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November 29, 2005

Secretary Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423

215 252



Re: Ex Parte No. 656 (Sub-No. 1), Investigation Into the Practice of the
National Classification Committee

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Dear Secretary Williams:

At the time of the founding of the United States of America, Adam Smith expressed the fundamental reason for not regulating commercial activities through government intervention much more eloquently than we could attempt to do.* Any reasonable person would agree that the historical experiences during the lengthy period of time since his words were first written have proven him to be correct. Therefore, our most important point in this matter is to be mindful of the wisdom of Adam Smith and subsequent historical experiences. We submit that the antitrust exemption of the trucking industry should not be renewed.

In case you should decide to continue the antitrust exemption, our concern is whether the process of freight classification through an organization like the NCC is a fair process for both trucking and shipping companies, whether the use of a neutral arbiter in case of a disagreement over a decision of the NCC results in a fair outcome, or whether the decision-making process should not be fundamentally altered to include both shippers and truckers on an equal basis with an independent chairman casting the deciding vote in case of a deadlock.

Here again, we submit that the current process is inherently biased towards trucking companies and helps them collectively, through a government-sanctioned process, to enhance their revenues at the expense of shipping companies for the following reasons:

1. The NMFTA and the NCC are, so to speak, prosecutor, judge, and jury at the same time. The staff of the NMFTA brings the case before the NCC, the staff recommends how the case should be decided, and the NCC then rules without being responsible to anyone.

* *"No regulation of commerce can increase the quantity of industry in any society beyond what its capital can maintain. It can only divert a part of it into a direction into which it might not otherwise have gone; and it is by no means certain that this artificial direction is likely to be more advantageous to the society than that into which it would have gone of its own accord."*

Smith, Adam

An Inquiry into the Nature and Causes of the Wealth of Nations,

First published: 1776

The Ultimate Lighting Machines.

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2. The NCC can arbitrarily decide to blatantly disregard information. This happened during the meeting of the full NCC committee in San Diego in August of 2004, where an honest discussion of the merits of the lighting industry's study of more than one million individual shipments against a study by two trucking companies of 65,000 shipments did not take place. After a short discussion and statements of generalities without addressing the strengths or weaknesses of the extensive study produced by the lighting industry, the NCC decided 33-1-1 to change the classifications to the disadvantage of the lighting industry and contrary to previous precedents. In hindsight, this meeting had an Orwellian or Leninist feel to it, where some people in the avant-garde just knew better and were more equal than the others.

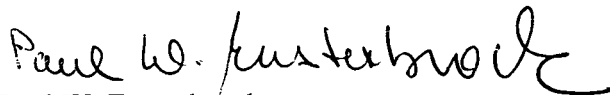
3. The NCC as a government-sanctioned bureaucratic body can out-manuever any industry through its control of the process of arriving at freight classifications. This includes the arbitration process that, in effect, gives the NCC a means to rebut the arguments of a group of shipping companies, but does not give the shippers the means to rebut the arguments of the NCC. This is due to the fact that the NCC's rebuttals can be presented after the case is closed for the shipping companies. The process is framed in such a way that the neutral arbiter in most cases can do nothing more than confirm the NCC's position, and, in the American judicial tradition, set a precedent in favor of the NCC.

Again, we ask that you consider not renewing the antitrust exemption of the NCC, because it serves no public purpose, or, again in the words of Adam Smith, "it is by no means certain that this artificial direction is likely to be more advantageous to the society than that into which it would have gone of its own accord."

If, in your best judgment, there appears to be some public purpose for the NCC, resulting in a more advantageous course for society, then we would like you to reorganize the NCC in such a way that both truckers and shippers are represented on equal terms with an independent chairman being able to cast a tie-breaking vote. We would welcome the opportunity to speak with you further about this subject.

Thank you for considering our case.

Sincerely yours,



Paul W. Eusterbrock,
President of Holtkoetter International, Inc. and
Chairman of the Freight Classification Task Force,
American Lighting Association