Five-year report on OSRA

It’s been five years since since the Ocean Shipping Reform Act took effect on May 1, 1999. The impact of this legislation deserves evaluation.

OSRA took root in the early 1990s when shipping lines developed the Trans-Atlantic Agreement to support revenue recovery in that trade. The crude attempt at cartel-like pricing rapidly galvanized shippers, who joined with the National Industrial Transportation League and similar overseas shipper organizations. The NIT League’s new leadership was looking for ways to add value for members who were already enjoying the benefits of rail and motor carrier deregulation.

In January 1995, as the new Republican Congress (elected under the “Contract With America”) convened, the NIT League unveiled its initial proposal for ocean shipping reform. Once the shipper organization reached agreement with Sea-Land, two other American-flag carriers — APL and Crowley — quickly followed. However, foreign shipping lines organized an opposition campaign and pressured their railroad and port suppliers to oppose the legislation. The campaign worked and the 104th Congress adjourned without passing ocean shipping reform.

In early 1997, similar legislation was introduced to the 105th Congress. Legislation was stalled for over a year as foreign steamship lines, now working closely with organized labor, tried to halt the effort. However, within a year, the foreign lines recognized the inevitability of change, and they reached a compromise with the NIT League — which sealed the deal. The Senate approved the bill in April 1998, and the House followed in August. President Clinton signed the Ocean Shipping Reform Act on Oct. 14, 1998, and the law took effect six months later.

Since then, relationships between steamship lines have changed, as has the nature of customer pricing. In a clever negotiating gambit, overlooked by most steamship lines during the negotiations that produced OSRA, the NIT League allowed conferences to retain antitrust immunity. It appeared to be a victory for the carriers. But under the impending threat of confidential contracting, rate-setting conferences fell apart as it was impossible for them to maintain and enforce rate discipline. This was a clear victory for shippers, but the lines managed to increase the role of discussion agreements. These agreements, which unify former conference and non-conference lines, have been fairly successful in unbundling cost components to shippers for items ranging from documentation to canal transits and chassis.

OSRA was not a “big bang” deregulation — it was the next imposition of market freedom that had begun with the Shipping Act of 1984. But it did mark a major change in the way ocean carriers approached the market. Before OSRA, cost-based pricing prevailed. Prices reflected the sum of underlying expenses, to the extent a line could quantify them. Under OSRA, carriers had to address the challenge of price-based costing. Could they get their costs down to a level where they could make money on market rates?

OSRA’s impact has been significant. As vessel prices dropped, lines purchased ever-larger vessels as they sought economies of scale. Vessel alliances allowed lines to deploy these ships without having to fill them exclusively by themselves. The concerns of railroads and ports (which opposed this legislation a decade ago) and other industry suppliers were validated — steamship lines sought never-ending cost reductions in exchange for increased volume, even though the costs were not subject to scale economies. Today, many suppliers cannot even recover inflation increases. Meanwhile, shipping lines are finally facing the need to address legacy labor costs.

Early deregulatory proposals by the NIT League, which were subsequently abandoned, advocated eliminating the Jones Act, which limits U.S. intercoastal shipments to U.S. carriers. Another abandoned initiative involved the opportunity for non-vessel-operating common carriers to sign confidential contracts with their customers. While this has proved inconvenient for some, it has not kept many non-asset companies from expanding services beyond traditional freight forwarding. Today, major NVOs have petitioned the Federal Maritime Commission to allow them to engage in confidential contracting, and if that doesn’t happen, they are prepared to ask Congress to legislate this permission.

The market will most certainly continue to change along with customer requirements, economic conditions and trade flows. OSRA enabled the ocean shipping market to resemble the global market for other goods and services. Trade continues to increase in importance, and as it does so, we all continue to benefit from the freedom secured by OSRA.

Ted Prince is senior vice president of Optimization Alternatives Ltd. He can be reached at (804) 754-2291, or via e-mail at ted@oax.com.