

November 15, 2021

The Honorable Dan Maffei
Chairman
U.S. Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

RE: Container Excess Dwell Fees

Dear Chairman Maffei:

On behalf of the undersigned associations representing importers, exporters and supply chain stakeholders, we are writing to you to express concern about the new Container Excess Dwell Fees that have been established at the Ports of Los Angeles and Long Beach. While the ports and terminals have indicated that the fee is to be paid by the carrier for loaded containers that have excessive dwell time beyond the allotted periods for truck or rail movements, the carriers have indicated that they will pass along the new fee to cargo owners.

Collectively, we have heard concerns from our members about both the establishment of these fees as well as the pass throughs announced by the carriers. We certainly recognize the unprecedented disruption and port congestion that our nation is facing. We applaud efforts to get stakeholders together to develop creative solutions to improve fluidity and move containers as quickly as possible from the port. However, with the ongoing challenges that many cargo owners and drayage trucking companies are experiencing with the ability to retrieve cargo because of port congestion, restrictive empty return policies, and subsequent chassis shortages that result, we believe the new fee will add substantial costs to the supply chain.

We are especially concerned about the announcements by the carriers that they intend to pass the charges through to the cargo owners. We support the letter filed recently by NITL, which asked the Commission how is the purpose of the Container Excess Dwell Fee any different than the current demurrage fees paid by importers and wouldn't the pass through of this fee allow for a "double dip" by the carriers? We agree with NITL that a pass-through of the Container Excess Dwell fee is subject to the FMC's Interpretive Rule on unjust and unreasonable demurrage and detention practices. 46 CFR § 545.5. Under this rule, in order to be reasonable, the fee must serve its "intended primary purposes as financial incentives to promote freight fluidity." 46 C.F.R. § 545.5(1). If the fee cannot serve this purpose, it would unfairly penalize the importer and function as an improper revenue stream.

We strongly encourage the FMC to review the new fees and to clarify that the announced carrier pass throughs would be subject to the FMC's demurrage rule. With the ongoing disruption issues, which many expect to continue well into next year, and the skyrocketing transportation costs that importers and exporters are facing, the FMC needs to ensure that these new fee proposals meet their stated goal and comply with regulations under the FMC's authority.

Thank you very much for your consideration.

Sincerely,

1. Accessories Council
2. Air-Conditioning, Heating, and Refrigeration Institute
3. Airforwarders Association
4. ALTI (Audio and Loudspeaker Technologies International)
5. American Apparel & Footwear Association
6. American Association of Exporters and Importers
7. American Bridal and Prom Industry Association
8. American Coatings Association
9. American Down and Feather Council
10. American Forest & Paper Association
11. American Home Furnishings Alliance
12. American Import Shippers Association
13. American Lighting Association
14. American Log Export Coalition
15. American Pyrotechnics Association
16. American Rental Association
17. American Spice Trade Association
18. American Trucking Associations
19. Association of Bi-State Motor Carriers
20. Association of Food Industries
21. Association of Home Appliance Manufacturers
22. Auto Care Association
23. Automotive Body Parts Association
24. Autos Drive America
25. Business Alliance for Customs Modernization
26. California Fashion Association
27. California Trucking Association
28. Can Manufacturers Institute
29. CAWA- Representing the Automotive Parts Industry
30. Color Pigments Manufacturers Association
31. Consumer Technology Association
32. Council of Fashion Designers of America (CFDA)
33. Fashion Accessories Shippers Association
34. Foreign Trade Association
35. Gemini Shippers Association
36. Green Coffee Association, Inc.
37. Halloween & Costume Association
38. Harbor Trucking Association
39. Hardwood Federation
40. Home Fashion Products Association
41. Institute of Scrap Recycling Industries, Inc.
42. Intermodal Motor Carriers Conference

43. International Association of Movers (IAM)
44. International Housewares Association
45. International Warehouse Logistics Association
46. Juvenile Products Manufacturers Association (JPMA)
47. Leather and Hide Council of America
48. Los Angeles Customs Broker and Freight Forwarder Association
49. Meat Import Council of America
50. Motor and Equipment Manufacturers Association (MEMA)
51. Motorcycle Industry Council
52. NAFEM
53. National Association of Chemical Distributors
54. National Association of Music Merchants
55. National Association of Printing Ink Manufacturer's
56. National Customs Brokers and Forwarders Association of America
57. National Electrical Manufacturers Association
58. National Fisheries Institute
59. National Industrial Transportation League
60. National Pork Producers Council
61. National Retail Federation
62. National Shippers Strategic Transportation Council (NASSTRAC)
63. National Ski & Snowboard Retailers Association
64. National Sporting Goods Association (NSGA)
65. New Jersey Motor Truck Association
66. North American Home Furnishings Association
67. North American Meat Institute
68. North American Uniform Manufacturers & Distributors
69. Outdoor Industry Association
70. Pet Industry Joint Advisory Council (PIJAC)
71. Plumbing Manufacturers International
72. Promotional Products Association International (PPAI)
73. Recreational Off-Highway Vehicle Association
74. Retail Industry Leaders Association (RILA)
75. Snowsports Industries America
76. Society of Chemical Manufacturers & Affiliates
77. Specialty Equipment Market Association
78. Specialty Vehicle Institute of America
79. Sports & Fitness Industry Association
80. Tea Association of the U.S.A., Inc.
81. The Fashion Jewelry and Accessories Trade Association
82. The Toy Association
83. Travel Goods Association
84. U.S. Fashion Industry Association
85. Vinyl Institute

CC: Commissioner Rebecca Dye
Commissioner Carl Bentzel

Commissioner Michael Khouri
Commissioner Louis Sola