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August 22, 2005

Deborah A. Garza, Chair
Jonathan R. Yarowsky, Vice Chair
Antitrust Modernization Commission
Attn: Public Comments
1120 G Street, N.W.
Suite 810
Washington, D.C. 20005

Re: Supplemental Comments on Behalf of World Shipping
Council

Dear Ms. Garza and Mr. Yarowsky:

The World Shipping Council ("WSC") filed comments with the Commission on July 15, 2005. WSC requests leave to file this supplemental letter in order to reply to comments submitted to you by the Intermodal Motor Carriers Conference (IMCC) on July 15, 2005. To ensure that the Commission has an accurate record on which to make its findings and recommendations, we are writing to correct some erroneous statements in the IMCC submission. The IMCC comments focused on the Shipping Act of 1984, as amended, which was also the subject of the comments filed by WSC.

The IMCC suggests that the antitrust exemption provided under the Shipping Act is used by ocean carriers to collectively set rates paid to U.S. truckers for international shipments to and from points in the United States. This is legally and factually incorrect, and no revisions to the law are needed to address this point.

Agreement on the rates to be paid to inland carriers, defined as the "inland divisions" of a through rate, is already prohibited by the statute. See 46 App. U.S.C. 1706(b)(2). It is true, as IMCC notes, that the Shipping Act antitrust exemption does permit ocean carriers to reach agreements on intermodal rates charged to ocean carrier customers, referred to as the "inland portion" of a through rate. However, the rates charged to customers are a wholly separate matter from what each ocean carrier pays to its inland transportation trucking subcontractor. Ocean carrier agreements established

under the Shipping Act may not and do not discuss or set rates paid to truckers. Those rates are negotiated between individual ocean carriers and individual truckers.

It would appear that the IMCC's core concern is with the intensely competitive marketplace that exists in U.S. intermodal trucking. U.S. motor carriers are indeed facing significant economic and operational challenges at the moment, but this has nothing to do with antitrust immunity granted to ocean carriers. Rather it is a function of commercial factors -- an overstressed road infrastructure, low barriers to entry, rising fuel prices, and supply and demand factors for trucking services.

Moreover, in the absence of Shipping Act antitrust immunity, the occurrence of extreme and sudden rate declines that have historically characterized liner shipping would exacerbate the IMCC's economic concerns: lower ocean freight rates would logically lead to more cost pressures on ocean carriers' vendors. Thus, the Shipping Act, if anything, mitigates the types of concerns raised by IMCC.

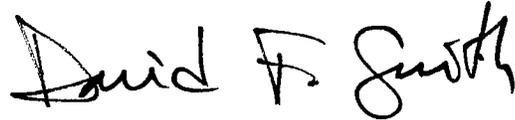
IMCC's reference to the West Coast Marine Terminal Operator (MTO) Agreement is puzzling at best. At the insistence of California state legislators, and under threat that the program would be legislatively mandated, marine terminals in the Los Angeles area, with the support of the public port authorities and a broad based coalition of America's importers, collectively adopted a proposal to open marine terminals at night to relieve serious daytime highway and port traffic congestion. This was an extraordinarily complicated public/private effort requiring extensive cooperation by all industry stakeholders. The MTO effort was accomplished pursuant to an agreement filed with the Federal Maritime Commission. In fact, this program is a good example of the use of the Shipping Act antitrust exemption to respond to and accomplish an important public objective. No charges are assessed against motor carriers under the program, which was intended to reduce Southern California road, port and terminal congestion, and which is succeeding in helping meet this important community objective.

Finally, the description of the Shipping Act's legislative history is factually inaccurate. The IMCC states that authority to set "store door" rates (also referred to as "through intermodal rates" to or from U.S. inland locations) "was inserted in OSRA in 1998 just prior to passage of the Act, with no debate, analysis and no committee report." In fact, there was no discussion of intermodal rate authority in 1998 because Congress had added that authority, after extensive debate, 14 years earlier, when it was a key element of the Shipping Act of 1984. Also, Congressman Hyde's proposed 1999 and 2001 legislation was neither enacted nor reported out of committee.

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Motor carriers face real challenges in the current competitive environment. However, revision of the Shipping Act antitrust exemption has nothing to do with these problems. In fact, if anything, repeal would exacerbate them.

Very truly yours,

A handwritten signature in black ink that reads "David F. Smith". The signature is written in a cursive, slightly slanted style.

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cc: Intermodal Motor Carriers Conference