

# Memorandum

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FEDERAL MARITIME COMMISSION

**TO** : Bryant VanBrakle

**DATE:** December 5, 2003

**FROM** : Steven Najarian, Counsel to Commissioner Joseph E. Brennan

**SUBJECT** : Summary of Oral Presentation; P5-03, Petition of National Customs Brokers and Forwarders Association of America, Inc.

By an order of November 13, 2003, the Commission determined to permit interested persons to make oral presentations to individual commissioners in the proceeding P5-03, Petition of National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984.

The order required that a summary or transcript of any oral presentation be included in the record and submitted to the Secretary of the Commission within five days of the presentation.

On December 2, 2003, Commissioner Brennan met at 800 North Capitol Street, NW at 12:00 noon with the following persons regarding P5-03:

Juerg Bandle, Senior Vice President, Kuehne & Nagel, Inc.  
Lisa R. Domingo, PIX Line Manager, PIX Line  
Edward D. Greenberg, Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C.  
J.H. Kent, Kent & O'Connor  
Bill McInerney, Chief Executive Officer, Phoenix International Freight Services, Ltd.

The oral presentation had been scheduled at the request of Edward Greenberg.

The presenters made the following points:

The presenters have met with other commissioners of the FMC. The presenters had not realized that a procedure for meeting one-on-one with commissioners was possible. They are pleased that the Commission has made this uncustomary process available.

The NCBFAA has filed a petition with the FMC and will file comments in January which respond to other filed comments and flesh out other issues.

The steamship lines think that the NCBFAA petition is a bad idea.

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Approximately 50 NVOs submitted comments to the NCBFAA regarding the issues raised in the exemption petition. It is usually difficult to motivate NVOs to file verified statements. The fact that 50 did so shows the depth of the NVOs' feeling that it is time for a change.

The industry has changed since the issues raised in the petition last came up. The NCBFAA was opposed to an exemption for NVOs 10-12 years ago. The industry was split on this issue in the early 1990s when FIATA filed a petition with the FMC. The Commission denied that petition on a split vote.

OSRA has changed things. Now we have a system of contract carriage, not common carriage. This is true even for NVOs. Rates are negotiated. There are auctions and bids online. Shippers do not look at tariffs, as the filing of the National Industrial Transportation League will show in January. There is no need to consult tariffs online. There are numerous other sources of market information. One can use the telephone, consult with personal contacts, or compare rate quotes.

Tariff publishing serves no purpose. It is anachronistic, costly make-work. There are only political reasons for the tariff-publication requirement.

The amendment of Sen. Slade Gorton was defeated, but the legislative history of OSRA has nothing to do with the NCBFAA petition, which seeks an exemption from tariff publication. The standard for exemption under section 16 has been met. The exemption would be pro-competitive and not harmful to the industry.

The NCBFAA supports the petitions of UPS and other NVOs, as long as the requested exemptions are not limited to those companies. There should not be a "balance sheet" test for an exemption.

Tariff publication places a considerable financial burden on NVOs. Based on an estimate of five minutes per transaction, tariff maintenance costs rise as high as \$105,000 per year. The cost is approximately \$47,000 more per year when employee salaries are factored in. These estimates apply to outbound transport only.

The cost of tariff maintenance takes a large bite out of gross profits.. The NVO business has a very small margin. No NVO charges its customers for the cost of tariff publication.

The NVOs employ persons who deal with RFQs (request for quote) only.

Generally ocean freight represents 10 percent of the cost of a good.

The range-rate alternative suggested in the NCBFAA petition is not the preferred approach. If used, the rates in the range have to be meaningful and not too narrow. The

NCBFAA will address the range-rate idea further in a January filing. It is not optimistic that it can develop a meaningful range. The ocean common carriers may support the idea of range rates.

The interest of organized labor and the ocean common carriers as to the NCBFAA petition is not apparent. The OCCs already know the service contract rates between OCCs and NVOCCs. The OCCs do not have a legitimate interest in whether or not NVOCCs publish a tariff.

The rules tariffs could remain. The requested exemption applies to rate tariffs only.

Commenters have stated that shippers need access to rules tariffs. In fact, OCCs use rules tariffs against shippers as a means of charging more at the end of the day. Service contracts typically allow the OCC to add surcharges. OCCs incorporate tariffs by reference in service contracts.

Commissioner Brennan stated that the Commission remains open-minded as to the issues raised in the NCBFAA petition and has come to no conclusion on the matter.