From:

ASSOCIATION OF MULTIMODAL TRANSPORT OPERATORS OF INDIA (AMTOI)

FEDERATION OF FREIGHT FORWARDERS' ASSOCIATIONS IN INDIA (FFFAI)

CONSOLIDATORS ASSOCIATION OF INDIA (CAI)

Date: - 21/10/2019

To

Special Secretary Logistics,
Ministry of Commerce,
Logistics Division.

Attn. Mr. N. Sivasailam

Subject: - Meeting to discuss the option of direct payment or through FF in FE to the shipping line and issues related to INR payment – regarding

Dear Sir,

We thank you for inviting us to attend the above-captioned meeting held on 07th Oct 2019. At the outset, we appreciate the initiative for trade facilitation and reduction in transaction costs. All three associations, viz – FFFAI, AMTOI and CAI, are firmly committed to reducing the transaction costs, remove the distortions in the system and improve the ease of doing business.

Since the SOP including the revised SOP given on 14/10/2019 does not address the issue of establishing a fair practice of fixing the exchange rate, we are attaching herewith (Annexure 1 and Annexure 2) draft SOPs for:

1) Payment through EEFC account

2) For establishing the exchange rate mechanism for all the logistics service providers, including shipping lines, freight forwarders, banks et al.

3) **Quoting and charging in INR**

Our submissions are as follow -

1) Freight forwarder as a Carrier: It is essential to understand and acknowledge the role played by the freight forwarder in contemporary logistics practice globally as well as in India.
   a) The Rotterdam rules 2008 (UNCTAD), clearly defines –
      i) "carrier" means a person that enters into a contract of carriage with a shipper (Definition 6A).
      ii) "Contract of carriage" as a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall

provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

b) Contract of Affreightment: In the context of Maritime law, a contract of affreightment is an agreement for carriage of goods by water. A contract of affreightment shall employ a bill of lading, a charter party, or both in order to ship the goods. A contract of affreightment is also known as contract of carriage and is abbreviated as COA.

https://definitions.uslegal.com/c/contract-of-affreightment/

c) “Freight” as the remuneration payable to the carrier for the carriage of goods under a contract of carriage.

The Freight forwarder enters into Contract of Carriage with the customer. Hence, the freight forwarder assumes the role, including the responsibilities and liabilities as a carrier. It is therefore beyond doubt that the amounts collected by freight forwarders is freight. Accordingly, the definition of carrier is not limited to mean a shipping line.

2) Forwarder as a principal:

a) Whenever a freight forwarder enters into a contract of carriage with the exporter:
   i) The relationship is Principal to Principal.
   ii) Further, all other transport intermediaries, such as shipping lines, are vendors of the contracting freight forwarder.
   iii) The exporter in such cases does not have privity of contract with the shipping line, i.e. the exporter does not have contractual obligations towards the shipping line such as financial obligations or towards the contract of carriage. Likewise, the so-called shipping line also does not have any contractual obligations towards the exporter such as completion of the contract of carriage, timely delivery of goods, etc.
   iv) Out of the total bouquet of services offered by the freight forwarder to the exporter, the freight forwarder may subcontract a part of the total services provided, to the shipping line. The shipping line is liable only to the forwarder.
   v) The forwarder is liable to the cargo owner from end to end as per the contract of carriage.
   vi) It is essential to review the updated structure of international transport and ownership of vessels of carriage, i.e. ships, as old terminologies become redundant in the new system.
b) The structure of international transport has changed considerably over the years, so has the ownership models of ships. Hence the terminologies and definitions used for various stakeholders have changed correspondingly. This includes the emergence of Vessel Chartering, Slot Chartering, Vessel Sharing Agreements, Common Carrier and NVOCCs, etc.

3) The Directorate General of Shipping in the year 2013 have also given their clarification to the Ministry of Commerce that registered multimodal transport operators under the Multimodal Transportation of Goods (MMTG) Act 1993, act as principals and carry a liability to the exporter for loss or damage to the cargo and are not acting as freight forwarders (as agents). They have further clarified that exporters in India should in their own interest endeavour to receive documents for exports from an operator who is not acting “as agents”.
   a) As much as the consideration, a so-called shipping line as a carrier gets for the contract of carriage is ‘freight’, equally the consideration that a freight forwarder as a carrier gets for entering into a contract of carriage is also ‘freight’. Further the document issued as evidence of a contract of carriage, by both the so-called shipping lines and forwarders is identical except for jurisdiction and convention under which the contract of carriage is entered into. Further for differentiation or selection of the convention or jurisdiction has no relation whether the logistics service provider is a so-called shipping line or freight forwarder. A simple reading of various such documents of contracts of carriage of different shipping lines and freight forwarders will amplify and highlight this point abundantly.
   b) Given (1) to (3) above, it is established that it will be a gross mis-interpretation to categorise the freight forwarder as an intermediary.
4) Choice of freedom of contract :
   a) The principle of freedom of contract is a well-established principle in civilised societies, particularly democracies.
   b) The exporters should have free choice to select their vendors and work with them on mutually agreed contractual terms. Equally, the freight forwarders should have the option to choose their customers and work on mutually agreed contractual terms.
      i) Exporters, to control their freight costs, have the free choice to either engage directly with the shipping line or choose to engage with any of the thousands of freight forwarders. They should negotiate their contracts diligently.
      ii) The freight forwarding industry is highly fragmented; hence, there is no case for monopoly or oligopoly. Further, there are no operators (freight forwarders) in the market who enjoy a dominant market share in a manner that they can influence the freight rates or the terms of contracts.
      iii) In contrast, the number of shipping lines operating in India, offering global services are just a handful, and a few have a dominant market share with a potential to influence the freight rates.
      iv) If the exporters are forced to deal with the foreign shipping lines directly or indirectly (by making it hard for the forwarder to offer his services), the exporters will face serious service issues in addition to increased cost.
      v) The SOP, as proposed, in cases where the freight forwarder has a principal to principal relationship with the exporter, will lead to absurd and invalid contracts. For example, if the exporter pays freight directly to the so-called shipping line then the forwarder would not receive any consideration towards transportation of goods though his role is that of a carrier. Without consideration, a contract is

void. Hence the forwarder would not be legally obliged to fulfil his obligation to transport goods or for the safe delivery of the goods.

c) In view of (a) & (b) above, the exporters, particularly MSME exporters will certainly incur higher costs if the current practice of freedom of contract between the exporters and freight forwarders is breached.
   i) Most exporters prefer a single invoice and a single vendor offering a bouquet of services and do not like to deal with multiple vendors.
   ii) In fact, most exporters prefer an all-inclusive price, which includes total logistics costs; what is paid to the shipping line is just one of the components.
   iii) We are sure that where exporters have the freedom to choose the freight forwarder, and they exercise reasonable commercial diligence, there can't be any case of overcharging. Contracts are always negotiated at the market-driven price. We wish to study the cases of overcharging which have been brought to your notice. Exceptional circumstances or malpractices should not be considered industry practice, and cannot be a case in point for regulating the commercial aspects of the freight forwarders and/or the business practices in the industry. Laws exist to deal with malpractices and should be dealt with accordingly. Such instances require a surgical strike approach as against carpet-bombing the entire industry.
   iv) If the actual costs being charged by freight forwarders towards the complete logistics costs ex-factory to the final destination are seen it will be noticed that depending on the commodities, value, distance and destination, the logistics costs which freight forwarders charge are an average of 4% of the FOB value of the export goods. Hence to attribute high logistics costs in India to freight forwarders is a fallacy. Refer Annexure D.

d) The practice suggested in the SOP dated 14/10/2019, of exporter paying the freight forwarder only the freight amount that the freight forwarder pays to the shipping line as freight is:
   (1) Completely inconsistent with established global practices in EXIM trade and the general business practices across any business across the world, including in India.
   (2) Impractical and impossible to implement as exporters have never paid any service fee to freight forwarders to negotiate freight rates; hence, the suggestion to this effect is infeasible.
   (3) A freight forwarder is neither an employee of the exporter nor a consultant that they can be paid a fee for entering into third party contracts.
   (4) A trigger for the shift of business of Indian Freight Forwarders to foreign forwarders.

5) Safeguarding the interest of Indian freight forwarders and Indian shipping lines: Refer Annexure A, attached.

6) Reasons for high logistics costs in India:

a) Refer Annexure B for specific reasons - attached
b) Refer Annexure F for Exchange Rate over charging - attached

7) Measures to reduce logistics cost for exporters: Refer Annexure C, attached.

8) The proposed SOP, including revised proposed SOP of 14/10/2019, does not address the moot point of charging fair exchange rate. In fact, this point is deflected and sidelined by introducing direct payment to shipping lines, either in INR or foreign currency or by proposing changes to existing contractual arrangements of freight forwarders with exporters. We support the SOP in so far as RBI ADR based procedure is prescribed, the suggestion of doing away with CA certificate 15CA/CB procedure and shipping lines are obliged to accept payment in foreign currency, is concerned. However, we do not agree with the concept and content beyond the system of payment in foreign currency.
   a) The facility for payment in foreign currency from EEFC account or otherwise is an existing facility and in operation in decades. The SOP for this payment should be guided by RBI ADR circulars and limited to the procedural part of it. The only point of attention in SOP should be that logistics service providers, including shipping lines, should willingly accept payments in foreign currency.
      i) Payment in foreign currency is not practical in all cases, particularly in cases of small amounts as the bank charges for these payments are comparatively high.
      ii) The proposal of payment by 15 CA/CB route is even more difficult and costlier.
   b) We support the proposal for establishing uniformity and transparency in the exchange rate and propose the SOP as attached, Annexure E-1 & E-2
   c) **We propose that the government should encourage (and if possible implement) the practice of quoting ocean freight in INR by all logistics service providers, including shipping lines. Export air freight is quoted in INR; similarly ocean export freight should also be quoted in INR.** The practice for both, quoting and charging in INR will put to rest the dispute on the exchange rate and further establish certainty for costing for all the stakeholders.

   d) The direct payment to shipping lines in foreign currency should continue to be an option available to the exporters. It should not be a compulsion in any manner. As was brought out by FIEO statistics, the majority of exporters prefer to use services of freight forwarders. The principle of freedom of contract should be respected, and the contracts should be consistent with the global industry practices.
   e) We, along with other stakeholders, viz – FIEO and SBI, met on 14/10/2019, in Mumbai to discuss and finalise the SOP as presented by SBI. The revised SOP presented on 14/10/2019 did not address the concerns raised by us during the previous meeting.

9) Healthy business policies and practices should be followed across all industries and all stakeholders. The SOP should not be discriminatory against any one segment of the industry.
   a) The SOP refers to freight forwarders exposing their commercial transactions of payments to the shipping lines and proposes that the freight forwarder should charge

freight on a cost-to-cost basis. On the other hand, the fact that banks, in addition to their very high banking fees, charge an exchange rate that is higher than the RBI reference rate or their purchase price. Similarly, though the moot point was high exchange rate charged by shipping lines, in the SOP this point was deflected to target freight forwarders. We consider this highly discriminatory and unfair.

b) There is a convergence in the logistics sector, and various stakeholders offer services that overlap into each other's traditional business domains. The boundaries are either thin or non-existent. Similarly, vessel owning as explained earlier is very different from what it used to be. Equally, some vessel operators, e.g. Common carriers, do not enter into contracts with the exporters. Their customers are either called MLOs, shipping lines, NVOCCs, freight forwarders etc. who in turn enter into contracts with exporters. We, therefore, submit that there is no special category such as shipping lines and no special dispensation should be given. **Thus, the hypothesis that only what shipping lines charge is freight is unfounded and incorrect**. In the SOP, either what applies to shipping lines should equally apply to freight forwarders or what applies to freight forwarders should equally apply to shipping lines.

c) Shipping lines must also disclose their purchase exchange rate from their banks so that there is transparency across all stakeholders.

d) Some Associations’ guarantee the realisation cheques of its members to logistics service providers. We expect that FIEO and other export promotion councils, as responsible representative associations, should also take responsibility of its members by underwriting the bad debts and delayed payments by the exporters to logistics service providers.

We hereby submit that the measures proposed by us will meet the objectives of reduction of costs for exports and will bring in the desired transparency. We plead that if things are made hard for the freight forwarder unilaterally, it will lead to delays, bottlenecks and increase in dwell times, leading to disturbance in the ecosystem. It will, in addition, lead to an escalation of costs, as the exporters will be forced to deal with either the foreign shipping lines or foreign freight forwarders with whom dealings are both complicated & difficult, and will have limited opportunity for negotiation. While we welcome change, it is our submission that in any significant change all the stakeholders should share the responsibilities and it should not be limited to only freight forwarders.

In line with the Make in India initiative of the government, any policy should encourage Indian freight forwarders.

We, the logistics industry, have also initiated the process of more extensive interactions with members for standardising procedures and practices across the sector, we will come out with comprehensive and detailed SOPs for further discussions and deliberations with you. This is a humungous exercise, and it will require extensive consultation across thousands of member companies all over India. It is a time-consuming exercise. Once the draft SOPs are ready, the SOPs will have to undergo through the process of review, pilot testing, tweaking and validation before concluding the final version. We estimate that the detailed SOPs, Considering the magnitude of work and time involved, will be completed by the end of this financial year.

We will appreciate if you can give us an appointment to explain our point of view in person.

Thanking you

Yours Sincerely

For AMTOI

Shantanu Bhadkamkar
President

For FFFAI

A.V. Vijaykumar
Chairman

For CAI

M. P. Pradhan
President

Encl: Annexures A to F

Annexure A

Safeguarding the interest of Indian freight forwarders and Indian shipping lines:

a) The freight forwarder aggregates the volume of several small and large exporters to negotiate competitive rates. A large part of the benefit of the discounted rates is passed on to exporters. The biggest beneficiary of this aggregation is the MSME exporter who otherwise would not be in a position to obtain such low rates. In fact, many large companies also prefer dealing with forwarders than with the lines directly due to a multitude of reasons.

b) Freight forwarders employ around 1 million people. The proposed SOP will lead to massive scale retrenchment of Indian workforce while creating new jobs overseas as the business will shift to foreign freight forwarders.

c) Lines in exceptional cases, at the most, offer 10 days credit; forwarders, on the other hand, offer credit extending from 15 to 120 days which indirectly contributes to the growth of India's exports.

d) The freight forwarder accepts small consignments on LCL basis to 1500+ destinations, including destination that are difficult to reach. The shipping lines do not accept LCL Cargo. In the absence of this facility and this service, the exporters will not be able to ship small consignments.

e) A shipping line mostly accepts port to port shipments. Freight forwarder organises the transport under DAP, DDP, ex-works and various other INCOTERMs. In addition, the freight forwarder also provides a host of value-added services that are integral to the exporters' customers needs.

f) Exporters can focus on their core competencies because the freight forwarder makes the shipping process hassle-free for the exporter. It is challenging to reach shipping line staff, to obtain bookings on time etc. whereas freight forwarders are available 24x7 to comply with all the requirements of the exporter.

g) The notion that there is an outflow of foreign exchange on account of freight if at all is mainly relevant to MNCs viz foreign shipping lines and foreign freight forwarders:

i) The local Indian shipping lines and Indian freight forwarders do not remit the earnings.

ii) Most of the export shipments of the MNCs viz foreign shipping lines and foreign freight forwarders are nominated from outside India on FOB terms

iii) MNCs viz foreign shipping lines and foreign freight forwarders remit the foreign exchange earned in India whereas Indian freight forwarders retain the same within the country.

Further local sales of Indian freight forwarders and Indian shipping lines are mainly on C&F terms and therefore are subject to local market conditions and competition and are therefore more competitive.

Annexure B

Reasons for high logistics costs in India:

a) High costs for the movement of containers from ICD to Port. Concor charges USD 1000/40' to move a container for a distance of 1100 kms, from New Delhi to Mundra. In the USA it costs USD 900/40' to cover a distance of 1450 kms from Norfolk to Chicago. This works out to a cost of USD 0.90 per km in India as against a cost of USD 0.62 per km in the USA. Therefore Indian costs are higher by 45%.
b) The waiting time for trucks at Exporters factories is very high. Exporters ask for 24 to 36 hours of free truck waiting time for loading of the goods. In developed countries, this waiting time is 2 hours and in western countries efforts are on to bring this down to 1 hour. The costs for such high waiting times is factored into the transport costs resulting in higher costs for exporters.
c) Highways and road Infrastructure issues; bad roads, the inefficiency of highway network, problems of trucks passing through small towns and cities which apply road closures for truck, restricted truck movements; add to the logistics cost to the exporters. A truck in India covering a distance of 500 kms makes 7/8 trips per month compared to 18/20 trips that their peers make in developed countries, including in China. The impact of these factors for short hauls is even higher. Truck efficiency in developed countries is 250% compared to India.
d) Port infrastructure outside ports and terminal, high shut-out charges, variations in THCs charged by different lines operating from the same terminal/port also result in higher logistics costs.
e) Additional costs incurred in the US, such as truck detention charges, overweight stowage, due to delays in performance or non-performance by shipping lines, for FCL door deliveries are passed on to the exporter in breach of contractual agreements.
f) Please find attached Annexure D, showing the logistics cost charged by freight forwarders as a percentage of the FOB value of shipments, incurred by exporters.

Annexure C

Measures to reduce logistics cost for exporters:

a) Rail haulages in India should be rationalised in line with international practices and cost levels.
b) Improving port and road infrastructure so that access roads and highways are congestion-free will help in the seamless movement of containers directly and immediately inside the port, thereby eliminating waiting time and shut outs which adds to the logistics cost.
c) Exporters must reduce the turn-around time of trucks in their factories to international standards of 2 hours.
d) Logistics cost can be lowered if exporters make timely payments within 15 days.
e) The services offered by the national carrier "The Shipping Corporation of India", are highly competitive compared to the foreign shipping lines. The national carrier should play a more significant role in EXIM trade by offering global container shipping services to achieve the objectives of ease of doing business and reduction in logistics costs.