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FEDERAL MARITIME COMMISSION



## Florida Shipowners Group Inc.

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September 30, 2008

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

Dear Acting Secretary Gregory:

Re: NVOCC Petition on Tariff Publication

Florida Shipowners Group Inc. (FMC Agreement 203-011953) is Administrator for two Discussion Agreements, the Caribbean Shipowners Association (FMC Agreement: 205-010979) and the Florida-Bahamas Shipowners & Operators Association (FMC Agreement: 205-010982). Several of our Members, in particular Bernuth Lines, Ltd., CMA CGM SA, Crowley Caribbean Services LLC, Seaboard Marine, Ltd., Sea Freight Line, Ltd., Tropical Shipping USA, LLC, asked we respond to the petition filed by the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") seeking an exemption for Non-Vessel Operating Common Carriers (NVOCCs) from tariff publication requirements.

We appreciate the opportunity to comment and respectfully suggest the petition not be granted. NVOCCs buy and resell transportation services actually provided by VOCCs that invest billions of dollars in the assets needed to move international commerce. In buying port-to-port or bundled shipping services, NVOCCs are customers of VOCCs and seek the lowest cost and best value for their customers. They may also be competitors of VOCCs in reselling the services to beneficial cargo owners and other shippers who might otherwise buy them directly from the VOCC.

Both NVOCCs and VOCCs now have essentially the same two regulatory options for providing service to their customers. They may ship their customers' cargo pursuant to tariffs or contracts. The tariffs of both NVOCCs and VOCCs must be published. 46 U.S.C. § 40501. Likewise, the contracts of VOCCs (Service Contracts) and NVOCCs (NVOCC Service Arrangements or NSAs) must meet certain basic requirements and be filed with the FMC. 46 CFR parts 530, 531.

Four years ago, the Commission believed it important to achieve this regulatory parity when it granted NVOCCs the ability to enter into NSAs, NVOCC Service Arrangements, FMC Docket No. 04-12, Notice of Proposed Rulemaking at 14 (Oct. 28, 2004). In that proceeding, the Commission denied the same exemption sought in this proceeding by the NCBFAA. The Commission was correct in making that determination. NVOCCs and VOCCs do compete with each other for certain business. Eliminating tariff publication requirements for one class of competitor while leaving it in place for the other class will affect the competitive balance between them. NCBFAA obviously believes the change will benefit NVOCCs – otherwise, they would not have sought the change.

A key question is whether and to what extent VOCCs will be disadvantaged if the requested change is implemented. NCBFAA downplays the issue, arguing that there is a practical difference in the markets served by NVOCCs vs. VOCCs which justifies different regulatory treatment. Pet. at 5. However, while NVOCCs may specialize in certain markets in certain trades, there is a vast

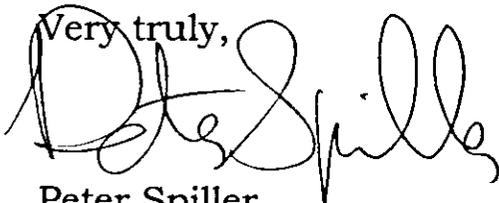
overlap in the customer bases of NVOCCs and VOCCs. Given the highly competitive nature of the industry, sellers will seek to exploit any advantage to gain an edge with customers. Disparities in the regulatory requirements imposed by government should not provide that edge.

Another question is whether the burden imposed by the tariff publication rule is significant enough to justify the change. This concern should be put into some perspective. The billions of dollars in capital costs VOCCs pay to develop and maintain vessels, equipment and the entire infrastructure needed to move international trade dwarf the systems and personnel costs at issue to comply with Shipping Act and FMC tariff publication requirements.

Moreover, NCBFAA recognizes that some written record of the contract between the shipper and NVOCC would be required, presumably in an electronic format. Pet. At 11. How difficult would it be to take the electronic system that records the agreements between shipper and NVOCC and conform it either to a tariff publication system, or to an NSA filing system?

Florida Shipowners Group raises these issues fully cognizant of the revolutionary changes that the Shipping Act of 1984 and the Ocean Shipping Reform Act brought about in the ocean shipping industry. Congress nevertheless chose to retain the minimal tariff publication requirement on both NVOCCs and VOCCs. The FMC should decline the invitation to lift that requirement on one but not both of these classes of competitors.

Very truly,

A handwritten signature in black ink, appearing to read "Peter Spiller". The signature is written in a cursive, flowing style with a large initial "P".

Peter Spiller  
President of the Board