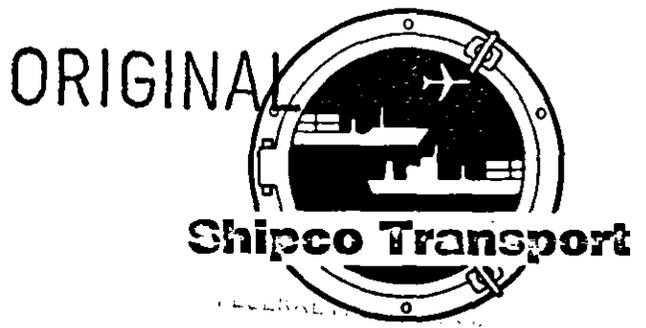


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**BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.**

**REPLY COMMENTS OF SHIPCO, INC.
IN SUPPORT OF THE
PETITION OF THE NATIONAL CUSTOMS BROKERS AND
FORWARDERS ASSOCIATION OF AMERICA (“NCBFAA”) FOR
EXEMPTION FROM MANDATORY RATE TARIFF PUBLICATION**

FMC Petition No. P1-08

September 25th, 2008

I. Introduction.

The following comments are submitted by Shipco Transport, Inc. (“Shipco”), a Federal Maritime Commission (“FMC” or “Commission”) licensed Ocean Transportation Intermediary (“OTI”), FMC license number 008352N. Shipco Transport, Inc. maintains nine (9) branch offices throughout the United States, in addition to a headquarters operation. Shipco was established in 1988 and has developed into one of the world’s leading neutral NVOCC’s, with more than 40 offices worldwide, in excess of 800 employees and covering all major trade lanes. Shipco is fully supportive of the Petition of the National Customs Brokers and Forwarders Association of

America (NCBFAA), FMC Petition No. P1-08, submitted pursuant to 46 C.F.R. §§ 502.67 and 502.69 for a limited exemption of mandatory rate tariff publication.

II. Shipco Reasons For Support of the Petition.

Shipco agrees with the NCBFAA that the deregulatory changes in Congressional policy initiated in the 1984 Act and expanded in OSRA have substantially changed ocean shipping and rendered many tariffs meaningless. Shipco concurs with the NCBFAA and others that shippers neither review nor do they rely on freight tariffs in determining the selection of a carrier or intermediary. Shipco is in agreement that NVOCC freight rates are almost always separately negotiated with each shipper, and rates and charges are tailored to the specific movements, the number of containers at issue, commodities and other circumstances involved in each transaction. Shipco is also aware that shippers contact intermediaries to obtain rate quotes and service commitments and then negotiate the commercial terms of carriage specific to their requirements. Shipco cannot name a single instance where shipper customers actually consult with existing Shipco tariff rates and charges or those of its competitors for purposes of structuring or negotiating their individual shipments with Shipco. **Tariff publishing exists merely to meet current regulatory requirements. Tariff publishing has absolutely nothing to do with the underlying commercial transactions.** Applicable rates and charges, as provided in transportation tariffs, have no current meaning in today's marketplace. Shipco has to constantly amend its tariffs on a shipper by shipper basis to reflect the specific rates and charges negotiated with each customer. Common carriage is an antiquated historical artifact in the current marketplace. Additionally, in view of different surcharges which are applied by the underlying vessel operators, which change almost on a daily basis, in view of current regulatory requirements, makes it difficult, if not impossible, for NVOCCs to properly set up tariff models which accurately reflect these changes to the detriment of either Shipco or its shipper

customers. The flexibility provided by this Exemption is a step in recognizing the reality of the marketplace, and a step in the right direction. Just as important, tariff publication is costly and it has no corresponding commercial benefits. Shipco agrees with the NCBFAA Petition that it is time for a change to more flexible marketplace pricing.

III. Shipco Supports All Principles as Provided by the NCBFAA But Would Include Both Rates and Charges in the Exemption.

The NCBFAA Petition provides: “[t]he NCBFAA requests that NVOCCs be exempted from the 1984 Act requiring NVOCCs to publish and/or adhere to rate tariffs for ocean transportation in those instances where they have individually negotiated rates with their shipping customers and memorialized those rates in writing.”

Shipco fully supports this request, if the language is taken to include exemption of both rates and charges. As noted above, an important part of the problems which arise from tariff publishing regulations involve the timely charging of surcharges to shippers. NVOCCs should have the flexibility of agreeing to pass on all surcharges imposed by the underlying ocean carriers on the shipper without fear of violating tariff regulations. An NVOCC may utilize a handful of ocean carriers in a particular trade lane, and each of these carries may impose different surcharges. The NVOCC and its shipper customers should have the flexibility to agree that said surcharges will be passed on to the shipper. As the regulations exist now, the NVOCC may have a surcharge in its tariff that it must charge notwithstanding what the underlying ocean carrier’s actual charge may be for the specific shipment. In a particular shipment, the NVOCC may be taking a loss on a surcharge, or may be “overcharging” its customer. Flexibility to exempt charges to what the parties agree is essential. For example, the

NVOCC and the shipper could just agree to pass on the surcharge of the underlying ocean carrier, and this would be fair to all parties. Under the current regulations the NVOCC can only charge what is in its tariff. This is mandated by 46 C.F.R. §520.8 (a) (1) and (b) (4). Those sections provide:

§ 520.8 Effective dates.

(a) *General.* (1) No new or initial rate, charge, or change in an existing rate, that results in an increased cost to a shipper may become effective earlier than thirty (30) calendar days after publication.

(b) *Amendments.* The following amendments may take effect upon publication:

(4) changes in charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carriers or conferences, which merely acts as a collection agent for such charges **and the agency making such changes does so without notifying the tariff owner.**

Therefore, an NVOCC, which may utilize various underlying ocean carriers in a particular trade lane (these carriers could possibly all have different Bunker Surcharges in their tariffs), must pursuant to the above regulation only charge its customer the Bunker Surcharge included in the NVOCC's tariff. The carriers by filing the surcharges in their tariffs "have notified the tariff owner (the NVOCC)" and therefore, the exclusion provision in the regulations does not apply. Since the NVOCC cannot have multiple Bunker Surcharges (to match each of the ocean carriers in the particular trade lane), inevitably such a charge would either result in a loss to the NVOCC, or in an "overcharge" to the shipper. The Exemption requested by the NCBFAA should be interpreted to include exemption from "rates and charges."

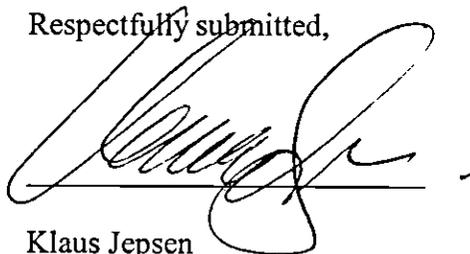
In view of the above comments, Shipco would suggest that Principles 3 and 5 be modified as indicated below, and that they be considered by the Commission when considering

this Petition. Note the suggested changes below by Shipco. Additions are underlined and bolded. Shipco believes that the following modified Principles would address its concerns as articulated herein:

3. Negotiated NVOCC rates and charges and any disputes relating thereto between the parties, would be governed solely by contract law considerations. As such, these negotiated rates would be specifically exempted from former sections 8(a), (b), (d), (e) and (g); and 10(b)(2), (4), and (8) (now 46 U.S.C. §§40501(a) - (e) and (g); 40503; and 41104(2), (4) and (8)).
5. All negotiated rates and charges would need to be memorialized in writing, so that there would be some written documentation in the event of a dispute. The NCBFAA does not believe, however, that it is necessary or appropriate for the Commission to dictate the particular form which should be used. The parties to such negotiated rate agreements are fully capable of appropriately memorializing the freight rates under which traffic moves and already do so, which helps explain the fact as to why there are so few rate disputes between shippers and the NVOCCs that serve them.

For all of the foregoing reasons, Shipco supports the NCBFAA Petition, and joins in requesting that the Commission initiate a formal proceeding under Sections 16 of the Shipping Act of 1984, as amended, to consider exempting NVOCCs from the specified tariff obligations currently required by the Commission's rules and regulations.

Respectfully submitted,



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