



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