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THE SECRETARY
FEDERAL MARITIME COMM

Memorandum

TO : Bryant L. VanBrakle

DATE: December 11, 2003

FROM : A. Paul Anderson, Commissioner

PA

SUBJECT : Meeting Regarding Petition No. 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

On December 11, 2003, I met in my office with Mr. Edward D. Greenberg, counsel with Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., representing the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA), at his request, to hear further explanation of the issues raised in NCBFAA's petition as well as NCBFAA's views regarding issues raised in several related petitions. My counsel, Lucille A. Streeter, was also present. In the petition, NCBFAA seeks a limited exemption from the provisions of Sections 8 and 10 of the Shipping Act of 1984 (the Act), which require non-vessel operating common carriers (NVOCCs) to establish, publish, maintain and enforce tariffs setting forth ocean freight rates. Alternatively, NCBFAA seeks to have the Federal Maritime Commission (the Commission) institute a rulemaking for the purpose of promulgating rules governing the establishment of "range rates."

Mr. Greenberg began with a brief description of the circumstances surrounding the passage of the Ocean Shipping Reform Act of 1998 (OSRA), and stated that these circumstances produced a bifurcated system in which vessel-operating common carriers can use service contracts, while NVOCCs are obligated to use tariffs. Mr. Greenberg stated that the two primary issues that NVOCCs have with tariffs are the costs and lack of flexibility associated with their use. With regard to costs, he stated that expenses associated with tariff usage had been shown to be \$5.80 per shipment in the case of one NVOCC.

Mr. Greenberg stated that the Commission's expanded exemption authority, implemented in OSRA, and the change from common to contract carriage in the industry, prompted the filing of NCBFAA's petition seeking exemption from statutory tariff requirements. He noted that service contracts are not useful for NVOCCs, and most in the industry do not want them based on the filing requirement.

Mr. Greenberg discussed an alternative to tariff exemption, presented in NCBFFA's petition, that would allow NVOCCs to establish and maintain "range rates" in lieu of specific rates. A range rate would consist of establishing a minimum and maximum rate level for a particular service (Petition, p.4, footnote 3). Mr. Greenberg stated that he is working to quantify range rates and will present more information about this concept in an additional filing with the Commission. He stated that the range has to be substantial to be meaningful. I concluded the meeting by thanking Mr. Greenberg for his views and stating that the Commission has an open mind on the issues presented in NCBFFA's petition.