

From: [Abbott, Andy](#)
To: [Secretary](#)
Cc: [Davis, Jim](#)
Subject: Petition of the World Shipping Council for an Exemption From Certain Provisions of the Shipping Act of 1984, as Amended, and for a Rulemaking Proceeding
Date: Wednesday, October 17, 2018 3:14:38 PM

Ms. Rachel E. Dickon
Secretary
Federal Maritime Commission

Petition of the World Shipping Council for an Exemption From Certain Provisions of the Shipping Act of 1984, as Amended, and for a Rulemaking Proceeding

Dear Ms. Dickon:

Please accept the below comments from Atlantic Container Line AB, (ACL) an independent ocean carrier with headquarters in Westfield, NJ. ACL is not a member of the World Shipping Council.

The elimination of contract filing would eliminate a significant cost to EVERY stakeholder in ocean transportation: the carriers, shippers, forwarders, NVOCC's and the FMC. There is the pure administrative cost of preparing and filing huge amounts of data that nobody uses. There is also the cost to the shipper and carrier associated with the restrictions in flexibility caused by the current requirements. The data compilation costs for the Commission and all stakeholders are enormous. Its elimination would allow the FMC to focus more attention on proactively regulating ocean commerce. The Commission could cut costs while becoming more effective and visible at the same time. The change would help everyone and hurt nobody.

The key factors that come into play:

WHY STAKEHOLDERS DID NOT MIND TARIFF & CONTRACT FILING PRIOR TO 1999

Prior to the Shipping Act change allowing contract confidentiality, carriers, intermediaries and shippers would use the FMC rate and contract database for market intelligence. Carriers and forwarders would use the data to identify new business and see what their competitors were charging for each commodity and shipper; shippers would use it to see what their competitors were paying. All players got more in commercial benefits than the costs associated.

Today, the data that is open to the public is meaningless commercially. You have no clue who the shipper is or what is being charged, so the benefits are gone. Nobody uses the data anymore because it does not tell you anything.

US CROSSBORDER CARGO VIA CANADA VERSUS US CARGO VIA US PORTS

- US cross border cargo via Canada uses an unfilled tariff and confidential rates and contracts.
- US cargo via US ports: Service contracts are four times longer than contracts for US cargo

via Canada. Filed US contracts require a lot of boilerplate that the parties do not want nor need. Most cross border contracts are simply one-page documents. Every American shipper that we deal with prefers the pricing simplicity of a cross-border move via Canada versus a move via US ports – all because of the “no filing” requirement.

- US shippers with service contracts always have changes to their commodities or inland points than what is originally filed. Many of their changes come at the last minute, often after the cargo is underway. If the carrier does not get the info in time to file an amendment, the cargo must wait for the next sailing – all because of a technicality in today’s filing requirement. Therefore, the filing requirement punishes the US shipper via US ports by forcing extra cost or shipment delays. The same shipper via Canada can easily make the changes en route.

EXAMPLES OF FREQUENT PROBLEMS CAUSED BY THE FILING REQUIREMENT

- Insufficient Commodity Description and subsequent Re-rating of Cargo.

Scenario: It becomes known that certain new commodities are loaded in the customer’s container. The contract does not specifically cover this cargo.

Current US “Filed contract” System:

Solution: If the consignment is in the Carrier’s custody, then re-rating at the tariff’s punitive “Cargo NOS” rate is the only option.

Current Cross border System (with unfiled contract):

Solution: Carrier and Shipper agree to apply a price in line with the contract levels.

- Incorrectly Rated Shipped Cargo

Scenario: Carrier erroneously charges the wrong level of BAF on multiple shipments moving under a contract

Current US “Filed contract” System:

Solution: Individual CV’s need to be raised on every single shipment correcting the error. This is considerable work for the Carrier’s documentation people and floods the Shipper with additional paperwork.

Current Cross border System (with unfiled contract):

Solution: Carrier alerts Shipper to error (or vice-versa); they quantify the amount owed/to be reimbursed over all affected loads, which is taken care of via an invoice or credit note.

- Late or Missing Signature

Scenario: Following renegotiation, Shipper fails to return a signature extending the terms of an existing contract before the current filed document expires.

Current US “Filed contract” System:

Solution: An entirely new contract needs to be filed. This involves producing a new document and exchanging new signatures again before filing. It will also mean that cargo coming into the custody of the Carrier in the interim, when no contract exists, must be rated at higher “General Cargo NOS” tariff levels.

Current Cross border System (with unfiled contract):

Solution: Parties mutually agree via email to extend the contract even though it had expired

and rate any loads in the Carrier's care accordingly.

- Assessment of Liquidated Damages (LD's)

Scenario: In good faith, shipper agrees to ship 100 TEUs with his Carrier but is facing a small volume shortfall, as the next shipments will occur after the contract expires.

Current US "Filed rates and contracts" System:

Solution: Carrier is forced to amend contract before it expires, or assess LDs on his loyal customer

Current Cross border System (with unfiled contract):

Solution: Carrier informs shipper that LDs will not be invoiced. No urgent signature needed. Adjustments made to next contract. Both parties are satisfied.

- Change of Destination

Scenario: Shipper has a single-factor Door/Door contract, and has a change of consignee/place of delivery for an export load.

Current US "Filed contract" System:

Solution: The box needs to be held at ocean terminal until the new rate has been inserted in the contract and filed, which may lead to delays and billing of export demurrage, or the shipment is loaded but re-rated at much higher tariff conditions.

Current Cross border System (with unfiled contract):

Solution: carrier immediately re-prices the new door and loads box to vessel.

OTHER PROBLEMS THAT ARE CAUSED BY THE CURRENT SYSTEM

- Effective date of rate changes: The current system mandates cargo received by date at inland point or marine terminal dictates the rate: so you can have two containers from the same shipper on the same ship and have two different rates apply – a big source of shipper complaint.
- Why is it that new cars are exempt from all filing requirements but used cars are not? What makes new cars so special compared to tractors, aircraft parts or engines?
- Retroactive rate adjustment is not possible due to filing rules per shipment. Why cannot shipper and carrier save all the extra work and adjust the rate retroactively if both parties are in agreement?

If tariff and contract filing were eliminated, carriers would save a huge amount of money in personnel costs and filing costs. We would also be able to eliminate the bureaucratic step in the process that would enable carrier and shipper to solve most little problems before they became big ones. The result would be happier stakeholders and lower administrative costs for all.

If contract filings were eliminated, most cargo would move under a simple one-page contract with service and volume commitments. Since everything would be stored in the carrier's data files, there would be a lasting record of the shipper's contracts over time. This would allow

carriers to analyze a customer's rate history as preparation for negotiations. An FMC auditor could easily review the same information.

During their carrier audits, the FMC could review any incidences of shipper complaints and inspect each carrier's independent ratemaking practices. The result of this would be much happier shippers, carriers, forwarders and NVOCCs, and an FMC organization more focused on ensuring a level playing field and fair and legal business behavior by all players.

The FMC could eliminate the staffing required to deal with the huge amount of daily filings and reallocate time and manpower to carrier/intermediary audits and investigations.

For all of the above reasons, Atlantic Container Line AB is favor of the proposed Rulemaking in Petition No. P3-18 / Document Number 2018-20167, dated 9/18/2018.

If you need me to submit these comments in a different format, or if you need any further information, please let me know.

Best regards,

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