

November 1, 2010

**FEDERAL MARITIME COMMISSION**

**NOTICE OF INQUIRY**

**AN ANALYSIS OF THE EUROPEAN UNION REPEAL OF THE LINER  
CONFERENCE BLOCK EXEMPTION**

**AGENCY:** Federal Maritime Commission

**ACTION:** Notice of Inquiry

**SUMMARY:** The Federal Maritime Commission (“FMC” or “Commission”) is issuing this inquiry to solicit information and comments concerning the effects on international liner shipping of the European Union’s (“E.U.”) repeal of the liner block exemption from competition laws that took effect on October 18, 2008. This information will assist the Commission in its identification, analysis and evaluation of any consequences of the E.U.’s policy decision on U.S. trades, and will be incorporated into the Commission’s research for *An Analysis of the E.U. Repeal of the Liner Conference Block Exemption* (“E.U. Study”) which is scheduled to be completed in late 2011.

**DATES:** Responses are due on or before January 18, 2011.

**ADDRESSES:** Submit all comments concerning this Inquiry to:

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

Or email non-confidential comments to:

[secretary@fmc.gov](mailto:secretary@fmc.gov)

(e-mail comments as attachments in Microsoft Word)

**FOR FURTHER INFORMATION CONTACT:**

Dr. Austin L. Schmitt, Director  
Bureau of Trade Analysis  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-0001  
Telephone: (202) 523-5796  
E-mail: [aschmitt@fmc.gov](mailto:aschmitt@fmc.gov)

**SUPPLEMENTARY INFORMATION:**

**Submit Comments:** Non-confidential filings may be submitted in hard copy or by e-mail as an attachment (Microsoft Word) addressed to [secretary@fmc.gov](mailto:secretary@fmc.gov) on or before January 18, 2011.

Include in the subject line: “FMC EU Study – Response to NOI”. Responses to this inquiry that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as “confidential,” describes the nature and extent of the confidential treatment requested, and states the reason for the request (e.g., commercially sensitive data). When submitting documents in response to the NOI that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as “Confidential- Restricted,” with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, “confidential materials excluded.” Questions regarding filing or treatment of confidential responses to this inquiry should be directed to the Commission’s Secretary, Karen V. Gregory, at the telephone number or e-mail provided above.

The Federal Maritime Commission is seeking information and comments from interested parties regarding the impacts of the E.U. repeal of the liner conference block exemption, Regulation (EEC) No. 4056/86<sup>1</sup>, on the performance of liner shipping in U.S. trades. The adoption by the European Union of Regulation 1419/2006 (“Repeal”), on September 25, 2006, removed the previous block exemption from E.U. competition laws as of October 18, 2008. Under European Commission Regulation No. 906/2009, liner shipping consortia with market shares up to 30% retain an exemption for certain activities.

## **Background**

As the expert agency responsible for regulating liner shipping in U.S. trades, the Commission has an on-going responsibility to keep abreast of changes in foreign laws and regulations that may impact liner activities in U.S. trades. The Commission developed the E.U. Study as a means of meeting that responsibility, and of determining whether or not any impacts on U.S. trades that could be related to the E.U.’s Repeal warranted Commission action with respect to its existing regulations and oversight activities under the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998.

In doing so, the Commission was cognizant of recommendations made by the National Industrial Transportation League (“NITL”) to the Antitrust Modernization Commission (“AMC”) in their October 18, 2006 comments. NITL told the AMC that, in light of the E.U.’s repeal of the liner conference block exemption, it would be appropriate for the United States government to undertake a review of the antitrust immunity granted under the Shipping Act.

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<sup>1</sup> Regulation (EEC) No. 4056/86 included a block exemption from E.U. competition laws for liner shipping conferences, which allowed them, under certain conditions, to fix prices and regulate capacity.

NITL stated, in particular, that such a review should include an analysis of the impact that the changes adopted in Europe will have on the shipment of goods in U.S. trades.<sup>2</sup>

On November 23, 2009, in a public address to several industry groups, FMC Chairman Richard A. Lidinsky, Jr. announced the Commission's intention to undertake a comprehensive study of the impact of the E.U.'s repeal of the liner block exemption on U.S. trades. He noted that the E.U. study would cover a five-year period, from January 2006 through December 2010, and that it would include an analysis of changes in liner market structure, competition, services offered, vessel capacity, rates and surcharges. He also advised that the Commission staff was consulting key industry and customer groups concerning the parameters of the study, the proposed research methods, and the possibility of future interviews with industry representatives. Chairman Lidinsky declared that the Commission intended to publish a Notice of Inquiry ("NOI") in late 2010, and stressed the importance he attached to participation by the shipper community in both the E.U. Study in general and the proposed NOI in particular.

### **NOI Participation**

The Commission's research efforts, under the E.U. Study, are intended to support a detailed analysis of the impact of the E.U. repeal on U.S. trades. The Commission is currently collecting, and will be evaluating data and other information on the three main East/West trades during the pre- and post-repeal periods. The E.U. Study analysis will involve comparing changes in the E.U./U.S. trade lane (North Europe/U.S.)<sup>3</sup> over time and, to the extent that useful

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<sup>2</sup> See Comments Submitted on Behalf of the National Industrial Transportation League, by Attorneys Nicholas J. DiMichael and Karyn A. Booth, Thompson Hine LLP, October 18, 2006, page 9.

<sup>3</sup> The Europe/U.S. trades are typically separated into two sub-groups: (1) the North Atlantic trade, and (2) the Mediterranean trade. There has been no conference in the U.S./Mediterranean

comparative data is available, across two Asia-based trade lanes (Far East/U.S. and Far East/Europe). The NOI questions below -- several of which solicit information by specific trade lane -- are intended to help inform the Commission of the experiences and views of all industry sectors, groups and individuals willing to participate. It is anticipated that the comments provided could prove useful in the Commission's evaluation of the data it is currently collecting.

If participating respondents believe that there is a topic related to the issue of the impact of the E.U. repeal of the liner conference block exemption on U.S. liner trades that is not adequately addressed in the NOI questions, they are encouraged to identify and address that topic in their comments to the NOI.

To promote maximum participation by individual shippers, vessel-operating common carriers, ocean transportation intermediaries, public port authorities, marine terminal operators, etc., the NOI questions will be made available via the Federal Register and on the Commission's web-site at [www.fmc.gov](http://www.fmc.gov) in a downloadable text file. They can also be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523-5725 or by e-mail at [secretary@fmc.gov](mailto:secretary@fmc.gov). Please indicate whether you would prefer a hard copy or an e-mail copy of the NOI questions. Non-confidential comments may be sent to [secretary@fmc.gov](mailto:secretary@fmc.gov) as an attachment to an e-mail submission. Such attachments must be in Microsoft Word.

The Commission intends that the E.U. Study be as thorough as possible, and therefore encourages prospective NOI participants to address all relevant questions with detailed

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trade since February 2006. Consequently there was no conference for almost all of the 5-year test period (January 2006 – December 2010). Further, the U.S./Mediterranean trade involved a good deal of trans-shipment. For those reasons, the Bureau has decided to focus its U.S./Europe research on the North Atlantic trade.

comments. There is, however, no requirement that participants answer all the NOI questions. Participants, if they wish, are free to limit their responses to questions where they have direct experience or specific views. In addition, although many of the NOI questions are designed to elicit responses from a broad range of industry participants, the eight final questions are addressed specifically to vessel-operating common carriers.

The Commission anticipates that most filed NOI comments will be made publicly available. The Commission believes that public availability of NOI comments is to be encouraged because it could improve public awareness of the issues being addressed in the E.U. Study, and of the various perspectives of all interested parties. Nevertheless, some commenting parties may wish to include commercially sensitive information as relevant or necessary in their responses by way of explaining their liner shipping experiences or detailing their responses in practical terms. To help assure that all potential respondents will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

## FMC E.U. Study Notice of Inquiry Questions

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**Identifying Information** (Please provide the information requested below with your NOI response.)

**Name of Respondent:** (individual)

**Respondent's Title/Position:**

**Contact Information:** Telephone and E-mail

**Name and Address of Company or Other Entity:**

**Type of Company or Other Entity:**

Beneficial Cargo Owner (BCO)

Ocean Transportation Intermediary (OTI)

Shippers' Association

Vessel-Operating Ocean Carrier (VOCC)

Public Port Authority

Other, please describe (e.g., marine terminal operator, trade association, government agency, etc.)

### Section A: General Questions

1. Based on your experience *since September 2006* (when the European Union announced its decision to terminate the block exemption for liner shipping conferences to take effect October 2008), what impacts, if any, have you identified on your company's commercial activities, *in any trade lane*, that you would *attribute to the termination of the E.U. conference block exemption*? Please explain. If you believe there have been such impacts, please indicate when that impact first occurred.
2. Based on your experience *since October 2008* (when the E.U. exemption for liner conferences was terminated) has any class of shipper or class of vessel-operating common carrier received a competitive advantage or been put at a competitive disadvantage as a result of the E.U. decision to terminate the exemption? If so, please explain.
3. Based on your experience *since October 2008* (when the E.U. exemption for liner conferences was terminated), have differences between U.S. and E.U. liner shipping competition regulations created any problems for your company? If so, please explain.
4. Does your company view cooperation among ocean carriers in *operational agreements* (e.g., vessel sharing agreements, alliances, consortia, etc.) as generally having a positive, neutral or negative impact on the availability or cost of liner shipping services? Please explain. Does the E.U. market share threshold of 30% for such operational agreements have any effect with respect to that impact? If so, please explain.

## **Section B: Questions about the North Atlantic Trade (North Europe/U.S.)**

5. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involves international shipping in the North Europe/U.S. trade? Does your company's business involve US imports (westbound service) only, U.S. exports (eastbound service) only, or both? Please explain briefly.
6. How, and to what extent, did the recent economic recession (2008 – 2009) affect your company's liner shipping-related business in the North Europe/U.S. trade? Please explain.
7. Based on your experience *prior to* July 2008, when the Trans-Atlantic Conference Agreement (TACA) disbanded, did the existence of TACA have any impact on your liner shipping-related business in the North Europe/U.S. trade? If so, please explain.
8. Based on your experience in the period *from October 2008 to the present* (i.e., since the E.U. block exemption was terminated), has there been any significant change(s) in liner services in the North Europe/U.S. trade *that you attribute to the E.U. terminating the block exemption*? For example, changes in:
  - a. the level of freight rates and surcharges;
  - b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
  - c. the assessment of surcharges;
  - d. the level of competition among ocean carriers;
  - e. the service contracting practices or terms offered by ocean carriers;
  - f. the availability of vessel capacity and container equipment; or
  - g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please identify and explain those changes.

9. For CY 2010 to date, please estimate the percentage of your annual business (by volume) *in the North Europe/U.S. liner trade* that moved under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify). Has that changed significantly since October 2008? If so, please explain.
10. Following repeal of the E.U. block exemption, ocean carriers created a global information system under *Container Trade Statistics, Ltd.* (CTS) in which a majority of ocean carriers serving the North Europe/U.S. trade participate. CTS provides certain data free on its web site, including indices of the carriers' aggregated average revenue per TEU by month. CTS also sells other data. To what extent, if at all, does your company access and use CTS Europe/U.S. trade data, and (if it does so) for what purpose(s)?

## **Section C: Questions about the Transpacific Trade (Far East/U.S.)**

11. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involve international shipping in the Far East/U.S. trade? Does your



company's business involve U.S. imports (eastbound service) only, U.S. exports (westbound service) only, or both? Please explain.

12. How, and to what extent, did the recent economic recession (2008-2009) affect your company's liner shipping-related business in the Far East/U.S. trade? Please explain.
13. Based on your experience *from January 2006 to the present*, have the activities of the Trans-Pacific Stabilization Agreement (TSA) or the Westbound Trans-Pacific Stabilization Agreement (WTSA) had any significant impact on your company's liner shipping-related business in the Far East/U.S. trades? If so, please explain.
14. Based on your experience in the period *from October 2008 to the present*, have there been any significant characteristics of liner services in Far East/U.S. trades that you *attribute to actions taken by TSA or WTSA member lines acting collectively*? For example:
  - a. the level of freight rates and surcharges;
  - b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
  - c. the assessment of surcharges;
  - d. the level of competition among ocean carriers;
  - e. the service contracting practices or terms offered by ocean carriers;
  - f. the availability of vessel capacity and container equipment; and
  - g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please identify and explain those characteristics.
15. For CY 2010 to date, please estimate the percentage of your annual business (by volume) *in the Far East/U.S. liner trade* that moves under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify)? Has that changed significantly since October 2008? If so, please explain.

## **Section D: Questions about the Europe – Asia Trade (Far East/Europe)**

16. Approximately what percent of your company's freight earnings (lines, OTIs) or shipping expenses (shippers) involve international shipping in the Far East/Europe trade? Does your company's business involve European imports (westbound service) only, European exports (eastbound service) only, or both? Please explain briefly.
17. How, and to what extent, did the recent economic recession (2008-2009) affect your company's liner shipping-related business in the Far East/Europe trade? Please explain.
18. Based on your experience *prior to October 2008* (i.e., before the Far East Freight Conference (FEFC) disbanded), did the existence of FEFC have any impact on your liner shipping-related business in the Far East/Europe trade? Please explain.
19. Based on your experience in the period *from October 2008 to the present* (i.e., since the E.U. block exemption was terminated), has there been any significant change(s) in liner services in

the Far East/Europe trade *that you attribute to the E.U.'s ending of the block exemption?* For example, changes in:

- a. the level of freight rates and surcharges;
- b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
- c. the assessment of surcharges;
- d. the level of competition among ocean carriers;
- e. the service contracting practices or terms offered by ocean carriers;
- f. the availability of vessel capacity and container equipment; and
- g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please identify and explain those changes.

20. For CY 2010 to date, please estimate the percentage of your annual business (by volume) *in the Far East/Europe liner trade* that moved under (a) annual (or longer) service contracts, (b) shorter-term freight agreements, (c) spot rates, and (d) other (please specify)? Has that changed significantly since October 2008? If so, please explain.

21. Following repeal of the E.U. block exemption, ocean carriers created a global information system under *Container Trade Statistics, Ltd. (CTS)*, in which a majority of ocean carriers serving the Far East/Europe trade participate. CTS makes certain data free on its web site, including indices of the carriers' aggregated average revenue per TEU by month. CTS also sells other data. To what extent, if at all, does your company access and use Far East/Europe trade data, and (if it does so) for what purpose(s)?

## **Section E: Comparisons Among Trades**

22. Based on your experience since October 2008 (since the E.U. block exemption was terminated) are there differences in the characteristics of the Far East/U.S. trade versus the Far East/Europe or North Europe/U.S. trades that you attribute to differences between U.S. and European liner competition regulations? For example, differences in:

- a. the level of freight rates and surcharges;
- b. the frequency with which rates or surcharges are adjusted upward or downward (rate volatility);
- c. the assessment of surcharges;
- d. the level of competition among ocean carriers;
- e. the service contracting practices or terms offered by ocean carriers;
- f. the availability of vessel capacity and container equipment; and
- g. the level or quality of liner services (including customer service, billing accuracy, etc.)

If so, please explain those differences.

23. Please identify any significant similarities and dissimilarities (for example, cargo volumes, scope or scale of operations, shipper mix, geography, market concentration levels, contracting practices, legal requirements, etc.) that existed in liner shipping markets in the (1) Far East/U.S. trade and the (2) Far East/Europe trade during the period 2006-2010. In your opinion, how (if

at all) would those similarities and dissimilarities likely impact a comparison of liner pricing and service behavior across those two trades?

## Section F: Additional Questions for Vessel-Operating Common Carriers

### FOR VOCCs ONLY:

24. Please estimate the percentage of your liner revenues (globally) that were earned in each of the following trade lanes during CY 2010 to date:

- |                                      |       |
|--------------------------------------|-------|
| a. North Europe/U.S. liner trade     | ___ % |
| b. Far East/U.S. liner trade         | ___ % |
| c. Far East/Europe liner trade       | ___ % |
| d. All other liner trades            | ___ % |
| e. Total (all liner trades combined) | 100 % |

If those percentages changed significantly during the 2006 through 2010 period, please describe and explain the change.

25. In each of the three major East-West trades, please estimate the percent of cargo your company carried for beneficial cargo owners (BCO) accounts, (b) OTI accounts, (c) other accounts (if any, please explain) during CY 2010 to date:

- |                                  | BCO  | OTI  | Other |
|----------------------------------|------|------|-------|
| f. North Europe/U.S. liner trade | ___% | ___% | ___%  |
| g. Far East/U.S. liner trade     | ___% | ___% | ___%  |
| h. Far East/Europe liner trade   | ___% | ___% | ___%  |

Has the relative ranking of shipper types in these trade lanes changed significantly during the 2006 through 2010 period? If so, please describe and explain the change.

26. In each of the three major East-West trade lanes, please indicate which lanes have tended to be the relatively most profitable and which was the relatively least profitable for each year between 2006 and 2010 (inclusive). [Write *M* for most, and *L* for least.]

- |         | Far East/U.S. | Far East/Europe | North Europe/U.S. |
|---------|---------------|-----------------|-------------------|
| a. 2006 | _____         | _____           | _____             |
| b. 2007 | _____         | _____           | _____             |
| c. 2008 | _____         | _____           | _____             |
| d. 2009 | _____         | _____           | _____             |
| e. 2010 | _____         | _____           | _____             |

If those rankings changed significantly during the 2006 through 2010 period, please explain the reason(s) for the change.

27. Based on your experience during the period *from January 2006 to the present*, have there been any significant changes in the nature of your business in the *North Europe/U.S.* liner shipping market related to *changes* in:
- a. Seasonality of cargo movements;
  - b. Commodity values;
  - c. Directional cargo imbalances (imports vs. exports);
  - d. Number of carriers serving the trade; or
  - e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

If so, please identify and explain those changes.

28. Based on your company's experience in the *North Europe/U.S.* trade, please identify any substantial changes that occurred in your liner business (operations, marketing, pricing, etc.) in the two years following repeal of the E.U. liner conference exemption (CY 2009 and 2010) as compared with the two years preceding the repeal (2006 – 2007)? If any, please explain.

29. Based on your experience during the period *from January 2006 to the present*, have there been any significant changes in the nature of your business in the *Far East/U.S.* liner shipping market related to *changes* in:
- a. Seasonality of cargo movements,
  - b. Commodity values
  - c. Directional cargo imbalances (imports vs. exports)
  - d. Number of carriers serving the trade; or
  - e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

If so, please identify and explain those changes.

30. Based on your experience during the period *from January 2006 to the present*, have there been any significant changes in the nature of your business in the *Far East/E.U.* liner shipping market related to *changes* in:
- a. Seasonality of cargo movements;
  - b. Commodity values;
  - c. Directional cargo imbalances (imports vs. exports);
  - d. Number of carriers serving the trade; or
  - e. Minimum scale (# and size of vessels) needed to serve the trade efficiently

If so, please identify and explain those changes.

NOW THEREFORE, it is ordered that Notice of this Inquiry be published in the Federal Register.

By the Commission.

Karen V. Gregory  
Secretary