



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