



February 17, 2010

*Via- Email*

Chairman Richard A. Lidinsky, Jr.  
U.S. Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, DC 20573

**Re: Shanghai Shipping Exchange**

Dear Mr. Chairman:

The National Industrial Transportation League ("League") is writing to request your assistance in obtaining additional information and clarification regarding the ocean carrier rate filing requirements implemented recently in China and administered at least in part by the Shanghai Shipping Exchange ("SSE"). Founded in 1907, the League is the nation's oldest and largest trade association representing the interests of shippers in matters involving the freight transportation industry. Many League members import goods from China and, thus, may be impacted by the new SSE rate filing rules.

The League has obtained an unofficial and awkward translation of the Chinese rules as set forth in two documents entitled, "Implementing Rules on Filing Freight Rates by International Container Liner Service" and the "Operational Guideline on International Container Liner Freight Filing" (hereafter "SSE Rules"). The League has also received some information about the rate filing rules from one of the ocean liner carriers that is subject to the requirements. Based on the information that the League has been able to obtain to date, we have a number of questions and concerns regarding the workings and impact of the SSE Rules, as set forth below.

**Summary of the SSE Rules**

The following summary of the SSE Rules is based on the above-mentioned documents and information. Under the SSE Rules, which became effective on or about August 1, 2009, international liner carriers must file tariff rates and negotiated rates with the SSE that apply to container cargo exported from China. Service shall be provided by carriers "at a normal and reasonable prices" and may not be performed at a "zero freight rate" or "minus freight rate." (Implementing Rules, p. 1).

Tariff rates will be published as a range containing a maximum and minimum freight quote. Negotiated rates shall be filed if they are at a level that falls outside of the tariff ranges and shall include the code of agreement, consignor, route, port of loading, port of destination, duration, the quantity of containers, freight rate, etc. (Operational Guideline Art. 3). The carrier may file the actual agreement with the SSE or the agreement shall be retained for inspection for a period of three years. (Operational Guideline Art. 6). Information obtained from the ocean carrier indicates that carriers must file rate agreements where rates fall below the tariff minimum rate.

Except for the first rate filings made by carriers which will take effect on the day that the SSE accepts the filing, tariff rates will take effect 30 days after the SSE accepts the tariff filing, and negotiated rates will take effect within 24 hours of acceptance of the filing. (Operational Guideline Art. 9). Tariff rates will be published on the SSE's website. (Operational Guideline Art. 12). However, the guidelines state that "the name of consignor and the freight rate of negotiated rate, which are commercial confidentiality of the international container liner operators, shall not be publicized." (Operational Guideline Art. 12). Carriers shall specify the freight rate and other surcharges on the freight manifest and those operators using a negotiated rate shall specify the freight agreement number on the freight manifest. (Operational Guideline Art. 10).

The SSE Rules will be enforced on a regional basis by provincial departments and port and shipping authorities, who shall report violations to the Ministry of Transportation (MOT). (Implementing Rules, p.2). Carriers that fail to file rates or implement the filed rate will be fined not less than 20,000 Yuan and not more than 100,000 Yuan. (Implementing Rules, p. 2). In addition, the MOT may investigate any carrier that files rates that are not within "the normal and reasonable range" or "seriously deviates from the average freight rate level of the same line and of the same scale of liner operators, which may cause damage to fair competition." (Id. at pp. 2-3). If an investigation concludes that damage to fair competition has occurred, then "restrictive and prohibited measures may be imposed upon the carrier, including suspending the carrier's tariff and rate filings." (Implementing Rules, p. 3).

### **Questions and Concerns Regarding the SSE Rules**

Based on the above, the League has several questions regarding implementation and enforcement of the SSE Rules. We would like to obtain assistance from the Commission, to the extent possible, to achieve greater clarity regarding the workings and impact of the SSE Rules in the following areas:

1. It is unclear from the information we have reviewed whether the SSE or the MOT is the responsible party for administration of these new rules, adjudication of any disputes, enforcement, etc. Clarification of the respective roles and responsibilities of the entities named in the rules is essential.
2. The new rules fail to include a specific standard for determining "normal and reasonable prices" and there would appear to be a risk that as carrier prices rise over time, rate filings below the rising average may be targeted as being "unfair competition." Greater clarity is needed as to how the MOT will evaluate rate filings in determining whether a rate qualifies as "normal and reasonable" and/or "seriously deviates from the average freight rate level . . . ."
3. Although it appears that the SSE will not publish the "negotiated rates" (as opposed to tariff rates which will be published), the League is interested in obtaining confirmation of that understanding, since it is not entirely clear whether the requirement for carriers to publish rates and surcharges on the freight manifest also applies to negotiated rates.
4. It is not clear from the information obtained whether competing carriers can obtain access to negotiated rates included in confidential service contracts and/or customer names filed with the SSE, via electronic or other queries made to the SSE. If Chinese authorities assert that such sensitive information is to be protected from disclosure to other carriers and shippers then we would like to know how they intend to provide such protection.

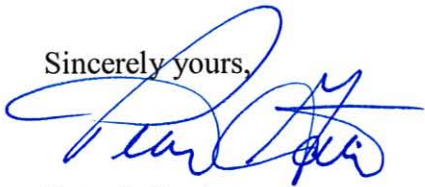
5. It would be helpful to understand the enforcement intentions of the SSE and whether the mere existence of the new rules and/or any actions taken by the Chinese Government to enforce the rules are having an impact on the rates applied to China's export shipping market.

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In submitting this letter, the League is not requesting the FMC to take any formal action at this time under the Shipping Act of 1984, as amended with regard to the SSE Rules. Rather, we request that the agency use its foreign expertise and other resources to obtain more accurate information and greater detail of the SSE rate filing requirements and their impact on the U.S. Trans-Pacific trade, and that the agency share that information with the shipping public. The League would greatly appreciate any assistance that you can provide.

Should you have any questions regarding this letter, please contact the undersigned.

Sincerely yours,



Peter J. Gatti  
Executive Vice President  
The National Industrial Transportation League

cc: Commissioner Joseph E. Brennan  
Commissioner Rebecca F. Dye  
Commissioner Michael A. Khouri