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United State House of Representatives

on
“Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”
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INTRODUCTION AND BACKGROUND

Chair Schakowsky, Ranking Member Bilirakis, and members of this Subcommittee, my name is Glenn Richey. I am the Harbert Eminent Scholar in Supply Chain Management at Auburn University and Editor-in-Chief of the *Journal of Business Logistics*.^{*} I am happy to be here today, testifying before this Committee protecting American citizens from potentially harmful predatory pricing practices commonly called price gouging. I have been involved in disaster and humanitarian supply chain research for fifteen years. I've also lived across the USA experiencing hurricanes, tornados, floods, fires, nor'easters, heatwaves, and this enduring pandemic. My personal experience with disasters makes me someone you don't want to own a home near, but it does combine well with my academic and business background in supply chain management, marketing strategy, and international business – giving me deep insights into crisis event business activity.

In reading H.R.675, I quickly became confused by the legislation. Price gouging typically occurs at the local retail level. Corporate (strategy) level price gouging does not occur often, because it is very transparent to business and law enforcement at the macro-level. My reading of H.R. 4521 (America Competes Act of 2022) enhanced my concern that Congress may not understand the levels and complexity of supply chains.

SUPPLY CHAINS FROM THE SHADOWS

Tariff legislation and the pandemic that followed finally revealed the importance of supply chains to the USA. For years, supply chains have been loosely aligned networks of “shadow organizations” relatively unknown to consumers. Moving into the spotlight has been both refreshing and frustrating for the stakeholders in our field of supply chain management and logistics (SCML). For this reason, I feel like there are a few things I should point out about our field before we move forward.

1. There is no “The” supply chain. This may seem like a minor issue, but your local restaurant has multiple supply chains. Your local grocery store may have a hundred. Any product you see on the shelf at a store might have its own supply chain. I am guilty of simplifying the complexity of supply chains by saying “The” supply chain quite often, but I worry that such a simplification could convince people that the government can develop policy that manages supply chains. That is fundamentally impossible, especially for international supply chain networks.
2. Adding additional parties to the supply chain is termed intermediation. The phrase “cutting out the middleman” is the opposite of intermediation (disintermediation). Disintermediation is

expected to cut *time* and *cost* from supply chain processes. Adding the government to supply chains is highly likely to add touches, processes, *time*, and *cost*.

3. Supply chains are typically multi-member, meaning not only could a single product or part have a raw material extractor, manufacturer, wholesaler, distributor, transporter, and retailer, but a web of multiple parties at each level. Without addressing the level of the supply chain, legislation will not appropriately assign responsibility to specific companies.
4. Congress seems to be pushing for supply chain resilience. Resilience means you get knocked down and find a way to stand back up. That is what is happening now to supply chains - given different levels of resilience. Recent legislation seems to motivate robust and responsive supply chains. It is really a question of adaptability (structural adjustment), flexibility (policy adjustment), agility (process adjustment) and improvisation (spur of the moment one-time adjustment) that allows for supply chains to be responsive. It is an equation of these strategic decisions that allows a supply chain to respond to and recover from crisis situations. These decisions and related tradeoffs typically impact pricing strategy.

ISSUES WITH THE CURRENT LEGISLATION

The legislation in H.R.675 presents several issues of concern. The first obvious concern is a lack of specificity. Terms like “unconscionably excessive”, “increasing prices unreasonably”, and “grossly exceeds” do not provide adequate understanding of price gouging expectations for businesses or consumers. Is this a percentage? Is it a gross amount of income? Is it contribution margin? And are these expectations the same or different across industries? February of 2022 is a very different time from January of 2020. We have seen significant labor, energy, and transportation cost increases, parts and inventory scarcity, and a softening value of the dollar. Companies require the ability to increase prices to remain viable in turbulent environments. Congress must be careful to not damage ethical businesses that raise prices to survive in a time that has already stressed operations and performance for small, medium, and large businesses.

The following statement allows similar products (potentially substitute products) to be compared to products targeted by the FTC for price gouging. “Whether such price grossly exceeds the average price at which the same or a similar good or service was sold or offered for sale by such person— during the 90-day period immediately preceding January 31, 2020.” This could potentially create a situation where products with different cost profiles are compared. In a situation where a US made product is more expensive to make than an imported product (i.e., foreign labor cost savings), the US company could

potentially be incorrectly targeted as acting opportunistically and price gouging. Additionally, there are quality and use concerns. A Mercedes and a Kia are similar products. A Kia and a motor scooter are substitute products that have a similar use. The legislation needs to address these issues or the financial basis for comparing prices will be fundamentally flawed.

It is also important to note that most price gouging happens at the local level. Local companies and individuals make financial gains at the expense of the citizen customer due to product/service scarcity - especially in a time of crisis. The term “corporate” in this legislation could apply to all levels of the supply chain including a local mom and pop grocery store. Following disaster events, we remind local grocery stores, gas stations, tree removal services, and similar businesses to not price gouge. Be a corporate citizen! State and local governments monitor activities with law enforcement on the ground. The size of the country and the scope of US industry will make top-down enforcement expensive and responsiveness slow. This may intensify current supply chain disruption and negatively impact the consumer. Furthermore, the supply chain level (i.e., location within a chain) of the price gouging is important as manufacturer level price gouging is uncommon. In fact, I commonly think of market failure (i.e., individual incentives for rational behavior do not lead to rational pricing outcomes) caused by pharmaceutical patents as a best example of top-down price gouging (supported by the government), but certainly powerful companies can impact prices at all levels.

It is impossible to monitor all these supply chains. This is especially true when international partners are involved, and when some members continue to play the spot market for materials resulting in constant supplier switching. Additionally, if supply chains want to grow market options – they may continually add partners. Mapping a supply chain today based on a history of relationships would be outdated before the mapping is completed. Tracking supply chain price changes will be nearly impossible at the Federal level due to this complexity.

The following phrase concerns me that the legislation may be unenforceable in even extreme cases: “Whether such price reasonably reflects additional costs, not within the control of such person, that were paid, incurred, or reasonably anticipated by such person, or reasonably reflects the profitability of forgone sales or additional risks taken by such person, to produce, distribute, obtain, or sell such good or service under the circumstances.” My concern is that coming out of the pandemic – nearly every company in the country will be able to show additional costs, loss of control, negative impacts on profit, lost sales, and/or additional risks incurred across supply chain processes including acquisition, production, distribution, and sales. Currently, companies are allowed under US trade law to offer different prices to

different customers based on these issues as they all have potential impact on costs. I expect even bad actors would be able to justify their price adjustments based on these variables.

Finally, I fully understand and respect the desire to protect consumers from harm in critical industries. But coverage of “food, beverages, water, ice, a chemical, a personal hygiene product ... cleaning supplies, disinfectants, sanitizers; or any healthcare service, cleaning service, or delivery service” covers a massive portion of the US economy. Many products within these categories may not be critical items. Additionally, within each of these categories are low cost, average cost, and premium cost offerings that could be “similar” product offerings at very different prices. How will the government account for those value-based differences?

It is important to remember that prices move with the market and across supply chain transactions. A chemical company that cannot get inputs from a current supplier might need to raise prices:

- to cover fixed costs in the near term,
- to engage with a new replacement supplier,
- to include enhanced distribution costs,
- to fund a re-emerging sustainability program, and/or
- to respond to increasing energy costs,
- to respond to existing/new government requirements.

The same can be said for a meat processor that can't get animals, a delivery company that is short on truck drivers, or a healthcare service that has lost workers. They must raise prices to cover for expenses when supply and revenues are in flux. When considered beyond a snapshot of the economy based in January of 2020, we expect that price gougers will be replaced by competition and/or innovation if the market is allowed to function over time.

In closing, I want to thank the representatives for allowing me to address the committee. My life's work is centered on advancing supply chain strategy through research, educating college students and executives in hopes of improving the way we do business domestically and abroad, and providing related service and advice to the community. This opportunity hits on all three of those areas. I enthusiastically look forward to assisting the committee in examining how we can address the marketing, international business, and supply chain issues facing consumers and businesses.