Before the

MARITIME AND COAST GUARD SUBCOMMITTEE OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF MR. PETER FRIEDMANN

on behalf of the
AGRICULTURE TRANSPORTATION COALITION

June 19, 2008

I. ABOUT AgTC

The AgTC was founded 21 years ago on the following principles:

1. Agriculture is the largest contributor to the positive side of our nation's balance of trade, **but**

2. there is nothing produced in US agriculture that cannot be sourced elsewhere in the world, **and**

3. if we don't assure a dependable and affordable transportation system to get our products to the foreign markets, those customers will go elsewhere.

The membership of the Agriculture Transportation Coalition is comprised of virtually all food and fiber agriculture exports (and imports) from all locations in the country, and every state of the Union. Farmers, ranchers, growers, food processors, packing houses, freight forwarders, compresses, ag warehouses are all members of the AgTC. They are located in rural areas and near the ports.

The AgTC conducts each year Ag Shipper Workshops for agriculture exporters and importers. Earlier this year they were held in Minneapolis, Seattle, Boise, Modesto, Long Beach and Atlanta. Just last week we concluded our 21st Annual Ag Transportation Conference last week, with overwhelming turnout and updates on the current ocean transportation capacity situation. The crisis is real.

The AgTC has organized meetings with the Federal Maritime Commission, dialogue with carriers, press briefings, participates in the Maritime Administration National Advisory Council (MTSNAC), and now briefs Congress, because all play an essential role in achieving the mission of the AgTC: to assure affordable, efficient and dependable transportation to keep U.S. ag competitive in the global marketplace.

II. OVERVIEW; ROLE OF THE TRANSPORTATION & INFRASTRUCTURE COMMITTEE

From the *Wall Street Journal* to the *Los Angeles Times* (both attached), newspapers around the country are reporting on an ocean transportation crisis facing U.S. exporters generally, and agriculture in particular, who seek to export U.S. grown, produced and manufactured products. These challenges are severely restricting this country's ability to export, are increasing our international trade deficit, threatening and limiting US jobs, and profoundly impacting the commerce of the United States.

United States farmers and manufacturers are being denied access to foreign customers, at a time when the low dollar and rising wealth overseas is presenting unprecedented opportunities to stimulate economic opportunities for growth here at home and export sales overseas.

The livelihoods of our entire agriculture food and fiber chain depend on the ability to access foreign markets. That access is jeopardized today. The result is millions, if not hundreds of millions, of dollars of forgone or lost sales from grain, to meat, to cotton, to produce, etc, etc. Agriculture exporters and their freight forwarders can attest to the fact that they simply cannot fulfill sales because they cannot get the cargo delivered, because the ships are full. This is true on the west coast, east coast, gulf coast, both U.S. and Canada.

Does Congress and specifically the Coast Guard and Maritime Transportation Subcommittee of the House Transportation & Infrastructure Committee, have the ability to constructively address the problem? Can this Committee keep U.S. exporters competitive in the global marketplace?

There are many reasons for the surging demand for U.S. exports, what this Committee can do is play a central role in removing a significant barrier to physically getting those exports to the foreign customers. That barrier is the collective actions of the ocean carriers to jointly discuss and fix transport charges and transportation services. The law that allows this activity is the Shipping Act of 1984 (as amended in 1998). It falls under this Committee's jurisdiction. It grants ocean carriers immunity from U.S. antitrust laws, and it is sorely in need of review.

The U.S. is not alone. To protect its own exporters, the European Union has recently repealed its laws which are similar to the Shipping Act, which have allowed ocean carriers to collectively discuss and fix ocean transportation rates. The repeal will be effective in October of this year.

It is time for Congress, and this Committee, to act, to protect U.S. exporters from such ocean transport price fixing.

III. THE CAUSES

There are numerous components to the current challenges facing U.S. agriculture exporters accessing the global marketplace. We roughly estimate that agriculture exports could be as much as 20-30% greater (by value) in certain sectors, if there was sufficient vessel capacity available at North American ports.

The causes of the current crisis include:

1. Growing wealth of foreign countries, demanding more and better food, and ag inputs. A global shift in consumption is underway. The most populous nations in the world, China and India, as well as Korea and southeast Asia countries, are becoming rapidly wealthier, with a middle class with increasing incomes, which are driving demand for U.S. products, and agriculture in particular. This is not a temporary trend, but one that will only accelerate in the coming years.

2. Low value of the dollar has accelerated the trend of foreign consumption of U.S. exports. Note: It is easy to attribute the demand for U.S. exports to a temporary drop in the value of the dollar. However, this is not the case. Agriculture exporters reported growing demand from foreign buyers BEFORE the dollar dropped so precipitously.

3. Leveling of consumption by U.S. consumers, meaning the volume of imports (and import containers) is not growing.

4. Insufficient vessel capacity to meet demand for current and future sales. The ocean carriers have, over the past two years, taken many vessels out of service to the U.S. Those vessels are now serving other trades, such as Asia to Europe. This reduced supply of vessel capacity and containers has created a shortage which is severely restricting U.S. access to world markets.

5. Specialty grain shifting from bulk shipping to container, due to foreign customer demand.

6. Railroad service reductions to rural (agriculture) locations, particularly in the Midwest.

7. Container imbalance. Exports weigh more than imports. A ship carrying 8,000 TEU of imports can only carry 6,000 TEU of exports. Cell phones come in boxes of Styrofoam and air, shoes are in boxes full of air, while compressed hay cubes, cotton, frozen poultry, etc. are heavy, and a ship cannot carry all 8,000 containers full of heavy export cargo.

8. Dramatically increasing fuel costs.

9. Ocean carrier antitrust immunity. Current law allows carriers to discuss and fix freight rates, surcharges, vessel capacity, etc. Thus, it is no surprise that every carrier comes out with same surcharges at the same time, takes similar capacity reductions, and imposes one-size-fits-all pricing. The state of customer service, of carrier-to-shipper relationships is horrendous. The AgTC has long championed the termination of carrier antitrust immunity, and we are very glad that the European Union has now done so, effective October of this year. This is the one factor under the complete control of Congress and this Committee.

10. Foreign entities are controlling U.S. agriculture and manufacturing access to foreign markets. Almost all of the containerized ocean carrier capacity serving the U.S. is now foreign owned, in some cases by foreign governments.

IV. THE OCEAN SHIPPING ACT

Under Section 2. DECLARATION OF POLICY, the purposes of the Shipping Act are stated. They can be summarized as follows:

To provide a law consistent with that of other countries; to promote the growth and development of U.S. exports; to encourage development of a U.S.-flag liner fleet.

In fact, the Shipping Act has accomplished the opposite: The immunity from antitrust laws will shortly be ***inconsistent*** with the EU; even with the protection of the antitrust immunity, most of the United States flag liner (container) fleet has ***gone out of business***; the Act is ***undermining*** the growth and development of United States exports.

It is this factor that the Act is undermining the growth and development of United States exports, which is the motivation for our urgent appeal to this Committee to promptly review this Act under its jurisdiction.

The Ocean Shipping Act of 1984 and the Ocean Shipping Reform Act of 1998 were appropriate to these times, but circumstances have changed, permanently, in some cases dramatically.

Those laws are now badly in need of review and revision by this Committee and Congress. Today they are badly out of step, they are inconsistent with international shipping practices, and in some respects have proven to be dismal failures, not achieving their stated objectives. The European Union, which has long had similar laws, has determined that they are injurious to European economic interests, and have thus repealed them effective this October. It is time for this Committee to begin to seriously review these laws.

It is not a given that changing these laws will immediately result in increased vessel capacity serving U.S. exports, but it is clear that these laws are providing a means by which ocean carriers can, and do, collaborate to fix prices for transportation, to discuss how many ships they keep in the trades, and, if they wish, agree to reduce available ocean shipping capacity in order to drive prices up.

Members of Congress are generally shocked to read the actual language of the Shipping Act:

SECTION 4. AGREEMENTS WITHIN SCOPE OF ACT

a) Ocean common carriers. This Act applies to [allows] agreements by or among ocean common carriers to –

    1) **Discuss, fix, or regulate transportation rates**, including through rates, cargo space accommodations, and other conditions of service;

    2) Pool or apportion traffic, revenues, earnings or losses;

    3) Allot ports or **restrict** or otherwise **regulate the number and character of sailings between ports**;

4) **Limit** or regulate **the volume or character of cargo** or passenger traffic to **be carried**;

5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or within one or more marine terminal operators;

6) **Control, regulate, or prevent competition in international ocean transportation**; or

7) Discuss and degree on any matter related to service contracts.

Carriers utilizing this immunity can and have at various times organized into groups to discuss and fix rates and service. Whether they call themselves cartels, or conferences, or something sounding more benign, such as talking agreements, stabilization agreements, or discussion agreements, really makes no difference. We do not allow such price fixing and capacity rationalization in our own economy, for any industry, and the European Union will not, effective October this year, allow it in the international trades serving European exports and imports. Why should we allow it here? Why should we allow such outdated concepts to restrict U.S. access to the global economy and our ability to export our agriculture and manufactured products?

Please see attached *Wall Street Journal* and *Los Angeles Times* articles.

THE WALL STREET JOURNAL.

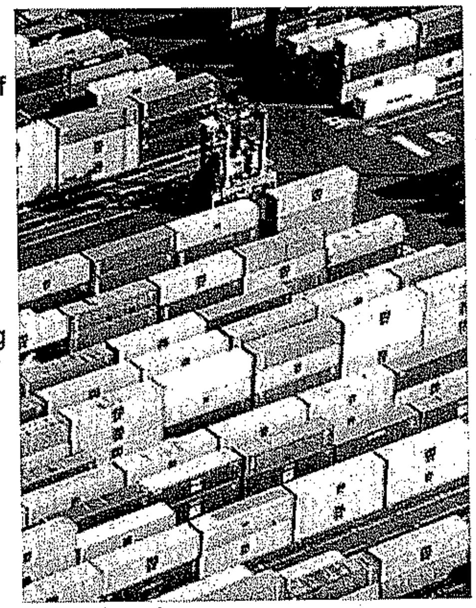
Container Shortage Frustrates U.S. Exporters

Agriculture Industry Battles Bottleneck At Many Ports

By ILAN BRAT and TIMOTHY AEPPEL

The Wall Street Journal
May 9, 2008; Page A4

Surging U.S. exports on a range of goods including corn, soybeans and frozen pork are hitting a bottleneck in the nation's overloaded ports, threatening to crimp profits for U.S. farmers and agricultural processors at a time when it is easier than ever for them to sell their goods abroad.



Associated Press
Shipping containers are stacked on a wharf at the Port of Newark, N.J.

The problem can be traced to a shortage of once-plentiful shipping containers and other transportation equipment, along with a lack of space on outgoing ships. The shortage is affecting other industries, including exporters of manufactured goods and sellers of scrap metal and paper.

Exporters' frustration is building even as U.S. agricultural exports have jumped 20% by weight in the six months ended Feb. 29, compared with the same period last year, according to the Department of Agriculture. Shipments of lentils and peas are being delayed by months. Cargo-ship operators are raising prices. Many cold-storage facilities are packed to near capacity with pork and other meat products waiting to be loaded into containers -- rectangular boxes that are generally 20-feet or 40-feet long.

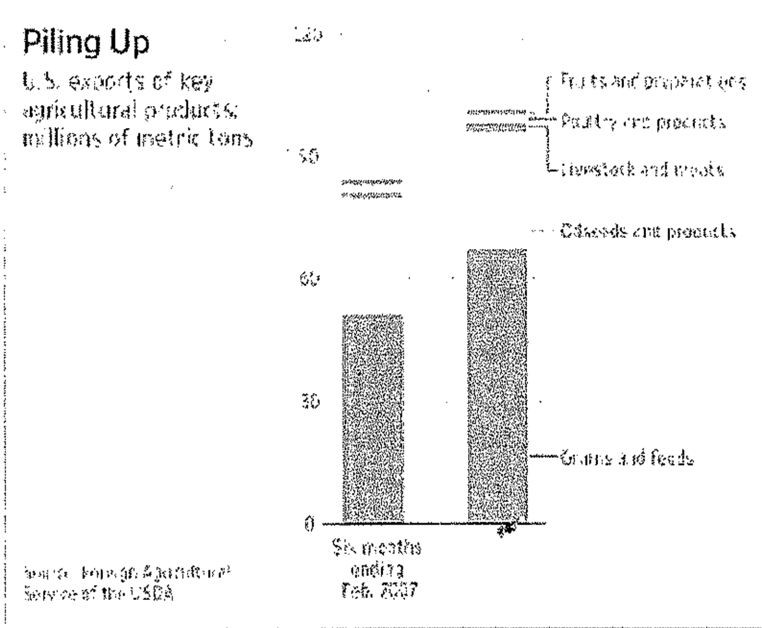
Peter Friedmann, executive director of the Agriculture Transportation Coalition, estimated agricultural exporters could have shipped 20% to 30% more products in the past six months if more containers were available.

The port congestion comes as food prices are rising and grain stocks are dropping amid a surge in demand from fast-expanding nations such as India and China. Two other factors boosting food prices are the increasing use of grains in the production of biofuels and poor harvests in several big food-producing nations. The increased shipping costs could push grain prices higher still.

"My partner and I are pulling our hair out trying to figure out what to do," said Larry Jansky, a senior trader in agricultural commodities for North Pacific Group Inc., which trades specialty grains and is based in Portland, Ore. Birdseed and other grain cargo he had scheduled to leave the country for the Far East and Caribbean in late February and early March now won't ship until later this month, he said.

Finding enough containers for agricultural products used to be easy. The U.S.'s massive demand for imports meant shipping firms typically scoured the country for anyone willing to fill outgoing boxes. Often grains, scrap metal and paper fit the bill.

As shipping lines have shifted more of their fleet to lucrative routes in Asia and between Asia and Europe, there are fewer containers available to handle grains and other commodities in the vast agricultural heartlands of the U.S. and Canada.



Mr. Jansky said the shortage has forced him to pay truck drivers to camp overnight at rail yards to line up for empty containers to cart to agricultural loading points.

The container shortage also is complicating pricing, especially for refrigerated containers. Producers of products such as cheese, poultry and meat are accustomed to calling up a local shipping depot and getting a container sent over on short notice. Now, they sometimes have to pay for containers to be sent hundreds of miles. The prices producers quote when inking deals on big foreign sales sometimes don't include or only partially reflect the added cost of getting a container to where it is needed.

"Before, the price would take into consideration that the empty container was sitting down the road in Chicago or somewhere else close," said Victor Cruz, of Lakehurst, N.J., who makes international delivery arrangements for shipping companies. "Now the container has to be hauled out from New Jersey, so [customers are] paying for a round trip."

Adding to the problem is that shipping rates are steadily increasing, and shippers are boosting their fuel surcharges. In the past, rates were set for six months or even a year.

Some exporters, worried about availability, have resorted to ordering containers months before they need them, and sometimes they show up at the wrong time.

Some exporters "are calling up and making a booking for 100 containers for eight weeks out," and then the customer shows up with enough goods to fill only 40 or 50 containers, said Bob Sappio, American President Lines Ltd.'s senior vice president for trans-Pacific trade. APL, which is a subsidiary of Neptune Orient Lines Ltd. of Singapore, last year swung five to 10 of its 120 ships world-wide away from U.S. ports, Mr. Sappio said.

Large agricultural companies such as Archer-Daniels-Midland Co. may not be as affected by the container shortage as smaller companies, said Jay O'Neil, a senior agricultural economist at Kansas State University, as they have greater shipping resources.

Partly to address the problem, Mr. Friedmann of the Agriculture Transportation Coalition held a conference call with 59 members in late April to discuss what to do. Participants talked about getting Congress -- with the help of other industries -- to repeal parts of a shipping law that allows carriers to discuss and fix transportation rates and service. By doing so, he believes carriers will respond more to supply and demand. They also considered pushing federal regulators to examine shipping companies' pricing practices.

Mr. Friedmann worries any possible solution will come too late to help with the container shortage. U.S. agricultural exporters currently worry their customers will start buying from other countries that produce grains, meat and other commodities.

Los Angeles Times

U.S. exporters face cargo container shortage at ports

The weak dollar has increased demand for American goods overseas, but a decline in imports means fewer ships are coming from Asia.

By Ronald D. White, Los Angeles Times Staff Writer
May 12, 2008

At a time when the struggling U.S. economy needs the biggest boost it can get from booming exports, companies and agricultural producers with American goods bound for overseas can't find enough empty cargo containers and have to wait weeks to get space on ships headed to Asia.

Only a few years ago, the trade bottleneck was the reverse. At U.S. harbors -- particularly the nation's biggest container complex at the twin ports of Los Angeles and Long Beach -- there were too few dockworkers to handle surging imports. Inland rail capacity to the rest of the U.S. was similarly strained.

Now, because of the container problem, U.S. exporters find themselves unable to take full advantage of the competitive edge of a weak U.S. dollar.

"We could export a good 20% more in agricultural products from this country if there was the capacity to handle it," said Peter Friedmann, general counsel for the Washington-based Agriculture Transportation Coalition, a lobbying group formed to help growers become more competitive internationally.

"People talk about how important it is to reduce the trade deficit. Well, here is one way to do it, and the opportunity is slipping away."

The container problem is being most acutely felt in the Midwest, said Friedmann and other experts. Southern California isn't suffering as much because of its ports' role as a key gateway to Asia.

Los Angeles and Long Beach moved 15.7 million containers in 2007, nearly three times as much as the No. 3 port, New York/New Jersey, and attracted many more empty containers for shipping back to Asia than any other port complex.

This year, imports through March were down 7% at Los Angeles and 11% at Long Beach, while exports were up 21% and 26%, respectively -- and the numbers of empty containers were down 28% and 25%.

"Last year, I could have called for a ship and had it by next week. Now it takes up to six weeks to book one. There just isn't enough room on the ships," said Howard Wallace, president of the Los Angeles Harbor grain terminal, where exports are up 150% this year.

Friedmann said he knew of a California dairy that could have sold 600 more containers of goods overseas, if it had been able to find cargo boxes. A beef and poultry producer in the Midwest, Friedmann said, missed out on at least $10 million in sales overseas for the same reason.

There are several reasons for the bottleneck of exports bound for Asia through the West Coast ports. The weak U.S. dollar has combined with growing Asian economies to increase the demand for U.S. goods, raising the need for containers.

But when the U.S. economy cooled and American consumers began tightening their belts, oceangoing shipping lines pulled as many as 30% of their vessels, and a commensurate number of containers, out of the routes from Asia to the West Coast. They moved them to Asia-to-Europe routes and to routes between Asian countries where the economies were more robust, said Paul Bingham, an economist for Global Insight.

Another problem was pure physics, said Asar Ashaf, head of the Washington office of the University of New Orleans´ National Ports and Waterways Institute. A ship that can carry 8,000 containers of finished goods such as electronics, toys and apparel from Asia to the U.S. can´t carry 8,000 containers of exports from the U.S. back to Asia.

"The exports are heavier -- grains, paper, scrap metals. The ship reaches its tonnage limit much faster, so maybe it is carrying only two-thirds as many containers of exports back to Asia," Ashaf said.

Also, the shipbuilding industry has placed far more emphasis on building container vessels than on the bulk carriers that used to dominate trade in items such as grains and scrap metal. Wallace said the competition for the limited amount of space available on bulk vessels has made using them much more expensive than container ships. Plus, Wallace said, his Asian customers prefer their agricultural goods shipped in sealed containers.

"Once they start using containers, they don´t want to go back to bulk," Wallace said.

All of that has combined to make it harder for exporters to find space quickly on container vessels. Spokesman Mark Bagby said that members of Calcot, a Bakersfield-based farmer-owned cooperative with about 1,400 members, said, "We´re having a little trouble finding space on the ships," even though they are exporting less.

The export problems have been compounded by a significant change in the way shipping lines view empty containers. They were once so plentiful because of the import boom and huge trade imbalance that the shipping lines "were happy to have anything in them" for the return trip to Asia, said Mike Zampa, a spokesman for APL, a subsidiary of Singapore-based Neptune Orient Lines.

Now, with fuel costs soaring and fewer containers available, Zampa and others say that exporters are going to have to pay more to make doing business with them profitable. To combat that, Zampa said, exporters are going to have to put the same effort into logistics planning that importers do on a routine basis now.

"We´re telling them they have to plan ahead, try to even out their shipments, try to take advantage of times of the year when there may be more slack in the demand," Zampa said.

Exporters aren´t happy with the new balance in the shipping trade.

Friedmann of the Agriculture Transportation Coalition said the fault is with the shipping lines for talking too much among themselves and not enough to their export customers. Many exporters, he said, are willing to pay more to get the empty containers they need -- if only they could get them.

"The mind-set of the shipping lines is that they serve the import cargo. That is where the money is," Friedmann said. "They just didn´t see this problem coming."