

# **Comments Of Federal Maritime Commissioner Rebecca F. Dye at the American Metal Market Moving Metals Conference**

**December 5, 2011**

- Thank you for inviting me to participate in your scrap metal panel.
- My remarks reflect my own individual views and are not offered as the official position of the Federal Maritime Commission.
- As I discussed last year, 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.

- Of course, all U.S. exporters and importers benefit from general international supply chain efficiency improvements that are incorporated into the ocean shipping system.

## **Economic Downturn**

- During the economic downturn that began in 2009, 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 8 percent and imports fell by 14 percent. Freight rates plummeted as carriers laid up over 575 vessels worldwide.

## **Fact-Finding Number 26**

- Early in 2010, 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.
- 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.
- 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.
- Both shippers and carriers identified the fundamental problem as a lack of additional capacity to handle the sudden increase in cargo as international trade began to recover from the economic crisis of 2008 and 2009
- The Commission adopted my final confidential Fact-Finding report last November 30<sup>th</sup>.

- The report concluded that the most effective long-term solutions to the commercial problems experienced by U.S. exporters and importers during the capacity shortage would be developed by ocean carriers working closely with their customers.

## **Rapid Response Teams**

- One of the most well-received developments from Fact-Finding 26 are the “Rapid Response Teams” established by the Commission within our 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.
- The carrier representatives have guaranteed that they will respond to a specific complaint brought to their attention by the Commission within 24 hours.
- We believe this approach will promote better business relationships and avoid costly legal processes.

## **Contract Enhancements**

- Since we originally discussed the basic problem of a lack of mutual understanding between the parties to service contracts, I am extremely pleased that the discussions between carriers and shippers on ways to improve service contracts

have taken off.

- This is a successful use of collaborative techniques: after an initial development of an issue and focus on a problem, the parties continue the discussions and develop their own solutions to their problems.
- Since last year, ocean carriers, shipper trade associations, trade publications and commercial symposiums have been focused on ways to improve the mutuality of understanding between the parties to ocean service contracts.

## **Vessel Capacity**

- Transpacific vessel capacity deployed in September, 2010, was 24 percent higher than in January, 2010, and 13 percent higher when compared to September of 2009. This mitigated some of the most severe problems encountered



by shippers last year.

- Currently, transpacific vessel capacity is somewhat lower than 2010, but still much higher than the levels during 2009. Current average weekly capacity is still about 50,000 TEUs higher than it was in the early spring of 2010 when the full force of the capacity shortage was being felt.
- Carrier capacity always declines during the winter. However, 2010 and 2011 declines during the slow season have been much less than 2009.
- While there have been recent isolated reports of capacity shortages, generally capacity is holding and complaints from shippers have diminished.
- While the specific revenue information that the Commission receives from the Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement is confidential, I understand that current WTSA and TSA average revenues per container remains well

above the levels in the middle of 2009.

- The picture of future import trade volume is unclear. Spot rates from China to the U.S. West Coast are down 27 percent from a year earlier.
- Carriers have reported that importers are having a very difficult time forecasting the future volume of imports during the slack winter season. Carriers will be forced to further reduce vessel capacity if import volume falls more than is anticipated.
- The latest Journal of Commerce reports that the weak peak shipping season signals decreased American desire for Chinese imports, while at the same time, China's demand for U.S. exports has increased.
- PIERS data shows a 12.5 percent year-over-year jump in U.S. containerized exports to China in the third quarter, pushing total exports up 6.8 percent from the same time last year.

- Exports to China rose 5.4 percent from the second quarter, as their demand for wastepaper, grains, and scrap metal grew.

## **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.
- The Commission's staff has recently completed a report which analyses the impact of the European Union's repeal of the liner conference block exemption on U.S. liner trades.
- Our staff did an excellent job of 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.

- The global economic downturn created substantial challenges for our effort to isolate the effects of the E.U.'s elimination of the conference exemption from broader economic trends.
- I believe that our Bureau of Trade Analysis staff has produced a thorough and professional study of this issue.
- The Commission will vote later this week to release the report to the public.

## **Regulatory Relief**

- If the Commission identifies regulatory relief that would not substantially reduce competition or be detrimental to commerce, I believe we may and, that we should, provide this relief.
- Especially under today's economic conditions, we should grant reasonable exemptions to simplify

the business processes of companies, put cash back into businesses, and generate additional American jobs.

- One April 18<sup>th</sup> the Commission's final rule to relieve certain ocean transportation intermediaries from the costs and burdens of publishing in tariffs the rates they charge for cargo shipments became effective.
- I strongly supported this rule which, according to comments filed with the Commission, could save many American businesses up to \$200,000 per year. These savings could allow many businesses to hire additional American workers.
- While most of your industry is not required to publish tariffs, changes of this type in our regulations will make the entire international ocean transportation industry more competitive and efficient.

## Conclusion

- Finally, I would like to hear from you about your individual business situations involving vessel capacity, your satisfaction with your current ocean vessel service contracts, and any other interesting information about current business trends.
- Since the Fact-Finding investigation began, I have kept 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 lack of ocean transportation.
- I believe that to significantly improve the international ocean shipping system, the Commission should eliminate all unnecessary regulatory requirements, including tariff

publication, for all non-vessel-operating common carriers and ocean carriers, alike.

- The savings and efficiency enhancements from eliminating the unnecessary regulatory requirements such as tariff publication would make our international supply chain more flexible and reliable.
- Regardless of future developments concerning ocean carrier and ocean transportation intermediary capacity and rates, the international ocean transportation system will be improved by eliminating unnecessary requirements and allowing carriers to cut costs and become more competitive.
- I look forward to continuing to work with you and other shippers, intermediaries, and ocean carriers to make the market-based reforms necessary to increase the resiliency of our international ocean transportation system.