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Michael Angell, Associate Editor | Jun 15, 2021 5:37PM EDT



FMC members say that its efforts are mostly focused on detention and demurrage rather than export refusals Photo credit: Shutterstock.

Two members of the US House of Representative are drafting legislation that would give the US Federal Maritime Commission greater power by allowing them to enforce complaints against ocean carriers that refuse take agricultural export containers.

Rep. Dusty Johnson, R-S.D., and Rep. John Garamendi, D-Calif., argue the additional legal authority, which would come via an update to the Shipping Act of 1984, is needed to give the FMC more power to ensure that container lines are meeting their common carriage responsibilities to ship exports. The legislation would require carriers to include a statement of compliance with US maritime regulations, bar carriers from refusing exports, and

require the FMC to publicly disclose on its website false certification and resulting penalties.

“We have a problem in which the shipping industry is able to discriminate against American exporters,” Garamendi said during a meeting of the House Coast Guard and Maritime Transportation subcommittee on Tuesday.

John Butler, president and CEO of the World Shipping Council, which represents major global container lines, told Congress Tuesday the agency has enough power to police bad actors and warned proposals to update shipping law will do more harm than good.

More agency power?

FMC Chairman Michael Maffei said he was open to discussing legislation and agreed that the agency “needs more tools,” but he was quick to note that the agency isn’t looking to “scapegoat carriers.” Maffei stressed the FMC has little to no authority to enforce contracts between carriers and shippers, even as shippers and forwarders complain that their minimum quantity commitments within new trans-Pacific service contracts aren’t being honored.

“There is a bigger role for the FMC in reviewing contracts for clauses that may violate the Shipping Act,” Maffei said. “But it can be blurry whether it’s a contract violation or Shipping Act violation.”

Maffei did say that the FMC needs a more “credible deterrent” for enforcing Shipping Act violations. He suggested that instead of the FMC levying fines, “reparations that would go back to the aggrieved shipper” would be a potentially more effective deterrent to such violations.

Fellow FMC Commissioner Rebecca Dye was more strident, saying flatly that the agency had the power it needs. There are three other FMC commissioners.

“We’re certainly not happy with the behavior of some of [the carriers]. But some of them are in compliance and keep in close touch; we want to make sure we target the people that aren’t compliant,” she said during the hearing.

To that end, Dye said ocean carriers should consider hiring compliance officers who can work with the FMC. She also said the FMC should conduct “regular bureau enforcement audits of detention and demurrage to continually be aware of their behavior.”

Dye said the FMC has many ongoing investigations of a particular carrier’s business practices based on shipper complaints, which may or may not result in a formal complaint from the FMC. Most of those complaints are over detention and demurrage costs, Dye said, adding the FMC already has clear authority to enforce actions against ocean carriers over those costs.

Although instances in which an ocean carrier refused or cancelled an export booking are potential violations of the Shipping Act, Dye said the FMC “didn’t get as many complaints as we wanted because our exporters are worried about retaliation.”

Dye said the lack of detail and specific allegations about which carriers did what hampers the FMC’s investigations because, “we do require facts to investigate potential violations.” However, she said the FMC doesn’t need more legal powers, which might further chill the FMC’s relations with the industry it oversees.

“I don’t believe we need anymore (authority),” Dye said. “Good carriers are going to suffer as well as the ones we know are not following rules.”

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