



The Bottom Line

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OCEAN SHIPPING REFORM ACT INTRODUCED TO CONGRESS

Summary

House Representatives John Garamendi (D-CA) and Dusty Johnson (R-SD) on Aug. 10 introduced the Ocean Shipping Reform Act of 2021 (OSRA 2021). If passed, the legislation would mark the first major update of federal regulations since 1998.

Background

The Ocean Shipping Reform Act of 1998 modernized and deregulated the international ocean shipping business. The last Reform Act set in motion a transformation of our common carriage system into a contract-based system in which pricing was confidential instead of publicly filed. Other changes brought about by this regulation included a diminished role for tariffs, reduced enforcement tools employable by the Federal Maritime Commission (FMC) and a redefinition of 'common carriage' in favor of private contract-based business.

One outcome of this reform was the development of carrier operating alliances – the goal of which was purported to be cost savings and schedule efficiencies.

The pandemic labor conditions combined with shipping volumes have created a crisis in the supply chain. It is evident that there is currently almost debilitating extreme congestion occurring at ports on both U.S. coasts. Regardless, there is a continued propensity of the carriers and marine terminal operators to continue to assess demurrage and detention even though the slow down on the movement of containers in and out of the ports is beyond the control of NVOCCs and shippers. In response to the deluge of complaints reaching the FMC, the Commission has initiated and expanded recommendations for the industry designed to alleviate some of these conditions.

Current Status

The new Ocean Shipping Reform Act (2021) is bipartisan legislation introduced last month by Congressmen John Garamendi (D-CA) and Dusty Johnson (R-SD) and is seeking to address issues of maritime shipping that have been creating challenges for beneficial cargo owners. The proposed legislation, designed to establish reciprocal trade to promote U.S. exports, would also impose strict regulations on ocean carriers and strengthen the oversight role of the Federal Maritime Commission. It addresses things like minimum service standards for carriers and would regulate late fees and put the burden of proof for those fees on the carrier or marine terminal operator, not the company who placed the order. It also stipulates that carriers cannot decline export cargo if it can be loaded safely and in a reasonable amount of time. With the creation of the

carrier alliances, contraction of the number of carriers in the market, changes to chassis management and others, there is overwhelming support for these important reforms. Carriers would be required to provide notice of cargo available and container return locations under the bill. The legislation would also effectively codify the Federal Maritime Commission's Interpretive Rule on Demurrage and Detention Under the Shipping Act.

While industry welcomed the FMC's Interpretive Rule on Detention and Demurrage, more than just 'guidance' is needed. As it stands, the guidance is not being followed by ocean carriers and marine terminals and this continues to lead to hundreds of millions of dollars in unfair penalties against US shippers and their transportation partners.

The World Shipping Council has criticized the proposed reforms as an attack on ocean carriers that it believes will be counter-productive and 'doomed to fail', noting: "The supply chain congestion is widespread. Every link in the supply chain – from marine terminals, to truckers, to rail cars and warehouses – is under tremendous strain. It is unrealistic, inequitable, and unproductive to try to address these supply chain-wide challenges by regulating only one class of supply chain participants – ocean carriers. It is doubtful that regulating all supply chain actors would have any discernible positive impact on the current supply chain challenges."

Impact

The legislation has robust support from a variety of industries, including agricultural, apparel and retail. A coalition of more than 152 companies and trade associations representing U.S. importers, exporters, transportation providers and other supply chain stakeholders submitted a letter of support to Congress endorsing the Act. The letter stressed that "US companies, their workers and consumers rely on a global maritime transportation system to support their businesses and move goods through the supply chain", adding: "The ongoing supply chain challenges that face the nation's exporters and importers are having a significant effect on their economic recovery during the pandemic. While the supply chain has been stretched from end-to-end, there are systemic issues that need to be addressed in the maritime cargo sphere."

RESOURCES

[Ocean Shipping Reform Act of 1998 Overhauls Transportation System for U.S. Exports and Imports](#) (Morgan, Lewis & Bockius LLP)

[Ocean Shipping Reform Act of 2021](#) (U.S. House of Representatives)

[US Businesses Back Ocean Shipping Reform Moves](#) (Lloyd's Loading List)

[Proposed Ocean Shipping Bill Gains Momentum Among Supply Chain Stakeholders](#) (Home Accents Today)