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I would like to begin by thanking Mike Sacco and the Maritime Trades Department (MTD) for the opportunity to discuss the various issues affecting the liner shipping industry and its employees, including the status of maritime security and environmental issues.

Before addressing those topics, I would like to note with appreciation the excellent efforts of the MTD and its members in consistently contributing to the advancement of the U.S. maritime industry and in supporting the outstanding work of U.S. merchant mariners and other maritime workers.

The international shipping industry faces a number of serious but different challenges that we need to address openly and honestly – from piracy to environmental stewardship to security to trade policy. But the backdrop against which all these issues will be addressed is the current economic recession.

There is little doubt that the maritime industry is facing the most substantial economic challenges that have existed in the working lifetime of any industry employee. Trade volumes have shrunk dramatically, yet long-ordered new capacity continues to be delivered. AXS-Alphaliner recently estimated the idle global containership fleet at roughly 400 ships. Another industry analyst estimated the number to be 427 ships. No new ships have been ordered for seven months – an unprecedented development in the containership industry. Efforts will

continue to cancel, restructure or postpone existing shipbuilding orders. Services are being pared back and restructured. Downsizing is prevalent. More adjustments to the demands of a harsh market are certain.

When the industry will see significant improvement is unclear. What is clear is that reduced consumer demand worldwide, coupled with excess supply of new vessel tonnage, are creating a very difficult business environment.

Congress and the Administration have fashioned an \$800 billion economic stimulus package, and continue to consider what other additional measures they may take for other various industries, from the financial sector to the auto sector. What is clear, however, from the debate on the stimulus package in the U.S. Congress, as well as similar debates within other governments, is that the maritime industry and the thousands of businesses that rely on trade are in for an even more harrowing time if there is a policy drift towards the acceptance of trade protectionism.

The maritime industry depends on trade. In fact, containerization arguably is what has facilitated the incredible growth of the global economy over the past several decades. It has enabled almost any business to deliver its products to the door of any address in the world. America is the largest trading nation in the world, and the consequences of wise trade policy are critical to its economic health and to global prosperity. As noted by the *National Journal* recently:

“The effort in the 1930s to boost domestic output by restricting imports made things worse. The collapse of world trade, and hence global output, was helped along by deliberate policies in the United States (including Smoot-Hawley) and abroad, as government tried to keep employment high at home by shifting unemployment overseas. In the end, everybody was worse off.... Smoot-Hawley is a byword for economic incompetence and illiteracy. In a global slowdown, “Beggar thy neighbor” is a formula for disaster.”

Of all the current debates about how governments should or should not try to stimulate the economy, there may be no issue that has more long term importance and consequences than resisting a drift toward protectionism – a specter that *The Economist* recently characterized as “threatening the world with depression”.

Every ocean carrier in every trade is facing the consequences of the global recession and has to make difficult decisions affecting its capital investments, its employees, its services to customers, and its financial health. Efforts within the liner shipping industry to see if a group of lines could develop a collective approach to current overcapacity through coordinated capacity discussions in the Trans-Pacific trade were recently shot down at the Federal Maritime Commission by shipper organizations’ objections. We will never know whether such an effort would have produced a better outcome than what the shipping public will face with uncoordinated service reductions and capacity decision-making. The irony is that the voices of

many actual shippers, who wrote to the FMC in support of giving the carriers involved a chance to develop such an approach for agency review, were simply drowned out, and the carriers involved were simply not willing to be a political punching bag. Not being given the chance, we won't know what the lines could have produced.

We can expect members of the industry to announce more changes affecting their services and operations, and we can expect that the trade and financial numbers from the first quarter of this year will be very sobering.

Against the challenges of the economic recession and overcapacity, the industry will also be addressing a host of public policy challenges here in the U.S., some of which I will try to briefly outline for you. I hope that they will provide some insight into issues that the industry and labor can continue to work on in a cooperative and effective manner.

## **Security**

The last time I had the honor and ability to address an MTD convention, we discussed the various efforts being undertaken to address the threat that international terrorism poses to the free flow of international trade. Enhancing U.S. maritime security is an unfinished task, but there is little question that major improvements have been undertaken by the various Department of Homeland Security (DHS) agencies and the industry.

The issues that we will need to continue addressing in 2009 will include the following:

- **Transportation Worker Identification Credential:** More than 941,538 enrollments have been processed, and 711,313 cards have been issued by the Transportation Security Administration's 149 enrollment centers. Coast Guard enforcement of TWIC compliance began in October for Northeast U.S. ports, has been extended to Great Lakes, Gulf, Mid-Atlantic, Hawaiian and Alaskan ports, and will commence at the end of this week at some West Coast ports. Despite some ongoing enrollment issues, reports are generally positive on the program's implementation at port facilities to date. There will be a high degree of interest in the regulations DHS will propose later this year on the use of TWIC readers at port facilities and covered vessels.
- **Seafarer Access to Shore Leave:** Regarding seafarers' access to shore leave, visitors, and representatives of seafarers' welfare and labor organizations, the National Maritime Security Advisory Committee (NMSAC) last fall recommended, consistent with the International Ship and Port Facility Security Code, that the Coast Guard require each port facility to provide unencumbered access for seafarers' shore leave, crew changes, and access for visitors without cost to the seafarer or visitors. The Coast Guard has issued a bulletin to all districts stressing the importance of this issue and will hopefully be able to confirm progress on obtaining universal access at U.S. ports at the next NMSAC meeting in March.

An issue that remains unresolved for the International Transport Workers Federation is that after September 11, the U.S. government established the requirement that all foreign seafarers must have individual visas if they are to get off a ship in the U.S. The individual visa application and processing procedures, together with the biometric identifiers of a visa, are what provide the requisite U.S. security check and are compatible with the biometric data collection process of the U.S. VISIT program. This is an understandable policy, but those seafarers without individual visas cannot obtain shore leave privileges while in U.S. ports, and this is a hardship on those individuals. It remains difficult to see a change in the government's visa policy in the foreseeable future since there is at present such a gap between the ILO Convention seafarer credential and established U.S. security requirements.

- **Gulf of Aden Piracy:** Since early 2008, there have been more than 200 attempts by pirates in the GOA region to attack and hijack vessels. Of these, pirates have successfully hijacked an estimated 50 vessels and taken almost a thousand crewmen hostage. Although no container ships or ro/ro vessels have been successfully hijacked, 20 liner shipping vessels have reported being the subject of attacks and hijacking attempts since February 2008. In seven of these attacks, the vessels were fired upon by pirates using guns and/or RPGs.

Although the U.S. government was criticized by some for the speed with which it initially engaged in the international effort to establish multi-national naval forces to patrol and police the area, it is now working with the United Nations Security Council, setting up Combined Task Force (CTF) 151 comprised of naval assets from over twenty nations, and partnering with the EU Naval Force ATALANTA, the Marine Safety Center – Horn of Africa (MSC-HOA) and the United Kingdom Marine Trade Operations (UKMTO) office in Dubai. These efforts, when combined with industry's security measures and with the efforts to develop an effective legal regime to prosecute and imprison those undertaking these acts of piracy, should help restore law and order in the GOA. But, that objective is unlikely to be achieved without law and order in Somalia itself.

- **Containerized Cargo Security:** The two most active policy issues in the U.S. relating to containerized cargo security continue to be the idea of 100% container inspection, and U.S. Customs and Border Protection's new regulation to improve cargo screening and risk assessment, called the "10 plus 2" rule.

Regarding the statute that establishes an objective of 100% overseas container inspection of U.S. import cargo by 2010, Department of Homeland Security Secretary Napolitano expressed her recognition of the difficulties and the unaddressed problems inherent in that law in response to questions from Congress during her confirmation process. This is understandable. Facts don't change just because political leadership of the Department changes. Both governments and industry operational experts who have spent time analyzing the issue recognize the enormous challenges and practical obstacles to implementation of this vision on a wide-spread basis in the foreseeable future. There is no reason to believe that the new Administration would undertake precipitous action

on this issue. CBP's continued development of its Container Security Initiative will provide further information and results from the ongoing international dialogue on how best to inspect containerized cargo.

The most substantial new U.S. container security initiative is Customs and Border Protection's implementation of its new "10 plus 2" regulations. These long-awaited regulations require for maritime containerized cargo the advance submission of two sets of data from ocean carriers (vessel stow plans and container status messages) and 10 additional data elements from U.S. importers before vessel loading. These regulations are based on the U.S. government's determination that containerized import cargo risk assessment before vessel loading is an important security priority, and that using carriers' bill of lading data for this cargo risk assessment is not sufficient.

When I spoke before your convention in July 2005, I noted that in the fall of 2004, the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) had forwarded to DHS and Customs a recommendation that the government pursue this initiative, and that the World Shipping Council had recommended that the department give the development of the new risk assessment data system "priority attention". Both ocean carriers and U.S. maritime labor recognize that it is far better to intercept and address import cargo security risks before vessel loading than afterwards. After years of extensive outreach and analysis, this new Customs rule has been promulgated and is now being implemented.

Nobody has disputed the premise or logic of the new rules – namely that the U.S. government's advance import cargo risk assessment strategy is a more practical approach to cargo security than 100% container scanning, and that carrier bill of lading data should be supplemented by importer data to facilitate better risk assessment and targeting by CBP. There are, however, some in the trade community who clearly hope that the new Administration will roll back this regulation. There is at this time no evidence that this will occur.

One of the first acts of the Obama Administration was to issue an order to review all regulations which the prior U.S. Administration had proposed that were not yet effective. As part of that review process, the new Administration specifically determined that it would not postpone the implementation of the "10 plus 2" regulation. There is no political or policy reason to assume that the new Administration intends to reverse course and back away from this new security rule. I believe that it is in the interest of maritime labor to continue to support this initiative, as the World Shipping Council has done and continues to do. After all, if one opposes this security initiative, one must either take the position that CBP is wrong and can in fact perform adequate cargo risk assessment based only on carrier bill of lading data (which I have heard nobody argue), or take the position that 100% container inspection is a preferable and reasonable U.S. cargo security strategy (which I have heard nobody that actually ships or carries cargo argue).

The gradual one-year phased implementation period for this new regulation, which CBP has provided, should help ensure that the trade community has the time to adapt to this new system. CBP has gone to great lengths to facilitate a smooth transition to full compliance with these regulations and deserves great credit for its ability to be both steadfast in pursuit of its clearly stated strategy and responsive to industry requests for adequate time to come into compliance.

Other nations may not attach the same importance to pre-vessel loading cargo risk assessment for their imports as the U.S. government, or be willing to dedicate the necessary systems and resources to this effort as the U.S. government is dedicating. That is their choice, and such choices should be fully respected. While international uniformity is a desirable objective, this new regime can be applied to U.S. imports of maritime containerized cargo, will improve CBP's risk assessment and targeting, will ensure compliance with Congressional mandates requiring CBP to gather more cargo data from the party with direct knowledge of it before vessel loading to enhance cargo risk assessment capabilities, and will provide a more practical security regime than the idea of 100% container scanning. The liner shipping industry will continue to support the successful implementation of this regulation.

**Five Year Security Plan Review:** Almost five years ago, the Coast Guard promulgated its Maritime Transportation Security Act (MTSA) regulations, which implemented the United States' international security obligations pursuant to the ISPS Code and required that U.S. cargo vessels above 100 gross registered tons, most U.S. passenger vessels, and all U.S. port facilities that serve international and regulated U.S. vessels must have completed a security assessment and implemented an approved security plan. One of the major tasks for industry and the Coast Guard this year will be the review and renewal of these assessments and plans. Consistent with the efforts of other nations' flag state administrations, the U.S. Coast Guard has expressed interest in further expanding the scope of its security requirements to smaller classes of vessels in support of the agency's effort to reduce the potential for these vessels to be used in a waterborne terrorist attack.

**Maritime Domain Awareness (MDA):** MDA is a term used to describe the U.S. governments' effort to better understand threats associated with the global maritime domain that could adversely impact the United States. The U.S. National Plan to Achieve Maritime Domain Awareness, one of eight plans developed in support of the National Strategy for Maritime Security, stresses the need for U.S. Government agencies to closely coordinate maritime information and intelligence to identify threats as early as possible. In addition to the contribution that CBP's "10 plus 2" regulations will make to this effort, two of the key MDA systems are shipboard Automated Information Systems (AIS) and Long Range Identification and Tracking (LRIT).

- **AIS:** From mid-2003 to the end of 2004, the requirement to use AIS, which automatically transmits vessel identification, type, position, course, speed, and navigational status information via VHF radio, was phased in for various classes of commercial and passenger vessels engaged in international voyages. Last December, the Coast Guard issued a proposed rule to expand the applicability of AIS requirements to include U.S. commercial and passenger vessels that are not on international voyages. This change will include, among others, all commercial vessels of 65 feet or more, commercial towing vessels of 26 feet or more, passenger vessels carrying 50 or more passengers, as well as all vessels carrying designated “certain dangerous cargos”. Although AIS is an important step forward in monitoring vessel traffic, its existence places vessel information in the hands of anyone who has an AIS receiver. Pirates in the Gulf of Aden, for example, have used AIS information to improve their ability to intercept and hijack vessels. It is therefore important that vessel operators continue to have the discretion to secure their AIS systems if such transmissions would compromise the safety or security of the vessel.
- **LRIT:** Pursuant to an amendment to the Safety of Life at Sea (SOLAS) Convention, all passenger ships, cargo vessels of 300 gross tons and above, and mobile offshore drilling units must transmit LRIT information (vessel identification, position, and date/time of the report) to their flag state administrations at least four times per day by the end of 2009. The Coast Guard’s LRIT final rule further requires that LRIT information be provided to the Coast Guard, via flag states, for all vessels that have expressed their intention to enter the United States and all vessels that are operating within 1000 nautical miles of the U.S. baseline. Although compliance with this requirement is not difficult for ships, flag state administrations have struggled to establish or become affiliated with LRIT data centers so they can receive and forward ships’ LRIT transmissions. Although the U.S. LRIT data center is in place, many large flag state administrations as well as the 27 European Union member states will not have operational LRIT data centers until the end of 2009 or later. Even more so than with AIS, proper control and dissemination of LRIT information by flag states, port states and coastal states will be critical to preventing LRIT information from being placed in the hands of those who might use it to attempt to intercept and hijack vessels.

## **Environmental Regulations**

While maritime transportation is the most energy efficient means of transporting a ton of freight, the industry also recognizes that it can make further improvements in vessel efficiency – saving fuel and reducing ship emissions. In that process, there are two main sets of issues. The first is -- what are the most appropriate standards to set? The second is, now more than ever before, can the United States regulate the maritime industry with a single,

coordinated voice, or will we see a further aggregation of differing, inconsistent and sub-optimal regulations by different state and local jurisdictions over ships?

Ships are mobile assets, moving from port to port, state to state, and country to country. Those ships engaged in international trade spend a very small percentage of their time in any one country, let alone in any one state or harbor. Vessels that are in an East Coast service today may be moved to a West Coast service tomorrow. Vessels engaged in international commerce call on ports in many states, and they may have their itineraries changed on a regular basis. Vessels that do not today operate in U.S. foreign commerce may be called on to begin such service tomorrow. As a result, vessel operators need to know with certainty what technologies and structural features need to be installed on their ships, regardless of which U.S. port they may call.

The premise that maritime commerce should be governed by a single set of regulatory rules, however, is unfortunately unraveling in the U.S. It is that trend – and not the content of what regulatory measures might be best to protect the environmental – that is creating such headaches for the industry.

How ships are constructed and what kind of equipment they need on board must be addressed with a single voice by the U.S. government for vessels engaged in U.S. commerce. Hopefully, those standards will reflect international standards developed at the International Maritime Organization with U.S. support; however, even in the unfortunate event that IMO standards are not followed, it remains critically important that the U.S. have consistent and uniform standards for vessels serving its ports.

This is true for fuel standards, for whatever ballast water treatment technology may be required for installation aboard vessels, for whether gray-water holding tanks must be installed – the list goes on. If one wishes to argue that the previous U.S. Administration was not sufficiently active on developing environmental regulations, the answer is for the present U.S. Administration to develop them – NOT to abdicate regulatory responsibility to state and local governments and foster a balkanized regulatory system and endless litigation.

Complicating this picture is the fact that a number of U.S. statutes (e.g., the Clean Air Act and the Clean Water Act, among others) specifically provide for the states to set more stringent standards where they deemed necessary. This system never envisioned or contemplated the application of such standards to vessels, but we are now facing the numerous problems of applying to ships a system that was designed to address conventional land-based sources of pollution. To rectify this problem, we will need to see strong action at the federal level – either through the Congress or through the establishment of stringent national standards that effectively eliminate the call for more aggressive actions at the state level.

Because the last Congress chose not to legislate on the issue of ballast water standards, we now have EPA and every individual coastal state in the nation each trying to decide how to regulate and permit 26 different types of discharges from ships that occur as a normal part of

vessel operations. This is thanks to recent federal court decisions in California that overturned a 35 year old regulation stating that Clean Water Act permitting requirements do not apply to ships. One thing that aging maritime veterans like Mike Sacco and I can attest to is that there is no way that Senator Ed Muskie, chairman of the Environment Committee, and Senator Warren Magnuson, chairman of the Commerce Committee, ever envisioned the Clean Water Act requiring vessels to obtain permits for normal ship operations when that Act was passed.

But the courts have taken us there, and despite the efforts of some legislators, the Congress has so far left us there. We have just emerged from a process of different states attaching different conditions to the EPA general permit for ship operations, without understanding what they were doing, and with EPA being sued on all sides in its efforts to try to bring some order out of the chaos. Neither the process, the needless litigation, the regulatory uncertainty, nor the confusion of different governmental agencies calling for ships to undertake different measures is palatable or appropriate.

The industry will continue to strive for a regime that allows vessel operators to know with certainty what single and uniform set of vessel discharge requirements their vessels will need to do comply with in order to continue serving America's commercial needs. One would hope that the environmental community could support that objective.

On the issue of vessel air emissions, regulatory developments are somewhat more orderly as the United States implements the new MARPOL Annex VI rules governing NO<sub>x</sub>, SO<sub>x</sub> and particulate matter emissions, and will soon propose an Emission Control Area with Canada for adjacent coastal waters on the West, Gulf, and East Coasts. The industry nevertheless still faces some of the same regulatory uncertainties over state laws, with California proposing further restrictions and under a different time frame for all vessels visiting California port.

With respect to the climate change issues and efforts to design a new regulatory regime governing ships' CO<sub>2</sub> emissions, the industry is working within the context of complicated discussions currently underway at the IMO to determine what type of regime makes the most sense for application to the maritime sector. Options being discussed include mandatory vessel efficiency standards (often referred to as the design index), a carbon tax or compensation fund, and "cap and trade" emission trading systems. Also under debate is whether such a system should be applicable to all ships or whether some nations would obtain differentiated treatment for their commerce or their national fleets. This is a complicated challenge. However, even more so than "dirty" air emissions such as NO<sub>x</sub> and PM that can have serious local health consequences, CO<sub>2</sub> emissions from international shipping are part of a global problem that requires international resolution. Regulation by individual or regional governments of global transportation's CO<sub>2</sub> emissions would be chaotic and less effective when compared to a well thought out global system that applies equally to all ships.

Notwithstanding California's current request to EPA to be granted the authority to regulate carbon emissions from on-road vehicles (cars and trucks) and the European Emissions Trading Scheme (put in place in 2005 for land-based sources), we do not yet have varying CO<sub>2</sub> regulatory regimes applicable to maritime shipping. The UN climate change negotiations

scheduled for Copenhagen this fall and the IMO's efforts to create an international carbon emission regime for shipping can hopefully reach a successful conclusion sometime in 2010. Resolution of this debate in 2010 will be critical if we are to avoid an expansion of the problem we are now seeing with local regulation of vessel discharges and other emissions at the state level.

The maritime industry understands the responsibilities of environmental stewardship and the need for effective air and water emission regulatory regimes. The liner shipping industry has in the past and will in the future support such measures. What the industry needs in return is a uniform and consistent set of regulatory and vessel standards so its ships can operate in compliance with the law, regardless of what port they may call.

## **Conclusion**

The maritime industry is facing the most difficult economic times seen during our careers. It will be very painful. It will test us all. Both maritime companies and their employees will be buffeted by storms beyond their control.

At the same time, the industry is by necessity an integral and necessary segment of the world economy. Even if one cannot predict when, we know that an economic recovery will occur. So, in addition to addressing the economic challenges, the industry must also address the many public policy challenges that will shape how we will operate in the future.

Those questions can have major implications for the industry and the societies it serves – from dealing with climate change, to protecting commerce from terrorist risks. We are making real progress in addressing these challenges, but the effort to address them more effectively must continue.

The maritime industry and the maritime labor community are generally on the same page when it comes to addressing maritime public policy challenges. You have the commitment of the World Shipping Council and its members to always strive for cooperative, open and mutually beneficial relations and approaches to issues affecting the industry.