

The Honorable Michael A. Khouri
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Keynote Address: Current Developments at the FMC
April 4, 2011

Thank you and good afternoon. It is a pleasure to join you again and share some thoughts and perspectives on current developments at the Federal Maritime Commission. Hopefully, we will have some time at the end of my remarks where you can share some of your views, concerns and questions with me.

First, I note for the record that my remarks reflect personal views. They are not offered as the official position of the Federal Maritime Commission.

I next want to note how much I have enjoyed working with Ed Greenberg on a number of issues since I arrived at the FMC. At his invitation, I spoke to your Government Affairs Conference last September in Washington. And in spite of that performance, you have invited me back.

So let's begin with a few recent and pending items and then I will touch on some future actions and opportunities.

First, Commissioners New and Old

With a new Congress convened in January, our President has again nominated Mario Cordero and re-nominated Commissioner Rebecca Dye. The Senate Commerce Committee has again voted to favorably report their nominations out of committee. Both are now on the Senate's executive calendar awaiting final action by the full Senate.

EU Study

The Commission staff is in the later stage of a study on the impact of the EU's repeal of their liner block exemption. The study has focused on three major east / west trade lanes – the Trans Pacific, the North Atlantic and the Far East to Europe trade. The first, the Trans Pacific operates under US FMC Shipping Act rules while the other two trades have operated under EU competition rules since October, 2008. Our Bureau of Trade Analysis has endeavored to provide a set of empirical descriptions of what happened in each trade lane and – to the extent possible – an assessment of effects of the 2008 EU repeal.

Our economists are well aware that separating the impacts of the EU repeal from the considerable effects of the global recession will be a challenge. Two, somewhat obvious observations; however, to keep in mind. All countries and all trade lanes experienced the recession. Second, economics is not a laboratory science, like chemistry. Economists are accustomed to working in the global laboratory and producing useful insights.

Flowing from responses to the recent FMC Notice of Inquiry, it was clear that the study will need to address several topics – namely rate volatility, various types of surcharges and industry concentration. Those issues will be addressed within a context of a broad examination of changes in market structure, actual VOCC conduct and the economic performance of the three trade lanes under review.

I am told that the staff is hopeful that they will be able to share some preliminary data in the Fall with stakeholders – like NCBFAA – to get the benefit of your experience and insights. The current timeline calls for the study to be completed by the end of this year.

Regarding our Two Fact Finding Initiatives

Fact Finding 26 was begun last year to examine vessel capacity and equipment availability especially in our export trades. An important outcome of that fact-finding was the recognition that the FMC can play an important role as a “Facilitator” for joint shipper and ocean carrier problem solving without resorting to enforcement actions, fines or new rulemaking.

The Commission plans to continue the discussions among shippers, intermediaries, and carriers that began under the Fact Finding. During the first quarter of this year, the Commission has closely monitored the vessel and equipment capacity available in the Trans-Pacific Trade. Import vessel capacity is stable, and fortunately, we are not expecting another capacity short-fall like the one that occurred last year.

At our April 13th Commission meeting, we plan to consider the next steps to implement a collaborative framework exploring solutions to commercial problems experienced by American importers and exporters.

Commissioner Dye asked me to thank you for your valuable participation in the Fact Finding 26 Investigation. The Commission is extremely pleased that shippers, intermediaries and carriers are discussing ways to improve the service contracting process and to provide other mutually beneficial business practices.

Next, Fact Finding 27

The international shipment of household goods and personal property is a relatively small part of the total goods carried in U.S.-Foreign ocean commerce. But over the years it has generated a substantial number – many would say inordinate number - of the complaints and problems addressed by our Consumer Affairs and Dispute Resolution office.

Typical complaints allege loss of cargo, delay or failure to deliver, refusal to return pre-paid freight on cancellation, significantly inflated charges after the OTI has possession of the cargo and holding cargo hostage.

In this context, Fact Finding 27 was initiated last year and is close to its completion. Some observations based on what we have learned –

- The overall process of ocean transportation is complicated and confusing to the average consumer.
- Your average citizen lacks knowledge about basic shipping terms and is easily confused by various billing charges and duties, who is responsible for what charges, different types of insurance and what is covered by the insurance options.
- Many problems are caused by customer expectations based on an imperfect understanding of these terms and options.
- There is a lack of understanding by the general public as to why an FMC license and bond is important and what additional level of protection it provides to the shipping public.
- For the general public, and some industry participants as well, there is confusion about the distinctions between and the different responsibilities of the various parties involved in ocean transportation: the vessel operating common carrier, the non-vessel-operating common carrier, the freight forwarder, the freight “broker” and the “agent.

All leading to the conclusion that this is a complex and multi-faceted set of issues and will not be resolved with one “silver bullet.” On the contrary, it will require a variety of measures organized around three principles: educating the consumer, improving the consumer experience, and protecting the consumer through coordinated agency cooperation and enforcement.

It is clear to me that an important part of addressing these issues is the partnership between the FMC and industry stakeholders, such as NCBFAA. Among other things, licensed NVOCCs can assist in addressing household goods problems by not providing transportation services to unlicensed OTI’s.

As we move from the Final Report to implementation of the recommendations, we will be looking to the NCBFAA to work with us on an ongoing basis.

I would like to talk for a moment about the Commission’s Office of Consumer Affairs and Dispute Resolution Services. I want to recognize Vern Hill. He is the Director of CADRS and is here in the audience today. I encourage you to talk with Vern while he is here and to learn about all of the services that CADRS can provide to you and your customers.

Protecting the shipping public is an important mission of the FMC and an increasingly important part of our focus and activities. CADRS is a primary way the Commission can assist the industry and the public to resolve shipping disputes.

CADRS can address a variety of disputes, including: rates and charges, demurrage and per diem issues, cargo delays, cargo loss and damage, service issues, OTI licensing, civil penalty demand letters, and passenger/cruise vessel issues.

NCBFAA members can use all of the services of CADRS, as it functions as a neutral and confidential facilitator, or as a mediator, or as an Arbitrator, or, last, through the informal docket process for claims under \$50,000.

In all of these cases, CADRS can facilitate resolution of disputes in a manner that avoids more costly and time-consuming litigation.

NVOCC Tariff Filing Exemption

Next, the issue near and dear to your hearts – the new NVO tariff filing rule. I know that an exemption from the tariff publication requirements has been a priority objective of your association for many years. The issue first came before the Commission back in the early 1990's. As we know, Commissioner Dye has worked tirelessly on this throughout her term. We should all recognize and applaud her efforts.

At my first Commission meeting in February of last year, I joined Commissioner Dye and Chairman Lidinsky in a vote to initiate a rulemaking on this subject.

While it took far longer than I would have liked, I am very pleased to report that at our most recent meeting, the Commission approved a final rule to relieve licensed Non-Vessel-Operating Common Carriers from the burdens and costs of publishing rate tariffs, subject to certain conditions. That rule has been published in the Federal Register and will become effective on April 18th.

The extensive written comments and the public testimony during the rulemaking made it crystal clear that no one is consulting published NVO tariffs as a part of negotiations for future rates or for any other purpose. The only parties that argued to maintain filed tariffs were the tariff publishing houses. In the May public hearing - at which Ed Greenberg testified - even a tariff publisher conceded that “no one is really looking at these published tariffs”. The current rate tariff system simply serves no practical commercial purpose.

Of particular importance to me was this fact – not one single shipper filed a comment, not for the February 2010 Commission meeting, or the May public hearing or the June open comment period. The total silence from the shipper community spoke volumes to me as to the commercial necessity or continued viability of NVO tariffs.

As another side issue, no interested parties expressed any serious concerns or reservations concerning elimination of tariff filing for all NVOs – that is, for foreign based, FMC bonded and registered NVOs and U.S. based, FMC bonded and licensed NVOs.

At the Commission's recent February meeting, the Commission's General Counsel agreed that the full record in the combined petition and docket would support a finding that there was no substantial reduction in competition and it would not be detrimental to commerce if the Commission were to extend the exemption to all NVOs. Commission staff, however, expressed concerns that immediately extending the exemption to the foreign bonded but unlicensed NVOCCs could harm the agency's mission.

The Commission did vote, however, to commence proceedings to potentially modify the final rule, including the possible extension of the exemption to the foreign NVOCCs. The Chairman expressed his hope that these modifications could be reviewed and considered by the Commission within a year.

As many of you know, I came to the Commission from the private sector business community. I am a firm believer in periodic "benchmarking" that leads to analysis, course correction and continuous improvement. Every organization – including government agencies – should "grade its own work" to determine how it is doing.

At the Federal Maritime Commission, our mission is the Declaration of Policy found in Section 2 of the Shipping Act of 1984. These are the "marching orders" that Congress has given our agency and I take them with a serious mind.

Based on my views of that measuring stick, I offer my assessment of my own work and our collective work as regards the tariff exemption rule. To do this I want to focus on three of the purposes set forth in the Shipping Act's Declaration of Policy.

First, "to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce...with a minimum of government intervention and regulatory costs."

Second, "to provide an efficient and economic transportation system...that is, so far as possible, in harmony with and responsive to, international shipping practices."

Third, "to promote the growth and development of U.S. exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace."

On the first, we deserve a poor grade for establishing a two tier NRA format that discriminates between domestic and foreign NVOs without well stated or articulated policy reasons. We earn a high B grade for reducing government intervention and regulatory costs.

On the second policy directive, we deserve an even poorer grade. In addition to the discriminatory NRA regime that hampers efficiency, the rule does not provide harmony with other country's shipping practices. Such harmony could come – ironically – in the form of retaliation that could harm our domestic based NVOs.

The third directive was added by Congress in 1998 as part of the OSRA amendments. I believe the Commission deserves a full high mark by placing more emphasis on the marketplace. I am confident that the new rule will lower commercial transaction costs, promote exports and create jobs – something that is particularly important to our national economy.

The Commission has the opportunity to improve on all of these grades and I encourage NCBFAA to engage with the Commission on this matter. During the recent FMC public hearing on the rule, the staff voiced their concerns that the Commission simply does not have sufficient information on the foreign bonded but unlicensed NVOs, information as to who they are, who are the principals and how to verify the bona fides of their operations.

I strongly encourage all foreign NVOs here today and all similar members of NCBFAA, to contact the Commission's Bureau of Certification and Licensing and the Managing Director's Office. Open up and offer what information you are willing to provide on a regular basis so that the tariff filing exemption can be available to all NVOs who serve in the U.S. import and export trades.

Some Concluding Thoughts

With the NVO tariff filing exemption as a recent example, I think it is important that the Commission continue to look for opportunities to use its Section 16 "exemption authority" to eliminate unnecessary regulatory costs and burdens wherever possible.

I would note that this approach is also consistent with the vision of President Obama. In a Wall Street Journal article titled "Toward a 21st Century Regulatory System," the president discussed the drivers in our economy over two centuries, the evolution of regulatory agencies and their work product – i.e., regulations. He criticized burdensome, ill conceived, out dated, poorly administered and otherwise costly or unnecessary regulations. The President announced a new Executive Order for each federal agency to begin a review of its regulatory portfolio.

I believe that the NVO tariff filing exemption is a grand example of relieving companies who assist in our export and import container trade from unnecessary regulations and costs. Upon completion of the additional review discussed in our February 16th meeting, I hope that the exemption will be extended to all NVOCCs.

Again, I thank you for your kind attention and the opportunity to visit with you today. I welcome your comments or questions.