

## Magdalene Grant

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**From:** Secretary  
**Sent:** Tuesday, September 30, 2008 2:19 PM  
**To:** Karen Gregory; Magdalene Grant  
**Subject:** FW: Petition P1-08  
**Attachments:** NVOCC tariff filing exemption comments.doc

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**From:** Joyce Baker [mailto:JBAKER@sherblackwell.com]  
**Sent:** Friday, September 26, 2008 11:13 AM  
**To:** Secretary  
**Subject:** Petition P1-08

Dear Ms. Gregory,

Attached is an electronic copy of the comments filed by the World Shipping Council in the above-referenced matter today. Please contact either me or John Butler (202) 463-2510 should you have any questions. Per the attached certificate of service, we have both emailed and mailed a copy of the comments to Mr. Greenberg.

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ORIGINAL

Before the  
FEDERAL MARITIME COMMISSION

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PETITION P1-08

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PETITION OF THE  
NATIONAL CUSTOMS BROKERS AND  
FORWARDERS ASSOCIATION OF AMERICA, INC.  
FOR EXEMPTION FROM  
MANDATORY RATE TARIFF PUBLICATION

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**COMMENTS OF THE WORLD SHIPPING COUNCIL**

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The World Shipping Council (“WSC” or the “Council”), through its undersigned counsel, files these comments in response to the Commission’s August 5, 2008, Notice of Filing regarding the above-referenced Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication (the “Petition”).

The Council is a non-profit trade association of over twenty-five international liner shipping ocean carriers, established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s Members include the leading ocean liner companies from around the world—carriers providing efficient, reliable, and low-cost ocean transportation for America’s international trade. The Council’s Member lines include the full spectrum of carriers from large global lines to niche carriers, offering container, roll on-roll off, and car carrier service as well as a broad array of logistics services.<sup>1</sup>

The Council takes no position on the merits of the Petition. However, the Council does believe that the Commission should make its decision here and in future proceedings based on a factually accurate record. We take this opportunity, therefore, to correct several inaccurate statements in the Petition in light of the Petition’s apparent assumption that an unchallenged assertion becomes true merely because it is unchallenged (*see* Petition at 18 n.18).

1. There is no shortage of vessel space or containers. The Petition states (at 3) that: “It is now a well known fact that there is a significant shortage of containers and vessel space in both the inbound and export trade of the United States.” The assertion is inaccurate. According to August 2007—August 2008 data from the Journal of

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<sup>1</sup> A list of the World Shipping Council’s Member companies is provided as Attachment A.

Commerce, the annual containerized import trade is approximately 18.2 million TEUs, while the annual export trade is approximately 11.5 million TEUs. The amount of vessel and container assets deployed is controlled by the import leg, which remains much larger than the export leg. Deployed capacity is more than adequate to cover the import demand, and because container flows must balance in order for the system to continue working, simple mathematics dictates that there are sufficient numbers of containers to handle the export trades. With respect to differences in equipment availability in different inland portions of the United States, that is a function of the balance of traffic flows and repositioning costs. It is true that useable vessel capacity is lower outbound, but that is a function of the density of the export cargo, which causes loading constraints based on deadweight rather than volume. In any event, neither vessel capacity nor container availability has anything whatever to do with tariff publication.

2. Claims of Short-Notice VOCC Rate Changes Are Unsupported and Inaccurate. The Petition asserts (at 3) that: “NVOCCs attempting to obtain space for their customers are required to negotiate rates and bookings often weeks in advance, in a marketplace where carrier rates and surcharges are changing daily and lower rated cargo is difficult to move. When space is booked four or more weeks out, the carrier will often change its rate to the NVOCC even after a booking commitment has been obtained.” *See also* Petition at 6 (noting that having multiple VOCC competitors offering services makes it more difficult to track rates).

These statements are difficult to square with commercial practice and the law. As for commercial practice, most NVOCCs structure their dealings with VOCCs through service contracts, so any rate changes must be mutually agreed. If a tariff controls, then as a legal matter there is a 30-day waiting period before rate increases can take place. 46 U.S.C. § 40501(e). Any rate decrease could occur more quickly, but that would simply add to the NVOCC’s margin and is presumably of no concern. The Petition cites the Statement of David Powell at page 2 as the support for these assertions regarding rate adjustments. That Statement claims that “because NVOCCs offer shippers an al-a-carte [sic] approach to freight carriage, providing multiple routing options via various underlying carriers, and because each underlying carrier structures and adjusts its surcharges in a unique way, it is impossible for NVOCCs to embrace a synchronized, pass-through pricing strategy.” The concern expressed seems to be less about any individual VOCC’s pricing policies and more about the fact that each VOCC has a different approach. But this is merely a description of a highly contested VOCC marketplace at work. It is that variation and competition among VOCCs that allows NVOCCs to exist in the market.

3. The Generalization that NVOCCs Have Greater Numbers of Customers Than VOCCs Is Misleading. The Petition asserts (at 6-7) that: “Unlike the vessel operators who deal with only their relatively limited customer bases, most of whom will be FCL shippers, NVOCCs sell to the entire universe of shippers, most of whom are LCL shippers, and procure the ocean transportation required from all of the carriers.” No source is cited for the proposition that ocean carriers deal only with “relatively limited customer bases.” In fact, although there is a great variability in business models, some

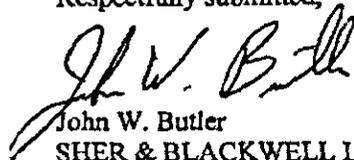
VOCCs deal with many thousands of BCO and NVOCC customers. With respect to relative filing burdens, then, if the Commission is to consider that factor (a point on which WSC has no position), its consideration should be factually accurate.

\* \* \*

The factual points discussed above appear to have no great relevance to the relief sought in the Petition. As noted above, WSC raises them simply because it believes that it is important that the Commission proceed on a factually accurate record, and that the Commission not incorporate into its ultimate decision assumptions that are unproven and that could lead to less than fully informed decisionmaking in this or other proceedings.

The Council appreciates the opportunity to share its comments with the Commission on these factual points. As noted above, the Council takes no position with respect to the merits of the Petition.

Respectfully submitted,



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*Counsel for the World Shipping Council*

September 26, 2008

## **Attachment A**

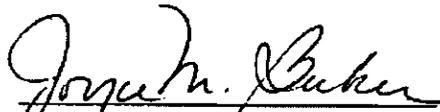
### **Member Companies of the World Shipping Council**

APL  
A.P. Møller-Maersk (including Maersk Line and Safmarine)  
Atlantic Container Line (ACL)  
China Ocean Shipping Company (COSCO)  
China Shipping Group  
CMA-CGM Group  
Compania Sud-Americana de Vapores (CSAV)  
Crowley Maritime Corporation  
Dole Ocean Cargo Express  
Evergreen Marine Corporation  
Hamburg Sud (including Alianca)  
Hanjin Shipping Company  
Hapag-Lloyd Container Line  
Hyundai Merchant Marine Company  
Independent Container Line (ICL)  
Kawasaki Kisen Kaisha Ltd. (K Line)  
Malaysia International Shipping Corporation (MISC)  
Mediterranean Shipping Company (MSC)  
Mitsui O.S.K. Lines  
NYK Line  
Orient Overseas Container Line, Ltd. (OOCL)  
United Arab Shipping Company  
Wan Hai Lines Ltd.  
Wallenius Wilhelmsen Logistics  
Yangming Marine Transport Corporation  
Zim Integrated Shipping Services, Ltd

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the World Shipping Council regarding FMC Petition P1-08 were filed with the Federal Maritime Commission via hand delivery and in electronic form (Microsoft Word 2003) on this 26<sup>th</sup> day of September, 2008, and a true copy of the World Shipping Council's comments were served first-class mail, postage prepaid, and electronically, on the following party:

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Joyce M. Baker