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Congress of the United States
House of Representatives

COMMITTEES:

ARMED SERVICES

EDUCATION AND THE WORKFORCE

September 22, 2003

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

RE: Petition P3-03

RECEIVED
03 SEP 29 PM 3:20
FEDERAL MARITIME COMMISSION

Dear Commissioners:

It is my understanding that United Parcel Service (UPS) has filed a petition for an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) entering into confidential contracts with their customers. This petition points out a burdensome regulation that puts American shipping companies at a distinct disadvantage vis-a-vis overseas competitors. Due to the operational characteristics of major shipping companies and recent developments within the ocean shipping marketplace, I believe Congress should revisit the regulatory scheme governing NVOCCs. In the meantime, I write in support of the current petition and those that other American major shipping companies may put before the FMC on this particular matter.

During consideration of the *Ocean Shipping Reform Act (OSRA)* revisions of 1998, Congress carefully 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 NVOCC's 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 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 unprecedented consolidation among ocean carriers, with foreign-owned corporations purchasing virtually all major U.S.-flagged carriers. Then in an effort to offer customers a full range of services, these very same carriers (which don't have to publish their prices) now compete with the American NVOCCs.

With a substantial fleet of trucks, cargo airplanes, and thousands of skilled employees, heavily capitalized NVOCCs like UPS actually operate more like the ocean shipping companies than like

standard NVOCCs. But by having to publish their contracts when the ocean carriers don't have to, these companies are forced to compete on an unequal playing field with ocean carriers.

Understanding that there would be dramatic unforeseen changes in the ocean shipping industry with the passage of OSRA, Congress gave broad exemption authority to the FMC so it could react to those changes. Such a case faces the FMC here. Congress did not contemplate how fast or how smoothly the market could adapt to these changes. By granting the current petition and similar ones that may follow, 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 this matter its utmost consideration and render an equitable decision. Thank you.

Sincerely,

A handwritten signature in black ink that reads "John Kline". The signature is written in a cursive, flowing style.

JOHN KLINE
Member of Congress