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# UNITED STATES BUSINESS AND INDUSTRY COUNCIL

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FEDERAL MARITIME COMMISSION SECRETARY

October 3, 2003

P3. 03

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

Dear Federal Maritime Commissioners:

On behalf of the member companies of the U.S. Business and Industry Council (USBIC), I write in strong support of FMC Petition No. P. 3-03 by United Parcel Service (UPS) to gain an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. UPS should be allowed to conduct its business on the same basis as ocean carriers in the marketplace and should not be restricted by government regulations that limit its flexibility to set its own rates and compete effectively with other commercial entities.

More competition means quite simply that customers and consumers win. Firms that use international transportation or logistical services involving ocean shipping are benefited when there are many providers of such services who must compete for their business.

USBIC members are mainly domestic manufacturers, many of whom have substantial numbers of international customers. Often they use UPS to transport their goods to their foreign clients. It is extremely important to them to have rock-solid, reliable, one-stop service, i.e. one company to handle their transactions from pick-up at their U.S. factory to delivery to their foreign customer; one company that can control all the details of the transaction from beginning to end, including a competitive price.

USBIC members benefit when they can take advantage of integrated supply chains -- those that can synchronize the movement of goods, information, and funds across continents. In a global economy, speed and reliability are essential to USBIC members and other U.S. exporters. A streamlined process fully under one management's control benefits USBIC companies by bypassing multiple distribution centers, by minimizing time lost in warehouses, and by reducing damage from multiple handling by disjointed operators.

That is why liner carriers have vertically integrated their operations since they were allowed to enter into confidential contracts in the Ocean Shipping Reform Act (OSRA) of 1998. Prior to OSRA, Vessel Owning (VO) and NVO carriers were treated the same, i.e. both had to publish tariff rates. That equality should be restored in that both VOCCs and a large, intermodal NVOCC like UPS should be able to enter into confidential contracts with their customers. Indeed, the unprecedented consolidation among ocean carriers in recent years, resulting in the loss of major U.S.-flagged carriers, should immediately raise the question of how to generate more competition.

In the OSRA, Congress sought to protect users of shipping services from small NVOCCs and to guarantee liability coverage by mandating that NVOCCs operate under a published tariff system. UPS does not fit the profile of the small NVOCCs Congress intended to regulate. UPS is the world's largest package delivery company and has developed integrated supply chain services, with offices in 150 countries. UPS utilizes ocean shipping in connection with its extensive fleets of surface transportation vehicles and aircraft. UPS needs the freedom to pass on to customers the cost savings from its efficient operations at every stage of the journey, whatever the combination of movement by land, air or sea. That UPS buys space on container ships, rather than owns the ships directly, should not hinder its ability to price its services as needed in the marketplace.

I am hopeful that the FMC will give the UPS petition favorable consideration. In fact, it is critical that you do so. In an era of spiraling U.S. trade deficits, it is clear that USBIC members, and indeed all other American exporters, must be given every possible advantage to remain as globally competitive as possible. The most efficient and lowest possible cost movement of their goods overseas is central component of their survival as profitable enterprises employing millions of Americans. It should also be a central component of our government's efforts to increase American exports and to see that international trade is brought back into greater balance.

Thus UPS's petition affects not only the profitability and success of that one company but its customers, including USBIC members, as well. Through all of these companies, the health and success of the overall American economy is positively impacted. Favorable action on UPS's petition by the FMC aids all American businesses in the best possible way, by increasing competition rather than restricting it.

In conclusion, the U.S. Business and Industry Council respectfully urges the Federal Maritime Commission to grant the UPS petition and thanks the Commissioners in advance for what we know will be their thoughtful consideration of this matter.

Sincerely,

  
Kevin L. Kearns  
President