Congress of the United States

Washington, DC 20515

August 17, 2023

The Honorable Daniel B. Maffei
Chairman
Federal Maritime Commission
800 North Capital Street, NW
Washington, DC 20573

Dear Chairman Maffei,

As members of the House Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation, we are writing with regard to the Federal Maritime Commission's ("FMC's" or "Commission's") proposed rulemaking to establish demurrage and detention billing requirements under the Ocean Shipping Reform Act of 2022 ("OSRA" or "Act"). Specifically, we urge the Commission to follow the intent of Congress by removing marine terminal operators ("MTOs") from the rulemaking's substantive demurrage billing requirements. In addition, we are deeply concerned that the Commission's recent interpretation of the "Incentive Principle" could cause severe disruptions in America's supply chain if applied to terminal demurrage.

Given our concerns over the impact of OSRA's detention and demurrage provisions on shippers, marine terminal operators and the supply chain, we voted against the original House version of the bill (H.R. 4996), but we supported the final version of the bill that became law. The original House and Senate versions of OSRA each contained burdensome demurrage billing requirements, but the final version removed MTOs from those requirements to ensure that potentially negative impacts to the supply chain and established billing processes were mitigated. The Commission's rulemaking should be based on the final legislation that became law, not on the provisions that were removed from the original House and Senate legislation.

Of particular note, the final OSRA legislation that became law did not contain the following provisions that were included in the original House or Senate bills:

- The prohibition of any ocean carrier or marine terminal operator from invoicing a party for demurrage and detention charges, unless such invoice was accompanied by an accurate certification that such charges comply with the FMC's regulations and the Commission's "Interpretive Rule on Demurrage and Detention Under the Shipping Act."

- The Commission's requirement to publish all penalties imposed or assessed against both ocean common carriers and MTOs with regard to improper demurrage and detention charges.

- A burden-shifting provision that would have required MTOs to prove that demurrage charges were reasonable whenever challenged by shippers.

During the House Transportation and Infrastructure Subcommittee's March 23rd hearing on the FY2024 budget for federal maritime programs and OSRA implementation, you testified that the underlying purpose of OSRA

was to help the FMC take a lead role in "untying the knots and mitigating the unfairness that seemed to be plaguing the supply chain," and acknowledged the FMC's responsibility to implement the new law "in the spirit intended by Congress." However, mandating billing requirements for MTOs, which were already removed by Congress in the final legislation, do not serve the purposes of the underlying Act. Rather, mandating such requirements could potentially increase port congestion by disrupting established billing processes and the flow of cargo at marine terminals. Moreover, the actions of American MTOs do not cause the negative impacts on U.S. shippers that OSRA was intended to address.

You also acknowledged during the March 23rd hearing that the FMC should avoid actions that disincentivize the timely retrieval of cargo from marine terminals and, in response to questions, noted that detention and demurrage, while essential to keep cargo flowing, must adhere to the "incentive principle." We understand that in a recent decision the Commission determined that the imposition of equipment detention charges on a holiday weekend was at odds with the "Incentive Principle" and therefore unreasonable under the Shipping Act. While the goal of the Incentive Principle is sound – ensuring that detention and demurrage charges incentivize the flow of cargo – we are concerned that extending the Commission's recent interpretation to terminal demurrage would disincentivize the timely removal of containers from marine terminals and impede cargo fluidity at U.S. ports.

Marine terminals are not warehouses, and it is not unreasonable for an MTO to be compensated by a shipper that improperly uses the marine terminal as such. Moreover, the imposition of weekend and holiday terminal demurrage promotes cargo fluidity, consistent with the Incentive Principle. Such charges incentivize shippers to remove their containers before the weekend or holiday to avoid paying for such additional storage costs. This frees finite terminal space for containers discharged from vessels calling on U.S. ports during the weekend or holiday.

The United States has just recovered from unprecedented supply chain congestion that caused great harm to our economy, and we cannot allow counterproductive government regulation to threaten the stability we have restored at American ports. Therefore, we urge you to remove MTOs from the OSRA detention and demurrage rulemaking and to ensure that the FMC does not extend its recent "Incentive Principle" interpretation to terminal demurrage.

Sincerely,

Jake Auchincloss
Member of Congress

Brian Babin
Member of Congress

CC:

Commissioner Rebecca F. Dye
Federal Maritime Commission

Commissioner Louis E. Sola
Federal Maritime Commission

Commissioner Carl W. Bentzel
Federal Maritime Commission

Commissioner Max Vekich
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