

FEDERAL MARITIME COMMISSION

46 CFR Part 586

PETITION OF TOTAL OCEAN MARINE SERVICES, INC.
FOR RELIEF FROM CONDITIONS UNFAVORABLE TO
SHIPPING IN THE UNITED STATES/VENEZUELA TRADE

[DOCKET NO. 91-22]

ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE
TO SHIPPING IN THE UNITED STATES/VENEZUELA TRADE

AGENCY: Federal Maritime Commission.

ACTION: Notice of Intent to Discontinue Proceeding.

SUMMARY: A recent maritime agreement concluded between the Government of Venezuela and the Government of the United States would appear to have resolved the unfavorable shipping conditions addressed by the Proposed Rule issued in this proceeding. The Federal Maritime Commission is therefore giving notice of its intent to discontinue this proceeding. However, before any such final action, the Petitioner and other interested parties can comment on the discontinuance.

DATE: Comments (original and 15 copies) due on or before February 14, 1992.

ADDRESS: Send comments to:

Joseph C. Polking, Secretary
Federal Maritime Commission
1100 L Street, N.W.
Washington, D.C. 20573
(202) 523-5725

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

On May 13, 1991, the Federal Maritime Commission ("Commission" or "FMC") initiated this rulemaking proceeding ("Proposed Rule") pursuant to section 19 of the Merchant Marine Act, 1920, 46 U.S.C. § 876 ("Section 19") in response to a petition ("Petition") filed by Total Ocean Marine Services, Inc. ("Total Ocean"). It appeared from the Petition, and comments on the Petition, that the laws, policies and practices of the Government of Venezuela ("GOV") reserved a substantial portion of general export and import cargo in the United States/Venezuela trade ("Trade") to carriage by national lines to the exclusion of operators of third-flag vessels. In addition, it appeared that agencies of the Government of Venezuela had withheld from the Petitioner authorization to undertake operation as a common carrier by chartering third-flag vessels.

The Proposed Rule would adjust or meet the apparent unfavorable conditions by imposing a per voyage fee upon certain named Venezuelan carriers. Failure to pay the fee would result in suspension of a carrier's tariffs, or denial of access to or clearance from U.S. ports. The effect of the Proposed Rule would be to meet unfavorable shipping conditions by imposing burdens upon Venezuelan carriers which approximate those imposed by Venezuelan

law, regulation, policy and practice upon the petitioner, a potential operator of third-flag vessels.

The corrective measures advanced in the Proposed Rule would be applied to the following named carriers: Venezuelan Container Line, C.A. ("VCL"); Naviera Pacifico C.A. ("Naviera Pacifico"); Compania Anonima Venezolana de Navigacion ("CAVN"); Maritima Aragua, S.A. ("Maragua Line"); King Ocean Service de Venezuela, S.A. ("King Ocean"); C.A. Maritima Oceanica Granelera ("CAMOGRA"); Consorcio Naviero de Occidente C.A. ("Conaven"); Naviera Lavinel C.A.; Naviera Transpapel, C.A.; Vencaribe C.A.; Naviera Caribana C.A.; Zade, C.A.; Naviera Naviprobo, C.A.; and Inagua Line - Naviprobo.¹

The Proposed Rule was published in the Federal Register on May 16, 1991 (56 FR 22685) and the following persons submitted comments: Total Ocean; Shippers for Competitive Ocean Transportation ("SCOT"); Inagua Lines, Inc. ("Inagua"); CAMOGRA; Naviera Pacifico; the Venezuelan American-Chamber of Commerce and Industry ("VenAmCham"); American Transport Lines, Inc. ("AmTrans");

¹ The Proposed Rule indicated that the Commission was unable to determine whether the company identified as "Inagua-Naviprobo" by Total Ocean in its Petition was the same as, or distinct from, Naviera Naviprobo C.A. Proposed Rule at 28, n. 2. Accordingly, both Naviera Naviprobo and "Inagua Naviprobo" were listed as separate and distinct carriers in the Proposed Rule. By letter to the Commission dated June 17, 1991, counsel for Inagua Lines, Inc. advised that the tariff is issued by Naviera Naviprobo, and that Inagua is only an agent. Counsel further explained that: "The wording 'Inagua-Naviprobo,' is only the result of an every day common expression resulting from the usage of both companies names combined, by customers in the trade." Apparently, Inagua Lines is a U.S. company operating third-flag vessels and is not a Venezuelan-flag carrier.

King Ocean; CAVN; and Camara Venezolana de Armadores, the Venezuelan Chamber of Shipowners ("Chamber" or "Venezuelan Shipowners").² Comments were thus filed either individually (or collectively by the Chamber) on behalf of all of the Venezuelan-flag carriers named in the Proposed Rule with the exception of the following: Vencaribe; Naviera Caribana; Zade; and Naviera Naviprobo.³ The Proposed Rule was supported by Total Ocean and SCOT and generally opposed by Venezuela shipowner interests.

The Department of State ("DOS") submitted letters dated July 3, 1991 ("July 3 Letter") and August 9, 1991 ("August 9 Letter"). In its August 9 Letter, DOS indicated that the U.S. Government was in the process of proposing an agreement to the GOV which it believed ". . . would adjust conditions in the trade in such a manner as to address the underlying access issue in the case before the Commission." DOS also reaffirmed the request made in the July 3 Letter that the Commission withhold a final determination of Total Ocean's Petition pending a report on the conclusions of the consultations.

² The Chamber identified itself as an association of Venezuelan-flag carriers in, inter alia, the trade between the United States and Venezuela. The seven members of the Chamber represented by the comment are: VCL; Transpapel; King Ocean; Maragua; Naviera Lavinel; Naviera Pacifico; and Conaven.

³ According to the comment and letters submitted by Inagua Line, Naviera Naviprobo is a Venezuelan-flag carrier serving the Trade. In the affidavit of Salvador Juan attached to the comment of the Venezuelan Chamber of Shipowners, Vencaribe, Naviera Caribana and Zade are said to be Venezuelan-flag carriers with limited operations in the Trade. See Juan Affidavit at 5-6.

Subsequently, an agreement between the Government of the United States and the GOV was concluded through an exchange of diplomatic notes dated October 15 and 17, 1991. A letter from DOS dated October 24, 1991 ("October 24 Letter") transmitted copies of this exchange of diplomatic notes. DOS indicated in the October 24 Letter that:

Under the terms of the Agreement, the reserve cargo of the two countries shall be available, on an equal access basis, to the maritime carriers of the two nations for transport in vessels owned or chartered by the carriers (including third-flag chartered vessels).

The agreement is for a two-year term and excludes the defense cargoes of both countries. It supersedes a 1983 bilateral memorandum of understanding on shipping policy.

DOS provided copies of this exchange of diplomatic notes. In addition, DOS provided copies of two other documents which are relevant to this proceeding. One is a letter from Rear Admiral Luis Antonio Mareno Zambrano of the GOV Ministry of Transportation and Communication to Total Ocean dated October 17, 1991 which informs Total Ocean of the new maritime agreement and which states:

. . . we are authorized to inform you that your firm may operate as of this date in the maritime trade between the two countries, pursuant to the conditions hereby.

The second document is a letter from Celia Benchimol of the Ministry of Transport and Communications to the National Banking Council, dated October 18, 1991, notifying the National Banking Council of the "new commercial maritime policy" and directing Venezuelan banks not to include restrictive language in letters of credit that would require the use of the state-owned carrier or

associated lines for shipments in the trade between the U.S. and Venezuela.

Subsequently, the Commission received a letter from Total Ocean dated November 4, 1991, responding to the recent diplomatic developments. Total Ocean acknowledges the receipt of a letter from Venezuela's Ministry of Transport and states that ". . . it appears that the concerns of the Petitioner in this matter may be substantially resolved." Nevertheless, Total Ocean appears to express reservation over the fact that the new agreement will expire in two years and that the authority (presumably to operate in the trade) contained in the Ministry's letter to Total Ocean "has not yet been put into practice or tested." Total Ocean therefore requests "that a final ruling . . . in this matter be held in abeyance until a later date when these and other minor issues may be resolved."⁴

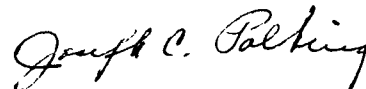
Finally, the Commission takes note of recent accounts appearing in the trade press which report that Total Ocean inaugurated a service in the Trade in December, 1991 utilizing a chartered third-flag vessel. These reports provide further indication that Total Ocean has entered the Trade and that the apparent unfavorable shipping conditions described in the Proposed Rule may be resolved.

Accordingly, based on the diplomatic developments, Total Ocean's recent letter, and press reports, it would appear that the

⁴ Total Ocean sent a letter to the Commission dated November 13, 1991, certifying that a copy of the November 4, 1991 letter was served upon the participants in this proceeding.

unfavorable shipping conditions described in the Commission's Proposed Rule have been substantially alleviated. The Commission therefore is announcing its intention to discontinue this proceeding based on the apparent resolution of unfavorable shipping conditions. Total Ocean and all other interested persons can comment on this discontinuance on or before February 14, 1992.

By the Commission.


Joseph C. Polking
Secretary