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June 2, 2010

Docket No. 10-03, Comments on NVOCC Negotiated Rate Arrangements

I am responding to Docket No. 10-03, NVOCC Negotiated Rate Arrangements

I thank the Commission for initiating this rulemaking to relieve NVOCCs from the cost and burden of tariff rate publication, and for affording Panalpina the opportunity to present oral comments at the public meeting on May 24, 2010.

As I commented during the public meeting, the NPRM as written offers this relief only to licensed NVOCCs (Section 532.2). I request that you extend this relief to all NVOCCs in good standing, who are properly bonded according to the statute, and who have proper representation in the United States. In the case of Pantainer, Ltd (Org#008092), we are represented in the U.S. by licensed freight forwarder Panalpina, Inc. (FMC #375-F). Our company is headquartered in Basel, Switzerland. Pantainer, Ltd. requires that all of its global agents sign an agency agreement and adhere to a strict set of written requirements focusing on the proper handling of NVOCC operations, proper preparation and control of bills of lading, and adherence to the local country regulations. This includes global instructions on the requirements of the Federal Maritime Commission (regulations and tariff filing requirements). At great expense, Pantainer Ltd., has trained global offices (on site in key countries, and remotely) to ensure compliance. Foreign offices are audited by Pantainer Corporate to ensure compliance - including compliance to the U.S. tariff rate filing requirements. I am sure that there are many other similarly situated foreign NVOCCs who operate in strict compliance to the US Regulations.

I am sure that the Commission is concerned with the less reputable companies, as we all are. I can only say that companies who follow the current tariff rules and who take advantage of the relief will abide by the new requirements, and those that do not follow the current tariff requirements now will not. I also note that whether an NVOCC is headquartered in the Unite States ("Licensed") or in another country (bonded with proper US representation), any NVOCC with a global network faces the same challenges in training and monitoring these foreign locations. The difference is not US vs. Foreign, or Tariff vs. NRA. It is in whether or not an NVOCC is making its best effort to comply with the rules. If a company does not follow the requirements of the NRA, the Commission can rescind the privilege. I respectfully request that the relief from tariff publication be afforded equally to all NVOCCs in good standing.

I am also taking this opportunity to comment on some of the specifics in the NPRM as written, and hope that you will consider further clarification in the final rule:

1. Section 532.7: Record Keeping / Definition of "Memorialize": Please consider keeping the NRA record keeping requirements simple to conform to standard business practices. A quotation accepted by the shipper is simply a document that can be kept in a transaction file. Although some companies may or already do take advantage of software to keep track of their quotations by customer electronically, I recommend that centralized record keeping not be a requirement. That can be equal to the burden and cost of tariff publishing, especially to small or mid-size companies. I recommend that you model the record keeping requirement for the 'NRA' after Section 515.33.

2. Information required on an NRA: The quotation for a company who has both forwarding and NVOCC operations generally includes many services in addition to the ocean transportation. This meets the expectation of the customer who is looking for a single document with all cost. These services could include forwarding, warehousing, export compliance, customs clearance, and many other services. I recommend that the final rule indicate that the charges for ocean freight that would traditionally have been filed in the tariff, be highlighted in some way on the NRA to make it clear for FMC auditing purposes. How that is done should be at the discretion of the NVOCC, as long as it is clearly stated.

3. Surcharges/Rules Tariff: The Rules Tariff traditionally includes the surcharges. In the tariffs, we are allowed to show that a rate is subject or includes a rules surcharge. We are also allowed to override that by making a commodity rate subject to a specific dollar amount surcharge. The NPRM, as written does not address this, and I request that the final rule indicates that it is allowed to agree to a specific surcharge amount on an NRA or otherwise refer to the tariff rule.

4. NPRM Section IV Discussion / Page 15 and Section 532.3 Analysis p. 19 note that the NRA should provide specific transportation service for a stated cargo quantity. Although rates could be quoted on a quantity basis, they are traditionally quoted on a 'type' such as 'cbm - cubic meter' or container size "20', 40', etc. I recommend that the final rule state that the NRA clearly states the application of the rate, without limiting it to any single unit.

5. NPRM Section IV Discussion / Page 16 notes that the NVOCC must give notice that it is invoking the exemption. I request clarification on where this notice must be placed and if it is an 'all or nothing' notice. I recommend that an NVOCC have the flexibility to opt for the exemption stating clearly when it applies. By this I mean that an NVOCC might state that the exemption will apply to all FCL - Full Container Rates, but that the tariff will apply for all LCL (less than container load) rates, or that there is an option to do this by trade lane. Although I am personally an advocate for the removal of tariffs altogether, since the exemption is just that, an exemption, then I recommend the flexibility as long as it is clearly defined in the required notice.

6. 532.5(c) "clearly specify the rate and to which shipment or shipments such rate will apply": I recommend further clarification. A rate quotation could cover a specific period of time and/or apply to specific trade lanes, and not necessarily simply to a specific shipment. Perhaps this is the intent of the language, but it seems to be too specific as written.

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7. 532.5(d) "may note be modified after the time the shipment is received..." If the shipper and the NVOCC both agree in writing that a modification to the rate was warranted, that should be allowed, as long as it is clearly stated in writing that the party to whom the request was made agrees to the change. I request your consideration.

In closing, I would like to address the subject of why an NRA is needed when NVOCCs already enjoy the privilege of issuing an NSA – NVOCC Service Arrangement (and why NSAs are not used more often). There is certainly a level of shipper who wishes to work under a contract basis and there are also some circumstances where an NVOCC may want to issue an NSA (such as to require a volume commitment), but by and large, the small to medium enterprises are working on a quotation basis. These companies may only be looking for an ocean freight quotation, but more likely, they are looking for a quotation for a wide variety of services. It is a simple, standard, and long-standing business practice. These companies do not want or need to engage in a formal contract process which requires legal involvement. It's just a quote. The NVOCC or forwarder agent quotes, the shipper agrees, the cargo moves, and in the event of a rate dispute, the NVOCC and shipper look to the quote to resolve the dispute. I recommend (and hope) that the final rule will consider this long standing practice and adopt it in its simplest form as the formal Negotiated Rate Arrangement.

I thank you for the opportunity to comment and look forward to your additional comments and the final rule.

Sincerely,

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