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FEDERAL MARITIME COMMISSION

DOCKET NO. 12-07

NOTICE OF INQUIRY

SOLICITATION OF VIEWS ON REQUESTS TO DEVELOP AND RELEASE CONTAINER FREIGHT RATE INDICES FOR U.S. AGRICULTURAL EXPORTS BASED ON A SAMPLING OF SERVICE CONTRACTS FILED WITH THE FMC

AGENCY: Federal Maritime Commission

ACTION: Notice of Inquiry

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is issuing this Notice of Inquiry ("NOI") to solicit public comment on informal requests the Commission has received from some large U.S. exporters and intermediaries to develop and release container freight indices for U.S. agricultural exports. The Commission is seeking written comments and information from U.S. exporters, intermediaries, ocean carriers, and any other interested parties on 1) whether and to what extent the shipping public would find targeted U.S. export rate indices beneficial; 2) whether the Commission should extract rate information from service contracts or whether suitable alternatives exist; 3) the positive and negative influences on the export commodities and ocean transportation marketplaces of the greater transparency such indices might provide; and 4) whether, these indices, if developed, should be commodity specific for different

prescribed routes or whether more broadly based indices would meet U.S. exporters' needs.

DATES: Responses are due on or before July 9, 2012.

ADDRESSES:

Submit comments to:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W. Room 1046
Washington, D.C. 20573-0001

Or e-mail non-confidential comments to:

secretary@fmc.gov
(e-mail comments as attachments preferably in Microsoft Word or PDF)

FOR FURTHER INFORMATION CONTACT:

Sandra L. Kusumoto, Director
Bureau of Trade Analysis
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Telephone: (202) 523-5796
E-mail: skusumoto@fmc.gov

SUPPLEMENTARY INFORMATION:

Submit Comments: Non-confidential filings may be submitted in hard copy or by e-mail as an attachment (preferably in Microsoft Word or PDF) addressed to secretary@fmc.gov on or before [insert 45 days after publication]. Include in the subject line: "FMC Export Index – Response to NOI". Responses to this inquiry that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as "confidential" and describes the nature and extent of the confidential treatment requested, e.g., commercially sensitive data. When submitting documents in response to the NOI that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as "Confidential- Restricted," with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, "confidential materials excluded." Questions regarding filing or treatment of confidential responses to this inquiry should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or e-mail provided above.

Background:

Published containerized freight rate indices have proliferated in the past several years. In chronological order of their initial year of publication, these include the China Containerized Freight Index (CCFI, 1998), Drewry Freight Insight Index (2006), Shanghai Containerized Freight Index (SCFI, 2009), Container Trade Statistics Index (CTS Index, 2009), the Transpacific Stabilization Agreement Index (TSA Index, 2011), and the Drewry-Cleartrade World Container Index (WCI, 2011). Each of these indices includes one or more U.S. trade routes, but most of them focus only on the U.S. import leg. The two exceptions are the CTS Index, which issues a lagged monthly index of U.S.-Europe rates benchmarked to 2008, and the WCI, which last year began providing coverage of container rates for freight shipped from Los Angeles to Shanghai and Rotterdam among the 11 route-specific indices it provides weekly. Most of these indices were developed in the wake of recent rate volatility in the major international liner shipping markets. In principle, the availability of credible rate benchmarks allows shippers and ocean carriers an opportunity to manage freight rate risk.

Last fall the Commission issued a proposed rule for freight index-based service contracts to provide flexibility and certainty to ocean carriers and their customers. The final rule went into effect in March and makes clear that service contracts can reference freight indices or other outside terms, so long as they are readily available to the contracting parties and the Commission.

Beginning this year, the Commission has received informal requests from several large U.S. agricultural shippers, intermediaries, and derivative brokers to consider issuing an index based on service contracts filed with the Commission because they have not found the available indices for U.S. export routes useful for the level of market intelligence they need, for adjusting rates in contracts, or for hedging freight rate risk. These large U.S. exporters, as well as the Agricultural Marketing Service at the U.S. Department of Agriculture (USDA), have expressed an interest in having access to reliable container freight rate indices that are specific to U.S. agricultural export commodities. They assert that the U.S. export market likely would be quick to adopt index-based contracting because many exporters already are accustomed to hedging risk exposure in the bulk shipping markets and because freight rates represent a much larger portion of the delivered value of their products, which means even quite small freight rate movements can have a large impact on the delivered value. These agricultural exporters also point out that they have excellent visibility into bulk shipping rates through the Baltic Dry Indexes, but have no similar visibility into container shipping rates for exports.

Some U.S. agricultural exporters have told Commission staff that a properly constructed index would help them increase exports by allowing them to use contracting and hedging strategies to increase the certainty of their transportation costs. These U.S. agricultural exporters have said that ocean carriers generally are reluctant to offer them service contract rates that are valid for more than 30 to 60 days, and that this inability to lock in a rate hinders their ability to sell agricultural exports for delivery more than 60 days into the future out of fear that changing transportation costs will make the sale uneconomic. Releasing an appropriately designed index could provide a market-based approach to this problem by allowing shippers to protect themselves through contracting and hedging strategies in private markets. U.S. agricultural exporters and derivative brokers also have told the Commission that the lack of a reliable container rate index for export grain shipments in particular disadvantages container shipping relative to bulk shipping because of the superior pricing transparency afforded by the Baltic Dry Indexes.

In response to the exporter requests, Commission staff inquired whether and why the indices currently published were not meeting U.S. shippers' exporting needs. These agricultural exporters raised concerns about the present export indices' transparency in the way the underlying data are collected. They also claimed there is poor correlation between the general rate trends represented in these indices and the actual rates U.S. exporters incur for the ocean transportation of specific agricultural products.

Other parties, on the other hand, have raised questions or concerns about the concept of the Commission sampling service contract data for commodity-specific freight rate indices. For example, they have asked: (1) whether commodity-specific indices can be aggregated in a manner to protect confidential individual service contract rates; (2) whether release of such indices would further or contravene the purposes of the Shipping Act; (3) whether release of indices would benefit U.S. exporters or instead advantage their foreign competitors; (4) whether any benefits to exporters would be sufficient to justify the commitment of Commission resources to developing and releasing the indices; and (5) whether issuance of such indices is better left to private index publishers.

The Commission is interested in evaluating whether more targeted indices utilizing information in the service contracts filed with the Commission could materially assist U.S. agricultural exporters while furthering the Commission's governing statutes and the Administration's goal of promoting U.S. exports. One of the stated purposes of the Shipping Act is to "promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace," 46 U.S.C. § 40101(4) and, in January 2010, the President launched a National Export Initiative with the goal of doubling U.S. exports over the next five years. Later, on March 11, 2010, the President issued Executive Order No. 13534 and has directed the use of every available federal resource in support of that effort.

Following the requests from large agricultural exporters and others, Commission staff has conducted some initial testing of the technical feasibility of using service contract data filed with the Commission to develop a container rate index for a few targeted major U.S. export commodities such as grains, cotton, hay, and frozen meat, and has assessed the resource implications. To fully protect the identity of individual shippers and ocean carriers, data extracted from service contracts would be aggregated at an appropriate level prior to making public an average rate or index. The Commission wishes to stress that this concept is still in its formative stages and wants to hear the views of all parties before deciding whether or not to produce it.

The Current Inquiry:

At this time, the Commission is seeking written comments and information from U.S. exporters, intermediaries, ocean carriers, and any other interested parties on whether it would be useful, advisable, and appropriate for the Commission to publish a few targeted export indices based on an aggregated sampling of service contract data. The Commission is particularly interested in: (a) understanding whether and to what extent the shipping public would find U.S. export rate indices beneficial; (b) assessing whether it should extract rate information from service contracts or whether suitable alternatives exist; (c) determining the positive and negative influences on the export commodities and ocean transportation marketplaces that greater price transparency via such indices might provide; and (d) gathering views on whether these indices, if developed, should be commodity-specific for different prescribed routes or whether more broadly based indices would meet the needs of U.S. exporters.

Questions:

1. Is there anything that prevents private index developers and publishers from developing indices of the kind being sought by U.S. agricultural exporters?

2. Has your company used or considered using any existing freight rate index to adjust rates in its export service contracts or to hedge freight rate risk? If so, what is your company's view on the products it used or considered?

3. Would it be appropriate to use service contract data filed confidentially with the Commission to develop indices of the kind being sought by U.S. agricultural exporters (assuming the data is aggregated so as to protect the identity of individual shippers and ocean carriers before being released to the public in the form of an average rate or index)?
4. Should these indices be optimized for use in service contracts, for use in financial hedging instruments, or both?

5. What kind of competitive issues would the public release of a broadly based or route and commodity specific rate index create for U.S. export shippers or ocean carriers?

6. If developed using service contract data filed with the Commission, should a U.S. export rate index be route and commodity specific or should it be more broadly based? If the

former type of rate index would be more useful to your business, explain what type of commodity, specific route, publication frequency, or other index-related factors are most needed.

7. Should either or both parties to a service contract have the option of not having their contract rates incorporated into an index?

8. If made available by the Commission, how would an export rate index affect your company's export sales?

9. If made available by the Commission, how likely is your company to use an export rate index in its service contracts to adjust rates?

10. Has your company or related subsidiary traded in freight derivatives? If so, describe that experience and the outcomes obtained?

11. If a U.S. export rate index is made available by the Commission, how likely is your company to trade in a derivatives market based on that index?

12. What impact would trading in a freight derivative market based on a U.S. export rate index have on the physical U.S. export container market?

Along with comments, respondents should provide their name, their title/position, contact information (e.g., telephone number and/or e-mail address), name and address of company or other entity and type of company or entity (e.g., carrier, exporter, importer, trade association, index publisher, etc.).

Responses to the NOI will help the Commission decide whether it would be useful, advisable, and appropriate for the Commission to publish a few targeted export freight rate indices based on an aggregated sampling of service contract data filed with the Commission, and if so, what type of indices would best serve the needs of U.S. exporters.

To promote maximum participation, the NOI questions will be made available via the Federal Register and on the Commission's web-site at www.fmc.gov in a downloadable text file. They can also be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523-5725 or by e-mail at secretary@fmc.gov. Please indicate whether you would prefer a hard copy or an e-mail copy of the NOI questions. Non-confidential comments may be sent to secretary@fmc.gov as an attachment to an e-mail submission. Such attachments should be submitted preferably in Microsoft Word or PDF.

The Commission anticipates that most filed NOI comments will be made publicly available. The Commission believes that public availability of NOI comments is to be encouraged because it could improve public awareness of the benefits and drawbacks of establishing rate benchmarks for major U.S. exports. Nevertheless, some commenting parties may wish to include commercially sensitive information as relevant or necessary in their responses by way of explaining their liner shipping experiences or detailing their responses in practical terms. To help assure that all potential respondents will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

By the Commission.

Karen V. Gregory
Secretary