

(S E R V E D)  
( MARCH 17, 2010 )  
**(FEDERAL MARITIME COMMISSION)**

## **FEDERAL MARITIME COMMISSION**

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Fact Finding Investigation No. 26

Vessel Capacity and Equipment Availability in the  
United States Export and Import Liner Trades

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### **ORDER OF INVESTIGATION**

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Pursuant to the Shipping Act of 1984, 46 U.S.C. 40101 *et seq.* (“Shipping Act”), the Federal Maritime Commission (“FMC” or “Commission”) is charged with regulating the common carriage of goods by water in the foreign commerce of the United States (“liner service”). In doing so, the Commission must be mindful of the statutory purpose of its regulation. Those purposes include a non-discriminatory regulatory process, an efficient and economic transportation system, and promotion of the growth and development of U.S. exports. 46 U.S.C. § 40101.

Like many sectors of the global economy, in 2009 shippers and ocean carriers experienced one of the worst years in the more than fifty-year history of international containerized shipping. During this economic downturn, U.S. liner exports fell by 14 percent and imports fell by 16 percent. Freight rates dropped precipitously, and carriers laid up more than 500 vessels worldwide, or roughly 10 percent of the global fleet capacity.

Reflecting the worldwide uptick in economic activity during the fourth quarter of 2009 and early 2010, cargo volumes shipped to the United States from Asia have increased, as has the demand for export shipments from the United States. As a result, shipping rates have increased. Many ships remain idle, however, and the Commission has received a growing number of reports that importers and exporters

have had difficulty obtaining vessel space, particularly in the U.S.-Asia trades. The Commission has also received reports of U.S. exporters experiencing problems with the distribution and availability of shipping containers for their goods on those same Asian trades.

On January 27, 2010, the President launched a National Export Initiative with the goal of doubling U.S. exports over the next five years. On March 11, 2010, the President issued Executive Order No. 13534 and has directed the use of “every available federal resource” in support of that effort.

Recent reports of container vessel capacity and equipment constraints have raised concerns over both the cause of the constraints and whether those constraints could hinder the nascent economic recovery. Therefore, consistent with its statutory duty, pursuant to 46 CFR 502.281 *et seq.*, the Commission hereby **ORDERS** a non-adjudicatory investigation into current conditions and practices in the U.S. liner trades, and into potential impediments to the flow of ocean-borne import and export trades. The Commission will use the information obtained in this investigation and recommendations of the Fact-Finding Officer (FFO) to determine its policies with respect to vessel and equipment capacity-related issues.

Specifically, the Fact-Finding Officer (FFO) named herein is to develop a record on the following:

1. Recent conditions in the U.S. export liner trades;
2. Recent conditions in the U.S. import liner trades;
3. Current and forecasted common practices by vessel-operating common carriers (VOCCs) regarding the management and allocation of VOCC-, shipper-, and leasing company-owned equipment for the U.S. import and export trades, specifically the management, supply, allocation and availability of containers for all U.S. export commodities and categories.
4. Current practices and plans of VOCCs regarding the deployment of vessel capacity in the U.S. trades;
5. Current and planned common practices relating to service contracting in the U.S. liner trades, specifically:
  - a. The practices of VOCCs with respect to the booking of cargo before and after a minimum quantity commitment of a service contract has been met but before the term of that contract has expired;
  - b. The practices of VOCCs with respect to the cancellation of cargo bookings;
  - c. The practices of carriers and shippers with respect to the overbooking of cargo; and

- d. The impact of those practices on the availability of liner service to meet the demands of U.S. exporters and importers; and
6. Any related conditions or practices that affect the U.S. liner trades.

The FFO is to report to the Commission within the time specified herein, with recommendations for any further Commission action, including any policies, rulemaking proceedings, or other actions warranted by the factual record developed in this proceeding.

Interested persons are invited and encouraged to contact the FFO named herein, at (202) 523-5715 (telephone), (202) 275-0521 (facsimile), or by e-mail at [factfinding@fmc.gov](mailto:factfinding@fmc.gov), should they wish to provide testimony or evidence, or to contribute in any other manner to the development of a complete factual record in this proceeding.

**THEREFORE, IT IS ORDERED**, That, pursuant to 46 U.S.C. §§ 41302, 40302, 40502 to 40503, 41101 to 41109, 41301 to 41309, and 40104, and 46 C.F.R. §§ 502.281 to 502.291, a non-adjudicatory investigation is hereby instituted into the current conditions in the U.S. ocean-borne common carrier trades, to gather facts related to the issues set forth above and to provide a basis for any subsequent action by the Commission;

**IT IS FURTHER ORDERED**, That, pursuant to 46 C.F.R. §§ 502.284 and 502.25, Commissioner Rebecca F. Dye is designated as the FFO. The FFO shall have, pursuant to 46 C.F.R. §§ 502.281 to 502.291, full authority to hold public or non-public sessions, to resort to all compulsory process authorized by law (including the issuance of subpoenas *ad testificandum* and *duces tecum*), to administer oaths, to require reports, and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission. The FFO shall be assisted by staff members as may be assigned by the Commission's Managing Director, and the FFO is authorized to delegate any authority enumerated herein to any assigned staff member as the FFO determines to be necessary.

**IT IS FURTHER ORDERED**, That the Investigative Officer shall issue an interim report of findings and recommendations no later than June 15, 2010, a final report of findings and recommendations no later than July 31, 2010, and provide further interim reports if it appears that more immediate Commission action is necessary, such reports to remain confidential unless and until the Commission provides otherwise;

**IT IS FURTHER ORDERED**, That this proceeding shall be discontinued upon acceptance of the final report of findings and recommendations by the Commission, unless otherwise ordered by the Commission; and

**IT IS FUTHER ORDERED**, That notice of this Order be published in the Federal Register.

By the Commission.

Karen V. Gregory  
Secretary