BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. P2-15

PETITION OF THE NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC. FOR INTIATION OF RULEMAKING

COMMENTS OF CAROTRANS INTERNATIONAL, INC.
IN SUPPORT OF PETITION P2-15 FOR INITIATION OF RULEMAKING

I. Introduction

The following comments are submitted by CaroTrans International, Inc., an Ocean Transportation Intermediary licensed by the Federal Maritime Commission (the "Commission") and operating pursuant to FMC License Number 016017, regarding the petition filed by the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") on April 16.

In 46 C.F.R. Part 532 ("NRA Exemption"), the Commission exempted non-vessel-operating common carriers ("NVOCC") from the tariff rate publication and adherence requirements of the Shipping Act of 1984.[1] The NCBFAA petitioned the Commission to expand the Negotiated Rate Arrangement ("NRA") Exemption. This petition called for the inclusion of non-rate economic terms in NRAs and the modification of NRAs at any time upon agreement between NVOCCs and their customers. CaroTrans International, Inc. supports the expansion of the NRA Exemption, which will ease unnecessary and costly regulatory burdens on the NVOCC industry.

[1] NVOCC Negotiated Rate Agreements, 46 C.F.R. § 532 (2011).

II. Commercial Environment Supports Inclusion of Economic Terms

The current NRA Exemption prohibits the inclusion of any non-rate economic term in a NRA. The NCBFAA requested the Commission's authorization to include economic or service terms in NRAs, provided those terms are appropriately memorialized in a manner consistent with existing NRA regulations. This inclusion would benefit both individual parties and the commercial environment.

The Ocean Shipping Reform Act of 1998 created a competitive marketplace where virtually all current traffic and rate arrangements are individually negotiated between two parties. In 2011, the Commission granted the NRA Exemption to promote this competitive marketplace by allowing NVOCCs to enter into NRAs to "better serve their shipper customers."[2] However, the current NRA Exemption places unnecessary restrictions on NVOCCs' ability to enter into comprehensive agreements with their customers. Contracting parties often want to discuss credit and payment terms, rate methodology, minimum quantities, and liability so as to understand and minimize the risks of a contract. However, if parties want to address these terms in their agreement, they currently must either file those terms in a Non-Vessel Operating Common Carrier Service Arrangement ("NSA") or simply not cover the terms except in tariff format. NSAs are often of little utility to most NVOCCs due to the formality, burden, and cost of its publication and filing requirements. Including the terms in tariff format burdens both the NVOCC and the customer. The shipper must refer to both the NRA and various tariff rules to understand the full nature of their contractual obligations. Additionally, since tariffs are established and published unilaterally, shippers may not have agreed to or be aware of tariff-

[2] Docket No. 10-03, 76 Fed. Reg. 11351, 11354 (March 2, 2011).

based provisions to which they are bound. The Commission should consider allowing NRAs to include the full terms of the parties' agreement as that will increase NVOCCs' ability to interact efficiently with customers and will improve the overall commercial environment.

III. Permitting Modification of NRAs would Improve Efficiency

The NRA Exemption prohibits parties from amending or modifying a NRA after the initial shipment is received by the carrier or its agent.[3] This regulation, however, has not prevented contracting parties from amending their agreements. Because parties are prohibited from directly modifying a NRA, they have utilized an indirect route to change agreement provisions. In order to change a NRA, parties need only terminate the current NRA and enter into new NRA to take the place of the old one. By permitting NVOCCs to do indirectly what they are prohibited from doing directly, the Commission has created an inefficient and nonsensical approach to the NRA process. This inefficiency in the process benefits neither the NVOCC nor the shipper. The Commission should consider the creation of an efficient process that allows parties to amend NRAs as necessary.

IV. Conclusion

The Commission has the specific statutory and regulatory authority to grant the relief sought in the pending petition. Moreover, the proposed relief speaks to the Ocean Shipping Reform Act's call by Congress to implement measures to improve rather than hinder the commercial marketplace. CaroTrans International, Inc. hopes the Commission will consider

[3] NVOCC Negotiated Rate Agreements, 46 C.F.R. § 532.5(e) (2011).

these comments in the positive manner in which they are intended. We encourage the Commission to initiate a rulemaking to consider the expansion of the NRA Exemption.

Dated: __June 8, 2015___

Respectfully submitted,

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