

## **Policies in the Shipping Sector**

### **Bob Blair, The Federal Maritime Commission**

The bulk of my comments today are going to be about international ocean shipping: industry organization--the cartels that Bill Hall talked a bit about and the emerging oligopolistic conditions--and the new legislative provisions of the Ocean Shipping Reform Act (OSRA). But before that, I'd like to make a couple of other points about shipping that might fit in with the economic research interests of this group.

First is the Jones Act. The Jones Act Coalition does have a wonderful website, and it is worth a visit. The man heading the coalition is a former FMC commissioner named Rob Quartel, for whom I used to write speeches. He's a very good speaker and he likes controversy. If you invite him to come talk about the Jones Act, I'm sure he'd be happy to.

The other topic is the national task force under the Department of Transportation that is currently assessing the capability of U.S. maritime transportation. I think it's looking mainly at seaports and at rail and road infrastructure, and how the infrastructures tie together. That is probably something of interest to all shippers, including agricultural shippers. You might want to see if you can get someone from the task force to come and talk about what they're looking at.

Now, on to international liner shipping.

What we're talking about, essentially, is regularly scheduled shipping service. The service tends to be weekly. As Bill Hall mentioned earlier, liner shipping is mainly the shipping of containers. Not only do these liners no longer see themselves in the "movement of goods" business, these days they also go beyond the "movement of containers" business to the "we provide transportation solutions" business. As Bill noted, the lines are involved with rail, involved with trucking, and at least the major carriers provide additional value-added services.

A point of terminology: "carriers" means the companies running the ships, and "shippers" means the firms that have cargo moving on the ships.

The carriers who have so far survived the winnowing-out process as their industry becomes increasingly concentrated see the movement of containers from port to port, or even from inland point to inland point, as almost a commodity business. From the shipper's perspective, one ship or one container is pretty much the same as the next. If the carrier is going to make any real money, it's got to provide additional benefits beyond simple transportation. And that's an important part of where international shipping is going.

The other important part, as Bill mentioned, is the cartels. Since the late-1800's, international liner shipping has been cartelized. That's what makes it a particularly interesting industry for economists. There are so few cartels operating in the United States that have antitrust immunity to collectively set prices. But the government allows cartels in liner shipping and has since 1916. When I talk about OSRA, I'll stress the point that, even under deregulation, the government

continues to grant antitrust immunity. So, the economic consequences of allowing carrier cartels is still a live policy issue.

When preparing my notes for this workshop, I asked myself, "If I were an agricultural economist, what would I want to know about international shipping (if anything)?"

First: I'd want to know about shipping cartels and their present incarnation. The traditional cartels are rapidly dying out. By "traditional" I mean the groups of carriers that formerly sold themselves as offering a premium level of service and jointly priced their services. In recent years, these groups have tended to have a collective market share of about 50 percent, but sometimes higher, in the U.S. trades in which they operate. They agree on the individual rates they offer and maintain a joint tariff listing the rates they are supposed to be charging. However, these traditional cartels are now passing from the scene. I don't expect the few that are still around to continue to operate beyond the next year or two. But there is a new creation, a new form of cartel, which I'll discuss in a few moments.

Second, as an agricultural economist, I'd want to know about key economic and technological trends--because this industry is strongly driven by technology and by economic conditions.

And, finally, I'd want to know about the recent policy changes in the Ocean Shipping Reform Act. OSRA officially goes into effect on May 1, 1999. But, as economists, you know that when people have information about future events, they begin acting on it well before these events occur. So, it's not incorrect to say that OSRA has been having an effect for well over a year now and perhaps longer than that in some respects.

Since I can't really present any of these topics in great depth in 30 minutes, I've decided as an alternative to present a brief outline of how cartels have changed over the last 20 years in relation to changes in public policy and technology. And I have broken that history into three eras to make it easier to comprehend.

From 1961 to 1984 (the year the first deregulatory act was passed), I'll call the Era of Red Tape. From 1984 to around 1997, I'll call the Era of Declining Cartels--because traditional cartels proved not to work well. And from 1997 onwards, I'll call the Service Contract Era. Obviously, it's hard to predict the essence of an era when you can't even predict how long it's going to last, but it is clear that the key element is going to be service contracting under the new contracting provisions of OSRA.

In 1961, Congress split the two major maritime functions, regulation and subsidization, between the Federal Maritime Commission, which got regulatory responsibility for overseeing the cartels, and the Maritime Administration, first a part of the Department of Commerce and later the Department of Transportation. Originally the two functions were in an organization called the Maritime Board, and you had the schizophrenic situation of trying to regulate an industry that you were also handing out subsidies to on the side. Maybe that's a familiar situation in agriculture, I'm not sure. But it didn't work for shipping. So the FMC became the regulatory body, and the Maritime Administration became the U.S.-flag promotional body.

The 1960's, for those of us who are old enough to remember it, was the "big is bad" era of regulation. And the Federal Maritime Commission, when it was set free to be the regulator, was encouraged by Congress to be an *active* regulator. In the 1960's and onward, when agreements to form cartels--and operational agreements, but I'll be talking strictly about cartel agreements--were filed with the FMC there was no deadline by which the FMC had to approve the agreement. In fact, the people setting up a cartel, or changing an already existing cartel, had to show there was a public necessity to do so. And then, of course, their carrier rivals and the shippers who would be most affected could come to the FMC and protest, demand public hearings and additional information. These agreement approval proceedings could run as long as two years.

Now, if it's going to take up to two years to get permission to do something, is it worth pursuing? That became a problem for the carriers beginning in 1966, because that's when containerization was introduced into the international trades. Containerization expanded through the late 1960's and into the mid-1970's. Bill talked earlier about how that affected the industry. Once you moved to a containerized system for cargo, the process was faster and more efficient. There was less damage to cargo, to go back to one of Brian McGregor's points, because there was less handling. You moved the full box directly onto the ship and onto the train. And there was less port labor needed to move boxes through a port rather than to load and unload individual pallets of goods.

Two things happened with the expansion of containerization: first, the per-unit cost to move goods was reduced. Second, the absolute cost for the new technologies, new ships, specialized equipment, port technologies, distribution technologies that went along with containerization went way up. So the capital costs of running a shipping line went up, but the lines could then offer the customer cheaper rates.

By the time you hit the mid-1970's, containerization was pretty much complete in the main East-West U.S. trades. But then the next feature of the 1970's appeared and Bill alluded to this, too, with the introduction of new shipping lines by Asian nations like Korea, Taiwan, and Singapore. These countries began new containerized shipping services. And it is important to understand the difference between the Asian view of international shipping and today's American view. The Asians consider shipping a strategic industry. Perhaps that's because many Asian nations have traditionally been more heavily export-oriented than we have, so their industries and their national economies are more dependent on liner shipping. The point is that many Asian nations view international shipping as a strategic industry and their national lines as a strategic asset to be supported. So when the new Asian carrier services entered the U.S. trades in the 1970's, they had governmental support. Sometimes they were owned or controlled by their governments. These new Asian lines introduced a whole new element of competition from the mid-to late-1970's onward.

So what was the state of the conference system at this point? Another point of terminology: "conference" is ocean shipping jargon for "cartel." I don't mind referring to them as cartels. Some cartels don't mind calling themselves cartels. But the traditional jargon, a nice euphemism, is conferences. The state of the system was somewhat chaotic, in part because there were so many

cartels operating in a given region. In the Pacific, for example, there were at least a dozen and possibly more individual cartels in the Pacific trades. There would be one from the West Coast to Korea, another from the West Coast to Taiwan, yet another from the Atlantic and Gulf Coasts-- via the Panama Canal--to Korea. And so forth.

The cartels were also experiencing trouble adjusting because of the inflexibility that existed under the then-current regulatory scheme. If the cartel wanted to make adjustments to its agreement, particularly with respect to intermodal shipping, it found that change was nearly impossible.

With the development and expansion of containerization, the ability to amend agreements to fit new business situations--especially when intermodal transportation ( the linkage of sea and land transportation) was involved--became increasingly important. Cartel members had traditionally priced together on the port-to-port movement of goods, but with containerization the game changed. The business was no longer port-to-port, but from one inland point (in Asia, for example) to an inland destination point (say, Chicago in the U.S. Midwest). If cartels were going to continue to function effectively, collective pricing was going to have to cover more than the ocean movement. It was going to have to cover the through service from one inland point to the other.

Not only were the lines having difficulty with the red tape of the regulatory process, but the Department of Justice was also beginning to raise the question of whether point-to-point collective pricing was an area requiring intervention by its Antitrust Division, and not simply an FMC issue.

That combination of inflexible regulation, potential Department of Justice intervention, and the increased competition from the new Asian lines--most of which declined to join the cartels-- created a difficult environment for the cartel lines. The carriers' solution was to go to Congress and propose new legislation that would modernize the regulatory scheme and give the cartels clear authority to collectively price the inland leg of their cargo shipments.

They began in 1978, and it took them until about mid-1983 to get the new legislation passed. Along the way, they had to do a lot of compromising with shipper interests to achieve their goals.

What the carriers got out of it was: (1) the end of the red tape in the agreement approval process, and (2) clear intermodal pricing authority. The new agreements establishing cartels were to be reviewed by the commission within 45 days, after which they went into effect automatically, or else the commission had to take the parties to court to show that the agreements were so egregious they should be halted. In any court case, the burden would be on the FMC to establish that the proposed cartel would have horrendous future economic consequences for the trade. The new shipping act also made clear that agreements with intermodal pricing authority were outside the scope of DOJ Antitrust Division oversight.

What did the carriers give up in the compromise leading to the Shipping Act of 1984? Two things. First, the act introduced contracting, in a limited way, as a new pricing process in ocean shipping. It may seem a little strange, but before 1984 there was no contracting between carriers and

shippers. Individual commodity rates were published in public tariffs, and even giant shippers like DuPont could not contract with their preferred carriers.

Along with contracting, the new act introduced (and here's another piece of jargon) "independent action" or IA on tariff rates. Independent action meant that a particular cartel member could, after a ten-day waiting period, offer a rate other than the previously agreed-upon rate published in the cartel's joint tariff--without the other cartel members having authority to take any adverse action against the member who took "independent action." Basically, members were allowed to cheat on their previous rate decisions, but they had to do so publicly. This introduced an element of potential internal competition among cartel members.

What happened to cartels when the Shipping Act of 1984 went into effect? Structurally, the number of cartels decreased, and the new cartels had vastly expanded geographic scope. Where there had been 12 or more cartels operating in the outbound Pacific trades before 1984, consolidation created a single cartel--the Transpacific Westbound Rate Agreement, or TWRA--covering movements from all points in the United States to all points in Asia. You've probably heard of this cartel because it affected U.S. agricultural exports to Asia. However, I don't expect it to exist much longer.

The new contracting provisions turned out to be relatively popular with shippers. For the first couple of years that the act was in effect, contracting was a bit of a trial-and-error learning experience. The carriers in TWRA, for example, signed a lot of contracts initially--many of them containing what were called "Crazy Eddie" clauses (which said, basically, that if the carrier offered anyone else moving that commodity a lower rate, the contracting shipper was entitled to the same lower rate). After a couple of years of this, TWRA members simply collectively agreed to stop offering contracts. And not until 1995 did TWRA lines offer much beyond two or three contracts to special shippers.

In most other trades, contracts were regulated rather than eliminated (TWRA was a unique case), and 50 to 60 percent of the volume moving in key trades moved under service contracts.

However, most of the new Asian carriers still did not join the cartels. Initially, there were two markets--a *premium market* for shippers with goods that needed especially high-quality, dependable, frequent service, and a *discount market* where the shippers' main concern was low price. The cartel carriers offered a dependable, well-established quality of service and tended to attract the premium-market customers. The Asian independent lines, which tended to price 10 to 15 percent below the cartel rate, could compete effectively in the discount market.

Over time the Asian lines improved. They adopted more modern technologies, their level of experience increased, and the transportation service that they offered became every bit as good as those offered by the premium lines. With this difference: the Asian lines tended to maintain the original 10 to 15 percent price differential. So, by the late 1980's and early 1990's, the cartel carriers discovered that they were losing market share to the Asian independent lines.

That loss of market share was a serious problem. There was now a single market and a standard

level of service, but the cartels commanded only about 50 percent market share in the various trades. With only half the market cartelized and half competing on price, it didn't take long to see that the cartels were becoming less and less effective.

At the same time, capital costs were increasing as the technologies became more sophisticated (and expensive), as carriers expanded their service networks to call on more ports, and as electronic tracking of goods became possible. And the industry concentration that began with containerization continued to grow. We'll talk more in a moment about where that's headed.

From an economist's point of view, the 1984 act had some very interesting features. One being that it mandated a 5-year study of changes in the industry. The FMC was to do the study, with a review of the results by the Department of Justice, Department of Transportation, and the Federal Trade Commission. After that, a Presidential Commission was to be formed, which would have a year to conduct public hearings on the issue of how the new act was working out and whether it needed any changes. Not a bad idea.

From the shippers' point of view, this was seen as a second chance to eliminate the carriers' antitrust immunity altogether, or failing that, at least an opportunity to expand the new contracting provision and remove contracting authority from the control of the cartels. Cartels, as the TWRA example I gave shows, had the authority to regulate their members' contracts.

In 1989, the FMC published its final report on the 5-year study. The report has lots of good data on rates and other contract-related issues. So if you get involved in researching, that study is worth looking at, especially if you like crunching numbers. The figures--originally covering the period from 1976 through 1988--have been updated to 1990, and are available on diskette from our office.

During 1991, the Advisory Commission on Conferences in Ocean Shipping, or ACCOS, held hearings and collected lots of additional information. They issued a report in April 1992, and for my money, that is the best single document that exists on shipping in the U.S. trades. The advisory committee got input from big shippers and carriers. FMC economists (but not me) and DOJ economists were involved in putting it together, and it contains their different perspectives. The final report contains all the industry and government body views, covers all the key issues, and provides a short but useful history of modern liner shipping. Whenever I run into someone who's new to the liner shipping industry, say a reporter who's been assigned to cover it, I give them a copy of the advisory commission report and say "If you want to learn about this industry quickly, start by reading this." Unfortunately, I've given away my last copy--but I'd certainly advise any new researcher studying this industry to begin with that report.

What shippers wanted to see, but ACCOS did not produce, were recommendations for changing the 1984 act. And that was pretty much a foregone conclusion since one-third of the advisory commission was carrier representatives, one-third was shipper representatives, and one-third was congressmen--a recipe for gridlock. But, from the carriers' perspective, the absence of any recommendations for legislative reform of the act was a major plus. The status quo was the best the carriers believed that they could achieve, and that's what they got. Shippers, however, were

very unhappy with the results.

Not only did ACCOS ' s early 1992 report offer no prospect for change, but the winter of 1992-93 saw the formation of a new liner conference that demonstrated real market power. The traditional conference carriers in the North Atlantic brought several formerly independent lines into the new conference--called the Trans-Atlantic Agreement, or TAA--by setting up a double-tiered rate system, high market share was achieved. And by establishing internal solidarity and a good information exchange process, after two years of very severe competitive discounting of rates, the new conference achieved a remarkable pricing turnaround. The first act of the new conference was to radically raise rates--and made the increase stick! That demonstration of effective collective pricing, following by only 9 months the disappointing ACCOS report, got groups like the National Industrial Transportation League working hard on a political effort to change the regulatory system.

Skipping ahead a bit, in mid-1997 a second really effective cartel was created. This new agreement was different from the traditional conference-style cartel. Like TAA, the new transpacific cartel--called the Transpacific Stabilization Agreement, or TSA--brought in several formerly independent lines. TSA set up an excellent internal information exchange process and got the members ' CEOs to exercise tighter control over their marketing divisions as they sold vessel space. Competitive discounting among TSA members was brought to a halt. So, by the end of 1997, there were two examples of very effective, nontraditional cartels--TAA and TSA.

Where are we today? OSRA has passed. It was the best deal that shippers were able to negotiate. Like the carriers in the years before 1984, shippers sought new legislation to get the changes they wanted in the 1984 act, but ended up having to compromise with the carriers, with U.S. ports, and with maritime labor. What the shippers got out of the bargain was a reduction in the cartels ' control over their members ' contracts. The cartels no longer have the authority to regulate their members ' contracts; the members can--and most are expected to--offer their customers individual contracts.

The shippers also got legal authority for confidential contracts, and contract rates are no longer publicly available. There are pluses and minuses to confidential contracting, which I ' ll discuss if we have time. However, the shippers who pressed for confidential contracting think that the new flexibility it introduces will allow them to form partnerships with their preferred carriers--breaking those carriers ' connections with the other cartel members. The shippers hope to be able to get customized service, to be able to exchange proprietary business information, and to develop real commercial partnerships. And that is a real possibility. I don ' t want to play that down.

But there is also a potentially anticompetitive side to the new legislation. It was, after all, a compromise. The carriers retained their antitrust immunity to agree on rates and on capacity levels--if they can. OSRA also allows carriers to establish what are called confidential "voluntary service contract guidelines." These guidelines have no mandatory requirements--cartels can ' t do anything to a member who doesn ' t want to abide by the voluntary guidelines--but carriers will have the opportunity to voluntarily agree, for example, to restrict the confidentiality of their contracts. They could, for example, agree that all member lines will adopt a common

confidentiality clause in their individual contracts that allows them to protect contract information from other shippers, but share rate information among themselves. That would allow them to prevent the general shipping public from knowing the rates being negotiated, but still exchange that information within the cartel so that they can continue to agree on, and support, collective pricing actions.

Carriers now have a model for effective cartels under OSRACTSA-style agreements. Known as "discussion agreements," or "stabilization agreements," this new form of cartel appears to be the wave of the future. These discussion agreements are specific to particular geographic regions. They agree on the common aggregate price increase they'll implement rather than on thousands of specific individual commodity rates--say an annual increase of \$300, or even \$1,000 per container. And some recent rumblings have suggested that some carrier groups are considering using their antitrust immunity to establish collective capacity management processes.

Such capacity management schemes could work in two ways: by actually removing vessels during periods in which the carriers judge that there is likely to be excess capacity, or by regulating the entry of new vessels into a trade. Capacity regulation could be achieved by the cartel members agreeing to share forecasts on future demand and information on each company's plans to bring additional capacity into the trade. If it looked like new capacity would exceed expected demand, individual member lines could agree to delay new entry in exchange for the allocation of additional space on another member's vessels. Instead of its members bringing in new ships right away, in anticipation of higher future demand, the cartel could encourage its members to allocate their available current capacity in a way that satisfied each carrier's short-term need for space. That would allow the group to slow the introduction of additional vessels--reducing the scope of any short-term excess capacity--or even to remove vessels if the demand for current capacity was judged to be insufficient. The possibility of that kind of collective rationalization of capacity exists under OSRA.

There's one other element of the current scene that is worth briefly mentioning because it may have a significant impact on liner shipping--the existence of multiple national regulatory authorities. Liner shipping is an international business. The Federal Maritime Commission is the regulatory authority for the United States. The European Union has its own competition authority--DG IV--that oversees the European trades, including the U.S.-to-Europe trades. And most interestingly, China is now in the process of establishing a national regulatory authority for the China-based trades.

Each of these organizations has its own separate perspective and style. DG IV, for example, tends to be relatively narrow and legalistic in its perspective and adopts a fairly confrontational style in its dealings with carrier cartels. Instead of viewing cartel operations as an economic or commercial issue, DG IV often seems to take the approach that clear legal limits exist with respect to cartel operations, and those legal limits are decisive (regardless of any arguments about economic efficiencies that may exist). DG IV seems to be trying to use a narrow interpretation of EU law to constrain cartel activities to the point that the sheer inflexibility will render liner cartels nearly useless to their members.

The FMC, in enforcing the 1984 act and now OSRA, has tended to favor flexibility in its interpretations of legitimate cartel authority--based on what the economic consequences of the cartels' activities may be. This approach seems to be to allow significant operational latitude, but balance that liberality with close monitoring (and attendant requirements for information on cartel activities) and occasional intimations of possible legal action to limit potential abuse.

China appears to be setting up a system--based, in part at least, on the old 1984 act model--under which carriers publish binding tariffs, and terms of service contracts are publicly available. It's as if China were saying: "We like the way that the FMC was operating before OSRA went into effect, and we're going to create a similar system of our own for the China trades."

How these various, and potentially discordant, regulatory approaches will interact is one of the questions that make these such interesting times to be engaged in research on liner shipping. Given the growing oligopoly effect, the development of new cartel structures, the introduction of more flexible contracting, and China's new regulatory ambitions, the next few years should prove fascinating. And given that possible complexity, liner shipping research may have to be conducted largely on a trade lane by trade lane basis.

That's a brief overview of where things stand today, and how we got here. If there are any questions, I'll try to answer them--always with the caveat that the answers will still be my own opinions, not the official views of the Federal Maritime Commission.

MS. BALLENGER: What can you tell us about the availability of shipping data?

MR. BLAIR: Getting good information has always been difficult. When the FMC undertook its 5-year study, the fact that Congress had mandated the study, and was looking at the possibility of changing the act, helped us get cooperation from both carriers and shippers. The rate study had to deal with a lot of technical problems. For example, there were many different publicly available rates for a given commodity. So it was difficult to know under which rates most of the cargo was moving. You could assume, and we did for awhile, that the majority of a given commodity moved under the lowest rate. But when you got to post-1983 period, the problem of service contracts arose. There would be a number of contracts in existence, and it was hard to know how much moved under each one. We needed a way to weigh the various contract rates to get an average rate for a commodity. We established various advisory groups to help us--a carrier group, a shipper group, a port authority group, etc. The advisory groups allowed us to get the information needed to work out the approximate average rates for the commodities and trades we were researching. But once the study was finished, and the advisory groups disbanded, the insider perspective was gone--and doing accurate rate studies became very difficult.

Today you'd have to go to the shippers to get the necessary information. A version of that approach was tried in the Ferguson study--but was not very well done in my opinion. With confidential contracting under OSRA, rate studies will be harder than ever. The confidential contracts are filed with the FMC, so we could do rate studies if there was an interest. The tariffs will still be out there, and many will now be individual lines' tariffs. But the expectation in the industry is that, after a year or two of transition, 90 percent of the cargo will be moving under

service contracts.

How confidential those contracts will be remains a key question. The term "confidential" wasn't defined in the legislation. Some shippers, if they have the power of a 3-M or DuPont, may be able to say to carriers, "If you want to carry my cargo in the multiple trade lanes I move goods in, you will share contract information with nobody--including your cartel partners." That might work for the biggest shippers. On the other hand, it's quite possible that the cartels will work out a system under which they will protect the contract information in Shipper X's contract from his competitor Shipper Y, but still share it with the other carriers. If so, the members of the cartel will know what rates are being charged by the other members for each commodity-type to each port or inland point, while the shippers with whom they negotiate would *not* have the same sort of information. And such asymmetry of information is likely to have economic consequences.

I don't expect that the lines will offer any of this rate information to outsiders interested in doing rate studies. Although I tend not to get involved in rate studies myself, there are some people in our bureau who do. So if you decide that's an area you want to pursue, please feel free to get in touch with us and we'll see if we can work out an arrangement that would be consistent with OSRA's confidentiality requirements on service contracts. As a personal opinion, it seems to me that access to the filed contract rates may be the only way to do an accurate rate survey without the assistance of the lines themselves.

Finally, I'd say that if this group is interested in studying the effect of liner shipping on agricultural exports, the most important element is going out and talking with the shippers, going out and talking with the carriers, going out and talking with those guys in Dar Es Salaam that Bill was talking about. That face-to-face contact with the players is the best way to find out what's going on in this industry. Reading the *Journal of Commerce* helps. And there are a couple of excellent monthly magazines. *Containerization International* is the best, and *American Shipper* is the next best, for keeping up with industry news. I recommend both of them. But nothing beats going out and talking to the people involved.

MS. PRYOR: What is the future of Sea-Land, the remaining U.S. shipping line?

MR. BLAIR: That may be a special case. I think everyone will be waiting with bated breath to see if the separation of Sea-Land Service into three parts--the very lucrative U.S.-flag-oriented Jones Act trade, the terminal business (which I hear is also a lucrative part of Sea-Land's operation), and Sea-Land, the international ocean carrier, is a prelude to the sale of the international carrier's assets.

APL, the other major U.S.-flag line, is now owned by Neptune Orient Lines of Singapore. And one of the very few other American lines, Lykes, was picked up by a Canadian carrier. It seems to me that the possibility exists--and I don't have any inside information on this, just the speculation I read in the paper--the possibility exists that Sea-Land's stand alone international carrier business could be bought by someone. Best guess is Sea-Land's alliance partner, Maersk.

Which raises a very interesting question. If there comes a time where there are no major U.S.

carriers left, would that change the general perspective on how international shipping policy is evaluated? From the maritime unions' point of view, perhaps not. But from other interested parties' institutional perspectives, maybe so.