

*Foreign Trade Association
6216 E. Pacific Coast Hwy. #407
Long Beach, CA 90803*



February 1, 2018

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

**RE: Petition of the Coalition for Fair Port Practices for Rulemaking
[Petition No. P4-16]
Comments Submitted by The Foreign Trade Association**

Dear Assistant Secretary Dickon,

The Foreign Trade Association submits these comments in response to the Federal Maritime Commission's Notice of Public Hearing and Request for Comments on the Petition of the Coalition for Fair Port Practices for Rulemaking. An original of these comments will be sent via overnight.

TESTIMONY OF THE FTA

Attached hereto as Exhibit "A" is a copy of my opening statement provided to Panel 3: Intermediary Panel at the hearing on January 16, 2018.

**RESPONSE TO COMMISSIONER MAFFEI'S QUESTIONS REGARDING
CBP GENERAL ORDER**

In response to Commissioner Daniel B. Maffei's request, below is a summary of advice I gave to a client regarding the use of U.S. Customs and Border Protection General Order process to avoid excessive delay and the demurrage charges due to port congestion in November of 2014.



While port congestion is systemic, port congestion became increasingly acute in November and December of 2014.¹ At that time, it was taking weeks to obtain receipt of ocean containers from the marine terminal. Motor carriers were waiting on line for days and were often turned away. The congestion was so acute, ocean carriers diverted vessels to other ports of entry.²

A U.S. importer client sought my guidance in avoiding delay and demurrage. The client needed to meet an important delivery deadline with a new customer. The client had lost faith in the ocean transportation system.

I advised the client to consider abandoning the cargo under 19 CFR § 123.10, which states:

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unloading until the fifteenth calendar day after landing. **No later than 20 calendar days after landing**, the owner or operator of the vehicle or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to \$1,000 per bill of lading against the owner or operator of the vehicle or the agent thereof. If the value of the merchandise on the bill is less than \$1,000, the penalty shall be equal to the value of such merchandise.

This would force the terminal to deliver the container to the G.O. warehouse within the 15-day period provided for in U.S. Customs and Border Protection Public Bulletin LA09-009, attached hereto as Exhibit "B."

Once the container had been moved to the general order warehouse, the client could make entry and obtain the cargo, bypassing the port congestion at the marine terminal. A strategy of abandonment would save time and money.

¹ [Congestion and delays continue at ports of Los Angeles and Long Beach](https://www.scpr.org/blogs/economy/2014/12/03/17637/congestion-and-delays-continue-at-ports-of-los-ang/)
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² Cargo is diverted from congested Long Beach, Los Angeles ports. See
<https://www.presstelegram.com/2014/12/13/cargo-is-diverted-from-congested-long-beach-los-angeles-ports/>



CONCLUSION

The facts listed in the opening statement, my testimony on January 16, 2018, and herein are evidence of the systemic nature of port congestion. The only issue is how acute the congestion becomes on any given day.

The collection of demurrage, detention and per diem the midst of port congestion is an unjust and unreasonable practice and a violation of California law. Cal. Bus. & Prof. Code § 22928. Despite the known causes of port congestion, custodial ocean carriers and terminal operators have continued the practice of accessing these charges during periods of gate closure, de facto closure and port congestion. Accordingly, the FMC should adopt Petitioner's policy statement.

Respectfully,

A handwritten signature in blue ink, appearing to read "Cameron W. Roberts", is written over the typed name.

Cameron W. Roberts
Chairman of the Foreign Trade Association