

No. 17205

**UNITED STATES OF AMERICA
and
BRAZIL**

**Exchange of letters constituting an agreement relating to
equal access to United States Government controlled
cargoes. Washington, 17 November 1977**

Authentic text: English.

Registered by the United States of America on 24 November 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
BRÉSIL**

**Échange de lettres constituant un accord relatif à l'égalité
entre chargeurs pour les cargaisons contrôlées par le
Gouvernement des États-Unis. Washington, 17 novem-
bre 1977**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 24 novembre 1978.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹
BETWEEN THE UNITED STATES OF AMERICA AND BRAZIL
RELATING TO EQUAL ACCESS TO UNITED STATES GOVERNMENT CONTROLLED CARGOES

I

*The Assistant Secretary of Commerce for Maritime Affairs
to the Brazilian National Superintendent, Merchant Marine*

UNITED STATES DEPARTMENT OF COMMERCE
THE ASSISTANT SECRETARY FOR MARITIME AFFAIRS
WASHINGTON, D.C.

Dear Mr. Abud:

I would like to clarify our understanding of the mechanisms to be employed to continue assuring that Brazilian-flag ships obtain "equal access" to United States Government-controlled cargoes in accordance with principles established in the Memorandum of Consultation, dated March 7, 1970, which continues to be in full force and effect.

Any and all government-controlled cargo shall be divided in accordance with the pooling agreements in the trades between the two countries. Based on this understanding, we are agreeable to affording Brazilian-flag ships equal access to United States Government-controlled cargoes.

In order to implement the equal access provided for in the preceding paragraph, it has been proposed that a blanket waiver be granted by the Maritime Administration for a three (3) year period ending December 31, 1980, which would permit vessels of Brazilian flag to participate to the extent of fifty percent (50%) in the movement of all government-controlled cargoes between our two countries, subject to each of the approved pooling agreements.

The Maritime Administration is agreeable to granting a blanket waiver of the requirements of Public Resolution 17 covering Export-Import Bank loans as proposed under the following terms and conditions:

- 1) Ships of Brazilian flag would participate to the extent of fifty percent (50%) and ships of United States would participate to the extent of fifty percent (50%) of the United States Government-controlled cargoes within the scope of Public Resolution 17 moving under each of the respective pooling agreements;
- 2) Freight revenues would be the main criterion for determining flag participation. In this regard consideration may also be given to cargo valuation, freight tons, payable tons, etc. Accordingly, with respect to cargoes moving

¹ Came into force on 17 November 1977 by the exchange of the said letters.

under Public Resolution 17, throughout the term of each respective pooling agreement, United States-flag vessels would receive fifty percent (50%) of the freight revenues. An overearning on government-controlled cargoes up to ten percent (10%) is to be tolerated in a semiannual period, but it shall be compensated and adjusted in the following semiannual period. When Brazilian-flag vessels are the overearners, the Maritime Administration shall instruct all shippers to use United States-flag vessels until the required participation has been achieved and shall advise SUNAMAM of such action;

- 3) When the deviation from the stated percentages becomes too large or too persistent, the Maritime Administration may suspend the blanket waiver in order to restore the United States flag participation to the required level;
- 4) The term of the waiver would be effective for a period of three (3) years, but the waiver would terminate simultaneously with the cancellation of any of the respective pooling requirements within that three (3) years and would require explicit and formal written approval to be applicable to any extensions of the pooling agreements beyond the three (3) year period;
- 5) Equal access to government-controlled cargoes shall be determined and administered under each pooling agreement rather than on a nationwide basis;
- 6) Representatives of the Maritime Administration shall confer regularly with SUNAMAM to assure that equal access is being maintained. The Maritime Administration shall furnish the SUNAMAM with copies of the records of cargo movements which the Administration receives in accordance with the requirement in each Export-Import Bank loan agreement.

In regard to shipments by all other government agencies, particularly AID and Agriculture, which are covered by Public Law 83-664, only fifty percent (50%) is reserved for the United States flag. Part of this Public Law 83-664 coverage concerns certain relief cargoes moving under Title II of Public Law 83-480 for which freight charges are paid by the United States Government only when the cargoes are carried on United States flag vessels. However, even these are available to Brazilian-flag vessels provided the Brazilian Government is agreeable to paying the freight charges and it is our understanding that the Brazilian Government has so agreed, by SUNAB (Ministry of Agriculture) letter of January 3, 1972, to AID (Administration for International Development). Thus, existing procedures offer adequate assurances that Brazilian-flag vessels will be given equal access under Public Law 83-664.

The accountant for the carriers in the pool agreements will submit to the Maritime Administration as well as SUNAMAM copies of reports reflecting the carriage of Government controlled cargoes by the national flag vessels of Brazil and United States. The borrowers will report monthly to the Maritime Administration all shipments under Public Resolution 17.

The Maritime Administration believes the procedures outlined above foster attainment of the desirable goal of equal access to the trade by national flag vessels. However, these procedures by the United States will not be implemented unless Brazil agrees to reciprocate by providing equal access to Brazilian Government-controlled cargoes which would necessarily include the same treatment for United

States-flag vessels carrying cargoes between the two countries as is received by Brazilian-flag vessels.

Sincerely,

[Signed]

ROBERT J. BLACKWELL
Assistant Secretary for Maritime Affairs

Commandante Manoel Abud
Superintendencia Nacional da Marinha Mercante¹
Rio de Janeiro, Brazil

II

*The Brazilian National Superintendent, Merchant Marine,
to the Assistant Secretary of Commerce for Maritime Affairs*

SUPERINTENDENCIA NACIONAL DA MARINHA MERCANTE
DELEGACIA EM NEW YORK²

Washington, D.C., November 17, 1977

Dear Mr. Blackwell:

In acknowledgement of the undertaking of "equal access" to United States Government controlled cargoes in your letter dated November 17, 1977, we are agreeing also that any and all Brazilian Government controlled cargoes included in pooling agreements are afforded equal access to United States flag ships of lines participating in pool agreements in the trade between the two countries for a period of three years ending December 31, 1980.

Insofar as to the waiver requirements is concerned the Superintendencia Nacional da Marinha Mercante is also agreeable to issue a blanket waiver in order to ensure an equal division of the aforementioned government-controlled cargoes, during the term of the duration of the respective pooling agreements, with the provisions as follows:

a) The waiver of the Brazilian-Government controlled cargoes will be assured for the duration of the pooling agreements, unless extended and except if suspended or cancelled as provided; it is understood, however, that the Government of the United States and the Government of Brazil will consult with each other before either Government terminates the equal access provision which have been put into effect.

In case of a temporary suspension of the pooling agreements and any extension beyond the three year period ending December 31, 1980, that also would require an explicit and formal written consultation between the government authorities concerned in order to acknowledge and approve.

b) Considering that the pooling agreements specify that all cargo carried by the parties to the pooling agreements, including any and all government controlled

¹ National Superintendent of Merchant Marine.

² National Superintendent of Merchant Marine, Delegation in New York.

cargoes shipped from ports of the United States of America and destined to ports of Brazil, are to be divided between the national flag lines of the two countries, it is understood that the Brazilian flag vessels will participate to the extent of fifty percent (50%), and vessels of United States-flag will participate to the extent of fifty percent (50%) of all Brazilian Government controlled cargoes carried by the parties under each pooling agreement.

c) The division of cargoes will be made on a freight revenue basis, in this regard consideration may also be given to cargo valuation, freight tons, payable tons, etc. in order to achieve an equal and equitable division of cargoes; an overearning on government-controlled cargoes up to ten percent (10%) is to be tolerated in a semiannual period but shall be compensated and adjusted in the following semiannual period. If the compensation of the tolerance is not complied with as has been established or the ten percent limit connected with revenue [has] been surpassed by United States-flag vessels, then SUNAMAM may suspend its respective blanket waiver until the minimum requirement of fifty percent (50%) has been restored to the Brazilian-flag vessels and shall advise MARAD of such action.

d) The Brazilian Government will assure that Brazilian Import licenses and other contracting documents covering the above-mentioned Government controlled cargoes are stamped, "Ship via Brazilian Lines" (names of lines to be inserted) or "U.S. Lines" (names of lines to be inserted), when transportation is by ocean going vessels.

e) It is understood that any and all United States Government controlled cargoes, existing in reason of Public Resolutions and Public Laws, and others which relate to liner cargoes covered by the pooling agreements that can be created during the time of duration of the pooling agreements, are to be included in this understanding of equal access statement, and given adequate assurances that Brazilian-flag vessels will participate equally, as provided herein.

f) Considering that the movement of bulk cargoes under the P.L. 83-480 are out of the scope of the pooling agreements, and are already subjected to a division of fifty percent (50%) for each national flag carrier, it is stated that actual procedures of division of such cargoes transported by the national flag lines are maintained and therefore are not affected by the present understanding for equal access.

g) It is our intention that the 50% of cargoes covered by P.L. 83-664 not reserved for the U.S. flag vessels will be carried by Brazilian-flag vessels.

h) The accountant for the carriers in the pool agreements will submit to SUNAMAM as well as to MARAD copies of reports reflecting the carriage of Government controlled cargoes by the national flag vessels of Brazil and the United States. The borrowers will report monthly to the Maritime Administration all shipments under Public Resolution 17.

i) The MARAD will forward to SUNAMAM copy of the borrower's monthly report under Public Resolution 17.

j) Equal access to all government-controlled cargoes shall be determined and administered under each pooling agreement rather than on a nationwide basis.

k) In the eventuality that the ships of the two national flags are not able or in position to carry some portion of the government controlled cargoes then

SUNAMAM and MARAD with indispensable consultation with each other, will take the proper steps to issue the necessary waivers for ships of third flag in order that no difficulties should arise for the loading of the cargo at port of embarkation nor difficulties for customs release of the stated cargo at destination in Brazil.

l) The term ships of Brazilian-flag shall be extended to include ships operating under Brazilian control whether of Brazilian registry or charter substituting tonnage in construction under a shipbuilding program, hereinafter being referred to as Brazilian-flag ships.

m) In keeping with the objectives set forth in the March 7, 1970 Memorandum of Consultation pooling agreement membership requirements as well as accounting procedures may be established in a manner which will properly serve the interests of the pools and may, if approved by appropriate agencies of the two countries, provide for accounting by commodity category or character of service.

As we indicated to you during our meetings which concluded today, it is our belief that with your cooperation the procedures outlined above are consistent with the promotion of a reasonable equilibrium in the balance of payments of freights, the goal of fair cooperation, and the guidelines established in the Memorandum of Consultation of March 7, 1970. These procedures provide for reciprocal treatment for United States and Brazilian-flag vessels in the transportation of the cargoes between the United States and Brazil and for the equal division of revenue of Government-controlled cargoes, considering cargo valuation, freight tons, payable tons, etc. by the national flag lines of our two countries.

Yours truly,

[Signed]

MANOEL ABUD
National Superintendent
of Brazilian Merchant Marine

Mr. Robert J. Blackwell
Assistant Secretary for Maritime Affairs
U.S. Department of Commerce
Washington, D.C.
