



WORLD SHIPPING COUNCIL
PARTNERS IN TRADE

Remarks of

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International maritime transportation is facing a wide array of public policy and business challenges, including the rise in protectionist sentiments, the large increase in fuel costs, the effects of an apparent economic slowdown, and trying to match the huge capital investment requirements for new capacity with reliable demand forecasting and adequate pricing.

Without in any way diminishing the fundamental importance of those issues, today I will try to use my short time with you to discuss three other evolving sets of public policy issues that will be affecting maritime commerce for the foreseeable future. Those three subject areas are the challenges of providing adequate transportation infrastructure, of providing for a cleaner environment, and of providing for effective supply chain security.

I. Transportation Infrastructure

The unavoidable and impending need for the Congress to enact a highway reauthorization program in 2009 is the principal focal point for the growing debate on

what needs to be done in the U.S on the subject of surface transportation infrastructure. That is as it should be, for the primary issue is -- What will the federal government's policy be towards funding the maintenance and expansion of the *public* highway transportation infrastructure, which is largely owned and controlled by the various states?

In this context of transportation infrastructure, it is important to note that maritime transportation infrastructure is not suffering from a lack of available capital or willingness to invest. Ocean carriers have invested tens of billions of dollars in new capacity. Marine terminal operators have shown a similar willingness to invest. And, while the Government Accountability Office has once again pointed out that funds received in the Harbor Maintenance Fund are being diverted by Congress to unrelated uses even though not all harbor maintenance dredging needs have been met, as a general proposition, in many ports the major obstacles to infrastructure expansion have less to do with funding harbor improvements or facilities inside the marine terminal gate and more to do with difficulties in obtaining the necessary environmental permits and in ensuring that the domestic surface transportation infrastructure is adequate.

Permitting delays add cost, aggravation, uncertainty and congestion to commerce. To the extent that these delays can be attributed to environmental issues, the liner shipping industry is supportive of developing solutions – a topic I will address in a minute.

To the extent that the infrastructure challenges relate to rail capacity, it is important to note that rail infrastructure is private, and public financing is not the solution. Whether Congress will see fit to provide further incentive to invest in rail capacity through expanded investment tax credits remains to be seen. And whether short-term profit-maximizing activist railroad shareholders will cause rail management to shortchange needed capital investment remains to be seen.

But the central surface transportation infrastructure policy question in Washington in 2008 and 2009 will be what will be done with the federal highway program.

The key issues are how much of the necessary highway program funding will be provided by outlays from the federal government, and how will those revenues be raised? While all recognize that existing funding mechanisms could benefit from revision, one quickly comes to the strategy questions. The existing Department of Transportation favors a strategy of moving toward increased use of user fees directly assessed on the users of the infrastructure. Others want to avoid tolls or user fees and increase broad-based taxes to provide an enhanced revenue flow. This is a key strategy question, which is unlikely to be resolved until the next Administration and Congress are in place.

The fact is that, as important as maritime commerce is, it has a marginal role in this debate.

The U.S. transportation system moves roughly 20 billion tons of goods a year. Of that amount, only 10% is international freight. When you subtract air cargo, NAFTA

cross-border cargo, and pipelines from that international freight number, you cut that 10% number roughly in half -- meaning about 5% of the freight being transported in the U.S. is non-NAFTA, international maritime cargo. When you then subtract bulk, break-bulk, and ro-ro maritime cargo, you get an even smaller portion of the total freight that is being transported via ocean containers. And of that total, a substantial share of that maritime containerized cargo is moving by rail to its inland destination, rather than by highways.

Why do I mention this? Because, despite these facts, in the debate over how to fund a new federal highway program, the idea of taxing international containerized cargo shipments as a way to help pay for America's highways continues to be raised by some.

Import and export containerized freight is too small percentage of the freight using the nation's highway system to be a logical revenue source for funding highway construction -- especially when considering that the highway system is generally built for and used mostly by automobiles and that domestic freight far exceeds cargo in international containers.

Trying to tax this small portion of America's freight commerce as a way to pay for highway construction would also face a number of legal impediments, including such a charge being challenged as unfairly discriminatory, the Constitution's prohibition on taxing exports, the World Trade Organization's restrictions on discriminating against imports, and international container conventions that guarantee tax free admission of containers.

To the extent a tax on containerized shipments would be logical or legally sound, it would be as a nondiscriminatory user fee assessment applied against any cargo shipment using a highway project built on a user fee model.

But that comes back to the strategy question that is in contention between the present Department of Transportation and the Congress and others regarding how the highway program should be funded.

It is also a debate that may continue in some state legislatures, like California, where proposals to tax interstate and international container movements to raise state revenues continue to be discussed. Such state container tax proposals, if enacted, would certainly lead to litigation and would probably result in such state taxes being struck down as unconstitutional. That result again can be avoided only if such charges are structured as an appropriate user fee assessed on the basis of actual use of specific infrastructure on a fairly apportioned basis.

While the issue of what kind of financing structure should be created for the next federal highway bill is unlikely to be resolved in 2008, the issue will be discussed extensively and the trade community should follow this issue closely.

II. Environmental Protection

During the past six years, maritime and supply chain security issues have constituted the principal public policy issues facing shipping. It seems reasonable to believe that the environmental issues facing the shipping industry are likely to take a position of comparable prominence in the next six years.

In one sense that is somewhat ironic, because shipping is the most energy efficient way to transport goods, and produces significantly less pollution per ton mile than rail, truck or air transportation.

The major environmental issues presently facing ocean carriers are ballast water discharges and the risk that such discharges may result in the transference of invasive aquatic species, and vessel air emissions. In each case, the continued efficient and reliable transportation of commerce requires a predictable, effective solution for vessel assets that move amongst ports around the world and spend a relatively small percentage of their time in any single jurisdiction.

Ballast water can be a conduit for the transfer of aquatic organisms from one ecosystem to another. The industry deals with this today by performing mid-ocean ballast water exchange, which is fairly effective at reducing the risk of transferring potentially invasive aquatic species, but it is not perfect. Treatment technology is needed for significant efficiency gains in this regard.

The maritime industry can support a solution that provides for the installation of treatment technology, even though this may cost billions of dollars. But for this to work, the industry needs a predictable, stable technology standard and regulatory system, so that compliant treatment technology can be installed on a vessel allowing it to call at any port. For that reason the International Maritime Organization's convention on this issue would be a good step in the right direction; however, even that convention allows countries to set higher treatment standards.

Today the maritime industry finds itself, together with some environmental groups, in support of Congressional legislation addressing this subject. Other environmental groups oppose such legislation and want this issue to be addressed instead through the permitting process of the Clean Water Act. The Clean Water Act, however, is a poor regulatory regime for application to mobile vessel sources that are engaged in interstate and foreign commerce, and which call at different ports that have different water qualities. It is further flawed by its devolution of authority to the various U.S. states to set their own standards and permitting processes, which would only further complicate compliance and enforcement. The outcome of this issue remains in question, even while we hope for a Congressional resolution this year.

An even bigger environmental issue facing shipping is vessel air emissions. There are two principal sets of issues in this regard. The first, and much more clearly defined, challenge is to address what one might term "harmful" air pollutants – NO_x,

SOx and particulate matter. These are the emissions that can affect human health, and are particularly important to address in those urban port areas that are not in compliance with ambient air quality standards.

The World Shipping Council and its member companies recognize the need to address this challenge in an environmentally effective manner. Consequently, they have supported the U.S. government's comprehensive proposal to the International Maritime Organization to set new engine system standards and to establish a new regime for the use of low-sulfur fuel in designated coastal regions. This proposal has been supported by the State of California as well as the industry, and we are hopeful that the IMO will succeed in these efforts to create uniform, environmentally effective regulations this year.

While the cost of complying with such new standards will be significant, this should significantly improve air quality, should provide an effective and predictable international regulatory regime, and will hopefully eliminate a reason for holding up the permit approval process for maritime infrastructure expansion.

The second and less predictable vessel air emission challenge involves carbon dioxide emissions – which do not affect human health but are considered a contributor to global warming. Since all sources of CO₂ emission are coming under scrutiny, some governments, particularly in North Europe, are calling for CO₂ emission reductions from ships. However, unlike SOx, NOx and PM emissions, there is a lack of clear or specific proposals from governments for actions that should be taken, and the industry is similarly unsure what is to be expected. It is more common to see threats that the industry needs to reduce CO₂ emissions by X % by some defined date, without reference to how it should do so, how to establish a baseline to measure reductions, or whether international shipping should be in an international “cap and trade system”, which has yet to be defined.

With the recent substantial increases in the price of fuel, shipping lines are already focusing on ways to conserve fuel. But slower sailing speeds, the deployment of larger vessels producing less CO₂ per unit of cargo moved, and propeller and hull cleaning are not likely to provide qualitative breakthroughs, and global trade and shipping are certain to grow as the world's economy grows.

It is clear that the International Maritime Organization is the best forum, with the most appropriate competence to address the SOx, NOx and PM issues, and that if it agrees to an environmentally effective regime, it can succeed in establishing a uniform international regulatory regime this year.

It is less clear what will happen with respect to CO₂ emissions. It is, however, a development that will be of substantial importance to the shipping industry and its customers. As shippers also express greater interest in reducing the “carbon footprint” resulting from the transportation of their goods, there may even be increased diversion of cargo from air to sea transport, which produces far less emissions for the transportation of

goods. This too will be an evolving policy issue where the liner shipping industry looks forward to dialogue with the cargo community.

III. Maritime Supply Chain Security

The strategy of the U.S. government towards containerized maritime cargo security has been broadly based on risk assessment, and more particularly on risk assessment of the cargo before it is loaded onto a vessel destined for the United States. The trade community has generally expressed support for that strategy, and it has been implemented through a variety of initiatives administered by Customs and Border Protection (CBP), including the “24 Hour Rule” for advance cargo manifest filings, the C-TPAT program, and the Container Security Initiative.

The strategy has a solid logic. It makes sense to conduct cargo risk screening and to perform this function before vessel loading if possible. It reassures the public that the government is in fact taking meaningful measures to protect against security risks. It facilitates the efficient flow of low risk cargo. And, it hopefully allows the government to provide trade and economic continuity in the event of a maritime cargo security incident.

Because not all security functions can be performed overseas before vessel loading, CBP has supplemented the early cargo screening with 100% radiation scanning of containers at U.S. ports of discharge and 100% non-intrusive (NII) scanning of those containers that CBP’s targeting capabilities determine warrant further review. That too makes sense.

When Congress went further and passed a law last year requiring 100% of all import containers to undergo overseas radiation and NII scanning before vessel loading by 2012, the trade community and many foreign governments justifiably cried “foul” over the policy and terms of this legislation, its drafting, and the process used to enact it. Recognizing that this legislation had political motivations and was drafted in such a way as to avoid addressing fundamental questions central to an implementation of such an objective, it seems clear that the law’s meaning will not be determined until some time during the next Administration.

One of the ironies that is currently playing itself out in Washington is that those who oppose the 100% container scanning legislation generally argue that the government’s strategy should be based on credible cargo risk assessment instead. Yet, when CBP actually moves forward to improve its cargo risk assessment capability through the proposed “10 plus 2” rulemaking, there is considerable resistance from the trade community.

CBP’s “10 plus 2” initiative can hardly be a surprise to anyone following these issues. CBP has been discussing the idea with the trade for years. In the SAFE Port Act, Congress instructed CBP to collect better data for enhancing its pre-vessel loading cargo risk assessment capabilities, which is what “10 plus 2) does. And nobody that I am aware

of has made the case that carriers' bill of lading data, required under the existing 24 Hour Rule, provides a fully satisfactory basis for effective cargo security risk assessment.

The Congress, the Department of Homeland Security, the Commercial Operations Advisory Committee (COAC), the Government Accountability Office (GAO), cargo security experts, and the industry all have recognized that reliance on carriers' cargo manifest data, while a fine start in developing effective security screening capabilities, has significant limitations. The present system provides either no or unreliable data regarding the commercial parties involved in buying and selling the goods, where the goods are originating and who produced or supplied them, where the goods are ultimately going, and where and by whom the container was stuffed. The "10 plus 2" rulemaking seeks to address these shortcomings.

The comment period on the "10 plus 2" rulemaking recently closed. Many of the comments that have been submitted to CBP with respect to this rulemaking are in fact thoughtful observations and suggestions, identifying legitimate issues that warrant a clear government response. That is a positive attribute of the open and transparent rulemaking process that CBP has adopted in the development of this initiative. And, there is little question that CBP understands that this initiative is a substantial one that requires care and deliberation, that it requires significant changes to how U.S. maritime containerized import commerce is documented, and that it will require a gradual phase-in period and implementation process.

But for those who go beyond seeking specific answers or adjustments to the proposal to address specific concerns and make it work better, and seek instead to stop it from proceeding, what is the alternative cargo security strategy? Status quo reliance on carriers' bill of lading data for cargo risk assessment?

It would seem very possible that failure to proceed with this initiative to enhance cargo risk assessment capabilities will not only leave targeting limited to its present data, and fail to address the Congressional mandate to obtain better data, but would give those who advocate 100% overseas pre-vessel loading container inspection greater reason to pursue implementation of that objective. Failure to proceed with this initiative is also likely to give the government less capability and confidence to allow for the efficient continuation of commerce in the event that we ever face a security incident involving containerized cargo. Those are prospects that hold substantially greater difficulties, costs, and unresolved issues for carriers, shippers, terminal operators, and governments alike.

CBP's strategy and its efforts to create an effective and resilient cargo risk assessment system are logical and understandable. It may not be an approach that all governments around the world see a need to pursue. But, CBP, which is accountable to the President, the Congress and the American public for containerized cargo security, has an extremely difficult, but serious, challenge -- one that should not be taken for granted.

As the agency digests all of the comments it has received on the proposed rule, the most significant questions will not be questions about the format of specific data

fields, or the definitions of specific terms, or the length of the phase-in implementation period, but the strategic question of whether and how the agency intends to improve its advance cargo risk assessment capabilities.

The World Shipping Council supports the “10 plus 2” initiative. It hopes that CBP will digest all the public comments, make whatever clarifications and adjustments to the rule may be appropriate, and proceed with a deliberative implementation plan. A decision not to proceed with the “10 plus 2” initiative could easily raise even more difficult strategy questions than what the trade faces today.

IV. Summary

It is assumed by many that 2008, being an election year, will be a slow year in Washington for policy-making. The maritime industry and its customers, however, are likely to see some highly significant decisions being made.

While a highway bill will not be enacted into law until next year, the debate over what that legislation and the public surface transportation system’s funding mechanism should look like is likely to progress fairly significantly.

What kind of regime will be developed to address the environmental issues facing the industry will similarly be very significant, with the industry hoping for environmentally effective international standards in lieu of a patchwork of uncoordinated regional or local responses.

How the U.S government positions itself for its next step in enhancing maritime and cargo security will also be very significant.

In each of these areas, the international liner shipping industry looks forward to continuing its efforts in support of effective solutions to these real challenges. The failure to create and implement such solutions will only leave the industry and its customers with greater uncertainty and risk to their business.

In this regard, I would like to close these remarks by commending CONECT, not only for staying informed about the public policy issues affecting the trade and transportation communities, but for your active efforts to visit and interact with officials in Washington to promote sound policy objectives. It takes time, resources, and commitment to go to Washington every year and make your views known, but it is important for the trade community to do this. Even in an election year like 2008, a lot of things can happen and a lot of decisions can be made. A pro-trade and pro-transportation message is probably more important to deliver now than it has been in many years. To the extent that the international liner shipping industry can continue to work closely with you in these efforts, it would be very pleased to do so.

Thank you for the invitation to join you today, and I look forward to future opportunities to work together on issues of common concern.