

Congress of the United States  
House of Representatives

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DALE E. KILDEE  
5TH DISTRICT, MICHIGAN

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FEDERAL SECRETARY  
FEDERAL MARITIME COMM

CO-CHAIR:  
CONGRESSIONAL AUTOMOTIVE CAUCUS  
CONGRESSIONAL NATIVE AMERICAN  
CAUCUS

September 16, 2003

Bryant L. VanBrakle  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, DC 20573

RE: Petition P3-03

Dear Mr. VanBrakle:

It is my understanding that United Parcel Service (UPS) has filed for an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. I write in strong support of this UPS petition currently pending before the Federal Maritime Commission (FMC).

During consideration of the Ocean Shipping Reform Act (OSRA) revisions of 1998, Congress considered all aspects of the ocean shipping industry including the role of NVOCCs. Based on the nature of ocean shipping at the time, Congress determined that NVOCCs should be regulated differently than vessel operators. In the late 1990s, most NVOCCS were small enterprises that neither owned ocean vessels nor the cargo being shipped. In order to protect shippers and to guarantee liability coverage, Congress determined that NVOCCs should operate under a published tariff system when dealing with customers.

However, the state of the U.S ocean shipping industry has changed since passage of OSRA. There has been consolidation among ocean carriers resulting in the loss of major U.S. flagged carriers. In an effort to offer a full range of services, these carriers have created vertically integrated logistics companies that compete with NVOCCs.

UPS operates the most sophisticated, integrated, intermodal transportation network in the world, and is deemed a "carrier" in the surface and airfreight industries. Furthermore, UPS makes significant annual capital investments to its' asset-based transportation infrastructure. These facts alone set UPS apart from the companies that first raised concerns about the regulatory status of NVOCCs.

The UPS petition, citing the recent evolution of the ocean-shipping marketplace, is precisely the reason Congress granted such broad exemption authority to the FMC. While anticipating dramatic changes in the ocean shipping industry with the passage of OSRA, Congress did not contemplate how fast or how smoothly the market could adapt to these changes. By granting this petition, the FMC will acknowledge these changes, level the playing field between NVOCCs and vessel operators, and ultimately benefit ocean-shipping consumers around the world.

I am hopeful the FMC will give the UPS petition its' utmost consideration and render an equitable decision based upon the merits of the UPS case. Thank you for your consideration of this request. If you should have any questions, please do not hesitate to contact myself or Adri Jayaratne on my staff at 202-225-3611.

Sincerely,



Dale E. Kildee, M.C.