



November 2, 2021

Via Email

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

Re: Ports of Los Angeles and Long Beach Container Excess Dwell Fees

Dear Chairman Maffei:

On behalf of the National Industrial Transportation League (“NITL”), I am writing to you regarding significant concerns of our members regarding the new Container Excess Dwell fees recently adopted by the Ports of Los Angeles and Long Beach. These fees are intended to be assessed against ocean carriers, but some carriers intend to pass the fee through to their importer customers. The fee is designed to address the unprecedented congestion at the ports and to incentivize the prompt removal of loaded containers within the designated time-period.

To be clear, NITL strongly supports actions by the ports, carriers, cargo interests, and all other stakeholders that will help alleviate the severe congestion and help return the ports to more normal operations. All parties involved in ocean cargo deliveries must do their part to help address this national crisis and NITL members are committed to picking up their cargo at these ports as quickly as is feasible under present circumstances. NITL members, like thousands of other importers and exporters, are experiencing severe supply chain disruption and skyrocketing costs due to the ongoing port congestion and related challenges that have impacted the fluidity of the ocean cargo delivery network.

NITL understands that, on November 15, the ports will begin assessing a fee of \$100 per loaded container and that the fee will increase by \$100 per day for containers that have dwelled at the ports for nine days and are contracted to move by truck or that have dwelled for six days are contracted to move by rail. While NITL does not oppose assessment of the fee on the ocean carriers who have more control over the discharge of containers and contract with the terminals and rails directly, our members are very concerned about the likely pass-through of the fees to importers, since importers are already paying demurrage fees to ocean carriers which serve precisely the same purpose as the Container Excess Dwell fee. In other words, a pass-through of the Container Excess Dwell fee to importers will be an unreasonable “double-dip” by the ocean carriers. Moreover, recognizing that importers are often prevented from removing their cargo from the terminal timely because of well-documented congestion-related issues such as chassis shortages, a lack of terminal appointments and empty return constraints, a pass-through of the new Container Excess Dwell fee to the importers is unlikely to achieve its intended purpose in those instances.

Most importantly, any pass-through will undermine any incentive for ocean carriers to change their own practices to help alleviate congestion.

Based on the identical purpose between the Container Excess Dwell fee and demurrage, NITL respectfully asks the FMC to clarify immediately that a pass-through of the Container Excess Dwell fee is subject to the FMC's Interpretive Rule on unjust and unreasonable practices with respect to demurrage and detention which was adopted in May 2020. 46 CFR § 545.5. Under this rule, 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. Further, the FMC should also clarify that ocean carriers who assess both fees upon importers to accomplish the very same financial incentive for cargo removal from the ports would be an unreasonable practice.

Finally, to the extent that the carriers publish the Container Excess Dwell fee or any provision designed to allow a pass-through of such fees in their tariffs, they must provide thirty (30) days' advance publication before the charge can take effect. *See* 46 U.S.C. § 40501(e). We request that the FMC confirm the application of this requirement to the Container Excess Dwell fee.

The League greatly appreciates your leadership during these challenging times and respectfully requests your assistance with this urgent matter.

Respectfully,

A handwritten signature in black ink that reads "E. Nancy O'Liddy". The signature is written in a cursive, slightly slanted style.

E. Nancy O'Liddy
Executive Director

cc: Commissioner Carl Bentzel
Commissioner Rebecca Dye
Commissioner Michael Khouri
Commissioner Louis Sola