

Thoughts Regarding the Soft Environment
for Building Shanghai into an International
Shipping Centre

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关于上海建设国际航运中心的软环境的思考

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1, 引言

一个国际经济、金融、贸易中心城市的崛起,必然与国际航运中心的发展互为条件,相辅相成。把上海建成国际航运中心是开发开放浦东、使上海成为国际经济、金融、贸易中心之一的重要条件。上海优越的地理位置,雄厚的产业基础,广阔的发展腹地和完善的配套服务,为其在2010年初步建成国际航运中心,准备了充分的条件。

把上海建成国际航运中心,除了必不可少的硬件投入,如航道整治、深水港建设等,还必须同时考虑软环境的建设。让各国航运、贸易和金融各界人士感到,在上海从事航运业务,与在鹿特丹、新加坡和香港地区一样方便、高效、有序和有利可图。这就要求上海有作为国际航运中心所必需的平等的竞争环境,配套的法律法规,使各种航运交易活动按照市场经济规律,遵循国际惯例,在法制的轨道上正常有序地进行。

2, 平等的竞争环境

纵观国际上各个航运中心城市,可以发现它们有一个共同的现象,即世界各主要航运公司都在那里落户,各自都是环球海运航线的起运港、中转港和目的港。如果一个港口城市不具备上述二点,那就谈不上是一个国际航运中心。

改革开放以来,不少著名的航运企业先后进入上海,如丹麦的马士基航运公司、美国的海陆公司、韩国的韩进公司和荷兰的渣华航运公司等。它们或者在上海成立子公司,或者在上海建立办事处。以上海为起迄港的集装箱班轮航线发展很快。1995年,上海港国际集装箱吞吐量突破150万标准箱,约占全国沿海港口集装箱吞吐量的三分之一强,是1980年的50倍,年均递增30%。所有这此,说明国际航运界乃至整个世界看好上海。但是,上海要在2010年建成国际航运中心,还有很长的路要走。

要吸引更多的国际航运企业,尤其是国外著名的航运企业来上海安营扎寨,并开出高密度、全球化的集装箱班轮航线,一个重要的条件是,国家必须为在上海开展航运业务的中外航运企业提供一个彼此能够平等竞争的环境。随着改革开放的深入,我国国际航运业已经发生了深刻变化,择其要者有:允许由外资参予的中国船公司的船舶在中国登记注册,悬挂中国旗帜在海上航行;开放航运市场,在对等条件下允许外国船公司在中国从事经营活动;停止执行国货国运政策,不再为国轮保留货载,原则上新签的国与国之间的双边海运协定不设货载份额条款;放开国际航运运价;打破船舶代理、货运代理独家经营的局面;统一对外国籍船舶和中国籍船舶的港口收费标准;允许合资经营码头等。上述变化,是我国由封闭的计划经济体制向开放的市场经济体制过渡的结果。

要在2010年把上海建成国际航运中心,必须逐步减少对外国航运企业进入中国航运市场的各种限制,并经过10多年的过渡,最终给外国航运企业国民待遇。在航运领域里,所谓国民待遇,是指给外国航运企业的待遇,不应当低于给予本国航运企业的待遇。如果二者之间有差别,改变了双方的竞争条件,使之有利于本国航运企业,则被认为是违反了国民待遇原则。简而言之,在国民待遇下,外国航运企业在市场准入条件、公司经营范围及

税收等方面，与国内企业适用同一标准，在招工、租房、水电、交通等方面，也与国内企业一样享受同等待遇。外国航运企业在中国开展航运业务时犹如一个国内航运企业。从这个意义上说，给外国航运企业国民待遇是营造平等竞争环境所必不可少的条件。如果我国法律法规对外国航运企业进入中国航运市场设有程度不同的限制，使其事实上不能与中国同类企业处于平等地位，造成不公平的竞争局面，这就在客观上阻碍了外国航运企业进入中国航运市场，最终将影响到上海国际航运中心的建设。几十年来，从扶持民族航运业的角度出发，限制外国航运企业进入中国航运市场，给国有航运企业一系列优惠政策，这是十分必要的，也是可以理解的。但是，随着我国经济体制的转轨和市场经济的发展，整个国民经济与世界经济的联系日益密切，如果继续在航运领域里维持各种对外国航运企业的限制，那么，到2010年把上海建成国际航运中心的目标是很难实现的。

众所周知，国际航运业涉及的面很广，与贸易、金融、保险、港口等行业有着密不可分的联系。航运业是服务贸易的一部分，如果不是着眼于整个服务贸易业的对外开放，而是孤立地突出航运这一环节，显然是难以奏效的。外资银行和保险公司不能与外国航运企业同步放开，将会影响到航运业务的开展。所以，只给外国航运企业国民待遇是不够的，而应当在整个服务贸易领域里，都对外国企业实行国民待遇。

国民待遇与市场准入紧密相连，由于各国服务贸易业发展水平不同，世界上多数国家的做法与国民待遇的要求还有程度不同的差距，即使像美国这样服务贸易高度发达的国家，在航运领域里也没有达到完全自由的水平。如果在我国现在就实行国民待遇，就必须取消所有对外国籍船舶的各项不同于本国籍船舶的收费，重新考虑垄断沿海与内河航行权的政策。应该说，我国目前还不具备这样做的条件。在这一问题上应当采取实事求是的态度，只能根据国家的发展水平和承受能力，在双边谈判的基础上，有步骤分阶段地落实国民待遇政策，逐步达到《服务贸易总协定》(GATS)下航运服务业谈判所追求的目标：逐步取消一切限制进入航运市场的措施，允许外国在本国实现自由的商业性存在，给予外国航运服务提供者国民待遇，最终实现航运完全自由化。

我国自1990年起参加乌拉圭回合的航运业谈判。为减少和取消外国在航运方面的障碍与壁垒，根据GATS的原则和精神，我国向有关国家提出了合理要价，同时也对外作出了承诺。我国的对外承诺可以概括为：允许通过合营形式建立航运公司；允许以合营形式从事集装箱装卸、仓储业务；在对等条件下允许外国船公司在我国境内开办独资或都合资船务企业，为其自有船舶办理有关业务；允许合资建设并经营公用码头等。我国对外要价的主要精神是：要求有关国家逐步取消货载保留，允许中国航运企业在当地开展正常的航运业务，平等对待我国国有航运企业和其他性质的船运企业等。根据GATS“市场准入”原则，在我国航运市场对外开放，并逐步落实对外国航运企业实行国民待遇的同时，外国航运市场也应对我开放，外国同样应给予我国航运企业国民待遇。这对我国航运业全面走向世界，扩大市场份额是有利的。当然，我们应当重视在给外国航运企业国民待遇的过程中，对国内航运企业带来的冲击。毫无疑问，在对外扩大开放的同时，我国航运业已面临着严峻的挑战。

给予外国航运企业国民待遇，为其与我国航运企业在中国航运市场上处于事实上的平等地位创造了条件。但是，如何保证中外航运企业在中国开展具体的航运业务时做到公平

竞争呢？建立上海航运交易市场是一个有效途径。在交易市场内，实行公平、公正、公开三原则，把货主、船方、港口经营人，以及船舶代理和货运代理引入交易市场，禁止任何形式的欺诈和违法交易行为，实现水路运输资源的合理配置，保障交易各方的合法权益，达到规范市场交易，调节市场价格，沟通市场信息的目标。

在培育上海航运交易市场时，首先应该出台若干与交易行为直接相关的规章制度，如航运交易市场管理规则、航运交易市场交易规则和结算办法等。与此同时，上海航运交易市场应该立即组织力量，在借鉴国内外同类合同的基础上，尽快制定出自己的各种标准合同格式。上海航运交易市场如能早日推出与航运有关的各种标准合同格式，作为向中外客户提供优良服务的一个抓手，并以此扩大自己的影响，那对于交易市场的发展将会产生十分积极的作用。从一定的意义上说，当上海航运交易市场的标准合同格式为国内外客户认同之日，便是上海国际航运中心建成之时。

3. 配套的法律法规

国际上的航运中心，无一不是按照市场经济规律运作的，或者说无一不是在市场经济的体制下运行的。市场经济是法制经济，离开了配套的法律法规，市场经济将陷入混乱。我国自70年代末期开始的经济体制改革，已经取得了举世瞩目的成就。为建立和发展有中国特色的社会主义市场经济，全国人大及其常委会已先后出台了一系列法律，如公司法、票据法和破产法等。与此同时，国家也注意到立法滞后于经济体制改革，明确提出改革决策要与立法决策紧密结合，立法要体现改革精神，用法律引导、推进和保障改革的进行。

就与航运业直接有关的法律而言，全国人大已通过了二部，即1983年的《中华人民共和国海上交通安全法》和1992年的《中华人民共和国海商法》。从航运业涉及的各种关系看，上述二部法律远不能满足需要，自然也就不能满足把上海建成国际航运中心的需要。例如：港口是国家对外开放的门户，是水陆交通的枢纽，迫切需要有一部港口法来调整与港口有关的纵向、横向的各种关系；我国整个水路运输秩序不能令人满意，有些环节管理失控，急需相应的管理条例出台。这从一个侧面反映出我国还没有一个能够保障上海成为国际航运中心的法律体系。为此，建议国家加快港口法，水运法和中国国际海运业管理条例等法律法规的制定工作，早日形成与上海建设国际航运中心相适应的法律环境。

3.1, 港口法。我国是一个航运大国，也是一个港口大国。现有对外开放的港口117个，其中一类口岸77个，二类口岸40个。港口吞吐了全国90%以上的对外贸易进出口货物。上海是全国最大的港口，货物吞吐量位居中国第一，亚洲第二，世界第三。港口能否高效、有序地运作，关系到航运业的健康发展和国家的对外形象。我国现行的港口体制已越来越不适应形势发展的需要，集中表现为：港口管理条块分割，机构重叠，职能交叉，影响了国家对港口的宏观调控能力；港口政企不分，削弱了港口的行政管理职能，妨碍了港埠企业独立自主地走向市场。所有这些反映在港口的服务质量上，是船公司和货主对之颇有微词。为了促进港口体制的进一步改革，推动港埠企业建立现代企业制度，依法调整港口与各方面的关系，尽快制定港口法，确实已到了迫在眉睫的地步。

制定港口法应当坚持改革开放，在认真总结建国40多年来港口管理与经营的经验 and 国外港口管理与经营的长处的基础上，形成我国的港口法。港口法的规定应当有利于加快港口建设，有利于加强国家对港口业的宏观调控，在政企分开的前提下理顺港口管理体制，

明确港口经营人的法律地位，促进港口市场的发展，防止港口的垄断经营。

3.2, 中国国际海运业管理条例。我国海商法第6条规定：“海上运输由国务院交通主管部门统一管理，具体办法由国务院交通主管部门制定，报国务院批准后施行。”这就是说，法律已明确授权交通部对国家包括国际航运在内的整个海上运输业进行行业管理。作为主管部门的交通部，如何在市场经济的条件下，依法对航运业进行管理，是一个现实而又紧迫的课题。以上海为例，目前货运代理市场管理混乱，运输中不合理的削价竞争和乱给回扣，外国船公司的办事处违法经营、偷税漏税等，极大地损害了上海航运市场的声誉，急需对之采取措施予以解决。

我国习惯上将整个水上运输分为国际航运、沿海与内河水运，并在此基础上进行管理。因此，有关国际航运的管理，可以在将由国务院颁发的国际海运业管理条例中规定，有关沿海与内河水路运输的管理，可以在正在制定中的水运法中规定。从发展的眼光看，国家应该制定一部既适用于国际航运，又适用于沿海与内河水路运输的管理法。人为地把水路运输一分为二的做法，是不合理的。

国际航运业管理条例应该就我国国际航运市场的准入条件、班轮与提单管理、船舶代理、货运代理及国际多式联运经营人的审批程序、经营行为准则、运价及其他有关事项作出规定。

3.3, 水运法。我国沿海与内河运输实行相同的管理体制和同一的责任模式。水路运输在整个国民经济中发挥了其它运输方式不可替代的作用。在这一庞大的运输体系中，纵向行业管理主要靠1987年国务院发布的《中华人民共和国水路运输管理条例》和1987年交通部发布的《水路运输管理条例实施细则》，横向民事关系主要靠1986年交通部发布的《水路货物运输合同实施细则》、1987年和1995年交通部发布的《水路货物运输规则》和《水路货物运输管理规则》。1992年的海商法，除第四章海上货物运输合同外，其他章节适用于沿海运输。此外，交通部还制定了一系列适用于沿海与内河运输的规章。目前适用于沿海与内河运输的各种规定的缺点是，层次不高，内容分散，不少规定本身缺乏法律依据，相互之间还有冲突。所以，制定一部同时适用于沿海与内河运输的水运法，无疑是十分必要的。

水运法要与海商法合理衔接，力求与国际接轨。水运法要结合我国沿海与内河运输的实际，纵向与横向兼顾，主要包括下列内容：船舶与船员、水路运输管理、水路货物运输合同、水上事故处理等。

到本世纪末，上述三个法律法规将先后出台，它们将与其它法律法规一起，初步形成能够涵盖与航运业有关的各个方面关系的法律体系。在这个体系中：规定海上、内河运输关系、船舶关系的有海商法、水运法(包括沿海与内河运输的纵向管理规定)；规定国际航运业纵向管理关系的有中国国际海运业管理条例；规定与港口有关的各种关系的有港口法；规定船舶登记制度的有船舶登记条例；规定船舶检验制度的有船舶检验条例；规定海上交通安全的有海上交通安全法。这一系列的法律法规，与民法通则、保险法、担保法、票据法、银行法等一起，就能够在大的方面基本满足将上海建成国际航运中心对法律的要求。

制定法律法规固然不易，但是法律法规出台后真正做到依法办事更难。有法不依、执

法不严，甚至比没有法律的危害更大。为此，在上海建设国际航运中心的过程中，上海地方交通主管部门、海事法院等必须严格依法行政、依法办案，确实做到有法必依，执法必严，这对于上海国际航运中心的早日建成，是至关重要的。

离开2010年还有15年的时间。建设上海国际航运中心，必须脚踏实地，埋头苦干，在硬件投入、软环境建设二个方面都抓紧不放。笔者认为，通过3个5年计划的不懈努力，一个四通八达的国际航运中心，必将屹立在祖国的东方，太平洋的西岸。

论文摘要:

把上海建成国际航运中心,除了必不可少的硬件投入,如航道整治,深水港建设等,还必须同时考虑软环境的建设,这就要求上海作为国际航运中心所必需的平等的竞争环境,配套的法律法规,使各种航运交易活动按照市场经济规律,遵循国际惯例,在法律的轨道上正常有序地进行。

为了保证中外航运企业上海开展具体的航运业务时做到公平竞争,建立上海航运交易市场是一个有效途径。

市场经济是法制经济,为此,建议国家加快港口法,水运法和中国国际航运业管理条例等法律法规的治定工作,形成与上海建设国际航运中心相适应的法律环境。

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Thoughts Regarding the Soft Environment for Building

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1. Preface

The rise of an International Centre of Economy, Finance and Trade and the development of an International Shipping Centre inevitably become mutual condition and supplement of each other. Building Shanghai into an International Shipping Centre is an important factor to the development and opening of Pudong and to the making Shanghai into one of the International Centres of Economy, Finance, Trade. Its advantageous geographic location, solid industrial fundamental, vast hinterland to provide further development and perfect accommodation services provide efficient grounds for building Shanghai into an International Shipping Centre within early 2010.

To develop Shanghai into an International Shipping Centre, it not only requires necessary investment in hardware, such as dredging waterways, building deep-water ports, and also requires to consider building of soft-environment at the meantime. The people in shipping, trading and financial lines from each country will feel that going in for shipping business in Shanghai is as convenient, high efficient, well-ordered and privilegeous as in Rotterdam, Singapore and Hongkong area. This requires that Shanghai must have an environment of equal competition necessary for any international shipping center, and must have a complete set of related statutes and regulations complete, so that all shipping dealings and activities could proceed along the right track of statutes in line with the market economy laws and international conventions.

2. Environment of Equal Competition

Looking far and wide at other International Shipping Centre cities, we can find that they all have a common aspect that is, all main shipping companies in the world settle there, and take that city as the port of shipment, of transit, and of destination for their round-the-world lines. A harbour city without the two points above-mentioned, can not be ranked as an International Shipping Centre. Since reform and opening, a great

number of well-known shipping corporations have entered Shanghai in succession, for instance, Maersk of Denmark, Sea-land of USA, Hanjin of Korea, and Naddlyd of Holland and so on. They established either branch offices or agencies in Shanghai. The container lines taking Shanghai as port of shipment or destination develop rapidly. In the year of 1995, Shanghai handled international containers up to 1.5 million TEUs accounting for more than one third of the total volume handled by of cabotage ports in China, as fifty times as in 1980, with an annual increase of 30 percent. All these show that all the international shipping business even the whole world think highly of Shanghai. However, it is a long way to go until Shanghai is built into an International Shipping Centre.

In order to attract more and more international shipping companies, especially foreign famous international shipping corporations to make their home in Shanghai, and to operate concentrated round-the-world container lines, one important condition is to furnish environment in Shanghai where domestic and foreign shipping companies can compete with one another equally. With the reform and opening deepening, the shipping business of our country has profoundly changed, mainly including: vessels owned by a Chinese ship company but participated by foreign capital now are permitted to register in China and navigate flying Chinese flag; shipping market has been opened, and foreign ship companies to now are allowed to have operating activities in China on the basis of reciprocity; the policy of native cargo carried by native ships is ceased to apply; no reserving cargo carriage for native ships any more; in principle, the mutual agreement of carriage by sea newly reached will not set a clause of carriage share reservation; no more interference in international freight; the solitary operation of one ship broker or freight forwarding without competition has been broken; the standard of harbour charge to ships either of Chinese or of other nationalities is unified; joint venture to run wharf now is permitted, etc. The aforesaid changes are the outcome of transition from close planned economy system to open market economy system.

To build Shanghai into an International Shipping Centre in 2010, we must reduce step by step various restrictions imposed on foreign shipping companies to come into Chinese shipping market, and try in around ten years' to give them National Treatment. What is called National Treatment in shipping field is that the treatment granted to

foreign shipping corporations shall not be lower than that to native corporations. If there exists difference between the two, and therefore alters the competing conditions, and places native shipping enterprises in a position of privilege, then it is to be considered as breach of the principle of National Treatment. In brief, under the principle of National Treatment, foreign shipping companies shall apply to the same standard as native companies, in the terms of market accessibility, business scope of company and tax revenue, and also enjoy the same treatment also in recruitment, rent, water and electricity as well as communication. Thus foreign shipping companies can operate their business in China as native ones. In this sense, to grant foreign shipping companies the National Treatment is indispensable to creating an environment of equal competition. If our statutes and regulations still place restrictions of varied degrees on foreign shipping companies in entering Chinese shipping market, make them in fact unable to be on an equal standing with Chinese counter parts, this hinders foreign shipping enterprises getting into the shipping market of China beyond question. At last, it will greatly affect the building of Shanghai into an International Shipping Centre. During the past several decades, the state, in order to support our national shipping business, placed restrictions on foreign shipping companies to get into Chinese shipping market and to grant a series of favourable policies to state owned shipping companies, which was essential of that time. However, with the reform of our economy system and the development of market economy, the whole national economy becomes more closely related with the world economy. If we continues to keep the various restrictions on foreign shipping companies in the field of shipping, then the objection to build Shanghai into an International Shipping Centre is difficult to be realized.

It is known that international shipping business involves a lot of trades, having close relation with trading, finance, insurance, harbour and so on. If shipping business, as part of the service trade, does not focus on the all-round opening of service trade, and in stead, only focuses on giving prominence to shipping only, obviously it will be hard to get the desirable result. If the market can not open to foreign capital banks and insurance companies at the same time, it will affect the development of shipping business. Therefore, it is not enough to grant national treatment to foreign shipping companies, in stead, we ought to implement National Treatment in entire service trade field.

National Treatment closely relates to market access. As the levels of development of service trade vary in each country, there is still different gaps between what most countries are doing and the requirement by National Treatment. Even if the USA whose service trade is highly developed, she still has not reached complete freedom in the shipping field. If the National Treatment is to be adopted in China, then we should abolish all sorts of charges and fees applied to ships of foreign nationalities which are different from those applied to native ships, and reconsider the policy of having monopolized cabotage and inland water navigation right. But in fact our country does not possess such condition today. Therefore we must have a practical and realistic attitude towards this question. We can only adopt National Treatment policy by stages, considering our country's development level and capacity, on the basis of mutual negotiation, progressively reach the objection pursued by shipping negotiations under the general agreement on service trade(GATS): to rescind step by step all measures which obstruct entry into shipping market, to permit foreign enterprises freely to exist commercially, to provide foreign shipping servitors with National Treatment, and to achieve entire liberalization in shipping field finally.

Our country has taken part in shipping business negotiation of the Uruguay Round since 1990. With the aim of reducing and abolishing obstacles and barriers some foreign countries have set in shipping area, our country put forward reasonable request, in compliance with the principle and spirit of the GATS, meanwhile we also made promises, which can be summarized as following: allow to establish shipping companies by the means of co-operation; allow to jointly operate of container loading and discharging, warehousing business; permit foreign ship companies to open solely owned or joint venture shipping enterprises and deal with ships of their own on the basis of reciprocity; allow to construct and operate public berth with Chinese partners, etc. The requirement we proposed is mainly: demand nations concerned to rescind cargo reservation by stages, allow Chinese shipping companies to launch normal shipping business in the locality; and give equal treatment to our state-owned shipping companies and companies of other natures. According to the GATS "market access" principle, as our country opens shipping market and implement the policy of National Treatment, foreign shipping market should be opened to us as well, and give our shipping companies National Treatment. It is useful for our

shipping business to head for the world in an all-round way, and to increase market share. Certainly, we must attach importance to the wave brought about to native shipping companies when we grant foreign shipping companies National Treatment. Doubtlessly, with the opening towards outside, the shipping business in our country will face severe challenge.

Granting foreign shipping companies National Treatment creates favourable condition for them to be in situation of genuine equality as our shipping companies in Chinese shipping market. But furthermore, how to ensure that domestic and foreign shipping companies can bring about fair and just competition when they each launch particular shipping practice? To establish Shanghai Shipping Exchange Market is a efficient way. In the market, equitable, impartial and public rules guide cargo owners, carriers, port operators along with ship brokers and freight forwardings into the exchange market, forbid fraudulent and illegal transaction, achieve rational disposition of waterway transport resource, protect lawful rights and interests of parties involved, therefore, attaining the goal of standardizing market exchange, adjusting market price, and communicating market information.

When Shanghai Shipping Exchange Market is being fostered, some certain statues and regulations directly related to transactions must be worked out, for example, regulation on the administration of shipping exchange market, regulation on the transactions in the shipping exchange market and administration of settlement, etc. At the same time, Shanghai Shipping Exchange Market shall only organize resources, borrow the experience of similar domestic and foreign contracts for reference to work out standard contract form of its own as soon as possible. If Shanghai Shipping Exchange Market can bring forth all kinds of standard forms, as a bridge to supply excellent service, and meanwhile enlarge its influence, it will positively promote the development of the market. In a certain sense, the day when the contract form of the Shanghai Shipping Exchange Market is accepted by domestic and foreign clients is the day when Shanghai International Shipping Centre will have been set up.

3. A Complete Set of Statutes and Regulations

None of the shipping centres in the world does not operate according to market economy pattern, or in another words, each of them operates

under market economy system. Market economy corresponds to legalized economy. Without a complete set of statutes and regulations, market economy is thrown into confusion. Our country has made tremendous achievement since economy system reform in late 1970's. In order to establish and develop Chinese characteristic socialist market system, the Nation People's Congress and its Standing Committee has drawn up a series of regulations one after another, for instance, the Company Act, the Negotiable Instruments Law, the Law of Bankruptcy. Meanwhile our state has also noticed that legislation has lagged behind the economic system reform, thus clearly put forward the view of point that decisions of strategic importance on reform must be integrated with legislation decisions. Legislation ought to reflect the spirit of reform. Statutes shall guide, protect and promote the reform. As for the regulations relating to shipping business, the Nation People's Congress has passed two bills. One is the Maritime Traffic Safety Law of P.R.C. in 1983 and another the Code of Maritime Law of P.R.C. in 1992. In terms of relationship pertaining to shipping business, the two regulations above-mentioned are far from sufficient, let alone satisfy the demand to build Shanghai into an International Shipping Centre. For example, a port is not only a window for the country to open towards outside but also a hub of water and land communication. We are in great need of a Harbour Act to adjust lengthwise and crosswise relationships concerned. The waterway transport order is far from satisfaction, some links are even out of control, and require urgently to lay down relevant laws. All of above presents an aspect that our country is in need of a legal system to guarantee Shanghai to become an International Shipping Centre. For this reason, we suggest to speed up formulating Harbour Act, Waterway Transport Act and International Maritime Business Administration Rules and so on, in order to form a legal surrounding corresponding to constructing Shanghai as an International Shipping Centre at a earlier date.

3.1 Harbour Act. Our country is a great shipping nation as well as the country owns a great number of ports. Up to date, there are about 117 ports opening towards outside, including 77 first class ports and 40 second class. Those harbours handle over 90 percent import and export trading cargo. Shanghai is the greatest port in China, with the volume of freight handled ranking the first in China, the second in Asia, and the third in the world. Whether the harbours can operate in high efficiency

and good order will affect the market development of shipping business and the image of the country. Our harbour system in operation becomes worse and worse out of pace with the current development, such as divided harbour management, overlapped organizations and functions have seriously adversed the national macroscopic adjustment and control over harbours, mixture of administration and entity weakens harbour administration function and prevents enterprises from entering market independently and initiatively. As a result ship companies and owners of cargo have veiled criticism on the service qualities of harbours. In order to carry forward the reform of the harbour system, to give impetus to port companies to set up modern enterprise system, and to adjust various relationships with harbours , it is extremely urgent to lay down the harbour act.

To formulate our country's harbour act we must adhere to reform and opening policy, and work out a harbour act of our own by seriously summing up over 40 years' harbour management and operation experience since the founding of P.R.C. and borrowing good experience of other countries'. The stipulation of Harbour Act shall contribute to speeding up of harbour construction, improving national macroscopic adjustment and control over ports. On the condition of separating from administration, put harbour management in order, make clear the legal position of port operator, promote the development of harbour market, and guard against monopoly harbour operation.

3.2 Regulation for Administration of International Ocean Shipping of P.R.C.

Clause 16 in the Code of Maritime Law of P.R.C. stipulates: All matters pertaining to maritime transport shall be administered by the authorities in charge of transport and communication under the State Council. The specific measures for such administration shall be worked out by such authorities and implemented after their being submitted to and approved by the State Council. That is to say, the code clearly and definitely authorizes the Communication Department to administer the whole seaway transport including international ocean shipping. For the Communication Department, as a competent authorities, how to administer shipping business in compliance with statutes and regulations under the conditions of market economy is a practical and urgent question. Taking Shanghai as example, the freight forwarding market is in chaos at the moment; prices are unreasonably lowered; commission is

paid; the offices of foreign shipping engage in illegal operation, evasion taxes, all of which has done great damage to the reputation of Shanghai shipping market, and requires urgent actions.

In usual practice, we classify waterway transport into international shipping, cabotage and inlandwater transport, and take measures for administration accordingly. Thus the subject pertaining to international shipping administration can be provided for in the Regulation for Administration of International Seaway Transport which is going to be issued by the State Council, while cabotage and inland water transport may be set out in the Waterway Transport Act which is being laid down. In the long run, our state ought to work out regulation for administration applicable to not only international shipping but cabotage and inland waterway transport. It is not suitable to simply divide the waterway transport from one to two.

The Regulation for Administration of International Shipping Business shall stipulate items such as: condition of access to our international shipping market, the management of lines and bills of lading, the approval procedure of ship broker, freight forwarding and international multimedia operator, standard of operation, and freight.

3.3 Waterway Transport Act. In our country cabotage and inland water transport are applied to the same administrative system and liability pattern. Waterway transport plays an non-replaced role in national economy. In this massive transport set-up, lengthwise business administration mainly relies on the Regulation for Administration of Carriage by Waterway of P.R.C. issued by the State Council in 1987 and the Regulation for Implement Contract of Carriage of Goods by Waterway released by the Communication Department in 1987. In addition, crosswise civil relationship respectively depends on the Regulation for Carriage of Goods by Waterway of 1987 and the Regulation for Administration of Carriage of Goods by Waterway of 1995. Code of maritime Law of P.R.C. of 1992, except Chapter 4, the Contract of Carriage of Goods by Sea, other chapters apply for the cabotage transport. Besides, the Communication Department has formulated a set of rules applicable for cabotage and inland water transport. There are some short-coming in regulations applicable to cabotage and inland water transport: lack of unity and coherence, loose substance, too many clauses wanting in legal foundation. conflict among themselves. It is considerably essential to lay down waterway transport

act suitable for both cabotage and inland water transport. The Waterway Transport Act, which mainly consists of vessel and crew, administration of carriage of goods by waterway, contract of carriage of goods by waterway, dealing with accident on water, etc., should be associated with the maritime law and the actuality of cabotage and inland water transport, give consideration to lengthwise and crosswise relationship.

In company with other rules, these three aforesaid statutes and regulations that are going to be brought forward in succession, with the approach of the century, will form a relating complete legal system covering various relationship concerning shipping business. In the system: Code of Maritime Law of P.R.C. and the waterway transport act stipulate the content of transport and vessel relationship of sea and inland river; the regulation for administration of international shipping business adjusts lengthwise administration of international shipping business, the harbour act regulates relationships relating to harbours, the regulation for vessel registration provides institution of vessel registration, the maritime traffic safety law guarantee the safety on sea. The series of statutes and regulations together with the general rule of civil law, insurance act, guaranty act, negotiable instruments law, and law of bank can basically satisfy the requirement of statutes and regulations by aiming at constructing Shanghai as an International Shipping Centre.

Doubtlessly, it is not easy to work out statutes and regulations, but what even more difficult is to handle affairs according to them strictly when they come in effect. Though there are existing regulations applicable, one does not enforce or does not enforce them strictly. This is more harmful than there is no law. Therefore, during the course of building Shanghai into an International Shipping Centre, Shanghai local departments in charge of transport and the maritime court must strictly administer and deal with cases in accordance with statutes and regulations. This is essential to constructing Shanghai into International Shipping Centre early.

With only 15 years left to 2010, we must work in a down-to-earth style, quietly immerse ourselves in hard work, firmly grasp investments on infrastructure and soft-environment construction. The author considers that through consistent effort of three five-years plan an International Shipping Centre extending in all directions will certainly erect in the east of the homeland, in the west coast of the Pacific.

Abstraction

In the process of building Shanghai into an International Shipping Centre, it is necessary to increase municipal investments on infrastructure, meanwhile, we shall also develop a qualified soft-environment in Shanghai, which means an fair play surroundings and relevant statutes and regulations, where various shipping business could be performed orderly upon a basis of market system in accordance with international customs.

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