



12 October 2020

The Ports Regulator  
Suite 1101  
The Marine  
22 Dorothy Nyembe Street  
Durban  
4001

Per email: [comments@portsregulator.org](mailto:comments@portsregulator.org)

Dear Sirs

**SUBMISSIONS IN RESPECT OF TRANSNET NATIONAL PORT AUTHORITY ("TNPA") 2021/22 TARIFF APPLICATION : DEFINITION OF COASTWISE CARGO EXCLUDING WALVIS BAY AND LUDERITZ**

We refer to the correspondence received from your Ms Jowie Mulaudzi indicating that submissions in respect of the TNPA's 2021-22 tariff application are required by 30 September 2020, which point the Regulator to factors that it must consider in making its decision on the TNPA tariff for the 2021 financial year. These are those submissions.

Ocean Africa Container Lines ("OACL") is a division of Grindrod (South Africa) (Pty) Ltd, a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, which has its registered address at 2<sup>nd</sup> Floor, Grindrod Mews, 106 Margaret Mncadi Avenue, Durban and carries on business from 5<sup>th</sup> Floor, Grindrod House, 108 Margaret Mncadi Avenue, Durban.

OACL provides, inter alia, a fortnightly coastal shipping service including the following ports: Beira, Durban, Port Elizabeth, Cape Town, Luderitz, Walvis Bay, Namibia, Cape Town, Durban, Maputo and Beira. Not only do we carry cargo of our own customers to those ports but also feed cargo from various of the South African ports mentioned for the following ocean carriers: CMA CGM S.A., Ignazio Messina & C., Safmarine, Ocean Network Express Pte. Ltd and Deutsche Afrika-Linien. We are the only dedicated feeder operator for South Africa for main line carriers.

We set out below a brief history of what transpired in the years 2017, 2018, 2019 and 2020 below. On 31 March 2017, a string of communication commenced between Ester Claassen (then National Account Manager, Customer Relationship Management, TNPA and now Senior Key Accounts Manager, Customer Relationship Management, TNPA) and our Mr Poovan Naidu pertaining to the 2017/18 TNPA tariff in which the issue of cargo dues as it related to cargo to and from Walvis Bay and Luderitz arose. We attach herewith marked "A" that string of correspondence in date order, which is self-explanatory. It will be noted that on 20 April 2017, we were advised that the Tariff office of the TNPA had "... removed Namibia as a coastal." This was most surprising, given that hitherto it had always been the case that Walvis Bay and Lüderitz were **included** as a coastal. Your records will show that historically the definition of "coastwise cargo" for purposes of the tariff book had always been defined and understood to mean cargo moving by sea between South African ports, including Walvis Bay and Luderitz. We immediately pointed out in our response on the same day that we, being Ocean Africa Container Lines, were the only *bona fide* coaster carrier in the region, querying the removal referred to and providing a brief justification as to why Walvis Bay and Luderitz should be reinstated in the definition of "coastwise cargo".

There followed over the next two months a number of reminders from us querying the situation until on 19 June 2017, we were advised that the issue had been taken to you for review and that the situation would likely be reversed so that Walvis Bay and Luderitz was again included in the definition of "coastwise cargo". We were subsequently told and noted that the tariff approved by you reverted to the same definition of "coastwise cargo" as the previous years, which included cargo to and from both Walvis Bay and Luderitz. In its response, the TNPA never queried our justification as to why Walvis Bay and Luderitz should be included – on the contrary, by reverting to the original position, we understood that the TNPA must obviously have accepted the soundness of that justification.

Against that background we believed that the 2017/18 issue had been corrected by the TNPA going forward as a once-off mistake or anomaly. We further believed that the TNPA accepted – as it had previously in every other tariff period – the obviously important reasons for including Walvis Bay and Luderitz in the definition of "coastwise cargo" (which we set out in detail below). Having been informed of the TNPA's correction of the 2017/18 tariff, we had no reason to think that the issue would re-arise at all, and certainly not without proper notice to us. We acted on that basis given our communications relating to this issue and the fact that TNPA had corrected the 2017/18 anomaly in response to our queries, and we expected – given that we were the carrier most affected and whose customers would be most affected by such an amendment, a fact that the TNPA could be in no doubt about – that if the long-standing inclusion of Namibia were ever to be changed, that would only be done by bringing such a change directly to our attention.

To our surprise, we discovered that despite its correction of the anomaly of 2017/18, the issue had arisen again in respect of the 2018/19 tariff. It was not specifically brought to our attention at all during or after the TNPA's 2018/19 tariff application or the TNPA's presentation on the tariff application roadshow presentation.

The first time we became aware of the issue having resurfaced was on or about 29 March 2018, after receipt of an electronic version of the 2018/19 tariff. Upon our perusal thereof we noticed that Walvis Bay and Luderitz had been excluded from the definition of coastal – with no apparent justification for the reversal of their long-standing inclusion. We immediately raised this with Ms Claassen who responded on 3 April 2018 and advised "... that Namibia is no longer considered coastal," without any reasons being provided to explain why the change had occurred. A copy of the relevant correspondence string is attached marked "B". She referred our Mr Poovan Naidu to Pule Mothiba, Pricing Manager of the TNPA, and Mr Naidu discussed the situation with him either the same or the following day. Following on that call, Mr Naidu then called your Mr Chris Lotter on around 4 or 5 April 2018, who advised that we make submissions to you on the trade impact of the removal of Namibian ports from the definition of "coastwise cargo".

We subsequently sought the assistance of our lawyers and a maritime economist in order to ensure that we proceeded correctly and provided the information and analysis you required. On 30 April 2018, we submitted the information and analysis required and requested that you reconsider the definition of "coastwise cargo" as reflected in the 2018/19 tariff to revert to the definition as finally approved for the 2017/18 tariff as follows-

"Coastwise cargo" means cargo moving by sea between SA ports, including Walvis Bay and Luderitz, provided that both the country of origin and destination is SA or Namibia."

We were subsequently advised by your office at a roadshow held in 2018, that the definition of "coastwise cargo" would not be amended in the 2019/20 tariff to include Walvis Bay and Luderitz but that due to the volume of cargo moved by OACL and considering that OACL are the only *bona fide* coaster carrier in the region, that in respect of the 2019/20 financial year, OACL would be granted a leniency and given the benefit of the definition of "coastwise cargo" as finally approved for the 2017/18 tariff, which included Walvis Bay and Luderitz. Given the fact that the TNPA applied to amend the definition of "coastwise cargo" to include Namibia in the tariff for the 2020/21 year, OACL did not make independent submissions in that regard but as the Ports Regulator rejected that proposed amendment, it is now necessary to make these submissions.

We hereby request that you reconsider the definition of “coastwise cargo” as reflected in the 2021-22 tariff application to revert to the definition as finally approved for the 2017/18 tariff and in respect of which a leniency was granted for the 2019/20 tariff. We do so against the background of the following information and analysis.

We attach herewith marked “C” schedules of cargo volumes moved by us to and from Walvis Bay for different customers during the year 2019 which makes obvious the very severe impact upon our business of the 2021/22 tariff.

From a transport economics perspective, the removal of Namibian cargoes from the definition of “coastwise cargo” has both microeconomic consequences that impact adversely on regional transport costs and shippers’ modal choice, and broader strategic consequences that impact adversely on the economic viability of the integrated coastwise carriage of goods between South African ports, and between those ports and neighbouring ports in Southern Africa.

In terms of direct cost consequences, the immediate impact is on the level of cargo dues paid by cargo owners moving goods between South African and Namibian ports, and particularly between the ports of Walvis Bay and Durban. Both westbound and eastbound cargo flows will be affected adversely, but the sharpest impact is on the eastbound or import leg from Walvis Bay to Durban, where the removal of Walvis Bay as a “coastal” port would serve to raise cargo dues from R78.67 to R1975.18 per TEU, or some 25-fold (or 2,511%), in terms of tariff levels proposed in the 2021/22 TNPA Tariff Application. This represents a tariff “spike” of very substantial proportions and it may be noted that the Regulator’s March 2020 revision of its Tariff Strategy document, which lays out the conceptual foundations for longer-term changes in tariff arrangements, draws particular attention to the adverse consequences of significant, non-marginal tariff changes. Indeed, the revised Tariff Strategy notes (page 23) that ‘(d)ue cognisance will be taken by the Regulator regarding annual circumstances in order to ensure that large tariff spikes to any particular user group is avoided’.

The context of the Regulator’s concern in this regard is the longer-term evolution towards a more optimal set of South African port prices, which are also associated with real reductions rather than real increases in cargo dues attracted by containerised cargoes, and not on the specific circumstances of coastal and regional carriage of goods by sea, but the impact on this group of users will be substantial. The removal of Namibian ports and cargoes from the definition of “coastal” will have the effect of increasing consolidated transport costs, net of ocean freight rates, by approximately 34%. These cost increases cannot be absorbed by OACL, and hence will serve to increase total distribution costs to end users. The traffic base of dry cargoes carried between South African and Namibian ports is also dominated by relatively low-value commodities (predominantly salt in the case of eastbound cargoes from Walvis Bay to Durban, and sugar in the case of westbound cargoes from Durban to Walvis Bay), and for these kinds of cargoes, transport costs, including port charges, constitute a significant proportion of final user costs, and this renders these cargoes vulnerable to competition from land-based transport that does not attract the equivalent of cargo dues. The most adverse consequence of such an overall increase in through-transport costs would be the diversion of this cargo from sea to road – a very significant impact upon an already over-burdened road infrastructure and without apparent regard to the duty of co-operative governance mandated under section 41 of the Constitution. This consequence, and the failure of co-operative governance, would serve the interests neither of OACL, nor of the TNPA, which would lose cargo dues’ revenue, and nor would it be consistent with broader transport efficiency in the sub-continent and on South African roads, a matter that would be of concern to the Minister of Transport.

The higher cargo dues also find little principled justification in terms of microeconomic efficiency. In its 2015 and revised March 2020 Tariff Strategy documents, the Regulator embraces the principle of “cost orientation” as a guiding tariff-setting principle. This requires that the South African ports be priced “according to the underlying cost of the service (or function) provided”, which in the case of cargo dues is the broad cargo-working and marine infrastructure of the ports concerned. Further, the Tariff Strategy acknowledges pricing at marginal cost as the first-best pricing rule to follow, but that challenges in measuring marginal costs in a ports’ context make average cost pricing the most practicable pricing basis. On either basis, it is difficult to find a principled foundation to support the kinds of variances that are embodied in the 2021/22 Tariff Application with regard to homogeneous cargo units (standard

freight containers) on the same vessel at the same time and handled in the same berth or terminal, but destined for or originating from a Namibian as opposed to a domestic coastal port. As an example, a vessel sailing from Walvis Bay to Durban with an intermediate call in Cape Town arrives with a mix of Walvis Bay and Cape Town cargo for discharge. From a port cost perspective, there is no difference in the “underlying cost of the service provided” to the Walvis Bay containers as opposed to the Cape Town containers, and hence no cost-based justification for the wide tariff differentials in the proposed 2021/22 tariff. Such an irrational differential has already been criticised by the Ports Regulator in the *Columbus* matter.

The considerations of microeconomic port pricing efficiency justify a reconsideration of the definition of “coastwise cargo” in the 2021/22 Tariff Application in their own right. The need for such a reconsideration is, however, sharpened by the broader strategic dimensions that surround the coastal and regional trades. In the broad panoply of proposed maritime transport policy instruments that have been identified in the Comprehensive Maritime Transport Policy (“CMTP”) for South Africa, coastal shipping and coastwise traffic has been identified as the first strategic target for greater participation by a South African shipping industry. This is further embodied in the draft Merchant Shipping Bill, notably in Part Three of Chapter Three of this Bill. The traffic base of domestic coastwise sea transport in South Africa, notably in the market for general cargoes (which are the relevant cargoes here), is relatively small. Cargo flows are also markedly imbalanced, with higher volumes on westbound voyages from Durban, and with vessels generally returning eastbound with considerable spare capacity. Any cargo sources that mitigate these imbalances consequently bolster the overall coastal/regional traffic base. The major point to make from this is that the coastal sea trades are inextricably bound up with the adjacent regional trades, within which the Namibian trades are paramount, most notably in respect of cargoes that improve load factors on return voyages to South Africa. It would not be economically viable to mount a dedicated liner service only between South African ports and Walvis Bay or *Luderitz*, *without uplifting domestic coastal cargoes en route, and by extension any cargoes carried to or from Namibian ports improve the consolidated regional cargo base, and increase the viability of the coastal-cum-regional trades. Under these circumstances, any intervention that reduces the availability of cargo on these strategic and strongly interdependent trades, weakens their consolidated traffic base and reduces their potential viability. A non-marginal increase in the cargo dues attracted by Namibian cargo constitutes just such an intervention, and it is manifestly not in the long-term strategic interests of robust coastal and near-water shipping.*

In the circumstances, we respectfully request that you consider these submissions and that you reconsider the definition of “coastwise cargo” as reflected in the 2021/22 tariff application to revert to the definition as finally approved for the 2017/18 tariff.

The annexures (A to C) referred to in the submissions can be accessed by clicking on the following link <https://www.dropbox.com/sh/3bxbvrlmrf9fouc/AADqg8cUz1GRrM-by6d2G0JJa?dl=0> as the size of the one attachment may prevent it from being sent via email.

Should you require any further information or analysis, please let us know.

Yours faithfully

## **OCEAN AFRICA CONTAINER LINES**

Kesh Naidoo

Trade Executive