



Bombay Chamber of Commerce & Industry

KS/ST&L/0374

April 27, 2009

Mr. A.P.V.N. Sarma IAS
Secretary to the Government of India,
Ministry of Road Transport, Highways & Shipping
1, Transport Bhavan
Parliament Street, New Delhi 110001

Dear Mr. Sarma,

SHIPPING TRADE PRACTICES BILL

We understand through our membership that the Directorate General of Shipping has circulated a questionnaire to receive feedback on the proposed Shipping Trade Practices Bill.

The Bombay Chamber, which has an illustrious history of over 172 years, has been representing the interests of its members, predominantly large and medium sized professionally managed companies from manufacturing and service sectors. More than 20% of Chamber's membership of over 2000 companies is directly or indirectly connected with the port, maritime and trade related activities. The Bombay Chamber is an internationally recognized institution for Weather Working days and Charter Party Holidays for Mumbai and Jawaharlal Nehru Ports and as far back as in 1873, played a significant role in development of Port City and setting up of the Bombay (Mumbai) Port Trust. From time to time, we have conveyed our recommendations to the Ministry of Shipping, through the White Papers, based on deliberations at the Biennial Conferences on the 'Indian Ports & Shipping', since 1998.

The members of the Bombay Chamber are also concerned about the provisions of this Bill and are of the considered opinion that any legislation should have a balanced approach and should be equitable to all segments of the trade. The implementation of new legislation needs to be looked at holistically such that industry at large is benefitted.

While the proposed Bill does not cover under its purview the Ports, Railways, Custom House Agents etc., all of which are the integral part of this service providers Industry, it favours only a segment of industry (i.e. containerised trade). The implementation of the Bill will lead to increased financial outlays as well as cost of services and, therefore, increased logistics costs which would render India's international trade even more uncompetitive, in the highly competitive international markets.

The Bombay Chamber firmly supports creation of a competitive regime which provides equal opportunities for all players while eschewing any vested interests and parochial influence. The Bombay Chamber also believes that rather than introducing an additional legislation, the existing legislations could be strengthened by means of simplification of the settlement process and effective implementation for benefit of industry at large.

Imposition of unnecessary legislation, which would bring in curbs and restrictions and high costs, is not desirable. The members of the Bombay Chamber therefore are not in favour of the introduction of said 'Shipping Trade Practices Bill'. It will be a futile exercise and will also have major bearing on the trade, rendering it totally uncompetitive.

We enclose for your consideration a Memorandum detailing the Comments of our members on the proposed Bill and trust the same will receive your positive consideration. The Bombay Chamber and its members will be pleased to interact with the Directorate General of Shipping and the Ministry of Shipping in case of any further dialogue is initiated on the proposed Bill.

With regards,

Yours sincerely,



Manju Sood
Executive Director

Encl. a.a.



Bombay Chamber of Commerce & Industry

(Continuation sheet 2)

QUESTIONNAIRE ON SHIPPING TRADE PRACTICES BILL

1. Which sector/segment of the shipping industry do you represent?

The Bombay Chamber of Commerce and Industry (Bombay Chamber) represents different segments related to shipping such as Shipping Lines, Ship Agents, Forwarders, Exporters / Importers etc. The Chamber also represents the CSLA Secretariat.

2. Brief details of the organization you represent viz.

(1) Legal Status

The Bombay Chamber is the oldest and most reputed Chamber of Commerce established in 1836 and has an impeccable lineage of 173 years of continued services to trade and industry. **The Bombay Chamber of Commerce was incorporated under the Indian Companies Act, VII of 1913, and the Company is LIMITED. Subsequently, under the provisions of Section 23 of the Companies Act 1956, the name was changed to The Bombay Chamber of Commerce & Industry.**

(2) Number of members

The membership of over 2000 companies predominantly represents large and medium sized professionally managed corporates and multinationals from manufacturing and services sectors and contribute a third of India's trillion Dollar GDP. More than 20% of the Chamber's membership is directly or indirectly connected with the Ports, Maritime and Trade related activities.

(3) Main Functions

The functions of the Bombay Chamber relate to three broad groups of activities:

- Representational – the Chamber is an important channel of communication on behalf of its members with Government and other public sector bodies and corporations;
- Common services provided to all members to improve their working and efficiency, e.g. Advisory Services, Trade Services, organising meetings, conferences/ seminars, discussions, management development programmes, trade delegations etc., and,
- Fostering corporate responsibility.

With reference to the Shipping trade, the Bombay Chamber is also internationally recognised to declare the 'Weather Working Days' and 'Charter Party Holidays' for the Mumbai Port and Jawaharlal Nehru Port. It is recognised by the Government of India for issuing the 'Certificates of Origin' for export

documentation. In fact Bombay Chamber has played a significant role in development of the port city of Mumbai and setting up of the Bombay (Mumbai) Port Trust in 1873. The history of Bombay Chamber mentions that we were responsible for the measurement of cargo and maintaining trade statistics also.

- a. **Do your members also represent other segments/sectors of the shipping industry, if yes, please provide us with details of such members and their areas of involvement.¹**

Yes, our Members and their respective constituents are also members of other trade Bodies/Associations including MANSA, CHENSAA, CSLA, AMTOI and other Chambers of Commerce including FICCI, CII, FIEO etc.

We express our inability to provide individual member details with respect to their respective association with other trade bodies/ chambers, as we do not have specific record. It is entirely Member company's prerogative to chose membership options with other Associations.

- b. **With reference to members who are specifically performing the business of transportation of goods only as Agents (other than CHA's), Freight Forwarders and Cargo Consolidators, are they registered with any association/organization? If yes, please provide us with details of such other businesses activities.²**

Each member may be having ancillary business activities on the basis of which they will have interactive association with other Bodies. Our Chamber is unable to provide such individual details.

3. **What are the problems identified by you in your sector/ segment of trade practice, National as well as International, which are required to be addressed by the proposed Bill?**

With the proposed Bill, financial outlays and cost of services will go up manifolds and trade will be at a disadvantage, consequent to increased logistics costs. The heavy bank guarantees, registration requirements etc. will significantly increase the cost of service. and will further add to the burden of the already high logistics cost. **The members of the Bombay Chamber are not in favour of the introduction of the proposed Shipping Trade Practices Bill.** The introduction of the said 'Bill' will be a futile exercise and will have major bearing on the trade, rendering it totally uncompetitive in the highly competitive International markets.

¹ WITH REFERENCE TO QUESTION NO 2 (a) - If FFFAI is filling this questionnaire, in which case, if the CHA's who are registered with your association are also registered as MTO's with AMTOI or any other organization, kindly provide us with that list. If you don't have an available list, please acquire this information from your respective members and kindly furnish them.

² WITH REFERENCE TO QUESTION NO 2 (b) Company or agency profile will be sufficient

4. Is the proposed Bill (in its present form) addressing the issues concerned with your area/segment of trade?

As mentioned above, the proposed Bill is not user friendly or helpful to any segments of trade.

5. With reference to question no 4, if the proposed Bill (in its present form) is NOT addressing the issues / grievances concerning your segment of trade, kindly provide us with the details as to why this is so?

- The members of the Bombay Chamber are of the opinion that any legislation should have a balanced approach and should be equitable to all segments of the trade. **The proposed Bill is in favour of one segment only (containerized trade).** The Bombay Chamber supports creation of competitive spaces through implementation of equal opportunities for all players while eschewing any vested interests and parochial influences.
 - The Component Authority is given unbridled authority to act *suo motu* cancel / suspend registration, impose penalty etc. Obviously, these are subjective measures without any objective guidelines. **The arbitrary legislative system should not be imposed in the International trade, as it will hamper the otherwise smooth operations and functioning.**
 - **While the Bill emphasizes the need for registration, bank guarantee, insurance coverage etc, it does not specify or authenticate actual need for such barriers.** This will dissuade a number of service providers to enter this sector. Emerging prospects and growing trade necessitate support from large number of service providers. **Besides, implementation of the Bill will increase the cost of services, rendering India's international trade even more uncompetitive.**
 - In addition, the question is - **Who will provide the required insurance? Whether the Government has made provisions in Govt. owned insurance companies to provide such comprehensive cover at low premium! The proposed Bill does not address these issues.**
 - **The Bill does not cover Ports, Railways, Custom House Agents etc. all of which are integral part of this Service providers Industry.** Hence, the Bill fails to address even the stated intentions.
6. Which are the sections of the proposed bill required to be amended to redress the specific problems you experience, more effectively? (Please specify the section and the proposed modification / deletion / addition)

The members of the Bombay Chamber reiterate that the Proposed Bill should not be implemented. The Government should not impose yet another legislation, in a completely well defined area of service activity, particularly when none of the

corporate, exporters/ importers have any grievances against service providers from the shipping fraternity.

The Bill is addressing the needs of only containerized trade which accounts for merely 12 - 14% of total cargo shipped by the sea. It is not appropriate to implement special legislation and address marginal problem, associated with a small segment of trade. **Holistic approach needs to be followed in favour of overall trade, which should also include the balance 86% which, as per this Bill, will be at disadvantage position.** We therefore, reiterate that this is an unnecessary exercise and should be avoided.

7. Any other comments on the subject.

- a. **Only companies registered in India are covered under this Bill.** While it would cover the Agents, the foreign registered Shipping Lines will not be under the purview of the Bill. The Agents are bound by the '**Agency Agreement**', with their Principals. How will the Bill ensure that Agents can fulfill requirements without involvement of their Principals? **It will only create serious conflict of interest.**
- b. The Bill prescribes that the tariff needs to be filed with the Competent Authority and cannot be changed without the prior approval of the Authority. The questions arising are - What happens when the related tariff of Port/Railways CFS etc. gets changed without the approval of the Competent Authority? What happens, if Govt. hikes the oil price overnight and/or imposes special tax or levies? In these conditions, how can change in tariff be subject to the Competent Authorities' approval? **This will unnecessarily delay trade practices.**
- c. When tariff is required to be filed, the Service Providers will obviously incorporate the costs associated with the Bill in their tariff. Besides, heavy Bank Guarantee, Registration Fee will increase the cost of service manifolds, and **will have major bearing on the trade, rendering it totally uncompetitive.**
- d. Filing of tariff with the Authority itself if questionable. **There can't be a standard tariff except, perhaps, for ocean freight. All other charges are as per the requirements of the customer's specified service needs, which cannot be standardized.** On what basis could service provider file the rate in advance. The concept is contradictory. If insisted, Service Providers will inflate the tariff to include exorbitantly high cost of services, before filing and will explain to their customers that filed tariff have to be applied.
- e. The Bill prescribes very heavy Registration fee and Bank Guarantees. These are retrograde steps that will create near-monopoly situations, specially, in smaller towns where ICDs are situated. Not many entrepreneurs will fulfill such onerous conditions and it would put many service providers out of the range. **Will consequently reducing healthy competition.**

Vide letter dated 23rd Jan, 2006, we had written to the Ministry of Shipping (Copy enclosed) that as a responsible Chamber, keeping the interest of the overall trade, we do not subscribe to the concept of a legislation where free commerce is in existence. It goes completely against the stated policy of the Govt. of India. In prevailing free & competitive market, where trade is immensely benefited, imposition of unnecessary legislation, which would bring in curbs and restrictions and high costs, is not desirable. If at all there are any disputes between parties, there are other options available, including legal settlements.

There is no scope for a new Bill. We therefore, submit that in the general interest of India's international trade the proposed Bill be dropped, as its imposition will make India's trade even more expensive and uncompetitive in the global competitive markets.

Mumbai
April 27, 2009



BOMBAY CHAMBER

Bombay Chamber of Commerce & Industry

EXECUTIVE DIRECTOR

January 23, 2006

> *The Bombay Chamber of Commerce & Industry has an illustrious history of 170 years of representing the interests of industry, trade and commerce in the country. The Chamber enjoys an unparalleled membership of major and minor business institutions and companies which contribute to almost 1/3 of the country's GDP in manufacturing and services.*

> *It would be worth noting that more than 15% of the Chamber's membership of 1700, is directly or indirectly connected with the port, maritime and trade related activities.*

> *The Bombay Chamber is also the internationally recognised body to declare the Weather Working Days and Charter Party Holidays for the Mumbai and Jawaharlal Nehru Ports.*

> *The Chamber has been organising biennial International Conferences on 'Indian Ports and Shipping' since 1998, the deliberations at which are conveyed to the Ministry of Shipping through White Papers/ Strategy Documents.*

> *The Chamber has played an important role in the development of the port city of Mumbai and the setting up of Bombay (Mumbai) Port Trust in 1873.*

Mr. A.K. Mohapatra, I.A.S.
Secretary to the Govt. of India
Ministry of Shipping, Road Transport & Highways
Parivahan Bhavan
1, Sansad Marg
New Delhi 110 001

Sir,

Shipping Trade Practices Act, 2005

This refers to the initiative of the Ministry of Shipping in introducing the "Shipping Trade Practices Act, 2005". The Bombay Chamber of Commerce and Industry would like to offer its comments on the legislation.

- 1) The proposed legislation overlaps almost 8-10 existing Acts, e.g., Multimodal Transport of Goods Act, Major Port Trust Act, Bill of Lading Act, the Contract Act, the Customs Act, Carriage of Goods by Sea Act, the Law of Agency and Competition Act, etc. In some cases it also contradicts some of the clauses of the existing ones. *It needs to be clarified whether the provisions of the proposed Shipping Trade Practices Act would supercede the existing ones.*
- 2) *The Bombay Chamber is of the opinion that freedom to enter into contract among commercial entities should not be curbed by a regulation.* The proposed Act would lead to a large number of litigations. Instead, for timely resolution of disputes/grievances or differences arising between parties, *it would be appropriate to provide for ALTERNATE DISPUTE RESOLUTION* rather than a multi-member Commission. This will only be time consuming and lead to unnecessary and even frivolous delays which defeats the purpose of "timely resolution".

The Act should provide for the necessary inclusion of an Arbitration Clause as part of all contracts covered under the ambit of the Act. In case there is no specific identified arbitrator mentioned in Arbitration Clause, the local Chamber of Commerce could be deemed to be the arbitrator by default. The process of arbitration should be as per **THE ARBITRATION AND CONCILIATION ACT, 1996** – as amended.

In the event of acceptance of the principle of ALTERNATE DISPUTE RESOLUTION under the existing Act, the necessity of appointing a Commission/Commissioner is redundant. This would also prevent the huge financial outlays incurred on the required administrative setup.

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Over 160 Years of Service to Trade and Industry

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- (8)
- 3) The draft Act states that all ancillary charges collected by the service providers shall be mandated by a Commissioner. This provision *not only interferes with the jurisdiction of TAMP and the workings of the various Conferences*, but also *detracts from the established conventions and practices and the principles of free market conditions which are necessary for optimal pricing*. The current advantage arising out competitive pricing would be lost to the trade.
 - 4) We would like to point out that the stringent penal clauses could lead to service providers *absorbing all the ancillary charges into the basic freight* which are outside the jurisdiction of the Act. Besides, the quantum of such additional factored into the basic freight will never be known. At present, the surcharges such as CAF, BAF etc. keep fluctuating and sometimes even disappear in accordance with the changes in the respective elements that constitute them.
 - 5) To prove the bonafides of any parties, *registration under any of the existing customs/port and related services Acts should be acceptable*. Registration under the proposed Act should be necessary only for those parties not covered under the existing customs/port and related services Acts. The fees should be made commensurate with those charged under the other Acts. The present rates under the proposed Act are deemed to be on the higher side, which would add to the transactions costs which will eventually get passed on to the trade, directly or indirectly.
 - 6) Also, Part VI of the proposed Act provides for Penal Charges for any violation. These in our opinion are so drastic that even a slight violation – which may be unintentional/caused due to oversight – will lead to unnecessary prosecutions and harassment of the logistics service providers, thereby further affecting their efficiency.

The Bombay Chamber believes that rather than introducing an additional legislation, the existing legislations could be strengthened by means of simplification of the settlement process and effective implementation.

We sincerely hope that the Bombay Chamber's views are given due consideration. We would be obliged if the Ministry of Shipping could provide us with background papers on the objectives of the proposed act so as to enable us to offer further inputs. The Chamber will also be pleased to interact with the Ministry in case of any further dialogue.

Thanking You,

Yours faithfully,


L. A. D'Souza