



FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Mr. John Butler
President & CEO
World Shipping Council
1156 15th Street, NW
Suite 300
Washington, D.C. 20005

Dear Mr. Butler:

We are writing to express our growing concern about reports that ocean carriers are refusing the carriage of U.S. exports. While we understand the current surge of import cargoes into the United States has stretched our supply chain's capacity to handle cargo in certain seaports, it is of great concern, if true, that focus on the delivery of surge import cargoes works to the detriment of U.S. exporters. The immense fluctuations in trade caused by COVID-19 have been exacerbated by shortages of longshore labor and drayage trucking, labor and space shortages in inland distribution warehousing, and the inadequate supplies of intermodal chassis and containers. We recognize that operational changes to ocean carrier scheduling have been implemented, but the U.S. export market should not be excluded. We appreciate the efforts some carriers have made, but there is more that should be done.

We want to stress the point that in responding to import cargo challenges, ocean carriers should not lose sight of their common carriage obligations to provide service to U.S. exporters. We urge vigorous action, consistent within the bounds of existing law and regulation, to protect U.S. exporters. As our ports experience unprecedented cargo surges, it is imperative that we strive for a balanced trade to keep our supply chain fully effective and efficient, while maintaining vital export opportunities for the U.S. agriculture and manufacturing bases.

Common carriage obligations have been in place for U.S. transportation interests since the passage of the Interstate Commerce Act of 1887 and were imported into international ocean transportation with the passage of the Shipping Act of 1916. These obligations remain.

As established in the Declaration of Policy to the Shipping Act of 1984 and refined by the Ocean Shipping Reform Act of 1998, the purpose of the law is to "establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;" and further, to "promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace."

The Shipping Act specifically codifies the requirements to provide common carriage and ensure shipper access to ocean transportation in section 41104(a)(10): common carriers may not



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“unreasonably refuse to deal or negotiate,” as well as prohibitions against concerted actions in section 41105: two or more common carriers may not “boycott or take any other concerted action resulting in an unreasonable refusal to deal;” or “engage in conduct that unreasonably restricts the use of intermodal services or technological innovations[.]”

Although the obligation to affirmatively provide export carriage is not unfettered, we believe that it should be construed by the industry to stress the importance of the provision of export cargo services.

Although we are very concerned about reports of refusals to provide service to our export community, we would be remiss in not acknowledging the extraordinary challenges caused to the supply chain because of COVID-19. We would also be remiss if we did not acknowledge and thank the member companies of the World Shipping Council for their continuing services during the pandemic. We both truly believe that they played a great role in helping our Nation sustain itself during this tribulation.

Thank you,

Carl W. Bentzel
Federal Maritime Commissioner

Daniel B. Maffei
Federal Maritime Commissioner