



THE  
NATIONAL  
INDUSTRIAL  
TRANSPORTATION  
LEAGUE

RECEIVED

2010 JAN 21 PM 5:00

FEDERAL MARITIME COMMISSION

cc: OS  
CC  
Coman(4)  
OPS  
BCL  
BTA  
BOE  
Pub

January 21, 2010

Ms. Karen Gregory  
Secretary  
Federal Maritime Commission  
500 North Capitol Street, NW  
Washington, DC 20573-0001

**Re: Petition P1-08, Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication; Supplemental Comments of The National Industrial Transportation League**

Dear Secretary Gregory:

In response to the Federal Maritime Commission's Order issued on January 5, 2010, The National Industrial Transportation League ("League") respectfully files supplemental comments in support of the Petition of the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") to exempt non-vessel operating common carriers ("NVOCCs") from the requirements in the Shipping Act of 1984, as amended, to publish ocean transportation rates in tariffs, and to charge only such rates to customers that ship under common carriage arrangements. The League initially filed comments in support of the NCBFAA Petition on September 26, 2008, along with proposed modifications to the scope of the exemption as proposed by NCBFAA.

Specifically, the League explained why it believes that the NCBFAA's proposal meets the statutory exemption standards and asked the FMC to apply the exemption not only to rates negotiated between shippers and NVOCCS but also to service terms negotiated in conjunction with ocean rates. Alternatively, the League asked the FMC to require NVOCCs to include a disclosure statement in their written communications to shippers containing the exempt rates that would inform the shipper that applicable service terms are set forth in a published tariff and how to access the relevant rules tariff. The League continues to believe that the FMC should grant the petition for exemption filed by NCBFAA with either of the modifications proposed by the League.

The League has reviewed the supplemental comments submitted by DJR Logistics Inc. and Alfred-Balguerie S.A.-Transo, and remains concerned about the tens of thousands of dollars that must be expended by individual NVOCCs to establish and maintain tariffs, as well as by the marked increase in tariff maintenance costs noted by these commenters.

The primary purpose of tariff publication, which is to prevent discriminatory pricing among shippers, is no longer a protection that is required or desired by shippers. Indeed, shippers receive little benefit from tariff publication because of the abundance of service alternatives that are provided by ocean transportation intermediaries, as well as VOCC and shippers' associations, which allow shippers to obtain competitive pricing in most cases. Further, the vast majority of international shipments transported by vessel move under service contracts which permit customized

pricing. As such, tariffs are rarely reviewed or consulted by shippers to determine ocean transportation pricing and, thus, function more as a costly regulatory after-thought.

More importantly, the substantial costs associated with maintaining tariffs imposes a substantial regulatory burden on NVOCCs. These costs either must be passed on to shippers through less competitive freight rates or absorbed by the NVOCC, many of whom are small companies. The continued imposition of such unnecessary costs, particularly within the current economic climate, stifles potential industry growth and development. In contrast, a granting of the NCBFAA petition with the League's proposed modifications would be consistent with the underlying statutory purpose to "promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace." See 46 U.S.C. § 40101(4). The proposed exemption would provide greater flexibility by replacing the outdated and time consuming tariff publication system with negotiated rates, which would allow for a regulatory system that is more closely aligned with real time business practices.

The League respectfully renews its request that the FMC grant the exemption for tariff publication proposed by the NCBFAA, and extend the exemption to service terms negotiated by NVOCCs and their customers simultaneously with rates. Alternatively, the FMC should require NVOCCs to include a disclosure statement on written communications containing exempt rates that informs shippers of the location and access of rules tariffs that contain the applicable service terms.

Respectfully submitted,



Peter J. Gatti  
Executive Vice President