

**U.S. Senator Maria Cantwell**

**U.S. Senate Committee on Commerce, Science, and Transportation Hearing on the Ocean Shipping Reform Act**

**Witnesses: Daniel B. Maffei, Chair, Federal Maritime Commission  
Rebecca F. Dye, Commissioner, Federal Maritime Commission**

**March 3, 2022**

**TRANSCRIPT: Cantwell Opening Statement**

[\[VIDEO\]](#) [\[AUDIO\]](#)

**Cantwell:** Today we will evaluate the bipartisan Ocean Shipping Reform Act, which was introduced by my colleagues Senators Klobuchar and Thune and co-sponsored by 24 bipartisan members.

During the COVID-19 pandemic consumers spent more on e-commerce goods that were shipped from overseas. From 2019 to 2020, we saw a nearly 32 percent increase in e-commerce spending. And, from 2020 to 2021, we saw another 14 percent increase.

The arrival of these imports has led to record volumes at U.S. ports. In 2021, the Ports of Los Angeles and Long Beach moved 10 million containers for the first time ever. In the state of Washington, the Northwest Seaport Alliance saw a 15.4 percent increase in container volumes over the last year.

This unprecedented volume continues to cause a massive back-up of ships offshore and as of yesterday, 30 vessels are at anchor or loitering waiting to access the ports of Los Angeles and Long Beach.

As the economy has roared back, ocean shipping companies have struggled to keep up with the demand, and freight costs have soared.

The [pre] pandemic shipping rates for a forty-foot container was about \$1,300 dollars. By 2021, the cost jumped to \$11,000 dollars. That's a 746 percent increase in freight cost. This increase means U.S. consumers are paying higher prices for goods every day.

In November of 2021, a United Nations report found that if container freight rates continue at this pace through 2023, the cost of importing goods could increase by 11 percent, which would raise consumer prices.

This Committee worked tirelessly on numerous provisions that were included in the Bipartisan Infrastructure Law. We made a historic \$2.25 billion-dollar investment in Port Infrastructure and Development.

In total, the bill included \$28 billion for freight infrastructure over the next five years, including \$3 billion for at-grade railroad crossings which are known to be a supply chain bottleneck problem.

We also know we need a robust Federal Maritime Commission and we passed out a nominee to join you. I think Max Vekich has been sworn in as a member.

Today, we are taking another step by holding this Ocean Shipping Reform Act hearing. This bill would significantly strengthen the Commission and provide tools to crack down on unfair practices. The bill would direct the commissioners to establish a rulemaking to address unfair detention and demurrage charges. These unfair fees are being passed down to consumers.

A June 2021 report on the 20 busiest ports globally, found that detention and demurrage charges nearly doubled between 2020 and 2021. I will have specific questions to the FMC members today about that.

As we heard from our witnesses at a previous hearing that we had on unfair shipping practices chaired by our colleague from Michigan, we know that these costs are passed onto consumers.  
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In addition, these unreasonable charges, we need to address the complaints that our constituents have...that we've heard from many of the important industries across the state of Washington.

According to the Agriculture Transportation Coalition, impacted farmers include:

- hay and potatoes from Washington state,
- cotton growers from Mississippi,
- pork from South Dakota,
- soybeans from Minnesota,
- paper products from Tennessee,
- almonds from California,
- dairy from Wisconsin,
- poultry from Georgia, and
- citrus from Florida.

We're proud of what we make and grow in the United States of America and we expect it to get to its' destinations in a timely fashion. It is unfair that these consumers are being gouged with these high prices and our very important growers can't get their products to market in a timely fashion.

Today, we will hear from the Federal Maritime Commission's Chair, Daniel Maffei and Republican Commissioner, Rebecca Dye. We want to hear from you about what needs to be done to help address this issue.

We want to know what tools in the Ocean Shipping Reform Act you can use immediately if passed into law that would help you find real solutions for the market today. We need a commission to offer real and immediate solutions to those farmers to get these products to these global markets.

### Question and Answer with the Witness

**Witnesses: Daniel B. Maffei, Chair, Federal Maritime Commission  
Rebecca F. Dye, Commissioner, Federal Maritime Commission**

[\[VIDEO\]](#) [\[AUDIO\]](#)

**Cantwell:** I wanted to go back, listen, for me in the northwest, this is about agricultural product that needs to get to international markets, and it needs to get so in a timely fashion. There's some of these products that are highly perishable. And so timing matters. So the way I see this, the reason why you even exist, is because the United States of America set some terms for people to come to our ports and deliver products. Is that not right? That's the history of us.

**Maffei:** Yes, I mean, I think we've gotten away from that, certainly part of the purposes section. But you know,

**Cantwell:** Part of what Senator Tester was saying is, "we're letting everybody come here and make bank -- make big bank." Huge increases. Our longshoremen actually have increased their productivity, some died even doing it. And yet, this issue is they're making bank and then they're leaving our products on the dock. That's exactly what is happening. And you don't seem to have the authority, which I'm going to try to get at here is why you don't have the authority and what we need to do to change it because we are going to pass some legislation here, we are going to fight for these shippers who need to get their product to international markets, and as a very trade dependent state, I will make this the biggest priority of this Committee, if it's what it takes.

So first and foremost, under Section 41104 of common carriers. It says that, "any person directly or indirectly may not give any undue or unreasonable preferences or advantage or improperly undue unreasonable prejudice or disadvantages." And then that's in section that section sub eight and then sub nine is, "or give any undue preferences or advantage to impose undue regional unreasonable prejudice, or disadvantage with respect to any port."

So why doesn't that give you enough authority today? What is it about that language that doesn't allow you to say to these major shipping companies who have now basically been even

more consolidated, so it's not like there's somebody says, I'll deal with the small shippers, I'll take their product and get them to Asia? That's not happening. These guys are just hurrying back, getting more cargo and jamming them through our ports and leaving our shippers and our products there on the docks to rot.

**Maffei:** Well, Senator, Madam Chair, some of it is evolved over years. It has to do with the trade deficits. The carriers make their money on the what's called the fronthaul, coming to the United States.....

**Cantwell:** (interrupts) I don't need it explained, I know how they're making money. It's in the paper, it's in the Wall Street Journal. They're making a lot of money. It's record profits. What I'm trying to get at is what in the existing authority right there does not allow you to do something about these unreasonable rates. What is it?

**Maffei:** The carriers could defend themselves by saying "we're offering space, if they want to pay as much as the importer, we'll give them space and that therefore, we're not discriminating."

**Cantwell:** (interrupts) What is the rate increase? It's over 100% increase?

**Maffei:** It's well more than that. I was thinking... Mr. Hickenlooper's people got a great deal.

**Cantwell:** (interrupts) How is that reasonable? How have you determined that as reasonable?

**Maffei:** I don't believe it is, ma'am.

**Cantwell:** OK, so as a Section 6 G of the Shipping Act empowers the FMC to go to federal court to seek an injunction if it determines that any agreement or agreements between carriers or others are likely to produce an unreasonable increase in transportation costs. Do you agree that that dramatic increase during the pandemic is an unreasonable increase in transportation costs?

**Maffei:** I certainly agree that it's a colossal increase whether it would be unreasonable under the law is a more complicated question. I will say, though, that I'm not sure...we don't have evidence, well, we're looking into whether we can connect these costs to the alliances or to the individual carriers. Either way, it's a huge problem.

**Cantwell:** They're unreasonable costs. Trust me. They're unreasonable costs. And they aren't even able to pay it. So we're giving access to our ports. And we basically believe in trade. I come from one of the most trade dependent states in the nation. Believe me, I believe in trade, probably more than 98% of the people in the United States Senate. Maybe Patty Murray and I are like the top two, we believe in it, okay, so we want to have this shipping industry work and work effectively, but it can't be a one-way street and so we can't have our products left on the docks.

So we want to have...and if you don't feel that you can go to court right now on unreasonable rates, or you don't feel like the definition is strong enough. Listen, I've authored three statutes related to unfair and deceptive practices and manipulation. And believe it or not, there's a lot of case law already in these areas. So I do think, so I really want to nail down here what is it that you think?

**Maffei:** Yeah, under current law, well, under current law, a rate, no matter how high in itself is not unreasonable. It would be how that rate was arrived on, it's an alliance, how they got to that rate.

**Cantwell:** It's not about alliances, it was found in so many aspects of manipulation of oil and natural gas when we set new laws, because it wasn't about collusion. It wasn't about somebody coming together and setting a price. It's about whether you have a market condition that basically serves the customer, and you have small customers here who are not getting served is the issue. And they can't get their products out of our ports, importers can't get their products out, because they can make more money being exporters to the United States than bringing our product back to Asia.

**Maffei:** There's no doubt that your observations are well taken. And your points are right. This bill, the last bill was written in 1986, 36 years ago. We didn't have mobile phones. I mean, the industry has changed so much. That's why it's so important that we update it. Now we don't have the authority to regulate rates. We don't have the authority to say that rates too high. We don't have the authority to say you have to pay some attention to small businesses. You can't just pay attention to the big box stores. We don't have that authority. I wish you know, sometimes I wish we did. And if you give it to me, I will use whatever authorities that the Congress sees fit to give us.

**Cantwell:** Well, we're definitely going to give you new authority. The question is whether we get it absolutely right. Because we can't afford not to get this right. We can't afford this to continue this way. So I will take for the record. Something more defining on the unreasonable rate. Maybe you can go back to more, more counsel...

**Maffei:** I would be very glad to give you something.

**Cantwell:** So at the Federal Maritime Commission, I'm all for a Federal Maritime Commission and a strong one. That is why we also sent a new nominee to you. And hopefully that'll be some more expertise, at least from the real-life experience

**Maffei:** Good to have somebody who worked on the docks them self.

**Cantwell:** Yeah. And I think that's I think that's very good experience. But I think that we have to crystallize here, what exactly are we talking about. To me when I read this authority, it seems to me you should be able to go to court right now on unreasonable increases in transportation costs. It seems to me that you should be able to do that.