

September 14, 2010

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

RE: Shipping Act Reform

Dear Chairman Oberstar:

In recent public remarks you said you would soon introduce legislation to change the law(s) governing antitrust immunity in international liner shipping. The undersigned organizations, representing exporters, importers and the third party logistics providers that support them, applaud you for this initiative and pledge our cooperation and support for achieving the objectives you outlined.

Enactment of the *Ocean Shipping Reform Act of 1998* (OSRA) created a more competitive international liner market through the introduction of confidential service contracts. Congress must now take steps to insure that an environment exists so that contracts are honored and that ocean exports and imports can move at rates that are determined solely by competitive market conditions rather than by foreign-based companies acting in concert, even when that concerted action is permitted today.

Since the early 20th century, ocean carriers serving the U.S. have been exempt from U.S. antitrust laws under the *Shipping Act*. This extraordinary privilege may have made sense some 100 years ago, but in today's fully integrated global marketplace, competition rather than joint carrier discussions should be the determining factor which governs the price for moving freight. Freight rates, surcharges and other ancillaries should be determined by each individual carrier based on that carrier's cost plus a reasonable return on investment.

Under today's law, carriers may band together in "agreements" to discuss and agree upon rates and other freight charges and terms of service, or they may agree upon so-called "voluntary guidelines" for service and pricing. Ocean shipping conferences were rendered nearly obsolete by OSRA, but they are still permitted to exist and set rates. Many U.S. exporters and importers participating in the current U.S. Federal Maritime Commission investigation into carrier practices on vessel and equipment capacity and related matters have noted that liner carriers in the U.S. Westbound and Eastbound Pacific trades have charged identical and/or very similar rates and terms for carriage and uniformly applied surcharges. Carriers have "rolled cargo", and refused to load cargoes without additional compensation. In doing so, carriers often ignore contractual service commitments and prohibitions on the unilateral imposition of surcharges. Shipper protests have been largely ignored by carriers, and these disputes are mooted by the need to move the cargo.

The exclusive remedy for these types of shipper-carrier contract disputes today lies with the courts, unless the parties have agreed in the contract to resolve the dispute via arbitration. However, in practice, when disputes arise many shippers have no choice but to comply with a carrier's demands, or face the consequence that their freight will not move. Other more immediate remedies should be available as options for the contracting parties.

While we agree that carriers should continue to be permitted to engage in cooperative agreements that result in more efficient services for their customers (which US antitrust law certainly allows), Congress must end the legalized cartels which, under the current OSRA, are specifically allowed to engage in price

fixing, cargo allocation among the carriers, and even agreements to restrict capacity. The marketplace should be allowed to determine the prices at which freight moves. Each carrier, individually, should make its own decisions as to pricing, service and capacity, without knowledge of their competitors' plans, or the agreement of their competitors.

We appreciate your initiative to remove this antiquated and inappropriate exemption from our antitrust laws, and we look forward to working with you as well as others in Congress to make these goals a reality.

Sincerely,

Agriculture Transportation Coalition
American Apparel & Footwear Association
American Cotton Exporters Association
American Cotton Shippers Association
American Meat Institute
Association Of California Recycling Industries
Columbia River Customs Brokers and Forwarders Assn.
Consumer Electronics Association
Craft & Hobby Association (CHA)
Fashion Accessories Shipper Association/Gemini Shippers
Grocery Manufacturers Association
Halloween Industry Association (HIA)
Juvenile Products Manufacturers Association (JPMA)
Los Angeles Customs Brokers & Freight Forwarders Assn.
Midwest Shippers Association
Minnesota Grain and Feed Association
National Customs Brokers and Forwarders Association of America
National Industrial Transportation League
National Pork Producers Council
National Potato Council
National Retail Federation
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns. Inc
Pacific Northwest Asia Shippers Association
Toy Industry Association
Toy Shippers Association
Transportation Intermediaries Association
Travel Goods Association
U.S. Dairy Export Council
U.S. Hide, Skin and Leather Association
U.S. Meat Export Federation
U.S. Shippers Association
Washington State Potato Commission

CC: The Honorable Elijah Cummings, Chairman House Committee on Transportation & Infrastructure Subcommittee on Coast Guard and Maritime Transportation
The Honorable John Mica, Ranking Member House Committee on Transportation & Infrastructure
The Honorable Frank LoBiondo, Ranking Member House Committee on Transportation & Infrastructure Subcommittee on Coast Guard and Maritime Transportation
Members of the House Committee on Transportation & Infrastructure