

**BEFORE TEE
FEDERAL MARITIME COMMISSION**

**PETITION OF UNITED PARCEL SERVICE, INC. FOR EXEMPTION PURSUANT TO SECTION 16 OF
THE SHIPPING ACT OF 1984 TO PERMIT NEGOTIATION, ENTRY AND PERFORMANCE OF
SERVICE CONTRACTS, P3-03;**

**PETITION OF NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA,
INC. FOR A LIMITED EXEMPTION FROM CERTAIN TARIFF REQUIREMENTS OF THE SHIPPING
ACT OF 1984, P5-03;**

VERIFIED PETITION OF BAX GLOBAL, INC. FOR RULEMAKING, P8-03;

**PETITION OF C.H. ROBINSON WORLDWIDE, INC. FOR EXEMPTION PURSUANT TO SECTION 16
OF THE SHIPPING ACT OF 1984 TO PERMIT NEGOTIATION, ENTRY AND PERFORMANCE OF
CONFIDENTIAL SERVICE CONTRACTS, P9-03**

SUPPLEMENTAL COMMENTS

**SUBMITTED BY THE
TRANSPORTATION INTERMEDIARIES ASSOCIATION**

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**ROBERT A. VOLTMANN
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JANUARY 16, 2004

The Transportation Intermediaries Association (“TIA”) submits these comments as a supplement to the comments it filed in these proceedings on October 10, 2003. Those comments and others filed by trade associations, individual companies and members of Congress have stimulated thoughtful and wide ranging discussion within the industry. TIA commends the Commission’s decision to leave the record open for these and other supplemental comments that will assist in determining the best way forward in responding to the petitions.

The consensus of the comments filed to date clearly supports exercise of the Commission’s exemption authority under Section 16 of the Shipping Act of 1984 (“Act”) as amended by the Ocean Shipping Reform Act (“OSRA”) to relieve non-vessel-operating common carriers (“NVOCCs”) from both the economic and administrative burdens of tariff publication. Even the ocean shipping lines, represented by the World Shipping Council, have expressed a willingness to consider the use of “range rate” tariffs that would reduce the administrative burden of tariff publication.

There is also broad industry support, at least among NVOCCs and their shipper customers, for use of the Commission’s exemption authority to permit them to enter into customized and confidential contracts with each other for ocean transportation services. TIA has joined with the National Industrial Transportation League (“NITL”), and the National Customs Brokers and Forwarders Association of America (“NCBFAA”) in a Statement of Common Principles Concerning a Section 16 Exemption for NVOCCs (“Common Principles”, attached hereto), a copy of which was filed with the Commission on January 12, 2004. As to tariff publication, the Common Principles reflect agreement between NVOCCs and shippers that “[t]he administrative costs incurred by NVOCCs to publish tariffs far exceed any consumer benefits, since very few NVOCC customers rely on published tariffs to obtain NVOCC pricing

information.” This conclusion reinforces the statement made in TIA’s earlier comments that, according to its members, customers never check the published tariff rates—they just ask for a rate quotation over the telephone, or by fax and **email**. The Common Principles also conclude that granting an exemption that reduces tariff publication burdens would meet the standards under Section 16 because it would “have a pro-competitive impact on the industry and . . . facilitate commerce.”

As to confidential contracting, TIA’s earlier comments pointed out that the rationales advanced by UPS, BAX and C.H. Robinson—supporting use of the exemption authority to permit NVOCCs to enter into contracts tailored to the needs of their customers—applied equally to small, medium and large intermediaries, and that any such exemption should be ‘broad enough to be used by small, medium and large companies that meet certain minimum criteria.’ Shippers agree. The Common Principles state that contracting is the preferred means of conducting ocean transportation services between ocean carriers and shippers, because it allows for more flexible and customized business arrangements, and that ‘NVOCCs should have the same opportunity to offer contracts to their customers.’ To that end, the Common Principles urge the Commission to begin a rulemaking proceeding “to broadly authorize confidential contracting between NVOCCs and their customers.”

Finally, shippers and NVOCCs agree that the Commission has ample legal authority under the Act, as amended by OSRA, “to grant an exemption that would provide greater pricing flexibility and/or reduce regulatory burdens for NVOCCs.” TIA urges the Commission to begin a rulemaking process that would explore how it might best use that authority to address the

needs of shippers and NVOCCs for the freedom to shape service and price to the changing demands of the marketplace.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard D. Gluck, hereby certify that on January 16, 2004, a copy of the attached Supplemental Comments submitted by the Transportation Intermediaries Association was served via **first** class mail, postage prepaid upon the following counsel for petitioners:

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ATTACHMENT

**BEFORE THE
FEDERAL MARITIME COMMISSION**

PETITION OF UNITED PARCEL SERVICE,
INC. FOR EXEMPTION PURSUANT TO
SECTION 16 OF THE SHIPPING ACT OF 1984
TO PERMIT NEGOTIATION, ENTRY AND
PERFORMANCE OF SERVICE CONTRACTS

FMC Petition No. **P3-03**

PETITION OF NATIONAL CUSTOMS
BROKERS AND FORWARDERS
ASSOCIATION OF AMERICA, INC. FOR
A LIMITED EXEMPTION FROM CERTAIN
TARIFF REQUIREMENTS OF THE
SHIPPING ACT OF 1984

FMC Petition No. **P5-03**

PETITION OF OCEAN WORLD LINES, INC.
FOR A RULEMAKING TO AMEND AND
EXPAND THE DEFINITION AND SCOPE OF
"SPECIAL CONTRACTS" TO INCLUDE
ALL OCEAN TRANSPORTATION
INTERMEDIARIES

FMC Petition No. **P7-03**

PETITION OF BAX GLOBAL INC.
FOR RULEMAKING

FMC Petition No. **P8-03**

PETITION OF C.H. ROBINSON
WORLDWIDE, INC. FOR EXEMPTION
PURSUANT TO SECTION 16 OF THE
SHIPPING ACT OF 1984 TO PERMIT
NEGOTIATION, ENTRY AND
PERFORMANCE OF CONFIDENTIAL
SERVICE CONTRACTS

FMC Petition No. **P9-03**

**JOINT ADDITIONAL COMMENTS
of**

**THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
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The National Industrial Transportation League, the National Customs Brokers and Forwarders Association of America and the Transportation Intermediaries Association (collectively, "Joint Commenters") submit these Joint Additional Comments in response to the order of the Commission in these various proceedings served November 13, 2003, in which the Commission determined to re-open the comment period for additional comments,

These Joint Commenters are submitted the following Statement of Common Principles which they believe should guide the Commission in adjudicating these proceedings:

**STATEMENT OF COMMON PRINCIPLES
CONCERNING A SECTION 16 EXEMPTION FOR NVOCCs**

agreed to by

**The National Industrial Transportation League
National Customs Brokers and Forwarders Association of America
Transportation Intermediaries Association**

1. The FMC has the authority under Section 16 of the 1984 Shipping Act, as amended by OSRA, to grant an exemption that would provide greater pricing flexibility and/or reduce regulatory burdens for NVOCCs.
2. The FMC's exemption authority was liberalized under OSRA to enable the agency to reduce unnecessary regulatory burdens, and the FMC should exercise that authority unless the exemption would substantially reduce competition or be detrimental to commerce.
3. Granting exemptions that broadly permitted confidential contracting between NVOCCs and their customers and reduced tariff publication burdens would have a pro-competitive impact on the industry and would facilitate commerce.
4. The FMC should initiate a rulemaking proceeding to determine how to apply its exemption authority in order to broadly authorize confidential contracting between NVOCCs and their customers. The FMC should permit all qualified NVOCCs to have service contracting authority and should consider whether service contracts between NVOCCs and shippers should be subject to all of the existing rules and requirements applicable to VOCC service contracts.
5. Contracting is the preferred means of conducting ocean transportation services between VOCCs and shippers because it allows for more flexible and customized business arrangements. NVOCCs should have the same opportunity to offer contracts to their customers.

6. The administrative costs incurred by NVOCCs to publish tariffs far exceed any consumer **benefits**, since very few NVOCC customers rely on published tariffs to obtain NVOCC pricing information.

7. The shipping industry has changed dramatically since OSRA was adopted and has moved from a system of common carriage to contract carriage. In addition, **NVOCCs—whether small, medium or large—have** become far more sophisticated and have generally made the investments in infrastructure that are necessary to provide an efficient and economic intermodal **transportational** system. The changed dynamics of the NVOCC industry supports the FMC taking a **fresh** look at how it can increase competition and relieve regulatory burdens for NVOCCs.

In addition to the submission of these Common Principles, these Joint **Commenters** will also be separately submitting Additional Comments in response to the Commission's November 13 orders, in which they will discuss at greater length the above principles and also submit views or arguments in reply to the petitions or in reply to comments already received.

Respectfully submitted,

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Dated: January 12, 2004

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The undersigned hereby certifies that a copy of the foregoing Joint Additional Comments was served via first-class U.S. mail on the 12th day of January 2004, upon the following:

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