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September 19, 2008.

Assistant Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

Re: Petition P1-08 - National Customs Brokers and Forwarders Association of America,
Inc. – Exemption from Rate Tariff Filing

Dear Sir or Madam,

Enclosed are original and 15 copies of my comments in the above referenced petition.

A copy has also been sent to Petitioner's counsel Edward D. Greenberg, Esq.

Please send any issuances to me via email at stanlevyconsult@gmail.com .

Sincerely,

Stan Levy
President
Stan Levy Consulting, LLC

Cc: Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C.

INTRODUCTION

ORIGINAL

I am president of Stan Levy Consulting, LLC, which provides consultation, commercial and regulatory advice to international maritime and domestic transportation companies and their service providers. I am a Federal Maritime Commission (FMC) licensed practitioner.

Previously I was vice president of a tariff publishing company that issued tariffs on behalf of Vessel Operating Common Carriers (VOCCs) with the Federal Maritime Commission (FMC) and the Surface Transportation Board (STB) and on behalf of Non Vessel Operating Common Carriers (NVOCCs) with the FMC. Additionally I testified as an expert witness during the FMC hearings for the Automated Tariff Filing and Information (ATFI) system implementation (first automated tariffs) in the early 1990s. I also participated in those rulemakings as well as the rulemakings implementing the new tariff regulations for Ocean Shipping Reform Act (OSRA) 1998 (Docket 98-10 and 98-29).

Previously, I was the tariff publishing officer for a transpacific VOCC. Furthermore, I was the pricing representative to several ratemaking conferences.

Lastly, I was a traffic manager with an import/export company utilizing the services of both conference and non-conference ocean carriers in the Transpacific and Caribbean trades.

Since I have used transportation tariffs for over 30 years in my daily business as a shipper, carrier, tariff publisher, FMC practitioner and consultant, I have an interest in this proceeding.

PETITIONER'S REQUEST

On August 5, 2008, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) requested a voluntary exemption for non-vessel common carriers (NVOCCs), who are licensed or registered with the FMC, from the requirements of the Shipping Act 1984 (SA1984), as amended, to publish and adhere to "rate" tariffs. Additionally, any disputes arising from the common carriage of such cargo with NVOCCs would be resolved in a Court of law instead of with the Federal Maritime Commission (FMC). These rates would be "memorialized in writing" with FMC access to them.

To date all the comments submitted by NVOCCs, including the statements in the Petition, support this exemption due to the cost and difficulty of compliance with the tariff regulations and the usefulness of tariffs.

BACKGROUND

The Shipping Act of 1984 (SA1984) mentions the word "Tariff" 40 times. One of the largest sections of the Act is dedicated just to tariffs. It is an integral part of the law and enables the FMC to enforce most of the other provisions of the Act. It was enacted 25 years ago.

At that time tariffs were published on paper pages in text which were filed at the FMC. In the Congressional budget process, the FMC was instructed to implement an "automated" tariff system. Subsequently, in the early 1990s the FMC introduced the ATFI system to replace paper tariffs. Carriers initially opposed many aspects of this system including its cost and its requirement to produce a total bottom line, especially since its features went well beyond what was originally envisioned. The FMC then implemented its new tariff regulations to support the ATFI system.

Section 8 Tariffs of the SA1984, which contains the requirement for carriers to publish tariffs, was fully considered during the drafting of Ocean Shipping Reform Act (OSRA) in 1998, just ten years ago. In fact, Congress made a major change to the language in SA1984 from "shall file

BACKGROUND

with the Commission” to “shall keep open for public inspection, in an automated tariff system” which was a major departure for tariff maintenance. Congress did not decide to eliminate international maritime tariffs altogether as they did previously for the domestic motor carrier industry governed by the Surface Transportation Board (STB). In fact, domestic maritime tariffs are still required to be filed with the STB. While Congress revised the Shipping Act, it still maintained the FMC as the regulator of international maritime transportation.

The current regulatory tariff structure was implemented by Docket No. 98-29 Carrier Automated Tariff Systems effective May 1, 1999 as a result of OSRA. Before OSRA, carrier tariffs were filed in the FMC’s ATFI system. As a result of OSRA, tariffs would no longer be filed at the FMC but were required to be made publically available and to be “automated”.

During that rulemaking, commenter’s noted that the FMC proposed regulations mirrored ATFI too closely, would be burdensome and expensive [1]. Due to the time element, the FMC only made some minor adjustments, but the proposed tariff regulations remained largely intact and are still in effect today. Compliance with “ATFI” regulations remained although ATFI was abandoned.

Section 16 Exemptions of the SA1984, as amended, provided that the FMC “may by order or rule exempt ... from any requirement of this Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.”

In August 2003, the NCBFAA submitted a similar petition P5-03 requesting a partial exemption from the same tariff requirements. The FMC denied that petition in February 2005 stating “... all of NCBFAA’s arguments were fully considered. Accordingly, the Commission has determined in its discretion that no further action on NCBFAA’s petition is warranted.” This new petition is just a slightly modified version of this earlier petition.

[1] Refer to Addendum

ANALYSIS of the PETITION

The Petitioner makes claims on the burdensome cost of tariff publishing, their exposure for an inadvertent failure to adhere to their tariffs, and scoffs at their usefulness.

The Petitioner did not substantiate with facts that the requested exemption would not result in a substantial reduction in competition or be detrimental to commerce.

Additionally, the Petitioner did not offer any new information or facts since its last petition, just a few years ago, which was denied by the FMC.

COMMENTS

The two most common complaints offered by NVOCCs is the cost of maintenance and that tariffs are not useful.

To operate as an ocean common carrier in the international commerce of the U.S. carries responsibilities and obligations to adhere to SA1984, as amended. The common carrier obligation to maintain and adhere to tariffs does have a cost.

Importers, who use the services of many members of the NCBFAA, realize that they must pay fees to their customs brokers for compliance with Customs' rules and regulations, and must maintain staffing to do so. It is their cost of doing business to be able to import.

Yes, there is a tariff compliance cost to doing business as an international ocean common carrier. The real question is: What is a reasonable cost so that it would not be detrimental to commerce?

NVOCCs do not want their rates to be divulged in public rate tariffs but are willing to store them for FMC access. The difficulty is not in recording the information but perhaps in the required tariff formats.

COMMENTS

Having seen the tariff changes in the last 25 years from readily accessible pages at the FMC to individual on-line systems, I can understand the complaint that tariffs today appear to be not useful. As a shipper, I did not regularly refer to tariffs. Most shippers are not interested in reviewing their carriers' tariffs to ensure that their carriers are in compliance with the law; they leave that duty to the FMC. However, whenever there is a cost or service issue involving a common carrier shipment, it is reassuring, especially in international commerce, to know (both as a carrier and a shipper) that there is a legal tariff, binding on all parties, with the FMC as the referee.

I have been contacted by shippers, legal counsel, NVOCCs, VOCCs and even the FMC itself to verify and check on tariff provisions. I have provided copies of tariff rules (and rates) in complaints and legal proceedings, and I have participated in claims for over-charges, refunds, and under-payment. Usually a reading of the tariff resolves the situation before it ever reaches the FMC. Tariffs may not be used day-to-day by shippers, but they provide a framework governing their shipments, regardless of the carrier.

It is sometimes next to impossible to access "public" tariffs, usually due to the subscription cost and sometimes due to the complexity of the on-line system. While carriers are able to charge a "reasonable fee", I have encountered subscription fees as high as \$1000 per month. For some unknown reason the FMC decided not to deal with this issue when they discontinued their May 2000 Docket 00-07 – Advance Notice of Proposed Rulemaking Concerning Public Access Charges to Carrier Automated Tariffs and Tariff Systems Under The Ocean Shipping Reform Act of 1998.

Some carrier tariff systems do not seem to be fully compliant with the current regulations, making it difficult to research tariff information. Of particular importance noted by the NVOCCs is access to the VOCC tariffs which contain all the charge and surcharge information that governs their service contracts. I am unaware of any periodic review by the FMC as stated in 46 CFR § 520.10 (c). Perhaps, shippers would do more tariff research if tariffs were more accessible and easier to understand.

COMMENTS

Finally, SA1984, as amended, maintained the FMC to hear complaints and to issue penalties and/or reparations. The FMC is the expert regulatory agency. Any shipper can make a complaint against a domestic or non-domestic situated carrier without having the burden and cost of going to a Court of law, wherever that may be. Sometimes issues can be resolved with phone calls and perhaps an informal proceeding. It is unclear from the Petitioner how a complaint on a shipment would be handled when the rules governing the shipment would be in a tariff and the rates would not. The NVOCCs' shippers, most of whom apparently use common carriage, would lose the ability to use the FMC as a forum for their complaints, contrary to the intent of SA1984, as amended. This would appear to be detrimental to commerce.

CONCLUSION

While the SA1984, as amended, furnished a broad exemption authority, I believe that the FMC as a regulatory agency should be cautious when considering this petition to essentially revise a US law, just reviewed and revised ten years ago by Congress itself. I believe that Petitioners should go to Congress to revise the law rather than to the regulatory agency responsible for implementing the law. History has shown that government regulations are often removed, ignored or abandoned as outdated or un-necessary because they were so successful at curing and/or preventing the problems and abuses which they were addressing in the first place.

Since the Petition does not substantiate sufficient factual justification for such a huge exemption from the SA1984, as amended, I believe that it should be denied.

However, the issues being raised by the Petitioner should not be ignored. This is the third time in ten years that carriers have complained about the burden of tariff regulations.

Rather than exempting any common carrier from the requirements of SA1984, as amended, the FMC should consider reforming their tariff regulations so that they can perform their duty and maintain the regulatory framework envisioned by Congress. Such a reform should bear in mind the cost of tariff compliance and making tariffs more user-friendly and accessible.

CONCLUSION

I highly recommend that the FMC initiate a proceeding to review and hopefully reform the tariff regulations for both NVOCCs and VOCCs to make tariff compliance less burdensome, tariffs more accessible, and tariff information more useful. There are more innovative methods to publishing automated tariffs without having the burden of complying with "ATFI-style" regulations especially with all the developments in software and the internet since 1998.

Respectively submitted,

Stan Levy
President
Stan Levy Consulting, LLC

[1] ADDENDUM

DOCKET NO. 98-29 CARRIER AUTOMATED TARIFF SYSTEMS

American International Freight Association & Transportation Intermediaries Association ("AIFA");

Council of European & Japanese National Shipowners' Associations ("CENSA")

As a general matter, many commenters believe that the proposed rule goes far beyond what is necessary to implement the prescriptions of OSRA. CENSA contends that the rule imposes "form and manner" requirements, rather than requirements concerning the "accessibility and accuracy" of tariffs. It believes that the rule will result in elaborate and costly systems not warranted by the limited role tariffs will play in the post-OSRA era and states that how a carrier chooses to present its rates and terms of service should be dictated by market demands and

[1] ADDENDUM

customer requirements. NAI likewise believes the proposed rule far exceeds any requirements relating to accuracy and accessibility and suggests that the Commission eliminate all portions of the rule relating to tariff contents and format. Matson contends that the cost and complexity of the rule goes beyond what is reasonable and continues many ATFI requirements.

NITL notes that the Commission's role in overseeing new private tariff systems has been significantly reduced and submits that the Commission must eschew "command and control" type regulation and instead rely on broad standards that seek general results. It believes that a competitive market will achieve the desired result of accuracy and accessibility.

OCWG also notes that the role of tariffs under OSRA will be reduced in that the large majority of cargo will move under service contracts. It contends that the maximum use of tariffs will occur only through a minimum degree of regulation. OCWG suggests that there are two components of accessibility: (1) can a user find and gain access to a particular tariff; and (2) once in a tariff, can the user locate specific tariff matter? It claims that the Commission's rule largely perpetuates ATFI, even though many aspects of ATFI have been rendered obsolete. Lastly, OCWG alleges that carriers will be forced to rely on outside vendors to design and maintain tariffs and that a system to meet the proposed requirements would cost \$500,000 or more.

The Commission is not insensitive to many of these general concerns raised by these commenters. It has accordingly kept them in mind while addressing other, more specific comments in the proposed rule.

AIFA asserts that NVOCCs need flexibility to publish extremely simple electronic tariffs in a format best suited to their individual operations. It suggests further that the Commission should conduct a rulemaking to determine whether a full or partial exemption from tariff filing is warranted for NVOCCs. DCL likewise contends that the true solution is an NVOCC exemption from tariff filing. The Commission believes that any such exemption is beyond the scope of this rulemaking proceeding. To the extent that AIFA or others seek to invoke the exemption authority under section 16 of the 1984 Act, as modified by OSRA, they should file a petition for exemption with appropriate justification.