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Via Email: [secretary@fmc.gov](mailto:secretary@fmc.gov) and FEDEX (tel: 202-523-5725)

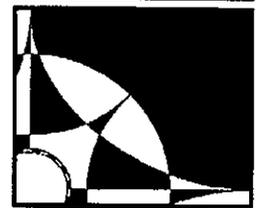
Ms. Karen V. Gregory  
Assistant Secretary

**Federal Maritime Commission**

800 North Capitol Street, N.W.

Washington, D.C. 20573-0001

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM



**DISTRIBUTION  
PUBLICATIONS, INC.**

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Re: Petition P1-08 – National Customs Brokers and Forwarders Association of America, Inc. –  
Exemption from Rate Tariff Filing

Dear Ms. Gregory,

Enclosed are original and 15 copies of supplemental comments on the above referenced petition. I understand the service requirement for these comments has been waived.

Please send any issuances to me via email at [jdevine@dpiusa.com](mailto:jdevine@dpiusa.com)

Sincerely,

James E. Devine  
President

*Distribution Publications, Inc.*

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INTRODUCTION

I am James E. Devine, Jr., President of Distribution Publications, Inc. (DPI), a corporation based in Oakland, California, where I have worked since 1993. I have been a certified Federal Maritime Commission Practitioner since 1995. DPI publishes tariffs for a wide range of ocean carriers, NVOCCs and marine terminal operators. As a consultant, DPI provides expert assistance on the Commission's tariff and service contract regulations, and NVOCC service arrangements (NSAs). We also assist with licensing and bonding requirements for Ocean Transportation Intermediaries (OTIs). Thus, we have expertise in the subject matter of this petition and an interest in this proceeding.

PETITIONER'S REQUEST AND THE COMMISSION'S ORDER OF JAN 5, 2010

On August 5, 2008 the National Customs Brokers and Forwarders Association of America (NCBFAA) filed a petition requesting a voluntary exemption for all licensed or registered Non-Vessel Operating Common Carriers (NVOCCs) from requirements of the Shipping Act of 1984 (SA 1984), as amended, to publish and adhere to rate tariffs. The NCBFAA seeks exemption from these requirements for rates that are individually negotiated with shipping customers. These rates would be "memorialized in writing" and would be available to the FMC for the purpose of conducting investigations. Petitioner requests the Commission approval on the grounds that tariff regulations are outdated and compliance with these regulations is costly and burdensome.

The Commission's records show I submitted comments in this proceeding on September 25, 2008.

On January 5, 2010 the Commission reopened the record in this proceeding for the "limited purpose of receiving updated tariff cost information, and any replies thereto, from previous commenters of record."

BACKGROUND

The comments I submitted in September 2008 review the Commission's current tariff regulations, the origins and development of these regulations, and my carefully considered views of the positive impact these regulations have on the ocean transportation industry. I hope the Commission will review these comments and give them due consideration.

In the time that has passed since my comments were submitted there have been no changes to the Commission's tariff regulations and no significant change in general industry practices with regard to tariffs.

The following supplemental comments focus on tariff cost information and claims made by the Petitioner and by Dennis J. Rowles of DJR Logistics in support of the Petition.

SUMMARY OF THE PETITION and SUPPLEMENTAL COMMENTS OF DJR LOGISTICS

The Petition claims *“Shippers no longer review or otherwise rely on rate tariffs in determining how or when to ship or in selecting a carrier or intermediary.”* Instead, shippers obtain rate quotes from carriers.

The Petition claims compliance with the Commission’s tariff regulations is challenging for NVOCCs because they often work with customers *“in a spot market environment”* and *“sell to the entire universe of shippers.”*

The Petition claims tariff costs for NVOCCs range from *“\$20,000 to \$240,000 per year”* and some NVOCCs have installed their own proprietary tariff publication systems *“which require expensive maintenance and dedicated manpower.”*

The Petition argues NVOCC tariff rate obligations have become a regulatory anachronism imposing significant and unnecessary costs on the industry while providing no countervailing public benefits. It claims NVOCC tariffs are not necessary for the Commission to enforce the Shipping Act, and that there are substantial costs associated with tariffs that have no practical use.

The supplemental comments of Dennis J. Rowles of DJR Logistics, Inc., an NVOCC, which the Commission has added to the record in this matter, repeat the claims of the Petition with regard to tariff costs and the use of tariffs. Mr. Rowles adds to the record by explaining his company has recently incurred costs of \$4737 for its tariff over a recent two month period. The billing detail attached indicates 671 rates and 3 commodity descriptions were filed in the tariff of DJR Logistics during the month of November 2009.

Mr. Rowles explains his company has entered into several service contracts with ocean carriers and these contracts are frequently amended. For “competitive reasons” Mr. Rowles has determined that his tariff must be amended to reflect virtually every rate change made to these service contracts.

COMMENTS

**1. Petitioner’s claim *“none of our customers have access the website to review our tariffs”* is central to its argument. In my experience, shippers have NEVER reviewed tariffs, but ALWAYS rely on tariffs.**

Tariffs have always been complex documents that are read and understood only by highly trained people that work with them on a daily basis. Tariffs are designed by carriers to define the services they provide and their applicable rates and charges. They are not marketing or sales documents. They are not easy to read or understand, and this is intentional. Carriers have rarely ever advertised or publicized their tariffs. Carriers would prefer not to provide public access to their tariffs. They do so only because the Commission requires it.

**2. While shippers have NEVER reviewed tariffs, they have ALWAYS relied on tariffs.**

Tariffs document carrier rates and charges completely and accurately and ensure these remain in effect for 30 days without increase. Shippers expect and rely on carriers to comply with the tariff requirement. Due to the Shipping Act and enforcement by the Commission, most carriers are careful to comply with tariff requirements. Shippers understand this and benefit from it.

Carrier rate quotations to shippers are not required to be published in FMC tariffs. Carriers are free to quote as they wish and these quotes can be subject to change without notice at any time. The Shipping Act and Commission regulations set no standards for carrier rate quotations. However, when a carrier receives a shipment at origin the rates and charges for the shipment must be published and effective in the carrier's tariff, or in a service contract or NSA filed with the Commission.

The tariff thus requires carriers to carefully document the actual rate and charges that will be invoiced to the shipper. Once the rate is filed in a tariff, it cannot be increased or removed from the tariff for 30 days. Shippers rely on this 30-day notice period because shipments are often not ready to move immediately. The physical movement of goods for export, container loading, and documentation requirements can often require days or weeks. Commercial considerations related to the sale of the goods can also delay shipments. The 30 days notice period is an essential element of the Shipping Act for good reason.

Carriers and shippers understand this. Many carrier rate quotes and proposals include the disclaimer "Subject to FMC tariff filing." For many carriers, the procedure whereby shippers "accept" their rate proposals triggers their rate filing. At that time, if there are any changes to the rate or surcharges the carrier advises the shipper. For other carriers, the receipt of the shipment at origin triggers the rate filing. At that time, the rates that will be invoiced for the shipment are carefully documented in a complete and accurate tariff filing that meets FMC standards and will remain in effect for 30 days, and will remain on accessible to the shipper and Commission.

The tariff requirement thus forms the foundation on which rates are quoted to shippers. While there are no standards or requirements for rate quotation, when quotes result in cargo movement they must be documented with a tariff rate filing. The tariff rate filing must satisfy the standards and requirements of the Shipping Act and FMC regulations and must remain in effect for 30 days. These are fundamental aspects of the Shipping Act, which are relied upon by shippers. These benefit shippers every time a shipment moves under tariff rates.

**3. DJR Logistics claims compliance with the Commission's tariff regulations is challenging because "for competitive reasons" its tariff must be amended to reflect virtually every rate change made to service contracts.**

The Commission's tariff regulations do NOT require NVOCCs to amend their tariffs to reflect virtually every rate change made to service contracts they have entered into with ocean carriers. DJR Logistics has determined it must do this "for competitive reasons."

The tariff rate filing requirement applies on shipments the NVOCC, acting as carrier, physically receives and handles. This feature of the tariff regulations greatly limits the burden of tariff publication on NVOCCs. However, our experience at DPI has shown us some NVOCCs do not understand this, and publish rates needlessly for quotations that do not result in shipments. Others insist on publishing hundreds of rates based on service contracts because they are unable to put procedures in place publish only those rates for their actual cargo movements. These are costly commercial decisions.

**4. The Petition claims tariff costs for NVOCCs range from "\$20,000 to \$240,000 per year," and some NVOCCs have installed their own proprietary tariff publication systems "which require expensive maintenance and dedicated manpower." DJR Logistics provides evidences of its tariff costs.**

We find these estimates high. We also wonder if they include costs for software systems which NVOCCs would incur regardless of the Commission's tariff requirement.

DPI currently publishes and maintains FMC tariffs for 1019 NVOCCs licensed by or registered with the Commission. In our comments of September 25, 2008, we advised annual tariff costs for our NVOCC clients ranged from \$400 to \$120,000. In 2009, annual tariff costs for our NVOCCs clients ranged from \$400 to \$75,000. We have many active NVOCC clients whose annual tariff costs are in the range of \$1,000 to \$10,000.

At the low end, these are simply tariff database maintenance charges for tariffs of NVOCCs whose rates have not changed because they are not active. At the high end, these are costs for NVOCCs who update their tariffs on a daily basis and move large volumes of cargo to/from the USA. Annual costs for our largest clients decreased significantly in 2009. This was due to reduced cargo volumes in 2009; less cargo meant fewer rates to file. Costs were also reduced by careful tariff management.

2009 was a challenging year for tariff management due to the fluctuation of bunker and fuel surcharges. The best way to manage these surcharges is to file them in tariff rules which are separate from ocean freight rates. Then, when bunker surcharges change the tariff rule is amended. This is an efficient procedure used by many carriers.

A much more expensive way to manage tariff is to file rates that are not subject to separate bunker surcharges because these have been included in the rates. This is

expensive because when bunker surcharges change rates must be amended. For some tariffs this means thousands of rate amendments.

We note the tariff billing information provided by DJR Logistics indicates 671 rates and 3 commodity descriptions were filed in the tariff during the month of November 2009 - no tariff rules were amended. We suggest DJR Logistics investigate how it could reduce and control tariff costs thru the use of surcharges filed separately in its tariff rules.

**5. The Petition argues NVOCC tariff rate obligations have become a regulatory anachronism imposing significant and unnecessary costs on the industry while providing “no countervailing public benefits.” It claims NVOCC tariffs are not necessary for the Commission to enforce the Shipping Act, and that there are substantial costs associated with tariffs that have no practical use. DJR Logistics repeats this in saying the tariff regulations are an “archaic rule that serves no useful purpose.”**

We respectfully disagree with these claims. We believe tariff costs are not unreasonable, and tariffs do provide valuable benefits. Thanks to the tariff publication requirement, shippers can rely on filed tariff rates to be accurate, complete, and in effect for 30 days. This exerts a tremendous influence on the ocean transportation marketplace in the US trades. Rate quotations that result in actual cargo movement are conditioned on the expectation that rates will be published in tariffs that satisfy FMC regulations.

In the event of a dispute between a carrier and shipper or any related party the tariff can be easily accessed and reviewed. The tariffs maintained at our website at [www.dpiusa.com](http://www.dpiusa.com) have been used thousands of times to verify tariff rates in order to assist in settling disputes. We are regularly requested by shippers, carriers, forwarders and interested parties to assist them in verifying tariff rates.

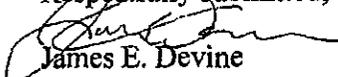
The Commission’s access to published tariffs is essential in order for it to monitor the activities of NVOCCs and to help protect the public from violations by carriers of section 10 of the Act. Tariffs provide the transparency required for the Commission to fulfill its mission to administer policies and regulations that foster a fair, efficient and secure maritime transportation system. Tariffs enable the Commission facilitate compliance with U.S. shipping statutes through oversight and outreach, and assist in resolving disputes. These are important public benefits.

We also believe that the services we provide our NVOCC clients during the tariff rate publishing process benefit the shipping public. In our communications with our NVOCC clients regarding their rate publications we are constantly advising them on FMC compliance issues. In this process, we help our clients understand and comply with the Commission regulations and the shipping public benefits from this.

CONCLUSION

We submit granting this exemption would impair the Commission's effective regulation by limiting its access to NVOCC rate information. Granting this exemption would be detrimental to commerce because it would restrict access to rate information relied upon by the shipping public and because it would eliminate the 30-day notice requirement for tariff rates. This would result in an increase in disputes between shippers and NVOCCs over applicable rates and charges for shipments. Additionally, this exemption would limit the Commission's ability to protect the shipping public from potentially unscrupulous NVOCC operators.

Respectfully submitted,



James E. Devine

President

*Distribution Publications, Inc.*