

FEDERAL MARITIME COMMISSION

46 CFR PART 586

[DOCKET NO. 87-6]

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

AGENCY: Federal Maritime Commission

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission issues a Final Rule in Docket No. 87-6 finding unfavorable conditions to exist in the U.S./Peru trade which arise from certain laws and decrees of the Government of Peru. Further, in order to meet or adjust the unfavorable conditions found the Commission assesses fees for each voyage made by certain Peruvian-flag carriers after the effective date of the Final Rule. Nevertheless, the Commission concludes that assessment of the fees set forth in the Final Rule would not effectively meet or adjust the conditions unfavorable to shipping due to economic and political conditions present in Peru, and has therefore elected not to make the Final Rule effective at this time.

DATE: None. [Effective at a date to be determined by further order of the Commission.]

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SUPPLEMENTARY INFORMATION:

Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission" or "FMC") is authorized and directed to make rules and regulations affecting shipping in

the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3(a), (b) and (d).

BACKGROUND

In March 1986, the Commission received communications from shippers and shipper organizations expressing concern

over the impact of Supreme Decree No. 009-86-TC¹ (Decree 009-86), which became effective on February 28, 1986, and which reserved 100 percent of all imported and exported ocean freight generated by Peru's foreign trade for Peruvian-flag carriers. The FMC began its inquiry into this matter by publishing a Notice in the Federal Register on April 22, 1986 (51 FR 15069) ("April 1986 Notice"), wherein the Commission requested interested persons to submit views, arguments or data relating to the impact of the Government of Peru's ("GOP") enactment, implementation and enforcement of Decree 009-86 on the United States/Peru oceanborne trade ("Trade"), to determine whether action pursuant to Section 19 was warranted.

The amount of cargo reserved by Decree 009-86 for Peruvian-flag carriers could be reduced as follows: (1) on the basis of strict reciprocity;² (2) pursuant to government

¹ Decree 009-86 amended Supreme Decree No. 036-82-TC ("Decree 036-82"), effective September 1982. Decree 036-82 reserves Peruvian import and export cargoes for Peruvian-flag vessels and sets out waiver and cargo manifest certification requirements for non-Peruvian-flag carriers. The exact percentage of cargo reserved for Peruvian-flag carriers is not specified in Decree 036-82. Another decree states that 50 percent of Peruvian import and export cargo is reserved for Peruvian-flag carriers.

² E.g., U.S. carriers' access to Peruvian cargoes would be proportional to Peruvian carriers' access to U.S. cargoes.

or commercial agreements³ among non-Peruvian and Peruvian-flag carriers, preferably including Compania Peruana de Vapores ("CPV"), the Peruvian state shipping line; or (3) when the Peruvian Director General of Maritime Transportation or Peruvian Consuls grant non-Peruvian-flag or non-associate carriers authorization to carry Peruvian export or import cargoes. Authorization for the use of non-Peruvian-flag or non-associate carriers may be granted in the form of a waiver or cargo manifest certification when Peruvian-flag or associate carriers are not available and in position within 12 days⁴ following the proposed date of shipment of non-perishable products, or within 4 days in the case of perishable products, or when no Peruvian-flag carrier serves the relevant port.

Prior to the closing date for comments to the April 1986 Notice, the Commission received through the Department of State, a diplomatic note from the GOP requesting a six-month extension of the period allowed for submitting comments, along with guarantees from the GOP that there would be no interruption of services or disruption in the Trade and the procedures for better services would be

³ Non-Peruvian-flag carriers which become parties to such commercial agreements may be granted associate status upon approval by the GOP. Associate carriers are generally excepted from cargo manifest certification and waiver requirements under Decree Nos. 009-86 and 036-82.

⁴ Supreme Decree No. 033-86-TC of June 11, 1986, modified Decree 009-86 by reducing the number of days a shipment must wait for a Peruvian-flag or associate carrier from 15 days to 12 days.

expedited. Before acting on the GOP's request for a six-month extension the Commission sought clarification from the GOP regarding the status of U.S. and third-flag operations in the Trade, and the effect on those carriers of the guarantees referred to by the GOP. In August 1986, the Department of State transmitted a communique from the GOP in which it provided certain assurances regarding implementation of Decree 009-86 and clarified points made in its diplomatic note.

In its communique, the GOP assured that its regulations would allow third-flag carriers to operate in the Trade in accordance with established rules, and that over the six-month period it would not levy any fines on third-flag carriers operating in the Trade for noncompliance with Decree 009-86. Further, the GOP informed the Commission that the Government of Chile had on August 7, 1986, implemented Resolution No. 2 which excluded Peruvian-flag carriers from operating in certain Chile/third-country trades including the Chile/United States trade.⁵

On August 27, 1986, the Commission issued a Notice in the Federal Register (51 FR 30543) ("August 1986 Notice"), stating the following:

⁵ On September 26, 1986, it was reported by the Department of State that the Government of Chile had implemented Resolution No. 2 because of the GOP's decision to apply Decree 009-86 to Chilean carriers. The Department further explained that on September 15, 1986, the GOP issued Ministerial Resolution No. 044-86-TC/AC ("Resolution 044-86"), which excluded Chilean-flag vessels from transporting cargo in certain Peru/third-country trades because of the Government of Chile's refusal to lift Resolution No. 2.

By removing the threat of penalties for noncompliance with the waiver and cargo manifest certification requirements, the communique from the Government of Peru is taken by the Commission to mean, in effect, that shippers will be allowed to select the carrier of their choice and all carriers, including U.S. and third-flag, will have free and open access to the U.S./Peru trade. Based on this understanding, the Commission is hereby serving notice that it will defer any action pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, with respect to the implementation of the February Decree, for a period of six months from the date of publication of this Notice in the Federal Register provided the assurances given in the Peruvian communique transmitted to the Commission on August 19, 1986, are observed.

Further, the Commission's August 1986 Notice advised that it did not see a need for extending the comment period, as requested by the GOP, but noted that it would expect interested parties to advise the Commission promptly if they believe that conditions in the Trade warrant further Commission action.

Subsequent to the issuance of the August 1986 Notice, as well as after the six-month period had expired in February 1987, the Commission received communications from the Department of State, GOP, shippers, shipper organizations, freight forwarders and carriers. A number of the comments indicated that the GOP waiver system under Decree 009-86 did not allow shippers to select their preferred carriers and that the six-month deferral period failed to reopen the Trade to all non-Peruvian-flag carriers.

On the basis of all the information received the Commission published a Notice of Proposed Rulemaking in the Federal Register on April 13, 1987 ("Proposed Rule") (52 FR

11832), to address apparent conditions unfavorable to shipping in the Trade pursuant to Section 19. The Proposed Rule, which initiated this docketed proceeding, recognized the appearance of unfavorable conditions in the Trade, and proposed the suspension of tariffs of Peruvian-flag carriers unless such carriers within 25 days of the issuance of a final rule obtained authorized status by filing with the Commission a certificate from the GOP stating unequivocally that no law, regulation or practice precludes any non-Peruvian-flag vessel from competing in the Trade on the same basis as any other vessel. Comments on the Proposed Rule were requested.

Subsequent to issuance of the Proposed Rule, regulations ("Regulations")⁶ were issued by the GOP pursuant to a Memorandum of Understanding ("MOU") signed by the United States Government ("USG") and the GOP on May 1, 1987. These Regulations set forth new requirements and procedures that shipping lines operating third-flag vessels must observe in order to obtain authorizations from the GOP Ministry of Transportation and Communications to participate in the Trade. The GOP advised through the Department of State, that the "authorization" system under the Regulations totally replaced the existing "waiver" system for granting third-flag carriers access to the Trade.

⁶ These Regulations were contained in Ministerial Resolution No. 027-87-TC/AC ("Resolution").

Based on all the information received the Commission issued a Final Rule on December 7, 1987 ("December 1987 Final Rule") (52 FR 46356). In issuing its Final Rule the Commission explained that while it recognized the good faith efforts made by the USG and GOP to address the situation in the Trade through diplomatic means, the resultant Regulations which implement the MOU did not satisfactorily resolve that situation. The Commission stated that, in fact, the Regulations, in effect, would continue in place the very types of restrictions and impediments which prompted this proceeding in the first instance. Although third-flag carriers were no longer required to obtain "waivers" for individual shipments, they were to obtain "authorizations" to participate in the Trade. The Commission found this authorization process as inconsistent with free access to the Trade as was the waiver system it replaced. In this regard, the Commission also added that it was unknown whether Chilean-flag carriers would be granted authorizations and allowed to operate in the Trade, particularly in light of the existence of Peruvian Resolution 044-86 which excluded Chilean-flag carriers from certain Peru/third-country trades.

Finally, the Commission advised that it could not accept as a satisfactory resolution of this matter an accommodation which would permit the GOP to deny authorization to a third-flag operator in the Trade if the country of nationality of that operator bars participation

to Peruvian-flag carriers in any of its third-country trades. The Commission explained that to accept the proposition that the GOP can settle disputes with foreign nations by imposing burdens on U.S. commerce, in effect would allow the GOP to hold the U.S.-Peru trade hostage to obtaining concessions elsewhere.

Thus, the December 1987 Final Rule suspended the tariffs of the Peruvian-flag carriers operating in the Trade, with the exception of Naviera Amazonica Peruana, S.A. ("NAPSA"),⁷ unless such carriers obtain authorized status from the Commission.⁸ The suspension of these tariffs was to become effective March 7, 1988.

⁷ Under the Final Rule, NAPSA's tariff, FMC No. 3, covering the U.S./Iquitos, Peru trade, would not be suspended because the Commission found this subtrade distinguishable from the Trade generally, and, therefore, entitled to different treatment. The Final Rule noted that the Commission did not receive any complaints regarding this subtrade. Further, it stated that there is no alternative to NAPSA's service in this subtrade. (See Docket No. 87-6, 52 FR 46362, December 7, 1987).

⁸ The Final Rule states that authorized status shall be conferred upon a Peruvian-flag carrier upon that carrier's submitting to the Commission a certificate from the GOP stating unequivocally that no law, regulation or policy of the GOP will:

(i) Preclude any non-Peruvian-flag carrier from competing in the Trade on the same basis as any other carrier;

(ii) Result in less than meaningful and competitive access by any non-Peruvian-flag carrier, to cargo designated as reserved under Supreme Decree No. 009-86-TC; and

(iii) Impose any administrative burden, including but not limited to, the necessity to secure an authorization based on the national status of the carrier, or otherwise discriminate against any non-Peruvian-flag carrier in the Trade.

On February 4, 1988, the "Peruvian carriers", i.e., CPV, Naviera Neptuno, S.A. ("Neptuno") and Empresa Naviera Santa ("Santa"), filed a Petition for Reconsideration ("Petition") requesting that the FMC reconsider its December 1987 Final Rule or stay its effective date on grounds that it was basically directed at Decree 009-86 of February 28, 1986, which had been rescinded by GOP Supreme Decree No. 004-88-TC ("Decree 004-88") of January 22, 1988.⁹ They submitted that the Regulations which implemented the MOU also had been rescinded.¹⁰ Further, the Peruvian carriers advised that while Decree 009-86 reserved 100 percent of all Peruvian import and export cargoes, Decree 004-88 reestablishes legislation in existence between 1970 and 1986 which reserves 50 percent of Peruvian cargoes to Peruvian-flag or associate carriers.¹¹

Subsequently, the Commission issued its Notice of Reconsideration of Final Rule on March 8, 1988 (53 FR 7361) ("March 1988 Notice".) In that Notice the Commission discussed the GOP initiatives, noting that some action was necessary to recognize the changed status of the issues brought about by the GOP's actions and, as a technical legal

⁹ Decree 004-88 was published in the Peruvian Official Gazette, "El Peruano," on January 25, 1988.

¹⁰ In addition, Resolution No. 044-86 which excluded Chilean-flag carriers from certain Peru/third-country trades had been rescinded.

¹¹ The pre-1986 legal regime is based primarily on Decree 036-82.

matter, because the rescission of Decree 009-86 and Resolution 044-86 appeared to have undermined the basis cited in the December 1987 Final Rule for the Commission's findings of conditions unfavorable to shipping in the Trade. The Commission withdrew the December 1987 Final Rule for reconsideration and again invited interested parties to comment. However, the Commission also pointed out that rescission alone may not resolve the unfavorable conditions which the December 1987 Final Rule addressed, and the Commission stated that, if the system remains discriminatory in the absence of Decree 009-86, it would be prepared to act to reinstate the December 1987 Final Rule on the basis of new findings that conditions unfavorable to shipping continue to exist.

Subsequent to the issuance of the Commission's March 1988 Notice, three agreements were filed with the Commission between Peruvian and Chilean-flag carriers.¹² Pursuant to these agreements, the Chilean-flag carriers were granted associate status by the GOP and thereby given access to the Trade.

Based on comments received in response to its March 1988 Notice, the Commission announced on June 7, 1988 (53 FR

¹² These agreements are: Agreement No. 212-011180 between Neptuno and CSAV, filed March 16, 1988, effective April 30, 1988; Agreement No. 212-011186, as amended by Agreement No. 212-011186.001, between Santa and Empresa Maritima de Estado, filed March 29, 1988, effective May 13, 1988; and Agreement No. 212-011189 between CPV and Compania Chilena de Navegacion Interoceanica, S.A., filed April 12, 1988, effective May 27, 1988.

20847), that this proceeding would be held in abeyance and invited further comments and information from interested parties by August 31, 1988. The Commission, noting that all but one party had suggested that the Commission either terminate the proceeding or hold it in abeyance, elected then to give the parties time to assess the impact of certain actions taken by the GOP and the then recently-filed agreements entered into by Chilean and Peruvian-flag carriers.

On October 6, 1988, the Commission issued a Notice of Further Proceedings (53 FR 39317) and invited interested parties to file replies to comments received on August 31, 1988, from Nedlloyd Lines ("Nedlloyd") alleging the continued existence of conditions unfavorable to shipping in the Trade affecting shippers as well as carriers. In particular, the Commission invited comments in reply to Nedlloyd's contentions that the Trade continues to be burdened by requirements that are discriminatory, result in uneconomic commercial circumvention, or adversely affect shippers' choice of carriers, as well as comments on the alternative remedial rule proposed by Nedlloyd.¹³

¹³ Nedlloyd's alternative proposed rule included sanctions which would require Peruvian-flag carriers to obtain waivers from the FMC for the carriage of cargo in the Trade, and to file periodic reports with the Commission.

Comments have now been received from the Executive Agencies;¹⁴ Nedlloyd; Shippers for Competitive Ocean Transportation ("SCOT"); CPV, Neptuno, and Santa - jointly ("Peruvian carriers"); Compania Sud Americana de Vapores ("CSAV"); Lykes Bros. Steamship Co. ("Lykes"); American Chamber of Commerce of Peru ("Chamber"); and Georgetown Steel Corporation ("GSC"). These comments are summarized below.

SUMMARY OF COMMENTS

A. Executive Agencies

The Executive Agencies state that although GOP maritime policies differ sharply from those of the U.S., significant progress has been made in removing barriers to participation in the Trade by third-flag non-associate carriers. They, therefore, recommend that the Commission not impose sanctions on Peruvian-flag carriers.

The recommendation made by the Executive Agencies is based on responses from the GOP to questions posed by the Executive Agencies regarding access of foreign-flag non-associate carriers to the Trade. The Executive Agencies report that the following information was obtained from the GOP:

(1) the GOP waiver requirement for use of a foreign-flag non-associate carrier only applies to the 50 percent of the cargo that is reserved;

¹⁴ The U.S. Department of Transportation submitted comments on behalf of the Executive Agencies.

(2) non-associate third-flag vessels may transport cargoes of exporters/importers which have already shipped 50 percent of their cargoes on Peruvian or associate-flag carriers, with the stipulation that these cases be accredited by the Transportation Ministry's Office of Water Transport ("Ministry");

(3) according to Ministerial Resolution No. 054-82-TC/AC ("Resolution 054-82"), a shipper must report quarterly to the Ministry on its maritime transport of cargoes;

(4) once an exporter/importer has shipped 50 percent of its projected quarterly cargo on Peruvian or associate-flag vessels, it may submit sworn information to this effect to the Ministry and is then accredited by the Ministry to use any carrier it wishes with no further authorization;

(5) the Ministry issues an accreditation by telex saying that the exporter/importer is free to ship on any carrier it desires for the remainder of that calendar quarter with no further authorization from the Ministry;

(6) information regarding the waiver process has been disseminated to users; and

(7) no rate quotations from potential providers of maritime services are necessary for obtaining waivers.

B. Nedlloyd

Nedlloyd contends that unfavorable conditions to shipping continue to exist in the Trade. It reports that its extensive efforts to resolve the question of its access to the Trade have been inconclusive. Nedlloyd believes that

only the threat of sanctions by the FMC will have any impact on reducing impediments to access in the Trade.

Nedlloyd alleges that with the exception of foreign-flag carriers with associate status, non-Peruvian-flag carriers cannot carry any Peruvian cargo absent some action by the GOP. The GOP actions mentioned by Nedlloyd include GOP authorizations, waivers, certifications or accreditations. Nedlloyd asserts that given these requirements, it is "rank sophistry" to argue that there is no reason for concern because only 50 percent of the cargo in the Trade is reserved. Further, there is allegedly no direct mechanism for a carrier to gain access to the "free" 50 percent of the cargoes; shippers can gain access only by obtaining a GOP accreditation.

Nedlloyd contends that the only factual inquiry concerns the mechanics of how a shipper is granted permission by the GOP to employ non-Peruvian-flag carriers. Nedlloyd maintains that no matter how "onerous or perfunctory" the mechanics may be, it has not found a shipper that is willing to confront these mechanics. The GOP is said to control access to 100 percent of the Trade and that as a result, Nedlloyd is totally excluded from the Trade. Further, Nedlloyd believes that the current GOP reservation system is more onerous than the regulations drafted pursuant to the U.S./GOP Memorandum of Understanding that the Commission previously rejected.

Nedlloyd describes its operational experience in the Trade since August 31, 1988. It reports that it has not obtained any cargo in the Trade. This situation is contrasted with that of a previous new entrant, Santa, a Peruvian-flag carrier, which shortly after entering the Trade allegedly acquired a 25 percent market share. Nedlloyd explains that its lack of cargo is due to the laws which favor use of Peruvian-flag carriers.

While allegedly difficult to document, Nedlloyd finds credible reports of potential customers indicating that the GOP waiver and authorization requirements make it impossible for them to do business with Nedlloyd in the Trade. Further, Nedlloyd states that there are indications that the Peruvian cargo reservation laws are having an adverse impact on its ability to carry cargo in the U.S./Chile trade.¹⁵

Nedlloyd reports that in October 1988, during its third mission to Peru, representatives met with affected Peruvian carriers to discuss barriers to entry.¹⁶ Nedlloyd recounts that during the meeting it expressed willingness to enter into an agreement with the Peruvian carriers in order to obtain associate status as long as such an agreement does not require it to set rates collectively and share revenues. It reports that the reaction of the Peruvian carriers was

¹⁵ This assertion is elaborated on in the affidavit attached to Nedlloyd's comments.

¹⁶ Nedlloyd attaches to its comments a summary of the views expressed at this meeting. The attached affidavit also recounts the content of the meeting.

that Nedlloyd and other third-flag carriers would present a considerable competitive threat to them and that third-flag carrier access either should not be granted under any circumstances, or that Nedlloyd should be permitted access only if it compensated or contributed to the Peruvian carriers for the economic harm that its participation might cause. The Commission is further advised that after Nedlloyd discussed the adverse impact of the GOP waiver system, the Peruvian carriers stated that the waiver system was the method by which third-flag carrier access can be limited and that the waiver system should not be reviewed by the GOP unless Nedlloyd withdraws from the FMC proceeding. Nedlloyd expressed concern that should it withdraw from the proceeding, parties may no longer have incentive to negotiate. Nedlloyd concludes that the meeting did not resolve its access problem and notes that it has not received any further communication from the GOP or Peruvian carriers.

Based on its allegations regarding conditions in the Trade, Nedlloyd comments on the appropriateness of the Final Rule with modifications. Nedlloyd asserts that given the extensive comment period that the Commission has provided, it sees no procedural bar to immediate implementation of the Final Rule or related modifications based on subsequent events. It would not, however, disfavor reasonable modifications of sanctions to achieve more precise symmetry of conditions in the Trade than might be achieved under its

August 31, 1988 proposed modifications. Further, Nedlloyd states that it would not object to SCOT's proposal that sanctions once promulgated, be delayed in order to permit the GOP or Peruvian carriers to remove restrictions in the Trade.

Nedlloyd also addresses the November 9, 1988 comments filed by the Executive Agencies. It believes that the optimistic view of the Executive Agencies that sanctions are unnecessary due to the fact that significant progress has been made in liberalizing the Trade, destroys any hope for GOP actions to remove restrictions or for Nedlloyd to reach a commercial settlement. Nedlloyd asserts that the answers provided by the GOP to the Executive Agencies do not reasonably lead to the conclusion drawn by the Executive Agencies. Allegedly, the "off-book" nature of the GOP requirements creates the "chilling effect" previously found to exist by the Commission. Nedlloyd maintains that in contrast with the Executive Agencies' conclusion and recommendation, shippers are intimidated by the waiver system and 100 percent of all U.S. maritime cargo in the Trade requires some GOP action before there can be free carrier selection.

C. SCOT

SCOT takes the position that conditions in the Trade will remain unfavorable as long as the GOP requires a waiver/visa for every U.S. shipment on a non-associate third-flag vessel. The rescission of Decree 009-86

allegedly did not resolve the basic issues. SCOT states that there is evidence that the waiver/visa system is being imposed on shipments from all U.S. coasts to Peru. It asserts that implementation of this system has more than a "chilling" effect on the use of non-associate third-flag vessels. SCOT maintains that in the complex scheduling environment within which shippers must operate, it is very difficult for a shipper to gamble on a carrier which may be denied the right to lift cargo at any moment. The ultimate effect of imposition of the waiver/visa system is said to deny third-flag carrier access to all cargo in the Trade except for an occasional spot movement. Further, SCOT maintains that it is not practical for a shipper and a non-associate carrier to enter into a service contract since the carrier may be denied the right to carry cargo in the Trade by the GOP. It, therefore, concludes that conditions are unfavorable to U.S. shipper interests represented by SCOT.

SCOT explains that in its August 31, 1988 comments to the Commission, it intended to convey that, to its knowledge, the commerce of the U.S. is not immediately suffering, and if good faith negotiations between the U.S. and GOP show promise of a real resolution of the problems, a short delay in Commission action could be tolerated by U.S. shippers. SCOT notes, however, that third-flag carriers may not be able to tolerate such a delay.

SCOT believes that Nedlloyd has presented convincing evidence that it is being denied access to the Trade unless

it enters into an agreement with Peruvian-flag carriers which would enable it to obtain associate status under terms dictated by the GOP. Commenting on Nedlloyd's proposed, modified final rule, SCOT states that it does not support the approach suggested by Nedlloyd because of the absence of details on how the rule would be implemented, the Commission's ability to implement it, and the apparent increase in the role of government to enforce such a rule.

SCOT states that it sees no evidence that conditions unfavorable to shipping in the Trade have been removed and supports action necessary to remove such conditions. SCOT submits that it does not object to imposition of an FMC final rule if such action appears essential. It suggests that another approach between immediate implementation of a final rule and an indefinite delay would be for the Commission to issue a final rule which describes sanctions which will be imposed at a specified time unless the unfavorable conditions to shipping are removed.

D. Peruvian Carriers

The Peruvian carriers take the position that there is no evidence of unfavorable conditions in the Trade. They contend that the GOP's cargo reservation system is "a justified and reasonable accommodation of the interests of shippers and carriers in the Trade and the national interest of Peru in maintaining its merchant fleet."

In justifying the GOP's reservation policies, the Peruvian carriers argue that small trades such as Peru's

require control and rationalization of service to ensure the survival of small carriers and maintain stable, competitive service. They maintain that the GOP exercises a reasonable amount of control in the Trade. They contend, however, that even with such control, there is excess capacity in the Trade and the level of trade is declining.

Further, the Peruvian carriers contend that the GOP's 50 percent cargo reservation is less restrictive than the United Nations Code of Conduct for Liner Conferences' ("Code") 40-40-20 cargo sharing formula. They maintain that, while the U.S. has not accepted the Code, GOP laws are in accordance with generally accepted international practice. The Commission's Section 19 rules at 46 C.F.R. 585.3(d), are said to recognize that discriminatory treatment of carriers is justified under generally accepted international agreements or practices. Comparisons are also drawn between GOP and U.S. cargo reservation laws.

The Peruvian carriers insist that the purpose of the Merchant Marine Act, 1920 "is to promote U.S. shipping interests, primarily the U.S. merchant fleet" and submit that Section 19 authorizes the Commission to take remedial action only when foreign laws or practices adversely affect U.S. shipping interests.

The Peruvian carriers provide a summary of the GOP's cargo reservation laws. They argue that Decree 036-82 does not "effectively" reserve 100 percent of import and export cargoes for Peruvian-flag vessels, as Nedlloyd contends, but

rather reserves only 50 percent of the cargo leaving the remaining 50 percent free to be carried on any vessel. The Peruvian carriers state that Decree 036-82 in conjunction with Resolution 054-82 establish a system by which non-Peruvian or non-associate third-flag vessels could be used to carry reserved cargo. They explain that Resolution 054-82 makes it clear that waivers or visas are required for shipments of reserved cargoes on non-associate-flag vessels and are not required for shipments of unreserved cargoes. The Peruvian carriers describe the system by which a shipper, once having shipped 50 percent of its cargo during a quarter of a year on Peruvian or associate-flag vessels, may use non-associate-flag vessels.¹⁷

The Peruvian carriers state that Nedlloyd's assertions are based on a misunderstanding of the GOP laws and are unsupported by the facts. The fact that Nedlloyd did not obtain Peruvian cargo on its first two voyages allegedly does not lead to the conclusion that the GOP laws are the reason. The Peruvian carriers argue that Nedlloyd's failure to obtain cargo was a result of start-up problems, "ineffective marketing or the chilling effect of its own

¹⁷ The system described by the Peruvian carriers tracks the description set forth in the Executive Agencies' comments.

marketing."¹⁸ They believe that if Nedlloyd's marketing efforts included informing shippers of the procedure for employing it for the transportation of unreserved cargo, Nedlloyd could be more successful in obtaining cargo in the Trade.

The Peruvian carriers contend that conditions in the Trade are favorable and that Nedlloyd does not present any evidence to the contrary. Shippers in the Trade are said to have a wide range of service options at competitive rates and, therefore, there is allegedly no basis for the Commission to find that shippers' choices are unreasonably restricted merely because those choices do not include Nedlloyd or other third-flag carriers in every instance.¹⁹ The Peruvian carriers submit that the complaints that originally formed the basis for these proceedings have been satisfied and, as a result, conclude that issuance of a rule imposing restrictions against Peruvian-flag carriers would be arbitrary and capricious and might result in severe disruption in the Trade.

¹⁸ The Peruvian carriers advise that Nedlloyd's advertisements state that its service in the Trade is subject to GOP cargo reservation laws. Nedlloyd's failure to explain these restrictions in its advertisements allegedly could deter shippers from using Nedlloyd's services.

¹⁹ The Peruvian carriers state that it is their understanding that Great Lakes Transcaribbean Lines ("GLTL"), a third-flag carrier in the Trade, has been granted associated status by the GOP. GLTL, generally a commenter in these proceedings, did not submit comments to the Commission's Notice of Further Proceedings.

The Peruvian carriers believe that Nedlloyd's alternate rule is not a mirror image of the GOP's cargo reservation laws and would create unfavorable conditions where none previously existed. They submit that the GOP cargo reservation laws limit access of third-flag carriers and not U.S.-flag carriers to the Trade. Further, they note that Nedlloyd's rule would shut Peruvian-flag carriers out of the total Trade unless a waiver is granted. This, it is argued, contrasts with the GOP action which restricts only 50 percent of the Trade.

E. CSAV

CSAV, a Chilean-flag carrier, asserts that Nedlloyd's suggested rule would be harmful to the shipping public and to third-flag carriers now serving the Trade. It explains that the suggested rule would harm third-flag carriers that are only able to serve the Trade through commercial agreements that they have entered into with Peruvian-flag carriers. In particular, CSAV points to that portion of the suggested rule which would prohibit cargo carriage by or impose penalties on other third-flag carriers for operating under their agreements with Peruvian-flag carriers. CSAV contends that the effective result of this provision would be to require CSAV either "(1) to cease serving the Trade because it could not lawfully load cargo under its agreement with Neptuno; (2) to violate its agreement to Neptuno by declining to carry cargo for Neptuno; or (3) to violate the Commission Rule if it complies with its agreement with

Neptuno." CSAV, therefore, concludes that Nedlloyd is requesting the FMC to impose the burden and cost of its entry into the Trade on innocent third-flag carriers.

CSAV asserts that it would be particularly unjust for it to be prevented from operating under commercial agreements filed at the behest of the Executive Agencies. It, therefore, requests that the Commission not issue any rule that would force CSAV to suspend its operation under the Neptuno-CSAV Agreement.

F. Lykes

Lykes advises that conditions in the Trade have not adversely affected its services. It contends that service available in the Trade clearly provides substantial, if not excessive, shipping opportunities. Lykes states that based on its experience, it is not aware of any conditions unfavorable to shipping in the Trade.

With regard to Nedlloyd's suggested alternative rule, Lykes states that it does not believe that the rule would adversely affect its operations in the Trade. However, Lykes fears that any sanctions imposed by the Commission would result in retaliatory actions by the GOP which would be detrimental to both U.S.-flag carriers and the Trade in general. It maintains that Commission action which detrimentally affects U.S.-flag carriers would appear inconsistent with the intent and purpose of Section 19 and the Merchant Marine Act, 1920.

Lykes believes that the instant proceeding should be dismissed given the fact that the situation in the Trade has changed and those parties previously complaining are no longer doing so. It suggests that, if Nedlloyd desires, a new proceeding based on the issues raised by Nedlloyd could be instituted.

G. Chamber

The Chamber states that despite Nedlloyd's comments, its members continue to indicate that available services are satisfactory and that the GOP continues to apply its waiver system in as flexible a manner as possible in the Trade. It notes that Nedlloyd's August 31, 1988 comments do not state whether Nedlloyd had been able to obtain a waiver from the GOP for any particular shipment. The Chamber states that, based on its understanding, the GOP had not received waiver applications from shippers or users on behalf of Nedlloyd.

The Chamber concludes that it sees no justification for Commission action based on a situation that is satisfactory to its members and the progress already made as a result of the FMC proceeding. It, therefore, recommends that the proceeding be terminated.

H. GSC

GSC transmitted a letter to the Commission Chairman along with a copy of a letter to the Honorable Robin Tallon of the U.S. House of Representatives. GSC states that the GOP has told it that it can use foreign-flag vessels in 1989 with no problems. GSC further reports that the GOP has

granted waivers to it whenever necessary. As an example, GSC notes that it used an Ecuadorian-flag vessel in 1988 to ship cargo from Peru to the U.S.

GSC concludes that it sees no justification for imposing restrictions against Peruvian-flag carriers and that any differences of opinions should be worked out between the parties concerned.

DISCUSSION

Nedlloyd's contentions that the Trade continues to be burdened by requirements that are discriminatory, result in uneconomic commercial circumvention, and adversely affect shippers' choice of carriers, as well as its suggested alternative remedial rule, brought comments in reply from many of the parties who have previously participated in this proceeding. While most of these comments were simply consistent with the views earlier expressed in this proceeding by those same parties, a few shed additional light on the present conditions.

The Peruvian carriers once again argue that no evidence of conditions unfavorable to shipping has been presented, and that the GOP cargo reservation system is necessary and rational for the protection of GOP interests in the Trade. Lykes too argues that its service has not been adversely affected, and that no conditions unfavorable to shipping have been shown to exist in the Trade. Other parties similarly urging the Commission to conclude the proceeding

without further action, stating that their interests in the Trade are being adequately served, include the Chamber and GSC. The only Chilean-flag carrier to file comments in this round, CSAV, does not describe conditions in the Trade or their effects on its present service, but directs its concern to the sanctions proposed by Nedlloyd, urging the Commission not to take action against Peruvian-flag carriers which would affect its own status and service.

The Executive Agencies, based on information provided by the GOP regarding carrier access to the Trade, indicate that the present system appears to include significant progress in removing barriers to third-flag participation. While the rescission of Decree 009-86 and the re-entry of the Chilean-flag carriers as associate carriers in the Trade give the appearance at least of such progress, the continued reservation of a substantial proportion of both U.S. and Peruvian-origin cargo, and the implementation of the cargo reservation system belie that progress.

The means by which carriers and shippers may determine when and if they may deal together, as described by the GOP to the Executive Agencies, leave us greatly troubled. Thus, for at least some substantial part of each calendar quarter, a third-flag, non-associate carrier wishing to participate in the Trade must rely upon cargo from shippers willing and able to obtain waivers from the GOP for specific shipments, until shippers desiring to use its service have shipped half their cargo for the quarter on Peruvian-flag or associate

carriers and have submitted documentation and obtained GOP accreditation of that fact. Only then can such a carrier and willing shipper freely do business together. These flag-based procedures do not appear to us to differ greatly in kind or burdensomeness from the original waiver system, or the short-lived authorization system, which formed the basis for the concerns we have expressed repeatedly in this proceeding.

The latest comments of affected shippers and carriers indicate not only that the direct effects of the GOP decrees are still being felt, but that the more subtle, indirect effects - the "chilling effect" described by Nedlloyd and SCOT - are taking their toll. Thus, as SCOT points out, the requirement that a shipper fulfill its obligation to ship half its cargo for each calendar quarter on Peruvian-flag or associate carriers prior to being able to obtain from the GOP documentary confirmation that it is free to use any carrier for its remaining cargo for the calendar quarter, effectively precludes shippers from seeking service contracts with non-associate carriers. The fact that service contracts are viable only with Peruvian-flag and associate carriers reinforces the reluctance of shippers to undertake the additional risks and procedures that accompany third-flag, non-associate service. These flag-based burdens make for uneconomic decision-making on the part of shippers which distorts the Trade.

We therefore conclude that the conditions unfavorable to shipping which the Commission found in the December 1987 Final Rule continue to exist. Although the specific GOP enactments which brought into being the unfavorable conditions the Commission sought to deal with in the December 1987 Final Rule have been repealed, they have been replaced by, or have reinstated by default, a cargo reservation system which continues to have an onerous and detrimental impact on shipping in the Trade. The fundamental basis for the December 1987 Final Rule and the final rule herein-issued is the same: the injurious effects on carriers, shippers and the Trade generally which result from laws, decrees and regulations of the GOP that impose burdens on non-Peruvian-flag carriers which are not experienced by Peruvian-flag carriers. These burdens are among the conditions described as unfavorable to shipping in the Commission's Section 19 rules at 46 C.F.R. 585.3. We are convinced that Trade access by non-Peruvian-flag carriers and the concomitant ability of shippers to freely exercise their best commercial judgment in choosing a carrier in the Trade have not materially improved, despite the numerous changes in the amount of cargo putatively affected and the form of the burdens imposed, e.g., waivers, authorizations, certifications.

The Commission's March 1987 Proposed Rule and its December 1987 Final Rule would have suspended the tariffs of the Peruvian-flag carriers. Almost all of the parties who

subsequently commented in this proceeding, including Nedlloyd, expressed a desire to avoid disruption of the Trade.

In its comments filed in August 1988, Nedlloyd proposed alternative sanctions which would have required Peruvian-flag carriers to obtain waivers from the FMC for the carriage of cargo, and to file periodic reports with the Commission. Nedlloyd's purpose in proposing these sanctions was to construct a "mirror image" of the burdens imposed by the GOP decrees and to avoid the disruption of service in the Trade which would follow if the Commission suspended the tariffs of certain Peruvian-flag carriers, as earlier prescribed.

Comments filed in response to Nedlloyd's proposal pointed out that the alternative sanctions would burden not only the Peruvian-flag carriers but shippers and the FMC as well. While the Commission has in the past, whenever possible, sought to meet conditions unfavorable to shipping in the U.S. trades by mirroring the burdens imposed, we must agree with these commenters. The sanctions proposed by Nedlloyd, moreover, would require resources exceeding those available to the Commission.

Section 10002 of the Foreign Shipping Practices Act of 1988 ("1988 Act"), 102 Stat. 1570, Pub. L. 100-418, authorizes the Commission to assess fees of up to \$1 million

per voyage in proceedings conducted under Section 19.²⁰ Based on the evident agreement among commenters that tariff suspension would unduly disrupt the Trade, and the impracticability of the alternative suggested by Nedlloyd, the Commission has elected to substitute a system of per voyage fees in the final rule as a means of meeting or countervailing the effects of the GOP cargo reservation system presently in effect under Decree 036-82.

The Commission notes the concern expressed by CSAV that the Chilean-flag carriers - the erstwhile victims of GOP cargo reservation under Decree 009-86 - now operating in the Trade as associate carriers pursuant to agreements with Peruvian-flag carriers, not be victimized by the imposition of sanctions on the Peruvian-flag carriers. In order to avoid this possible result, the Commission has directed in the Final Rule that the fees assessed shall be paid by

²⁰ The Foreign Shipping Practices Act, § 10002(e)(1) authorizes the Commission to take "such action as it considers necessary and appropriate" against a foreign carrier who has been found, or whose government has been found, to have created conditions which adversely affect the operations of United States carriers and do not exist for such foreign carriers in their operations in the United States, and states that such actions may include, among others enumerated, "a fee, not to exceed \$1,000,000 per voyage". Section 10002(h) of the 1988 Act provides that the actions against foreign carriers authorized in subsection (e) may be used in the administration and enforcement of Section 19. Thus, the 1988 Act sets forth examples of actions which the Commission may take in proceedings under that Act or under Section 19, but neither limits the Commission to the actions enumerated or establishes standards for Commission determination of what constitutes "necessary and appropriate" action. These matters continue to be left to the Commission's discretion.

Peruvian-flag carriers from their own revenues, without affecting the revenue shares of non-Peruvian-flag carriers participating in joint operations pursuant to agreements on file with the Commission.

We believe the level of the fees assessed herein would provide a means of adjusting the unfavorable conditions found but would also avoid serious disruption to the Trade generally. Therefore, in order to redress the detrimental competitive effects of the decrees and regulations of the GOP, the Commission herein assesses fees to be paid by the Peruvian-flag carriers - the chief beneficiaries of the GOP decrees - in connection with each voyage made by or on behalf of such a carrier in the Trade.

Although the Commission believes this action is justified under Section 19 to meet or adjust the conditions described above, particularly given the passage of more than three years since these conditions were first brought to our attention, we also recognize that this Commission does not operate in a vacuum. As our general rules make clear, proceedings under Section 19 necessarily touch upon, and are not themselves immune to, the concerns of U.S. foreign policy assigned by statute to other government entities. See e.g., 46 CFR §§ 585.8 and 585.13.

News articles recently appearing in a number of publications have made us aware that the shipping and foreign oceanborne trade with which we are concerned may also be affected by other events in Peru. Therefore, at the

Commission's request, the Office of Andean Affairs of the Department of State ("Department" or "DOS") provided a briefing on current economic and political conditions in Peru. The briefing touched on the economic policies of the GOP, including its policies concerning foreign debt, and the effects of inflation; the role of the Peruvian military, particularly with respect to control of the guerilla insurgency; the outlook for Presidential elections which will next occur in May, 1990; and U.S. foreign policy with respect to Peru.

The Department brought to the Commission's attention economic and political concerns affecting U.S. foreign policy as well as, in the DOS' view, being likely to affect the Commission's assessment of the efficacy of measures to meet or adjust the conditions unfavorable to shipping found to exist in the U.S./Peru trade. The information provided did not address the merits of the issues directly before the Commission in this proceeding. The DOS did not present views on the existence of conditions unfavorable to shipping or whether particular types of Commission action would be appropriate to meet or adjust such conditions.

Notwithstanding the Commission's conclusion that action pursuant to Section 19 is warranted in this proceeding, and its formulation of sanctions to meet or adjust the conditions found, the Commission is not putting those sanctions into effect at least at this time, because of the political and economic environment existing in Peru. As

described to us in the DOS briefing, and as appears generally from reports we read in the press, economic and other conditions exist in Peru which threaten the stability of Peruvian institutions and the democratically elected government itself. We are concerned that our action might have undesirable side effects on foreign policy matters, outside of our own statutory focus on shipping, which affect national interests generally that are legitimately of concern to the U.S. Department of State. The detrimental effects of the GOP's cargo reservation decrees presently being experienced by U.S. shipping interests, as described to us by SCOT for example, arise from their exclusionary impact on a non-U.S.-flag and non-U.S.-owned carrier. In addition, these U.S. shippers, whose concerns led to the initiation of this proceeding, are not now advocating the immediate imposition of sanctions in the Trade. Therefore, it appears particularly prudent for us, in balancing the myriad of commercial and national considerations here, to take into account more general U.S. interests in determining the appropriate timing of our action in this proceeding.

Moreover, because of the unsettled internal situation in Peru, the desired financial impact of the Commission's Final Rule might well be lost among the other economic dislocations presently being experienced in that country by Peruvian-flag carriers and the GOP itself. As a result, it is likely that effecting such action at this time would, in any event, not bring about the desired easing of barriers to an open trade.

For reasons set forth above, the Commission is therefore deferring the effectiveness of the sanctions imposed in this proceeding until further notice. The Commission will continue to monitor these matters and will, when appropriate, issue a further order establishing an effective date for the final rule or taking such other action as appears advisable at the time. We will expect the parties who have previously commented in this proceeding, including Nedlloyd and SCOT, as well as the Department of State (whether through its Office of Andean Affairs or its participation in the comments of the Executive Agencies) to assist us by keeping us informed as to the changing state of affairs in Peru. The Commission will consider the request for action of any person but will determine, in its discretion, a propitious time to effectuate the final rule. In the interim we would, of course, continue to encourage the GOP to take whatever action is necessary to remove the unfavorable conditions herein found to exist in order to obviate any need for the Commission to put into effect countervailing remedies.

FINAL RULE

For the reasons stated above the Commission finds it necessary and appropriate to issue a rule, pursuant to Section 19, to adjust or meet conditions described above which it finds unfavorable to shipping in the Trade ("Final Rule"). However, notwithstanding the issuance of the Final

Rule at this time, the Commission for reasons also explained above, is deferring its effective date until further notice.

The Final Rule will require the Peruvian-flag carriers operating in the Trade, with the exception of NAPSA which operates only a U.S./Iquitos, Peru service, to pay a fee for each voyage completed in the Trade as a means of countervailing the detrimental conditions imposed on U.S. trade by the practices of the Government of Peru. NAPSA service in the U.S./Iquitos trade is not being subjected to these fees because the Commission has found this subtrade distinguishable from the Trade generally, and therefore entitled to different treatment. The considerations which underlay this determination in connection with the December 1987 Final Rule continue to apply to NAPSA's service in this subtrade.

The Final Rule will require that Peruvian-flag carriers pay to the Commission a fee of \$50,000 for each voyage on which cargo is carried on a vessel owned or operated by or on behalf of a Peruvian-flag carrier, or under a Peruvian-flag carrier's bill of lading for service performed by another carrier pursuant to an agreement on file with the Commission. Such fees shall be paid to the Commission within 7 days of the completion of each voyage subject to this Rule. Each Peruvian-flag carrier shall, in addition, file a report with the Commission within 15 days of the end of each calendar quarter certifying that all penalties due have been paid and setting forth the dates of voyages made,

amounts of cargo carried, and amounts of fees paid, for the calendar quarter. If a Peruvian-flag carrier fails to pay the required fees, or to submit the required report and certification, within the prescribed time period, its tariffs on file with the Commission will be suspended 30 days subsequent to the end of the calendar quarter in which the fees or report were due.

List of subjects in 46 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 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714; Section 10002 of the Foreign Shipping Practices Act of 1988, Pub.L. No. 100-418; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and 46 CFR Part 585; Part 586 to Title 46 of the Code of Federal Regulations is added to read as follows:

Part 586 - Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade ("Trade")

Sec.

586.1 Conditions unfavorable to shipping in the Trade.

586.2 Peruvian-flag carriers -- assessment of fees.

586.3 Source of fees.

586.4 Effective date.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1714; § 10002 of the Foreign Shipping Practices Act of 1988, Pub.L. No. 100-418; 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

§ 586.1 Conditions unfavorable to shipping in the Trade.

(a) The Federal Maritime Commission has determined that the Government of Peru ("GOP") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(b) GOP law provides that non-Peruvian-flag carriers must become associate carriers or obtain cargo from shippers who have secured waivers for individual shipments or certification of cargo shipped, to operate in the Trade. The enforcement of this system discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

§ 586.2 Peruvian-flag carriers - assessment of fees.

(a) "Voyage" means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this part, the transportation of cargo by water aboard a single vessel inbound or outbound between ports in Peru and ports in the United States under one or more bills

of lading issued by or on behalf of the Peruvian-flag carriers named in paragraph (b) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to Agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (d) of this section, shall be deemed to constitute a voyage.

(b) For each voyage completed after the effective date of this part, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of \$50,000:

Compania Peruana de Vapores ("CPV");
Empresa Naviera Santa, S.A. ("Santa");
Naviera Neptuno, S.A. ("Neptuno"); and
Naviera Universal, S.A. ("Uniline").

The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(c) Each Peruvian-flag carrier named in paragraph (b) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed

pursuant to paragraph (b) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(d) If any Peruvian-flag carrier shall fail to pay any fee assessed by paragraph (b) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(1) Compania Peruana de Vapores (CPV)

FMC No. 14 - Applicable BETWEEN United States Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15 - Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16 - Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

Empresa Naviera Santa, S.A.

FMC No. 3 - Applicable FROM Rail Container Terminals at United States Pacific Coast Ports TO Ports in South America.

FMC No. 5 - Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 7 - Applicable BETWEEN United States Atlantic and Gulf Ports and Ports in Peru.

Naviera Neptuno, S.A.

FMC No. 5 - Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

Naviera Universal, S.A. (Uniline)

FMC No. 2 - Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(2) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

Atlantic & Gulf/West Coast of South America Conference

FMC No. 2 - Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

FMC No. 3 - Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 5 - Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 6 - Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(3) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(4) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or


rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

§ 586.3 Source of fees.

Any fees assessed by section 586.2 against Peruvian-flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian flag carriers operating pursuant to such Agreements.

§ 586.4 Effective Date. The date upon which this rule shall be effective shall be determined by further order of the Commission.

By the Commission.


Joseph C. Polking
Secretary