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17.08.2020

Konu : FONASBA Tarafından Peru Hükümetine Gönderilen
Yazı Hk.

Sirküler No: 912

Sayın Üyemiz,

Gemi Brokerleri ve Acenteleri Ulusal Birlikleri Federasyonu'ndan alınan (The Federation of National Associations of Ship Brokers and Agents – FONASBA) 14.08.2020 tarihli Ek'te sunulan yazıda, Peru Hükümeti tarafından 1492 sayılı bir kararnamenin yayımlandığı ve söz konusu kararın başlangıçta Peru sınırları içerisinde gemiler tarafından yapılan raporlamaların dijital hale getirilmesi ve raporlama sürecinde fiziki beyan ihtiyacının azaltılması amacıyla duyurulduğu bildirilmektedir.

Yazıda, 1492 sayılı kararnamede bulunan yüklerin teslim edilmesinden önce orijinal konşimentoya bakılma zorunluluğunun ortadan kaldırılması ve yükün alıcıya teslim edilmesi sırasında yapılan tüm harcamaların konşimentoya dahil edilmesine yönelik getirilen şartlar hakkındaki bazı hükümlerin uluslararası denizcilik uygulamalarına aykırı olduğu ifade edilmektedir.

Bu kapsamda, söz konusu hükümlerin 1492 sayılı kararnameden çıkarılması için nakliyeciler ve liman yetkililerini temsil eden Peru Gemi Acentaları Birliği (Asociacion Peruana de Agentes Marítimos – APAM) ve diğer kuruluşların, bağlı oldukları uluslararası kuruluşlardan destek talep ettiği ve FONASBA ile Dünya Denizcilik Konseyi (World Shipping Council - WSC) yetkililerinin bu konuyla ilgili olarak 3 Haziran 2020 tarihinde Peru idaresi ile ilgili bakanlıklara bir yazı gönderdiği bildirilmektedir.

Konuya ilişkin detaylı bilgi ve FONASBA tarafından gönderilen yazı Ek'te sunulmaktadır.

Bilgilerinize arz/rica ederim.

Saygılarımla,

Cengiz ÖZKAN
Genel Sekreter V.**Ek:**

FONASBA'dan alınan 14.08.2020 tarihli yazı. (7 sayfa)

Dağıtım:

- Tüm Üyeler (WEB sayfası ve e-posta ile)
- Türk Armatörler Birliği
- Gemi Brokerleri Derneği
- Vapur Donatanları ve Acenteleri Derneği

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NUMBER
15

AUGUST
2020

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NEWS UPDATE



**The Baltic Exchange, St. Mary Axe, London EC3A 8BH
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FONASBA SUPPORTS PERU IN ACTION ON CHANGES TO INTERNATIONAL MARITIME PRACTICE

In late May the Secretariat was approached by our colleagues at APAM in Lima with a request to assist them in expressing opposition to some of the provisions of a new Decree issued by the Peruvian Government.

Decree 1492 was originally proposed in the early days of the COVID-19 pandemic as a means of driving forward the digitalisation of vessel reporting in Peru and so reduce the need for paper documentation and the accompanying physical interactions necessary for undertaking reporting obligations. Clearly any action to drive forward digitalisation, whether related to a global pandemic or not, is a very welcome development for ship agents and these provisions were therefore fully supported by APAM and the rest of the Peruvian maritime transport community.

Unfortunately however, the Decree also included some very unwelcome sections relating to the release of cargo without sight of the original bill of lading and the need to include all the landside costs, for example for the delivery of the goods to the consignee, in the bill of lading. Clearly both provisions were completely contrary to accepted international maritime practice. APAM and other associations representing the carriers and the port community therefore sought assistance from their international representative bodies to have these provisions overturned or removed from the Decree. FONASBA was of course fully behind this action and so wrote to the President of Peru, Señor Martin Vizcarra, on 3rd June, with copy to senior members of his staff and relevant government ministers. A copy of that letter is attached. Our colleagues at the World Shipping Council have also made a similar approach to the President through their local association, ASMARPE. At the time of writing this report, neither APAM, ourselves nor WSC have received any formal response from the Peruvian authorities.

Continued overleaf

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Subsequent to this action, we were also made aware that another Decree, this time Supreme Decree 012-2929-RE, had been issued, the intention of which was to give notice that Peru would withdraw from the International Convention for the Unification of Certain Rules of Law Relating the Bills of Lading, also known as the Hague Rules 1924. The provisions in Decree 1492, if implemented, would be incompatible with the Hague Rules so this latter decision might appear to be a logical follow up to the previous action. Unfortunately, however, a major maritime nation withdrawing from a long-standing, internationally recognised, respected and legally tested convention does not reflect well on the Peruvian authorities' commitment to the rule of law in maritime transport. Such an action is also likely to impact adversely on Peru's international competitiveness. At the request of APAM therefore, we sent a further letter, this time to newly elected Prime Minister Pedro Álvaro Cateriano Bellido, to express our significant concerns at this latest development. A copy of same is also attached.

So long as this matter remains open, FONASBA will remain in regular contact with APAM President Estenio Pinzas Vidmar and his team to ensure that we are fully up to date with developments and are able to respond quickly and effectively to any further actions taken by the Peruvian Government.

FONASBA is of course also ready and willing to provide similar assistance to other members to enable them to respond to the actions of governments, authorities and other parties.

FONASBA, London, August 2020

Attached: Letters to President Martin Vizcarra and Prime Minister Pedro Álvaro Cateriano Bellido



THE FEDERATION OF NATIONAL ASSOCIATIONS OF SHIP BROKERS AND AGENTS

Wednesday, 03 June 2020

Señor Martin Vizcarra
President of the Republic of Peru

Dear President Vizcarra,

LEGISLATIVE DECREE 1492, 9th MAY 2020

The Federation of National Associations of Ship Brokers and Agents, FONASBA, is the international organisation representing the professions of ship agents and ship brokers. It currently has members in 63 countries worldwide, including Peru, where our member is the Asociación Peruana de Agentes Marítimos (APAM). FONASBA is also the accredited representative body for ship brokers and ship agents at the International Maritime Organisation, where it enjoys consultative status. It also has consultative status with the United Nations Conference on Trade and Development, the United Nations Commission on International Trade Law and the European Union. A Memorandum of Understanding is also in place with the World Customs Organisation.

FONASBA's members themselves represent more than 3,500 individual ship agency and ship broking companies and the 63 countries represented comprise more than 50% of the global population and over 65% of total GDP. More information about FONASBA is available at: www.fonasba.com. APAM members operate in all Peruvian ports and attend approximately 75% of all vessels and cargo handled annually.

In recent days we have been made aware of the ongoing discussions between the Ministry of International Commerce and Tourism (MINCETUR) and representatives of the Peruvian maritime sector, including APAM, in order to ensure the continued and effective movement of goods to and from Peru whilst at the same time ensuring that those operations do not contribute to, or hinder efforts to control, the spread of COVID-19. We understand from APAM that significant progress has been made in this regard, and in particular the progress towards the digitalisation of ship reporting formalities as a means of both reducing physical interaction and at the same time enhancing the efficiency of those processes. These actions are very welcome and all those concerned in achieving the desired result in a very short timeframe are to be congratulated.

Conversely however, Decree 1492 also includes some measures that have a detrimental effect on the ability of ship agents to operate normally, in accordance with international best practice and to serve the interests of their Principals and Peruvian consumers. These relate to the removal of the obligation to sight an original bill of lading prior to the release of cargo (section 7.2 of the Decree) and the requirement for all costs to be specifically referred to in the bill of lading (section 11.2). We understand that these issues have already been raised with MINCETUR by APAM, acting jointly with ASMARPE and ASSPOR and are also the subject of a letter sent to your office by the World Shipping Council, representing the major container lines. On the basis that these measures represent a threat to the continued ability of ship agents to operate normally and to protect the interests of their Principals, FONASBA fully supports those associations in calling for those sections of Decree no. 1492 to be withdrawn or significantly modified. Our concerns are as follows:

1. DELIVERY OF CARGO WITHOUT SIGHT OF THE ORIGINAL BILL OF LADING (Sections 7 and 10).

It is fully accepted and backed by international trade law and conventions that the Bill of Lading has three primary functions, namely:

- To serve as evidence of title (ownership) of the goods
- Provide a receipt for the shipment of the goods and
- Provide evidence of the details of the contract of carriage between the carrier and the cargo owner

The presentation of an original bill of lading by the receiver of the goods to the carrier or their agent proves to the carrier that title to the goods has been passed by the shipper to the consignee, that payment for the value of the cargo has been made in full and therefore authorises the carrier to release the cargo to the consignee. Without sight of the original bill, none of these checks can be made and it is therefore possible that the carrier or their agent may unknowingly release the cargo to the wrong party or do so before the sale has been completed, thus leaving the carrier or their agent open to legal action. Whilst efforts to introduce electronic bills of lading have been under development for many years, the reality is that the vast majority of international cargo shipments, and all the financial transactions that accompany them, are still made on the basis of paper bills of lading. As a result, it remains vital for the continued operation and security of international transport that the original bill continues to be physically presented prior to the release of the cargo. Ship agents are fully aware of the possibility of fraudulent attempts to obtain clearance of cargo without the correct documentation and have procedures in place to prevent this. Removing the obligation to provide the original bill of lading (section 7.2) will however remove the single most important piece of evidence that supports those efforts and potentially lead to a significant increase in fraudulent release of cargo. The risks and liabilities inherent in the release of cargo without sight of the original bill of lading are the subject of regular warnings and bulletins by international Protection & Indemnity Clubs. Introducing this new legislation could therefore result in carriers diverting cargo to other countries where the protection of the original bill of lading is still provided, thus reducing cargo flow through Peruvian ports.

Unilateral action by the Peruvian authorities in this regard will not only place ship agents and the lines they serve in jeopardy but applying fines (section 10.2) for non-compliance will also reflect poorly on the commitment of those authorities to uphold the internationally accepted conventions, procedures and safeguards that underpin global maritime trade.

2. INCLUSION OF ALL COSTS IN THE BILL OF LADING (Sections 11, 12 and 13)

It is neither possible nor realistic to expect all costs involved in transporting a cargo to be included in the bill of lading (section 11.2). Under normal circumstances the bill will only reflect the main terms necessary for the carriage of the cargo by sea and will not go into the details of ancillary services such as land transportation. The bill of lading will therefore only show the freight rate and freight surcharge applicable to the ocean voyage. Indeed, the majority of bill of lading forms do not include provision for additional charges to be recorded.

Any additional costs relating to the movement of the container to or from the port and other charges will either be detailed in the contract of carriage or discussed directly between the carrier and the shipper or consignee, as the case may be. Those arrangements may, and often do change between the bill of lading being issued, and sent to the consignee, and the vessel arriving. Adjustments to the additional services cannot be accurately ascertained prior to issue of the bill. Changes may also result from commercial decisions by the consignee, as an example the need to deliver the cargo to a different location from that previously intended.

It is impossible in practice for the carrier to accurately estimate such charges until the need arises. Once a change does arise however, the carrier or their agent will discuss them with the responsible party and agree both the means, and the cost, of putting alternative strategies into place to accommodate them.

The ability of the ship agent to respond to the needs of the cargo interests in developing and modifying previously laid plans in the light of circumstances and matters beyond the direct control of the parties is integral to the efficient and effective movement of cargo and is carried out every day in multiple situations. Some of those actions may involve the cargo owner in additional costs. In all such cases however, the agent will discuss the situation with the cargo owner and reach agreement on the best way forward. Alternatively, the agent may in fact be able to suggest alternative measures that will save the cargo owner time and or money.

None of these actions can be foreseen in advance. Trying to factor all of them into a cost that can be notified before the bill of lading is issued is not practical and will result in carriers and agents either over or under charging the cargo owner to the detriment of one or both parties. It would also require that certain decisions in terms of organising additional services were taken without being in full possession of the facts.

The actions currently undertaken by carriers and ship agents on behalf of cargo owners are the result of many years of commercial experience, supported by international conventions and legal precedent. They are robust, workable and provide the highest possible levels of flexibility, allowing all parties to react to circumstances as they arise and reach appropriate and effective solutions that minimise cost and time and ensure the soonest delivery of the cargo. Any action by a Government department or other authority that would prevent or impede the ability of the ship agent and the carrier to provide those services, as is regrettably the case with the aforementioned sections of Decree 1492, will impact adversely on the free flow of cargoes to the economic detriment of the country.

In view of the foregoing, FONASBA respectfully requests that the measures referred to above be reconsidered in the light of their detrimental impact on the free movement of ships and cargoes to and from Peru and on the future economic health of the country.

Please accept, Mr. President, the expression of my deep respect.

Yours faithfully,



AZIZ MANTRACH
PRESIDENT

Copy to:

Señora Mirian Morales, Secretary General of the Presidency

Señor Edgar Vásquez, Minister of Foreign Trade and Tourism

Señorita María Antonieta Alva, Minister of Economy and Finance

Señor Carlos Lozada, Minister of Transport and Communications

Señor Gustavo Meza-Cuadra, Minister of Foreign Affairs

Señor Manuel Merino de Lama, President of the Congress of the Republic

Señor Edgar Patiño, President of the National Port Authority

Señor Estenio Pinzas Vidmar, President of APAM



**THE FEDERATION OF NATIONAL ASSOCIATIONS OF
SHIP BROKERS AND AGENTS**

Tuesday, 28 July 2020

His Excellency Pedro Álvaro Cateriano Bellido
Prime Minister of the Republic of Peru

Dear Prime Minister Cateriano,

LEGISLATIVE DECREE 1492/RENUNCIATION OF THE HAGUE RULES

On behalf of the Executive Committee and members of the Federation of National Associations of Ship Brokers and Agents (FONASBA), and the Asociación Peruana de Agentes Marítimos (APAM), our member in Peru, please accept our congratulations on your recent appointment as Prime Minister of the Republic. We wish you every success in your term of office.

FONASBA is the accredited representative body for ship brokers and ship agents at the International Maritime Organisation, where it enjoys consultative status. It also has consultative status with the United Nations Conference on Trade and Development, the United Nations Commission on International Trade Law and the European Union. A Memorandum of Understanding is also in place with the World Customs Organisation.

FONASBA's members themselves represent more than 3,500 individual ship agency and ship broking companies and the 63 countries covered by FONASBA comprise more than 50% of the global population and over 65% of total GDP. More information about FONASBA is available at: www.fonasba.com. APAM members operate in all Peruvian ports and attend approximately 75% of all vessels and cargo handled annually.

We are taking this opportunity of writing to draw your attention to Legislative Decree 1492 which is giving our colleagues at APAM, as well the international shipping community, cause for concern, specifically in relation to the impact it will have on international maritime transport to and from Peru, and therefore the downstream effect on the local economy and consumers.

In early June we wrote to President Vizcarra to set out those concerns in detail, and to avoid unnecessary duplication and repetition, a copy of that letter is attached for information. In summary, whilst FONASBA and its members fully support the proactivity of the Peruvian Ministry of Transport in driving forward the digitisation of ship reporting, the measures included in Decree 1492 relating to the delivery of cargo without sight of the original bill of lading and inclusion of all costs in the bill of lading, bring with them considerable risks for the shipping line as carrier of the cargo, and the ship agent as the local representative of the line.

In addition to our concerns in relation to Decree 1492, it has now been brought to our attention that by means of Supreme Decree 012-2929-RE, Peru intends to withdraw from the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, also known as the Hague Rules 1924. We presume this is because the measures relating to bills of lading introduced by Decree 1492 are incompatible with the obligations of the Hague Rules, but whatever the reason, any decision by a contracting state to withdraw from an internationally recognised maritime convention will be viewed with considerable concern by the global maritime community. We are aware that FONASBA's significant reservations at these actions are shared by our colleagues at the International Chamber of Shipping, the European Community Shipowners Association, the Asian Shipowners' Association and the World Shipping Council.

Taken together, the actions of the Peruvian Government in introducing Decree 1492 and withdrawing from the Hague Rules will result in a lessening of confidence by the maritime community that contracts for the delivery of goods to Peru by sea are fully protected. Clearly, this may then lead to shipments being routed through neighbouring countries where those conventions continue to be upheld. Such actions would subsequently result in reduced cargo volumes being moved through Peruvian ports and increased costs (due to extended land transport sectors and increased compliance and delivery times) which will adversely impact on Peruvian importers, exporters and consumers as well as the port sector.

In the light of the foregoing therefore, FONASBA would respectfully suggest that action be taken to reverse the decision to withdraw from the Hague Rules and also to review, and hopefully rescind, the contentious sections of Decree 1492 as detailed in the attached letter to President Vizcarra. Doing so will send a powerful message to the international maritime and trading communities that Peru continues to uphold and support globally accepted and proven conventions on international trade and so provide security and certainty to those engaged in that trade.

On behalf of the members of FONASBA, I thank you for your consideration of these points. We also remain available for further discussions on these matters, either directly or through our colleagues at APAM.

I remain, respectfully yours,



AZIZ MANTRACH
PRESIDENT

CC: Mrs. Rocío Ingrid Barrios Alvarado, Minister of Foreign Trade & Tourism
Mr. Estenio Pinzas Vidmar, President APAM

Attach/...