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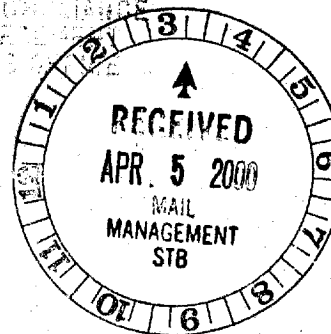
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April 11, 2000

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OFFICE OF COMPLIANCE
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DIRECTOR'S OFFICE



Mr. Vernon Williams
Secretary, Case Control Unit
Office of Compliance and Enforcement
Surface Transportation Board
U.S. Department of Transportation
1925 K Street, N.W., Room 788
Washington, D.C. 20423

S5m-61 suble

RE: NATIONAL CLASSIFICATION COMMITTEE--AGREEMENT

Dear Secretary Williams:

I am writing on behalf of the Secondary Materials and Recycled Textiles Association (SMART), concerning the Surface Transportation Board's request for proposals and comments on suggested methodologies for increasing shipper participation in the classification processes of the National Classification Committee (NCC) of the National Motor Freight Traffic Association (NMFTA).

By way of background, SMART is a 68-year-old trade association that represents more than 300 small businesses involved in salvaging and recycling textiles and apparel. SMART members were recently affected by a reclassification action taken by the NCC (originally docketed as Subject 11, NCC Docket Number 991, first heard by the NCC Classification Panel which met in Palm Springs, California, on February 9, 1999) which merged NMFC Item Number 49265 — a textile category with two Sub Items — with NMFC Item Number 49540, a textile category made up of materials that have completely different shipping characteristics, and resulted in the creation of nine separate Sub Items in a full-scale density rating system.

NCC action on this issue is expected to result in serious hardship for SMART members. Companies will now be required to classify products under one of nine separate NMFC Sub Items instead of the two categories which had been in existence for some fifty years. Many SMART members will be required to implement or upgrade computer systems, complete complicated bills of lading, and in most cases pay higher shipping rates.

Before the emergence of this action, SMART had no experience with the NCC. However, in the past 15 months — as we have gone through the entire reclassification process — SMART and its members have come to learn that NCC procedures are conducted in a one-sided manner which precludes full and fair participation by impacted industries, and heavily favors preordained

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outcomes decided by a small number of NCC members and staff. Based on our experience, in fact, SMART does not believe that NCC procedures are within the legal requirements of Title 49 of the United States Code.

Based on our experience with the NCC, SMART also wholeheartedly agrees with the STB's observation published in the February 9, 2000 decision regarding Section 5a Application No. 61, that NCC procedures are drafted in such a way that "...barriers to shipper participation are strong enough to produce a bias toward classification changes that overall result in rate increases." (page 4). In our case, for instance, the NCC repeatedly stated that reclassification was needed to address identification issues, yet ignored our repeated requests to work with NCC staff to address any such problems in a manner other than the preordained full-scale density model. This, not coincidentally in SMART's opinion, will result in significant rate increases for material that had previously been classified, rightfully, under NMFC Item Number 49265.

Based on our recent experience with the NCC, in fact, SMART members are greatly concerned about the renewal of the Bureau's agreement with the NCC, and we strongly recommend that, at a minimum, the following changes be made to current NCC procedures as a prerequisite for renewal of the NCC's antitrust exemption:

Formal Notification

Before initiation of Classification Panel consideration of Subject 18, NCC Docket Number 993, neither SMART nor any of our member companies were given advance notice of pending action. It was in late January 1999, in fact, that we first learned that the Classification Panel would be meeting on February 9, 1999, in Palm Springs, California, to consider the issue.

In essence, this meant the NCC staff had virtually a unlimited amount of time to prepare for this Classification Panel. However, SMART had approximately 10 days to familiarize itself with NCC procedures, poll our industry regarding the potential impact of the proposed reclassification, draft an appropriate response (based strictly on narrow criteria established by the NCC), and attempt to arrange coast-to-coast travel for members or staff to present our concerns. In the end, it was simply impossible for us to have any sort of meaningful participation in the Classification Panel's consideration. The result was that the Panel approved the proposed reclassification with virtually no participation by members of the impacted industry.

To correct this, SMART recommends the NCC be required to implement a formal notification process. This will enable shippers and their trade associations the opportunity to participate in Classification Panel consideration of issues that could have a significant impact on their industries. Industry associations and their members should be given a minimum of 90 days' notice, in fact, prior to initial Classification Panel consideration of NCC docket items.

In contrast to the current system, under which NCC Dockets are released within 10-21 days of NCC meetings, a preparation period of at least 90 days would ensure that industry members and associations have enough time to develop information that would be meaningful to Classification Panel consideration, and that industry members could be on hand during Classification Panel deliberations to present their concerns and respond to Panel questions.

In addition, SMART suggests that outreach to industries potentially affected by NCC Docket Items be a prerequisite of Classification Panel consideration. Such outreach should be standardized and well documented. It should also involve, at a minimum, comparison of North American Industrial Classification System (NAICS) data with NCC Docket items by NCC staff to identify industry members and associations of impacted industries and/or efforts to match shippers of specific products classified under the National Motor Freight Classification Manual with impacted NMFC Item Numbers in a proposed reclassification consideration based on bills of lading or other documentation.

Standardized, documented outreach is currently not a part of NCC procedures, and significantly minimizes industry participation in Classification Panel deliberations. When NCC staff was asked, for instance, why SMART had not been contacted prior to Classification Panel consideration of Subject 11, NCC Docket Number 991, we were told that "some" letters had been sent to "some" textile-related trade associations and textiles industry members, but that no responses had been received. NCC staff was unable to tell us which industry members, or associations, had been contacted, how those members or associations had been identified, when the contacts were made, or even the number of contacts made.

In our case, the only certainty was SMART was never contacted by NCC staff. Our organization only learned about pending Classification Panel considerations from a member company who happened to see it in the docket released approximately 10 days before the Classification Panel meeting in California. This despite the fact SMART members routinely used NFMC Item Number 49265 in their shipments.

Transparency

SMART further recommends NCC procedures become more transparent as a prerequisite to maintaining the organization's antitrust exemption.

Under current practice, NCC operations, research procedures, and rules of participation are kept largely confidential. Survey data generated during NCC research projects is not divulged in anything more than vague and general terms, and the basis of NCC action on specific docket items can be withheld. When SMART met with NCC staff to discuss Subject 11, NCC Docket Number 991, subsequent to the February 9, 1999, Classification Panel meeting in California, for instance, NCC staff would not tell us: 1) the number of complaints received from

NCC members or the dates of those complaints; 2) which impacted industry members or associations had been contacted during the course of staff research; or 3) what research had been done by NCC staff to corroborate or refute complaints by NCC members. It was not until after SMART filed protest with the Surface Transportation Board, in fact, that any of this information was disclosed.

To correct this, SMART suggests that the NCC be required to publicly disclose all of the information available to NCC staff as the basis of proposed docket items. Such information should include, but not necessarily be limited to, written correspondence from NCC members or others, survey data, telephone and e-mail logs, and meeting records.

It should also be a requirement that complaints by NCC members which serve as the basis for docketed action items be put in context of the number of shipments over a given period. In our case, for instance, we were not told whether the proposed action was docketed based on a single letter from an NCC member, or 50,000 letters. No information was available about whether the identification "problem" that served as the basis for the docketed item was based on one questionable shipment from a single shipper or thousands of shipments from dozens of shippers.

A "Bright Line" Standard

Similarly, based on SMART's experience with the NCC, we recommend that a "bright line" standard be implemented for reclassification purposes. This is especially important considering the impact that such reclassification actions have on industry, and the immunity from antitrust laws under which the NCC is allowed to operate.

Under such a standard, the NCC would be required to document and demonstrate that a reclassification procedure is based on identifiable, quantified problems regarding a minimum of 10 percent of all shipments within any given classification.

NCC action regarding Subject 11, NCC Docket Number 991, appeared to SMART to be based on a handful of complaints received by an unknown number of NCC member companies over a period of approximately twenty years. Yet this action will have a significant impact on all future shipments made by all industry members for decades to come. Under current NCC procedures, in fact, a single NCC member complaint could result in a reclassification action that mandates significantly increased demands of time, money, and personnel by shippers. Simple fairness dictates that such expenditures should not be required of shippers lacking the proven existence of need by the NCC based on a rational, objective measure. SMART believes that a "bright line" standard for proposed reclassification action would provide such a measure.

Investigate Alternative Solutions

As noted, in SMART's experience with Subject 11, NCC Docket Number 991, the NCC stated that identification problems made it impossible for truckers and other "laymen" to distinguish textile products classified under NMFC Item Number 49265 from those classified under 49540. The proposed "solution" to this problem was to merge Item Number 49265 into 49540 which was subject to full-scale density provisions. This although SMART was able to demonstrate that the primary shipping characteristics for the two categories were completely different, and despite SMART's repeated offers to investigate alternative solutions.

Based on our experience, SMART recommends that the NCC be required to investigate alternatives to any action that could result in higher shipping rates if such alternatives are proposed by impacted industry members or groups. Moreover, if the NCC rejects such an alternative, they should be required to publish a written justification for their decision, and make that justification available to impacted industry.

Collaboration and Communication

Under current procedures, NCC Classification Panels are composed entirely of NCC members who act on research findings developed by NCC staff which, in SMART's experience, is based on minimal participation from impacted shippers. SMART's recommendations are aimed at increasing involvement of impacted shippers in these procedures and establishing better criteria for NCC reclassification actions. It is also believed that voting representation on NCC Classification Panels and the full NCC should be made available to shippers. By allowing voting membership on Classification Panels and the full NCC by shippers, SMART believes that balance and perspective would be added to the decision making process.

SMART bases this recommendation on our experience with the NCC, and the realization that — although we were allotted time to testify before the full NCC to appeal action taken by a Classification Panel — it was obvious to us that the NCC had already made its decision regarding the proposed reclassification. Voting rights for shippers in Classification Panel and full NCC deliberations, in short, would bring new information to the table, ensure fairness, and give the NCC greater credibility. Participating shippers will also have the benefit of gaining first-hand information about the NCC, and would have greater empathy for the trucking industry.

Independent Appeals Process

In our appeal to the full NCC of the Classification Panel (action taken concerning Subject 11, NCC Docket Number 991) the amount and type of information SMART presented was unfairly restricted under NCC procedures. Moreover, we were required to face a body made up exclusively of trucking industry members — all of whom stood to gain financially if the proposed reclassification was implemented. After the brief presentation allowed under NCC rules, we were questioned by NCC members who (as the transcript clearly shows) were confused

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about the basis of the proposed reclassification. Other NCC members appeared to have no interest in the issue whatsoever. In essence, our only opportunity to appeal under NCC procedures was a short presentation to a self-interested body that had little understanding or interest in the matter at hand. After this, an anonymous vote was taken and we were dismissed.

To correct this, SMART recommends the NCC appeals process be revised so that an independent board or arbitration panel is given the final decision-making authority. This body can be thoroughly briefed on all issues associated with a proposed reclassification by the parties involved.. The appellate body should be allowed to hear and consider information beyond the primary shipping characteristics. They should be allowed, for instance, to consider the economic impacts that would result from the implementation of a proposed reclassification.

In short, considering that there is only one appeal under current NCC procedures, the appellate body should be an autonomous, fully-informed group, made up of members who have no economic interest in transportation issues. They should be made to disclose the specific basis for their final decision.

Economic Impact and Shipping Characteristics

As SMART learned during our experience with Subject 11, NCC Docket Number 991, NCC procedures only allow shippers to present data regarding four primary shipping characteristics to an NCC Classification Panel and the full NCC. In addition, of these four shipping characteristics, we were told that density characteristics were of primary importance.

Despite arguing that products classified under NMFC Item Number 49265 were of such low value that the proposed reclassification would result in increased shipping costs that would make it virtually impossible to transport these materials without shippers losing money, we were told that economic data could not be presented or considered. When we tried to couch our economic argument under the primary shipping characteristic of "liability" (noting that carriers do not suffer liability in transporting these goods because of their low value) we were rebuked by NCC staff and legal counsel. Lastly, when an effort was made to compare the value of the goods classified under Item Number 49265 with those classified under Item Number 49540, we were told these arguments could not be made under NCC procedures.

Based on this experience — and considering the economic impact that NCC reclassification efforts have on businesses and industry — SMART recommends that economic impact data be taken into consideration. If this cannot be discussed at the Classification Panel level, at least at the appellate level. In SMART's case, the recent decision regarding Subject 11, NCC Docket Number 991 is expected to severely handicap many businesses within our industry, yet we were precluded from sharing any data regarding these impacts to the NCC. Considering that shipping costs are perhaps the largest factor in the pricing and sustainability of the recycled

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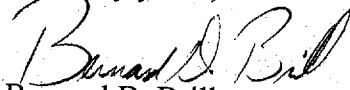
textile industry, it is simply unjust to make sweeping decisions regarding shipping costs without considering economic data.

Conclusions

On behalf of SMART, I thank you for the opportunity to present these recommendations. It has been SMART's experience that the NCC is currently allowed to operate in a manner that conflicts with its authority under Title 49 of the United States Code. Implementation of these suggestions will result in a classification system that is open, fair, and reasonable. We hope, therefore, that the Surface Transportation Board will adopt our recommendations as a prerequisite to continued the enjoyment of an antitrust exemption by the NCC.

Please feel free to call me should you have any questions or need additional information regarding our suggestions. Be assured that SMART and our members stand ready to assist you in any manner.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Bernard D. Brill". The signature is fluid and cursive, with the first name "Bernard" and last name "Brill" being the most prominent parts.

Bernard D. Brill

Executive Vice President