

# Department of Justice

FOR IMMEDIATE RELEASE  
WEDNESDAY, MAY 9, 1979

79-8

AT  
202-633-2014

The Department of Justice today refused to give antitrust clearance to a proposal by the National Association of Marine Services, Inc., to adopt conditions of sale of goods by ship suppliers to shipowners.

John H. Shenefield, Assistant Attorney General in charge of the Antitrust Division, said the Department's decision was contained in a business review letter to the Association today.

The Association notified the Department that it was considering the adoption of standard conditions of sale that would apply to deliveries of goods by membership suppliers to shipowners. The conditions, if approved, would establish voluntary guides for costs of delivery, price, and payment terms.

The letter stated that, while the proposed conditions would not establish prices to be charged by members of the Association, the conditions could have a stabilizing effect on prices and that joint action by sellers that have such an effect are prohibited by the Sherman Antitrust Act.

Under the Department's Business Review Procedure, a firm or organization may submit a proposed action to the

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Antitrust Division and receive a statement as to whether the Division would challenge that action under the federal antitrust laws.

After a 30-day waiting period, a file containing the business review request, the supporting documents, and the Department's response will be available in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Washington, D.C. 20530.

# # #



ASSISTANT ATTORNEY GENERAL  
ANTITRUST DIVISION

United States Department of Justice

WASHINGTON, D.C. 20530

8 MAY 1979

C. Willman Brown  
National Association of Marine Services, Inc.  
Post Office Box 1927  
Wheaton Branch  
Silver Spring, Maryland 20902

Dear Mr. Brown:

This is in response to your request on behalf of the National Association of Marine Services, Inc. (NAMS) for a statement of the present enforcement intentions of the Department of Justice under the antitrust laws with respect to the proposed adoption by NAMS of certain conditions of sale for trade in ships' supplies between its member ship suppliers and shipowners. Our understanding of the facts and circumstances surrounding the proposal are based upon your letter and attachments to me of March 5, 1979 and your letter and attachments of April 10, 1979.

As we understand these facts, NAMS is an organization of commercial vessel suppliers with 64 members located in most of the seaports of the United States. NAMS is a member of the International Ship Suppliers Association (ISSA), headquartered at the Hague, Netherlands. NAMS is considering the adoption of certain standard conditions of sale, formulated by the ISSA, that would apply to deliveries of goods by ship suppliers to vessels. The conditions include provisions relating to allocation of the costs of delivery and to the terms of payment. In addition, the conditions provide with respect to prices that "the vendor shall charge to the purchaser the prices current at the relative port or in the relative port area at the time of delivery." We understand that the conditions, if adopted, would operate only as a voluntary guide to NAMS members and that the association would not require their use.

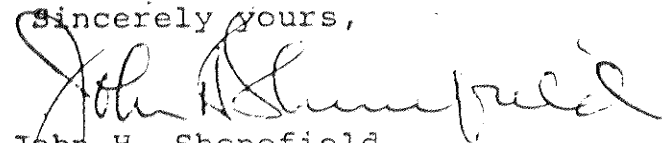
While the proposed conditions do not purport to establish the prices to be charged by suppliers, some of the provisions would clearly affect those prices. These include

the conditions relating to delivery charges and terms of payment. Also, while the condition providing that the prices charged shall be those "current at the relative port . . ." is ambiguous and could be interpreted innocuously, it also suggests the possibility of concerted action among sellers to determine such "current prices," and it also by its terms discourages discounting by individual sellers from their own "current prices."

We can appreciate that the ISSC may not have intended any such anticompetitive effects in promulgating these conditions. On the other hand, it is clear that under the Sherman Act, joint actions by sellers that have a stabilizing effect on prices are prohibited. Adoption of the ISSC conditions by NAMS, even on a voluntary basis, could have such effect. The Division must therefore decline to state that it would not challenge such conduct as a violation of Section 1 of the Sherman Act.

The statement herein is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and your supporting data will be made publicly available within 30 days of the date of this letter unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely yours,



John H. Shenefield  
Assistant Attorney General  
Antitrust Division

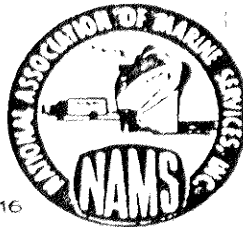
Enclosure

# NATIONAL ASSOCIATION OF MARINE SERVICES, INC.

Organized 1951 - Originally National Associated Marine Suppliers, Inc.

PO Box 1927 Wheaton Branch Silver Spring Maryland 20902

• (301) 924-2316



March 5, 1979

The Honorable John H. Shenefield,  
Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice  
Washington, D.C. 20530

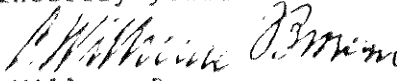
Dear Sir;

The attached copy of a letter received today from Mr. Daniel C. Schwartz of the Federal Trade Commission is self explanatory.

This organization will hold its 29th Annual Meeting in Houston, Texas beginning on April 21st. As you will gather from the copies of my correspondence forwarded to you by the FTC, questions concerning this matter are almost surely to be asked from the floor of the meeting. Any advices you may be able to give us prior to that time will be most appreciated.

For your information, a copy of the International Ship Suppliers Register (1978/79 Edition) is enclosed. A copy of the "Conditions" may be found on the break-page.

Sincerely yours

  
C. Willman Brown  
Executive Vice President.

CC; Mr. Daniel C. Schwartz, FTC (Corres, No. 06805.)

FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

BUREAU OF COMPETITION

Mr. C. Willman Brown  
National Association of Marine  
Services  
P. O. Box 1927  
Silver Spring, Maryland 20902

FE 1979

Re: Corres. No. 06805

Dear Mr. Brown:

This is in response to your correspondence of December 7, 1978 in which you request a staff opinion as to the legality of a document entitled "I.S.S.A. - Conditions" which is intended to be used as part of sales contracts entered into by ship suppliers belonging to your trade association.

It has been determined through established liaison channels that the Antitrust Division of the Department of Justice has previously considered matters relating to maritime transportation. Officials of the Antitrust Division have expressed an interest in your correspondence.

It is the policy of the Commission and the Department of Justice to avoid duplication in matters over which the two agencies may share concurrent jurisdiction. This coordinated approach is essential in order to avoid unnecessary expenditures of public funds and insure the best allocation of available resources. Accordingly, we are referring copies of your letter and the "I.S.S.A. - Conditions" to the Honorable John H. Shenefield, Assistant Attorney General, Antitrust Division, Washington, D.C. 20530.

Sincerely,

  
Daniel C. Schwartz  
Deputy Director

# I.S.S.A.-CONDITIONS



These international conditions for the shipstore trade are listing the rights and duties of both ship suppliers and shipowners. They were formulated by the INTERNATIONAL SHIP SUPPLIERS ASSOCIATION (I.S.S.A.) and deposited at the Court of Registry, The Hague/Netherlands, on 12th November 1958. — We give below the schedule of conditions as approved in September 1974.

CONDITIONS governing the trade in ships' supplies (hereinafter called "goods") between ship suppliers (hereinafter called "the vendor") and shipowners and their representatives such as agents/managers/masters/officers and crewmembers, in charge of the purchasing of ship's supplies (hereinafter called "the purchaser") as approved by the International Ship Suppliers Association.

## GENERAL

1. Unless otherwise expressly agreed in writing the following conditions apply to a single delivery and/or to a sequence of deliveries of goods.

## ORDERS and DELIVERY

2a. The purchaser shall communicate as soon as practicable to the vendor his orders for the goods which his ship (ships) requires (require).

2b. Provided the prevailing circumstances reasonably permit, the vendor shall supply and deliver to the purchaser the goods as ordered at the time and place stated by the purchaser in so far as such goods are available at the agreed port or in the agreed port area.

3a. All goods shall be delivered free by truck to the nearest point to the ship where the truck can be unloaded.

3b. If delivery is required outside normal working hours or on Saturdays, Sundays or legal holidays expenses incidental to such delivery shall be refunded by the purchaser as additional costs.

3c. On arrival of the goods at the point of delivery the purchaser shall take the goods on board at his own risk by means of his own equipment and personnel.

3d. The purchaser shall refund to the vendor any costs or expenses incidental to a waiting period in excess of normal.

## PRICES

4a. In respect of the goods supplied by the vendor, the vendor shall charge to the purchaser the prices current at the relative port or in the relative port area at the time of delivery.

4b. The vendor may, if requested by the purchaser, send to the purchaser a list stating the prices of goods and the period for which such prices are to apply; goods which cannot be offered at a fixed price shall be clearly so marked.

## QUALITY and PACKING

5. The goods shall be of standard quality or of prime quality as rated at the place of delivery. The goods shall be supplied in the packing customary at the place of delivery. The purchaser shall inform the vendor of any special packing requirements in view of the destination of ship and/or goods. Any expenses in excess of normal incurred in complying with such special requirements may be chargeable to the purchaser.

6a. Returnable packing material and containers supplied by the vendor shall be clearly marked as such on the receipt-note.

6b. Returnable packing material shall be charged separately at the prices current at the place and at the time of delivery. The amounts so charged shall be refunded by the vendor to the purchaser, provided such packing material and containers are returned undamaged within a reasonable period.

## CLAIMS

7. By taking delivery of the goods and signing the receipt-note accompanying them the purchaser shall be deemed to have approved and accepted the goods in every respect.

8. The purchaser may claim in writing—normally within one month of delivery after which period all rights in regard thereto shall lapse—only the repayment of the purchase price of any goods proved to be defective at the time of delivery, subject to the goods being returned or landed against receipt from an ISSA representative, in so far as this is reasonably possible.

If no ISSA representative is available a Lloyd's report will have to be arranged for by the purchaser.

9. The purchaser shall in any event only be entitled to a repayment if he proves that the goods have been handled, treated and stored in keeping with their nature, their liability to deterioration, etc., the purchaser being under the obligation so to handle, treat and store the goods.

10. The purchaser shall in no case be entitled to make any claim for consequential loss or damage arising out of the supply of any goods by the vendor to the purchaser.

11. No complaint by the purchaser in regard to the vendor's invoice will be considered unless lodged in writing by the purchaser with vendor within 30 days of despatch of such invoice.

## PAYMENT

12a. The purchaser shall pay—or arrange for payment of—the invoiced amounts within 30 days after delivery or the

date of invoicing whichever is the later at the rate of exchange on the day of delivery.

12b. If payment be made at a later date, then and in such case the vendor shall be entitled to charge interest at the rate customary in his country.

12c. The property in the goods delivered to the ship shall not pass to the purchaser until he has made full payment for the same.

## FORCE MAJEURE

13. If the vendor is unable to make delivery or to make delivery in good time owing to force majeure—which shall include all and any circumstances or conditions for which the vendor cannot be held liable and as a consequence whereof it is not reasonably possible to make delivery in good time—then the vendor's obligation to supply and deliver shall cease or be suspended for the duration of such force majeure.

## CONTRACTS

14a. All or part of the aforementioned conditions can be declared applicable to a contract entered into for a specific period (which shall be a calendar year, unless otherwise agreed).

14b. Such a contract shall imply that the purchaser agrees that during the period specified in the contract all and any goods as specified in the contract or as customarily purchased from ship suppliers will be obtained solely from the vendor and that the vendor agrees to supply and deliver during such period the goods subject to the above conditions as declared applicable.

## DISPUTES and APPLICABLE LAW

15. Unless arbitration under the ISSA Arbitration Rules is agreed upon, disputes arising under an agreement entered into on these conditions and any further agreements resulting therefrom shall in the first instance be submitted exclusively to the jurisdiction of the Court competent at the place of domicile of the vendor, but the vendor shall have the option to submit the dispute to the jurisdiction of the competent Court at the place of domicile of the purchaser.

16. Agreements which include these conditions shall be governed and construed in all respects according to the law of the place of domicile of the vendor.