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The Container Shipping Slump, U.S. Exports, and the Role of the Federal Maritime Commission

The international container shipping market is currently undergoing significant consolidation in response to slower growth in world container trade. This development may be problematic for some U.S. exporters and for the smooth functioning of ports. Congress is considering legislation that could lead to greater competition among container ship lines.

Background

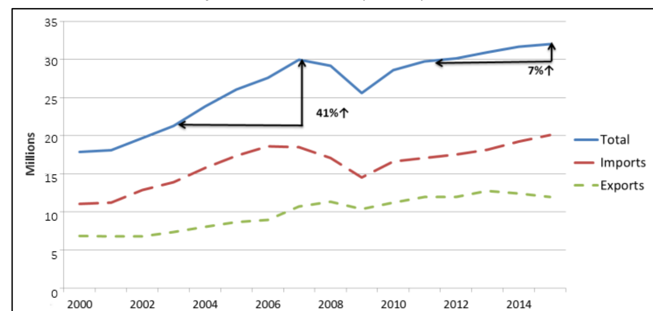
Container shipping, also known as "liner" shipping, carries most U.S. international trade and a growing proportion of agricultural trade. The international container shipping market, for decades, has had a persistent problem with oversupply of shipping capacity. Maritime trading nations generally have sought to develop and support their own fleets of ships for national and economic security reasons and/or to signify their nations' development and global presence. More recently, overcapacity has been exacerbated by larger ships that have come into service at a time when trade growth has slowed (**Figure 1**).

Since the 1800s, ship lines have formed cartels, known as "conferences," to regulate rates and capacity on international routes. The United States and other countries have given ship owners a certain amount of antitrust immunity to participate in conferences, but have also set strict limits on the way conferences function. Although the United States has generally favored competition among transportation carriers in recent years, allowing regulated antitrust immunity for ocean carriers recognizes the global nature of shipping and thus the difficulty of pursuing U.S. policy preferences unilaterally. Agreements among carriers are regulated by the Federal Maritime Commission (FMC), an independent agency. The FMC has five commissioners appointed by the President and confirmed by the Senate for five-year terms, with no more than three from the same political party.

Congress began limiting cooperation among ship lines in 1916. Since the 1980s, various deregulatory shipping acts have reduced the market power of shipping alliances. Tariffs (official ocean rates) are no longer required to be filed with the FMC, but rather merely posted on a carrier's website, and ship lines are free to carry cargo at less than the conference rate or not to belong to a conference. The vast majority of containerized cargo is carried at contracted rates specified in confidential agreements between carriers and importers and exporters (shippers) rather than at the posted rates. In 2008, the European Union disallowed agreements among carriers involving specific rates and capacity quotas (called "rate discussion agreements," or RDAs), but continued to allow more general "vessel-sharing agreements" (VSAs), under which carriers reserve space on each other's vessels. Thus, only VSAs are now allowed among liner carriers providing service between Europe and North America.

Figure 1. U.S. International Container Trade

Loaded 20-Foot Equivalent Units (TEUs)



Source: Maritime Administration, U.S. Waterborne Foreign Trade.

While the general trend has been toward further deregulation of the market, the United States and Asian nations still allow RDAs among liner carriers. The most prominent RDA involving U.S. trade is the Transpacific Stabilization Agreement among 10 container carriers. RDAs must be nonbinding, so that each ship line is making only a voluntary commitment to abide by the pricing terms in the agreement. A carrier may ignore an agreement if it is in its interest to reach other rate and service terms with a shipper. The nonbinding nature of the agreements is a key feature that has limited the carrier alliances' ability to influence the market.

VSAs or similar agreements about vessel space sharing, rather than RDAs that also set common rates, cover most liner trade to and from the United States. All such agreements must be filed with the FMC, which solicits public comment. A proposed agreement goes into effect in 45 days unless the FMC requests more information or opposes it in federal district court.

Shippers, in general, strongly oppose RDAs, but have been less concerned about VSAs. A bill approved by the House Transportation and Infrastructure Committee on May 24, 2017, H.R. 2593, would disallow carriers from participating in both an RDA and VSA. The proposed change appears to reflect concern over recent consolidation activity among liner carriers. A companion bill approved by the Senate Commerce Committee, S. 1129, does not make this change.

Industry Consolidation

Since the Great Recession in 2008 and 2009, the growth rate of U.S. container trade has slowed (**Figure 1**). The slowdown may have caused the bankruptcy of two major

carriers, while others have received financial assistance from their home governments to cover their losses.

The slowdown has also induced further VSAs and mergers as carriers try to further rationalize their services. The number of container carriers serving U.S. international trade will decline from 20 in 2015 to 13 in 2018, and the number of VSAs will decline from four to three. At the same time, the largest carriers are gaining market power: the market share of the top five carriers in U.S. foreign trade rose from 38% in 2002 to over 48% in 2016. The Department of Justice's Antitrust Division has opposed three VSAs recently approved by the FMC, expressing concern about their competitive effects and likening the arrangements to mergers. The Antitrust Division stated that some of the agreements' provisions were overly broad and could facilitate rate collusion.

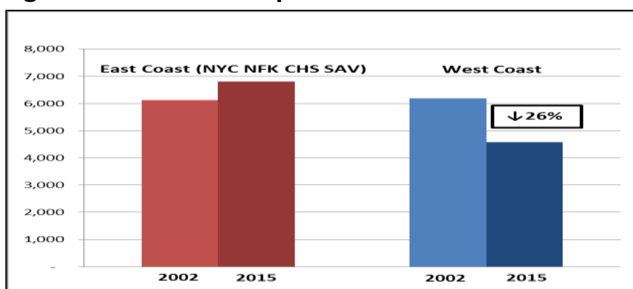
U.S. Exports

As **Figure 1** indicates, the United States imports about twice as much containerized cargo as it exports. This trade imbalance is reflected in ocean freight rates as well. Export rates can be about half as much as import rates because U.S. exports are treated as the backhaul leg. While exporters benefit from low freight rates, container carriers provide services based mostly on the needs of importers since it is the import leg that "drives the business." U.S. agricultural exporters, particularly in the Midwest, have complained about the difficulty of obtaining containers for export, because most imported containers are unloaded at locations far from farms and meat processing plants. The FMC has worked with the U.S. Department of Agriculture to provide a weekly report on container availability.

A major development since the 1980s has been the sale of U.S.-owned liner carriers to foreign companies. As there are now few U.S.-owned vessels in international liner service, the FMC's attention has been focused on protecting U.S. shipper interests. The trend toward consolidation of services by container carriers is not necessarily in the best interest of U.S. exporters of perishable goods such as chilled meat products, which are among the few high-value products the United States exports in containers in large quantities to Asia.

The use of larger container ships, a reduction in the number of carriers, greater sharing of vessels, and elimination of ship calls at smaller ports have resulted in less frequent sailings from the U.S. West Coast (**Figure 2**), the shortest and most direct route to Asia.

Figure 2. Container Ship Calls



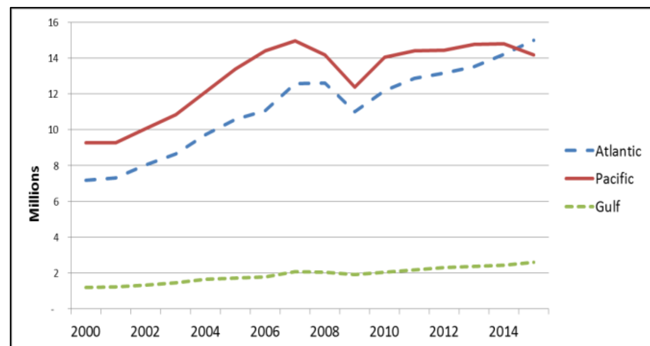
Source: Maritime Administration, Vessel Calls at U.S. Ports.

This may not be a positive development for products with short shelf lives, even though these actions by carriers are intended to reduce the cost of ocean transport. With less frequent sailings, a shipment that misses a ship's departure might have to be frozen to preserve it for the next available sailing, significantly lowering its value.

Effects of Port Congestion

Figure 3 indicates that since the Great Recession, the slowdown in container trade has been most pronounced on the West Coast. East Coast ports recently surpassed West Coast ports in the total number of containers handled. A labor-management dispute at West Coast ports in late 2014 and early 2015 may have influenced some cargo shift to other ports. Gulf Coast ports have been slowly increasing volume and did not experience the same drop-off in cargo during the Great Recession as the other coastal ports. Enlargement of the Panama Canal in 2015, allowing ships with three times the number of containers to sail through, may be one factor influencing shifts in market share.

Figure 3. U.S. Container Trade by Coastline
(TEUs)



Source: Maritime Administration, U.S. Waterborne Foreign Trade.

Another factor could be port congestion and efficiency issues. Reshuffling of VSAs has required more transshipment of containers by truck between terminals within ports. Larger ships, which are carrying about twice the number of containers they did a decade ago, have bunched cargo-handling activity. This has exacerbated inefficient truck gate operations at some ports, leaving long lines of trucks waiting hours to enter the port. The FMC investigated this and a host of other issues impeding the smooth functioning of container ports. Its idea to establish a nationwide portal containing key information related to port efficiency was rejected in a Senate committee markup earlier this year.

However, comments by several Members during committee markups of bills to reauthorize the FMC indicate that further amendments related to international container shipping could be forthcoming if the bills are taken up by the House and the Senate.

John Frittelli, Specialist in Transportation Policy

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