

**STATEMENT OF
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BEFORE THE
U.S. SENATE
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Good morning, Chair Cantwell, Ranking Member Wicker, and Members of the Committee.

I am grateful for the opportunity to appear this morning with my colleague Rebecca Dye to discuss the authorities of the Federal Maritime Commission, and how current legislative proposals could strengthen to better address disruptions to container shipping and supply chains.

The dramatic and historic surge in ocean cargo volumes that began in July 2020 has led to diminished service, reduced reliability, higher costs, and port congestion issues, not just in the United States but around the world.

Pictures of lines of hulking containerships and ports crowded with high stacks of shipping containers draws the attention of the media, but this visual is misleading. A sink clogged with muddy water looks terrible and we often would say ‘our sink is broken’ but the truth is, the sink itself is not broken – what is broken are the clogged pipes below it. Similarly, the problems that you see at America’s ports is less an issue in the ports and more one of inland supply-chain problems. These include: the inadequacies of inland supply chain facilities, shortages of equipment such as chassis and containers, and shortages of workers such as truckers and warehouse personnel.

In fact, it would be wrong not to acknowledge the fact that it has been truly remarkable how productive our ports have been. From Southern California to the New York/New Jersey port complex; from Seattle to Savannah, Gulfport to Norfolk, Oakland to Miami, and so many more, America’s ports have handled safely and efficiently millions more containers of cargo than ever before in U.S. history. The record numbers of throughput are a tribute to the companies and workers that have never stopped and instead have intensified their efforts, even in the worst days of COVID.

Less than 48 hours, ago I toured parts of the Port of L.A. – our Nation’s largest single port – that port alone in 2021 smashed its record for most containers handled by 13%. That translates into 1.5 million more containers than the biggest pre-COVID year and that does not include the neighboring port of Long Beach which has registered a similar increase in productivity. Even with increased productivity at our ports, these enormous volumes have overwhelmed the capacity and freight rates have gone up dramatically compared to pre-COVID levels.

Unfortunately, the biggest increases are hitting smaller businesses and freight forwarders who do not have the shipping volumes that the Nation’s biggest retailers have. Some of them have business models that worked fine for twenty years or more, as ocean shipping rates were relatively cheap and stable – today, those business models are upside down.

The situation defies easy answers. The usual answer to high shipping rates would be to incentivize the companies that own and operate the enormous container carrying ships to add more vessels to address demand. As the demand has been so high for so long, almost every ship that can carry containers is out on the water. Furthermore, the shipping lines are investing heavily in buying new ships. In addition, adding more capacity has not solved the problem any more than turning the faucet on high in a clogged sink would help unclog it. Instead, it just means longer lines of ships at our Nation’s largest ports.

The Commission has responded to supply chain challenges as aggressively, creatively, and comprehensively as we can within the bounds of our jurisdiction. I am proud of the non-partisan and reasoned manner with which we have identified initiatives and pursued actions which can be broadly summarized under three categories: Enforcement of the Law; Updating Policy; and Communication and Cooperation.

We have increased investigative and enforcement activity, paying particular attention to ocean carriers. We have initiated a new focus on addressing fees and surcharges with the goal of bringing greater truth and transparency to rates. We increased the monitoring requirements of ocean carrier alliances and continue to assess if further changes are necessary. We have provided guidance to shippers on bringing complaints to the Federal Maritime Commission and we are seeing an increase in both formal and especially informal docketed proceedings being filed. We appointed an Export Expert in our Office of Consumer Affairs to specifically assist exporters in resolving disputes. We stood-up the National Shipper Advisory Committee, which provides an important channel between the Commission and one

of our key constituencies. I asked Commissioner Bentzel to take on the Maritime Transportation Data Initiative to identify data constraints that impede the flow of ocean cargo and add to supply chain inefficiencies. Also at my direction, following conversations with Commissioner Dye, the FMC created the Vessel-Operating Common Carrier Audit Program. We continue to work to achieve compliance with our interpretive rule on demurrage and detention, which Commissioner Dye will address in her testimony.

One of my highest priorities as Chairman is for the FMC to promote access to export markets for U.S. businesses, including farmers. The supply chain situation is especially difficult for agricultural exporters who are put at the greatest disadvantage due to the scarcity of equipment in agricultural regions and the unpredictability of when ships will come into ports. As part of Fact Finding 29, Commissioner Dye is doing excellent collaborative work with stakeholders to find ways to make it easier for exporters to get their boxes on ships. She will discuss her recommendations, which I fully support, particularly those aimed to promote exports. Also, I am announcing that the FMC's audit team will expand its scope to get information from carriers on their export strategies and discuss gaps between carrier strategies and measurable results. And our Bureau of Enforcement is prioritizing cases involving exports.

Make no mistake, I do not think this is enough, but I sincerely believe we are already pushing into the limits on our authority under the current shipping laws. That's what brings us here today in response to the Committee's gracious invitation.

Global containerized trade has grown exponentially since the passage of major shipping legislation in 1984 and then in 1998. The largest container ships were only a fraction of the size of contemporary line haul vessels. Consolidation of ocean shipping carrier companies means that there are less than half the major competitors in the market now than there were in the late nineties and – as many of you have aptly pointed out – not one major global container ship line is based in the United States. I have said frequently since first being confirmed to the FMC in 2016 that the law governing container shipping has been in need of updates, even before the current COVID-triggered demand surge.

That is why I am so grateful to Senator Klobuchar and Senator Thune, the bill's co-sponsors, and especially to Chair Cantwell and Senator Wicker for holding this hearing. I will happily answer questions about the legislation's details. Let me just say that the proposal includes new authorities that would provide the Federal Maritime Commission with additional leverage over regulated entities and would

help protect shippers from unfair and deceptive practices. While the Federal Maritime Commission can do additional rulemaking, legislation updating our statute would remove any ambiguity about policymakers' priorities on matters such as detention and demurrage, and ocean shipping contract reform. Similarly, providing the Commission with additional resources would allow us to be even more active than we already are in industry oversight, voluntary compliance, investigations, enforcement, consumer assistance, and outreach.

Any bill that is ultimately passed into law must not have the unintended consequence of being too disruptive to trade. The cargo surge and associated congestion is primarily caused by conditions related to a global pandemic and record high demand for imported items. Indeed, none the ocean freight challenges are unique to America, although some challenges are more acute here. But I am ultimately optimistic. We will get past the worst of supply chain disruptions and return to a more established state of operations – perhaps as early as early next year. When that happens, we don't want to regret any kneejerk reaction to the current challenges that ends up creating worse problems in the long run.

Thank you for your attention, your interest in these issues, and the privilege of testifying before you today. I look forward to answering your questions.