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3/26/2001



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

Order 2001-3-24

125018

Action on IATA Agreement  
Issued by the Department of Transportation  
on the 26 day of March, 2001

Served: March 29, 2001

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Agreement adopted by the Tariff :  
Coordinating Conferences of the : Docket OST-2000-8066-2  
International Air Transport Association : R-1 through R-8  
relating to cargo composite 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 composite Cargo Tariff Coordinating Conference in Geneva, Switzerland, May 15 -17, 2000. 1/

The agreement is comprised of composite resolutions with worldwide application. The agreement would amend sources of exchange rates in order to facilitate uniform application; amend a specific commodity rate description guide to include soft shell turtles; increase the dangerous goods handling fee from South Africa; reduce the ULD (unit load device) demurrage charge in South Africa; and add local currency amounts for certain charges in Thailand. We will approve those portions of the agreement, which raise no substantive concerns, subject to our usual conditions that all agreed rates and charges represent maximums, with carriers free to implement rates and charges below them. 2/

The agreement also amends declared value amounts in Resolution 503 (Charges in Relation to Value), generally to align them with provisions of Montreal Protocol 4, which establishes a limit on carrier liability of 17 Special Drawing Rights (SDR's) per kilogram. The previous limit was \$20. However, in Attachment A to Resolution 503, the agreement would continue exceptions to the generally applicable SDR17 level, for 10 countries, and add exceptions for nine countries. Some of these

1/ IATA memorandum CTC COMP 0283 filed with the Department on October 4, 2000.

2/ The only rate increase, in the dangerous goods handling fee from South America, will have a de minimus effect on U.S. carrier revenues, and information available to us indicates that the carriers are not earning excessive returns in their Atlantic freight operations. See Order.

exceptions are expressed as local currency amounts and some adopt the previously applicable \$20 level. IATA merely states that these exceptions are to reflect "carrier requirements." We are not prepared to approve exceptions to the SDR17 amount in Montreal Protocol 4, and will, therefore, disapprove Attachment A.

We conclude that the resolutions we are approving 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 and provisions already approved and immunized by the Department. As a result, none 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 following resolutions, which are incorporated in the agreement in Docket OST-2000-8066 as indicated and which have either direct or indirect application in foreign air transportation as defined by the Code, to be 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 be maximums, (b) each and every carrier operating pursuant to such resolutions may implement rates and charges below those established by these resolutions, and (c) and approval is subject, where applicable, to conditions previously imposed;

**Docket OST-00-8066**

<u>Resolution</u>	<u>Description</u>
R-1; 001uu	Special Resolution ❖ Neutral Air Waybill (except EC Member States, USA/US Territories)
R-2; 033e	Rules for Payment of Cargo Rates, Charges and Other Amounts
R-3; 503	Charges in Relation to Value (Except Attachment A)
R-4; 509	Charges for Disbursements
R-5; 518	Dangerous Goods Handling Fee
R-6; 519	Fee for Charges Collect

**Docket OST-00-8066**

<u>Resolution</u>	<u>Description</u>
R-7; 520b	ULDs - Demurrage
R-8; 590aa	SCRs Item Numbers and Description Guide

2. We find Attachment A of Resolution 503 (Charges in Relation to Value) to be adverse to the public interest and in violation of the Code; and

3. 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 85-5032, 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, the conferral of antitrust immunity is mandatory under Title 49 of the United States Code.

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-00-8066, as set forth in finding paragraph 1 above, subject to conditions imposed.

ACCORDINGLY,

1. We approve and grant antitrust immunity to the agreement contained in Docket OST-00-8066, as set forth in finding paragraph one above, subject to conditions imposed; and

2. We disapprove Attachment A of Resolution 503.

**By:**

Susan McDermott  
Deputy Assistant Secretary for Aviation  
And International Affairs

**(SEAL)**