

# **THE ROAD TO AVERAGE ADJUSTMENT CAREER IN CHINA**

## **REN JIANXIN-THE FOUNDER AND PIONEER**

### **OF THE ADJUSTMENT CAREER**

*Ye Weiyang*

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Average adjusting in China started from scratch and grew from being small to big, from being a domestic business to a world-wide undertaking. It won one victory after another. I am proud and lucky to have witnessed its 40 year praise worthy history.

#### **A. The Average Adjustment Career of China Grew from Scratch**

Before 1966, there was no specialized average adjustment organization in China, nor was there qualified average adjusters readily available. As a result, all general average cases relating to Chinese ships, including those chartered from abroad, were dealt with by foreign average adjusters.

With a view to meeting the needs of the continuous development of the shipping industry, international trade and insurance business of China and at the request of the Ministry of Communications (including COSCO), the Ministry of Foreign Trade (including SINOTRANS) and The People's Insurance Company of China (PICC), the China Council for the Promotion of International Trade (CCPIT) decided to establish the Department of Average Adjustment on April 23, 1966, made a seal available for the Department and entitled it to accept and deal with average adjustment

cases. Mr. Gao Sunlai and I were assigned to work in the Department. The founding of the Department of Average Adjustment was then filed with the State Council by the Ministry of Foreign Trade with the "Report on the Issue Concerning Handling General Average Adjustment in China" for registration on January 8, 1969.

After several years' painstaking work, many Chinese shipping companies no longer sent their general average cases abroad, but began to entrust the Department of Average Adjustment of CCPIT to carry out adjustments, thus bridging the gap in this area.

#### **B. The Average Adjustment Career of China Grew from Being a Small Business to a Big One**

However, we encountered many unimaginable difficulties in our average adjustment profession.

Firstly, adjusters were in serious shortage and their professional knowledge needed upgrading.

The Department of Average Adjustment was being designed and initially established at the time of the "Proletarian Cultural Revolution" when class struggle swept across the whole country and all

organizations were almost at an operational standstill. Besides, to make things worse, after the demotion of a large number of cadres of CCPIT to the “May 7<sup>th</sup> Cadres School” in 1969, in fact, I was solely left responsible for the adjustment business. In addition to average adjustment, I had to be in charge of trade mark agency, maritime arbitration and foreign trade arbitration, as the saying goes: “One cannot be in two places at a time”!

During the few years after the founding of the Department of Average Adjustment, although we dealt with several cases, drew and issued statements of general average per M.V. “Haidong” and M.V. “Atticos”, it was very hard to do a good job of the average adjustment which is complicated and time-consuming, besides covering a wide range of fields and requiring strong professionalism.

Secondly, the guiding principles for doing average adjustment cases were unclear and non-specific, and new adjustment rules and laws had not been formulated. It was only mentioned in the Report by the Ministry of Foreign Trade to the State Council on January 8, 1969 that we handle average adjustment cases under the principles of equality and mutual benefit, fairness and equity. At that time the leaders of the organizations concerned did not agree to adjust general average cases while keeping an eye on the relevant provisions of the York-Antwerp Rules for reference, yet China did not have its own rules and laws to be used as the basis for average adjustment.

Under such circumstances, it was difficult to carry out average adjustment work, resulting in a serious backlog of cases and failure in prompt adjustment.

At this difficult moment, when acting as the director of the Legal Affairs Department of CCPIT, in 1971, Mr. Ren Jianxin immediately took various major measures and made great efforts to address existing issues in the field of average adjustment .

### **1. Staff the Team and Train Average Adjusters**

Mr. Ren Jianxin transferred a number of staff members of CCPIT from the “May 7<sup>th</sup> Cadres School” including Messrs. Gao Sunlai, Shao Xunyi, Tang Houzhi, Xu Lugang, Li Dongfa, Xu Shizhang, Yan Cunhou and Mrs. Rong Jiexin and Xu Xiugu etc.. Mr. Gao Sunlai was appointed to be responsible for daily leadership of the Department of Average Adjustment. In addition, Mr. Ren Jianxin hired a number of experts, including Mr. Wang Enshao and Mr. Zhou Taizuo from PICC and Chief Captain Feng Fazuo from the Ministry of Communications as consultants, and gave them a free hand. In this way, the staff members in the Department of Average Adjustment went up to 18 at its peak, forming a strong and sizable work force.

After staffing, the next step was to train the average adjusters. Among the staff members of the Department of Average Adjustment, some were familiar with shipping and international trade; some were engaged in marine insurance for a long

time and some others had basic knowledge related to average adjustment and maritime law. Mr. Ren Jianxin asked them to learn from each other, to gain further access to foreign writings and information related to average adjustment, to study the York-Antwerp Rules, 1950 and refer to many statements of general average drawn by foreign average adjusters. In addition, he adhered to the idea of opening-up and invited a number of well-known foreign average adjusters, including Mr. William Richards and Mr. Hudson from the U.K. and Mr. Pinos from Sweden, to visit China.

Besides, he actively participated in international activities related to average adjustment. In 1973, Mr. Ren Jianxin personally led a delegation, as observers, to attend the Seventh Conference of the International Association of European Average Adjusters held in Madrid, Spain, to keep abreast of the international situation and development of average adjustment. Meanwhile, he instructed the Department to send letters to the average adjusters in many countries in order to gain knowledge about the laws and practices relating to average adjustment in those countries. Such study, training and investigation went on for quite a few years, greatly enhancing the business standard of adjusters and accelerating the speed of adjustment.

## **2. Specify the Adjustment Principles and Formulate the Beijing Adjustment Rules**

Mr. Ren Jianxin was well aware of the significance of specifying the adjustment principles in order to do a good job of

average adjustment. He not only listened to the oral reports by the leaders at all levels within the Legal Affairs Department of CCPIT, but also chatted with the persons assuming specific duties after taking office, thereby he acquainted himself with the history of development, the current situation and internationality of general average within a short time. Besides, he knew that the York-Antwerp Rules were widely accepted and used in the world. After careful and thorough consideration, at the Seventh Conference of International Association of European Average Adjusters on October 8, 1973, he proposed to take “adhering to the spirit of independence and self-reliance, equality and mutual benefit while referring to the international practice at the same time” as the principles for actively embarking on and handling average adjustment cases. In the following year, he further clarified that the provisions of the York-Antwerp Rules can be referred to in doing specific adjustment.

General average adjustment rules are the basis for adjustment. After several years of practice, Mr. Ren Jianxin led us to sum up experiences gained in handling cases and formulate the Provisional Rules for General Average Adjustment of the China Council for the Promotion of International Trade (or “Beijing Adjustment Rules” in short) with reference to the York-Antwerp Rules, 1950 and 1974. This was officially announced on January 1, 1975, under the approval of the Ministry of Foreign Trade, the Ministry of Foreign Affairs, the Ministry of Communications and Ministry of Finance.

Mr. Ren Jianxin personally presided over the drafting of the Beijing Adjustment Rules and the entire staff of the Department of Average Adjustment participated in. Three years later, the draft was finalized after six times of revisions being made on the basis of the comments and suggestions from more than 100 relevant organizations throughout China.

The Beijing Adjustment Rules have a systematic content and a concise text composed of only 8 articles (22 articles in total in the York-Antwerp Rules, 1974). It not only basically adopts the principles generally accepted in the world, in consideration of the internationality of shipping and average adjustment, but also contains quite a few innovations with Chinese characteristics: (1) In theory, only the sacrifice or expenditure intentionally and reasonably made or incurred for the common safety of the property involved are allowed as general average, but in practice, it provides that under certain circumstances, the expenses incurred and the losses and damages caused for the prosecution of the voyage can currently be admitted as general average; (2) It proposes to simplify general average adjustment and measures for dealing with the deposit; (3) It requires the parties concerned to declare general average and provide documents and materials necessary for doing adjustment within a certain time limit.

Although the Beijing Adjustment Rules are rather simple and the provisions that if the event giving rise to a claim for general average is due to the fault of one of the parties, for which he is not entitled

to exemption from liability, no adjustment shall be proceeded with, which is different from the international practice and thus needs to be modified; yet the Rules have been generally accepted and adopted by the shipping, trade and insurance circles since its promulgation, as the basis for average adjustment in the last few decades and played a significant role in the average adjustment in China.

It must be specifically pointed out that in the damned days of the “Proletarian Cultural Revolution”, the “rebels” all over the country shouted: “the public security organs, the procurators and the people’s courts should all be smashed to pieces” and all laws and regulations were under criticism. Between 1972 and 1974, the evil forces of the “Gang of Four” were still rampant, denouncing and seizing people at will, ill-labeling people for defamation, or even cooping others in prison for political persecution. Under such circumstances, Mr. Ren Jianxin ran considerable political risks and need remarkable courage and firm resolution to lead the drafting and publication of the Beijing Adjustment Rules.

### **3. Promote the Formulation of the Maritime Law of China and Incorporate the Relevant Provisions of the Beijing Adjustment Rules therein**

After the founding of the People’s Republic of China, the Ministry of Communications invited the institutions concerned to draft the Maritime Law of China. From 1952 to 1963, the draft of the law was revised 9 times. Unfortunately, the

work was interrupted by the “Proletarian Cultural Revolution”. In 1974, Mr. Ren Jianxin led a delegation to attend the 30<sup>th</sup> Conference of the Committee Maritime International (CMI) in Hamburg and had first knowledge of the situation relating to the formulation of maritime laws and regulations in the world. After returning home, he proposed to speed up the formulation of the Chinese maritime law to the institutions concerned, promoting the process of formulation of the Maritime Law of the People’s Republic of China. In 1982, led by the Ministry of Communications, the drafting of the law was restored. Mr. Ren Jianxin dispatched the representatives of the CCPIT including the Department of Average Adjustment, to participate in the whole process of the formulation of the law, except proposing that the Maritime Law should provide that the carrier shall not be responsible for loss or damage arising or resulting from neglect or default of his servants in the management of the ship and the liability of the carrier for delay in delivery shall not exceed the total freight payable. Particularly, it was suggested: (1) The extraordinary sacrifice or expenditure intentionally and reasonably made or incurred for the common safety of the property or, in certain cases, for the safe prosecution of the voyage should be made good as general average and contributed to by the interested parties in proportion to their respective contributory values; and (2) The Maritime Law should have provisions relating to the basis for computing the sacrifice and contributory values respectively. As the drafters of Chapter X, i.e. “General Average”, we basically incorporated the provisions of

the Beijing Adjustment Rules (Excluding article 2, paragraph 3) into the Maritime Law. Our proposal was totally accepted by the leaders of the State Council and the National People’s Congress. Finally, the Maritime Law of the People’s Republic of China was adopted and promulgated at the 28<sup>th</sup> Session of the Standing Committee of the 7<sup>th</sup> Conference of the National People’s Congress of the People’s Republic of China on November 7, 1992 and came into force on July 1, 1993.

### **C. The Average Adjustment Career of China Grew from Being a Domestic Business to a World-wide Undertaking**

In July 1985, with the approval of the leaders of the CCPIT, the adjuster of the Department of Average Adjustment, bringing a start-up cost of less than USD 20,000, went to Hong Kong to cooperate with Richards Hogg International of the U.K. in handling average adjustment cases, opening up its secondary market. Initially, many foreigners did not believe that people coming from Mainland China could do a good job in adjustment and thought that he could not gain a foothold in Hong Kong and would withdraw from Hong Kong to the Mainland China soon. But after several years’ painstaking work, the business carried out by the cooperative company continued to expand, accounting for a proportion from zero to 20%, from 20% to 80%, and finally up to 100% in the total adjustment business of the Chinese-owned and joint-venture shipping companies in Hong Kong. By the fall of 1991, apart from the handled

cases and the collected adjustment fees, the number of the pending cases that had been accepted by the cooperative company was more than 160, with total adjustment fees receivable reaching several tens of millions of HK dollars. The company was originally expected to break even after two years of operation, but in fact, it made money in the first year. We are happy to say that we achieved good social and economic benefits. In this regard, people both at home and abroad believe that the Department of Average Adjustment was remarkably successful in opening up its secondary market, and, what is more is that we learned international practices via the window, i.e. Hong Kong, thus upgrading the level of the average adjustment of China and making it in line with international standards.

In 1991, the representative of the Department of Average Adjustment was sent to Geneva by the Ministry of Communications and the CCPIT to attend the 13<sup>th</sup> Session of the Working Group on International Shipping Legislation of the Committee on Shipping of the United Nations Conference on Trade and Development (UNCTAD), and delivered a speech at the conference to point out that general average should not and can not be abolished immediately, but should be constantly reformed and simplified, winning support and praise from the representatives of participating countries.

In 1994, the representative of the Department of Average Adjustment again attended the 35<sup>th</sup> Conference of Committee Maritime International in Sydney. He

delivered a speech at the conference and participated in the revision of the York-Antwerp Rules.

For decades, the Department of Average Adjustment has dealt with many average cases and has drawn and issued a large number of statements of general average. As consultants and average adjusters, we have rendered our good services to the organizations concerned: declaring general average, collecting security and relevant documents and materials, dealing with adjustment efficiently, fairly and with precision, and finally collecting contributions from the interested parties so that the cases and the claims can be promptly and satisfactorily settled, thereby promoting the continuous development of shipping, economy and trade as well as the insurance business.

Besides, the Department of Average Adjustment has assisted the institutions concerned to train their professional claim-settlement personnel. We have also published many articles relating to general average in newspapers and magazines, and have been invited to Chinese shipping companies, insurance companies and relevant institutes as well as international symposiums to give lectures and lessons, making contributions to the popularization of general average knowledge.

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