

A PROCLAMATION HONORING
LUCEIL GIVIN ON HER 105TH
BIRTHDAY

HON. ZACHARY T. SPACE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 22, 2010

Mr. SPACE. Madam Speaker, I submit the following.

Whereas, Luceil Givin was born in Scio, Ohio, on September 22, 1905,

Whereas, Luceil worked with her father on the family farm in Scio, raising chickens, hogs, and calves,

Whereas, Luceil also worked at the Scio Pottery for 42 years,

Whereas, Luceil now lives at the Harrison County Home in Cadiz,

Resolved That along with her friends, family, and the residents of the 18th Congressional District, I congratulate Luceil Givin on achieving her 105th birthday, and for her contributions to her community and country.

THE SHIPPING ACT OF 2010

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 22, 2010

Mr. OBERSTAR. Madam Speaker, today I have introduced the "Shipping Act of 2010". This bill has its roots in the Shipping Act of 1916, which provided the foundation for the regulation of international shipping in the United States.

In the 94 years since that law was enacted, shipping has changed greatly. Most significant was the development of the intermodal shipping container in the late 1950's, which allows for cargo to be loaded into standardized containers for shipping rather than on pallets put on a ship using cargo nets. Use of these containers has transformed the manufacturing and distribution of goods throughout the world by increasing the productivity of our global intermodal transportation system by having a container that can be loaded on a truck chassis, easily transferred on to a ship, and then transferred again on a rail car. This bill will modernize the regulation of that transportation system by increasing competition and improving services for the movement of those goods.

First, it eliminates antitrust immunity for ocean carrier agreements, which currently allows ocean common carriers to get together to discuss, fix or regulate transportation rates. Although parties to the carrier agreements are not required to adhere to the rates set by the conference when they are contracting, oftentimes they use the collectively set rate as the basis for negotiations. The carrier's tendency to use the agreed upon rates as a floor for negotiations has made it difficult for shippers to negotiate more favorable terms for transportation.

Antitrust immunity for these agreements was initially granted to enable carriers to stabilize their economic position through controlling rates and capacity. In fact, Congress has long been concerned about the anticompetitive impact of these conference agreements and, in the Shipping Act of 1916, put a regulatory structure in place to monitor their activities.

Currently, the conferences must submit their agreements to the Federal Maritime Commission (FMC), who reviews them for compliance with the statutory requirements including whether or not the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation services or an unreasonable increase in transportation costs.

However, even under the current regulatory scheme, immunity for such agreements has long outlived its usefulness, and stifles competition. In 2007, the Antitrust Modernization Commission (Commission) report stated that "free-market competition is the foundation of our economy, and the antitrust laws stand as a bulwark to protect free-market competition." The Commission found that there is questionable justification for continuing conference exemptions from the antitrust laws in the Shipping Act and that there is nothing unique about ocean carriers that warrant an exemption from the antitrust laws. A survey cited by the Commission found that "the steepest declines in observed freight rates have coincided with a generalized decrease in conference power in the face of competition from strong independent operators and the implementation of competition-enhancing legislation in the United States trades."

On March 17, 2010, the Committee on Transportation and Infrastructure held a hearing on the challenges faced by U.S. importers and exporters in moving cargo by the international container lines. The Committee received testimony from importers, exporters, agricultural shippers, manufacturers, retail stores, and raw products exporters. In that hearing, shippers complained that ocean carriers do not have enough capacity in the market to meet the demands of U.S. shippers and that rate increases imposed through new service contracts have skyrocketed. Many believe that these rate increases reflect the desire of carriers to recoup their losses of the past year. Moreover, these shippers expressed concern that there is no willingness on the part of conference agreement participants to negotiate independent rates. This has significantly increased the costs of U.S. exports and made it difficult for U.S. importers to price their products.

Eliminating the antitrust immunity for these conference agreements will increase competition by requiring ocean carriers to compete in the marketplace with the best price and service to get shippers' business. That will benefit the industry as a whole. Moreover, the bill will require carriers to continue to file service contracts with the FMC and to have tariffs be available for FMC review. This information will allow the FMC to determine whether or not carriers are colluding after their antitrust immunity has been eliminated.

However, this bill does preserve some antitrust immunity for ocean carriers so that they can enter into vessel sharing agreements. A vessel sharing agreement is an agreement among carriers to share space on each others vessels. This will allow carriers to offer shippers service five days a week on their ship or one of their partners' ships. However, under this bill, this authority is limited so that it ensures that there is still adequate competition in a particular trade. The European Union limits a vessel sharing agreement to 30 percent of the capacity in a trade. That is a reasonable place to begin.

In addition, this bill deals with the carriers' practice of imposing surcharges, seemingly at will. Currently, shippers enter into negotiations with carriers for transportation service contracts at fixed prices. Once the transportation price is negotiated, the shipper then develops a pricing scheme for its customers. However, we have heard complaints that ocean carriers often decide at the last minute to levy surcharges, which are not necessarily based on their own increased costs (for example, the cost of buying fuel). This impacts the shippers business because the U.S. exporter or importer has already signed a contract with their customer for a fixed price. If the carrier increases the cost of a shipper's goods by imposing a surcharge and the shipper has already advertised the price for selling those goods, where is the increased cost going to come from? The shipper's profits? To ensure that a shipper can adequately price his product, this bill requires that any surcharge imposed by a carrier needs to accurately reflect increases in the carrier's cost.

Elimination of antitrust immunity for ocean carrier agreements may not be enough to spur the carriers to improve their customer service. One major area that needs to be addressed is dispute resolution. The Shipping Acts of 1916 and 1984 were not designed to facilitate dispute resolutions between shippers and carriers. In fact, the only remedy authorized under the Shipping Act to resolve a dispute in a service contract is to go to court. The delay oftentimes associated with pursuing a case in court results in a major disadvantage to shippers. This is because a large volume of the cargo that shippers carry is perishable and those goods may be destroyed by the time a District Court ever hears the case. Under this bill, the FMC will be empowered to help resolve service contract disputes quickly through mediation and arbitration, so that the freight can keep moving.

We have also heard from export shippers that carriers refuse to ship containers that are not owned by that ocean carrier. This results in many shippers being left without an alternative to ship their goods unless they agree to pay a steep price to the ocean carrier. I do not understand how a carrier can refuse to supply a shipper with a container at a reasonable price, and then refuse to move a shipper's goods if they are in a container provided by someone else. There needs to be transportation network neutrality so that shippers can have their cargo moved by an ocean carrier supplied container or one provided by a third party that meets internationally accepted container safety standards. This bill provides that neutrality by prohibiting carriers from discriminating against a shipper that provides their own container or other equipment.

It also addresses the practice of bumping or rolling containers, in which a carrier decides that there is not enough room on a ship for a container which they have already been contracted to transport. The bill prohibits ocean carriers from engaging in deceptive practices, including the unreasonable failure to provide transportation services as agreed to in a negotiated service contract. The FMC is then tasked with developing remedies and penalties for carriers that engage in such deceptive practices.

President Obama has announced that he wants to double U.S. exports in the next 5 years. I am committed to helping him accomplish that goal by reforming our shipping laws