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ORIGINAL

DOCKET NO. 10-03

NVOCC NEGOTIATED RATE ARRANGEMENTS

COMMENTS OF THE NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC.

Consistent with the Notice of Proposed Rulemaking (“NPRM”) issued by the Commission on April 29, 2010, the National Customs Brokers and Forwarders Association of America, Inc. (“NCBFAA”) is pleased to provide its comments in support of the agency’s proposal to provide an exemption for NVOCC negotiated rate arrangements (“NRAs”). As the NCBFAA and virtually every other commenting party has stated since this matter was raised in Docket No. P1-08, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication*, filed July 31, 2008 (the “NCBFAA Petition”), the proposed exemption recognizes the fundamental changes in the marketplace that have occurred as a result of the Ocean Shipping Reform Act of 1998 (“OSRA”), is wholly consistent with the policies underlying that statute, fully satisfies the criteria necessary for the Commission’s exercise of its exemption authority, and would be a significant benefit to both NVOCCs and shippers.

I. INTRODUCTION

The NCBFAA is the national trade association representing the interests of freight forwarders, NVOCCs and customs brokers. The Association’s members are directly affected by

the statutory and regulatory mandates currently requiring that NVOCCs publish all rates in tariff form regardless of whether those rates have been individually negotiated.

As the expert body charged with regulating international ocean commerce, the Commission is now well aware of the many ways in which OSRA has transformed the ocean shipping industry. Shippers no longer review or otherwise rely on rate tariffs in determining how or when to ship their cargo or in selecting an NVOCC. In today's marketplace, NVOCC freight rates are almost always separately negotiated with each shipper – regardless of the number of containers – and tailored to the specific movements, commodities and other circumstances involved. Whether space is tight or not, the underlying vessel operating common carrier (“VOCC”) rates on which NVOCC necessarily must rely are extremely dynamic, with rates and surcharges changing virtually on an hourly basis.

As one recent example, Attachment 1 is an announcement from Maersk, dated June 1, 2010, discussing what it calls an “upgrade option” – *i.e.*, a fee that changes frequently and is required of shippers and NVOCCs who actually wish to have bookings honored. The point of this is not to complain about what Maersk or other carriers may be doing, but rather to recognize that ocean shipping pricing reacts constantly and quickly to space constraints and similar market forces.

Yet, the existing regulatory scheme requires NVOCCs to constantly amend their tariffs to reflect the specific rates negotiated with each customer, which in turn are predicated on the rates NVOCCs negotiate with the underlying carriers. Even if this rate publication is feasible, NVOCC rate tariff changes are necessarily almost always published after – not before – both of those negotiations are concluded. The process of rate tariff maintenance is accordingly now an

afterthought – a technical, albeit extremely costly and burdensome requirement having no function other than to memorialize arrangements that have been previously negotiated.

By approving the NCBFAA's Petition and issuing the NPRM that would implement the exemption, the Commission would eliminate a significant and unnecessary regulatory burden, permit the industry to function in a far more efficient and less costly manner, and further the OSRA policy goals of minimizing unnecessary government intervention and regulatory costs and promoting the growth and development of U.S. exports by placing greater reliance on the marketplace. (46 U.S.C. §40101.)

II. THE COMMISSION SHOULD ADOPT FINAL RULES IMPLEMENTING THE PROPOSED EXEMPTION

The NCBFAA is grateful that the Commission elected not to give in to the inertia of the status quo and deny the Petition it filed in Docket No. P1-08. While similar efforts have been denied over the years the Commission is now well aware that OSRA changed the landscape. The record is clear and virtually un rebutted that:

- OSRA fundamentally changed the character of the shipping industry from a common carriage, "me too" structure to a system to one where rates are negotiated by carriers and shippers on a one-to-one basis;
- Rates for the movement of NVOCC traffic are based on market, not tariff considerations, taking into account the constantly changing VOCC rates and surcharges and the demands and needs of the individual shippers;
- The promulgation of the NVOCC Service Arrangement ("NSA") exemption in 2005¹ is of little benefit for NVOCCs or their customers and has been rarely used

¹ Docket No. 4-12, *Non-Vessel Operating Common Carrier Service Arrangements* (decision served December 15, 2004).

due to the same concerns of cost and inflexibility that burden the rate tariff process today;²

- The issuance of this exemption for NVOCCs would increase, not decrease, competition in the NVOCC industry;
- The exemption would not be detrimental to commerce, but would instead increase NVOCC efficiency, substantially reduce unnecessary costs, save jobs, permit these companies to expend scarce resources in positive ways, and allow NVOCCs to reduce rates for their shippers;
- The proposed exemption has the overwhelming and totally unified support from the NVOCC industry and associated trade associations, from the shipper community, from the U.S. Department of Justice and U.S. Department of Transportation, and from several members of Congress; and
- The OSRA gave the FMC full authority to grant the NCBFAA Petition and issue the requested exemption.³

The only industry opposition to this important initiative was from several tariff publishing companies, who are perhaps understandably concerned about the loss of the revenue they may experience when this exemption goes into effect, and from the Florida Shipowners' Group Inc. ("FSG"). None of the concerns expressed by these parties have merit.

The FSG suggests that it would be unfair and discriminatory for the Commission to grant this exemption for the benefit of NVOCCs while not at the same time relieving VOCCs of their

² See the NCBFAA Petition, at pp. 7-8, for comparison of the industry's wide use of VOCC ocean service contracts as compared to the scant use of NVOCC NSA's.

³ See the NCBFAA Petition, at pp. 21-23, detailing the statutory changes in OSRA that authorize the Commission to exercise its expertise and discretion to grant the NRA exemption. See, also, the discussion of why the proposed exemption satisfies the statutory criteria. NCBFAA Petition, at pp. 23-28.

comparable rate tariff burden. The FSG might have had a point had it sought, and been denied, a similar exemption. But that is not the case, as no VOCC has made any such request. FSG's position essentially argues: (1) that VOCCs are competitors with NVOCCs, so that lifting a burden on one group necessarily discriminates against the other; and (2) that the status quo should remain because it artificially increases NVOCC burdens and costs which FSG apparently believes is a useful goal.

The members of FSG are entirely free to seek a comparable exemption if they believe that the proposed exemption would be beneficial to their interests. Whether FSG's members do so is not relevant to the issues in this docket, as granting the proposed exemption will not affect competition between NVOCCs and vessel operators. While both are treated as carriers under the Act, there are clear differences in their activities as well as in the way they are regulated. Former FMC Chairman Koch perhaps said it best when he observed:

Competition between NVOCCs and vessel operators (VO's), to the extent it exists, differs fundamentally from VO-VO competition. When vessel operators compete, someone wins and carries the cargo and someone loses and doesn't. To the extent VO's and NVO's "compete", the competition is for who issues a shipper a bill of lading and makes a little more money as a result. Even when the NVO wins in that exercise, the VO's aren't total losers because they will – they must – still carry the cargo on their ships.

Statement of Chairman Koch on NVOCC Tariff Filing, 26 S.R.R. 465 (August, 1992).

Insofar as the protesting tariff publishing agents are concerned, it is worth noting that not all tariff publishers are opposed to the proposed exemption. To the contrary, Mr. Neil Barni, the President of CargoSphere, testified at the FMC's public meeting on this topic on May 24, 2010 that his company provides tariff publication services for many NVOCCs, that this tariff publication places a significant burden on NVOCCs, that it has little or practical value for the public, that there "seems to be no audience for this rate data" that is published in tariff form, and

that over the past three years not a single inquiry of a tariff was made by any shipper to CargoSphere concerning the rates it publishes for its customers.

Mr. Barni's conclusions are not surprising, as the sworn, detailed and unrebutted testimony by the numerous NVOCCs that filed comments in this proceeding have said repeatedly that the rates tariffs were never accessed or used by any shippers. That point was corroborated by the comments filed by the National Industrial Transportation League ("NITL") in this proceeding, where it stated:

Rates are rarely reviewed or consulted by shippers to determine ocean transportation pricing and function more as a costly regulatory afterthought that must be prepared or updated by NVOCCs after a negotiation has occurred.

(Comments of NIT League, filed September 26, 2008 in Docket No. P1-08, at 1.)⁴

Indeed, even Mr. James Devine, President of Distribution Publications, Inc., filed two sets of comments in this proceeding in which he specifically said "In my experience, shippers have NEVER reviewed tariffs. . . ." (Comments of Mr. Devine in Docket P1-08, filed September 25, 2008 and January 21, 2010 at pp. 6-8 and 2-3, respectively; emphasis in the original.) Mr. Devine went on to say that tariffs are "not marketing or sales documents . . . they are not easy to read or understand." Nevertheless, Mr. Devine and several other tariff publishing companies claim, incorrectly and without any support, that tariffs are relied upon by shippers.

Initially, of course, comments from the shipper community belie that assertion. That a rate tariff may document a negotiated rate certainly does not mean that it is the only way to determine that an agreement was reached between shippers and carriers or what that agreement was. Non-tariff rates are the rule in every other facet of the transportation industry and are of

⁴ See also Attachment 1 to the NCBFAA Petition which attached the "common principles" statement issues by NITL and the Transportation Intermediaries Association pointing out the shippers' lack of use of NVOCC rate tariffs.

course a normal practice in other commercial endeavors.⁵ And, Mr. Devine's written comments seemed to take pride in the fact that rate tariffs are too complex to be used by most people, which again undercuts his assertion of the public utility of such publications.

Moreover, in the event of a dispute between an NVOCC and its customer, the rate tariff no longer serves the so-called "filed rate doctrine" purpose of always determining the applicable, legal rate. Now, as a result of OSRA, the Shipping Act literally provides that privately negotiated rates supersede those that may otherwise be set forth in a tariff or service contract, and that neither the Commission nor a court can order a shipper to pay any rate in excess of what it had negotiated. *See* 49 U.S.C. §41109 (d).⁶ Consequently, the published rate tariff is no longer the "filed rate" that supersedes any other understanding.

The tariff publishing opponents to the exemption nonetheless contend, without any evidentiary support, that they do receive frequent "hits" on the various tariffs. But the companies touting this never explain what they mean by "hits" or the source from where these alleged "hits" derive. The so-called "hits" may simply have been the incessant publication of new rates that no one will ever review. Or, they might be internal reviews by NVOCCs, VOCCs or the tariff companies themselves. At the May 24 public meeting, Mr. Wardell of RateWave Tariff Services, Inc. indicated that most of the "hits" in his tariff were from carriers; if so, it is not clear what conceivable benefit that would have been to the shipping public.

⁵ To the extent the parties or Commission staff need to review the situation or otherwise determine the applicable rate in a given situation, this can be ascertained as easily – and far more accurately – by reviewing the written memorialization of the rate agreement between the parties rather than resorting to a complex series of tariff items with notes, exclusions and references to multiple items and tariffs.

⁶ The text of this provision is:

The Commission or a court may not order a person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in a tariff or service contract by that common carrier for the transportation service provided.

On the other hand, sworn statements from the commenting NVOCCs uniformly stated that no shipper ever accessed their rate tariffs. And, appended as Attachment 2 are exchanges of correspondence between several NVOCCs and their tariff publishing agents – Effective Tariff Management Corporation (“ETM”) and Sumner Tariff Service, Inc. – attesting to the fact that no entity other than the FMC or the tariff service ever accessed their rate tariffs.

Consequently, since the Commission and its staff would continue to be able to access the negotiated, legal rate agreements of NVOCCs and shippers electing to take advantage of the NRA process, the record conclusively demonstrates that the rate publication requirement is anachronistic, burdensome, costly, and beneficial only to a few tariff publishers reluctant to see their revenues slashed.

III. THE PROPOSED REGULATIONS

A. There is No Need to Prescribe Additional Technical Requirements for Use of the Exemption

The NCBFAA believes that the regulations proposed in the NPRM, subject to a reservation discussed in greater detail below, represent the correct approach for implementing the proposed exemption. As originally conceived, the NCBFAA believed that the exemption should be voluntary, rather than mandatory, apply only to rate tariffs, not be construed so as to convey antitrust immunity to NVOCCs, be applicable only for licensed and registered NVOCCs, and ensure that the Commission and its staff would continue to have access to the memorialized agreements or other written communications underlying the negotiated rates for the purpose of conducting any investigation that might be appropriate. Accordingly, the fundamental elements of the exemption would require that the NRA must:

- Be agreed to by both parties;
- Be memorialized in writing;

- Include the applicable rate or rates for the relevant shipments;
- Be memorialized before the first shipment moves; and
- Provide notice of the location of the NVOCC's rules tariff.

The NCBFAA assumes, based upon the comments filed to date by the protesting tariff publishing companies, that those companies may now also urge that the Commission burden the exemption with a multitude of detailed requirements that would essentially mirror the existing tariff regulations in 46 C.F.R. Part 520. The Commission should resist an invitation of this nature, as the complexity of the tariff regulations would frustrate NVOCCs and shippers alike and significantly limit or even eliminate the benefit of the exemption.

Proposed Section 532.5(c) would require that the NRA "clearly specify the rate and to which shipment or shipments such rate will apply. . . ." That is the basis on which virtually all NVOCC traffic moves today and should be sufficient, if appropriately memorialized in writing, to provide the evidentiary basis for demonstrating that a negotiated arrangement has been agreed to by both the NVOCC and shipper parties. Again, when enacting the regulations underlying the execution of ocean service contracts and NSAs, the Commission wisely resisted prescribing the forms of these agreements and instead gives the parties freedom to work out their own commercial arrangements without undue regulatory structure. The proposed regulations strike the right balance for achieving the freedom and certainty that the contracting parties for these new NRAs would find useful and necessary, while at the same time ensuring the parties reach an informed agreement concerning the traffic that will be moving.

B. The Exemption Should be Applicable to Both Licensed and Registered NVOCCs

The NCBFAA Petition requested that the exemption from mandatory rate publication be available to all lawfully operating NVOCCs, whether they were U.S.-domiciled companies

operating under a license or foreign-domiciled companies operating pursuant to the registration provisions of the Commission's regulations. In that way, companies unlawfully providing NVOCC services – in other words, that are operating without a proper registration, tariff and/or bond – would not be eligible to benefit from the exemption.

Aside from the fact that a large number of them have filed evidentiary comments supporting the exemption, the fact remains that there is no reason to discriminate against foreign-based, registered NVOCCs. Under both the statute and the Commission's regulations, the touchstone for becoming eligible to obtain an NVOCC license is that the party must be acting in that capacity "in the United States." 46 U.S.C. §40901. And, the Commission's regulations provide that a person is "in the United States" if the person resides in or is incorporated here. 46 C.F.R. §515.3. Accordingly, limiting the exemption to licensed entities would require foreign-based, registered NVOCCs wishing to use the exemption to open their own offices in the United States and apply for a license. As the Commission is aware, Congress was asked to consider requiring all NVOCCs – not just U.S.-based companies – to be licensed during the discussions that led to the enactment of OSRA. That suggestion was rejected. There is no reason for the Commission to second guess Congress on that issue by now putting pressure on foreign companies to become licensed by using the exemption as a "carrot."

In any event, the NCBFAA is unaware how either the public or the Commission itself would benefit from the application of this patently discriminatory restriction. Maintaining this artificial distinction would, on the other hand, create a number of significant problems.

Initially, foreign-based, registered NVOCCs bear the same burdens and costs of the anachronistic mandatory tariff publication system as do their U.S.-licensed competitors. Shippers do not access or otherwise utilize the rate tariffs of foreign NVOCCs any more than

they do domestic companies. Insofar as protection to the shipping public is concerned, foreign registered NVOCCs are required to have a higher bond than U.S.-licensed entities (\$150,000 as compared to \$75,000; 46 C.F.R. §515.21(a).) The fact that registered NVOCCs are not located within the United States does not protect them from legal process in the event of some dispute with their shippers or the Commission, as they are by statute and regulation required to designate a resident agent in the United States for receipt of judicial and administrative process. (46 U.S.C. §40902(d); 46 C.F.R. §515.24.) And, proposed rule §532.7 literally requires any NVOCC invoking the NRA exemption to produce required records. In addition, foreign domiciled, registered NVOCCs are required to provide their services in the United States through the use of a licensed ocean transportation intermediary. (46 C.F.R. §515.3.) Accordingly, both the Commission and the shipping public has ample opportunity to initiate any civil or administrative proceedings as may be deemed appropriate for the purpose of investigating questionable activities or seeking redress for disputes.

The NCBFAA understands that there are persons and companies in every line of commercial activity that do not play by the rules, that may engage in illicit or otherwise questionable activities. Remarkably, despite the large number of NVOCCs engaged in the complex international shipping business, relatively few disputes between shippers and NVOCCs have ended up in litigation either in the courts or before the Commission. As Mr. Robert Schott, President of Seaschott, a division of Airschott, Inc., stated at the May 24, 2010 public hearing, almost every dispute between shippers and NVOCCs are amicably resolved in a commercially acceptable way. So, concerns about possible future misunderstandings should not be accorded undue weight.

The NCBFAA understands that the Commission may be concerned about its ability to obtain necessary records from foreign-based companies, due both to the lack of proximity and the possible existence of foreign blocking statutes that could prevent compulsory production of documents. As noted above, geographic distance is not a significant issue, in light of the requirements that foreign NVOCCs are required to appoint agents for service of process and must necessarily work through U.S.-domiciled and licensed agents. In the event such parties were subject to an FMC investigation and refused to provide required documentation, the agency has ample authority to suspend their tariff, bond and registration, thereby effectively foreclosing them from operating in the U.S. ocean trades.

On the other hand, there is ample reason to fear that various foreign governments may not look kindly on what they would likely perceive to be discriminatory treatment by the U.S. against their nationals. Even if maritime services are exempt from the provisions of the Maritime Trade Organization, other governments may not sit by while the U.S. engages in preferential treatment for its domestic NVOCCs. That helps explain why every commenting NVOCC that has addressed this issue – whether U.S. or foreign based – strongly supports extending the exemption to both licensed and registered companies, even if the U.S. companies would otherwise seem to be advantaged if the proposed rule is implemented in its existing form.

As the Commission is aware, representatives of the People's Republic of China have already notified U.S. authorities of their intention to review their continued willingness to permit U.S.-licensed NVOCCs to base the U.S. \$21,000 Optional Rider (provided in Appendix E to Subpart C of Part 515 of the Commission's regulations) on the ground that the U.S. Dollar has fallen in relationship to the Renminbi ("RMB"). Rather than just insist upon a higher dollar valuation in the Optional Rider, it is possible that the PRC might view the limitation as a basis to

terminate its participation in the Memorandum of Consultations that was executed by the U.S. and the PRC on December 8, 2003. An action of that nature would require U.S.-licensed NVOCCs to post cash deposits equal to 800,000 RMB in Chinese banks, which would be a matter of significant concern to these companies.

Similarly, representatives of the PRC have recently given notice that it might require NVOCCs to publish rate tariffs with the Shanghai Shipping Exchange. If the limitation is implemented, it is possible that the PRC could further require that U.S.-licensed NVOCCs now publish detailed rate tariffs in the same manner as required by the Commission's regulations in Part 520. Perhaps worse, it is possible that the PRC authorities could require that U.S. NVOCCs doing business in China would be required to actually become licensed there, rather than continue to operate through PRC-domiciled agents. Any of these alternatives would have a disastrous effect on U.S. NVOs.

Moreover, the Commission should not overlook the administrative difficulties and costs that would be incurred if all or even a large number of registered NVOCCs elected to now open offices in the United States and become licensed. That would literally inundate the Commission's Bureau of Certification and Licensing with hundreds or potentially thousands of new applications. Yet, the NCBFAA is not aware of any benefit to be obtained by maintaining this artificial distinction.

It is possible that some commenting parties might suggest that the Commission implement the regulation as proposed, limitation and all, and then take another look at the issue at some point in the future. With respect, that suggestion would be misguided, as it would establish the inappropriate and unfair discrimination, maintain the burden and unfair competitive

advantage of domestic companies for the indefinite future, and invite a response from various foreign governments.

If the Commission truly believes that the extension of the exemption to foreign-domiciled, registered NVOCCs could create unforeseen difficulties in obtaining access to records, it would be preferable to approach the topic the other way. If experience indicates that some issue does arise, the Commission has the authority to initiate an investigation and/or modify the exemption as appropriate to accomplish its regulatory objectives. But, there is no reason at this time to create the distinction, so that the exemption should be extended to all lawful licensed and registered NVOCCs.

C. The Commission Should Exempt NRAs from the Prohibitions of Sections 10(b)(4) and 10(b)(8) of the Shipping Act

The NPRM sought comment on whether the NRA exemption should also have the effect of exempting NVOCCs from the prohibitions of Sections 10(b)(4) and 10(b)(8), 46 U.S.C. §§41104(4) & (8). Having originally proposed that this would be the case (*see* NCBFAA Petition at 11), the Association is not aware of any reason not to do so.

The record demonstrates that the NVOCC shipping industry is extraordinarily competitive, that rates are individually negotiated between NVOCCs and their customers, that there no longer is a common or uniform rate that is applicable or even offered to shippers, that shippers themselves prefer to individually negotiate their ocean shipping arrangements rather than rely on general rate matrices, and that shippers have ample choice of service providers so that they cannot be subjected to discriminatory treatment by a market-dominant NVOCC.

There is accordingly no sound reason to make the NRAs, which would be individually negotiated with each customer, subject to the provisions of 10(b)(4) and (8).

D. The NCBFAA Supports the Use of the Commission's Dispute Resolution Services

During the May 24, 2010 public meeting, a question was raised as to whether the final rule should require parties with disputes to bring them to the Office of Consumer Affairs and Dispute Resolution Services ("CADRS"). While the NCBFAA believes that CADRS performs an extremely valuable function and has been of significant benefit in resolving disputes, there is no need to mandate this requirement in the final rule implementing the NRA exemption. Very few disputes between shippers and NVOCCs go unresolved for very long, primarily because of commercial considerations. And, not every dispute that does exist necessarily relates to an alleged violation of the Shipping Act, so that it is possible that the Commission might not have jurisdiction over a particular matter.

The NCBFAA accordingly believes that while parties may elect to use the services of CADRS in the event they cannot resolve their differences, it would be more appropriate to leave the choice of forum to the option of the parties.

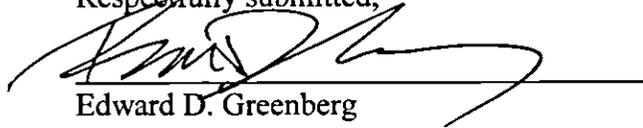
IV. CONCLUSION

In closing, the NCBFAA wants to express its appreciation to the Commission for moving forward and implementing the rate tariff exemption that the Association proposed. The Association's initial Petition instituting the proceeding and the NPRM have generated a great deal of comment, from NVOCCs, shippers, government agencies and other interested parties, most of which strongly supported issuance of the exemption. By doing so, the Commission will eliminate a substantial impediment and cost burden to efficient NVOCC operations and permit them to act in a manner that is more in step with how the industry has evolved since the enactment of OSRA.

Although this is addressed in more detail above, it is also important that the Commission make the exemption effective across the board and not arbitrarily deny its benefits to a class of lawful NVOCCs just because they are domiciled abroad. In filing its Petition, the NCBFAA did not intend to discriminate against foreign based companies, and is unaware of any factor that would justify that result.

The Association accordingly urges the Commission to issue final rules that implement the NPRM but that modifies proposed Sections 520.13, 532.1, and 532.2 so that they are applicable to both licensed and registered NVOCCs.

Respectfully submitted,



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Attorney for
THE NATIONAL CUSTOMS BROKERS AND
FORWARDERS ASSOCIATION OF AMERICA,
INC.

DATE: June 4, 2010

ATTACHMENT 1

The answer is "YES"

1 June 2010

For some shipments, timing can make all the difference in the world. That's why we're pleased to announce a new upgrade option that makes it possible to get urgent cargo on board a ship that has very limited space available. Known as a Priority Product upgrade, this service is meant to help you when you simply can't afford to take 'no' for an answer when placing bookings for certain key shipments.

A large, bold, black graphic of the word "YES" in a slightly distressed, hand-painted font. The letters are thick and blocky, with some white speckling and a slight shadow effect, giving it a three-dimensional appearance. It is positioned on the right side of the page, partially overlapping the main text area.

What it is

An upgrade to Priority Product is basically a loading priority, at a price. It's available only at the time of booking, and only on vessels where space is limited. The option offers major business benefits, including:

- Priority **loading** of cargo
- Reduces the **risk** of costly delays
- Saves **time** – no need to hunt for an alternative
- Instant answer to whether you have a possibility of loading your cargo – or not
- Booking **acceptance**, when it would otherwise have to be rejected

Why a Priority Product upgrade?

You have approached us, requesting a premium product and we recognise that different customers have different needs at different times.

The upgrade option provides you with the option to adjust to your supply chain. So when a booking rejection or a delayed shipment would normally be the only other alternatives, we now offer you the choice of upgrading your booking.

How we do it

You might wonder how we can make room for cargo on a ship that's already full. First of all, we don't do it by removing other customers' cargo. When anticipating high demand, we reserve limited space on the vessel for Priority Products.

When will it start?

The Priority Product upgrade will be introduced on selected services on June 1st and will, during the month of June be implemented on the majority of our services. There will, however, still be services where we will not be offering the upgrade option due to operational constraints or local regulations such as FMC regulations (Federal Maritime Commission).

Dynamic pricing

The Priority Product upgrade is not available for a fixed fee, but is priced dynamically and will vary depending on vessel space availability and market demand.

Money-back guarantee

If for some reason, we cannot load the cargo on the planned vessel, we will refund the cost of the upgrade and of course schedule the cargo for the next available departure with a free upgrade to Priority Product.

We hope you will find our new Priority Product upgrade helpful, and we look forward to saying 'yes' to cargo next time you place a booking with Maersk Line.

For more information Maersk Line's new Priority Product upgrade, please contact your local Maersk Line office.

ATTACHMENT 2

From: etmcorp@etmcorp.com [mailto:etmcorp@etmcorp.com]

Sent: Tuesday, May 18, 2010 10:30 AM

To: Lori Fleissner

Subject: RE: Global fairways Tariff

Dear Lori,

Per our telephone conversation this morning, this email is to confirm what we discussed. Your tariff is password protected. The FMC, ETM and yourself are the only companies having access to your tariff. No one has contacted ETM to gain access to your tariff by having their own user id and password set up to view the tariff on line. Thank you very much.

Best Regards,

Kelli Toney

ETM

--- On Mon, 5/17/10, Lori Fleissner <lfleissner@globalfairwaysinc.com> wrote:

From: Lori Fleissner <lfeissner@globalfairwaysinc.com>
Subject: RE: Global fairways Tariff
To: "Lori Fleissner" <lfeissner@globalfairwaysinc.com>, etmcorp@etmcorp.com
Cc: "Colleen Curtis" <ccurtis@globalfairwaysinc.com>
Date: Monday, May 17, 2010, 6:14 PM

Hi - This is what I need to know:

the number of hits since 1/1/08 to the most current time period possible
- whether the inquiry was directed at your rate tariff or, in the alternative, the rules tariff
- whether you can identify the name of the company that accessed the tariff and what line of business they are in (i.e., government, carrier, shipper, nvoc, etc.)
- whether ETM would be in a position to know the identity or line of business of any one accessing your tariff

Sincerely,
Lori L. Fleissner
President
Global Fairways, Inc.
6680 Brandt Street, Suite 100
Romulus, Michigan 48174 USA
Phone: 734-641-7550 / Fax: 734-641-7555
www.globalfairwaysinc.com

I am participating in an endurance event and need your help, please visit my website to find out more:

<http://pages.teamintraining.org/mi/bayshr10/lfeissner>

From: Lori Fleissner
Sent: Monday, May 17, 2010 5:57 PM
To: etmcorp@etmcorp.com
Cc: Colleen Curtis
Subject: Global fairways Tariff

Can you tell me how many times my tariff has been accessed or reviewed by clients or anyone (outside of Global fairways staff) in the past 1 yr, 5 yrs ?

Sincerely,
Lori L. Fleissner
President
Global Fairways, Inc.
6680 Brandt Street, Suite 100
Romulus, Michigan 48174 USA
Phone: 734-641-7550 / Fax: 734-641-7555
www.globalfairwaysinc.com

I am participating in an endurance event and need your help, please visit my

Sumner Tariff Service, Inc.

Transportation Consultants

ROY R. SUMNER
President
Licensed FMC
Practitioners

1012 14TH STREET, N.W.
SUITE 905
WASHINGTON, DC 20005
TEL: (202) 842-1100 FAX: (202) 842-1104
info@sumnertariff.com

April 20, 2010

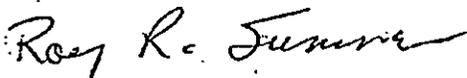
Attn: Rich Roche
Diplomat Global Logistics
6315 Fly Rd
East Syracuse, NY 13057

Re: DIPLOMAT GLOBAL LOGISTICS, INC.

Dear Rich,

Diplomat had a password change on July 29, 2002 when your company requested a new password. According to our records no other company EVER received a password to view the tariff. The FMC had access to the tariff at all times as did Sumner Tariff Service.

Regards,



Roy Sumner
Sumner Tariff Service, Inc.



"Scott Case"
<s.case@camelotcompany.com>

05/18/2010 03:29 PM

To "EDWARD Greenberg" <EGreenberg@gkglaw.com>
cc
bcc
Subject FW: Can I get the number of hits on my tariff over the past two years, please? (with update)

From: abc [mailto:abc@sumnertariff.com]
Sent: Tuesday, May 18, 2010 14:20
To: Scott Case
Subject: RE: Can I get the number of hits on my tariff over the past two years, please?

Scott,

Yes, your tariff is password protected. Anyone asking to view your tariff would be required to pay us a fee and receive a login/password. As of today no one has asked for your login information.

Regards,
Athena
Sumner Tariff Service, Inc.
Tel (202) 842-1100

From: Scott Case [mailto:s.case@camelotcompany.com]
Sent: Tuesday, May 18, 2010 11:56 AM
To: abc
Subject: RE: Can I get the number of hits on my tariff over the past two years, please?

Athena:

Can you confirm if my tariff is password protected or would anybody have had to request a username and password from you to access it? If somebody did, who?

Also, can you please confirm whether or not you received any of my submissions last week.

Thank you,

Scott
s.case@camelotcompany.com
Direct: +1 (847) 737-6963
Office: +1 (847) 678-5400
Mobile: +1 (224) 715-4444
Skype: camelotsac
Twitter: camelotcompany

From: abc [mailto:abc@sumnertariff.com]

Sent: Tuesday, May 18, 2010 08:34

To: Scott Case

Subject: RE: Can I get the number of hits on my tariff over the past two years, please?

Scott,

We do not keep a log of how many times your company has visited the website. (Or the FMC or Sumner Tariff Service.) From our records no other company has requested access to your tariff.

Regards,

Athena

Sumner Tariff Service, Inc.

Tel (202) 842-1100

From: Scott Case [mailto:s.case@camelotcompany.com]

Sent: Monday, May 17, 2010 4:18 PM

To: Athena Aloutis

Subject: Can I get the number of hits on my tariff over the past two years, please?

Many thanks!

Scott

Scott Alan Case

Vice President, Certified Ocean Forwarder

s.case@camelotcompany.com

Direct: +1 (847) 737-6963

Office: +1 (847) 678-5400

Mobile: +1 (224) 715-4444

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Twitter: camelotcompany

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