

Testimony of
Daniel B. Maffei
CHAIRMAN
FEDERAL MARITIME COMMISSION

Regarding “Impacts of Shipping Container Shortages, Delays, and Increased Demand on the
North American Supply Chain”

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 15, 2021

Good morning Chairman Carbajal, Ranking Member Gibbs, and members of the Subcommittee. I appreciate having the opportunity to speak with you today about our ocean freight system.

The American economy is dependent upon ocean freight. Container ships move commodities, consumer goods, and inputs necessary for manufacturers. The events of recent months have highlighted just how critical overseas shipping is to all Americans and how invaluable the contribution of ocean transportation is to economic competitiveness and our way of life.

When President Biden designated me Chair on March 29, I stepped into the position in the midst of the largest import boom in U.S. history. Key U.S. gateways for container shipping have handled cargo volumes that have been high and frequently record breaking. The Port of Long Beach recently announced that it has had ten consecutive months of breaking cargo movement records.¹ Similarly the Port of Los Angeles reported the best April in the port’s history and that the complex has set records for volumes six of the last nine months.² The Port of New York & New Jersey set a “new all-time monthly record” in March, superseding the one they set in just October 2020.³ The Port of Virginia set a new record in April for monthly volumes,⁴ South

¹ “Strongest April on Record at the Port of Long Beach”, Port of Long Beach Press Release, May 12, 2021 <https://polb.com/port-info/news-and-press/strongest-april-on-record-at-port-of-long-beach-05-12-2021/>

² “Robust April Volume Breaks Another Record at Port of Los Angeles”, Port of Los Angeles Press Release, May 13, 2021 https://www.portoflosangeles.org/references/2021-news-releases/news_051321_aprilvolume

³ “Strong Consumer Demand Drives March Volume to All-Time High”, Breaking Waves Blog, Port of New York & New Jersey, May 5, 2021. <https://www.portbreakingwaves.com/strong-consumer-demand-drives-march-volume-to-all-time-high/>

⁴ “All-Time Record Volume, Strong Service Levels Continue at the Port of Virginia”, Port of Virginia Press Release <https://www.portofvirginia.com/who-we-are/newsroom/all-time-record-volume-strong-service-levels-continue-at-the-port-of-virginia/>

Carolina reported a record breaking April⁵, Georgia a record breaking March,⁶ and Oakland handled 100,000 import containers in a single month (April) for the first time in its history.⁷ In short, the system is at or beyond capacity.

With such high demand for overseas imports, container shipping prices have rocketed up. The Shanghai Containerized Freight Index indicated that for May average freight costs are three times as high as they were this time last year.⁸ An individual shipper needing to find a container on the spot market will likely pay an even higher multiple. And cost certainly is not the only challenge. For many shippers, finding a container and/or space on a ship has been sometimes impossible at any cost. And many other shippers have not been able to get their products to foreign markets in a reliable timeframe or get goods manufactured abroad to their American customers without substantially higher than average delays.

Of particular concern to me is the effect of the import boom on U.S. exports and the increases in price and lack of availability of containers for export. While it may surprise some of you to find out that the carriers are actually transporting more containers of our exports than in previous years, the number pales in comparison to the boom in imports and there is some truth that ocean carriers will carry fewer containers of American exports than they otherwise would have in order to get empty containers more rapidly back to Asian ports to fill with higher value import loads.

Under my predecessor, then-Chairman Michael Khouri, the FMC had already started taking steps to address the many aspects of this crisis.

Last Spring, the Commission unanimously approved an interpretive rule on detention and demurrage. This measure had already worked its way through much of the rulemaking process before COVID hit but the Commission knew it could become even more important as the pandemic emerged. The rule addressed how the FMC will assess the reasonableness of detention and demurrage regulations and practices of ocean carriers and marine terminal operators (MTOs). The Commission stated it will consider the extent to which detention and demurrage charges and policies serve their primary purpose of incentivizing the movement of cargo and promoting freight fluidity.

Last fall, the Commission increased alliance reporting requirements and is considering whether additional changes are needed.⁹ Monitoring requirements might be further amended to demand

⁵ "SC Ports handles record cargo volumes in April", South Carolina Ports Press Release, May 11, 2021 <https://scspa.com/news/sc-ports-handles-record-cargo-volumes-in-april/>

⁶ "GPA's March container trade leaps 48 percent". Georgia Ports Authority Press Release, April 15, 2021 <https://gaports.com/press-releases/gpas-march-container-trade-leaps-48-percent/>

⁷ "Port of Oakland passes milestone, sets all-time cargo record", Port of Oakland Press Release, May 13, 2021 <https://www.portofoakland.com/press-releases/port-of-oakland-passes-milestone-sets-all-time-cargo-record/>

⁸ Alphaliner Monthly Monitor, May 2021

⁹ "Federal Maritime Commission Increases Global Alliances' Information Monitoring Report Requirements", Federal Maritime Commission Press Release, November 25, 2021. <https://www.fmc.gov/federal-maritime-commission-increases-global-alliances-information-monitoring-report-requirements/>

more information and data of use to Commission economists, analysts, and lawyers in their work.

We have launched a formal investigation of issues at LA/LB and NY/NJ involving detention demurrage practices, container return requirements and lack of containers being made available for export. This investigation is called Fact Finding 29 and is led by our most experienced Commissioner, Rebecca Dye, and it could lead to a formal enforcement proceeding. Because it is an ongoing investigation, I am limited in what details I can give you. That said, one of the focuses of the investigation involves the Interpretive Rule on Detention and Demurrage which the commission unanimously put in place a year ago. We must make sure that rule is being heeded and, where it is not, we will bring enforcement actions. being heeded, root out the non-compliance.

Once I became Chairman, I was able to help the FMC build on these existing efforts in several ways:

- 1) As Commissioner Dye's investigation got to the stage of analyzing data from the carriers and potentially developing enforcement cases – I made sure that she has the appropriate staff resources that she needs. This investigation is a vital part of the FMC's overall effort to deal with this crisis and that is why I am so glad that you have invited Commissioner Dye as well so she can give you a report on the progress of that investigation. Know that she has my full trust as the investigation officer.
- 2) I have started examining the industry response to last year's detention and demurrage rule to determine whether additional rulemaking would be useful in deterring the sort of practices that seem to be making the current situation worse. Personally, I want to look at the billing and appeal policies for detention and demurrage (D&D) charges, issues involving where & when containers can be returned, and rapidly shifting Earliest Return Dates (ERDs) which can become unworkable for exporters.
- 3) I am also taking a good look at the way the FMC enforces the authority Congress has provided, and have provided some preliminary direction. It is vital that our enforcement capability provides a sufficient deterrent to abusive practices in the industry. I have directed the career staff at the Federal Maritime Commission to be open minded in applying the authorities we do have to make things better. Circumstances are different today and just because the FMC has not taken certain kinds of enforcement action in the past does not mean we should not now.
- 4) Where appropriate, Commissioners are reaching out informally to carriers and terminal operators to encourage the industry to be as flexible as possible given the situation. As we have spoken to companies depending on ocean shipping, shipping groups, and their members, we have relayed their general concerns and observations to the carriers. We have also done outreach to other supply chain stakeholders such as truckers, retailers, port authorities, terminal operators, and labor unions.

- 5) The Commission recently voted to implement our new National Shipper Advisory Committee. This will be a body of 24 shippers—divided equally between importers and exporters—who will advise the Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system.

The steps that I list here is not an exhaustive list and, if members want to suggest additional actions, I would welcome suggestions.

That said, it's important to understand that the nature of the current crisis and the ocean freight system make it impossible for the FMC – or even the U.S. government as a whole – to alter or counteract much of the current situation.

First, the difficulties are global. Congestion, reliability, and cost issues are impacting ports, businesses, and ocean linked transportation networks not just in the United States but in Europe, Asia, the Indian Sub-Continent, Australia. Point to a spot on the map and you will find a portion of the world's ocean cargo system struggling. Problems overseas create problems here and vice-versa. That is of no comfort to a U.S.-based importer or exporter trying to move their cargo, but it does point to the enormity of the underlying problems. It also illustrates that solutions, if there are any to be had, will not be U.S. derived ones alone.

Second, the crisis is really one that does not just affect ocean shipping but goes up and down an interconnected U.S. supply chain. Attention has been focused on ports but that is because this is where inefficiencies with our freight transportation networks manifest themselves in pictures of large container ships lining up and bigger and bigger piles of containers. However, issues related to increased port congestion and diminished ocean carrier performance stretch far from the dockside of any marine terminal and deep into the United States interior. Insufficient landside infrastructure, whether roads or rail, means cargo cannot move. A lack of chassis, trucks, or truck drivers means cargo cannot move. Warehouses and distribution centers that are full means cargo has no place to go, and therefore cannot move. The underlying issues that are causing congestion in the freight delivery system are not new. Current events have only put into stark relief what are the systemic flaws and shortcomings in the Nation's freight transportation capabilities.

If an interconnected system becomes overwhelmed, a problem in one part of it becomes a compound problem. The once in a century snowstorm in Texas disrupted rail traffic for six weeks causing issues related to the availability of intermodal rail cars to serve Southern California ports.¹⁰ A crack in the I-40 bridge over the Mississippi River takes out an important intermodal truck route to and from railheads in Memphis and the time and expense added to ground moves ripples at the ports.¹¹ Congestion at Mid-West container yards causes a loss of income for drivers and they quit in frustration, potentially reducing the capacity to move

¹⁰ "Dallas intermodal ramp flows recover after paralyzing winter storm", Journal of Commerce, Ari Ashe, May 26, 2021 https://www.joc.com/rail-intermodal/class-i-railroads/bnsf-railway/dallas-intermodal-ramp-flows-recover-after-paralyzing-winter-storm_20210526.html

¹¹ "Memphis' cracked I-40 bridge creates headache for traffic, shipping", NBCNews.com, the Associated Press, May 12, 2021 <https://www.nbcnews.com/news/us-news/memphis-cracked-i-40-bridge-creates-headache-traffic-shipping-n1267187>

containers.¹² These are just some of the issues that happen far from a port but impact operations at marine terminals and the ability to handle ocean containers. They contribute to congestion, diminish capacity, erode capability, add costs, and exacerbate problems everywhere.

Third, the primary reason for the congestion, high prices, and lack of reliability is that the demand for cargo shipping has outstripped the supply.

For years, the increasing supply of space with the continued ordering of bigger and bigger ships kept ocean freight rates on the low side. And now it is COVID-induced demand that is largely the reason for the high freight rates. The drop in cargo volumes for the first half of 2020 dramatically reversed beginning in July or August of 2020 when American consumers began an unrestrained buying spree that continues today. Ports that lost volumes in early months of 2020 ended their years equaling their 2019 totals. In other words, a large portion of 12 months of volume moved in what turned out to be an approximately four-month period. The demand for imported goods has not waned and all indications are that demand will not diminish until 2022 at the earliest.

Meanwhile, the supply of space on ships has not increased enough to keep pace. If this supply were being artificially limited by the carriers, there would be a clear path for the Federal Maritime Commission and/or the Justice Department to intervene. However, all indications are that the lines are trying to increase their capacities as quickly as possible. According to an Alphaliner report published in May 2021, there are only 60 idle ships representing less than 1% of the world's available container ship fleet. Also, reports that the order book for new builds represents another 4 million TEU of capacity, approximately 18% of the current world's fleet total capacity. Similarly, ocean carriers and intermodal equipment lessors have been buying new containers to increase the supply of boxes available to ship goods. Furthermore, we have seen increased use of extra loaders, additional capacity on strings, and vessel sharing agreements that have resulted in some expanded capacity. These are all positive developments they simply are not that substantial when compared with the overwhelming demand.

Because of these three factors – global nature of trade, integrated nature of the supply chain, and the largely demand driven causes – we are limited in what can be done.

We can put in measures to improve the overall capacity of the system – increase the supply in the supply-demand chart. Certainly, efforts to improve our physical infrastructure at our ports but also rail, truck networks, and inland ports would greatly improve capacity of the system.

Another initiative is to convene parties across the supply chain to establish better data sharing. One way to prevent bottlenecks, especially at facilities that are limited in ability to grow, is to have better communication about ERDs, container availability and key other key operational information. Such transparency would assist preventing avoidable D&D charges, and help shippers adjust their schedule. Shippers need more information than they currently get and providing it to them can only help the freight delivery system. I believe there is a role for the

¹² “US drayage drivers quitting as rail ramp congestion crimps pay”, Journal of Commerce, Ari Ashe, May 19, 2021 https://www.joc.com/trucking-logistics/drayage/drayage-divers-quitting-rail-ramp-congestion-crimps-pay_20210519.html

FMC to act as a convener and possibly to formulate incentives to encourage the adoption of more open data and information policies among carriers, terminals, ports, and land transportation.

However, improvements to our physical and informational infrastructure are long-term solutions that will take years to develop.

In the meantime, I as Chairman and the Federal Maritime Commission have been getting pleas to force carriers to provide more export containers, ban all detention and demurrage charges in certain ports and DO something about these outrageously high prices including revoking the limited anti-trust exemption for carrier alliances. I cannot help but empathize with the frustrations of shippers and beneficial cargo owners – many of which are small and medium-sized businesses. When I served in Congress, I represented a district with agricultural exporters and know how vital it is that they can transport their goods to foreign markets.

Nonetheless, the legislation governing ocean shipping and determining the powers of the Federal Maritime Commission limits the actions we can take. The law allows us to take action against a carrier or terminal if they engage in a prohibited anticompetitive behavior, discriminatory practices against U.S. companies or products, unlawful deception, or some other unreasonable practice. It allows us to take action against an alliance of carriers but only under certain circumstances when the alliance has broken its own agreement or is clearly resulting in an unreasonably higher price or lower level of service than otherwise would be the case.

The law does NOT allow us to set rates or set a ceiling for what it costs to move an ocean container. It does not allow us to demand that ships service certain ports, carry particular products, or establish a quota for the number of export containers it must accommodate. If a sky-high cost for shipping a container is due simply to the laws of supply and demand, we have no authority to change that.

What we can do and are doing is to work hard every single day to make sure nobody makes a profit from this current crisis in a way that violates the Shipping Act. We can help exporters and other U.S. shippers navigate the system and file complaints. We can communicate with various stakeholders in the supply chain to help them work together to make the system more efficient and reliable. And we can stay in close touch with other agencies of the Federal government and you in the Congress to find new ways of making this COVID pandemic and its aftermath easier to live with.

I am happy to take your questions.