Parties:
P&O Nedlloyd Limited/P&O Nedlloyd B.V.
Australia-New Zealand Direct Line
Hamburg-Sud KG
Fesco Ocean Management Limited (''Fesco'')
Synopsis: The proposed amendment authorizes all of the parties except Fesco to share and distribute certain cost savings realized under the agreement.

Agreement No.: 201126.
Title: Oakland/Hanjin/Total Terminals Agreement.
Parties:
Port of Oakland
Hanjin Shipping Company, Ltd.
Total Terminals International, LLC
Synopsis: The proposed agreement provides for the assumption of certain of Hanjin's financial responsibilities at Berths 55–56 (Oakland). The agreement runs through December 31, 2004.

Dated: August 10, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–20557 Filed 8–14–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Requirement for reporting revised.

SUMMARY: The Federal Maritime Commission is revising its requirement that certain ocean common carriers in the U.S.-Japan trade report on the status of efforts to reform conditions unfavorable to shipping in the U.S.-Japan trade. Areas for reporting include effects of recent changes in Japanese laws and ordinances; continued application of the ''prior consultation'' system for pre-approving carriers' service changes in Japan; and entry of new entities into Japan's harbor services market.

DATES: Reports due by November 7, 2001, 90 days from the date of service of this Order and every 180 days thereafter.

ADDRESSES: Reports and requests for publicly available information should be addressed to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573; (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573; (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

1997 Final Rule

Following an extensive investigation, the Commission on February 26, 1997 issued a final rule in this docket finding unfavorable conditions facing U.S. ocean shipping interests in Japanese ports and imposed sanctions in the form of $100,000 per voyage fees on three Japanese ocean common carriers entering United States ports. The rule took effect on September 4, 1997, but was suspended by the Commission on November 13, 1997, after the signing of comprehensive government-to-government and industry-government accords to substantially reform Japanese port practices. At that time, accrued fees of $1.5 million were paid by the Japanese carriers.

The February 1997 final rule identified a number of conditions unfavorable to shipping warranting action under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. sec. 876:

- Ocean common carriers in the Japan-U.S. trades could not make operational changes, major or minor, without the permission of the Japan Harbor Transportation Association (''JHTA''), an association of Japanese waterfront employers operating with the permission of, and under the regulatory authority and ministerial guidance of, the Japanese Ministry of Transportation (''MOT'').[1]
- JHTA had absolute and unappealable discretion to withhold permission for proposed operational changes by refusing to accept such proposals for ''prior consultation,'' a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions.
- There were no written criteria for JHTA's decisions whether to permit or disallow carrier requests for operational changes under prior consultation, nor were there written explanations given for the decisions.
- JHTA threatened to use, and did use, its prior consultation authority to punish its detractors and to disrupt their business operations.
- JHTA used its prior consultation authority to extract fees and impose operational restrictions, such as limits on Sunday work.
- JHTA used its prior consultation authority to allocate work among its members, by barring carriers and consortia from freely choosing stevedores and terminal operators and by compelling carriers to hire additional, unneeded stevedores or contractors.
- MOT administered a licensing standard which blocked new entrants from the stevedoring industry in Japan, protected JHTA's dominant position, and ensured that the stevedoring market remained entirely Japanese.
- Because of the restrictive licensing requirements, U.S. carriers could not perform stevedoring or terminal operating services for themselves or for third parties in Japan, as Japanese carriers do in the United States.

On November 10, 1997, U.S. and Japanese officials and relevant industry groups (*i.e.*, JHTA, the Japan Shipowners' Port Council (''JSPC'') and the Japan Foreign Steamship Association (''JFSA'')) came to terms on a number of points for remedying conditions in Japanese ports, including:

- A reaffirmation by the Government of Japan (''GOJ'') that it would approve foreign shipping companies' applications for licenses for port transportation business operations;
- An agreement to simplify the prior consultation system, increase its transparency, and provide for dispute settlement procedures which would include a role for MOT or an MOT-chaired committee;
- A commitment by the GOJ and carrier groups to establish and implement an alternative to the prior consultation system under which carriers intending to implement operational changes would confer with their terminal operators (who, in turn, would consult with labor unions, directly or through a collective bargaining agent as may be required by applicable collective bargaining agreements);
- Commitments that prior consultation would not be used as a means to approve carriers' business plans and strategies, allocate business among port transportation business operators, restrict competition or infringe on carriers' freedom to select port transport business operators; and
- A commitment by the GOJ that it would use its authority to prevent the unjustifiable denial of essential services, ensure the smooth operation of the port

[1] As part of a reorganization, the functions formerly performed by the Ministry of Transport were transferred to the new Ministry of Land, Infrastructure and Transport (''MLIT'') at the beginning of 2001.

transportation business and the improvement of port efficiency, and ensure that operation of the alternative prior consultation process would be free from outside interference, harassment, or retaliation.

The comprehensive settlement reached in this proceeding was reflected in an exchange of letters between the Japanese Ambassador and the U.S. Secretary of State. In those letters, the GOJ confirmed its ''commitment * * * to guide all the signatories to the attachments [the Three-Party and Four-Party Agreements] in securing their faithful, effective and timely implementation of these reforms.'' In addition to the undertakings concerning the approval and issuance of licenses for port transportation businesses, the GOJ committed to ''exert its maximum effort to prevent the unjustifiable denial of services essential to the conduct of any licensed activities.'' The letter also pledged that ''[p]rior consultation shall not be used as a means to approve carriers'' business plans or strategies, allocate business among port transportation business operators, restrict competition or infringe on the carriers' freedom to select port transport business operators.'' The GOJ also ''reiterate[d] its commitment to enforce the Labor Relations Adjustment Law, and further emphasize[d] that the parties concerned with labor disputes can use mediation, reconciliation and arbitration as provided for in that law to maintain order in the provision of port transportation services.''

1999 Withdrawal of Final Rule and Imposition of Reporting Requirements

The Commission noted in May, 1999 that the pace of progress and reform in Japan's port transportation sector had been slow, despite the commitments of the GOJ to market opening and increased accountability. *Port Restrictions and Requirements in the United States/Japan Trade*, 28 S.R.R. 822 (FMC, 1999), 64 FR 30245 (June 7, 1999). It was reported that no foreign carriers had applied for or received licenses to operate their own terminals; no carrier had invoked or tested the prior consultation dispute settlement procedures or other procedural safeguards that were agreed to; and no alternative to the prior consultation system had been developed. Among the reasons noted by the Commission for the lack of substantial change at that time was the strong opposition to change by Japanese labor unions. This opposition included threats of work stoppages communicated to foreign lines which hoped to establish their own terminal operations. The Commission also noted that GOJ regulatory requirements, including ''close ties'' (through equity exchange or long-term contracts) with subcontractors, made launching a terminal venture even more difficult. Furthermore, the Commission found that economic factors in Japan were negatively affecting the attractiveness of carrier investment in Japan's high-cost ports.

The Commission expressed dissatisfaction with the status of port conditions facing the Japan/U.S. trade, including the high costs inefficient Japanese waterfront practices imposed on U.S. trade and carriers, and suggested further steps that the GOJ appropriately could take to ensure that its market-opening commitments were fulfilled. With regard to licensing, these included the elimination or liberalization of regulatory requirements that make entry more difficult, such as the close-ties test and regulatory minimum manning requirements. In order to make the success of any new entrants possible, the Commission suggested that MLIT and other GOJ authorities must also ensure that there would be no illegal boycotts of new entrants to the market, and must act to prevent unlawful threats or harassment.

Finally, the Commission stated that it would monitor regulatory changes then under consideration by the GOJ. Those proposals, propounded in the December 1998 Interim Report of Japan's Transport Policy Council Harbor Transport Subcommittee, included the elimination of the supply/demand test for licensing port business operators (*i.e.*, the requirement that new entrants for a license demonstrate that the supply of port transportation services would not exceed current demand) and the regulatory approval of harbor companies' fees and charges. The Commission noted that these might be positive steps, but suggested that a plan limited to these measures was not likely to remedy current inefficiencies and obstacles in Japan's ports, or ensure an open and competitive market for terminal and stevedoring services. Drawbacks to the deregulatory plan included retaining the economically burdensome requirements that terminal operators: (1) Perform at least 70% of their services themselves; (2) maintain ''close-tie'' relationships with subcontractors; and (3) meet regulatory minimum manning standards.

Although it pointed out these negative developments, the Commission also suggested that the reasons for the lack of progress were unclear and determined that further information to update the record was necessary. In order to effectively evaluate whether the unfavorable conditions identified in the final rule continue to exist, and if they do exist, the extent to which their continued existence arises out of or results from laws, rules, or regulations of the GOJ, the Commission withdrew the final rule and required the U.S. and Japanese carriers to file periodic reports.

Port Transportation Business Law Amendments

The Commission has continued to follow with interest developments relating to these issues. The port deregulation measures resulting from the Transport Policy Council Harbor Transport Subcommittee's Final Report were embodied in amendments to the Port Transportation Business Law enacted on May 10, 2000. The amended law and related ordinances became effective in November, 2000.

The amendments replaced the licensing for a general port transportation business with ''permission'' (Article 22–2) and abolished the supply and demand requirement. The law as amended: (1) Requires that applicants for permission provide a ''business plan'' appropriate for executing business activities (including demonstrating adequate funding) (Article 5); (2) continues the requirements for ''close ties'' to subcontractors; and (3) increases the minimum manning standards to 150 percent of the old standard. The requirement that tariffs and fees for port transportation services be approved by MLIT was replaced with a filing requirement. However, MLIT may order changes in the tariffs and fees as filed within a specified period of time. The revised law also permits shipping lines to own their terminal operating equipment. Additional changes affecting carrier operations in Japanese ports have reportedly occurred in the availability of Sunday and extended working hours at Japanese ports as a result of labor agreements concluded earlier this year.

Discussion

The reports received from carriers following the withdrawal of the final rule in May, 1999 suggest that the situation with respect to the issues raised in this proceeding had not changed materially. The amendments appear to have done little to address the substantial obstacles to proprietary carrier terminal operations affecting carriers in Japan. For example, the revised law does not address ''close tie'' requirements, the role of JHTA, or the prior consultation system, and, in a move backwards, it actually increases

the minimum manning requirements for new business entrants.

These issues were raised by the Acting Maritime Administrator in a letter to MOT in September, 2000. In response, the Director-General of the Maritime Transport Bureau wrote that ''[w]e are actively making efforts to improve the prior consultation system.'' He also reported that detailed procedures for implementation of the amended Port Transportation Business Law had been published for public comments in a cabinet order issued in May, 2000 and a ministerial ordinance issued in July, 2000. These interpretive guidelines appear to have been the subject of some controversy, and were reportedly significantly revised before their issuance in response to Japanese labor unions' opposition to the possibility they raised of increased competition in port services.[2]

Press reports of recent events, as well as the reports in this proceeding, indicate that progress has been minimal and, with respect to some issues, negative. Reports published since the revised law became effective do not suggest that it has resulted in the entry of new competitors in the port transportation business. To the contrary, such reports suggest that the obstacles to firms contemplating new types of service or service to additional ports, including those created by labor opposition, remain formidable.[3]

The Commission is concerned that, despite the length of time which has passed, carriers' opportunities to perform port services for themselves or other carriers or to benefit from increased competition in port services have not materialized. As previously noted, in some respects, the laws and regulations affecting these issues appear to have become more, rather than less, onerous. Therefore, the Commission remains concerned that the amelioration of the unfavorable conditions found in this proceeding, which was anticipated as a result of the agreements reached in November 1997, has not occurred.

In light of the recent legislative and ministerial enactments, the Commission has concluded that once again it is necessary to gather further information and to update the record in this proceeding. The carriers named in the Commission's Order of May 28, 1999, have continued to file the reports required by that Order. The most recently filed responses were filed only three months after the revisions to the Port Transportation Business Law became effective. The next report is presently due to be filed on August 20, 2001. However, we find that the questions posed in the May 28, 1999 Order may no longer be as precise as we would wish in light of the current conditions, laws and ordinances affecting port practices in Japan.[4] Therefore, we hereby amend the reporting requirements established in the Commission's May 28, 1999 Order. In addition, while it appears that the GOJ has issued ministerial guidelines or ordinances implementing or interpreting the revised Port Transportation Business Act, the Commission has not had an opportunity to review these documents. We are therefore requiring the three Japanese carriers to provide such documents.

Therefore, It Is Ordered, That Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kaisha, Ltd. file, collectively or individually, copies of any cabinet order or ministerial ordinances, notifications, notices, or regulations issued by the Japanese Ministry of Transportation (''MOT'') or the Ministry of Land, Infrastructure and Transport (''MLIT'') implementing or interpreting the revised Port Transportation Business Act with the Commission by November 7, 2001, 90 days from the date of service of this Order; [5] and

It Is Further Ordered, That the requirement for the submission of reports contained in the Commission's Order of May 28, 1999, *Port Restrictions and Requirements in the United States/ Japan Trade,* 28 S.R.R. 822 (FMC, 1999), 64 FR 30245 (June 7, 1999), is rescinded;

It Is Further Ordered, That the following parties are ordered to file reports with the Commission by November 7, 2001, 90 days from the date of service of this Order, and every 180 days thereafter: American President Lines, Ltd.; A.P. Moller Maersk Sea-Land; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha. These reports should address the following:

1. (For initial reports due in 90 days only). Describe any new or further restrictions or requirements placed on your company regarding the use or operation of terminals or harbor services as a result of changes in laws, regulations or ordinances of the Government of Japan issued during 2000 or 2001.[6]

2. (For initial reports due in 90 days only). Describe in detail any effects not described in response to question number 1 of recent changes in the laws, ordinances or standards for the provision of marine terminal or stevedoring services in Japanese ports on your company's business operations, particularly with respect to minimum manning requirements, ''close-tie'' relationships, and the ''permission'' system affecting such services.

3. Describe any plans or legislative or regulatory proposals to improve the prior consultation system proposed by MOT, MLIT, JHTA, JSPC or JFSA during 2000 or 2001 (for initial reports due in 90 days) or within the last 180 days (for reports due thereafter) and provide copies of any such plans or proposals.

4. (For A.P. Moller Maersk Sea-Land and American President Lines, Ltd.

[2] ''Labor Reads Riot Act to Transport Ministry Over New Ordinances,'' *Shipping and Trade News,* September 27, 2000 at 1; ''Port Labor Prepared to Strike Over Anti-Dumping Ordinances,'' *Shipping and Trade News,* October 12, 2000 at 1; ''Labor Ready to Strike 12 Major Ports,'' *Shipping and Trade News,* October 18, 2000 at 1; ''MOT Amends Ordinances for Revised Port Law (October 24, 2000),'' *Cyber Shipping Guide;* and ''Agreement on Port Law Revision Averts Strikes,'' *Shipping and Trade News,* October 24, 2000 at 1. The provisions as originally proposed were reportedly objected to by JHTA as well as the Council of Japanese Dockworkers Unions (Zenkoku Kowan).

[3] For example, three companies which applied for licenses to serve the port of Shimizu reportedly withdrew their applications following the filing of a notice of opposition by Zenkoku Kowan. ''Japan's Ports Are Feeling the Deregulation Pressure,'' *International Transport Journal,* March 23, 2001. Plans by the port of Kitakyushu for private construction and operation of a major new container terminal (Hibiki Box Terminal) with the support of MLIT, and its stated goal to operate at low cost, 24 hours a day, 365 days a year, have faced similar opposition from established firms and labor organizations. ''Japanese Port Bids to Break Unions,'' *Fairplay International Shipping Weekly,* September 7, 2000; ''Terminal Operators Scramble to Build Private Container Port in Japan,'' *Journal of Commerce Online,* August 21, 2000; ''Seven Bid For Test-case Port,'' *Fairplay Daily News,* August 25, 2000; ''Kamigumi, Nittsu Withdraw From Hibiki Box Terminal Project,'' *Shipping and Trade News,* April 9, 2001 at 1; ''Future of Kitakyushu Terminal Remains Unclear,'' *Containerisation International,* May 2001 at 33.

[4] In addition, the Commission is concerned that limitation of the reporting requirements to the five originally-named carriers in this proceeding may not sufficiently reflect the impact of those conditions on shipping in the U.S./Japan trade generally. Therefore, by a separate order, the Commission is directing all of the carriers who have substantial operations in the U.S./Japan trade to respond to a limited number of questions concerning the conditions affecting their operations at major ports in Japan.

[5] Any document in a language other than English shall be accompanied by an English translation. For the purposes of this Order, the term ''document(s)'' refers to written, printed, typed, or visually or aurally reproduced material of any kind, including (but not limited to) all copies of any and all letters, correspondence, recommendations, contracts, agreements, orders, records, minutes, reports, press releases, plans, manuals, lists, memos, instructions, notes, notices, confirmations, inter-office or electronic mail, faxes, cables, notations, summaries, opinions, studies, surveys, or memoranda of any conversations, telephone calls, meetings, or other communications.

[6] References to ''your company'' include parent companies, subsidiaries, and corporate affiliates with whom common ownership is shared.

only). Has your company entered into or sought to enter into any joint venture with a Japanese company to perform stevedoring or marine terminal services in Japan during 2000 or 2001 (for initial reports due in 90 days) or during the last 180 days (for reports due thereafter)? If so, for each instance, describe in detail: the relationship sought; whether the venture sought or was required to seek a license or permit to perform such services; the procedures followed for obtaining such a license or permit; and whether the license or permit ultimately was issued as well as the length of time that elapsed from initial application to final issuance or denial.

5. Has your company altered or abandoned any planned or contemplated change in operations on matters subject to prior consultation due to opposition or threats of strikes or other withdrawal of labor by labor organizations or others during 2000 or 2001 (for initial reports due in 90 days) or within the past 180 days (for reports due thereafter)? If so, did your company make any attempt to bring these threats to the attention of Japanese authorities? If so, describe in detail any such consultations, provide copies of documents (including any correspondence, complaint, petition, report, or other application filed) and identify the agency of the Government of Japan contacted concerning the matter.

6. Has any dispute between your company and JHTA under the prior consultation system arisen within the past 180 days? If so, was MLIT notified or requested to serve as arbitrator? Describe in detail what actions, if any, have been taken by MLIT. (Responses may be limited to prior consultation regarding services in U.S.-Japan trades).

7. With respect to major matters (as defined in the ''Revised Prior Consultation System of 1997''), has your company had reason to submit a major matter to JHTA for prior consultation in the past 180 days, or is it likely to have reason to submit such a matter within the next 180 days? Please describe each request or likely request. If past, indicate specifically how the matter was handled and disposed of by JHTA and whether the procedures outlined in paragraph II of the ''Revised Prior Consultation System of 1997'' were adhered to by JHTA and your company.[7]

It Is Further Ordered, That each of the questions listed above calling for the submission of information (as opposed to documents) must be answered separately and fully, in writing and under oath, and signed by the corporate official providing the answer;

It Is Further Ordered, That every document provided pursuant to this Order must clearly identify the question in response to which it is supplied;

It Is Further Ordered, That documents provided pursuant to this Order must be accompanied by a certification, under oath, by a corporate official indicating that a thorough search has been made, and that the documents provided are the only documents responsive to this Order within his or her possession, custody, or control; and

It Is Further Ordered, That responses to this Order shall be protected from disclosure to the public to the fullest extent permitted by law; provided, however, that such treatment shall not foreclose use by the Commission of such information in any subsequent formal proceeding.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–20554 Filed 8–14–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
4503F	Aimar USA, Inc. 7500 W. 18th Lane, Hialeah, FL 33014	May 24, 2001.
1752F	Amtonco Inc. dba Amton Shipping Company, 401 Broadway, Suite 508, New York, NY 10013.	June 15, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–20555 Filed 8–14–01; 8:45 am]

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FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

JTK International Trading, Inc., dba Coastline Trans, 3200 Wilshire Blvd., Suite 1750, Los Angeles, CA 90010; Officers: Jay Tak, Vice President (Qualifying Individuals), Yong Suk Kim, President

Transamerica Leasing Inc., 100 Manhattanville Road, Purchase, NY 10577; Officers: Stuart Downie, Vice President (Qualifying Individual), Brian Sondey, President

[7] Paragraph II.(1–3) of the ''Revised Prior Consultation System of 1997'' requires that:

1. The JHTA shall promptly process a request from a carriers [sic] for Prior [Consultation] without refusing to accept it nor suspending the processing of it.

2. The JHTA shall promptly inform the carrier in writing of the result of the labor-management consultation (with adequate explanation when the labor-management consultation is unsuccessful) or the request for further clarification of the carrier's request.

3. When a prior consultation is unsuccessful, both the carrier and the JHTA shall report it in writing to the MOT.