ID# 327903

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

CO034-01

DATE RECEIVED: MAY 13, 1992

NAME OF CORRESPONDENT: THE HONORABLE CHRISTOPHER L. KOCH

SUBJECT: TRANSMITS A COPY OF THE ORDER DISCONTINUING PROCEEDING REGARDING ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. CARRIERS IN THE U.S. / TAIWAN TRADE

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
RONALD GEISLER	ORG	92/05/13		C	92/05/18
REFERRAL NOTE: RD HERR	A	92/05/14	DJ	C	92/05/15
REFERRAL NOTE: PD MARU	DJ A	92/05/19	DJ	C	92/06/04
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					

COMMENTS: NOT FOR PRESIDENT'S XMITTAL TO THE CONGRESS.

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 1140 ____ ____

MI MAIL USER CODES: (A)_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF
*F-FURNISH FACT SHEET	*S-SUSPENDED	* OUTGOING
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

May 13, 1992

The Honorable George Bush
President
The White House
Washington, D.C. 20500

Dear Mr. President:

This letter constitutes notification to you pursuant to the requirements of section 10002(e)(3) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a(e)(3) ("FSPA"), that the Federal Maritime Commission ("Commission") has made findings of adverse conditions in the course of an FSPA investigation of the United States/Taiwan oceanborne trade. Specifically, the Commission found that Taiwan laws prohibit U.S. ocean carriers in the Trade from performing their own trucking in Taiwan, that this restriction adversely affects the operations of U.S. carriers in the Trade, and that no such conditions exist for Taiwan carriers in the United States.

The Commission did not, however, exercise its authority to impose sanctions to offset these adverse conditions,[1] upon consideration of the totality of the circumstances, including the recommendations of the two U.S.-flag carriers, whose interests the FSPA and the Commission proceeding sought to protect. The U.S. carriers, American President Lines, Ltd., and Sea-Land Service, Inc., advised that sanctions at this time were "unwarranted by commercial and operational circumstances". The Commission also took cognizance of the facts that Taiwan satisfactorily resolved some of the issues raised in the proceeding; and that efforts to address the trucking restriction are pending in the Taiwan legislature. The Commission will continue to monitor the situation and to require reports on trade conditions in order to assess the need for further consideration of sanctions.

Section 10002(e)(3) of the FSPA provides that the Commission notify the President of its determinations in FSPA proceedings and that the President may disapprove the Commission's determination

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[1] The FSPA at section 10002(e)(1) requires the Commission to take such action as it considers necessary and appropriate against the foreign carriers whose government has created the conditions, in order to offset those conditions. Possible sanctions include limitations on sailings, suspension of tariffs (thereby precluding the vessels' operations at U.S. ports) and fees of up to $1,000,000 per voyage.

within ten days if required for reasons of national defense or foreign policy.[2] This provision was primarily intended to enable the President to set aside sanctions which might be proposed by the Commission. No such sanctions are being proposed in this instance. Nevertheless, the matter is being referred to your attention in the event the Commission's findings of the adverse conditions themselves warrant disapproval for purposes of national defense or foreign policy.

A copy of the Commission's Order Discontinuing Proceeding is enclosed. Enclosed as well is a copy of the Order Requiring Information issued this date which will keep the Commission apprised of developments which may require further action.

Sincerely,

Christopher L. Koch
Chairman

Enclosures

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[2] Section 10002(e)(3) states:

> (3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(S E R V E D)
(May 13, 1992)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 91-44

ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING UNITED STATES CARRIERS IN THE UNITED STATES/TAIWAN TRADE

ORDER DISCONTINUING PROCEEDING

This investigation under the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a ("FSPA"), was commenced on October 11, 1991, by Notice and Order of Investigation ("1991 Order") of the Federal Maritime Commission ("FMC" or "Commission"). The proceeding was initiated to determine whether conditions exist adversely affecting the operations of United States carriers in the United States/Taiwan trade ("Trade") but which do not exist for Taiwan carriers in the United States.

BACKGROUND

The 1991 Order designated five major issues: (1) the operation of off-dock container terminals being subject to land area and third-party container handling restrictions; (2) prohibitions on U.S. carriers obtaining trucking licenses; (3) requirements that chassis registration include listing the authorized user of the chassis, which user may not be a U.S. carrier; (4) problems in the processing of U.S. carrier applications for authority to lease empty containers or to engage in the business of leasing containers; and (5) requirements that

applicants for licenses to operate a shipping agency in Taiwan must first produce contracts with intended customers.

Named as parties were Evergreen Marine Corporation ("Evergreen") and Yangming Marine Transport ("Yangming") as Taiwan carrier parties (collectively, "Taiwan Carriers"), American President Lines, Ltd. ("APL") and Sea-Land Service, Inc. ("Sea-Land") as United States carrier parties (collectively, "U.S. Carriers"), and the Commission's Bureau of Hearing Counsel ("Hearing Counsel"). The 1991 Order set dates of November 15, 1991, for receipt of initial affidavits and memoranda; December 16, 1991, for replies; and February 13, 1992, for the Commission's decision.

On February 12, 1992, the Commission issued an Order Extending Proceeding ("Extension Order"), invoking section 10002(c)(2) of the FSPA and extending until May 13, 1992, the date by which a decision is due. The Extension Order noted that by the time initial and reply submissions were received, a substantial amount of progress appeared to have been achieved toward alleviation of possible adverse conditions. See Extension Order, at 2-3. Some of the issues were reported by the Carriers as resolved, and others as not currently creating adverse effects.

The trucking issue (and the related chassis registration issue) remained unresolved, however, even upon receipt of a status report from Hearing Counsel and replies thereto from the carrier parties. The Commission was informed that a corrective amendment to Taiwan's Highway Trucking Law was pending, and had been or was

about to be presented by the Executive Yuan to the Legislative Yuan as part of the legislative process. There was also some degree of confusion stemming from the unavailability of an official translation of the proposed amendment, and from certain language in the unofficial translation of the amendment limiting the scope of a foreign carrier's authorized trucking operations to "containers shipped by its own vessels." In extending the proceeding by 90 days, the Commission sought clarification of these concerns and developments.

SUPPLEMENTAL SUBMISSIONS

U.S. Carriers

The U.S. Carriers' joint supplemental filing explains that they have no immediate plans to conduct trucking operations in Taiwan even if the Highway Law amendment is enacted. Nevertheless, they would like the ability to conduct trucking operations to bolster their negotiating position with Taiwan contractors, and for emergency purposes. They state their understanding that Taiwan's Executive Yuan approved an amendment to the Highway Law which would meet both of these objectives.

They base this conclusion on an unofficial translation of the amendment provided by the American Institute in Taiwan ("AIT"). That translation states that the prohibition on foreign trucking does not apply to "branch offices of foreign maritime carriers . . . [which] may have their own vehicles to transport their own sea containers" if such rights are reciprocated by the respective

foreign governments. Licenses to conduct such operations must first be obtained. The exemption applies to a carrier's "own export and import sea containers," and excludes "containers of other maritime carriers transported on its vessels." The translation also indicates that "legislative history" provides that "own containers" includes "full and empty containers owned or leased by the carrier for use in transporting its own cargo."

The U.S. Carriers refer to meetings held in late March ("March Discussions") among AIT, the Taiwan Ministry of Transportation and Communication ("MOTC"), and the affected carriers. They relate that AIT demanded of Taiwan officials "full parity" with the treatment of Taiwan carriers in the U.S., and suggested that a phased liberalization of trucking restraints over one year "might be acceptable to the U.S. Government."

The U.S. Carriers explain that their "unique business position in Taiwan is largely satisfied" by the amendment, even with the limitation to the carriers' "own" containers. They state that this falls short of the U.S. Government's goal of full parity, which they believe would be consistent with the purpose of the FSPA. The U.S. Carriers express their support of U.S. Government and FSPA objectives, but emphasize that their own more limited objectives in Taiwan have been met by the proposed amendments to the Highway Law.

The U.S. Carriers therefore conclude that sanctions are "unwarranted by commercial and operational circumstances." They suggest that seeking full parity be viewed as a continuing process, and that "commercially important reforms that are achievable" be

accepted in the short term. The U.S. Carriers express confidence that the Commission can use the FSPA or section 19 of the Merchant Marine Act of 1920, 46 U.S.C. app. § 876, expeditiously if necessary, and recommend that this proceeding be discontinued without the imposition of sanctions.

Taiwan Carriers

Evergreen relates that at the March Discussions, "The MOTC agreed to revise the then proposed amendment to the Highway Law to enable a U.S. carrier to operate a trucking service in Taiwan to carry its own containers transported either on its own vessels or by it on slot charter vessels." Evergreen reports that AIT originally agreed to provide an English translation of the amendment but then advised that it would not do so; Evergreen has supplied a copy of the amendment and an "explanation", both in Chinese, which were provided it by MOTC. Evergreen relays MOTC's information that the revised amendment was approved by the Executive Yuan and is scheduled to be submitted to the Legislative Yuan shortly.

Evergreen concludes that as "meaningful progress continues to be made," the proceeding should be terminated without sanctions. It reiterates that there is no evidence in the record of any harm to the U.S. Carriers.

Yangming includes in its submission a translation of the Highway Law amendment as "re-revised" to reflect the March Discussions. Yangming's translation was purportedly obtained "from the Taiwan attorneys for APL, Messrs. Tsar & Tsai," and differs in

wording from that APL and Sea-Land submitted as received from AIT. Yangming interprets the net effect of the amendment as permitting the U.S. Carriers to truck containers moved pursuant to their own bills of lading. Yangming reports that this revision of the amendment is to be submitted to the Legislative Yuan on March 28, 1992. Yangming also reports that APL has not as yet taken advantage of the concessions made by Taiwan to facilitate its obtaining a license to conduct shipping agency operations.

Yangming argues that Taiwan has negotiated in good faith and has met every demand made by the U.S. Carriers, including proposals to revise the Highway Law to allow the U.S. Carriers to carry their own containers. Yangming contends that the U.S. Carriers never expressed an interest in trucking other carriers' containers, and that Taiwan cannot be faulted for not having corrected this newly raised issue, although the MOTC has agreed to consider the matter.[1]

Sanctions have not been justified, Yangming contends, because all of the issues which were raised in inter-governmental consultations in 1989 have now been the subject of Taiwan concessions. Yangming also notes the unanimity of the carriers on both sides of this case that sanctions not be imposed, and cites the Commission's declining to issue sanctions in FMC Docket No. 91-

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[1] Yangming also criticizes the U.S.' alleged refusal to address requests made by Taiwan in 1989, and cites "a certain inconsistency between what the U.S. side practices compared to what it preaches." Taiwan reportedly has unsuccessfully been seeking a Jones Act exception to permit Taiwan carriers to transship foreign cargoes between U.S. ports in the event of storms, strikes or other emergencies, and permission to ship U.S. EXIM Bank-financed merchandise in the same manner as Taiwan permits U.S. carriers access to all merchandise financed by Taiwan's EXIM Bank.

31, Actions to Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade, and Docket No. 91-24, Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade, although some minor issues remained unresolved in those proceedings. It is unfair, Yangming asserts, to subject the Taiwan Carriers to possible economic ruin on the basis of allegedly unsupported allegations of economic disadvantage.

Yangming also attacks the proceeding itself as "Kafkaesque," stating that the accused are prevented from facing their accusers or presenting a defense or testing the validity of the accusations. Yangming is also critical of the fact that the Commission has not participated in the negotiations and that instead it finds AIT, a "quasi official representative" of the U.S., "negotiating with a Ministry of the elected government of a country which for geo-political reasons the United States refuses to recognize."

Hearing Counsel

Hearing Counsel notes that AIT's demand for full liberalization of trucking remains unmet, and that there has been no action by the Executive or Legislative Yuan completely opening trucking opportunities for the U.S. Carriers. Hearing Counsel notes that Taiwan authorities have not honored AIT's requests for an official translation or interpretation of the proposed amendment.

Hearing Counsel concludes that inasmuch as full liberalization on trucking has not been achieved or agreed to, the U.S. Carriers

are adversely affected by this restriction within the meaning of the FSPA. Therefore, Hearing Counsel states, the Commission should impose sanctions as the Commission "considers necessary and appropriate." Hearing Counsel does not discuss or recommend any specific sanction, but refers to the sanctions provision of the FSPA.

SUPPLEMENTAL REPLIES

U.S. Carriers

APL advises that as of April 6, 1992, AIT reports no further communications from MOTC in response to AIT's request for a commitment to full parity for U.S. carriers. Sea-Land did not file a supplemental reply.

Taiwan Carriers

Evergreen states that the trucking issue is the only designated matter not wholly resolved, and that the Highway Law amendment has been pending before the Legislative Yuan since March 27, 1992. It contends that Hearing Counsel's "lonely voice calling for sanctions" is unsupported by evidence of harm. AIT's apparent dissatisfaction with Taiwan's unwillingness to fully liberalize trucking is not a basis for sanctions under the FSPA, Evergreen argues: "The mere fact that AIT has requested greater reforms than necessary to meet the U.S. Carriers' needs provides no basis for the imposition of sanctions under the FSPA." Evergreen notes that the U.S. Carriers themselves concede they have no immediate plans to conduct trucking operations, and argues that the alleged

"indirect value" of trucking authority is unsubstantiated and meaningless.

Evergreen reports that it understands that MOTC's response to AIT has been prepared but not as yet transmitted. Evergreen presents what it describes as a "rough summary translation" of the expected response, a Chinese language copy of which Evergreen has obtained. Evergreen claims that this response demonstrates that Taiwan is making real effort toward a legislative solution, and that AIT's dissatisfaction with such is irrelevant. Evergreen's translation of the prepared MOTC response refers to the demand for U.S. Carrier authorization to carry third-party cargo as a new request which is not under the scope of this proceeding. MOTC also reportedly claims that U.S. Carriers enjoy better treatment than the Taiwan Carriers in Taiwan, in that they, and not the Taiwan Carriers, are permitted to own port operating equipment.

Finally, Evergreen notes that in Dockets Nos. 91-31 and 91-24, the Commission discontinued the proceedings on the basis of commitments made and substantial progress achieved, and did not require the actual effectuation of full liberalization.

Yangming cites the U.S. Carriers' supplemental submissions and questions how Hearing Counsel can ask for sanctions when the U.S. Carriers themselves state that sanctions are unwarranted. Yangming also submits its own "English synopsis" of MOTC's reputed response to AIT, and emphasizes MOTC's assertion that third-party container trucking is an issue only newly raised by the U.S. side. Yangming declares Hearing Counsel's demand for sanctions an "overreaction,"

arguing that Taiwan has complied with 90% of the U.S. Carriers' demands, and the U.S. has complied with none of Taiwan's requests.

Hearing Counsel

Hearing Counsel reiterates its complaint that Taiwan has not responded to AIT's requests, and that no official translation or interpretation of the Highway Law amendment has been provided by Taiwan. Hearing Counsel points out that each of the carrier parties translates and describes the effect of the purported Highway Law amendment somewhat differently. Under any interpretation, Hearing Counsel asserts, there is a limitation on trucking authority which precludes full liberalization. This limitation allegedly constitutes a competitive disadvantage and an adverse effect in violation of the FSPA which Hearing Counsel concludes justify unspecified sanctions.[2]

DISCUSSION

As was the case when the Commission determined in February to extend this proceeding for 90 days, the only unresolved issue remains that of trucking rights. For the reasons set forth below, the Commission determines that the continued existence of restrictions on the U.S. Carriers' trucking capabilities constitutes an adverse condition within the meaning of the FSPA, but that no sanctions are necessary and appropriate at this time.

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[2] Additional submissions filed by Taiwan Carriers and AIT as recently as May 11, 1992, were received too late for Commission consideration.

Adverse Conditions

The significance of the proposed Highway Law amendment remains unsettled and unclear as to the ability of the U.S. Carriers to truck containers from their own vessels and from vessels they charter due to the fact that (1) no official translation of the amendment has apparently been prepared; and (2) the amendment is still pending in the Legislative Yuan.

Despite the lack of an official translation, the unofficial translations and analyses of the amendment suggest that the proposed law would permit U.S. Carriers (by virtue of the reciprocal authority in the U.S.) to engage in trucking operations for containers carried on their own vessels or containers from vessels they charter. Hearing Counsel notes that the English translations of the amendment vary somewhat, as do the parties' descriptions of the amendment's effects. The Commission finds nothing either surprising or disturbing about such differences, however, and would in fact consider it odd if parties independently employed identical language in interpreting and analyzing the amendment. Of greater significance is that the unofficial translations support the carrier parties' expressed view that the proposed law, which was revised to accommodate concerns expressed in the March Discussions, would allow the U.S. Carriers to engage in the type of trucking operation they have long sought.

The question of whether the proposed amendment would encompass cargo from chartered vessels also appears to have been clarified to

all the parties' satisfaction. The U.S. Carriers state regarding the AIT-furnished translation that it

> appears to be clear on its face that a U.S. carrier could obtain a trucking business license and, having done so, could truck its own loaded or empty, owned or leased containers, whether or not transported on its own vessels or the vessels of another carrier.

Thus, although an official and definitive reading of the proposed amendment is desirable, the Commission will in this instance rely on the translations provided and the U.S. Carriers' satisfaction therewith.

The Commission's finding of adverse conditions, however, devolves from the failure of the proposal to become enacted by the legislature. The record does not enlighten as to the time frame in which, or procedure by which, the amendment will become law. The Taiwan Carriers state only that MOTC intends to apply pressure to achieve expedited legislative review.

The Taiwan Carriers characterize the referral of the amendment by the Executive Yuan to the Legislative Yuan as Taiwan's having met its commitments. The FSPA, however, does not define laws of foreign governments to include only executive branch acts vis-a-vis legislative ones. The MOTC may have fully met its commitments, and the success of its efforts may be at the mercy of the legislative process. But the restrictive practices at issue continue to have the force of law, and none of the parties to this investigation can predict or have even ventured to predict when a corrective amendment to this law will be effective.

The prior FMC foreign shipping practices proceedings cited by the Taiwan Carriers are consistent with the Commission's finding herein. In Docket No. 91-31, the U.S. Carriers esssentially abandoned their trucking rights issue and argument. Here, trucking authority has been pursued aggressively. In Docket No. 91-24, there were precise timetable commitments made by Korea actually to ease the restrictive practices at issue and a partial implementation of these commitments. Here, the commitments made were only to refer the matter for legislative action. Actual enactment of a repeal of the restrictions was not promised by MOTC, nor does it appear that it could be.

The Commission is cognizant of the indirect nature of the adversity alleged by the U.S. Carriers to arise from the restrictive trucking laws. The U.S. Carriers, as the Taiwan Carriers point out, state that they do not intend to engage in regular trucking operations in Taiwan even if the restrictions are removed. Rather, the U.S. Carriers seek trucking authority in case of an emergency situation (such as labor disruptions) and, more importantly, to provide them greater leverage and a better bargaining position when negotiating a contract with Taiwan trucking companies.

Although indirect in nature and inherently unquantifiable, the disadvantage occasioned by the U.S. Carriers' inability to perform their own trucking is undeniable. The current prohibitions on the U.S. Carriers have the effect of guaranteeing the Taiwan trucking companies with whom the U.S. Carriers are forced to contract, that

they, or some other Taiwan trucking company, will eventually win the right to truck the U.S. Carrier cargo. The restrictions ensure that the Taiwan trucking companies need not factor into their negotiating strategies the possibility that the U.S. Carriers will choose to perform their own trucking. This adversely impacts the intermodal operations of U.S. Carriers in Taiwan in a manner not experienced by Taiwan Carriers in their operations in the United States. Taiwan Carriers are free to operate their own trucking companies in the United States and therefore have considerable leverage should they choose to contract out for trucking services. Such disparity in laws and practices is well within the objectives of the FSPA, and the Commission has no difficulty in concluding that that statute's criteria under section 10002(b) have been met.

The Commission is not reaching the issue of whether the restriction on U.S. Carriers' ability to truck containers of other carriers constitutes an adverse condition under the FSPA. The proposed Highway Law amendment does not appear to address this prohibition. It is uncontroverted in the record that no effort has been made to date on Taiwan's part to liberalize trucking fully so as to permit third-party container trucking. The parties disagree, however, on the extent to which this is a legitimate issue, is timely and fairly raised, and is appropriately within the scope of this proceeding.

As the Taiwan Carriers point out, unlike the other issues designated in this investigation, trucking of third-party containers was not embraced as an issue by the U.S. Carriers until

very recently. The focus of the U.S. Carriers' complaints appears to have been the right to carry their own cargo, with a related issue being whether "own" cargo includes cargo from chartered vessels. The Taiwan Carriers contend that Taiwan has had little or no notice that there was an interest in third-party container trucking authority, and maintain that it is not fair to expect Taiwan to meet these concerns within the time frame of an FSPA proceeding. Third-party authority, they argue, is more an issue advanced by AIT than a legitimate interest of the U.S. Carriers, and as such, should not be an issue in the FSPA proceeding.

Although the 1991 Order's presentation of the trucking issue may be somewhat ambiguous as to whether the Commission's interest in trucking operations extended to third-party containers, that order was referring to the U.S. Carriers' right to truck their own containers, and not to enter the trucking business in general. The U.S. Carriers' submissions earlier in this proceeding contained no suggestion that they were interested in third-party container trucking. And their more recent submissions emphasize the distinction between their actual business objectives and the "full parity" which they describe as being the goal of the U.S. Government.[3]

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[3] Moreover, the record in this proceeding does not include evidence of the effect of this aspect of the limitation on trucking authority. APL's harm data does not appear to be based on the absence of third-party container traffic. The responses to information demand orders received in April 1991, on which the instant FSPA proceeding was partially based, refer to U.S. Carriers' "own inland container movements." See e.g., APL's April 30, 1991, submission, which has been made part of this investigation.

The Commission will not, accordingly, reach findings as to whether the absence of full liberalization of trucking authority, beyond that sought throughout this proceeding by the U.S. Carriers, constitutes an adverse condition within the meaning of the FSPA. Such findings were not with the scope of this investigation, and would in any event be tangential to the thrust of the U.S. Carriers' expressed interests. We note, however, that third-party container authority would appear to be essential to achieving full efficiency in trucking operations. The Commission will monitor this issue in the coming months and expects the U.S. Carriers to advise us should they believe Commission attention to the matter is warranted.

Sanctions

More difficult than the finding of adverse conditions is the determination under section 10002(e) of the FSPA whether FMC actions are necessary and appropriate to offset those conditions. Although the trucking restrictions at issue continue to remain in effect, the Commission is not persuaded of the necessity and appropriateness of sanctions given the mitigating circumstances discussed above, and particularly in light of the U.S. Carriers' own recommendations.

The U.S. Carriers' joint supplemental filing rather deliberately distinguishes the policy goals of AIT from the Carriers' own "achievable" goals which they state are "largely satisfied." The U.S. Carriers' position is obviously based on the assumption that the proposed Highway Law amendment will be enacted

and will be implemented consistent with the more optimistic interpretations of its intent and effect. That assumption has yet to be realized. At the same time, sanctions are necessarily disruptive, and could offset the liberalizations expected as well as preclude others to come. The indirect nature of the adverse conditions found to exist in the Trade does not warrant, we believe, the imposition of such actions at this time. That the U.S. Carriers report they do not intend to operate their own trucking companies does not negate the existence of the adverse impact occasioned by Taiwan's trucking restrictions, but the limited extent of the harm does have a bearing on whether there is a need for offsetting measures.

The Commission will therefore adopt the recommendations of the affected carriers in this proceeding that sanctions are "unwarranted" at this time. The Commission is swayed as well by the satisfactory resolution of the majority of the issues raised in this proceeding and the pendency of the apparently corrective legislation on the remaining issue. We are further persuaded by the reminder of the U.S. Carriers that the Commission has ample means to revisit these matters expeditiously if necessary, on its own motion or by petition.

To this end, the Commission intends to remain abreast of conditions in the Trade which may have implications under the FSPA or section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876. By separate Order Requiring Information issued this date pursuant to section 10002(d) of the FSPA, the Commission is

requiring the U.S. Carriers and Taiwan Carriers to report further on shipping conditions in the Trade in six months' time. If any time prior to that date, any party wishes to alert the Commission of developments on other issues which were raised in this investigation, it is encouraged to do so.

THEREFORE, IT IS ORDERED, That this proceeding is discontinued.

By the Commission.

Joseph C. Polking
Secretary

(S E R V E D)
(May 13, 1992)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

LAWS, RULES, REGULATIONS, POLICIES AND PRACTICES OF TAIWAN AFFECTING SHIPPING IN THE UNITED STATES/TAIWAN TRADE

ORDER REQUIRING INFORMATION

By this Order issued pursuant to section 10002(d) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a ("FSPA"),[1] the Federal Maritime Commission ("Commission") directs the named United States and Taiwan ocean common carriers[2] to report on certain shipping conditions in the United States/Taiwan trade ("Trade"). The Commission is concerned about the continued existence of conditions unfavorable to shipping in the Trade arising from Taiwan laws, rules or regulations or from competitive methods or practices employed by Taiwan carriers, and whether such laws, rules, regulations, policies or practices adversely affect

[1] Section 10002(d), 46 U.S.C. app. 1710a(d), states in relevant part:

> (d) INFORMATION REQUESTS.--(1) In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission.

[2] The named carriers are American President Lines, Ltd. and Sea-Land Service, Inc. (collectively, "U.S. Carriers"), Evergreen Marine Corporation and Yangming Marine Transport.

the operations of U.S. carriers in the Trade which do not exist for Taiwan carriers in the United States. See section 10002(b) of the FSPA, 46 U.S.C. app. 1710a(b). A report from each of the named carriers is to be submitted to the Commission on or before November 13, 1992. The information provided will be used to determine whether proceedings pursuant to the FSPA or other statutes administered by the Commission are warranted.

By separate Order Discontinuing Proceeding issued this date in Docket No. 91-44, Actions to Address Adverse Conditions Affecting United States Carriers in the United States/Taiwan Trade, the Commission concluded an FSPA investigation of the Trade by finding that certain adverse conditions do exist within the meaning of section 10002(b), and that no actions on the part of the Commission to offset such conditions were necessary and appropriate. The Commission advised that it would continue to monitor events in the Trade and that to this end an Order Requiring Information would be issued with responses due in six months.

While most of the issues raised in that proceeding were resolved to the apparent satisfaction of the U.S. Carrier parties, the issue on which the finding of adverse conditions was based was that of U.S. Carrier trucking rights. Legislation to liberalize restrictions on the U.S. Carriers' ability to engage in their own trucking operations in Taiwan remained pending at the close of the FSPA investigation. There was uncertainty not only as to the timing of the enactment of the legislation, but also regarding the actual meaning and interpretation of the proposed legislation, an

official translation of which has not been made available to the Commission.

Thus, the carriers named herein are instructed to report to the Commission on any laws, rules, regulations, policies or practices which operate to prevent U.S. carriers from engaging in their own trucking operations. The carriers are also instructed to report on any developments relating to restrictions on U.S. carriers' ability to truck the containers of other carriers. Any other issues or developments relating to conditions in the Trade may also be included in the reports.

THEREFORE, IT IS ORDERED, That pursuant to section 10002(d) of the Foreign Shipping Practices Act of 1988, the carriers named herein shall submit to the Commission the information requested above, together with any relevant documents, including copies of applicable laws, orders, regulations, decrees, and legislation. Any document written in a language other than English shall be accompanied by a certified English translation. Each of the answers shall be provided in writing and under oath, and signed by the person providing the answer.

FINALLY, IT IS ORDERED, That the reports required by this Order be filed on or before November 13, 1992. Such reports shall be directed to the Secretary, Federal Maritime Commission,

Washington, D.C. 20573-0001 and shall consist of an original and 15 copies.

By the Commission.

Joseph C. Polking
Secretary