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Order 2001-3-2  
Served: March 6, 2001



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

123429

Action on IATA Agreement  
Issued by the Department of Transportation  
on the 1st day of March, 2001

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Agreement adopted by the Tariff	:	
Coordinating Conferences of the	:	Docket OST-2000-8067-2
International Air Transport Association	:	R-1 through R-6
relating to composite cargo resolutions	:	

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ORDER

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code (the Code), and Part 303 of the Department's regulations. The agreement was adopted at the Cargo Tariff Coordinating Conference Geneva, Switzerland, May 15-17, 2000. 1/

The agreement revalidates existing IATA rate resolutions to/from the U.S., with some changes. Minimum charges from Yugoslavia to U.S. points in the North Atlantic sub-area are aligned with minimum charges to foreign points in the Mid and South Atlantic sub-areas. From South Africa, minimum charges, general commodity rates and specific commodity rates are increased to offset currency depreciation. Add-on amounts for Alexandria are introduced at zero over Cairo for construction of GCRs/SCRs to/from the U.S.

The U.S. carrier members of IATA did not submit economic justification in support of the agreement, but rely instead on economic justification submitted in support of an earlier IATA agreement in Docket OST-2000-6837. 2/

1/ IATA memorandum CTC COMP 0288 filed with the Department on July 2, 2000.

2/ The agreement in Docket OST-2000-6837 proposed a uniform, industry-wide mechanism to surcharge cargo rates based on a fuel-price index, with an initial surcharge of 10 cents per kg. The Department disapproved the agreement on policy grounds in Order 2000-3-7 (March 14, 2000), and we did not evaluate the economic justification submitted by the carriers in that Docket at that time.

Those economic justifications, from American Airlines, Delta Air Lines, Federal Express and United Airlines, included forecasts of freight revenue and earnings under existing rates, for the two years ending February 28, 2002 for each of the operating divisions (Atlantic, Pacific and Latin America). Although these forecasts were prepared as justification for an earlier IATA agreement, they remain relevant for evaluating the agreement before us now. The rate increase proposed in the agreement involves only the Atlantic area. As detailed in the Attachment, all of the U.S. carriers project operating losses and negative returns on investment in their Atlantic freight operations under existing rate levels. The proposed rate increases affect very little traffic to/from the U.S. and will have a de minimus effect on U.S. carrier earnings.

We will approve the agreement, subject to our usual conditions that all agreed rates and charges represent maximums, with carriers free to implement rates and charges below them. Composite carrier results for Atlantic rates to/from the United States demonstrate that the revenue received by the carriers for their freight services does not provide an excessive return, and that approval of the rate changes is justified.

Furthermore, we conclude that the resolutions contained in the agreement should be granted immunity from the operation of the antitrust laws to the extent necessary to permit their implementation. In general, they amend existing rates already approved and immunized by the Department. As a result, the agreement does not raise immunity issues not previously considered, and the conferral of immunity upon them is consistent with our policy of conferring immunity on amendments coextensively with the underlying agreements.

Acting under Title 49 of the United States Code, and particularly sections 40101, 40103, 41300, and 41309:

1. We do not find that the resolutions set forth below, and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, or likely to lessen competition substantially; provided that (a) notwithstanding any provisions of these resolutions or any other resolutions, all rates and charges to or from U.S. points established pursuant to these resolutions shall maximums, (b) each and every carrier operating pursuant to such resolutions may implement rates and charges below those established by these resolutions and (c) approval is subject, where applicable, to conditions previously imposed;

Docket OST-00-8067  
CTC COMP 0288

Resolution  
R-1; 501 (002)

Description  
Minimum Charges for Cargo

Docket OST-00-8067

CTC COMP 0288

Resolution

Description

R-2; 530 (002)

Rates and/or Charges for  
Unitised Consignments

R-3; 550 (002)

General Cargo Rates

R-4; 590 (002)

Specific Commodity Rates

R-5; 015aa

Add-On Amounts

R-6; 501aa

Small Package Service except USA/US  
Territories-Belgium, Chile, Germany, Italy,  
Sweden, Switzerland

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-00-8067, as set forth in finding paragraph 1 above, subject to conditions imposed.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in Docket OST-00-8067, as set forth in finding paragraph 1 above, subject to conditions imposed.

By:

Susan McDermott  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

## Attachment

U.S. Carrier Atlantic Freight Operations, Projected <sup>1/</sup>  
\$(000)

	<u>American</u>	<u>Delta</u>	<u>FedEx</u>	<u>United</u>	<u>Composite</u>
Operating Profit (loss)	(187,195)	(95,569)	(42,753)	(145,504)	(471,021)
Return on Investment	(61,005)	(30,570)	(15,834)	(45,164)	(152,573)
Investment	178,857	160,714	473,222	156,919	969,712
% Return	-34.1%	-19.0%	-3.3%	-28.8%	-15.7%

<sup>1/</sup> The carriers forecast results for the two years ending February 28, 2002. Return elements reflect averages of the two year forecast period.