



September 14, 2022

Mr. William Cody
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Submitted by Email to:
secretary@fmc.gov

RE: Docket 22-19
Request for Information, Existence of an Emergency Situation

Dear Mr. Cody:

Please accept these comments on behalf of the U.S. Dairy Export Council (USDEC) and the National Milk Producers Federation (NMPF) and their members with regards to the Federal Maritime Commission's Request for Information related to "whether an emergency situation exists related to the congestion of the carriage of goods and any adverse effects on the competitiveness and reliability of the international ocean transportation supply system."

USDEC is a non-profit, independent membership organization representing the global trade interests of U.S. dairy farmers, dairy processors and cooperatives, dairy ingredient suppliers and export trading companies. Its mission is to enhance U.S. global competitiveness and assist the U.S. industry to increase its global dairy ingredient sales and exports of U.S. dairy products. USDEC and its 100-plus member companies are supported by staff in the United States and overseas in Mexico, South America, Asia, Middle East and Europe.

NMPF develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies. NMPF provides a forum through which dairy farmers and their cooperatives formulate policy on national issues that affect milk production and marketing. NMPF's contribution to this policy is aimed at improving the economic interests of dairy farmers, thus assuring the nation's consumers an adequate supply of pure, wholesome, and nutritious milk and dairy products.

Since the onset of the COVID-19 pandemic, the international ocean freight system has been disaffected by an imbalance of shipments and cargo and port congestion that has led to several deleterious effects on American dairy and agriculture exports, as well as on various

other industries and shippers. These effects have included a lack of available containers and equipment, unreliable and delayed vessel bookings, cancelled and blanked sailings, drastically increased charges and fees, and unreasonable application of detention and demurrage fees, among others.

As a result of these ocean carrier service shortfalls and terminal congestion, American dairy exporters faced significant economic impacts. In 2021, it was estimated that the American dairy industry lost over \$1.5 billion due to lost sales, lower sale value and increased shipping costs directly related to the challenges faced with the unreliability and delayed services of the ocean freight system. And not only were these problems felt immediately, but we have heard various anecdotes about foreign customers seeking out suppliers from other nations as their trust in the supply chain that delivered American goods diminished, putting at risk long-term customer and market relationships on which U.S. jobs depend. Furthermore, ongoing delays in good shipments due to delayed or cancelled vessel bookings continue to risk the spoilage of perishable foods, adds costs for yard storage or warehousing, increases drayage trips and costs, as well as various other economic impacts.

Despite the passage of the Ocean Shipping Reform Act, diminished COVID pandemic impacts and changes in the global economic landscape, many of the problems faced by American dairy exporters continue to exist today. Recently we conducted a survey of our members to evaluate their recent experiences with the international ocean freight system (see addendum). The results of this survey were concerning. Of those responding, 65 percent indicated that unreasonable detention and demurrage fees continue to be a challenge; 43 percent indicated that container access has not improved; 92 percent responded that they continue to experience cancelled or rolled vessel bookings; 54 percent had recent experiences with cancelled/blanked sailings; while 44 percent noted ongoing issues with adequate or reliable Earliest Return Dates.

The significant shipping concerns that our members continue to experience suggest that cargo congestion and inadequate ocean freight transportation services constitute an emergency situation. This appears to exist in some form throughout the United States, with anecdotal accounts of challenges at ports on the east and west coasts, and among private and publicly operated terminals. However, there have been a notable volume of concerns voiced about services involving the ports of Oakland, Los Angeles/Long Beach, Houston, and more recently, reports about congestion affecting the ports of New York/New Jersey and Savannah. These localized challenges have included shipping delays, drayage challenges, inadequate communication about vessel scheduling and ERDs, poor vessel schedule reliability and a lack of terminal space.

As part of any emergency situation determination, the Commission should consider the following information and/or requirements that ocean carriers and/or terminal operators should be required to provide to shippers, rail carriers and other parties:

- Established Earliest Return Dates and cut-offs, ideally with a minimum of a week to ten days;

- Vessel sailing schedules, with requirements for advance notice of any blanked sailings;
- Advanced prior notice for changes to vessel schedules and related contingency specifications for dwell time related to port congestion;
- Details about the availability and location of empty containers;
- Terminal drayage appointment and open-access calendars, including evening and weekend dates/times, including with any incentives for use of off-time; and
- Expected rail-ramp delivery times and delay estimations, updated regularly.

Ultimately, the Commission should develop metrics based not only economic impacts but also measurable supply chain and cargo flow details, which are the subject of the Commission's August 8, 2022 Request for Information related to *Container vessel imports and exports*. This objective data should be used to serve as the future basis for the Commission's determination of whether emergency situations exist and should be used as a standard for these determinations to continue beyond the congressionally established 18-month window. Certainly, other information will inform the Commission about the competitiveness of the system, based on costs and economic impacts, but cargo flow data can be a strong indicator of emergency situations.

Sincerely,



Jaime Castaneda
Executive Vice President for Policy Development & Strategy

Dairy Export Supply Chain Survey Results

To learn more about the current state of export ocean shipping among the dairy industry, the U.S. Dairy Export Council and National Milk Producers Federation conducted a survey of its members from August 8 to August 22, 2022. This survey asked 21 questions about the challenges that dairy shippers are facing with the international ocean freight transportation system, and whether there had been any progress on the problems faced with export supply chains that have been occurring since early 2020. Input was received from 39 dairy exporting companies and cooperatives.

Survey Overview

The survey results paint a mixed picture of the current export ocean shipping situation.

- A vast majority of respondents note that vessel accommodation scheduling and reliability continue to be significant challenges, and that this continues to have negative effects on supply chains and shipping costs. Poor communication about vessel schedule changes was also a frequently cited concern.
- There appears to be some progress in the experiences related to certain persistent shipping challenges, such as demurrage charges, detention and demurrage invoices, access to empty containers and terminal appointment scheduling (ERDs). Some of these improvements, especially the demurrage invoice billing, may be related to the passage of the Ocean Shipping Reform Act, while others may be related to some stabilization of the ocean shipping network.
- Certain ocean shipping carriers stand out for shipper concerns, while a few have been cited for making progress on service quality.
- Many respondents note that while the growth of shipping rates has slowed, base rates remain high and ancillary fees and charges have risen. Challenges related to vessel schedules have also driven increases in related fees due to increased reliance on storage (warehouses and yards), chassis, and re-deliveries.
- Concerns about the performance of the Port of Oakland were cited by nearly half of all respondents, far beyond any other domestic port.
- Overall, the survey results show some improvements in the ocean shipping experience for dairy industry exporters, but much work remains to have a stable and efficient agriculture export container shipping system. Discrepancies among carriers are apparent, demonstrating progress among some steam ship lines, while problems persist elsewhere. This suggests an ongoing need for the Federal Maritime Commission and others to maintain strong oversight of the carriers and port terminals to pursue further improvements for American exporters.

Survey Results Summary

Detention and Demurrage Charges

- 65% indicated that demurrage charges (and detention charges, to a lesser extent) continue to be a challenge.
- CMA CGM was the most cited carrier for ongoing demurrage issues and Hapag-Lloyd was the second most cited carrier.
- Nearly 75% of respondents indicate that they are receiving the necessary information related to detention and demurrage invoices.
- This positive response is indicative of carriers responding to the new regulations in the Ocean Shipping Reform Act which immediately implemented new detention and demurrage invoice rules.
- Many responses cite frequent vessel schedule changes and early cut-offs as the driving force behind detention and demurrage charges. When ERDs and cut-off dates change, shippers are forced to either keep containers out longer or leave containers on port terminals for extended periods while awaiting the vessel accommodations and loading.
- Some comments cite documentation and bill of lading problems leading to delays and disputes, while some also noted improvements in charge details and dispute procedures.

Container Access

- A majority of responses indicate improvements in container access, with 8% noting that it had Significantly Improved, and 47% at Somewhat Improved. However, some comments suggest that this situation is highly variable.
- Among the carriers listed as having made progress, CMA CGM is listed most frequently, MSC is listed the second most.
- Comments indicate that reefer containers have been more challenging to obtain.
- Some commenters note that the availability of containers at rail ramps in the Midwest (Kansas City, Chicago, Minneapolis) has been more limited than at the ports.

Vessel Accommodations and Schedules

- Over 92% of responses indicate problems with ocean carrier vessel schedule reliability.
- CMA CGM and Hapag-Lloyd were both listed by over a third as having notable vessel schedule reliability issues, while COSCO and MSC were both listed by numerous respondents. Notably, 6 respondents indicated "all" carriers had some issues with vessel booking and schedules.
- Frequent vessel schedule changes and cancellations were the most cited concern. Variable ERDs and cut-offs remain significant challenges. Overbooking is a common reason given to shippers for vessel accommodation changes. Poor advance notice or notification of schedule changes was also cited by numerous respondents.
- 55% of responses indicate recent experiences with cancelled/blanked port visits.
- The Port of Oakland is by far the most problematic port, with nearly half of all responses highlighting problems there.
- Among those who listed carriers as standing out for cancelled port visits, CMA CGM had the most responses and Hapag-Lloyd the second most.
- Over half of all respondents (54%) note that they have been receiving adequate ERDs from carriers to deliver goods to ports.

- *Among the carriers cited by responses for continuing ERD challenges, CMA CGM was cited the most, with MSC second, and Hapag-Lloyd and Evergreen third.*
- *The Port of Oakland was cited the most in responses, with Los Angeles & Long Beach following.*
- *Some responses note that while the ERD is given in adequate advance time, the quality of that information is often unreliable and the ERD shifts, adding costs for container and chassis storage and drayage.*

Ocean Freight Charges & Fees

- *The general sentiment among responses is that rates continue to increase or that they are about the same. Only one respondent indicated that their rates were decreasing.*
- *Commenters indicate that cost growth has slowed but continues to increase.*
- *Many cite growth in miscellaneous fees for storage (warehousing and yards), chassis, trucking/drayage.*
- *The cost implications to these fees from vessel schedule changes is a broad concern.*

Problems with Specific Ports

- *Over three quarters of responses indicate problems at specific ports, with the Port of Oakland was most commonly cited as problematic.*
- *Vessel delays and schedule changes/revisions were cited in numerous comments, as was equipment (container/chassis) availability, while port congestion and complexity is a concern for all West Coast ports.*
- *Rail transport and rail ramp congestion, chassis availability at rail yards was noted in multiple comments.*