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March 23, 2012

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W. Room 1046
Washington, D.C. 20573-0001

Re: NOI – Docket No. 11-22
Comment on making tariff filing exemption more useful

Dear Federal Maritime Commission:

Mohawk Global Logistics is an OTI operating under License No. 003952NF. We currently remain at a crossroads on our decision to go forward with using NRA's or sticking with the old tariff process. Our quandary lies in our unanswered questions about how to use NRA's. The published rules and posted guidelines on the FMC website include language that when subjected to varying interpretation makes compliance too subjective. While we know how to work within the framework of tariff filing, we can only speculate upon how these new rules might be interpreted or enforced.

I submitted comments on the topic of tariff exemption for NVOCC's twice before. The first time was in 2003 and more recently in June of 2010. I applaud the FMC for taking the first step in establishing an alternative to tariff filing. I still question the need for any kind of tariff (including rules tariff) as long as the necessary records are kept for the prescribed five year period.

It is complying with the "writings" part of the NRA that we find the most problematic. Rule 532.5 requires that an NRA must be (a) in writing; and (b) be agreed to by both Shipper and NVOCC prior to the date on which the cargo is received…" The first part of the writing requirement is easily accomplished and is an industry best practice. As an NVOCC we provide a written rate quote prior to receipt of cargo in order to gain the business from our customer. In most cases the Shipper responds to our rate quote by making a booking (usually telephonically), and then tenders the cargo. While we believe this tendering is tacit agreement on the part of the Shipper, we will seldom see a written response to our quote, so a "writing" that evidences agreement is difficult to obtain. This process is one or two steps further removed for inbound freight where we issue the consignee our rate quote; they instruct their overseas vendor to book the cargo with our service; the vendor contacts our overseas agent to book the cargo; our agent informs us the cargo will move; and we file the rate prior to their receipt of the cargo. In the NRA scenario, we will find it difficult and burdensome to gain a "writing" for every rate agreement we enter into. In today's fast-paced market, the rates can change on a monthly or even weekly basis. This becomes a lot of rate changes when multiplied by the number of shippers we serve, by the number of commodity descriptions they use, by the number of container sizes used, and by the number of port pairs we move for each shipper. Industry practice is to offer a rate sheet covering these variables, and the client accepts by tendering the cargo to us. When the rates

change we offer a new rate sheet. The NRA process should reflect that flow and not add the additional step of written rate acceptance. If our customer disputes the rate we have charged they will take it up with us directly.

Another point where the NRA rules and guidelines seem to differ from industry practice is that often a rate sheet will include an announcement of scheduled fuel surcharge changes, GRI's and possibly even credit terms, minimum quantity charges, penalty provisions or other economic terms relating to the transaction. It would greatly simplify matters if the rate sheet is permitted to carry this type of notification or charge without having to be related to a separate rules tariff. As we are getting away from tariffs it would make more sense to handle all charges on a rate sheet rather than requiring a rules tariff as an additional place to go for information that impacts the rate charged. We have trading terms and conditions on file on our website and on the back of our bills of lading. These are recognized in courts across the world. Why duplicate them in a rules tariff?

We find the language regarding no amendments to be a bit misleading. Our interpretation is that an NRA can exist at one rate level covering cargo in receipt after the inception of that NRA until another NRA is tendered that cancels out the first. In other words, the original NRA cannot be amended, but rather replaced by a new NRA issued to the client covering any cargo received following inception of the new NRA. Others would argue that once the first NRA is in place it simply cannot be amended. We do not feel this was the intention of the FMC, and would seek guidance on this point.

Lastly we would argue that the exclusion of foreign NVOCC's from the tariff exemption is an unfair restriction that could result in retaliation by other governments of countries we actively trade with. We would hope this is something the FMC will reconsider in an effort to keep all licensed and/or registered NVOCC's on a level playing field, and to reduce the risk of undue legislation in foreign lands. The tariff exemption is a trade facilitating practice that eliminates a tariff system that was seldom if ever used by the shipping public. It serves no purpose that could be better and more easily facilitated in other ways, specifically through record keeping as described in the rule. If the FMC is to really eliminate tariffs for NVOCC's then why not do it for all licensed and registered NVOCC's, and why not eliminate the rules tariff too?

By way of suggestion, it would be most helpful going forward if the FMC would post a Frequently Asked Questions section to augment the NRA guidelines on the website. If the NRA rules, stipulations, and guidelines cause confusion for others as they do for us, this kind of FAQ section would be most helpful for the great majority of NVOCC's who are on the fence about using NRA's just as we are.

Executed on March 23, 2012

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Richard J. Roche
Director of International Transportation