THE U.S. OCEAN SHIPPING REFORM ACT OF 1998:
AN ANALYSIS OF ITS ECONOMIC IMPACT ON CARRIERS, SHIPPERS AND THIRD PARTIES

SHASHI KUMAR
Chair/Professor
Loeb-Sullivan School of International Business and Logistics
Maine Maritime Academy
Castine
Maine 04420

Note:
Paper to be delivered at "Liner Shipping: What's Next?" the International Association of Maritime Economists Annual Conference in Halifax, N.S., Canada on 9/13/1999.

Press embargo until Monday, 9/13/1999.

Abstract
The U.S. Ocean Shipping Reform Act of 1998 went into effect on May 1, 1999. While it does not deregulate U.S. liner shipping services completely, it eliminates a number of the regulatory requirements of the 1984 Act and effectively replaces the common carriage system with a system of contract carriage. The author provides a brief history of the four year long legislative developments that led to the Act and an empirical analysis of the potential impact of the new legislation on carriers, shippers and third parties, the major stakeholders affected by the regulatory changes.

The U.S. Ocean Shipping Reform Act of 1998: An Analysis of Its Economic Impact on Carriers, Shippers and Third Parties

1. INTRODUCTION

Liner shipping services have remained controversial beginning from 1817 when Black Ball Line announced the availability of trans-Atlantic voyages on scheduled departure times, whether fully-laden or not. Given the oligopolistic structure of liner markets and the various theories that attempt analyzing one or more of its controversial aspects, the ongoing dilemma about liner markets and the diversity in opinions is understandable.[1] The U.S., being the world's largest exporter and importer, remains an attractive market for liner operators. The nation embarked on a policy of unilateral regulation of liner shipping services in its foreign commerce dating back to 1916 and continues to maintain an activist liner shipping policy. The 1916 Act as amended in 1961 was replaced by the 1984 Act and has been amended by the Ocean Shipping Reform Act of 1998 (OSRA) with effect from May 1, 1999. The new amendments include a variety of deregulatory provisions that have created an aura of uncertainty that usually accompany such major legislative changes. The paper will provide a brief history of U.S. maritime regulation and document the changes that led to OSRA. It will analyze the major changes introduced by OSRA and discuss its likely impact on carriers, shippers and third parties, the three major stakeholders based on author's primary research and empirical analysis.

2. HISTORY

Shipping legislation in the United States has always tread on the heels of a crisis of one nature or the other traditionally.[2] A number of prominent litigation prior to WWI and the 1909 British Royal Commission Report on Shipping Rings gave the momentum for the 1916 Act. It dealt with the ubiquitous concern as to whether the conference system was a benevolent scheme that provided regular sailing schedules and maintained stable and reasonable rates or a malevolent monopoly that exploited shippers. A 1958 U.S. Supreme Court decision that dual rate contracts were illegal led to the eventual amendment of the 1916 Act in 1961.[3] A series of subsequent developments such as the introduction of the *Svenska* public interest standard and its accompanying procedural delays and complications, and the evolution of containerization and intermodalism, and other issues of concern such as the extra-territoriality of unilateral shipping regulations led to the U.S. Shipping Act of 1984.[4] It filled a regulatory vacuum that appeared to develop in the ocean-borne commerce of the United States and introduced market-oriented provisions in the liner sector. In order to counterbalance the continued antitrust privilege granted carriers, the 1984 Act introduced the pro-competitive shipper oriented provisions of mandatory independent action, the legal acceptance of service contracts and the right to form shippers' associations.[5]

The introduction of the 1984 Act coincided with a period of global recession and over-tonnaging in the liner market that led to a turbulent period for the liner operators. The decade from 1984 to 1994 witnessed a number of partial or complete liner shipping business failures and many spectacular bankruptcies.[6] The cost of international shipping movements stagnated at non-compensatory levels from the operators' perspective. However, a genuine possibility of losing their antitrust immunity in any subsequent

legislative development--in consonance with the higher levels of deregulation in all other modes of transportation in the U.S.--kept the carriers from seeking any substantive legislative redress. However, the shipper community under the leadership of the National Industrial Transportation League took an aggressively proactive stance against the status quo especially as the nation's political ideology took a swing to the right in 1994.[7]

3. THE GENESIS OF OSRA

The move to replace the 1984 Act began in mid-1994 with the National Industrial Transportation League going on record against the Trans Atlantic Agreement, a controversial carrier agreement that was beset with legal problems from its very conception.[8] The shipper community was also skeptical of the pro-carrier attitude of the FMC and the efficiency of its regulatory practices.[9] The shipper effort toward total deregulation of U.S. liner trades began in full earnest with the Republicans taking control of the U.S. Congress in November 1994.[10] The President of the National Industrial Transportation League declared a "real live war" on the ocean conference system, public filing of tariffs and service contract terms. The initial proposal included:[11]

- provisions to end the carrier antitrust immunity
- abolition of the Federal Maritime Commission
- terminating the requirements for public filing of tariffs and service contracts
- shifting the regulation of carrier consortia to the Department of Justice
- shifting licensing and bonding of forwarders to the Department of Transportation

Predictably, the carriers aligned to oppose the initiative. However, in July 1995, the NITL decision to drop its stand on eliminating the carrier antitrust immunity[12] led to a significant change in the opposition of the top U.S. operators--Sea-Land, American President Lines and Crowley. The compromise legislation would allow confidential contracts, eliminate tariff filing and abolish FMC by October 1, 1997.[13] The U.S. House of Representatives passed the compromise bill in September 1995 as part of the budget bill.[14] However, it ran into significant opposition in the Senate.[15] In particular, the Senate Majority Leader opposed the abolition of the FMC in early 1996[16] and by March 1996, the Clinton administration also began to reconsider its previous support for the reform bill. The American Association of Port Authorities[17] and labor unions also joined the opposition rank that resulted in the Congress adjourning without any action on shipping reform. In October 1997, the U.S. Department of Transportation endorsed the Senate bill but favored retaining FMC as a separate agency.[18] A new compromise bill was introduced in November 1997 that would allow two-tiered contract system, with confidential contracts permitted only for individual carriers in single trades, or multiple carriers operating on connecting routes.[19] All contracts would be filed with the FMC that would remain as an independent agency. The final compromise that emerged in March 1998 made key changes from the former bill.[20] These included eliminating the two-tiered contracting system and continuing the prohibition against non vessel operating common carriers (NVOCC) signing service contracts with shippers. The bill was predictably opposed by the NVOCC sector[21] but eventually won the favor of all other key stakeholders.[22] The U.S. House of Representatives approved the final version in August 1998 and the Senate in October 1, 1998.[23]

4. MAJOR PROVISIONS OF OSRA 1998 (S. 414)

The Ocean Shipping Reform Act of 1998 introduces a number of significant changes. Although OSRA still does not deregulate liner shipping completely and continues to offer antitrust immunity to carrier agreements,[24] it does contain a number of market oriented provisions. This section will provide a brief overview of the key changes that went into effect on May 1, 1999.

4.1 Tariff Filing[25]

OSRA eliminates the traditional tariff filing and enforcement obligation on carriers and shippers. However, carriers are required to publish their tariffs (except for exempt commodities that now includes new assembled motor vehicles) electronically but not file them with the FMC. The FMC's role in tariff filing is limited to promulgating regulations governing the accessibility and accuracy of the tariff system. The published automated tariffs must show all of their rates, terms and charges.[26] Users of published tariff other than the FMC may be charged a reasonable fee for providing this service. Learning from past experiences with transportation deregulation in the trucking sector, shippers are not required to pay undercharges to carriers should there be a carrier bankruptcy.

4.2 Service Contracts

The service contract provision is the most deregulatory component of the new legislation. It has expanded the scope and purpose of service contracts from the original 1984 Act and has made it a truly powerful marketing tool for shipping companies to differentiate their services from their competitors.[27] The new service contract provision allows the co-existence of a discriminatory contract carriage system with the common carriage objectives of the tariff system.

Although contracts need to be filed confidentially with the FMC except for contracts on exempt commodities, the previous requirement to file essential terms of a service contract in tariff format for public review is seriously curtailed. Strategic components of a service contract such as inland points for intermodal movements, freight rates, service commitments and liquidated damages for non-performance can now remain confidential.[28] Conferences and consortia will not have the right to restrict its members from negotiating individual contracts with shippers although they may issue voluntary guidelines relating to terms and procedures for such contracts.[29] The voluntary guidelines must be submitted to the FMC. Another significant departure from the 1984 Act is that a contract may be based on percentage of cargo of the shipper,[30] not permissible earlier because of its connotation to a loyalty contract. Loyalty contracts are still illegal under OSRA. However, OSRA has altered the definition of such contracts to one that includes a deferred rebate.[31] The "me-too" provision of the 1984 Act that guaranteed symmetrical positioning of similarly situated shippers is no longer in existence. Individual shippers, a shippers' association as well as a group of unaffiliated shippers may enter into service contracts. Similarly, a group of carriers other than a conference is also allowed to enter into service contracts.[32] However, NVOCCs are not allowed to issue service contracts.

Carriers should not unjustly discriminate against ports through their service contracts between an individual carrier and a shipper as defined in Section 10(b)(5). However, in service contracting, discriminatory practices against shippers are not ruled out. A carrier or group of carriers cannot unreasonably refuse to deal or negotiate with any stakeholder, a provision that was applicable only to shippers' associations under the 1984 Act. Section 10 provides explicit clarifications of prohibited acts when contracts involve a conference or a group of two or more common carriers and one or more shippers. Furthermore, Section 10(c)(7) stipulates that no conference or group of common carriers may "for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port or persons due to those persons' status as shippers' associations or ocean transportation intermediaries." Section 10(c)(8) also stipulates that no conference or group of common carriers may "for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port or persons due to those persons' status as shippers' associations or ocean transportation intermediaries." Thus, the new Act not only gives individual carriers more freedom than conferences in refusing to grant service contracts, but also expressly protects shippers' associations and third parties from discrimination by carrier groups. Ocean carriers would have to disclose service contract information on specific aspects of dock or port area cargo movements to a labor organization if their collective bargaining agreement permits such requests.[33]

4.3 Independent Action

The mandatory independent action provision introduced in the 1984 Act as a safety valve mechanism to facilitate intra-conference competition will continue under OSRA.[34] The original maximum notice period has been reduced from 10 calendar days to five.[35] The amended Act also eliminates conferences' right to restrict independent action for exempt commodities.

4.4 Ocean Transportation Intermediaries (OTI)

OSRA has created a new category of stakeholders called OTI that includes freight forwarders and NVOCCs.[36] While there were no previous licensing requirements for NVOCCs in the U.S., all OTIs must now be licensed as per OSRA.[37] The Act also allows the FMC to establish appropriate standards of financial responsibility for OTIs.[38]

4.5 Collective Negotiations for Intermodal Transportation

OSRA allows carriers to negotiate jointly with railroads, trucking companies or airlines for transportation within the U.S., a freedom that was not available under the 1984 Act.[39] However, such negotiations or any resulting agreements are subject to the antitrust laws and must be consistent with the purposes of the Act as defined in the Act's Declaration of Policy (Section 2).

4.6 Revised Criteria for Exemptions

Under the 1984 Act, the FMC could exempt a commodity or class of commodities from tariff and publication requirements of the Act and also exempt agreements from filing requirements upon satisfactory compliance with the following four criteria:

a. Not substantially impair effective regulation
b. Be unjustly discriminatory
c. Result in a substantial reduction in competition
d. Be detrimental to commerce.

Section 16 of the amended Act provides greater latitude to the FMC in granting exemptions by eliminating above provisions a & b, and retaining provisions c & d only. Accordingly, the FMC may exempt a commodity or class of commodities from tariff and publication requirements of the Act and also exempt agreements from filing requirements so long as they satisfy provisions c & d listed above.

4.7 Prohibited Acts

Section 10 of the Act provides an extensive list of prohibited acts. The prohibition against rebates and fighting ships continue.[40] However, there appears to be no reason why a carrier cannot offer a rebate agreed as per a confidential service contract.

4.8 Controlled Carrier[41] Restrictions

OSRA amends Section 9 of the 1984 Act (Controlled Carrier Act) and simultaneously amends Section 19 of the Merchant Marine Act, 1920. The Congress now explicitly authorizes the FMC to take action against controlled carriers if it finds that their pricing practices are predatory or unfair.[42] The controlled carrier has the burden of proof to demonstrate that its rates, charges, classifications, rules or regulations are just and reasonable. Furthermore, these provisions will apply even if a controlled carrier is a conference member, and also to the bilateral trade between the U.S. and the nation that directly or indirectly owns or controls the operating assets of the controlled carrier.

5. EMPIRICAL ANALYSIS

The author drafted a questionnaire to analyze the economic impact of OSRA on carriers, shippers and ocean transportation intermediaries. All respondents were requested to provide a brief profile of their firm including the trade lanes in which they were active. The second part of the questionnaire consisted of six subsections under the following titles:

- New service Contract Provisions
- Potential Impact of OSRA on Carriers
- Potential Impact of OSRA on Shippers
- Potential Impact of OSRA on International Intermodal Movements
- Potential Impact of OSRA on Ocean Transportation Intermediaries
- Summary

Each of the above subsections consisted of various statements that sought the survey recipients' opinion on Likert Scale, using the following notations:

1 Completely disagree
2 Disagree to some extent
3 Neutral
4 Agree to some extent
5 Completely agree

The survey was mailed to the top fifty container operators in the U.S. foreign commerce, one hundred randomly selected exporters and importers (one each from each state), and one hundred randomly selected freight forwarders and NVOCCs (two each from each state). The recipients were requested to fax their responses. This section contains a preliminary empirical analysis of the survey responses received for five out of the six subsections listed earlier.[43]

5.1 Active Trade Lanes

Table 1. Respondents' Active Trade Lanes (in per cent)

Trade Routes	Carriers	Shippers	OTIs
Trans Pacific	58	100	100
Trans Atlantic	58	100	100
Europe-Asia	42	50	40
Intra-Asia	50	25	60
Latin America	75	25	100
Mediterranean	67	50	100
U.S. Coastal	8	25	20
Others	42	25	80

The trade lanes in which survey respondents were actively involved are listed in Table 1. In general, participants were active on all major trade lanes, the trans-Pacific and trans-Atlantic being the most widely reported trade lanes.

5.2 New Service Contract Provision

The survey participants were requested to respond to twelve statements (see Table 2) related to the amended service contract provision. The responses received from each stakeholder group were analyzed individually and collectively as shown in Table 3.

Table 2. New Service Contract Provision

Statements:

1. The new service contract is a significant positive development in ocean shipping
2. Ability to negotiate confidential independent contracts will help our firm
3. Global contracts will become the norm in service contracts
4. 80% or more liner cargoes will move as contract cargo
5. We will negotiate tailored contracts
6. Service contracts will become more ingenious
7. Vital contract terms will remain confidential
8. Importers and exporters will team up for two-way contracts
9. There could be a single contract for liner and bulk cargoes
10. Service contracts will focus more on lowering the total logistics cost rather than gaining short term rate reductions
11. This provision will seriously harm small and medium size shippers
12. The new service contract provision will result in discrimination on a grand scale

Table 3. The New Service Contract Provision--Analysis of Responses

Statements	Carriers		Shippers		OTIs		Cumulative	
	Mean	S.D.	Mean	S.D.	Mean	S.D.	Mean	S.D.
1	3.62	2.07	3.60	1.22	3.44	1.26	3.56	2.51
2	3.38	1.82	4.40	1.22	2.67	1.50	3.33	1.67
3	2.85	1.34	3.40	0.71	3.89	1.89	3.30	3.21
4	4.00	2.87	3.40	0.71	4.22	1.00	3.96	4.98
5	4.77	4.95	3.80	1.00	4.13	2.08	4.38	6.38
6	4.58	1.41	4.40	1.41	4.22	2.00	4.42	6.69
7	4.15	3.40	3.20	1.22	2.56	2.00	3.44	3.58
8	3.54	2.63	4.40	1.41	3.67	1.89	3.74	5.68
9	2.77	1.14	3.60	1.22	3.22	2.50	3.07	3.36
10	2.92	1.82	3.00	0.00	3.56	1.30	3.15	2.51
11	2.38	1.52	3.60	0.71	3.56	0.50	3.00	0.55
12	2.38	1.34	4.00	1.22	3.56	0.50	3.07	1.67

There is a general recognition that the amended service contract provision is a positive development. The carriers are more in agreement with this statement compared to shippers perhaps because the responding shippers are relatively small in size. All respondents except the OTIs consider the ability to negotiate independent service contracts to help their firm. There is support for the widely reported statement that 80 per cent or more of U.S. liner cargoes will move under confidential service contracts although global contracts may not become the norm. Furthermore, from responses to statements five and six, the contracts themselves are expected to become more customized and ingenious. A good number of the carriers believe that crucial contract terms will remain confidential while shippers and OTIs in particular, are somewhat unconvinced. The responses support the argument that importers and exporters could team up for two-way contracts. Statement nine that shippers could sign a single contract for liner and bulk cargoes has very little support from carriers in particular. This could be because very few of the liner operators have the capability to handle bulk shipments and liner cargoes simultaneously. The ongoing distrust between carriers and shippers appears in the response to statement ten. Carriers are suspicious that shippers will use confidential contracting to gain short-term rate reductions more than lowering the overall supply-chain cost. Responding shippers and OTIs in particular believe that small and medium size shippers will be hurt by OSRA and that the new service contract provision will lead to a grand scale price and service discrimination.

5.3 Potential Impact of OSRA on Carriers

Respondents judged twelve statements (see Table 4) related to potential impact of OSRA on carriers. The responses (see Table 5) to statements one and two indicate an overwhelming consensus that liner conferences will lose their power and membership. The ongoing developments in the trans-Pacific and trans-Atlantic trades are good illustrations of this. Respondents generally agree that the new environment will foster competition in the liner market although shippers are still in doubt as to whether this would result in real rate reductions. Statement five was included with the expectation

Table 4. OSRA's Potential Impact on Carriers

Statements:
1. Liner conferences will lose power and membership
2. Liner conferences will become insignificant in U.S. trades
3. Competition will increase in US liner trades
4. Liner freight rates will drop because of the increased competition
5. There will be a better relationship between price and cost of liner services
6. Carriers will be more flexible in their dealings with shippers
7. Rate levels in US trades will be driven by economics and not the deregulatory provisions
8. There will be a greater concentration of economic power among the top operators
9. There will be more "APL-NOL" type mergers and acquisitions
10. There will be a carrier shakeout but freight rates will remain generally low
11. There will be a carrier shakeout followed by higher freight rates
12. New forms of carrier cooperation will emerge in US liner trades

that given confidential contracting, there will be a better relationship between freight rates and the cost of providing liner services. However, there is very little support for this view as shown in the table. While carriers and OTIs believe that carriers will be more flexible in their dealings with their customers, shippers remain unconvinced. There is somewhat of a consensus that rate levels in U.S. trades will be driven by economics and not by the new legislation or its deregulatory provisions. Accordingly, the response to the next two statements (eight and nine) appears rational. All participating stakeholders agree that the liner sector is headed for greater economic concentration and more mergers and acquisitions. The responses to remaining statements affirm the position that there will be a shakeout among liner operators and that it will be followed by higher freight rates. There is also a consensus that much as conferences may disappear from U.S liner trades, some other form of carrier cooperation will emerge to take its place.

Table 5. OSRA's Potential Impact on Carriers--Analysis of Responses

Statements	**Carriers**		**Shippers**		**OTIs**		**Composite**	
	Mean	**S.D.**	**Mean**	**S.D.**	**Mean**	**S.D.**	**Mean**	**S.D.**
1	4.54	4.93	4.60	1.73	4.78	3.54	4.63	8.85
2	4.23	2.89	4.60	1.41	4.67	2.12	4.44	7.09
3	3.38	1.82	3.20	0.71	3.33	1.26	3.33	2.70
4	3.00	2.19	3.00	0.00	3.33	1.73	3.11	3.97
5	2.92	2.63	3.00	1.22	3.22	1.26	3.04	4.04
6	4.00	2.22	3.40	0.71	3.78	1.26	3.81	4.04
7	4.23	3.20	3.80	1.00	3.56	1.89	3.93	4.39
8	3.62	3.20	4.60	1.41	4.38	1.41	4.04	6.30
9	3.69	2.63	4.60	1.73	4.56	0.71	4.15	5.59
10	2.92	1.71	3.00	1.00	3.56	1.50	3.15	3.51
11	3.08	2.06	4.00	1.00	3.33	1.26	3.33	3.05
12	3.92	1.71	4.00	1.22	4.00	1.15	3.96	4.87

5.4 Potential Impact of OSRA on Shippers

Table 6 shows the ten statements that were included in the subsection that dealt with OSRA's potential impact on shippers. The analysis of responses is given in Table 7.

Table 6. OSRA's Potential Impact on Shippers

Statements:
1. All shippers will benefit from OSRA 1998
2. Small and medium size shippers will benefit from OSRA 1998
3. Small shippers will lose from OSRA
4. Ocean carriers will play a significant role in the entire supply chain
5. Contract carriage will become prominent
6. 80% or more liner cargo will begin to move under service contracts
7. Absence of "me-too" provision is not important
8. Shippers will use a smaller number of core liner operators
9. Equipment availability will improve significantly
10. Previous carriers will continue to get their cargo

Responses to statements one, two and three emphasize the view that that all shippers are unlikely to benefit from OSRA 1998. This reflects the ongoing market concerns about OSRA's impact on small and medium shippers in particular. Respondents are in agreement that ocean carriers will play a significant role in facilitating global supply chains and that contract carriage will become more prominent. Statement six, a repetition from 5.2 (Statement 4) is once again affirmed indicating the likely transition from common carriage to contract carriage of liner cargoes. From statement seven, all respondents, especially the OTI sector, appear to consider the elimination of the "me-too" provision of the 1984 Act somewhat important. This reflects the inability of smaller shippers to take advantage of their similarly situated shipper status. This is somewhat confusing as it was reported that the number of me-too contracts was relatively low.[44] While carriers and OTIs believe that shippers will reduce their carrier choices, shipper respondents disagreed with that. All stakeholders are more or less in agreement that there will be no significant change in the equipment shortages that they experience occasionally. The statement that previous carriers will continue to get their cargo evoked almost a neutral response from all parties concerned.

Table 7. OSRA's Potential Impact on Shippers--Analysis of Responses

Statements	**Carriers**		**Shippers**		**OTIs**		**Composite**	
	Mean	**S.D.**	**Mean**	**S.D.**	**Mean**	**S.D.**	**Mean**	**S.D.**
1	2.54	0.96	2.40	0.71	2.00	2.00	2.33	3.85
2	2.92	1.50	3.00	0.00	2.44	2.50	2.78	2.70
3	2.77	1.14	4.00	1.00	4.00	2.65	3.41	3.51
4	3.77	3.20	3.20	1.41	3.88	1.41	3.69	4.60
5	4.54	0.71	3.80	1.00	4.50	0.00	4.38	6.26
6	4.31	2.87	3.60	1.22	4.38	2.08	4.19	5.07
7	2.54	0.50	2.40	0.71	2.50	2.00	2.50	2.59
8	4.00	5.77	2.60	0.71	4.38	1.53	3.85	5.76
9	2.62	1.52	2.00	1.22	2.75	1.53	2.54	4.15
10	3.00	1.71	3.20	0.71	2.88	0.58	3.00	4.15

5.5 Potential Impact of OSRA on Ocean Transportation Intermediaries (OTIs)

Table 8 lists eight statements used to gather opinions on the likely impact of OSRA on ocean transportation intermediaries. Table 9 shows the analysis of responses received.

Table 8. Impact of OSRA on OTIs

Statements
1. NVOCCs will benefit from deregulation
2. Freight forwarders will benefit from OSRA
3. Freight forwarders will establish in-house NVO operations
4. The number of traditional freight forwarders will drop because of the new rules
5. There will be many mergers, buyouts and alliances among forwarders & NVOCCs
6. NVOCCs will provide more value added services
7. NVOCCs should be allowed to sign confidential contracts with shippers
8. Freight forwarders should be allowed to sign confidential contracts with shippers

The OTI sector has made it abundantly clear that they stand to lose from OSRA's provisions. Interestingly, the responding carriers and shippers also seem to be in agreement with this (see analysis of statements one and two). The respondents indicate that freight forwarders will establish in-house NVO operations. Carriers and shippers seem to generally agree that the number of traditional freight forwarders will drop because of the new rules. All stakeholders agree that the OTI sector is headed for a turbulent period, characterized by many mergers, acquisitions and alliances. The OTIs believe that they will provide more value added services while shippers and carriers are somewhat skeptical. OTIs strongly agree that NVOCCs should have the same right as carriers to sign confidential service contracts which the shippers and carriers disagree.

Table 9. OSRA's Potential Impact on OTIs--Analysis of Responses

Statements	Carriers		Shippers		OTIs		Composite	
	Mean	S.D.	Mean	S.D.	Mean	S.D.	Mean	S.D.
1	2.31	3.30	2.00	1.00	3.11	0.45	2.52	3.36
2	2.54	1.50	2.20	0.71	2.44	1.30	2.44	3.05
3	3.69	3.86	4.20	1.73	4.00	1.15	3.88	6.83
4	3.46	2.63	4.00	1.22	3.56	1.00	3.59	4.45
5	3.69	3.06	4.00	1.22	3.63	0.82	3.73	5.17
6	3.00	1.15	3.20	1.22	4.13	2.08	3.38	4.71
7	2.08	3.20	2.80	0.71	4.44	3.46	3.00	4.51
8	2.00	1.89	2.20	0.71	3.67	1.89	2.59	2.70

5.7 Summary

The summary section consisted of four objective statements as well as two subjective questions (see Table 10). None of the four objective statements elicited a significantly positive response. The respondents do not seem to agree that OSRA will lower rates or improve the terms of service, or a combination of both. However, they were equally nonchalant when asked to judge on the statement that OSRA would not yield any positive effect on its stakeholders. Selected responses to the subjective questions are given in Tables 12 and 13.

Table 10. Summary Statements and Questions

Statements:
1. OSRA's main effect will be lower rates
2. OSRA's main benefit will be better terms of service
3. OSRA's main benefits will include both lower rates and better services
4. OSRA is unlikely to have any positive effect
Subjective Questions:
5. What should an ocean carrier do to be successful in the deregulated era?
6. What changes would you like to see in the OSRA 1998?

Table 11. Analysis of Responses to Summary Statements

Statements	**Carriers**		**Shippers**		**OTIs**		**Composite**	
	Mean	**S.D.**	**Mean**	**S.D.**	**Mean**	**S.D.**	**Mean**	**S.D.**
1	2.77	2.07	3.20	0.71	2.44	1.30	2.74	3.36
2	2.69	1.71	2.60	0.71	3.22	0.45	2.85	2.41
3	2.38	1.52	2.80	0.71	2.56	1.79	2.52	2.61
4	3.00	1.14	2.00	1.00	2.89	0.84	2.77	2.05

Table 12. What Should An Ocean Carrier Do to be Successful? (Subjective Question No. 5)

Selected Carrier Responses
• Listen to customers • Stay close to your clients • Offer differentiated services • Maintain deep pockets to survive • Focus on internal cost reduction/control • Defend your own cargo first, and then go for more • Focus on alliances and partnerships, and maintain customer intimacy • Build long term relationships with customers and offer value added services • Bring in progressive minded leadership that can lead effectively in a deregulated environment
Selected Shippers Responses
• Lower rates • Add value by offering more logistics support
Selected OTI Responses
• Be flexible • Improve customer service • Be willing and able to negotiate • Improve services rather than selling rate reductions

Table 13. A Wish List of Changes to OSRA 1998
(Subjective Question No. 6)

Selected Carrier Responses
• Too shipper-oriented • Deregulate completely • Carriers need more protection • Go all the way and deregulate totally, or do nothing at all • FMC and the Dept. of Justice should investigate predatory pricing of Asian carriers • Too soon to comment
Selected Shippers Responses
• Relax the regulatory requirements • Prevent giant rate increases such as the one presently experienced in the Pacific trade
Selected OTI Responses
• NVOCCs be given the same contracting rights as carriers • Eliminate tariff requirements for NVOCCs on LCL cargoes • Eliminate the confidentiality provision in service contracting • FMC should provide clear guidelines with regard to anti-competitive practices

6. PRELIMINARY OUTCOMES

The new Act went into effect on May 1, 1999 with the trade media predicting drastic changes.[45] OSRA has been in effect for eight business days as of writing this. While it is too early to detect any discernible market impact, it is worthwhile to note some of the significant changes that have led up to the May 1 implementation date as well as the reported developments during the first week of the new shipping law. It has been reported that a number of contracts have been signed and that the market is unaware of the confidential aspects of those contracts.[46] This goes against the dire prediction that nothing remains confidential in liner shipping business.[47] All indications are that the proposed significant rate increases in the eastbound-Pacific trade are holding on with even the traditional low cost operators joining the fray.[48] Private contractors that provide automated web-based rate retrieval systems appear to be flourishing and gaining new liner clients.[49] A House Judiciary Committee inquiry into anti-competitive practices of conferences, convened primarily in response to complaints from OTIs, opted to continue the status quo thereby putting an end to speculations about an abrupt end to the conference system in the U.S..[50] However what the House Judiciary Committee did not do to the conference system is happening even more effectively in the marketplace through the invisible hand of market forces. North Atlantic Agreement (NAA), a proposed trans-Atlantic agreement that would have dominated the trade has not seen the light of day. The two trans-Pacific conferences, Asia North America Eastbound Rate Agreement (ANERA) and Trans-Pacific Westbound Rate Agreement (TWRA) have ceased operations because of member resignations in preparation for the flexibility required to survive in a (partially) deregulated market environment and have been replaced by discussion agreements.[51] There has been a flurry of new entrants into the voluminous trans-pacific trade in anticipation of becoming a global player and benefit from the present market conditions in that trade.[52] Some incumbent operators in the trade have defended their position by expanding their offerings.[53]

Shippers' associations who remained relatively quiet under the 1984 Act have become aggressive and proactive in pursuing the new freedoms offered by the new Act. There is ample room for creativity on their part as illustrated by the case of East-West Shippers Council and the Glove Shippers' Association. Both these groups of smaller shippers are offering two-way contract hauls in the Pacific, a trade lane that is plagued with consistent trade imbalances.[54] Such creativity will benefit all stakeholders in the liner sector.

The National Customs Brokers and Freight Forwarders Association has formed the nation's largest shippers' association. It will have significant negotiating leverage with the operators because of the 50,000 TEUs that its members are expected to move annually.[55] The FMC has raised the bonding requirements for forwarders from $30,000 to $50,000 and for US-based NVOCCs from $50,000 to $75,000.[56] One reported possibility that has not materialized is the likelihood of the FMC being unprepared for the massive online filings that were expected to happen from May 1, 1999.[57] FMC appears to have lived up to its promise in this aspect. Furthermore, the FMC has also shown remarkable flexibility[58] by listening to its stakeholders and accommodating reasonable changes in the interim rules and regulations necessary to carry out the Act.[59]

7. CONCLUSION

The Ocean Shipping Reform Act of 1998 introduces significant changes in the U.S. liner shipping sector. While it goes a step beyond the 1984 Act in eliminating unnecessary regulations, it does not deregulate the industry completely. Its provisions will effectively eliminate the venerable common carriage system with a system dominated by confidential service contracts.

OSRA is unlikely to bring about dramatic rate reductions. The market forces of supply and demand will govern this as always. However, OSRA will allow the market forces to play a greater role in making commercial decisions. Although OSRA may not bring about short-run remedies for any of the stakeholders, it has the potential to build long-term partnerships between shippers, ocean carriers, seaports, domestic carriers and ocean transportation intermediaries, and meet the tailored logistics needs of their client base.

Under the OSRA regime, carriers will have to become more flexible and customer-oriented to maintain their market share. OSRA will shift the focus from conferences to the individual operators who will need to go beyond bare-bones services and provide a variety of value added services for those customers desiring such services. The conference system, as indicated by recent market developments, is on its way out in the U.S. trades. Liberal carrier agreements that do not interfere with commercial decisions of individual operators will replace the conferences. There are all indications that the FMC and the House Judiciary Committee will maintain a close eye on the activities of such discussion agreements. What is most essential for liner companies today is to have the right leadership that understands the needs of their clients and is willing to work with them. The market may have no favorites, but it is harsh and unforgiving in dealing with those that do not adapt to the changed environment.

8. ENDNOTES

[1] N. Shashikumar, "Competition and Models of Market Structure in Liner Shipping," Transport Reviews 15.1 (1995): 3-26.
[2] For details, see N. Shashikumar, "U.S. Maritime Regulation: History and Evolution of the 1984 Act," Maritime Policy and Management 15.3 (1988): 241-46.
[3] Act of 3 October 1961, Pub. L. No. 87-346, 75 Stat. 763.
[4] See note 2, listed above, for further details.
[5] Pub. L. No. 98-237, 98 Stat. 67, 46 U.S.C. app. 1701 *et seq.*
[6] See Chapter 2 (pp. 19-38) from N. Shashikumar, U. S. Shipping Act of 1984: A Scrutiny of Controversial Provisions (Castine: Maine Maritime Press, 1988).
[7] Bruce Vail, "Joining the Maritime Fray," American Shipper Nov. 1994: 28-32.
[8] Tony Beargie, "NIT League Files Complaint Against TAA," American Shipper Aug. 1994: 6-9.
[9] Tony Beargie, "Will FMC Watchdog Bite?" American Shipper Sept. 1994: 24-29.
[10] Tony Beargie, "NIT League Vs. FMC," American Shipper Dec. 1994: 23-24.
[11] Tony Beargie, "NITL Submits Its Proposals for Deregulation," American Shipper Feb. 1995: 11-12.
[12] Tony Beargie, "Is NITL Drive Losing Steam?" American Shipper May 1995: 39-42.
[13] Tony Beargie, "Ocean Shipping Reform Act of 1995?" American Shipper Aug. 1995: 12-14.
[14] Tony Beargie, "Shipping Law Reform Advances in House," American Shipper Nov. 1995: 12.
[15] Tony Beargie, " Shipping Reform Stalls in Senate," American Shipper Dec. 1995: 16-19.
[16] Tony Beargie, "Senate Starts Anew on Shipping Bill," American Shipper Jan. 1996: 15.
[17] Tony Beargie, "AAPA Opposes Shipping Act Bill," American Shipper May 1996: 16.
[18] "Shipping Reform Gets Boost from DoT," American Shipper Nov. 1997: 16.
[19] Tony Beargie, "Ocean Shipping Reform Act of 1998?" American Shipper Dec. 1997: 10-12.
[20] Tony Beargie and Chris Gillis, "Rate Deal," American Shipper Apr. 1998: 8-12.
[21] "NVOs Seek Tariff Exemption," American Shipper Oct. 1998: 20.
[22] "FMC Gets Ready for Shipping Reform," American Shipper Aug. 1998: 10-12.
[23] Tony Beargie, "Service Contracts," Nov. 1998: 8-12.
[24] S.414 Section 7.
[25] S.414 Section 8.
[26] S.414 Section 8 (a) (2).
[27] For details of the 1984 Act's original service contract provision, see N. Shashikumar, "Service Contracts: A Case Study of Unfulfilled Promises," Maritime Policy and Management 16.1 (1989): 13-26.
[28] S.414 Section 8 (c) (3).
[29] S.414 Section 5 (c) (1) and (3).
[30] S.414 Section 3 (19).
[31] S.414 Section 3 (13).
[32] S.414 Section 8 (c) (1).
[33] S. 414 Section 8 (c) (4).
[34] For details on the mandatory independent action provision of the 1984 Act, see N. Shashikumar, "Mandatory Independent Action: A Legislative Paradox," Maritime Policy and Management 15.4 (1988): 241-46.
[35] S.414 Section 5 (b) (8).
[36] S.414 Section 3 (17).
[37] S.414 Section 19 (a).
[38] S.414 Section 19 (b).
[39] S.414 Section 4 (a) (1).
[40] S. 414 Section 10.
[41] A controlled carriers is defined as an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government. S.414 Section 3 (8).
[42] S.414 Section 9 (a).
[43] The subsection that deals with the likely impact of OSRA 1998 on international intermodal movements is part of another study. However, the summary findings of that subsection will be integrated into the conclusions of this study.
[44] United States, Dept. of Transportation, Report of the Advisory Commission on Ocean Conferences, (Washington, DC: GPO, 1992): 29.

[45] Dennis L. Bryant, "Ocean Shipping Reform will Shake the Industry," Journal of Commerce Apr. 28, 1999: 13A.
[46] Bill Mongelluzzo, "Shippers Sign Deals as Reform Law Starts," Journal of Commerce May 5, 1999: 1A.
[47] Bill Mongelluzzo, "Pacific Economics won't Change," Journal of Commerce Feb. 10, 1999: 1A.
[48] Bill Mongelluzzo, "COSCO Joins the Club and will Raise Rates May 1," Journal of Commerce April 21, 1999: 1A.
[49] P.T. Bangsberg, "OOCL Taps U.S. Firm to Handle Tariff Data," Journal of Commerce May 6, 1999: 3B.
[50] Tim Sansbury, "Panel: Antitrust Secure," Journal of Commerce May 6, 1999: 1A.
[51] Bill Mongelluzzo, "Deregulation Fallout: Carrier Conferences Dying in the Pacific," Journal of Commerce Mar. 18, 1999: 1A.
[52] Paul Richardson, "Norasia to Enter Pacific Trade in May," Journal of Commerce Apr. 23, 1999: 1B.
[53] Bill Mogelluzzo, "Maersk Expands Pacific Capacity," Journal of Commerce May 7, 1999: 1A.
[54] "Partnershipping," Editorial, Journal of Commerce Apr. 9, 1999: 4A.
[55] Terry Brennan, "Shippers Told: Pull Together for the Best Deal," Journal of Commerce Mar. 8, 1999: 15A.
[56] For further details, see "FMC to Raise NVO, Forwarder Bonds," American Shipper Jan. 1999: 52.
[57] Tim Sansbury, "Ship Lines Fear Filing Snafu may Thwart Reform," Journal of Commerce April 8, 1999: 1A.
[58] Tim Sansbury, "FMC Overhauls Reform Act Plan," Journal of Commerce Feb. 19, 1999: 1A.
[59] As per Section 17 of S. 414.