

**STATEMENT OF ACTING CHAIRMAN MICHAEL A. KHOURI
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**BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES**

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Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee, thank you for providing me with this opportunity to appear before you today and discuss the mission of the Federal Maritime Commission.

The Federal Maritime Commission is working to be a more efficient organization by making a concerted effort to reduce regulatory burdens on our constituents. The Commission is aggressively looking for ways to make compliance with Commission requirements easier and more cost effective for shippers, carriers, and ocean transportation intermediaries. On March 6th, the Commission approved key changes to regulatory requirements for ocean carrier service contract filings and non-vessel-operating common carrier (NVOCC) service arrangement filings that will make it easier and more efficient for shippers and carriers to do business.

I want to assure you, and those with business before the Federal Maritime Commission, that I am committed to continuing to identify rules that are outdated or impede the efficient operation of business, and eliminating them whenever possible. I believe there are additional reforms that can be made to existing regulations administered by the Federal Maritime Commission, and relief from tariff publication requirements immediately comes to mind as another obligation ripe for Commission consideration.

Currently, ocean transportation intermediaries and vessel-operating common carriers are required to publish tariffs, even though the overwhelming majority of cargo moving across oceans does so under the terms of service contracts. In other words, current law and Commission regulations require companies to publish rates that have nothing to do with the actual market prices being charged to shippers. Continuing to mandate thousands of tariffs be published that do not reflect real conditions in the market, and have minimal, if any, use by industry participants when negotiating service contracts, is a requirement and expense that regulated entities could be relieved of under the exemption authority provided to the Commission by Congress.

Building on Executive Orders of both the prior and current administrations, the Commission is in the process of identifying requirements that should be changed or eliminated. It takes far too long to travel the road to regulatory relief. When we see a regulatory burden, we should be able to successfully address it as rapidly as possible, and by that, I have in mind a timeframe of months as opposed to years. Unshackling the market from artificial constraints on efficiencies should be something we designate as a priority and work tirelessly to achieve.

Toward that end, after consulting with my fellow Commissioners, on March 13th I designated the agency's Managing Director, Karen V. Gregory, as the Regulatory Reform Officer. Ms. Gregory will stand up a Regulatory Reform Task Force as contemplated by the January 30th "Presidential Executive Order on Reducing Regulations and Controlling Regulatory Costs." The task force will identify those regulations that are the most ineffective, would be the easiest to repeal, and then establish a definitive timeline within the agency to move those items to a vote before the Commission. Even if not technically required as an independent agency to take this step, I believe that it is the right action to take and is consistent with the broader deregulatory history and scope of the Shipping Act.

This commitment to deregulation is essential. It is a critical factor in expanding America's economic competitiveness in the ocean container supply chain. If I can achieve only one thing as the Acting Chairman of the Federal Maritime Commission, I would like our numerous stakeholders to view the agency's regulatory regime as fair and to view the FMC as a global leader in terms of promoting a competitive and efficient ocean transportation system, with primary reliance on a free and open market place, and a minimum of government intervention and regulatory costs.

While my enthusiasm for achieving meaningful deregulation is genuine, no one should mistake that priority as signaling decreased vigilance in meeting the Commission's core mission—fostering a fair, efficient, and reliable international ocean transportation system while protecting the public from unfair and deceptive practices. We have been doing this work, as one entity or another, for one hundred years and we are at a particular juncture in the history of the container shipping industry where our work is all the more important.

Since the Commission last appeared before you, there have been tremendous changes to the ocean transportation services marketplace. The recent past has been marked by considerable merger and acquisition activity among shipping lines that was topped off by the bankruptcy of a "top ten" carrier late last summer. As a result of these events, the number of major shipping lines operating in the international trades has dropped from 20 in 2015 to what will be 13 by next year when the three Japanese-based carriers create a new, consolidated container line. All of this activity has consequentially caused a reordering of the carrier alliance system and the creation of two new organizations ("THE Alliance" and "The OCEAN Alliance") that will join the already existing "2M Alliance."

Carrier and marine terminal alliances can be very beneficial for U.S. exporters, importers, and consumers. Such alliances allow participants to obtain efficiencies and cost-savings that can be passed on to domestic consumers especially when healthy competition exists among vessel operators. Last, the benefits of alliances and other forms of joint commercial arrangements are recognized and addressed in the Shipping Act of 1984, as amended, and the contemporaneous Congressional record.

Given the significant amount of change that has taken place over the past year, shippers are viewing the new commercial environment with many questions and perhaps even some trepidation. Put succinctly, shippers are concerned that fewer carriers, operating in fewer, yet

larger, alliances will not only equate to less service choices, but to a commercial environment where shipping lines enjoy an advantage of leverage in contract negotiations. These apprehensions are not limited exclusively to cargo owners. We have heard similar sentiments voiced by terminal operators, equipment lessors, as well as various service providers. The industry is entering a new era and it is not surprising that there may be questions about whether carriers will be in a position to dictate rates. The current circumstances perfectly illustrate why the Federal Maritime Commission was created, what its job is, and how the agency provides a benefit to American shippers and to our economy more broadly.

The mission of the Federal Maritime Commission is to facilitate an open and free market for ocean shipping services by bringing transparency to market forces and protecting against anticompetitive behaviors. While the Commission is always diligent in its duties to assure the marketplace remains competitive, we are aware and alert that with the dawn of a new era, the oversight work of our professional transportation economists, attorneys, and analysts is all the more critical. It is vital to the interests of all parties involved in the movement of ocean commerce that the Commission provide confidence that America has a competitive, fair, and efficient marketplace. As the new alliances begin to operate commercially next month, we are positioned to monitor the marketplace more carefully than ever with a particularly keen eye focused on any behavior that might appear to produce an unreasonable increase in transportation cost or an unreasonable reduction in transportation services as a result of collective carrier behavior under the respective alliance agreements. Toward that goal, the Commission has strengthened the economic review process of new alliance agreements filed with us. More specifically, we have required tighter limits on the scope of each agreement's authority, as well as expanded quarterly reporting requirements to be filed with the Commission. All of this is done to ensure the Commission's ability to detect and respond to any signs of anticompetitive behavior or abnormal pricing trends.

Our *Annual Report* will provide you with a comprehensive summary of the Commission's activities and industry developments in Fiscal Year 2016. While future predictions are difficult, I will briefly address what we foresee as potential developments and trends in the coming months.

Carriers are operating in an environment where trade volumes are growing more sluggishly than has been typical of the sector. Concurrently, new vessels of the largest capacities continue to emerge from shipyards and be deployed into the world's trade lanes. All things being equal, and with no other shocks to the business such as a spike in fuel costs or another shipping line bankruptcy, this is a formula for continued low rates, which ultimately benefits shippers, at least in the shorter term.

As noted earlier, although there has been a contraction in the number of lines operating in the international ocean trades, competition between companies remains vibrant and shippers continue to benefit from low rates. Overall market share of even the largest oceangoing carriers remain diffused. In the U.S. export and import trades combined, CMA CGM holds a 12.42 percent market share followed closely by Mediterranean Shipping Company at 12.39 percent and Maersk in third position with 10.62 percent. These are far from dominant market positions as recognized by established economic standards. We will, of course, monitor what impact the carriers operating in the new alliances have on market dynamics, rates, and services. A preliminary analysis conducted

by FMC staff, and hopefully available for publication later this year, finds that shippers may enjoy certain benefits from larger alliances, particularly in terms of what they pay for service.

One factor to note is that some carriers receive government support, either directly or indirectly. The invisible hand is not the only force that guides the global shipping industry, and nations throughout the world go to great lengths to support national companies, including saving them from bankruptcy. At the moment, such close links between a government and its national carrier can also benefit American shippers and consumers by virtue of lower freight costs and greater service choices.

The ocean liner industry has been in a state of vessel oversupply for several years. The low freight rate structure in U.S. trade lanes is a direct reflection of that capacity supply/demand imbalance and American exporters and importers have been the beneficiary of those low freight rates. Such supply imbalances will not last forever. The Federal Maritime Commission does not favor one competitor, sector, or industry stakeholder over another. We will continue to be vigilant for indications of rate increases that are products of market distorting, collusive carrier business practices; however, it is important to remember that rate increases in and of themselves are not proof of an uncompetitive marketplace. At some point in the future, higher freight rates will be a normal result of a more equalized and healthy supply/demand marketplace.

Finally, I should note that the Commission is beginning to see marine terminal operators and port authorities show increased interest in how to use agreements filed with and reviewed by the Commission to their benefit. There is a realization among these parties that seeking an alternate antitrust enforcement regime available to them through an agreement filed at the FMC can lead to increased efficiencies and lowered costs. We welcome the application of any parties from the port and terminal sector who want to use agreements to achieve goals that ultimately benefit the American shipper and consumer.

Turning from the shipping industry to the Commission itself, I would like to note an FMC initiative that is making a meaningful contribution toward understanding, addressing, and mitigating port congestion – as well as enhancing supply chain efficiency for America’s exporters and importers. I am referring to our Supply Chain Innovation Team Initiative that is being led by my colleague and friend, Commissioner Rebecca Dye.

This undertaking was launched in May of 2016 and focuses on challenges faced by America’s international maritime supply chains. Commissioner Dye, with her volunteer teams of industry leaders composed of shippers, marine terminal operators, trucking companies, ocean carriers, port officials, labor representatives, logistics companies, and other stakeholders, have been working to develop actionable commercial solutions – including in particular – the key content for a national seaport information portal that could provide the necessary critical information sought by all parties involved in moving containers to/from vessels, through seaports, and onward to a final destination.

The team’s consensus in Phase One was that if such a portal could be funded and implemented, it would make a meaningful contribution to both improved supply chain efficiency and to America’s national economic competitiveness.

Phase One of the initiative addressed our country's import supply chains. This year, Commissioner Dye will launch a second phase – this time focusing on America's export supply chains. We are very much looking forward to the results of the work those teams will do.

Commissioner Dye's work illustrates what can be accomplished with the right people working toward a common goal under effective leadership. A proven method of achieving strong performance at an organizational level is through focused and meaningful strategic planning. From my years in the private maritime sector, I experienced first-hand how strategic planning can be not just a tool, but a driving force in an organization's success. Government agencies can also benefit from strategic planning that is focused, and designed to unite all agency team members to find ways to achieve our mission more effectively while delivering value to the taxpayer. Creating a strategic plan that is substantive and seeks to make the Commission an even better run agency is a task I welcome taking on as the Acting Chairman. To this point, we are now beginning work on a new five year strategic plan that will guide the Commission through Fiscal Year 2022.

Finding ways to conduct the Commission's business more efficiently is an important goal we share, Mr. Chairman. I am very pleased to say we have made some definitive steps toward trying to find ways to make every dollar appropriated to us go as far as it can. The FMC is a small agency with a very technical mission and a need for a very specialized workforce. Our requested level of funding for Fiscal Year 2017 is \$27,490,000. The part of the agency involved in the heart of the mission, you will find a high percentage of transportation economists and attorneys – career fields that tend to command more compensation in order to successfully recruit and retain qualified candidates. Overall, the great bulk of the Commission's budget, approximately 88 percent, is consumed by rent and salaries. "Overhead" costs such as security fees, utilities, and government services account for most of the remaining budget dollars. The Commission has very little, if any, control over many of these costs. Year in and year out, the rent we are charged rises, the supplies and resources we purchase to support our economist and attorney's competitive analysis and legal research cost more, and information technology costs—including IT security and telecommunications bills—rise. We constantly work to find a balance between our resources and our workload; however, if there is a surge of agreement filings, if a "class" of plaintiffs choose to seek relief at the FMC, or if our building security requirements increase, then we work to prioritize our mission-critical activity and reallocate resources to the extent possible.

Another example of the challenge of controlling our costs is illustrated by the ongoing discussions we are having with the General Services Administration (GSA) regarding security requirements and related costs for our headquarters building in Washington D.C. The Commission's projected security costs for FY2017 is \$758,017. Of this total, only \$71,983 can be categorized as being basic, necessary, and pertinent for the agency's headquarters building and its six regional Area Representative offices. The additional \$686,034 we estimate we will pay in security fees are incremental costs imposed upon us because of the building where are our headquarters is located. The \$686,034 figure represents approximately 2.67 percent of our total FY 2017 budget. For an agency with a low security requirement and a desire to be accessible to the public, that money could be better used to hire the additional economists and analysts we need to help monitor the international ocean shipping marketplace.

Our building is a mix of government and non-government tenants. Two of our fellow government tenants are law enforcement agencies with higher physical security requirements than the Federal Maritime Commission. We are concerned that we will be required to shoulder anticipated cost increases associated with maintaining security levels at the building that are dictated by the needs of other federal tenants co-located by GSA into our building subsequent to our original occupancy in 1991. Additionally, we are concerned that we will be directed to contribute toward the overall cost of new security upgrades to meet the desires or professed needs of other federal tenants in the building. These ever-increasing security costs are problematic in light of current budget realities.

As I mentioned earlier in this testimony, the Federal Maritime Commission continues to faithfully pursue the purposes and mission of the Shipping Act that has been in place for 100 years. In its *First Annual Report*, published on December 1, 1917, a total of 83 employees were listed on the payroll of our predecessor agency, the United States Shipping Board. Today, a century later, with a vastly larger domestic economy and global trade, the Commission has only 127 employees working to maintain a competitive ocean transportation services marketplace that moves billions of dollars in commerce representing about one-third of America's Gross Domestic Product. I am proud of the work the Commission's staff does each day to ensure a fair, efficient, and reliable international ocean transportation system, and to protect our U.S. exporters, importers, and ultimately the American consumer from unfair and deceptive practices.

Thank you for this opportunity to discuss the mission of the Federal Maritime Commission, current state and future challenges of the ocean shipping industry, as well as highlight some of the Commission's recent achievements and future priorities. I am always ready to be of any assistance to the Subcommittee and its Members. I would be pleased to answer any questions you may have.