

## **Comments of Federal Maritime Commissioner Rebecca F. Dye**

### **American Metal Market Scrap and Scrap Substitutes Conference**

**October 19, 2010**

- Thank you for inviting me to speak to you.
- My remarks reflect my own individual views and are not offered as the official position of the Federal Maritime Commission.
- As you may know, the Shipping Act of 1984 exempts common carriers from the tariff publication requirements and the service contract filing requirements of the Act when they carry “recycled metal scrap.”
- However, scrap metal shippers are protected by the Shipping Act’s prohibitions contained in chapter 411 of title 46, United States Code.

#### ***Economic Downturn***

- During the economic downturn, U.S. importers, exporters, and ocean carriers, like every other sector of the global economy, faced the most significant economic challenges of at least a generation.
- During 2009, U.S. liner exports fell by 14 percent and imports fell by 16 percent. Freight rates plummeted as carriers laid up over 575 vessels worldwide.

#### ***Fact-Finding No. 26***

- Early this year, the Federal Maritime Commission received reports that importers and exporters had difficulty obtaining vessel space, particularly in the U.S.-Asia trades.
- We also received reports that U.S. exporters were losing sizable overseas sales due to the distribution and availability of shipping containers.
- Due to our concerns about the causes of these vessel capacity and equipment constraints, as well as concerns about whether those constraints could hinder the U.S. economic recovery, the Commission ordered the Fact-Finding Investigation on Vessel Capacity and Equipment Availability in the United States Export and Import

Liner Trades.

- As you know, I was named the Fact-Finding officer.
- The Commission authorized a full and fair “non-adjudicatory” investigation to explore ways to address the current vessel capacity situation, in light of our limited statutory authority in this area.
- One of my goals in this investigation is to prevent any American exporter from losing an international sale because he was unable to secure ocean vessel space or equipment to ship his goods.

### **Investigation Background**

- The first phase of my investigation involved an intensive series of confidential interviews with American exporters and importers, including some of the country’s largest companies. We also interviewed executives of 14 ocean carriers operating in the U.S. transpacific trade.
- In addition, we interviewed shippers’ 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.
- I especially appreciate the willingness of the Burlington Northern Santa Fe Railway to participate in the investigation.

### **Investigation Findings**

- 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.

- Shippers also reported that their service contracts did not protect them from numerous rate and surcharge increases. Their service contracts also did not provide the volume forecasting specificity necessary to assure them of vessel space and equipment.
- 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 were exacerbated by multiple bookings by shippers

## **Westbound Pacific Trade**

- In the westbound Pacific trade, shippers and carriers agreed that U.S. exporters face additional problems obtaining vessel space and equipment. Although these problems were exacerbated by the economic turmoil, they are chronic and serious.
- In the transpacific, average freight rates are higher eastbound than westbound. For this reason, ocean carriers deploy 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.” U.S. exports, such as scrap metal 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 was also exacerbated due to the virtual halt in container manufacturing from late 2008 through 2009.
- The practice of transloading imports into domestic containers near ports of entry may increase the likelihood that empty ocean containers will be shipped back to Asia to be used for higher paying Asian exports.

## ***FMC Action***

- At the FMC meeting held last June, the Commission adopted the recommendations of my interim report, and took action in several areas to provide positive changes in U.S. ocean transportation.

## **Increased Commission 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.
- The Commission further directed our staff to prepare recommendations for prompt Commission action on ways to increase oversight of Global Vessel Alliances.

## **Rapid Response Teams**

- The Commission has established “Rapid Response Teams” within the Commission’s Office of Consumer Affairs and Dispute Resolution Services to provide solutions for disputes among shippers, ocean transportation intermediaries, and carriers.
- If you are involved in a dispute with an ocean carrier, intermediary, or shipper, go to our website at [www.fmc.gov](http://www.fmc.gov) and click on Rapid Response Teams on the right hand column.
- Identify your problem as urgent, and our staff will handle these complaints as quickly as possible. We want to provide practical, “real time” solutions to make your problems “go away!”
- The staff has formal mediation training to address your problems with a more formal approach, if necessary.
- All public contact with our Office of Consumer Affairs and Dispute Resolution Services is handled on a confidential basis, and we only contact the ocean carrier with the shipper’s permission. The best and fastest outcomes usually result from a shipper with the most specific and detailed information about the problem.
- Even if you decide that you do not want the Commission to take action on your problem, please give us a call.
- Although we cannot give legal opinions about service contractual obligations, we are available to discuss other options with you.
- For the first time, ocean carriers have each named representatives to work directly with our Rapid Response Teams to quickly address capacity and other urgent

problems that arise between shippers and carriers. We currently have 16 carriers in the program.

- The carrier representatives have guaranteed that they will respond to a specific complaint brought to their attention by the Commission within 24 hours.
- Of course, this process is available for carriers and intermediaries who have disputes with their customers.
- I am very excited about the possibilities for this new program. We believe this approach will promote business relationships and avoid costly legal processes.

### **Best Practices**

- We have also held “best practices” discussions between shippers and carriers to consider ways to resolve the most pressing problems with current carrier practices.
- Six exporter and six carrier representatives travelled to Washington last month to engage in discussions on various carrier customer service topics. These one-on-one discussions were productive, and I believe the direct carrier-customer discussion format will be extremely useful for future discussions.

### **Export Capacity Working Group**

- The Commission has also held initial discussions of an Export Forecasting Working Group composed of shippers and ocean carriers who have met with the Commission to discuss the availability of future vessel capacity for U.S. exports.
- The Commission intends to organize future meetings of this type to assure that accurate export capacity forecasting is available to ocean carriers.

### **Contract Enhancements**

- Based upon our discussions with shippers and carriers about the shortcomings of certain ocean service contracts, our Commission staff has developed suggestions for service contracts that will improve the mutuality of understanding that is necessary for successful business arrangements.
- We will publish these suggestions on our website later this year.

## **Export Equipment Availability**

- The Commission is also organizing an intermodal working group to address the chronic unavailability of export containers for certain American exporters.

## ***Vessel Capacity and Trade Forecasts***

- Transpacific vessel capacity deployed in September, 2010, is 27 percent higher than in January, 2010, and 15 percent higher when compared to September of 2009. This has mitigated some of the most severe problems encountered by shippers earlier this year.
- Import volumes have remained relatively strong through early October. Following the Chinese National Day holidays in early October, the picture of import trade volume is unclear. Although there are reports of declining spot rates in certain China to West Coast trades, future import demand is difficult to predict.
- Industry experts predict that approximately 1.5 million containers will be manufactured during 2010. While this is a substantial increase over 2009, it is still only about half as many which were produced in 2008.

## ***Antitrust Immunity***

- I know that many of you are also interested in the European Commission's decision to repeal the exemption from the ban on restrictive business practices for liner conferences and how that affects the U.S. liner trades.
- Currently, the Commission is collecting data and stakeholder information for our study on the impact of the E.U.'s October, 2008, repeal of its liner conference block exemption.
- Our study will cover five complete calendar years, from January 1, 2006, to December 31, 2010.
- The global economic downturn creates substantial challenges for our effort to isolate the effects of the E.U.'s elimination of the conference exemption from broader economic trends. Consequently, we are looking at ways to develop a comparative analysis addressing the issue.
- In order to learn about stakeholder's experiences before and following the E.U. block exemption repeal, we are having discussions with shippers, shipper councils, ocean transportation intermediary organizations, representatives of port authorities, and ocean carriers.

## ***Conclusion***

- My authority under Fact Finding 26 ends at the end of next month. As we move forward, I am keeping two goals in mind:
  - 1) The United States must have a reliable international supply chain for U.S. importers and exporters, and
  - 2) No American exporter should lose an international sale due to the unavailability of ocean transportation.
- I am honored to have been re-nominated by President Obama for another term at the Commission.
- If confirmed, I intend to pursue these goals with your continued assistance and support.
- Thank you very much.