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BEFORE THE FEDERAL MARITIME COMMISSION

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

WASHINGTON D.C.

PETITION NO. P2-15

**COMMENTS OF UPS OCEAN FREIGHT SERVICE, INC., UPS EUROPE SPRL AND
UPS ASIA GROUP PTE. LTD.**

In response to the Federal Maritime Commission's ("Commission's") April 28, 2015 *Federal Register* notice, UPS Ocean Freight Services, Inc. (FMC License No. 016871N), UPS Europe SPRL, a registered non-US non vessel operation common carrier ("NVOCC") (Org. No. 24173) and UPS Asia Group Pte., Ltd. a registered non-US NVOCC (Org. No. 23718) (collectively "UPS NVOCCs") presents the following comments regarding the petition of the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA").

I. INTRODUCTION

The UPS NVOCCs are wholly-owned subsidiaries of United Parcel Service of America, Inc., a worldwide surface and air freight carrier and logistics and supply chain management service provider. Founded in 1907, UPS is the world's largest package delivery company and a provider of specialized multimodal transportation and logistics services, operating some 2,738 facilities in 220 countries worldwide. UPS, with 2014 consolidated corporate revenues of \$58.2 billion, has 435,000 employees worldwide with 354,000 in the United States. UPS makes some 18.0 million daily global deliveries. UPS carries general ocean freight world-wide as a non-vessel operating common carrier ("NVOCC") and the UPS logistics business serves all sectors of the general ocean freight industry worldwide.

II. DISCUSSION

NCBFAA views Non-Vessel Operating Common Carrier Service Arrangements ("NSAs"), currently regulated under the Commission's rules at 46 CFR §531, merely as an interim step toward eventual elimination of the Shipping Act tariff publication requirement, presumably by means of an exemption granted by the Commission. Accordingly, NCBFAA proposes that

regulations under 46 CFR §532 governing NVOCC Negotiated Rate Agreements (“NRAs”) be liberalized to permit inclusion of additional commercial terms beyond rate information, and allow relatively free amendment of NSAs. NCBFAA further suggests that the NSA regulation at 46 CFR §531 be eliminated entirely. Thus NCBFAA proposes that the Commission effectively end the regulatory exemption that created NSAs, therefore eliminating the availability of NSAs, leaving NRAs or tariff-based service as the only options for NVOCCs.

UPS submits that the abrupt wholesale elimination of NSAs would create disruption and chaos in the industry, and would create unfair competitive conditions for NVOCCs handling a significant amount of container traffic. UPS urges the Commission to preserve the availability of NSAs for those NVOCCs that are now successfully using them, and for the benefit of their shippers.

NCBFAA argues that with its proposed modifications to the NRA regulations, NRAs alone should be available. NCBFAA’s rationale is that approximately 2,300 NVOCCs appear to use NSAs (according to a source apparently within the Commission) while only 82 NVOCCs have utilized NSAs, filing some 1,445 NSAs, contrasted with the “hundreds of thousands of rates” presumably established using NRAs. While UPS assumes NCBFAA is correct about the number of rates established using NRAs, NSAs on file also likely contain hundreds of thousands of rates. As the Commission will be aware, many NSAs are longer-term, multi-year large-volume contracts between NVOCCs and their shipper customers, often including multiple affiliated companies as additional shippers or consignees, often covering global trade lanes. While many NRAs include a single rate for a single commodity and trade lane, often for a single shipment, a single NSA may contain hundreds or even a thousand or more individual rates, and may serve a dozen or more affiliated shipper entities on world-wide trade lanes. By way of example, the UPS NVOCCs move more than one-third of their container volume a key U.S. trade lane under NSAs.

UPS, like a number of NVOCCs including those that led the charge in Petition P3-03, initially filed by UPS resulting in establishment of NSAs as a mechanism for NVOCCs to compete on an even footing with vessel-operating common carriers, has developed the NSA as a beneficial tool for contracting with shippers of all sizes, bringing the benefits of the Commission’s exemption to the marketplace. UPS has invested heavily in building up procedures and business methods for

this mode of contracting, and has successfully attracted a significant volume of shipper customers to the use of NSAs.

Conversely, not all NVOCCs and not all shippers can use NRAs, and the NRA may not be the most suitable format for certain types of transactions. The confidentiality feature of NSAs is attractive in certain instances. While UPS understands that some NCBFAA members may not like the NSA procedures and filing requirements, they have the option of using NRAs. It does not make sense to narrow NVOCCs' range of choices for contracting when a substantial volume of cargo is moving under this mode successfully and with great benefits to carriers and customers.

UPS also notes that NSAs are the only method by which larger-volume NVOCCs can maintain an equal playing field with the vessel operating common carriers ("VOCCs"). Without NSAs, which have as a mandatory element a minimum quantity commitment ("MQC"), NVOCCs carrying substantial volumes will have to negotiate service contracts with VOCCs with large MQCs which the NVOCC must honor or face liquidated damages, but in turn these NVOCCs will have difficulty in obtaining volume commitments from a significant percentage of their shippers to support their VOCC MQCs. Shippers signing NRAs are not required to commit to an MQC, and the NVOCCs cannot enforce any volume requirement against them. Thus without being able to do back-to-back NSAs to balance their service contract MQCs, NVOCCs would be caught in the middle with MQCs looking upward to the VOCCs, but no volume commitment with shippers. With NSAs, NVOCCs can manage their portfolios in the same manner as the VOCCs, taking some volume on tariff rates without MQCs, but offering larger shippers NSAs with a mandatory MQC. Without that option for NVOCCs, the VOCCs will be able to continue balancing their shipper commitments, but the NVOCCs will not be able to do so if restricted to use of NRAs or tariffs.

UPS also notes that a number of smaller-volume NVOCCs co-load (in compliance with the Commission's regulations) with other NVOCCs in order to build volume to hedge against larger service contract MQCs. Many users of NSAs compete in a different sector of the market with larger MQCs where co-loading is not a realistic option. Preservation of NSAs as a business method will enable them to continue to improve efficiency and offer increasing price and service benefits to shippers without having to rely on co-loading opportunities. UPS believes this additional option

benefits all parties from the VOCC to the intermediaries to the shipper. It ought to be preserved regardless of any changes to the NRA regulations to improve flexibility.

III. CONCLUSION

For the foregoing reasons, the UPS NVOCCs suggest that if the Commission initiates a proceeding to consider the NCBFAA petition, the scope of consideration should not include elimination of the NSA option or any material additional restrictions on the NSA regulations at 46 CFR §531.

Respectfully submitted,

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