

## Memorandum of Consultations

Delegations of the Governments of the United States of America and the People's Republic of China continued discussions of their bilateral maritime transport relations in San Francisco on July 29-31, 2003. (Delegation lists appear as Attachment A.) The discussion focused on a new bilateral Agreement, and proceeded in a highly positive and productive atmosphere. The two delegations reached *ad referendum* agreement on the text of a new far-reaching and comprehensive Agreement, which reflects a market-oriented approach and the significance of the bilateral trade between the two countries. The initialed text appears as Attachment B.

The delegations noted that the Agreement would accomplish key goals for both sides. In particular, Chinese carriers, under Part III of the Annex to the Agreement, would be able to change their rates for any U.S. trades (bilateral and cross-trades), regardless of rates charged by competitors, with decreases effective upon publication. U.S. companies would enjoy broad new rights in doing business in China, as provided for both Parties under Parts I and II of the Annex.

The delegations noted that the Agreement would enter into force by an exchange of diplomatic notes, following completion of necessary preliminary actions by both governments. As part of this process, the delegation of the United States noted the intention of the Maritime Administrator to advise the Federal Maritime Commission (FMC) of the significant improvements in the bilateral relationship that the new Agreement formalizes and the consideration therein that China will have extended to U.S. carriers. In addition, the U.S. delegation noted the Maritime Administrator's intention to share this communication with U.S. shippers and carriers, to encourage a similarly positive reaction to the FMC. Both delegations noted their expectation that the Agreement would enter into force only after (1) the U.S. Government has granted relief from certain provisions of the Controlled Carrier Act to Chinese carriers that have pending requests for relief with the FMC, and (2) the Chinese Government has taken all necessary steps to harmonize its relevant measures with the terms of the Agreement.

The delegations also discussed several matters related to implementation of the Agreement. The Chinese delegation noted its government's intention to provide expeditious changes to licenses granted to U.S. companies to permit their exercise of the rights under the Agreement. The Chinese delegation expressed its concerns regarding the effect of new U.S. regulatory measures with regard to visas for seafarers. The U.S. delegation noted its concerns for the inability of U.S. container transport service companies to perform customs clearance and inspections in China. Both delegations noted each other's concerns and undertook to communicate them to appropriate officials.

With regard to Non-Vessel Operating Common Carriers (NVOCCs), the Chinese delegation was assured that Chinese shipper interests would enjoy the same protection as U.S. shipper interests. The Chinese delegation therefore noted its Government's intentions not to require U.S. NVOCCs to make a cash deposit in a Chinese bank, as a prerequisite to apply to the Chinese Ministry of Communications (MOC) to engage in non-vessel operating services between U.S. and Chinese ports, provided that the NVOCC:

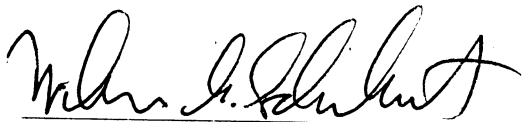
1. Is a legal person registered by U.S. authorities;
2. Obtains an FMC license evidencing NVOCC eligibility; and
3. Provides evidence of financial responsibility in the total amount of 800,000 RMB or \$96,000 U.S. (certificate of bond as proof of credit.)

Applicants that meet the above conditions must provide authentic and valid documentation. After approval from the MOC, they will be eligible to engage in non-vessel operating services between U.S. and Chinese ports. The U.S. side explained that there are no limitations or requirements for the nationality or geographic location of persons who may submit a claim against a bond. The bond required by the FMC covers liabilities for transportation-related activities in the U.S./China trade (as well as other U.S./foreign trades).


The U. S. side explained that with respect to regulations regarding documents required for entry and stay of crews in the United States, and based on national security considerations, the crew list visa will be phased out as a valid document for purposes of vessel crewmember entry and stay in the territory of the United States. This will mean that only a valid passport, as defined under the U.S. Immigration and Nationality Act, can be used by crewmembers to obtain a visa for entry and stay in the United States. Under the requirements of the Enhanced Border Security and Visa Entry Reform Act of 2002, all visas issued after October 26, 2004 will require biometric identifiers. Since each visa must be linked to specific biometrics, including fingerprints, visas must be issued to individuals. The collection of biometric data has already begun at U.S. Embassies and Consulates worldwide.

The Chinese side stated that the "Seafarer's Passport of the People's Republic of China" is a valid identity document for Chinese crewmembers and that it should have the same status as a passport and be accepted as a valid document in applying for an entry visa. The Chinese side noted that while changing the existing visa procedures for crewmembers' entry and stay in the United States, peculiarities of the maritime transport sector should be fully taken into consideration, so as to facilitate to the greatest extent the entry and stay of crewmembers in the United States. The Chinese side wants Chinese crews to receive the same treatment as other countries' crews with respect to entry and stay in ports of the United States, and hoped that in respect of the future implementation

in practice of measures concerning crewmembers' entry and stay administration, both sides shall maintain mutual communication in accordance with applicable agreements.



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Washington  
December 8, 2003