

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**PETITION OF CHINA OCEAN SHIPPING (GROUP) COMPANY
FOR A PARTIAL EXEMPTION FROM THE CONTROLLED CARRIER ACT**

FMC Petition No. P3-99

**COMMENTS OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
IN SUPPORT OF PETITION FOR A PARTIAL EXEMPTION**

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February 23, 2004

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The National Industrial Transportation League (“League”) hereby submits these comments in response to the Federal Maritime Commission (“FMC”) order, served on January 22, 2004, in which the agency re-opened this proceeding to allow for the submission of comments by interested parties on or before February 23, 2004. This proceeding concerns a petition, filed on March 31, 1999 by the China Ocean Shipping (Group) Company (“COSCO”), in which COSCO seeks a partial exemption from the Controlled Carrier Act (Section 9 of the Shipping Act of 1984, 46 U.S.C. App. § 1708) to allow it to reduce its common carrier tariff rates in the United States trades upon one day’s notice, regardless of whether the reduced rates would be equal to or lower than the rates of competing carriers.¹ The League supports a granting of the partial exemption.

¹ Two other carriers have filed petitions seeking identical relief, and the League supports all three petitions. *Petition of China Shipping Container Lines Co., Ltd. for Permanent Full Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984*, Petition No. P4-03 (filed July 31, 2003); and *Petition of Sinotrans Container Lines Co., Ltd. for a Full Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984, as Amended*, Petition No. P6-03 (filed August 11, 2003).

The League believes that granting the exemption would have a pro-competitive impact on the U.S. ocean liner industry by providing COSCO nearly the same tariff rate reduction rights enjoyed by all other liner carriers not subject to the Controlled Carrier Act.² Specifically, the League believes that COSCO should be able to reduce rates to meet customer requirements and to respond to market forces without adhering to the statutory 30-day waiting period. Granting the petition would increase service options for shippers and provide COSCO with increased flexibility to meet the needs of its customers when market conditions warrant a reduction in rates.

I. IDENTITY AND INTEREST OF THE LEAGUE

The League is one of the oldest and largest national associations representing companies engaged in the transportation of goods in both domestic and international commerce. Founded in 1907, the League currently has over 600 company members. These members include not only some of the largest users of the nation's and the world's transportation system, but also numerous smaller companies engaged in the shipment and receipt of goods. In addition, the League expanded its membership in 2002 to include carriers as well. Thus, the League's members now represent all aspects of the nation's transportation system, including shippers and receivers of goods, carriers, third party intermediaries, logistics companies, and others. League members are engaged in the domestic and international transportation of substantial quantities of goods by rail, ocean, air, and motor carriage. For nearly 100 years, the League has worked for a competitive, efficient, and safe transportation system in the United States and throughout the world. Toward this end, the League has been a frequent participant in regulatory and legislative matters dealing with national and international transportation.

² Under Section 8(d) of the Shipping Act of 1984, a tariff rate reduction made by carriers that are not subject to the Controlled Carrier Act take effect upon publication of the rate. 46 U.S.C. App. § 1707(d).

II. BACKGROUND

A. COSCO'S Petition

Petitioner COSCO is subject to the Controlled Carrier Act, 46 U.S.C. App. § 1708. Under that Act, new rates or amended rates in the United States trades that are published in a controlled carrier's tariff are not effective until 30 days after publication. 46 U.S.C. App. § 1708(c). Pursuant to a special exemption received from the Commission on March 27, 1998, COSCO currently can reduce its tariff rates in the United States trades, to be effective upon publication, as long as the new tariff rate is no lower than a competitor's rate. Nonetheless, unlike nearly all of its competitors, COSCO must still wait 30 days to lower a tariff below that charged by a competitor. It is this restriction that COSCO seeks to address in its petition.

B. Granting the Petition is Consistent with the Recently Negotiated U.S.-China Bilateral Agreement

Just a few months ago, on December 8, 2003, the U.S. and China signed a new Bilateral Agreement on Maritime Transportation. If certain conditions for implementation occur and the Bilateral Agreement goes into effect, American companies will have much greater flexibility to engage in shipping and logistics activities in China. These new freedoms will create a more level playing field between the U.S. and China, as Chinese shipping companies already enjoy these privileges in the United States.

During the negotiations leading up to the Bilateral Agreement, Chinese officials expressed their hope that the petitions for exemption from Section 9(c) of the Shipping Act filed by COSCO and the two other carriers would be granted by the Commission. The U.S. negotiators from the Departments of Transportation and State agreed that more reliance on the marketplace is desirable and, thus, agreed to express their support for the petitions as one of the conditions for implementation of the Agreement. The Commission has already received letters

of support from Alan Larson, the Under Secretary of State for Economic, Business, and Agricultural Affairs in the State Department, and from Captain William G. Schubert, the Administrator of the DOT's Maritime Administration. Although the final decision on these petitions belongs entirely to the Commission, these letters underscore the broad support for the exemption on both sides of the Pacific Ocean.

The League believes that the Bilateral Agreement between the U.S. and China would greatly benefit commerce in the U.S. Pacific trade. If it were to enter into full force, the Bilateral Agreement will allow U.S. shipping companies, container transport service companies, and their subsidiaries, affiliates, and joint ventures to establish branch offices in China and engage in a broad array of business activities. American shippers, in particular, would benefit from the increased on-the-ground presence of U.S. shipping companies in China and a greater range of transportation and logistics service options.

III. COMMENTS IN SUPPORT OF THE PETITION

Granting COSCO's petition would benefit American shippers by allowing COSCO to offer shipping rates to its customers that are more responsive to the marketplace and by furthering competition between ocean carriers. The exemptions sought by COSCO and the other Chinese carriers would not only serve the interests of American shippers but they are also appropriate under the Commission's exemption procedures and in line with the Commission's stated policies.

A. The Petition is Pro-Competitive and Consistent with OSRA's Market Focus

The Ocean Shipping Reform Act of 1998 ("OSRA") marked a fundamental shift in the regulation of ocean shipping by the Commission. The more deregulatory regime created by Congress when it passed OSRA places a greater emphasis on competition and market forces,

rather than regulation, to govern ocean carrier practices. The cornerstone of OSRA was granting the right to ocean carriers and shippers to enter into service contracts with confidential rates. OSRA's reforms, including confidential contracting, have thus far led to a more fluid marketplace that requires carriers to be responsive to changing economic conditions and shippers' business requirements.

Although the vast majority of cargo moved in the U.S. trades now moves under confidential service contracts, some shippers still choose to ship using common carrier tariff rates. When performing common carrier service, most other ocean liner carriers are able to decrease their rates immediately upon a new tariff publication to respond to the market. With carriers such as COSCO, this practice is not possible if COSCO wants to create a tariff rate that is below the analogous tariff of a competing carrier. In that case, COSCO's customer must wait 30 days after COSCO first publishes the reduced tariff rate. This sort of delay in today's fast-moving business world is a severe impediment to efficient business practices. It also places COSCO at a competitive disadvantage since many shippers are unwilling or unable to wait 30 days for the rate decrease to take effect, in order to satisfy their own business requirements. In many cases, the shipper would be more likely to pursue the services of another carrier to obtain the lower rate immediately.

To compete on a level playing field and better service its customers, COSCO needs to be able to offer lower tariff rates once they are published. The exemption sought by COSCO for authority to reduce common carrier tariff rates on one day's notice is pro-competitive and is completely in harmony with the Commission's statutory mandate to "promote the growth and

development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.”³

The League also believes that the petition satisfies the exemption criteria included in Section 16 of the Act, 46 U.S.C. § 1715. Under Section 16, the Commission may grant an exemption when it finds that the exemption “will not result in substantial reduction in competition or be detrimental to commerce.” As noted above, the League believes that the exemption sought by COSCO is pro-competitive and would benefit commerce in the U.S. foreign trades by allowing COSCO to better respond to the needs of its customers and to the marketplace.

B. The Petition Will Not Affect the Commission’s Substantive Authority Over COSCO’s Tariff Rates

Even if the Commission grants the Petition, the Commission would retain its statutory powers over COSCO pursuant to the Controlled Carrier Act. If the Commission believed that COSCO’s shipping or pricing practices were predatory or having a harmful effect on American shipping companies, the Commission could investigate COSCO as a controlled carrier and prohibit the use of any COSCO tariff rates that are found not to be just and reasonable.

The requested exemption is largely a procedural change. If granted, it would merely change the timing within which reduced tariff rates offered by COSCO may become effective. It does not change the substantive standard that COSCO’s tariff rates must meet. New tariff rates must still be no lower than a “just and reasonable” level that is fully compensatory to COSCO.⁴ Furthermore, the Commission can still suspend a new tariff rate and require COSCO to prove

³ 46 U.S.C. App. § 1701(4).

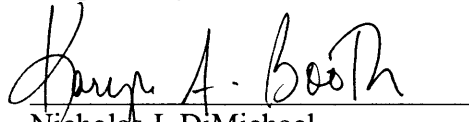
⁴ 46 U.S.C. App. § 1708(a) and (b).

that the new tariff rate meets the just and reasonable standard.⁵ In such a proceeding, the burden of proof would still be on COSCO.

IV. CONCLUSION

For all of the foregoing reasons, the partial exemption requested by COSCO in its petition should be granted.

Respectfully submitted,



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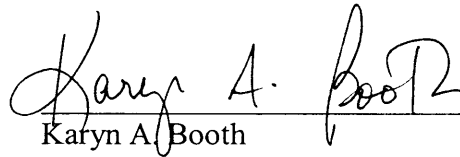
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⁵ 46 U.S.C. App. § 1708(d).

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2004, I have served a true and accurate copy of the foregoing Comments of the National Industrial Transportation League in Support of the Petition For a Partial Exemption by First Class Mail, postage prepaid, upon Counsel for Petitioner at the address below.

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