

# FEDERAL MARITIME COMMISSION

PORT RESTRICTIONS AND  
REQUIREMENTS IN THE UNITED  
STATES/JAPAN TRADE

Docket No. 96-20

Served: January 26, 2011

BY THE COMMISSION: Richard A. LIDINSKY, Jr., Chairman;  
Joseph E. BRENNAN, Rebecca F. DYE, Michael A. KHOURI,  
Commissioners.

## **Order Discontinuing Proceeding**

### BACKGROUND

This proceeding was initiated under section 19 of the Merchant Marine Act, 46 U.S.C. § 42101 (“Section 19”), in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Japan. On February 26, 1997, following an extensive investigation, the Commission issued a final rule finding unfavorable conditions facing U.S. ocean shipping interests in Japanese ports. *See Port Restrictions and Requirements in the United States/Japan Trade*, 27 S.R.R. 913 (FMC 1997) (hereinafter 1997 Final Rule).

The rule took effect on September 4, 1997, but was suspended by the Commission on November 13, 1997, after the signing of comprehensive government-to-government and industry-government accords to substantially reform Japanese port practices. *See Port Restrictions and Requirements in the United States/Japan Trade*, 27 S.R.R. 1301, 1302 (FMC 1997).

In May 1999, the Commission noted that the pace of progress and reform in Japan’s port transportation sector had been slow, despite commitments of the Government of Japan to open markets and increase accountability. *See Port Restrictions and Requirements in*

*the United States/Japan Trade*, 28 S.R.R. 822 (FMC 1999). On August 9, 2001, the Commission amended the reporting requirements established in the Commission's May 1999 Order. *See Japanese Port Practices*, 29 S.R.R. 296 (FMC 2001). The Commission ordered Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kaisha, Ltd. to file with the Commission by November 7, 2001, collectively or individually, copies of any cabinet orders or ministerial ordinances, notifications, notices, or regulations issued by the Japanese Ministry of Transportation or the Ministry of Land, Infrastructure and Transport, implementing or interpreting Japan's revised Port Transportation Business Act. The Commission also rescinded the requirement for the submission of reports as required in the Commission's Order of May 28, 1999, and ordered that semi-annual reports be filed by American President Lines, Ltd.; A. P. Moller Maersk Sea-Land (now Maersk Line); Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha.

The Commission recently received comments from Maersk Line and joint comments from Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kaisha supporting the termination of this proceeding.

## DISCUSSION

The periodic reports received from all the carriers following the August 9, 2001 Order suggest that the potential benefits of continuing the proceeding and its semi-annual reporting requirements no longer justify the accompanying regulatory burdens on the affected ocean carriers.

The Commission has received reports that showed some improvements in 2001 and 2002 in two areas of concern that have been the subject of this proceeding:

1. "Prior consultation" system for carrier service changes in Japan: In 1997, the Commission found that a significant unfavorable condition in the U.S.-Japan trades was the requirement that shipping lines obtain permission of the Japan Harbor Transportation Association (JHTA) through a system of "prior consultation" before making major or minor operational changes. The Commission

observed that under this “prior consultation” process, the JHTA had absolute and unappealable discretion to withhold permission for proposed operational changes, and that the JHTA used that discretion to punish its detractors, extract fees, impose operational restrictions, and allocate work among its member companies. *See* 1997 Final Rule.

The shipping lines reported that, effective August 2002, the JHTA and Japanese longshore unions reached an agreement to revise and simplify the prior consultation process. It limited the scope of events requiring prior consultation to three types of “major” matters that change the work system at a container berth. All other changes are considered “minor,” and receive consent within a week. In the years since that change, the shipping lines have reported no disputes arising from the prior consultation system.

2. Sunday and evening working hours: When these proceedings began, the Commission received complaints of restrictive hours for unloading cargo. Ships generally could not be unloaded on Sundays or numerous holidays, and container terminals closed from noon to 1:00 p.m. and again at 4:30 p.m. Following agreements between JHTA and Japanese labor unions in April and October 2001, the Commission received reports in 2002 that Japanese ports for the first time had moved to 364-day per year and 24-hour service.

In addition, one non-Japanese entity has succeeded in entering the Japanese terminal market. In 2005, PSA International Pte, Ltd. which, like American President Lines, Ltd., is owned and controlled by the Government of Singapore, became the first non-Japanese entity permitted to operate a terminal in Japan, the Hibiki Container Terminal.

Neither new issues nor new progress with Japan’s port and terminal restrictions have been reported to the Commission since that time. Reports indicate that changed economic circumstances, along with the remaining obstacles, have diminished non-Japanese entities’ interest in providing stevedoring or terminal operation services in Japan.

## CONCLUSION

The Commission continues to have concerns regarding the Japanese licensing requirements for new entrants in the terminal services industry and the system of prior consultation.\* The Commission has determined, however, that the most efficient course of action now is to terminate the current proceeding and its semi-annual reporting requirements, while encouraging the industry and shipping public to report any new restrictions or disputes affecting shipping in the U.S.-Japan trades as they arise. The Commission will remain watchful for unfavorable conditions that harm the foreign oceanborne trade between the United States and Japan.

THEREFORE, IT IS ORDERED, That this proceeding and the reporting requirements in the Commission's August 9, 2001 Order in this proceeding are discontinued.

By the Commission.

Karen V. Gregory  
Secretary

---

\* We note that another major Japanese trading partner has had similar concerns with these practices. *See, e.g.*, European Union, EU Proposals for Regulatory Reform in Japan, at 47-48 (Oct. 16, 2007), *available at* <http://www.mofa.go.jp/region/europe/eu/overview/dereg0710.pdf>.