

PIER PRESSURE: REGULATION AND COMPETITION IN MARITIME SHIPPING

HEARING

BEFORE THE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

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PIER PRESSURE: REGULATION AND COMPETITION IN MARITIME SHIPPING

Tuesday, March 17, 2026

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY
Washington, DC

The Subcommittee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Scott Fitzgerald [Chair of the Subcommittee] presiding.

Members present: Representatives Issa, Gooden, Harris, Nadler, Raskin, Balint, Lofgren, and Johnson.

Mr. FITZGERALD. [Presiding.] The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone to today's hearing. Happy St. Patrick's Day.

This hearing on regulation and competition in the maritime shipping industry is a Subcommittee hearing we have wanted to tackle for some time.

I will now recognize myself for an opening statement.

Today, we are here to examine the statutory antitrust exemption granted under the 1916 Shipping Act and its impact on competition and consumers. Since the earliest day of maritime shipping, ocean carriers have entered into cooperative agreements to coordinate freight capacity and global shipping routes. This was to ensure space abroad; a vessel didn't go unused, and ships would not be arriving at the same ports at the same time.

Recognizing that these cooperative agreements, known as "conferences," could act to restrict or eliminate competition between rival shippers, Congress began studying the issue. What Congress concluded was that, while there were certainly anticompetitive aspects of these conferences, the benefits seem to outweigh any potential harm.

In the words of a 1914 Alexander report, quote,

To terminate the existing agreements would bring about two results. The steamship lines would either engage in rate wars, or to eliminate a costly struggle, they would consolidate through common ownership.

Congress' compromise came in the Shipping Act of 1916. As part of that compromise, ocean carriers could enter into collective agreements, so long as those agreements were filed with and overseen by a Federal regulator, which today is known as the Federal Maritime Commission, or the FMC.

The industry today, however, looks very different from the one Congress confronted in 1916. In 1998, the top 20 ocean carriers controlled approximately 50 percent of the world's container slot capacity. By 2018, that number had almost doubled to nearly 90 percent. Today, three global shipping alliances together control nearly all transatlantic and transpacific trade.

The intent behind the Shipping Act was also to advance the interests of American shippers. As one scholar had put it, "Both the original statute and the 1961 amendments are designed to protect and foster a strong American flag merchant marine." In other words, Congress wanted to protect American interests against discrimination by foreign shippers.

Yet, today, the largest ocean shipping companies are all foreign-owned and controlled. In the list of the top 20 container shipping companies by market cap, there is not a single U.S. company.

The United States depends on foreign flag vessels for 97 percent of its maritime trade. COSCO Shipping, one of the largest container shipping companies by market share, is owned and controlled by the Chinese Communist Party. That presents its own national security risks, which the House Committee on Homeland Security and the China Select Committee have been investigating.

This concentration and coordination can exacerbate supply chain disruptions that would otherwise be more resilient when competition is robust. For example, during the COVID pandemic, freight rates for a container increased from \$1,300 to as much as \$11,000.

When geopolitical crises have struck, such as the Russia-Ukraine conflict, or more recently, the ongoing air strikes against the Iranian regime, ocean carriers have leveraged their monopoly power to charge detention and demurrage fees, surcharges, and other fees that should, instead, be charged by marine terminal operators.

What would otherwise be unreasonable business practices in a competitive environment; it appears to be routine under these anti-competitive alliances. The result of the Shipping Act, as we have seen, may have, unfortunately, been precisely what Congress was hoping to avoid—concentration of foreign shipping companies, to the detriment of American businesses and consumers.

When Congress granted the antitrust exemption, it tasked the Federal Maritime Commission with subjecting these ocean carrier agreements to antitrust scrutiny. However, as one of our witnesses will explain today, the FMC has never once brought a case against the powerful ocean shipping carriers that dominate shipping markets. Despite having the statutory authority to seek a judiciary remedy or monetary penalties, the FMC has never taken an enforcement action to challenge an agreement. Some will call this "underenforcement." It could be called a dereliction.

Over the years, the FMC has maintained the position that competition was vigorous among ocean carriers and their three major shipping alliances. Even after the COVID pandemic, in which the

United States faced some of its greatest supply chain challenges, the FMC reported to Congress that, “Competition among ocean common carriers, among the three major alliances, and among the members in each of these alliances is vigorous.”

That argument is in tension with the position taken by Congress and the DOJ in recent years. When Congress passed the Ocean Shipping Reform Act of 2022, it did so to alleviate concerns among businesses that ocean-carrying alliances were, quote, “able to wield excessive power to prevent competition.” Yet, despite Congress giving the FMC more authority to police the carriers in the terms of their agreements, it appears the agency is still sitting on its hands.

The DOJ, meanwhile, has long maintained the position that antitrust exemption for ocean shipping is no longer justified, and has repeatedly submitted comments to the FMC expressing antitrust concerns over ocean carrier alliances.

In 2016, for example, the DOJ submitted comments urging the FMC to oppose the proposed Ocean Alliance Agreement. In their comments, the DOJ stated that the agreement “contemplates extensive cooperation among members and would grant the parties the ability to broadly coordinate service between routes, including the unfettered exchange of competitively sensitive information.”

Additionally, the DOJ stated, “The increase in concentration in the transpacific shipping market is presumed likely to enhance market power under the antitrust laws.” Despite this warning, the FMC authorized the Ocean Alliance in 2016, and has continued to extend the agreement, most recently, until March 2032.

An economy based on vigorous competition protected by the antitrust laws does the best job of promoting consumer welfare and a vibrant, growing economy. Statutory antitrust exemptions are antithetical to those principles.

As the bipartisan Antitrust Modernization Commission stated, “Statutory exemptions from the antitrust laws undermine, rather than upgrade, the competitiveness and efficiency of the U.S. economy.”

When Congress grants immunity from antitrust scrutiny, we must do so selectively and with consumers in mind. When compelling evidence suggests consumers no longer benefit from an antitrust exemption, it is appropriate for Congress to reexamine whether it is still in the public interest to allow otherwise anticompetitive behavior to continue unchecked.

That is why we are here today, to better understand the history of the Shipping Act and whether, after nearly 100 years, it is still in the consumers’ best interests.

We will also hear today whether other government regulations, such as environmental regulations in international shipping, or restrictions in domestic maritime shipping, like the Jones Act, are negatively impacting shipping prices and harming consumers.

I look forward to hearing from our witnesses and hearing what they have to say today. Thank you.

I now recognize the Ranking Member, Mr. Nadler, for an opening statement.

Mr. NADLER. Thank you, Mr. Chair. Mr. Chair, in this senseless war, there is no defined goals and no end in sight. With gas prices skyrocketing and with an affordability crisis that is draining Amer-

icans' pocketbooks, and is only getting worse, a hearing to examine maritime shipping rules does not exactly meet the moment.

The affordability crisis touches nearly every aspect of our lives. Staple grocery costs have risen more than three percent over the last year—causing many Americans to struggle just to put food on the table. The rent and mortgage payments are stretching families' budgets, with many young people priced out of the housing market altogether. Utilities are up an average of 12 percent from last year, and health insurance premiums have gone through the roof, especially after Republicans let critical subsidies expire. On top of all this, gas prices have risen sharply since Trump attacked Iran, and are climbing higher by the day.

It is no wonder that consumer confidence is the lowest it has been since 2014. Americans are feeling the freeze, but Republicans have done nothing to ease their pain and many of their policies are only making it worse.

The increased costs faced by consumers have been fueled in large part by the global trade war launched by President Trump last year, which has taken aim at friends and enemies alike. Instead of taking a targeted and thoughtful approach to trade that would protect American industries, workers, and consumers, Trump has taken a scattershot approach—imposing steep tariffs across the board that are driving up prices for American consumers and businesses, while doing very little to bring investment to our shores.

By one estimate, American consumers have paid more than \$230 billion in tariff costs since the Trump Administration began. That's more than \$1,700 per family. Even though the Supreme Court has struck down some of the tariffs, significant others remain, and the refunds mandated by the courts will go to businesses, not consumers.

At the same time, President Trump has taken this country to war with Iran—without making the case to the American public or seeking congressional authorization. Iran has now retaliated by shutting down the Strait of Hormuz, through which one-fifth of the world's oil supply travels—a response that comes as a surprise to no one, except Donald Trump. As a result, the price of oil is already over \$100 a barrel and gas prices are skyrocketing.

Rigorous enforcement of the antitrust laws could be a powerful tool in the effort to address the affordability crisis, but instead, this administration has corrupted the antitrust process—rewarding their political allies, punishing their perceived enemies, and firing the career professionals and other officials who have refused to cater to industry lobbyists or to carry out a toothless enforcement scheme.

The ask of the senior leadership in the DOJ's Antitrust Division appears to have cleared the path for one of the most egregious examples of lax enforcement—the government's sweetheart deal with Live Nation–Ticketmaster. The monopolistic power of this company has been known ever since Live Nation and Ticketmaster first proposed merging in 2009. At the time, I urged my colleagues—I joined my colleagues in warning about the impact it would have on consumers. Although the merger was approved, I am sad to say that our concerns turned out to be well-founded.

The millions of Americans have felt the effects of Live Nation–Ticketmaster’s anticompetitive practices. When they bought a ticket to a concert, performed in a local production, or worked at an auditorium, they saw how the company drove up ticket prices, limited tour dates, or prevented other companies from entering the market.

Given this awful record, I sought reexamination of the merger by the antitrust enforcers in 2021. Thankfully, in 2024, the Biden Administration and 40 State Attorneys General sued Live Nation–Ticketmaster for monopolizing markets across the live entertainment industry.

At the time, I said, quote,

Since its merger in 2010, Live Nation–Ticketmaster has engaged in boldly anticompetitive practices at the expense of consumers, entertainers, venues, and vendors. Instead of cooperating with the terms of its consent decree with the Department of Justice, the company has only grown more brazen in its tactics to corner the primary and secondary ticket markets.

Despite having a slam-dunk case, days into trial, the Trump Administration suddenly settled the case for practically nothing—leaving venues, performers, and consumers out in the cold. The case was settled so abruptly that the judge even admonished the government and Live Nation–Ticketmaster for their quote, “absolute disrespect for the court, the jury, and the entire process.”

This case is not only the most recent, but also one of the most damning examples of how corrupt the Republican-controlled DOJ is. As one former antitrust official noted, “You really couldn’t send a clearer message that antitrust is dead at the Federal level than settling this particular case.”

Thankfully, most of the State Attorneys General involved in the case dejected the settlement and vowed to continue the litigation. The Trump Administration, on the other hand, appears content to allow consumers to pay more for less.

Such a sorry state of affairs cries out for congressional oversight, but the Republican majority has been silent, while the Trump Administration guts the antitrust enforcement agencies that should be protecting consumers, not companies.

Mr. Chair, market consolidation, unpredictable tariffs, and the war in Iran are all driving prices up, but this hearing is designed to address none of these pressing issues. By all means, we should examine the maritime shipping industry at some point, but the affordability crisis is urgent right now, and it is growing worse. That is where our attention should lie today.

I yield back.

Mr. FITZGERALD. The gentleman yields back. We are waiting for Chair Jordan. I will now recognize the Ranking Member of the Full Committee, Mr. Raskin, for his opening statement.

Mr. RASKIN. Mr. Chair, thank you very much. Thanks to the witnesses for joining us today.

A majority of Americans feel like they’re getting priced out of Donald Trump’s new gilded age in America. A third of Americans, around 82 million people, are skipping meals or basic healthcare to pay for utilities. Prices for food staples like eggs, sugar, and meat jumped up in 2025 and are climbing every day.

Whether you rent or own, housing is becoming more unaffordable for the working middle class, while Donald Trump bulldozes the White House and throws “Great Gatsby parties” at Mar-a-Lago for his billionaire Cabinet and the fellow stars of the Epstein files.

Forget owning a house, when three-quarters of Americans say that buying a new car is out of reach. If you have got a car, driving it is becoming ludicrously expensive, as gas prices have shot up 25 percent just in the last few weeks—with Trump’s “war of choice” in the Middle East. Gas prices are soaring every day, as the theocrats of Iran retaliate by shutting down the shipment of oil through the Strait of Hormuz, and Donald Trump spends \$2 billion a day on this war that we never declared and didn’t even debate—putting it on America’s imaginary credit card and driving up our deficit and our national debt.

President Trump’s impulsively stupid policies and the invertebrate response of Republicans in Congress have made life even more expensive and difficult for our people. Republicans refuse to address the healthcare crisis, and instead, chose to cut Medicaid and the tax credits that help make healthcare affordable and accessible to millions of people.

Meantime, monopolies and corporate giants rule in Trump’s economy. The MAGA-controlled agencies have waved through giant mergers in the real estate market, which means that you pay more for a home and have fewer options for buying one. They also settled slam-dunk rent price-fixing cases, where major landlords across America conspire to set the rent that you pay for your home, ensuring that they will get richer while you spend more on rental housing.

Just last week, the DOJ OKed an obviously corrupt settlement of the Live Nation–Ticketmaster suit, which may appease MAGA’s big business campaign funders, but will do nothing to lower the exorbitant prices that people pay to see live entertainment. The government originally accused Live Nation–Ticketmaster, a multibillion-dollar live-event business, of stifling competition, coercing artists and venues into using its services, and driving up ticket prices for millions of fans, while pocketing bloated profits. Under the Trump Administration, this years-long case has been quietly settled with no changes for the millions of American consumers, artists, venues, and competitors that this business injured and overcharged.

President Trump promised that foreign countries, not Americans, would pay for his giant and illegal tariffs, and he promised that those tariffs would create jobs. Both promises turned out to be empty. President Trump’s tariffs, which he applied unilaterally, haphazardly, and unevenly, of course, unconstitutionally—failed to create new jobs, and instead, effectively, taxed every American more than \$2,500. A study by the Fed shows that 90 percent of these costs were paid by American companies and American consumers, not by China or any other foreign country.

The resulting brutal affordability squeeze has landed most heavily on people who also lost critical social services, like SNAP food stamp benefits, children’s health insurance, Medicaid and Medicare, and funding for rural hospitals—when House Republicans passed their One Big Ugly Class Warfare Bill.

Our government actually has the agency tools needed to address the Trump affordability crisis, but Trump has either totally dismantled them or corrupted them. He has broken the agencies that protect us against fraud, scams, and financial conspiracies.

He has fired any antitrust official who has disagreed with his policy of giving political allies a green light to swallow up their competitors. Last month, he abruptly dismissed Assistant Attorney General Gail Slater, who was often the only dissenting voice, as lobbyists in backrooms and White House insiders pushed mergers that are terrible for consumers and driving us toward an economy run by oligarchs.

The Majority has conducted zero oversight of these antitrust corruption debacles—leaving it to the Democrats to invite as a witness Gail Slater’s Deputy, Roger Alford, who was fired for raising concerns about rank pay-to-play corruption and self-dealing in the GOP-controlled antitrust agencies. Alford implored us in this room to conduct oversight of the Antitrust Division before it is too late for America. A two-term Trump official, thus, begged us to do our jobs to protect the American people, but it has fallen on deaf ears among our colleagues.

President Trump’s policies and Republican inaction mean that today Americans cannot afford daily life, but Trump and the billionaire class are getting richer every day. Just four tech billionaires—Elon Musk, Mark Zuckerberg, Jeff Bezos, and Jensen Huang—all whom donated to Trump’s inauguration, they made \$288 billion in less than one year. By contrast, the American people paid \$2,500, on average, last year for higher prices, thanks just to the tariffs alone.

The President has said that the affordability crisis is, quote, “a hoax, a con job, a scam,” but his illegal tariffs were the hoax. His claim to support release of the Epstein files is the con job, and his illegal unilateral war in Iran, which is costing us more than a billion dollars a day, and 13 American lives already, and more than a thousand Iranian lives, including children, is the scam.

The real fraud is President Trump’s personal net worth going up \$1.4 billion in his first year of his second term, and his son-in-law Jarad Kushner raking in \$2 billion from the Saudis and more than \$1.5 billion from Qatar, while exercising a lot more decision over the decision to go to war than any of the Members in this room did combined.

What are we here today to discuss? An esoteric antitrust exemption about shipping. Now, in normal times, I might appreciate an examination of this or any other antitrust exemption, but these aren’t normal times and this Majority isn’t even prepared to reform the exemption in any event—something I would certainly be open to discussing.

The millions of Americans literally cannot afford now to get medicine or pay for housing or for groceries in Trump’s economy. We must do everything we can to try to help the people now with the tools that are actually at our disposal. Instead, our Republican colleagues have called us here to discuss a niche antitrust exemption unlikely to change anytime soon.

The ship of State is taking on water rapidly every day and starting to sink, but our colleagues want to have a debate about diversionary things. Count me out.

Thank you, Mr. Chair. I yield back.

Mr. FITZGERALD. The gentleman yields back.

I would just make the comment that, as a namesake of Scott Fitzgerald, I thought it was a cheap shot that you brought up the “Great Gatsby-style parties.”

[Laughter.]

Mr. RASKIN. I meant it only as the highest form of flattery. Right?

Mr. FITZGERALD. Thank you. The gentleman yields back. Without objection, all other opening statements will be included in the record. We will now introduce today’s witnesses.

Professor Erika M. Douglas. Ms. Douglas is an Associate Professor of Law at Temple University’s Beasley School of Law. Her scholarship focuses on antitrust, data privacy, and intellectual property law. Professor Douglas previously worked in private practice, where she focused on antitrust and technology-related matters.

Mr. Tony Rice. Mr. Rice is senior director of trade policy at the National Milk Producers Federation, an association of dairy producers and cooperatives. Mr. Rice focuses on matters relating to U.S. dairy exports.

Professor Richard Sicotte. Mr. Sicotte is an Assistant Professor in the Department of Economics at the University of Vermont. Professor Sicotte, his work focuses on economic history, industrial organization, political economy, and international economics.

Ms. Diana Moss. Ms. Moss is a Vice President and the Director of Competition Policy at the Progressive Policy Institute. Her work focuses on antitrust enforcement and sector regulation.

We welcome our witnesses and thank them for appearing today. We will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct, to be the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the witnesses have answered in the affirmative. You can take your seat, please.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Professor Douglas, you may begin.

STATEMENT OF ERIKA M. DOUGLAS

Ms. DOUGLAS. Thank you, Chair Fitzgerald, Ranking Member Nadler, and the distinguished Members of the Subcommittee.

My name is Erika Douglas. I’m an Associate Professor of Law at Temple University in Philadelphia. I’ve been dedicated to antitrust law for over 15 years—first, in private practice, then at major law firms, and now, as a professor and leader at organizations like the ABA.

My research examines how antitrust interacts with regulation. Ordinarily, antitrust law applies across the economy to prevent

anticompetitive agreements among rivals. That is not the case in international ocean shipping. Antitrust law is blocked by Section 4307 of the Consolidated Shipping Act. This section shields certain agreements among rivals that are filed with the Federal Maritime Commission. This ocean shipping exemption is one of the oldest in antitrust law. It's not clear that it was ever justified, and it certainly is not today.

Congress created this exemption based on the mistaken view that ocean shipping had special economics; that free competition would cause the industry to fall apart from overcapacity and rate wars. We've known for decades that this is not true.

From the 1990s onward, ocean shipping has been increasingly deregulated. It has not led to industry collapse. Antitrust courts have long rejected the concept of ruinous competition. This German act rightly assumes that competition benefits the consumers that we're concerned about here today. Antitrust should coexist with ocean shipping regulation, just as it does with regulation in other industries, like airlines, telecommunications, and securities.

The second reason for this exemption was to even the playing field for American carriers in international shipping competition. This rationale also no longer makes sense. There are no major American carriers left. The European Union has repealed its own shipping exemption. Today, the U.S. exemption serves only to shield foreign carriers from our antitrust laws—at the expense of American shippers and consumers.

It's important to understand that, in place of the usual antitrust laws, ocean shipping has a partial substitute that is not being used. The FMC holds the exclusive statutory power to challenge ocean carrier agreements that result in an unreasonable reduction in service or increase in cost.

My research shows that the FMC has never brought such a case, despite holding this power for over 40 years. This record suggests that the FMC tolerates greater competitive risk than would antitrust law, although the agency's analysis often lacks transparency.

This legal landscape is concerning to me as an antitrust scholar because the ocean shipping industry bears at least three classic hallmarks of antitrust risk.

First, it's highly concentrated. The industry is dominated by three major alliances which account for up to 95 percent of ocean shipping. As recently as 2011, this figure was only 30 percent. Concentration increases the risk of antitrust violations by making collusions easier.

Second, ocean shipping has an unusual web of agreements among competitors. The FMC has over 360 agreements on file. The big three alliance agreements allow rivals to decide jointly on the volume of cargo they ship and when vessels are deployed. The First Circuit recently confirmed that a similar agreement between airlines violated Section 1 of the Sherman Act.

Finally, there's recent collusion in this industry. Where antitrust jurisdiction remains, the DOJ has been vigilant in bringing criminal charges. Carriers have colluded in the shipment of vehicles and farm equipment, and price-fixed in food and medicine shipped to Puerto Rico. These cartels harm any American consumer who buys goods that travel by ship. These factors create a perfect storm for

anticompetitive conduct. If there's consensus around one issue in antitrust trust, it's that these sorts of exemptions are rarely justified.

I would encourage you to consider the repeal of the arcane ocean shipping exemption to free antitrust law to protect American shippers, ports, and consumers from these risks.

Thank you.

[The prepared statement of Ms. Douglas follows:]

Prepared Statement of

Erika M. Douglas
Associate Professor of Law
Temple University
Beasley School of Law

Before the

United States House of Representatives Committee on the Judiciary
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Hearing on Pier Pressure: Regulation and Competition in Maritime Shipping

Washington, DC
March 17, 2026

Chairman Fitzgerald, Ranking Member Nadler, and distinguished Members of the Subcommittee, thank you for the opportunity and privilege to appear before you.

My name is Erika Douglas. I am an Associate Professor of Law at Temple University in Philadelphia. I have been dedicated to antitrust law for over 15 years, first in private practice at major law firms, and now as a professor and leader at antitrust organizations like the American Bar Association. I regularly write and publish on the interaction of antitrust and industry regulation.

The ocean shipping industry plays a fundamental role in the success of the U.S. economy, by enabling the international shipment of imports and exports. Part 1 of this statement examines the current risks to free competition in ocean shipping common carriage. Part 2 explains that a statutory exemption blocks antitrust law from applying to certain ocean shipping agreements, and why that exemption no longer makes sense. Part 3 observes that the substitute regime for antitrust law is not being enforced by the Federal Maritime Commission, and explains why this is a problem. Part 4 considers legislative solutions to fix this gap.

1. There is Significant Antitrust Risk in Ocean Shipping

The ocean shipping industry displays several classic hallmarks of antitrust risk: high and growing concentration among firms, significant price spikes, widespread competitor agreements, a history of anticompetitive conduct, and recent cartel cases where antitrust jurisdiction remains.¹

First, ocean shipping has seen a trend of dramatic, recent consolidation. Major global shipping carriers have combined into just three alliances, with one large independent that recently split from a prior alliance.² This is down from four alliances that existed as recently as 2016,³ and about 360 conferences in the early 1970s.⁴ The major alliances are listed in **Appendix A** (as of 2025).

The Federal Maritime Commission (FMC), an independent agency, holds responsibility for the regulation of ocean-borne transportation between the United States and foreign countries.⁵

1. For further discussion of the issues here, see Erika Douglas, *Antitrust Abandonment*, 42 YALE J. ON REG. 1 (2025).

2. 63rd Annual Report for Fiscal Year 2024, FED. MAR. COMM'N (Apr. 1, 2025), <https://www.fmc.gov/wp-content/uploads/2023/04/61stAnnualReport.pdf> (noting three major alliances but also a shift in the alliance participants); 2025 Global Container Shipping Alliances, LOGISTICS+ (Jan. 3, 2025) <https://www.logisticsplus.com/2025-global-container-shipping-alliances/> (identifying the three major alliances as Gemini, Premier and The OCEAN Alliance, along with participants in each).

3. Letter from Renata B. Hesse, Acting Assistant Att'y Gen., Dep't of Just., to Sec'y, Fed. Mar. Comm'n Re: The OCEAN Alliance Agreement, FMC Agreement (Sept. 19, 2016), <https://www.justice.gov/atr/file/909131/download> [<https://perma.cc/K9Y5-LB35>] at 2 [hereinafter DOJ Letter on The OCEAN Alliance Agreement].

4. Chris Sagers, *The Demise of Regulation in Ocean Shipping: A Study in the Evolution of Competition Policy and the Predictive Power of Microeconomics*, 39 VAND. J. TRANSNAT'L L. 779, 790 n.41 (2006).

5. The term "ocean shipping" is used here to refer to such shipping between the U.S. and other countries by common carriers, over which the Federal Maritime Commission (FMC) holds authority. Domestic shipping within the U.S. is not addressed by these comments. Power under the Shipping Act was initially granted to the FMC's

The FMC estimates that the combined market share of these three alliances ranges from 89% to 95% of imports and exports on Atlantic and Pacific trade routes. Contrast this with the period from 1996 to 2011, when “the leading three alliances operated only about 30% of global container shipping.”⁶

Ocean shipping uses several different market share measurements. For example, some measures include only exports or imports, some only Atlantic routes or Pacific routes. Some market shares are based on available capacity, while others measure actual shipment volumes in TEU (Twenty-Foot Equivalent Units), weight or other measurements.⁷ Shifting alliances also complicate the measurement of market shares.⁸ What is clear across these estimates is a trend of increasing concentration within these alliances.

Second, policymakers, scholars, and antitrust enforcers have sounded the anticompetitive alarm in ocean shipping for years. Container shipping rates “recorded strong increases” in 2024, with growing volatility.⁹ This is consistent with a 2022 White House report that rates in several areas of ocean shipping had skyrocketed—in some cases by 1,000%—with profit margins of carriers expanding dramatically.¹⁰ The report expressed concern that ocean carriers were using their market power to impose surprise fees, to change bookings, and to refuse carriage of goods from the United States.¹¹

The DOJ Antitrust Division (DOJ) has brought several recent cartel cases in ocean shipping where it retains antitrust jurisdiction (beyond the edges of the antitrust exemption discussed in Part 2 below). The DOJ brought a series of cases from 2014 to 2016 for price-fixing, bid-rigging, and market allocation in non-containerized (roll-on, roll-off) ocean shipping, which ended with fines

precursor agency, the Shipping Board within the Department of Commerce. The Shipping Board later became the redundantly named Shipping Board Bureau, then the U.S. Maritime Commission, the Federal Maritime Board and, finally, the Federal Maritime Commission.

6. Press Release, White House, Fact Sheet: Lowering Prices and Leveling the Playing Field in Ocean Shipping (Feb. 28, 2022), <https://perma.cc/36LV-8QD5>; OECD International Transportation Forum, The Impact of Alliances in Container Shipping (2018), https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/11/the-impact-of-alliances-in-container-shipping_f95dd18e/61e65d38-en.pdf (similarly estimating a 29% share).

7. Compare 63rd Annual Report for Fiscal Year 2024, *supra* note 2 (alliance shares) to Logistics+, 2025 Global Container Shipping Alliances, *supra* note 2 (unstated basis for shares) to Alphaliner, Top 100 March 13, 2026, <https://alphaliner.axsmarine.com/PublicTop100/> (individual company shares by TEU), which can be compiled into alliance shares based on known alliance participation. TEUs are a standard measure of volume of an ISO-certified shipping container, which measures 20 x 8 feet.

8. Global Container Shipping Alliances to Restructure in 2025, TRANSMODAL (Dec. 30, 2024), <https://blog.transmodal.net/global-container-shipping-alliances-to-restructure-in-2025> (discussing impending changes in the composition of the major alliances).

9. UNCTAD, 2025 Review of Maritime Transport (Sept. 24, 2025), available at <https://unctad.org/publication/review-maritime-transport-2025>.

10. See Press Release, White House, *supra* note 6.

11. *Id.* Congress responded to this concern in part with 2022 amendments to the Shipping Act that placed new emphasis on competition in the Act’s purpose clause and imposed new rules limiting carriers from engaging in unfair or unreasonable refusals to ship goods. Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, § 2, 136 Stat. 1272, 1272 (codified at 46 U.S.C. § 40101) (emphasizing “competit[on]” and “a greater reliance on the marketplace” in the purpose clause); *id.* § 7, 136 Stat. at 1274-76 (codified at 46 U.S.C. §§ 41102 note, 41104 & note) (prohibiting common carriers from denying available cargo space and from assessing unfair late fees called “demurrage” and “detention” fees).

of over \$230 million and several prison terms.¹² This widespread conspiracy impacted the shipment of vehicles and farm equipment. The DOJ has also convicted freight transporters for price-fixing and bid-rigging in shipments of food, medicine and other goods between the United States and Puerto Rico.¹³ Finally, DOJ has scrutinized mergers in related industries such as shipping-container handling equipment¹⁴ and refrigerated shipping containers.¹⁵ These cases highlight the risk of anticompetitive conduct in ocean shipping and adjacent industries. They also signal that, if given greater authority over ocean shipping competition, DOJ is likely to be a vigilant enforcer.

Third, ocean shipping has an unusual degree of agreement among competitors. The most recent FMC Annual Report indicates that there are 360 agreements on file with the Agency.¹⁶ This includes agreements between common carriers who are competitors in ocean shipping.

In particular, each of the three global alliances have agreements filed with the FMC.¹⁷ Any action under such agreements remains immune from antitrust law as long as the agreements are effectively filed with the FMC. Some provisions in these agreements may have procompetitive benefits, such as vessel space sharing, which could increase efficiency by making it more likely that available space is used on each sailing. However, these agreements also raise a number of significant anticompetitive risks that depend on how the agreements are implemented in practice. The key risks include the following:

12. Brent Snyder, Deputy Assistant Att’y Gen., Dep’t of Just., Remarks at the Yale Global Antitrust Enforcement Conference (Feb. 19, 2016), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-brent-snyder-delivers-remarks-yale-global-antitrust> [<https://perma.cc/H9Q2-J2GS>] (referring to these shipping conspiracy cases as “the largest domestic conspiracy ever prosecuted in terms of affected commerce”); Press Release, Dep’t of Just., International Shipping Executives Indicted for Colluding on Bids and Rates (Jun. 27, 2017), <https://www.justice.gov/opa/pr/international-shipping-executives-indicted-colluding-bids-and-rates> [<https://perma.cc/4TB9-8FAE>] (summarizing fines in ocean shipping cases involving non-containerized cargo). Non-containerized cargo is also termed “roll-on, roll-off” cargo. As the name implies, this cargo is rolled onto and off of a vessel instead of being placed into cargo containers.

13. Press Release, Dep’t of Just., Former Executive Convicted for Role in Price-Fixing Conspiracy Involving Coastal Freight Services Between the Continental United States and Puerto Rico (Jan. 29, 2013), <https://www.justice.gov/opa/pr/former-executive-convicted-role-price-fixing-conspiracy-involving-coastal-freight-services> [<https://perma.cc/ELE9-8EJW>] (describing coastal water freight cases ending in \$46 million in criminal fines and prison sentences for five individuals). As domestic transportation, this business is not subject to the Shipping Act exemption.

14. Press Release, Dep’t of Just., Shipping Equipment Giants Cargotec and Konecranes Abandon Merger After Justice Department Threatens to Sue (Mar. 29, 2022), <https://www.justice.gov/opa/pr/shipping-equipment-giants-cargotec-and-konecranes-abandon-merger-after-justice-department> [<https://perma.cc/EYK5-323N>]. The parties ultimately abandoned the transaction.

15. Press Release, Dep’t of Just., Global Shipping Container Suppliers China International Marine Containers and Maersk Container Industry Abandon Merger after Justice Department Investigation (Aug. 25, 2022), <https://www.justice.gov/opa/pr/global-shipping-container-suppliers-china-international-marine-containers-and-maersk> [<https://perma.cc/W6TT-2DV7>]. Here too, the parties ultimately abandoned the transaction.

16. 63rd Annual Report for Fiscal Year 2024, *supra* note 2, at 5. This dramatic variation in the number of agreements filed in various years relates to the deregulation of shipping competition from the late 1990’s onward, which made more rate and service competition and agreements possible.

17. Filed agreements are available on the FMC’s website, here: <https://www2.fmc.gov/FMC.Agreements.Web/Public?Sort=TimeSinceFiled%2Cdesc&AgreementTypeIdFilter=7&CargoTypeIdFilter=>

- **These agreements allow rivals to decide jointly on the scheduling of their services.** This ability to agree on scheduling creates the potential for rivals to allocate the markets in which they compete. For example, if the parties agree that only one carrier will serve a route where there used to be multiple carriers scheduled, that could amount to market allocation. Market allocation agreements are a classic violation of antitrust law. A recent case found that a similar scheduling agreement between airlines decreased capacity, harmed competition, and violated Section 1 of the Sherman Act.¹⁸ The court applied the rule of reason to this conduct, but observed that it “closely resembled per se illegal market allocation.”¹⁹
- **These agreements allow rivals to decide jointly on the number and capacity of vessels they operate.** This creates the potential for rivals to agree to limit output, which is a classic violation of antitrust law. For example, if parties agreed to deploy fewer vessels or carry less cargo on certain routes than in a competitive market, that would reduce available shipping capacity, and likely drive up rates to the detriment of shippers and consumers.
- **These agreements create the potential for the exercise of monopsony (buyer) power over U.S. terminal operators.** Alliance agreements contemplate joint negotiation or other action by the alliance parties in their interactions with terminal operators. This joining together of previously independent buyers increases the potential for the exercise of power against U.S. terminal operators.
- **These agreements allow rivals to share a wide array of competitively sensitive information, including forward-looking plans.** This includes ongoing information exchange on topics such as forecasts and projections, schedules, and performance metrics. While not a violation of antitrust law standing alone, the sharing of competitively sensitive information can facilitate collusion and reduce competitive vigor.
- **The agreements give cover for rivals to discuss and coordinate decisions and operations.** The agreements contemplate wide-ranging collaboration on joint decision making and committees, as the parties deem necessary, to operationalize their terms. While such interactions may be benign, they also create avenues for discussion that risk diminishing incentives to compete, and that may spill over into collusion or anticompetitive cooperation.

This discussion does not set out to prove that antitrust violations are occurring in ocean shipping, which would require a fact-specific analysis of how these agreements are being implemented, and their effects on competition. Rather, it points to flaws in the design and operation of the legislative scheme that may be allowing such misconduct to go unchecked, and

18. *United States v. Am. Airlines Grp. Inc.*, 121 F.4th 209, 220 (1st Cir. 2024), *cert. denied*, 145 S. Ct. 2866, 222 L. Ed. 2d 1148 (2025).

19. *Id.* (quoting *United States v. Am. Airlines Grp. Inc.*, 675 F. Supp. 3d 65, 116 (D. Mass. 2023), *aff'd*, 121 F.4th 209 (1st Cir. 2024)).

where those risks lie.

In gauging the antitrust risk, it is important to note that the nature of these filed agreements has changed over time. Under the historical conference system, the filed ocean carrier agreements were price-fixing agreements which, but for the statutory exemption from antitrust law, would be considered among the most egregious of antitrust violations. As shipping deregulated, carriers have replaced this direct rate-fixing with “voluntary guidelines” on rates, and information sharing across the industry. Today, the filed agreements often relate to information sharing, operational partnerships for vessel space sharing, and other coordination.²⁰

This discussion focuses on the potential risks to competition posed by these agreements among ocean shipping competitors. However, like any industry, competition in ocean shipping is shaped by other forces as well. The industry has seen significant changes, driven by massive technological evolution, global crises (a pandemic, and now a war), and increasing globalization of trade.²¹ These forces impact consolidation, pricing, and other industry dynamics in ways that are not examined here.

2. Antitrust Law is Blocked from Applying to Ocean Shipping Agreements Among Rivals

The current state of the ocean shipping industry—highly concentrated, with a history of competitor agreement, and recent anticompetitive conduct—points to the need for competition oversight. Yet instead of such oversight, there is a gap created by an unusual legislative scheme. General antitrust law is blocked from applying to ocean shipping agreements by an arcane, legislative exemption. The only agency that can take action against these agreements is the FMC, and it has never brought a case against ocean carriers (see Part 3).

Since 1916, the FMC and its precursors have exercised an array of oversight in ocean shipping and have established rules and regulations for the industry.²² The FMC’s power over ocean shipping includes an antitrust-like authority over agreements among ocean common carriers. The FMC’s statutory power is exclusive; it displaces general antitrust law and its enforcers, leaving the FMC with the sole power to police such agreements and conduct under them.

The scope of this authority rests on the Shipping Act’s requirement that specified types of agreements be filed with the FMC.²³ The agreements that must be filed are listed in the Act and include those between ocean carriers on prices; allocation of markets; shipping volumes; information and facilities sharing; and “exclusive, preferential, or cooperative” arrangements; as

20. See, e.g., 63rd Annual Report for Fiscal Year 2022, *supra* note 2 (describing the nature of the filed agreements).

21. See Sagers, *supra* note 4, at 786-95.

22. See Edward Mansfield, *The Federal Maritime Commission*, in *THE POLITICS OF REGULATION* 42, 42-74 (James Q. Wilson ed., 1980) at 46, 69.

23. See 46 U.S.C. §§ 40301-40302 (2018) (requiring that all agreements by or among ocean common carriers or marine terminal operators for the specified activities be filed with the Commission, including agreements to fix rates or conditions of service; pooling cargo revenue; allocating ports or sailings; limiting the volume or character of cargo or passengers to be carried; engaging in exclusive or preferential arrangements; or controlling or prevent competition).

well as other agreements to “control, regulate, or prevent competition” in international ocean transportation.²⁴ Many of the listed agreements would otherwise constitute classic violations of antitrust law. Price-fixing and market-allocation agreements among horizontal competitors are the most egregious violations of section 1 of the Sherman Act.²⁵

The Shipping Act, however, exempts these agreements from antitrust law once effective and filed with the FMC.²⁶ Since its passage in 1916, the Shipping Act has included this antitrust exemption for ocean common carrier agreements.²⁷ Today, antitrust immunity is obtained automatically forty-five days after the effective filing of an agreement.²⁸ The exclusion of antitrust law blocks both expert antitrust agencies—the DOJ and the FTC—from overseeing these ocean shipping agreements.

During its lengthy history, there have been at least four major amendments to the Shipping Act—in 1984, 1998, 2018, and 2022.²⁹ Each has moved the ocean shipping industry closer to open competition in certain ways. For example, the 1998 amendments introduced greater price competition by making it much easier for shippers to reach independent service agreements with carriers and to keep the terms of those agreements confidential. Yet antitrust law still does not apply. There have been numerous efforts to repeal the antitrust exemption in the Shipping Act in whole or in part.³⁰ So far none have succeeded, making it one of the oldest surviving statutory exemptions from antitrust law.³¹

24. See *id.* § 40301.

25. See *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940); *United States v. Topco Assocs., Inc.*, 405 U.S. 596 (1972) (“[B]ecause of their pernicious effect on competition and lack of any redeeming virtue,” such agreements “are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.”).

26. 46 U.S.C. § 40302 (2018) (setting out the filing requirement and statutory exceptions). Operation under a listed agreement that is not filed with the FMC is itself a violation of the Shipping Act. *Id.*

27. Shipping Act of 1916, ch. 451, § 15, 39 Stat. 728, 734 (codified as amended at 46 U.S.C. §§ 40102(2), 40307).

28. *Id.* § 40304(c). The Act provides that the agreement must meet certain technical and content requirements before coming into effect, but none are particularly onerous. *Id.* § 40304(b) (requiring agreements to comply with certain provisions in the Act); *id.* § 40303 (setting out certain required content in agreements).

29. Shipping Act of 1984, Pub. L. No. 98-237, 98 Stat. 67; Ocean Shipping Reform Act of 1998, Pub. L. No. 105-258, §§ 101-118, 112 Stat. 1902, 1902-14; Frank LoBiondo Coast Guard Authorization Act of 2018, Pub. L. No. 115-282, §§ 701-714, 132 Stat. 4192, 4293-99; Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, 136 Stat. 1272.

30. See, e.g., Ocean Shipping Antitrust Enforcement Act of 2023, H.R. 1696, 118th Cong. § 3 (2023) (proposing to repeal 46 U.S.C. § 40307 (2018), which grants the antitrust exception, but preserving the exception for certain other agreements); Free Market Antitrust Immunity Reform (FAIR) Act of 2001, H.R. 1253, 107th Cong. (2001) (proposing the elimination of the antitrust exemption for ocean shipping agreements, except those among marine terminal operators); Free Market Antitrust Immunity Reform Act of 1999, H.R. 3138, 106th Cong. (1999) (same).

31. Organisation for Econ. Co-operation & Dev. [OECD], Contribution from the United States on Competition Issues in Liner Shipping, at 2, DAF/COMP/WP2/WD(2015)13 (May 26, 2015), [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2015\)13/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2015)13/en/pdf) [https://perma.cc/JQW5-FQRT].

a. The Rationales for the Antitrust Exemption in Ocean Shipping No Longer Make Sense, and May Never Have

Congress created the shipping regulatory regime in response to a 1914 House document—commonly called the Alexander Report³²—which concluded that free competition among ocean carriers would lead to ruinous overcapacity on ships and the eventual collapse of the industry.³³ The Alexander Report observed that the members of shipping conferences were engaged in flagrant violations of the Sherman Act, such as predatory practices, tying, and exclusive dealing.³⁴ Yet it recommended against restoring open competition among shipping carriers.³⁵ The Report found that the special economics of ocean shipping made horizontal collusion necessary to avoid ruinous rate wars and chronic overcapacity, which would otherwise lead to unprofitable operations and industry collapse.³⁶ This thinking led to the creation of the antitrust law exemption for ocean shipping.

The DOJ and many scholars now agree that the original excess-capacity rationale for the antitrust exemption has been proven unsound by modern economic theory, and by the experience of the industry itself as it became increasingly deregulated.³⁷ As DOJ leadership testified before the House Judiciary Committee in 2000, the overcapacity defense for ocean shipping agreements amounts to an argument that inefficient carriers need collusive agreements to protect themselves from competition—to impose higher prices on buyers so they can cover the capital costs that the carriers are too poorly operated to recover.³⁸ Such protection of inefficient actors is at odds with modern antitrust law, which promotes economic efficiency, and encourages the protection of

32. H.R. Doc. No. 63-805, at 417-18 (1914). The “Alexander Report” was named for the House Committee on the Merchant Marine and Fisheries then-Chairman, Joshua W. Alexander. Congress commissioned the Alexander Report because, from the late 1890s onward, steamship carriers had been operating price-fixing cartels in open violation of (what was then) new legislation, the Sherman Act. *See* Mansfield, *supra* note 22, at 43.

33. H.R. Doc. No. 63-805, at 416.

34. *See* Fed. Mar. Bd. v. *Isbrandtsen Co.*, 356 U.S. 481, 488 (1958) (summarizing the anticompetitive conduct uncovered by the Alexander Report, which was “designed to give the conferences monopolies upon particular trades by forestalling outside competition and driving out all outsiders attempting to compete”).

35. H.R. Doc. No. 63-805, at 416 (“These advantages . . . can be secured only by permitting the several lines in any given trade to cooperate through some form of rate and pooling arrangement under Government supervision and control.”).

36. *Id.* at 416-418 (finding that the restoration of unrestricted competition among ocean carriers would be contrary to the public interest because restraints on competition are necessary for a functional industry).

37. Free Market Antitrust Immunity Reform (FAIR) Act of 1999: Hearing on H.R. 3138 Before the H. Comm. on the Judiciary, 106th Cong. 22 (2000) [hereinafter Hearing on Shipping Act Reforms (2000)] (statement of John Nannes, Deputy Assistant Att’y Gen., Department of Justice) (“Supporters of the antitrust exemption for ocean carriers have been reciting essentially the same rationales from the beginning. Whatever may have been the force of those rationales at the time the exemption was first enacted in 1916, they have become increasingly dubious in the years since, and, when they are floated in the current economic and legal environment, they quickly take on water and begin to list.”).

38. *Id.* at 19 (refuting the economic justifications for the Shipping Act antitrust exemption and arguing that “simply because competitors desire to collude in order to maximize their joint profits does not mean that it is good public policy to allow them to do so”); *see also* ADVISORY COMM’N ON CONFS. IN OCEAN SHIPPING, REPORT TO THE PRESIDENT AND THE CONGRESS 67 (1992), <https://perma.cc/BFB8-2ZFX>, at 68 (describing the economic theory behind the Shipping Act, but finding that “rather than being a problem to be avoided, rate wars may be an essential part of a free market mechanism” as market forces eventually eliminate overcapacity through the exit of inefficient operators, and rates stabilize); DOJ Letter on The OCEAN Alliance Agreement, *supra* note 3 at 2 (“The ocean shipping industry exhibits no extraordinary characteristics that warrant departure from competition policy.”).

overall competitive processes rather than individual actors. The Alexander Report feared that open competition would see “the elimination of the weak and the survival of the strong,”³⁹ but modern economics and antitrust view precisely such weeding out of inefficient competitors as a benefit of fair competition.⁴⁰

Scholars and practitioners also criticize the overcapacity justification as circular.⁴¹ Ocean shipping overcapacity may well be caused by the same Shipping Act carrier agreements that this rationale is invoked to defend: once price competition was removed from the industry by lawful, collusive agreements, ocean carriers were left to compete based only on other, non-price factors—primarily, increased shipping frequency and quality.⁴² This meant running more ships, which led to the very excess capacity invoked by the industry and the FMC to justify the need for those price-fixing agreements.⁴³

A secondary rationale that drove the creation of the antitrust exemption was the international nature of the ocean shipping industry.⁴⁴ On one hand, Congress was concerned that applying U.S. antitrust law would provoke trade disputes.⁴⁵ On the other, it worried that applying antitrust law *only* to U.S. carriers would unfairly disadvantage those companies in international competition.⁴⁶ Today, this rationale is no longer relevant. There are no major U.S.-owned carriers left. And there is little need to even the playing field with international carriers who benefit from antitrust exemptions; the European Union long ago narrowed its equivalent antitrust exemption and, as of 2024, fully eliminated it.⁴⁷

3. The FMC Has Never Brought a Case to Enjoin an Ocean Carrier Agreement

While commonly referred to as an “exemption” from antitrust law, it is perhaps more accurate to say that the Shipping Act creates an antitrust substitute scheme. This is due to another important provision: section 41307 of the Act. This section grants the FMC the power to challenge in court any ocean carrier agreements that turn out to have “unreasonable” anticompetitive

39. H.R. Doc. No. 63-805, at 416 (1914).

40. See, e.g., Sagers, *supra* note 4, at 808-09.

41. See *id.* at 804-05 (“While the [shipping] industry surely has suffered overcapacity, there are competing explanations for this phenomenon. . . . [T]here is reason to believe that the carriers themselves have deliberately contributed to capacity problems through the inefficient service competition typical of regulated or price-stabilized industries.”); Hearing on Shipping Act Reforms (2000), *supra* note 37, at 19 (statement of Nannes) (“[E]conomists have often found that a regulated cartel yields the worst of both worlds—high prices and low profitability, as companies over-invest in capacity, and lose the incentive to innovate and operate efficiently.”).

42. See Sagers, *supra* note 4, at 804-05; Hearing on Shipping Act Reforms (2000), *supra* note 37, at 19 (statement of Nannes).

43. See Sagers, *supra* note 4, at 804-05; Hearing on Shipping Act Reforms (2000), *supra* note 37, at 19 (statement of Nannes).

44. Hearing on Shipping Act Reforms (2000), *supra* note 37, at 54 (statement of Nannes).

45. *Id.*

46. *Id.*

47. Press Release, European Commission, Commission Decides Not To Extend Antitrust Block Exemption For Liner Shipping Consortia (Oct. 9, 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4742 (explaining that after a study of the effects of antitrust law exemption for ocean shipping, the EU declined to re-extend the legislation that had created the exemption).

effects.⁴⁸ Once an agreement is filed, the provision empowers the FMC to pursue an injunction in federal court against any agreement that is “likely, by a reduction in competition,” to result in either “an unreasonable reduction in transportation service,” or “an unreasonable increase in transportation cost.”⁴⁹

The FMC has now held the power to challenge anticompetitive ocean shipping agreements under section 41307 of the Shipping Act for over forty years.⁵⁰ In those decades, the FMC has never brought a case against the powerful ocean shipping carriers that dominate shipping markets. A Westlaw search of all decisions citing this provision as of late 2024 produces just one complaint brought by the FMC in 2008—and it was against ports, not ocean carriers.⁵¹ There are no reported FMC cases under section 41307 against any ocean carriers. Over several decades and thousands of agreements, in the face of expert criticism and changing economics, law, and industry conditions, the FMC has never challenged an ocean carrier agreement as anticompetitive in court.

This FMC power to seek a judicial remedy for anticompetitive agreements was introduced in 1984, when the process for filing these agreements changed.⁵² Before the 1984 amendments, there was no need for such a provision because the FMC (then the Board) had full authority to reject such agreements as anticompetitive at any time. During this historical period, agreements were not effective—or immune from antitrust law—until approved by the FMC.

This is solely an analysis of the FMC’s use of certain competition provisions of the consolidated Shipping Act. It does not express a view on the FMC’s wide array of other regulatory responsibilities over shipping, which include matters such as the adjudication of Shipping Act violations, international shipping relations, licensing and cruise ship regulation.⁵³

a. There is a Lack of Transparency in the FMC’s Competitive Analysis of Ocean Shipping Agreements, and Monitoring Alone May be Inadequate to Ensure Competition

A possible explanation for the lack of FMC challenges under section 41307 is that the Agency carries out its competition oversight internally, rather than in the courts. This explanation of internal supervision does not seem well supported historically, although a lack of transparency around the FMC’s current internal actions makes it difficult to assess.

The FMC’s annual reporting on the use of this authority emphasizes “monitoring” of filed agreements, and reports on the number of agreements, but offers little further detail. The DOJ has

48. *Id.* § 41307(b)(1).

49. *Id.* The FMC also has the supporting powers to investigate and hold hearings regarding any potential violations of § 41307, as well as to issue certain reparations. *See id.* §§ 41302–41305 (empowering FMC to investigate potential violations of the Act of its own volition, to hold hearings, and to require reparations).

50. *See infra* note 52.

51. *FMC v. City of Los Angeles*, 607 F. Supp. 2d 192 (D.D.C. 2009) (an unsuccessful challenge under § 41307(b)(1) to enjoin agreements between trucking programs at ports in Southern California).

52. Shipping Act of 1984, Pub. L. No. 98-237, §§ 6(g), (h), 11(c), 98 Stat. 67, 72-73, 80 (codified as amended at 46 U.S.C. § 41307(b)).

53. *See generally* 63rd Annual Report for Fiscal Year 2024, *supra* note 2 (discussing the various FMC regulatory actions and authorities).

repeatedly and openly criticized the FMC’s “monitoring and reporting” approach as inadequate to ensure competition among carriers.⁵⁴ This includes the DOJ’s public challenges to the FMC’s view that particular agreements are harmless for competition, and urging the FMC to use its statutory power to enjoin anticompetitive agreements.⁵⁵

The Agency’s annual reports do not indicate the number of investigations, agreement modifications, or other similar actions that have occurred.⁵⁶ The FMC at times refers to its use of “traditional antitrust law principles and economic models to evaluate the potential competitive impacts” of these agreements, but it does not specify which principles or how they are applied.⁵⁷ There are no guidelines on how the Agency analyzes agreements, or the effects that FMC action may be having on anticompetitive terms in carrier agreements. This makes it difficult to determine whether the Agency is, in fact, engaging in effective antitrust oversight. Any such monitoring has never identified an agreement or conduct that merited a section 41307 challenge, which suggests that the monitoring may not be particularly effective. If the FMC is working internally with common carriers to modify and resolve competition concerns in filed agreements to avoid judicial challenges, such activity is difficult to discern.

Prior to 1984, the FMC had the power to reject anticompetitive agreements without recourse to the courts,⁵⁸ so the explanation of internal action may have been more plausible then. This changed in 1984 when Congress, largely in response to the FMC’s lengthy delays in approving agreements, eliminated the FMC’s power to reject at filing and instead implemented the current system under which antitrust immunity goes into effect automatically “on the 45th day after filing.”⁵⁹ Since these changes, at filing the FMC is empowered only to check for technical compliance with the specific content requirements of the Act, or request further information.⁶⁰ Then, if the FMC thinks the agreement is anticompetitive, it must file in federal court to challenge the agreement.⁶¹ It has not done so.

54. DOJ Letter on The OCEAN Alliance Agreement, *supra* note 3 at 7 (“Monitoring and periodic reporting requirements, such as those the FMC has required of shipping alliances in the past, are insufficient to preserve competition in the container shipping market.”).

55. Department of Justice Comment to the Federal Maritime Commission on the Gemini Cooperation Agreement August 15, 2024 <https://www.justice.gov/atr/media/1364036/dl?inline> (encouraging the FMC to enjoin the agreement); DOJ Letter on The OCEAN Alliance Agreement, *supra* note 3 at 1 (urging FMC to seek to enjoin a particular agreement among four ocean shippers as anticompetitive or at least “to ensure the Agreement is narrowly tailored to achieve procompetitive benefits while limiting the risk of anticompetitive harm”).

56. For example, the Shipping Act empowers the Agency to ask parties for more information in its review of agreements, but in recent reporting it is unclear whether or to what extent the FMC exercises this power. 46 U.S.C. § 40304(d) (2018).

57. See, e.g., 61st Annual Report for Fiscal Year 2022, Fed. Mar. Comm’n (Mar. 31, 2023), at 17.

58. See Shipping Act of 1916, ch. 451, § 15, 39 Stat. 728, 733-34 (amended 1984); see also Bureau of Econ., *supra* note 24, at 10 (describing the changes introduced by the 1984 statutory amendments to the process for challenging agreements).

59. Shipping Act of 1984, Pub. L. No. 98-237, § 6(c), 98 Stat. 67, 72 (codified as amended at 46 U.S.C. § 40304(c)). This immunity applies unless FMC seeks to prevent this or later challenges the agreement based on 46 U.S.C. § 41307(b)(1) (2018). See § 6(b), (c), 98 Stat. at 72 (codified as amended at 46 U.S.C. § 40304(b), (c)).

60. 46 U.S.C. § 40304(b) (2018) (allowing FMC to reject agreements that do not meet the requirements of the Act as set out in its regulations pursuant to § 40302—none of which had been issued as of 2024—and § 40303, which requires certain content in agreements, such as a purpose statement and a withdrawal mechanism for carriers, and prohibits certain other content such as terms that disallow independent service agreements); see *id.* §§ 40302-40303.

61. See *id.* § 41307(b)(1) (providing for civil action).

b. The FMC's History is At Odds with Robust Competition

Another potential explanation for FMC's lack of cases is that the filed common carrier agreements are not, and never have been, anticompetitive. This has long been FMC's primary explanation and defense for its scant record of enforcement.

This view may stem in part from the FMC's identity as an institution which emphasized protectionism, not competition. FMC's precursor agency was created in response to the Alexander Report which, as discussed above, took the view that free competition was not possible in the ocean shipping industry.

From the Alexander Report onward, the historical record suggests that the FMC has taken a softer approach to competition than antitrust law, and at certain points has even used its powers to stymie competition. From the early 1960s until 1984, the FMC had the power to reject common carrier agreements outright.⁶² Yet one FMC analyst gave this alarming description of the Agency's reviews of filed agreements:

I joined in '61. At the time all we looked for was grammar and punctuation. Those of us conversant with the problem thought there ought to be some justification [for anticompetitive agreements]. Something sophisticated like a pooling agreement would come in and we'd say, "What do you want it for?" The carriers would say, "None of your business."⁶³

Around this same period, the FMC used its powers to endorse carrier actions to *block* competition. In *Federal Maritime Board v. Isbrandtsen Co.*, the FMC's precursor agency endorsed an agreement that enabled seventeen ocean-carrier conference members to act collectively to exclude the sole remaining independent competitor on certain shipping routes.⁶⁴

In the late 1970s, the DOJ was the primary author of "protest" filings, through which third parties could force the FMC to hold hearings on potentially anticompetitive agreements.⁶⁵ An administrative law judge at the FMC lamented this intervention, complaining that "the Justice Department has taken it upon itself to protest every agreement that's filed. [They] would like to see us abolished."⁶⁶

By the 1980s, Edward Mansfield interviewed FMC reviewers who continued to characterize the agreement-review process as "more show than substance."⁶⁷ One attorney referred

62. See *supra* text accompanying notes 58-59.

63. Mansfield, *supra* note 22, at 56.

64. Isbrandtsen, 356 U.S. at 484, 486.

65. See Mansfield, *supra* note 22, at 60 (observing a 1977 DOJ estimate of "fourteen or fifteen" protests and a total of twenty-eight docketed agreements for the year). The FMC is required to hold a hearing on "any formally protested agreement that is a per se violation of the antitrust laws." *Id.* at 61; see *Marine Space Enclosures, Inc. v. FMC*, 420 F.2d 577, 583 (D.C. Cir. 1969).

66. See Mansfield, *supra* note 22, at 61.

67. *Id.* at 58.

to it as “a pure paper-shuffling operation.”⁶⁸ During congressional scrutiny in the late 1990s, the FMC still maintained the position that there could be no competition issues in ocean shipping because of widespread overcapacity, which made it almost impossible to charge supracompetitive prices for shipping services.⁶⁹

Today, the FMC is somewhat more focused on competition, but still seems to reach similar conclusions. In a 2022 special report ordered by Congress,⁷⁰ the FMC found that competition was vigorous among ocean carriers and their three major shipping alliances.⁷¹ This was followed by legislative amendments to the Shipping Act that placed new emphasis on competition in the Act’s purpose clause and imposed new rules limiting carriers from engaging in unfair or unreasonable refusals to ship goods.⁷² The FMC continues to emphasize an approach of “monitoring” agreements. This longstanding FMC view on the adequacy of ocean shipping competition is difficult to square with the perspectives of Congress, scholars, and the DOJ on competition in ocean shipping discussed in Part I.

4. Next Steps to Ensure Oversight of Ocean Shipping Competition: Repeal the Antitrust Exemption, or Increase Transparency

This analysis suggests a problem in the legislative approach to ocean shipping competition. Antitrust enforcers are blocked from acting by an arcane statutory exemption. In their place, an industry-specific regulator, the FMC, has exclusive litigation authority that it does not use. This is despite several indicators of risk to competition in ocean shipping (see Part I).

This analysis suggests the need to repeal the antitrust law exemption in ocean shipping, Section 40307 of the consolidated Shipping Act. Such a repeal would enable the DOJ and/or the FTC to begin applying general antitrust law to ocean carrier agreements. This legislative change would eliminate one of the most outdated statutory exemptions in antitrust law. It would bring antitrust law’s more robust oversight of competition to bear on ocean shipping, and help to eliminate the risks to competition discussed here. A repeal of this exemption has long been justified.

To be clear, this is not necessarily a call for the elimination of competition powers held by the FMC. The Agency’s disused antitrust-like powers could be left in their original form. The

68. *Id.* (noting further that in inquiring about the impact on competition, “the only justification [needed] is that the parties want the agreement”).

69. See Advisory Comm’n on Confs. in Ocean Shipping, at 25 (noting that FMC “believes” it has not “had to bring” any such cases because “the overcapacity which plagues the market has made it unlikely that any agreement could cause the unreasonable rise of rates.”).

70. See Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, § 18(b)(1)(A), 136 Stat. 1272, 1281-82.

71. See Fact Finding Investigation 29, Final Report, Effects of the COVID-19 Pandemic on the U.S. International Ocean Supply Chain: Stakeholder Engagement and Possible Violations of 46 U.S.C. § 41102(c), FED. MAR. COMM’N 6 (May 31, 2022) [hereinafter Fact Finding Investigation 29], <https://www.fmc.gov/wp-content/uploads/2022/06/FactFinding29FinalReport.pdf> [<https://perma.cc/XDE7-QEH6>] (describing an analysis using “established antitrust analytical tools” that found that “the current market for ocean liner services in the Trans-Pacific trade is not concentrated and [that] the Trans-Atlantic trade is only minimally concentrated”).

72. Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, § 2, 136 Stat. 1272, 1272 (codified at 46 U.S.C. § 40101).

proposal is additive: two or more agencies rather than one inactive regulator would have the power to ensure competition in this economically important industry.

In the absence of a repeal, at a minimum, it would be helpful to require greater disclosure on ocean shipping agreements among rivals. A full assessment of how these agreements are impacting competition requires greater transparency and disclosure on: (i) how the ocean carrier agreements are being implemented in practice, not just as written, and (ii) how the FMC analyzes the competitive effects of these agreements and their implementation, beyond the brief treatment in the FMC's annual reports.⁷³

Thank you for your attention to this important issue.

73. See similar calls in J. WYATT FORE & KATHLEEN BRADISH, AM. ANTITRUST INST., COMPETITION ENFORCEMENT, PRIVATE ACTIONS AND THE SHIPPING ACT *passim* (2023), https://www.antitrustinstitute.org/wp-content/uploads/2023/05/AI-Shipping-Paper-Summary_05.02.03.pdf [<https://perma.cc/F6JF-DRTY>] at 6, 15 ("There is almost no public information about the standards used by the FMC when evaluating the competitive effect of a filed agreement. . . . there appear to be no guidelines or other public comment on the subject.").

APPENDIX A: Shipping Alliances and Major Independents (2025)⁷⁴

	Alliance or Shipper Name	Participants
1.	Gemini Alliance	Maersk Hapag-Lloyd
2.	Ocean Alliance	CMA-CGM COSCO (owns OOCL, sometimes listed separately) Evergreen
3.	Premier Alliance	ONE HMM Yang Ming
4.	Mediterranean Shipping Company	N/A

⁷⁴ 2025 Global Container Shipping Alliances, LOGISTICS+ (Jan. 3, 2025) <https://www.logisticsplus.com/2025-global-container-shipping-alliances/>.

Mr. FITZGERALD. Thank you, Professor Douglas. Mr. Rice, you may begin.

STATEMENT OF TONY RICE

Mr. RICE. Chair Fitzgerald, Ranking Member Nadler, and the Members of the Subcommittee, thank you for the opportunity to testify before you today on the maritime supply chain challenges faced by the U.S. dairy industry. Having spent 18 or so years milking cows on my Pennsylvania dairy farm that my family runs today, this is a true honor.

My name is Tony Rice, and I serve as the Senior Director of Trade Policy for the U.S. Dairy Export Council and the National Milk Producers Federation, where I lead supply chain policy development for both organizations.

America's dairy farmers and the communities they support depend on reliable access to global markets—with roughly 17 percent of production reaching international customers last year in the form of cheese, whey proteins, or other dairy ingredients.

As most dairy products are perishable, maintaining product integrity throughout the global supply chain is critical. Shipping disruptions risk compromising product quality and eroding the confidence that overseas customers play in U.S. dairy products.

While North America is our most important market, a growing volume of our exports is reaching overseas customers via ocean-going vessels. With the U.S.-flagged oceangoing fleet representing only 2.3 percent of global shipping capacity, U.S. dairy exporters are almost wholly dependent on foreign entities to transport their products.

Today, less than a dozen shipping companies dominate the industry, and most operate within just three large carrier alliances. While these alliances can create operational efficiencies for carriers, this also means that exporters have fewer options when selecting shipping services and less leverage when negotiating service terms.

To counter this trend, we support efforts to strategically invest in the domestic maritime sector, including enhancing capacity for American shipbuilding to strengthen the resilience of our supply chains by offering exporters more options.

Simultaneously, Congress should consider permitting reform to expedite new shipyard capacity and investments in mariner workforce education and training.

Conversely, U.S. dairy exporters are very concerned that foreign ocean carriers are likely to pass through costs associated with proposed port fees on foreign-flagged, owned, or operated ships. In a normal supply environment, additional fees would incentivize dairy exporters to select U.S.-flagged carriers instead. Unfortunately, U.S. dairy exporters have little choice than to contract with a foreign carrier and likely assume responsibility for any penalty fees—putting them at a competitive disadvantage to other global suppliers. We urge the U.S. Government to carefully evaluate the effects of these penalties on U.S. agricultural exporters.

The pandemic exposed structural imbalances in international shipping networks, that shippers face extremely limited container availability, high-port congestion, and unpredictable vessel sched-

ules. In 2021 alone, our industry lost over \$1.5 billion due to missed sales opportunities, reduced product values, and sharply higher costs associated with unreliable shipping services.

Frankly, the worst of these issues have abated, but some underlying problems remain. The persistent issue of unreliable ocean carrier schedules and limited accountability is an ongoing source of frustration. While the delays are due to a number of factors, including weather and port congestion, a shrinking number of carrier options exacerbates the situation—with exporters rarely receiving sufficient information about why a booking was rolled or delayed.

Ocean carriers also maintain control of containers and set limits on the availability and use of chassis which adds costs and constrains trucking, drayage, and scheduling options for export shippers.

We commend the FMC for launching an investigation in January into whether the ocean carriers have been unreasonably restricting truckers and shippers from their choice of chassis providers. Continued FMC oversight is critical to provide a fairer market for U.S. exporters.

Dairy farmers milk their cows 365 days a year. For a producer in Wisconsin, these supply chain challenges are not abstract policy concerns. When export shipments are delayed, canceled, or become expensive to move, the disruptions ripple back through the supply chain and, ultimately, affect farm income.

To ensure competitiveness now, we urge the FMC to maintain strong oversight over foreign ocean carriers and alliances, and to enforce the law with respect to reasonable service, and ensure adequate transparency, particularly regarding schedule changes and equipment availability. To enable more options, we support efforts to restore an American maritime industry.

As Congress deliberates these important issues, we encourage focus on how the ocean carrier market is meeting the needs of U.S. exporters. Since foreign-owned ocean carriers receive antitrust exemptions, it is only reasonable that they treat U.S. exporters fairly.

I appreciate the opportunity to provide comments on these important issues, and I look forward to your questions. Thank you.

[The prepared statement of Mr. Rice follows:]



Testimony of Tony Rice

Senior Director of Trade Policy
U.S. Dairy Export Council
National Milk Producers Federation

Pier Pressure: Regulation and Competition in Maritime Shipping

Before the Subcommittee on the Administrative State, Regulatory Reform, and
Antitrust of the Committee on the Judiciary

March 17, 2026

Introduction

Chairman Fitzgerald, Ranking Member Nadler, and members of the subcommittee, thank you for the opportunity to testify before you today on the maritime supply chain challenges faced by the U.S. dairy industry.

My name is Tony Rice, and I serve as the senior director of trade policy for the U.S. Dairy Export Council (USDEC) and the National Milk Producers Federation (NMPF). In this role I work to develop, implement and communicate policies that promote U.S. dairy exports, pursue the repeal of policies that impede those exports and address foreign barriers to U.S. dairy sales. I also lead supply chain policy development for both organizations.

USDEC is a non-profit, independent membership organization representing the global trade interests of U.S. dairy farmers, dairy processors and cooperatives, dairy ingredient suppliers and export trading companies. Our mission is to enhance U.S. global competitiveness and assist the U.S. industry to increase its global dairy ingredient sales and exports of U.S. dairy products. USDEC and its 130 member companies are supported by staff in the United States and overseas in Mexico, Central and South America, Asia and the Middle East and North Africa.¹

NMPF develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce two thirds of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and among government agencies. NMPF provides a forum through which dairy farmers and their cooperatives formulate policy on national issues that affect milk production and marketing. NMPF's contribution to this policy is aimed at improving the economic landscape of dairy farmers, thus assuring the nation's consumers an adequate supply of pure, wholesome, and nutritious milk and dairy products.²

America's dairy farmers depend on reliable access to global markets, with roughly 17 percent of production reaching international customers last year.³ While the North American market is our most important destination, a growing volume of our exports reach customers overseas via oceangoing vessels. Yet that system is dominated by a small number of foreign-owned ocean carriers that control a large share of global container capacity.

Many of these carriers coordinate vessel deployments, sailing schedules, and network capacity through cooperative agreements. While these arrangements may create operational efficiencies, they also raise important questions about competition, transparency, and fair access to transportation for American exporters.

Our members regularly report difficulty securing vessel space, shipments being rolled to later sailings, and containers leaving U.S. ports empty while export cargo remains on the dock. For agricultural exporters, these disruptions can mean missed delivery windows, lost contracts, and damage to long-term relationships with overseas customers.

¹ U.S. Dairy Export Council, "About Us," U.S. Dairy Export Council, <https://www.usdec.org/about-us>

² National Milk Producers Federation, "About Us," National Milk Producers Federation, <https://www.nmpf.org/about/about-nmpf/about-us/>

³ U.S. Dairy Export Council, "News Release," February 13, 2026, <https://www.usdec.org/newsroom/news-releases/news-releases/news-release-2/24/2026>

The United States is one of the world's leading dairy exporters, yet we rely almost entirely on foreign-owned carriers to move our containerized exports. That makes it especially important that the market functions fairly and exporters have reliable access to global transportation networks.

Background on Dairy Exports

Exports are extremely important to the U.S. dairy industry. Last year the United States exported \$9.6 billion in dairy products worldwide, or three million metric tons of products in the form of cheese, milk powders, whey proteins and a variety of other dairy ingredients.⁴ Those sales play an indispensable role in supporting the health of America's dairy farms as well as the manufacturing jobs of dairy processors. Impairing export sales therefore harms not only farmers, but the communities that they support.

U.S. dairy exports are poised to continue their growth trajectory, with rapidly increasing demand in overseas markets like Japan, South Korea, Australia, Southeast Asia and Latin America. The wide range of dairy products we export, from cheese that requires refrigerated or "reefer" containers to whey products and dry ingredients shipped at ambient temperatures, reflects the diversity of the U.S. dairy industry's offerings. Our international customers view U.S. dairy products as reliable sources of quality, consistency, and variety. That reputation is built on the high standards under which the U.S. food system operates, including rigorous food safety, handling, and traceability requirements.

Because of those standards, maintaining product integrity throughout the global supply chain is critical. Many dairy products are sensitive to handling conditions and transit times, and refrigerated products in particular depend on an unbroken cold chain from processing plant to end customer, even if they are on the other side of the globe. When shipping disruptions occur, they do not just create logistical problems and cost, they risk compromising product quality and eroding the confidence that overseas customers place in U.S. dairy products.

With over two thirds of exports shipped overseas via intermodal shipping container versus land transportation, dairy exporters require a maritime industry that provides timely, reliable transport to maintain high food quality and safety standards and to meet delivery commitments. Efficient port operations, container availability and predictable transit times allow shippers to move large volumes competitively and fulfill contracts with international buyers. Disruptions such as shipping delays, rolled bookings, blanked sailings or container shortage increase costs, threaten product quality and undermine the reliability that global dairy markets depend upon. Limited competition within the ocean carrier industry and unexpected fee hikes compound the issues for an industry that already operates on thin margins.

The global dairy market is highly competitive due to these thin margins. American dairy exporters have had to constantly work to earn our global customers, and our members strive to maintain these trade relationships. Shipping delays frustrate these efforts and result in our customers facing delays when receiving the dairy products they order from American dairy producers.

Unfortunately, U.S. dairy exporters understand these challenges all too well. The supply chain crisis just a few years ago cost the dairy industry billions in added costs and lost international customers.

⁴ U.S. Dairy Export Council, "News Release," February 13, 2026, <https://www.usdec.org/newsroom/news-releases/news-releases/news-release-2/24/2026>

The issue was exacerbated by extremely limited shipping options, port congestion and a highly unpredictable ocean shipping market. While the worst of the volatility has abated since the height of the crisis, the underlying challenges and threats remain.

Shipping Industry Consolidation

To reach our global customer base, U.S. dairy manufacturers have virtually no options other than to rely on foreign-flagged vessel operating common carriers (VOCCs). With the U.S. flagged oceangoing fleet representing only 2.3 percent of global shipping capacity by deadweight tonnage,⁵ shipments to Asia, Latin America and the Middle East, among other routes, are wholly dependent upon foreign entities to transport U.S. dairy products.

The global container shipping industry has undergone significant consolidation over the past two decades. Today, less than a dozen major global ocean carriers dominate the container shipping sector, and most operate within three large carrier alliances that coordinate vessel capacity and service networks. Alliances coordinate vessel scheduling, port terminal access, and container and chassis availability, all of which impact our exporters' delivery schedules, drayage costs and shipping prices. While these alliances can create operational efficiencies for carriers, this also means that exporters have fewer options when selecting shipping services. Under the Shipping Act, carriers are exempt from American antitrust laws in order to allow them to enter into these alliance agreements, while rate setting and marine terminal operations are not covered by this exemption.⁶

Recent consolidation activity involving two major carriers illustrates the continued concentration within the container shipping industry. As the number of independent carriers declines, exporters face fewer choices when selecting VOCCs and less leverage when negotiating shipping rates and service terms across key trade lanes.

Another factor at play is the effect of significant investments in new vessel capacity made in response to the disruptions of the last global shipping crisis, which has resulted in excess capacity for some carriers. Rather than lowering rates or increasing service frequency, which would be typical market behavior, alliances have at times sought to constrict vessel supply by cancelling or "blanking" sailings to raise vessel utilization, which impacts shipping and vessel schedules and reduces available shipping options and flexibility for exporters.⁷ Despite this excess capacity, several major carriers have also proposed General Rate Increases of up to \$1,000 per container to recover investments and improve profitability, creating additional cost pressures for dairy exporters that rely on competitive and reliable ocean transportation.⁸

⁵ U.N. Trade and Development, Review of Maritime Transport 2023 at Tables 2.5 & 2.6.

⁶ 46 U.S.C. § 40307

⁷ Parisi Grand Smooth Logistics, "The Return of Blank Sailings: How Carrier Alliances Are Managing Overcapacity in 2025", September 17, 2025, <https://pgs-log.com/the-return-of-blank-sailings-how-carrier-alliances-are-managing-overcapacity-in-2025/>

⁸ Journal of Commerce, "Carriers try new rate hike on Asia-Latin America, but fresh capacity provides headwind", February 3, 2026, <https://www.joc.com/article/carriers-try-new-rate-hike-on-asia-latin-america-but-fresh-capacity-provides-headwind-6163541>

Improving America's Shipbuilding Capacity

USDEC and NMPF support efforts to strategically invest in the domestic maritime sector, including enhancing capacity for American shipbuilding. Expanding domestic shipbuilding capacity can strengthen the resilience, security, and long-term stability of the United States' supply chains by offering exporters like our members more options.

As we learned during the last ocean shipping crisis, foreign-based carriers have no fealty to American shippers, and it was clear that the plight of our exporting members was generally not their concern. American-flagged ocean carriers, backed by industrial policy and government support, should be more export- and domestic customer-focused. A stronger American maritime industrial base can complement existing global shipping networks and help ensure that dairy exporters have dependable transportation services to serve international markets and increased options when selecting among ocean shipping carriers.

The Administration's plans to revitalize the United States' shipbuilding capacity through investments in upgrading and modernizing shipyards and updating infrastructure is a much-needed step in the right direction.⁹ The use of grants, financing and public-private partnerships would incentivize increased domestic production of merchant vessels to grow oceangoing capacity and expand the currently limited set of options available to U.S. dairy exporters. Similarly, proposals to "leverage economic diplomacy and the Agreement on Reciprocal Trade (ART) Framework" to drive foreign direct investment are appropriate methods of bolstering the U.S. shipbuilding industry.

In addition to incentives, Congress should consider how permitting reform can hasten new capacity at shipbuilding yards and build relationships with material providers to ensure that steel and other inputs can be readily supplied. However, it would also be important to assure that American vessel construction can be globally competitive, which may include steps toward encouraging more foreign investment, adopting automation and implementing reasonable labor policies.

NMPF and USDEC also support investment in mariner workforce education and training through recruitment and retention incentives, streamlined credentialing, increased funding for Centers of Excellence for Domestic Maritime Workforce Training and Education and modernization of the Merchant Marine Academy to build America's maritime workforce, just to name a few initiatives to enhance the United States' shipbuilding labor force.

Conversely, U.S. dairy exporters are very concerned that foreign ocean carriers are likely to pass through costs associated with proposed port fees on non-U.S. flagged vessels, a measure intended to penalize the use of foreign owned, operated, or flagged ships. For example, USDEC estimates that penalties proposed as a result of the U.S. Trade Representative's Section 301 investigation into China's maritime dominance could increase shipping costs by as much as \$500 per container transiting on Chinese-owned and -operated vessels and an additional \$120 per container on a Chinese-built vessel after a three year phase-in period. Over one-fifth of international carrier vessels calling on American ports were Chinese-made, and over 50 percent of global vessel orders

⁹ The White House, Restoring America's Maritime Dominance, Maritime Action Plan, February 2026, <https://www.whitehouse.gov/maritimemight/>

in 2025 went to Chinese shipbuilders.¹⁰ Consequently, options to avoid use of Chinese-built vessels is increasingly limited.

Although the Administration has paused implementation of these fees until November 2026, the potential cost impacts remain a significant concern for U.S. dairy exporters operating on thin margins and facing intense global competition. While some carriers have indicated they do not intend to pass these fees directly on to shippers, nothing prevents VOCCs from incorporating such fees into broader rate increases or surcharges. In practice, these additional costs would ultimately be borne by exporters, reducing the competitiveness of U.S. dairy products in international markets as other major dairy suppliers, namely the European Union and New Zealand, would not face similar charges.

In a normal supply environment, additional fees would incentivize dairy and other exporters to select U.S.-flagged VOCCs instead. Unfortunately, these options are unavailable and U.S. dairy exporters have little to no other choice than to contract with carriers belonging to one of three foreign-controlled alliances and likely assume responsibility for any penalty fees. NMPF and USDEC strongly urge the U.S. government to meaningfully invest in U.S. shipbuilding capacity while carefully evaluating the effects of penalties on U.S. agricultural exporters.

Beyond financial incentives and investments, the U.S. dairy industry supports the Administration's efforts to strengthen the nation's maritime sector through regulatory reform and streamlined permitting that can accelerate investment in shipbuilding, port infrastructure, and maritime supply chains. The Administration's maritime strategy recognizes that rebuilding U.S. maritime capacity will require modernizing government processes, improving interagency coordination, and reducing unnecessary regulatory barriers that delay critical projects. Streamlined regulatory processes can help accelerate shipyard modernization, infrastructure development, and private investment while maintaining appropriate oversight.

Lessons from the Supply Chain Crisis

The global ocean freight system experienced significant disruptions beginning in 2020, as the COVID-19 pandemic exposed and intensified structural imbalances in international shipping networks. Surging consumer demand, uneven trade flows, and severe port congestion strained the container shipping system and disrupted normal cargo movements. These conditions created widespread challenges for exporters across the U.S. economy, including the dairy sector, as shippers faced limited container availability, port congestion, unpredictable vessel schedules, cancelled sailings, escalating surcharges, and the inconsistent application of detention and demurrage fees.

For U.S. dairy exporters, these disruptions had substantial economic consequences. In 2021 alone, USDEC estimated that more than \$1.5 billion was lost due to missed sales opportunities, reduced product values, and sharply higher transportation costs associated with unreliable shipping services. Beyond the immediate financial impacts, the instability of ocean transportation networks also threatened long-term commercial relationships with overseas buyers. In some cases,

¹⁰ Office of the United States Trade Representative. (2025). Report on China's targeting of the maritime, logistics, and shipbuilding sectors for dominance
<https://ustr.gov/sites/default/files/enforcement/301Investigations/USTRReportChinaTargetingMaritime.pdf>

international customers turned to alternative suppliers in other countries as confidence in the reliability of global supply chains to deliver American products on time declined.

The challenges created by these disruptions also raised significant operational risks for exporters of perishable products. Delayed vessel bookings and cancelled sailings increased the likelihood of spoilage for time sensitive dairy shipments, while extended storage times at ports and warehouses added additional costs. Exporters were often forced to absorb higher drayage expenses and other logistics costs as they attempted to manage these delays and find alternative shipping options.

Illustrating the challenges, one dairy exporter described a shipment that had its booking rolled so many times that it ultimately departed on the same vessel on which it had originally been scheduled to sail—only after that vessel had completed a round trip to Asia. Another member company resorted to air cargo to deliver their cheese products to a long-standing customer, taking on significant costs to maintain this sales relationship, even if it was at a loss, all to overcome the broken international ocean shipping system.

Ongoing Challenges

While the *Ocean Shipping Reform Act of 2022* (OSRA) resolved several issues, including exporters being charged untenable detention and demurrage fees incurred for factors outside of their control, many underlying issues remain. This includes ocean carriers blanking sailings and opting to forego stops at certain ports, which adds costs and inefficiencies for U.S. dairy exporters. Moreover, ever-shifting Earliest Receiving Dates (ERD) are a moving target, with exporters recording up to five ERD changes for a single booking. The changes are frequently not proactively notified to exporters, requiring shippers to log in electronically on a recurring basis to ensure that the receiving window has not moved. This creates compounding issues for U.S. dairy exporters shipping out of the Midwest who are attempting to meet a moving target.

Frequently changing ERDs and cargo cut-off deadlines all compound to make booking logistics an ongoing struggle for exporters. Because these milestones move so often, logistics teams are forced to react at the last minute, making reliable planning nearly impossible. The result is missed vessel sailings, unexpected costs, and dissatisfied consignees who experience delays and uncertainty. It is difficult to reconcile ocean vessels leaving U.S. ports with a large volume of empty containers while U.S. dairy exports are frequently left behind due to a rolled booking.

Another concern is the persistent issue of ocean carrier schedule reliability and the limited accountability for its consequences. Throughout 2024, global on-time performance hovered around roughly 53–59 percent.¹¹ Conditions improved somewhat in 2025, with reliability reaching 66 percent.¹² Even with this improvement, our members report that only about half to two-thirds of vessels arrive as scheduled, and the strongest carriers achieve reliability rates only in the mid-70 percent range.

While receiving windows move for a variety of reasons, including port congestion or weather delays, the issue is exacerbated by an increasingly consolidated ocean carrier industry that incorporates a

¹¹ Sea-Intelligence. (2025, January 28). *2024 schedule reliability largely within 50–55%*.

<https://www.sea-intelligence.com/press-room/307-2024-schedule-reliability-largely-within-50-55>

¹² Magli, D. (2025, July 8). *Global carrier schedule reliability hits 18-month high*. Port Technology International.

<https://www.porttechnology.org/news/global-carrier-schedule-reliability-hits-18-month-high/>

greater number of ports in a rotation. For example, if a vessel servicing six ports in a rotation experiences a delay at a single location, that slowdown can create a cascade of delays across an entire network for weeks. With limited competitors in the ocean shipping market, alternatives are frequently unavailable.

Exporters face significant uncertainty when ocean carriers reject bookings, roll containers to later sailings, or change vessel schedules and receiving windows. In many cases, exporters receive little or no explanation for these decisions. A perishable dairy shipment may be confirmed and prepared for export, only to be rolled shortly before departure or shifted to a different vessel. ERDs may also move with limited notice, forcing exporters to quickly adjust inland transportation, storage, and staging plans. These changes are particularly difficult for exporters moving product from the Midwest by rail, where shipments must be planned days in advance and cannot easily be delayed or rerouted once they are moving through the rail network.

More broadly, the market lacks basic transparency and accountability mechanisms around these operational decisions. Exporters typically have little visibility into how carriers allocate capacity, why certain bookings are rejected, or what drives schedule changes and ERD shifts. Without clearer information, exporters are left to absorb the costs and uncertainty associated with disruptions they cannot anticipate or explain. For rail-served exporters located far from coastal ports, these disruptions can create additional costs and delays as containers arrive too early, miss receiving windows, or must be held or repositioned while waiting for a later sailing.

One solution to alleviating this issue is for exporters to secure land to store containers near a terminal that can be quickly moved when a receiving window opens. Currently local ordinances frequently prohibit drayage trucks and equipment from parking in a given municipality, limiting options, which in turn leads to delays, missed appointments and added costs.¹³ Public-private partnerships to designate container yards close to a port could provide dairy and agricultural exporters with adequate space to store shipments while awaiting a receiving window to open. With high port congestion and limited storage options, having additional space to temporarily store containers would provide one means of mitigating ever-changing ERDs and cutoff dates.

Pursuing redress for lost shipping slots is cumbersome and time-consuming with little opportunity for a sufficient restitution. Foreign customers rely on timely shipments, forcing buyers to consider alternative dairy suppliers when shipping disruptions mount. This has ripple effects down to the farm level, as lost sales opportunities have a direct impact on U.S. dairy farmers' milk checks.

While the Federal Maritime Commission (FMC) has enabled an easier and more efficient complaint filing process, it remains a legal process that many shippers are unfamiliar with or express difficulty in navigating the dispute system. Bringing challenges to the ocean carriers, on whom our shippers are dependent, remains a daunting effort. The FMC may consider better outreach to ensure American exporters are familiar with their procedures and process for filing claims, when appropriate. The FMC may also consider broadening methods by which complaints can be brought by a class, which would allow individual shippers to pool their complaints against certain carriers and spread the cost, risk and effort among them.

¹³ American Journal of Transportation, "Port of NY/NJ faces truck parking space shortage", October 27, 2025, <https://www.ajot.com/premium/ajot-port-of-ny-nj-faces-truck-parking-space-shortage>

Further, while the challenges faced during the ocean shipping crisis with respect to access to shipping equipment (including chassis, containers, and reefers in particular), has declined, it has not gone away. Shippers still rely on foreign-owned carriers to make containers and chassis available and to deliver the equipment, which continues to be inconsistent. This is particularly a challenge for exporters located in the Midwest, as export equipment supplies are frequently short and VOCCs are not motivated to move equipment inland far from the coasts.

Ocean carriers maintain control of containers and set limits on the availability and use of chassis, which adds to costs and constrains trucking, drayage and scheduling options for export shippers. The question of chassis control by the carriers has been the subject of litigation by the American Trucking Association, and more recently, the FMC launched an investigation into whether the ocean carriers were unjustly and unreasonably restricting truckers and shippers from their choice of chassis providers.¹⁴ The investigation is indicative of a larger concern of foreign-owned ocean carriers increasingly controlling additional parts of the supply chain, including intermodal containers, chassis and logistics platforms.

While detention and demurrage charges incurred outside of a dairy shippers' control have mostly been limited due to OSRA, dairy shippers still report occasionally facing charges that result from unexpected rolls and/or blanked sailings. This adds additional costs to drayage providers for the planned equipment due to delayed or cancelled vessels. As noted previously, while there is an established FMC process for disputing the charges, exporters note that it takes time and resources to file a claim, which is not always successful.

Compounding the challenges is a jurisdictional gap between the Surface Transportation Board and the FMC regarding storage fees applied to intermodal containers destined for export travelling via rail to ocean ports. While OSRA prohibited carriers from charging exporters for detention and demurrage fees for factors beyond their control, there is ambiguity regarding the fees when accrued at a railyard. Several dairy exporters note that they will occasionally receive a rail storage bill directly from a carrier when a booking is rolled or delayed, despite booking the consignment through a third-party logistics manager. NMPF and USDEC encourage Congress to provide clarity on the jurisdiction under which rail storage fees fall.

While tangential to the focus of the hearing, export supply chain security is an ongoing challenge for several dairy exporters. Dairy processors based in the Midwest shipping intermodal containers via rail to West Coast ports have been experiencing container break-ins at some point in the transit. Organized crime groups will break into a string of railcars in search of high value retail goods, with dairy products becoming collateral damage. Broken container seals require exporters to return the consignment back to the point of origin at their own cost with little to no recourse for insurance coverage. When criminals are apprehended, rail security forces indicate that there is typically insufficient legal recourse to ensure prosecution. NMPF and USDEC strongly encourage Congress to support efforts to ensure (1) law enforcement receives adequate resources to effectively police the issue and (2) offenders are held accountable.

¹⁴ Federal Maritime Commission, "FMC Launches Investigation of Ocean Common Carriers' Practice and Restrictions on Chassis Usage", January 26, 2026, <https://www.fmc.gov/articles/fmc-launches-investigation-of-ocean-common-carriers-practice-and-restrictions-on-chassis-usage/>

Conclusion

The challenges facing U.S. dairy exporters in the maritime supply chain reflect deeper structural issues in the global container shipping market. Continued consolidation among ocean carriers has reduced the number of independent service options available to exporters and increased the importance of fair, transparent market practices. At the same time, exporters still face operational uncertainty when bookings are rejected, containers are rolled, vessel schedules change, or receiving windows shift without explanation. Greater transparency around booking decisions, capacity allocation, and schedule changes would help restore confidence that the system is functioning fairly and allow exporters to plan shipments with greater certainty. A functioning competitive market should lower costs and improve reliability for exporters.

The FMC must also remain vigilant in its oversight of the international ocean carrier marketplace, and to continue to assess the impact of alliances and consolidation on American exporters and their shipping options. We support its investigation into chassis availability, and we urge the FMC to also assess the need to similarly review container availability. The tendency of alliances and carriers to blank sailings should also be a topic on which the FMC should be collecting data and investigating.

For a dairy farmer in Wisconsin, these supply chain issues are not abstract policy concerns. Export sales play an important role in supporting the price farmers receive for their milk. When export shipments are delayed, cancelled, or become more expensive to move, those disruptions ripple back through the supply chain and ultimately affect farm income. Missed sales opportunities and higher transportation costs can weaken the competitiveness of U.S. dairy products in overseas markets, reducing demand that American farmers depend on to sustain their operations and support rural communities.

We recognize the importance of efficient global shipping networks. Our concern is ensuring that those networks work for American dairy exporters as well as they work for global carriers. At the same time, the United States should pursue policies that strengthen its own maritime capabilities. Strategic investment in domestic shipbuilding capacity, workforce development, and maritime infrastructure can help expand long term transportation options for American exporters. Streamlining permitting and reducing unnecessary regulatory barriers in the shipbuilding industry will also be important to accelerate investment and modernization across the maritime sector. These steps can help build a stronger and more resilient U.S. maritime industrial base while supporting the competitiveness of American exporters.

I appreciate the opportunity to provide comments on these important issues to this subcommittee. Thank you.

Mr. FITZGERALD. Thank you, Mr. Rice. Professor Sicotte, you may begin.

STATEMENT OF RICHARD SICOTTE

Mr. SICOTTE. Thank you. Chair Fitzgerald, Ranking Member Nadler, and the Members of the Subcommittee, thank you for inviting me to testify today on regulation and competition in ocean shipping.

I'm a Professor of Economics at the University of Vermont, areas of specialization in industrial organization and economic history. Drawing on my experience researching the shipping industry and its regulation, my goal is to bring an economic perspective to the matters before the Committee today.

The Shipping Act of 1916 authorized the predecessor of the Federal Maritime Commission to approve cartel conference agreements in ocean shipping, and those agreements so approved would be immune from the antitrust laws—conference agreements, fixed rates, coordinated capacity, and sometimes the firms pooled revenues. Subsequent amendments to the Shipping Act, effectively, prohibited rate-fixing, but still permit firms to cooperate intensively in matters of capacity and operations.

Shipping agreements must be submitted to the Federal Maritime Commission, which, quoting to its 2024 report, “analyzes these agreements for potential anticompetitive effects.” The FMC reported that, at the end of Fiscal Year 2024, there were 360 agreements, 50 of which were subject to staff monitoring.

From the perspective of U.S. foreign commerce, one could argue that the most important kinds of agreements are the space charter agreements, vessel-sharing agreements, and shipping alliances. First, the space charter agreements, are when one firm rents space on another firm's ships. Vessel-sharing agreements are between two or more firms that use space on one another's vessels and they coordinate capacity. Alliances are described by the FMC as “large VSAs” which are nearly global in scope.

These agreements provides the backdrop for the adoption of very large capacity container ships, frequently more than 10,000 20-foot equivalent units on a ship, sometimes twice that amount. The trend in the industry is toward ever-larger ships.

According to the FMC, Fiscal Year 2024, nearly 90 percent of U.S. transatlantic and transpacific water-borne commerce was carried by members of these three shipping alliances. There has been some realignment among these firms over the past 18 months, so that MSC, a former alliance member, is no longer in alliance, and another firm joined in a new alliance that was approved.

These are challenging economic questions—there are challenging economic questions surrounding these agreements and their effects.

First, if agreements jointly fix capacity, then they can exercise market power, even though they do not explicitly collude on rates.

Second, such close cooperation and information-sharing can facilitate collusion, tacit or otherwise. A commonly shared view among the industry, in particular, is that alliances and vessel-sharing agreements enable firms to achieve economies of scale and enjoy cost savings that might be passed on, at least in part, to consumers.

Measuring the efficiency gains that might exist and quantifying the potential market power or exercise of market power are really within the expertise of industrial organization economists. In the context of other industries, these same issues are analyzed by economists at the Department of Justice and the Federal Trade Commission, whether in the context of mergers, cartels, or vertical restraints.

There is very little in the public record that sheds light on the kinds of analysis being conducted by FMC staff on these agreements. I don't really understand what kind of economic analysis they're engaged in. We know that they're monitoring; we don't know what that entails.

I think that the other witnesses have already spoken to some of the—for example, Professor Douglas spoke about the FMC's lack of enforcement of antitrust. They have yet to block or enjoin any carrier agreement. They acknowledge competitive concerns, but it's unclear what's actually being done about them.

Reasonable reform, in my view, would be that the review of interfirm agreements in ocean shipping be carried out by professionals at the DOJ or FTC, and that they are able to access essential data that only the FMC has access to, so that they can carry out that kind of analysis.

I look forward to your questions.

[The prepared statement of Mr. Sicotte follows:]

Statement of Richard Sicotte, Professor of Economics, University of Vermont, before the U.S. House of Representatives, Judiciary Committee, Subcommittee on the Administrative State, Regulatory Reform and Antitrust.

March 17, 2026

Chairman Fitzgerald, Ranking Member Nadler, and Members of the Subcommittee, thank you for inviting me to testify today on regulation and competition in ocean shipping. I am a Professor of Economics at the University of Vermont, with areas of specialization in industrial organization and economic history. Drawing on my experience researching the shipping industry and its regulation, my goal is to bring an economic perspective to the matters before the committee today.

The Shipping Act of 1916 authorized the predecessor of the Federal Maritime Commission to approve cartel - “conference” - agreements in ocean shipping, and those agreements so approved would be immune from the antitrust laws. Conference agreements fixed rates, coordinated capacity and sometimes pooled revenues. Subsequent amendments to the Shipping Act effectively prohibited rate-fixing but still permit firms to cooperate intensively in terms of capacity and operations. Shipping agreements must be submitted to the Federal Maritime Commission, which, quoting its 2024 annual report, “analyzes these agreements...for potential anticompetitive effects. For those agreements that are competitively concerning...Commission staff monitors activity on an ongoing basis. Conduct inconsistent with the terms of the agreement is illegal.” The FMC reported that at the end of FY 2024, there were 360 agreements, 50 of which were subject to staff monitoring.

From the perspective of US foreign commerce, one could argue that the most important kinds of the agreements are 1) space (slot) charter agreements, 2) vessel sharing agreements (VSAs), and 3) shipping alliances. The first are agreements where one firm “rents” space on another firm’s containerships. Vessel sharing agreements are between two or more firms who use space on one another’s vessels and coordinate capacity. Alliances are described by the FMC as “large VSAs.” These agreements provide the backdrop for the adoption of very large capacity containerships, frequently more than 10,000 TEUs, or twenty-foot equivalent containers. The largest vessels have more than twice that capacity. There has been a clear trend toward adoption of ever larger ships.

According to the FMC, in FY 2024 nearly ninety percent of US transatlantic and transpacific waterborne foreign commerce was carried by the members of three alliances. In 2025

there was some realignment among these firms so that MSC, a former alliance member is no longer in an alliance. The three alliances along with MSC are said to control more than eighty percent of global container capacity.

There are challenging economic questions surrounding these agreements and their effects. First, if firms jointly fix capacity, then they can exercise market power even though they do not explicitly collude on rates. Second, such close cooperation and information sharing can facilitate collusion, tacit or otherwise. Yet a commonly shared view is that alliances and VSAs enable firms to achieve economies of scale and enjoy cost savings that might be passed on, at least in part, to consumers. Measuring the efficiency gains and quantifying the exercise of market power are within the wheelhouse of industrial organization economists. In the context of other industries, they are precisely the types of issues that DOJ and FTC economists address, whether in merger analysis, the analysis of cartels or of vertical restraints.

There is very little in the public record that sheds light on the kinds of analysis being conducted by FMC staff on these agreements. There is an MOU between the DOJ and the FMC, and it is unclear if the FMC staff coordinate with DOJ experts in their analysis. The FMC has access to data, or the authority to collect it, that would enable state of the art economic assessment of the competitive effects of the alliances, and an analysis of whether alternative institutional arrangements short of an alliance could result in similar purported efficiency benefits. The DOJ commented on the OCEAN Alliance agreement in 2016 and the Gemini agreement in 2024. Yet the FMC allowed both to become effective without addressing DOJ's objections. The FMC acknowledges "competitive concerns," but it is unclear what is being done, and what "monitoring" entails. There is no record, to my knowledge, of the FMC seeking to block or enjoin any carrier agreement. A reasonable reform in my view would be that the review of interfirm agreements in ocean shipping be carried out by professionals in DOJ or FTC, and that they are able to access the essential data to carry out their analysis, or agreement reviews become a joint endeavor between DOJ and the FMC where any DOJ objections would be addressed.

Mr. FITZGERALD. Mr. Sicotte, thank you so much. Dr. Moss, you may begin.

STATEMENT OF DIANA MOSS

Ms. MOSS. Thank you. Chair Fitzgerald, Ranking Member Nadler, and the Members of the Subcommittee, it's an honor to be here today.

PPI advocates for pragmatic competition policies that champion the economic prospects and outlook for working Americans. Any conversation about the importance of the U.S. antitrust laws or exemptions to those laws would be incomplete without considering the broader role or competition in antitrust enforcement as a major tool for protecting consumers.

Consumers are the backbone of the U.S. economy. Almost 70 percent of spending in the economy in the first quarter of 2024 was attributable to personal consumption expenditures. Sensible competition policy and strong antitrust enforcement are major tools for protecting those consumers from the exercise of market power that drives up prices, lowers quality, stifling innovation, and limits choice and market access.

The U.S. antitrust laws protect consumers by ensuring that they are not harmed by anticompetitive mergers, and business practices that squeeze out smaller rivals, and fixing prices or dividing up markets. The importance of those laws is widely acknowledged by both Democrats and Republicans.

The bipartisan Antitrust Modernization Commission established by Congress in 2002 explained that, "The rule of laws stand as a bulwark to protect free market competition" and "prohibit anticompetitive restraints that harm consumer welfare."

In legislating antitrust exemptions, Congress has weighed the harm to competition and consumers against the benefits of achieving broader economic, social, or regulatory goals. The evidence on the benefits of immunities and exemptions is increasingly negative, because most of the markets that are immunized from liability under the antitrust laws are now highly concentrated. For example, the top four container shippers control 60 percent of the global market, but the three big alliances or conferences control up to 90 percent of the global market.

In airlines, domestic mergers have, similarly, increased the global control of immunized international alliances. At these levels of concentration, anticompetitive consolidation and conduct would be considered presumptively illegal under the antitrust laws.

The benefits of exemptions accrue to a few powerful companies, but their costs affect a wide swath of consumers. Sixty percent of the world's commodities pass through global shipping lanes, and transportation costs, more generally, highly impact the final prices of consumer commodities shipped into the United States.

Suffice it to say that Congress has the power to revisit antitrust exemptions, especially for the Shipping Act—to roll them back; to narrow them, or to make sure that they sunset rapidly.

Let me finish with two other developments that, much like antitrust exemptions, raise concerns that antitrust enforcement can't or isn't doing enough for consumers.

First, a recent PPI report finds that, in food, healthcare, housing, transportation, and insurance, merger enforcement has historically been at levels that are far below the all-sector average. This needs to change.

Second, more recently, premature settlements in antitrust cases have become the norm. Fully litigated trials and strong remedies, like injunctions and breakups for restoring competition, would have served consumers far better in lowering prices, but settlements we are seeing could even harm consumers more, including in the Hewlett Packard–Juniper Networks merger; the Live Nation–Ticketmaster monopolization case, and the RealPage anticompetitive price-fixing case.

Finally, the ability of U.S. companies to compete globally is at risk. Aside from directly raising prices to consumers to the tune of billions and billions of dollars over the last year, IEEPA tariffs on imported commodities raise the costs of U.S. companies, making their goods less competitive relative to foreign alternatives. Retaliatory tariffs have decimated certain sectors, like soybeans, by eliminating markets for exports that U.S. farmers rely on for long-term income security and stability.

The foregoing policies undermine competition and consumers. Congress has the power to revoke outdated and harmful antitrust exemptions and ensure that the DOJ and FTC uphold due process and the rule of law; that competition remains healthy; that the laws rein-in market power, and we keep the cost of living down for millions of American workers and consumers.

I appreciate the opportunity to submit testimony for this hearing, and I look forward to answering your questions.

[The prepared statement of Ms. Moss follows:]



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**Pier Pressure:
Regulation and Competition in Maritime Shipping**

**Testimony of Dr. Diana Moss
Vice President & Director of Competition Policy
Progressive Policy Institute**

**Before the United States House of Representatives
House Judiciary Subcommittee on the
Administrative State, Regulatory Reform, and Antitrust**

March 17, 2026

I. Introduction

Thank you Chair Fitzgerald, Ranking Member Nadler, and Members of the Subcommittee. It is an honor to be here today to lend the Progressive Policy Institute's (PPI's) perspective to the issue of competition and regulation in maritime shipping, with a focus on the state of competition between ocean carriers and the merits of the Shipping Act antitrust exemption.

PPI is a catalyst for policy innovation and advocates for competition policies that support consumers and workers, with pragmatic proposals that champion the economic prospects and outlook for working Americans.¹ PPI applauds House lawmakers for turning their attention to competition issues in a critical transportation market that has a direct impact on the cost of living for American consumers.

II. The Antitrust Laws Play a Vital Role in Protecting Competition and Consumers

Competition is the lifeblood of a market system. Access to markets, choice, and fair terms of trade are hallmarks of competition for consumers, workers, and smaller businesses. The benefits of competition are tangible. The engines of economic activity and growth run at fuller throttle, income and wealth are more equitably distributed, and consumers achieve a better standard of living.

In both theory and practice, markets that feature hard-nosed rivalry are the most likely to produce fair prices and wages, higher product and service quality, and more innovation and economic opportunity and growth. These markets stand in stark contrast to those where dominant players or tight oligopolies wield market power to stifle competition, and restrict choice and market access.

¹ For more information, please see www.progressivepolicy.org.



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The U.S. antitrust laws play a vital role in promoting competition in a market economy. The U.S. Department of Justice (DOJ), Federal Trade Commission (FTC), state Attorneys General, and private antitrust enforcers serve as “referees” on the playing field of markets. Enforcers call the “balls and strikes” on what the law deems to be pro-competitive, versus anticompetitive, consolidation and business practices that harm consumers and workers. The federal U.S. antitrust agencies enforce the Sherman and Clayton Acts, while the FTC also enforces the Federal Trade Commission Act.²

Under these statutes, antitrust enforcers, and ultimately the courts, ensure that consumers and workers are not harmed by mergers that substantially lessen competition, dominant firm conduct that squeezes out smaller rivals, and agreements to fix prices (or wages) or divide up markets. The prevailing consumer welfare standard captures these effects, ranging from higher prices or lower wages, to reduced product and service quality, and slower innovation.

The importance of enforcement of the U.S. antitrust laws is widely acknowledged by both Democrats and Republicans. For example, the bipartisan Antitrust Modernization Commission, established by Congress in 2002, produced a final report in 2007, stating: “The antitrust laws stand as a bulwark to protect free-market competition. They prohibit anticompetitive restraints that harm consumer welfare.”³

III. Statutory Exemptions to the Antitrust Laws Displace Competition and the Goal of Promoting Consumer Welfare

Congress has created a number of exemptions, in whole or in part, to the U.S. antitrust laws.⁴ Such decisions are based on the idea that the costs of displacing competition and promoting consumer welfare in a sector or market are exceeded by the benefits of promoting other societal goals. These goals might include worker protection, reducing destructive price wars, increasing the stability of supply chains, promoting investment and innovation, encouraging standardized practices and coordinated services, and improving bargaining power for smaller market participants.

Congressionally-mandated exemptions to the antitrust laws in some sectors and markets include (1) full statutory exemptions and (2) statutory exemptions created as part of a regulatory regime.⁵ In the first case, economic activity in a market is fully exempted from application of the antitrust laws. In the second case, exemptions apply to certain types of conduct, for example, under an existing regulatory regime.⁶

² 15 U.S.C. §§ 1–7, 5 U.S.C. § 18, and 5 U.S.C. §§ 41–58.

³ Antitrust Modernization Commission, Report and Recommendations, 2007, at pp. 334 and 348, https://govinfo.library.unt.edu/amc/report_recommendation/chapter4.pdf.

⁴ *Id.*, see Annex A, p. 378.

⁵ *Id.*, Chapter IV.B.

⁶ A third type of antitrust immunity is a judicially created exemption, such as the filed rate and state action doctrines.



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Leading statutory exemptions to the antitrust laws include the Capper-Volstead Act, which exempts cooperative associations that process, handle, and market agricultural products.⁷ There is also the Sports Broadcasting Act, which exempts professional sports leagues that collectively negotiate television deals as a single entity, versus a collection of competing teams.⁸ The Webb-Pomerene Export Act exempts the formation of associations to fix prices, divide up markets, or engage in other cartel-like activities for the purpose of selling products in foreign markets.⁹

High profile examples of statutory exemptions created as part of a regulatory regime include The Shipping Act, which is the subject of today's hearing exempts an array of agreements filed with the Federal Maritime Commission (FMC).¹⁰ These include those established by shipping "conferences," or groups of competing ocean liner shipping companies, that agree to specific terms of service, including fixing rates. There is also the air transportation exemption, which exempts joint venture agreements, subject to approval by the U.S. Department of Transportation (DOT), between international airlines to set rates on overlap routes.¹¹

As high profile as statutory antitrust exemptions are, it is important to note that Congress has been careful at times to specify proactively in statutes that application of the federal antitrust laws is *not precluded*. Explicit antitrust "savings clauses," or language stating so in effect appear, for example, in the Dodd-Frank Act¹² and Federal Power Act.¹³ By doing so, Congress ensured comprehensive competition enforcement across both federal sector regulation and an antitrust authority.

IV. There is Growing Advocacy and Evidence For Repealing Antitrust Exemptions

Antitrust exemptions can facilitate anticompetitive consolidation and business practices that harm consumers. These include exemptions from antitrust liability for collusive pricing and rate-setting agreements, anticompetitive market allocation, and cooperatives for joint marketing, processing and distribution of commodities that squeeze out smaller market players. In protecting anticompetitive activity through antitrust exemptions, Congress has explicitly weighed harm to consumers against the economic, social, or regulatory benefits created by displacing competition.

The private rewards from an antitrust exemption are enormous. They come in the form of weak, if any, incentives to compete on the merits, squeezing out smaller rivals, and monopoly and oligopoly profits. This protection spurs ongoing efforts to retain

⁷ 7 U.S.C. §§ 291–92.

⁸ 15 U.S.C. §§ 1291–95.

⁹ 15 U.S.C. §§ 61–66.

¹⁰ 46 U.S.C. app. §§ 1701–19.

¹¹ 49 U.S.C. §§ 41308–09, 42111.

¹² 12 U.S.C. § 5303.

¹³ 16 U.S.C. § 2603.



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exemptions and even to create new ones. Lawmakers, the courts, and antitrust enforcers have stressed for decades that antitrust exemptions should be disfavored.¹⁴ This includes outright repeal, rapid sunset provisions, and the narrow construction of the language of exemptions. Some jurisdictions have already acted on these imperatives. For example, the European Union terminated its exemption for shipping conferences in 2006.¹⁵

There are a number of compelling arguments for why antitrust exemptions should be disfavored. First, the benefits of exemptions accrue to small groups of stakeholders. However, the costs of displacing competition are passed through to potentially enormous groups of consumers through restrictions on market output, higher commodity prices from anticompetitive agreements or the exclusion of smaller rivals, lower quality and service, and less innovation.

Second, there is a growing body of evidence that indicates that antitrust exemptions do not pass the cost-benefit test. For example, there are 13 DOT-authorized antitrust immunized alliances that exempt joint venture agreements between airlines to coordinate on fares, scheduling, and capacity on trans-oceanic routes.¹⁶ But a growing body of economic research shows that the costs to consumers of higher fares from the elimination of competition on overlapping routes are not outweighed by benefits of coordination in other parts of airline networks.¹⁷

Third, many of the sectors and markets that enjoy antitrust exemptions have become more concentrated over time including, notably, shipping, railroads, and airlines. Higher levels of concentration virtually guarantee that antitrust exemptions will cover most industry participants and ensure that prices are uniformly higher as a result of anticompetitive coordination.

¹⁴ See, e.g., Deputy Assistant Attorney General Dina Kallay Delivers Virtual Remarks at the 2025 Chatham House Competition Policy Conference on Competition in the Airline Industry, U.S. Department of Justice, Nov. 20, 2025, <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-dina-kallay-delivers-virtual-remarks-2025-chatham>.

¹⁵ Press Release, European Union, Competition: Repeal of Block Exemption for Liner Shipping Conferences-Frequently Asked Questions (Sept. 25, 2006), <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/344&format=HTML&aged=1&language=EN&guiLanguage=en>.

¹⁶ U.S. Department of Transportation, List of Active Antitrust Immunized Alliances (last updated 11/18/2025), <https://www.transportation.gov/office-policy/aviation-policy/dot-aviation-antitrust-immunity-cases>. See also, Diana L. Moss Revisiting Antitrust Immunity For International Airline Alliances, Am. Antitrust Inst., Mar. 28, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3332651.

¹⁷ William Gillespie and Oliver M. Richard, Antitrust Immunity and International Airline Alliances, U.S. Department of Justice, Economic Analysis Group, EAG-11 (Feb. 2011), <https://www.justice.gov/atr/antitrust-immunity-and-international-airline-alliances>.

V. The Antitrust Exemption in The Shipping Act

The Shipping Act contains one of the oldest antitrust exemptions on the U.S. books. The Act "...expressly confers an exemption from the antitrust laws for agreements on shipping rates, pooling arrangements, and shipping route allocations, so long as those agreements are first submitted to and reviewed by the FMC."¹⁸ These arrangements occur within the ocean shipping "conferences," or cartelized collectives of ocean shippers that are immunized from antitrust liability, for example, for rate discussing agreements, capacity management, vessel sharing agreements, scheduling, and information sharing.

The FMC has questioned the applicability of the antitrust exemption for some agreements filed under The Shipping Act. This includes, most recently, a decision that cancelled provisions under the World Shipping Council's proposed Cooperative Working Agreement based on exceeding the scope of the statute's antitrust exemption.¹⁹ The Shipping Act has also been the subject of scrutiny, including most recently, The Ocean Shipping Reform Acts of 1998 and 2021.²⁰

These decisions and legislation, however, do not fully address the ill effects of the antitrust exemption for ocean shipping that has raised concerns for years.²¹ The DOJ has "long taken the position that the general antitrust exemption for international ocean shipping carrier agreements is no longer justified."²² The container shipping industry is now highly concentrated. In 2002, the top four ocean carriers controlled about 30% of the market.²³ Today, they control about 60% of the market. However, the 10-13 global ocean carriers are organized into three major alliances--2M Alliance, Ocean Alliance, and THE Alliance²⁴--that control over 80% of capacity and 90% of trade to and from the U.S.²⁵

¹⁸ Working Party No. 2 on Competition and Regulation, Competition Enforcement and Regulatory Alternatives – Note by the United States, OECD, Jun. 7, 2021, <https://www.justice.gov/atr/media/1347631/dl?inline>. See also, Peter Carstensen, Replacing Antitrust Exemptions for Transportation Industries: The Potential for a 'Robust Business Review Clearance, 89

Oregon L. Rev. (2011), <https://ssrn.com/abstract=3260696>.

¹⁹ FMC Draws a Line on Carrier Coordination: Implications of the Commission's WSC Agreement Order, Holland & Knight, Mar. 12, 2026, <https://www.hklaw.com/en/insights/publications/2026/03/fmc-draws-a-line-on-carrier-coordination>.

²⁰ Federal Maritime Commission, Ocean Shipping Reform Act of 2022 Implementation, <https://www.fmc.gov/ocean-shipping-reform-act-of-2022-implementation/>.

²¹ See, e.g., Erika M. Douglas, Antitrust Abandonment, 42 Yale J. On Regulation (2025).

²² Letter from Renata B. Hesse, Acting Assistant Attorney General, to Secretary, FMC, Re: The OCEAN Alliance Agreement, at 2, FMC No. 012426, Sept. 19, 2016, <https://www.justice.gov/atr/file/909131/dl?inline=>.

²³ Dylan Gyauch-Lewis and Mekedas Belayneh, Shipping Cartels Are Spiraling Out Of Control. The Agency Set To Regulate Them Doesn't See The Problem, Revolving Door Project, Mar. 28, 2022, <https://therevolvingdoorproject.org/shipping-cartels-are-spiraling-out-of-control-the-agency-set-to-regulate-them-doesnt-see-the-problem/>.

²⁴ Giannis Nikolakis, Global Container Rankings by TEU Capacity, May 27, 2025, <https://container-news.com/container-lines-rankings-2025/>.

²⁵ Wyatt Fore, A Rising Tide for Competition Enforcement: The Federal Maritime Commission Revitalizes its 'Anti-Monopoly' Tradition, 38(1) Antitrust Magazine Fall 2023,



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At these high levels of concentration, anticompetitive coordination between firms on prices, schedules, and capacity is presumptively illegal under the antitrust laws. An antitrust exemption is particularly troubling for consumer commodities where transportation costs are both passed through, and account for a significant portion of the final price to consumers.²⁶ Transportation costs account, for example, for 13% of food prices, 16% of lumber and wood prices, and 8% for textile prices.²⁷ About sixty percent of global trade relies on containerized oceanic shipping.²⁸

Continuing to protect anticompetitive conduct in a highly concentrated industry like ocean shipping guarantees that shipping rates will be at oligopoly levels and that those rates will be passed on to U.S. consumers for commodities that transit in U.S. foreign trade. Moreover, increases in container fees that apply across the board, higher detention and demurrage charges, additional logistics costs on trucking and shipping intermediaries have an outsized effect on smaller players. This reduces their ability to apply competitive pressure on pricing and service quality. This calls into question—much like in the case of the international airline alliances—whether the harmful effects of exemptions outweigh the purported benefits.

Collectively, these arguments make a strong case for why Congress should consider repealing the antitrust exemption in The Shipping Act. Because many of these arguments also apply to exemptions in other sectors and markets, Congress may also be well-positioned to consider broader reform, across the collection of antitrust exemptions currently on the books.

VI. The Problems With Antitrust Exemptions Put Competition Front and Center in U.S. Economic Policy

It is hard to frame public policy discourse about the high cost of living in the U.S. without considering the broader role of competition and antitrust enforcement as a major tool for protecting consumers and workers. Consumers and the dollars they spend are the backbone of the U.S. economy. For example, almost 70% of spending in the U.S.

https://www.americanbar.org/groups/antitrust_law/resources/magazine/2023-fall/rising-tide-for-competition-enforcement/.

²⁶ Leslie Sheng Shen and Hillary Stein, The Impact of Global Shipping Cost Surges on US Import Price Inflation, Federal Reserve Bank of Boston, Nov. 14, 2024, <https://www.bostonfed.org/publications/current-policy-perspectives/2024/the-impact-of-global-shipping-cost-surges-on-us-import-price-inflation.aspx>.

²⁷ Share of Transport Costs in Product Prices and Average Domestic Haul Length, The Geography of Transport Systems, <https://transportgeography.org/contents/chapter3/transportation-and-economic-development/transport-costs-prices-domestic-haul-united-states/>.

²⁸ A perfect storm for container shipping: Will prolonged disruptions shift the pattern of trade?, The Economist, Sept. 16, 2021, <https://www.economist.com/finance-and-economics/a-perfect-storm-for-container-shipping/21804500>.



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economy in the first quarter of 2024 was attributable to personal consumption expenditures.²⁹

Congress is, without doubt, aware of how certain policies adversely affect competition and consumers. For example, a recent Progressive Policy Institute (PPI) study raises concerns that antitrust is not doing enough to protect consumers from the exercise of market power in critical markets.³⁰ For example, consumers allocate most of their budgets to five major categories of goods and services: housing, transportation, food, insurance and retirement, and health care. Together, these categories accounted for about 75% of total consumer spending between 2020-2023.³¹

However, these consumer-facing sectors have faced decades of consolidation and rising concentration, sluggish growth in productivity, and bottlenecked supply chains that contribute to high consumer prices.³² Merger enforcement is considered the “first line of defense” in heading off high concentration that can foster the emergence of dominant firms and tight oligopolies. Yet the most consumer-facing sectors in the U.S. economy exhibit a lackluster record of merger enforcement.³³

Another emergent problem is the pattern of recent, early settlements in antitrust cases when a fully-litigated trial and strong remedies for restoring competition would have served consumers far better in lowering prices. For example, the DOJ settled two antitrust cases with remedies that are actually likely to *harm* consumers. One is the Hewlett Packard-Juniper Networks merger.³⁴ The DOJ initially intended to seek an injunction to stop the merger, which would have created intense pressure to raise prices in the market for local area networks, driving up costs for businesses. But the case was abruptly settled with a small divestiture that is highly unlikely to restore competition in a way that protects consumers.

Just last week, a similar settlement emerged in the DOJ and state antitrust case against Live Nation-Ticketmaster.³⁵ The case is one of the largest and most important antitrust monopolization cases in the U.S. Only a few days into trial in the Southern District of New York, the DOJ announced a settlement with remedies that will do little to restore competition in ticketing and reduce high ticket fees to consumers. Only a full break-up of

²⁹ How Does Consumer Spending Impact the Health of the Economy?, US Bank, October 11, 2024, <https://www.usbank.com/investing/financial-perspectives/market-news/consumer-spending.html>.

³⁰ Diana L. Moss, Can Antitrust Be Doing More to Protect Consumers? Progressive Policy Institute, December 2024, <https://www.progressivepolicy.org/wp-content/uploads/2024/12/PPI-Antitrust-Consumers-1210.pdf>.

³¹ Id.

³² Moss, *supra* note 29.

³³ U.S. Dept. of Justice and Fed. Trade Commn., 2023 Merger Guidelines, December 18, 2023, <https://www.justice.gov/atr/merger-guidelines>.

³⁴ U.S. v. Hewlett Packard Enterprise Co. and Juniper Networks, Inc., Case 3:25-cv-00951 (N.D. Cal.).

³⁵ U.S. and Plaintiff States v. Live Nation Entertainment, Inc and Ticketmaster L.L.C., 1:24-cv-03973-AS (S.D.N.Y.).



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the company, which now appears out of reach, would have delivered relief to consumers. This abrupt settlement also effectively shut out the 40 states and District of Columbia AGs that are seeking relief for years of monopoly ticketing fees.

Finally, the DOJ filed an antitrust case last year against digital rental housing platform RealPage.³⁶ The case alleged that prices for apartment rentals were fixed at anticompetitive high levels through the use of a digital algorithmic price fixing scheme on the RealPage platform. Rather than litigate the case to an outcome that would have produced strong remedies to restore competition, the DOJ settled the case early with remedies that will be almost impossible to enforce.

Current policies that harm competition and hit consumers hard in their pocketbooks and paychecks do not stop with antitrust. Tariffs imposed on imported commodities over the last year under the International Emergency Economic Powers Act (IEEPA) have, according to the Digital Data Design Institute's Tariff Tracker, raised the price of imported consumer goods subject to tariffs by about 7.0%, and the price of similar locally produced goods by about 4.6%.³⁷ Based about \$21 trillion in U.S. total personal consumption spending for 2025, this reflects about \$410 billion in extra costs paid by U.S. consumers.³⁸

Just as concerning is how tariffs reduce the competitiveness of U.S. producers. Tariffs increase the costs of imported materials, parts, and components. They drive up the cost of finished U.S. goods relative to foreign alternatives. This harms U.S. producers and has negative spillover effects on labor and innovation markets—effects that can be long term and damaging to U.S. competitiveness. Retaliatory tariffs in response to U.S. tariffs have also decimated certain sectors, like soybeans, by eliminating markets for exports that U.S. farmers rely on for long-term income security.

The foregoing antitrust enforcement trends and other policies that directly and adversely affect competition in the U.S. do a disservice to consumers. Congress has enormous resources to exercise oversight over the DOJ and the FTC through appropriations and inquiries into what antitrust concerns the agencies pursue, and how they pursue them. PPI encourages Congress to take a proactive role in ensuring that antitrust enforcement and competition policy in the U.S. works for consumers by keeping competition healthy, reining in market power, and keeping the cost of living down.

³⁶ U.S. v. Realpage, Inc., 1:24-cv-00710, (M.D.N.C.).

³⁷ Digital Data Design Institute, Tariff Tracker, <https://www.pricinglab.org/tariff-tracker/>.

³⁸ Ed Gresser, Supreme Court: Presidents cannot use 'international emergencies' as pretexts to create their own tariff systems, Progressive Policy Institute, Feb. 25, 2025, <https://www.progressivepolicy.org/supreme-court-presidents-cannot-use-international-emergencies-as-pretexts-to-create-their-own-tariff-systems/>.



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I appreciate the opportunity to submit testimony for this hearing and look forward to answering questions from the committee members.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Moss', with a stylized flourish at the end.

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Mr. FITZGERALD. Thank you, Dr. Moss. We will now proceed under the—minute rule with questions.

I want to recognize the gentleman from Texas for five minutes.

Mr. GOODEN. Thank you, Mr. Chair. Professor Douglas, it has been pointed out that the FMC hasn't done a great job of regulating anticompetitive practices. Would it benefit if we consolidated more of those functions—enforcement functions rather—into the DOJ or the FTC?

Ms. DOUGLAS. If you repealed the exemption, the DOJ and FTC would have those enforcement functions that the FMC is not using.

Mr. GOODEN. Do you have a position on that?

Ms. DOUGLAS. Yes. That the repealed exemption is something that a lot of people would support, and I definitely support.

If I can dig in a bit more to what you're asking, I'm not necessarily saying that the FMC's power has to change, but the additive power from the DOJ and FTC by repealing the exemption would be beneficial here, because we're not seeing a lot of enforcement.

Mr. GOODEN. Are there current policies or regulatory loopholes that the big three alliances are using or exploiting that you're aware of?

Ms. DOUGLAS. It's not a loophole, in that it's permitted under the Shipping Act right now. Under 4307, antitrust law does not apply to these big three shipping companies. In that sense, it's a matter of the law permitting it right now because of the exemption.

Mr. GOODEN. Thank you. Mr. Rice, going back to the issue of collusion, how do these issues affect every day American households?

Mr. RICE. Sure. Thank you, Congressman, for the question.

As we've seen for our dairy producers and exporters, the highly consolidated nature of the shipping industry creates headaches for us, due to inefficiencies that arise. It's not wholly the fault of carriers, as we see port congestion and weather delays, but the shrinking number, as Mr. Sicotte has pointed out, the shrinking number of available options just limits the availability of carriers for our exporters and our producers to move their product overseas.

Mr. GOODEN. Mr. Sicotte, what changes to the current regulatory framework would you propose, short of a full removal of the anti-trust exemption?

Mr. SICOTTE. Short of a full removal, I would recommend that the FMC be required to share its confidential service contract data with the DOJ or FTC, and if the DOJ reviews an agreement, which they should have the right to do, that those objections have to be responded to publicly in a way that we can understand what the FMC is doing. That would be a minimum.

Mr. GOODEN. It also doesn't seem like they are lots of American ship companies banging down our doors asking for this.

Mr. SICOTTE. Well, there are, in terms of ocean shipping carriers, zero, right? They were absorbed into foreign shipping companies over the past 30 years, 40 years—30 or 40 years. There used to be two very large ones, but that's true.

Mr. GOODEN. I will close with you, Dr. Moss. My constituents aren't banging down my door about this issue. I suspect my colleagues on the Left would say the same thing. Do you have any-

thing you would add? It seems like everyone's getting toward the same page here.

Ms. MOSS. I do think consumers care significantly about their cost of living.

Mr. GOODEN. Sure, absolutely.

Ms. MOSS. We know this to be a serious problem.

Consumers are smart enough to understand that their commodities, especially the big-spend items in their budget, on food and commodities, anything that goes into building or construction, are really affected by immunities and exemptions. They drive up the cost, and they drive up the final prices to consumers.

I've talked to a lot of consumers all the time and they are aware of these policies. When I say, "Did you know that the antitrust laws don't apply in this particular sector?" they get very angry.

Mr. GOODEN. It sounds crazy, right? Yes.

Thank you. I appreciate you all. I yield back to the Chair my time.

Mr. FITZGERALD. The gentleman yields back. We now recognized Mr. Nadler from New York for five minutes.

Mr. NADLER. Thank you, Mr. Chair.

Professor Douglas, we have read countless stories about reported corruption in the DOJ. This Subcommittee heard testimony from the former second-in-command of the Antitrust Division, Roger Alford, after he was fired for pushing back against this corruption, about how mergers and settlements in the Trump Administration increasingly involve backroom deals, creating a pay-to-play system. What effect does this kind of corruption of the rule of law have on the market, and what does that mean for consumers?

Ms. DOUGLAS. Thank you for this important question.

I am gravely concerned by reports of political influence peddling in antitrust agencies. I work on the rule of law, and I don't think it should ever be displaced by political favoritism in antitrust law, or otherwise. I want to commend the Subcommittee from hearing from Roger Alford and important voices on this issue.

That's all that I can say on it for right now. Thank you.

Mr. NADLER. Thank you.

Dr. Moss, can you answer the same question? What is the impact on the market and consumers of this kind of pay-to-play corruption? Is there anything that Professor Douglas missed?

Ms. MOSS. Professor Douglas summed it up quite nicely. We are in a troubling new era where antitrust enforcement has been politicized and weaponized. There appear to be two channels. One is to go directly to the White House with your deal to grease the skids for antitrust review. The other channel is for what appears to be political interference to swoop in and to commandeer cases to create premature settlements that reward companies, powerful companies, and harm consumers and workers in the markets that are affected.

Antitrust is a key tool, as I've stated, for protecting competition, consumers, workers, paychecks, and pocketbooks, if you will. If it does not function, if we lose due process, and if we sacrifice the rule of law, we are harming millions and millions of American workers and consumers, and we are going to decimate our economy in the process.

Mr. NADLER. Can you give us some examples?

Ms. MOSS. Absolutely. Of course, the worst, which has already been referenced, is the Live Nation–Ticketmaster deal. A very surprised and angry judge, a very surprised and angry set of 40 States plus D.C., who were locked out of a settlement. The settlement does nothing—nothing—to reduce the market power of Live Nation–Ticketmaster in ticketing, in concert promotion, in exclusive contracts with venues.

The bad conduct will continue. We have a long history of bad conduct and violation of past decrees by the company. This will do nothing to lower the monopoly ticket fees to millions of fans. It will steer everybody back to the Live Nation–Ticketmaster platform for 20 more years of monopolistic conduct.

The same thing with Hewlett Packard. Under Gail Slater, she was prepared to—DOJ—go to court to enjoin that merger, which would have created a duopoly and local area networks. Another premature settlement, ineffective remedy, that will do nothing to keep costs down for American businesses.

I could go on. I could go on, but those are two very leading examples.

Mr. NADLER. Thank you.

Dr. Moss, this hearing has been called to examine competition in the maritime shipping industry. Can you compare the impact of reforms in this area to the impact of addressing the cost of Trump's tariffs, the doubling of healthcare premiums, or the recent surge in gas prices?

Ms. MOSS. I would say the issue of immunities and exemptions is very important. Any abstention or exception or immunity from enforcing the antitrust laws and holding companies liable under the antitrust laws does an enormous disservice to competition, to our market economy, to our consumers and workers.

In the broader scheme of things, we are probably talking about a drop in the bucket relative to the over \$400 billion of additional costs that Americans have absorbed as a result of tariffs within an incredibly compressed, short period of time.

We are really looking at a very macropicture in terms of adverse impact of policies on consumers and a very, very micro, surgical policy through repealing or rolling back the shipping exemption. The two really do not compare. We need a more holistic approach to how to protect our consumers and our workers.

Mr. NADLER. Thank you, Dr. Moss. I yield back.

Mr. FITZGERALD. The gentleman yields back. We now recognize the gentleman from North Carolina for five minutes.

Mr. HARRIS. Thank you, Mr. Chair. Thank you to all of you on the panel for your presence and your expertise today.

Mr. Rice, as someone who represents a district where agriculture is a prominent industry in North Carolina, I'm always worried about ways in which this anticompetitive behavior in the ocean shipping industry can harm producers, as I know you have expressed as well. Can you take just a few moments and explain the impact that the alliance system is having on agricultural exporters?

Mr. RICE. Well, certainly, thank you, Congressman.

To give you a bit of an example, the worst of these supply chain issues happened during the pandemic. As I mentioned before, our exporters are wholly dependent on foreign ocean carriers. While the Shipping Act prevents them from unreasonably refusing to deal with us, it doesn't prevent them from rolling a booking, moving it onto the next ship, not giving transparency into why a shipping was rolled.

For example, one of our exporters had a container destined for Asia. It was rolled so many times that the original ship that it had been scheduled to sail on had went to Asia and came back, and that's the one that picked up the container.

There's one piece of this that, yes, some of these alliances, they do create some operational efficiencies, but at the same time, Congress saw fit, when passing the Shipping Act, that if these carriers are to receive antitrust exemptions, they have to provide reasonable access for U.S. exporters and ensure efficiency.

It's hard to reconcile when we saw 70 percent of some of these carriers carrying—70 percent of the ship would be empty containers, while our exports would be left on the dock during the height of the pandemic. Now, those, thankfully, have abated since then, but we do see these issues with transparency, and a lack thereof, into why decisions are made; why sailings are canceled or blanked. It creates a ton of logistical issues for our industry who is exporting perishable products that need to get to an end consumer in a timely fashion.

Mr. HARRIS. Thank you very much.

Mr. Rice, while we are there, in April 2025, the Trump Administration released a Maritime Action Plan with a goal of really restoring America's maritime dominance. The plan seeks to really revitalize U.S. shipbuilding and rebuild the maritime workforce. Can you give us your thoughts on how this plan would help to address the problems that the American, particularly American dairy exporters and other agricultural exporters, are currently facing with the ocean shipping?

Mr. RICE. Certainly. Investment in the U.S. shipbuilding industry, as I mentioned, is sorely overdue. For example, Chinese shipbuilders build 230 times the number of ships per year as the United States. It's very troublesome that we just don't have an industry here in the United States to produce these container ships that we need.

Yes, supporting investment in the shipbuilding capacity, streamlining the permitting, and reforms at shipyards and ports—there's a long backlog of maintenance and expansion issues at the ports themselves that need to be addressed.

The one thing I mentioned in my remarks as well, in developing a plan to fund these programs, we just think it warrants careful consideration of any penalty fees that are put on foreign ships to make sure that the people who are actually paying it aren't American exporters.

Mr. HARRIS. Well, thank you.

Ms. Douglas, as you note in your testimony, the Federal Maritime Commission, or FMC, rarely brings cases against the ocean shipping carriers that dominate shipping markets, despite having the legal authority to do so. Can you kind of help us dive into that,

of how lack of transparency over the FMC's competitive analysis of ocean shipping agreements could be contributing to the FMC's lack of challenges to ocean carrier agreements?

I'll follow that up and give you the rest of my time. What would be the possible effects of having the DOJ work with the FMC to scrutinize ocean shipping agreements?

Ms. DOUGLAS. Right. The lack of challenges seems to suggest that there's either not analysis happening or analysis that's happening that tolerates greater anticompetitive harm than antitrust law.

What Professor Sicotte and I are both saying is it's not clear how the FMC is coming to these conclusions. Because from the outside perspective, it's a concentrated industry that, we've heard from industry here, is dominated by a few companies, and has had a number of cartels that have been prosecuted where the exemption doesn't apply.

We would need to know how these agreements are being implemented in fact. That's something that antitrust law can get at. If DOJ could do an investigation, the rule of reason looks carefully at these sorts of claims that maybe there's some efficiencies here; maybe there isn't. There are a lot of different provisions in these agreements, but as written, we can't really tell what's going on.

Mr. HARRIS. All right. Thank you very much. Mr. Chair, I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the Ranking Member of the Full Committee, Mr. Raskin, for five minutes.

Mr. RASKIN. Thank you, Chair Fitzgerald.

Dr. Moss, President Trump promised to lower prices on day one. What has actually happened since day one, and how are American families faring?

Ms. MOSS. Thank you for the question.

Nothing has happened. In fact, things have gone the other way. The promise to lower prices on day one was really lip service to a broader political strategy.

Consumers have been under assault for years by growing concentration in really critical consumer-facing sectors. Consumers spend 75 percent of their budgets on food, transportation, housing, healthcare, and insurance. Those are highly concentrated industries that needed direct attention and support for very, very strong enforcement, which we have not gotten under this current administration.

Consumers are really buckling under the burden of high prices from excessive market power, from supply chain instability, from inflation. That should be a No. 1 goal. Consumers support the economy. They are the backbone of the economy. Without them, we will not have a robust, functioning economy.

Mr. RASKIN. People instinctively understand the way that corruption and insider political influence end up harming consumers and driving up prices. I wonder, is it also the case that, when we allow combinations to form and conglomerates to take over the economy, that this increases corruption and it increases political inequality and injuries to democracy.

Ms. MOSS. Yes. The purpose of the antitrust laws, of course, is to promote competition in the economy; to prevent the concentration of market power. The antitrust laws really address directly the economic effects of high concentration and a lack of competition.

What you're getting at is a really important connection between economic power and political power. There is a direct link there. The importance of antitrust enforcement in controlling economic power, excessive economic power, does link directly into controlling excessive political power. Of course, political power can lead down a number of different pathways. That's what we're seeing right now.

Mr. RASKIN. You can get into a vicious cycle where economic concentration increases political concentration of power, and then, that further deepens the ability to manipulate the economy for particular groups?

Ms. MOSS. That is correct. I would just add a really important point. These precedents are now being set for the first time in the United States, this type of weaponization and politicization of the antitrust process.

This administration will not be here forever. There will be other administrations. The setting of those precedents as they exist now can—it really spells a very, very dismal and concerning future for our antitrust establishment and law enforcement in the U.S.

Mr. RASKIN. The shipping antitrust exemption which we are discussing today has actually been studied and debated extensively, and even reformed repeatedly, as recently as 2022. Can you name some of the other anticompetitive policies and problems today orchestrated by the Trump Administration that are doing a lot more damage to American consumers than the shipping exemption?

Ms. MOSS. Sure. One thing that the Trump Administration did, as part of its order to realign regulation, to eliminate anticompetitive relation—anticompetitive regulations, was to really gut the ability of the U.S. Department of Agriculture to collect data, to do analysis that would have really supported competition initiatives in our food supply chains.

We see independent cattle ranchers, for example, being pushed out, priced out of the market by large, industrialized players and the packer cartel.

The inability of USDA to collect data has completely undercut the agency's important authority to police competition and—

Mr. RASKIN. Was the purpose of elimination of the data collection function?

Ms. MOSS. I believe the—eliminating the data collection was designed, potentially, to undercut the ability of the agency to function properly and support competition in our food and—

Mr. RASKIN. Is that happening in other agencies and departments, too?

Ms. MOSS. It absolutely is. In housing—I referenced the Real-Page settlement—we really needed a court decision on what constitutes algorithmic price-fixing on a digital platform. We didn't get that because that case was settled.

Mr. RASKIN. Thank you. I yield back, Mr. Chair.

Mr. FITZGERALD. The gentleman yields back. I recognize myself for five minutes.

Ms. Douglas, you list several examples in your testimony of how the ocean carrier agreements could raise significant anticompetitive risks. Can you talk about that a little bit more?

Ms. DOUGLAS. Yes. We understand what these agreements look like as written. My written testimony talks about what they might look like as implemented.

If carriers can't agree on scheduling, that means they could also allocate different markets to each other. That's a classic antitrust law violation.

It's also possible that there could be an exercise of monopsony or buyer power against ports in the United States, because these agreements allow these companies to collectively negotiate, where previously they would have been individual buyers.

Particularly, on the idea of scheduling, enabling market allocation, we have a close parallel in the airline industry, right? Another transportation industry where we have seen that a scheduling agreement in *U.S. v. American Airlines*, which is a 2024 case, a scheduling agreement caused a decrease in capacity. It caused the competitors who made that agreement to decide to fly less planes.

What I'm saying is you would have to look at how these agreements are being implemented in shipping to figure out if that is also occurring here, if there's a capacity reduction here, or if there's market division happening here.

The other big risk that I highlight in my written testimony is that these companies are allowed to share extensively competitively sensitive information. Normally, rivals don't share with each other their future plans for the market. These agreements allow alliances to engage in that sort of sharing. It's not itself a violation, but it's a classic factor that in antitrust law we look at to say that, if companies can talk with each other about their competitive plans, that's likely to reduce their rivalry in the market and lead to higher prices.

Thank you.

Mr. FITZGERALD. Let me just followup then. How should DOJ view these agreements? What should they be looking for? What would prompt them to take action on some of these agreements?

Ms. DOUGLAS. Right. If the DOJ were to look at these agreements under the rule of reason, they would be looking at whether they unreasonably limit competition relative to a free and fair open market without the agreements.

They would want to look at how these companies are scheduling their services relative to how they might be scheduled if the market was competitive, if it didn't have those agreements in place. They might look, for example—and this is purely something that's taken from the airline case—are these companies sending as many ships as close in time as they would if they didn't have this agreement? Are they sending fewer ships or ships with less capacity? Is there this capacity reduction or market allocation, which are, again, classic violations of antitrust law under the Sherman Act? The DOJ would have to look at how these agreements are being implemented in practice to make that fact-specific evaluation.

Mr. FITZGERALD. Very good. Thank you.

Mr. Rice, so given that the top three alliances control over 80 percent of the market, as you spoke about earlier, do you think

that provides ocean carriers with market power over importing and exporting companies? Is this simply another fact or a piece of data that doesn't necessarily have that effect? Where do you think that falls?

Mr. RICE. Yes, thank you, Mr. Chair.

Yes, certainly the consolidation within the ocean carrier industry does create challenges in the power that they amass. For example, there might be a dairy exporter from Wisconsin sending only three or four containers a month, and they have little to no leverage in those negotiations with one of three alliances. That component is concerning.

The other component is, to some of the other witnesses who have testified about this, is the ability for these alliances to coordinate on overcapacity now that there's new ships coming online. Limiting capacity creates problems for exporters as well in the number of options that we have to get the containers to their end destination.

It's a number of factors, but the amassing, and it continues to accumulate. This is not a static thing. These alliances continue to consolidate and create additional market power that our exporters have struggled to gain any leverage in negotiations with.

Mr. FITZGERALD. Very good. My time has expired. We will go to the gentlewoman from Vermont for five minutes.

Ms. BALINT. Thank you, Mr. Chair.

Mr. FITZGERALD. Yup.

Ms. BALINT. Competition brings down prices, right? When we don't have real competition, then executives and investors get to reap more profits, and everyone else gets sticker shock. That is partly why this area of the law is so interesting to me.

Because lack of competition in all industries impacts people in their bottom line. Dr. Moss, you spoke to that really directly. This includes maritime shipping.

Although this may be a small aspect of what is increasing cost, it is important for us to look at this. It is why antitrust law matters.

I know that antitrust law can seem dry; it can seem complicated, and I get that. To your point, Dr. Moss, American consumers understand that, when there are only a few big players, regardless of the industry, they pay the price for that. It is at the heart of what I think we are trying to do on this Committee, is translate that for everybody.

Dr. Sicotte, I appreciate that we have a Catamount in the room today from the University of Vermont. Nice to see you.

I would like to go to you first. Am I right that about 80–90 percent of ocean shipping is actually controlled by just three major shipping alliances?

Would you mind putting on your mic?

Mr. SICOTTE. I apologize.

Ms. BALINT. No, that's all right.

Mr. SICOTTE. I'm not used to this.

Yes, that was the Fiscal Year 2024 figure in the FMC report. There's one very large company that has subsequently removed itself from the alliance, but the most—by any stretch, you would call this quite a concentrated industry.

Ms. BALINT. We talk about alliances. We will talk about conferences. Again, I'm trying to translate it for people back home. From where I sit, this looks a lot like cartels.

Tell me why these ocean shippers form these cartels. Why does this advantage them?

Mr. SICOTTE. Well, the advantage—there could be two possible advantages from an economic perspective, right?

One is that it enables them to use very large container ships that they wouldn't be able to fill on their own. That is one—that's their logic for an efficiency defense.

Ms. BALINT. OK.

Mr. SICOTTE. OK? The other logic would be the market power, the exercise of market power. To actually evaluate the merits of those arguments is really—it needs to be done. That's what is missing in that.

Ms. BALINT. I agree with you, and I think we can't just take their word for it around efficiency. We have to actually kick the tires and see if this holds water.

I want to get to what you were talking about, market power. Tell me what they can do collectively as a cartel that they can't do separately.

Mr. SICOTTE. Well, if it's a full cartel—now, they—cartels—

Ms. BALINT. I'm using that word. I understand you may not be comfortable with that word.

Mr. SICOTTE. Yes, because, technically, they're not permitted to fix rates jointly, right? That would be one stretch. If you can fix capacity jointly, you can, potentially, have the same impact. OK?

Ms. BALINT. Do you think it is fair to say that these massive ships with mountains of containers that carry, basically, everything that Americans see on their shelves, they are owned by these three alliances/cartels. They are actually impacting Americans directly every time that they go to the store and take something off the shelf. Is that fair to say?

Mr. SICOTTE. Yes, absolutely. Not only that, it's all the American farmers. Much of what's traded are inputs as well and intermediate goods. It hurts companies. It raises the costs of doing business.

Ms. BALINT. Yes. Actually, that is a great segue into talking with you, Mr. Rice.

I'm a Vermonter. I understand the importance of the dairy industry. I'm wondering, how does this directly—again, I'm using the word "collusion" because that is what I think it is. It is a cartel involved in collusion. How does this impact American dairy farmers?

Mr. RICE. Well, thank you, Congresswoman. Vermont has some great cheeses and other dairy products.

Ms. BALINT. Thank you for noticing.

Mr. RICE. For cheeses, for example, perishability is a real concern. When these carriers aren't beholden to the interests of U.S. agriculture or dairy exporters, those products may not reach customers in time, and then, you have shelf-life issue at the East Coast.

Ms. BALINT. Exactly. Absolutely. I see that I'm almost—well, I am out of time.

If I could just say, if you will indulge me just for a moment, Mr. Chair—I know that this is an issue that we can come together on

as Democrats and Republicans. It is one of the reasons why I love being on this Subcommittee, where we can actually do some bipartisan work. I hope that this is something that we will dive into—not just on the shipping industry, but all the industries in which Americans are getting screwed because we are not actually holding their feet to the fire and actually enforcing antitrust law.

Thank you. I yield back.

Mr. FITZGERALD. The gentlewoman yields back. Now, I will recognize the gentleman from California for five minutes.

Mr. ISSA. Thank you, Mr. Chair.

Ms. Douglas, as a researcher, how do prices paid by our similar importers or exporters compare here to other countries around the world?

Ms. DOUGLAS. That's an excellent question that I would look to my economics colleagues to answer when it comes to specifics on price.

Mr. ISSA. OK. Who has got the proof that somebody else gets a better price than us? Is this a monopoly that screws the whole world or is it just a monopoly that is screwing the United States?

Yes, sir?

Mr. SICOTTE. Well, that's such a great economics question. That's precisely the information that we don't know the answer to the question. Because that's actually a surprisingly difficult thing to come up with; is to actually measure the degree of market power that's being exercised.

There's a good reason to be suspicious, based on the contours of the agreements, right, for sure. If they can't actually—I've never seen someone using the data and actually answering your question. I don't know the answer.

Mr. ISSA. OK. Well, let's explore this direction. Because we are asserting here today that there is a monopoly at work; that it is Chinese-based, and that it is using its market power.

Is it fair to say the Chinese don't just own ships, they own the ports here and around the world, including, but not limited to both sides of the Panama Canal?

Mr. SICOTTE. It's my understanding that the port ownership is that they—that COSCO was forced to divest partially. Certainly, in terms of their agreements and their operations, they're a very large player.

Mr. ISSA. If they were transparent in some ways, they are opaque in some of the transfer cost?

Mr. SICOTTE. A lot of the data would be available to the Federal Maritime Commission to investigate that, yes.

Mr. ISSA. OK. Let's go the other way. Ms. Douglas, I'm going back to you. I'm not going to quit until you give me an answer to something—not that you are not trying to.

Is it fair to say that, if the group of companies together—nine companies—with the kind of market power they have—and some of them specifying more in one country versus another—if you were looking at a merger and acquisition, you would turn this one down?

Ms. DOUGLAS. That's absolutely fair to say because the market shares, as we've mentioned, would be at least above 60–95 percent. For mergers, we typically look at a 30-percent-or-above share. So, yes.

Mr. ISSA. From a pure U.S. standpoint, we can agree that we created a monopoly in 1916 and thereafter. We allowed it to continue. Now, we have allowed this trust/monopoly—and “trust” is probably even a better word—to, in fact, be opaque and to operate in a way that we really just don’t know whether they are gouging us or not? We don’t know whether they are getting a fair price? Even more importantly, if they decided not to service us, we would have very little recourse because we don’t own enough ships to take care of ourselves. All those are vulnerabilities based on the current trust, if you will. Is that fair to say?

Ms. DOUGLAS. That’s fair to say. I just want to make sure we’re being clear that what we’re talking about is agreements among competitors. Regardless of whether there is monopoly power, agreements can still be unlawful. That’s what we’re seeing in this space, and that’s why it should have antitrust oversight.

Mr. ISSA. Well, as someone in San Diego who watched former CEO Smisek collude with the other airline companies to screw San Diego out of its direct flight from DCA, it is not just price. Sometimes it is service. We found ourselves with less choice. We were not without power.

If we, essentially, set aside or partially set aside this law in bipartisan legislation, then the dismantling or the regulating or the holding accountable could begin. Is that fair to say?

Ms. DOUGLAS. Then the scrutiny from antitrust law would be applied and would likely find that there’s problems in this industry, if this were repealed. We’ve seen around the edges where DOJ retains its jurisdiction, where the exception doesn’t apply, there have been a number of cartel cases that have been successfully provided.

Mr. ISSA. OK. Last question in closing, is there a solution less than setting aside the 1916 law that would effectively require transparency before making the decision, but trigger an invalidation of this law if they failed to meet that requirement? Is that a possible solution to get the answers to your questions before we decide how much to break up these agreements? I’m just wondering if, from a legislative standpoint, if we have a middle ground here that we could come together on. Quickly.

Mr. SICOTTE. I think so. If you amend the law to require, or FMC to take into account DOJ’s input more explicitly, that could be a middle ground.

Mr. ISSA. I thank you, Mr. Chair, and I appreciate the extra time and I yield back.

Mr. FITZGERALD. The gentleman yields back. I would recognize the gentleman from Georgia for five minutes.

Mr. JOHNSON. Thank you, Mr. Chair.

There is a well-known theory around here that nothing comes before this Committee that has not been approved in advance by Donald Trump, or directed by him to occur. Today, we are talking about competition between ocean carriers on the high seas, while here at home Americans are catching hell trying to pay their bills.

He is wanting us to be talking about what is happening on the high seas, but there are a lot of people at home watching C-SPAN. I’m always surprised at how many people do.

There are people at home wondering, what is this MAGA Republican Congress doing to address the fact that competition between

predatory Wall Street private equity and venture capital firms are swallowing up the single-family home market? They are crowding out homebuyers, controlling the market, concentration in the market, driving up the cost of real estate beyond what people can pay—while at the same time getting a stranglehold on the apartment market and raising rents up at will, using algorithms and other predatory processes to soak the American people of their money.

Yes, the rent in America is too damn high. Yes, the price of groceries in America is too damn high. The cost of gas in America—and across the world now—is too damn high.

The cost of medical care is too damn high. We have got venture capital and private equity firms swallowing up medical practices and hospitals, getting a lock on the medical care market, while at the same time insurance companies are doing the same thing.

Costs continue to go up for Americans due to market concentration into the hands of the super-wealthy billionaires who were seated behind Trump at his inauguration—the same ones who will be frolicking in the new White House ballroom that is being built to replace the West Wing of the White House.

They are getting richer and richer, and Americans trying to make an honest day's pay are paying more and more.

Can any of you witnesses think of one single thing that MAGA Republicans have done in Congress to make life more affordable for the American people? Can any of you cite one thing that they have done? I'm with you; I can't, either.

Let me ask someone, are tariffs taxes? Dr. Moss, what do you say?

Ms. MOSS. The answer is the answer that we all know, and even your average American consumer knows, that the tariffs are taxes. They are paid by consumers. They raise the prices for essential commodities, where Americans, workers and consumers spend most of their money. That is just Economics 101. That is the economic reality. It is also the political reality.

Those consumers vote. They are going to turn out in droves because cost of living is such a top-of-mind issue for them. If anything galvanizes consumers in the upcoming election cycles, it will be that issue.

Mr. JOHNSON. Well, I tell you, it is \$175 billion in taxes due to tariffs that have been levied on the American people over the last year by this Trump Administration—with the complicity of Members of Congress here in control, MAGA Republicans. Americans will, indeed, be looking at it in November.

The high cost of housing, food, medical care, and energy is what the American people are concerned about. This Committee appears to be focused on competition between ocean carriers on the high seas. I think that is a shame.

With that, I yield back.

Mr. FITZGERALD. The gentleman yields back.

Ms. BALINT. Mr. Chair, I have a couple of UCs to enter into the record.

Mr. FITZGERALD. The gentlewoman is recognized.

Ms. BALINT. First, from *Reuters*, February 12, 2026, "NY Fed report says Americans pay for almost all of Trump's tariffs."

Second, *Gallup*, March 2026, “One-Third of Americans Cut Back to Cover Healthcare Expenses.”

Third, finally, from *The New York Times*, “Oil Rises, Bringing Gains to 40% Since the Start of the War.”

Mr. FITZGERALD. Without objection.

Ms. BALINT. Thank you.

Mr. FITZGERALD. That concludes today’s hearing. Thank you to our witnesses for appearing before the Committee today.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 11:33 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=119042>.

