

Wm. LACY CLAY
1ST DISTRICT, MISSOURI

COMMITTEES
FINANCIAL SERVICES
GOVERNMENT REFORM

Ranking Member,
SUBCOMMITTEE ON TECHNOLOGY,
INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS
AND THE CENSUS

Web Site www.house.gov/clay/
E-Mail www.house.gov/writerep/

131 Cannon House Office Building
Washington, DC 20515
(202) 225-2406
(202) 225-1725 Fax

Congress of the United States
House of Representatives
Washington, DC 20515-2501

RECEIVED
03 SEP 15 PM 3:25
625 North Euclid, Suite 200
St. Louis, MO 63108
(314) 367-1970
(314) 367-1341 Fax
8525 Page Boulevard
St. Louis, MO 63114
(314) 890-0349
FEDERAL MARITIME COMMISSION (314) 427-6320 Fax

September 8, 2003

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

Dear Secretary VanBrakle,

Ref: RE: Petition P3-03

It has come to my attention that the United Parcel Service (UPS) has filed for an exemption with the Federal Maritime Commission (FMC.) Their request if granted, would prohibit Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. Additionally, due to the operational characteristics of UPS and recent developments within the ocean shipping marketplace, the antiquated regulatory scheme governing NVOCCs should be revised.

During consideration of the Ocean Shipping Reform Act (OSRA) revisions of 1998, Congress carefully considered all aspects of the ocean 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 1990's, 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 their customers.

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

UPS operates the most sophisticated, integrated, inter modal transportation network in the world, which includes air, rail and surface and NVOCCs transportation, and is deemed a "carrier" in the surface and air freight 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 on this matter based upon the merits of the case.

Sincerely,

Wm. Lacy Clay

Wm. Lacy Clay
Member of Congress

WLC/rmo

cc: Commissioners