February 28, 2022

The Honorable Lina M. Khan
Chairman
U.S. Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

The Honorable Noah Phillips
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

The Honorable Rebecca Slaughter
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

The Honorable Christine Wilson
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: Impact of Supply Chain Disruptions on Competition in Consumer Goods and Retail (FTC–2021–0068)

Dear Chair Khan and Commissioners Phillips, Slaughter and Wilson:

On behalf of the National Retail Federation, we are submitting these comments in response to the Commission's request for input on the impact of ongoing supply chain disruptions on retail and consumer goods. These comments will follow on comments delivered during the December 16 open meeting of the Commission. Throughout the pandemic, the supply chain has faced unprecedented disruptions affecting companies of all sizes. We applaud the steps that the administration has taken to date but believe more needs to be done to address the ongoing supply chain challenges. Focusing on the practices of a few U.S. retailers who have been trying to address the shipping crisis will not help to solve the issues that many expect will continue throughout 2022.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing $3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

The current supply chain crisis has been affecting companies both large and small that are being impacted by disruptions at every stage of the supply chain. In general, the demand for goods and materials continues to far outpace the availability of supply to make and move those products through the global supply chain. This is resulting in significant congestion and increased costs and fees, which are leading to increased inflation. Higher retail goods prices are clearly being driven by a supply-demand imbalance. Retail sales have grown by over $1 trillion dollars over the last two years as consumers shifted their spending away from services and towards goods."

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Over the past two years, we saw a significant increase in imports to the United States. According to NRF's Global Port Tracker, 2021 imports are expected to total 26 million Twenty Foot Equivalent Units (TEU), an increase of 18.3 percent over 2020 and the highest number since NRF began tracking imports in 2002. The projected total would top 2020's previous record of 22 million, which was up 1.9 percent over 2019 despite the pandemic. The growth rate would also be the highest on record, topping 16.7 percent in 2010 as the economy recovered from the Great Recession.

We continue to see disruptions originating overseas, with continuing uncertainty about the omicron variant that threatens to again shut down foreign factories and foreign ports. There continue to be shortages in available materials and workforce to produce goods both here and abroad, a shortage of empty containers to transport the goods, a lack of available capacity aboard maritime vessels, continuing port congestion affecting U.S. ports, and challenges with chassis availability, empty container returns and available warehouse space.

These disruptions have all added more time and costs to NRF members' supply chains. Retailers have been working to mitigate these challenges throughout the pandemic, especially in advance of the all-important holiday season last year. Retailers have taken many steps to try to mitigate the disruptions, which included bringing in products earlier, looking for alternate sourcing, using alternate ports and using air freight instead of ocean freight. Again, all these options have added time and costs to retailers' supply chains and continue today.

Despite having taken these steps, retailers continue to face ongoing disruption and challenges with getting their cargo in a timely manner. In a September 2021 survey of NRF members, all respondents noted that their supply chain costs had increased at every step along the way. They identified their top three challenges as port congestion, container availability and carrier capacity. In an updated January 2022 survey, most respondents noted that their supply chain costs significantly increased in 2021 and will continue to increase in 2022. They continue to believe that their biggest challenges are port congestion, lack of available capacity and ongoing workforce shortage issues. Many believe these challenges will continue through 2022.

In general, the unprecedented consumer demand over the past couple of years has certainly played a major role in supply chain disruption as retailers try to keep up. There has been a $1 trillion shift in consumer spending from services (travel, entertainment, etc.) to goods, which has put upward pressure on the prices of goods. Many expect inflation to peak in the next couple of months, though this is dependent on a number of factors including easing of pressure on the supply chain and softening consumer demand.

We continue to believe that there are specific ways that the administration and Congress can help alleviate some of the supply chain disruptions, but we caution that some aggressive policy interventions to address the broader inflation could aggravate, rather than alleviate, inflationary trends.

In response to some of the questions in the public comment request, we offer the following responses:

1. **What supply chain disruptions have you experienced**?

   Despite challenges from inflation, supply chain disruptions and the ongoing pandemic, retail sales during 2021's November-December holiday season grew 14.1 percent over 2020 to $886.7 billion, setting a new record. This was due to the extraordinary steps that retailers continued to take throughout the holiday season to ensure that products would be available to consumers. These steps included bringing in cargo earlier than normal, using alternate ports beyond the Ports of Los Angeles and Long Beach, chartering vessels, shifting to air freight over maritime and looking at alternate sourcing.

   In addition, retailers worked closely with transportation providers, especially carriers and truckers, to clear cargo as quickly as they could. Many retailers also worked closely with the port authorities to identify critical cargoes that needed to move. Retailers also worked directly with White House Port Envoy John Porcari and the Supply Chain Task Force to identify additional opportunities.

   Even with these steps, many constraints remain in the ability to quickly move cargo from the ports, especially as more vessels continue to wait to berth and unload. Some key constraints continue to be specific to port operations and empty return policies and the availability of chassis. Retailers want to pick up their cargo, but have difficulty when truckers are not able to make appointments, return empty containers or have a chassis available.

   Specific to chassis, one of the challenges that we face is the current availability of chassis to meet the market demand. The record level of empty containers both on terminal and off terminal sitting on top of this critical asset impacts the ability for the chassis to be used to move a loaded container. Another issue impacting the availability of chassis is the current 221 percent antidumping/countervailing duty on imports of chassis from China that took effect in early 2021. Unfortunately, domestic chassis providers are not able to meet the demand for new chassis in a timely manner.

2. **What is the current outlook for future supply disruptions over the next quarter and year?**

   In responses to an updated benchmarking survey, many NRF members believe the supply chain disruptions will continue well into 2022. The majority of respondents believe the challenges will continue between 10-12 months. As noted, respondents continue to say that U.S. port congestion, ocean carrier capacity and workforce shortages are the top areas where they are seeing supply chain disruptions.

   A softening of consumer demand will certainly help alleviate the pressures on the supply chain. NRF's Global Port Tracker is forecasting imports to continue to increase through 2022, but at a single-digit rate as opposed to the double-digit rate we witnessed in 2021.

On top of the ongoing disruption challenges that both importers and exporters are facing, an additional issue could lead to more disruptions this summer. The West Coast port labor contract between the International Longshore and Warehouse Union and the Pacific Maritime Association is set to expire on July 1. The ILWU has rejected a one-year contract extension offer from the PMA. Previous contract negotiations have led to slowdowns and disruptions. Retailers are already beginning to plan mitigation strategies to shift away from West Coast ports in order to avoid any potential disruption. Congress and the administration must encourage the parties to begin negotiations early and remain at the negotiating table until a new deal is reached, without engaging in any kind of actions that lead to disruptions.

What can the administration do?

While not asked specifically, we believe that the administration needs to take a leadership role in addressing the ongoing supply challenges facing American businesses. Many are systemic issues that need to be addressed to avoid future supply chain disruptions. We recommend the following actions for the administration:

- **Convene a high-level working group including all affected stakeholders to discuss the current issues and identify short, medium and long-term solutions**. Key participants would include beneficial cargo owners (importers and exporters), port authorities, terminal operators, ocean carriers, drayage providers, freight brokers, chassis providers, intermodal rail and longshore labor.

- **Pass the Ocean Shipping Reform Act of 2021**. This legislation would put in place common-sense reforms to address long-standing issues in the maritime shipping industry, which have been further highlighted by the COVID-19 pandemic. The Shipping Act has not been updated in more than 20 years; however, the industry has changed significantly in that time. The law needs to be updated to reflect 21st century global maritime trade. While the bill cannot solve all current supply chain disruption issues, it will go a long way to address some of the core issues that existed well before the COVID-19 pandemic.

- **Codify the Federal Maritime Commission's Interpretive Rule on Demurrage and Detention.** The rule provided guidance for ocean carriers and terminal operators regarding "container availability" and the issuance of demurrage and detention charges. These charges have escalated through the pandemic, costing companies millions of dollars in additional fees, for reasons beyond the cargo owner or trucker's control. FMC needs the ability to enforce this rule.

- **Develop a National Freight Portal**. One of the biggest challenges facing goods movement through our nation's ports is the lack of standardized data and transparency among stakeholders that would allow for better forecasting, planning and operations. There is a great need for all stakeholders to communicate with each other to properly plan for the safe and efficient movement of cargo from the moment a vessel arrives at port until a container exits a marine terminal gate. This also includes coordination on the return of equipment in a timely manner. A national freight portal would help stakeholders plan accordingly.

- **Workforce Issues**. We need to ensure we have a sufficiently trained workforce. This includes an increase in the number of skilled longshoremen working at our ports. Labor and management must continue to work to implement technology at our ports that will not only improve the safety of operations but improve freight fluidity through critical gateways.

- **Port Operations**. We need to evaluate whether or not our ports are operating in a manner that truly meets the needs of a 21st century global supply chain. As trade volumes in both imports and exports continue to grow, we need to evaluate how our ports can handle this growth. We will not be able to build our way out of these congestion issues. We need to use existing infrastructure in a smarter and more efficient manner. This evaluation must include an analysis of whether we need to shift to a third shift and 24x7 operations, how terminal appointment systems work (a common set of rules is needed) and other operations.

- **Eliminate or suspend AD/CVD Tariffs on Chassis.** The lack of available chassis continues to hamper the ability to quickly move containers to and from the port. The current 221% AD/CVD tariffs have had an impact on chassis availability. We encourage the administration to either suspend or remove these tariffs as a means to get more chassis into the market. While domestic manufacturers have started to increase production, they cannot meet the current need.

- **Provide Tariff Relief**. The Section 301 China tariffs continue to harm U.S. companies. To date, U.S. Customs and Border Protection has collected over $122 billion from U.S. importers since the tariffs first went into effect in 2018. The economic harm from the tariffs has been significant, particularly for small and medium-sized businesses, many of which have not been able to shift their supply chains or find alternate sources. Congress and the administration must evaluate whether or not the tariffs have actually had their desired effect. Providing tariff relief will help many companies who have seen significant cost increases in their supply chains.

We thank you for your interest in addressing the nation's supply chain challenges. We stand ready to work with Congress and the administration to address these issues and create a more resilient supply chain.

Sincerely,

David French
Senior Vice President
Government Relations