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Freight Forwarder: Overcoming Supply Chain Challenges to deliver to America

Chairman Crawford, Ranking Member Norton, and members of the House Transportation & Infrastructure Committee: Thank you for the opportunity to speak with you today to highlight the important role that logistics companies play in the supply-chain and how our members were part of the solution during the pandemic to alleviate disruptions. I will also address a few issues that impact the safety of the supply chain and the free flow movement of freight throughout the United States. We have some potential pragmatic solutions that could help alleviate both the residual supply chain disruptions from the pandemic and ongoing safety-related concerns.

My name is Anne Reinke; I am the President & CEO of the Transportation Intermediaries Association (TIA). I am honored to be here today to represent our more than 2,000 member companies. TIA is the professional organization of the $232 billion third-party logistics industry. TIA is the only organization exclusively representing transportation intermediaries, commonly referred to as brokers, or forwarders in all modes doing business in domestic and international commerce. TIA provides education, advocacy, networking, and other member services to our member companies; our mission is to promote and assist with our members' growth and professional development. As evidence of this commitment, TIA's education curriculum has been certified by the State Council of Higher Education for Virginia (SCHEV). SCHEV certification is awarded to educational institutions and organizations that meet rigorous standards of quality and comply with state and federal regulations. TIA also serves as the U.S. voice of the International Federation of Freight Forwarders Associations or FIATA. Our members stand at the center of the supply chain: they facilitate and arrange the efficient and economical movement of goods by working with tens of thousands of shippers and carriers to help arrange the movement of freight by truck, rail, air and ocean carriers. Every fortune 500 company utilizes the services of at least one freight broker, and often they use many brokers to handle their traffic allocation.

As we are all aware, the U.S. economy continues to be more interconnected with the global economy and the world's supply-chain. Logistics in the United States and throughout the world plays an integral role in the overall American economy. From our members' perspective, the supply chain disruptions which were a result of the COVID-19 pandemic continue to improve, but several residual effects remain, including workforce issues, a truck driver shortage, truck capacity in certain sectors, container shortages, inflation, regulations, and other challenges. TIA applauds the Biden Administration for its attention to the supply chain through the FLOW initiative and the actions of this Committee for its attention on the supply chain, a recognition of how critical it Is to the U.S. economy.

About TIA and the Industry

TIA members include more than 2,000 motor carrier property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and NVOCCs), air forwarders, customs brokers, warehouse operators, logistics management companies, and intermodal marketing companies. TIA members handle the purchase of more than $100 billion worth of transportation each year and employ more than 130,000 people across the country.

Transportation intermediaries or third-party logistics professionals act somewhat as the "travel agents" for freight; however, given the wide varieties of freight, the specific needs of each customer, and the diverse issues applicable to anyone load means that third-party logistics professionals must have expertise far beyond what a traditional "travel agent" must possess. These companies serve tens of thousands of customers (known as "shippers") who are the actual owners of the goods being transported, bringing together the transportation needs of those cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers.

Transportation intermediaries are companies whose expertise is providing mode and carrier-neutral transportation arrangements for shippers with specific needs and requirements and matching those with the ability and expertise of the underlying operating carriers.

Supply Chain Disruptions

The supply chain has rebounded significantly since the disruptions of the COVID-19 pandemic and has markedly improved. However, some residual effects of the pandemic continue to impact the supply chain, some of which have been there since before the pandemic. In order to set the stage for how the residual supply chain challenges impact the logistics industry, we have to take a look at the current economic situation. A global recession feels inevitable, impacting buyers, suppliers, banks and several other key stakeholders. Additionally, the U.S. labor markets remain volatile, with labor disputes arising at ports creating unrest and tensions that create work stoppages and delays, and an overall downturn in the American exonomy leading to layoffs in certain sectors. Furthmore, in an inflationary market, corporate debt is rising, which ultimately increases the cost of labor, goods, and energy.

All these issues are contributing to and compounding disruptions and uncertainty in the supply chain. The decline in freight rates and volumes over the past two months more than offset the improvements in utilization in fuel cost improvement. The outlook for transportation continues to be negative moving into 2024.

While all this uncertainty looms on the horizon, the 3PL marketplace is stronger than ever and the reliance on brokers by shippers continues to grow. The broker freight marketplace grew over 30% from 2020 to 2022. Our members are able to be nimble, to “flex” and have the ability to go out and findcapacity, because of carrier relationships that they have that shippers may lack. Shippers continue to look for transportation solutions to fill their needs while highlighting safety and security as the top two reasons for what they look for in a broker. It is estimated that by 2045 brokers will handle almost 45% of the freight in the supply-chain; the current amount sits roughly around 30%.

Potential Solutions:

While there is not one single solution or action that will immediately alleviate the supply chain disruption, several solutions exist that would help improve the movement of goods. The safest and most secure marketplace is also the most efficient and functional marketplace. In that vein, TIA believes there are critical safety and fraud issues that the FMCSA can address.

Delayed Safety Regulation

I would like to begin with a discussion on safety, the top priority for the TIA, and the core mission of the Federal Motor Carrier Safety Administration (FMCSA). We firmly believe that FMCSA is should prioritze several key safety issues. The National Highway Traffic Safety Administration has said that truck crashes are up ten percent from 2021 to 2022; truck crashes were also up year over year from 2020 to 2021. We also know that a majority of trucking companie on the road operate without a safety rating each year and there is limited action by FMCSA to address the issue..

TIA has pushed for many years for a more robust and effective motor carrier safety rating process, as a means to improve the safety of the nation’s highways. Currently, the FMCSA is using an outdated and ineffective physical audit system to rate motor carriers for safety. The physical audit requirement means that the FMCSA has neither the manpower nor the resources to conduct safety inspections of the vast majority of motor carriers. This antiquated system has led to an unbelievable 92% of trucking companies being “unrated”, and this number increases annually as more trucking companies enter the marketplace. This system creates confusion and uncertainty in the carrier selection and vetting process that leads directly to pinched capacity and time constraints on our member's operations. The lack of clarity on the safety rating status of a carrier leads to delays in the carrier vetting process, where an updated safety rating process would shorten the time to vet carriers. This lack of clarity is preventing thousands of small motor carriers from being utilized because of the confusion that exists by virtue of 92% of motor carriers having no safety rating, which ultimately decreases the capacity available to our members. TIA members and the industry needs a new system, built on fair and reliable data, which will (1) expeditiously and safely improve the process of selecting a motor carrier and (2) give industry stakeholders like ours more certainty regarding the quality of the carriers they use and ensure that only safe carriers are selected.

TIA has fully endorsed and supported the bipartisan legislation, H.R. 915. The "Motor Carrier Safety Selection Standard Act of 2021," sponsored by Congressman Moulton (D-6th/MA) and Congressman Gallagher (R-8th/WI). H.R. 915 would require the FMCSA to begin the process of developing a new Safety Fitness Determination (SFD) process to change the way carriers are rated, and create an interim safety standard in the meantime. TIA applauds Congressmen Moulton and Gallagher for their leadership on this legislation and would ask the Committee to include this legislation in the upcoming FAA Reauthorization Act or another appropriate vechicle for passage.

Fraud in the Supply-Chain

The supply-chain is in the midst of a fraud epidemic, estimated to cost brokers, carriers and shippers around $800+ million. TIA successfully advocated in 2012, as part of MAP-21, to have language included tightening the requirements for becoming a broker and creating a National Consumer Complaint Database (NCCDB) for stakeholders to report cases of fraud to the FMCSA. Unfortunately, there is an increase in bad actors in the space illegally brokering freight, registering as carriers using hundreds of MC numbers, and conducting outright fraud, theft, and holding freight hostage, without any legal consequences. The FMCSA is not enforcing the law, let alone investigating the tens of thousands of fraud complaints in the NCCDB. FMCSA indicated that it planned to use a portion of the millions of dollars appropriated to it by Congress through the Infrastructure Investments & Jobs Act (IIJA) to increase enforcement officials. To date, we have not seen any enforcement or investigations conducted. Recently, we alerted the FMCSA of an address in Wyoming that over 200 carrier companies were using as their address. The Agency believes that it has limited authority to impose civil penalities in a commercial dispute. However, arguably, they can exercise greater due diligence in the motor carrier and broker registration process, they can investigate those who are illegally brokering freight as well as those complaints in the NCCDB, and use other weapons in their arsenal to clean up the marketplace. Fraud fosters an insecure and unsafe marketplace. The FMCSA must assist the industry in rooting out fraud.

We hear every day from both brokers and motor carriers about getting loads stolen or held hostage, and in the case of carriers, they are never paid by the fraudulent entity for their services. This rampant fraud hurts the overall safety on our nation's hghways and utlimtely the end consumer who has to bear the additional costs created by fraud. We are glad to see Congress is paying attention: TIA applauds Congress for including language in the fiscal year 2023 THUD Appropriations Bill that requires the FMCSA to report back to Congress on the reports and what they are doing to address this serious problem. The report has not yet been issued. One other phenomenon that we believe fuels fraud in the supply chain is the rise in unlicensed and unregulated "dispatch services" , which often times are not domiciled in the United States and are hired by owner-operators to source loads for them, including Department of Defense freight and other critical and sensitive freight. This is an issue of national security, and we are working with the Armed Services Committees in the House and Senate to address this major concern. One solution would be for the FMCSA to implement a provision from the Moving Ahead for Progress in the 21st Century Act of MAP-21, that required brokers to have sufficient knowledge of the industry or a minimum of three years experience in order to gain authority. This provisions was based on a current regulation at the Federal Maritime Commission (FMC) and seems to work effectively on weeding out the bad actors trying to enter the market.

Unnecessary Commercial Regulation and Delayed Safety Regulation

Given the uptick in motor carrier accidents and fatalities, as well as the proliferation of fraud in the marketplace, the FMCSA's decision to move forward with a rulemaking on a 1980's regulation is both ill-considered and feckless. FMCSA has indicated that it will initiate a rulemaking that could force the release of the private commercial contract information to parties not privy to the contract. We believe FMCSA does not have the legal authority to "pierce" contracts between a broker and a shipper, for many reasons, not least of which is that such an act would potentially expose proprietary information of shippers, fundamentally alter and constrain the shipping market, and result in serious significant costs for all parties with little benefit.

FMCSA's rulemaking, which was initiatied by small owner operators, seeks to address an outdated and unnecessary regulation from more than 40 years ago,. This regulation proscribes conduct between parties to a commercial transaction, and the sharing of information thereto. This regulation was enacted in 1980, as a response to dramatically different marketplace and to address the concern of the Interstate Commerce Commission (ICC) about the illegal practice of freight rebating: motor carriers paid brokers a commission, and those brokers could potentially have common ownership with a shipper. This arrangement and "freight rebating" no longer exist. Today brokers contract directly with shippers in one transaction and then enter ina completely separate transaction with a motor carrier. The existing regulation is itself unnecessary and obsolete given the changed dynamic in the marketplace, but expanding it would benefit no one, and would instead damage the economy. . Owner operators originally pushed for the expansion of the regulation because of a very short freight shutdown that occurred during the commencement of the COVID-19 pandemic, where 25% of the economy shut down causing 90% of the trucks to chase 75% less freight, driving down rates. To blame the brokers for a briefly panicked and uncertain marketplace under unprecedented circumstances was both unfair and illogical. As we now know, the economy quickly rebounded, and over the last three and a half years,, motor carriers turned out to have had all the leverage in commercial interactions during the pandemic because of insufficient drivers and trucks, and rates rose to levels previously never seen. This is called supply and demand. Rates are falling again as we noted – the freight marketplace is much softer. And so to hear the carriers blame the brokers again remains unfair and illogical, The end result is that moving forward with the regulation would result in “rate intrusion,” where owner operators attempt to regulate freight rates through government intervention, rather than through marketplace negotation.

Not only is the end consumer hurt, but so would be the owner-operators. If this were to be implemented, shippers might be hesitant to use brokers for their transportation needs. In turn, large trucking companies that have the resources to source loads themselves would be the primary beneficiaries, not owner-operators. Additionally, if shippers start to see what their competitors are spending, they could cut their own rates, which would additionally again hurt the owner-operator.. Furthermore, FMCSA is considering barring brokers from including certain contract provisions about the public disclosure of proprietary information. Brokers are are naturally required by our shipper customers to keep certain proprietary information private. Most companies require that proprietary information be kept private in order to protect the competitive advantage created by that proprietary information. The FMCSA requiring brokers to disclose information that they are contractually unable to disclose, puts our members in an untenable and unmanageable situation.

Moreover, motor carrier transportation in the spot market is one of the most transparent marketplaces in the world. Load boards, the internet, and rate quotes in person-to-person communications within the industry provide the rate transparency that was intended by 49 CFR §371.3 when commissions paid by carriers to brokers were common. Motor carriers have sufficient access to current market rates without inspecting brokers' shipment records to find out what the brokers' gross margins are on a load-by-load basis. However, that the FMCSA is putting its thumb on the scale in what is, at root, a contract negotiation between two private parties, while simultaneously disregarding serious safety and security issues, is alarming. The bottom line is that the Agency should spend its limited time and resources on its mission of safety, not regulating the private, proprietary contract provisions of its stakeholders.,

Brokers and owner-operators have respectively enjoyed working together over the years as both parties heavily rely on each other to survive. Brokers in many ways serve as the sales force for owner-operators who are busy doing their job of hauling our nation's freight, while on the reverse owner-operators offer capacity to brokers in order to meet their customers' transportation needs. The two parties—and the American consumer, are better off when brokers and owner-operators work together as we did back in 2012 during MAP-21 to address common problems in the industry, like fraud, coercion, and truck parking.

- Additional Regulatory Burdens

We have heard from several members about the California ports and the AB 5 law that seeks to essentially eliminate independent contractors from operating in California. The majority of drayage carriers operating at the ports are independent contractors. This California law attacks the independent contractor model and is upsetting a highly fluid and competitive marketplace with zero to minimal benefits. This law flies in the face of 10+ years of an explosion in the number of for-hire trucking companies, while the State of California is trying to hold back and organize labor. As you are likely aware, almost 90% of all trucking companies are small fleets of fewer than five trucks. TIA supports all trucking companies and works tirelessly through our Association and members to ensure that the conditions of truck drivers continue to improve and to create a win-win-win value proposition for all three parties involved. A diversified and decentralized freight system that can adapt to market changes rapidly is the key to our economic health and growth and national security. The PRO Act at the federal level and pending attempts from the Department of Labor (DOL), which would change the way independent contractors are classified at the federal level, would make this a national issue and have devasting effects on the transportation market. The most impacted group if this bill were to be passed, is of course the end consumer.

Conclusion:

I appreciate the opportunity to testify before the Committee today to provide the perspective of the 3PL industry and offer some potential solutions. I would be happy to answer any questions.