

Statement of

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Before the

**U.S. Senate Committee on Commerce, Science, and  
Transportation, Subcommittee on Surface  
Transportation, Maritime, Freight, and Ports**

on

**Uncharted Waters: Challenges Posed by  
Ocean Shipping Supply Chains**

December 7, 2021

**1. Introduction: The World Shipping Council and the Liner Shipping Industry**

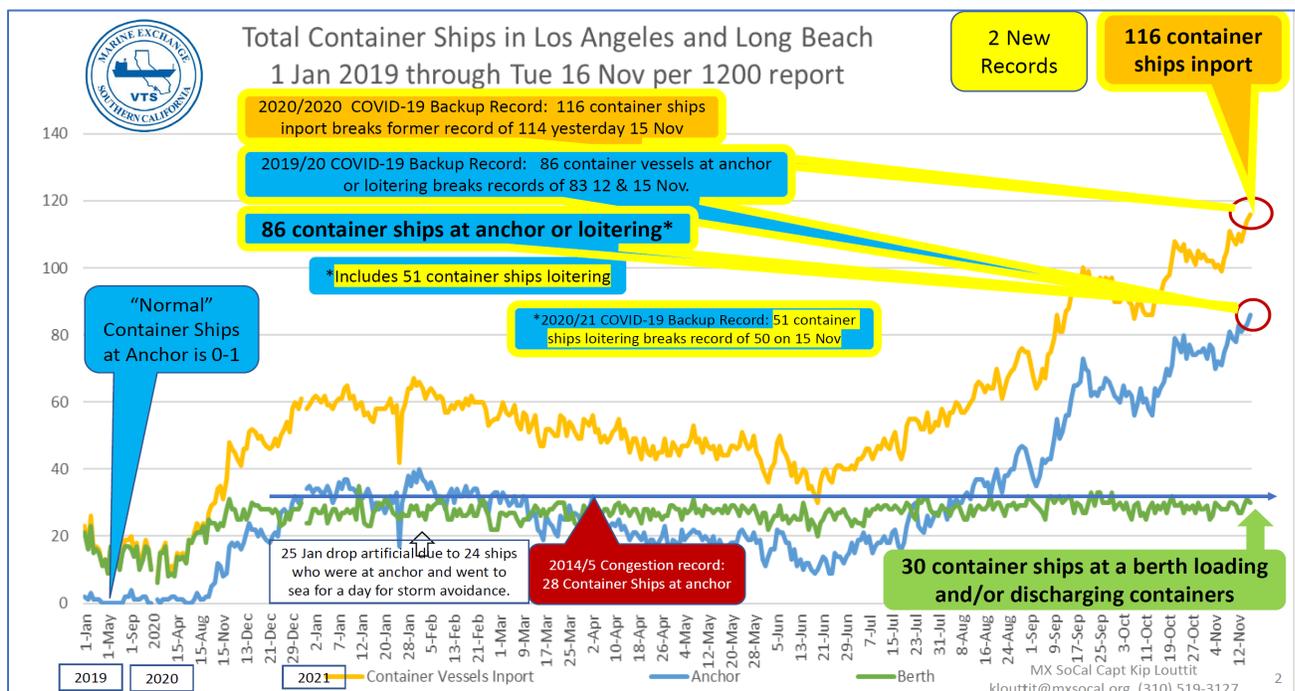
Chairman Peters, Ranking Member Fischer, and Members of the Subcommittee thank you for the invitation to testify today. My name is John Butler. I am President and CEO of the World Shipping Council<sup>1</sup> (“WSC” or the “Council”). WSC is a non-profit global trade association whose goal is to provide a coordinated voice for the liner shipping industry in its work with policymakers, the public, and other industry groups with an interest in international transportation.

WSC members comprise an industry that has invested hundreds of billions of dollars in the vessels, equipment, and marine terminals that are in worldwide operation today. Approximately 1,200 ocean-going liner vessels, mostly container ships, make more than 28,000 calls at ports in the United States during a given year – almost 80 vessel calls a day. This industry provides American importers and exporters with door-to-door delivery service for almost any commodity to and from roughly 190 countries. *The ocean common carrier community is committed to serving the international trade of the United States, and the record volume of import and export cargo that we continue to move is the evidence of that commitment.*

## 2. Record U.S. Consumer Demand and COVID-19 Disruptions Have Strained Every Link in the Supply Chain

The U.S. is experiencing unprecedented import cargo demand due to pandemic-altered consumer spending patterns and COVID disruption. U.S. consumers made a dramatic shift in spending from services to goods, with many of these goods purchased on e-commerce platforms. What was perceived as a temporary consumer shift during the beginning of the pandemic to e-commerce is increasingly appearing to be a permanent shift. This behavioral change has resulted in record import volumes, as the majority of goods U.S. consumers, businesses and importers are ordering are made overseas, or assembled in the U.S. with components from other countries. U.S. import demand is further complicated by COVID disruptions when factories, port terminals and other operations throughout the world are sporadically shut down in response to infection outbreaks, putting pressure not just on ocean carriers, but on every link in the complex global and North American supply chain from both a production perspective and a transportation perspective.

Ocean carriers responded to the U.S. consumer import demand by deploying every container ship available. But when these ships and containers reach the entrance to U.S. ports, a shortage of landside capacity to process the cargo—in marine terminals, trucking, chassis, warehouses, distribution centers, and rail cars—has created bottlenecks. This video is illustrative of the challenge: [https://youtu.be/\\_56qEFojS1](https://youtu.be/_56qEFojS1) The most visible bottleneck is the record number of ships backed up off the ports of Los Angeles and Long Beach. On November 16, a record 86 container ships were at anchor or loitering offshore waiting for a berth assignment. For reference, from 2018 to 2019, the number of ships at anchor or loitering was typically zero—arriving ships proceeded directly into port to offload cargo.



What is the primary cause of this congestion? Simply put, U.S. landside capacity cannot keep up with the volume of import cargo that American businesses and consumers are ordering from overseas. Because cargo owners' warehouses are full, and there is strong competition for trucking and rail services to pick up and process the cargo, in some cases cargo owners are effectively using the marine terminals and containers as temporary warehouses. This practice is consuming precious space and limiting the terminals' ability to operate at full capacity. It is also taking up the space where returned empty containers would typically be stored, so in some cases marine terminals are unable to accept empty container returns from truckers unless a loaded import container is removed in the same transaction in order to create space.

The inefficiencies that these conditions generate are made worse by the fact that both loaded and empty containers are too often stored outside of the marine terminals on the same truck chassis that are needed to move imports off of the terminals and to move export containers onto the terminals to be loaded on outbound ships. Each inefficient process affects every other connected process, and each individual problem compounds problems in the rest of the supply chain.

### **3. What are Ocean Carriers doing to help alleviate this congestion?**

Although in most cases ocean carriers' contractual obligation is completed once they deliver merchant haulage cargo to the marine terminal, ocean carriers are working with the Administration's Supply Chain Disruption Task Force, Port Authorities, and their customers (cargo owners) to encourage them to pick up their cargo as soon as possible. This collaborative effort has resulted in a decline in long-dwelling containers in Los Angeles and Long Beach from 62,000 to 39,000— a 37 percent reduction.<sup>1</sup> One WSC member company has even taken the unique step of instituting an "Early Container Pickup Incentive Program" which offers importers up to \$200 per container if they pick up their container from Los Angeles and Long Beach within eight days of delivery, in an effort to improve cargo fluidity.<sup>2</sup>

Ocean carriers are also working where possible to operate dedicated empty container evacuation ships — so-called "sweeper ships"— which have picked up some 20,000 empty containers, freeing up both terminal space and chassis, which provides more chassis availability for truckers to retrieve laden containers from the marine terminals and to deliver U.S. export containers to the ports for loading on outbound ships.<sup>3</sup>

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<sup>1</sup> See [Ports of LA, Long Beach, delay container fee for 4th time – Press Telegram](#)

<sup>2</sup> See <https://www.cmacgm-group.com/en/news-media/cma-cgm-implements-incentive-program-to-ease-congestion-at-the-ports-of-Los-Angeles-and-Long-Beach>

<sup>3</sup> See [Empty Containers Pile Up at Port of Los Angeles as Ocean Liners Add 'Sweeper' Ships to Clear Backlog \(gcaptain.com\)](#)

#### **4. When Ocean Carriers Return Empty Containers to Alleviate Port Congestion and free chassis, are these “empties” displacing U.S. Agricultural and other exports?**

Within the category of agricultural exports that move in containers, there has been an assertion that more containers should be set aside for agricultural exports. Although it is understandable that all shippers would prefer to have a favored position in the market, it is not possible to arbitrarily favor one group of customers without disrupting the functioning of the entire system, to the detriment of all. When overall U.S. import volume surges and overall U.S. export volume remains relatively flat – as has been the case since mid-2020 – this results in an increase of empty containers in the U.S. that need to be repositioned to overseas locations to be filled with U.S. import cargo.

Without that repositioning of empty containers to the origin countries from which U.S. importers purchase goods, U.S. importers would not be able to meet the demands of U.S. businesses and consumers that purchase those imported products. Equally important, if these containers are allowed to pile up in ports, the resulting congestion slows down the system for everyone – importers and exporters. The containerized ocean transportation system is not two disconnected import and export systems. It is one system comprised of a single interconnected network employing the same ships and containers in continuous service loops, and that network must be managed to keep all types of cargo moving. Everybody’s cargo moves, or nobody’s cargo moves.

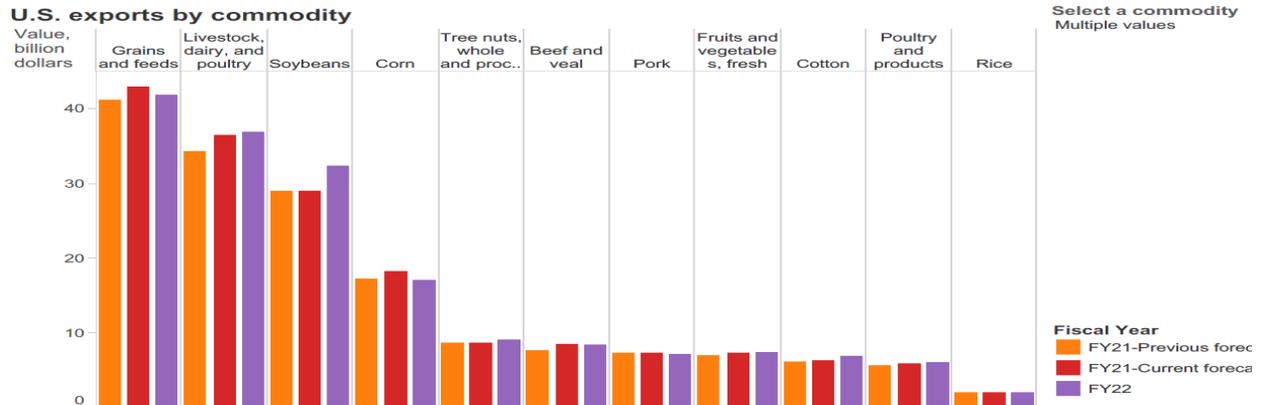
U.S. agricultural exporters face the same land transportation and equipment challenges as importers as they work to move their export cargo in the opposite direction, as well as the additional challenge of synching their export loads up with the ships they are booked on. This combination of challenges has created frustration among exporters because it is difficult to match inland transportation arrangements with ship schedules that are themselves uncertain because of port congestion. This has resulted in problems with what is termed the “earliest return date” (ERD) for outbound cargo – the window during which the marine terminal will accept cargo for a particular ship. If the cargo comes into the terminal too early and the ship does not arrive, then that cargo contributes to congestion. If the cargo comes in too late, it may miss the ship. The Federal Maritime Commission (FMC) recently announced it is addressing this issue using a “Supply Chain Innovation Team” composed of representatives from ocean carriers and marine terminal operators to address exporter concerns and bring certainty and predictability to the ERD process.<sup>4</sup>

While there have been allegations that exporters of agricultural products have been disproportionately affected, in fact all exporters, both agricultural and non-agricultural, have been affected by the bottlenecks caused by the pandemic induced supply chain congestion.

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<sup>4</sup> See [New Supply Chain Initiatives Announced at FMC Meeting - Federal Maritime Commission - Federal Maritime Commission](#)

Notwithstanding the congestion, however, U.S. agricultural exports are moving at high and in some cases record levels.



Note: Fiscal year (FY) covers October 1 of the previous calendar year to September 30 of the listed year. Values for some commodities are included in more than one figure (e.g., if both categories are selected, Fruits, fresh appears as a separate category and is also included in Horticultural products). To see how commodities are grouped, please refer to Table 3 of the *Outlook for U.S. Agricultural Trade*.

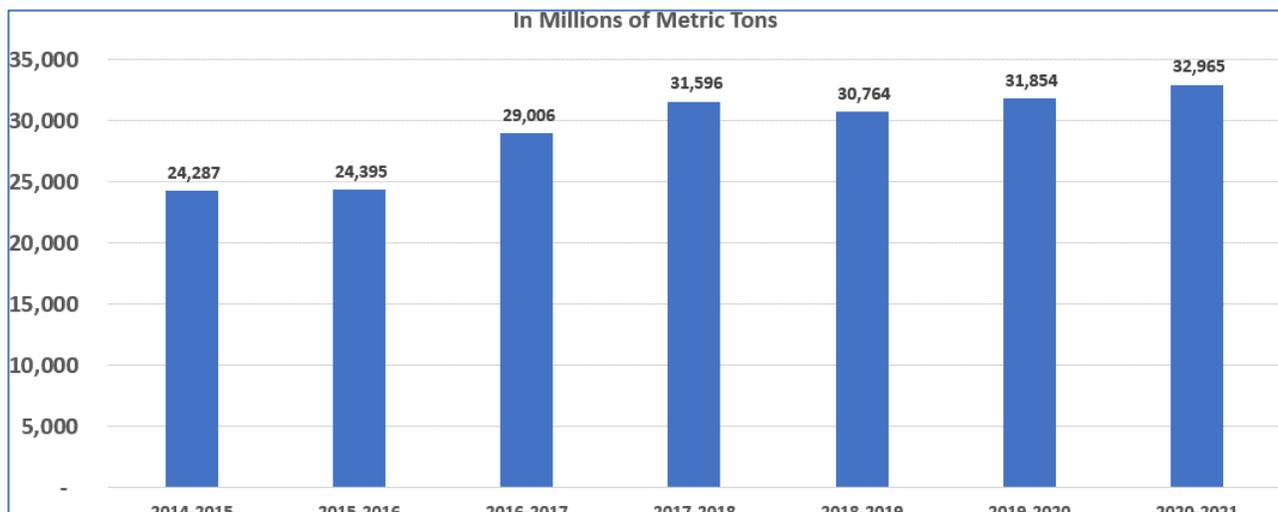
Trade forecasts for the fiscal year are released quarterly. FY21-Previous forecast was released in May 2021; FY21-Current and FY22 forecasts were released in August 2021.

Source: USDA, Economic Research Service and USDA, Foreign Agricultural Service analysis and forecasts using data from U.S. Department of Commerce, Bureau of the Census.

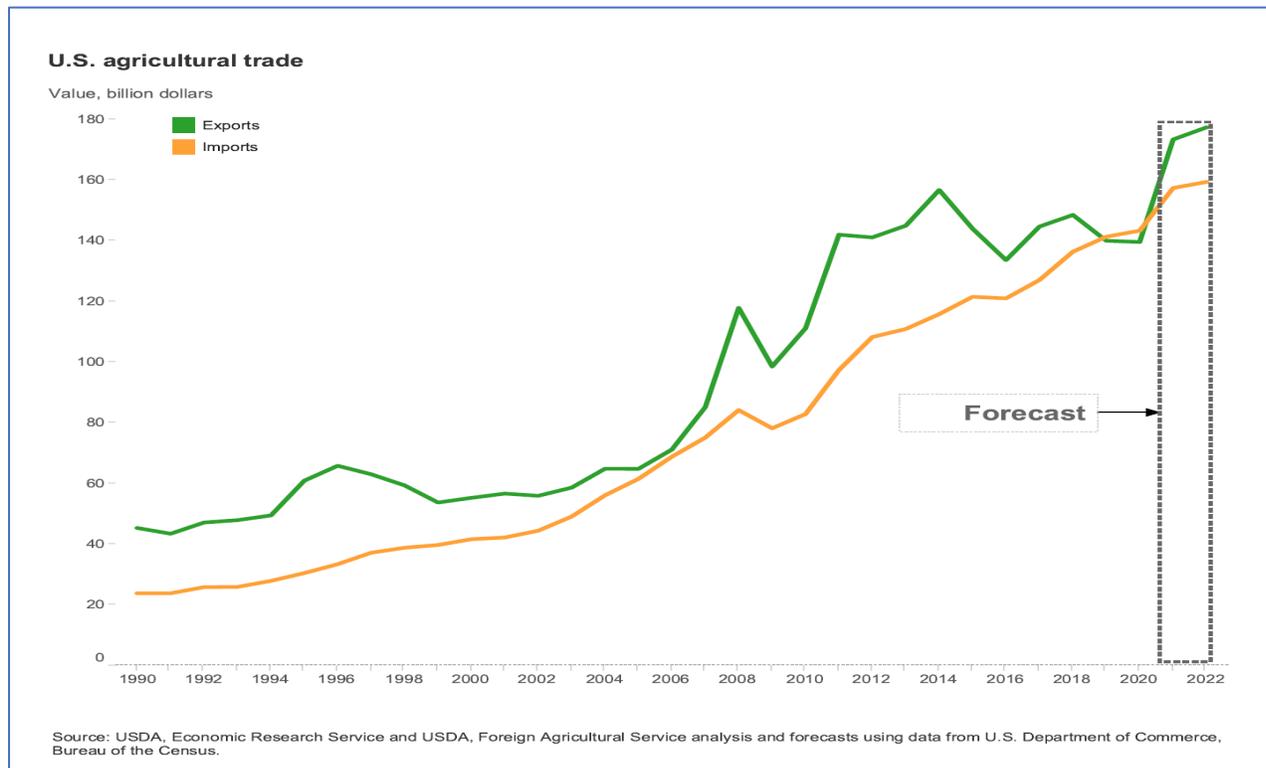
By way of context, containerized cargo is a relatively small percentage of total agricultural exports. Exports to Canada and Mexico move almost entirely by land transportation. For agricultural exports moving by sea, the majority are exported on bulk freighters.

However, U.S. containerized agricultural exports are also moving at pre-pandemic and in many cases record levels. According to the Foreign Trade Division of the U.S. Census Bureau, containerized export tonnage of soybeans increased almost twenty-five percent in the October 2020-March 2021 period, reaching the highest levels ever. Additionally, containerized exports of Tree Nuts, Frozen Beef, and Dairy were at record levels and Pork, Cotton and Forage (Hay & Clover) were at near-record levels.

### Seaborne Containerized Agricultural Exports, October-June in Recent Years



U.S. Department of Agriculture Forecasts project exports for fiscal year 2021 at \$173.5 billion, an increase of \$9.5 billion from the May 2021 projection.<sup>5</sup> The USDA forecast for 2022 continues this upward trend rising \$4.0 billion to \$177.5 billion, with soybeans increasing by \$3.3 billion from 2021, to a record \$32.3 billion, cotton forecast up \$500 million to \$6.8 billion, and livestock, poultry and dairy exports up \$400 million to \$36.8 billion, primarily due to growth in dairy and poultry products. Overall agricultural exports to China are forecast at \$39 billion—an increase of \$2 billion from FY 2021.



**5. The Ocean Carrier Industry is not highly concentrated; Vessel Sharing Agreements (VSAs) enable carriers to offer a broader suite of services and use vessels more efficiently**

Recently there have been assertions that the ocean carrier industry is highly concentrated and that price increases caused by the ongoing COVID-19 disruption might not be market driven. In fact, the opposite is true. Both the FMC and European Union competition authorities have recently reviewed pandemic-driven price increases, with both agencies concluding that they have not received any evidence or identified any anticompetitive behavior in relation to price

<sup>5</sup> See United States Department of Agriculture, Economic Research Service, Outlook for U.S. Agricultural Trade: August 2021, available at [USDA ERS - Outlook for U.S. Agricultural Trade](#)

increases.<sup>6</sup> In fact, these competition authorities have concluded that the pandemic has presented operators across the supply chain with exceptional challenges, that the causes of the prices hikes and of the current level of service quality are multifaceted, not necessarily the same across the entire world, and are not attributable to one determining factor or one category of operators.

The fact is that prices in the ocean shipping markets are driven by supply and demand. Demand for ocean transportation services into the United States is at a record, sustained level. Despite the fact that ocean carriers have deployed all available ships and equipment, the landside bottlenecks discussed above are preventing those ships from efficiently unloading import cargo and loading outbound U.S. exports. In this way, the operational and infrastructure challenges that begin at the ports and run inland all the way to the final destination of the imported goods are reducing the effective capacity of the ocean vessel fleet. Ships forced to wait to get into port are not moving cargo and satisfying demand.

There has also been some misunderstanding about vessel sharing agreements, or VSAs. These longstanding arrangements are one of the most important structural features of the liner shipping industry. VSAs allow carriers to share vessel capacity on each others' ships, causing ships to be used more efficiently and resulting in more service offerings to more ports by more carriers than would otherwise be the case. These are purely operational arrangements, however, and each carrier continues to individually price its services.

VSAs are recognized worldwide by regulators as increasing service levels and operational efficiency, to the benefit of all supply chain users. In the United States, VSAs are filed with the FMC and are subject to strict monitoring to ensure that they remain pro-competitive. In the conditions that we are currently experiencing, VSAs provide a mechanism to ensure that every slot on every vessel is used to move loaded containers or to reposition equipment for the next use – efficiencies that are critical to getting the best performance from an ocean transportation system that is constrained by inland congestion.

## **6. The Federal Maritime Commission (FMC) has the Necessary Authority and is Actively Regulating the U.S. International Transportation System**

In challenging trade conditions, it is not uncommon for there to be complaints about marketplace behavior in all transportation modes. For liner shipping, if there are problems that run afoul of the Shipping Act, the FMC punishes unreasonable behavior. The FMC is actively investigating allegations of Shipping Act violations through its “Fact Finding 29, International

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<sup>6</sup> See [International Shipping Competition Agencies Meet - Federal Maritime Commission - Federal Maritime Commission \(fmc.gov\)](#); [Increase in maritime freight transport costs \(europa.eu\)](#); [Answer for question E-004399/21 \(europa.eu\)](#)

Ocean Transport Supply Chain Engagement” in order to address any abuses and to identify operational and regulatory solutions to cargo delivery system challenges related to COVID-19.<sup>7</sup>

The FMC also recently completed an audit of the top nine ocean carriers by market share for compliance with the Commission’s recently promulgated “Interpretive Rule on Demurrage and Detention Under the Shipping Act”<sup>8</sup> and subsequently urged ocean carriers to adopt best practices for detention and demurrage.<sup>9</sup> Detention and demurrage charges are used to ensure that shippers expeditiously pick up their cargo and promptly return empty containers so the equipment can be used by the next customer. This keeps the supply chain moving and enhances service efficiency, reliability and predictability. The Commission has been especially focused on detention and demurrage charges recently, both because these mechanisms are necessary to maintaining the free flow of cargo, and also because cargo volumes and related congestion have raised questions about how charges are applied in some cases.

The FMC’s active engagement and oversight demonstrate that the FMC is uniquely positioned and has ample authority to address these issues. The Commission has repeatedly confirmed that questions about detention and demurrage are inherently fact-specific, and adjudication of any complaints is the sort of task to which administrative agencies, with their adjudicative and investigatory resources, are well suited to handle. To date, there have been very few formal complaints filed with the FMC, and the Commission has the authority to undertake enforcement actions on its own initiative if it finds cause to do so.

## **7. Conclusion**

Every sector of the global supply chain remains under tremendous stress, and that stress is more acute in the United States than anywhere else on the globe. That is the case because of the surge in U.S. import cargo. The record-level import surge has clogged overseas ports as well as some of this nation’s ports, the inland transportation system, and warehouses and distribution centers. Those landside back-ups mean that we have ports where ships are waiting for long periods of time to unload and load cargo, thus reducing the effective capacity of the world’s containership fleet. The import surge has also exacerbated an existing imbalance between import and export volumes, which increases the need to reposition empty containers in order to meet the continuing demand from U.S. importers. If those empty containers pile up in marine terminals or are left sitting on chassis outside the terminals, that slows down the flow of cargo for both importers and exporters. All of these factors build upon one another to cause the situation that we find ourselves in today.

Everyone experiencing these unprecedented conditions has been impacted by the business challenges, costs, and delays resulting from the pandemic and its cargo demand surge.

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<sup>7</sup> See [www.fmc.gov/fact-finding-29](http://www.fmc.gov/fact-finding-29)

<sup>8</sup> Federal Maritime Commission, Interpretative Rule on Demurrage and Detention Under the Shipping Act, 85 Fed. Reg. 29638, at 29647 (May 18, 2020).

<sup>9</sup> [FMC VOCC Audit Team Urges Carriers to Adopt Detention & Demurrage Best Practices - Federal Maritime Commission - Federal Maritime Commission](#)

As testimony from all witnesses today will show, this is not a situation caused by the failure of any one part of the supply chain, and no part of the system has been untouched. To the contrary, all parts of the chain are affected, and all parties are working overtime to keep cargo moving. And while there are obviously disruptions, costs, and delays, the fact is that the international ocean and U.S. intermodal transportation system is moving more cargo right now than at any time in history. *The system is bent, but it is not broken.*

The supply chain challenges that we face require logistical and management solutions, as well as a return to a more normal volume and balance of import and export cargo, which will happen over time. Necessary solutions are being provided through the common purpose and efforts of many supply chain actors. These are operational and commercial challenges that must be addressed first and foremost by the commercial service providers and customers involved, with a steady regulatory backstop provided by the FMC. *The ocean common carrier community is committed to serving the international trade of the United States, and the record volume of cargo that we continue to move is the evidence of that commitment.*

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