo of Deliverable or Service” under Article 5, Paragraph 2, Item 3 of the Act. Furthermore, if the Entrusting Business Entity forces the Small or Medium-Sized Entrusted Business Operator to provide independent labor services for its own benefit without compensation, this constitutes a violation of the SMETA as “Request for Provision of Unjust Economic Benefit” under Article 5, Paragraph 2, Item 2 of the Act.

- Points to Consider Regarding Antimonopoly Act (Abuse of Superior Bargaining Position)

Where a business operator in a superior bargaining position unilaterally sets or changes transaction terms for its counterpart, thereby imposing an unfair disadvantage on that counterpart contrary to normal business practices, this constitutes a violation as an unfair transaction method under Article 2, Paragraph 9, Item 5(c) of the Antimonopoly Act.

- Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)

In transactions subject to the Special Designation for Distribution Systems, if a specific Shipper causes changes to the original transport request without bearing the necessary costs, thereby unfairly harming the interests of a specific logistics operator, this constitutes a violation of the Antimonopoly Act defined in Article 1, Item 7 of the Notice.

(3) Required Transaction Practices / Desirable Transaction Examples

- The Transport Contracting Entity shall recognize that nights and holidays fall outside normal business hours and properly pay premium rates for overtime work. The premium rate shall be clearly stipulated in the contract documents.
- In cases where vessel's delay is anticipated due to weather, etc., advance notice can prevent unnecessary waiting. Therefore, the deadline for advance notice and the cost allocation shall be clearly stipulated in advance in the contract documents.
- For matters not explicitly stated in previous contract documents, such as liability exemptions during natural disasters, contracts shall be revised to reflect current circumstances.

## **6. Issuance, Preparation, and Storage of Documents**

(1) Examples of Specific Acts to be Problems

- In the event of vessel's delay due to weather, etc., resulting in canceled arrivals or works, the treatment of cost allocation is not clearly stated in the contract, leaving the response unclear.

(2) Points to Consider Regarding Related Legislations

- Points to Consider Regarding SMETA

In transactions subject to the SMETA, if a Entrusting Business Entity fails to clearly specify to a Small or Medium-Sized Entrusted Business Operator, in writing or by electronic means, specific details such as the amount of the contract price, the payment due date, and the date for receiving goods or services, this constitutes a violation of the Act as “Obligation to Explicitly State Order Details” under Article 4, Paragraph 1 of the SMETA. The individual perpetrator shall be punished, and the company shall also be subject to a fine of not more than 500,000 yen.

Furthermore, when a contracted service, specific transportation consignment, etc. that contracted to a Small and Medium-Sized Entrusted Business Operator are completed, the Entrusting Business Entity

shall prepare and store for two years the relevant transaction record documents or electronic records detailing the content of the services provided, the amount of the contract charges, and other relevant matters. Failure to prepare or store such records or electronic records constitutes a violation of the "Obligation to Prepare and Store Documents" defined in Article 7 of the Act. The individual perpetrator shall be punished, and the company shall also be subject to a fine of not more than 500,000 yen.

(3) Required Transaction Practices / Desirable Transaction Examples

- The Transport Contracting Entity and the Transport Contractor shall consult in advance regarding responses to occurrences such as vessel's delay, cancellations, etc., and clearly specify the agreed terms in the contract documents.
- Systematize the order-taking and order-placing process to visualize and document freight rates and charges, contract terms, payment conditions, etc. in advance, establishing an environment where both parties can confirm these details at any time.

**7. Prohibition of Delayed Payment of Freight Rates and Charges**

(1) Examples of Specific Acts to be Problems

- Payments are significantly delayed due to the Transport Contracting Entity's circumstances, resulting in monthly outstanding receivables.

(2) Points to Consider Regarding Related Legislations

○ Points to Consider Regarding SMETA

In transactions subject to the SMETA, the payment due date shall be set within the shortest possible period not exceeding 60 days from the date the transport service is provided. Furthermore, if no payment due date is specified, the date on which transport is actually provided shall be deemed the payment due date. Failure to pay the full contract price by that due date constitutes a violation as “Delayed Payment of Manufacturing Consignment, etc.” under Article 5, Paragraph 1, Item 2 of the Act.

However, if an individual service is provided continuously and meets all of the following requirements ① to ③, it shall be treated as having been provided on the last day of the monthly closing period.

- ① Payment of the contract charges shall be made for services provided by the end of the closing period set on a monthly basis through prior agreement in consultation with the Small and Medium-Sized Entrusted Business Operator, and this shall be clearly stated in the statement under Article 4. (Example: The payment date column shall state “Monthly closing on the ○ th, payment on the ○th of the following month (or the month after next).” )
- ② The amount of the contract charges for the relevant period (or the calculation method) shall be clearly stated in the statement under Article 4.
- ③ The services provided consecutively by a Small and Medium-Sized Entrusted Business Operator

are of the same type.

In other words, in this case, payment of the contract charges is permitted within 60 days (two months) after the closing date.

In cases where the period during which individual services or services under the specific transportation consignment are provided consecutively is less than one month, such the service shall be deemed to have been provided on the last day of that period.

○ Points to Consider Regarding Antimonopoly Act (Abuse of Superior Bargaining Position)

A business operator in a superior bargaining position fails to pay contract charges to its counterpart on the contractually stipulated payment date without justified reason, but the counterpart has no choice but to accept this due to concerns about the impact on future transactions, this constitutes a violation of the Antimonopoly Act as an unfair transaction method defined in Article 2, Paragraph 9, Item 5(c) of the Act.

○ Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)

In transactions subject to the Special Designation for Distribution Systems, if a specific Shipper fails to pay the charges after the predetermined payment date has passed, without any reason attributable to the specific logistics provider, this constitutes a violation of the Antimonopoly Act defined in Article 1, Item 1 of the Notice.

(3) Required Transaction Practices / Desirable Transaction Examples

- Consultations regarding delayed payments, etc. shall be conducted between responsible personnel in positions of authority, not at the working staff level, to ensure sincere and prompt responses.

**8. Prohibition of Forced Purchase or Use**

(1) Examples of Specific Acts to be Problems

- When additional work requested by the Transport Contracting Entity requires equipment, the Entity forces the purchase from a manufacturer or supplier it designates, even when there is no justified reason such as the need to standardize or improve the content of the service.
- Where the Transport Contractor is in a superior transaction position to the Transport Contracting Entity, the Operator, without justified reason and despite the Entity's lack of desire, demands the implementation of excessive inspections or the bearing of their costs as a condition for undertaking the business.

(2) Points to Consider Regarding Related Legislations

○ Points to Consider Regarding SMETA

In transactions subject to the SMETA, if a Transport Contracting Entity, without justified reasons such as the need to standardize the content of the goods and services provided or to improve them, forces the

purchase of goods or the use of services, it designates, this constitutes a violation of the act as the “Forced Purchase/Use” defined in Article 5, Paragraph 1, Item 6 of the Act.

○ Points to Consider Regarding Antimonopoly Act (Abuse of Superior Bargaining Position)

When a business operator in a superior bargaining position requests a transaction counterparty to purchase goods or services unrelated to the transaction in hand, and the counterparty does not need or desire such goods or services, however, it has no choice but to accept the request due to concerns about the impact on future transactions, this constitutes a violation of the Antimonopoly Act, as unfair transaction method defined in Article 2, Paragraph 9, Item 5(a) of the Act. This applies equally even when a Transport Contractor does it toward a Transport Contracting Entity, if a business Entity in a superior bargaining position does it toward its transaction counterpart.

Note that “goods or services other than those related to the transaction in hand” includes not only goods or services supplied by the Entity itself, but also goods or services supplied by business operators designated by the Entity. Furthermore, “cases where it has no choice but to accept the request” include not only situations where the purchase is made a condition of the transaction or where disadvantages are imposed for not making the purchase, but also cases where it is recognized that the purchase is practically forced.

○ Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)

In transactions subject to the Special Designation for Distribution Systems, if a specific Shipper forces a Transport Contractor to purchase goods designated by the Shipper or use services without justified reason, this constitutes a violation of the Antimonopoly Act, as defined in Article 1, Item 4 of the Notice.

○ Points to Consider Regarding Port and Harbor Transportation Business Act

Under the Port and Harbor Transportation Business Act, refusing cargo handling without reasonable cause, thereby hindering the convenience of the business counterparty, or engaging in discriminatory treatment against specific business partners may result in the issuance of a business improvement order or a business suspension order.

(3) Required Transaction Practices / Desirable Transaction Examples

- When a Transport Contractor or Transport Contracting Entity requests the purchase of services or the bearing of costs, it is necessary to explain the reasonable necessity to the other party and make the request or demand only after obtaining their agreement.

## **9. Prohibition of Retaliatory Measures**

(1) Examples of Specific Acts to be Problems

- If a Transport Contractor reports a Transport Contracting Entity's violation of legislation to MLIT, the

Operator may suffer disadvantageous treatment such as a reduction in transaction volume as a result.

(2) Points to Consider Regarding Related Legislations

○ Points to Consider Regarding SMETA

A Entrusting Business Entity engages in unfair treatment against a Small and Medium-Sized Entrusted Business Operator solely because the Operator reported improper business practices between them to the Japan Fair Trade Commission, the Small and Medium Enterprise Agency, or the relevant ministry or agency constitutes a violation of the SMETA as “Retaliatory Measures” defined in Article 5, Paragraph 1, Item 7 of the Act.

○ Points to Consider Regarding Antimonopoly Act (Special Designation for Distribution Systems)

A specific Shipper's disadvantageous treatment against a specific logistics operator because the operator reported the Shipper's acts violating the Special Designation for Distribution Systems to the Japan Fair Trade Commission constitutes a violation of the Antimonopoly Act under Paragraph 2 of the Designation. Similarly, disadvantageous treatment against the operator because the operator refused to perform acts violating the Special Designation for Distribution Systems constitutes a violation of the Act under Item 8 of Paragraph 1 of the Designation.

(3) Required Transaction Practices / Desirable Transaction Examples

- If improper transactions occurred, it is preferable to consult with relevant agencies such as the Fair Trade Commission, the Small and Medium Enterprise Agency, and MLIT.

## **Chapter 4: Specific Initiatives toward Achieving Proper Transactions**

Port Transport Services are essential businesses that rely on the presence of Shipping Companies and Cargo Owners. Port transport operators provide indispensable services Shipping Companies and Cargo Owners by safely and efficiently handling loading and unloading operations with vessels, as well as managing cargo handling operations on the land side. Port transport operators, Shipping Companies, and Cargo Owners are obviously indispensable partners of each other. To achieve sustainable development of Japan's logistics, it is essential to strengthen mutual trust among them through the following initiatives, enhance added value, and deepen collaboration and cooperation.

### **1. Examples of Specific Initiatives in the Port Transport Industry**

- (1) Port Transport Operators shall fully understand the intent of these guidelines. When negotiating freight rates and charges with Transport Contracting Entities, the Operators shall, as a principle, reference general indicators and data from other industries to calculate appropriate costs. It is important that negotiations also ensure various premium charges are clearly specified in contract documents. Furthermore, beyond discussions on freight rates and charges, it is desirable to regularly share information with Transport Contracting Entities regarding challenges facing the Port Transport Industry, such as the recent labor shortage, and strive to deepen mutual understanding.
- (2) Port Transport Industry Associations and Port Transport Operators shall actively promote initiatives to communicate and enhance the appeal of port transport across the industry as a whole, in addition to individual operator efforts, to maintain the stable provision of necessary services while the labor shortage becomes a persistent issue, thereby striving to secure employment. Additionally, to improve working environment and enhance productivity, initiatives are required to adopt technological innovations such as automated and remote-controlled cargo handling machinery and personnel deployment utilizing AIS (Automatic Identification System) to eliminate excessive labor, as well as to establish collaborative frameworks.
- (3) The port transport industry has a structure characterized by low fluidity, with a tendency for business relationships between prime Contractors and sub-contractors to persist over long periods. While such relationships possess elements of mutual support, they also carry the risk of developing into dependent transactional relationships. The port transport industry association is required to ensure thorough dissemination and implementation of these guidelines among its member companies. It shall also promote a recognition that prime contractors and sub-contractors are mutually important partners, driving a review of commercial practices within the industry. Furthermore, it is required to promptly formulate a voluntary action plan (\*) aiming to promote proper transactions, including those with Shipping Companies and Cargo Owners, and to enhance productivity and added value.

(\*) In September 2016, the Ministry of Economy, Trade and Industry compiled “Toward Future-Oriented Business Practices,” aiming to promote “proper transactions” and “additional value enhancement” for both prime contractors and sub-contractors, and to improve transactions across the entire supply chain. Many industry associations have since formulated

voluntary action plans to advance proper transactions and improve productivity and additional value. Furthermore, on December 27, 2021, the “Measures Package for Facilitating Smooth Price Transfers to Create Value through Partnerships” was approved by the Cabinet. This package aims to establish an environment where the entire partnership in transaction operators' community can appropriately transfer increases in labor costs, raw material costs, and energy costs to the prices.

## **2. Remarks Desirable to Specify in Port Transport Contract Documents**

In port transport contract documents, it is desirable to clearly specify necessary matters in consultation with the Transport Contracting Entities, in addition to basic freight rates and charges, to prepare for situations such as work performed during unscheduled overtime hours, ancillary services, or cancellations or changes to transport. This helps prevent misunderstandings between the contracting parties, enabling the realization of proper transactions and the smooth execution of operations. The following are examples of key matters to include in contract documents.

### **【Examples of Key Matters】**

#### **1. Scope of Works**

The scope of works covered by the base rate is as follows:

##### **(1) Unloading**

Works from ○○ to ○○

##### **(2) Loading**

Works from ○○ to ○○

#### **2. Premium Rates**

##### **(1) Midnight/Late-Night Cargo Handling Premium**

For cargo handling between ○○:○○ and ○○:○○, a premium of ○○% is applied to the base rate.

##### **(2) Sundays and Holidays Cargo Handling Premium**

For cargo handling on Sundays and Holidays, a premium of ○○% is applied to the base rate.

##### **(3) Saturdays Cargo Handling Premium**

For cargo handling on Saturdays, a premium of ○○% is applied to the base rate.

##### **(4) Early Morning Cargo Handling Premium**

For cargo handling in early morning, a premium of ○○% is applied to the base rate.

##### **(5) ○○ Cargo Handling Premium**

For cargo handling at ○○, a premium of ○○% is applied to the base rate.

#### **3. ○○Premium Standby Rates**

| Classification by Number of Workers Assigned per Task Unit | ○ persons | ○ persons |
|------------------------------------------------------------|-----------|-----------|
| Daytime 00:00 to 00:00                                     |           |           |
| ○○ 00:00 to 00:00                                          |           |           |

(Unit price per task unit per hour)

These rates apply to standby time incurred after the scheduled cargo handling start time due to waiting for the vessel's arrival, waiting for the arrival of cargo to be loaded, or delays caused by

weather conditions or cargo handling equipment malfunctions. For daytime cargo handling premium, waiting time occurring between 00:00 and 00:00 will be charged; for nighttime cargo handling premium, waiting time occurring between 00:00 and 00:00 will be charged.

However, this applies only when the reason for the standby is not attributable to the Port Transport Operator.

#### 4. Minimum Rates

| Classification by Number of Workers Assigned per Task Unit | 0 persons | 0 persons |
|------------------------------------------------------------|-----------|-----------|
| Daytime 00:00 to 00:00                                     |           |           |
| 00 00:00 to 00:00                                          |           |           |

(Unit price per task unit)

These rates apply in the following cases. However, this applies only when the reason for the case is not attributable to the Port Transport Operator.

##### (1) Cancellation of Cargo Handling

- ① Cancellations made more than 0 hours after the final time for daytime cargo handling arrangements (by 00:00 of the previous day) will incur the minimum daytime handling rate.
- ② Cancellations made more than 0 hours after the final time for midnight cargo handling arrangements (by 00:00 of the previous day) will incur the minimum midnight handling rate.

##### (2) Partial Cargo Handling

Due to the suspension of work after the commencement of cargo handling, or due to small-volume operations or periods of standby, if the amount charged for each cargo handling classification of 00 cargo handling and 00 cargo handling falls below the respective minimum rate, the applicable minimum rate shall be applied.

##### (3) Addition Task Unit of Workers

For the additional task unit of workers, the applicable minimum rate will be applied.

However, notwithstanding the above (1), in cases where neither the Transport Contracting Entity nor the Transport Contractor has no attributable reasons, due to force majeure such as weather conditions, the costs associated with canceling or changing cargo handling arrangements shall be borne through consultation on a case-by-case basis.

#### 5. Others

Should any matters not specified in the contract documents arise, separate actual costs will be incurred upon consultation.

### **3. Examples of Specific Initiatives by Shipping Companies and Cargo Owners**

- (1) It is required to fully understand the purpose of these guidelines, recognize that improper transactions may violate relevant legislation, and fully understand the business environment, including rising labor costs and labor shortages in port transport. When a Port Transport Operator requests negotiations regarding freight rates and charges, it is desirable to respond sincerely and determine appropriate freight

rates and charges based on sufficient consultation. In particular, a Shipping Company that contracts transport services is required to strive to appropriately transfer costs related to port transport to Cargo Owners and others by visualizing such costs and incorporating them into the freight rates and charges for maritime transport.

- (2) When conducting consultations, it is important to provide the Transport Contractor with the information necessary for consideration and, if a response requires time, to indicate the expected response period, thereby striving to facilitate the smooth implementation of the consultation. Additionally, it is desirable to clearly specify in contract documents matters such as premium rates for handling cargo outside scheduled times, pricing structures addressing cargo volatility, and cost allocation arrangements for cancellations or changes due to force majeure events such as weather conditions.
- (3) It is also required to fully recognize the burden on the Transport Contractor for ancillary services beyond transport operations and to bear appropriate costs. For example, when temporarily storing containers within a container yard, measures such as bearing storage costs and setting appropriate storage periods are necessary to ensure the smooth operation of the entire container yard.
- (4) From the perspective of improving workers' labor environments of Transport Contractors, it is important to promptly notify workers when ship delays or changes in working hours occur, and to strive to reduce workers' standby time. Furthermore, in cases where work occurs during time periods when securing workers is difficult, it is desirable to consult appropriately with the Transport Contractor and implement flexible measures such as adjusting work hours.

**(Reference 1) “Price Negotiation and Transfer Support Tool” (Small and Medium Enterprise Agency)**

(content omitted)

**(Reference 2) Consultation Desk**

(content omitted)