

Agreed Minutes

Maritime delegations of the governments of the United States of America and the People's Republic of China held discussions on shipping issues and related problems in Beijing June 25-28 and in Washington, D.C., December 3-11, 1997. Vice Minister of Communications Hong Shanxiang chaired the Chinese delegation at the June meeting, with Hu Hanxiang, Director General of the Department of Water Transport Administration, Ministry of Communications as his deputy. In December Director General Hu Hanxiang chaired the Chinese delegation. At both the June and December sessions the Chinese delegation included representatives of the Ministry of Communications, the Ministry of Foreign Affairs and the Ministry of Foreign Trade and Economic Cooperation. John E. Graykowski, Acting Maritime Administrator, Department of Transportation chaired the U.S. delegation at the June and December meetings. At both sessions the U.S. delegation included representatives of the Department of Transportation, the Department of State and the Department of Commerce. The discussions were conducted in a frank and friendly atmosphere.

During the December discussions, Secretary of Transportation Slater received the members of the delegations. Secretary Slater emphasized that the strengthening of friendly cooperation in the field of maritime transport between China and the United States plays a significant role in improving trade and economic cooperation between China and the United States.

Both sides reaffirmed the basic principles of their bilateral Maritime Agreement: recognition of



the importance of maritime relations, fostering efficient, competitive shipping services to support trade and the growth of economic ties; and the recognition of the importance of equal rights, benefits, and opportunities for both sides. They also underscored the importance of timely communication between them on matters of interest and concern. The following summarizes the June and December discussions.

1. Chinese Port Access

The U.S. delegation noted that U.S. carriers are experiencing substantial delays in gaining access to 24-hour notice ports in China that are listed in the annex of the 1988 bilateral Maritime Agreement. The U.S. side pointed out that the Maritime Agreement provides U.S. vessels with access to Chinese ports on a 24-hour notice basis. The U.S. side stated that Chinese vessels do not experience administrative delays in gaining access to U.S. ports on a 24-hour notice basis and that the actions of the Chinese authorities in this regard are in sharp contrast to U.S. action last year to fully open all U.S. ports to Chinese vessels.

The Chinese delegation explained that while U.S. vessels were permitted to gain access to Chinese ports on a 24-hour notice in accordance with the annex of the China-U.S. bilateral Maritime Agreement signed in 1988, foreign vessels are subject to relevant regulations governing the entry of foreign vessels into Chinese ports. China issued Regulations on the Management of International Liner Service in 1990, which set forth the following provisions:



- all liner shipping companies, including Chinese shipping companies, must conclude an agreement with port authorities in each port and apply to the Ministry of Communications prior to their vessels calling at Chinese ports;
- the Ministry of Communications will inform an applying carrier of approval or disapproval of each application within 90 days of receipt; and
- the approved liner vessel is not required to submit any further applications to call at the port, and is entitled to gain access to the Chinese port on a 24-hour notice.

With respect to pending and future applications of U.S. carriers covering their liner services, the Chinese side agreed to act upon these applications within the shortest possible time. The U.S. side reiterated that U.S. carriers should have access to Chinese ports on a 24-hour notice basis.

The Chinese side explained that the purpose of the Regulations on the Management of International Liner Service is to ensure that liner vessels obtain timely and effective service from ports.

The Chinese side emphasized that the Chinese position has never changed with respect to stipulations regarding the access to Chinese ports by U.S. vessels (including the approved liner vessels) on a 24-hour notice.



2. Shanghai Shipping Exchange

The U.S. delegation expressed its concern that initially U.S. shipping companies were subjected to pressure: (1) to join the Shanghai Shipping Exchange; (2) to provide the Exchange with information the confidentiality of which is essential to their operations; and (3) to charge rates at levels established by the Exchange. The U.S. delegation further stated that understanding of the Exchange was clouded by the fact that it is a non-governmental body carrying out governmental functions. The U.S. side expressed concerns that the purpose of audits of carrier compliance with filed rates was unclear and that the legal standards under which penalties may be assessed are also unclear. Also, the U.S. side said, the Exchange earlier had stated that membership would determine foreign carrier doing-business rights, further blurring the distinction of the functions between the Exchange and the government. The Exchange's functions appear to create a conflict of laws with other countries. In addition, the U.S. delegation requested information on a plan announced at a recent meeting to establish a freight rate index for all of China's export trade routes including those with the United States.

The Chinese side expressed its understanding of the U.S. concerns about Shanghai Shipping Exchange, and also noted that there existed serious misunderstanding over Shanghai Shipping Exchange by the U.S. side. In response to the questions and concerns raised by the U.S. delegation, the Chinese delegation explained the purpose and significance of the establishment of the Exchange and the three functions thereof and clarified the misunderstanding of the U.S. side. In addition, the Chinese side clarified the following:



1. Membership in the Exchange is voluntary and non-members will not suffer discrimination.
2. The Exchange is not an enterprise; rather, it is an institutional legal person at rank A, and is authorized to carry out some governmental functions, including acceptance of rate filings and carrying out of audits on filed rates under the provisions of the Implementing Method of Rate Filing System on International Container Liner Service approved by the Ministry of Communications.
3. The Implementing Method of Rate Filing System on International Container Liner Service is a regulation promulgated by the Chinese government, in accordance with which carriers who are not members of the Exchange shall also file their rates with the Exchange and be subject to audits of their compliance with filed rates. The Exchange is obligated in accordance with law to maintain confidentiality of commercially sensitive information.
4. In accordance with present stipulations, the minimum or maximum rates established by the Exchange are only adopted by members when transaction is conducted within the Exchange in the manner of price tendering. Up to now, the price tendering transaction has not yet been introduced; therefore, minimum or maximum rates do not exist. The minimum freight rates for trade routes from



Shanghai to Europe and Japan were agreed upon spontaneously and voluntarily among carriers engaged in these routes, which is a purely commercial activity. The Exchange is only responsible, at the request of carriers, for the coordination of this. The minimum rates are not in any way binding on non-members.

5. Neither the Chinese Government nor the Exchange will use information gathered from rate filings and audits to allocate cargo. The activities of the Exchange will be under the strict supervision of the government.
6. With respect to the planned container freight rate index, this will simply be an average computed from information provided by selected carriers. When it is compiled, it will not be used to allocate cargo, determine rates or otherwise interfere with the negotiation of rates between shippers and carriers. Furthermore, no carriers will be forced to submit information for calculation of the index.
7. The Chinese side stated that the laws and regulations of the Shanghai Shipping Exchange do not create a conflict with the laws of other countries.

Expressing appreciation for this explanation, the U.S. delegation underscored the importance that U.S. shipping law attaches to the principles of free competition among carriers and rate negotiation between shippers and carriers. The U.S. delegation urged that China take no action that would affect these principles.



The Chinese side requested that U.S. carriers obey all Chinese laws and regulations which have been publicized.

3. Chinese Multimodal Regulation

The U.S. delegation stated that a basic commercial principle applied in the international liner trade to maximize efficiency is the use of multimodal contracts of carriage for door-to-door transportation. In June, the U.S. delegation requested information with respect to the status of the Chinese multimodal regulation that would have prohibited foreign carriers from performing through transport in China.

The Chinese side stated that the U.S. side has a misunderstanding on the multimodal regulation, which stipulates that no one can be engaged in multimodal transport in China without approval; but it does not prohibit the activity. The Chinese side further stressed that prior to the enforcement of the Regulation a supplemental circular was issued, which has resolved the specific administrative problems for foreign companies to engage in China's multimodal transport. The Chinese side further stated that foreign companies who have already been issuing multimodal transport documents in China shall complete the permission procedures by July 1, 1998. During that period operations may be continued, and no engagement in multimodal transport will be possible without permission thereafter.



The U.S. delegation responded that it is encouraged that U.S. and other foreign carriers will still be able to issue through multimodal transport documents. The U.S. side expressed concern that Chinese government regulation of this basic business practice could add to the cost of intermodal transportation and reduce its efficiency and also about the requirement for Chinese government approval of multimodal operations and the form of transport documents.

The Chinese side expressed that the multimodal regulation will not add to the cost of operation or reduce efficiency; instead, since this action has regulated the market, it will be beneficial to the carriers and therefore the U.S. side should not be concerned.

The U.S. delegation then asked how the new Chinese system will apply to foreign shipping companies known as non-vessel operating common carriers (NVOCCs). The Chinese delegation responded that the Chinese government is currently considering whether to formulate regulations dealing with NVOCCs.

4. Shipping Between Hong Kong, China and the Mainland

The U.S. delegation requested confirmation that U.S. carriers that were serving the trade between Hong Kong, China and China's mainland ports before July 1, 1997, are permitted to continue to do so.

The Chinese side explained that since reversion, China is implementing a policy of

"one country-two systems" with respect to Hong Kong. The Chinese delegation stated that the trade between Hong Kong, China and the mainland is domestic service under special administration. In this connection, the Chinese side explained that according to a regulation issued on June 26, 1997, foreign carriers may not operate on Hong Kong, China-mainland routes without permission of the central government. According to the regulation issued by the Ministry of Communications on June 26, 1997, carriers already operating on these routes before July 1, 1997, should apply before December 31, 1997, to the competent authorities for permission to be able to continue to do so. Pending a decision by the authorities on these applications, they may continue to operate in the Hong Kong, China-mainland trade. The Chinese side further explained that most applications of existing carriers will be approved. The Chinese delegation explained that a new regulation will take effect on January 1, 1998. The Chinese side will inform the U.S. side in time upon the promulgation of this new regulation. The Chinese delegation advised that U.S. carriers operating such service should file their application before December 31, 1997. U.S. carriers will not have to reapply next year after the approval of this application. The Chinese side also clarified that changes in port rotations would not require any additional approvals.

5. Shipping Across the Taiwan Strait

The U.S. side stated that the establishment of commercial shipping links across the Taiwan Strait is an important positive development. The U.S. side welcomed the expansion of the shipping and trading opportunities that this represents. The U.S. side expressed its deep concern,



however, that only third-flag vessels owned or operated by mainland or Taiwan interests or joint ventures between the two are allowed to participate. The U.S. side stated it does not understand why these routes have been opened to some third-flag vessels while others have been excluded. The U.S. side also stated that such a policy is discriminatory and will lead to costly inefficiencies on these routes.

The Chinese side pointed out that three principles must be followed in sailing across the Strait, i.e., "one China, dual direction sailing and mutual benefit." The Chinese further stated that sailing across Taiwan Strait is an internal domestic affair of China in which no other country may interfere and that there exists no discrimination against any country. The "Managing Method on the Shipping across Taiwan Strait" issued by the Ministry of Communications stipulates that no foreign shipping companies can engage in dual-direction or transshipped cargo transport or passenger transport across the Strait without permission by the Ministry of Communications. The Chinese side also explained that vessels presently employed in the trade under flags of convenience are either owned by mainland China or Taiwan interests or jointly owned. The Chinese side stressed that this is different from the concept perceived by the U.S. side of shipping across the Strait under third flags.

6. U.S. Carriers' Branch Offices in China

The U.S. delegation noted that Chinese authorities have denied requests by U.S. carriers to open additional branch offices. The U.S. side stated that such actions by China are inconsistent with

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an expanding maritime and trade relationship and with the unrestricted treatment enjoyed by COSCO and SINOTRANS in the United States. Therefore, the U.S. side offered to develop an alternative approach to this problem and the Chinese side said that it would consider this approach when it has received further information from the U.S. side.

The Chinese side stressed that China is a developing country, its market is limited and legislation is not perfect, therefore, its market can only be opened step by step. The extent of openness in China and the United States is different, therefore, it is not realistic to require that what is open in the United States should be also opened in China or vice versa. U.S. carriers have set up a number of companies in China. Their wholly owned subsidiaries, branch offices and wholly owned container transport service companies and branch offices constitute 48% of the total number of foreign companies of this kind in China, which exceeds any other foreign country.

7. Vessel Agency in China

The U.S. delegation asserted that China still requires U.S. carriers to deal with PENA VICO, a subsidiary of COSCO, or China Marine Service, a subsidiary of SINOTRANS, for performance of vessel agency work. The U.S. delegation noted that U.S. carriers are internationally known shipping companies that directly service their own vessels in other ports of the world and continued protection of the Chinese providers in this field is costly and inefficient. The U.S. delegation noted further that there are no limitations on Chinese companies doing vessel agency work in the United States. The U.S. side emphasized that the standard that should be met is one



of reciprocity.

The Chinese side said that the shipping agency subsidiaries of COSCO and SINOTRANS are entirely independent from their parent companies. Foreign shipping companies may select freely any shipping agencies for services, provided that these agencies are entitled to perform their services for foreign vessels. The Chinese side noted that the extent of openness in China and the United States is different and that in accordance with Chinese legislation vessel agency business in China is not presently open to foreign investment. The Chinese side stressed that in this area China and the United States should render most-favored-nation treatment to each other.

8. Foreign Investment in China

The U.S. delegation noted that foreign investment in shipping operations and facilities in China represents a substantial positive contribution to the Chinese economy and that encouragement of such investment by China sends a strong positive signal to potential foreign investors and to China's trading partners. The U.S. delegation asked the Chinese delegation for information on the status of Sea-Land's terminal operating joint venture with the port of Tianjin, and requested approvals be granted by December 15, 1997.

The Chinese side stated that three principles shall be observed in terms of foreign capital participating in China's port operation activities: conducive to the introduction of advanced technology, conducive to the introduction of capital, conducive to the introduction of modernized

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management. Under these three principles, China encourages foreign capital to participate in construction of port infrastructure facilities in China. With respect to the Sea-Land joint-venture project with Port of Tianjin, the Ministry of Communications has the matter under review in accordance with the above-mentioned principles and will act on the application within the shortest possible time.

9. Controlled Carrier Act

The Chinese delegation stated that the issue of the Controlled Carrier Act included in the Memorandum of 1996 remains unsolved. Despite the fact that the Chinese Government has repeatedly stated that the Government does not control Chinese shipping companies and these companies do their business on their own and assume sole responsibility for their profits or losses on the basis of market economic rules and neither subsidy nor preference is gained from the Government, COSCO and SINOTRANS are still regarded in the United States as controlled carriers and subject to the Controlled Carrier Act and substantial discriminations. It is both unreasonable and unfair to the Chinese carriers and severely affects their normal business. The Chinese side cannot accept that this problem still remains unsolved. The Chinese side noted in particular that COSCO's rate filing for Taiwan trade is treated as that of a third country, seriously contravening the U.S. commitment to an only one-China policy. The Chinese side stated that this is by no means acceptable and constitutes a serious political issue. The Chinese side requested that the U.S. side remove the discrimination imposed on Chinese carriers under the Controlled Carrier Act at the earliest possible date. The Chinese side reiterated that Taiwan is an inalienable part of China, therefore, the rate filing for Taiwan trade by COSCO should be treated



as that of U.S.-Hong Kong, China trade. The Chinese side requested that the U.S. side take effective measures to eliminate the discrimination encountered by Chinese carriers in their operations in the United States.

The U.S. side responded that the U.S. Government welcomes the vigorous competition of COSCO and SINOTRANS in the U.S. trades. The U.S. side noted that the Controlled Carrier Act was passed into law in the late 1970's and remains in effect to protect all carriers in the U.S. trades from predatory pricing by state-owned or -controlled carriers. The U.S. side confirmed, as the Chinese side had noted, that the Department of Transportation and the Maritime Administration do not implement the Controlled Carrier Act. The U.S. side stated that there were at least two ways for the Chinese carriers to remove themselves from coverage under the Act: (1) join shipping conferences in the U.S. non-bilateral trades or (2) provide evidence to the Federal Maritime Commission that they are neither owned nor controlled by the Chinese Government.

The U.S. side stated that it understood that COSCO had requested that the Taiwan-U.S. trade be considered an exempt bilateral trade under the Controlled Carrier Act. The U.S. side expects that the Federal Maritime Commission would reply to COSCO directly on this issue.

The U.S. delegation reminded the Chinese side that the Federal Maritime Commission is an independent regulatory agency, not subject to influence by U.S. Government executive branch. The U.S. side assumes that any application by COSCO or SINOTRANS for special consideration



under the Controlled Carrier Act would be carefully and expeditiously reviewed by the Commission. The U.S. delegation reminded the Chinese side that in the Memorandum of U.S.-Sino Maritime Discussions signed on June 14, 1996, the U.S. side agreed that it and the U.S. Carriers would actively support a Chinese carrier's application to the Federal Maritime Commission for blanket special permission to file rates on one day's notice to match the rates of competing carriers and would use their best efforts to obtain such permission. The U.S. side renewed its commitment in this regard.

10. Chinese Carriers' Business Activities in the United States

The Chinese side stated that COSCO intended to lease the container terminal in the Port of Long Beach and concluded the lease contract with the Long Beach Municipal Government in accordance with the legal procedures of the United States. This action will create ground for COSCO to further develop its business in the United States, reduce the adverse Sino-U.S. trade balance and increase employment opportunities for Americans. It is beneficial for both sides and is a normal and legitimate business activity.

The Chinese side stated that, after entering into the contract, COSCO invested 1.5 million U.S. dollars in the Port of Long Beach and ordered equipments valuing in tens of millions of U.S. dollars. Cancellation of the COSCO contract has caused huge losses for both the business and image of COSCO and has harmed the cooperative maritime relations between China and the United States. The Chinese side said that if this problem cannot be solved quickly, COSCO will

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suffer more losses to its business and reputation.

The U.S. side explained to the Chinese side that the issue of the use by Long Beach of the former U.S. Naval property has been challenged by private environmental and historic preservation groups in California State courts. The U.S. side explained further that those challenges were not directed at COSCO, and would have occurred regardless of the identity of the tenant of the proposed terminal. The U.S. side noted that it was not possible for it to intervene in the California state court proceedings, but that it would make the views of the Chinese side known to other appropriate parties and would encourage the earliest possible resolution of this problem.

Having recognized the importance the Sino-U.S. Maritime Agreement has played in maintaining the bilateral maritime relationships, and noting that this Agreement will expire on June 15, 1998, both sides agreed to hold negotiations on the Sino-U.S. Maritime Agreement early next year, the specific date, place and agenda of which shall be consulted and settled through diplomatic channels.

Signed in Washington, D.C. on the eleventh of December, in the year 1997, in English. A Chinese text will be prepared, conformed and signed at a later date, upon which both texts will become effective and will be equally authoritative.



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