



AMERICAN COFFEE CORPORATION

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OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION

February 10, 2017

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]

Dear Assistant Secretary Dickon:

American Coffee Corporation is pleased to respond to the Federal Maritime Commission (FMC) *Federal Register* notice published on December 28, 2016 concerning a petition for rulemaking from the Coalition for Fair Port Practices. American Coffee Corporation fully supports the policy statement requested by the Coalition which would help bring about more reasonable demurrage and detention practices for cargo moving through our nation's seaports. We urge the FMC to begin a formal rulemaking on this matter as soon as possible.

As president of American Coffee Corporation, I am responsible for all operations including all ocean borne containerized shipments. My company handles approximately 2,000 TEUs per year of green coffee beans from Asia, Africa, Central and South America into 15 ports of entry along all three U.S. coasts. We maintain service contracts with several major carriers and include free time privileges within the service contract terms. However, we are often in disagreements with our carriers and the terminal operators that serve them over the fair and practical application of those privileges and regularly find ourselves frustrated at our inability to reach amicable agreements.

Our company has experienced many incidents of severe congestion at container terminals in U.S. ports on both the West Coast and East Coast which have prevented our draymen from picking up our cargo and returning empty containers, which may or may not be the same location from where they were picked up. We have also experienced numerous delays caused by government holds and inspections including Customs VACIS examinations and CET intensive examinations which are not always completed within our established free time privileges under our negotiated carrier service contracts.

In certain weather related situations when terminals plan to close in advance of an oncoming storm, they may at times provide for another day of free time. But it is quite perplexing that the day's relief does not apply to containers which may already be incurring demurrage at the same terminal, even if due to circumstances beyond the shipper's control.



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As an example, we received a notice from the Port Authority of New York and New Jersey on February 8, 2017 concerning Winter Storm Niko which read: *Quote* Due to the impending snow storm, all container terminals, empty and chassis depots will be CLOSED on Thursday February 9th. Free time will be extended for containers not already in demurrage. Per diems on containers and chassis will be handled in accordance with the Winter Weather Plan. *Unquote*

We contend that in such instances, free time, demurrage and container detention should all be extended during the period of such terminal closure.

Whether the past incidents involved weather, labor issues, government exams, the arrival of very large vessels or other disruptions, the port delays were beyond the control of my company or our draymen. All too frequently shippers and truckers are being charged demurrage and detention penalties for late pickup or return of containers when it is not their fault. If the terminal is closed during normal working hours, or if a container is unavailable for pickup during the free time period due to congestion or other disruption at the port, carriers and terminals should not assess demurrage. The same is true for detention charges when attempts to return an empty container are frustrated. These are real costs that hurt American businesses and ultimately the American consumer.

The Coalition for Fair Port Practices has proposed a policy statement that would help to stop these unfair practices. The FMC has the authority to ensure that demurrage and detention practices are fair and reasonable and the American shippers must look to the FMC to address this problem.

The FMC has taken important steps to examine port congestion issues challenging carriers, shippers, terminals and intermediaries. As the next step, we urge you to grant the petition and open a rulemaking on the Coalition's policy statement to ensure that U.S. imports and exports are not burdened with unfair demurrage and detention charges. Thank you for considering our views.

Sincerely,

**AMERICAN COFFEE CORPORATION**

Donald A. Pisano  
President