

INTRODUCTION

Contributed by: Marc J. Fink and Matthew Howell, Cozen O'Connor

As the shipping industry enters 2020, it faces a myriad of issues from a variety of perspectives. From a customer point of view, shipping companies must grapple with greater demand for transparency in costs, improved service quality, and a continuation of lower profit margins. From a regulatory perspective, carriers and shippers are faced with continued investigations into co-operative activities, further reviews of competition law block exemptions for co-operative agreements, new and significant environmental regulations from the International Maritime Organization, and implementation of new technologies and digital platforms.

Global Economy and Geopolitical Events

The shipping industry finds itself again at the forefront of ongoing, or threatened, trade disputes between major economic forces such as the US, China, and the European Union. The consequences of any such dispute, in particular any significant conflict between the US and EU, conducted under the auspices of tariffs or similar activities, would negatively impact the stable trade experienced during the last several years. As yet, no major, disruptive tariffs have been implemented, but both parties have threatened to impose significant financial burdens on various goods, including aerospace products, electronics, and pharmaceuticals. If tensions continue to escalate, it is quite possible that these important trade lanes between major countries will become a new difficulty that the industry must navigate throughout 2020.

The impacts, whether positive or negative, of a Phase One trade between the US and China are also unknown at this point. As these are the two largest global economic powers, any uptick in trade will inherently create positive overflow effects in the US-Asia trade lanes. However, the pattern of practice between the two countries indicates that a renewed trade war remains a constant possibility. Additionally, the possibility of conflict between Iran and the US carries significant risks for the shipping industry, particularly as it relates to the Strait of Hormuz.

IMO 2020 Implementation and Adjustments

Now that we have entered 2020, the shipping industry will begin to witness real-time effects of the International Maritime Organization's Low Sulphur Regulation (IMO 2020). As of 1 January 2020, all shipping companies are now required to begin reducing sulphur emissions by 85% in order to continue curbing the environmental impact of fuel discharge by the industry. Although these limits on sulphur fuel came into force into 2005 under the International Convention for the Prevention of Pollution from Ships (the MARPOL Convention), the IMO 2020

regulations significantly limit the sulphur content of ships' fuel oil from 3.50% mass by mass ("m/m") to 0.50% m/m.

Shipping companies have engaged in a variety of efforts in order to meet the IMO 2020 requirements, with two dominant strategies emerging. First, some companies have invested in operating systems that can employ newer, more efficient fuel resources such as Very Low Sulphur Fuel Oil or Liquefied Natural Gas (LNG). Other companies have engaged in intensive retrofitting efforts to equip vessels with so-called "scrubbers," which act as gas exhaust cleaning systems for pollutants in non-compliant fuel. Some shipping companies have implemented these two strategies in combination in order to meet the IMO 2020 deadline, while reducing costs as much as possible.

The impact of installing and using a scrubber can be extreme, due to the cost differences between fuel types. For example, certain industry reports already show that fuel costs doubled from January 2019 to January 2020 due to the change from Heavy Fuel Oil to Very Low Sulphur Fuel Oil. Accordingly, vessels with scrubbers will have access to cheaper fuel and better profit margins. However, retrofitting vessels with the necessary equipment has proven both costly and time-consuming, leading many companies to forecast vessels idling in shipyards well into 2020, and thus prompting the majority of the global fleet to begin using compliant fuels instead.

The significant investments made by shipping companies will necessarily create added costs which have been estimated at USD1 to USD2 billion annually by some ocean carriers. Certain industry estimates show that implementation of compliant low-sulphur fuel will increase costs to carriers of up to USD15 billion annually. As shipping companies and customers continue to undergo impacts from IMO 2020, carriers will each be faced with the challenge of creating transparent charges to address the increased costs while maintaining a measure of sustainability. Recoupment of added costs will only be more difficult in markets with a strong supply/demand balance in favour of shippers.

IMO 2020 has also led to increased scrutiny from various competition and antitrust regulatory bodies. It has been widely reported that the European Commission issued cautions to carriers that any collusive practices in this area will be monitored closely and investigated as necessary.

Service Quality and Transparency

As global regulatory bodies push shipping companies to implement new technologies that will necessarily drive up costs for customers, those same customers are demanding more sophis-

INTRODUCTION

Contributed by: Marc J. Fink and Matthew Howell, Cozen O'Connor

ticated and better service quality from the shipping companies. Customers, often in tandem with governmental entities, continue to seek greater transparency from shipping companies that impose costs under the guise of surcharges or detention and demurrage. In fact, various regulatory bodies in the US and Asia have initiated reviews of carrier commercial practices in these areas. The United States Federal Maritime Commission, for example, recently concluded an intensive fact investigation related to detention and demurrage charges.

As governments continue to investigate these commercial practices, it will be critical for carriers to be clear and transparent with their customers.

Digitalisation

In conjunction with the above notes on service quality, the shipping industry is also adjusting to a more technologically savvy customer base that demands greater innovation and digitalisation throughout the customer experience. In order to address these concerns, shipping companies have begun to implement various digital technologies, particularly blockchain, in order to reduce paperwork while increasing accessibility for customers. At its most simplistic, blockchain is designed to act as a digital ledger, allowing all parties the ability to see the historical path of a transaction while creating increased security for information. In the shipping context, documents such as bills of lading, port documents, service contracts, etc. can all be digitised and encrypted via blockchain. At the outset, this immediately reduces the sheer volume of paperwork and increases the ability of all parties to track shipments. By its very nature, blockchain creates a clear line of custody that displays where a customer's shipment/container is at all times, eliminating communication concerns and addressing the customer transparency issues highlighted above.

At present, the most significant attempt at implementing this technology is by TradeLens, a blockchain company owned by IBM and Maersk. Following its creation in 2018, the company has signed up over 15 liner companies, all of which have access to the TradeLens technology. As digitalisation continues to take effect throughout the industry, it is likely that other platforms will enter the market.

Regardless, it is clear that the continued evolution and implementation of this technology will become a requirement for the shipping industry going forward. The inherent efficiency, and eventual cost savings, of digitalisation naturally creates an incentive for all parties in the shipping industry to coalesce around new technologies such as blockchain.

Block Exemptions

As the shipping industry continues to go through a period of lower profit margins, shipping companies have continued to co-operate on operational matters in order to increase efficiency throughout the industry. Such co-operation is generally achieved through so-called "block exemptions," which exclude liner shipping companies from competition laws and regulations in limited contexts. Namely, these block exemptions help carriers achieve the most efficient shipping methods while reducing costs by increasing utilisation for all vessels. Such operational co-operation occurs through various formats including "Vessel Sharing Agreements." These types of efforts allow shipping companies to increase the availability of services for customers without incurring significant costs. However, shippers continue generally to oppose block exemptions in most cases.

The coming years mark a significant turning point for block exemptions as the regulations currently in effect in both the European Union and Australia are presently under review by their respective governments. During the public comment period, carriers, shippers, and customers have offered dramatically different thoughts on the success or failure of the block exemption regulations. The potential revocation and/or non-renewal of block exemptions raises significant issues throughout the shipping industry, and thus deserves to be monitored closely by all interested parties.

Conclusion

The shipping industry remains the centrepiece of global trade and commerce, but is certainly facing significant issues as it enters a new decade. Although the industry, particularly in the area of liners, has undergone a period of consolidation, it remains highly competitive, although ripe for further changes, including additional mergers and acquisitions. Additionally, the prevalence of environmental regulations, specifically via IMO 2020, is just now starting to create significant added costs for nearly every participant in the global shipping market. These mounting costs, combined with further demands from customers for the best price available coupled with superior customer service, will necessarily lead to a changing market landscape. This adjustment will create opportunities for shipping companies that are best positioned to implement new technologies designed to increase efficiency and stabilise profit margins simultaneously.

Contributed by: Marc J. Fink and Matthew Howell, Cozen O'Connor

Cozen O'Connor has a maritime practice that is made up of acknowledged leaders of the maritime bar, including several former presidents of the Maritime Administrative Bar Association. The firm's attorneys represent a diverse range of global clients serving the maritime industry, including major vessel-operating common carriers, ocean shipping company groups and alliances, vessel owners, maritime-related investors and fi-

nancial institutions, ports, terminals and port/terminal operators, carrier-terminal management groups, P&I Clubs, chassis pools, and ocean transportation intermediaries. The firm provides counsel in a variety of fields, including regulatory filings before US and international agencies, ship financing, complex commercial litigation, and the impact of antitrust and competition laws on the industry.

Contributing Editors



Marc J. Fink has more than 30 years of experience representing companies and organisations involved in the transportation industry before US courts, arbitration panels, boards of contract appeals, federal agencies and Congress. His practice covers the gamut of legal issues

that are faced by companies engaged in the transportation of cargo. He frequently provides advice on US trade sanctions and compliance with statutory and regulatory obligations pertaining to transportation that are administered by various US agencies. Marc also has significant experience in dealing with the Federal Maritime Commission, the Maritime Administration, and the Department of Homeland Security.



Matthew Howell is an associate with Cozen O'Connor and represents a variety of clients covering nearly all aspects of the maritime industry. His practice encompasses a wide-ranging set of issues, but primarily focuses on regulatory filings, as well as potential disputes, before US

agencies, including the Federal Maritime Commission and the Office of Foreign Asset Control of the US Department of State. He also provides advice and counsel on the impact of international competition laws on the practices of major players and alliances in the shipping industry.

Cozen O'Connor

1200 19th Street NW
Washington
DC 20036
USA

Tel: +202 912 4879
Fax: +202 499 2451
Email: MHowell@cozen.com
Web: www.cozen.com



