

STANDING COMMITTEE REPORT NO. 15-180

RE: C.R. NO. 15-192/T&C

SUBJECT: AGREEMENT ON REGIONAL COOPERATION IN MATTER AFFECTING
INTERNATIONAL COMMERCIAL SHIPPING IN MICRONESIA (MSC TREATY)

FEBRUARY 04, 2009

The Honorable Isaac V. Figir
Speaker, Fifteenth Congress
Federated States of Micronesia
Sixth Regular Session, 2009

Dear Mr. Speaker:

Your Committee on Transportation and Communications, to which was referred C.R. No. 15-192, entitled:

"A RESOLUTION TO RATIFY THE AMENDMENTS TO THE AGREEMENT ON REGIONAL COOPERATION IN MATTERS AFFECTING INTERNATIONAL COMMERCIAL SHIPPING IN MICRONESIA (MSC TREATY); TO REFLECT THE CURRENT NEEDS OF THE THREE PARTICIPATING GOVERNMENTS IN ORDER TO HELP BOOST OUR ECONOMIES, TO ENSURE SECURITY OF OUR SEAPORTS AND TO PROMOTE FAIR TRADE AND SHIPPING AMONGST AND WITHIN THE MSC TREATY PARTICIPATING GOVERNMENTS.",

begs leave to report as follows:

The intent and purpose of the resolution are expressed in its title.

The Micronesian Shipping Commission (MSC) met on July 8 to 10, 2008 in Majuro and unanimously adopted the following five proposed amendments to the MSC agreement.

Adopted amendment No. 1 is to amend Chapter 1 of the MSC treaty by adding thereto a new Article 2A to read as follows:

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"Article 2A - Ship and Port Security Requirements

- (a) The ship and port security arrangements contained in this agreement covers international voyages on fixed routes between the port facilities in the jurisdictions of the three Participating Governments that are parties to this agreement.
- (b) The ship and port security arrangements contained in this agreement will be interpreted or implemented by any of the parties to comprise the level of security of other ships and port facilities not covered by this agreement.
- (c) All vessels traveling on international voyages on fixed routes between the port facilities of the three Participating Government parties to this agreement must comply with the minimum requirements of Part A of the International Ship and Port Facility Security (ISPS) Code.
- (d) All port facilities in the jurisdictions of the Participating Governments receiving any vessel required to comply with the ISPS Code must comply with the minimum requirements of Part A of the ISPS Code.
- (e) This agreement may be treated as a pre-existing alternative security agreement in light of Article 4.26 of Part B: Guidance regarding the provisions of Chapter XI-2 of the Annex to the International Convention for the Safety of Life at Sea, 1974, as amended.
- (f) This agreement will be continually monitored and subsequently amended when the need arises and will be periodically reviewed every five (5) years."

Adopted amendment No. 2 is to amend Chapter 1, Article 6 Priority Consideration by adding thereto new Subsections (d) and (e), which shall read as follows:

"(d) The Commission shall ensure, through cooperation with respective Designated Authorities, that the port facilities under the jurisdictions of the three Participating Governments have approved port facilities security plans and that the plans are adequately implemented."

(e) Preference shall be given to Entry Assurance (EA) applicants that use ships that have approved ship security plans and shall ensure,

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through cooperation with the respective Designated Authorities and Port State Control of the Participating Governments, that such plans are fully implemented whilst the ships are in ports under the jurisdictions of the MSC Participating Governments. Where ships exempted from the International Ship and Port Facility Security (ISPS) Code are used, the Commission shall ensure that the use of such ships does not compromise the level of security of other ships using ports and the port facilities under the national jurisdiction of the Participating Governments."

Adopted amendment No. 3 is to amend Chapter 1, Article 3 Terms and Conditions of Entry Assurance by amending subpart of section (a) and by adding two new Subsections (b) and (c) thereto to read as follows:

Article 3 Terms and Conditions of Entry Assurance

"(a) An Entry Assurance to ports on specific routes shall be granted or denied on the basis of the merits of individual proposals for service submitted to the Micronesian Shipping Commission. And all Entry Assurance Certificates, upon granted, shall be for a term of [~~one or more five~~] (5) years, unless otherwise terminated for cause.

(b) Once awarded a Vessel Operation Common Carrier (VOCC) Entry Assurance Certificate, an Entry Assurance holder shall not serve as a general agent for another VOCC EA holder. Moreover, such a VOCC Entry Assurance Holder shall not employ, utilize, hire or otherwise appoint as its agent any terminal operator of any of port where its cargoes are offloaded; Provided, however, that these two new terms and conditions shall apply prospectively commencing upon their entry into effect.

(c) No VOCC and/or NVOCC Entry Assurance Holder shall utilize original bill of ladings of any carrier, which is not a holder of an MSC-approved EA Certificate, in transporting its cargo from point(s) of origin to any port(s) of destination in Micronesia."

Adopted amendment No. 4 is to amend Chapter III, Article 6 Exceptions, Subsection (f) to read as follows:

"(f) Fish bait, salt carried in bulk on reefer carrier(s) that are used for chilling and/or freezing highly migratory fish catch, and replacement purse seine fishing nets which are shipped in and frozen fish by-catch, frozen pre-cooked tuna loins and related by-products, and canned tuna, Wahoo, swordfish, billfish and other highly migratory fish species which are transported out by locally-based companies,

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loining plants and/or canneries operating within the jurisdictions of the Participating Governments, are not classified as commercial cargo and therefore are exempted from the requirements of this Article."

Adopted amendment No. 5 is to amend Chapter III, Article 7 to read as follows:

~~[Government and private vessels, registered in any of the Participating Governments and not under charter to any international commercial carriers, may haul cargo on a return trip from dry docking without Entry Assurance.]~~ "Vessels owned and operated by any Participating Governments, and privately owned vessels registered in their respective jurisdictions and which are licensed solely to operate in the inter-island domestic and coast-wide trade, shall be exempted from the requirements of the MSC and may haul cargo on its return trip from dry docking without Entry Assurance. For the purpose of this Chapter, the term 'inter-island domestic and coast-wide trade' shall mean trade within the boundaries of each of the three Participating Governments and/or between the Participating Governments themselves as may from time to time be authorized by said Participating Governments."

Rational for the Adopted Measures

Adopted amendments No. 1 and No. 2 are essentially to implement the Alternative Security Requirement of the International Ship and Port Security (ISPS) Code for ships calling at port facilities in the jurisdiction of the Participating Governments (FSM, RMI, and ROP). Amendments No. 1 and 2 are recommended because if the MSC Agreement is not in compliance to the ISPS Code, the Participating Governments will be barred from receiving vessels traveling to and from other international ports, notably US Ports of Los Angeles, Honolulu, Guam and Saipan. Hence, not incorporating amendments No. 1 and No. 2 will jeopardize shipping service to and from the three Participating Governments. Moreover, it is also envisioned that by incorporating amendments No. 1 and No. 2, the international seaports of the three Participating Governments can be eligible for financial assistance from the US Government.

Adopted amendment No. 3 is essential to provide MSC with the necessary mechanism to prevent the reoccurrences of carriers holding Entry Assurance Certificates (EAC) as Vessel Operating Common Carrier (VOCC) to serve as "general agent" for another VOCC holder. At one time, Matson Navigation lines, a VOCC EA, appointed Palau Shipping Company, another VOCC EA, as its general agent for the FSM Ports. Despite

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numerous complaints against the appointment, the Commission (MSC) could not intervene with the appointment since its MSC Treaty and/or By-Laws did not address such matter. The adopted amendment No. 3 went further to incorporate mechanisms to avoid the tendency or the appearance of unfair treatment of carriers by Terminal Operators by preventing Terminal Operators from being appointed as agents for carriers servicing the port. The new Subsection (c) is to ensure that carriers either VOCC and/or NVOCC EAC holders must issue original bills of lading for the cargo it is transporting and to be accountable or responsible for the cargo until it is delivered at the port of destination.

Adopted amendment No. 4 is intended to exempt other fish-industry related cargoes. When the MSC Treaty was initially drafted, only fish bait and by-catch were conceived as the only fishing industry related cargoes. It is now apparent that such is not the case any more and the amendment is necessary to promote the development of the tuna industry.

Adopted amendment No. 5 is to exempt Inter-Islands and Inter-Government Trade from the requirement of the Entry Assurance scheme to allow for Government owned or privately owned vessels to be used in trading between and within the Participating Governments. This will pave the way for MS Caroline Voyager or any privately owned and registered vessel to engage in any trade between the Participating Governments. The FSM States can ship local produce to the Republic of the Marshall Islands or Republic of Palau without any restrictions imposed by the MSC through its Treaty requirements.

The three Participating Governments (FSM, ROP and RMI) have exercised their responsibilities conferred upon them by the *Agreement on Regional Cooperation in Matters Affecting International Shipping in Micronesia*, and unanimously adopted these five proposed amendments to the subject MSC Agreement. The Office of the Secretariat for the MSC has informed your Committee that the other two Participating Governments (Palau and Marshall) had already ratified the adopted amendments.

Your Committee on Transportation and Communications urges this Congress to ratify these amendments, and is in accord with the intent and purpose of C.R. No. 15-192 and recommends its adoption.

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Respectfully submitted,

/s/ Moses A. Nelson
Moses A. Nelson, chairman

/s/ Fredrico O. Primo
Fredrico O. Primo, vice chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, member

/s/ Dion G. Neth
Dion G. Neth, member

Claude H. Phillip, member

/s/ Joe N. Suka
Joe N. Suka, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member