U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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The Honorable Roger Wicker
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Peter A DeFazio
Chairman
The Honorable Sam Graves
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Ocean Carrier Bankruptcies: Federal Agencies Have a Limited Role in Addressing the Effects on Cargo

Ocean shipping is an important part of the U.S. economy, supporting the trade of cargo into and out of the United States from all over the world. The Federal Maritime Commission (FMC) oversees ocean common carriers in the ocean liner trade that provide service to and from the United States and, according to FMC, works to ensure a competitive and reliable ocean-transportation supply system.[1] According to FMC, more than $1 trillion in U.S. exports and imports are moved by ocean vessels annually.[2]

In August 2016, South Korea's Hanjin Shipping (Hanjin) filed for bankruptcy protection after 4 consecutive years of financial losses. Hanjin—at the time the seventh largest ocean carrier in the world—subsequently halted the movement of its vessels and failed to meet many of its cargo delivery and payment obligations.[3] These actions affected the movement of cargo into and out of the United States.

In recent years, the ocean common container carrier industry has consolidated. The largest 10 international ocean container carriers—none of which are U.S. companies—now carry about 90

[1] In general, an ocean common carrier operates, for all or part of its service, vessels on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, providing transportation by water of passengers or cargo for compensation to the general public. 46 C.F.R. § 535.104(f), (u). Much of this ocean cargo is transported in containers, which are large steel boxes that can be transferred from vessels to other transportation modes such as railcars and trucks.

[2] FMC, *Fiscal Year 2020 Budget Justification* (March 2019).

[3] According to FMC officials, Hanjin's financial difficulties were widely known and the surprise was the precipitousness of the withdrawl of financial support for Hanjin by a Korean state-sponsored bank.

percent of global container traffic.[4] This consolidation may enable carriers to be more financially viable and therefore less likely to file for bankruptcy protection. In the event, however, that one of these larger consolidated carriers were to file for bankruptcy protection and ultimately cease operations, the effect on the movement of cargo could be even more significant than what occurred when Hanjin filed for bankruptcy protection.

The Frank LoBiondo Coast Guard Authorization Act of 2018 included a provision that GAO review the effects of a major ocean carrier bankruptcy on the movement of cargo.[5] The most recent major ocean carrier bankruptcy was that of Hanjin Shipping initiated in August 2016. This report describes stakeholder and federal agency accounts of: (1) the effects of Hanjin's bankruptcy on the movement of cargo; (2) federal agency actions taken at the time of Hanjin's bankruptcy; and (3) federal agency and industry actions taken since then to help mitigate the effects of any future bankruptcies. This report provides a summary of our findings related to these objectives; for more detailed information on our findings, see the attached enclosure, which provides the finalized version of a briefing that we provided to your staffs in December 2019.

In summary, we found that:

- Stakeholders we interviewed mentioned cargo delays and additional costs as two primary effects of Hanjin's bankruptcy on the movement of cargo. While they did not cite any data or analysis that could help quantify the extent of the overall economic effects, they provided examples of delays and additional costs. For example, stakeholders explained that some cargo did not reach its final destination on time because Hanjin halted its vessels at sea for fear of arrest of such vessels at port on behalf of creditors. Stakeholders added that some port facilities were reluctant to offload cargo associated with Hanjin until they received payment for port fees and labor services.[6] Some cargo owners incurred additional costs to pay for services—such as the offloading and release of their cargo—which may have been included in fees they had already paid to Hanjin. While cargo delays were generally resolved in 4 to 8 weeks, other lingering issues took up to 3 months longer, such as a shortage of chassis (trailers that carry containers and attach to trucks). This shortage occurred because some ports refused to accept empty containers, worried that Hanjin would not pay the associated fees or would never retrieve them, tying up valuable yard space.
- In effect, the Bankruptcy Court for the District of New Jersey had primary jurisdiction over Hanjin-related bankruptcy proceedings in the U.S. court system and authorized steps that affected cargo in the United States. Outside of the U.S. Court process, FMC and the Department of Commerce (Commerce) were the primary federal agencies that addressed cargo issues in the United States territorial jurisdiction related to Hanjin's bankruptcy. According to FMC officials, FMC monitored transactions for unreasonable practices, offered mediation services to industry parties experiencing challenges or disputes, and spoke regularly with industry stakeholders to share relevant information. According to Commerce officials, Commerce convened officials from federal agencies and industry stakeholders to

[4] See United Nations Conference on Trade and Development, *Review of Maritime Transport 2019*.

[5] Pub. L. No. 115-282, § 713, 132 Stat. 4192, 4298-99.

[6] Arrest prevents a vessel's further movement and can occur under many scenarios such as when the vessel's owner has not met its contractual obligations to a creditor with a court order enforcing a maritime security lien on the vessel.

share information relevant to the bankruptcy and its effects on cargo movements, among other things.

- Officials with both FMC and Commerce suggested that the legal and market response to Hanjin's bankruptcy resolved the effects on cargo movements in a timely and effective manner and that therefore, taking actions to address the specific aspects of a future bankruptcy may be unnecessary at this time. These officials added that the agencies have limited authority to take additional regulatory action to address the effects of such bankruptcies. Furthermore, when asked, many stakeholders we interviewed did not identify any additional actions that FMC or Commerce could take at this time, but said some industry parties have taken steps to reduce the risks associated with any future ocean carrier bankruptcies; for example, some cargo owners may limit the percentage of cargo they ship with any one carrier.

To address these objectives we reviewed documents filed as part of Hanjin's bankruptcy proceedings in the United States and relevant documents from FMC and Commerce. We conducted semi-structured interviews with 15 industry stakeholders representing various participants in the supply chain, which we selected based on recommendations made by FMC and Commerce officials and by other industry stakeholders we interviewed and from a search of news articles that discussed parties affected by Hanjin's bankruptcy. The selected stakeholders included representatives from four ports, two ocean carriers, one association representing carriers, one association representing freight forwarders and customs brokers, five associations or companies representing transportation and equipment providers, one association representing retailers, and one association representing agricultural cargo owners. The selected stakeholders encompass a range of roles from the supply chain. While the findings from these interviews are not generalizable to all industry stakeholders, they provide important perspectives and common themes. We also interviewed officials with FMC and Commerce about the actions they took related to the movement of cargo following Hanjin's banruptcy and actions they may have taken since that time to help mitigate the effects of any future ocean carrier bankruptcies.

We conducted this performance audit from June 2019 to January 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Agency Comments

We provided a draft of this report to Commerce and FMC for review and comment. Commerce provided technical comments orally that we incorporated as appropriate. FMC informed us that it had no comments.

We are sending copies of this report to the relevant congressional committees, the Chairman of the Federal Maritime Commission, and the Secretary of Commerce. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or flemings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are Maria Edelstein (Assistant Director); Matt Rosenberg (Analyst-in-Charge); Amy Abramowitz; Melissa Bodeau; Geoff Hamilton; Gina Hoover; Risto Laboski; Malika Rice; Roger Stoltz; Rich Tsuhara; and Lauren Wice.

Susan Fleming
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Enclosure

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