

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**Petition of United Parcel Service, Inc.
Petition No. P3-03**

**Petition of C.H. Robinson Worldwide, Inc.
Petition No. P9-03**

**Petition of the National Customs Brokers and
Forwarders Association of America, Inc.
Petition No. P5-03**

**Petition of Danzas Corporation d/b/a Danmar
Lines Ltd., Danzas AEI Ocean Services, and
DHL Danzas Air and Ocean
Petition No. P1-04**

**Petition of Ocean World Lines, Inc.
Petition No. P7-03**

**Petition of BDP International, Inc.
Petition No. P2-04**

**Petition of Bax Global Inc. for Rulemaking
Petition No. P8-03**

**Petition of FedEx Trade Networks Transport &
Brokerage, Inc.
Petition No. P4-04**

**Reply of the World Shipping Council to the
Joint Supplemental Comments Requesting Expedited Adoption
Of a Conditional Exemption from Tariff Publication**

The World Shipping Council (“WSC” or the “Council”), pursuant to the Commission’s Order dated September 2, 2004, files this Reply in response to the Joint Supplemental Comments Requesting Expedited Adoption of a Conditional Exemption from Tariff Publication (the “Joint Supplemental Comments”).¹ For the reasons set forth below, the Council has no objection to the Commission providing the relief requested in the Joint Supplemental Comments.²

¹ The Joint Supplemental Comments were filed on August 2, 2004, by The National Industrial Transportation League, FedEx Trade Networks Transport & Brokerage, Inc., United Parcel Service, Inc., Transportation Intermediaries Association, BAX Global, Inc., C.H. Robinson Worldwide, Inc., and BDP International, Inc.

² The Council does, however, urge the Commission to deny without prejudice the various pending petitions that seek relief beyond that set forth in the Joint Supplemental Comments. Certain of the petitions contain requests for relief that essentially amount to being freed from all of the common carrier obligations of the Shipping Act. These sorts of requests for relief would, *inter alia*, free NVOCCs acting in their role as carriers from Shipping Act carrier obligations while preserving such Shipping Act obligations for vessel operating carriers. The Council does not support the suggestion in the Joint Supplemental Comments at page 2, footnote 2, that the other petitions should remain under consideration even if the relief requested in the Joint Supplemental Comments is granted.

1. Background.

The Council expressed its concerns regarding the initial related requests filed in Docket Nos. P3-03, P5-03, P7-03, P8-03, and P9-03 on several grounds. Among those grounds were that:

1. With respect to the United Parcel Service, Inc. ("UPS") petition and other petitions that were similarly structured, the Council observed that "the petition as currently structured must be denied" because it did not seek exemption from any requirement in the Shipping Act, but simply sought the grant of an affirmative right. As such, the Council argued that the petitions were beyond the Commission's authority to grant under Section 16 of the Act. *See* WSC Comments at 6 (October 10, 2003).
2. The types and bases of the relief requested were so varied as to prevent a focused, logical analysis or the structuring of a coherent Commission response. *See* WSC Further Comments at 4-5 (January 16, 2004).
3. Related to the issue regarding the disparity of types of relief granted, the Council objected to the UPS and similar petitions because they requested relief only for a single company, based on that company's unique characteristics, but failed to provide any generally applicable standards that the Commission could use to evaluate other similar requests. *See* WSC Comments at 7 (October 10, 2003).

If these concerns can be appropriately addressed, reasonable Commission action to address this issue can be pursued. The Commission is "the agency empowered with the expertise and authority to address the conditions of our foreign shipping, and [the FMC] should not tell Congress to make the decision if [the Commission itself] can."³ For the reasons enumerated below, the Council believes the Joint Supplemental Comments address these concerns.

³ *See* DOT comments on various NVOCC petitions at 4 (Jan. 16, 2004), quoting public statement of FMC Chairman accompanying Commission decision in *Tariff Filing by Non-Vessel-Operating Common Carriers*, 26 S.R.R. 965, 966 (FMC 1993) (brackets added).

2. The Joint Supplemental Comments Adequately Address the Council's Original Objections.

By restructuring the relief sought, the Joint Supplemental Comments have responded to and addressed the Council's primary objections to the original petitions. First, as to the nature of the relief requested, the current proposal now properly seeks a permissible exemption under Section 16. Specifically, that proposal seeks a conditional exemption from tariff publication. Section 16 provides that:

The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

46 U.S.C. App. § 1715 (emphasis added).

The restructuring of the requested relief to include an exemption from the *requirement* of tariff publication, coupled with a *condition* that requires service-contract-like filing requirements, fits within the language of the statute, whereas the original request simply for service contract authority, without mention of an exemption from tariff publication, did not.

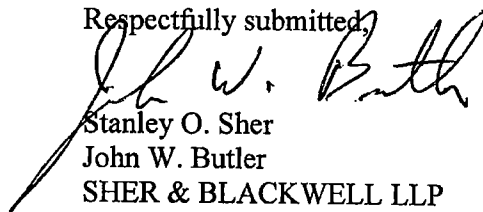
With respect to the Council's second and third objections—the disparity of relief originally requested and the lack of any organizing principle to deal with future requests—the proposal in the Joint Supplemental Comments satisfies those concerns. The NVOCC parties and an organization representing a substantial group of shippers have agreed upon a single remedy. This not only makes it possible to understand how the system would work under an exemption, but it also provides certainty that all properly

constituted and bonded NVOCCs would operate under a common set of rules. This settling on a single form of relief addresses the practical problem facing the Commission with respect to the numerous different original petitions.

The Joint Supplemental Comments state that “the FMC will retain jurisdiction over such [NVOCC] agreements to the same extent that it maintains jurisdiction over [VOCC] service contracts regulated under the Shipping Act.” Joint Supplemental Comments, Appendix 1 (brackets added). As WSC understands this language, it means that the new NVOCC contracts would be subject to the same regulatory requirements as VOCC contracts, *e.g.*, that a condition of the exemption would be that NVOCCs utilizing such contracts are required to comply with the Commission’s regulations governing service contracts (46 C.F.R. Part 530) and with requirements equivalent to those in section 10 of the Act applicable to service contracts. WSC agrees with this, and requests that the Commission include appropriate conditions to that effect if it grants the relief requested in the Joint Supplemental Comments.

For each of these reasons, and with the understanding that the Commission will monitor the effects of the exemption if it is granted, the Council has no objection to the Commission’s grant of the relief requested in the Joint Supplemental Comments.

Respectfully submitted,



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