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FEDERAL MARITIME COMMISSION

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Petition No. P1-10

FEDERAL MARITIME COMMISSION

PETITION OF )  
HAINAN P O SHIPPING CO., LTD. )  
FOR AN EXEMPTION FROM THE FIRST )  
SENTENCE OF SECTION 9(c) OF THE SHIPPING )  
ACT OF 1984, AS AMENDED )

Pursuant to 46 CFR 502.69 and Section 16 of the Shipping Act of 1984 (" Act") as amended, Hainan P O Shipping Co., Ltd. ("P O Shipping") petitions for an exemption from the first sentence of Section 9 (c) of the Act to permit it to reduce its tariff rates, charges, classifications, rules or regulations effective upon publication. Since P O Shipping has published its tariffs which will be effective on August 1, 2010, we therefore request that this Petition be expedited to the maximum extent feasible.

**Background**

In January 2009, P O Shipping was established, 55% of which is owned by the Yangpu Economic Development Zone through its Office of State Assets Management Committee, and 45% is owned by Hainan Province Yangpu Development and Construction Holding Co., Ltd, a company entirely owned by Yangpu Economic Development Zone which is a government organization directly under the Hainan Provincial Government, People's Republic of China. In this case, P O Shipping is 100% owned by a provincial government in China and is therefore a controlled carrier as defined in 46 CFR 565.2(a) as it is an ocean common carrier whose operating assets are owned or controlled by a government.

To date, P O Shipping has operated only outside the U.S. trades, operating in the China/Australia trade. However, beginning from Mid August, 2010 as scheduled, P O Shipping will commence operations in the trade between the People's Republic of China, Vietnam and the Republic of Korea on the one hand, and the U.S. Ports of Los Angeles and Long Beach, and inland points via Los Angeles and Long Beach, on the

other hand. The initial service will include at least two owned container vessels, the XIANG SHUI WAN and the LONG MU WAN.

For the purpose that it may operate in the U.S. trades on the same terms available to other ocean common carriers, including many controlled carriers that have been granted relief under Section 16 of the Act, P O Shipping requests that the Commission grant it an exemption from the first sentence of Section 9(c) of the Act so that it may reduce its tariff rates upon publication.

### Discussion

Under Section 16 of the Act, the FMC may grant an exemption from a requirement of the Act, if it finds that the exemption will not result in a substantial reduction in competition or be detrimental to commerce.

As important to this Petition, in 2004 the FMC granted under Section 16 similar petitions of three other carriers, all subject to the control of the People's Republic of China. They were Docket No. P3-99, Petition of China Ocean Shipping (Group) Company, 30 SRR 187 (April 1, 2004); Docket No. P4-03, Petition of China Shipping Container Lines, Ltd., 30 SRR 193 (April 1, 2004); and Docket No. P6-03, Petition of Sinotrans Container Lines Co., Ltd., 30 SRR 197 (April 1, 2004). In addition, on October 27, 2004, the Commission granted the Petition Of American President Lines, Ltd. and APL Co., PTE, Ltd. For a Full Exemption From The First Sentence Of Section 9(c) Of The Shipping Act Of 1984, As Amended, 30 SRR 517. To the knowledge of counsel for P O Shipping, and from a review of the last list of controlled carriers published by the Commission in May, 2005, in the case of COSCO, CSC and Sinotrans, these are all of the carriers controlled by the People's Republic of China or one of its provinces other than P O Shipping, and with APL, owned in part by interests in the Republic of Singapore, are all of the other controlled carriers in the U.S. trade that P O Shipping intends to operate. Thus, unless the Petition of P O Shipping is granted, it will be the only carrier in the trade that will, without special permission of the Commission, have to wait 30 days to decrease its tariff rates rather than upon publication.

The same reasons for granting the instant Petition were present in the earlier petitions. On the first of the Section 16 requirements for relief-impact on competition- the FMC found, for example in Sinotrans (known as "Sinolines"), at 200:

"Sinolines arguments regarding carrier competition appear to have merit. Sinolines' burden as petitioner is to establish that the exemption will not result in

a substantial reduction in competition. Sinolines' goes further, however, and argues persuasively that, at least in one regard, the exemption it seeks will actually promote competition. Allowing it more flexibility to reduce its rates to match those of its competitors would seem to result in an instantaneous increase in competition among carriers, Sinolines contends. This position is amply supported by the shippers' comments on the Petition, which demonstrate that some shippers would use Sinolines, but do not because of the 30-day delay. Furthermore, these assertions are unopposed by any commenters."

See also, COSCO, supra at 192, CSC, supra at 196-197. Here with a number of carriers increasing rates substantially, with peak season surcharges on top of general rate increases, additional competition by a carrier like P O Shipping may help ameliorate or temper those increases.

The second of the Section 16 criteria-detriment to commerce-is also met. Rather than being detrimental to commerce, the requested exemption would promote commerce by providing shippers with more options than are currently available. As stated in Sinolines, ibid:

"Sinolines' uncontested argument that the exemption will not be detrimental to commerce also appears to be valid. By allowing Petitioner to compete more effectively for time-sensitive cargo, shippers will be given more service options in a more competitive carrier market. Again, this point is well-supported by the comments of AISA and its shippers, and is unopposed."

In addition, in a time when the Commission has instituted Fact-Finding Investigation No 26 into shortages of vessel capacity and equipment in the export and import trades, with special reference to the Pacific trades, the additional vessels and equipment offered by P O Shipping should help resolve those issues as well.

Although Section 9(c) permits a controlled carrier to reduce its rates with special permission, it is often impractical to file the request. Often a carrier must act immediately to be competitive and a special permission request could take days to resolve. Moreover, the filing fee for a special permission application may act as a detriment to competing for a small shipment. Granting of this Petition is the only way to assure that P O Shipping can offer meaningful competition for all cargo offered by shippers.

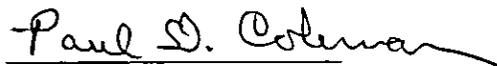
Finally, the granting of P O Shipping's Petition will not result in rate abuse. First, if there is any misuse of the exemption, the Commission has the express power to revoke any exemption under Section 16. Second, P O Shipping would still be subject to the substantive standards of Section 9(a) because its rates cannot be "below a level that is just and reasonable" within the meaning of that Section.

The Commission is to use its exemption powers under Section 16 to avoid "inconvenience or inequities". H. Rep. No. 89-2248, 89<sup>th</sup> Cong., 2d Sess. At 2 (1966). Here without the exemption P O Shipping will be the only ocean common carrier in the trade without the ability to reduce its tariff rates and charges with immediate effect. Moreover, in a time in which both capacity and equipment for shippers appears to be lacking, not curtailing any carrier's ability to offer service to and compete for time-sensitive cargo should be beneficial for the shipping community as well.

### Conclusion

For the reasons stated above, P O Shipping respectfully submits that the requested exemption from the first sentence of Section 9(c) will not result in a reduction in competition or be detrimental to commerce. This Petition should therefore be granted.

Respectfully submitted,



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July 23, 2010

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FEDERAL MARITIME COMMISSION

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HAINAN P O SHIPPING CO., LTD. )  
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DECLARATION OF CHEN JINGDE

I am CHEN Jingde, President of Hainan P O Shipping Co., Ltd. I have read the foregoing Petition of Hainan P O Shipping Co., Ltd. For An Exemption From The First Sentence Of Section 9 (c) Of The Shipping Act Of 1984, As Amended. I declare under penalty of perjury that, based on personal knowledge or inquiry to persons with relevant knowledge, the facts stated in the Petition are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
CHEN Jingde

July 22, 2010