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To: Federal Maritime Commission

Certificate of Service

Docket No. P1-08
Certificate of Service

I, Michele Farrell, Executive Director of the New York New Jersey Foreign Freight Forwarders & Brokers Association, Inc., do hereby certify that a copy of the NYNYFFF&BA Supporting Statement to Docket NO. P1-08 was sent today, September 25, 2008 to Petitioner's counsel, Mr. Ed Greenberg, Esq. via FEDEX Tracking no.:7911 4697 0812

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**BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.**

**PETITION OF NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF
AMERICA FOR EXEMPTION
FROM MANDATORY RATE TARIFF PUBLICATION
DOCKET NO. P1-08
VERIFIED SUPPORTING STATEMENT OF
NEW YORK NEW JERSEY FOREIGN FREIGHT FORWARDERS & BROKERS
ASSOCIATION, INC.**

I am Mathew Brauner, President of the New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. ("NYNJFFF&BA") and writing on behalf of our members.

The NYNJFFF&BA, established in the New York area in 1917, is one of the oldest U.S. trade associations for freight forwarders, non vessel operating common carriers ("NVOCC"), and customs brokers. Its mission is to promote the interests of its 108 members and to maintain the ethics of their professions at the highest standards. Fifty-eight percent (58%) of its full time members operate as OTI NVOCCs, who have struggled to comply with the publication of ocean

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rate tariffs. A large portion of our membership is directly affected by the regulation that NVOCCs publish a tariff of all rates for freight moved on their Bill of Ladings.

The NYNJFFF&BA strongly supports the petition of the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") for an "exemption from the provisions of the Shipping Act of 1984" requiring NVOCCs to publish all ocean freight rates in freight tariffs. We agree with the NCBFAA's statement that eliminating the existing tariff-filing requirement would be "beneficial to the NVOCC and shipper industries, be consistent with the policies underlying the Ocean Shipping Reform Act of 1998 ("OSRA"), and recognize the fundamental changes in the marketplace." The tariff-filing requirement causes the NVOCC to bear substantial and unnecessary costs in compliance, makes them subject to potentially enormous penalties for tariff-based violations, and yet does not provide any real benefit to the market participants.

Ocean Freight Rates Are Market Not Tariff Driven

The reality of today's market is that ocean freight rates are established by competitive forces and not by static tariffs. Our NVOCC membership negotiates selling rates with its' customers based on their needs and volume. Most of our NVOCC members are also licensed as freight forwarders. Market forces have blurred the distinction between the freight forwarder and the NVOCC. The issuance of an NVOCC bill of lading forms part of a total logistic service that many NVOCCs provide to their customers. Often the rates quoted to a client are part of a door-to-door package that is tailored to their specific movements. The ocean freight is just one component. The final cost to the shipper or consignee of an international freight movement is determined by market forces. To have to construct and file an ocean freight rate based on commodity and origin / destination ports and points becomes an unnecessary exercise and not

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applicable to other shippers. Customers of NVOCCs pick up the phone or send an email to inquire about rates. They do not log on to tariff filing data bases to compare rates and then chose which NVOCC will move their goods. To search data bases will take too much time and not be certain to reflect current rate conditions.

The tariff filing structure now in place assumes a stable market where price changes occur in a controlled and more uniform way. This is simply not the case in the real world. NVOCCs determine the prices they can offer their customers based on what they can obtain from the Vessel Operating Common Carriers ("VOCCs"). Even though many of our members sign contracts with VOCCs to lock in their costs, NVOCCS often negotiate on a spot market basis with steamship lines in order to remain competitive in quoting new business or retain shipments in active trading lanes. Thus, traffic often moves under bullet rates that can be further adjusted as needed. The fact that contracts exist with the steamship lines does not protect the NVOCC from experiencing volatile swings in its cost basis due to surcharges, such as for energy, foreign exchange, and security factors. Ocean carriers impose changes in surcharges with minimum 30-day notices. The surcharges vary among carriers. The cost for moving the same commodity between the same origin and destination points will differ depending upon the steamship line used. Because the NVOCC works with many carriers and differing service levels, it makes it very difficult to construct a simple commodity based tariff that will give it the flexibility to use a variety of steamship lines and sailings that could benefit the shipper and consignee. The ocean freight cost basis for the NVOCC is not stable, but responsive to market forces. The tariff filing structure required of the NVOCC slows down its ability to either recoup higher costs or pass on reductions. The tariff filing requirement actually works to inhibit the beneficial affects of competition for the shipper and consignee.

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Tariff Filing Requirement Costly and Unnecessary with Contract Carriage System

The Shipping Act of 1984 and the Ocean Shipping Reform Act of 1998 ("OSRA") facilitated the movement away from a system of common carriage to one where rates are negotiated with the customer under an individual contract. The tariff filing requirement does not serve a useful purpose when rates are largely agreed on an individual basis with each shipper. In order to avoid any confusion at time of billing, our NVOCC members usually confirm rates in writing. This is done with varying degrees of formality. Often the rate is confirmed by simple email or fax exchange that may or may not include a table of rates in an attachment. This practice is common because it is useful to both the NVOCC and the customer. The shipping public's interests are protected because they have been quoted and agree to a specific rate structure that works for them. If not, the shipper could find alternative solutions with other NVOCCs in the market.

We agree with the NCBFAA conclusion that NVOCC Service Arrangements ("NSAs") are not a viable option for most freight being moved by NVOCCs. The customer base of an NVOCC is very diverse and composed of many smaller and middle-sized companies that are not interested in signing detailed legal contracts for ocean freight movements with restrictive commitments. They prefer to maintain their flexibility in availing themselves of the best rates present in the market at any given time. NSAs have little practical effect on the wider NVOCC market. They entail some of the same costs as tariff filing. The agreements still have to be written documents that are officially filed with essential terms published in an NVOCC's tariff. We see the NSA having a limited role in governing the rate structure and commercial relationship between a customer and an NVOCC.

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The airfreight and trucking industries successfully moved away from a highly regulated tariff defined common carriage structure to one of individualized negotiated contracts or agreements. Why can't the ocean freight industry as it applies to the NVOCC do the same? What benefit is gained by the maintenance of tariffs that are not used? Why does the same piece of freight from a shipper have to move overseas at a rate that is officially published in a tariff when it is shipped by ocean whereas it does not need this when it is exported by air?

There is a real cost to maintaining an NVOCC tariff. This consists of paying in-house personnel or outsourced filing bureaus to record every rate affecting all commodities, port pairs, origin / destination points for freight moved on an NVOCCs bill of lading. Any changes to any of the components requires an updated filing. Outside filing bureaus charge a fee for each rate change. A huge administrative burden with real out-of pocket costs ensues. The tariffs are rarely accessed and do not serve any useful purpose in informing the shipping public.

Requested Exemption

We support the NCBFAA's request that NVOCCs be exempted from mandatory publishing of rate tariffs for ocean transportation. We do not think that the rate exemption should be limited only to those instances where NVOCCs "have individually negotiated rates with their shipping customers and memorialized those rates in writing. We believe that commercial practice, the understanding of the parties, and contract law will determine the appropriate form for memorializing rates between the NVOCC and their shippers.

To specifically state that the rate must be in writing will force discussions of what is sufficient proof that the requirement has been satisfied along with where and how the communications must be maintained for record-keeping compliance. We agree with the NCBFAA that it should not be "necessary or appropriate for the Commission to dictate the

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particular form which should be used". We believe that the very requirement for insisting that the rate be "memorialized in writing" will naturally need further explanation. It should be made specifically clear that the sufficiency of a writing should never be the basis for an enforcement inquiry. Any dispute as to the sufficiency of a writing should only be a matter between a shipper and the NVOCC, and differences should be resolved by application of contract law, and by courts, if necessary. We suggest that the exemption be allowed to be voluntary and made relevant for the shipping public by the commercial relationship between the customer and the NVOCC. It should not be the subject of agency regulation.

In conclusion, the NYNJFFF& BA requests the FMC to rule favorably on the NCBFAA petition to exempt NVOCCs from mandatory publishing of rate tariffs as the requirement for tariff filing has outlived its usefulness.

I, Mathew Brauner, President of the NYNJFFF&BA, 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 Spetember 24, 2008.



Mathew Brauner