

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Petition No. P4-16

**PETITION OF THE COALITION FOR FAIR PORT PRACTICES FOR
RULEMAKING**

**TESTIMONY OF DON PISANO
PRESIDENT OF AMERICAN COFFEE CORPORATION
ON BEHALF OF THE COALITION FOR FAIR PORT PRACTICES**

Good morning. I am Don Pisano, President of American Coffee Corporation. I am responsible for all operations including all ocean borne containerized shipments. Our company handles approximately 2,000 TEUs per year of green coffee beans from Asia, Africa, Central and South America into 15 ports of entry along all three U.S. coasts. While 2,000 containers probably puts us into the small to medium size shipper range, our span of activity gives us varied and pretty significant experience in dealing with carriers and marine terminal operators. From that experience I must concur with most of the findings detailed in the FMC report issued April 3, 2015 on *Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports*, in which it determined that there is no clear or standard manner in which carriers and terminal operators handle demurrage and detention issues, thus making comparisons difficult. While detention and demurrage charges are intended to encourage the timely pickup of containers from terminals and the timely return of equipment to carriers, these charges are punitively applied in cases where it is impossible for the shipper to access the seaport due to congestion or other causes.

While it is true that both terminal free time and equipment free time privileges may be negotiated with individual carriers, each carrier has its own policies regarding extended free time or waivers of charges which are generally tied to larger volume commitments. Smaller shippers generally lack the ability to secure anything more than the standard tariff filings. We maintain service contracts with several major carriers that include free time privileges within the service contract terms. However, we are often in disagreements with our carriers and the terminal

operators that serve them over the fair and practical application of those privileges, and are regularly frustrated at our inability to reach amicable settlements.

Over the past several years our company has suffered through service disruptions caused by labor disputes between carriers and stevedoring unions, which were totally beyond our control. In addition, our company and the draymen handling our containers have experienced many incidents of severe congestion at container terminals as a result of larger vessels, the bunching of port calls, and poor planning and coordination between the carrier and the MTO, all of which prevented the pickup of our cargo and return of empty containers within the allowed terminal and equipment free time privileges. In some cases, terminal gates were closed without notice while our truckers had already been dispatched and were waiting in line to enter the terminal. We have also experienced numerous delays caused by U.S. governmental holds including Customs VACIS and other examinations and inspections, which are not always completed within the free time period allowed under our negotiated carrier service contracts and for which we were charged demurrage.

In the specific case included in my statement submitted in support of the petition filed by the Coalition for Fair Port Practices, our containers could not be removed initially due to a Customs hold. But once the permit to transfer was received, we still had two days of free time remaining but were unable to secure appointments at the terminal which forced us to incur 5 days' worth of demurrage charges. Neither the Customs hold nor the lack of available appointments were within our control. Frustrated by the carrier and the terminal operator's refusal to negotiate a resolution, we did enlist the FMC's office of Consumer Affairs for mediation, but even the FMC's effort was rebuffed.

While we can choose our carriers, it is the carrier which chooses the marine terminal operator. In the current environment with the proliferation of vessel sharing agreements, there is no longer any real expectation as to which terminal will handle the cargo. Considering there is no commercial relationship between the beneficial cargo owner and the marine terminal operator, the MTO is free to act with impunity without consequence to their business.

What the coalition is seeking is **not** to be relieved of demurrage and detention charges when cargo is not removed or equipment is not returned in a timely manner when those actions are within our control, since we all benefit from efficient carrier and port operations. Nor is it seeking some kind of advantage over the carriers or marine terminal operators. We are purely seeking an establishment of fair business practices which can be uniformly applied throughout the U.S. port system.

Surely the Federal Maritime Commission in its role to ensure a fair and competitive ocean shipping environment has the authority and wherewithal to require that shippers are not unfairly penalized when access to the goods is denied for a reason which is beyond the shipper's control. We respectfully urge the Commission to take action to offer guidance to the industry as to demurrage and detention practices that are fair, reasonable, and consistent with the Shipping Act in such circumstances.

Thank you for your time.