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.\footnote{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.} According to FMC, more than $1 trillion in U.S. exports and imports are moved by ocean vessels annually.\footnote{FMC, \textit{Fiscal Year 2020 Budget Justification} (March 2019).}

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.\footnote{According to FMC officials, Hanjin’s financial difficulties were widely known and the surprise was the precipitousness of the withdrawal of financial support for Hanjin by a Korean state-sponsored bank.} 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 percent of global container traffic. 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. 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. 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

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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.
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 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 bankruptcy 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
Director, Physical Infrastructure

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

Introduction
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 liner trade that provide service to and from the United States and 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 and the largest 10 international ocean container carriers—none of which are U.S. companies—now carry about 90 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. Should one of these larger, consolidated carriers file for bankruptcy protection and ultimately cease operations, however, the effects on the movement of cargo could be even more significant than they were 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.

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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 withdrawal of financial support for Hanjin by a Korean state-sponsored bank.


Overview of Hanjin’s Bankruptcy Process

Hanjin filed for bankruptcy protection in South Korea, the United States, and reportedly in a number of other countries. 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. (See fig. 1.) With respect to Hanjin’s assets within the territorial jurisdiction of the United States, the court issued an order on September 6, 2016, that imposed a temporary freeze on creditor actions seeking to collect amounts owed by Hanjin. This freeze enabled Hanjin vessels to come into U.S. ports without fear of being subject to creditor actions to arrest Hanjin assets.

Figure 1: Key Dates in Hanjin Shipping’s Bankruptcy

- Aug. 31, 2016: Hanjin Shipping (Hanjin) files for bankruptcy protection in South Korea (the main foreign bankruptcy proceeding).
- Sept. 2, 2016: Hanjin files for Chapter 15 bankruptcy protection in the United States Bankruptcy Court for the District of New Jersey (U.S. Bankruptcy Court) seeking bankruptcy protection of Hanjin assets in U.S. territorial jurisdiction and U.S. Bankruptcy Court recognition of the main foreign bankruptcy proceeding in South Korea.
- Sept. 6, 2016: U.S. Bankruptcy Court issues an interim provisional order (pending a final order) that recognizes the South Korea proceeding to which the U.S. proceedings will generally be secondary and grants bankruptcy relief on a temporary basis, preventing creditor actions against Hanjin’s assets, such as actions to arrest vessels in U.S. territorial jurisdiction.
- Sept. 9, 2016: After additional consideration of the issues, the U.S. Bankruptcy Court issues an order, still provisional, that recognizes the South Korea proceeding, maintains the previously granted bankruptcy relief pending a final order, and approves a protocol whereby cargo owners can enter into agreements with terminals, carriers, or other third parties to obtain their cargo in U.S. territorial jurisdiction.
- Dec. 14, 2016: U.S. Bankruptcy Court issues an order that finalizes the previously granted bankruptcy relief and recognizes the South Korea proceeding to which the U.S. proceedings will generally be secondary.
- Dec. 2016 – Feb. 17, 2017: U.S. Bankruptcy Court takes various actions relating to Hanjin assets, such as a protective order, as well as an order recognizing and enforcing an order by the South Korean court approving the sale of specified Hanjin assets.
- February 21, 2017 – Jan. 2019: U.S. Bankruptcy Court takes actions including enforcing sale orders of the South Korean court approving the sale of specified Hanjin assets in U.S. territorial jurisdiction to facilitate liquidation.

Source: GAO analysis of bankruptcy documents | GAO-20-353R

The purpose of Chapter 15 is to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country.

Hanjin filed for bankruptcy protection under Chapter 15 of the United States Bankruptcy Code. Chapter 15 is based upon the policy that countries other than the home country of the debtor, where a main bankruptcy proceeding would be brought, should usually act in support of the home country main proceedings.

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 maritime security lien on the vessel.
According to Industry Stakeholders, Hanjin’s Bankruptcy Had Short-Term Effects on Cargo Movements and Brought Additional Costs to Some Cargo Owners

Stakeholders we interviewed said that Hanjin’s bankruptcy affected the movement of both exports and imports. However, they could not quantify the effects and primarily noted the effects on the movement of imports. (See fig. 2.)

**Figure 2: Primary Effects of Hanjin’s Bankruptcy on the Movement of Imported Cargo**

<table>
<thead>
<tr>
<th>Standard cargo shipping process</th>
<th>Issues caused by Hanjin Shipping’s (Hanjin) bankruptcy</th>
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| **1** On carrier: Containers in transport to port of call. | • Hanjin halted vessels at sea out of fear of arrest by creditors.  
• Vessels were delayed in berthing at port, putting other cargo movements behind schedule. |
| **2** At port of call: Containers unloaded from vessel at terminal. | • Once vessels berthed at port, some ports and terminals were reluctant to service Hanjin vessels, demanding payment upfront before they offloaded or released cargo.  
• For cargo owners that already paid Hanjin for delivery, these payments for port and labor services were an additional cost. |
| **3** On truck: Containers picked up at terminal and transported to next destination. | • Some motor carriers could not pick up new, loaded containers due to challenges returning empty containers, which left a lack of available chassis—trailers that attach to trucks to transport containers—in circulation for further use.  
• Therefore, some offloaded cargo was unable to leave port in a timely manner. |
| **4** Destination: Containers unloaded and empty ones returned by truck to terminal. | • Once cargo was delivered, motor carriers had difficulty returning empty containers as ports refused to accept them, worried that Hanjin would not pay associated fees or would never retrieve them, tying up valuable yard space.  
• Since Hanjin leased the majority of its containers, some motor carriers had to locate and travel to different locations to return them. |

Source: GAO analysis of stakeholder interviews. | GAO-20-353R

No stakeholders we spoke with cited any data or analysis regarding the overall economic effects of Hanjin’s bankruptcy. However, stakeholders were able to describe two primary effects:

- **Cargo delays.** Because some cargo did not arrive or was not offloaded at the intended ports when scheduled, it did not reach its final destination on time.
- **Additional costs.** Some cargo owners or other industry stakeholders paid unexpected additional fees to obtain cargo that was not being released, or incurred other fees as described below.

According to most stakeholders, while some of the bankruptcy’s effects on the movement of cargo were resolved in weeks, others took longer:

- Cargo delays were resolved and detained or delayed containers were moved off port within a few weeks, generally between 4 to 8.
- Lingering issues regarding empty containers and chassis shortages at ports were resolved within 6 weeks to 3 months.
Effects on Movement of Cargo (continued)

After Hanjin filed for bankruptcy protections in 2016, there were immediate effects on the movement of cargo, according to stakeholders we interviewed. When Hanjin filed for bankruptcy protections in South Korea on August 31, it halted some vessels at sea due to fear of arrest of such vessels on behalf of creditors, while other vessels were forcibly stopped by creditors at ports or in canals. On September 6, in response to Hanjin also filing for bankruptcy protection in the United States, the U.S. bankruptcy court took action to protect Hanjin assets in United States territorial jurisdiction, enabling vessels to come into port.

According to industry stakeholders, for U.S.-bound cargo still at sea, movement was better able to proceed once the U.S. bankruptcy court approved protocols on September 9, which provided a framework for cargo owners and others to handle payment for services to release containers within United States territorial jurisdiction. However, according to stakeholders we interviewed, effects on the movement of cargo on land continued, including:

- Initially, some cargo owners were unaware of the location of their cargo or when they could retrieve it. This situation was due in part to vessel-sharing agreements between carriers, which meant that some cargo owners may not have known that they had cargo on a Hanjin vessel.
- Once vessels berthed at ports, some terminal operators were reluctant to provide services to Hanjin vessels, refusing to offload or release cargo until they received payment. These actions further contributed to congestion and delays. Some ports instituted cash-only policies to cover fees and the labor costs of handling containers or demanded payment upfront before releasing cargo. For cargo owners that already paid Hanjin for the delivery of their cargo—which could have included payment for these port fees and labor services—these additional payments were an unexpected added cost.
- Some Hanjin containers intended for a particular port were offloaded at the vessel’s first port of call. Accordingly, some cargo owners had to arrange for additional transportation for the cargo to reach its intended location.
- Some cargo owners had exports booked for transport on Hanjin vessels that had not yet been shipped. In these cases, exporters retrieved their cargo and arranged for other means of transportation, incurring additional costs as well as delays that may have led to spoilage of perishable goods.
- As 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—motor carriers struggled to discharge the empty containers to free up chassis for loaded containers. Additionally, since Hanjin leased the majority of its containers, some motor carriers had to locate and travel to different locations to return them. This inability to offload empty Hanjin containers contributed to congestion and delays in the movement of cargo, and in some cases resulted in extra fees for chassis usage when motor carriers held containers for long periods of time.
FMC and Commerce Had Limited Roles in the 2016 Ocean Carrier Bankruptcy

Outside of the U.S. Court process, FMC and Commerce were the primary federal agencies that addressed cargo-related issues.  

According to FMC officials, FMC took the following actions:

- FMC monitored transactions for unreasonable practices that would violate the Shipping Act. Official said, however, that FMC did not find sufficient evidence to take action in any such cases.

- Through the Office of Consumer Affairs and Dispute Resolution Services (CADRS), FMC offered mediation services to industry parties experiencing challenges or disputes. For example, if a cargo owner felt that it was charged unreasonable fees to retrieve its cargo, CADRS would offer mediation services to resolve the dispute if both parties were willing to participate. CADRS handled approximately 66 complaints related to the bankruptcy, mainly from cargo owners.

According to FMC officials, this was a higher than average volume.

- FMC officials, including the Chairman, held regular meetings and calls with cargo owners, ocean carriers, terminals, and other industry stakeholders regarding problems they faced. FMC staff also attended bankruptcy court proceedings and shared relevant information, such as court actions, with key stakeholders.

According to Commerce officials, Commerce took the following actions:

- Immediately following the bankruptcy, Commerce convened officials from relevant federal agencies and industry stakeholders, including representatives from port authorities and retail and trade associations, to share information. This information included updates on port congestion, cargo owners’ questions about the location of containers, and status updates on court proceedings.

- In coordination with the White House and the Department of State, Commerce engaged with South Korean government officials to emphasize the importance of keeping cargo moving and to secure emergency funding to facilitate continued cargo movement.

- Commerce reached out to embassy officials from countries where Hanjin vessels had been arrested pursuant to creditor actions en route to U.S. ports in an effort to keep cargo moving.

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9 Several other federal agencies, including the Maritime Administration, Department of Treasury, and Department of Labor took actions as a result of the Hanjin bankruptcy. For example, the Maritime Administration conducted outreach to ports affected by Hanjin’s bankruptcy. This engagement focuses on Commerce and FMC as their actions were most focused on addressing the movement of cargo.

10 Under the Shipping Act, common carriers, marine terminal operators, or ocean transportation intermediaries may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. 46 U.S.C. § 41102(c).

11 According to FMC officials, Hanjin’s largest shareholder provided emergency funding, helping enable vessels to come into port and be offloaded by, for example, paying fees.
FMC and Commerce See Limited Role in Addressing Effects of Any Future Ocean Carrier Bankruptcies

Officials with both agencies 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. Both also noted that the agencies have limited authority to take additional regulatory action to address the effects of future bankruptcies on cargo movements.

When asked, many of the industry stakeholders we interviewed had no additional actions to propose that FMC or Commerce could take at this time to mitigate the effects on the movement of cargo of any future ocean carrier bankruptcies. However:

- Two suggested that FMC require ocean carriers be licensed and bonded, as it requires of some other providers.\(^\text{12}\) FMC officials, however, said that FMC does not have the legal authority to impose such a requirement on ocean carriers. They said FMC requires other entities to be licensed and bonded as instructed by statute.

- Two suggested that FMC conduct additional financial analyses to assess the financial health of ocean carriers and the extent to which they are at risk of going bankrupt. However, FMC officials said it may not be appropriate for FMC as a government entity to publicly speculate on the potential viability of a private entity.\(^\text{13}\)

Additionally, Commerce’s Advisory Committee on Supply Chain Competitiveness recommended in 2017, in response to Hanjin’s bankruptcy, that Commerce use various financial criteria to assess the risk of future ocean carrier bankruptcies.\(^\text{14}\) According to Commerce, department analysts use such criteria for internal industry assessments. Commerce also noted that if analysts were to find a high risk of a future bankruptcy, it would coordinate with other federal agencies, carriers, and supply chain stakeholders to take appropriate action.

The Advisory Committee on Supply Chain Competitiveness also recommended that Commerce establish a committee to coordinate an interagency response to any future bankruptcies. Commerce has not implemented this recommendation because, according to officials, the threat of future ocean carrier bankruptcies appears minimal at this time and it does not see the need to create a new committee that would have little responsibility or work during periods of stability in the carrier industry.

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\(^\text{12}\) FMC requires freight forwarders—also known as Ocean Transportation Intermediaries—to obtain a license from FMC in order to operate. FMC also requires them to submit proof of having a bond so that cargo owners that are their customers are protected if the provider does not comply with FMC rules or does not fulfill its duties. See, 46 U.S.C. §§ 40901, 40902.

\(^\text{13}\) Some private sector companies conduct and publish financial analyses of carriers. In addition, some large ocean carriers receive significant financial backing from their national governments and are not publicly traded companies. As a result, complete financial information for those carriers may be unavailable.

\(^\text{14}\) Advisory Committee on Supply Chain Competitiveness Maritime Carrier Bankruptcy Risk Assessment Framework (April 2017). The committee also recommended that cargo owners conduct such analysis.
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