



**U.S. SENATE COMMITTEE ON
COMMERCE, SCIENCE & TRANSPORTATION**
Senator Maria Cantwell, Chair

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**U.S. Senate Committee on Commerce, Science, and Transportation
Federal Maritime Commission Nominations Hearing**

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VIDEO

Senator Cantwell: Thank you, Senator Peters. Thank you so much for sharing this important hearing and nominations of our two colleagues back to the Federal Maritime Commission. And thank you for both being here and joined with also Commissioner Vekich. Thank you for being here.

During COVID-19, we were just discussing this at large. I think the word that we're using is how do you de-risk your supply chain, meaning we can't afford to have this level of risk in our supply chains that we saw during COVID.

But with the offloading of imports, and then leaving the dock without picking up American products and taking it back was the major issue. And in some cases, our agricultural products spoiled on the docks.

The Federal Shipping Act makes it unlawful to unreasonably deny cargo. The Commission didn't step up and put a stop to this problem during the pandemic. And that's why the Ocean Shipping Reform Act required the Commission to enter a rulemaking and to define what is "unreasonable" and put an end to this practice once and for all.

Chairman Maffei, cargo stranded at ports harm American shippers, they harm our farmers, our fishermen, our businesses that rely on those ocean carriers to get their products to markets across the globe.

I was pleased to see an initial proposed rule on September 21, 2022, followed by a second public comment period that closed last summer.

But despite that progress, I'm concerned that we're not quite there yet.

What is the status of this unreasonable denial of cargo rulemaking? What can we do to help our farmers and business people get this final rule?

Chairman Maffei: I do believe that the final rule is forthcoming in the next couple of months. And the reason for the delay, I don't believe, is substantive. I think that the final

rule will be very close to the supplemental rule. But it's very, very important that we do everything we can to one, avoid any unintended consequences. We don't want to harm America's agricultural exports while trying to help them. I don't think that will happen, but we're going to make sure it doesn't. And secondly, we want to make sure that it is bulletproof in terms of being challenged in front of the courts. And we are finishing that up. Getting the detention and demerged rule done is very important...

Senator Cantwell: On that point, because you're making me think that you think intimidation by these foreign carriers to our agriculture economy, where they're going to retaliate if they don't like the rule that you're coming out with, is something you might be referring to. Because we're not going to put up with that, we're not going to put up with foreign carriers intimidating our agricultural economy.

Chairman Maffei: No, and we wouldn't at the FMC either. And you've given us the tools in 2022. I think we'll enforce that greatly.

Senator Cantwell: Well, you said you were going to do something, but not if you felt like it ultimately harm farmers. And while we were working on this legislation, we heard the same kind of chatter, which was really the foreign carriers basically threatening retaliation.

So I'm going to get to a second question that will illuminate... but just that comment you made, please don't.

Focus on protecting American businesses. Focus on using our leverage. You want access to our ports? Guess what, there's rules to that. And that is that, you call on our ports, you have to take stuff out of our ports. And you can't have unreasonable scheduling where you aren't communicating with these customers.

Chairman Maffei: Well said.

Senator Cantwell: If you want to call on our ports.

Chairman Maffei: Well said, Senator.

Senator Cantwell: Okay, great.

I wanted to hear from both you, Commissioners Dye and Maffei, on the fact, what else can we do to protect our businesses on this access to reasonable and reliable ocean shipping. What else do you think we should be doing?

Commissioner Dye: Chair Cantwell, I think that we need to get ready now that the supply chain needs to be strengthened. There are certain bottlenecks that occur every cargo surge and every peak season.

And I've encouraged marine terminals in LA Long Beach, New Jersey, to work with us and address these concerns now. Because we know inevitably, there will be other problems with the supply chain. We hope and pray that there won't be another pandemic, as Chairman Peters mentioned, but there will be another dislocation.

And so I've started working with them. And we'll keep you informed on the progress because I think that this system, the supply chain, needs to be strengthened. It will benefit the competitiveness of the United States overall, in addition to being more responsive to the needs of importers and exporters.

Senator Cantwell: Okay. I was thinking broadly, but yes.

Chairman Maffei: I agree with my colleague, except may I also address the question.

Madam Chair, one of the issues that has been a big problem happened during COVID, but frankly, it's been happening since before COVID. Where agricultural shippers will show up with their cargo, and there won't be enough space on the ship for the cargo, which is very puzzling because, of course, most of the time, our ports are importing more than they're exporting. And so there's been some issues with that. And again, it particularly happened during COVID when actual space was becoming a problem. But sometimes shipping would be canceled, what we call "blank sailings" or what have you.

What they would do is start booking multiple times on various ships to make sure they could get this precious cargo, much of it perishable, to the markets where it was needed and where it was demanded.

Then the ocean shipping companies seeing all this overbooking, or seeing them overbooked, start overbooking themselves and putting 120-130% of their shipping. And that just created this death spiral, if you will.

Unraveling that, I do think, is something the FMC could have a role in. And I do, I would like to commence hearings on that as soon as we kind of have the bandwidth. I think we have to get our rule out first, frankly. But we definitely think we need to do that.

The other issue that I do keep an eye on is equipment. Our agricultural exports, in particular, need the right -- not just a container -- but the right kind of container. It has to be clean and in good condition. Sometimes it has to be what we call a "reefer container" or refrigerated container. Often, because of the relative weight of agricultural exports, a 20-foot container is much more useful than a 40-foot container.

Also, a lot of our agricultural exports, not most of them in Washington state, but even in Washington state, they tend to be more in the eastern part of the state, Walla Walla, etc. That's not where the containers necessarily go with the consumer goods.

The repositioning of containers is something else that I do think we should keep an eye on, both at the FMC and in Congress.

Senator Cantwell: You mean de-linking that? Some people have talked about de-linking that, the ownership so that you could have a more robust system.

Chairman Maffei: I mean, I'm not necessarily advocating that now. I don't know enough about it. But I've heard that is a possibility. There could be some role for the Department of Agriculture. There are a number of different things that we could talk about.

Senator Cantwell: Well, let me ask you about the detention and demurrage fees issue because, between 2020 and 2022, nine of the largest carriers charged approximately \$8.9 billion in demurrage and detention fees. These are fees above the cost of shipping.

Just last week, the Commission published a final rule on detention and demurrage practices to help cut down on these costs and improve transparency. Can you tell me how this new rule will cut down on those costs facing shippers in the United States?

Commissioner Dye: I can give you an example that directly affected exporters who did everything right. Their cargo was waiting on the dock. But the ship didn't pull in on time. And they were being charged fees for storage. Although they had done everything according to port practices. And so that was the first one of the first things that I and my colleagues emphasized to ocean carriers. That no charges will lie against an exporter, under the incentive principle that from our regulation against exporters because the ship didn't fall on time. And I'm pleased to say that the ocean carriers changed their systems to stop that.

There are a few other examples like that that our interpretive rule, the incentive principle, has outlawed. These detention and demurrage fees are despised internationally. And the United States was really the first ones who really took action to make sure that they serve the purpose for which they are intended.

Senator Cantwell: These are exorbitant fees passed on to the consumers and we can't afford that. I don't know how confident you are that this rule is going to get rid of those exorbitant fees. Could you tell me?

Commissioner Dye: I believe that we have, in the marketplace, there is much broader compliance. And, of course, OSRA, you provided a complaint process that if carriers don't actually mitigate or void fees, then shippers are free to come to the Federal Maritime Commission and we will investigate.

Senator Cantwell: Well, investigations is one thing I thought you would say when I said, what more can you do? I would have thought maybe you would talk about your investigation. Because you have done some good investigations.

Commissioner Dye: Yes, I misspoke, Chair Cantwell. We will certainly, if our investigation shows that the thief should not be charged, then we will either act with our enforcement or what often happens is that carriers will just void voluntarily.

Senator Cantwell: I'm sorry, they will void those fees...

Commissioner Dye: They will not charge and cancel the charge.

Senator Cantwell: Thank you.

Chairman Maffei: Sometimes they'll get scared off.

Senator, I also want to bring up the charge complaints thing because this was specific to OSRA, and it has put a fast track on the kinds of complaints that shippers might have on detention and demurrage. And that's been extraordinarily important, and, in fact, has

resulted already in refunded or waived fees of two and a quarter million dollars. And these are often fairly small cases. So, in terms of limiting the abuse of these fees, I think that program has a lot to do with it.

Senator Cantwell: You would say that the most important measures that you've been taking on the implementation of compliance with the Ocean Shipping Reform Act are these investigations, or are there other tools, enforcement?

Chairman Maffei: I don't like to choose between my children, all of the OSRA initiatives are extraordinarily important. But I think on detention and demurrage, it is a multifaceted issue. And I will say this: I do believe that our new D&D rule will be very, very effective in helping to eliminate some of the billing abuses.

But there might still be more and then we'll do another rule. We will fully enact both the OSRA, but also whatever we need to do to make sure that Commissioner Dye's authored initial interpretive rule that says these fees are for the promotion of the movement of cargo. They're not to pad the bottom line of an ocean shipping company. They're not for other purposes. They're supposed to be used for that. And if they're not used for that, they're unreasonable. And we will do whatever it takes until we get there. Well, we'd

Senator Cantwell: Well, we'd like to see a report to the Committee on what types of complaints you've investigated, what kind of enforcement actions, what kind of results have you had in driving down the cost to our consumers and businesses that are trying to be involved in international trade?

And I guess if there's a meta-message here, look, I hope that you are thinking about more competition, certainly more transparency, which that is probably your investigations and enforcement.

But I also think we need to think about more technology. I'm a big fan of blockchain technology when it comes to an immutable manifest. So we should be moving towards some system where we know where everything is at every moment, is just kept in a more private way. And that way, we would get a lot of the mystery out of the situation and get a system that could be more dependable and reliable. I'm not asking you to necessarily lead the charge, but you can lead a discussion about what some of those options are to make shipping even more cost effective in the United States.

I represent a big trade state. I have a lot of people whose 90% of their product is exported. So, we want to see a more aggressive FMC. We don't want to see a sleepy little agency when 95% of consumers live outside the United States. We want trade to work. If you want to call on our market, we want you to know that there's rules to coming to our market. And that we have an aggressive agency. We're not going to gouge people. We are just going to stop people from being gouged. That's the key thing. And if you could lead that charge, then obviously, we'll continue to work with you all, but we need an aggressive agency.