



MEAT IMPORT COUNCIL OF AMERICA, INC.
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October 17, 2019

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

Re: Docket No. 19-05; 46 CFR Part 545: Interpretive Rule on Demurrage and Detention under the Shipping Act.

Dear Secretary Dickon:

This statement is filed on behalf of the Meat Import Council of America, Inc. (“MICA”) pursuant to the invitation for comments published in the Federal Register concerning the *Interpretive Rule on Demurrage and Detention under the Shipping Act, Docket No. 19-05; 46 CFR Part 545*. Thank you for the opportunity to comment on this important issue.

MICA is an incorporated trade association which represents the U.S. industry that imports fresh, chilled and frozen beef and sheepmeat into the United States. MICA’s regular members are importers who account for most of the non-NAFTA imports of this product. MICA’s membership also includes organizations such as port authorities, refrigerated warehouses, customhouse brokers, etc. who provide services in connection with this imported product, as well as processors and other users of those services. MICA is in support of the Interpretive Rule as written.

The interpretive rule provides important guidance to the maritime industry regarding how the FMC will evaluate the reasonableness of port demurrage and container charges. This guidance has been

lacking to date, and MICA supports this effort by the FMC to address the serious concerns over ocean carrier and marine terminal demurrage/detention charges as demonstrated in the Fact-Finding Investigation and the Petition filed by the Coalition for Fair Port Practices. The proposed interpretive rule identifies key principles and examples of reasonable practices that will be considered by the FMC in the context of a 10(d) claim as to demurrage/detention, while providing the necessary flexibility to account for differing circumstances on a case-by-case basis. Furthermore, the proposal will greatly benefit the US maritime industry by promoting efficient cargo handling and delivery, improving commercial fairness in the assessment of the charges, while also reducing confusion and disputes along the supply chain.

The interpretive rule will also align demurrage/detention rules and practices across the industry, further incentivizing efficient cargo handling and delivery. The purpose of detention/demurrage charges under the Incentive Principle is to provide efficiency in the supply chain by promoting quick pick up and drop off of cargo, which is supported by the law and Shipping Act policies. The guidance appropriately promotes the core purpose of these charges by supporting the suspension of charges or the extension of free time where efficiency incentives are not able to be achieved due to extenuating circumstances beyond the control of the beneficial cargo owner. It is appropriate for cargo interests to fulfill their responsibilities to receive and pick up cargo under the Incentive Principle, but there is no need for advance payment of all charges where credit has been agreed to between shipper and ocean carrier. Furthermore, pre-payment of charges should not apply to any charges that are in dispute.

The interpretive rule appropriately encourages actual notice of cargo availability, which will vastly improve port efficiencies and the US freight delivery system. Knowing when cargo is actually available will help ensure that pickup is timely scheduled—reducing idle and wasted hours truckers spend waiting for containers to become available. Free time should only be tied to actual cargo

availability, and no other circumstances such as vessel arrival, since you cannot incentivize efficient cargo pickup if the cargo may not yet be available (i.e. held in a closed yard or location at the terminal). Furthermore, free time should be stopped if a container is no longer available. The manner in which notice of cargo availability is also communicated is a critical aspect of reasonableness contemplated by the guidance. The communication must be timely and readily accessible to the contracting party or its designee, must provide clear information as to when and where cargo may be retrieved, and where appropriate, “push notices” are favored. This is fair and equitable guidance stated in the interpretive rule

The three government inspections approaches identified by the interpretive rule are also a key interest to the imported meat community. All imported meat is subject to 100% inspection by the U.S. Department of Agriculture, which is a critical component of our food safety system and fully supported by MICA members. However, cargo interests should not be penalized via detention and demurrage charges due to normal delays associated with required government inspections. Of the three approaches identified, MICA believes all three would be positive steps forward on this issue, but approach one and two would have the most equitable impact on the trade. Detention and demurrage charges should not accrue during government inspection processes and any resulting delays outside the control of the cargo interests, or mechanisms should be in place to extend the allotted free time to compensate for delays related to those inspections. Both approaches would serve to equitably deal with a situation in which an unforeseen delay occurs outside the control of the cargo interests.

The FMC has properly identified the types of policies, rules and practices that would greatly improve dispute resolution processes in the interpretive rule as well. Defined time frames for dispute procedures should apply to both filing and responding to claims, and must operate to facilitate resolution of disputes and not unreasonably cut off claims. Objective, transparent assessment criteria for responding to claims must be developed as part of the standard operating procedures for the issue.

MICA agrees with the FMC that demurrage/detention invoices must include adequate information to allow a shipper/trucker to audit and contest the charges. We favor invoicing that is tied to contractual relationships rather than ownership or control of the assets, i.e. ocean carriers should continue to bill their customers directly, rather than terminals billing for demurrage, since contractually-related parties should be able to negotiate demurrage terms in their service contracts. Without a contractual relationship, the third party terminal has no incentive to negotiate or mediate concerns that arise from a non-customer.

We further support the FMC's proposal encouraging the identification of evidentiary information that can facilitate dispute resolution, such as appointment logs and trouble tickets.

MICA also supports the FMC proposal for the use of more consistent demurrage and detention terminology in carrier and terminal tariffs, including that the most common understanding of these terms based on the source of the charge (land for demurrage) and (container for detention) as opposed to the location (inside or outside the terminal).

Finally, we believe that in order to have the greatest immediate impact on the trade, the FMC should proceed to adopt its proposed interpretive rule promptly.

Respectfully submitted,

MEAT IMPORT COUNCIL of AMERICA, INC.
BY

A handwritten signature in black ink, appearing to read "Stephen Sothmann", is centered on a light gray rectangular background.

Stephen Sothmann
Associate Director