STATEMENT OF
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CHAIRMAN, FEDERAL MARITIME COMMISSION

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

October 29, 2013

Good morning Chairman Hunter, Ranking Member Garamendi, and members of the Subcommittee. Thank you for the opportunity to address you today on matters related to the Commission's re-authorization.

The Commission is the independent agency charged with the regulation of U.S. oceanborne foreign commerce valued at $930 billion annually, accounting for 29.3 million twenty-foot equivalent units (TEUs) of import and export cargo. The Commission continues to cultivate a regulatory system that ensures competition, facilitates commerce, and encourages reliable service to U.S. exporters and importers while minimizing government intervention and costs. The Commission also remains alert to foreign activities that have the potential to harm the U.S. maritime industry, and we will remain vigilant on behalf of the American importer, exporter, and consumer.

The Commission carries out important, statutorily-mandated programs aimed at maintaining an efficient and competitive international ocean transportation system; protecting the public from unlawful, unfair, and deceptive ocean transportation practices; and resolving shipping disputes. These key FMC initiatives allow the Commission to resolve issues that have an impact on importers and exporters, as well as support one of the Commission's primary objectives to increase U.S. exports and further the interests of the greater shipping community. A fair, efficient, and adequate ocean transportation system depends on the FMC's ability to evaluate carrier and terminal agreements for anti-competitive impact and to license ocean transportation intermediaries to protect the shipping public and facilitate international trade.

The Commission is specifically charged by the Shipping Act with the following responsibilities:

(1) Establishing a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) Providing an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;

(3) Encouraging the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and

(4) Promoting the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

The Commission's oversight of ocean common carriers, ocean transportation intermediaries, and marine terminal operators is an important element in the effort to protect our Nation's seaports. Unique among federal agencies, the FMC regulates virtually all entities involved in liner shipping, receiving, handling, and transporting cargo and passengers in foreign commerce. The FMC's unique mission affords it the opportunity to assist front-line security efforts by providing information regarding the backgrounds of parties using our Nation's supply chain, including those with direct access to our seaports. The Commission's updated agreement with Customs and Border Protection (CBP) to share data from the Automated Commercial Environment-International Trade Data System enhances both agencies' ability to achieve their statutory missions.

The Commission accomplishes these responsibilities through its programs and the activities highlighted below.

Trade Monitoring

The Commission reviews and monitors agreements and activities of ocean common carriers and marine terminal operators under the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 in order to provide an efficient and economic transportation system. Specifically, the Commission examines those agreements that are immunized from the anti-trust laws, to ensure that they do not have significantly anti-competitive effects. The Commission, pursuant to its statutory mandate, also monitors market conditions in the U.S.-foreign oceanborne trades and reports its findings annually to Congress.

Agreements have provided an avenue for Commission regulated entities to facilitate trade and further efficient port operations. For example, marine terminal operators are able to discuss very important issues such as cargo efficiencies and environmental impacts. Currently, the Commission is reviewing a filing of an agreement between the world's three largest container carriers – Maersk, CMA CGM, and MSC, the "P3 Alliance." The P3 Alliance agreement will be subject to the review of not only the Commission, but also of regulators in important U.S. trading partners, the European Union and China. Recently, I called on fellow regulators in the European Union and China to join with me in a global regulatory summit to have a dialogue on our respective global challenges in maritime trade monitoring and regulation.

Ocean Transportation Intermediaries

The Commission regulates non-vessel-operating common carriers (NVOCCs) and freight forwarders, the middlemen responsible for moving oceanborne cargo in the U.S. foreign trades. In the years since the original implementation of the Commission's regulation of ocean transportation intermediaries (OTIs), it has taken several actions to address concerns raised by the regulated industry. The Commission continues to ensure that licensed entities have the requisite character and financial responsibility to protect the shipping public. The Commission's hard work in streamlining the OTI licensing process has resulted in the Commission completing 90 percent of the hundreds of OTI applications it receives within 60 days.

Last fall, the Commission issued changes to its procedural rules for the first time in many years to improve its administrative proceedings and provide a just, speedy, and less expensive resolution to matters brought to the Commission. During the summer of 2012, the Commission revised its tariff exemptions to eliminate record-keeping requirements for negotiated rate arrangements offered by U.S.-based NVOCCs who choose to use those instruments. During the summer of 2013, the Commission issued a final rule that expanded that exemption to foreign-based NVOCCs. The Commission will continue to engage the shipping public and the regulated industry to explore, through its retrospective review of regulations, how it can streamline and improve its rules and procedures.

Earlier this year, the Commission issued an Advance Notice of Proposed Rulemaking (ANPRM) to its OTI rules intended to: (1) adapt to changing conditions in the OTI industry that include inflation regarding bond requirements, use of the internet, and deceptive OTI trade practices through the internet; (2) improve regulatory effectiveness by making it easier for the public and the FMC to locate licensed OTIs by requiring license renewals; (3) improve transparency by requiring OTIs and agents to include identifying information on all shipping documents; (4) streamline processes by enhancing the Commission's ability to protect consumers and to facilitate commerce; and (5) reduce regulatory burdens by eliminating separate bonding requirements for unincorporated branch offices.

We are now in the process of reviewing the public comments to the ANPRM and will determine how to revise the proposal based on those comments. When we have done that, we will again ask the public to comment on those revisions, and that request will include an initial analysis under the Regulatory Flexibility Act to determine any impacts on small businesses. Unfortunately, like the Commission's other important work, this review has been delayed by the recent shutdown.

Consumer Protection

The Commission's mission includes ensuring service and providing protection for members of the public — those who travel on cruise ships or deal with international shipping companies when they ship personal belongings or household goods abroad.

As mentioned earlier this year, during the Commission's budget testimony, the Commission enhanced the financial protection for cruise passengers who sail from U.S. ports, while reducing financial responsibility requirements on smaller cruise lines. The Commission increased the maximum coverage requirement for larger cruise lines from $15 million to $30 million per cruise line, and now requires that this cap be adjusted every two years, based on the Consumer Price Index for All Urban Consumers. It also provided relief for smaller cruise ship operators by reducing their coverage requirements in instances in which alternative forms of financial protection may be in place. The Commission continues to assist the cruising public through its Office of Consumer Affairs and Dispute Resolution (CADRS) by providing information and guidance on passenger rights and obligations paid to cruise lines as it relates to voyages or other cruise-related issues.

CADRS continues to assist the shipping public with complaints related to cargo shipments. In addition, the Commission maintains a full-time presence in the major U.S. port regions of Southern California, South Florida, New York/New Jersey, Seattle, New Orleans and Houston through Area Representatives based in each of those locales to support the Commission and handle hundreds of informal complaints. The Area Representatives are a cost-saving, efficient, and effective way to act as local conduits for information to and from the maritime industry and the shipping public, investigate alleged violations of the shipping statutes, and resolve complaints and disputes between parties involved in international oceanborne shipping, including those who are not sophisticated shippers. The industry has embraced the service provided by the local Area Representatives who handle many informal complaints lodged by local businesses and individuals each year.

Protecting the Shipping Public from Fraud and Abuse

Where possible, compliance with statutory and regulatory requirements can be achieved informally. For those that are not resolved, investigative cases are opened and the Area Representatives conduct on-site investigations related to unlawful shipping practices, including unlicensed OTI activities, misdescription of commodities by shippers, and improper service contract rate application by ocean carriers.

The Commission's Bureau of Enforcement, Area Representatives, and investigative staff continue to prevent and end shipping practices that are unfair or deceptive. Targeted violations have included illegal or unfiled agreements among ocean common carriers; unfair or fraudulent practices affecting household goods shippers; and misdescription of cargo, which not only affects shipment costs, but can also pose a serious safety and security risk by preventing vessel operators and port officials from knowing what goods are being transported on vessels into the

United States. The Commission has collected almost $4 million in civil penalties over the last two fiscal years for Shipping Act violations, sent directly to the U.S. Treasury General Fund.

Monitoring Foreign Practices

The Commission encourages the development of a sound and efficient fleet of U.S. vessels to meet national security needs through its regulation issued under the authority of the Controlled Carrier Act, Section 19 of the Merchant Marine Act of 1920 and the Foreign Shipping Practices Act (FSPA). Section 19 empowers the Commission to make rules and regulations to address conditions unfavorable to shipping in our foreign trades; FSPA allows the Commission to address adverse conditions affecting U.S. carriers in our foreign trades that do not exist for foreign carriers in the United States. Under the Controlled Carrier Act, the Commission can review the rates of foreign government-controlled carriers to ensure that they are not below a level that is just and reasonable. The Commission carefully monitors the activities of state-owned ocean common carriers to ensure that U.S. trades remain substantially free of unfair practices. The Commission has also studied the maritime practices of our trading partners generally. In July 2012, the Commission released a *Study of U.S. Inland Containerized Cargo Moving through Canada and Mexican Ports.* That study analyzed the factors that may be relevant to the diversion of some U.S.-origin or -destined cargo through Canadian or Mexican seaports.

The Commission has an impressive record of identifying possible foreign restrictive practices and finding solutions to address costly restrictions imposed by foreign regulators. In 2002, because of a Commission-initiated proceeding, the U.S. and China were able to reach a diplomatic solution to a seemingly-unsolvable problem only because of the Commission's willingness to embrace an industry-proposed solution that resulted in an increased burden on the FMC. As a result, in 2004, the Commission agreed to create an optional bond rider system to accommodate the lack of the availability of such instruments in China. This accommodation, still in place after nearly 10 years, has saved U.S. NVOCCs, many of whom are small businesses, from the cost of compliance with Chinese regulatory requirements that otherwise would tie up desperately-needed capital in a Chinese bank.

More recently, the Commission has been the driving force behind a hard look at changes to Chinese tax law that may unfairly impact U.S. shippers and non-Chinese carriers. Changes to China's value-added-tax system is being closely reviewed by the Commission, and we are pleased that the U.S. and the PRC have agreed to discuss the possible impacts of this Chinese law in the context of the U.S.-PRC Bilateral Maritime Negotiations led by the Maritime Administration of the Department of Transportation and held in Chicago yesterday. We are hopeful that these talks will generate productive outcomes and look forward to hearing about the results.

Commission Resources

Limited resources and a very small budget have required the Commission to leverage the relationships it has with its foreign counterparts in increasingly creative ways to accomplish its legislative mandate to harmonize regulation in international ocean shipping. Strategic management of the FMC's human resources, property management, financial, and procurement practices and other vital support activities is essential to meet the agency's regulatory and programmatic goals.

The Commission's FY2014 budget proposal of $25,000,000 represents the *minimum* necessary for the Commission to achieve these statutory mandates, while funding 126 FTEs. This funding level would prevent future furloughs and allow staff to provide necessary oversight of the ocean transportation industry the Commission regulates. As 95% of the FMC budget is directly related to payroll, rent, and other fixed costs, there are few options for further reductions.

The Commission's FY2013 post sequestration funding level is $22,839,425. This funding level required the Commission to severely restrict hiring of replacements, cancel travel and training, delay and/or cancel purchases and contracts, and deeply cut the agency's outreach efforts needed to resolve issues affecting the shipping industry. One position we intend to fill in the continuing resolution period is for the Inspector General, as required by statute. This low funding level also has caused the Commission to make unsustainable cuts to its already minimal information technology systems, which are necessary to ensure security, provide efficiencies and reduce burdens on the industry it regulates.

Despite drastic reductions, agency staff was forced to take six (6) furlough days during FY2013, with the possibility of additional days by the end of this calendar year. The furloughs have already significantly disrupted workflow for a small agency with major responsibilities. Agency-wide furloughs in FY2013 demonstrated that loss of employee time had an enormously negative impact on the Commission's ability to carry out its statutory mandates. Restricting any increases in funding in the years ahead will reduce the agency to a level at which it will not be able to perform its core statutory duties.

Before the government shutdown and sequestration, the Commission pursued the implementation of several information technology programs and initiatives to comply with governing IT statutes and regulations, as well as to improve the efficiency, convenience, and effectiveness with which the agency serves the public, particularly in the licensing process. In particular, enhanced information systems are essential to efficient identification and licensing of regulated entities and to information sharing with our counterparts at CBP and other federal agencies. These IT systems would also enable our Area Representatives, the Bureau of Enforcement, and CADRS staff to have timely and comprehensive access to data needed to tackle the practices of ocean transportation intermediaries and vessel operators that abuse or defraud the shipping public.

Investment in new and innovative technology will substantially improve efficiency, enabling the Commission to focus on support of systems critical to FMC's core mission. In response to recent government-wide transformation initiatives, should funding be available, the

FMC will continue the integration of technologies to capture, manage, store, preserve, and deliver documents. The technology investments will depend on availability of funds, but would result in greater productivity, efficiency, and transparency.

Mr. Chairman and members of the Subcommittee, I appreciate your interest and efforts in working with the Federal Maritime Commission to foster a fair, efficient, and adequate ocean transportation system. The Commission's leaders and staff depend on our ability to evaluate carrier and terminal agreements for anti-competitive impact and to license ocean transportation intermediaries to protect the shipping public and facilitate international trade. Updated technology is critical to accomplishing the Commission's mission and will lessen the regulatory burden on the entities we regulate. I thank the Subcommittee for its support of the Commission through the years and respectfully request favorable funding consideration for Fiscal Year 2014 and beyond, so that the agency may continue to perform these vital statutory functions, and so that the public and shipping industry may continue to be served reliably, efficiently, and effectively.