



February 27, 2017

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

Via Email and US Mail

Re: Petition No. P4-16

Dear Assistant Secretary Dickon:

The New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. (NYNJFFF&BA) would like to provide comments to the Federal Maritime Commission (FMC) concerning the Coalition for Fair Port Practices' petition for a rulemaking "to clarify what constitutes 'just and reasonable rules and practices' with respect to the assessment of demurrage, detention, and per diem charges by ocean common carriers and marine terminal operators when ports are congested or otherwise inaccessible." As one of the oldest trade associations for licensed freight forwarders, NVOCCs, and Customs Brokers in the United States, the NYNJFFF&BA has over 100 regular members and 25 industry -related affiliated members who have themselves suffered or seen their import and export clients bear the additional costs of detention and demurrage in situations beyond their control. The membership consists of both publically traded multi-national companies as well as small businesses.

The NYNJFFF&BA is one of the members in the group that formed the Coalition of Fair Port Practices and strongly supports the requested rulemaking. We urge the FMC to begin a proceeding to consider this matter as soon as possible.

In recent years, there have been a number of situations where the vessel operators or marine terminal operators have assessed significant amounts of demurrage or detention in situations where neither we nor our customers are at fault or are able to pick up or deliver cargo or containers from or to the ports or carriers. In particular, recurring port congestion resulting from significant weather events, port labor issues, carrier bankruptcy, or inadequate port infrastructure have caused lengthy delays in moving the cargo and empty containers. There have been times when containers subject to Customs examination could not be processed efficiently and the importer was left to pay

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excessive demurrage and detention. Reasons for the delay were not related to the nature of the cargo or any importer Customs release issues. Yet, ports and carriers have routinely assessed demurrage and/or detention charges to us and/or our customers even when the delays in moving the containers are normally beyond our control.

Our membership is often the party that gets invoiced by the carriers and marine terminal operators and spends an unbearable amount of time attempting to have unreasonable demurrage and detention charges removed or reduced. Often the attempt is unsuccessful or dependent upon the customer relationship with a particular carrier or terminal. It is inherently unfair and capricious that some companies can have excessive demurrage and detention waived in extraordinary situations but others cannot. The existing system of arguing with the carriers or ports over the propriety of receiving demurrage or detention bills in these circumstances or, if the carrier or ports refuse to listen, in challenging the bills at the Commission, even with the assistance of the Consumer Affairs Dispute Resolution Service, is time consuming and unwieldy. For that reason, we believe that the Commission should consider adopting a policy or rule, as proposed by the Coalition, that makes it clear that it would be inappropriate for the carriers and MTOs to assess demurrage and/detention charges in situations where the delays are clearly beyond the control or fault of the OTIs and their customers.

The NYNJFF&BA would like to emphasize that we are not asking the Commission to add new regulations but to hold the carriers and terminals responsible to act reasonably and lawfully under the Shipping Act and not assess demurrage and detention in situations where the delays are not attributable to the cargo interests.

By doing so, the Commission would both provide a needed incentive to those parties to work harder to increase the efficiency of their operations and significantly reduce the amount of time spent or arguing or litigating about demurrage and detention bills.

We accordingly urge the Commission to initiate a proceeding to consider this important issue.

Respectfully,

New York New Jersey Foreign Freight
Forwarders & Brokers Association



Charles Riley
President