

FEDERAL MARITIME COMMISSION

46 CFR PART 586

[DOCKET NO. 87-06]

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

AGENCY: Federal Maritime Commission.

ACTION: Rescission of Final Rule and Termination of Proceeding.

SUMMARY: The Federal Maritime Commission ("Commission") published a Final Rule in this proceeding as 46 CFR 586.2 (1990). In response to a Motion to Terminate Proceedings and Rescind Final Rule filed by Naviera Neptuno, S.A. ("Neptuno"), the Commission is rescinding the Final Rule and terminating the proceeding.

DATE: Effective [insert date of publication].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Final Rule in this proceeding, issued pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), found conditions unfavorable to shipping to exist in the U.S./Peru trade ("Trade") as a result of the cargo reservation laws, decrees and policies of the Government of Peru ("GOP"). Decree No. 036-82-TC established the GOP cargo reservation system. Although subsequently amended by other decrees

which were themselves later repealed by the GOP, Decree No. 036-82-TC remained in effect and provided the underlying basis for reservation of 50% of commercial cargo for movement on Peruvian-flag or associated vessels, thus denying access to major proportions of cargo by third-flag carriers and restricting the service and choices available to U.S. shippers. The Commission's action in this proceeding was based in large part on Decree No. 036-82-TC.

The Commission's Final Rule, issued on March 28, 1989, assessed a fee of \$50,000 per voyage on several Peruvian-flag carriers. The effective date of the Rule was, however, deferred due to political and economic conditions then-existing in Peru, brought to the Commission's attention by the Department of State ("DOS"). See 54 FR 12629 (March 28, 1989); 46 C.F.R. 586.2.

#### RECENT GOP ACTIONS AND THE MOTION

The GOP has recently acted to eliminate the cargo reservation policies and decrees which were the focus of the Commission's proceeding. Supreme Decree No. 020-91-TC, enacted July 3, 1991, cancels a number of previous Supreme Decrees, including inter alia Supreme Decree No. 036-82-TC. DOS informed the Commission of these enactments by a letter forwarding a July 15, 1991, Diplomatic Note from the Embassy of Peru in which the GOP suggested that the Commission review and repeal the Final Rule. Neptuno, a Peruvian-flag carrier subject to the Rule, has filed a Motion which describes these filings and events and requests that the Commission rescind the Final Rule and terminate the proceeding.

REPLIES TO THE MOTION

The Motion was served on all of the parties who had filed comments in earlier proceedings in this Docket. Nedlloyd Lines ("Nedlloyd") replied to the Motion. In addition, DOS sent a letter confirming that the GOP's "decrees are in effect and have eliminated all cargo preference."

Nedlloyd states that the decrees appear to be a significant and progressive step by the GOP but, nevertheless, suggests that rescission of the Final Rule would be premature. The basis for Nedlloyd's concern is a \$100,000 penalty assessed against Nedlloyd earlier this year by the GOP for alleged violations of cargo reservation laws. Nedlloyd states that it is contesting the penalties, and that, although the GOP has taken no action to collect the penalties, they are still "pending." Nedlloyd suggests that the Commission allow a period in which to monitor GOP transition from cargo reservation by directing interested parties to report on conditions in the Trade in sixty days.

DISCUSSION

Nedlloyd states that its asserted liability for penalties based on alleged violations of the cargo reservation scheme remains outstanding. Nedlloyd further advises, however, that this assertion of liability predates the GOP action to remove the cargo reservation scheme itself and that no enforcement efforts have been undertaken by the GOP.<sup>1</sup> In these circumstances, and given

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<sup>1</sup> The Commission, of course, would be concerned should efforts be made to belatedly enforce cargo reservation decrees  
(continued...)

Nedlloyd's continuing ability to seek future action by this agency in light of changes in circumstances, we are reluctant to withhold Commission recognition of the GOP's recent actions.

The GOP enactments reflect the intention, expressed in Decree No. 020-91-TC, to "remove the restrictions affecting shipments by exporters and importers, including abolition of Reservation of Freight to promote shipping . . . ." Article 1 of the Decree provides for the removal of administrative restrictions of various kinds affecting maritime shipments by exporters or importers. Article 2 abolishes reservation of freight in favor of Peruvian shipping companies, and Article 3 provides for "participation of foreign shipping companies in the transport of Peruvian freight for export or import . . . on the basis of strict reciprocity."<sup>2</sup>

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<sup>1</sup>(...continued)  
which were the subject of this proceeding. While actual termination of such claims by the GOP would be welcome, the Commission will not speculate further on matters that might concern it in the future in view of the positive achievements in resolving the conditions unfavorable to shipping which were the focus of the proceeding.

<sup>2</sup> Thus, access by non-Peruvian flag carriers will be limited only by denial of access to Peruvian shipping companies to the freight generated in the country of origin of the foreign vessels in question. We note, however, that this proceeding was instituted as a result of concerns of U.S. shippers and shippers' organizations that their access to shipping services was adversely affected by GOP cargo reservation policies and decrees. Among the third-flag carriers affected were Chilean-flag carriers prominent in the movement of refrigerated cargoes. The exclusion of the Chilean-flag carriers arose in the context of a dispute over mutual access to Chilean cargoes by Peruvian-flag carriers. In promulgating its first Final Rule in this proceeding, 52 FR 46356 (December 7, 1987), the Commission advised that it could not accept as satisfactory a resolution of the matter which incorporated the proposition that regional disputes may be resolved by imposing burdens on U.S. commerce. In effect, the Commission warned, this  
(continued...)

Based on the new Peruvian Decree, the Commission will grant Neptuno's Motion. It appears, indeed, that the GOP has taken concrete and positive steps to remove the conditions unfavorable to shipping in our mutual trade previously found. We therefore rescind the Final Rule and terminate the proceeding.<sup>3</sup>

List of subjects in CFR Part 586:

Cargo vessels; Exports; Foreign relations; Imports; Maritime Carriers; Penalties; Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); section 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961); and 46 CFR Part 585, Part 586 to Title 46 of the Code of Federal Regulations is revised as follows:

Part 586 - Actions to Adjust or Meet Conditions Unfavorable to Shipping in the U.S. Foreign Trade

1. The authority citation for Part 586 continues to read as follows:

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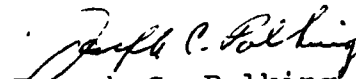
<sup>2</sup>(...continued)  
would allow the GOP to hold the U.S.-Peru trade hostage to obtain concessions elsewhere. We remain committed to the principles earlier enunciated. While it is possible that the language of Article 3 might encompass such an approach to regional problems in the future, a determination to that effect would be speculative at this point. Accordingly, we see no reason in the present context to delay action on the Motion.

<sup>3</sup> This action is, of course, without prejudice to the initiation of further proceedings either on our motion or at the request of any affected third party, should conditions in the Trade warrant.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. Section 586.2 is removed.

By the Commission.

  
Joseph C. Polking  
Secretary