STATEMENT OF
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ON
REVIEW OF FISCAL YEAR 2020 BUDGET FOR
THE COAST GUARD & MARITIME TRANSPORTATION PROGRAMS
BEFORE THE
SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Maloney, Ranking Member Gibbs, Members of the Committee, thank you for this opportunity to appear before you today to testify in support of the Fiscal Year 2020 budget request of the Federal Maritime Commission and to discuss the work of the agency as well as developments in the international ocean transportation industry we monitor. I am joined today by my colleagues, Commissioners Rebecca F. Dye and Daniel B. Maffei.

The Federal Maritime Commission

The FMC is an independent agency with specialized experience in the international ocean transportation industry. We administer a focused antitrust regulatory regime tailored to the particular factors affecting the ocean liner trade.

Based on economic and non-economic conditions affecting the international ocean liner trade, Congress enacted the Shipping Act of 1916 and first constituted the United States Shipping Board. The 1916 Act provided for certain types of competitor collaborations that would not traditionally be permitted under other antitrust statutes in order to ensure the availability of ocean transportation and stability of the shipping infrastructure upon which our international commerce depends. Under the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, Congress found that collaborative joint venture agreements between and among ocean carriers and marine terminal operators may and do provide efficiencies and reduced costs that ultimately benefit U.S. exporters and saves the U.S. consumer money *provided that such agreements are review by the Commission and determined to not be materially anticompetitive*. The FMC reviews and monitors these joint collaborations and agreements under the Shipping Act to ensure that procompetitive efficiencies and cost savings are obtained for the benefit of U.S. consumers, and that any anticompetitive effects are prevented or properly mitigated.

Our Annual Report was submitted on April 1, 2019 and provides a comprehensive summary of the Commission's activities and industry developments in Fiscal Year 2018. Our Fiscal Year FY 2020 Budget Justification was submitted on March 18, 2019 and provides detailed support for our budget request.

Fiscal Year 2020 Budget Request

The FMC's Fiscal Year (FY) 2020 Budget Request is $28,000,000 to support 128 full-time equivalent positions (FTEs). This funding level builds on the Commission's FY 2019 budget request of $27,490,000 and primarily reflects necessary increases in operating costs and information technology modernization.

The FMC is a small agency with a technical, commercial, and competition focused mission requiring a specialized workforce. The great majority of our budget, $24,057,000, goes to Personnel ($20,638,000) and Rent ($3,419,000). All other costs associated with operating the agency such as interagency expenses, utilities, information technology, travel, supplies, equipment, miscellaneous purchases, and consulting services are funded from the remaining $3,943,000.

The FMC staff includes a high percentage of economists and attorneys – career fields that tend to command higher compensation in order to successfully recruit and retain qualified candidates. The agency must continue to invest in our workforce, particularly in attracting and retaining the economists and transportation analysts who perform the critical economic analysis and oversight of the marketplace. Overhead costs such as interagency services, commercial services, travel and transportation, supplies, and equipment account for most of the remaining budget dollars. We constantly work to find a balance between our resources and our workload, working to prioritize our mission-critical activity.

LoBiondo Legislation

On December 4, 2018, the "Frank LoBiondo Coast Guard Authorization Act of 2018" was enacted as Public Law No. 115-282 (LoBiondo Act). Most of the changes are aimed at broadening the Commission's authority and increasing the tools at the Commission's disposal to carry out its mission. It makes several changes and places further restrictions on cooperation between or among ocean carriers and marine terminal operators (MTOs). These changes include: removing antitrust immunity for certain activities; prohibiting certain joint procurement activities; restricting overlapping agreement participation; and modifying the legal standard for enjoining agreements to jointly procure certain services. The LoBiondo Act also expands and clarifies the Commission's authority to seek information from MTOs, and, during agreement review, to seek information from interested parties other than the filing parties. The legislative history reveals that many of these provisions were intended to address concerns regarding carriers' ability to form alliances and then collectively negotiate with certain domestic service providers, and the potential impacts on shippers and such port service providers. H.R. Rep. No. 115-1017 at 5—6 (2018).[1]

The Commission applauds the Committee's work on this important legislation. We are diligently working on the LoBiondo Act's implementation and I assure the Committee that the additional authorities provided in the legislation will be implemented and enforced by the Commission as intended by Congress.

Industry Developments 2018

The container shipping industry plays an integral role in America's international trade and commerce. American importers and exporters rely on container shipping to meet domestic retail demand,

[1] H.R. Rep. No. 115-1017 accompanied H.R. 2593, an earlier authorization bill that contained several of the provisions later incorporated in the Authorization Act.

to provide the inputs manufacturers require, and to allow our companies and farmers to reach markets overseas.

In FY 2018, approximately 35 million TEUs (twenty-foot equivalent units) moved through our Nation's ports, a 5 percent increase from FY 2017. The U.S. imported over 23 million TEUs last fiscal year valued at $803 billion. This was an increase of over 6.3 percent by volume from FY 2017. In the same period, the U.S. exported approximately 12 million TEUs in FY 2018 with a value of $290 billion, a 2.7 percent increase over FY 2017 by volume. The U.S. share of the world's container trades was 16 percent, down slightly from FY 2017. Primarily as a result of continued growth in U.S. imports, the U.S. container trade imbalance worsened in FY 2018. Such imbalance is measured by the number of imported loaded containers versus exported loaded containers. For every 100 loaded export containers shipped from the U.S., 195 loaded containers were imported into the U.S. For FY 2017, that metric was 190 loaded import containers.[2]

The last decade has seen significant changes to the ocean transportation services marketplace. Mergers and acquisition activity among shipping lines and the bankruptcy of a top-ten ocean carrier reduced the number of major ocean carriers serving the international trade. Further, the formation of three global alliances – 2M,[3] OCEAN,[4] and THE[5]--then realigned the operation of the U.S. east-west trades. Compared with prior years that experienced these changes, 2018 was a more stable period for the container shipping industry.

2019 Industry Challenges

The calm of 2018 suggests the ocean carriers are in a settling period, assimilating companies they have acquired or merged with while adjusting to the new marketplace structure. Nevertheless, the industry faces business and operational issues that may challenge their revenues and financial health.

Excess Capacity

There continues to be a surplus of carrier vessel capacity compared to global trade volumes. Shipping lines traditionally address this imbalance by offering lower freight rates in order to fill vessels or maintain an individual carrier's market share. Ocean freight rates have been relatively flat over the past decade, 2009-2018. Average revenue (rate per container) from China to the U.S. West Coast declined by nearly 17 percent in nominal terms. However, adjusted for inflation, real rates are 29 percent lower over this period. This decline provides an insight into the competitive pressure ocean carriers face as well as the real value ocean transportation has provided to American companies through consistently low ocean freight rates. In terms of growth, the vessel capacity of the ocean lines continues to expand through new vessel building at a rate that exceeds the growth in global trade volumes.

[2] Source: PIERS Interactive.
[3] The 2M Alliance carriers are Maersk Line and Mediterranean Shipping Company.
[4] The Ocean Alliance carriers are CMA CGM, COSCO Shipping Line, Evergreen, and Orient Overseas Container Line.
[5] THE Alliance carriers are Hapag Lloyd, ONE, and Yang Ming.

IMO 2020 Low Sulphur Rule Requirement

An International Maritime Organization (IMO) Rule, commonly referred to as "IMO 2020", requires ocean carriers, beginning in January 2020, to burn low sulfur fuel that has a 0.5 percent sulfur content *or* install exhaust scrubbers in order to continue to run their vessels with heavy bunker fuel that contains 3.5 percent sulfur content. The low-sulphur requirements could boost ship fuel costs by as much as one third, and estimates run between $10 to $15 billion dollars a year in additional costs for ocean carriers. There is uncertainty about how some ocean carriers will comply with the IMO requirements, whether adequate supplies of low-sulphur fuel will be available, whether adequate supply of scrubber equipment will be available, and how individual ocean carriers will try to pass on part or all of these additional costs to cargo shippers.

The Commission is monitoring this issue because of our interest in an efficient marketplace and to ensure that carrier efforts to recover costs associated with the new standards do not violate the Shipping Act. A primary concern to the Commission under the Shipping Act is whether ocean carrier bunker charge adjustment formulas are clear and definite.

Review of Ocean Carrier and Marine Terminal Operator Agreements

Ocean Carrier Agreements

As noted above, nine of the major ocean carriers serving the U.S. trades have organized themselves under the Shipping Act into three major *global* alliances – 2M, OCEAN, and THE. These alliances are joint operating agreements of ocean carriers where they are allowed to discuss and agree on the deployment of specific service strings of vessels in various trade routes. Each alliance operates multiple services in the major Trans-Pacific (Asia-U.S. and Canada), and Trans-Atlantic (Europe-U.S. and Canada) trades. These three alliances supply 80 percent of the vessel capacity in each of these trade lanes.[6]

By all accounts, the marketplace for containerized ocean transportation services remains open and highly competitive. The Herfindahl-Hirschman Index values for the Trans-Pacific and North-Atlantic trade lanes reveal that the marketplace remains unconcentrated. Smaller companies in specialized trades continue to exist and there are even new market entrants. No one company, even among the top carriers, has a dominant position in trade volumes to or from the United States. At year end, for U.S. combined import and export trades, the market share for all container operators were as follows: Maersk (13.2%), CMA CGM (12.8%), MSC (12.6%), COSCO/OOCL (12.0%), Ocean Network Express (10.8%), Hapag Lloyd (8.5%), Evergreen (7.7%), Yang Ming (3.9%), HMM (3.8%), Zim (2.6%), and all other combined carriers such as Crowley, Seaboard, PIL, SM Lines, Wan Hai, Matson, and ACL (12.1%).[7]

As discussed below, a critical function of the Federal Maritime Commission is to ensure that these carrier agreements do not violate the Shipping Act's competition standard.

[6] Source: PIERS Interactive.
[7] Source: PIERS Interactive.

Marine Terminal Operator Agreements

There are 276 Marine Terminal Operators along the U.S. East, Gulf, and Pacific coasts that are registered with the FMC. The Commission oversees 89 port and MTO joint and/or collaborative agreements among these operators. To facilitate operations, some U.S. marine terminals enter into agreements on rates and/or terminal charges, or to cooperate in their daily terminal operations and related practices.

The demands of significantly bigger vessels unloading larger numbers of containers at each port call demands more of marine terminals in terms of productivity and infrastructure. As a result, ports and 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 business activities, all aimed at enhancing their ability to compete against other ports for cargo.

In recent years, it has become increasingly important for ports and marine terminal operators to address and mitigate air quality and traffic congestion impacts on their local communities. Ports use agreements filed at the Commission to address environmental and community impact issues that require coordination within a port or region.

Ports and MTOs use agreements filed at the Commission to address concerns that require a collective solution. For example, the supply of chassis in ports is critical to moving containers into and out of the ports. FMC-filed agreements have been used to help ports and MTOs in an area or region to manage chassis availability.

Competition and Integrity for America's Ocean Supply Chain

Ensuring Competition

At the heart of the mission of the Federal Maritime Commission is ensuring a competitive and reliable international ocean transportation system that supports the U.S. economy and protects the public from unfair and deceptive practices. We keep constant oversight of the marketplace in general and the specific monitoring of ocean carrier and/or marine terminal operator behavior under agreements filed at the Commission. The FMC monitors agreements, service contracts, and tariffs in key trades as barometers of market cycles and shifts in the balance of supply and demand.

The reporting requirements mandated by the Commission for the purposes of marketplace and agreement monitoring are not static. The Commission continuously refines procedures and requirements to help us better monitor and interpret developments in the shipping industry.

The Commission may challenge an agreement in Federal District Court during the 45-day initial agreement filing period or any time after the effective date if we find evidence that service levels, freight rates, or charges by and among a group of ocean carriers or MTOs operating within an agreement are not reflective of the overall prevailing market conditions.

Ensuring Integrity

The FMC engages in a variety of activities to protect the public from financial harm, including licensing, registration, and monitoring of financial bond requirements for over 6,000 ocean transportation intermediaries (OTI)[8]; periodic auditing of these OTIs, investigating and prosecuting unreasonable or unjust practices, ruling on private party complaints alleging Shipping Act violations, and helping mediate and resolve disputes concerning the shipment of goods or the carriage of passengers. These activities contribute to the competitiveness, integrity, fairness, and efficiency of the Nation's import and export supply chains and ocean transportation system. In addition, the FMC ensures that passenger vessel operators maintain proper financial coverage to reimburse cruise passengers in the event their cruise is cancelled or to cover liability in the event of death or injury at sea.

Removing Regulatory Burdens, Clarifying the Shipping Act, and Removing Obstacles in the Ocean Supply Chain

The Commission systematically reviews its regulatory requirements, interpretations of the Shipping Act, and processes for efficiency and effectiveness. A valuable and important role for the Commission is its ability to bring stakeholders together and facilitate workable solutions to problems.

Regulatory Reform Initiatives

The Commission established a Regulatory Reform Task Force in March 2017 with Managing Director Karen V. Gregory assigned as the Task Force leader. Since its establishment, the Task Force has undertaken a comprehensive examination of Commission rules and regulations, published notices and solicited the views of the public as part of the process, and released a strategy and time schedule for achieving those priorities.

41102(c) Interpretive Rule

Effective December 17, 2018, following full notice and public comment procedures, a new Commission interpretive rule clarified for the industry and shippers the FMC's jurisdictional and evidentiary requirements when alleging conduct that would violate the Shipping Act's prohibition on unjust or unreasonable practices under 46 U.S.C. 41102(c). Pursuant to this rule, a common carrier, OTI, or MTO must engage in a practice or regulation in a normal, customary, and continuous basis and such practice or regulation must be found to be unjust or unreasonable in order to constitute a violation of the Shipping Act. This interpretation restores the standard of what constitutes a violation under section 41102(c) of the Shipping Act to its traditional and proper definition under the Shipping Act of 1984, reflects longstanding Commission case law and related legal precedent, and reflects the clear intent of Congress.

[8] Ocean Transportation Intermediaries include non-vessel operating common carriers and ocean freight forwarders

Fact Finding 28

On March 5, 2018, the Federal Maritime Commission initiated Fact Finding Investigation No. 28, a non-adjudicatory investigation into the practices of vessel operating common carriers and MTOs relating to U.S. demurrage and detention charges. Demurrage is the charge per container for the use of ground space at the marine terminal. Detention is the charge by the ocean carrier for use of the container equipment. All charges are subject to a set number of free days.

The Commission designated Commissioner Rebecca F. Dye as the Fact-Finding Officer and directed her to develop a record through public or nonpublic sessions, and issue interim and final reports and recommendations. In April 2018, Commissioner Dye issued an Information Demand on ocean carriers and marine terminal operators that provided the informational foundation for her investigation. The second phase of her work consisted of field interviews that took place at the Ports of Los Angeles and Long Beach, the Port of Miami, and the Port of New York and New Jersey. As a part of that phase of her investigation, she also conducted interviews in Washington, D.C.

The Fact-Finding Officer conducted the investigation and issued an Interim Report on September 4, 2018 finding that bringing clarity, access, and efficiency to the delivery of cargo from carrier to shipper is key to improving the process for how and when detention and demurrage charges are levied. The Interim Report also considered organization of Innovation Teams of industry leaders to meet on a limited, short-term basis to refine commercially viable demurrage and detention approaches. On December 3, 2018, the Fact-Finding Officer issued a Final Report. The Commission approved the Fact-Finding Officer's Final Report on December 7, 2018.

The work of Innovation Teams consisting of industry experts who are part of the ocean freight transportation system and global supply chains commenced the next phase of Fact Finding 28. The Teams met with Commissioner Dye at the Commission in early April and considered four areas identified in the Fact Finding 28 Final Report as offering the best opportunities to refine commercially viable demurrage and detention approaches: (1) transparent and standardized language for detention and demurrage practices; (2) clear, simplified, and accessible billing and dispute resolution practices for detention and demurrage charges; (3) evidence that would be relevant to resolving demurrage and detention billing disputes; and (4) consistent notice to cargo interests of container availability.

A report to the Commission on the Innovation Teams, Commissioner Dye's findings, and any possible recommendations she may make, is scheduled to be filed by September 3, 2019.

Conclusion

I am proud of the contribution our agency makes toward ensuring competition and integrity for America's ocean supply chain. The Commission is grateful for the support of this Committee and its Members. I look forward to working with each of you. I am happy to answer any questions you may have about the jurisdiction, work, or budget request of the Federal Maritime Commission.

Thank you.