

May 2, 2023

The Honorable Sam Graves
Chairman
House Transportation and Infrastructure
Committee

The Honorable Rick Larsen
Ranking Member
House Transportation and Infrastructure
Committee

The Honorable Daniel Webster
Chairman
Coast Guard and Maritime
Subcommittee
House Transportation and Infrastructure
Committee

The Honorable Salud Carbaljal
Ranking Member
Coast Guard and Maritime Subcommittee
House Transportation and Infrastructure
Committee

The Honorable Troy E. Nehls
Chairman
Railroads, Pipelines, and Hazardous Materials
Subcommittee
House Transportation and Infrastructure
Committee

The Honorable Donald M. Payne, Jr.
Ranking Member
Railroads, Pipelines, and Hazardous Materials
Subcommittee
House Transportation and Infrastructure
Committee

Dear House Transportation and Infrastructure Committee Leadership:

The undersigned organizations representing U.S. businesses engaged in the ocean transportation of goods as importers, exporters, non-vessel operating common carriers, freight forwarders, customs brokers, and others, applaud the passage of the Ocean Shipping Reform Act of 2022 (OSRA22) and the recent introduction of the Ocean Shipping Reform Implementation Act, H.R. 1836. We strongly support modernizing our nation's maritime policies and amending the Shipping Act of 1984 to provide redress for unfair business practices that adversely impact supply chains and the ocean cargo delivery network.

There is an additional issue related to Demurrage and Detention charges that is currently unaddressed by OSRA22 and H.R. 1836 that continues to unfairly plague the shipping public which we would like to bring to your attention. Rail storage, a form of demurrage, is charged by railroads as part of international ocean transportation at the nation's interior rail terminals. In recent years, these demurrage charges have resulted in costs to U.S. businesses in the hundreds of millions of dollars.

A problem arises in situations where the ocean carrier contracts to deliver goods to a U.S. inland point under a through bill of lading and purchases interior rail service to satisfy its delivery obligation. The ocean carriers buy rail service under their contracts with the railroads. Through transportation means continuous transportation between the origin and destination

as offered or performed by one or more carriers, at least one of which is a “common carrier” under the Shipping Act.¹ However, when containers are delayed at the railyard often because of the railroad's terminal operations, rail storage charges accrue. These storage fees must be paid directly to the railroad by importers or their agents in order to gain release of the containers. Charges are often assessed even though they do not promote network efficiencies contrary to the incentive principle that the Federal Maritime Commission (FMC) has determined by rulemaking governs ocean transportation.²

In cases where charges are assessed unfairly, there is no regulatory agency with direct authority over such charges. The Surface Transportation Board (STB) has exempted intermodal transportation from its oversight, which applies to rail storage charges assessed on containers transported under ocean carrier through bills of lading.³ 49 U.S.C. § 10709 also provides railroads the ability to establish contract rates outside of the STB's regulatory review.

Moreover, FMC authority over rail storage charges remains unclear. Several FMC's commissioners, when asked in public forum, have responded that the Commission does have jurisdiction over inland charges on through bills of lading. In some cases, their responses were qualified with a statement that they only have this authority over FMC-regulated entities, which do not include the railroads. In other words, the Shipping Act which is enforced by the FMC may not apply to claims for unreasonable storage charges filed *against railroads* who do not qualify as a common carrier under the Act.

The lack of clear statutory authority for the FMC to address unreasonable rail storage charges assessed under ocean carrier through bills of lading is a gap that must be clarified. The shipping public does not have a contractual relationship with the railroad, nor do they have a regulatory agency to appeal to that clearly oversees the proper conduct or application of these charges. Continuing to allow railroads to invoice importers and their agents directly without oversight undermines the purpose and intent of the Shipping Act. While we do not suggest that railroads themselves would or should be regulated by the FMC, the railroads' storage charges under through bills of lading should more appropriately be invoiced *through the ocean carriers*. Rail storage charges assessed against containers moving in International commerce, an as-yet unaddressed abuse of demurrage charges, should clearly and formally fall within FMC authority through an act of Congress.

We therefore ask Congress to clarify that rail storage charges assessed under ocean bills of lading for through transportation should be billed through the contracting ocean carrier and subject to the OSRA22 demurrage and detention invoicing requirements. This can be accomplished by establishing a new requirement as 46 U.S.C. § 41104(g) stating "A common carrier shall be the billing party for third party demurrage or storage charges assessed by the

¹ 46 U.S.C. § 40102(26).

² See 49 C.F.R. § 545.5.

³ See 49 C.F.R. Part 1090.

carrier's contractors on containers transported under ocean through bills of lading and its invoices shall be issued in accordance with the requirements of Section 41104(a)(14) and (15), (d), (e) and (f)." This would more clearly establish that rail storage charges assessed as part of through international ocean transportation are under the operational authority of the FMC and that any unreasonable charges would be governed by the requirements of OSRA22.

Respectfully Submitted,

Agricultural Retailers Association
Agriculture Transportation Coalition (AgTC)
Almond Alliance
American Apparel & Footwear Association (AAFA)
American Cotton Shippers Association
American Foundry Society
American Lighting Association
American Pyrotechnics Association
American Seed Trade Association (ASTA)
Association of Food Industries
Atlanta International Forwarders & Brokers Association (AIFBA)
Auto Care Association
Autos Drive America
Baltimore Customs Brokers & Forwarders Association (BCBFA)
Boston Customs Brokers and Freight Forwarders Association (BCFFA)
Brownsville Licensed U.S. Customs Broker Association (BLUSCBA)
CAWA – Representing the Automotive Parts Industry
Chicago Customs Brokers and Forwarders Association
Color Pigments Manufacturers Association (CPMA)
Colorado Customs Brokers Association (CCBA)
Columbia River Customs Brokers and Forwarders Association (CRCBFA)
Coalition of New England Companies for Trade – CONECT
Customs Brokers and Forwarders Association of Northern California (CBFANC)
Customs Brokers & Freight Forwarders Association of Charleston (CBFFAC)
Customs Brokers & International Freight Forwarders Association of Washington State (CBIFFAWS)
Customs Broker International Freight Forwarder Association of VA (CBIFFA OF VA)
Detroit Customs Brokers and Forwarders Association (DCBFA)
Florida Customs Brokers and Forwarders Association (FCBF)
Green Coffee Association
Hardwood Federation
Houston Customs Brokers & Freight Forwarders Association (HCBFFA)
Independent Freight Forwarders and Customs Brokers Association of Savannah (IFFCBA)
Intermodal Motor Carriers Conference
Institute of Scrap Recycling Industries, Inc. (ISRI)

International Association of Movers
International Freight Forwarders & Customs Brokers Assn. of New Orleans
International Housewares Association
International Warehouse Logistics Association (IWLA)
JFK Customs Brokers & Freight Forwarders Association
Laredo licensed US Customs Brokers Association (LLUSCBA)
Los Angeles Customs Brokers and Freight Forwarders Association (LACBFFA)
MEMA, The Vehicle Suppliers Association
Mid Valley Customs Brokers Association (MVCBA)
National Association of Chemical Distributors (NACD)
National Cotton Council
National Customs Brokers and Forwarders Association of America (NCBFAA)
National Fisheries Institute
National Hay Association
National Industrial Transportation League (NIT League)
National Milk Producers Federation
National Pork Producers Council
National Retail Federation (NRF)
Natural Products Association
New York New Jersey Foreign Freight Forwarders and Brokers Association Inc.
Nogales US Customs Brokers Association (NUSCBA)
North American Association of Food Equipment Manufacturers (NAFEM)
North American Home Furnishings Association
North Atlantic Alliance Association, Inc. (NAAAI)
Northern Border Customs Broker Association (NBCBA)
North Texas Customs Brokers and Freight Forwarders Association (NTCBFFA)
Pacific Coast Council of Customs Brokers & Freight Forwarders Association (PCC)
Pet Advocacy Network
Pet Food Institute
Philadelphia Customs Brokers and Forwarders Association (PCBFA)
Promotional Products Association International (PPAI)
Retail Industry Leaders Association (RILA)
San Diego Customs Brokers Association (SDCBA)
Society of Chemical Manufacturers & Affiliates (SOCMA)
Specialty Equipment Market Association
Specialty Soya and Grains Alliance
Travel Goods Association
U.S. Dairy Export Council
U.S. Shippers Association (USSA)
West Texas New Mexico Customs Brokers Association (WTNMCBA)
Wine and Spirits Shippers Association

cc: House Transportation and Infrastructure Committee Members