From: "Fearn, Doreen" <DFearn@geo-logistics.com>
To: "'secretary@fmc.gov'" <secretary@fmc.gov>, "'EGreenberg@gkglaw.com'" <EGreenberg@gkglaw.com>
Date: 10/5/04 6:57PM
Subject: FMC Tariff Exemption on Behalf of GeoLogistics Americas Inc.

Gentlemen:

Please see attached correspondence from Mr. Robert J. Mockoviak, Sr. VP Ocean Services, GeoLogistics Americas, Inc.

Thank you.

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GEOLOGISTICS

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October 5, 2004

VIA MESSENGER and EMAIL

Secretary Bryant L. Van Brakle
Federal Maritime Commission
800 North Capitol Street, N.W. Room 1046
Washington, D.C. 20573

Re: FMC Petition Docket Nos. P3-03, P5-03, P7-03, P8-03, P9-03, P1-04, P2-04 and P4-04
NVOCC Petitions For Exemptions

Dear Secretary Van Brakle:

My name is Robert J. Mockoviak, and I am the Senior Vice President, Ocean Services at GeoLogistics America, Inc. ("GAI"). The office address is 1251 East Dyer Road, Suite 200, Santa Ana, California 92705.

As relevant here, GAI a licensed forwarder and also is the U.S. Agent for a Hong Kong based NVOCC called ECT Transport Ltd., which does business under the trade name of Seaquest Lines. Seaquest Lines has an appropriate bond on file at the FMC as a foreign-based NVOCC and is properly registered as such with the FMC (No. 10381). Seaquest Lines is a large international NVOCC, and moves approximately 300,000 TEU's around the world annually; of that volume, approximately 25% moves in the U.S. import or export trades.

GAI is aware of the petitions filed by the various intermediaries and the NCBFAA that relate to the exemptions being considered by the Commission on the issue of NVOCC tariffs. In light of the importance of the issue, GAI felt that it was important for the Commission to hear the company's views on this very important topic.

In the Joint Supplemental Comments filed by UPS, Fedex, NIT League, and several other parties, those entities make the excellent points that NVO's need to have the flexibility to negotiate individual rates with shippers, that the existing tariff mechanism is burdensome and outmoded and that the NVOCC business has changed since the Ocean Shipping Reform Act in a way that the publication of rate tariffs has become a meaningless exercise. Those companies

have proposed that NVOCC's should therefore be authorized by the Commission to enter into service contracts with their customers, in the belief that this would be a satisfactory solution to the problems caused by the current system of rate tariff publication.

While we agree that change is necessary, GAI cannot agree that the service contract remedy proposed by those parties is the right answer primarily because their proposal would require that the agreements be filed with the FMC and the essential terms be memorialized in tariff form. With all respect, GAI believes that the proposed cure is worse than the existing disease. The filing/publication requirements proposed by those parties would clearly exacerbate, not alleviate, the current burden being face by NVOCC's today, since NVO's would be trading the burden of post-negotiation rate publication to post-negotiation contracting, filing and essential terms publication. This is of no practical benefit to GAI or Seaquest Line and, I suspect, most NOVCC's.

Nor is there any reason why NVOCC's should have to go through such procedures in light of the significant changes made by OSRA. It is clear that no one accesses rate tariff publications today; simply stated, no one ever accesses Seaquest Lines' rates tariffs today, and there is no reason to believe that they would do so in the future. Nor does there appear to be any reason why NVOCC's should be required to file the contracts with the FMC, since it is likely that those contracts would simply sit in a room or in some electronic file without, again, anyone ever having the desire or need to review them.

It is important to have the Commission understand that most NVOCC business is based on individual negotiations with the shipper customer. In most instances, the shipper is shopping for rates, selects GAI and Seaquest Line because of our rate and service packages, and agrees upon a total lump sum charge that is to be paid in return for the various package of services we provide. After that negotiation is done, and an appropriate notation is made in the file for that shipment for billing purposes, GAI and Seaquest Line will then put the ocean portion of the charges into a tariff form. And, this is the situation whether the shipper is a repeating global account or a one-time customer. Consequently, the existence of a tariff really serves no purpose other than as an after the fact memorandum of part of whatever had been negotiated.

Moreover, the requirement to do so makes it difficult for NVOCC's to be able to properly react to the dynamic marketplace that exists in ocean shipping today. It makes no sense for GAI to establish ocean rates on traffic until we have the business, but that does not occur until after our negotiations with the shippers, on the one hand, and the VOCC's on the other, have been completed. Any filing or publication of these arrangements is of necessity a post-transaction exercise and, as such, an unnecessary expense that artificially increases our costs and necessarily reduces our ability to provide efficient, competitive service to our customers.

For this reason, GAI and Seaquest Line support the petition for exemption filed by the NCBFAA. As I understand it, the NCBFAA exemption petition requests that NVOCC's be exempted from having to publish rate tariffs. Since there is no longer any reason requiring tariff publication in view of how the industry has changed since OSRA, we urge the FMC to adopt the approach advocated by the NCBFAA and issue the exemption requested in Docket P5-03.

Thank you for giving us the opportunity to comment on this very important issue. I would of course be happy to answer any questions you might have.

Very truly yours,

Robert J. Mockoviak