Statement of

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Before the

House Committee on Transportation and Infrastructure
Subcommittee on Coast Guard and Maritime Transportation

On

Maritime Transportation Supply Chain Issues

March 28, 2023

1. Introduction: Mediterranean Shipping Company, the World Shipping Council, and the Liner Shipping Industry.

Chairman Webster, Ranking Member Carbajal, and Members of the Subcommittee, thank you for the invitation to testify today. My name is Bud Darr. I am Executive Vice President for Maritime Policy & Government Affairs of MSC Group. MSC stands for Mediterranean Shipping Company.

MSC is a global leader in transportation and logistics. As one of the world's leading container shipping lines, MSC's fleet sails on more than 260 trade routes, calling at 520 ports, and is targeting net-zero decarbonization by 2050. The global footprint of our cargo businesses also includes container terminal investments, as well as inland transportation and logistics networks around the world. To support our customers, MSC has 675 offices across 155 countries worldwide, including here in the U.S. where we employ more than 1,300 staff in 10 office locations. Together with the cruise and other passenger transportation businesses in the MSC Group, we employ more than 150,000 people onboard and ashore.

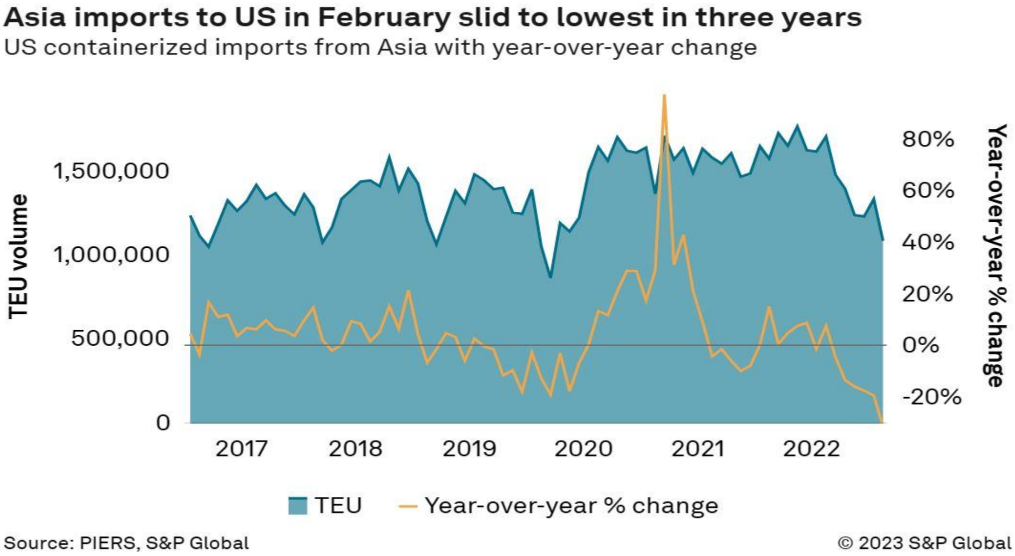
MSC is also a member of the World Shipping Council (WSC). The World Shipping Council (WSC) is a non-profit trade association that represents the liner shipping industry, which is comprised of operators of containerships and roll-on/roll-off (ro-ro) vessels (including vehicle carriers). Together, WSC's members operate approximately 90 percent of the world's liner vessel services including more than 5,000 ocean-going vessels of which approximately 1,500 vessels make more than 27,000 calls at ports in the United States each year.[1]

[1] A full description of the Council and a list of its members are available at www.worldshipping.org.

The liner shipping industry provides American importers and exporters with door-to-door delivery service for almost any commodity to and from roughly 190 countries. Approximately 35 million TEU[2] of containerized cargo are currently imported into or exported from the United States each year. The container shipping industry is one of the most important facilitators of the nation's growth and ongoing economic activity. Ocean shipping is also – by far – the most fuel-efficient form of mass cargo transportation on the planet.

2. The U.S. Supply Chain is Back to Normal after 3 Years of COVID-driven Congestion.

The U.S. international ocean supply chain has returned to normal. The return to pre-pandemic trade volumes has alleviated the severe congestion caused by the COVID-driven consumer demand for imported goods. U.S. consumers have resumed more normal spending patterns and are once again spending their disposable income on travel, entertainment and services. Unfortunately, inflationary pressures have also reduced U.S. consumer spending, resulting in retail importers holding large volumes of inventory, which has further reduced import orders. While the emergence from COVID-driven supply chain congestion is welcomed, the drop in import demand has caused cargo volumes to plummet. U.S. imports from Asia plunged 31 percent year over year in February 2023, which is the lowest level since March 2020, extending the sixth consecutive month of year-over-year declines in Asian imports that began in September.



The plummet in import demand has resulted in a corresponding drop in freight rates, which are now generally at or below pre-pandemic levels.

3. U.S. Agricultural Exports Smashed Records in 2021 and 2022.

Ocean carriers continue to work closely with U.S. agricultural exporters to provide innovative solutions to carry their goods to foreign markets. While all shippers, both importers and exporters, were affected by the COVID-driven bottlenecks resulting from import demand, allegations that agriculture exporters were disproportionately affected are not supported by U.S. government data. Rather, according to the U.S. Department of Agriculture (USDA), U.S. agriculture sector exports in FY 2022 reached a new record, up $24.7 billion from the previous FY 2021 record of $172.2 billion (which was a 23% increase from FY 2020). Moreover, the value of sales increased in all of the United States' top 10 agriculture markets – China, Mexico, Canada, Japan, the European Union, South Korea, Taiwan, the Philippines, Colombia and Vietnam, with sales in seven of the 10 markets (China, Mexico, South Korea, Taiwan, the Philippines and Colombia) setting new records. The increase in U.S. Agriculture exports in FY 2022 was principally due to record sales of these top commodities:

Soybeans	$33.3 billion	**Feeds & Fodders**	$10.6 billion
Corn	$19.5 billion	**Tree Nuts**	$9.8 billion
Beef & Veal	$10.8 billion	**Dairy Products**	$9.1 billion

Source U.S. Department of Agriculture, Foreign Agricultural Service.

4. The Latest Developments and Trends Reflect a Competitive Ocean Shipping Market.

Increased freight rates and reduced reliability during the pandemic were not attributable to carriers or alliances. Instead, both the Federal Maritime Commission[2] and the European Commission[3] concluded that these developments were caused by several other factors wholly outside ocean carriers' control, including exceptional supply and demand imbalances, a surge in U.S. import demand, labor shortages, and port and inland congestion that removed effective capacity from the market. Over the past 24 years, as carriers have worked hard to increase operational efficiency and reduce costs, freight rates have fallen considerably compared to the consumer price index. While consumer prices globally more than doubled from 1998 to 2019 due to inflation, freight rates have actually decreased, acting as a deflationary factor to push consumer prices down. Reliability impacts during this crisis were generally due to supply chain disruption ashore, which led to congestions in ports and terminals, whereas the operation of our ships at

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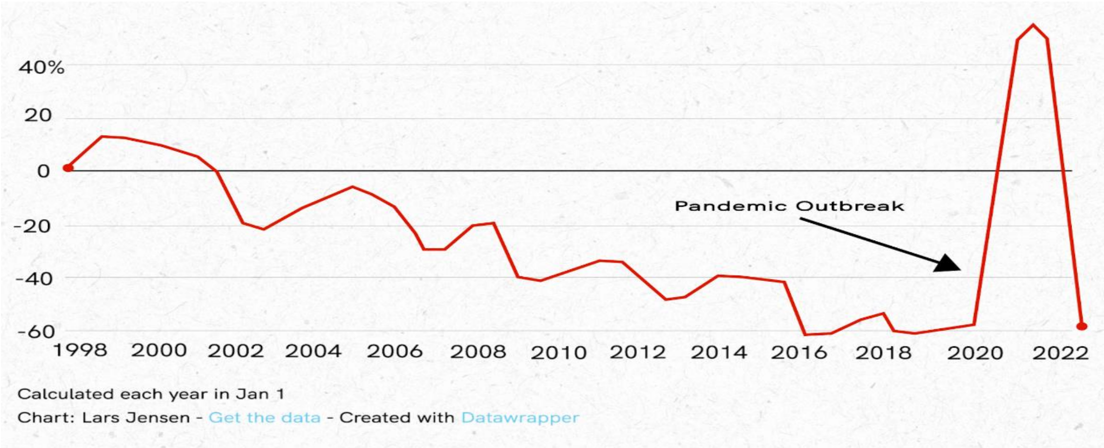
[2] FMC Fact Finding Investigation, Final Report "The Effects of COVID-19 on the U.S. International Ocean Transportation Supply Chain" FactFinding29FinalReport.pdf (fmc.gov).

[3] Answer given by Executive Vice-President Vestager on behalf of the European Commission (23.5.2022), Parliamentary question | Answer for question P-001454/22 | P-001454/2022(ASW) | European Parliament (europa.eu)

sea remained highly efficient and essentially unchanged.

Freight Rate Discount Compared to Global Consumer Price Index



5. Ocean Carriers are Highly Concerned that the FMC has Abandoned their "Incentive Principle" in their OSRA 22 Detention and Demurrage Rulemaking.

For the better part of the last five years, the Commission has consistently worked through its Fact Findings, policy guidance, and case law to make clear to the regulated industry that the "Incentive Principle," as set forth in its final Interpretive Rule on Demurrage and Detention,[4] is the touchstone of its detention and demurrage policy. The Incentive Principle states that in assessing the reasonableness of detention and demurrage practices, the Commission will first consider the extent to which those practices are serving their primary purpose of financially incentivizing cargo interests to remove their cargo from the terminal promptly and to return equipment in a timely manner. The Interpretive Rule also states that the concept of reasonableness is fact-specific, and therefore the application of the Incentive Principle will ''vary depending on the facts of a given case.''[5]

Congress in the Ocean Shipping Reform Act of 2022 (OSRA 22) directed the FMC to initiate a rulemaking that, "shall only seek to further clarify reasonable rules and practices related to . . . the final rule published on May 18, 2020, entitled 'Interpretive Rule on Demurrage and Detention Under the Shipping Act'"[6]. The Interpretive Rule that Congress told the FMC to make the basis of its detention and demurrage rulemaking is built around the Incentive Principle, but the Commission's proposed rule never once even mentions the Incentive Principle. Instead, the Commission's proposed rule abandons the Interpretive Rule's fact-specific analysis and focus on the Incentive Principle and replaces those concepts with absolute prohibitions on charging detention or demurrage to broad classes of entities. Because the proposed detention and demurrage rule does not consider how billing certain parties other than shippers incentivizes freight fluidity through the supply chain, it runs a real risk of increasing supply chain congestion, which is the opposite of what properly structured detention and demurrage charges are supposed to do.

Ocean carriers, ports, marine terminal operators and shippers are concerned that the Commission's rule, if adopted as proposed, will disincentivize many players in the supply chain from timely collecting goods from marine terminals and returning empty equipment for use by other

[4] See Interpretive Rule on Demurrage and Detention Under the Shipping Act, 85 Fed. Reg. 29665 (May 18, 2020), 46 CFR § 545.5 (Interpretation of Shipping Act of 1984 - Unjust and unreasonable practices with respect to demurrage and detention) (2020).
[5] See Interpretive Rule on Demurrage and Detention Under the Shipping Act, 85 Fed. Reg. 29665, 29641 (May 18, 2020).
[6] See Public Law No: 117-146 (June 16, 2022), Section 7, paragraph (b)(2).

customers. That in turn will only increase congestion in our nation's ports – threatening to worsen the very problem that properly applied detention and demurrage charges are designed to minimize. Congress was clear in instructing the Commission to use this rulemaking to provide further clarification on how to reasonably use the tools of detention and demurrage to incentivize cargo velocity. Given that we are only now clearing the congestion that snarled our ports and inland supply chains during the pandemic, it is hard to imagine a Commission initiative that is worse aligned with Congress' objectives in passing OSRA 22. The shipping industry welcomes clear regulations that ensure that everyone is treated fairly. But what the Commission has proposed will make some people pay when they have no ability or incentive to keep cargo moving, and it will prohibit some people from paying even when they are precisely the people that decide whether and when the cargo moves. This is exactly backwards, and it needs to be fixed before the FMC issues a final rule.

WSC looks forward to continuing to work with the Congress, and to encourage the Commission towards a rule that implements OSRA consistent with Congressional intent and sound policy, to ensure a workable and fluid international ocean transportation system for U.S. businesses and consumers.

6. Conclusion.

The work of thousands of supply chain stakeholders enabled the U.S. international ocean supply chain to move record amounts of import and export cargo throughout the COVID-19 pandemic. The return to normal volumes and balance of import and export cargo has resulted in relieving congestion throughout the supply chain. We must continue to collectively address the operational and commercial challenges we faced, to ensure our supply chain has the capacity and resiliency to meet the next challenge. We also need the support of reasonable regulations, consistent with Congressional direction in OSRA 22, to incentivize cargo velocity and fluidity. *The ocean common carrier community is committed to serving the international trade of the United States, and the historical volume of cargo that we moved throughout the pandemic, and continue to move, is the evidence of that commitment.*

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