



October 18, 2021

Department of Transportation  
1200 New Jersey Avenue SE  
West Building, Ground floor  
Washington, DC 20590-0001

Re Docket number DOT-OST-2021-0106

To whom it may concern,

The American Association of Exporters and Importers (AAEI) has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers, and service providers to the industry, which is comprised of customs brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and other movement of goods issues.

AAEI supports the Biden Administration's current efforts to examine the issue of supply chain disruptions and calls on the Administration to quickly resolve this critical issue. The current U.S. supply chain issues did not happen overnight and resolving many of the issues sustainably will not happen with one or two changes. Rather, resolution will require a working plan that involves government and industry resources co-creating a modernized future state. While the COVID-19 pandemic exposed the vulnerabilities in global supply chains, it must be noted that the U.S. trade infrastructure supporting our U.S. businesses has operated holistically unchanged for decades. The economic resiliency of the U.S. and the viability of U.S. businesses depend on foreign markets from raw material to finished goods from the industries of food to that of airplanes. In 2021, it has been difficult for several industries to get their products to market while meeting contractual deadlines due to several tremors that have impacted the supply chain. Margins have been tested all year, and without a reliable trade infrastructure, production will move overseas and alternate sources of supply will increase consumer costs. Investments in modernizing the transportation infrastructures (for all modes of transport, e.g. waterways, ports, and rail) is essential to produce long term success for the American worker and the company. The time is now to remove the barriers associated with deep, modernized change, as this is the only way to prevent the inevitable earthquake of even more severe U.S. economic impacts.

Please allow us to provide you the following comments regarding the above referenced docket number.

**Infrastructure or operational bottlenecks and chokepoints**



Export Constraints. Ports across the United States are experiencing unprecedented congestion and record container volumes, which pose significant challenges for exporters seeking to deliver their products to foreign markets affordably and dependably. During this challenge, we have reports that certain Vessel Operating Common Carriers (VOCCs) are making a business decision to load empty containers on a returning vessel rather than accept U.S. exports both due to time and equipment constraints with the added influence of increased profits. This practice greatly exacerbates the problem and potentially violates the Shipping Act as unjust and unreasonable. The time it takes to obtain sailing confirmation for an export order has increased from one week to as many as five weeks. This results in delayed shipments and lost orders because overseas customers are unable or unwilling to wait extended periods to receive U.S. goods.

Space Constraints. VOCCs returning with empty containers is another pertinent cause of port delays. Ports may not have enough space to accept empty containers. Some ports have attempted ad hoc solutions, but long-term solutions are needed. Additionally, many terminals have appointment systems which do not address the current challenges and lead to long waiting times. Truckers often get frustrated upon being turned away because the terminal cannot get to the container to release it to the trucker.

Excessive Fees. Ocean carriers are also charging truckers, importers, and exporters daily fees, known as “detention” or “per diem”, when they do not return the carrier’s container to the terminal within the time allotted under the contract of carriage. The carriers and marine terminals also charge “demurrage” when the trucker or shipper does not remove an import container from a terminal quick enough or returns the container to the terminals before the terminal wants it. These charges are now, in aggregate, in the hundreds of millions of dollars. Most disconcerting, the carriers and terminals are charging these fees even when it is not possible for the truckers or shipper to access the terminal to return or retrieve the container. These fees are jeopardizing the financial viability of exporters and importers.

Port Hours of Operation Constraints. Unlike foreign ports, U.S. ports are not fully operational 24/7. The limited hours of terminal gate operations at U.S. ports are the primary reasons that carriers are unable to maintain schedule integrity, and thus congestion, as the terminals are unable to handle the massive volumes of imports, arriving on the mega-ships. Worldwide ports operate 24/7, while U.S. terminal gates operate 5 days a week, fewer than 12 hours daily. Although the Biden Administration has instituted a 90-day 24/7 operation for the West Coast ports, this change should be made permanent and extended nationally.

Equipment Constraints. The current issues—ports, equipment, trucks, rail—are all “maxed utilized” right now, fixing the issues needs investment in infrastructure, especially in the following areas: warehousing in port areas as well as strategic centers all around the U.S. (incentives for businesses to invest) and permits granted; ports and the surrounding industrial zones, including airports, which have not expanded for cargo only passenger; and manufacturing base of equipment needed in the world of logistics and transportation, i.e. chassis, rail cars.

An additional challenge is the shortage of rail cars and chassis. Rail car shortages to get imports off the dock is a major contributing factor to the overall congestion. The Biden Administration should work with the rail carriers to ensure that advanced freight information is properly shared with rail carriers so the carriers can prepare for volume spikes. Related to the rail car issue is the lack of chassis. Chassis counts remain low due to the surge in imports. The 20% imports tariffs that are being applied to new chassis have made chassis importation cost prohibitive.



*Recommendation #1:* AAEI believes that USTR should immediately exclude chassis from import duties.

*Recommendation #2:* AAEI believes that the Federal Maritime Commission (FMC) must use its current authority to address unlawful port and shipping practices. We understand that in March 2020, the FMC initiated Fact-Finding No. 29, led by Commissioner Rebecca Dye, and expanded it in November 2020 to investigate reports of potentially unjust and unreasonable practices by certain VOCCs as discussed above. We support this investigative effort, and if unjust or unreasonable practices by certain VOCCs are discovered, we urge the Commission to take appropriate and timely enforcement actions under the Shipping Act to put an end to these costly practices. AAEI also supports introduced legislation, like HR4996 the Ocean Shipping Reform Act, which seeks to recommend a Shippers Bill of Rights and gives the FMC proactive authority to investigate unlawful port and shipping practices.

### **Technology issues**

The growing complexity and traffic at ports make data management essential. Currently, carriers, port terminals, importers and exporters and rail carriers lack the kind of advanced and common information that would help all parties achieve greater efficiency. There is a lot of container data generated at U.S. ports. The lack of shared information as to allocation of containers and times when they are available clouds supply chain visibility. The use of Big Data and automation would provide ocean carriers with accurate notice of arrival and departure and allow the marine terminals to load and unload efficiently. The Department of Transportation should examine how best to coordinate and consolidate this information for the benefit of port actors.

*Recommendation #3:* AAEI urges the Biden Administration and Congress to pass and an Infrastructure bill that includes investments in broadband. Universal broadband is important at the ports and beyond. The economic benefit of broadband includes trade creation and facilitation, lowering costs for international communications and greater access to foreign markets.

### **Infrastructure**

The lack of capacity of near-port distribution centers to accept and process massive volumes of import cargo is contributing to port congestion. The increased volume has strained capacity at the region's ports, which have limited acreage for expansion. Ports and terminal operators are reconfiguring terminals, promoting increased rail shipments, and encouraging the speedier flow of automobiles off the docks. AAEI believes that there should be a national strategy to increase port capacity that includes federal, state, and local cooperation. For example, San Diego, which handled 460,000 units during its most recent fiscal year, is working on several short-term and long-term projects as part of a broad effort to increase capacity at its National City terminal. There should be a national strategy, led by the Department of Transportation, that seeks to identify port bottle necks caused by the lack of capacity and provides short-term and long-term recommendations on how best to leverage federal, state, and local resources to improve capacity. While capacity is a major issue, worker shortages has become a growing concern.

The pandemic has reopened the debate about competitive wages, decent work conditions, and improved training. As vessel sizes get larger, ports are often faced with a shortage of permanent workers. In many instances, terminal operators have often turned to temporary labor. The consistent flow of new union candidates has slowed significantly



and growing concerns over national security have tightened the requirement for credentials. The Department of Transportation should also investigate expediting the TWIC approval process and eliminate “gray boxing” prior to interviews, where potential workers are eliminated from the employment process prior to receiving an interview.

Given these factors, operators are forced to look at other resources for qualified labor. Automation is an important piece that needs to be reviewed. However, the U.S. workforce is not currently prepared for increased global competition and rapid technological change. There is a growing need to review educational and skill training programs including truck drivers, advanced manufacturing, etc. AAEI believes that there should be an increase in vocational training in schools, which would lead more workers toward transportation-related fields.

*Recommendation #4: The administration should consider the Department of Transportation leading a national strategy to increase port capacity that includes federal, state, and local cooperation.*

*Recommendation #5: The Department of Transportation should consider expediting the TWIC approval process and eliminate “gray boxing” prior to interviews, where potential workers are eliminated from the employment process prior to receiving an interview.*

#### **Major risks to logistic and international transportations modes**

Because ports are part of the critical infrastructure sector, the risks that may occur at those locations every day constitute a challenge for U.S. national security. These risks include theft, smuggling of weapons and chemicals, human trafficking, terrorism, etc. For this reason, it is important to monitor all the critical areas where crime may occur or any illicit good may enter or exit. Due to the increased commercial exchange, the number of vessels that transport has grown. The difficulties that arise from the lack of acceleration the loading and unloading of containers have caused an increase in the waiting times inside U.S. ports. Besides generating inefficiencies and costs, port congestion constitutes a potential risk in terms of robbery of goods, failure of the delivery of critical health, military and safety equipment and problems of environmental impact due to possible oil spills and potential marine and fishery contamination.

*Recommendation #6: Increase the US share of steamship lines*

AAEI believes the need is urgent, especially with record container volumes at the nation’s major ports. These volumes, and the resulting congestion, will only grow as the global economy recovers from the coronavirus pandemic. Port problems will continue due to the broad and systemic issues causing this congestion, some of which are operational in nature. Producers rely on competitive access to foreign markets. The hope for post-pandemic economic recovery is at serious risk when goods cannot get to market. This is true for finished goods which are exported, but also the raw materials and components which need to be imported to make those export goods.

A long-term solution is needed in the United States. U.S. importers and exporters strive to drive improvement, but their capabilities are limited to initiatives within their own operations. To drive a step-change in world competitiveness, there needs to be a focused effort to build effective supply chains to drive insights and accelerate our U.S. goods to world markets.



We look forward to working with the Department of Transportation to address this growing problem.

Sincerely,

Eugene C. Laney  
American Association of Exporters and Importers  
President and CEO