

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**DOCKET NO.
P4-16**

**COMMENTS OF UPS IN RESPONSE TO
PETITION OF THE COALITION FOR FAIR PORT PRACTICES FOR RULEMAKING**

Pursuant to the notice of the Federal Maritime Commission (“Commission”) on December 28, 2016 (81 *Fed. Reg.* 95612), UPS Ocean Freight Services, Inc. (License No. 016871N), UPS Europe SPRL, UPS Asia Group Pte. Ltd. and UPS Supply Chain Solutions (License No. 00275F) (“UPS”) hereby reply to the petition of the Coalition for Fair Port Practices (“Petitioner”) for rulemaking (the “Petition”).

Background

UPS is a global intermodal package delivery, freight and logistics services provider, with over 362,000 employees in the United States and some 82,000 more worldwide at 1,800 facilities. UPS makes over 4.7 billion annual deliveries of packages documents globally. UPS operates 104,926 vehicles and one of the world's largest airlines, with more than 540 owned and leased aircraft. UPS's non-vessel operating common carrier (“NVOCC”), forwarding and logistics businesses provide services in more than 220 countries and territories worldwide, and includes supply chain design, execution and management, global multimodal transportation, freight forwarding and distribution, customs brokerage and trade finance services.

UPS and its predecessor ocean forwarding and NVOCC companies have been in operation for many decades. UPS's substantial annual ocean freight volume includes full marine containers and less-than-container load service, plus project cargo and heavy-lift items such as industrial vehicles and machinery. Most UPS ocean freight moves on a door-to-door, port-to-door or door-to-port intermodal basis with ocean/truck, ocean/rail or ocean/air interface to optimize delivery times and cost and meet customer needs.

UPS seeks to be an innovator in improving efficiency, customer service and value, streamlining operations and advocating regulatory policies that best serve and balance the needs of the shipping public, shipping industries and government. UPS was among the leaders in seeking the Shipping Act exemptions to permit NVOCCs to use NVOCC Service Arrangements (NSAs), and participates in Commission rulemaking processes with the objective of improving the U.S. regulatory framework to benefit shippers and the economy in general.

Comments

UPS, as a licensed NVOCC and forwarder, urges the Commission to consider several factors carefully in deciding if there is a compelling need to devote its resources to examining this subject, or good reason to promulgate any new general rules as proposed in the Petition:

1. The situation with respect to demurrage, and what constitutes reasonable practices, and especially what amount of "free time" VOCCs and marine terminal operators ("MTOs") reasonably offer their shippers, varies materially from coast to coast, port to port and terminal to terminal. Thus any general industry-wide rule would be highly problematic. Also such a rule could infringe upon the commercial parties' freedom of contract in negotiating free time and demurrage arrangements. These arrangements have been developed over many years by hundreds of VOCCs and MTOs and many thousands of shippers, as driven by market forces. As the Commission is aware, the vast preponderance of all liner traffic in U.S. trades moves under ocean service contracts negotiated by parties with a fair balance of bargaining power. Creating a generalized and arbitrary rule, as the Petition suggests, and then applying it fairly in individual cases, will present significant challenges.

2. As an NVOCC, UPS may be subject to payment of demurrage to VOCCs and MTOs, but also must charge or pass through demurrage charges to its shipper customers. UPS assumes the Commission will consider carefully all necessary means to assure that intermediaries, which do not control terminal gate hours or appointments or the number of free days allowed by VOCCs, but which also may be impacted by force majeure events, do not face inequitable situations as a result of a rule under which NVOCCs must pay demurrage to VOCCs but possibly cannot charge or collect it from their shippers.

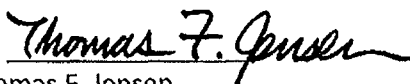
3. Ocean carriers' and MTOs' allowances for free time take into account weekends and holidays, when terminal gates have limited hours, and also include allowances for force majeure events such as storms, labor events and peak season port congestion. As the Commission is aware, VOCCs' allowances for free time are a negotiable contract term. Prohibiting demurrage charges for days when gates are not open or access is affected by force majeure events appears likely to lead to VOCCs and MTOs merely cutting free time or other steps to shift a portion of costs arising from these situations back toward the shipper or intermediaries. The Commission must consider whether the rulemaking proposed in the Petition would merely result in reactive changes in carrier and terminal practices without any material economic benefit to shippers or any material improvement in efficiency.

Conclusion

UPS thanks the Commission for its continuing interest in working with all stakeholders to improve the industry.

Respectfully submitted,

UPS

By: 

Thomas F. Jensen

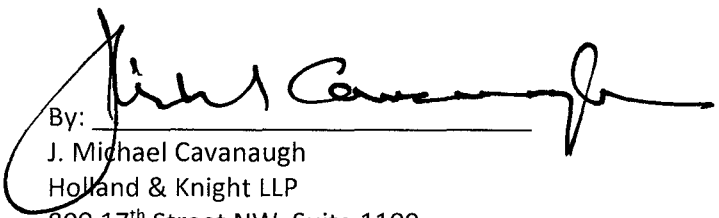
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