

Ag shippers press for demurrage and detention to be 'fully waived'

Agriculture Transportation Coalition urged Senate to press the FMC into taking action during a hearing Wednesday morning.

BY CHRIS DUPIN | WEDNESDAY, MAY 06, 2015

The Agriculture Transportation Coalition is pressing for the Congress and the Federal Maritime Commission to have demurrage and detention charges waived fully if they were imposed on shippers during the period late last year and early this year when West Coast ports were snarled with congestion.

The AgTC said in a statement Tuesday the FMC “can take effective action immediately, even if via informal communications with the ocean carriers” pointing to how carriers backed away from imposing congestion surcharges at West Coast ports when the FMC [raised questions](#) about their plans last November.

The AgTC noted FMC Chairman Mario Cordero appeared before the Senate Commerce, Science, and Transportation Committee for a confirmation [hearing](#) Wednesday morning along with Daniel Elliott of the Surface Transportation Board. Both men are up for reappointment.

According to the AgTC, the hearing “presents a timely opportunity for Senators to ask him (Cordero) what the FMC is doing and should be doing to assist constituent US exporters and importers who are being assessed grossly unfair and financially burdensome per diem container detention charges by the ocean carriers.”

“The US agriculture and forest products industries, the mainstay of our international trade exports, suffered billions of dollars of lost sales and revenue during the prolonged West Coast port disruption. Now, these same exporters are faced with millions of dollars of charges being imposed by ocean carriers, for delays which were most certainly not caused by the exporters,” said Peter Friedmann, executive director of the AgTC.

Friedmann voiced many of the same concerns in an interview with *American Shipper* last month.

“We urge Congress to encourage Chairman Cordero and the Commission to compel the ocean carriers to waive all per diem charges imposed during the period of West Coast port congestion, roughly November 1, 2014 through April 15, 2015,” the coalition said in its statement.

While there were a number of questions about port congestion, alliances and big ships, there was limited discussion of the detention and demurrage issue at the hearing.

Cordero said he and the FMC staff “have been very adamant with regard to protecting the interests of the American shipper and that costs related to demurrage and detention are “a serious concern.”

In Cordero's view, marine terminal operators “were not prepared for the unloading and loading of the thousands of containers these large vessels bring in.”

Meanwhile, National Customs Brokers and Forwarders Association, Inc. (NCBFAA) President Geoffrey Powell sent a letter to Cordero on Tuesday urging the FMC to initiate a fact finding investigation into the issue of port congestion and its impact on demurrage, detention and per diem charges assessed by both liner companies and port terminals.

Powell said the investigation should determine:

- Are charges reasonable – or even lawful - if cargo is unavailable?

- With increasing congestion at major ports, are free time reductions and attendant penalties reasonable?
- Is it reasonable or discriminatory to waive or reduce demurrage and detention charges for favored customers?
- Is using assessment of the penalty portion of demurrage as a revenue source a reasonable practice?
- Are the charges based on cost and competitive factors or simply intended to generate revenues and/or discriminate against less favored customers?

Powell noted a report on demurrage and detention issued last month by the FMC clearly recognized “free time is not a gratuity to be granted or denied at the whim of the provider of ocean transportation – it is required as a necessary part of the carrier’s transportation obligation.”

But he said as ships have become larger and terminal space has diminished in recent years, some carriers and marine terminal operators not only reduced the time during which importer and consignees can pick up their cargo, but also increased the penalties for not doing so within the free time.

Powell said there is wide variation in demurrage charges by carriers within and across ports — in the study released last month by the FMC, for example, Day 6 import demurrage charges at the ports of Los Angeles and Virginia for 20-foot dry containers ranged anywhere from \$50 to \$450 depending on the carrier.

Powell said while competitive considerations and equipment recovery challenges may account for this, he wrote that “it is also possible that these varying amounts have little or nothing to do with actual cost considerations, but instead are based upon revenue-generating considerations and/or the internal culture of the individual carriers.”

AgTC said in its release, “West Coast marine terminals became extremely congested during the West Coast port labor contract negotiations. It was impossible for exporters and importers to return the ocean carriers’ containers before the “free time” expired - typically 4 to 10 days.”

“Terminals closed abruptly for hours or days at a time, and trucks could not get into the terminals to drop off their containers, creating gridlock that lasted for weeks and months. At times, railroads were forced to embargo shipments to the West Coast ports, as there was no place to unload.

“Even though the ocean carriers were fully aware of this situation, they have churned out ‘per diem’ charges, for failure of their customer to return the container on time. For some exporters and importers, the per diem fees are totaling hundreds of thousands and in some cases millions of dollars. These are costs that are being imposed following nine months of lost sales, cargo damage, lost customers and diverting cargo to air and to alternative gateway ports. As one observer noted, this is akin to renting a car at the airport, but when you try to return it, the car company has so congested the terminal that you can’t get in - and then the car company charges you penalties for not returning the car on time! Some carriers are waiving these charges, but others are not,” it said.

Laura Daniels of Anderson Hay and Grain Company said, "Ocean carriers did much to create the problem, for instance they were not providing accurate information on when their vessels would arrive or depart, which created detention liability on our part when the marine terminals delayed receiving the containers we were trying to return. The carriers allowed the terminals to decide when and for how long they would accept containers for a sailing. Cut off dates for receiving cargo (and containers) were frequently delayed two or three weeks after we had taken the containers for loading, even though the carriers knew they were only giving us 14 days free time.

"Frequently, terminals only accepted containers back for a two or three day period, leaving trucks stranded in lines at the terminals all day long," said Daniels. "Our trucking capacity was reduced by half just due to lines at the terminals, further inhibiting our ability to return containers. Carriers blamed labor and the terminals, while labor and the terminals blamed carriers. We, the exporter at the end of the chain, have been left holding the bag, trying to figure out what schedule our bookings would be on, what we might possibly be able to truck in order to keep our business running and our employees working. For all this, the carriers are imposing hundreds of thousands of dollars of per diem fees on the hay exporters here in the Pacific Northwest."

Friedmann said, "Carriers cannot, should not be allowed to profit by the congestion. We applaud those carriers which are responding to their customers' (the exporters and importers) requests for waiver of these unfair per diem fees; as the US consumers of ocean transportation services, we look to the FMC and Congress to insist that all carriers waive these fees for shipments during the brutal West Coast port congestion."

AgTC praised the FMC's Consumer Affairs and Dispute Resolution Service (CADRS), by which an individual exporter or importer can file a request for assistance, including a request to the commission to encourage the carrier to waive the per diem fee.

The shipper group said the CADRS process is valuable but "individual case-based. Very difficult, as it requires the shipper to research and provide detailed documentation for each time the terminals were closed. It is almost impossible for the shipper to retrieve this information, sometimes the terminals themselves may not have it. We applaud the CADRS efforts, however exporters do not have the personnel, time or funds to contest thousands of these abusive per diem charges on a case-by-case basis."

AgTC added the FMC report on demurrage and detention "suggested actions such as establishing an advisory committee, fact finding missions, or hosting listening sessions. While nice to do more studies and outreach in the future, none of those will provide the relief that thousands of US exporters and importers need now. "