FEDERAL MARITIME COMMISSION

PETITION OF UNITED ARAB SHIPPING COMPANY (S.A.G.) FOR AN EXEMPTION FROM 46 U.S.C. § 40703	Petition No. P1-14

Served: July 16, 2015

BY THE COMMISSION: Mario CORDERO, *Chairman*, Rebecca F. DYE, Richard A. LIDINSKY, Jr., Michael A. KHOURI, and William P. DOYLE, *Commissioners*.

Order Granting Petition

By petition filed June 18, 2014, United Arab Shipping Company (S.A.G.) (UASC or Petitioner), a controlled carrier,[1] requested that the Federal Maritime Commission (FMC or Commission) exempt it from the requirements of 46 U.S.C. § 40703,

[1] A controlled carrier is defined under 46 U.S.C. § 40102(8) as follows: "The term 'controlled carrier' means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if – (A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or (B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier."

pursuant to Section 16 of the Shipping Act of 1984 (the Shipping Act or the Act),[2] 46 U.S.C. § 40103, and 46 C.F.R. § 502.76 of the Commission's Rules of Practice and Procedure. Section 40703 provides that "a rate, charge, classification, rule, or regulation of a controlled carrier may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after publication." 46 U.S.C. § 40703.

Notice of the filing was served on July 18, 2014, and published in the Federal Register on July 24, 2014. 79 Fed. Reg. 43,044–43,045. Comments were due on August 8, 2014. Three comments were filed after the filing due date. On August 18, 2014, the Commission received comments of Clifton M. Hasegawa & Associates, LLC (Hasegawa). In its comments, Hasegawa states that "precedent for an exemption to 46 U.S.C. 40703, is suggested, a matter reserved for an amendment by way of legislation by the United States Congress and signed by the President of the United States." Hasegawa Comments at 1. On February 3, 2015, APEX Maritime Co., Inc. filed comments in support of UASC's petition, and on February 9, 2015, Shipco Transport, Inc. also filed comments in support of UASC's petition.

For the following reasons, the Commission has determined to grant the Petition and exempt UASC from the requirements of 46 U.S.C. § 40703.

BACKGROUND

Petitioner is an ocean common carrier currently providing container service to the U.S. trades. Petitioner was established in 1976 by the governments of the United Arab Emirates, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the Republic of Iraq, the

[2] On October 14, 2006, the President signed a bill reenacting the Shipping Act as positive law. The bill's purpose was to "reorganize[e] and restat[e] the laws currently in the appendix to title 46. It codifies existing law rather than creating new law." H.R. Rep. No. 109-170, at 2 (2005). The Commission continues to cite provisions of the Act by their former section references, and that practice will be followed in this Order.

State of Qatar, and the State of Kuwait. At that time, none of the government shareholders had a majority interest. At the time it filed this petition, UASC notified the Commission that Qatar had acquired a 51.27 percentage ownership control in the company. UASC therefore became a controlled carrier within the meaning of 46 U.S.C. § 40102(8) and 46 C.F.R. § 565.2(a), and became subject to the requirements set out in 46 U.S.C. §§ 40701–40706.

Petitioner seeks an exemption from 46 U.S.C. § 40703, so that it may lawfully reduce its tariff rates, charges, classifications, rules, or regulations effective upon publication. Petitioner contends that granting the exemption will permit UASC to "react quickly to market conditions and be more competitive," which it argues would benefit commerce by allowing an additional carrier to compete effectively in the market, giving customers more choices and promoting commerce. Petition at 2. Petitioner also notes that the Commission has "repeatedly found that exempting controlled carriers from the 30 day requirement is pro-competitive and beneficial to commerce." *Id.*

After initial review of the Petition for Exemption and of the comment filed by Hasegawa, the Commission determined that additional information was necessary to create a full and complete record on which to base a decision. Therefore, on January 13, 2015, it ordered UASC to answer a series of questions. Subsequently, comments were filed by APEX Maritime Co., Inc. and Shipco Transport, Inc. In its comments, Hasegawa neither supports nor opposes the Petition, but rather asserts that the Petition is not within the Commission's jurisdiction, as it is "akin to a request to the United States Supreme Court to legislate." Hasegawa Comment at 2. According to Mr. Hasegawa, consideration of an exemption to 46 U.S.C. § 40703 is "a matter reserved for amendment by way of legislation by the United States Congress and signed by the President of the United States." *Id.* at 1.

In their comments, APEX Maritime Co., Inc. and Shipco Transport, Inc. assert that granting UASC's petition would result in a favorable increase in competition and have no foreseeable detrimental impact on commerce. Shipco Comment at 1; APEX Maritime Comment at 2.

AUTHORITY

Under 46 U.S.C. § 40103(a), the Commission may grant administrative exemptions from the Act "if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce." In addition, the Commission "may attach conditions to an exemption and may, by order, revoke an exemption." *Id.*

The Commission has previously granted exemptions from § 40703. *See Petition of Hainan PO Shipping Co., Ltd. for an Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984*, 31 S.R.R. 1659 (FMC 2010); *Petition of China Shipping (Hong Kong) Container Lines Co., Ltd. for an Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984,* 30 S.R.R. 645 (FMC 2005); *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 S.R.R. 517 (FMC 2004)*; Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act,* 30 S.R.R. 187 (FMC 2004).

With regard to the first finding required in § 40103(a), Petitioner argues that granting the requested exemption would not result in any substantial reduction in competition, but rather would increase competition because it would allow UASC to "react quickly to market conditions and increase competition." Petition at 2.

The second criterion of 46 U.S.C. § 40103 is whether the granting of the exemption would be detrimental to commerce. The Petitioner alleges that granting the exemption would not be detrimental to commerce, and that "[a]llowing an additional carrier to compete effectively in the market would give customers more choices and would thus promote commerce." *Id*. UASC states that "the FMC has repeatedly found that exempting controlled carriers from the 30 day requirement is pro-competitive and beneficial to commerce." *Id*.

DISCUSSION

1. Commission Discretion to Grant or Deny Exemption Requests

As a general matter, the Commission enjoys discretion in considering a request for an exemption from 46 U.S.C. § 40703. As stated in *Petition for Exemption from the NVOCC Tariff Filing Requirements under the Shipping Act of 1984*, 26 S.R.R. 240, 245 (FMC 1992), the Commission "has complete discretion to deny any request for an exemption." The statute itself provides that the Commission "may," rather than shall, grant an exemption if certain criteria are met. *See Petition of China Ocean Shipping (Group) Company for a Limited Exemption From Section 9(c) of the Shipping Act of 1984*, 28 S.R.R. 144, 147 (FMC 1998) (discussing Commission's discretion).

2. Consideration of Petition under 46 U.S.C. § 40103

As noted above, the standard for Commission consideration of the relief requested in the petition is found in 46 U.S.C. § 40103, which states that if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce, the relief may be granted.

After initial review of the Petition for Exemption and the first comment received in response, the Commission issued an Order to Supplement the Record, in which it set out seven questions concerning the amount of cargo UASC moves under tariffs rates in the U.S. trades; shippers likely to be affected by the 30-day notice requirement; shipper support for the Petition; and UASC's revenue, rate, and capacity levels in the U.S. trades. Order to Supplement the Record at 2. UASC was ordered to respond to the questions on or before February 3, 2015. UASC submitted its responses to the questions by the date specified.

Based on the information submitted, granting the exemption is unlikely to result in a substantial reduction in competition. By allowing UASC to reduce tariff rates on publication rather than requiring a 30-day waiting period, UASC will be able to react to market conditions more quickly and be better able to compete.

With regard to detriment to commerce, based on UASC's relatively small market shares in the Transpacific trade and in the U.S. East Coast/Mediterranean-Middle East-Indian Subcontinent trade, we conclude that it appears unlikely that granting the exemption would be detrimental to commerce.

CONCLUSION

We find that UASC's petition for exemption from the requirements in 46 U.S.C. § 40703, meets the two-part test of 46 U.S.C. § 40103 and will not result in a substantial reduction in competition or be detrimental to commerce. Therefore, the request for exemption from the requirements of 46 U.S.C. § 40703 is granted without a time limit or provision for expiration. UASC will remain subject to all other applicable provisions of the Shipping Act and the Commission's regulations. The Commission retains full authority to revoke the instant exemption.

THEREFORE, IT IS ORDERED, that United Arab Shipping Company (S.A.G.) is granted an exemption from the requirements of 46 U.S.C. § 40703, that tariff rates of a controlled carrier may not become effective until the 30th day after publication; and

IT IS FURTHER ORDERED, that this proceeding is discontinued.

By the Commission.

Karen V. Gregory
Secretary