

February 2, 2018

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

Re: Petition of the Coalition for Fair Port Practices for Rulemaking - Petition No. P4-16

Dear Assistant Secretary Dickon:

I am writing to express the Retail Industry Leaders Association's support for the petition of the Coalition for Fair Port Practices, FMC Docket P4-16. We urge the Federal Maritime Commission to issue a policy statement addressing the levying of detention, demurrage and per diem charges in terminals at sea ports in the United States. We believe such a policy statement is within the Commission's scope, and that it would help provide clarity for the industry, improve efficiency and operations, and protect American businesses.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA members are some of the largest shippers and cargo owners in the country, and are considerable users of our nation's ports. As such, retailers are often disproportionately affected by systemic issues of port congestion and operational inefficiencies. Furthermore, while it has been suggested that in the absence of punitive levels of fee assessment, retailers would be motivated to use terminals as "storage," that argument simply does not bear scrutiny. In today's fast-paced retail market, speed and responsiveness are absolutely critical. Retailers are under constant pressure to reduce the time spent between acquiring merchandise and getting it in the customer's hands. As such, most retailers closely monitor metrics and key performance indicators that reflect the speed of their supply chains. Time where merchandise is not moving at all, such as container dwell time in ports, is of particular concern, and is a focus of many retailers' efforts to collaborate with partners in the supply chain ecosystem to drive greater efficiency. Greater transparency and measurability of port operations is an area of keen interest to the retail community. Indeed, RILA and our members have participated in many industrywide efforts to improve efficiency, transparency and effectiveness at ports, such as the commission led by Commissioner Dye.

The Coalition is not asking for the FMC to create new regulations, to abolish detention and demurrage fees, to impose extensions of free time, or to otherwise intervene in contractual relationships between business entities. RILA advocates for market-based solutions to issues; however, ocean shipping and ports are not truly free markets. The complicated web of contractual relationships and the large array of stakeholders have the effect of making shippers and their cargo (and the drayage providers who move the cargo) often subject to the charges and inclinations of terminal operators, with whom shippers generally have no contractual relationship. Retailers have virtually no say in which terminal operators handle their cargo, and even less control in this era of massive carrier alliances.

Furthermore, there is little or no market incentive for terminals to view shippers as “the customer,” as the shippers have little ability to take their business elsewhere. When containers are unavailable for pickup for any of a variety of reasons outside a shipper’s or driver’s control—work stoppage, closure of all or part of the terminal yard, unavailability of appointments, weather, and so on—the shipper has little recourse when forced to pay a steep fee to ultimately retrieve its cargo. Dispute resolution through the carriers or terminal operators can be a lengthy and arduous process. As very large shippers, RILA’s members feel a proportionally larger effect from this practice. In especially acute times of congestion or disruption, RILA members have experienced charges in the hundreds of thousands of dollars, and amounting to millions over time.

We have also seen that this is not necessarily a matter than can be negotiated via service contracts and business relationships. Shippers simply do not enjoy the choice or leverage to adequately address this issue in contracts. As we heard from testimony at the hearing, if the world’s largest retailer has difficulty negotiating relief in its contracts, what hope could smaller shippers possibly have?

When fairly applied, detention, demurrage and per diem fees are essential tools to encourage the fluid movement of supply chains, and smooth operations of ports. Again, the Coalition’s petition does not suggest the abolition of these charges; nor does the petition suggest that the Commission should get involved in defining and enforcing such things as minimum free time allowances.

A policy statement on this issue from the FMC would help provide clarity and standards for fair practice in the industry. This baseline expectation of business practices would help stakeholders streamline operations, and would save countless hours of time and significant cost that is currently spent negotiating and settling fee disputes among several parties, often foreign-owned ocean carriers and marine terminal operators.

RILA thanks the Commission for holding this hearing to consider the important issue of detention and demurrage application, and appreciates the opportunity to provide comments. Please contact me with any questions or further discussion.

Sincerely,

Jennifer M. Safavian  
Executive Vice President, Government Affairs