



**COMMENTS OF NATIONAL CUSTOMS BROKERS & FORWARDERS
ASSOCIATION OF AMERICA, INC.
REGARDING TRANSITION ISSUES
NOVEMBER 25, 2008**

The NCBFAA is the trade association representing, as relevant here, the nation's freight forwarders and non-vessel operating common carriers (NVOCCs), which are collectively referred to as Ocean Transportation Intermediaries (OTIs). OTIs in turn tend to handle the transportation and logistical arrangements for most of the smaller and medium sized shippers that ship their goods internationally and are accordingly directly affected by the Shipping Act and the actions of the FMC. On their behalf, the NCBFAA has the following comments:

Administration of the FMC - - We believe that the FMC's administration of the Act would be more effective if the Commissioners were more directly involved with establishing policy and adjudicating issues involving the agency's constituents. The NCBFAA recommends that (a) the number of Commissioners be reduced from 5 to 3, (b) internal policy guidelines be adopted requiring the agency to give the industry fair advanced notice through rulemaking or other administrative proceeding of generally applicable interpretations of the Shipping Act or FMC policies, (c) the agency's Alternative Dispute Resolution office be expanded with authority to require that parties submit disputes involving less than \$100,000 to that office for resolution and (d) reduce the monetary penalty for violations that have no significant adverse consequences on ocean shipping from the present statutory maximum of \$30,000 for each violation.

Reduce Unwarranted Regulatory Burdens on NVOCCs - - The Ocean Shipping Reform Act transformed the ocean shipping industry into a market where rates are individually negotiated between NVOCCs and their customers. The unrebutted record demonstrates that rate tariffs are not relied upon by OTIs, shippers or vessel operators for any purpose and are published only because of anachronistic regulatory requirements. The FMC should act quickly to remove the burdensome, inefficient regulatory requirements by approving the NCBFAA's petition to exempt NVOCCs from having to publish negotiated rates in tariff form.

Enhance Security of OTIs - - As OTIs typically act as the agents for shippers and, in that capacity, are responsible for complying with the various US export/import control initiatives, the bonding requirements and vetting process for FMC licenses need to be enhanced. The existing licensing process is insufficient to exclude unknowledgeable or questionable applicants or to assure the government or shipping public of the integrity and competence of licensees or the accuracy of shipment data being transmitted.

Reform Antitrust Immunity - - To the extent antitrust immunity for ocean carriers or ports is retained, it should be subject to a preliminary finding by the FMC that any existing or proposed agreement will not unduly lessen competition in the involved market, will not permit the parties to engage in market distorting behavior, and will not permit the parties to wield undue market power against shippers, OTIs or trucking companies.