

Order 2004-3-15



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

Action on IATA Agreement  
Issued by the Department of Transportation  
on the 15<sup>th</sup> day of March, 2004

Agreements adopted by the Tariff  
Coordinating Conference of the  
International Air Transport Association  
relating to composite cargo resolutions

Served: March 18, 2004

Docket OST-2003-14481  
R-1 thru R-27

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 held at The Hague, May 27–31, 2002.<sup>1</sup>

The agreement proposes a variety of amendments to existing resolutions, applicable on a worldwide basis, that do not directly specify cargo rates in individual markets. Most changes serve an editorial, technical or clarifying purpose. We will approve those portions of the agreement that 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.

The agreement would amend **Resolution 012 (Glossary of Terms)**, **Resolution 014b (Combination Rules for Cargo Rates)** and **Resolution 015aa (Add-ons)** to clarify the difference between two methods for establishing a through rate between two points for which no published rate is available: combination rates, established under Resolution 014b by combining international sector rates; and constructed rates, established under Resolution 015aa by adding an international rate and the "add-on" rate for an international-domestic sector. We will approve the changes proposed to these resolutions. However, the Department has previously conditioned its approval of Resolutions 014b and 015aa to vitiate various restrictions they contain on combinations or constructions.<sup>2</sup> Because IATA is now clarifying its terminology, we will restate our conditions and apply them as well to IATA Resolution 001 (Permanent Effectiveness Resolution – Cargo), to ensure that they apply to the IATA cargo tariff coordination system as a whole, regardless of technical terminology

<sup>1</sup> IATA memoranda CTC COMP 0408, filed with the Department February 7, 2003. Supplemental documentation was filed February 10, 2003.

<sup>2</sup> For example, paragraph 1 b) of Resolution 014b states that "where both an IATA cargo rate and a non-IATA cargo rate are available, the IATA cargo rate shall be used." See Order 86-9-88, September 29, 1986, and Order 85-9-23, September 13, 1985.

used in a particular resolution. The Department's other conditions on Resolution 001, of course, remain in effect.<sup>3</sup>

The agreement would amend **Resolutions 116aa and 116bb**, which set forth procedures for carriers to introduce rates outside the IATA rate structure, to clarify their areas of application and make other changes. For example, Resolution 116bb could not be used for Alliance Country markets by those carriers not party to the IATA rate agreements for Alliance Countries.<sup>4</sup>

**Resolution 501 (Minimum Charges for Cargo)** is amended to add minimum charges for additional markets and to raise the charge from the United States to Japan, from \$55 to \$125, to reflect the level actually applied in the market. The agreement would standardize rates under **Resolutions 595 (Rates for Valuable Cargo), 596 (Newspapers and Periodicals), and 597 (Carriage of Human Remains)** to the greatest extent feasible, although some exceptions remain for some markets. The agreement also introduces a new resolution to incorporate the United States into **Resolution 511 (Rates for Live Animals)** at the same rate levels previously adopted for virtually all other markets.

Finally, the agreement would amend **Resolution 503 (Charges in Relation to Value)**, which provides for an excess value charge of 0.50 percent for that part of the shipper's declared value for carriage that exceeds 17 Special Drawing Rights (SDR's) per kilogram, the limit of carrier liability under Montreal Protocol 4. In Order 2001-3-24, March 24, 2001 (Docket OST-2000-8066), the Department disapproved Attachment A of Resolution 503 because it included exceptions to the generally applicable SDR17 level for a number of countries, some expressed in local currency amounts and some adopting the previous \$20 per kilogram level. The resolution would now be amended to eliminate such exceptions and provide for IATA to publish local currency equivalent values of SDR17 three times per year, using IATA Clearing House market exchange rates. We will approve this amendment, which will facilitate application of Montreal Protocol 4 in the market.

We find that, as conditioned, the resolutions incorporated in the agreement are not adverse to the public interest, in violation of the Code, or likely to lessen competition substantially, and that they should be approved.

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<sup>3</sup> We will also remove the condition we placed on Resolution 015aa in Order 86-9-88, which required that all through rates constructed through the use of add-ons be filed as single-factor rates in tariffs with the Department. The condition is a nullity, as we exempted all carriers from filing international cargo rate tariffs by final rule published in the Federal Register on November 30, 1995, Docket Number 49827.

<sup>4</sup> "Alliance Countries" (Austria, Chile, Czech Republic, Faroe Islands, France, French Guiana, Germany, Greenland, Guadeloupe, Iceland, Italy, Malaysia, Martinique, Mayotte, Monaco, Netherlands, New Zealand, Panama, Reunion, Denmark, Norway, Sweden, and St. Pierre and Miquelon) are countries and dependencies whose designated airlines are parties to an alliance agreement with a U.S. carrier to which the Department has granted approval and antitrust immunization. One of the Department's conditions in approving each such agreement bars the parties from participating in IATA tariff coordination activities that discuss any through fares, rates or charges between the United States and any countries whose designated airlines participate in any such immunized alliance agreement. Accordingly, IATA tariff conferences discuss and agree on rates for alliance and non-alliance countries separately.

Furthermore, we conclude that the agreement should be granted immunity from the operation of the antitrust laws to the extent necessary to permit its implementation. In general, it amends 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.

Pursuant to the authority duly assigned under the Department's Regulations, 14 CFR 385.13:

1. We do not find that the resolutions set forth in the Attachment to this order, and which have direct or indirect 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 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) approval is subject, where applicable, to conditions herein or previously imposed; and

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-03-14481, 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-03-14481, as set forth in finding paragraph 1 above, subject to conditions imposed;
2. We condition Resolution 001 (Permanent Effective Resolution - Cargo) as follows:
  - a) No provision of this resolution or any other resolution shall restrict the pricing freedom of any air carrier or foreign air carrier in establishing rates for new routes.
  - b) No provision of this resolution or any other resolution shall prohibit any air carrier or foreign air carrier from selling a combination of local sector rates that undercuts the published through rates, or from using such lower combination of local sector rates for purposes of rate combination or construction.

- c) No provision of this resolution or any other resolution shall prohibit any air carrier or foreign air carrier from using a non-IATA rate for combination or construction purposes.
- d) Any carrier may establish through rates based on a construction or combination of local rates over U.S. gateways, served by either IATA or non-IATA carriers, whether or not that carrier provides service at the particular gateways involved; and

3. We withdraw condition 1 imposed on Resolution 015aa in Order 86-9-88.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file such petitions within seven days after the date of service of this order.

This order shall be effective and shall become the action of the Department of Transportation upon expiration of the above period, unless within such period a petition for review is filed or the Assistant Secretary for Policy and International Affairs give notice that he will review this order on his own motion.

By:

Paul L. Gretch  
Director, Office of International Aviation

(SEAL)

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<b>Reso.</b>	<b><u>No.</u></b>	<b><u>Designation</u></b>	<b><u>Title</u></b>	<b><u>Expiry</u></b>
R-1		CTC1(46)012 CTC2(56)012 CTC3(46)012 CTC12(67)012 CTC23(56)012 CTC31(50)012 CTC123(60)012	Glossary of Terms (Amending)	Indefinite
R-2		CTC1(46)014b CTC2(56)014b CTC3(46)014b CTC12(67)014b CTC23(56)014b CTC31(50)014b CTC123(60)014b	Combination Rules for Cargo Rates (Amending)	Indefinite
R-3		CTC1(46)015aa CTC2(56)015aa CTC3(46)015aa CTC12(67)015aa CTC23(56)015aa CTC31(50)015aa CTC123(60)015aa	Add-Ons (Amending)	Indefinite
R-4		CTC1(46)033c CTC2(56)033c CTC3(46)033c CTC12(67)033c CTC23(56)033c CTC31(50)033c CTC123(60)033c	Establishment of Through Cargo Rates and Charges (Amending)	Indefinite
R-5		CTC1(46)033e CTC2(56)033e CTC3(46)033e CTC12(67)033e CTC23(56)033e CTC31(50)033e CTC123(60)033e	Rules for Payment of Cargo Rates, Charges and Other Amounts (Amending)	Indefinite

<b>Reso.</b>	<b>No.</b>	<b>Designation</b>	<b>Title</b>	<b>Expiry</b>
	R-6	CTC1(46)033f CTC2(56)033f CTC3(46)033f CTC12(67)033f CTC23(56)033f CTC31(50)033f CTC123(60)033f	Administrative Provisions for the Review and Monitoring of Currency Levels (Rescinding)	Indefinite
	R-7	CTC3(46)045a	TC3 Cargo Charters (except US territories) (Rescinding)	Indefinite
	R-8	CTC23(56)116aa CTC31(50)116aa CTC123(60)116aa	Cargo Rates Enabling Facility (Amending)	Indefinite
	R-9	CTC1(46)116bb CTC2(56)116bb CTC3(46)116bb CTC12(67)116bb CTC23(56)116bb CTC31(50)116bb CTC123(60)116bb	Special Enabling Resolution (Amending)	Indefinite
	R-10	CTC3(46)116f CTC23(56)116f CTC31(50)116f CTC123(60)116f	GCRS Special Provisions Resolution from Japan (Amending)	Indefinite
	R-11	CTC1(46)501 CTC2(56)501 CTC3(46)501 CTC12(67)501 CTC23(56)501 CTC31(50)501 CTC123(60)501	Minimum Charges for Cargo (Amending)	Indefinite
	R-12	CTC1(46)501b CTC31(50)501b	International Priority Service (New)	Indefinite

<b>Reso. <u>No.</u></b>	<b><u>Designation</u></b>	<b><u>Title</u></b>	<b><u>Expiry</u></b>
R-13	CTC3(46)501d CTC23(56)501d CTC123(60)501d	International Priority Service (New)	Indefinite
R-14	CTC1(46)503 CTC2(56)503 CTC3(46)503 CTC12(67)503 CTC23(56)503 CTC31(50)503 CTC123(60)503	Charges in Relation to Value (Amending)	Indefinite
R-15	CTC1(46)509 CTC2(56)509 CTC3(46)509 CTC12(67)509 CTC23(56)509 CTC31(50)509 CTC123(60)509	Charges for Disbursements (Amending)	Indefinite
R-16	CTC1(46)509e CTC2(56)509e CTC12(67)509e CTC23(56)509e CTC123(60)509e	Charges for Disbursements ECAA (Amending)	Indefinite
R-17	CTC1(46)511 CTC2(56)511 CTC3(46)511 CTC12(67)511 CTC23(56)511 CTC31(50)511 CTC123(60)511	Rates for Live Animals (Amending)	Indefinite
R-18	CTC1(46)511b CTC3(46)511b CTC12(67)511b CTC23(56)511b CTC31(50)511b CTC123(60)511b	Rates for Live Animals to/from USA/US Territories (New)	Indefinite

<b>Reso. No.</b>	<b>Designation</b>	<b>Title</b>	<b>Expiry</b>
R-19	CTC1(46)512c CTC2(56)512c CTC3(46)512c CTC12(67)512c CTC23(56)512c CTC31(50)512c CTC123(60)512c	Charge for Preparation of Air Waybill (Amending)	Indefinite
R-20	CTC1(46)513 CTC2(56)513 CTC3(46)513 CTC12(67)513 CTC23(56)513 CTC31(50)513 CTC123(60)513	Charges on Mixed Consignments (Amending)	Indefinite
R-21	CTC1(46)518 CTC2(56)518 CTC3(46)518 CTC12(67)518 CTC23(56)518 CTC31(50)518 CTC123(60)518	Dangerous Goods Handling Fee (Amending)	Indefinite
R-22	CTC1(46)519 CTC2(56)519 CTC3(46)519 CTC12(67)519 CTC23(56)519 CTC31(50)519 CTC123(60)519	Fee for Charges Collect (Amending)	Indefinite
R-23	CTC3(46)593 CTC23(56)593 CTC31(50)593 CTC123(60)593	Carriage of Automotive Vehicles (New)	Indefinite

<b>Reso.</b>	<b>No.</b>	<b>Designation</b>	<b>Title</b>	<b>Expiry</b>
R-24	CTC1(46)595 CTC2(56)595 CTC3(46)595 CTC12(67)595 CTC23(56)595 CTC31(50)595 CTC123(60)595		Special Rates for Valuable Cargo (Amending)	Indefinite
R-25	CTC1(46)596 CTC2(56)596 CTC3(46)596 CTC12(67)596 CTC23(56)596 CTC31(50)596 CTC123(60)596		Newspapers and Periodicals (Amending)	Indefinite
R-26	CTC1(46)597 CTC3(46)597 CTC12(67)597 CTC23(56)597 CTC31(50)597 CTC123(60)597		Carriage of Human Remains (Amending)	Indefinite
R-27	CTC2(56)597		TC2 Carriage of Human Remains (Amending)	Indefinite