BEFORE THE
FEDERAL MARITIME COMMISSION

PETITION OF UNITED PARCEL SERVICE, INC.
FMC Petition No. P3-03

PETITION OF NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC.
FMC Petition No. P5-03

PETITION OF OCEAN WORLD LINES, INC.
FMC Petition No. P7-03

PETITION OF BAX GLOBAL INC.
FMC Petition No. P8-03

PETITION OF C.H. ROBINSON WORLDWIDE, INC.
FMC Petition No. P9-03

PETITION OF DANZAS CORPORATION D/B/A/ DANMAR LINES LTD., DANZAS AEI OCEAN SERVICES, AND DHL DANZAS AIR AND OCEAN
FMC Petition No. P1-04

PETITION OF BDP INTERNATIONAL, INC.
FMC Petition No. P2-04

PETITION OF FEDEX TRADE NETWORKS TRANSPORT & BROKERAGE, INC.
FMC Petition No. P4-04

RESPONSE OF SIRVA CORPORATION TO JOINT SUPPLEMENTAL COMMENTS REQUESTING EXPEDITED ADOPTION OF A CONDITIONAL EXEMPTION FROM TARIFF PUBLICATION

David P. Street
Galland, Kharasch, Greenberg,
Fellman & Swirsky, P.C.
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
(202) 342-5200

Date: October 5, 2004

Pursuant to the Order of the Federal Maritime Commission ("Commission") served on September 2, 2004, SIRVA Corporation ("SIRVA") hereby submits its response to the Joint Supplemental Comments Requesting Expedited Adoption of a Conditional Exemption from Tariff Publication ("Joint Supplemental Comments") filed in the above-referenced dockets on August 2, 2004 by the National Industrial Transportation League, United Parcel Service, Inc., BAX Global, Inc., FedEx Trade Networks Transport & Brokerage, Inc., Transportation Intermediaries Association, C.H. Robinson Worldwide, Inc., and BDP International, Inc. (hereinafter jointly referred to as the "Joint Commenters"). SIRVA has previously filed comments in a number of these proceedings on January 16, 2004.

The "Tariff Exemption Proposal" submitted by the Joint Commenters would establish a regulatory structure for "NVOCC Agreements" virtually identical to that which currently exists for service contracts of vessel operating common carriers ("VOCCs"). "NVOCC Agreements" would be defined in language identical to that used for the definition of "service contracts" in the Shipping Act of 1984; 46 App. U.S.C. §1702[19]. NVOCC Agreements would be required to have the same essential terms as are required for service contracts in Section 8(c)(2) of the Shipping Act; 46 App. U.S.C. §1707(c)(2)[1]; and the identical essential terms would be required to be published by NVOCCs in a tariff format. *Id*. at §1707(c)(3). Finally, the Tariff Exemption Proposal makes it explicit that the Commission would have the same power over NVOCC Agreements that it currently has over service contracts.

While SIRVA fully supports the need for greater pricing flexibility for NVOCCs, and also supports the Joint Commenters' plea for expeditious action by the Commission in this area, it opposes the substance of this proposal for the reasons set forth below.

[1] There appears to be a single difference between the essential terms required of a service contract and the essential terms the Joint Commenters would require of an "NVOCC Agreement." That is, NVOCC Agreements would be required to have liquidated damages provisions, whereas such provisions are optional in service contracts.

The real problem faced by NVOCCs is the cost and expense imposed by the outmoded and meaningless tariff requirements. If rate filing by NVOCCs served any useful commercial or regulatory purpose, the Joint Commenters' proposal might be worth examining as a means to combine increased pricing flexibility for NVOCCs with a filing mechanism similar to that for service contracts. The overwhelming weight of evidence presented in these proceedings, however – which agrees with SIRVA's own experience – testifies to the fact that there is no longer any justifiable purpose for making NVOCCs file rates. Given this fact, SIRVA submits that any proposal seeking to impose a rate filing requirement on NVOCCs should be rejected. In the case of the Tariff Exemption Proposal submitted by the Joint Commenters, which actually increases the filing burden on NVOCCs, there should be no question that it should be denied.

The Proposal of the Joint Commenters seeks to replace the single requirement of filing rates in a tariff with a new, dual filing requirement pursuant to which NVOCC Agreements would be filed with the Commission and synopses of those Agreements -- specifically not including the rates – would be separately filed in NVOCC tariffs. This would, in fact, impose greater burdens on NVOCCs with no corresponding regulatory benefit. Since it is clear that shippers do not look at NVOCC tariffs to find out what the rates are, why would the shippers look at NVOCC tariffs to see synopses of "NVOCC Agreements" that contain no rates? It is, in addition, highly doubtful the Commission itself would - - or could - - review the likely tens of thousands of NVOCC Agreement filings that would be produced by the Joint Commenters proposal. (There are over 3,000 NVOCCs currently licensed or registered with the Commision.) Thus, instead of eliminating regulatory burdens, it appears the Joint Commenters' proposal would increase regulatory burdens on NVOCCs and impose an additional burden on the Commission itself. For this reason alone, SIRVA believes the Tariff Exemption Proposal would be unworkable.

It is clear that tariff filing does not provide the FMC with effective oversight of anything other than the filing of rates themselves. Since common carriage no longer exists, there is not an interest in preventing discrimination among shippers. Further, NVOCCs do not have market power and are not immunized from the antitrust laws, as are VOCCs. Therefore, there is no need for the Commission to have volumes of pricing material from NVOCCs to perform any economic monitoring functions to ensure NVOCCs are not distorting the ocean shipping market. The Commission does not currently use NVOCC tariffs to monitor competitive conditions in the ocean shipping industry or even the NVOCC portion of the industry. Why would there be a need to accumulate thousands of "NVOCC Agreements" in the Commission's files?

In this regard, the filing of service contracts by VOCCs does serve a necessary regulatory function. VOCCs have antitrust immunity and VOCCs control the means of transportation and therefore can, if they wish, impose competitive injury on the shipping market. Thus, agreements among VOCCs necessarily must be filed with the FMC and VOCCs' pricing arrangements in the form of service contracts must also be filed to give the Commission the up to date competitive information it needs to effectively police the marketplace. Moreover, Congress has instructed the Commission to act promptly when necessary to forestall such harm. Having VOCC agreements and service contracts readily and instantly available in its own files gives the Commission the necessary tools to perform this function. Thus, there is a legitimate regulatory need for the filings of VOCC service contracts with the Commission.

There is, however, no similar regulatory need for a similar filing of NVOCC pricing arrangements. In this regard, the Joint Commenters proposal is based on a false premise; that is, that NVOCCs and VOCCs require parallel regulatory oversight. In fact, VOCCs are capable of market distorting anti-competitive behavior and need for closer ongoing regulatory supervision than do NVOCCs who have very little market power. In the case of NVOCCs this danger simply does not exist. There is, therefore, no need for

a filing regime for “NVOCC Agreements” similar to that which exists for VOCC service contracts.

As numerous NVOCC submissions in these proceedings have made clear, there is a real cost to tariff filing, both in terms of monetary expense and the expenditure of management time and effort. There is, therefore, an opportunity cost to NVOCC filing (whether of tariffs or “NVOCC Agreements”) that the Commission should recognize in considering the tariff exemption requests. Given the lack of economic or regulatory utility of NVOCC rate or agreement filing, there are clearly more critical and important areas for NVOCCs to employ their money, time and energy.

A prime example of this is in the area of security. As the Commission and other government agencies; notably, U.S. Customs and Border Protection (“CBP”), recognize NVOCCs perform critical functions in the international supply chains in which they participate. Since 9/11, CBP has adopted new regulations permitting NVOCCs to file their shipment information directly in the Vessel Automated Manifest System (“Vessel AMS”) so as to enable them to comply with the 24 Hour Advance Manifesting Rules. A significant number of NVOCCs have opted to do this by filing international carrier bonds with CBP and investing in the technology necessary to electronically file their manifests in Vessel AMS. CBP has made it clear that advance manifest filing is a critical component of its efforts to protect the United States from the introduction of weapons of mass destruction, other terrorist supplies or weapons, or terrorists themselves, into the United States in ocean shipping containers.

CBP has also included NVOCCs as one of the first groups of entities to be eligible to participate in the Customs-Trade Partnership Against Terrorism (C-TPAT). Again, a substantial number of NVOCCs have taken this opportunity to join CBP and other C-TPAT participants in a massive voluntary effort to upgrade security policies and procedures throughout the international supply chains serving the United States. Through their participation in C-TPAT, NVOCCs are being asked to continually upgrade their security arrangements and the security arrangements of their supply chain

partners and to develop and adopt best practices in the area of security. All of these security activities require money, time and management effort and attention. To the extent these factors are engaged in a wholly meaningless and sterile regulatory activity such as tariff (or "NVOCC Agreement") filing, they cannot be devoted to these more pressing and important activities.

For all of these reasons, SIRVA respectfully urges the Commission to reject the proposal of the Joint Commenters. Rather, the Commission should adopt the proposal of the National Customs Brokers and Forwarders Association of America (NCBFAA), which calls for the total elimination of tariff filing. This is the most sensible and efficient way to address the real problems created by the outmoded NVOCC tariff filing requirements. Moreover, SIRVA urges the Commission to take this step as soon as possible. In this regard, it agrees with the contentions of the Joint Commenters that there is no need to institute any further regulatory proceedings before taking this action. The Commission already has a complete record fully justifying the total elimination of NVOCC tariff filing. This is the course it should take with no further delay.

Respectfully submitted,

_____

David P. Street
Galland, Kharasch, Greenberg,
Fellman & Swirsky, P.C.
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
(202) 342-5200

Attorneys for SIRVA Corporation

Date: October 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of September, 2004, served a copy of the foregoing Response Of Sirva Corporation To Joint Supplemental Comments Requesting Expedited Adoption Of A Conditional Exemption From Tariff Publication, on the following persons listed below via first-class mail, postage pre-paid:

Nicholas J. DiMichael, Esq.
Karyn A. Booth, Esq.
THOMPSON HINE LLP
1920 N Street, NW, Suite 800
Washington, DC 20036

Counsel for The National Industrial Transportation League

Penelope W. Register, Esq.
Senior Vice President and
General Counsel
FEDEX TRADE NETWORKS
TRANSPORT & BROKERAGE, INC.
6075 Poplar Avenue, Suite 422
Memphis, TN 38119

Warren L. Dean, Jr., Esq.
THOMPSON COBURN LLP
1909 K Street, NW, Suite 600
Washington, DC 20006

Counsel for FedEx Trade Networks Transport & Brokerage Inc.

J. Michael Cavanaugh, Esq.
HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, DC 20006

Counsel for United Parcel Service, Inc.

Richard D. Gluck, Esq.
GARVEY SCHUBERT BARER
1000 Potomac Street, NW
5th Floor
Washington, DC 20007

Counsel for Transportation Intermediaries Association

Therese G. Groff, Esq.
Vice President, General Counsel &
Secretary
BAX Global Inc.
440 Exchange Drive
Irvine, CA 92602

Edward J. Sheppard, Esq.
Richard K. Bank, Esq.
Ashley W. Craig, Esq.
THOMPSON COBURN LLP
1909 K Street, NW, Suite 600
Washington, DC 20006

Counsel for BAX Global Inc.

Leonard L. Fleisig, Esq.
TROUTMAN SANDERS LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004-2134

Counsel for Ocean World Lines, Inc.

Carlos Rodriguez, Esq.
RODRIGUEZ O'DONNELL ROSS FUERST GONZALEZ & WILLIAMS
1211 Connecticut Avenue, NW
Suite 800
Washington, DC 20036

Counsel for C.H. Robinson Worldwide, Inc. BDP International, Inc. and Danzas Corporation d/b/a Danmar Lines Ltd.; Danzas AEI Ocean Services and; DHL Danzas Air and Ocean

R. Hewitt Pate
Assistant Attorney General
J. Bruce McDonald
Deputy Assistant Attorney General
Roger W. Fones, Chief
Donna N Kooperstein, Assistant Chief
Robert L. McGeorge, Esq.
Douglas B. Rathbun, Esq.
U.S. DEPARTMENT OF JUSTICE
Antitrust Division
Transportation, Energy & Agriculture Section
325 7th Street, NW, Fifth Floor
Washington, DC 20530

Counsel for the Department of Justice

Robert T. Basseches, Esq.
David B. Cook
Eric C. Jeffrey
SHEA & GARDNER
1800 Massachusetts Avenue, NW
Washington, DC 20036

Counsel for America President Lines, Ltd. and APL Co. Pte., Ltd.

Jeffrey N. Shane, Under Secretary of Transportation for Policy
Jeffrey A. Rosen, Esq.
Rosalind A. Knapp, Esq.
Dale C. Andrews, Esq.
Paul Samuel Smith, Esq.
U.S. DEPARTMENT OF TRANSPORTATION
400 Seventh Street, SW
Washington, DC 20590

Counsel for the Department of Transportation

Stanley O. Sher, Esq.
David Smith, Esq.
SHER & BLACKWELL LLP
1850 M Street, NW, Suite 900
Washington, DC 20036-5820

Counsel for World Shipping Council

_____
David P. Street

#240348 v1 - SIRVA - Response to Exemption from Tariff Pub. to FMC