

U.S. Senate Committee on Commerce, Science, and Transportation
Nominations Hearing of Mr. Max Vekich
October 20, 2021
Questions for the Record – Minority

Ranking Member Roger Wicker

Question 1: Over the past twenty years, marine terminal companies in regions of the U.S. have filed collaboration agreements with the FMC to allow port terminals to jointly explore and develop technology initiatives that can enhance port efficiencies, and the Commission has endorsed those agreements. Do you agree with the ongoing approach to allow for collaboration on innovative technologies?

I believe American ports need to realize their fullest potential. I know there are many under-utilized ports, that could help port congestion and would benefit from exploring technology initiatives and development. I agree with continuing this approach for port terminals to collaborate on innovative technologies that provide American jobs and American commerce. Moreover, I believe more needs to be done to boost exports, and that the FMC has started that process, which I would like to see evolve and pursued.

Question 2: In response to a question in your committee questionnaire about the top three challenges facing the FMC, you said one of the top challenges was carrier consolidation. You went on to say, “Furthermore, are regulations sufficient to keep the big guys honest?” Could you explain what you mean by that comment? Are you suggesting there is action stronger than regulations that the FMC should take against carriers, and if so, what would that action be?

The role of the FMC role is to preserve competition between ocean carriers, protect the integrity of the marketplace, and guard against any monopolistic trends and practices.

The quote about “keep the big guys honest” was a reference to the late Senator Warren Magnuson’s comments about monopolistic behavior. I was not suggesting that existing regulations are insufficient, or that new regulations are necessary, rather I was trying to make the point that making certain sufficient oversight is being exercised to protect the integrity of the marketplace is vital. Robust monitoring and enforcement by FMC is crucial to its mission.

Question 3: As you heard during the hearing, the freight congestion crisis is a major concern. If confirmed, what actions would you take on your first day as Commissioner to address this crisis?

I would start by seeking meetings with each of the other four Commissioners to understand their views on congestion and where the consensus is among them about agency priorities for addressing congestion.

Additionally, I would seek meetings with the key career staff at the Federal Maritime Commission. Both to begin learning in more detail about the agency bureaus and offices, but also to learn specifics about actions the FMC has taken in response to events of the last 18-months and what further actions might be pending. There are some specific areas that I would like the opportunity to gather more information, which include the Commission's complaint processes, further details about the VOCC Audit Program, the Commission's enforcement processes and functions, and Fact Finding 29 and the direction Commissioner Dye is moving with this effort.

Finally, I would begin my search for my Counsel. Each Commissioner has an advisor, and I would seek the advice of senior staff about what qualities, experience, and knowledge a Counsel should possess.

Question 4: The current Commissioners have taken a “divide and conquer” approach to FMC's portfolio, with each Commissioner focusing on a different topic. If confirmed, what topic, within the FMC's jurisdiction, do you plan to devote your attention to while at the FMC?

If confirmed as the newest Commissioner, one aspect of my role will be getting up to speed on all issues before the FMC as soon as I can.

An immediate contribution I can make is to serve as resource for other Commissioners and professional staff for information on how the waterfront works and how ocean cargo actually moves from an operational perspective.

I am interested in ongoing work at the Commission related to addressing COVID-19 related impacts to the supply chain, changing behavior on detention and demurrage and other fees, and enforcement actions overall. I would look to support these initiatives and to offer any assistance that would be of help to Commissioners who are working on these issues.

One area of interest to me, and would complement other ongoing efforts, is to examine the potential rural and underutilized ports present for adding capacity to the ocean-linked supply chain or for facilitating exports.

Question 5: I want to follow up on our discussion during the hearing. In response to my question about whether the FMC has the authority it needs or if it needs more authority to address the freight congestion crisis, you said, “I don’t think it’s appropriate for me to take sides” on whether the FMC needs more authority or not. Further, you said, “I would be happy to, once confirmed, weigh into that.” How should the Senate Commerce Committee consider your nomination if we are not able to know your perspective on FMC authority until after you are confirmed? I found your response particularly puzzling given your willingness to provide recommendations on increasing the workforce, your concerns about port automation, and your willingness to ask questions at the FMC about fees, surcharges, and ocean carrier practices.

Thank you for the opportunity to address this question.

I am aware that the Commission does not possess expansive authorities and certainly nothing near the power that many in the trade community believe it might have or wish it did. I know the Commission does not have the authority to set rates. It does not possess emergency powers to intervene in the marketplace. The Commission cannot dictate where equipment should flow or what specific shippers should be served by ocean carriers.

I have heard and read comments by Chairman Maffei articulating that the Commission’s authorities should be modernized to reflect changes in the industry and allow the agency to exercise its oversight functions more effectively. Broadly speaking, I have no objection to that goal, but would want to learn more about the specifics of what the Chairman has in mind before committing to supporting any particular proposal.

I have also heard and read comments by Commissioner Dye indicating the Commission has sufficient authorities to address issues related to detention and demurrage as well as other fees and surcharges.

The positions of Chairman Maffei and Commissioner Dye are not mutually exclusive. Becoming more intimately familiar with the exact authorities of the Commission will be top of my priorities if confirmed. The Commission must have the authorities necessary to protect the integrity of the marketplace, but on balance, the shipping public has been well served by access to reliable and historically consistent, stable rates to move cargo by ocean. While there is a call for the Commission to be given new authorities in response to supply chain congestion and high rates for ocean carrier services, a cautious and reasoned approach is always a wise course to follow. As a former legislator, I respect the prerogative of the Legislative Branch to determine the authorities and jurisdiction of an Executive Branch agency and will defer to the priorities set by policymakers.

Question 6: On different occasions during the hearing, you talked about policies for workforce development and recruitment as well as policies regarding infrastructure. While I understand that your responses were in response to Senators' questions, what authority do you believe the FMC has over workforce development or infrastructure policy at ports?

The Commission has no direct jurisdiction over workforce or infrastructure.

The Commission does play an important and key role as an advocate for an efficient ocean-linked supply chain and in recent years has taken on a useful role by convening parties involved in moving cargo to address operational challenges and identify solutions that can be pursued by the private sector.

My experience is on the waterfront, handling cargo and making it move off the docks and into American commerce. If confirmed, I can translate this experience into identifying issues related to the need to recruit and train sufficient numbers of workers to replace the generation of longshoremen who are rapidly reaching retirement age. Similarly, I can suggest where there are improvements to industrial infrastructure that can aid in moving cargo or gaining more efficiencies to the system overall.

Individual Commissioners can speak to issues related to the supply chain and international trade, but I understand the limitations of the office. I am under no illusion that if confirmed I will have the ability or authority to set in motion any initiative that will result in policy or regulation mandating construction of projects, the hiring of workers, or workplace regulations.

Question 7: During the hearing, I asked you for your thoughts on Commissioner Dye's interim recommendations as part of Fact Finding 29. Her recommendations included three changes to statute related to addressing shipper concerns about retaliation if they file complaints with the FMC, authorizing the FMC to seek double reparations for unlawful detention and demurrage practices, and authorizing the FMC to order refund relief in enforcement proceedings. Now that you have had the opportunity to read Commissioner Dye's recommendations, what are your thoughts on the issue?

Thank you for an opportunity to provide a more complete response.

Commissioner Dye's interim recommendations add teeth to FMC enforcement tools and would remove some barriers for private parties to seek relief at the FMC.

I understand her proposals enjoy the support of her colleagues and the Commission is moving forward to adopt her recommendations that do not require legislative change.

I certainly support the objectives of what she has recommended.

Senator Mike Lee

Question 1: If confirmed, what will be your key priorities?

If I am fortunate enough to be confirmed my priorities will be:

- Bring my “hands on” experience of moving cargo to the Commission.
- Support in any way I can Chairman Maffei’s and Commissioner Dye’s efforts to reduce port congestion through activities such as the Vessel-Operating Common Carrier Audit Program and Fact Finding 29. I would gladly take on any task asked of me toward the achieving their desired policy outcomes.
- Support Exports.
- Finding ways to support rural and underutilized ports as assets that can be used to move international containerized trade and serve as additional capacity during times of cargo surge or supply chain disruption.

Question 2: Conducting cost-benefit analyses for proposed regulations has been a practice undertaken by agencies under both Democrat and Republican Administrations.

- **Please explain your views on the use of cost-benefit analysis when considering proposed regulations. Should all FMC regulations be considered with a cost-benefit analysis?**
- **If regulatory costs outweigh the benefits, should that be a determining factor that prevents FMC from moving forward with a proposed regulation?**

I believe that cost-benefit analysis is an important consideration whenever an Executive Branch agency considers new regulations, and in particular, those that seek to regulate commercial conduct. The results of that analysis, and public input on that analysis, should be fully considered before adjusting or finalizing proposed regulations. FMC must also abide by the direction of Congress to do its work with a minimum of government intervention and regulatory costs.

Question 3: When considering regulatory proposal, should FMC prioritize policies that allow market participants to freely compete with FMC regulatory action or is the market more successful when the FMC actively guides the market through regulatory action?

The marketplace for container shipping has been highly deregulated for decades. Notwithstanding events of the past approximately 18 months, shippers have had access to reliable ocean shipping services at rates that have essentially been relatively low and consistently stable for more than 20 years. The Federal Maritime Commission has the responsibility for ensuring the integrity of the marketplace and that it is free of collusive and anticompetitive behavior by shipping lines. In response to dramatic rate increases since summer of last year, some are calling for a return of at least some regulation of the industry. It is warranted to examine if the regulatory regime the

Commission administers needs to be adjusted. Nevertheless, the debate must recognize the benefits users of ocean transportation have enjoyed from conditions where the Commission is protecting the integrity of the marketplace as opposed to guiding the marketplace to a certain outcome. Further, the FMC must also abide by the purposes established by Congress within the statutory framework for the agency.

Question 4: I would like to learn more about your views on the use of the FMC’s rulemaking power:

- **Should the FMC promulgate rules if the rulemaking power is not expressly granted by Congress?**
- **Can the FMC use its rulemaking power to circumvent legal precedents with which it disagrees?**
- **Can the rules passed by the FMC insulate market incumbents from competition?**

The FMC’s authority to issue rules derives from the statutory framework and authority established by Congress. In other words, the FMC’s rulemaking power and approach must be guided by the boundaries set by Congress. The FMC also has the ability to set precedent through Commission decisions on individual cases. While I understand that it is possible for the Commission to override a past Commission precedent with a notice and comment rulemaking, that is not a frequent occurrence. Finally, the rules issued by the FMC must be guided by the purposes set by Congress in 46 U.S.C. 40101 for the agency’s operation.

Question 5: What do you consider to be the main cause(s) of the current supply chain crisis and congestion at our U.S. ports?

There are many causes for current port congestion and degradation of the ocean-linked supply chain.

The system that moves cargo internationally is truly global and highly interconnected. Problems in Asia or Europe manifest themselves in the United States and vice versa. Shippers—those who contract with ocean carriers to move cargo—everywhere in the world are contending with the same frustrations as American shippers.

One key cause for current conditions is simply the historic and overwhelming volumes that have been moving via ocean carriage since approximately July 2020. The press releases issued by any major container port in the United States have reported month after month of record cargo volumes transiting their gateways. This has simply overwhelmed a domestic landside cargo delivery system that does not have excessive extra capacity to handle surges or disruptions.

Other contributing factors include lack of sufficient numbers of truck drivers, intermodal chassis, and intermodal rail capacity. There is insufficient space at warehouses to accept cargo at the

volumes it is flowing, and that sector is facing manpower shortages. If cargo cannot move, it backs up, most noticeably at ports and railyards. Marine terminals and inland railyards are at beyond their operational capacity, which impacts the ability of ports to work ships, which in turn causes delays to ship schedules. Our attention might be turned to video of ships waiting at anchor to call the Nation's ports, but ports are where problems with the domestic freight delivery system manifest themselves rather than the cause for the congestion itself.

Question 6: Given that the longshoremen have demonstrated for years that they can effectively collectively bargain, what factors are contributing to their labor shortages?

The record volumes of container volumes that have transited American ports that handle containers. This could not have been done without port workers, which include but are not limited to longshore labor, reporting for duty consistently over the duration of the pandemic. The biggest issue facing longshore labor is that many workers are approaching retirement age. It will be important to make certain that sufficient numbers of new workers are being recruited, trained, and brought into the workforce.

Question 7: What is your view on the use of technology to automate our nation's ports? Has the lack of its adoption at U.S. ports had any effects on costs and efficiency? Should U.S. ports have the option to automate their ports and accept automated ships?

Technology has a place on marine terminals and in the supply chain and can create added capacity throughout the freight delivery system. Information and data sharing is one area where there is an emerging consensus improvement to America's domestic freight delivery system can be achieved. I understand that Chairman Maffei and other Commissioners at the Federal Maritime Commission are interested in what strides can be made in increasing information and data sharing among parties involved in moving containerized ocean cargo. The Commission's agreement authority could be a useful tool for those who wish to collaborate to make progress in this area.

Question 8: What is your view on FMC regulation of ocean freight rates? Should the FMC actively regulate freight rates or is it more appropriate for markets to determine rates?

Response:

The marketplace model for determining the price to ship a container has largely worked well over an extended period of time in that it has yielded rates that have been essentially stable. Given the historically high rates being charged to ship containers, it is understandable why some are advocating for the Commission to have the authority to intervene in the marketplace. This would be a dramatic change to how American shippers are charged to purchase ocean cargo transportation services. Careful consideration would need to be given to such a dramatic change to a business model that has benefitted shippers for decades.

Question 9: What is your view on FMC regulation of ocean carrier contract provisions? Should the FMC actively regulate ocean carrier contract provisions? Is government regulation or contract negotiation preferred for the determination of contract provisions?

As I understand the authorities of the Commission, the agency does not regulate service contracts. Service contracts are individual agreements between a shipper and an ocean carrier or an ocean transportation intermediary. Given that something in the order of 700,000 plus service contracts and service contract amendments are filed at the Commission each year, reviewing each individually would require personnel and resources that the agency simply does not possess. I believe the Commission is examining ways to make better use of the information contained in these filings to further their understanding of market trends and to engage in oversight that might lead to enforcement actions. If confirmed, I plan on learning more about the specific proposals being considered.

Senator Ron Johnson

Question 1: According to the International Longshoremen's Association, there are 65,000 longshoremen in the U.S. You stated during the hearing that there is a shortage of longshoremen and many are facing retirement age. Many businesses are concerned they will lose workers if there is a vaccine mandate.

- **What percentage of longshoremen have received the COVID-19 vaccine?**
- **How would a vaccine mandate impact the availability of longshoremen and the congestion at the ports?**

I am not in a position to know how many longshoremen nationally, or even on the West Coast, have been vaccinated against COVID-19. The Ports of Seattle and Tacoma have made vaccines available to all port workers who want to receive the vaccine. Anecdotally, the majority of people who I work with on the docks sought the shot.

Depending on the success of vaccinating the workforce at any given port will dictate how many workers are available to work vessels and move cargo. It is possible that there might be a shortage of available workers if a significant number of port workers have not been vaccinated.

Question 2: Do you believe there should be exemptions to vaccine mandates for individuals that can demonstrate natural immunity from a prior-COVID infection?

As someone who works in an environment where accidents can, and do, easily cause serious bodily harm and even be fatal, I am always concerned about maintaining a safe workplace and limiting risks. I have a "safety first" mindset and I do not apologize for that. Nonetheless, I am not a safety expert nor am I a public health official. It is difficult for me to opine on the merits of vaccine mandate exemptions for individuals who can demonstrate natural immunity to COVID.

Philosophically, I am not opposed to such an exemption, or any other vaccine exemption granted for religious or medical reasons, as long as the safety of the workplace is maintained.

Question 3: Aside from the labor shortage, what do you believe are the additional barriers to relieving congestion at the ports?

There are many barriers to relieving congestion at ports and throughout the domestic freight delivery system. Limited hours that marine terminals are open to discharge cargo is one factor. Clogged railyards, especially in the Midwest, cause back-ups of cargo at the ports. A lack of truck drivers and intermodal chassis are also key contributors to congestion. Chassis are in such short supply; it is even a challenge to find available ones to use to train new truck drivers. If a truck driver cannot be trained to move intermodal containers, it is difficult to make progress in addressing the driver shortage, which is an excellent example of the interconnectedness of the issues that are undermining the ability to get cargo off ships, out of terminals and into the flow of commerce. A shortage of space in warehouses and distribution centers is also a problem, if cargo has nowhere to go it will sit at a marine terminal.

Question 4: Please provide specific ways to address congestion at the ports. Do you believe ports should operate 24 hours a day, 7 days a week?

Though our ports are congested, and our domestic freight delivery system is overwhelmed with the historic volumes of ocean freight American consumers and companies are importing, it is important to note that cargo is moving. The system is not working optimally, but it is working. Everyone involved in moving ocean freight, whether labor or management, is doing the best they can under challenging circumstances. I am not certain I can remember another time in my 50-year career where I have seen more unity of purpose than I have over the past 18 months. Maintaining that commitment to keep cargo moving is one of the most important priorities we can set for, at the very least, managing through the current situation.

Having ports and marine terminals operate “24/7” could be a productive step toward relieving congestion but it is not one that can be taken in isolation. To realize the potential gains from having gates open around the clock there need to be truck drivers to haul containers and warehouses and distribution centers open to accept shipments.

Finding ways to make intermodal equipment, especially chassis, more available would be an invaluable step in the right direction. I know that the Commission generally, and Commissioner Dye specifically, is working to find ways to improve the container return process. I support any effort that results in making more equipment available.

Even if cargo cannot be offloaded from a ship and sent to its final destination, getting containers off marine terminals would be another positive development. I know in Seattle, the port has opened two unused marine terminals to store cargo. This is inefficient in terms of how cargo should move, but it is a positive step in that it creates room on terminals that are servicing ships to

offload containers and keep boxes moving. I believe other ports throughout the Nation are looking for similar near port container storage options.

There are ports that can handle container ships where there is capacity for vessels to call and cargo to be worked. For example, some container ship traffic has returned to Portland, Oregon as vessel operators and shippers seek alternates to traditional gateways for containerized trade that have become congested. Work would need to be done to make certain sufficient capabilities to move cargo from these ports to destination or railheads exist but making use of underutilized ports could be beneficial.

Attracting people to work as truck drivers and warehouse workers should also be a priority. Both these sectors are facing personnel shortages which serves as a contributing cause to supply chain inefficiency.

The causes for port congestion are many, they are complicated, they are interconnected, and they feed off one another.

Question 5: Does the U.S. have sufficient dredge capacity to deepen and widen U.S. ports?

As I appreciate the jurisdiction of the Federal Maritime Commission, dredging is an issue that is the responsibility of the Army Corps of Engineers.

Question 6: If confirmed as Commissioner, will you commit to reviewing regulations that slow or prevent the deepening and widening of U.S. ports?

Though other agencies have responsibility for dredging and ports, the Commission does have an interest in advocating for infrastructure that contributes to an efficient supply chain system. Port facilities capable of handling the vessels that operate in international trade is an important part of that system. If confirmed, and if I identify issues related to dredging that are undermining the performance of the supply chain, I will call attention to those conditions.

Senator Shelley Moore Capito

Question 1: On June 16th, I wrote a letter to Federal Maritime Commission (FMC) Chairman Maffei regarding the ongoing shipping crisis. I appreciate Chairman Maffei's expeditious and thorough response to my letter and the FMC's commitment to doing whatever it can – within their jurisdiction - to address the issue. In Chairman Maffei's response, he noted that securing intermodal equipment over the past year has been a challenge for shippers, especially American exports. In your testimony, you also mention the return and availability of containers. If confirmed, what steps would you take as Commissioner to making progress on this issue?

The key to moving cargo, which is the key to working our way out of the port congestion problem, is to best use existing equipment and resources. Shippers, both exporters and importers, need containers and chassis. Progress on issues like container return and chassis return would make a meaningful contribution toward improving cargo flow and starting to address some of the problems causing supply chain congestion. I applaud Chairman Maffei's commitment to the FMC doing all within its power to contribute to improved equipment availability. If confirmed, I would do anything requested of me by the Chairman to support this objective. Commissioner Dye's work leading Fact Finding 29 has yielded interim recommendations that are practical and implementable. I would be interested in any further or future recommendations she might make that would help improve equipment flow and would be happy to support her efforts in any way I can.

Senator Rick Scott

Question 1: How would you use your position to solve the current port congestion and supply chain bottlenecks:

It is important to note that the Federal Maritime Commission has limited statutory authorities and jurisdiction to intervene in the marketplace. Many of the actions people would like the Commission to take, such as stepping in to cap rates being set by supply and demand, are beyond the power of the agency.

Nevertheless, the Commission can play an important role in contributing to efforts to address port congestion and supply chain inefficiency. Because of its role, the Commission has direct relations with all the parties involved in moving an ocean container. It has the ability to call attention to issues and to convene leaders who can offer private sector improvements to operational challenges.

Furthermore, the Commission can use the authorities it does have to make a difference. For example, through Fact Finding 29, the Commission is addressing detention and demurrage fees and making certain that such charges serve the purpose of incentivizing the movement of cargo and the return of intermodal equipment as opposed to another revenue stream for ocean carriers. Another Commission effort toward that goal is the Vessel-Operating Common Carrier Audit Program established at the direction of Chairman Maffei this past summer. This undertaking is assessing the nine top carriers by market share calling the United States for their compliance with the Commission's Interpretive Rule on Detention and Demurrage. Similarly, the Commission's Bureau of Enforcement launched an investigation in August 2020 into the timing and legal sufficiency of certain announced or initiated fees and surcharges by eight different ocean carriers.

The Commission can play a role in making improvements to the container return process and equipment availability. I understand Commissioner Dye is working on these efforts and if confirmed, I would offer her whatever support I could. Similarly, the Commission can play a role in efforts to improve information and data sharing, both by bringing attention to the need for progress in this area and through its agreement process. This is another policy objective I would support and would be pleased to offer my assistance and efforts on if confirmed.

Question 2: How would you use your position to foster a free market-based system for determining carrier rates and combating anticompetitive practices?

The key responsibility of the Federal Maritime Commission is to ensure that the marketplace for liner ocean services is free of collusive and anticompetitive behavior. The Commission engages in continuous and close monitoring of the marketplace and the behavior of shipping lines to make certain shippers are not unfairly disadvantaged.

If confirmed, I will carry out my duties as prescribed by the authorities Congress grants the Federal Maritime Commission.

It is important to enforce the law and make certain that all actors in the marketplace are competing on an even playing field. I will do everything within my authority as a Commissioner to realize that outcome.