STATEMENT OF
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FEDERAL MARITIME COMMISSION
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

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Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss the interim report on the Federal Maritime Commission's Fact-Finding Investigation Number 26. As you know, on March 17th, the Commission instituted this investigation on Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades. On June 23rd, the Commission considered the confidential interim report on the investigation in closed session.

I want to thank Chairman Lidinsky and Commissioners Khouri and Brennan for their support and advice during the first phase of this investigation. I also want to thank the members of the Federal Maritime Commission staff who continue to provide invaluable assistance to this investigation.

Mr. Chairman, I especially want to thank the many American exporters and importers who committed their time and resources to this investigation. Many of them discussed not only their current problems with ocean transportation, but also their suggestions for long-term improvements in the efficiency of the global supply chain. Their insights involving international ocean shipping formed the basis for several of our recommendations adopted by the Commission.

Finally, I want to thank the executives of the ocean carriers who have also participated in our investigation. They have provided us with valuable information on current capacity problems and have been forthcoming and cooperative in this investigation. We look forward to their continued participation as we move forward into the next phase of this investigation.

Market Conditions

In October of 2008, demand for vessel space in the U.S. trades plunged dramatically. Vessels that had been sailing 95 percent full from Asia to the United States were soon sailing 75 percent full. During fiscal year 2009, U.S. exports fell by 14 percent and imports fell by 16 percent. Freight rates dropped precipitously. For example, during one 12-month period from mid-2008 to mid-2009, average revenues per container declined about 40 percent. At one point, carriers had laid up more than 575 vessels worldwide, idling about 12 percent of the world's containership fleet. However, in the fourth quarter of 2009, and continuing into 2010, cargo volumes shipped to the United States from Asia began to recover and demand for U.S. exports surged.

By early 2010, increases in import volumes collided with previous vessel capacity reductions. The resulting supply and demand mismatch created serious supply chain disruptions for American importers and exporters. Cargo bookings under service contracts were denied, abruptly cancelled, or rolled to a later voyage. A rapid series of incremental price increases were imposed. U.S. exporters experienced severe problems with the availability of shipping containers for their goods.

Fact-Finding Number 26

As we developed our approach under the order of investigation, we decided to solicit information on problems in three main areas: (1) vessel space shortages, now and in the near future, inbound and outbound in the U.S. trades; (2) chronic container shortages in certain parts of the country; and (3) since international ocean cargo is carried almost exclusively under contract today, common carrier practices regarding service contracts. Our goal was to gather as much information as possible before the interim investigation deadline, followed immediately by appropriate recommendations to intervene in the serious situation that exists in international ocean shipping.

The first phase of the investigation has involved an intensive series of confidential interviews with American exporters and importers, including some of the country's largest importers and exporters. We also interviewed executives of 14 ocean carriers operating in the U.S. transpacific trade. In addition, we interviewed shipper associations, ocean transportation intermediaries, freight software providers, chassis pool experts, container lessors, transportation academics, and international ocean carrier investment consultants. We talked to port officials and railroad executives. We consulted with the American Association of Railroads and the Intermodal Association of America. Finally, we had an extremely valuable discussion with the Surface Transportation Board.

These interviews were conducted in Portland, Oregon, San Antonio, Texas, New York, New York, Washington, D.C., and twice in San Francisco, California. Many participants provided extensive documentation to support the investigation. We plan to continue the interview process for as long as the investigation continues.

The shippers and carriers that have participated in the investigation generally agree about the economic and commercial conditions that gave rise to the scarcity of vessel capacity, problems with container availability for export cargo, and the need for carrier price increases. Their disagreements tend to be about why those conditions arose, and the ways in which carriers handled them.

In the eastbound Pacific trade, both shippers and carriers identified the fundamental problem as a lack of additional capacity to handle the increase in cargo as international trade began to recover from the industry crisis of 2008 and 2009.

Shippers expressed the opinion that the ocean carriers continued to withhold vessel capacity from the market in a collective effort to raise prices by leveraging access to scarce capacity and equipment. They believed that carrier practices involving rolled cargo, cancelled bookings, and successive price increases were in conflict with protections in their existing service contracts.

Carriers responded that they were reluctant to bring vessel capacity back into the U.S. trades quickly, given the precariousness of their financial positions and the lack of certainty that recent, unanticipated increases in import and export demand would be sustainable. They explained their capacity decisions as sound business decisions made by individual lines, and said they believed that problems with rolled cargo and cancelled bookings have been exacerbated as a result of multiple bookings by shippers.

In the westbound Pacific trade, shippers and carriers agree that U.S. exports face additional problems obtaining vessel capacity.

In the transpacific, average freight rates are higher eastbound than westbound. For this reason, ocean carriers deployed vessel capacity based on demand for U.S. imports. When available capacity for U.S. imports is limited, U.S. exporters also experience higher levels of vessel capacity shortages.

Another vessel capacity problem facing exporters concerns the issue of vessels "weighing out." Container vessels are subject to both weight and volume limitations. Because US imports tend to be relatively light, vessels departing Asia can carry a full complement of loaded containers to the U.S. West Coast. However, U.S. exports, such as forestry products and grain, can weigh, on average, twice as much as imports. This weight disparity limits the number of filled export containers that may be carried on an outbound vessel.

During the interviews, shippers and carriers agreed that ocean container shortages exist throughout the country for a number of reasons, including the fact that many containers carrying imports arrive at distribution centers far removed from many export locations. A shortage of containers worldwide is exacerbated due to the virtual halt in container manufacturing from late 2008 though 2009. Imports are increasingly trans-loaded into larger domestic containers near ports of entry increasing the likelihood that empty ocean containers will be shipped back to Asia to be used for higher paying Asian exports.

Finally, the investigation found that many shipper service contracts with ocean carriers did not contain provisions which adequately protected the shipper from numerous rate and surcharge increases. Moreover, in certain cases where shippers had negotiated all-inclusive rates in contracts that did not allow the imposition of rate increases and surcharges, they stated that some carriers still attempted to impose rate increases.

The interim report on this investigation recommended seven approaches for timely action to address the severe disruptions in the ocean leg of the global supply chain experienced by U.S. exporters and importers. As you know, Mr. Chairman, The Federal Maritime Commission does not have the statutory authority to require ocean carriers to add vessel capacity. Also, unless the parties agree otherwise, the exclusive remedy for breach of contract under the Shipping Act of 1984 is an action in an appropriate court. However, we believe there are actions that the Commission can take immediately, within our statutory authority, to intervene in the situation that exists in international ocean shipping and produce positive results.

Commission Action

At the Commission meeting held on June 23rd, the Commission adopted the recommendations of the interim report, with immediate action in four areas:

Rapid Response Teams

The Commission established "Rapid Response Teams" within the Commission's Office of Consumer Affairs and Dispute Resolution Services to quickly address and help resolve disputes between shippers and carriers. These problems include cancelled bookings, rolled cargo, and container unavailability. We encourage shippers to call our Consumer Affairs Office and identify their problem as urgent. We will do our best to resolve the problem as soon as possible.

TSA and WTSA Oversight

The Commission voted to increase oversight of the Transpacific Stabilization Agreement (TSA) and the Westbound Transpacific Stabilization Agreement (WTSA) by requiring verbatim transcripts of certain Agreement meetings.

Global Alliance Oversight

The Commission directed our staff to prepare recommendations for prompt Commission action on ways to increase oversight of global vessel Alliances.

Extend Fact-Finding Investigation

The Commission extended Fact-Finding Investigation No. 26 from July 31 to November 30, 2010. This will allow the Commission to continue the investigation through the peak shipping season and to fully develop additional solutions.

Developing Solutions

The following additional solutions will involve working with shippers, carriers, and intermodal transportation groups within the confidentiality of the continuing investigation to develop solutions to the problems identified in the investigation. This approach will produce pragmatic improvements that will serve the commercial interests of U.S. importers, exporters, and ocean carriers.

Best Practices

We will organize "best practices" discussion pairs between shippers and carriers to consider ways to resolve the most pressing problems with current carrier practices. The initial problems for resolution are booking cancellations and cargo rolling.

Rapid Response Teams and Carrier Representatives

We will encourage each ocean carrier to name a representative to work directly with our recently established Rapid Response Teams to quickly address capacity problems and other urgent problems that arise between shippers and carriers. This carrier representative will be available at all times to respond to the inquiries of the Commission on behalf of U.S. shippers.

Model Contract Terms

Based upon our discussions with shippers and carriers about the shortcomings of certain ocean service contracts, our Commission staff has already developed suggestions for areas that may be addressed and language that may be included in ocean contracts that will improve the mutuality of understanding that is necessary for successful business arrangements. Our goal is to provide improvements in ocean service contracting and allow shippers and carriers to enjoy the full benefits of contracting envisioned in the Ocean Shipping Reform Act of 1998.

Export Capacity Working Group

The Commission will establish a group of shippers and ocean carriers to meet with the Commission to discuss availability of vessel capacity for U.S. exports. These discussions will be held regularly, but only under the direction of the Commission. These working groups appear to be one of the more promising approaches to assure sufficient capacity for export cargo.

Intermodal Working Group on Container Availability

Based upon our discussions with ocean carriers, shippers, trucking intermediaries, software providers, chassis pool experts and railroad representatives, the Commission will organize an intermodal working group to address the chronic unavailability of export containers for certain American exporters. This shortage is particularly severe in certain parts of the country, and we believe it is urgent to begin work on a solution as soon as possible.

Conclusion

Today, freight rates from Asia to the United States are approaching, but are still below, the mid-2008 level. A number of carriers have recently announced decisions to increase vessel capacity in several U.S. trade lanes, particularly the U.S.-Asia trades. This month, we expect available weekly vessel capacity to return to June 2009 levels.

Nevertheless, growth in demand for container imports and exports in the upcoming peak shipping season may strain current vessel capacity. Container availability for export cargo in some regions of the country likely will continue to be difficult and expensive to arrange. Finally, the cost of ocean transportation service is likely to increase as demand for service increases.

Mr. Chairman and members of the Subcommittee, we realize that we have laid out an extremely ambitious agenda for the next few months. We will keep you and your staff informed of our progress in these areas. Thank you so much for your support, and I’ll be glad to answer any questions you may have.