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U.S. SHIPPERS ASSOCIATION

U.S. Department of Commerce
Export Trading Company
Certificate 85-5A018
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Deborah A. Garza, Chair
Jonathan R. Yarowsky, Vice Chair
Antitrust Modernization Commission
1120 G Street, NW
Suite 810
Washington, DC 20005

Reference: Federal Register, Antitrust Modernization Commission, May 19, 2005.

Dear Ms. Garza and Mr. Yarowsky:

On behalf of U.S. Shippers Association (USSA), I am responding to the above notice requesting comments on issues being studied by your Commission. The USSA supports the continuation of the Export Trading Company Act and strongly urges that the Commission recommends to the President and Congress continuation of the Export Trading Company Act with no added limitations.

ABOUT U.S. SHIPPERS ASSOCIATION (USSA)

USSA was formed twenty years ago with three members: FMC Corporation, Olin Corporation (now Arch), and Stauffer Chemical Company (now Rhodia). It has since grown to twelve members: Air Products and Chemicals, Inc, AKZO Nobel Chemicals, Inc, AMCOL International Corporation, Arch Chemicals, Inc, Basell USA, Inc., BayerCrop Science, FMC Corporation, KRATON Polymers U.S. LLC, Pecten Chemicals, Inc. (Shell Chemicals export arm), Resolution Performance Products LLC, Rhodia, Inc., and Solvay Chemicals, Inc.

The USSA purchases ocean freight for shipment of containers utilizing the volume that members are willing to place under USSA contracts. USSA exists to make our members more competitive in the global markets by keeping their ocean freight rates low.

The USSA members exported 30,000 TEU's (a TEU is a twenty foot equivalent container) through USSA contracts in 2004, with an estimated sales value of

exports exceeding **\$1 billion**. USSA members have offices throughout the entire United States and export from 100 locations in 28 states, from California to New York.

VALUE OF ASSOCIATION SERVICES TO EXPORTERS

In the ocean freight export business, manufacturers, which make up the membership of USSA, are small compared to the carriers. In addition, carriers are protected by talking agreements which allow them to jointly announce general increases and various surcharges. Our association accounts for a relatively small part of total U.S. export sales. As individual companies, no USSA member would be in the top 100 container exporters.

Our association size is sufficient to make us attractive to carriers, but the most important services we offer to obtain attractive ocean shipping rates are: 1) knowledge of the ocean shipping industry and trends, 2) contacts by members and staff with carrier staff, 3) more contracts than any one member could justify on their own, and 4) thousands of origin/destination ocean rates that an individual member may only occasionally need.

We also have a computer system that help our members in the complicated task of determining the total ocean freight cost with surcharges and frequent adjustments that carriers impose. The system also helps determine the total rates of alternative carriers. It is doubtful if any individual member could afford this valuable computer system.

As members join our association, they see significant reductions in ocean rates, and they find our computerized contract management system of considerable value.

IMPORTANCE OF OCEAN FREIGHT RATES IN EXPORTING

Ocean freight rates hold tremendous importance for our members' market entry and exit decisions. Our members have reported that they have been able to go into various export markets as a result of obtaining attractive rates and have had to withdraw products from some export markets because of increases in ocean freight rates.

For example, some of our members were able compete with foreign producers in exporting to the East Coast of South America as a result of lower ocean freight rates. We have gained and lost export business to Africa as a result of ocean freight rate changes. A few years ago, some members were no longer able to supply the West Coast of South America due to the increase of ocean freight rates. A member captured export business to Viet Nam as a result of lower ocean freight rates.

ANTITRUST RESTRICTIONS UNDER THE CERTIFICATE

The biggest benefit of the certificate is that it helps level the "playing field" with foreign competitors who are not faced with treble damages in civil litigation and are not faced with many of the antitrust limitations that U.S. manufacturers face. The certificate greatly reduces the risk of costly frivolous civil litigation. At the same time, the domestic antitrust concerns of our government are clearly addressed.

While the certificate provides for **limited antitrust "immunity,"** it also places a number of the restrictions on our association. In our case, the joint purchase of export services by our association is permitted by the certificate. However, members and the association cannot engage in activities that would raise antitrust concerns. (For a detailed list of these restrictions see APPENDIX A) In order to be sure our members fully aware of these restrictions, we review the limitations placed on our association by the Export Trade Certificate at each meeting.

Since antitrust action by litigation or even investigation can be very costly to companies involved, the member companies' legal departments want assurance that the association is not risking antitrust litigation at an unacceptable level, and this certificate gives them that assurance by indicating that the Department of Justice and the Department of Commerce have reviewed and set limits on activities that may be undertaken by the association. The certificate makes frivolous civil antitrust action less likely without becoming an instrument for circumventing legitimate antitrust concerns.

There is considerable information voluntarily provided by the certificate holder to the Department of Justice and the Department of Commerce on the association activities that would not be readily available to them without a certificate. We believe that this oversight and the certificate restrictions help prevent antitrust behavior by thoroughly informing members of the restrictions and by member and staff "policing" to protect the certificate.

WITHOUT A CERTIFICATE

The USSA is unlikely to continue to exist without an Export Trade Certificate. It would be more difficult to add members to the organization, and without growth beyond where we are now, survival is doubtful. Some existing members would probably depart.

Alternatively, a restructuring of the USSA would not be as effective. It is the broad membership participation that provides us with more contacts in carrier organization and that provides us with understanding of what is happening in the ocean shipping industry. The members convey their individual needs directly to the carriers, and this definitely impacts our ability to satisfy the member business

needs. As a third party representative, we doubt that it would be possible to obtain the ocean rates and service we now enjoy under the Export Trade Certificate.

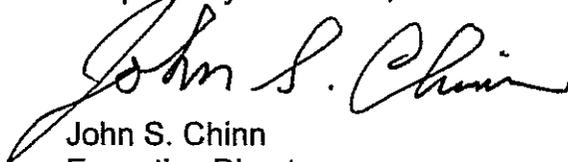
SUMMARY

The value of the Export Trade Certificate lies in our association's ability to negotiate ocean freight contracts, making our U.S. manufactured products more competitive with foreign producers who are not faced with the same types of antitrust concerns that exist in the U.S. The certificate is pro-competitive and efficiency generating on a global basis, and in this way, it is beneficial to the U.S. economy, international trade balance, and U.S. employees.

- Our association provides a valuable service to members in helping them on their export activities by providing carrier contacts, assisting members resolve carrier issues, sharing information on the trends in the ocean container industry, jointly negotiating contracts, providing more contract alternatives than any individual member would develop, and providing a computerized contract management system to handle complex ocean contracts.
- Export carrier services are heavily concentrated while our members individually and even collectively have a small share of the export market. This makes negotiations with carriers difficult for the buyers, making our association all the more relevant.
- USSA is heavily dependent upon the Export Trade Certificate to provide these services while assuring member companies' legal departments that the association is not involved in activities that will create unacceptable risk of an antitrust action. Our certificate is not a way around antitrust laws, but it clearly defines and limits our activities within antitrust laws and makes those activities transparent to the outside.

We believe that eliminating the Export Trade Certificate program will have no benefit to our economy or the global economy, and elimination can only have negative U.S. economic consequences. For these reasons, we support the continuation of joint export trade laws including the Export Trading Company Act and the Webb-Pomerene Act.

Respectfully submitted,



John S. Chinn
Executive Director

**U.S. SHIPPERS ASSOCIATION
EXPORT TRADE CERTIFICATE LIMITATIONS
APPENDIX A**

USSA and Members shall not use USSA to collude on the domestic supply or price of any product and shall not use USSA to reach agreements among themselves as to their respective export volumes of any product.

No individual on the USSA Operating Committee shall have any responsibility for the domestic (i) production, (ii) pricing, or (iii) marketing of any Member or of any competitor of a Member.

No individual engaging in any activity involving USSA shall intentionally disclose to any Member or to any competitor of a Member, directly or indirectly, any information about a Member's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

Each Member shall determine independently of any other Member the quantity of Products the Member will make available for export through USSA.

USSA may not solicit from any Member specific quantities of specific products for export or require any Member to export any minimum quantity of products. This provision is not intended to preclude USSA from soliciting increases in the aggregate volume of Transportation Services contracted for in the context of any particular negotiation.

Company-specific information on anticipated volumes to be exported through USSA shall be exchanged only to the extent reasonably necessary to negotiate for and to procure Transportation Services. To the extent such information is exchanged, no Director who has responsibility for domestic (i) production, (ii) pricing, or (iii) marketing of any Member or of any competitor of a Member shall have access to such information.

Product-specific information on anticipated volumes to be exported through USSA shall be exchanged only to the extent reasonably necessary to negotiate for and to procure Transportation Services and only at the request of a carrier or conference or in reasonable anticipation of such a request. To the extent such information is exchanged, no Director who has responsibility for domestic (i) production, (ii) pricing, or (iii) marketing of any Member or of any competitor of a Member shall have access to such information.

No individual who has received information as allowed by the two paragraphs above shall disclose such information to any individual who has responsibility for domestic (i) production, (ii) pricing, or (iii) marketing of any Member or of any competitor of a Member.