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46 CFR Parts 520, 532

Docket No. 10-03

NVOCC Negotiated Rate Arrangements

COMMENTS OF DAMCO A/S

Damco A/S (“Damco”) is a Danish corporation which is part of the A.P. Moller - Maersk Group’s logistics activities. Damco A/S is an unlicensed NVOCC, lawfully registered with the Federal Maritime Commission (“FMC”), with a valid surety bond filed with the FMC and published tariffs. Damco has over 10,000 employees operating in 289 owned offices globally and is represented in 120 countries. In the U.S., Damco USA Inc. is a licensed OTI which operates under several trade names including Damco Sea and Air, Damco Maritime and Maersk Logistics. Damco USA acts as Damco’s agent in the United States. Detailed information about Damco is readily available on our website at <http://www.damco.com/Pages/default.aspx>.

Damco has reviewed the FMC’s Notice of Proposed Rulemaking (“NPRM”). As proposed in the NPRM, the FMC would only apply the exemption to “licensed NVOCCs.” DAMCO would favor the proposed rule only if the exemption is available to all NVOCCs from publishing rate tariffs.

In Damco’s opinion limiting the exemption solely to licensed NVOCCs will create significant distortions in the global marketplace as unlicensed NVOCCs who normally compete with licensed NVOCCs will be unable to compete using privately agreed NRAs. Shippers who believe that NRAs will provide them an opportunity to negotiate private rates may shun doing business with NVOCCs where their rates are published in a public tariff. Damco believes that it will be competitively harmed if its competitors can enter into NRAs and it cannot. Additionally, if unlicensed NVOCCs could not exercise the exemption for rate tariff publication, such unlicensed NVOCCs would have a further competitive disadvantage of having to pay certain administrative costs to tariff publishers to publish a rate tariff that its licensed NVOCC competitors might not have.

While the NPRM does not explain why the FMC chose to limit application of the exemption solely to licensed NVOCCs<sup>1</sup>, Damco notes that if part of the rationale is the perception that the FMC

<sup>1</sup> The lack of any discussion of the reasons the proposal is limited solely to licensed NVOCCs may constitute a flaw to the rule if it is adopted without change and it is challenged in the U.S. Court of Appeals.

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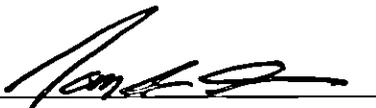
would have a more difficult time getting documents from unlicensed NVOCCs, Damco would be fully prepared to provide copies of NRAs to the FMC upon reasonable and timely requests for such documents. Damco would support an amendment to the proposed rule that makes it a condition for using the rate tariff publishing exemption that all participating NVOCCs will agree in writing to produce NRAs as reasonably requested by the FMC's Bureau of Enforcement. The FMC could also require that unlicensed NVOCCs maintain their NRA files at the offices of their U.S. agents as a condition for using the rate tariff exemption.

For all of the reasons set forth herein, Damco respectfully requests that the proposed rule apply to all NVOCCs, licensed and unlicensed.

Thank you for your affirmative consideration of these comments.

Respectfully submitted,

Damco A/S

By 

Jan K. Andersen

On behalf of Damco A/S

June 4, 2010

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