

The Implementation Effect and Improvement of Regulations of the People's Republic of China on International Ocean Shipping

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Abstract. The development of the ocean shipping industry requires legal guarantee. It's been over a decade since Regulations on International Ocean Shipping was implemented in China. It has stimulated the vitality of the ocean shipping market, promoted standardization of ocean shipping management, improved the regulation efficiency of the ocean shipping market and optimized the environment for foreign investment in and operation of the ocean shipping industry. However, the new ocean shipping forms and systems have shortcoming, thus requiring timely modification of Regulations on International Ocean Shipping. By doing so, it can strengthen in-event and after-event supervision, optimize division of management authorization, establish and improve the credit system, orderly open the ocean shipping market, and enhance management of the Hong Kong and Macao shipping routes and boundary rivers.

Key words: ocean shipping system; implementation; effect; improvement; Regulations on International Ocean Shipping

The ocean shipping industry is an important fundamental industry for economic and social development, and plays a significant role in safeguarding maritime rights and interests and economic security, facilitating foreign trade development, and promoting industrial transformation and upgrading, etc. In December 2001, on the same day when China entered the WTO, it announced Regulations of the People's Republic of China on International Ocean Shipping (hereinafter referred to as Regulations on International Ocean Shipping). It's not only direct reflection of China's performance of its commitment to WTO but also an integration and sublimation of China's ocean shipping policies and legal systems.

1 Main Contents of Regulations on International Ocean Shipping

A country's regulation of international ocean shipping mainly involves subjects, operational behaviors and competition order. Ocean shipping policies can reflect a country's philosophy in the quickest way and build orders by guiding subjects' behaviors. Practice proves it that effective policies can prevent fluctuation and strengthen the authority of policies only through legalization.

Regulations on International Ocean Shipping revised in 2013 covers seven chapters and 58 articles, mainly including international shipping companies management system, non-vessel

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operating common carry business management system, international liner shipping management system, international oceans shipping auxiliary business management system, international shipping agreement organization management system, shipping rate filing system, foreign-funded international ocean shipping and auxiliary business management system, and investigation system, etc.

2Implementation Effect of Regulations on International Ocean Shipping

2.1 Simulating the Development Vitality of the Ocean Shipping Market

Regulations on International Ocean Shipping demonstrates the values orientation of “with China as the subject, others are treated equally without discrimination; with foreign countries as the subject, differences are sought”, thus giving explicit expectations to investors and operators. At the same time, administrative laws and regulations replace departmental regulations and policy documents. Standardization efficiency and stability have been improved and varied subjects’ confidence in investing in and operating the ocean shipping industry has been strengthened. (Table 2-1)

Table 2-1

Year	2001	2006	2010	2015
(1) Number of ship		2,300	2,213	2,494
(2) Net dead weight of ship (ten thousand tons)	2,385.70	3,929.90	5,626.13	7,892.29
(3) Container space (ten thousand Teu)	47.9	76.3	101.07	180.01
(4) Passenger capacity (ten thousand seats)	1.4	1.69	2.04	2.55
(5) Freight volume (hundred million tons)	1.71	4.26	5.81	7.47
(6) Tonnage mileage (hundred million tons/km)	2.76	5.44	4.6	5.42
(7) Foreign trade goods handling capacity (hundred million tons)	6.51	16.16	25	36.6

Notes: (1) to (6) refers to ocean shipping; data mainly sources from “Development Statistics Bulletin for the Transportation Industry” on the website of Ministry of Transport.

According to data in table 2, compared with 2001, the net dead weight of ship, container space, freight volume, tonnage mileage and foreign trade goods handling capacity in ocean shipping respectively increased by 331% , 376%, 437%, 196% and 562%. The group of data to some extent proved that *Regulations on International Ocean Shipping* has stimulated the vitality of the ocean shipping market and boosted development of the ocean shipping industry.

2.2 Promoting Standardization of International Ocean Shipping Management

Regulations on International Ocean Shipping provides legal basis for standardizing ocean shipping management and has effectively promoted standardization of ocean shipping management.

(1) Legalization of government functions. *Regulations on International Ocean Shipping* clarifies the supervision responsibilities of the competent transportation department, divides the management authorities between the central government and local governments, ensures that competent transportation departments at different levels can perform their power by law, and prevents multiple management and disturbance of citizens because of enforcement.

(2) Institutionalization of market access. *Regulations on International Ocean Shipping*, in accordance with different business features and influences of the ocean shipping market, adopt

the license system and registration system. No matter what kind of system is employed, under the prerequisite of clarified conditions and procedures, the time limit for execution is clearly stated. For rejected licensing or registration, the competent departments shall shoulder the obligation of explanation while issuing the notice. In this way, it not only enhances administration efficiency but also safeguards the interest of applicants.

(3) Standardization of market competition. *Law of Countering Unfair Competition* cannot meet with special demands of the ocean shipping industry, such as problems of Liner Conference members charging THC^[1] by force in Chinese ports, and negative freight rates ^[2] on China-Japan routes. *Regulations on International Ocean Shipping* effectively attack unfair competition behaviors by stipulating forbidden operational behaviors and endowing the competent transportation departments with the right to investigate behaviors that may damage fair competition.

(4) Crystallization of legal responsibilities. *Regulations on International Ocean Shipping* provide explicit stipulations for legal responsibilities and compulsory obligations of different subjects on the ocean shipping market. The competent departments shall treat violation behaviors in strict accordance with laws and regulations, thus reducing and avoiding backroom operation, selective law enforcement and abuse of discretion.

2.3 Improving the Supervision Efficiency of the International Ocean Shipping Market

(1) Clarifying the Regulation System and Purposes

Regulations on International Ocean Shipping establishes the regulation system with cooperative “ministries and provinces”. The jurisdiction scopes of subjects are made explicit through standards. It has both division of labor and collaboration, thus ensuring effective operation of the system. The regulation is aimed to encourage fair competition and forbid unfair competition, and determines moderate level of state intervention so as to give full scope to the regulating role of the market.

(2) Enhancing the In-Event and After-Event Regulation Ability

Regulations on International Ocean Shipping provide a basis for in-event regulation through systems such as freight rates stipulation, Liner Conference agreement, operation agreement and freight rates agreement; lay a foundation for stipulating forbidden behaviors and cracking down on violation behaviors; effectively containing unfair competition behaviors through investigation procedures; and ensure legality of punishment through provisions on legal responsibilities.

While weakening pre-event regulation, it strengthens in-event and after-event regulation, which conforms to the development trend of administrative regulation; the regulation ability is constantly improved in the regulation implementation process.

2.4 Optimizing the Environment for Foreign Investment in and Operation of the Ocean Shipping Industry

Regulations on International Ocean Shipping set up a special chapter for foreign-funded international ocean shipping and business thereof, thus providing a clear guide for foreign investment and operation activities and demonstrating China’s attitude of keep improving the environment for foreign investment and operation.

In terms of market access, a full license system is adopted for foreign merchants to enter Chinese market. There are certain limits on the organization form of foreign merchants and contribution proportions which are stricter than those for Chinese investors. However, such system design is absolutely in line with China’s commitment to WTO.

China shoulders responsibility for foreign merchants’ operational behaviors and responsibilities

on Chinese market. The same standards for Chinese operators are employed, thus manifesting the principle of fairness; its maintenance of the transportation right and the equality principle of anti-discrimination conform to other countries' practice and the international practice, which shows that China's legal system is gradually connecting with ocean shipping powers.

3 Improvement of Regulations on International Ocean Shipping

The situation, policies and regulation methods on the ocean shipping market have undergone changes in the past ten-odd years since *Regulations on International Ocean Shipping* was implemented. With proposal of the ocean shipping power strategy, steady advance of legal government construction, constant development of free trade pilot zone construction and emerging of new types of operation, problems of its implementation such as law and policy conflict, imbalanced regulation and services, weak local regulation and difficult department coordination have become more and more prominent. It cannot satisfy real demands. It's necessary to go with the times and accelerate the amendment of *Regulations on International Ocean Shipping*.

3.1 Basic Principles for Amendment

The unswerving purpose of the amendment for *Regulations on International Ocean Shipping* is to effectively expedite development of China's ocean shipping industry, strengthen international competitiveness of the ocean shipping industry and safeguard national interest. Hence, in the system design process, influences over national interest shall be taken into account rather than pursuing advancement of the system itself. On this basis, the following principles shall be followed in the process of revising *Regulations on International Ocean Shipping*:

- (1) Principle of inheritance and development combination. It shall inherit actually effective stipulations in the current system and meanwhile combine the innovative management thinking of the ocean shipping industry to ensure consistence between the system and reality.
- (2) Principle of protection and openness combination. It shall always face up to the fact that China's international ocean shipping competitiveness is not strong enough, and give top priority to promoting development of China's oceans shipping industry, strengthening protection of China's ocean shipping enterprises^[3] and safeguarding national interest; at the same time, it shall not refuse to be open to the outside just because of "being weak" neither shall it fully follow foreign experience. Rather, it shall seek equilibrium between openness and protection based on national conditions.
- (3) Principle of regulation and service combination. The reform of China's administrative management is being deepened. Streamlining administration and power decentralization are the irresistible trend. Lowering the threshold for market access and strengthening in-event and after-event regulation is a necessity. "Moderate regulation, common governance of the society and service orientation", as a kind of philosophy, shall be demonstrated in the amendment.
- (4) Principle of national condition and international standards combination. Foreign advanced ocean shipping management legislation spirit shall be absorbed and actual needs of China shall be considered to make greater efforts in introducing, digesting and absorbing, gradually reduce legislation cost, enhance legislation efficiency and narrow the legislation gap between China and developed countries.

3.2 Main Contents of Amendment

(1) Strengthening In-Event and After-Event Regulation

It shall establish and improve the exit mechanism of the ocean shipping market, clearly stipulate conditions, methods, types and legal consequences for operators and ship to exit the

market; further refine the definition of unfair competition behaviors such as monopoly and low-price operation and explicitly stipulate whether shipping protocol organizations and Liner Conference are entitled to anti-monopoly immunity or not; moderately set up flexible terms for foreign investment to enter China's ocean shipping market so as to adapt to China's ocean shipping policies and changes in the opening-up reform of the ocean shipping field; establish cash deposit for non-vessel operating common carry, responsibility insurance or optional financial guarantee systems for financial guarantee; and increase categories of administrative compulsory initiatives and clarify implementation conditions.

(2) Optimizing Division of Management Authorities

It shall strictly confine the central authority to ocean international shipping and international river shipping management, and other matters in the ocean shipping shall be governed by local management organizations according to corresponding jurisdictional principles. Besides, it shall train varied intermediary organizations in the ocean shipping field, establish their subject position and give scope to their self-discipline.

(3) Establishing and Improving the Credit System

It shall make explicit the submission mechanism for credit information, improve the credit information collection mechanism, build a unified credit information sharing and exchange platform of the country (industry), and gradually realize information interflow and sharing; build an incentive mechanism for honesty and a punitive mechanism for dishonesty through the credit evaluation system, thus slowly realizing long-term effective incentive for honest units and joint punishment for dishonest units.

(4) Orderly Opening the Ocean Shipping Market

It shall be synchronized with the latest policy, allow establishment of foreign-funded international shipping management enterprises, moderately open Cabotage ^[4] and relax restrictions on foreign investment shares holding proportion in international shipping enterprises.

(5) Improving Management of Hong Kong and Macao Routes and Boundary Rivers

In terms of management of Hong Kong and Macao routes, it shall establish a reasonable system for central and local authorities to jointly manage based on the principle of equal rights and liabilities. A clear illustration of central authorities shall be provided and the rest of authorities will be left to local governments.

Boundary rivers shall be included in the management scope to establish the licensing right and punishing right of provincial shipping management organizations, and clarify conditions for market access and shipping capacity regulation.

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