STATEMENT OF

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BEFORE THE

UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY

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Chairman Fischer, Ranking Member Peters, Senators, thank you for the opportunity to appear before you today to discuss issues related to the Federal Maritime Commission and to share with you how the Commission works to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

The Federal Maritime Commission

The FMC is an independent agency with specialized expertise that administers a focused antitrust legislative and regulatory regime tailored to the particular factors affecting the international ocean liner trade. The Shipping Act of 1984 contains several major sections that are comparable to the competition and antitrust statutes administered by the Department of Justice and the Federal Trade Commission. Since passage of the original Shipping Act in 1916, Congress has recognized that the international ocean liner industry requires special legislative and regulatory consideration and oversight. This is due to the substantial amount of our Nation's international exports and imports being delivered via ocean carriage, the resulting critical role the industry plays in our international commerce, and the many competing, and potentially conflicting, maritime regulatory regimes and interests of our international trading partners.

Based on economic and non-economic conditions affecting the international ocean liner trade, Congress determined in 1916 to allow certain types of ocean carrier collaboration not permitted under other antitrust statutes, to ensure certain U.S. national objectives would be met. This included the availability of ocean transportation and stability of the shipping infrastructure upon which a material proportion of our international commerce depends. The antitrust laws, including the Shipping Act of 1984, are designed to protect competition, not individual competitors. Collaborative joint venture agreements among competitor ocean carriers, *as long as they are not found to be anticompetitive*, are recognized as beneficial, finding efficiencies and reducing cost that ultimately benefits U.S. exporters and saves the U.S consumer money.

Congress entrusted competition oversight and antitrust enforcement for this industry to a specialized agency with particular expertise in this legal area, close familiarity with the commercial and operational issues involved in the ocean liner industry, and sensitivity to the interests of U.S. stakeholders and our many international trading partners. The FMC reviews and monitors international ocean liner carrier joint collaborations or agreements under the Shipping Act to ensure that procompetitive efficiencies and cost savings are obtained for the benefit of U.S. consumers and anticompetitive effects are prevented or properly mitigated.

Congress noted the role they envisioned for the FMC in their Joint Explanatory Statement of the Committee of Conference – House Report No. 98-600, during consideration of the Shipping Act of 1984:

> [a]s new and evolving forms of cooperative conduct develop, the conferees believe that the Commission, rather than the antitrust agencies or the courts in the first instance, is in the best position to assess an agreement's benefits and detriments in light of the objectives of this Act.[1]

Given the significant growth in international commerce over the past three decades and the importance of this international trade to the U.S. economy, what was true in 1984 is even more valid today.

Our Annual Report was submitted on April 1, 2018, and provides a comprehensive summary of the Commission's activities and industry developments in Fiscal Year 2017 (FY 2017). I will address matters of interest to the Committee, discuss what we foresee as potential developments and trends in the coming year, and review our significant activities of the past year.

Petition P4-16 / Fact Finding 28

First, I would like to address an issue of interest to the Committee that Chairman Thune raised in a letter to the Commission last September. On December 7, 2016, the Coalition for Fair Port Practices, an organization of trade associations representing shippers, ocean transportation intermediaries, and domestic transportation companies, filed a Petition (P4-16) asking the Commission to begin a new rulemaking proceeding to address practices by marine terminal operators (MTOs) and vessel-operating common carriers (VOCCs) related to demurrage, detention, and related fees. Demurrage, detention, and related fees are charged by VOCCs and MTOs to compensate for the use of containers and terminal space and encourage the efficient movement of cargo through the terminals and the expeditious return of equipment.

The petitioners claimed that there were no standards as to what constitutes unreasonable demurrage and detention practices under the Shipping Act of 1984 which thereby lead to unfair practices that undermine the integrity and efficiency of the U.S. ocean transportation system. The petitioners asked the Commission to issue a rule, or alternatively, a policy statement interpreting unreasonable

[1] The Conference Report for the Shipping Act of 1984, H. Rept. 600 at pg. 32.

demurrage and detention practices and provide the industry with the tools it needs to more efficiently resolve demurrage and detention disputes.

The Commission received over one hundred comments on the Petition, and in January of this year, held a two-day public hearing that explored issues raised in the Petition by soliciting testimony from shippers, ocean transportation intermediaries, ocean carriers, truckers, and marine terminal operators.

Based on the testimony received in the public hearing and post-hearing comments filed by the parties and the public, the Commission voted last month to launch a formal investigation to examine practices of VOCCs and MTOs related to detention, demurrage, and per diem charges with Commissioner Rebecca F. Dye as the Investigative Officer. The investigation will focus on how demurrage and detention practices can optimize, not diminish, the performance of the American international freight delivery system. Commissioner Dye has broad authority to conduct the investigation, including the power to issue subpoenas, to hold public and non-public sessions, and to require reports. Under the Commission Order, she is charged with making recommendations for Commission action including investigations of prohibited acts; enforcement priorities; policies; rulemaking proceedings; or other actions warranted by the record developed in the proceeding. An interim investigation report is scheduled for September 2, 2018 and the final report of Commissioner Dye's findings and recommendations is due to the Commission for consideration, discussion, and vote no later than December 2, 2018.

Changes from 2016 to 2017 and Industry Oversight

The container shipping industry plays an integral role in America's international trade and commerce. There is no more efficient or economical way to move large volumes of commodities than aboard vessels, and the sectors of our economy tied to international trade depend on an efficient global intermodal transportation system. In 2017, approximately 34 million TEUs[2] moved through our Nation's ports, a 4 percent increase from 2016. U.S. imports surged during the year and accounted for most of this increase. The U.S. imported over 22 million TEUs last year valued at $754 billion. This was an increase of over 6 percent by volume from 2016. Meanwhile, the U.S. exported 12 million TEUs in 2017 with a value of $266 billion, a 1 percent increase over 2016 by volume.

In 2016, there were significant changes to the ocean transportation services marketplace, marked by merger and acquisition activity among shipping lines and the bankruptcy of a top ten ocean carrier. As a result of these events, the number of major multi-trade lane shipping lines operating in the international trades has dropped from 21 in 2011 to 12 global carriers following the merger of the three Japanese carriers into Ocean Network Express (ONE) and COSCO's acquisition of

[2] A Twenty-Foot Equivalent Unit (TEU) can be used to measure a ship's cargo carrying capacity. The dimensions of one TEU are equal to that of a standard 20 foot shipping container – 20 feet long and 8 feet tall. Two TEUs are equal to one forty-foot-equivalent unit (FEU).

Orient Overseas Carrier Line (OOCL). The table below lists the ocean carriers that serve the major east-west trade lanes. On a broader scale, thirty-six ocean container carriers serve the U.S. trades.[3]

Major Ocean Carriers by Operated Capacity

August 2011

Rank	Operator	TEU	Share %
1	Maersk	2,422,110	18.1
2	MSC	2,016,197	15.1
3	CMA CGM	1,291,816	9.7
4	COSCO	624,353	4.7
5	Hapag-Lloyd	622,799	4.7
6	Evergreen	614,115	4.6
7	APL*	580,658	4.3
8	CSAV*	525,483	3.9
9	Hanjin*	511,661	3.8
10	CSCL*	510,958	3.8
11	MOL*	420,821	3.2
12	OOCL	415,638	3.1
13	NYK*	398,667	3.0
14	Hamburg Süd*	394,652	3.0
15	K Line*	342,763	2.6
16	Zim	336,399	2.5
17	Yang Ming	336,328	2.5
18	Hyundai (HMM)	316,108	2.4
19	PIL	265,919	2.0
20	UASC*	234,815	1.8
21	WanHai	171,423	1.3
	Total	13,353,683	100.0

January 2018

Rank	Operator	TEU	Share %
1	Maersk	4,151,807	22.7
2	MSC	3,147,525	17.2
3	CMA CGM	2,514,170	13.7
4	COSCO	2,490,361	13.6
5	Hapag-Lloyd	1,547,865	8.4
6	ONE	1,483,371	8.1
7	Evergreen	1,060,224	5.8
8	Yang Ming	594,806	3.2
9	PIL	384,807	2.1
10	Zim	366,292	2.0
11	Hyundai (HMM)	347,136	1.9
12	Wan Hai	235,591	1.3
	Total	18,323,955	100.0

*These carriers no longer exist as independent operating and marketing entities

Source: ASX-Alphaliner Monthly Monitor, Top 30 Carriers, August 2011 & January 2018

Notwithstanding the reduction in the number of major shipping lines serving the international trades, the container industry remains very competitive. Using traditional antitrust analysis measures, the major transpacific and transatlantic trade lanes remain unconcentrated and competitive. These trade lanes have a Herfindahl-Hirschman Index (HHI) of 835 and 1,354, respectively.[4] This also holds true when one further breaks out the transpacific trade by West Coast and East Coast, as well as the transatlantic Northern European trade. The other transatlantic trade lane, the Mediterranean, is moderately concentrated according to the index, although it is by far the smallest by volume of the noted trade lanes. None of the major trade lanes are highly concentrated using this measure.

[3] Ocean common carriers that transport at least 0.1 percent market share or higher with a minimum of 18,000 containers per year in U.S. trades.

[4] Concentration is assessed using the HHI. Theoretically, the greater the degree of market concentration and the fewer the competitors, the higher the HHI. In its merger guidelines, the Department of Justice's (DOJ) Antitrust Division regards markets as not concentrated if the HHI is below 1,500. Under DOJ guidelines, mergers, and other less problematical forms of horizontal collaborations, that do not result in concentrated markets are unlikely to produce adverse competitive effects and, ordinarily, do not require further government regulatory analysis.

Trade Lane	TEUs	HHI
Asia-U.S. West Coast	13,595,933	826
Asia-U.S. East Coast	8,907,327	943
Transpacific-U.S.*	**22,594,058**	**835**
North Europe-U.S.	3,720,219	1,179
Mediterranean-U.S.	1,543,643	2,114
Transatlantic-U.S.	**5,263,862**	**1,354**

*includes Hawaii, Great Lakes and Puerto Rico (90,798 TEU)

The global fleet has increased in size in recent years. At the beginning of 2018, ocean carriers deployed 21.1 million TEUs of ship capacity globally, a 70 percent increase from 2009. Looking back over the past few decades, shipper demand for container ocean transportation was growing seven percent or more year after year. VOCCs were ordering more ships and bigger ships. Then the global recession began in 2008. There were three plus years of vessel construction commitments at all of the world's shipyards and shipper cargo demand was retreating. A perfect formula for overcapacity and depressed ocean freight rates. The backlog of new shipbuilding has now eased- in fact some shipyards in South Korea and China are now offering incentives in efforts to avoid large worker layoffs and yard closures. Global cargo demand has returned to modest to normal growth levels in major trade lanes. As consumer confidence and spending has grown, and the demand for ocean transportation services has increased, carriers have been able to fill their ships relatively close to capacity in the past year, despite having increased the total capacity on the major trade lanes.

Ocean carrier monitoring data confidentially filed at the FMC indicates that ocean carriers regularly experienced capacity utilization of over 90 percent on the inbound major transpacific trade throughout 2017 and about 90 percent on the transatlantic. Each of these trade lanes saw capacity utilization rise toward the end of 2017 compared to earlier in the year. However, vessel utilization on the backhaul route from the U.S. to Asia is only about 50 percent, with only slightly higher levels from the U.S. to Europe. Although ships are sailing relatively full, rates have remained comparatively low and are 22 percent below their peak in 2010. When adjusted for inflation, real rates are down 31 percent since 2010. According to FMC monitoring data, rates have remained steady on the major transatlantic trades.

There are some signs that the industry is moving towards a recovery from overcapacity and low freight rates. The percentage of the idled fleet has decreased. Many carriers have recently reported positive operating profits (i.e., EBIT or earnings before interest and taxes). However, charter rates for vessels of all sizes remain substantially lower than their peaks prior to the recession. Additionally, there does not appear to be any indication that typical sailing speeds are increasing. Other factors that can affect moving to a recovery are continued economic import and export growth in the United States. However, an economic downturn would have an adverse effect on demand for shipping and would slow down any recovery, thereby having a dampening effect on rates.

Nine of the remaining twelve major multi-trade lane ocean carriers are currently members of three global alliances– 2M, OCEAN, and Transportation High Efficiency (THE). These alliances are joint operating agreements of ocean carriers where they are allowed to discuss and agree on the supply of vessel capacity through the deployment of a specific service string or strings of vessels in various trade routes. Each alliance operates multiple services in the major transpacific (Asia-U.S. and Canada), transatlantic (Europe – U.S. and Canada), and Asia-Europe trades and supply over 90 percent of the vessel capacity in each of these trade lanes. These three major alliances are not the only vessel sharing agreements in which these and other ocean carriers participate, as carriers can and do participate in multiple agreements filed at the FMC. These include various space charter agreements, vessel sharing agreements, vessel sharing alliances, joint service agreements, and cooperative working agreements. In addition to the three global vessel sharing alliances referenced above, ocean carriers participate in more than 325 other agreements filed at the Commission.

Alliances can be very beneficial for U.S. exporters, importers, and consumers. Such alliances allow participants to obtain efficiencies and cost-savings that can be passed on to domestic consumers especially when healthy competition exists among vessel operators. Of note, the benefits of alliances and other forms of joint commercial vessel operating arrangements are recognized by Congress and addressed in the Shipping Act of 1984, as amended, and the contemporaneous Congressional record:

> Another important potential benefit to be considered is any efficiency-created aspects of an agreement. Agreements involving significant carrier integration are, if properly limited to achieve such important benefits, to be favorably considered by the Commission and the courts. Joint ventures and other cooperative agreements can enable carriers to raise necessary capital, attain economies of scale, and rationalize their services. Pooling arrangements can also offer significant benefits in reducing excess capacity and promoting efficiency.[5]

A reassuring data trend shows that even with the wave of mergers and acquisitions and new carrier alliance groupings, the individual ocean carriers within each alliance continue to independently and vigorously compete on pricing. Further, individual ocean carriers within the alliances continue to add and withdraw vessels from trades both inside and outside the alliances in which they participate, demonstrating that competition remains in both vessel capacity decisions and pricing decisions within the alliances. And over the last decade, the global vessel fleet has increased. The increase in capacity came from an increase in the number of vessels and an increase in the size of new vessels entering the global fleet. The increase in capacity occurred without a corresponding increase in cargo demand. Industry stakeholders have noted that the alternative to carrier alliances is further consolidation in the industry with fewer ocean carriers and less competition.

The Commission responded to the recent and ongoing structural changes in the international liner shipping industry with aggressive negotiations on proposed agreements and enhanced monitoring

[5] The Conference Report for the Shipping Act of 1984, H. Rept. 600 at pg. 36.

programs. With the increased size and market share of carrier alliances over the last four years, the FMC has insisted on narrower agreement authorities, more clear and specific agreement language, and enhanced monitoring requirements. Monitoring for these large alliances, entailing more details and timely filing of monitor reports has increased.

As alliances are ongoing cooperative agreements rather than mergers, the Commission is charged by Congress with continuous monitoring after the initial review and following the effective date of the agreements. The Commission examines both the structural market and actual carrier behavior under filed agreements to detect anticompetitive activity that would violate the Shipping Act.

Our transportation analysts, economists, and attorneys maintain a careful watch on industry trends, being vigilant for any indications of anticompetitive behavior by the participants operating within the filed agreements. The Commission is diligent in monitoring economic conditions and carrier agreement activities to identify potential anti-competitive concerns and the possible need for Commission action. The Commission may challenge an agreement in Federal District Court at any time after the effective date. The FMC will continue to monitor industry trends to identify when the industry enters a full recovery and vessel supply/cargo demand equilibrium. Such monitoring and analysis will be important for determining the extent to which rate increases at that time are attributable to an economic recovery or to coordinated action by carriers.

The FMC prioritizes all filed agreements[6] on a *red-yellow-green* scale, with red being higher profile agreements with the highest probability of potentially adverse market effects based on the agreement's authority in combination with the underlying market. All global alliances are categorized as *red* agreements. For these alliances, FMC staff prepares scheduled briefings for management and conducts more detailed quarterly reviews. The FMC monitors these *red* agreements for any exercise of market power that could allow alliance members to raise and maintain prices above competitive levels.

The FMC conducts a four-tiered analytical approach. The first tier is an immediate review of advance notifications of cancelled alliance sailings or other changes in vessel capacity that affect the supply of vessels of any individual alliance service by more than five percent of average prior weekly vessel capacity. The second tier consists of a careful review of submitted minutes of the most senior agreement committees that make vessel deployment decisions to assess the medium- to long-term outlook for capacity levels and how that could impact freight rates. Under the third tier, changes in individual alliance members' vessel capacity, capacity projections, and how that relates to changes in freight rates are analyzed. The final tier consists of reviewing and analyzing confidentially filed carrier data submitted by the alliances[7] for completeness and accuracy to determine if this data reveals any potential red flags.

[6] At the end of FY 2017, there were 484 agreements on file covering vessel operators and marine terminal operators.

[7] To prevent an alliance carrier from viewing another carriers' data, each alliance carrier submits its data individually to alliance counsel, who then prepares a collective submission on behalf of the alliance to the FMC.

The Commission also monitors trends in other carrier and marine terminal operator agreement filings. It is important to note that carrier agreements containing rate discussion authority have experienced a steady decline in membership and a number have been terminated. More specifically, of the sixteen rate discussion agreements, five have been terminated entirely in the past few months, including the Transpacific Stabilization Agreement, which has served as the primary price discussion forum for the ocean trade from Asia to the United States since 1989. Carriers appear to be ending their participation in rate discussion agreements for a number of reasons. Overcapacity continues to define the major east-west container shipping markets, keeping downward pressure on rates and limiting the effectiveness of these agreements. We also note carrier concerns over potential changes in the regulatory environment in the U.S. and abroad.

Further, the Commission monitors and analyzes commercial contracts confidentially filed in the FMC's SERVCON System between vessel-operating common carriers (VOCCs) and shippers for the transport of U.S. exports and imports. SERVCON is the Commission's repository for all filed service contracts, excluding exempt commodities, in the U.S. waterborne foreign commerce. Service contracts contain the rates, terms, and other service requirements agreed upon by VOCCs and shippers for the carriage of cargo. Commission staff conducts focused research and analysis on service contract terms and conditions, such as chassis usage/fees, demurrage terms/fees, etc., in order to investigate or clarify industry reports, gain better insight into emerging industry issues, and better inform policy decisions.

Review and analysis of confidentially filed commercial contracts between VOCCs and shippers provide a valuable tool to evaluate the competitive dynamics at play between shippers seeking to leverage cargo volumes in the pursuit of lower freight rates and/or special service terms and VOCCs competing to obtain that cargo. FMC staff also systematically monitors a sampling of service contracts for a number of beneficial cargo owner and non-vessel-operating common carrier (NVOCC) shippers on an ongoing basis to track overall competitive conditions in various trades. These reviews are designed to protect the shipping public from unfair and deceptive carrier practices by identifying and addressing potential concerted carrier activity under filed agreements found to have resulted in discriminatory practices involving rates or charges applied to any locality, port, or persons due to those persons' status as shippers' association or ocean transportation intermediary.

As noted earlier, although there has been a contraction in the number of lines operating in the international ocean trades, competition between companies remains vibrant and shippers continue to benefit from low rates. Overall market share of even the largest oceangoing carriers remain diffused. In the U.S. export and import trades combined, CMA CGM and Mediterranean Shipping Company (MSC) hold a 12.7 percent market share followed closely by Maersk in third position with 12.3 percent market share. These are far from "dominant" market positions as recognized by established economic standards. We will continue to look for any potential impact the carriers operating in the new alliances have on market dynamics, rates, and services.

While the United States' international trade depends on the liner trade, unfortunately there is no substantial U.S.-flag presence in the major transpacific and transatlantic trade lanes. The three largest carriers in the U.S. trades are CMA CGM, MSC, and Maersk Line. The invisible hand is not the only force that guides the global shipping industry, and nations throughout the world go to great lengths to support national companies, including indirect subsidies and direct capital infusion to maintain the national company's solvency. Some carriers are owned in part or whole by governments. The People's Republic of China (PRC) is the United States' largest trading partner in terms of cargo volume. The PRC actively invests in logistics, transportation, and infrastructure through initiatives such as Silk Road to advance strategic goals. The PRC-owned COSCO Shipping and Hong Kong-based OOCL will become the largest carrier of U.S. imports when the two companies' complete their merger this year. For the moment, such links between governments and national carriers can provide lower freight costs and greater service choices for imports and exports.

The ocean liner industry has been in a state of vessel oversupply for several years. The low freight rate structure in U.S. trade lanes is a direct reflection of that capacity supply/demand imbalance and American exporters and importers have been the beneficiary of those low freight rates. Such supply imbalances will not last forever. The Commission does not favor one competitor, sector, or industry stakeholder over another. We will continue to be attentive as we look for indications of rate increases that are products of market distorting, or collusive carrier business practices. However, it is important to remember that rate increases, in and of themselves, are not proof of an uncompetitive marketplace. At some point in the future, higher freight rates will be a normal result of a more equalized and healthy supply/demand marketplace.

The Commission continues to see marine terminal operators and port authorities' increased interest in how to use cooperative agreements filed with and reviewed by the Commission to their benefit. The nature and complexity of marine terminal operator agreements have increased considerably in recent years and marine terminal operators are cooperating in novel ways in an attempt to address the demands of significantly larger vessels unloading substantially larger numbers of containers at each port call. As a result, marine terminal operators have filed agreements to combine aspects of their operations, finance necessary infrastructure improvements, increase terminal velocity, develop collective solutions to mitigate cargo bottlenecks, and a host of other activities, all aimed at enhancing their ability to compete against other ports for cargo. There is a realization among these parties that seeking an alternate antitrust enforcement regime available to them through an agreement filed at the FMC can lead to increased efficiencies and lower costs.

We would review with interest the application of any parties from the port and terminal sector who want to use agreements to achieve goals that ultimately benefit the American shipper and consumer. Due to the unique nature of these types of agreements, monitoring of terminal agreements is specifically tailored to the agreement's scope, authority, and potential competitive impact of the agreement.

Regulatory Reform and Agency Actions

Regulatory Reform

Throughout FY 2017 and into FY 2018, the Commission has been actively taking steps to identify and address outdated, unnecessary, or unduly burdensome regulations. Further, the Commission aggressively looks for ways to make compliance with Commission requirements easier and more cost effective for shippers, carriers, and ocean transportation intermediaries (OTIs).[8]

Though they do not apply to the Commission, the FMC voluntarily initiated a regulatory reform effort in the spirit of Executive Order 13771, *Reducing Regulations and Controlling Regulatory Costs* and Executive Order 13777, *Enforcing the Regulatory Agenda*. The Acting Chairman designated a Regulatory Reform Officer and a Regulatory Reform Task Force (RRTF) was established consistent with the Executive Orders. The RRTF issued a Notice of Inquiry for public participation in the regulatory reform process and is working expeditiously to review existing regulations and provide regulatory relief, while maintaining the Commission's ability to complete its statutory mandate to protect competition and integrity in America's ocean supply system.

Flowing from the work of the RRTF, the FMC publicly issued a Plan for Regulatory Reform of Existing FMC Rules (Regulatory Reform Plan). The Regulatory Reform Plan identifies regulations for future review. The work on this Plan is projected to be completed in FY 2019. In addition to the Plan, the FMC established a Regulatory Reform web page and has pledged to provide additional information to the public on the Commission's website as the Regulatory Reform Plan progresses.

While the work of the RRTF is ongoing, the Commission has already taken steps to amend regulations related to Service Contracts, Negotiated Rate Agreements (NRAs), and NVOCC Service Arrangements (NSAs) to eliminate or reduce unnecessary filing obligations. On March 29, 2017, the Commission issued a deregulatory final rule updating and modernizing the FMC's regulations governing Service Contracts and NSAs, reducing the regulatory burden and costs of compliance with the agency's regulations. On November 29, 2017, the Commission issued a Notice of Proposed Rulemaking (NPRM) to simplify and streamline its NSA and NRA rules and procedures. The NPRM sought public feedback on three proposals: ending the requirement for NSAs to be filed with the Commission; expanding the ability of NVOCCs and shippers to amend NRAs; and allowing the act of tendering cargo to be considered acceptance of a rate under the terms of the NRA. The Commission is reviewing filed comments and moving forward with review of proposed deregulatory actions on this item. These changes will make it easier and more efficient for shippers and carriers to do business. Global supply chain operations will benefit through lower costs, which should result in savings realized by our U.S. exporters and importers.

Tariff publication requirements is a statutory obligation that the Commission will consider for review and possible modification under its Regulatory Reform Plan. Currently, OTIs and VOCCs are required to publish both rates and applicable terms, conditions, and rules in their tariffs, even

[8] OTIs includes non-vessel-operating common carriers and ocean freight forwarders.

though the overwhelming majority (92 percent plus) of cargo moving in most U.S. trade lanes does so under the terms of service contracts. In other words, current law and Commission regulations require vessel operating companies to publish "shelf" freight rates that have nothing to do with the actual day-to-day market prices being charged to shippers. This statutory requirement for tariff filings could be relieved under the exemption authority that Congress provided to the Commission in the 1984 Act and the 1998 OSRA amendments.[9]

Supply Chain Innovation Team Initiative

The Shipping Act contemplates a regulatory process for the foreign commerce of the United States with a minimum of regulatory costs. The Supply Chain Innovation Team Initiative (SCITI) was led by my colleague, Commissioner Rebecca F. Dye. The FMC initiative made a meaningful contribution towards enhancing supply chain efficiency for America's exporters and importers. Whenever possible, the Commission seeks to facilitate the cooperation of stakeholders to develop non-regulatory commercial solutions to address bottlenecks in the international supply chain.

The SCITI was an outgrowth of the Commission's previous work on port congestion issues in the fall of 2014. Launched in May of 2016 and focused on challenges faced by America's international maritime supply chains, Commissioner Dye, with her volunteer teams of industry leaders composed of shippers, marine terminal operators, trucking companies, ocean carriers, port officials, labor representatives, logistics companies, and other stakeholders, worked to develop actionable commercial solutions – including in particular – the key content for a national seaport information portal that could provide the necessary critical information sought by all parties involved in moving containers to/from vessels, through seaports, and onward to a final destination.

SCITI created two teams – one focused on import supply chains and the second focused on export supply chains. The work of both the import and export teams was summarized in a Final Report prepared by Commissioner Dye and presented to the Commission on December 5, 2017. *Supply Chain Innovation Teams Initiative: Final Report* presents the teams' view that greater visibility across the American freight delivery system was the one operational innovation likely to most increase U.S. international supply chain performance. The report also highlights the concept of a common National Seaport Information Portal for critical shipment information, possibly organized by business dashboards tailored to the needs of each supply chain actor.

Protecting the Public

The Commission licenses and regulates ocean freight forwarders and NVOCCs. There are currently 6,417 OTIs that are licensed/registered with the FMC. In furthering our mission to protect the public from unfair and deceptive practices, the Commission crossed an important milestone in FY 2017 with the successful launch of the OTI triennial renewal process. An important program with which the Federal Maritime Commission fulfills our mission of protecting the public is by investigating, conducting background examinations, and approving the Qualified Individual, i.e. the person who is the senior employee in charge of service in the daily operations of the OTI.

[9] 46 U.S.C § 40103 (a)

Several years ago, the Commission reviewed a survey of OTIs and discovered that a significant number had moved to new addresses without informing the FMC; that, too frequently, the Qualified Individual, whose qualifications were reviewed as the basis of granting the original FMC license, was no longer an employee of the company; and other filing discrepancies. A simple matter of not having the correct address of an OTI on file hampers the ability to have proper service in a legal matter and is an important issue. Failing to maintain an approved Qualified Individual is a serious matter. During the first year of our Triennial OTI License Renewal program over 1,350 license renewals were received, reviewed, and accepted by the Commission representing nearly 30 percent of the 4,870 active U.S.-based OTI licenses. Of the 1,350 reviewed, 77 percent provided updates regarding changes to the owners or officers, with 10 percent reporting changes to their physical or email address. Importantly, the renewal program revealed 94 incorrect Qualified Individuals. Therefore, bringing and maintaining our records up to date is an important ongoing initiative.

Given advances in information technology, the Commission determined that there was an opportunity to improve the quality and accuracy of information the agency has on file concerning OTIs, while doing so in a manner that was making the process easy to complete and with minimal industry burden. The renewal process is online and in most cases takes only five minutes to complete—facilitated by prepopulating the outgoing FMC inquiry with the OTI's information already on file with the FMC, such as company ownership, corporate officers, business locations, changes in affiliation or branch office. Moving to a web-based update system not only aids the Commission in meeting its mandate to safeguard the public, it significantly reduces the compliance burdens and costs upon the regulated entities.

FY 2019 Budget Request, Strategic Plan, Management Reforms

Fiscal Year 2019 Budget

The FMC is a small agency with a very technical mission and a need for a very specialized workforce. Our requested level of funding for FY 2019 is $27,490,000. Overall, the bulk of the Commission's budget, approximately 86 percent, is consumed by rent, salaries and benefits, and communications. Our staff includes a high percentage of transportation economists and attorneys – career fields that tend to command more compensation in order to successfully recruit and retain qualified candidates and is the heart of the agency's mission. Overhead costs such as interagency services, commercial services, travel and transportation, supplies, and equipment account for most of the remaining budget dollars. The Commission has very little, if any, control over many of these costs. Year in and year out, the rent we are charged rises, the supplies and resources we purchase to support our economists and attorneys' competitive analysis and legal research cost more, and information technology (IT) costs—including IT security and telecommunications bills—rise. We constantly work to find a balance between our resources and our workload; however, if there is a surge of agreement filings, if a class of plaintiffs choose to seek relief at the FMC, or if our building security requirements increase, then we work to prioritize our mission-critical activity and reallocate resources to the extent possible.

Finding ways to conduct the Commission's business more efficiently is an important goal we share, Chairman Fischer. As such, the Commission works to find ways to make every dollar appropriated to us go as far as it can. A recent example of innovative cost-sharing is our agreement with another small, independent agency, the Surface Transportation Board, to share the services and costs of a single Equal Employment Opportunity (EEO) Officer to ensure both agencies' responsibilities while maintaining solid support of our EEO principles.

As I mentioned earlier in this testimony, the Federal Maritime Commission continues to faithfully implement the purposes and mission of the Shipping Act. I am proud of the work the Commission's staff does each day to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

Strategic Plan for 2018-2022

A proven method of achieving strong performance at an organizational level is through focused and meaningful strategic planning. Strategic planning is a driving force in an organization's success. Government agencies benefit from strategic planning that is focused, and designed to unite all agency team members to find ways to achieve our mission more effectively while delivering value to the taxpayer. Earlier this year, the Commission finalized a new Strategic Plan for FY 2018-2022. This document will guide our work into the future.

Agency Reform and Long-Term Workforce Plan

The President has made reshaping the federal government one of the key initiatives of his Administration. Through an Executive Order issued in March and a memorandum issued in April 2017 by the Director of the Office of Management and Budget (OMB), the Administration instructed departments and agencies throughout the Federal government to include an Agency Reform and Long-Term Workforce Plan (Workforce Plan) as part of their FY 2019 budget submissions. A prime directive in the Executive Order and OMB memorandum was for Federal agencies to explore, develop and implement plans to streamline, consolidate and flatten their organizational operations and structure.

Over the last year, the Commission developed a Workforce Plan as directed by OMB. In broad terms, our 5-year Workforce Plan will (i) flatten the organization and reduce the number of supervisory positions; (ii) reduce the number of SES positions; (iii) establish a new two-tier SES structure to realign and control SES salary costs; (iv) realign and combine functions within the Commission (some subject to Congressional approval); and (v) continue our emphasis on achieving operational efficiencies and improving customer service through automation projects.

Our goal is to find ways to do more while controlling costs. Delayered work groups with broader spans of control and less hierarchy have been proven to improve efficiency, employee engagement and accountability. We are working to reshape the FMC and improve operational effectiveness as required by the Administration while minimizing the impact to the 116 committed and vital employees of the FMC.

Conclusion

Thank you for this opportunity to discuss the mission of the Federal Maritime Commission, current state and future challenges of the ocean shipping industry, as well as highlight some of the Commission's recent achievements and future priorities. Thank you, I am always ready to be of assistance to the Committee and I will be pleased to answer any questions you may have.