

BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

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FEDERAL MARITIME COMMISSION

"Docket No. 10-03 Comments on NVOCC Negotiated Rate Agreements"

I am Juerg Bandle, Senior Vice President of Kuehne + Nagel Inc., agent of Blue Anchor Line, Division of Transpac Container System Ltd., Hong Kong. I have previously submitted statements on several occasions supporting the elimination of mandatory NVOCC tariff publication. As the Commission is undoubtedly well aware, those statements provide ample evidence of the expense and burden and the total lack of any legitimate public purpose associated with continuing those regulatory requirements.

Blue Anchor Line, Division of Transpac Container System Ltd., Hong Kong, through its agent Kuehne + Nagel, is the world's largest NVOCC with an office network of more than 800 offices in 100 countries and more than 40 offices in the U.S.A. In 2009 Blue Anchor Line shipped approx. 2.5 million TEU per year through its global network out of which more than 500,000 TEU in U.S. trade-lanes.

Blue Anchor Line is a foreign domiciled and, therefore, registered and bonded NVOCC, represented in the U.S. by its agent and licensed freight forwarder, Kuehne + Nagel, Inc. Blue Anchor Line also maintains rate and rules tariffs as required by the existing regulations.

The NPR does not provide an explanation or reasoning for the Commission's decision to exempt only licensed NVOCCs from the tariff filing requirements. Considering the fact that registered NVOCCs also have to be bonded and are required to be legally represented in the U.S.A. by a licensed Ocean Transportation Intermediary, it would be discriminatory and unreasonable for lawfully established foreign NVOCCs not to be able to participate in this exemption. If the final rule is limited as proposed in the NPR, this would put foreign NVOCCs at a legal and, particularly, commercial disadvantage. Unlike U.S. licensed competitors, registered NVOCCs would continue to incur substantial costs for the maintenance of their tariffs and, therefore, have to work with a higher cost base. If the proposed rule is not amended, it is discriminatory and will create an uneven playing field, reducing competition and depriving shippers from potential cost savings.

One of the fundamental purposes that the Commission sought to achieve to reduce unnecessary NVOCC costs would be defeated.

Under its agency agreement with Kuehne + Nagel, Inc., it is the agent's responsibility to actually maintain changes in the Blue Anchor Line rate tariff. Consequently, the continued cost of doing would be borne by Blue Anchor Line's US affiliate .

We are, therefore, appealing to the Commission's sense of fair play and objectivity and request that the final ruling be modified, granting all lawful NVOCCs, licensed and registered, the benefit of the tariff publication exemption.

There is another significant point that needs to be mentioned here. The NPR requires the rate to be concluded and in place prior to the date the cargo is received and that the NRA cannot be modified after the cargo is received by the carrier or its agent. The rule should allow for more flexibility and allow for the modification of existing NRA after the cargo was received by the NVOCC on condition that the shipper agreed to it. A major reason for the requested exemption was to recognize that the ocean shipping marketplace is extremely dynamic and requires, for both shippers and NVOCCs, the flexibility to be able to mutually adjust rates and service offerings in accordance with the prevailing market conditions and services. As I read the NPR, ongoing adjustments and amendments to agreements would not be possible. As I am, again, not aware of any legitimate basis for imposing a "strait jacket" on consenting parties just because the rate agreement is not memorialized in a rate tariff that no one will read anyway, this proposed restriction should be removed.

Finally, I want to thank the Commission for listening to the various parties that have commented in response to the NCBFAA's petition. Granting this relief is a very significant step that will clearly reduce NVOCC costs and enhance the competitive service that we can offer our shipper customers.

I, Juerg Bandle, declare under penalty of perjury that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this verified statement.

Executed on May 3, 2010

Juerg Bandle