



News Release

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For Immediate Release

NCBFAA President Calls for FMC Port Congestion Fact Finding Investigation

Washington, DC: In a letter to Federal Maritime Commission (FMC) Chairman Mario Cordero, National Customs Brokers and Forwarders Association, Inc. (NCBFAA) President Geoffrey Powell urged 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 the vessel operating common carriers (VOCCs) and the port terminals.

Citing the Commission's recently released report, "Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving Through Selected United States Ports," President Powell noted that "there is a clear recognition in the Report that '[f]ree 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.'"

However, as vessels became larger and terminal space 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.

Added to this is the wide variation in charges imposed by carriers within ports and across ports. Although competitive considerations and equipment recovery challenges may account for this, President Powell 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."

"This raises the question of whether at least the penalty portions of demurrage and detention charges are being established on a reasonable basis," he said.

The current situation also calls into question the value of vessel sharing and consortium agreements, which are supposed to enhance the efficiency of the various carriers but appear to do little to mitigate the congestion. "If the port infrastructure and operational practices at a port cannot support the movement of cargo onto or off of the vessels that are calling at port," President Powell wrote, "perhaps it is time to reconsider whether these agreements do in fact produce the economies and efficiencies that the VOCCs have promised, especially in light of the significant demurrage and detention that have raised the costs of U.S. importers and exporters as well as the public at large."

In his letter, President Powell requested a review of these specific issues:

- 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?

Headquartered in Washington, DC, the NCBFAA represents nearly 860 member companies with 100,000 employees in international trade - the nation's leading freight forwarders, customs brokers, ocean transportation intermediaries (OTIs), NVOCCs and air cargo agents, serving more than 250,000 importers and exporters. Established in 1897 in New York, NCBFAA is considered the national voice of the industry. Through its various committees, counsel and representatives, the Association maintains a close watch over legislative and regulatory issues that affect its members. It keeps them informed of these and other related issues through its weekly Monday Morning eBriefing and various meetings as well as conferences throughout the year.