

法規名稱：AGREED MINUTES ON IMPROVING THE OPERATING ENVIRONMENT FOR OCEAN CARRIERS (AD.1987.4.7)

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Representatives of the American institute in Taiwan and the Coordination Council for North American Affairs, with their respective consultants, held technical discussions on shipping issues in Arlington, Virginia, April 6-7, 1987. During these discussions the two sides recalled earlier discussions of shipping issues held in bilateral trade forums and the technical talks on shipping held in Taipei, november 3-4, 1986. They decided on a number of steps to improve the operating environment for ocean carriers.

These are set forth below.

(A) AIT stated that U.S. carriers should be able to operate as container terminal operators, sea cargo forwarders, and shipping agencies and be able to conduct shipping agency business activities.

CCNAA informed AIT that, henceforth, in accordance with Article 40 of the Shipping Act of 1981, U.S. carriers will be able, as branch offices, to apply for and receive licenses to operate as container terminal operators, shipping agencies, container freight station operators, and sea cargo forwarders in accordance with local laws and regulations. Container freight station operation is contingent on an inland container terminal license.

CCNAA stated further that application for these licenses should be made to the provincial harbor authorities. Sublicenses for operation of container freight stations should be applied for through the customs authorities. CCNAA said that it would strongly urge the provincial authorities to treat U.S. and domestic carriers' applications equally.

CCNAA stated that after it has strongly urged the provincial authorities, it would provide a copy of its instructions to AIT in Taipei. CCNAA stated that applications would be accepted for such activities in three months and that licenses for shipping agencies and sea cargo forwarders would be acted upon within two weeks, provided that all requirements for the application are complied with.

Applications for terminal operator licenses will be acted upon as promptly as possible, recognizing that such licenses must also receive the approval of provincial authorities.

(B) AIT stated that U.S. carriers should be able to remit immediately all earnings, whether operational or non-operational. CCNAA said that the Central Bank of China issued new regula-

tions on March 6, 1987, which it believes should resolve the difficulties and delays encountered by U.S. carriers in remitting operational earnings. As for remittance of interest earnings, capital receipts, and other non-operational earnings, CCNAA said that the Ministry of Economic affairs is reviewing the problem and compiling a list of businesses eligible for Foreign Investment Approvals (FIA), which convey repatriation privileges.

AIT said that its position is that all income should be immediately remittable and asked CCNAA's representative to support inclusion of ocean carriers in the list of business eligible for FIA.

- (C) AIT said that U.S. carriers should be allowed to own, operate, buy, sell, import, and export dockside container handling equipment.

CCNAA said that there is no legal prohibition of such activities nor is there any legal requirement to depend on harbor authorities for leasing or management of such equipment. U.S. carriers are restricted in such matters only by their current harbor space leasing contracts with harbor authorities. CCNAA said that carrier ownership of equipment would be subject to commercial negotiation between carriers and harbor authorities when current leases expire or are otherwise renegotiated in accordance with the contract provisions.

AIT said that it expects that renegotiation of harbor space leases will not result in unreasonable rents. CCNAA said that it would strongly urge harbor authorities to negotiate reasonable terms in line with current international practice, without regard to whether the tenant owns or leases container handling equipment. AIT agreed to supply CCNAA with model port leasing contracts and pricing standards of international ports comparable to Kaohsiung harbor.

- (D) The two sides discussed the need to conclude a new accord relating to dual taxation. In this connection, AIT pointed out that under the Tax Reform Act of 1986, the former exchange of notes on dual taxation expired on December 31, 1986.

ATT noted that for a new exchange to apply retroactively without interruption it would have to be concluded during calendar 1987. AIT stated that as the result of recent rulings by the Ministry of Finance, the value added tax (VAT) was being applied unfairly to U.S. carriers. This and other related tax issues should be resolved in the exchange of notes.

CCNAA took note of AIT's statements on the taxation issue and requested that the issues be more specifically defined, so that the fairness of the practices can be assessed and the issue can be addressed by the proper authorities.

CCNAA also raised concerns with respect to unitary taxation of its carriers by U.S. state governments. AIT said that th-

- ey would be addressed in the taxation discussions.
- (E) AIT said that U.S. carriers should be able to own and operate trucking services for land transport of containers as part of the intermodal movement of cargo.
- CCNAA said that national highway law prohibits foreign ownership of trucking services. Amendment of the law is difficult and requires persuasive justification to the legislature. CCNAA said that, if the law were amended, foreign truck operators would be subject to (1) expropriation and other measures in case of national emergency, (2) security inspection, (3) taxation, (4) tariff regulation, and (5) other actions applicable to domestic businesses. CCNAA said further in this regard that foreign intermodal truck operators would not be subject to "need" test or public convenience and necessity determination in any less favorable manner than that accorded domestic businesses.
- AIT asked CCNAA to seek an amendment to the law permitting foreign oceancarriers to operate trucking services in support of intermodal freight movement.
- CCNAA responded that it would consider AIT's suggestion after CCNAA received from AIT a written confirmation that the U.S. carriers would be willing to subject themselves to the above--mentioned regulations.
- AIT said that the authority represented by CCNAA should allow truck transport of double container loads on its roads. CCNAA said that movement of double container loads had been ended after a six--month trial period in 1982, for safety reasons and because of the deterioration of its single super-highway. It said that use of double container loads would be considered again after the highway is renewed.
- AIT said that it was unpersuaded by CCNAA's accident data that double container loads are any more dangerous than other heavy trucks now operating in Taiwan. On CCNAA's request, AIT offered to provide truck design and safety information related to operation of double container loads. AIT also asked CCNAA to consider allowing transport of double container loads during restricted hours or on restricted routes.
- (F) AIT said that U.S. carriers should receive equal priority for berthing and equal access to container storage facilities.
- CCNAA said that national carriers do not have overriding priority for berthing. It said that berthing priorities are based on the annual number of port calls and on access to container storage yards leased by the carriers. It also said that at least one U.S. carrier had shown no interest when a survey was conducted on the need for additional container storage space at Keelung. AIT also expressed concern over the Kaoshiung Harbor Bureau's failure to negotiate fairly on berthing of U.S. carrier--operated

feeder vessels whose economical operation are important to U. S. carriers.

CCNAA responded that such contract negotiations are a matter between the harbor bureau and the affected carriers. AIT also raised the Kaoshiung Harbor Bureau's restrictions on the number of joint users at rented piers, as well as the KHB's restrictions against U. S. carrier--operated barges.

CCNAA requested evidence that barges are treated as container ships in other ports around the world and stated that upon receipt of such evidence, CCNAA would urge KHB through the provincial government to change its policy in this regard.

AIT expressed appreciation for the concrete steps announced by CCNAA.

AIT pledged its readiness to work closely with CCNAA and U.S. carriers to ensure that the new procedures outlined above are understood and are fully and fairly implemented. AIT said in conclusion that it expects to see progress on the outstanding issues, especially those related to trucking, and that it will closely monitor conditions during the next six months.

CCNAA raised a number of issues of concern to it and to its ocean carriers. They are as follows :

- (A) CCNAA expressed concern over legislative bills that have been introduced in the U.S. Congress, including H.R. 300 and H.R. 1290, which it views as protectionist proposals. For example, in the view of CCNAA, the following are objectionable and a violation of the basic spirit of fairness and due process : the automatic trigger of a U.S. agency investigation on the basis of market share in a single class of goods, the shifting of the burden of proof onto carriers on the basis of statistics, and the chilling effect that automatic investigation will have on shipping entrepreneurs.

AIT responded that the Administration opposes both these bills and the Maritime Administrator so testified before the House Merchant Marine Subcommittee on March 12. AIT explained its view that these bills would create an unwarranted intervention by government in the free shipping market.

- (B) CCNAA also raised a number of unfair practices that its shipping industry experiences in the United States, as follows :

- (1) The shipping companies on the CCNAA side conducting business in the United States have complained about their revenue loss on the service contract provisions and the mandatory right of independent action under the Shipping Act of 1984. They consider that service contracts under the Shipping Act, being a one-sided mechanism, only serve to guarantee a shipper "the lowest rate." They offer little protection to the carrier. The carriers suggested that the essential terms of a service contract be kept

confidential or the legal requirements of filing of service contracts with the FMC be abolished.

As to independent action, CCNAA indicated that carriers have suggested that the Shipping Act of 1984 be amended so that it will take a minimum of 30 days to be effective instead of 10 days as it is currently provided in the Act, if the mandatory independent action cannot be entirely eliminated. CCNAA recommended that favorable considerations be given to the carriers' suggestion.

In response, AIT noted that the FMC is to conduct a five-year review of the Shipping Act of 1984. CCNAA and its carriers would be able to contribute comments in the course of this review.

AIT added that service contracts are not mandatory but are freely negotiated between shipper and carrier. AIT also informed CCNAA that the Box Club has petitioned the FMC for a rulemaking to impose limits on terms of service contracts. That issue is currently under study by the FMC. AIT agreed to keep CCNAA informed on the study's progress.

- (2) CCNAA stated its view that operating-differential subsidy (ODS) is a major, and one of the foremost, U.S. restriction on free competition. CCNAA noted that while the United States has established the ODS system in 1937 to subsidize the U.S. shipping industry competing with foreign companies, authorities represented by CCNAA have never provided any operating subsidy to their shipping industry operating in the United States. ODS is a perfect example of U.S. protectionism so as to justify foreign governments' protective measures adopted for their own shipping industry.

AIT noted that ODS is provided for under Title VI of the Merchant Marine Act of 1936. The specific concept underlying the payment of ODS is that there is a differential between certain U.S. and foreign operating costs (i.e., wages, insurance, and maintenance and repair) and that, if these differentials are compensated by subsidy, the operation of U.S.

--flag vessels will be on a parity with those of foreign competitors. ODS, AIT explained, is intended to support a merchant marine capacity to meet national defense needs. Moreover, AIT pointed out that it had found instances where the authority represented by CCNAA provides subsidies to its maritime industry.

AIT added that, unlike the restrictions imposed by the authority represented by CCNAA on U.S. carriers, ODS does not restrict its carriers' ability to do business in the United States.

(3) CCNAA stated that shipping is an international industry. Movement of staff internationally is a common practice. The practice of the U.S. Immigration and Naturalization Service of Strict scrutiny and time--consuming procedures, in CCNAA's view, constitutes barriers to foreign shipping companies conduct of operations in the United States. In addition CCNAA views INS's policy as disguised protectionism of the U.S. labor market.

AIT responded that INS is responsible for enforcing U.S. immigration law. This enforcement is not discriminatory; it applies to all foreign nationals. AIT offered guidance to CCNAA on ways of reducing the visa difficulties of the carriers' employees.

(4) CCNAA expressed concern over recent investigations of its national carriers undertaken by the FMC. In the view of these carriers, said CCNAA, these investigations intrude into their operations in the United States. CCNAA expressed the concern that its carriers are being treated as scapegoats. CCNAA noted that under the 1981 Shipping Act, the authorities represented by CCNAA could launch similar investigations of U.S. carriers, but have never used such investigations as a means of retaliation. CCNAA asked the AIT to urge the FMC not to apply such investigations as a means of retaliation against foreign governments, so as to avoid unnecessary counteraction. AIT replied that the current investigations are not retaliatory in nature but are examinations of alleged prohibited practices by carriers on the CCNAA side.

If evidence of such malpractices is not found, no action will be taken. AIT said it will insure an appropriate transmittal of CCNAA's concerns on this subject.

(C) CCNAA also raised its serious concern over the impact of the closing of U.S. Lines. CCNAA requested assistance in dealing with the concerns of U.S.

Lines' creditors and former employees. AIT responded that it is concerned and that it will assist CCNAA in answering all its questions. AIT noted that it cannot act in U.S. Lines' behalf but will provide to CCNAA all available information and seek answers to questions posed by CCNAA on the subject.

[Signed]

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