



AMERICAN COFFEE CORPORATION

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October 30, 2019

Ms. Rachel E. Dickon, Secretary
Federal Maritime Commission
800 North Capitol Street N.W.
Washington, DC 20573-0001

Via email: Secretary@fmc.gov

RE: Docket No. 19-05
Interpretive Rule on Demurrage and Detention Under the Shipping Act

Dear Secretary Dickon:

American Coffee Corporation is pleased to submit its comments in response to the Federal Maritime Commission (FMC) Notice of proposed rulemaking on Demurrage and Detention under the Shipping Act issued on September 13, 2019. American Coffee Corporation fully supports the issuance of an Interpretive Rule to provide clarification on what may or may not be considered fair and reasonable practices in the assessment of demurrage and detention charges by the Vessel Operating Common Carriers (VOCC) and the Marine Terminal Operators (MTO) servicing the carriers and the carriers' customers.

American Coffee Corporation is a well established medium sized importer of green coffee beans from Asia, Africa, Central and South America into 15 ports of entry along all three U.S. coasts. We maintain service contracts with several major carriers and include free time privileges within the service contract terms. We often experience disagreements with our carriers and the terminal operators that serve them over the fair and practical application of those privileges and regularly find ourselves frustrated at our inability to reach amicable agreements. We therefore have had an active interest in the Fact Finding Investigation #28 and the establishment of an Interpretive Rule which we believe is well warranted and will greatly benefit the entire industry.

A. Purpose and Scope of Proposed Rule

We support the general purpose and scope of the proposed rule that would apply to demurrage and detention charges assessed against containerized cargo including refrigerated ("reefer") containers and specifically to shipping containers and not other equipment such as chassis.

B. Incentive Principle

- 1) General Incentive Approach: We support the premise that "the intended purposes of demurrage and detention charges are to incentivize cargo movement and the productive use of assets (containers and port terminal land)" and promote optimal cargo velocity through marine terminals. We also believe that the assessment of demurrage and



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detention charges when they do not or cannot incentivize container movement should be considered as unreasonable.

- 2) **Cargo Availability:** We contend that the free time clock should commence when the container is fully “accessible” for retrieval by the cargo interest or its trucker. The container would be “accessible” when it is discharged from the vessel, available in an open area of the terminal, free from government holds, and appointments are available if and where applicable. Free time calculations should be suspended during any period when containers become “non-accessible” due to situations beyond the control of the cargo interest or its trucker. We also contend that the demurrage clock should be suspended during “non-accessible” periods when the container may already be incurring demurrage charges thus eliminating the practice of “once in demurrage, always in demurrage”.
- 3) **Empty Container Returns:** We agree that absent extenuating circumstances, detention charges imposed when a container cannot be returned due to a terminal operator’s inability to accept it should be considered “unreasonable”. We also contend that the detention clock should be suspended during “non-accessible” periods when the container may already be incurring detention charges thus eliminating the practice of “once in detention, always in detention”.
- 4) **Notice of Cargo Availability:** We support the further development and implementation of “push notifications” to alert the cargo interest and truckers to accessibility of containers and notices of yard closures.
- 5) **Government Inspections:** We support the interpretation that “In the absence of extenuating circumstances, demurrage and detention practices and regulations that do not provide for mitigation of demurrage or detention while cargo is undergoing government inspection, such as by waiver or extension of free time, are likely to be found unreasonable”. We would suggest that demurrage includes two elements, a compensatory level for the use of the container and land it occupies, and a punitive element to incentivize the movement. Although each carrier and terminal operator may have different calculations, thus a “cap” may be difficult to formulate, any demurrage charges accrued while containers are held for government exams should not include any punitive element since the cargo owner is prevented from being incentivized to effect the movement.

C. Demurrage and Detention Policies

- 1) **Existence and Accessibility of Policies:** We appreciate the FMC’s encouragement of clear and defined policies that reflect the carrier’s practices in assessing demurrage and



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detention charges as well as in resolving any disputes in relation thereto. Such policies should be easily and readily available to the cargo interests.

- 2) **Billing:** We contend that primary commercial relationship is between the carrier and the beneficial cargo owner. All invoices for demurrage charges and detention charges should be issued by the carrier to the cargo owner and settled between the carrier and the cargo owner. We do not support the practice of terminal operators or other third parties to bill the cargo owner or trucker for demurrage and detention charges since there is usually no direct commercial relationship within which to negotiate such charges in the event of a dispute or consideration of circumstances.
- 3) **Guidance on Evidence:** We appreciate the FMC's encouragement on the further development of guidance on evidence to resolving demurrage and detention disputes. We also support requiring MTOs to provide detailed trouble tickets when containers are not able to be retrieved; and access to log records that track attempts to make appointments.

D. Transparent Terminology

We do agree that the industry would benefit from standardization of language used by carriers and terminal operators in regards to demurrage and detention charges. However, we believe that the term "demurrage" is widely defined as the charge assessed against containers while held on the terminal property covering both the use of the container and the space it occupies. Once the container leaves the terminal (out-gates), the equipment free time clock should begin and any charges due to the delay in returning the empty container beyond equipment free time expiry should be referred to as "detention" charges. We also believe that containers out-gated for government exams would fall under the equipment detention free time and not terminal free time.

American Coffee Corporation very much appreciates the great efforts made by Commissioner Dye and the FMC in its exhaustive review of the conditions and practices involving demurrage, detention and free time. We do look forward to the Commission issuing a final interpretive rule providing guidance for all involved in the maritime transportation industry. We further encourage the creation of a Shipper Advisory Board which would provide regular input on issues and circumstances as they become known and relevant to the industry and the Commission.

Thank you for the opportunity to submit our comments and for considering our views.

Sincerely,

AMERICAN COFFEE CORPORATION

Donald A. Pisano
President