UPDATE ON FEDERAL MARITIME COMMISSION'S EXAMINATION OF VESSEL CAPACITY

(111–126)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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June 29, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on "Update on Federal Maritime Commission's Examination of Vessel Capacity"

PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will convene on Wednesday, June 30, 2010, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony from the Federal Maritime Commission (FMC) regarding the examination it is conducting of the capacity of ocean-going vessels to meet U.S. import and export demands.

This hearing is a follow-up to a hearing convened by the Subcommittee on the same topic on March 17, 2010. At the time of that hearing, the FMC announced that it was initiating a non-adjudicatory fact finding to investigate current carrier capacity and ocean carrier business practices under service contracts as well as the extent of container shortages in the United States.

BACKGROUND

On March 17, 2010, the Subcommittee on Coast Guard and Maritime Transportation convened to assess current trends in ocean-going shipping. The Subcommittee heard testimony from Chairman Richard Lidinsky of the FMC and from representatives of ocean-going carriers as well as shippers, including Robert F. Sappio, Senior Vice President with APL Limited; Chris Mullally, President of the Mohawk Trading Company; Hayden Swofford, Executive Director of the

Pacific Northwest Asia Shippers Association; and Michael Berzon, President of Mar-Log Inc., representing the National Industrial Transportation League.

All witnesses who appeared before the Subcommittee in March testified to the unprecedented nature of events in global shipping in 2008 and 2009, when trade volumes fell worldwide in the wake of the global economic crisis, and ocean-going carriers responded to steep declines in freight rates by laying up vessels and sailing vessels that remained in service at slower rates of speed (slow steaming).

Data provided to the Subcommittee by the World Shipping Council indicated that as of February 2010, 532 vessels had been laid up worldwide (comprising 10.4 percent of worldwide tonnage). Mr. Sappio testified that while "[c]ontainerized trade worldwide grew 9% per annum on average between 1987 and 2008," in 2009, "imports were down over 15% industry wide."[1] Mr. Sappio further testified that "[d]uring this time APL's rates dropped on average 35% for imports and almost 40% for exports in the US trades and by almost the same amounts in other trades"; as a result, "APL revenues fell from $7.9 billion in 2008 to $5.5 billion in 2009."[2] Mr. Sappio stated that APL responded to the steep decline in cargo volumes by laying up ships, reducing the size of its workforce, and by reducing vessel operating costs, "most notably by slowing vessels down to conserve fuel."[3] Mr. Sappio indicated that "[a]t one point APL had 20% of its fleet idle."[4]

Shippers who appeared before the Subcommittee testified that cargo was frequently being "rolled," meaning that even though shippers had a contract in place guaranteeing the date on which their cargo would be loaded onto a vessel, the contract was not honored and the cargo was left on the dock.[5] When this occurs, shippers are required to pay unexpected storage fees; if they cannot get cargo to their customer within the timeframe required by their contracts, they also face the potential loss of a customer.

Mr. Michael Berzon, representing the National Industrial Transportation League, also testified that the members of the Transpacific Stabilization Agreement (TSA) had imposed significant new emergency revenue charges and that "the capacity reductions employed by the carriers have forced many shippers to pay TSA's Emergency charges in order to secure space for their cargo."[6] Mr. Berzon also noted that "[s]ome importers have reported that their refusal to pay the emergency charges, even if based on protections against price increases in their contracts, resulted in their cargo being left on the docks or 'rolled' from confirmed vessel sailings."[7]

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[1] Robert F. Sappio, American President Line, Ltd., Written Testimony before the Subcommittee on Coast Guard and Maritime Transportation (March 17, 2010), at 3.
[2] *Id.*
[3] *Id.* at 4.
[4] *Id.*
[5] Hayden Swofford, Executive Director, Pacific Northwest Asia Shippers Association, Written Testimony before the Subcommittee on Coast Guard and Maritime Transportation (March 17, 2010). Chris Mullally, President, Mohawk Trading Company, Written Testimony before the Subcommittee on Coast Guard and Maritime Transportation (March 17, 2010).
[6] Mr. Michael Berzon, on behalf of the National Industrial Transportation League, Written Testimony before the Subcommittee on Coast Guard and Maritime Transportation (March 17, 2010), at 7.
[7] *Id.*

Unexpected growth in exports and imports occurred in late 2009 and early 2010 – and many lines had difficulty adjusting in a timely manner to meet this growth. Thus, Mr. Sappio testified that APL "polled key customers in the fall, and they indicated conservatively that there would be flat to low single digit growth in 2010" but "[i]nstead volumes have increased by nearly 30%."[8] Mr. Sappio also indicated that "[f]or the month of January APL's overall volumes were up 63% higher than the same period in 2009."[9] Despite these sudden volume increases, however, there has been widespread uncertainty as to whether these trends would be sustained once depleted inventories were restocked.

APL noted that particularly as these sudden cargo volume increases occurred, cargo was sometimes "rolled" because shippers had made "ghost bookings." Ghost bookings refer to shippers' practices of making multiple bookings with multiple carriers to ensure their cargo will be shipped. In what carriers say is a response to such practices, carriers may over-book ships in an attempt to make up for "ghost bookings." Mr. Sappio testified that "[h]istorically about 20% of shippers' export bookings . . . fail to materialize as loaded containers tendered for carriage for various reasons."[10]

Another critical problem confronting many U.S. shippers is a lack of available shipping containers. The majority of U.S. imports are consumer goods that have U.S. metropolitan areas as their ultimate destinations. By contrast, the majority of U.S. exports are heavy bulk products, such as agriculture products that are grown in rural areas that are far from U.S. ports and that do not have the level of demand for imports that would bring many shipping containers to these areas. The regional shortage of containers is attributable in part to the high cost of transporting empty containers to a region where they can be loaded with goods. Further, the high cost of fuel and the general economic downturn has caused the rail and truck carriers that would typically be used to reposition containers to cut back on their inland services.

Witnesses who appeared before the Subcommittee described the impact of the container shortage particularly on agricultural shippers. Mr. Chris Mullally, President of the Mohawk Trading Company, testified that "[m]ost ocean carriers today are no longer willing to provide the required empty ocean containers to the locations where they are needed and required by most agricultural exporters" and instead "have chosen to simply send them back empty by rail to the United States west coast shipping ports where they are put on the vessels still empty, in order to support the needs of foreign exporters mainly in the Asian markets for importing their finished goods to the United States" (emphasis in original source document).[11]

Importantly, in addition to the many service problems that have emerged as a result of the worldwide economic crisis and that have persisted in recent months as carriers have awaited clear signals indicating likely cargo volume trends in the near and longer term, there continues to be a deep imbalance in U.S. trade that has persisted for many years. Cargo volumes in one direction of a trade route are often greater than cargo volumes in the other direction – and the United States continues to import more cargo than we export. Overall, import shipments of containers to the

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[8] Robert F. Sappio, American President Line, Ltd., Written Testimony before the Subcommittee on Coast Guard and Maritime Transportation (March 17, 2010), at 5.
[9] *Id.*
[10] *Id.* at 6.
[11] Chris Mullally, President, Mohawk Trading Company, Written Testimony before the Subcommittee on Coast Guard and Maritime Transportation (March 17, 2010), at 1.

United States – measured in 20-foot containers (called twenty-foot equivalency units or TEUs) – have been approximately 1.5 times the number of export TEUs. However, import TEUs have been double the number of export TEUs in the U.S.-Transpacific Trade and import TEUs are 1.1 times the number of export TEUs in the U.S.-Transatlantic Trade.[12]

In his testimony, Mr. Sappio addressed the impact both of the persistent U.S. trade imbalance and the significant volume of U.S. exports comprised by heavy bulk products on carrier business practices. Specifically, Mr. Sappio stated that "[t]here are several complex structural factors beyond the control of carriers and shippers that constrain container exports from the US."[13] Mr. Sappio continued by noting:

> There are more full containers moving cargo into the US than there are full containers moving cargo out of the US. For example, in the Transpacific last year the US imported almost 11 million loaded TEUs, which means the equivalent of 11 million 20-foot containers and exported 6 million loaded TEUs. In the same trade, APL imported approximately 850,000 TEUs and exported approximately 450,000 TEUs of cargo. The imbalance represents about a 2 to 1 ratio. This imbalance exists even during periods when US exports are strong.[14]

<u>The FMC's Findings</u>

The FMC is an independent U.S. regulatory agency responsible for the regulation of ocean-borne transportation in the foreign commerce of the United States. The principal statutes or statutory provisions administered by the FMC are provided in Subtitle IV of Title 46, United States Code.

Pursuant to 46 U.S.C. § 41302, the FMC has the authority "on complaint or its own motion" to "investigate any conduct or agreement that the Commission believes may be in violation of this part." Such investigations are conducted by a FMC representative designated as the Fact Finding Officer (FFO) who is duly authorized for the purpose. The investigation in which a hearing is held shall result in a written report stating "[i]ts conclusions, decisions, findings of fact, and order. The Commission shall provide a copy of the report to all parties and publish the report for public information." [15] Title 46, Subpart R of the Code of Federal Regulations (Non-adjudiciary Investigations) lays out the authorities the FMC may employ to conduct such investigations.

On March 17, 2010, consistent with its statutory authority, the FMC ordered a non-adjudicatory investigation into current conditions and practices in the United States' export and import liner trades. The investigation is also considering potential impediments to the flow of ocean-borne import and export trades into and out of the United States. The investigation was designated *Fact-Finding Investigation No. 26, Vessel Capacity and Equipment Availability in the United States*

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[12] World Shipping Council, *Facts About Serving U.S. Export Commerce* (February 2010), at 2.
[13] Robert F. Sappio, American President Line, Ltd., Written Testimony before the Subcommittee on Coast Guard and Maritime Transportation (March 17, 2010), at 6.
[14] *Id.*
[15] 46 U.S.C. § 41302.

Export and Import Liner Trades (FF-26). The FMC will use the information obtained in this investigation and the recommendations of the FFO to determine its policies with respect to vessel and equipment capacity-related issues.[16]

According to the FMC, FF-26 has consisted of a series of confidential interviews with some of the largest American importers and exporters as well as numerous shipper associations, ocean transportation intermediaries, trucking equipment distribution facilitators, chassis pool experts, and international ocean shipping investment consultants. In addition, the FFO met with officials from the U.S. Surface Transportation Board and interviewed representatives of 13 liner companies, port officials, and railroad representatives. The participants' involvement in the investigation was voluntary and testimonies and information received by the FMC are considered confidential. The FFO conducted confidential hearings in Portland, Oregon; San Antonio, Texas; New York, New York; Washington, D.C.; and two in San Francisco, California. During the hearings, the FFO focused on three specific topics:

- " The sufficiency of current and future vessel capacity for the carriage of the U.S. import and export trade;
- Obstacles to the availability of containers to meet the increasing demand for U.S. exports; and
- Recent ocean carrier business practices under service contracts." [17]

The FMC has reported to the Subcommittee that it has found that freight rates declined precipitously during the economic crisis, with rates declining by nearly 50 percent from mid-2008 to mid-2009. As a result, the FMC found that at the lowest point in the economic crisis, more than 10 percent of the world containership fleet was taken out of service.

While freight rates have increased – sometimes by significant amounts – in late 2009 and early 2010, many shippers have complained to the FMC that they believe carriers are deliberately keeping ships out of service to drive rates even higher. The FMC reports that carriers have responded to such complaints by explaining that they remain uncertain about long-term cargo trends and have been reluctant to expand capacity on routes serving the United States until clearer trends emerge. The FMC indicates that carriers are bringing vessels back into U.S.-serving trade routes, but capacity may remain tight and rates are likely to continue to rise. The FMC also reports that all parties agree that U.S. shippers face container shortages (which are more severe in some areas than in others).

<u>Recent Trends in Shipping Services</u>

According to the U.S. Census Bureau, imports into the United States are steadily exceeding exports from the United States in 2010. The total value of goods and services exported from the United States during the four months ending in April was $406 billion while the value of goods and services imported into the United States during this period totaled over $606 billion. As illustrated in the chart below, the nation's international trade deficit in goods and services fell from $816.2

[16] FMC, *Fact Finding Investigation No. 26, Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades, Order of Investigation* (March 17, 2010).
[17] FMC, *Interim Report of Findings and Recommendations, Fact Finding Investigation No. 26, Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades* (June 21, 2010).

billion in 2008 to $503.5 billion in 2009, reflecting in part reduced demand for imports in the United States.[18]

U.S. Trade with World, Seasonally Adjusted (*All figures are in millions of U.S. dollars on a nominal basis, not seasonally adjusted unless otherwise specified.*)			
Time Period	**Exports**	**Imports**	**Balance**
January 2010	99,444.0	145,816.0	-46,372.0
February 2010	99,235.0	150,048.0	-50,813.0
March 2010	104,417.0	155,631.0	-51,214.0
April 2010	102,974.0	154,760.0	-51,786.0
Total 2010 (Jan – April)	**406,070.0**	**606,255.0**	**-200,185.0**
	Exports	**Imports**	**Balance**
2009	**1,056,043.0**	**1,559,625.0**	**-503,582.0**
2008	**1,287,442.0**	**2,103,641.0**	**-816,199.0**

SOURCE: U.S. Census Bureau, Foreign Trade Division, Data Dissemination Branch

Since the Subcommittee convened on March 17, 2010, shippers have continued to report experiencing rolled cargo, limited booking availability, and even cancelled contracts.

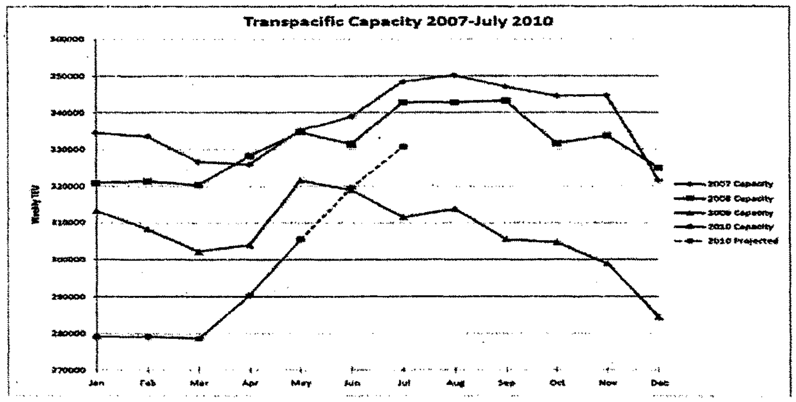
Several recent media reports have also suggested that the production of new shipping containers experienced a significant decline during the economic crisis, and that Chinese factories may still be limiting the production of new shipping containers, which is having the effect of keeping supplies tight and driving up shipping rates.[19] These reports indicate that few new containers were built in 2009, and that production capacity is only slowly coming back on-line and consequently "it is easier today to find ships to charter-in than it is to find boxes to put aboard."[20] As a result, one report indicates that "pricing power has shifted from carriers to box lessors" particularly as carriers divested containers in 2009 and may now be leasing as much as 80 percent of the containers they are utilizing.[21]

The container shortage and other factors have contributed to continued shipping rate increases in 2010.[22] Box rates on the Transpacific trade have hit a peak benchmark with rates reportedly rising 19 percent in one week for the Hong Kong to Los Angeles route to reach $2,607

[18] Trade with World, Seasonally Adjusted: 2010, U.S. Census Bureau Website, http://www.census.gov/foreign-trade/balance/c0004.html#2010.
[19] "Box Factories Drive Up Prices," *Daily Fairplay News* (June 25, 2010).
[20] "Box Drought Buoys Rates," *Daily Fairplay News* (June 24, 2010).
[21] *Id.*
[22] *Id.*

per forty-foot equivalency unit (FEU),[23] which is reportedly 182 percent higher than the rate assessed in the previous year and $600 higher than 2008 shipping rates.[24] More supplies of containers are not expected to become available for the next three to four months.[25]

Nonetheless, shipping capacity on routes serving the United States appears to be increasing. *The Journal of Commerce* reports that the data company Dynamar has found that "[i]n late April, there were 46 weekly services from Asia to the West Coast with a total capacity of 257,000 TEUs, compared with 39 weekly services totaling 222,000-TEU capacity in January."[26] Similarly, the FMC has reported to the Subcommittee that less than three percent of world containership capacity is still currently idle and that the Transpacific trade is projected to have a weekly average capacity of 319,500 TEUs by the end of June and to increase to more than 331,000 TEUs by mid-July. These trends are illustrated in the chart below.



Source: FMC

Capacity is, however, approaching full utilization. Thus, the FMC reports that at the end of May, eastbound Transpacific trade routes reported average capacity utilization in the high 90 percentile, and capacity is projected to have reached near 100 percent utilization on that trade in June. Because of the bulk nature of the cargo carried from the United States on the westbound Transpacific trade, space utilization varies between 40 percent and 80 percent, but the utilization of available cargo deadweight capacity is likely to be very high, suggesting that westbound ships will leave the United States nearly full.

With carriers still expressing concern that exporters are overbooking and exporters still expressing concern that carriers are cancelling bookings, Maersk Line, the largest container carrier in the world, has launched a pilot program that will in part enable an assessment to be made of the extent of the problem. Maersk has announced it will charge a $10 fee for every booking that fails to

[23] "Pacific Box Rates Hit a High," *Fairplay Magazine* (June 21, 2010).
[24] *Id.*
[25] *Id.*
[26] Bill Mongelluzzo and Peter T. Leach, "Crunching Capacity Needs," *The Journal of Commerce Magazine* (June 7, 2010).

yield a container for carriage and penalize itself $10 for every container booking that it rolls or cancels from a slot. The test is limited to the Ports of Oakland and Los Angeles and will track forest products, lumber, paper and pulp, wastepaper, and scrap metal.[27]

PREVIOUS COMMITTEE ACTION

On March 17, 2010, the Subcommittee on Coast Guard and Maritime Transportation convened a hearing entitled "Capacity of Vessels to Meet U.S. Import and Export Requirements" to examine the capacity of ocean-going vessels to meet U.S. import and export demands.

WITNESSES

Richard A. Lidinsky, Jr.
Chairman
Federal Maritime Commission

Rebecca F. Dye
Commissioner
Federal Maritime Commission

[27] Peter T. Leach and Bill Mongelluzzo, "Winning the Space Race," *Journal of Commerce Magazine* (April 12, 2010).

HEARING ON UPDATE ON FEDERAL MARITIME COMMISSION'S EXAMINATION OF VESSEL CAPACITY

Wednesday, June 30, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:03 p.m. in room 2167, Rayburn House Office Building, Honorable Elijah E. Cummings [Chairman of the Subcommittee] presiding.

Mr. CUMMINGS. This hearing will come to order.

The Subcommittee comes together today because back on March 14th, the Subcommittee convened to consider the shortage of shipping services and of shipping containers available to carry U.S. trade, particularly exports.

I convened that hearing because shippers were reporting rapidly rising rates and surcharges and they reported numerous instances when cargo was left on the docks even when a signed contract was in place.

Our last hearing gave us a good opportunity to develop a comprehensive view of the state of the shipping industry in recent months and many of the complaints that had been raised to the Subcommittee were confirmed by the testimony that we heard. In 2008 and 2009, the world economy suffered a severe downturn. Imports to and exports from the United States experienced a decline that mirrored overall reductions in world shipping volumes and shipping companies responded to steep declines in rates by laying up ships and sailing more slowly to conserve fuel. Demand for U.S. exports began an unexpected rise late in 2009 and recent statistics indicate that import demand also began to rise in the early part of 2010.

That said, at the time of our last hearing, there was not enough data to determine any clear trend in imports or exports, and the shipping lines appeared to be wary of restoring capacity too quickly lest the small increases that had been observed in trade proved to be unsustainable. As a result, although some ships were reentering trading routes, capacity remained tight and rates were quickly rising.

That said, while the volatility that has characterized the overall economy, and by extension the shipping industry, has been of great significance to U.S. exporters and importers. Many of the recent trends in shipping services are at least partially the result of what had been unprecedented upheavals in our domestic economy and, indeed, in the world economy.

As the economy continues to rebound and as clear trade trends emerge, capacity will respond, as appears to be happening right now. Put simply, ships will go where they can get the cargo. Perhaps of greater concern over the longer term is the impact of our Nation's expanding trade deficit on the very shipping services we need to reduce the deficit.

During our March hearing, Mr. Robert F. Sappio, Senior Vice President with APL Limited, testified that the facts are that because of some structural differences in the trade or structural facts that exist in the trade, imports pay more historically because they are manufactured goods, fashion goods, consumer electronics and so forth, and the physical makeup of these goods is that they are light, so you can load a lot of them on a ship.

The witness continued by saying, I believe for most carriers the economics are such that the imports are going to drive the deployment of additional ships and containers. In essence, the witness's perspective is that United States exports are essentially hostages to shipping capacity that is made available as a result of the carriage to the U.S. of foreign imports. Put simply, ships will go where they can get the cargo, but they will go first where they can get the best-paying cargo. And if that isn t the United States, our export cargo will not receive priority service.

Such business trends will only compound our trade deficit, and regardless of our other economic developments, will make it very difficult for the United States to achieve the doubling of export over the next five years for which President Obama has called. This reality has serious implications that urgently need to be addressed by comprehensive policy responses, not just in the maritime arena, but frankly in the industrial and manufacturing arenas as well.

That said, we are here today to receive an update from the FMC on current trends in ocean-going shipping capacity. At the time of our last hearing, Mr. Richard Lidinsky, the Chairman of the Federal Maritime Commission, announced that the FMC had voted to initiate a fact-finding investigation to examine the extent of space and equipment shortages. The fact-finding has been led by Commissioner Rebecca Dye.

In response to Chairman Lidinsky's announcement, I promised that the Subcommittee would reconvene to examine the result of that fact-finding effort and here we are today as promised. Chairman Lidinsky and Commissioner Dye are here to update us on the result of their investigation. We anxiously look forward to their testimony.

And with that, I yield to the distinguished Ranking Member, Mr. LoBiondo.

Mr. LoBiondo. Thank you, Mr. Chairman.

And to our panel, thank you for being here.

As was stated last March, the Subcommittee initiated a review of the conditions in the maritime trades which have restricted opportunities for U.S. producers to export their products by vessel. Following the hearing, the Federal Maritime Commission established a fact-finding investigation to examine vessel capacity equipment availability in the import and export trades.

The Commission has provided the Subcommittee with its preliminary results which suggest that capacity shortages are likely to continue for some time. In recent years, the demand for U.S. exports has significantly increased at the same time that vessel capacity has been withdrawn to save operational costs.

While some carriers have expressed their intent to place more vessels into service in the U.S. foreign trades, the FMC's report suggests that the capacity levels are not rising fast enough to meet the demand for U.S. shippers. As a result, many U.S. exporters are left in a situation where they cannot secure space for their products aboard a vessel for weeks.

Additionally, many U.S. exporters face challenges in obtaining shipping containers to transport their goods to port. The FMC report notes there is a worldwide shortage in container supply and manufacturing of new containers has largely been suspended in Asia.

I commend the Commission for seeking solutions to this problem and hope they will continue discussions with producers, shippers and carriers to broaden the availability of maritime containers which are a necessity in modern day trade.

Ultimately, vessel capacity levels will rise as the global economy recovers and trade returns to normal levels. As we prepare for these increases, it is in our national interest to strengthen the capabilities of domestic producers and shippers to quickly move their products to port and to sustain the increase in American exports to the rest of the world.

I want to commend the FMC for the recommendations presented in the preliminary report and I look forward to working with the Commission and all segments of the maritime industry on short and long-term solutions to these problems.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

We will now hear from Mr. Richard A. Lidinsky, the Chairman of the Federal Maritime Commission, and Commissioner Rebecca F. Dye of the Commission.

Mr. Lidinsky, welcome back.

TESTIMONY OF RICHARD A. LIDINSKY, CHAIRMAN, FEDERAL MARITIME COMMISSION; AND REBECCA F. DYE, COMMISSIONER, FEDERAL MARITIME COMMISSION

Mr. LIDINSKY. Time flew quickly from our hearings of St. Patrick's Day to the 4th of July, and we are here and we thank you both for your kind welcome.

The FMC appreciates this opportunity to update the Committee on the critical issue of ocean vessel capacity and shipping container availability since we last testified in March. As in that previous hearing, I am joined today by Commissioner Rebecca Dye and the Commission's General Counsel Rebecca Fenneman. We also have Commissioner Michael Khouri in the audience, as well as senior members of the staff and your former colleague, Commissioner Joe Brennan is back manning the ship, as we say, and sends his best regards.

At the hearing on March 17, we announced that Commissioner Dye would be leading a fact-finding investigation into the difficulties that plagued our industry at that time. During the intervening three months, Commissioner Dye and her team have done an impressive amount of work, including reviewing extensive data and documentation, holding interviews with a comprehensive array of representatives from all sectors of the ocean shipping industry.

In March, President Obama also directed agencies to use every available Federal resource to increase U.S. exports over the next five years. That directive dovetailed with the Shipping Act's goal for the FMC to promote the growth and development of United States exports through the competitive and efficient use of ocean transportation. As you survey the Government-wide responses to the President's goal, I cannot think of a better example than the extraordinary efforts of Commissioner Dye and her team.

Today, the Subcommittee will receive an update on Commissioner Dye's investigation and the current interim recommendations she has made. But before I turn the microphone over to her, I would like to share a few observations on what has occurred since March.

First, the maritime economy and trade have continued to improve since that date. As we look at the statistics for cargo growth, both imports and exports, our Nation's ports are surging. The growth over 2009, which was admittedly a horrible year of economic development, is quite impressive. In May of this year, for example, the Port of Long Beach saw total container volumes increase 25 percent; Seattle, 57 percent; Savannah on this coast, 25 percent in May; New York-New Jersey, 18 percent in April. The list goes on.

I begin with these figures to remind us that we should keep in mind that the problems that we face today are the consequences of a broad recovery that was not at all certain last year. In 2009, both ocean carriers and shippers would have felt fortunate to be where we are today.

When we last met in March, and even as late as May, certain ocean carriers were claiming that they were not sure that the uptick in trade was just temporary or a restocking before its second dip. Now, they appear to accept that the upturn is for real and they have moved to impose peak season surcharges earlier than normal, despite expressions of uncertainty. The growing pains and problems that we confront are serious, but they are far preferable to the severe economic pain that preceded them.

Second, vessel capacity is returning and I believe in thanks no small part to this Subcommittee's vigilant focus on these issues since March. In the Nation's largest trade lanes, the Transpacific between the U.S. and Asia, we are projecting capacity for July to be 18.7 percent higher than when we testified in March. Some of this increase is seasonal, but we also notice peak harvest season is coming for exports so we must continue to increase capacity.

On a year by year basis, July 2010 capacity in the Transpacific will be 5.8 percent larger than the year before. Whereas in March, capacity was still 7.8 percent below March of 2009. Capacity has not returned to 2008 levels. We project the July 2010 capacity to be 3.5 percent below July 2008 levels.

Third, as capacity returns, the more pressing issue has become shortage of containers. In March, much of the problem was the location of empty containers. Agricultural exporters in the upper Midwest and rural Pacific had trouble obtaining containers bringing exports to our ports for large metropolitan distribution centers. Now, this recurring problem of positioning of empty containers has been exacerbated by a worldwide container shortage.

During the recession in 2009, major container manufacturers in China suspended production. During the past few months, production has not ramped back up to keep pace with new orders from ocean carriers and container leasing companies. Analysts forecast the global output of containers this year to be only at 1.5 million to 2 million 20-foot equivalent units, down from 4.2 million in 2007. As a result, we have seen reported prices rise as high as $2,750 for 20-foot containers in China, the highest price levels in 20 years.

I know that Commissioner Dye and her team have looked closely at this issue, which I believe might eclipse the vessel capacity issue in severity during the coming peak season.

On that same subject, I would like to give the Committee a brief update on a project that I mentioned back in March: our initial discussions with the U.S. Department of Agriculture and a group of ocean carriers in the Westbound Transpacific Stabilization Agreement, WTSA.

This was to develop a pilot project to give inland agricultural exporters more information on locations and availability of empty shipping containers. Since March, work on this project has progressed at a good and steady pace. The FMC has worked with the USDA, WTSA, and we have also had input from the U.S. Army's experts on container tracking in the Surface Deployment and Distribution Command.

At this point in time, a group of six agricultural exporters and four ocean carriers has been assembled to provide data and present what would be most helpful to the exporters. The carriers have submitted a first round of data. The USDA has run this data and exporters have submitted initial comments. We will continue to assist USDA and the ocean carriers on their project to give them more transparency regarding container location. This is in addition to the FMC proposal on container issues that Commissioner Dye will share with the Subcommittee this afternoon.

With these preliminary thoughts, I will hand things over to Commissioner Dye, who has been living and breathing these issues with importers and exporters over the last few months. After she shares her updates, we will be most pleased to answer any questions you might have.

Again, thank you, Mr. Chairman, for this opportunity, and Members of the Committee, thank you for allowing us to be here today.

Mr. CUMMINGS. Thank you very much.

Commissioner Dye?

Ms. DYE. Thank you, Mr. Chairman, Mr. LoBiondo, Mr. Coble. Thank you very much for allowing me to appear before you today to deliver to you our interim report on the Federal Maritime Commission's Fact-finding Investigation Number 26.

I want to thank my colleagues on the Federal Maritime Commission for their support and advice during these few months that we have been investigating. I especially want to thank the Chairman for his devoting substantial resources from the Commission's budget to support this investigation because we all agree it is a very high priority.

And of course, I want to thank the members of my staff who are here today. My team, they have done a great job and we are all going to continue to work on this and I am grateful to have their support.

I especially want to thank the many American exporters and importers who committed their time and resources to this investigation so far. Many of them discussed not only their current problems with ocean transportation, but also their suggestions for improvements in the efficiency of the global supply chain.

I also want to thank the executives of the ocean carriers who participated in our investigation. They have provided us with valuable information on current capacity problems and have been forthcoming and cooperative in this investigation.

And finally, I want to thank the Burlington Northern Santa Fe Railroad, the American Association of Railroads, and the Surface Transportation Board, who have been very helpful to us so far. We look forward to their continued participation as we develop a solution to the inland container shortage.

The first phase of our investigation, Mr. Chairman, has involved an intensive series of confidential interviews with American exporters and importers. We also interviewed executives of 14 ocean carriers which operate in the United States-Transpacific trades.

In addition, we have interviewed shipper associations, ocean transportation intermediaries, freight software providers, chassis pool experts, container lessors, transportation academics, and international ocean carrier investment consultants. We talked to port officials and railroad executives and consulted with certain other railroad trade associations.

We conducted interviews in Portland, Oregon; San Antonio, Texas; New York, New York; twice in San Francisco; and of course, here in Washington, D.C. During our interviews, shippers in the eastbound Transpacific trade expressed the opinion that ocean carriers continue to withhold vessel capacity from the market in a collective effort to raise prices by leveraging access to scarce capacity and equipment. They believe that carrier practices involving rolled cargo, canceled bookings, and successive price increases were in conflict with protections in their existing service contracts.

Carriers responded that they were making business decisions on an individual basis, and were reluctant to bring vessel capacity back into the United States trades quickly, given the precariousness of their financial positions and the lack of certainty that unanticipated increases in demand would be sustainable. They believe the problems with rolled cargo and canceled bookings were exacerbated by multiple bookings made by shippers.

In the westbound transportation trade, our export trade, shippers and carriers agree that U.S. exporterss face additional problems obtaining capacity. In the Transpacific, average freight rates are higher eastbound than westbound, as you had mentioned, Mr. Chairman. For this reason, ocean carriers deployed vessel capacity based upon demand for U.S. imports.

Obviously, when available capacity for imports is limited, U.S. exporters also experience higher levels of vessel capacity shortages.

Another vessel capacity problem facing exporters concerns the issue of vessels weighing out. U.S. exporters such as forestry products and grain can weigh on average twice as much as imports, and this weight disparity limits the number of filled export containers that may be carried on an outbound vessel.

During interviews, shippers and carriers agreed that export container shortages exist throughout the Country for a number of reasons, including the fact that many containers carrying imports arrive at distribution centers that are far away from export locations. There has been a virtual halt in container manufacturing from late 2008 through 2009. Imports are increasing trans-loaded into larger domestic containers near ports of entry, increasing the likelihood that those empty containers will be turned around and placed on ships empty back to Asia for higher paying imports.

Finally, our investigation found that many shipper service contracts did not contain provisions which adequately protected them from many rate and surcharge increases. In certain cases where shippers had negotiated rates and contracts that did not allow the imposition of rate increases and surcharges, they stated that some carriers still attempted to impose rate increases or deny space.

Our interim report recommends approaches for timely action to address the severe disruptions in the ocean leg of the global supply chain. As you know, Mr. Chairman, the Federal Maritime Commission does not have the statutory authority to require ocean carriers to add vessel capacity. Also, unless the parties agree otherwise, the exclusive remedy for breach of contract under the Shipping Act is an action in an appropriate court.

However, we believe there are actions that the Commission can take immediately within our statutory authority to intervene in this situation and produce positive results.

At the Commission meeting held on June 23rd, the Commission took action in four areas. We established what we are calling rapid response teams within the Commission's Office of Consumer Affairs to quickly address and help resolve disputes between shippers and carriers. These problems include canceled bookings, rolled cargo, and container unavailability, and we encourage shippers to call our Consumer Affairs Office. It is located on our website, and we promise they will get a prompt call back, and hopefully a prompt resolution.

We have also increased our Commission oversight of the Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement. We increased oversight of these agreements by requiring verbatim transcripts of certain agreement meetings. And of course, our staff in our Bureau of Trade Analysis had already increased its oversight of these agreements.

We have also asked the staff to explore additional oversight of the global alliances and get back to us as soon as possible so we can act on that matter if the Commission so decides.

We extended our fact-finding investigation to the end of the peak shipping season so that we can continue to monitor the capacity and price situation in the U.S.'s international ocean transportation; and also to work on some additional solutions within the confidentiality of the fact-finding investigation. And as we develop what we think are good approaches, we can then recommend them to the Commission for action.

We are going to organize what I call best practice discussion pairs between one shipper and one carrier to consider ways to resolve the most pressing problems with recent carrier practices. The initial problems are booking cancellations and cargo rolling.

To work with our rapid response teams, we are going to ask our carriers to designate representatives who will be available to work directly with our staff to quickly address capacity problems and other urgent problems.

We have already developed some model contract terms that we are going to share with the shipping public to help them address some of the most pressing contract issues. We want to provide improvements in ocean service contracting and allow shippers and carriers to enjoy the full benefits of contracting envisioned in the Ocean Shipping Reform Act.

One of the most important solutions that we want to develop, Mr. Chairman, is to organize an Export Capacity Working Group. We are going to establish a group of shippers and carriers to meet with the Commission and discuss availability of vessel capacity for U.S. exports. These discussions will be held regularly, but only under the direction of the Commission. The working groups appear to be one of the more promising approaches to assure enough capacity for export cargo.

Finally, we have already started organizing a working group on container availability. Based upon our discussions with ocean carriers, shippers, intermediaries, chassis pool experts and railroad representatives, we are going to organize an Intermodal Group to meet at the Commission very soon to address the chronic unavailability of export containers.

Today, Mr. Chairman, freight rates from Asia to the United States have rebounded to close to where they were at the high point in August, 2008. U.S. export rates exceed 2008 levels. A number of carriers have recently announced decisions to increase vessel capacity in several U.S. trade lanes, particularly the U.S.-Asia trades. Transpacific capacity, as the Chairman had mentioned, has increased at least 17 percent since January.

Nevertheless, growth in demand for container imports and exports in the upcoming peak shipping season may strain current vessel capacity. Container availability for export cargo in some regions of the Country likely will continue to be difficult and expensive to arrange.

Mr. Chairman and Members of the Subcommittee, we realize that we have laid out an extremely ambitious agenda for the next few months for ourselves. As you know, Mr. Chairman, we only have 130 people, but we are committed to this endeavor. We will keep you and your staff informed of our progress in these areas.

Thank you so much for your continued involvement and support. I will be glad to answer any questions you may have.

Mr. CUMMINGS. Thank you very much.

First of all, I want to thank you and your staff for all that you have done. We really appreciate it.

Let me just ask you, Commissioner Dye, do you believe that the Chinese are intentionally holding back on the production of shipping containers to drive rates higher?

Ms. DYE. I can't speak to their intention, Mr. Chairman. What we have discovered is that the plants shut down at one point, completely. Whether or not they are moving fast enough to retool, we don't know. We don't know why or what exactly is happening. But let me say we do believe it is not fast enough for our American businesses who need the equipment.

Mr. CUMMINGS. Now, Chairman Lidinsky, while Commissioner Dye's investigation continues, exporters and importers are continuing to report cargo rolling, cancelled bookings, container shortages, and attempts to force charges that were not agreed in contracts that were just executed last month. What else can the FMC do to address these problems?

Mr. LIDINSKY. Thank you, Mr. Chairman. We have heard these unfortunate reports of occurrences where contracts were negotiated just a month ago and changes have already been made. I think the Commission can do two things. One is that we work within the confines of what Commissioner Dye has described, but we also have an open door for those shippers who have experienced these unfortunate incidents so that we can go directly to the carriers and try to get them resolved.

The ultimate solution, though, I believe is a legislative one, and this complements Commissioner Dye's study. We have to change the Shipping Act's exclusive remedy provision for these service contract issues to initially go to the Commission. Let the Commission mediate and arbitrate these disputes immediately. Don't put an importer and exporter in a position where they have to wait 18 months for a decision to come from a court, and then come to the Commission for relief.

So I think if we work to that goal, we can resolve much more quickly these issues that shippers are confronting.

Mr. CUMMINGS. Commissioner Dye just said that you are working with 130 people. Let's say the Congress were to give you that kind of authority and that kind of responsibility, would you be able to carry that out with the present staff that you have now?

Mr. LIDINSKY. We would not, Mr. Chairman, because I would see that we would virtually have to double the size of our Consumer Affairs Division, create a hearing officer, a situation where we would have people, expert at arbitrating, mediating, and we might look at an increase of possibly another 20 employees for that function.

Mr. CUMMINGS. And I take it that because you would then be able to resolve these issues quickly so that commerce might flow, I take it that it is your belief, and I am not trying to put words in your mouth; I am just curious, that the expenditure would be worth it to try to accomplish that?

Mr. LIDINSKY. Absolutely, Mr. Chairman, because again, we are all working towards the goal of the President of doubling our exports. We are particularly committed to exports. And to the extent that anyone leaves the export business out of frustration over treatment by an ocean carrier, that is a loss for the Country. So any investment we make in speeding these cases along is an investment well made.

Mr. CUMMINGS. Now, Commissioner Dye, do all carriers try to work with shippers whose cargo is being bumped to help ensure that the shipper's transportation needs can be met? Or have some carriers just bumped cargo without regard to the shipper's needs to get their imports or exports delivered on time? What have you found?

Ms. DYE. When we started this investigation, Mr. Chairman, I described the import and export trades as chaotic. Why that occurred, we don't know. But we heard situations in which there were multiple cargo rollings. Carriers normally must overbook their vessels because of what they call the fall-down rate of exports can be on average 30 percent.

So sometimes there is a need to roll some cargo, but what we had heard described was unacceptable. Part of what we want to explore in best practices is for us to be able to listen to the interchange between shippers and carriers, and hopefully get to a resolution that we can institutionalize at the Federal Maritime Commission in some way, and allow shippers more transparency in the situation, and plan for any cargo rolling that may occur for one vessel in one week.

Normally, it has worked out. In the past, it has been my understanding, that that has been worked out with a fair resolution between a carrier and a shipper. Whether or not it is the economic situation or the inefficiencies in the system, we are not sure.

Mr. CUMMINGS. Before we get to Mr. LoBiondo, let me just ask you this, Mr. Lidinsky. Carriers have been implementing surcharges for cargoes moving under service contracts. Have all of these surcharges been based on increased carrier costs such as an increase in fuel costs? Or has some of the surcharge has been noncost based, perhaps in an attempt to increase revenues to offset their losses from the past year? Should surcharges only reflect actual changes in the carrier costs for which the surcharge is being assessed, such as increased fuel costs?

Mr. LIDINSKY. Mr. Chairman, surcharges should be for the specific purpose for which they are made, for the fuel increase, and for other purposes. Now, when the service contract is formed, the shippers have an opportunity to protect themselves against certain surcharge increases and unfortunately a lot of times they don t. So the carriers, in an attempt to make up lost revenue, have imposed additional surcharges to bring them back to where they wanted to be from two years ago.

But the core of the issue remains this, that service contracts have been around for about a dozen years now in their present form. Nobody doubts they have been a success in terms of numbers. There are over two million of them on file today, individual deals between the importer-exporter and the carriers. Both sides are responsible for the state of being where they have not fully taken advantage of these opportunities in the service contract to negotiate provisions to insulate against surcharges, or for carriers to protect themselves against phantom bookings by shippers.

So if Commissioner Dye's Best Practices Committee can form a model service contract, we can have that in place, encourage people to use that as a model, and then change the law to say that when a dispute arises, come directly to the FMC. We will deal with it and we will solve the issue immediately. So I think that is the path ahead for the surcharge, for rolling cargo, for auctioning cargo, and for other problems that exist.

Mr. CUMMINGS. And what kind of training would those folks have to have, the people that you talk about resolving the issues? Would they be more like administrative judge type folk?

Mr. LIDINSKY. No, I don't think you need to be that level of expertise. I think you need to have worked within the Commission or within the industry. I would envision people who have worked for carriers, who have worked for shippers, worked for port authorities, who understand the transition and the process of cargo movement so that they can read a service contract and apply what is the fair solution.

So we don't need Ph.Ds. in the arbitration dispute area, but we need people who have common sense and who can quickly resolve the issue.

Mr. CUMMINGS. Mr. LoBiondo?

Mr. LOBIONDO. Thank you, Mr. Chairman.

A couple of the questions I had you have asked. I am going to yield my time to Mr. Coble.

Mr. COBLE. I thank the gentleman from New Jersey for yielding.

Chairman, Commissioner, Counsel, it is good to have you all with us.

In your report, you note that many shippers believe that carriers were withholding capacity despite surging demand to raise rates to collectively determined amounts. You furthermore note that many carrier groups have or have attempted to impose rate increases and surcharges even when the contracts appeared to have precluded their use.

Do you see signs or evidence or indicators that carriers are working with each other to establish uniform price levels?

Ms. DYE. Mr. Coble, we did not actually design this investigation with that sort of focus in mind. But I can say that we have no evidence that the carriers are actually exceeding the authority that they currently have in their agreements.

But we have already increased our oversight to make sure that we have done everything that we could do to make sure that that is not going on.

Mr. COBLE. Mr. Chairman?

Mr. LIDINSKY. Mr. Coble, back in March, this issue was touched on by one of the shipper witnesses. And we have said our door is open, we are anxious to talk to anybody who can bring us evidence of collusion or other illegal activities and we will certainly work with them to stop it.

Mr. COBLE. I thank you both.

In your report, you further recommended that the FMC explore ways with carriers and shippers to solve chronic unavailability of containers for U.S. exporters. What can the FMC do in cooperation with shippers and carriers to enhance the availability of containers to areas far from major ports?

Ms. DYE. Yes, Mr. Coble, we have already started, actually. We have an intermodal working group with the railroads, software providers and the carriers to discuss ways to serve areas like the Pacific Northwest and the upper Midwest. And I am very encouraged by the solutions that they have proposed.

We don't want to interfere with any business relationships that are working. To the extent that people are being served, we want to stay out of their way.

Mr. COBLE. How are costs associated with the transport of the container to the point of loading and to the port of departure split between the producer on the one hand, the shipper on the other hand, and finally the carrier which ultimately transports the cargo?

Ms. DYE. The carrier usually arranges the delivery of the container to the shipper to the agreed upon destination. The problem is that the containers usually arrive at population centers far removed from where the export cargo is located. And it is expensive to get the container relocated where it is needed.

Mr. COBLE. Has there been a change recently in how the costs are shared for containerized vessel exports?

Ms. DYE. There has been an increase in the types of cargo that is carried in containers such as increased use of containeers by agricultural products. As far as the costs go, the expense is shared by the carrier and the exporter. But in difficult economic times, the carrier expects the export shipper to pay more of those relocation costs. And sometimes these costs are too much for the export shipper to bear.

Mr. COBLE. And finally, Mr. Chairman, one final question.

And Mr. Chairman, I don't mean to be cutting you out. You feel free to put your oars into these waters as well.

Finally, how can the Federal Government and United States importers and exporters influence foreign operators plans to better suit domestic trade needs? And I ask this question because much of the shipping is done by foreign-based vessels.

Mr. LIDINSKY. Thank you. Let me respond to that.

I think we have to stress, first of all, that this is the foreign waterborne commerce of the United States. And a report that was done two years ago for the Congress pointed out that our importers and exporters should be first served by those shipping lines that freely choose to come to this Country.

Now, let me give you a couple of examples, Mr. Coble. First of all on this increasing export box use. I think we can work through vehicles like the USDA project I talked about to increase the visibility of boxes. I think we can stress to exporters they have to pay their fair share for positioning and other costs associated with moving that box inland and moving it back to the port area.

Another factor is, and I was very troubled to learn this, that a number of carriers refused to take what we call third party boxes. Now, this is a situation where a leasing company may own a box and a shipping line will come to that leasing company and say I need extra boxes for this move. They will take those boxes. The exporter then says, "I need a box". The line says sorry, we don't have a box. The exporter says I will go to a leasing company and get the same box to put on the ship. The ship says we don't want that box on our ship.

So now, the exporter has been discouraged in two ways. He has been told he doesn't have a box, and if he goes out and gets a box he is refused. So I think we have to clarify our regulations or maybe clarify the law that that carrier must take that box in our trade.

When you come to these shores as a foreign carrier, you have to honor the Coast Guard regulations, Customs, and other things. I think you should honor the exporter's needs.

Mr. COBLE. Sounds not unreasonable to me, Mr. Chairman.

I thank the gentleman from New Jersey and I yield back, Mr. Chairman.

Mr. CUMMINGS. It doesn't sound unreasonable to me either.

Mr. Lidinsky, this reform that you are calling for, this is major stuff.

Mr. LIDINSKY. Well, I think it would depend on how we approach it, Mr. Chairman. In other words, we could fine tune or we could wait a bit and look at a possible list of other changes and put them in under a sort of re-regulation bill of the year. So I think it is up to the Committee's wisdom how we should proceed, but we are certainly willing in the context, again, of Commissioner Dye's report, to come back to the Committee with a shopping list of what we feel is needed to fix the bill.

Mr. CUMMINGS. Well, I would appreciate it if you would do that.

I would like to see both approaches, the fine tuning and what you think that fine tuning would yield, sort of like an a la carte sort of thing. And then the big fix. We just have to figure it out. Up here things move very slowly and sometimes in order to get something done you have to do it in pieces, although it might make sense to do the bigger deal.

Do you follow me?

Mr. LIDINSKY. I understand you completely.

Mr. CUMMINGS. So we would like to hear from you on that.

How soon can I hear from you on that, with regard to that?

Mr. LIDINSKY. Well, I think we could be back to you within a month with the preliminary list.

Mr. CUMMINGS. That would be fine.

Now, you indicated, Mr. Lidinsky, that the FMC has continued to work with the USDA and other partners to discuss the best way of tracking available containers. Will a central registry be developed to report the location of empty shipping containers? And if so, when? Because that seems like one of those tweaking things that you talked about. I am just wondering.

Mr. LIDINSKY. Well, again, this project, Mr. Chairman, as I outlined it, is of course paid for and being directed by the Department of Agriculture. There is no FMC funds in it. But my understanding is once the pilot project is underway, it takes additional testing, but sometime later this summer there will be established a central registry where agricultural exporters can look at that. And then whether it is broadened, of course, will be a judgement of the USDA as to whether it is worth broadening.

But I think this could be of great advantage to exporters in the agricultural area, but also other areas as well. We could focus it on States that are not getting served. And it is an opportunity for both the carriers and the exporters for additional business.

So it is certainly worth pursuing and we are working very closely with USDA to make sure it moves quickly as possible.

Mr. CUMMINGS. And so you anticipate that if that proved to be effective and efficient, that I guess it would be your recommendation to the USDA that they expand that.

Mr. LIDINSKY. Yes, expand it. But again, it is their judgment call. I think it is not a solve all problems issue because as most things in life, it gets us part of the way there, but it is certainly better than what we have today. And we have encouraged them, we have praised them for these efforts. We praised the carriers for their efforts because they are the key people putting these numbers into the system.

Mr. CUMMINGS. Now, you indicated in the hearing that members of the Westbound Transpacific Stabilization Agreement were to meet in a forum on April 19. Is that right?

Mr. LIDINSKY. That is correct.

Mr. CUMMINGS. To discuss U.S. exporter needs and that the FMC was to participate in the meeting. Did they?

Mr. LIDINSKY. They did. The way the meeting was held, Mr. Chairman, was that I believe Commissioner Khouri, and I am not sure whether Commissioner Dye was there or not.

Ms. DYE. I was not there.

Mr. LIDINSKY. She was not there. We attended the opening of the session and heard the luncheon address. We then left and left senior staff there to work with some of the details of that meeting. But I understand it was a very good exchange, and again to the extent that dialogue takes place to explain the situation and efforts are made to reconcile problems, it was a very worthwhile meeting and we commended them for that meeting.

Mr. CUMMINGS. I am intrigued by this whole resolution situation. You indicated that FMC's Office of Consumer Affairs and Dispute Resolution Services can assist shippers and carriers in resolving service disputes. How many disputes has the office helped to adjudicate this year? And what are the typical types of cases brought for adjudication?

Mr. LIDINSKY. Well, I couldn't give you an exact number, and we will provide that for the record, but there are many, many cases that have been brought to us. And it would be things as simple as misunderstanding contract terms, containers being delivered to the wrong place. Cargo rolling issues have come to them where the staff has called the carrier, and worked to reconcile these issues.

When the carrier gets a call from the FMC, they are quickly going to respond, as opposed to a call from the shipper. So it is sort of like a hotline kind of approach. And if we get the authority to be the first party to come to, we would see these cases multiply dramatically and we would be up to handling them.

Mr. CUMMINGS. Mr. LoBiondo?

Mr. LOBIONDO. I have nothing else.

Mr. CUMMINGS. Mr. Coble, did you have something else?

Mr. COBLE. No, sir.

Mr. CUMMINGS. All right. I just have two more questions.

Ms. DYE. Yes, sir.

Mr. CUMMINGS. Commissioner Dye, you stated in your written testimony that the FMC has voted to increase oversight of the Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement by requiring verbatim transcripts of certain agreement meetings.

Ms. DYE. Yes, sir.

Mr. CUMMINGS. How can you ensure that you receive verbatim transcripts if the meetings are held in foreign countries and are not attended by FMC reps?

Ms. DYE. Well, we don't have any reason to doubt that they will comply, Mr. Chairman, but I can assure you if we do have any indication that they are not fully complying, then we would move to the next step.

Mr. CUMMINGS. So the Pacific conferences, they don't hold their meetings in the United States. Is that right?

Ms. DYE. They do not, as a rule.

Mr. CUMMINGS. Do you think that is on purpose?

Ms. DYE. I think that is probably for their convenience, Mr. Chairman.

Mr. CUMMINGS. What did you say?

Ms. DYE. I think that is for their convenience.

Mr. CUMMINGS. Oh, I see. All right.

Again, we want to thank you all for doing a great, great job. I thank you all for also having me to celebrate the 50th anniversary. I was very pleased to be there.

And I want to thank you, Mr. Chairman, for bringing a lot of morale to your institution there. I have gotten a number of emails from folks who after I spoke there who said some very, very kind things. And so I want to thank you. And please let everybody know there that we truly appreciate their work.

We are going to be calling you back so that we can get those recommendations. OK?

Mr. LIDINSKY. Very good.

Mr. CUMMINGS. I may not do it in the form of a hearing, but I want to see if we can get it within a month. Do you believe that will give you enough time to do what you need to do?

Mr. LIDINSKY. I think it will do for us, Mr. Chairman.

Mr. CUMMINGS. All right. Thank you very much.

Mr. LIDINSKY. Thank you for your continued support.

[Whereupon, at 2:52 p.m., the Subcommittee was adjourned.]

Congresswoman Laura Richardson (CA-37)

Committee on Transportation
Subcommittee on Coast Guard and Maritime transportation

HEARING: "Update on Federal Maritime Commission's Examination of Vessel Capacity"

Wednesday, June 30, 2010
2:00 P.M.
2167 Rayburn

Laura Richardson

Mr. Chairman, thank you for convening the hearing today to provide Members with an update on the Federal Maritime Commission's Examination of Vessel Capacity. I would also like to thank the witnesses for taking the time to appear before the Committee.

On March 17, 2010, the Federal Maritime Commission began a non-adjudicatory investigation into current conditions and practices in the United States' export and import liner trades. The investigation is also considering potential impediments to the flow of ocean-borne import and export trades into and out of the United States.

Because of its proximity to the ports of Long Beach and Los Angeles, the 37th District of California is directly impacted by vessel capacity and the flow of ocean-borne import and export trade in the U.S. My district depends on the ports for much of its jobs, industry, and commerce. The Long Beach-Los Angeles port complex is the nation's busiest seaport complex, handling more than 40 percent of the nation's imported products, resulting in approximately 3.1 million international trade-related jobs in the U.S. About one in eight jobs in Long Beach (30,000 total jobs) is directly attributed to the ports. Additionally, one in 22 jobs (316,000 total jobs) in the five-county Southern California region is linked to operations at the Long Beach-Los Angeles port complex. The ports also generate more than $5 billion a year in U.S. Customs revenues. They contribute approximately $4.9 billion a year in local, state and general federal taxes from port-related trade, $47 billion in direct and indirect business sales annually, and nearly $14.5 billion in annual trade-related wages.

Given the economic impact of the Long Beach-Los Angeles ports on my district, the region, and the entire country, the topic of this hearing is of utmost importance to me. I am concerned that without increased vessel capacity, the ports of Los Angeles and Long Beach will not be able to continue to compete for export and import business. It concerns me that our ports are designed to focus on handling imports rather than exports. It also concerns me that when a vessel leaves the U.S. it might be deemed "full" even though it is only carrying two-thirds the cargo it was carrying when it arrived here from Asia. We cannot possibly compete in this global economy if we do not look at vessel capacity.

But perhaps my greatest concern is that we have not invested enough in the infrastructure that *supports* our ports, so ultimately we will not be able to handle the exports and imports that would result from increased vessel capacity. For example, the Gerald Desmond Bride in my district is in such poor state of repair that it has a giant diaper below it to catch falling concrete and debris. Collectively, the Ports of Long Beach and Los Angeles handled 15.8 million twenty-foot equivalent containers (TEU) in 2007. By 2020 the ports are projected to handle 36 million TEU's. About 35-45% of ALL U.S. waterborne containers move through the ports of Long Beach/Los Angeles, and they enter and exit those ports via the Gerald Desmond Bridge.

I have been calling for the replacement of the Gerald Desmond Bridge since I first came to Congress because I know how important it is to our economic prosperity and national security. I urge everyone to keep these types of critical port-related projects in mind when discussing the future of our ports. We must focus on more than just vessel capacity.

I look forward to hearing from the witnesses on this timely issue. Thank you again, Mr. Chairman, for convening this hearing. I yield back the balance of my time.

STATEMENT OF
COMMISSIONER REBECCA F. DYE
FEDERAL MARITIME COMMISSION
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 30, 2010

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss the interim report on the Federal Maritime Commission's Fact-Finding Investigation Number 26. As you know, on March 17th, the Commission instituted this investigation on Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades. On June 23rd, the Commission considered the confidential interim report on the investigation in closed session.

I want to thank Chairman Lidinsky and Commissioners Khouri and Brennan for their support and advice during the first phase of this investigation. I also want to thank the members of the Federal Maritime Commission staff who continue to provide invaluable assistance to this investigation.

Mr. Chairman, I especially want to thank the many American exporters and importers who committed their time and resources to this investigation. Many of them discussed not only their current problems with ocean transportation, but also their suggestions for long-term improvements in the efficiency of the global supply chain. Their insights involving international ocean shipping formed the basis for several of our recommendations adopted by the Commission.

Finally, I want to thank the executives of the ocean carriers who have also participated in our investigation. They have provided us with valuable information on current capacity problems and have been forthcoming and cooperative in this investigation. We look forward to their continued participation as we move forward into the next phase of this investigation.

Market Conditions

In October of 2008, demand for vessel space in the U.S. trades plunged dramatically. Vessels that had been sailing 95 percent full from Asia to the United States were soon sailing 75 percent full. During fiscal year 2009, U.S. exports fell by 14 percent and imports fell by 16 percent. Freight rates dropped precipitously. For example, during one 12-month period from mid-2008 to mid-2009, average revenues per container declined about 40 percent. At one point, carriers had laid up more than 575 vessels worldwide, idling about 12 percent of the world's containership fleet. However, in the fourth quarter of 2009, and continuing into 2010, cargo volumes shipped to the United States from Asia began to recover and demand for U.S. exports surged.

By early 2010, increases in import volumes collided with previous vessel capacity reductions. The resulting supply and demand mismatch created serious supply chain disruptions for American importers and exporters. Cargo bookings under service contracts were denied, abruptly cancelled, or rolled to a later voyage. A rapid series of incremental price increases were imposed. U.S. exporters experienced severe problems with the availability of shipping containers for their goods.

Fact-Finding Number 26

As we developed our approach under the order of investigation, we decided to solicit information on problems in three main areas: (1) vessel space shortages, now and in the near future, inbound and outbound in the U.S. trades; (2) chronic container shortages in certain parts of the country; and (3) since international ocean cargo is carried almost exclusively under contract today, common carrier practices regarding service contracts. Our goal was to gather as much information as possible before the interim investigation deadline, followed immediately by appropriate recommendations to intervene in the serious situation that exists in international ocean shipping.

The first phase of the investigation has involved an intensive series of confidential interviews with American exporters and importers, including some of the country's largest importers and exporters. We also interviewed executives of 14 ocean carriers operating in the U.S. transpacific trade. In addition, we interviewed shipper associations, ocean transportation intermediaries, freight software providers, chassis pool experts, container lessors, transportation academics, and international ocean carrier investment consultants. We talked to port officials and railroad executives. We consulted with the American Association of Railroads and the Intermodal Association of America. Finally, we had an extremely valuable discussion with the Surface Transportation Board.

These interviews were conducted in Portland, Oregon, San Antonio, Texas, New York, New York, Washington, D.C., and twice in San Francisco, California. Many participants provided extensive documentation to support the investigation. We plan to continue the interview process for as long as the investigation continues.

The shippers and carriers that have participated in the investigation generally agree about the economic and commercial conditions that gave rise to the scarcity of vessel capacity, problems with container availability for export cargo, and the need for carrier price increases. Their disagreements tend to be about why those conditions arose, and the ways in which carriers handled them.

In the eastbound Pacific trade, both shippers and carriers identified the fundamental problem as a lack of additional capacity to handle the increase in cargo as international trade began to recover from the industry crisis of 2008 and 2009.

Shippers expressed the opinion that the ocean carriers continued to withhold vessel capacity from the market in a collective effort to raise prices by leveraging access to scarce capacity and equipment. They believed that carrier practices involving rolled cargo, cancelled bookings, and successive price increases were in conflict with protections in their existing service contracts.

Carriers responded that they were reluctant to bring vessel capacity back into the U.S. trades quickly, given the precariousness of their financial positions and the lack of certainty that recent, unanticipated increases in import and export demand would be sustainable. They explained their capacity decisions as sound business decisions made by individual lines, and said they believed that problems with rolled cargo and cancelled bookings have been exacerbated as a result of multiple bookings by shippers.

In the westbound Pacific trade, shippers and carriers agree that U.S. exports face additional problems obtaining vessel capacity.

In the transpacific, average freight rates are higher eastbound than westbound. For this reason, ocean carriers deployed vessel capacity based on demand for U.S. imports. When available capacity for U.S. imports is limited, U.S. exporters also experience higher levels of vessel capacity shortages.

Another vessel capacity problem facing exporters concerns the issue of vessels "weighing out." Container vessels are subject to both weight and volume limitations. Because US imports tend to be relatively light, vessels departing Asia can carry a full complement of loaded containers to the U.S. West Coast. However, U.S. exports, such as forestry products and grain, can weigh, on average, twice as much as imports. This weight disparity limits the number of filled export containers that may be carried on an outbound vessel.

During the interviews, shippers and carriers agreed that ocean container shortages exist throughout the country for a number of reasons, including the fact that many containers carrying imports arrive at distribution centers far removed from many export locations. A shortage of containers worldwide is exacerbated due to the virtual halt in container manufacturing from late 2008 though 2009. Imports are increasingly trans-loaded into larger domestic containers near ports of entry increasing the likelihood that empty ocean containers will be shipped back to Asia to be used for higher paying Asian exports.

Finally, the investigation found that many shipper service contracts with ocean carriers did not contain provisions which adequately protected the shipper from numerous rate and surcharge increases. Moreover, in certain cases where shippers had negotiated all-inclusive rates in contracts that did not allow the imposition of rate increases and surcharges, they stated that some carriers still attempted to impose rate increases.

The interim report on this investigation recommended seven approaches for timely action to address the severe disruptions in the ocean leg of the global supply chain experienced by U.S. exporters and importers. As you know, Mr. Chairman, The Federal Maritime Commission does not have the statutory authority to require ocean carriers to add vessel capacity. Also, unless the parties agree otherwise, the exclusive remedy for breach of contract under the Shipping Act of 1984 is an action in an appropriate court. However, we believe there are actions that the Commission can take immediately, within our statutory authority, to intervene in the situation that exists in international ocean shipping and produce positive results.

Commission Action

At the Commission meeting held on June 23rd, the Commission adopted the recommendations of the interim report, with immediate action in four areas:

Rapid Response Teams

The Commission established "Rapid Response Teams" within the Commission's Office of Consumer Affairs and Dispute Resolution Services to quickly address and help resolve disputes between shippers and carriers. These problems include cancelled bookings, rolled cargo, and container unavailability. We encourage shippers to call our Consumer Affairs Office and identify their problem as urgent. We will do our best to resolve the problem as soon as possible.

TSA and WTSA Oversight

The Commission voted to increase oversight of the Transpacific Stabilization Agreement (TSA) and the Westbound Transpacific Stabilization Agreement (WTSA) by requiring verbatim transcripts of certain Agreement meetings.

Global Alliance Oversight

The Commission directed our staff to prepare recommendations for prompt Commission action on ways to increase oversight of global vessel Alliances.

Extend Fact-Finding Investigation

The Commission extended Fact-Finding Investigation No. 26 from July 31 to November 30, 2010. This will allow the Commission to continue the investigation through the peak shipping season and to fully develop additional solutions.

Developing Solutions

The following additional solutions will involve working with shippers, carriers, and intermodal transportation groups within the confidentiality of the continuing investigation to develop solutions to the problems identified in the investigation. This approach will produce pragmatic improvements that will serve the commercial interests of U.S. importers, exporters, and ocean carriers.

Best Practices

We will organize "best practices" discussion pairs between shippers and carriers to consider ways to resolve the most pressing problems with current carrier practices. The initial problems for resolution are booking cancellations and cargo rolling.

Rapid Response Teams and Carrier Representatives

We will encourage each ocean carrier to name a representative to work directly with our recently established Rapid Response Teams to quickly address capacity problems and other urgent problems that arise between shippers and carriers. This carrier representative will be available at all times to respond to the inquiries of the Commission on behalf of U.S. shippers.

Model Contract Terms

Based upon our discussions with shippers and carriers about the shortcomings of certain ocean service contracts, our Commission staff has already developed suggestions for areas that may be addressed and language that may be included in ocean contracts that will improve the mutuality of understanding that is necessary for successful business arrangements. Our goal is to provide improvements in ocean service contracting and allow shippers and carriers to enjoy the full benefits of contracting envisioned in the Ocean Shipping Reform Act of 1998.

Export Capacity Working Group

The Commission will establish a group of shippers and ocean carriers to meet with the Commission to discuss availability of vessel capacity for U.S. exports. These discussions will be held regularly, but only under the direction of the Commission. These working groups appear to be one of the more promising approaches to assure sufficient capacity for export cargo.

Intermodal Working Group on Container Availability

Based upon our discussions with ocean carriers, shippers, trucking intermediaries, software providers, chassis pool experts and railroad representatives, the Commission will organize an intermodal working group to address the chronic unavailability of export containers for certain American exporters. This shortage is particularly severe in certain parts of the country, and we believe it is urgent to begin work on a solution as soon as possible.

Conclusion

Today, freight rates from Asia to the United States are approaching, but are still below, the mid-2008 level. A number of carriers have recently announced decisions to increase vessel capacity in several U.S. trade lanes, particularly the U.S.-Asia trades. This month, we expect available weekly vessel capacity to return to June 2009 levels.

Nevertheless, growth in demand for container imports and exports in the upcoming peak shipping season may strain current vessel capacity. Container availability for export cargo in some regions of the country likely will continue to be difficult and expensive to arrange. Finally, the cost of ocean transportation service is likely to increase as demand for service increases.

Mr. Chairman and members of the Subcommittee, we realize that we have laid out an extremely ambitious agenda for the next few months. We will keep you and your staff informed of our progress in these areas. Thank you so much for your support, and I'll be glad to answer any questions you may have.

STATEMENT OF
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BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

June 30, 2010

Mr. Chairman, Mr. Ranking Member, and members of the Subcommittee, thank you for this opportunity to provide an update on the work the Federal Maritime Commission (FMC or Commission) has undertaken on the critical issue of ocean vessel capacity and shipping container availability since we last testified to this Subcommittee in March of this year. As in that previous hearing, I am joined today by Commissioner Rebecca Dye and the Commission's General Counsel, Rebecca Fenneman. We also have Commissioner Michael Khouri and members of the Commission's senior staff in the audience today to assist the Subcommittee as necessary. Your former colleague, Commissioner Joe Brennan, is back manning the ship, as we like to say, and he sends his best regards.

At the Subcommittee's hearing on March 17, we announced that Commissioner Dye would be leading a fact finding investigation into difficulties U.S. exporters and importers have been experiencing due to the lack of available ocean vessel capacity and shortages of containers for exporters. During the intervening three months, Commissioner Dye and her team have done an impressive amount of work, including reviewing extensive data and documentation and holding interviews with a comprehensive array of representatives from all sectors involved in ocean shipping and equipment provision. In March, President Obama directed agencies "to use every available federal resource" to increase U.S. exports over the next five years. That directive dovetails with the Shipping Act's goal for the FMC "to promote the growth and development of United States exports through competitive and efficient ocean transportation." As you survey the government-wide response to assist U.S. exporters thus far, I cannot think of a better example than the extraordinary efforts of Commissioner Dye and her team.

Today, the Subcommittee has asked for an update on Commissioner Dye's investigation and any recommendations she and her team may have at this time. Before I turn the microphone over to Commissioner Dye to give the Subcommittee that interim report, I would like to share a couple of observations and an update on a project we discussed in March.

First, the economy and trade have continued to improve since March. Economic growth and traffic have been surging at the nation's ports and all transport segments serving our trade. The growth over 2009, which admittedly was the worst economic year in the FMC's fifty years of existence, is quite impressive. In May of this year, the Port of Long Beach saw total container volumes increase 25% year-on-year; Los Angeles rose nearly 20%; and Seattle has increased 57% (though some of that increase came at the expense of nearby Tacoma). On the East Coast, Charleston saw a year-on-year increase of 21% in May; New York-New Jersey increased 18% in April (the most recent figures available); Savannah increased 24% in April; and the list goes on. I begin with a mention of these impressive figures because it is important to keep in mind that the problems we face are the consequences of a broader recovery that was not certain last year. In 2009, both ocean carriers and shippers would have felt fortunate to sit where we are today. When we spoke in March, the ocean carriers were claiming that they were not sure if the uptick in trade was just temporary inventory restocking before a second dip. Now they appear to have accepted that the upturn is real, despite some expressions of uncertainty over whether its strength will continue through the last quarter of 2010. The growing pains and bottlenecks we confront are serious, but they are far preferable to the severe economic pain that preceded them.

Second, vessel capacity is returning. In the nation's largest trade lanes, the Transpacific between the U.S. and Asia, we are projecting that capacity for July will be 18.7% larger than when we last testified in March. Some of this increase is seasonal, as we begin to head into the peak season of stocking for the holidays. On a year-over-year basis, we expect July 2010 capacity in the Transpacific to be 5.8% larger than July 2009 capacity, whereas March 2010 capacity was still 7.8% below March 2009 capacity. But at the same time, capacity has not returned to 2008 levels. We project July 2010 capacity to be 3.5% below July 2008 levels.

Third, as capacity returns, I believe the more pressing shortage has become containers. In March, much of the problem was the location of empty containers: agricultural exporters in the upper Midwest and rural Pacific Northwest especially had trouble obtaining containers that were bringing imports to the nation's ports and large metropolitan distribution centers. Now this recurring problem of positioning has been exacerbated by a worldwide container shortage. During the recession in 2009, major container manufacturers in China suspended production. During the past few months, production has not ramped back up to keep pace with new orders from ocean carriers and the container leasing companies that own more than half of the world's containers. Analysts forecast global output of containers at only 1.5 to 2 million twenty-foot equivalent units (TEUs) this year, down from a peak of 4.2 million TEUs in 2007. I know that Commissioner Dye and her team have been looking closely at this issue, which I believe will eclipse the vessel capacity issue in severity during the coming peak season.

On the same subject, I'd like to give the Subcommittee a brief update on a project that I mentioned in my testimony in March: our initial discussions with the U.S. Department of Agriculture (USDA) and a group of ocean carriers in the Westbound Transpacific Stabilization Agreement (WTSA) about developing a pilot project to give inland agricultural exporters more information on locations and availability of empty shipping containers. Since March, work on this Container Availability Pilot Project has progressed. The FMC has worked with the USDA and WTSA-member ocean carriers, and has gathered input and ideas from the Army's experts on container tracking at the Surface Deployment and Distribution Command. At this point, a group of six agricultural exporters and four WTSA-member carriers has been assembled to help determine the type of data to present that would be the most helpful to exporters. The carriers have submitted a first round of sample data, the USDA has compiled it into a sample report format, and the exporters have submitted initial comments to the USDA. We will continue to assist the USDA and the ocean carriers on their project to give more transparency regarding container location. This is in addition to FMC proposals on the container issue that Commissioner Dye will share with the Subcommittee both today and in her final report.

With those preliminary thoughts, I'll hand things over to Commissioner Dye, who has been living and breathing these issues in interviews with importers and exporters around the country, as well as with the ocean carriers that serve them. After she shares her update on her investigation, recent Commission actions in response, and initial proposals going forward, we would be pleased to answer any questions you may have. Again, Mr. Chairman, Mr. Ranking Member, and members of the Subcommittee, thank you for the opportunity to address you today.