

STATEMENT OF  
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BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION  
OF THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
UNITED STATES SENATE  
REGARDING FREIGHT FORWARDER DEREGULATION  
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Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Department of Transportation's views regarding freight forwarder deregulation. I might add, Mr. Chairman, that we are especially pleased that you remain actively involved in surface transportation deregulation, in addition to your other important responsibilities. The quest for regulatory equality for freight forwarders -- the "forgotten segment" of the trucking industry -- will benefit greatly from your continued leadership.

FREIGHT FORWARDER REGULATION IS OUTDATED

Although the Motor Carrier Act of 1980 (MCA) has provided significant new operational freedoms and reduced regulatory burdens for common and contract motor carriers, most of these benefits have yet to be provided to freight forwarders. Strict freight forwarder regulation is particularly anomalous in an era of transportation deregulation and its concomitant market changes. We believe that the regulatory changes proposed by your bill are especially worthy of support, since freight forwarder deregulation is dictated by equity considerations as well as by the principles of economic efficiency. I might add that it has been over forty years since the basic framework of freight forwarder regulation

was devised. The regulatory framework of 1942 is ill-suited to the transportation realities of 1985.

#### FREIGHT FORWARDERS AND THEIR COMPETITORS

Who are the members of this "forgotten segment" of trucking, and how do they compare with other segments of the surface transportation industry? In many ways, forwarders are similar to shippers' associations and brokers. Like the former, they consolidate shipments in order to take advantage of truckload rates; like the latter, they bring shippers and carriers together and help meet the informational needs of smaller shippers. However, unlike either, forwarders are common carriers and, as such, are subject to more stringent regulation than either shippers' associations or brokers.

There are also many similarities between less-than-truckload (LTL) motor carriers and freight forwarders, both of whom consolidate LTL shipments into truckload lots. Like LTL common carriers, freight forwarders have benefited from easier entry policies. Also like motor common carriers, forwarders must publish and file their tariffs with the Interstate Commerce Commission. However, unlike their motor common carrier counterparts, they cannot hold "dual operating authority" and also serve as contract carriers. In addition, a freight forwarder does not provide the line-haul transportation for its shipments but, rather, must purchase this transportation from motor carriers or railroads.

The freight forwarder, as we know it today, is substantially a product of regulation -- the regulation of over forty years ago. We strongly believe that the time to modernize that regulation has come and that it is time to offer to freight forwarders the same flexibilities and freedoms that are now enjoyed by other segments of the transportation industry against whom they compete.

Forwarders have no economic characteristics warranting regulation for efficiency reasons, such as substantial fixed costs and scale economies. Fixed assets and shareholders' equity for even the largest freight forwarders averaged only slightly over one million dollars in 1978. The only historical basis for their regulation was to provide consistency with the regulation of other freight modes -- railroads, trucks, and barges -- at the time the controls were instituted in 1942. Furthermore, forwarders must now compete on inequitable terms with other types of rapidly expanding third parties -- shippers' associations, shippers' agents, and property brokers -- which are virtually unregulated. These entities are variously referred to as third parties, intermediaries, and middlemen. The terms are thus used interchangeably in this statement.

#### CHANGES IN TRANSPORTATION MARKETS SINCE 1980

In 1980, enactment of the MCA and the Staggers Rail Act (SRA) provided substantial deregulation of the motor carrier and railroad industries and resulted in a number of critical changes in the provision of transportation services. In the trucking

industry, the freer entry brought about by the MCA has resulted in entry by new carriers, expansion into new markets by existing carriers, and greater price competition. This effect was intensified by the softening of demand and the resulting buyers' market associated with the general economic slowdown of the early 1980's. These developments have been further associated with greater pricing volatility, a dampening of inflationary rate increases, and some absolute LTL rate reductions.

An additional development associated with freer entry is a weakening of the rather rigid segmentation that has traditionally characterized some parts of the transportation industry's structure. This change is particularly noticeable in trucking, where the previously sharp distinctions between common and contract carriage, for-hire and private operations, and regulated and exempt services are rapidly fading. Reduced regulation has exerted a similar influence on the functional distinctions among the various types of middlemen.

Another important post-1980 development is the rapid expansion of contracting between carriers -- both rail and motor carriers -- and individual shippers, relative to traditional common carriage. Such contracting involves individual negotiations of rates and service conditions, such as the degree of liability which the carrier assumes. This change has also produced a new emphasis on large volume movements, since greater committed tonnage yields shippers more favorable contractual terms regarding prices and service.

IMPACTS ON FREIGHT FORWARDERS

These developments have a number of implications for the freight forwarders, some of which are adverse. There is especially heavy competitive pressure for less-than-truckload traffic, the forwarders' mainstay, resulting in both traffic erosion and rate depression. The effect of new entry and expansion by existing motor carriers has already been mentioned. Additional pressure may also be traced to the increased competition provided by trailer-on-flatcar (TOFC) service for truckload (TL) traffic.

TOFC service has grown rapidly since it was exempted from regulation by the Interstate Commerce Commission (ICC), pursuant to the provisions of the SRA. Increased competition for TL traffic has forced many regular route general commodity truckers to become more dependent on LTL traffic. The greater emphasis placed on LTL traffic by such carriers has cut further into the forwarders' market share and intensified rate discounting, resulting in many LTL charges which we are told are at or near (and in some cases even below) 1980 levels. In addition, property brokers are beginning to compete for the small shipment traffic of the forwarders and are likely to increase their share of this traffic. Forwarders are also hampered by restricted opportunities to gain from the increased emphasis on volume traffic associated with the proliferation of contract rates.

This new emphasis on volume rates enhances the importance of intermediaries, who can often consolidate shipments into volumes

larger than those typically shipped by even relatively large shippers. The third-party role is also enhanced by the proliferation of price and service options, which complicates the ability of individual firms to keep up with developments. One result of contracting and its emphasis on volume shipments is the proliferation of unregulated property brokers and shippers' agents as direct competitors of the forwarders for this traffic. As an associated disability, forwarder opportunities to benefit from the new approaches are limited by the regulatory prohibition of contracting with either LTL or volume shippers.

Many forwarders are also disadvantaged by the asymmetry of Section 11323 of the Interstate Commerce Act which prohibits their direct control of motor carriers, but does not prohibit motor carriers from acquiring direct control of freight forwarders. This anomaly limits the potential benefits of vertical integration, thus also limiting the cost savings that could be passed on to shippers and consumers. In the absence of regulatory barriers, the distinctions between forwarders and LTL trucking firms could be expected to be much less than at the present time. A basic similarity between the two types of operations is seen in the crucial character of the assembly and distribution functions which they each perform, with the ownership status of the vehicle being quite incidental to the sophisticated operations involved. Vertical integration between motor carriers and forwarders has thus been freely available to motor carriers but not to forwarders. In fact, a 1978 DOT study indicated that

at least 20 of the 54 Class A general commodity freight forwarders (representing about 40 percent of the tonnage shipped) were controlled by motor carriers. In today's highly competitive environment, there is no sound policy reason to preclude forwarders from seeking the same types of benefits from integration that are available to motor carriers.

In view of the market changes that have occurred since 1980 and the special restrictions on the forwarders' ability to respond positively to them, forwarders might be expected to lag in development behind the transport industry generally. There is some confirming evidence. As one indication, the trend in their transportation purchases from the railroads is falling well behind that of their closest counterparts, the shippers' associations. For the United States as a whole, shippers' association carloads were about the same in 1983 as in 1978, but the freight forwarder total dropped by more than one-half, from 391,200 to 178,000.

#### WHY DOT SUPPORTS FREIGHT FORWARDER DEREGULATION

It should be emphasized, however, that the proposed deregulation is not designed as an economic relief measure, and it may fail to serve that purpose. But to the extent that the forwarders' disabilities are the result of regulatory restrictions on their right to perform economically viable services, both equity and efficiency considerations dictate that the roadblocks imposed by regulation should be promptly eliminated. In order to promote both efficiency and equity objectives, forwarders must have equal flexibility in dealing with their competitors, their line-haul carriers, and their shippers.

The explicit purpose of your bill is to ensure the competitiveness and efficiency of surface freight forwarder services, which the bill asserts would be fostered by the termination of the remaining ICC responsibilities for the regulation of these operators.

The proposed legislation explicitly eliminates all statutory requirements on freight forwarders. It thus sweeps away any artificial restraints on their ability to adapt to the market changes induced by the 1980 legislation.

In conclusion, the U.S. Department of Transportation strongly supports your bill to deregulate freight forwarders for a number of basic reasons:

1. It is consistent with and advances the goal of relying on market forces whenever feasible to promote competition and efficiency;
2. It advances equity and efficiency by providing forwarders with the flexibility to compete with other third parties on an equal basis;
3. It puts forwarders on an even footing with truckers when vertically integrated motor carrier-forwarder operations are more efficient than contracting out for the line-haul transport of freight.
4. It provides freedom to contract with shippers regarding price and service characteristics, including, for example, the degree of liability assumed;

5. It provides forwarders with the necessary flexibility to perform efficiently in transportation markets, fitting in where, how, and to the extent their performance permits. Any special financial hardship experienced by forwarders would then be a reflection of economic viability and not of artificial institutional constraints;
6. It removes antitrust immunity for freight forwarder collective ratemaking, which forwarders no longer need or want. We understand that only one or two forwarders even belong to the freight forwarders' rate bureau at this time.

There is only one change we would recommend to your fine bill, Mr. Chairman. We would include brokers of freight in the reform package. While there are relatively few regulatory restrictions on brokers, compared to freight forwarders, we believe such close competitors should be able to thrive on their own merits, on the basis of what service they do offer, not what service they are allowed to offer.

Mr. Chairman, that concludes my prepared remarks. I would now be glad to answer any questions you or other Members of this Committee might have.