HR 4996 FAQs & Specific Examples of Carrier Abuse

1. Isn't this issue just a supply and demand problem?

The notion of supply and demand assumes an efficient and fairly functioning market. In this system, prices may rise or fall depending on the availability of and demand for a service or good. However, ocean carriers operate in a captive market, where they effectively have a monopoly in offering the service of trans-oceanic cargo movement. Ocean carriers now exploit the control they have on this service, denying customers who are willing to pay increased rates from the availability of equipment (containers and chassis) and vessel accommodations, and levying new fees (detention and demurrage, surcharges, storage) on top of the ocean carriage service contract rates. Many American producers are willing to pay increased freight rates, but the challenges of securing containers, getting reliable bookings, charges exceeding agreed-upon service contracts, the imposition of unreasonable detention and demurrage charges are all outside the scope of typical supply and demand economic forces.

2. Why is this such an issue if dairy exports are at record levels?

While dairy export levels may be at a high rate, it is important to consider how high those exports could be. The post-COVID economy has induced higher demand for goods, including American agriculture exports. But without the ocean carrier and port congestion challenges, those exports could be much higher, especially considering the warehoused inventories, production reductions and other steps dairy producers have taken to manage their supplies and output. Customers are reporting increased frustration with the unreliability of U.S. exports, opting to source from trade competitors or higher-cost local producers. Anecdotally, U.S. exporters are reporting delays over 90 days for products to reach customers while EU exporters are facing only month-long delays and New Zealand exporters are facing little to no delays at all. This has long-term implications, as hard-fought market share is being lost in key markets and relationships are at risk of being damaged.

3. Does this impact farmers not based on the West Coast?

Yes, the inefficiency at the West Coast ports driven by the ocean carriers has wide-ranging effects on the industry. Exporters are now seeing congestion at East Coast ports and dairy exporters in the Midwest struggle to get containers loaded onto rails destined for the Atlantic coast. Even as international demand for dairy products has been increasing, U.S. exporters are losing market share to our trade competitors as continual delays force customers to source their product elsewhere. Excess product initially destined for export backs up domestic supply, putting downward pressure on prices and subsequently farm-gate milk price. Longer term impacts are more serious, as hard-fought market share in key Asian markets continues to be lost as carriers continue to cancel bookings and provide unreasonable timelines.

4. Why haven't more shippers filed complaints?

The Federal Maritime Commission's complaints system under the Shipping Act is costly, burdensome, time-consuming, and leaves shippers subject to ocean carrier retaliation. The complaint system operates under the Federal Rules of Civil Procedure and closely resembles litigation in a federal civil court proceeding, in that it involves depositions, interrogatories and discovery. Specialized attorneys are often necessary and can lead to sizable legal bills. Cases can take months if not years to resolve. There are reasonable fears that if a complaint fails, the charging party can be saddled with the defendant's legal fees. Demonstrating the threat of carrier retaliation, a carrier line threatened to file a defamation lawsuit in response to a small furniture manufacturer launching a case against the shipping line for an alleged breach in their contract.

5. Who is opposed to this legislation and why?

At this point, the primary public opposition is from the ocean carriers. Their trade organization, the World Shipping Council, has decried increased regulation of their industry, claiming increased government would raise costs and reduce service. They erroneously claim that the legislation would "allow a U.S. government regulator to prevent a ship from departing … until it loaded a specific amount of export cargo" which is a false reading of the bill's text and intent. The WSC also claims that the FMC has sufficient authorities to address these issues, which is also untrue, especially with regards to the aforementioned fears of retaliation and reluctance of shippers filing complaints.

6. Do we really need more government regulations and oversight?

The ocean shipping market has become so unbalanced and subject to so much control by the ocean carriers, it warrants increased oversight, and where necessary, additional regulations. Ocean carriers have been levying detention and demurrage charges at record levels, but often fail to provide documentation to substantiate the charges and lack the transparency for shippers or the FMC to verify these charges. While detention and demurrage are intended to incentivize the efficient use of containers and equipment, they have become revenue sources for ocean carriers in ways they were never intended or authorized. At the same time, reports are increasing of carriers violating service contracts, adding new surcharges, and cancelling or delaying vessel bookings. Meanwhile, the FMC complaints system is ineffective, cumbersome and leaves shippers worried about the prospects of damaging retaliation from the carriers, which has left the agency with limited tools to enforce the Shipping Act. These alleged offenses need to be subject to oversight and enforcement by the FMC, and new regulations will improve their capacity to do so. The proposed new rules will also increase transparency and accountability of the carriers and their practices, including requiring specific documentation to accompany any detention or demurrage charges. They will also allow FMC to investigate offenses outside the complaints process, reducing concerns about retaliation.

7. Carriers are not in fault; this is just a containers shortage.

While there is indeed a need to increase shipping container capacity, and manufacturers are working to fill a volume of new orders, this is not the only challenge. For ocean carriers to be filling their Asia-bound vessels nearly three-quarters full of empty containers demonstrates a clear choice by carriers to neglect exports with the container and vessel capacity they have. Instead of making those containers available to American producers, facilitating reciprocal trade, and assuring a fair balance between import and export carriage, carriers are advantaging imports over exports.

8. Specific examples of carrier abuse.

Foreign owned and operated ocean carriers are providing unpredictable and unreasonable timelines for exporters to load dairy and other agricultural goods, opting to return empty containers to the more lucrative Asian market instead. As a result, U.S. containerized ag exporters have been facing rolled bookings, canceled contracts, and untenable detention and demurrage fees. In addition to these costs, ongoing delays and congestion carry the risk of U.S. dairy exporters being increasingly viewed as unreliable suppliers for key Asian buyers. If current ocean carrier practices persist, and are not subject to oversight, then the U.S. dairy industry, its workers, and the communities they supports will struggle to access vital overseas markets cultivated over decades.

<u>Dairy Exporter Anecdotes</u>

- Exporter #1: *"Last week, [a dairy export competitor noted] they are getting additional milk powder business from China because **shipping from New Zealand is more reliable than from the United States**."*
- Exporter #2: "*A Malaysian customer's anhydrous milkfat shipment was delayed five months [from rolled bookings]. **The customer had to source in-market from local re-sellers**, and the pricing was $2000/MT higher. They have furnished a claim to [our company] for the difference*."
- Exporter #3: *"We have a shipment of product on the West Coast that has been rolled so many times it is now booked to go on the next voyage of original vessel it was booked on weeks ago. So, the **boat has circumnavigated Asia and come back to get its original cargo**. Unbelievable."*

<u>Non-Exhaustive List of Concerns</u>

- **Cancelled Bookings:** Carrier canceled shipments of 58 forty-foot equivalent units (FEU) for one dairy exporter.
- **Cancelled Contracts:** A customer in China cancelled a contract for 238 MT of milk powder due to delays.
- **Unreasonable Detention and Demurrage Fees:** Dairy exporters report being subject to excessive detention and demurrage charges for issues outside of their control. Year to date, a dairy exporter notes that detention charges and related fees alone on the ocean side totaled approximately $120k and $58k for inland ports.
- **Excessive Delays:** One dairy exporter has had 30 shipments delayed more than six months continuously. In any given week, another exporter reported they have 100-175 containers that they have loaded at its plant but cannot get onto a vessel.
- **Late Notice of Rate Changes:** Rates have been changing with under 30 days of notice, as required by the Shipping Act and FMC regulations. One exporters' production lead time is 42 days and have reported going negative before they even ship their product.