IANA
INTERMODAL ASSOCIATION OF NORTH AMERICA

Policy Issue Briefing
Shipping Act Reform

ISSUE TYPE	Legislative (Federal)
AGENCY	FMC
STATUS	Dormant
DIVISION IMPACT	Marine, Rail, MC, Supplier, Associate
INTERESTED PARTIES	WSC, NITL
KEY DATES	N/A
LAST UPDATED	Feb. 23, 2012

Summary

The Shipping Act of 2010 (H.R. 6167) was introduced by Rep. James L. Oberstar (D-MN) just before Congress recessed in 2010. Then-Chairman of the House Committee on Transportation and Infrastructure, Oberstar designed the legislation to do three things: to amend the law governing international shipping services performed by ocean liner carriers in the U.S.; to increase competition between ocean common carriers through the elimination of the carriers' collective ratemaking authority; and, to address a number of issues related to shortages in vessel capacity and retraction of service contract terms raised in 2010 to the Federal Maritime Commission by importers and exporters.

The mid-term elections saw Chairman Oberstar lose his re-election bid and the majority of the House changing to the Republicans. The legislation faded in the final days of the 111th Congress as Democrats had to move other high-priority legislation while still in the majority. However, now that Republicans control the House, it is possible that the bill could be resurrected at some point, as Republicans have previously introduced a number of bills attempting to eliminate antitrust immunity. The legislation has not been re-introduced in the House or Senate in any iteration as of this update.

If passed, the legislation would have eliminated all carrier conferences and discussion agreements and would have authorized ocean carriers to participate collectively only in "efficiency and service-enhancing agreements" that met the requirements of the new law. The bill would have also increased the authority of the FMC, particularly in the area of alternative dispute resolution, by requiring the Commission to establish binding arbitration procedures and to encourage mediation through a new Office of Dispute Resolution and Customer Advocate. It would also have prohibited certain conduct by ocean carriers relating to discriminatory, unfair or deceptive practices that would reduce competition, violate service contracts or result in unreasonable surcharges.

The bill launched a battle between shippers and ocean carriers, and a large coalition of shippers endorsed the legislation. U.S. exporters of agricultural goods, led by the Agriculture Shippers Association were especially vocal in their support of legislation that might also encourage carriers to provide more containers for westbound usage. The National Industrial Transportation League (NITL) supported the bill, calling it "the first step toward achieving a more robust, competitive and efficient maritime industry." NITL also alleged that carriers purposely caused equipment shortages in January 2010 as a means of boosting revenue. Carriers denied this claim and stated that available vessel capacity is back to normal.

The FMC launched *Fact Finding Investigation No. 26: Vessel Capacity and Equipment Availability in the United States Export and Import Trades* in response to this allegation, and a final report was presented by Commissioner Rebecca F. Dye at the FMC's December 8, 2010 meeting. The final report concluded that although capacity conditions in the U.S. trades have stabilized, certain underlying problems revealed during the investigation should be addressed, and the most effective long-term solutions will be developed by collaboration between ocean carriers and their customers within a framework organized by the Commission.

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Following their initial comments on the bill, the World Shipping Council (WSC), whose members operate around 90% of liner shipping capacity, including all the major container and bulk freight and tanker carriers, strongly advocated against the proposed changes included in the bill with regard to the way that the international liner shipping industry is regulated in U.S. foreign trades. WSC said that much attention had been paid to the fact that the bill proposes elimination of the limited antitrust immunity currently available for rate discussion agreements filed with the FMC, noting that ocean carriers believe that the repeal of rate discussion authority would lead to greater rate volatility and less predictable and less stable markets, which would not be beneficial to U.S. commerce.

WSC also noted that H.R. 6167's proposed changes were not limited to rate discussion agreements, and that it contained many other provisions that would have been detrimental to trade. It asserted that passing the legislation would create an ocean transportation system that would make U.S. trades less efficient and more costly for carriers, resulting in less choice, less capacity, lower service quality, and higher costs for U.S. importers and exporters while giving more regulatory powers to the FMC, such as giving the agency direct control over cargo carriers in terms of their relationship with customers including commercial negotiations about space availability, new equipment regulations for ship owners with more burdensome and costly reporting requirements.

While we believe that the bill will continue to face strong opposition from shipping lines and the WSC, U.S.-based shippers are likely to continue their campaign to resurrect a new iteration of *The Shipping Act of 2010*. In a mid-January letter to House and Senate leadership, a coalition of 29 U.S. importers and exporters accused U.S. carrier conferences of continuing to use their market power to exploit customers by raising rates and adding surcharges. The letter urged lawmakers to reintroduce legislation to eliminate carrier antitrust immunity, stating it would place U.S. importers and exporters "on a level playing field, not cost one penny of government money and would allow U.S. companies to be more competitive in overseas markets."

Related Issue

On January 31, 2011, the Federal Maritime Commission issued a Notice of Inquiry ("NOI") to solicit public comment on the impact of slow steaming on U.S. ocean liner commerce. The Commission is seeking public comment as to how the practice of slow steaming has 1) impacted ocean liner carrier operations and shippers' international supply chains; 2) affected the cost and/or price of ocean liner service; and 3) mitigated greenhouse gas emissions.

Potential Impact to Intermodal Freight Transportation

While Shipping Act Reform legislation has not been reintroduced in the 112th Congress, many of the provisions in H.R. 6167 were under scrutiny and debate by multiple entities and organizations.

Following are four preliminary potential impacts for IANA members:

Impact 1: Ocean carriers expect that repeal of the ability to retain rate discussion agreements would create rate instability, inconsistent and inefficient service offerings and hamper the ability to forecast demand. Impeding the ability to forecast demand and associated revenue could negatively impact the carriers' ability to develop long term capital commitment and investment plans, which are critical to support the ongoing growth and expansion of the North American intermodal supply chain.

Impact 2: Ocean carriers would be severely hampered by the provisions in the bill that outline new FMC oversight, review and approval of vessel sharing agreements that have created undeniable operational efficiency and cost savings to carriers, shippers, terminal operators, railroads and motor carriers. These agreements have a positive effect on the inland portion of ocean carrier moves and enable the planning and operation of dedicated intermodal trains and the associated labor and terminal support at origin and termination points.

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Consolidated vessel operations and capacity management also allow motor carriers to provide inland delivery and drayage services in an efficient and timely manner, along with an adequate roster of drivers.

Impact 3: Under certain provisions of the bill, there are items related to equipment, equipment charges and equipment pools that would require ocean carriers to handle shipper-owned or private equipment and to itemize certain equipment charges on freight bills. This would be cumbersome to the ocean carrier, and also add further complexity to all intermodal service providers in managing equipment, equipment flows and operational procedures for pick-up and return of equipment that is not owned or controlled by the ocean carrier. These equipment provisions may also include chassis and chassis pools.

Impact 4: One provision of the bill attempts to define "regulation of equipment providers" by the FMC and although vague at this point, defines an equipment provider as "a person in the United States that rents or leases marine cargo containers, or chassis for marine cargo containers to shippers or common carriers." This definition could make unclear the jurisdiction of Federal regulatory agencies, as the FMCSA and FMC would likely have conflicting viewpoints on responsibilities. Furthermore, it also includes the term "common carriers," that would affect all intermodal service providers with that designation, including motor carriers and railroads.

Policy Position – Adopted by the Board (11/14/2010)
IANA should continue to monitor Shipping Act reform activities and in coordination with the WSC, oppose any legislation that substantially changes the current laws under which the ocean carriers provide international intermodal service.

Current Status
Feb. 23, 2012: Nothing new to report at this time; status unchanged from original summary and position.