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Before The
FEDERAL MARITIME COMMISSION

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DOCKET NUMBERS:

Petition No. P3-03 --	Petition Of United Parcel Service, Inc. For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Service Contracts
Petition No. P5-03 --	Petition of National Customs Brokers And Forwarders Association Of America, Inc. For A Limited Exemption From Certain Tariff Requirements Of The Shipping Act
Petition No. P7-03 --	Petition Of Ocean World Lines, Inc. For A Rulemaking To Amend And Expand The Scope Of "Special Contracts"
Petition No. P8-03 --	Petition Of BAX Global Inc. For Rulemaking
Petition No. P9-03 --	Petition Of C.H. Robinson Worldwide, Inc. For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Confidential Service Contract

COMMENTS OF AMERICAN PRESIDENT LINES, LTD. AND APL CO. PTE., LTD. IN REPLY TO THE PETITIONS

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October 10, 2003

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American President Lines, Ltd. and APL Co. Pte., Ltd. ("APL" or "APL Liner") submit these comments in response to the Commission's notices in the following dockets:

Petition No. P3-03 -- Petition Of United Parcel Service, Inc. For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Service Contracts ("UPS");

Petition No. P5-03 -- Petition of National Customs Brokers And Forwarders Association Of America, Inc. For A Limited Exemption From Certain Tariff Requirements Of The Shipping Act ('NCBFAA");

Petition No. P7-03 -- Petition Of Ocean World Lines, Inc. For A Rulemaking To Amend And Expand The Scope Of "Special Contracts" ("OWL");

Petition No. P8-03 -- Petition Of BAX Global Inc. For Rulemaking ("BAX");

Petition No. P9-03 -- Petition Of C.H. Robinson Worldwide, Inc. Pursuant For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Confidential Service Contract ("CHRW").

APL generally supports the comments being submitted by the World Shipping Council, of which it is a member. APL files separate comments in order to respond to statements in the UPS petition specifically addressed to APL, and in order to elaborate on important policy, factual and legal issues raised by the petitions.

I. SUMMARY OF APL'S POSITION

The Commission has before it five -- so far -- petitions by non-vessel-operating common carriers ("NVOCCs") who seek to dramatically alter the rules applicable to their dealings with their shipper customers. The petitioners do not, however, speak with a single voice. UPS, BAX and CHRW ask for authority to enter into service contracts; OWL asks for authority to enter into "special contracts" that are different from service contracts; and NCBFAA asks for authority to enter into unfiled contracts that are different still. UPS seeks Commission action that would

benefit only itself based on a criterion (a large asset base) that would exclude OWL, BAX and CHRW.[1] BAX and CHRW each advocate different criteria that would include each other and UPS, but would exclude the large majority of the NCBFAA membership." UPS, NCBFAA and CHRW ask that Section 16 exemptions be granted on the existing record, while OWL and BAX believe that exemptions are inappropriate on the existing record and ask the Commission to initiate a rulemaking proceeding.[3] UPS, OWL, BAX and CHRW base their petitions on the alleged need for the Commission to take action to accommodate the evolving logistics industry; but UPS and CHRW disagree concerning the relevance to the petitions of logistics companies that are affiliated with vessel-operating common carriers ("VOCCs").[4] NCBFAA does not mention the logistics industry in attempting to support its proposal.

Given these differences, the cumulative effect of the petitions is to create considerable confusion. However, the petitions raise important policy issues, and have generated wide interest. The question is how the confusion can be sorted out and the issues adequately addressed. APL's position is as follows:

(1.) The petitioners have not presented a record on which the relief they seek could possibly be granted. While the petitions raise important policy (and related factual) issues, the large majority of those issues are not mentioned, much less discussed, in the petitions. In Part II below, we identify some of the issues that APL perceives. Without developing and analyzing those issues, it is not possible to conclude that the requested exemptions "will not result in substantial reduction in competition or be detrimental to

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[1] UPS Petition pp. 2-3, 14, 21, 23.

[2] BAX petition pp. 2-3, 4; CHRW Petition pp. 24-28.

[3] BAX Petition pp. 2,5-6; OWL 9/24/2003 Comments on UPS Petition pp. 2-6.

[4] UPS Petition pp. 1 l-12, Gargaro Decl. p. 20; CHRW Petition, p. 16.

commerce*' as required by Section 16, or that the requested rules are in the public interest.

(2.) The Commission's current legislative authority does not allow it to take the specific actions requested by petitioners, as explained in Part III below.

(3 .) As the expert agency with responsibility for overseeing the Shipping Act, the Commission need not confine its consideration to the legal issues. Given the importance of the policy/fact issues raised, it should commence a further proceeding to consider the totality of the issues raised by the petitions.

II. THE PETITIONS RAISE FUNDAMENTAL POLICY AND RELATED FACTUAL ISSUES THAT WARRANT COMMISSION CONSIDERATION.

A. The Commission Should Consider The Policy/Factual Issues Raised By The Petitions.

We explain in Part III, below, that the petitions are legally unsupportable and could be rejected for that reason alone; ***i.e.***, if this were a court case, they would be subject to a motion to dismiss on legal grounds. However, the current context is very different from a court case. Five prominent entities have filed petitions that — on their face and as elaborated below — raise fundamental and complex policy issues (and related factual issues) that have far-reaching implications for competition and service in the U.S. foreign commerce. The petitions have, understandably, generated a great deal of interest within the industry and the shipping public. In these circumstances, the expert agency with responsibility for overseeing the Shipping Act need not limit itself to narrow consideration of legal issues in the manner of a court, but can and should consider the petitions comprehensively. The policy and related factual issues raised by the petitions are centrally relevant to the Commission's regulatory responsibilities and can properly be considered by the Commission both in the exercise of its discretion in acting on petitions for rulemaking and in deciding petitions for exemptions under Section 16, which explicitly requires consideration of effects on competition and commerce. Indeed, even in the absence of the petitions, the Commission could properly develop and consider the fact/policy

issues, in furtherance of both its own oversight responsibilities[5] and its role as an expert agency in developing possible recommendations to Congress." If the Commission were to reject the petitions on purely legal grounds, petitioners' proposals will not go away, i.e., they will at some point be considered in the legislative arena. Given the below-described complexity of the policy/fact issues, the public interest would be well served if the expert agency were to develop and address them.

In short, the Commission can and should defer ruling on the legal issues raised by the petitions pending development and consideration of the policy/fact issues, and should issue a comprehensive decision addressing all facets of this important matter following a further proceeding in which the policy/fact issues can be fully aired.

Below, we identify some of the fundamental policy/fact issues that APL considers to be raised by the petitions. Because the petitions largely ignore these issues, and do not come close to creating a record on which they could be considered on an informed basis, it is not necessary or appropriate for these comments to address the issues in detail. For present purposes, our points are simply that the issues exist, that they are fundamentally important, and that the Commission needs to address them.

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[5] 46 C.F.R. §§ 502.281; 502.282. In its 2001 OSRA Report, the Commission stated that it would be monitoring developments in the logistics industry as they bear on the Shipping Act regulatory regime. The Impact Of The Ocean Shipping Reform Act of 1998 ("OSRA Report") pp. 6, 33, 48 (Sept. 2001).

[6] *See, e.g., Deering-Milliken, Inc. v. FTC, 595* F.2d 685,702 (D.C. Cir. 1978) ("the investigative power of the Commission may be used to reveal the need for changes in the law for the purpose of making recommendations to Congress") (citing *FTC v. Texaco, Inc., 555* F.2d *862,875* n.28 (D.C. Cir. *1977); United States Department of Labor v. Kast Metals Corp., 744* F.2d 1145, 1150 (5th Cir. 1984) ("Agencies may, of course, investigate for a variety of [non-adjudicatory] purposes, such as . . . reporting to Congress"); *Ash Grove Cement Co. v. FTC, 577* F.2d 1368, 1375 (9th Cir. 1978). See generally, Pierce, *Administrative Law Treatise* § 4.1 at 195 (4th ed.) ("Agencies now conduct investigations to make rules, to determine policy, to recommend legislation, and to illuminate areas in order to find out whether something should be done and if so what").

B. The Policy and Fact Issues

1. The nature of the logistics services at issue. UPS, BAX and CHRW ask the Commission to authorize them (or an affiliated NVOCC) to enter into service contracts that would cover, not only ocean/intermodal transportation and closely related accessorial services, but also a wide range of logistics services that have not historically been subject to FMC filing or Shipping Act regulation. These include numerous services covered by the rubric "comprehensive supply chain management," which in turn is said by petitioners to encompass, *inter alia*: "supply chain engineering," "network design," "vendor management," "quality control," "inventory management," "order management," "warehousing," "specialized trade financing," "consulting" "inspection," "supply chain visibility," and "information management."[7/]

The meanings of these terms may be well understood by persons working in the logistics business (albeit the meanings are changing as the nature of that business rapidly evolves). But to our knowledge, those terms have not been defined in issuances by the Commission. The petitions use the terms as shorthand without giving them clear meaning.

The first basic fact question raised by the UPS, BAX and CHRW petitions, therefore, is: What is the nature of the services that they are proposing to put into Shipping Act service contracts? As verified by the attached Declaration, the services that petitioners contemplate including in service contracts are extensive and wide-ranging. Using, for illustrative purposes, a comprehensive supply chain management contract with a U.S. clothing retailer that imports shirts from the Far East and sells them at a number of U.S. locations, the services could include a wide variety of functions from the floor of the vendor's Far East factory to the shelf at the U.S. retail store, including for example:

[7/] See, e.g., UPS Petition pp. 1, 5-9, 11, 15 and attached Gargaro Statement pp. 9-16, 21; CHRW Petition pp. 5, 11-13, 25 and attached Mulvehill Statement pp. 2-3, 5-6; BAX Petition pp. 347.

-- Vendor training and education, including with respect to ways to improve factory processes and the preparation of necessary documentation;

-- Quality control at the factory, such as confirming that the label accurately states the shirt size and checking to make sure that the buttons line up with the buttonholes, as well as providing the customer with periodic evaluations of the vendor's performance;

-- Packing the shirts into cartons at the factory, and labeling and bar coding the cartons;

-- Determining when the shirt cartons should be shipped in order to meet the retailer's stock needs and consolidating them into containers (together with cartons of other commodities from the same or other vendors for the same or other customers);

-- Arranging as the customers' agent for ocean transportation and tendering the container to the VOCC;

-- Receiving the container at the U.S. port of unlading, taking it to a distribution center, and unstuffing it;

-- Detennining to which of the customer's U.S. stores the shirt carton should be moved, consolidating it into a trailer with other cartons (including cartons from different vendors including U.S.-based vendors) determined to be moved to the same store, and arranging for the trailer to be moved to a warehouse in the proximity of the store;

-- Unstuffing the trailer at the warehouse, storing the shirt carton at the warehouse, and detexmining when to move it to the store;

-- Moving the carton to the store, unpacking it and placing the shirt on the shelf;

-- Providing information technology allowing the customer to know the location of the goods, by purchase order number, at all times during the foregoing process;

-- The same contract with the customer would typically provide for the performance of similar services for a variety of different commodities -- shoes, jackets, etc. -- originating at the same or different factories in the Far East.

Pricing under the contract might take the form of single price per individual article -- e.g., X dollars per shirt, Y dollars per pair of shoes, etc. -- covering all of the above functions from factory floor to store shelf Or, the price for one or more of the functions might be separately stated in the contract.

The logistics business is complex, and the foregoing is only one example of what a supply chain management package can look like. There are many permutations and combinations. For example, all of the above-listed services might not be performed, and/or additional services not mentioned above might be performed, such as, for example, consulting, return or redistribution of rejected goods, services related to the financing/lease of warehouse space or equipment, and services relating to financing the ownership of the goods while they are in the supply chain. Different or additional types of services may be provided to customers in other lines of business. And given the fact that the logistics business is rapidly evolving, it seems certain that additional types of services will be provided in the not-too-distant future.

The policy issues raised by the UPS, BAX, CHRW and OWL petitions need to be considered against the background of this very wide diversity of logistics services, the large majority of which have not historically been deemed subject to FMC filing or the Shipping Act regulatory regime.

2. The alleged need to include non-ocean logistics services in Shipping Act service contracts, and the alleged competitive advantage of logistics companies that are affiliated with a VOCC. UPS makes two, related claims. First, it claims that without service contract authority, it is impossible for it to enter into a single confidential agreement comprehensively covering a customer's global supply chain management.[8/] Second, UPS claims that a logistics company such as APL Logistics, Ltd. ("APL Logistics"), which has a VOCC in its corporate family, has a significant and unfair competitive advantage over UPS because its logistic services are merged into the VOCC's service contracts.[9/] UPS says that it "needs to be able to operate in the same manner as its principal VOCC competitors in the logistics arena."[10/] (Emphasis added.)

[8/] See, e.g., UPS Petition p. 7; Gargaro Decl. pp. 20-21.

[9/] See, e.g., UPS Petition pp. 11-12; Gargaro Decl. p. 20.

[10/] Gargaro Decl. p. 20; see also UPS Petition p. 21 ("The large OTIs that are part of vertically-integrated VOCC organizations already have, in essence, the same authority as UPS seeks.")

Both of these claims are incorrect. Under the current regulatory regime, it is entirely possible -- and commonplace -- for a logistics company to construct a comprehensive supply chain management contract that includes confidential ocean rates, as follows: A VOCC is not party to the contract. Rather, the logistics company contracts directly with the customer. The portions of the contract dealing with non-ocean logistics services can, obviously, be confidential (and are not filed with or regulated by the FMC). The portion of the contract dealing with ocean transportation can also be kept confidential, simply by providing that cargo subject to the contract will be moved pursuant to specified service contracts(s) between the customer and one or more VOCCs. The contract typically provides that the logistics company will act as the customer's agent in tendering/receiving cargo to/from the VOCC under such service contracts. The service contracts used for this purpose may be negotiated with the VOCCs by the customer directly or by the logistics company acting as the customer's agent. In either event, the result of the arrangement is a comprehensive contract between the logistics company and its customer in which the prices for both non-ocean and ocean services are confidential.[11/]

While we do not purport to speak for the entire logistics industry, we believe this approach is both generally accepted and administratively workable.[12/] Given the explosive growth of the logistics industry, it seems clear that it is also commercially effective. The

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[11/] When public NVOCC tariff rates are appropriate in the business context (which is often the case), the contract can provide for the use of NVO tariffs in addition to or in lieu of service contracts.

[12/] We are aware of language in the Commission's September 2001 Report on the Impact of OSRA (pp. 32-33) that may be read to suggest that some VOCC service contracts include supply chain logistics services. We do not know the basis for those statements, and are not in a position to categorically disagree with them. However, APL Logistics' belief, based on its understanding of the arena in which it competes and communications with its customers, is that inclusion of logistics services in VOCC service contracts is not typical in the markets APL Logistics serves. Further, the inclusion of non-ocean logistics services in FMC-filed service contracts would raise regulatory issues that have, so far as we are aware, yet to be considered by the Commission (see pp. 13-14 below).

approach allows logistics companies to enter into comprehensive contracts in which both ocean and non-ocean prices are confidential, while at the same time providing the FMC with visibility of the ocean transportation terms and allowing VOCCs a role that furthers the congressional policy (discussed below) of preserving the incentive to make needed investment in vessels.

APL Logistics itself has followed this approach. APL Liner service contracts do **not** cover supply chain management services to be performed by APL Logistics. Rather, APL Logistics contracts directly with its customers in the above-described manner, and APL Liner is not a party to the logistics contracts. The contract between the customer and APL Logistics may, of course, specify a service contract between the customer and APL Liner that can be used to accomplish ocean transportation of cargo subject to the contract. But typically, the contract will similarly specify additional service contract(s) with different VOCCs that are also to be used depending on which VOCC has the most efficient departure date and transit time for a particular shipment. The CHRW petition, contradicting UPS, explicitly recognizes that VOCC-affiliated logistics companies provide then services in a way that involves numerous m-affiliated voccs." [13]

UPS is entirely free to contract with its logistics customers in the exact same manner as APL Logistics and other VOCC-affiliated logistics companies. It is at no competitive disadvantage. The UPS petition makes no attempt to show that the above-described arrangement is unsatisfactory. Given the rapid expansion and innovative nature of UPS' logistics **services** as described in its petition, it seems clear that UPS has found a way to do business that is commercially and competitively effective.

3. Effects on competition.[14] As just explained, the real competition issue raised by UPS' petition is **not** whether UPS is at a competitive disadvantage, because UPS can today enter

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[13] CHRW Petition, p. 16 (citing Maersk Logistics' website).

[14] See attached Declaration.

into supply chain management contracts with its customers, in a way that keeps the ocean rates confidential, in the exact same manner as APL Logistics. Rather, from where we sit, the real competition issue raised by UPS' petition is whether UPS should be allowed to go beyond what APL Logistics and APL do, and thereby increase the competitive and bargaining power of UPS' already formidable NVOCC vis-a-vis APL and other VOCCs.

Thus, if an APL Logistics supply chain customer wants its ocean rates to be confidential, APL Logistics accomplishes that by having the logistics contract provide for the use of individual service contracts between the customer and individual VOCCs (typically several). Although UPS is free to enter into similar arrangements, it proposes a regime under which a UPS logistics customer would enter into a single service contract with the UPS NVOCC rather than individual service contracts with individual VOCCs. The UPS NVOCC would aggregate the volumes under its service contract with that customer together with the volumes under its numerous service contracts with other customers -- both logistics customers and traditional NVOCC customer@' -- and then turn around and use the aggregated volumes to negotiate mega-service contacts with VOCCs. The effects of this would be (i) to enhance the competitive power of UPS' NVOCC, which is already one of the largest shippers in U.S. foreign commerce,[16/] in its dealings with both VOCCs and shippers, and (ii) to switch substantial cargo now moving

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[15/] Nothing in the UPS proposal would limit its use of NVOCC service contract authority to customers for which UPS provides logistics services.

[16/] According to a recent Journal of Commerce compilation, Walmart was the largest importer in the U.S. foreign ocean trades in 2002, with an import volume of 291,900 TEUs, followed by Home Depot at 182,000 TEUs, Target at 173,100 TEUs, and Dole at 142,900 TEUs. Journal of *Commerce,* Vol. 4 Issue 39 (Sept. 29-Oct. 5, 2003) p. 24A. UPS' petition states that it moves approximately 300,000 TEUs of ocean freight annually. Petition p. 5; Gargaro Decl. p. 13. While UPS does not say what proportion of these were U.S. import TEUs, UPS is obviously an enormous shipper today.

under VOCC service contracts to the UPS NVOCC's service contracts. Given the sheer size of UPS in relation to even large VOCCs,"[17] the impacts on competition could be substantial. As the Fashion Accessories Shippers Association, Inc. stated in its August 19, 2003 Comments In Opposition to the UPS petition (p. 5):

> "At the end of the day, having locked up a substantial cargo volume through service contract commitments to itself, UPS would be poised to act (1) as one of the world's largest shippers in relation to ocean carriers (2) as one of the world's largest carriers in relation to small and medium sized shippers and (3) as one of the largest inland domestic carriers in relation to both."

This economic power would, moreover, be concentrated in a company that makes no investment in vessels or marine terminals.

To the extent that the same service contracting rights were accorded to other large NVOCCs who are major players in the logistics business -- such as BAX, CHRW and OWL (not to mention other household names which are likely waiting in the wings) -- the impacts on VOCC service contracting and NVOCC-VOCC competition would be even greater.

Similar, large impacts on VOCC service contracting and NVOCC-VOCC competition would result if NCBFAA were to get its way and NVOCCs as a class are allowed to deal with shippers through contracts that are secret from the Commission and effectively unregulated, or if OWL were to get its way and NVOCCs as a class are allowed to enter into confidential contracts without minimum quantity commitments.

4. Effects on the structure of the industry.[18] Petitioners' proposals -- all of which would increase the competitive power of NVOCCs vis-a-vis VOCCs in one way or another -- could result in major structural changes in the industry. For example, if NCBFAA's proposal were adopted, could VOCCs be expected to continue to operate using filed and regulated service

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[17] UPS had revenues of $3 1.3 billion in 2002 (Petition p.3), compared to $4.6 billion for Neptune Orient Lines, Ltd., APL's corporate parent.

[18] See attached Declaration.

contracts while NVOCCs competed for their customers using unregulated contracts that are secret from the Commission? In particular, would VOCCs that have structured their business to primarily deal with proprietary shippers on a direct basis (rather than through NVOCCs) continue that structure in the face of competition from VOCCs that to a significant degree use NVOCCs as the equivalent of a sales department, if the latter class of VOCCs is effectively allowed to compete using unfiled and unregulated NVOCC contracts with shippers? Or would the former class of VOCCs be moved to change their way of doing business so that they, too, could deal with proprietary shippers through an affiliated or allied NVOCC?

We do not purport to have answers to these questions; but there would be at least a significant possibility of a paradigm shift in industry operations under which service contracting between VOCCs and individual proprietary shippers would become less important and would be largely superseded by unregulated contracting between VOCC-affiliated NVOCCs and proprietary shippers, and under which the Commission would see and "regulate" only the homogenized service contracts between the cooperating VOCC and NVOCC.[19/]

Similarly, if the UPS/BAX/CHRW model were adopted and NVOCCs in the logistics business were allowed to aggregate volumes in the manner described above, would APL and other VOCCs find it competitively necessary to move to a similar model under which all their ocean transportation services for logistics customers would be provided through service contracts of affiliated NVOCCs?

5. Effects on capacity and rates. When Congress enacted OSRA in 1998, the primary reason why it determined that VOCCs, but not NVOCCs, should be authorized to enter into confidential service contracts with their customers was the need to provide an incentive for

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[19/] In fact, NCBFAA itself has previously argued that exempting NVOCCs from tariff filing would encourage VOCCs to operate through affiliated NVOCCs. Comments of the National Customs Brokers And Forwarders Association of America, Inc. in Docket No. P5-91 at 8 (Jan. 21, 1992).

entities to provide essential vessel capacity for the U.S. foreign trades. See pp. 16-l 7 below. By definition, VOCCs provide capacity and NVOCCs do not. Congress was concerned that, if NVOCCs were allowed to enter into service contracts on the same basis as VOCCs, there would be little incentive to operate as a VOCC and capacity would become scarce. And Congress further recognized that scarce capacity means higher rates. See p. 17, below.

Nothing has happened since 1998 to reduce this concern. To the contrary, the great risks associated with the high capital and fixed costs of VOCC operations have been highlighted by several years of very poor financial performance by VOCCs -- years during which, for example, UPS and CHRW, by their own acknowledgement, have been extraordinarily profitable.[20/] And the Commission's 2001 OSRA Report confirmed that the relationship of containership capacity to demand is a major determinant of rate levels in the U.S. container trades.[21/]

The petitions, which would allow NVOCCs to contract with shippers on the same basis as VOCCs -- indeed on a preferred basis -- squarely raise the basic policy question that Congress found dispositive in 1998. That question cannot be swept under the rug by general references to the growth of the logistics industry since then.

6. Regulatory policy issues. The petitions also raise a host of regulatory policy questions. UPS, BAX and CHRW state that they would be subject to the normal regulatory regime governing service contracts.[22/] But it is far from clear what that means in these circumstances; for example: What are the regulatory policy and jurisdictional implications of

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[20/] See, e.g., UPS Petition pp. 3-4, Gargaro Statement pp. l-3, UPS Annual Report 2002 pp. 4, 25, 29; CHRW Petition pp. 3, 8-10, 25-26, Lindbloom Statement pp. l-4, C.H. Robinson Worldwide, Inc. Annual Report 2002 pp. 6-7. No stand-alone financial data for OWL are publicly available. According to the 2002 Annual Report of The Pittston Company, while BAX earned a substantial profit in 2002, it incurred a loss in the preceding two years. The Pittston Company 2002 Annual Report pp. 1, 2, 8, 40.

[21/] *See, e.g.,* OSRA Report, *supra* n.5, pp. 10, 11, 13, 14, 28, 29.

[22/] UPS Petition pp. 2-3 & n.1, 7; BAX Petition p. 5; CHRW Petition p. 8 n.2.

including in FMC-filed service contracts the full range of "supply chain management services" described above (pp. 5-7)? Would the Commission have jurisdiction over checking buttonholes at a Far East clothing factory, or over warehousing after a Shipping Act-regulated through movement is completed, etc.? Would the statutory obligation to adhere to the terms of filed service contracts extend to the price and other terms relating to those types of activities? Would the service contract need to be amended every time a change was made regarding such an activity? If the till range of activities are provided for a single price per commodity unit, how can the Commission know the price being charged for regulated ocean transportation?[23/] If VOCC service contracts were to cover such supply chain management services (as UPS contemplates), could VOCCs file agreements under sections 4 and 5 of the Act authorizing them to discuss and cooperate on rates or other matters relating to the full range of logistics services in the filed service contracts?

In addition, NCBFAA's proposal raises the important *issue* of whether removal of the NVOCC tariff filing requirement would vitiate the regulatory scheme created by Congress to protect the shipping public against abuses by irresponsible or unscrupulous NVOCCs. As explained below, and as NCBFAA itself asserted the last time the Commission addressed a petition to exempt NVOCCs from tariff filing, it very likely would. See pp. 19-23, below.

III. THE FMC DOES NOT HAVE LEGAL AUTHORITY TO GRANT THE PETITIONS

As just discussed, the petitions fail to identify, let alone confront, most of the fundamental policy issues that are presented to the Commission by petitioners' proposals to extend service contracting authority to NVOCCs and to effectively neuter the Shipping Act regulatory regime governing NVOCCs which is grounded in the statutory tariff filing

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[23/] Section 8(c)(2) of the Act provides that service contracts filed with the Commission must state "the line-haul rate."

requirement. So too, while acknowledging that there exists an issue of Commission jurisdiction to grant the authority proposed in the petitions, petitioners give only passing consideration to the legislative and regulatory factors that put Commission authority to take the proposed actions in question. We undertake below to fill the remarkable void left by petitioners' failure to meaningfully address this important issue of Commission authority. For reasons identified at the outset of these Comments, we believe that the Commission should reserve decision on that issue, and its application to the petitions, until the Commission has conducted a further proceeding to develop and analyze the underlying substantive factual and policy issues that have been raised by the petitions (and which we have identified above).

A. Congress Has Determined That NVOCCs May Not Enter Into Service Contracts With Shippers

When Congress enacted the Ocean Shipping Reform Act of 1998 ("OSRA"), it specifically debated the issue of whether NVOCCs should be permitted to enter into confidential service contracts with shippers. And in the end, it made an explicit determination that only vessel operating common carriers – and not NVOCCs – should be permitted to utilize such contracts.

The bill that ultimately became OSRA was S. 414, 105th Cong. As reported out of the Senate Committee on Commerce, Science, and Transportation, S. 414 allowed all common carriers, specifically identified by the Committee to include NVOCCs, to enter into service contracts. See S. Rep. No. 105-61, 105th Cong., 1 st Sess. 19, 23 (July 3 I, 1997). By the time that S. 414 reached the Senate floor, however, it had been subject to a "manager's amendment" in the form of a substitute, which, as described by its author (Senator Hutchison) would "[c]ontinue

the existing requirement that NVOCCs offer their services to shippers pursuant to tariffs, instead of service contracts." 144 Cong Rec. S1067, S1068 (Feb. 26, 1998) (Remarks of Sen. Hutchison); 144 Cong. Rec. S1357 (March 4, 1998).

When the manager's amendment came before the Senate, the only question that was debated was whether to pass the manager's amendment as submitted or to adopt an amendment offered by Senator Gorton, the sole purpose of which was to allow NVOCCs to enter into service contracts with their shippers. The Gorton amendment was defeated by a vote of 72 to 25, and the manager's amendment was passed. 144 Cong Rec. S33 11, S33 13 (Apr. 21, 1998). S. 4 14 was then considered in the House, where again the debate centered on whether NVOCCs should be permitted to enter into service contracts. And again, the answer was "no," with the House adopting the Senate bill by a vote of two-thirds. 144 Cong. Rec. H7019 (Aug. 4, 1998).[24]

The vote of an overwhelming majority of both houses against allowing NVOCCs to enter into *service* contracts reflected the congressional policy judgment that a distinction between VOCCs and NVOCCs is necessary to provide VOCCs with the incentive to continue to invest in ownership and operation of vessels. As Senator Breaux – a co-sponsor of the manager's amendment – explained in opposing the Gorton amendment:

> "It is not fair to the vessel-operating common carriers serving our trades, with their huge capital investments, that they be put on par with entities taking advantage of the fiction of current law calling them tiers. . . . The end result [of allowing NVOCC's to enter into service contracts] would be to provide a disincentive to actually own and operate ships. Why actually own and operate ships if you could function in the same fashion as an ocean carrier without actually having to own or control any of the transportation functions or liabilities." 144 Cong. Rec. S3200 (Apr. 3, 1998). See also *id.* at S3307 (Apr. 21, 1998).

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[24] The single change that the House made to the Senate bill was to delete an unrelated title dealing with funeral benefits for certain Merchant Mariners. The Senate concurred in the bill as thus amended. 144 Cong. Rec. S11297, 11301 (Oct. 1, 1998).

Likewise, in the House, Representative Oberstar – ranking minority member on the Committee on Transportation and Infrastructure – explained:

> "Under the bill, only the person operating the vessel on which the goods are actually carried can enter into a confidential service contract with a shipper. The basis for this is simple: these people have invested millions of dollars in the vessel and pay for its operating cost. Why should they be treated the same as someone who has not invested any money in the vessel on which the goods are transported? This bill attempts to give an incentive for capital investment in these ships." 144 Cong. Rec. at H7018 (Aug. 4, 1998).[25/]

Congress identified, moreover, that such a difference in treatment between VOCCs and NVOCCs is necessary to ensure adequacy of vessel capacity and competition in international trade, with a resulting beneficial effect on carrier rates. Representative Oberstar thus observed:

> "Others may argue that allowing people that do not operate the vessel on which the goods are transported to enter into confidential contracts will help promote competition and reduce rates. However, investment in new, more efficient ships, will also increase capacity and decrease rates." *Id.*

And Representative Clement similarly stated:

> "International shipping is continuing to evolve with larger, more efficient ships. By promoting investment in these types of ship operations, we will help to decrease the cost of transporting goods in the future." *Id.* at H7016.

The FMC has likewise recognized this link between adequate capacity and reduced rates in its OSRA Report?

UPS asserts (pp. 22-23) that Congress refused to grant service contract authority to NVOCCs based primarily on a fear that NVOCCs lacked sufficient assets to perform and pay

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[25/] See also *id.* at H7016 (remarks of Rep. Clement).

[26/] *See* n.2 *1, supra,* and accompanying text. Another suggested reason for not allowing NVOCCs to enter into service contracts was the differential impact on large versus small NVOCCs, with resulting harm to small, "mom and pop" NVOCCs. See 144 Cong. Rec. S3200 (Apr. 3, 1998). (Sen. Breaux); *id.* at S3307 (Apr. 2 1, 1998).

claims related to service contracts. On this basis, UPS argues that the congressional policy against permitting NVOCCs to enter into service contracts with shippers should not apply to large, financially sound NVOCCs. UPS' claim is not only wholly without foundation but is flatly contradicted by the legislative history cited above concerning the reasons underlying the congressional determination.[27/]

The petitions directly challenge these policy decisions consciously made by Congress when it enacted OSRA.[28/] Whatever changes may have occurred in the transportation industry, it remains true, by definition, that NVOCCs neither own nor operate ships. Thus, the petitions would be directly contrary to the congressional policy judgment that restricting service contracts to VOCCs provides an important incentive for investment in vessels (with attendant benefits for rates and service). Moreover, the congressional policy judgment that the authority to enter into confidential service contracts should be restricted to VOCCs in order to provide an incentive for

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[27/] The legislative history relied on by UPS at page 22 of its Petition mentions large, financially stable NVOCCs, not in the context of saying that service contract authority would be appropriate for them, but rather in the context of stating that service contract authority would give them a competitive advantage over smaller NVOCCs.

[28/] UPS has attempted to rewrite the legislative history of OSRA by enlisting members of Congress to submit comment letters. Even apart from the fact that the congressional letters do not reflect consideration of the types of policy issues identified above, they are irrelevant in determining what Congress intended when it enacted OSRA. It is well established that post hoc statements regarding the meaning of past legislation are entitled to little or no weight, even when made by Congress itself in the normal course of congressional activity. ***See, e.g., South Dakota v. Yankton Sioux Tribe, 522*** U.S. 329,355 (1998) ("We have often observed . . . that 'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one"'); ***Walsh v. Brady,*** 927 F.2d 1229, 1233 n.2 (D.C. Cir. 1991) ("oxymoronic 'subsequent legislative history', here in the form of a letter from the amendment's sponsor . . . can add nothing"). See generally 2A Singer, ***Sutherland Statutes & Statutory Construction § 48.20 (6th ed.)*** ("Post-enactment views of those involved with the legislation should not be considered when interpreting the statute").

investing in vessels applies, *a fortiori,* with even greater force to the NCBFAA and OWL petitions, each of which seeks even greater flexibility than VOCCs possess to enter into confidential transportation contracts with shippers.[29/]

B. Congress Has Adopted a Regulatory Scheme For NVOCCs That Is Grounded In Tariffs

Each of the petitions would result in an effective end to tariff filing by NVOCCs. Under the NCBFAA proposal, NVOCCs would not maintain tariffs at all unless they chose to do so voluntarily. The UPS, BAX and C.H. Robinson petitions would still require tariffs (as is the case for VOCCs), but NVOCCs utilizing the exemption presumably would carry all or virtually all of their cargo under service contracts. And although the OWL petition nominally calls for NVOCCs to continue the tariff requirement, the rates for its customers would be in confidential "special billing instructions," which are not really tariffs at all, as the defining aspect of a tariff is that it is kept "open for public inspection," § 8(a)(1). Thus, grant of the petitions would gut the regulatory scheme that Congress has crafted for NVOCCs, which includes as an integral part the maintenance of tariffs.

On three occasions since 1984, Congress confirmed the requirement that NVOCCs file (or maintain) publicly available tariffs as an integral element of the congressional scheme for regulating NVOCCs for the benefit of the shipping public.

The issue was addressed in the 1984 Act itself. One of the hotly debated topics leading up to the 1984 Act was tariff filing. Congress ultimately decided to require that carriers

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[29/] The NCBFAA petition would authorize NVOCCs to enter into any sort of contract they wish, and would free them from most provisions of § 10. The OWL petition would allow NVOCCs to enter into contacts, under the rubric of "special billing instructions," that are really just service contracts freed from the limitations that go along with service contracts, such as the need for shipper volume (or portion) commitments and carrier service commitments.

file tariffs with the Commission. Contrary to the suggestion of NCBFAA in its petition. application of the requirement to NVOCCs was not some sort of unknowing consequence of the fact that NVOCCs just happened to be included in the term "common carrier." Congress was well aware, and specifically intended, that this requirement would apply to NVOCCs. See, e.g.. S. Rep. No. 98-3, 98th Cong., 1st Sess. 3 1 (Feb. 17, 1983).

In 1990, amendments to the Shipping Act were adopted focusing exclusively on NVOCCs and problems arising out of their activities as carriers. In the one Committee report on the 1990 amendments, it was explained that there had been an increasing number of complaints concerning the carrier activities of NVOCCs, including such "offending NVOCC practices" as "failure to deliver cargo, failure to honor loss and damage claims, and abandonment of cargo at ports throughout the world." The Report further noted that NVOCCs were required to file tariffs with the FMC, and to adhere to those tariffs, but that many NVOCCs (especially foreign-based entities) had "chosen not to abide by the tariff-filing requirements of the 1984 Act," despite the FMC's "numerous attempts to apprise [them] of their tariff-filing obligation and to secure their compliance."[30/] To address these problems, Congress (i) for the first time imposed a bonding requirement on NVOCCs; (ii) amended § 10 to prohibit a VOCC from carrying cargo for or entering into a service contract with an NVOCC unless that NVOCC had a valid tariff on file with the FMC, as well as a bond; (iii) required foreign NVOCCs to appoint resident agents for receipt of process, to make it easier for the Commission to enforce the tariff-filing and other requirements of the 1984 Act; and (iv) authorized the FMC to cancel the tariff of any NVOCC

[30/] H.R. Rep. No, 101-785, 101st Cong. 2d Sess. 2-3 (Oct. 1, 1990).

that did not maintain a bond or appoint an agent for service.[31] When the Commission promulgated interim rules implementing the 1990 Act, it summarized the legislative history and described Congress' "dual purposes" as being to protect shippers from unscrupulous NVOCC practices and to "ensure" compliance with "existing tariff filing requirements." 56 Fed. Reg. 1493, 1494 (Jan. 15, 1991).

Although it claims otherwise in its petition, the import of these congressional directives was clear enough to NCBFAA in 1992, when it filed an opposition to a petition by another association of NVOCCs seeking an exemption from tariff filing. NCBFAA then told the Commission that "both Congress and the President were persuaded in 1984 and 1990 that NVOs needed to be tariffed and enacted appropriate legislation."[32] Moreover, in 1992 NCBFAA also recognized the integral nature of tariff filing to the regulatory scheme created by the 1990 amendments, stating that "we fail to see how [the bonding] requirement can be enforced in the absence of tariffs."[33]

Finally, in OSRA, Congress continued and extended the regulatory scheme applicable to NVOCCs. Congress once again debated whether to require common carriers to maintain tariffs. The bill that Congress ultimately enacted requires carriers to maintain tariffs, but reduces the burden by allowing tariffs to be published privately, rather than filed with the FMC. In adopting this requirement, it was explicitly recognized that NVOCCs would be subject

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[31] Id.

[32] Comments of the National Customs Brokers And Forwarders Association Of America, Inc. In Docket No. P5-91 at 2 (Jan. 21, 1992).

[33] *Id.* at 7 n.3.

to the requirement to maintain public tariffs.[34] In addition, Congress continued the requirement for bonding, and encouraged the FMC to re-examine the amount of the bonds that OTIs were required to post in light of their carrier activities and potential liability to shippers.[35] And for the first time Congress required NVOCCs, like freight forwarders, to be licensed by the FMC. As Chief Administrative Law Judge Kline subsequently explained:

> "This act of Congress was welcome because even before the passage of OSRA, NVOCCs, like freight forwarders, had engaged in negligent conduct with respect to their handling of shippers' cargoes and like some forwarders, they were underfinanced and disdainful of their duties toward their shipper-customers." Crowley Liner Services, Inc. v. Puerto Rico Ports Authority, 29 SRR 394,412 (ALJ 2001).

In sum, Congress has set up a system for regulating NVOCCs, and tariffs are an integral part of that system. As NCBFAA itself identified in 1992, *see* p. 21 *supra,* it is hard to see how the system can be enforced if NVOCCs do not file tariffs. Indeed, the FMC's regulations impose special requirements on tariffs filed by NVOCCs, requiring that NVOCC tariffs include

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[34] For example Senator Hutchison, the manager of the bill, noted that although NVOCCs could not enter into &vice contracts, they could take advantage of the tariff reforms, in that "[t]hey will be able to privately publish tariffs and they don't need to file them with the Federal Maritime Commission." 144 Cong. Rec. at S3201 (Apr. 3, 1998). Representative Hyde, who opposed the bill, did so because NVOCCs would be required "to publish their rates for all to see." 144 Cong. Rec. H7017 (Aug. 4, 1998).

[35] S. Rep. No. 105-61, 1 05th Cong., 1 st Sess. 3 1 (July 3 1, 1997). The FMC did so, and increased the basic NVOCC bond amount, explaining:

> "The FMC has faced an increasing number of NVOCCs who have gone bankrupt or changed company names to avoid their responsibilities arising from transportation-related activities, thereby augmenting the importance of an adequate bond, surety or other insurance. Increasingly, injured shippers have not been made whole when seeking reparation from the instrument of financial responsibility. We note as well the diverse activities engaged in by OTIs due to the innovations and technological advances made by the shipping industry. The increased amounts proposed here will better protect the shipping public." 63 Fed. Reg. 707 10,707 12 (Dec. 27, 1998).

(a) details of the NVOCC's proof of financial responsibility, (b) the name and address of its agent for service (if the NVOCC is located outside the U.S.), and (c) certain information regarding co-loading. 46 C.F.R. § 520.11. Grant of the petitions would drastically undercut this congressionally mandated regulatory scheme.

The authority sought by the petitions would also effectively eliminate the FMC as a convenient forum for shippers to adjudicate disputes with NVOCCs.[36] Claims by shippers arising under NVOCC service contracts would, under § 8(c) of the 1984 Act, for the most part lie in the courts (or in arbitration if provided by the contract). The NCBFAA petition would go further to deprive shippers of remedies against NVOCCs by entirely exempting NVOCCs from a large number of the prohibitions stated in § 10 of the 1984 Act.

C. The FMC Lacks Authority To Override The Congressional Scheme

The question that remains, therefore, is what is the scope of the Commission's authority to grant the substantive actions sought in the petitions given Congress' prior, fully considered decision (i) to withhold from NVOCCs the right to enter into service contracts with shippers, and (ii) to establish a regulatory regime applicable to NVOCCs, which has at its heart the publication of tariffs?

The Commission has spoken to this very issue on several occasions. The issue of whether Section 16 exemption authority could extend to the grant of NVOCCs of contracting authority with shippers was identified by the Commission in its recent report on OSRA, *supra* n.5, where the Commission stated [p.48, emphasis added]:

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[36] Such disputes regularly appear on the Commission's docket. ***E.g., Total Fitness Equipment, Inc. v. Worldlink Logistics, Inc.,*** 28 SRR 534 (FMC 1998), review denied, 203 F.3d 54 (D.C. Cir. *1999); Corpco International, Inc. v. Straightway, Inc., 28 SRR 296* (FMC *1998); Symington v. Euro Car Transport, Inc.,* 26 SRR 871 (ID, Admin Final 1993).

> Whether to confer upon NVOCCs the right to enter into service contracts in their carrier capacities is peculiarly a legislative prerogative and is not a matter subject to administrative discretion."

In its petition [p. 22], UPS refers to this section of the OSRA report but fails to identify the position stated by the Commission as quoted above.

Earlier, in Docket 99-l 0, the rulemaking addressing the meaning of "ocean common carrier" as defined by OSRA, the FMC rejected a proposal by OWL to allow NVOCCs to slot charter space from VOCCs so as to enter into contracts with shippers for the chartered space, on the ground that this was the equivalent of a service contract:

> "Regardless of whether this is sound policy, Congress recently and very consciously chose not to permit such activity when it enacted OSRA. The Commission will not now do what Congress declined to do." 65 Fed. Reg. 26506, 265 12 (May 8, 2000)[37/]

More generally, the Commission has repeatedly recognized that the FMC's exemption authority cannot be used to make a fundamental change in the nature of the congressionally established regime governing ocean shipping. For example, in ***Motor Vehicle Manufacturers Association -Petition For Exemption,*** 25 SRR 849,852 (FMC 1990), the Commission stated:

> "The 1984 Act prescribes a specific statutory scheme which the Commission has been charged with enforcing. Section 16 of that Act does not provide authority to repeal or substantially amend that regulatory scheme." (Footnote omitted).

See also, ***Petition of COSCO For a Limited Exemption, 28 SRR*** 144,148 & n. 10 (FMC 1998); ***Motor Vehicle Manufacturers Association & Wallenius Lines, N.A. -- Joint Application For Exemption,*** 26 SRR 1269, 1277-78 (ID, Adopted 1994).

[37/] In 1992, NCBFAA itself took the same position with respect to a prior petition to exempt NVOCCs from tariff filing, stating that it "does not believe that the FMC has the authority to exempt such a substantial portion of the maritime industry from regulation." NCBFAA Comments in Docket ***No.*** P5-91, ***supra*** n.32, at 3.

Petitioners argue that OSRA amended Section 16 to expand and liberalize the Commission's exemption authority, and claim that major commercial changes in the industry since 1998 justify the grant of an exemption consistent with the remaining Section 16 criteria. The narrow, fact-based response to this claim is that, on the record as developed in the petitions, the petitioners have wholly failed to put before the Commission relevant, material, reliable and probative evidence based on which the Commission can find that the standards of Section 16 have been met – even assuming the specific exemption sought by petitioners were within the Commission's authority under Section 16. Given the fundamental policy/fact issues that we have identified above but that are not addressed in the petitions, it is impossible to conclude that "the exemption will not result in substantial reduction in competition or be detrimental to commerce," as required by Section 16. In this regard, the circumstance is precisely the same as that which existed in 1992 when the Commission rejected a petition filed by the International Federation of Freight Forwarders seeking an exemption from the tariff filing requirement on the ground, ***inter alia***, of a wholly deficient record. ***Petition For Exemption From The NVOCC Tariff Filing Requirements Under The Shipping Act Of 1984***, **26** ***SRR 240,247*** (FMC 1 **992).**[38/]

An additional, dispositive response to petitioners' argument is that Section 16 does not

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[38/] ***See*** also, ***e.g., Petition*** *of* ***A.P. Moller-Maersk Line For Exemption From Notice Requirement,*** 28 SRR **1209, 1209** (FMC 1999) (emphases added, citations omitted):

> "In order to grant an exemption, however, the Commission must currently make an affirmative finding that so doing would neither: (1) result in substantial reduction in competition, nor (2) be detrimental to commerce. The burden of proof for satisfying those criteria is on the petitioner."

Petition of Hamburg-Sudamerikanische **Dampfschiffahrtgesellschaft** Eggert **&** Amsinck For Exemption From Notice Requirement **, 28** SRR 1206, 1207 (FMC 1999); Petition of China Ocean Shipping (Group) Company For a Limited Exemption From **§** 9(c), 28 SRR 144, 147 (FMC 1998).

vest in the Commission authority to nullify decisions consciously made by Congress as to the coverage of the 1984 Act. Rather, as explained in the relevant Senate Committee report addressed to OSRA:

> This section would amend section 16 of the 1984 Act to facilitate the exemption of classes of agreements between persons subject to the 1984 Act or any specified activities of those persons from any requirements of the 1984 Act by eliminating two of the four tests applied to applications for such exemptions. The policy underlying this change is that while Congress has been able to identify broad areas of ocean shipping commerce for which reduced regulation is clearly warranted, the FMC is more capable of examining through the administrative process specific regulatory provisions and practices not vet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress." S. Rep. No. 105-61, 105th Cong., 1st Sess. 30 (July 31, 1997). (emphasis supplied)

The action requested by the petitions would violate this directive in at least two material respects. The issues of whether NVOCCs should be allowed to enter into confidential shipping contracts and whether they should be subject to a regulatory scheme that involves a requirement to maintain public tariffs were specifically addressed (and resolved) by Congress. And the authority requested in the petitions would not be consistent with the policy determinations so made by Congress; rather, they would be directly to the contrary and would reverse those congressional determinations.[39/]

However, the foregoing analysis does not necessarily mean that there is no conceivable alternative approach to accommodating structural changes in the market place if the approach does not contradict the above and is adequately demonstrated and documented. Without in any

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[39/] C.H. Robinson makes the remarkable argument that Congress must have intended to allow the FMC to authorize NVOCCs to enter into service contracts, because otherwise it would have included a prohibition against NVOCC service contracts in § 10. Apart from its other infirmities, the argument is simply wrong as a matter of fact – an NVOCC service contract is currently prohibited by § 10. Any NVOCC who entered into and performed a service contract

way endorsing the approach, we note that the NCBFAA has identified one possible such alternative, namely some form of range rates. It is, in part, because alternative approaches might be claimed to be appropriate even though the specific action sought in the petitions is not, that we are recommending that the Commission conduct a thorough inquiry into the issues prior to formally acting on the petitions themselves.

IV. CONCLUSION

The petitions raise fundamental and complex policy issues that have far-reaching implications for competition and service in the U.S. foreign commerce and also are centrally relevant to the Commission's regulatory responsibilities. Moreover, the policy issues raised by the petitions have generated wide interest in the commercial community, and, as evidenced by the comments that already have been filed with the Commission, appear to be of importance to the Congress as well. We have established that the Commission lacks authority to take the specific actions sought in the petitions. Nevertheless, the Commission has not only the authority, but the responsibility, to fully evaluate the claims raised in, and the issues raised by, the petitions in order to clarify the facts, evaluate the policy considerations, and determine whether responsive action within the Commission's authority is appropriate (and if not, whether recommendations should be made for Congressional action). We thus urge the Commission to defer formal action on the petitions themselves and instead initiate a proceeding to inform itself on the relevant fact and policy considerations, including those identified in Part II above. We have no specific recommendation as to the form of the proceeding, other than to suggest that it should provide for a thorough investigation of the issues and give interested persons an opportunity to participate in

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would be violating at least § 10(a)(2). Accordingly, there was no need for Congress to enact a redundant prohibition.

the development of a factual record and to provide comment to the Commission on the implications that can be drawn from such a record.

Respectfully submitted,

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October 10, 2003

Before The
FEDERAL MARITIME COMMISSION

DOCKETNUMBERS:

Petition No. P3-03 --	**Petition Of United Parcel Service, Inc. For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Service Contracts**
Petition No. P5-03 --	**Petition of National Customs Brokers And Forwarders Association Of America, Inc. For A Liited Exemption From Certain Tariff Requirements Of The Shipping Act**
Petition No. W-03 --	**Petition Of Ocean World Lines, Inc. For A Rulemaking To Amend And Expand The Scope Of 'Special Contracts"**
Petition No. P8-03 --	**Petition Of BAX Global Inc. For Rulemaking**
Petition No. P9-03 --	**Petition Of C.H. Robinson Worldwide, Inc. For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Confidential Service Contract**

DECLARATION OF CHRISTIAN I. CORRADO

I am Vice President Customer Service of APL Logistics, Ltd. ("APL Logistics"). APL Logistics is a corporate affiliate of American President Lines, Ltd. and APL Co. Pte., Ltd. APL Logistics is in the business of providing logistics services, including supply chain management, to customers (among others) whose products or processes involve commodities that move between foreign nations and the United States. As such, APL Logistics competes with the logistics businesses of United Parcel Service, Ocean World Lines, BAX Global, and C.H. Robinson Worldwide.

I am familiar with the logistics business, including supply chain management. I have read sections II.B. 1 through II.B.3 of the Comments Of APL In Reply to the above-referenced petitions. The facts stated in those sections concerning APL Logistics, the nature of logistics services, arrangements with customers for the provision of logistics services, and the logistics business are true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Christian I. Corrado

Before The
FEDERAL MARITIME COMMISSION

DOCKET NUMBERS:

Petition No. P3-03 --	Petition Of United Parcel Service, Inc. For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Service Contracts
Petition No. P5-63 . =	Petition of National Customs Brokers And Forwarders Association Of America, Inc. For A Limited Exemption From Certain Tariff Requirements Of The Shipping Act
Petition No. P7-03 --	Petition Of Ocean World Lines, Inc. For A Rulemaking To Amend And Expand The Scope Of "Special Contracts"
Petition No. PI-03 --	Petition Of BAX Global Inc. For Rulemaking
Petition No, P9-03 --	Petition Of C.H. Robinson Worldwide, Inc. For Exemption Pursuant To Section 16 Of The Shipping Act To Permit Negotiation, Entry And Performance Of Confidential Service Contract

DECLARATION OF ROBERT F. SAPPIO

I am Senior Vice President of Transpacific Trade for American President Lines, Ltd. American President Lines and APL Co, Pte Ltd (collectively "APL") are vessel-operating common carriers ("VOCC") in the U.S. foreign trades (among other trades). As such, APL competes for the business of beneficial cargo owners with non-vessel-operating common carriers ("NVOCCs") in their capacity as common carriers. APL also enters into service contracts with NVOCCs in their capacity as shippers vis-a-vis VOCCs. I am familiar with both of those aspects of APL's relationships with NVOCCs.

I havo rod sections IT.R.3 through II.B.5 of the Comments Of APL In Reply to the above-referenced petitions. The facts stated in thoso sections concerning APL and the VOCC industry are true to tho bost of my knowledgo, information and belief. In addition, thoso sections raiso a number of fact and policy questions concerning the potential effects that petitioners' proposals could have on competition between and among VOCCs and NVOCCs and on sorvico in the U.S. foreign trades. While I have nor been asked to proffer answers to thoso questions, I believo, including for tho reasons stated in those sections, that those questions arc squarely raised by petitioncrs' proposals and that tho described potential effects of petitioners' proposals could bo significant.

I declare under penalty of perjury that tho foregoing is true and correct.

Robort F. Sapplo

CERTIFICATE OF SERVICE

I certify that on October 10, 2003, I filed and served the reply Comments of American President Lines, Ltd. and APL Co. Pte., Ltd. in response to the petitions in Dockets P3-03, P5-03, P7-03, P8-03 and P9-03, by causing copies to be delivered as follows:

BY HAND

Hon. Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, Room 1046
Washington, D.C. 20573-0001

(Original & 15 copies + copy on diskette)

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