Agricultural Ocean Transportation Trends:
An Interim Report
November 2002

The disruption of port activities at U.S. West Coast ports, a major gateway for U.S. agricultural exports, is having a significant impact on ocean transportation capacity, availability, pricing, and service, which will continue into 2003. For this reason, the U.S. Department of Agriculture offers this interim report focusing on the West Coast port disruption and the implications for U.S. agriculture.

Port Situation Still Uncertain

A period of continued negotiation deteriorated into disputes following the expiration of the International Longshoremen Warehouse Union (ILWU) and the Pacific Maritime Association (PMA) contract for longshore labor at U.S. West Coast ports. This led to the closure of West Coast ports for 10 days in October, followed by major congestion and delays and significantly reduced vessel services. This congestion is expected to continue through the end of 2002.

The lack of agreement between the ILWU and PMA has created uncertainty regarding operations and vessel service along the West Coast. This uncertainty has caused many agricultural exporters to seek alternative routing through Gulf and East Coast ports or through Canadian ports. At the same time, pressure has increased on foreign purchasers of U.S. agricultural products to seek alternative sources. Numerous U.S. agricultural interests have reported lost foreign sales and concerns as to the long-term impact on U.S. agriculture as some foreign buyers shift to new foreign suppliers.

Harvest Timing Increases Port Shutdown’s Impact

The impact of the port disruption on U.S. agriculture has been considerable, particularly in view of the timing—right at the height of the U.S. harvest season. Due to the limited periods for which the product could be refrigerated, much of the perishable commodities that had already been loaded into the containers and delivered to the port just prior to lockout deteriorated in transit.

The port closure and subsequent congestion caused many exporters to retain their cargos in warehouses. Those locations soon reached or exceeded capacity. The supply chain for agricultural exports, particularly during harvest season, depends upon the availability of ocean containers and the continual movement of those containers to foreign markets. When the containers stop moving, significant storage capacity for perishable products is eliminated. During this period, foreign consumers of U.S. agricultural products began to turn to foreign sources of supply.

Looking to the Future

On November 24, after a lengthy period of negotiations starting last May, the PMA and ILWU announced that they had reached a tentative agreement. Details of the agreement have not yet been announced, pending a vote by ILWU members in December to ratify the contract. However, they are revealing that worker pay and pension benefits were increased (pension benefits by as much as 60 percent), and shippers and port operators were given freedom to implement new technologies such as barcode scanners and integrated computers. Both sides are describing the long-awaited agreement as historic. President Bush is quoted as saying, “This agreement is good for workers, good for employers, and it’s good for America’s economy.”

The key issue was technology—not so much which new technology will be introduced, but, rather, whether ILWU jurisdiction will extend to the jobs associated with implementation of the technology. Both PMA and ILWU agree that new technology will create efficiency and result in a loss of some ILWU jobs in current fields of activity.

Shippers Face Additional Transport Charges

U.S. agricultural exporters are not only experiencing lost sales and termination of long-term customer relationships, but they are also faced with additional transportation charges. In an effort to try to recoup their own losses, ocean carriers are resorting to two methods. First, some carriers are charging premiums to deliver containers to the contracted destination points. Second, some carriers have imposed port congestion surcharges.

So What Is “Force Majeure”? Force Majeure was designed to protect the carrier from the obligation to fulfill a commitment to carry cargo in case of war, weather, disaster, crime, etc.; however, today it is increasingly providing similar protections for the shipper.

During the port shutdown and afterward, carriers dropped containers at other locations along the West Coast, including Mexico, and are now requiring additional payments to deliver them to the contracted destination point. They are claiming that under "Force Majeure" they were relieved of their obligation to perform the contracted delivery and, thus, feel they can charge the additional amounts for delivery.

Shippers are asking: Is it possible to gain a refund of any additional charges paid to a carrier who demanded them in order to deliver the container? Is it possible to gain reimbursement for damage to the cargo caused by the carrier's failure to deliver? The answer depends upon whether the carrier is justified in claiming "Force Majeure" circumstances; e.g., did the ship arrive during the lockout or afterward? Was the carrier prevented from performing, or did the carrier simply decide that it would prefer not to make a second port call or take other actions that were possible but not convenient?

Shippers are advised to seek advice from professionals who have an established reputation in dealing with ocean shipping contracts and other legal arrangements of this nature.

Will Congestion Surcharges Apply? The other challenge to shippers at present is the "Congestion Surcharges" which have been announced by some carriers. Some carriers filed a $500 per 20-foot equivalent unit (TEU) surcharge effective in November. Others filed a similar surcharge but have since rescinded it. Yet others have not filed any such surcharge.

The Federal Maritime Commission (FMC) has notified carriers that, under the Shipping Act, they cannot implement such a surcharge until 30 days after the carrier files notice of the surcharge at the FMC.

Stable Shipping Rates Expected: Stable ocean transportation rates will help enhance the competitiveness of U.S. agricultural products and maintain their market shares. Should congestion be eliminated and capacity fully restored at West Coast ports, the normal trade imbalance, in which eastbound ships carrying imports are largely full and are continuously seeking westbound cargo, should be corrected. In such an environment, ocean freight rates should continue at the relatively low levels U.S. exporters have come to depend upon in order to stay competitive.

If supply of available westbound cargo space continues to exceed demand (as expected), the congestion surcharges that have been filed by some ocean carriers will likely not be imposed. If they are imposed at the levels at which they were filed ($500 per TEU), it would constitute a dramatic increase in transportation costs and would make reestablishment of foreign sales that much more difficult. Again, however, the surcharges will reflect the supply and demand of shipping services.

Contract Terms Reconsidered: As shippers and carriers negotiate another round of ocean transportation service contracts, it is expected that many agricultural exporters will closely scrutinize provisions of the contract that deal with surcharges. The ability of a carrier to impose a surcharge on cargo moving subject to a negotiated service contract depends on the terms of the contract. If rates are “all-inclusive,” the terms of the contract and all surcharges are fixed at the date of the signing of the contract, without any possibility of any increases or decreases during the term.

Most agricultural transportation contracts, however, incorporate by reference the ocean carrier service contract tariff on file at the FMC. That tariff sets forth a number of surcharges, including some which are intended to rise and fall during the course of the contract term. These tariffs also provide for new surcharges during the course of the contract term, as long as those surcharges are filed in the carrier's tariff during that period.

Agricultural exporters are expected to pay particular attention to provisions in either the contract or the carrier's governing tariff which might permit application of new and unforeseen surcharges/costs during the contract term. There will be an attempt to limit any fluctuating charges to foreseeable changes—such as fuel or insurance.

Due to terrorist activity in Indonesia, a number of carriers imposed Indonesia War Risk Surcharges during the fourth quarter of 2002. If the United States goes to war with Iraq, it is possible that War Risk Surcharges would be applied to cargo movements to and from other countries as well. Agricultural shippers will seek to determine whether those surcharges accurately reflect increased insurance costs to the carriers. To this end, shippers may request proof by the carriers of such increased costs.

New Port Security Developments Create Additional Stress

In the fourth quarter of 2002, Congress enacted legislation and the U.S. Customs Service began to implement new security procedures for exports and imports. Following is a brief summary.

Export Documentation Deadlines Tightened: Effective December 2, 2002, the Trade Act of 2002 requires cargo export information to be provided to the marine terminal operator no later than 24 hours after delivery to the port and at least 24 hours prior to loading onto the U.S. outbound vessel. Failure to provide this information in a timely manner will prevent the cargo from being loaded onto the ship. Because many shippers, particularly agricultural exporters, will have trouble complying on such short notice, the Customs Service will allow a 60-day grace period before the new rules goes into effect.

This procedure is a dramatic departure from the current environment in which, under the Automated Export System, such information may be provided to the U.S. Customs Service and Census Bureau after the ship has sailed. For many agricultural products, this may constitute a significant burden as there are situations in which the product is literally growing in the ground 24 hours prior to loading onto a ship. For example, California broccoli is generally harvested, chopped, packed, loaded into a container, hauled to the marine terminal, and loaded onto a ship within 18 hours of the ship sailing. Agricultural interests are working with the U.S. Customs Service to develop a mechanism which recognizes the need for flexibility for various products, particularly those that are not security sensitive, such as agricultural products.

Import Rules Also Change: For those who import agricultural products, a similar requirement will be implemented on December 2, although it will not be enforced until February 2, 2002. A “24-Hour Rule” requires that import information (in the form of the ocean carrier manifest) be provided to the U.S. Customs Service no less than 24 hours prior to loading onto the vessel in the foreign port. If the information is not provided at least 24 hours prior to loading, the products cannot be loaded onto the ship. However, if the products are loaded onto the ship, the cargo will not be discharged upon arrival at the U.S. destination port.

Some Lessons Learned

“Just in time” is a phrase that is most often associated with shipments of components for manufacturing plants. But as U.S. agricultural shippers learned during the West Coast port disruptions and ensuing congestion, “just in time” applies to agriculture as well. Hundreds of millions of dollars of perishable products were destroyed or sales lost due to the inability to ship on the dates planned. Customers abroad will reject the cargo, deny payment, and find another source if a shipment does not arrive in time. Truck, rail, marine terminal operations, and ocean shipping are part of a highly sensitive “just in time” supply chain, which U.S. agriculture today simply cannot do without.

The West Coast port disruption has underscored how tightly linked the U.S. agricultural supply chain is. Agricultural exporters depend upon the continued and predictable flow of ocean containers, not only to move the cargo, but also to temporarily warehouse it, particularly during peak harvest seasons. The supply chain goes well beyond the ports. Even a brief disruption to the flow of commerce through the gateway ports on the West Coast has a ripple effect on all transportation modes throughout the country. When the ports shut down, rail service was disrupted and, for many agricultural exporters, halted completely all the way to the East Coast. Soon after ships stopped moving, westbound railcars followed suit. Simultaneously, demand for trucking capacity increased dramatically as trucks began to haul rerouted cargo from the closed or congested West Coast ports to alternative ports on the East and Gulf ports.

Lack of transport capacity on the West Coast, due to either shipper demand or port disruption, is very quickly reflected in the loss of any excess transport capacity at the East Coast and Gulf ports. Shippers can quickly shift cargo destined for West Coast loading to East Coast terminals but will soon overwhelm any available excess capacity at the new terminal, in cold storage facilities, and on the outbound vessels, themselves.