



WORLD SHIPPING COUNCIL
PARTNERS IN TRADE

Statement of

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World Shipping Council

Before the

Federal Maritime Commission

In the matter of

Issues related to detention, demurrage, and per diem charges

Petition P4-16

January 17, 2018

Good morning Chairman Khouri, Commissioner Dye, and Commissioner Maffei. Thank you for the opportunity to testify today. My name is John Butler. I am President and CEO of the World Shipping Council.

The Council has filed two sets of comments in response to the petition. I am not going to try to summarize today everything we said in those papers. What I would like to do is to highlight a few key reasons why the petition should be denied.

I understand that the Commission is interested in port efficiency broadly, but we are here today on a specific petition, and I think it is important to address the details of that petition. The Petition asks the Commission to transform carriers and marine terminal operators into guarantors or insurance providers for weather events, labor disputes, equipment shortages, and government cargo inspections.

The Commission should decline that invitation on the grounds that the relief that the Petition seeks is unsupported by the law and the facts. In addition, granting the requested relief would be bad policy.

On the law, the relief that the Petition seeks has already been rejected by the Commission in the very case that the Petitioners rely upon most. That case is the 1948 New York I case, which the petition cites some 14 times. In the New York case, the U.S. Maritime Commission found that it would be improper to place responsibility on carriers for delays associated with pest quarantines, food and drug inspections, customs inspections, truck congestion, and port congestion. In short, the very case that petitioners rely on stands for the proposition that the Commission should not grant the requested relief.

The other important legal point is that the petition offers a legal standard that is inconsistent with the Shipping Act. The touchstone for the petition and for yesterday's testimony is whether a delay is "not the fault of the shipper or the trucker." It is correct that someone seeking relief from the Commission can't have caused the problem that they are complaining about, but that is only the beginning of the analysis, not the end. In a section 10(d)(1) case, the statute requires the Commission to look at the behavior of the marine terminal operator or the carrier, and to ask whether that behavior is unreasonable. The standard that petitioners have offered looks to the wrong parties, and as a result the petition provides no useful guidance to the Commission in deciding what carrier and MTO practices are

just and reasonable and which are not. That is a fatal flaw, and the Commission cannot adopt a rule that uses the “not my fault” standard as its foundation.

On the facts, the World Shipping Council in its first set of comments addressed the facts presented in each of the verified statements attached to the Petition. Almost without exception, the verified statements demonstrate either that disputed charges were substantially waived, that the delays complained of were caused by the government, or that the delays had been caused by labor slowdowns or weather. The most common demurrage trigger raised in the testimony yesterday was government inspection of cargoes, something that cannot be laid at the feet of carriers or marine terminal operators. Those situations would not result in relief under any rule that could be drafted under the applicable statutory standard and the Commission’s own precedent. There has been a lot of frustration expressed, and I understand that the frustration is genuine, but the record is very thin in terms of how often there are situations that are arguably unreasonable under the Shipping Act.

Finally, detention and demurrage charges, the situations that trigger them, and the resolution of disputes over those charges, are very fact-specific. There is already a mechanism in place for an aggrieved party to bring a complaint case to the Commission, where a proper review of all the facts could be made. That has not occurred. No party has brought a reparations case dealing with detention and demurrage at the Commission in recent times, so the Commission does not have the experience of litigation to help it define the issues.

In no small part because of the work that Commissioner Dye has done with the Supply Chain Innovation Teams, there is substantial work being done today to make America’s ports more efficient. The trade press regularly reports the efforts to create those solutions – from new software products for managing free time and container movement, to the trucker appointment systems being considered in New York/New Jersey, to the port-wide information sharing system being piloted by the Port of Los Angeles. The marketplace should be allowed to continue to address the many complexities of these issues.

At the end of the day, the petition asks the Commission to wade into the business of allocating commercial costs and risks that are today allocated by the market.

This petition does not make a persuasive case for the Commission to accept that invitation, and the Commission should deny the petition.

I appreciate the opportunity to testify today, and I would be happy to answer any questions that you might have.