Association of Transportation Law Professionals

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FMC CONDUCTS HEARING ON RED SEA AND GULF OF ADEN DISRUPTION OF SHIPPING TRAFFIC

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The Federal Maritime Commission

The Federal Maritime Commission ("FMC") is an independent agency of the United States Government. The FMC is "responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and the U.S. consumer." [1] The FMC Mission Statement is as follows: "Ensure a competitive and reliable ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices."[2] FMC administers federal statutes codified in Title 46 U.S.C. §§ 40101 – 44106, including *The Shipping Act of 1984*, as amended by the *Ocean Shipping Reform Act of 2022*, Pub. L. No. 117 - 146; *The Foreign Shipping Practices Act of 1988*, 46 U.S.C. §42301; Section 19 of the *Merchant Marine Act, 1920*, 46 U.S.C. § 50101; and Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350.

The FMC's Informal Public Hearing on February 7, 2024

On February 7, 2024, the FMC conducted an Informal Public Hearing to evaluate the disruption of shipping traffic in the Red Sea and the Gulf of Aden. A recording of the Public Hearing is available on YouTube.[3] Ten participants including representatives of shippers, ocean common carriers and port authorities, voiced their complaints to the FMC regarding the impacts of the disruption.

Submissions of Certain Participants at the Informal Public Hearing

The Vice President for Supply Chain and Customs Policy for the National Retail Federation ("NRF") headquartered in Washington D.C., provided written testimony. [4] Although the overall volume of U.S. trade funneled through the Suez Canal is only 12%, the NRF views the disruption to shipping as "significant." The disruption is compounded because of the low water volumes restricting trade in the Panama Canal. The NRF stated that the impact of the Red Sea/ Gulf of Aden attacks have resulted in (1) increased shipping timelines; (2) increased shipping costs; (3) material and component availability, and (4) potential port congestion. The mitigation strategies

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[1] https://www.fmc.gov/about-the-fmc/

[2] *Id.*

[3] https://www.fmc.gov/recording-of-fmc-hearing-on-red-sea-available/

[4] https://www.regulations.gov/comment/FMC-2024-0003-0010

of the NRF include transiting around the Cape of Good Hope, shifting cargo to West Coast Ports, and use of air cargo.

The Port of Long Beach California (the "Port") provided a submission.[5] The Chief Operating Officer of the Port reported "nominal increases in container volume resulting from the rerouting of ships from the Suez Canal." The Port stated that it is "well-positioned to capably handle shifts in volume to Southern California due to commercial ship re-routing from the Red Sea and Gulf of Aden." [6]

The Alliance for Chemical Distribution ("ACD") provided a written submission to the FMC on January 30, 2024. [7] ACD provides "chemical products used in medicine and health care, food and agriculture, clean water and sanitation, energy production, electronics, communication" in international commerce. ACD reported that in 2023, more than "950,000 twenty-foot equivalent units of chemicals were received in U.S. ports."[8] ACD asserted that the conditions in the Red Sea and Gulf of Aden, coupled with the drought conditions in the Panama Canal created significant disruptions in shipping of chemicals. The direct consequences of the disruption resulted in (1) shipping cost increases; (2) difficulties in obtaining insurance coverage for cargo, as well as premium increases; and (3) stockpiling of certain chemicals. ACD requests that the FMC examine the increased rates and surcharges of ocean carriers pursuant to 46 U.S.C. § 41102(c) and 46 U.S.C. § 411404(a)(14). [9]

Northwest Grains International, LLC ("NWG") located in Minneapolis, Minnesota, sent a letter to the FMC that was received on January 30, 2024. [10] NWG explained that its primary customers for shipment of containerized domestic agricultural products were located in Asia. NWG complained that in 2023, one specific ocean carrier began charging a "Transit Disruption Surcharge" of $400 for each 40 foot container travelling to the Red Sea. NWG asserted that the Surcharge was not charged in good faith and solicited FMC assistance.

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[5] https://www.regulations.gov/comment/FMC-2024-0003-0015

[6] *Id.*

[7] https://www.regulations.gov/comment/FMC-2024-0003-0006

[8] *Id.*

[9] *Id.*

[10] *https://www.regulations.gov/comment/FMC-2024-0003-0009*