

**STATEMENT OF
CHAIRMAN ELIJAH E. CUMMINGS**

50TH ANNIVERSARY OF THE FEDERAL MARITIME COMMISSION

June 16, 2010

Thank you, Chairman Lidinsky, for that warm introduction.

It is an honor to join you to celebrate the Commission's 50th Anniversary.

I also applaud you for your extraordinary leadership, which has reinvigorated the Commission precisely at a time when critical oversight of the shipping lines carrying our trade is so essential to our continuing economic recovery.

I also thank Commissioners Brennan, Dye, and Khouri for your outstanding work on the Commission.

And I thank all of the Commission's employees for everything that you do every day to ensure the success of the Commission.

Ladies and gentlemen, when I was offered the opportunity to chair the Subcommittee on Coast Guard and Maritime Transportation in January 2007, I must admit that this opportunity did not necessarily appear as attractive to me at the time as others appeared.

I thought to myself, I can't swim.

And I get seasick.

However, over the course of my tenure, I have had an extraordinary opportunity to learn about all things maritime – and to see first-hand how central waterborne commerce is to every facet of our economy.

I have also learned about the critical and changing role the Federal Maritime Commission has played in our maritime industry.

Former Congresswoman – and former FMC Chair – Helen Bentley has been a critical guide and mentor to me on my journey and I thank her today for all of her support and guidance.

As I mentioned and as you know, the Federal Maritime Commission has existed in many incarnations, each designed to serve our national needs as the maritime world has continued to change.

Many of these incarnations were created by the major pieces of shipping-related legislation enacted by Congress over the 20th century.

Thus, in 1916, Congress formally sanctioned the shipping cartel system when it enacted the Shipping Act, which granted common carriers acting in concert with one another exemptions from certain anti-trust requirements that would otherwise have applied.

Congress also created the U.S. Shipping Board in 1916 to begin to regulate ocean going carriers and to support the development of our merchant marine in a world that was already at war.

In 1936, Congress passed the Merchant Marine Act of 1936, a landmark piece of legislation intended to support the existence in the U.S. of a merchant marine sufficient to carry our nation's "domestic water-borne commerce and a substantial portion of the water-borne export and foreign commerce of the United States."

At that time, Congress also created the Maritime Commission to replace the Shipping Board. The Commission played a central role in directing the development of the shipping resources that were so essential to supporting our overseas campaigns during World War II.

In 1961, Congress responded to continuing change in international shipping by requiring that the agreements concluded by cartels be filed with the Federal Maritime Commission (FMC), which was also created that year. The FMC was authorized to reject agreements that it found to be "contrary to the public interest."

Following a series of court decisions that appeared to limit the anti-trust immunity of cartels, Congress enacted the Shipping Act of 1984.

This act re-affirmed carriers' anti-trust immunity. The Act also allowed carriers to enter into service contracts with shippers; however, the cartels often moved to limit the ability of carriers to enter such agreements.

Further, the 1984 Act eliminated the requirement that the FMC make affirmative decisions on the agreements filed with it; instead, agreements were allowed to enter into force unless challenged by the FMC.

In 1998, Congress enacted the Ocean Shipping Reform Act, which explicitly allowed carriers to establish confidential service contracts without the approval of conferences. Rates negotiated between carriers and shippers were not required to be disclosed. However, the Act continued to affirm the grant of anti-trust immunity to many agreements concluded by carriers acting in concert.

In fact, let me note that one of the most surprising things I have learned during my tenure as Chairman of the Coast Guard and Maritime Transportation Subcommittee is how so many aspects of the organization of shipping carrier services are frankly

contrary to the standards of competitiveness that are observed – in fact, required – in almost all other facets of commerce in the United States.

I was truly surprised that it was only the *Ocean Shipping Reform Act* of 1998 that allowed carriers to establish confidential service contracts without the approval of conferences and without disclosure of negotiated rates.

However, I have come to understand the history behind these developments – and with that broader perspective, I have also come to see that we likely stand at another turning point.

The *Ocean Shipping Reform Act* introduced significant pro-market forces into U.S. shipping intended to expand competition and reduce the power of the conferences.

The current state of affairs – in which the FMC has indicated that somewhere between 90 and 95 percent of the cargo coming to the United States moves under contract – is a testament to the success of the Act in accomplishing its objectives.

However, though the Act was meant to shake up the way business was conducted, it was not meant to completely eliminate the old ways of business. As a result, elements of anti-trust immunity – even for rate setting – remain in place in the United States.

Now, others are taking the next steps down the road toward deregulation – and it remains to be seen what the ripple effect of their steps will be in our waters.

I know that the FMC is looking closely at this issue – and I look forward to hearing the results of your ongoing investigations.

These changes are being debated at a critical time.

In the 20th century and now into the 21st century, while we have continued to update the various incarnations of what is now the Federal Maritime Commission, we have frankly struggled to find the policy that would truly “improve and strengthen the U.S. marine transportation system to meet the economic, environmental and security needs of the Nation” and that would ensure we continue to have a robust merchant marine.

In an effort to keep vessels under the U.S. flag and plying the foreign trade, we have at various times supported construction subsidies, operating subsidies, the Title XI program, cargo preference programs, and now the Maritime Security Program. Each was individually designed to pursue specific, narrow objectives.

However, an honest assessment must conclude that they have utterly failed in their stated overall objective of maintaining a U.S.-flagged fleet capable of carrying U.S. trade.

We will soon hold a hearing in the Subcommittee to examine in more depth the state of the U.S.-flagged fleet.

However, there are a few key statistics that are driving the Subcommittee's work.

According to a study produced in 2009 by IHS Global Insight for the U.S. Maritime Administration, in 1975, there were 857 ocean-going U.S.-flag ships with a carrying capacity of more than 17.6 million deadweight tons.

At the end of 2007, there were 89 U.S.-flagged ships operating in the foreign trades – and these ships are highly dependent on U.S. government-impelled cargoes. As a result, the U.S.-flagged fleet is estimated by IHS to be carrying less than 2 percent of U.S. foreign trade.

Over the past century, as the U.S.-flagged carrying capacity has continued its steep decline, there have been many voices warning that this decline constituted both a security risk and an economic risk. These risks remain real today.

One of the key consequences of the decline of the U.S. flag is that U.S. exporters and importers are subject to the business decisions and practices of foreign-flagged carriers when they move their products.

In March of this year, I convened the Subcommittee to consider the shortage of shipping services – and regional shortages of shipping containers – available to carry U.S. trade, particularly exports.

As you know, the recession that occurred in 2009 reduced our nation's demand for imports and reduced total worldwide shipping volumes, causing shipping rates – and thus carriers' profits – to plummet.

We in the Subcommittee have heard numerous complaints that carriers have responded by pulling ships off global trade routes and laying them up at anchor and by slow steaming.

Now, just as demand for U.S. goods abroad has begun to rise, shippers report they are finding that outbound capacity is limited and that containers are scarce – particularly in the U.S. interior where many agricultural exports are produced.

U.S. exporters also report that when service is available, carriers are often assessing extra surcharges in an attempt to raise their revenues.

While the limited availability of shipping capacity and of empty containers would be serious concerns at any time, these current capacity constraints are occurring just as President Obama has announced the goal of doubling U.S. exports over the next five years.

Increasing our nation's level of exports is critical to reducing our unsustainable trade deficits and to carrying our recovering economy forward.

That said, if individual economic trends in the maritime industry do not support the increased carriage of products from the U.S. to destinations abroad, our nation's ability to expand its exports may be threatened even if there is increased demand for such products.

Given the pressing urgency of the current questions surrounding capacity and service to the United States, under Chairman Lidinsky's leadership, the FMC has launched a Non-Adjudicatory Fact-Finding Investigation into space and equipment shortages in our import and export trades led by Commissioner Dye.

We look forward to reviewing the results of that report – and have scheduled a follow-up hearing on June 30 to receive Commissioner Dye's findings.

This is a critical issue and we want to know if the FMC believes it needs additional regulatory authorities to deal with the current capacity issues.

As I close, I also note that Chairman Lidinsky has led the FMC's active engagement with a number of other critical issues, including for example, creating an internal Maritime Environmental Advisory Committee to support the creation of green jobs in the maritime industry. This is an exciting initiative – and one that is an important facet of our effort to green our economy.

I am confident that under Chairman Lidinsky's leadership and that of Commissioners Brennan, Dye, and Khouri, the FMC will continue to address the most pressing issues in maritime trade confronting our nation – and I thank you again for all that you do and for all that the FMC has done for our nation over its first 50 years!