



## **Statement of the World Shipping Council on the Introduction of H.R. 6167**

**September 23, 2010**

With a week remaining until the Congress recesses for the November elections, H.R. 6167, the "Shipping Act of 2010", was introduced by Congressmen Oberstar and Cummings. The World Shipping Council greatly respects Chairman Oberstar's and Chairman Cummings' deep interest in a well functioning U.S. transportation system, and appreciates the Chairman's recent statements to the liner shipping industry and to labor that he looks forward to a more detailed discussion of the issues involved. We look forward to further discussions with the Congress.

H.R. 6167 is a first step in what we expect will be a legislative review process that appears likely to extend into the next Congress. The international liner shipping industry will present more detailed comments on H.R. 6167 to the Committee after a more thorough review of the bill. Our initial observations, however, include the following:

### **1. Service and Capacity Issues During 2010**

Trade volumes dropped by unprecedented amounts in 2009 because of the global recession, and liner shipping companies cut costs, laid up capacity, delayed further capital expenditures, and took extraordinary measures in order to survive that market crash and avoid financial ruin. Even with these measures, all carriers saw extraordinary deterioration in corporate equity, large increases in debt, and in some cases major liner companies were pushed to the brink of bankruptcy. It will be years before these losses are recovered.

During the first half of this year, there was a rapid, unexpected and unforecasted rebound in trade volumes. Shippers and carriers alike had difficulties dealing with these swings in demand, and we fully recognize that shippers experienced difficulties during the period when demand for service exceeded industry carrying capacity. None of these market swings were the result of or related to the U.S. regulatory system for shipping.

Today, ocean carriers have added sufficient capacity to handle all U.S. imports. For U.S. exports, carrier capacity far exceeds shipper demand. Carriers have also made substantial capital commitments in ordering additional container equipment to meet customers' needs. Shipping lines have returned to modest profitability in U.S. trades from the brink of financial disaster, although rates in the Trans-Pacific are still not at 2008 levels, and the trade press reports that rates are currently falling. The capacity difficulties that existed earlier this year are not present today.

Carriers have been working cooperatively with the Federal Maritime Commission (FMC) and with shipper representatives to improve contracting processes for all parties. Carrier discussion agreements in the Trans-Pacific have established an Export Shippers Advisory Panel and an Import Advisory Council to discuss how to obtain better market forecasts and how contracts could be more effectively designed to meet market needs.

In short, the market has corrected itself, and today there is ample capacity and service. Capacity shortages in late 2009 and early 2010 were brief, market-driven and unforeseen by shippers and carriers. The existing regulatory structure did not cause these transitory problems, but it did provide a predictable base from which carriers could efficiently and quickly respond to improved market conditions. The proposed legislation would not and could not prevent difficulties if such extreme economic conditions recur in the future.

## 2. Proposed Legislation

Although recent service disruptions had purely economic causes, we nevertheless recognize that some shipper trade associations have expressed support for legislation to amend the Shipping Act and to change the U.S. regulatory system for liner shipping, and in particular to repeal ocean carriers' rate discussion authority. H.R. 6167 proposes to make a host of major policy changes to the Shipping Act. WSC does not believe this proposal would be beneficial to U.S. international commerce.

1. *Rate Discussion Agreements*: The Shipping Act allows carrier agreements filed with the FMC to have limited antitrust immunity to discuss rate guidelines and trade forecasts. The bill proposes ending this authority. While we acknowledge that Congress can change this policy, we urge the Congress to consider fully the effects of eliminating this authority. It is the carriers' expectation that repeal of rate discussion authority would lead to greater rate volatility and less predictable and less stable markets. We do not recommend this change. Greater rate instability is unlikely to be in the interests of shippers or in the interests of carriers that must continue to make billions of dollars of investment in the capacity needed to serve American commerce efficiently.

What should not be lost in a review of the Shipping Act is the fact that ocean carriers have invested many billions of dollars years in advance to meet container trade growth that was three to four times GDP growth over the past 20 years. Investments of this scale and duration need some measure of assurance and predictability. If the investments are not made in advance of when the capacity is actually needed, cargo transportation will suffer. The stakes in this debate are significant, because if there is a shortfall in investment, there is no quick fix. The current system is seen by carriers as providing some level of market stability and predictability, with a minimum of competitive impact. If the Congress is to consider this change in the law, we believe it should make sure that it is comfortable with the market effects that would result from this change.

2. *Vessel Sharing/Operating Agreements*: Independent of the question of carriers' limited rate discussion authority under FMC regulatory oversight, we are unaware of any reasonable argument for the bill's proposed treatment of carriers' operating agreements – agreements that underlie the delivery of service to most American exporters and importers. The bill would effectively destroy the current system of operating agreements serving American maritime foreign commerce. It would be both procedurally and substantively far more restrictive than the application of antitrust law, and would be wholly out of alignment with every other nations' treatment of such agreements. Impairing carrier operating agreements is not an agenda that has been advocated by shippers, nor is it supported by any findings or recommendations from the FMC. Indeed, shippers generally support the industry's operating agreements because they improve service and increase the number of competitive options on any given trade lane. The bill would disrupt current services and operations, and it would make cooperative arrangements impractical in the future. We can identify no benefit and many disadvantages for American commerce arising from such a proposal. If enacted, the bill would create an ocean transportation system that would make U.S. trades less efficient and more costly for carriers, resulting in less choice, less capacity, lower service quality, and higher costs for U.S. exporters and importers.
  
3. *Excessive Government Regulation*: The Shipping Act's current regulatory regime includes a number of regulatory provisions that have been long justified on the basis that they provide an appropriate balance or oversight on the potential effects of carrier rate agreements. The bill would eliminate the justification for such regulations (i.e., the existence of limited carrier rate discussion authority), but then goes on to vastly increase, rather than decrease, government intrusion into the details of business-to-business commercial conduct. The draft legislation proposes various forms of rate regulation, mandatory revenue transfers, intrusion into how parties agree to structure their commercial offerings and agreements, and burdensome and ill-defined reporting requirements. There are numerous problems with these provisions which we will identify in more detail for the Committee after further review.

### Conclusion

If the Congress is to undertake a review of the Shipping Act and consider whether and how to design a different regulatory system for America's international maritime commerce, the liner shipping industry is prepared to discuss the issues and the best way to address them with shippers, ports, labor and the Congress. Such a discussion should be a transparent, open and careful process. The objective should be an efficient liner shipping transportation system for international commerce, in which carriers will continue to have an incentive to invest the many billions of dollars required of this capital intensive and cyclical business.

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