



Statement of the  
**Agriculture Transportation Coalition**  
upon enactment of  
**The Ocean Shipping Reform Act of 2022**  
June 13, 2022

The House has passed OSRA this evening, the vote was 369-42. The President will sign the bill on Thursday afternoon. Great news, big step forward, every sponsor's statements indicated that they were motivated to gain improved ocean carrier service for US agriculture exporters. We are extraordinarily grateful to Congressmen Garamendi (D-CA) and Johnson (R-SD) for their bipartisan leadership, and then Senators Klobuchar (D-MN), Thune (R-SD) and Cantwell (D-WA). But as they themselves say, this is not the final victory, this is the next step.

The Federal Maritime Commission will have to continue to demonstrate its recent and unprecedented will to fully utilize its long held and now expanded authority, as it has done recently in aggressive demurrage and detention enforcement - \$2 million fine on a carrier for detention/demurrage malpractices. It must now promptly initiate the multiple Rulemakings required by OSRA, and in doing so must always be guided, *first and foremost* by the direction included in Section 2. Purposes of S.3580, to "promote the growth and development of United States exports through a competitive and efficient system for the carriage of goods by water in the foreign commerce of the United States..."

This Purpose of OSRA reflects the founding principle of the Agriculture Transportation Coalition shared by all US agriculture: there is virtually nothing in US agriculture and forest products grown or produced in this country that cannot be sourced or substituted with products from elsewhere in the world; if we cannot deliver affordably and dependably, our foreign customers can, and have proven they will, shift their purchases to those other countries, sometimes permanently.

### **Detention and Demurrage - the Spark that Led to OSRA**

OSRA addresses, some of the most egregious practices threatening US agriculture exports -- unfair and onerous detention and demurrage charges which sparked exporter and importer, farmers and retailers, outrage, and Congressional search for solutions. Detention and demurrage charges are imposed by an ocean carrier (and to a lesser extent the terminal operator) when an importer does not pick up and remove a container from a marine terminal promptly after arrival, or when an exporter does not pick up and empty container and return it full of cargo, with the days allotted to it. But the FMC found those charges to be imposed unfairly, such as when the terminal was closed so the container could not be returned timely, or when the number of days or even hours provided to pick up and return the loaded container were impossible to comply with. Or when the container was segregated in a section of the terminal, which was not accessible, or when the container was being held by the government for inspections. Or when the carrier failed to provide notice to the exporter or importer that the ship had arrived or had been unloaded. Collectively, the carriers have imposed and collected hundreds of millions of dollars of such detention and demurrage charges, each month over the past two years. And generally failed to provide a reasonable means by which the shipper can explain to the carrier why the situation made timely pick up or return impossible.

It was an inexplicable mistake for the ocean carriers to ignore the FMC's Interpretive Rule on Detention and Demurrage issued first in 2019 and finally in 2020, which quite gently, without threats, provided carriers with guidance as to how to comply with the Commission's reasonableness standard. The failure to comply with that Rule's guidance led directly to Congressional intervention, manifested in the House bill that passed the House three times (almost unheard of), and in the Senate, unanimously, also unheard of in these partisan times.

OSRA addresses these malpractices with specificity – it requires carriers to include with every detention or demurrage invoice specific information to justify the charge, the date the container was made available, where, the earliest date the exporter was allowed to return the container, the number of day allowed for pick up and return, the applicable rate, information for shipper to question or contest the charge, statements that the charge complies with the FMC's rules, and that the carrier's own performance did not contribute to the delays. Without this information, the shipper is not obligated to pay the charges.

What if the carrier retaliates against a shipper who chooses not to pay, or complains to the FMC? Carrier retaliation can be subtle, hard to prove, and dangerous for a shipper to raise to the level of the FMC. Nonetheless OSRA provides some means by which the FMC can address such carrier behavior.

### **Carriers Must Carry Export Cargo**

The data clearly shows that carriers, while bringing in ships with every container loaded with imports, have dramatically reduced the percentage of loaded containers on ships leaving US ports, returning to Asia, etc. Meanwhile US exporters are told, sometimes bluntly, the carrier wants to return to Asia immediately with an empty container, because the freight charges on containers loaded with consumer goods from Asia are far higher than what US agriculture can afford to pay for a container exporting ag products. So US ag gets left stranded here, to be dumped on the US market.

The House OSRA bill required carriers to accept ag export cargo so long as it could be delivered to the ship timely, could be loaded and carried safely and is destined for the same port that the ship is already scheduled to arrive. Unfortunately, the Senate bill is not as proscriptive. It does provide a means by which the FMC, in a Rulemaking could find regular practice of refusing exports to be a violation, but the means of doing so, would requiring far more effort to prove that the refusal was "unreasonable", by the exporter and the FMC itself. It is possible for the Commission to issue a strong Rule that approximates the House provision, but the Commissioners will have to be very motivated to achieve that objective. We will seek White House and Congressional scrutiny of the Commission's process, toward this end..

### **What do Agriculture Exporters Really Want?**

Now the carriers have additional guidance, which if followed should benefit both shippers (exporters and importers) as well as the ocean carriers themselves. Agriculture exporters (and all shippers) always prefer a mutually beneficial, collaborative relationship – seeking Federal govt intervention and enforcement is only the last resort. The FMC is to be applauded for recently recognizing the authority it has had since the Shipping Act of 1984 but hasn't used. It imposed a US\$2 million fine on a carrier for detention and demurrage abuse, inconsistent with the Commission's Rule. While the Commission's action was appropriate and overdue, and hopefully sends a strong and constructive message to all carriers, agriculture shippers have

other objectives: changed carrier practices that render further penalties on carriers unnecessary. Ag exporters want to be dependable customers of the carriers, but that can only happen if we are, again, affordable and dependable suppliers of food, farm and fiber to the world. Carriers must understand this, and work with us to assure that their services make that possible. Recent developments have been encouraging – some carriers, for instance MSC, CMA-CGM, OOCL are repositioning containers where our AgTC members need them and initiating new services from key ag origins to key ag destinations.

### **What's at Stake for Shippers and Carriers?**

Congress may not be done, there are likely proposals to further address the imbalance of ocean carrier services and the needs of US importers and exporters. While the clear direction to carry export cargo that was in the House-passed version, was not included in the Senate version just today passed, there is enough authority in this bill for the FMC, if it has the will, to effectively end unreasonable export booking denials. This depends on the Commissioners – will they continue to demonstrate the initiative of recent months, to impose significant penalties on carriers acting outside the bounds of reasonable behavior., Otherwise, several Members of Congress have made it clear, they will come back with legislative remedies.

The provision in Sec. 2. Purposes, in S. 3580, to “promote the growth and development of United States exports through a competitive and efficient system for the carriage of goods by water in the foreign commerce of the United States, and by a great reliance on the marketplace”. Is both a ‘carrot and a stick’. Simply put, the carriers should work to promote US exports, otherwise even more attention is likely to shift to “the marketplace” for ocean transportation services. These past few months, President Biden, Congressmen and Senators of both parties have questioned whether carrier consolidation has essentially eliminated the ocean carriage “marketplace”. In some major trade lanes, agriculture exporters have only one carrier providing service from major ports here in the US, to major foreign markets. This consolidation as well as the practices that led to OSRA, have also motivated the White House and Members of Congress to comment on and even introduce bills focused on carriers’ statutory immunity from US antitrust laws.

### **Let's Move Forward Together**

Carriers say federal intervention is unnecessary, not helpful. One could say the best way to avoid it would be to listen to and serve the needs of their customers, including US agriculture exporters. Congress today demonstrated that it is listening to agriculture exporters.

Perhaps most obviously, carriers might do well not to repeat their earlier refusal to heed the FMC's D & D Rule -- which led to OSRA. The statements made by the President and Congress today, upon passage of OSRA, suggest they expect to see compliance, meaning changed carrier behavior, now. So, carriers would be well-advised to make every effort to comply with the requirements of OSRA *now*. Do not fight OSRA in the FMC rulemaking process; do not wait until the FMC completes the Rulemakings later this year or next and forces you to comply. The unprecedented speed by which OSRA moved through the House and Senate until today's enactment demonstrates that on this topic, Congress doesn't have much patience.

### **Thank You Again!**

Again, the efforts of importers and exporters, agriculture and retailers led the way to the Ocean Shipping Reform Act of 2022. We are grateful to Representatives Garamendi, Johnson, Costa,

Schrier and to Senators Klobuchar, Thune and Cantwell and to your well-informed and highly motivated professional staff. You have truly moved the ball forward, towards shipping practices that will help keep US agriculture viable in global markets and an industry that employs so many here in the US.

To see the full bill text, S.3580, [click here](#).

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