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Surface Transportation Board
Ex Parte 704—Review of Commodity, Boxcar, and TOFC/COFC Exemptions

Summary of Ex Parte Meeting held on June 4, 2019 between
Sadoff Iron & Metal Company and Tri-State Iron & Metal Company
and Vice Chairman Fuchs

**Sadoff Iron & Metal Company (“SIMC”) and Tri-State Iron & Metal Company
 (“TSIMCO”) Attendees:**

- David Borsuk, Senior Advisor, SIMC
- Haley Glick, Vice President, TSIMCO
- William Johnson, Chief Lobbyist, ISRI
- Karyn Booth, Thompson Hine LLP
- Kerem Bilge, Thompson Hine LLP

STB Attendees:

- Vice Chairman Patrick Fuchs
- Lisa S. Novins, Attorney Advisor
- Douglas W. Pelsey, Economist

Meeting Summary:

The meeting began with introductions, and ISRI/SIMC/TSIMCO thanked the STB Attendees for the opportunity to meet and discuss the Board’s proposed rule and the issues in this proceeding.

ISRI discussed the history of the proceeding, and the many changes that have occurred since the iron and steel scrap industry was exempted from regulation in 1995. ISRI explained that the current scrap metal industry has changed drastically since the exemption was granted, and that the rail industry has undergone significant consolidation resulting in substantial market power by the railroads over their customers. ISRI also explained that, although the railroads treat the scrap metal industry as monolithic, in reality ISRI members serve different markets and regions throughout the U.S. and are significantly different from each other in size, location, and supplier and customer bases.

Thompson Hine explained that the regulatory benefits achieved from the exemption no longer exist, since Congress eliminated tariff filing, contract summary filings, and other pricing regulations when it passed the ICC Termination Act and, thus, today there is no mutual benefit to the exemption. Rather, the exemption benefits only the railroads and not its iron/steel scrap customers.

SIMC explained its business model, use of rail service, and concerns with the current exemption. SIMC explained that its rail shipments involve inbound iron/steel materials and outbound shipments to steel mills and foundries. One of its major customers is a foundry located about 40 miles away from the SIMC Wisconsin facility. This foundry has highly specific product

requirements for the products that it fabricates and SIMC is not able to substitute one type of scrap for another.

SIMC stated that rail service issues, including missed switches, bunching, and inconsistencies of the weight scales are major concerns. SIMC also explained that rail rates continue to increase, and that their relationship with the railroads are one-sided as there is no true negotiation of prices or service. Thus, SIMC supports revocation of the exemption and STB oversight over its rail shipments.

TSIMCO explained its generational family business operations in Texarkana, AR and high dependence on rail service for 90-95% of its outbound shipments. Using the map (attached hereto as **Exhibit 1**), TSIMCO illustrated its rail infrastructure investments, including construction of additional storage tracks which increased TSIMCO's spot capacity by 10 cars (i.e., from 8 to 18 car switch). TSIMCO explained why truck rates are not competitive with rail for its outbound shipments, including as a result of its substantial volumes, its own infrastructure, and customer requirements.

TSIMCO's facility served directly by a large class I railroad, with a reciprocal switching agreement with a smaller Class I. TSIMCO does not have major concerns with the smaller Class I, who it finds generally responsive, but has serious concerns with the conduct of the large class I carrier.

TSIMCO leases private cars and also depends on railroad-owned system cars. TSIMCO explained that with the implementation of PSR, service by the large Class I has deteriorated. They have experienced increasing demurrage bills and missed switches. TSIMCO explained that they faced a \$100,000 demurrage bill for a single month in 2018 due to missed switches and bunching, as well as some machinery issues. While TSIMCO was willing to accept some responsibility for a portion of the demurrage, the large Class I carrier refused to offer any credits or concessions, and its dispute resolution was not only ineffective, but the carrier was rude and insulting and threatened to cut off service if the entire bill was not paid. SIMC also explained that it has faced increased demurrage bills in connection with its traffic moving to the foundry discussed above (i.e., \$50,000 for the first quarter of 2019 which is as much as it incurred in all of 2018), and they do not have any alternative to rail because its customer requires shipments by rail for a certain number of cars per day.

Vice Chairman Fuchs was interested in whether a generalized rule could be established for exemption revocation. Thompson Hine explained that the statutory revocation standard is whether regulation is necessary to carry out the national rail transportation policy, and that this provides the STB with broad discretion. Thompson Hine also referenced the potential for the railroads to exercise market power over iron and steel scrap shippers which was shown in the STB's own Waybill analysis and confirmed by the experiences of ferrous metal scrap shippers in their dealings with the railroads. Thompson Hine stated that in balancing the competing policy interests the STB should provide less weight to revenue adequacy than was afforded in the past, as it is clear that railroads are far more profitable and most are revenue adequate as compared to when the exemption was granted.

Thompson Hine and ISRI also explained the reasons why the industry supported the exemption from regulation in 1995, but those reasons and the findings of the Interstate Commerce Commission do not exist today due to the substantial changes in the rail market over the past 25 years and changes adopted since then to the regulatory regime. It was asserted that, although there is no bright line test to determine whether there is a need for protection from the potential abuse of market power, the totality of the circumstances, including the current issues ISRI members are facing, coupled with the Waybill evidence in the record and substantial market changes justify STB oversight over iron/steel scrap.

Vice Chairman Fuchs inquired about the effects if the exemption was revoked. ISRI/SIMC/TSIMCO explained that they do not believe that the current exemption is fair or rational, since the industry does not gain any benefit from being exempted and it will always need and utilize rail transportation. SIMC and TSIMCO explained that they believe the exemption reduces their negotiating leverage and they would like to be treated more like a true customer. They also stated that they having STB oversight would allow them to bring a case at the STB if needed and they do not believe that in today's consolidated market that they should be treated differently.

Vice Chairman Fuchs asked whether there is any other regulated industry that has similar transportation characteristics to the scrap metal industry. ISRI/SIMC/TSIMCO explained that it is hard to compare their industry with others because of the wide diversity in the scrap market. For instance, TSIMCO is a smaller scrap dealer that currently utilizes rail transportation for 95% of its outbound traffic. That is different for SIMC, who has larger operations and uses rail for both inbound and outbound but primarily inbound. Thus, there are different transportation characteristics and the use and dependence on rail can vary for each individual shipper. Thus, they asserted that comparisons between industries would be incredibly difficult.

The meeting concluded with each side thanking the other for participating in the meeting.

