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November 22, 2011

**Wayne Rohde**  
Direct Phone (202) 463-2507  
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Via Messenger

Ms. Karen V. Gregory  
Secretary  
Federal Maritime Commission  
Room 1046  
800 North Capitol Street, N.W.  
Washington, D.C. 20573

Re: FMC Docket No. 11-17 -- Certainty of Terms of Service Contracts and NVOCC Service Arrangements

Dear Ms. Gregory:

Enclosed herewith are an original and five (5) copies of the comments of the Transpacific Stabilization Agreement in the above-captioned proceeding.

A copy of this letter and its enclosure have been provided for your acknowledgement of receipt.

Respectfully submitted,

COZEN, O'CONNOR

A handwritten signature in cursive script, appearing to read "Wayne Rohde".

By: Wayne Rohde

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Before the  
FEDERAL MARITIME COMMISSION

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Certainty of Terms of Service Contracts  
and NVOCC Service Arrangements

FMC Docket No. 11-17

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Comments of the Transpacific Stabilization Agreement

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Pursuant to a notice published in the Federal Register on October 13, 2011 (76 Fed. Reg. 63581), the Federal Maritime Commission (“FMC” or “Commission”) proposed revising sections 530.8 and 531.6 of its regulations (46 C.F.R. §§ 530.8 and 531.6) to change the words “contained in a publication widely available to the public and well known within the industry” to read “readily available to the parties and the Commission.” This revision is intended to remove any uncertainty that may exist regarding the use of freight rate indices in service contracts and NVOCC service arrangements. The Commission also seeks comments on the methods by which the parties could ensure that the information referred to in service contracts is readily available to the Commission.

The carrier members of the Transpacific Stabilization Agreement listed in Appendix A hereto (collectively referred to hereinafter as “TSA”), through counsel, hereby submit their comments in the above-captioned rulemaking proceeding. In general, TSA is supportive of the Commission’s effort to expand flexibility in service contracting and welcomes the Commission’s support of the option to use rate indices.

### Interest of TSA

The carrier members of TSA are ocean common carriers in the foreign commerce of the United States that enter into thousands of individual service contracts each year in the single largest U.S. trade lane. While still small, an expanding number of those service contracts refer to rate indices. Accordingly, TSA's members are directly and substantially affected by the proposed rule.

### Comments

TSA supports the proposed rule. The adjustment of contract prices based on a reference to an external index of some type (e.g., the Consumer Price Index or Producer Price Index) is common in many industries, and provides a mechanism by which the parties to a contract can allocate in advance and in a mutually agreed manner the risk of changing markets. It is a common and reasonable commercial approach to contracting, and should be readily available to those carriers and shippers who choose to use it in the service contract context.

TSA believes that the ability to reference a price index will not only enable the parties to a service contract to allocate risk, but will also relieve the parties of the administrative burden of preparing and filing numerous contract amendments in response to changes in market conditions. Eliminating contentious negotiations over numerous contract amendments may help improve relations between shippers and carriers. Moreover, depending on how they are used by the parties, references to such indices may also contribute to greater stability and predictability in ocean freight rates, a benefit consistently sought by carriers and shippers alike.

In light of the foregoing, a clarification of the regulations which removes doubt as to the ability of contract parties to make use of this useful commercial tool and makes it easier to do so, is welcomed and applauded. TSA urges the Commission to adopt the proposed regulation.

Of course, the Commission's regulation in this area should promote maximum flexibility, including by not favoring or promoting any particular index. The parties should be able to refer to the index of their choosing. Some indices currently available in the liner shipping industry include the TSA revenue index, the World Liner Data indices, the Drewry Freight Insight Index, the Shanghai Containerized Freight Index and the China Containerized Freight Index.

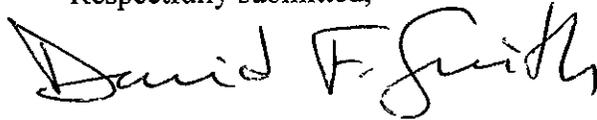
The Commission rulemaking requests comment on the means by which freight rate indices referenced in service contracts, but not publicly available, would be made available to the Commission. TSA recommends that the Commission include a requirement that such indices must be made available to the Commission by the carrier party to the contract within thirty (30) days of a written request for same by the Commission. This requirement, which is based on the existing requirements set forth at 46 C.F.R. §530.15, would provide the Commission with adequate assurance that it would have access to such indices.

The Commission has also requested comment on ways to reduce impediments to small shippers having the option of index-linked service contracts. Although experience with index-based contracts is still relatively limited, TSA is not aware of any impediments to a small shipper using such an index in a service contract with a carrier who is willing to do so.

Conclusion

For all the foregoing reasons, TSA supports the adoption of the Commission's proposed rule.

Respectfully submitted,

A handwritten signature in black ink that reads "David F. Smith". The signature is written in a cursive style with a large, stylized initial "D".

David F. Smith  
COZEN O'CONNOR  
1627 I Street, N.W., Suite 1100  
Washington, D.C. 20006

Counsel to the Transpacific Stabilization  
Agreement

November 22, 2011

## Appendix A -- Members of TSA

American President Lines, Ltd. and APL Co. PTE Ltd. (operating as a single carrier)

A.P. Moller-Maersk A/S trading under the name of Maersk Line

COSCO Container Lines Co. Ltd.

China Shipping Container Lines (Hong Kong) Company Limited and China Shipping Container Lines Company Limited (operating as a single carrier)

CMA-CGM S.A.

Evergreen Line Joint Service Agreement

Hanjin Shipping Co., Ltd.

Hapag-Lloyd AG

Hyundai Merchant Marine Co. Ltd.

Kawasaki Kisen Kaisha Ltd.

Mediterranean Shipping Co.

Nippon Yusen Kaisha

Orient Overseas Container Line Limited

Yangming Marine Transport Corp

Zim Integrated Shipping Services, Ltd.