

**PETITION NO. P4-16—*PETITION OF THE
COALITION FOR FAIR PORT PRACTICES FOR
RULEMAKING***

**TESTIMONY OF THE
*COALITION FOR FAIR PORT
PRACTICES***

January 16, 2018

26 MEMBERS OF THE COALITION

- American Apparel & Footwear Association
- American Chemistry Council
- American Import Shippers Association
- Association of Bi-State Motor Carriers
- Association of Food Industries
- Auto Care Association
- Foreign Trade Association
- Green Coffee Association, Inc.
- Harbor Association of Industry & Commerce
- Harbor Trucking Association
- Intermodal Motor Carriers Conference
- International Association of Movers
- Juice Products Association
- Juvenile Products Manufacturers Association

26 MEMBERS OF THE COALITION

- Meat Import Council of America
- Motor & Equipment Manufacturers Association
- National Customs Brokers & Forwarders Association of America, Inc.
- National Pork Producers Council
- National Retail Federation
- New York/New Jersey Foreign Freight Forwarders and Brokers Association
- North American Meat Institute
- Retail Industry Leaders Association
- Tea Association of the USA, Inc.
- The National Industrial Transportation League
- Transportation Intermediaries Association
- U.S. Hide, Skin and Leather Association

WITNESSES FOR COALITION

Industry Witnesses:

- Don Pisano, President, American Coffee Corporation
- Laura Crowe, Senior Director, Global Services, Walmart Corporation
- Robert Leef, Senior Vice President, East Region, Container Port Group.
- Fred Johring, President, Golden State Express
- Alex Cherin, representing the California Trucking Association Intermodal Conference

Legal Counsel:

- Karyn Booth, Partner, Thompson Hine, LLP
- Nicholas DiMichael, Senior Counsel, Thompson Hine LLP

**There Is a Problem with
Demurrage and Detention
Practices Nationwide**

Commercial Solutions Are Not Sufficient To Solve the Problem

**The Commission Is the Sole Party
With Both The Expertise and the
Power To Address the Problem**

**The Petitioners Are Requesting
the Commission to Issue a Policy
Statement That Will Guide the
Industry As To Unreasonable
Demurrage/Detention Practices**

THE PROPOSED POLICY STATEMENT IS CONSISTENT WITH SOME COMMERCIAL PRACTICES

- CMA Tariff CMDU-100, Rule 100 - Import Demurrage Rules: “In the event the carrier is for any reason unable to deliver cargo within free time, the free time shall be extended for a period equal to the duration of the delay of delivery. If cargo is already in a demurrage period, no demurrage or first period demurrage will be charged . . .”
- COSCO Tariff 201, Section 5 - Carrier Inability - USA: “When the carrier is for any reason unable to tender cargo for delivery during free time, free time will be extended for a period equal to the duration of the carrier’s inability . . . If such condition arises after the expiration of free time, no demurrage or first period demurrage will be charged . . .”
- Maher Terminals, LLC, Tariff Section III: “When the loading of cargo into a vessel is prevented by any factor immobilizing the pier facility . . . such as weather conditions, strike or work stoppage . . . cargo affected thereby shall be granted additional free time. . . If cargo is on demurrage, first period demurrage charges shall be assessed . . .”
- See also, Port of Long Beach, Tariff No. 004, Rule 34-D, Section IV(b)

REQUEST FOR POLICY STATEMENT: LANGUAGE FROM EXHIBIT A TO PETITION

PROPOSED FMC STATEMENT OF POLICY

ON OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR DEMURRAGE, DETENTION AND PER DIEM CHARGES

- (a) **Section 10(d) of the Shipping Act of 1984** (46 U.S.C. §41102(c)) **states that a common carrier or marine terminal operator 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.
- (b) **The Federal Maritime Commission interprets this provision to mean that when** an ocean common carrier or marine terminal operator is unable to tender cargo for delivery and/or to receive equipment (“disability”) and **such disability is caused by any event or circumstance that is beyond the control of the shipper, receiver or motor carrier . . . then, if the disability commences before free time, it would be unreasonable for the common carrier or marine terminal operator to fail to extend free time . . .**
- (c) [wording applicable to disability occurring after free time]. . .
- (d) [wording applicable to port-wide disability beyond shipper, etc. control]. . .

**The Requested Policy Statement
Allows for A Wide Variety of
Commercial Terms and Terminal
Operations**

CONTACT INFORMATION

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