

# United States Senate

WASHINGTON, DC 20510

November 19, 2021

The Honorable Daniel B. Maffei  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, DC 20573

Dear Chairman Maffei:

We write to express our serious concern with the new “Container Excess Dwell Fees” at the ports of Los Angeles and Long Beach that will be levied against ocean carriers starting on November 22. Although the ocean carriers will be receiving the bill, they have clearly stated their expectations that all fees will be passed through to the importers. These fees, just like tariffs, ultimately will be passed onto the American consumer in the form of higher prices for goods at a time when the prices are already at record highs. We call on the Federal Maritime Commission (Commission) to immediately review these fees against the statutory and regulatory requirements within the Commission’s jurisdiction. We also urge the Commission to review the ocean carriers’ plan for passing through the detention and demurrage fees to shippers.

Without question, ports across the United States are experiencing unprecedented congestion and record container volumes. We are sympathetic to the strain placed on all facets of the global supply chain, but it is misguided to levy an exorbitant fee under these unprecedented circumstances. Certainly, the delays and congestion at these ports are a multi-faceted problem, but these hyper-demurrage fees are not the solution. If left in place, they will have significant consequences for importers and American consumers.

The ports of Los Angeles and Long Beach will begin charging ocean carriers daily dwell fees of \$100 per container, increasing in \$100 increments every day until the container leaves the terminal. For containers scheduled to move by truck, fees will be incurred by containers that sit for longer than nine days. For containers moving by rail, shipping lines will be charged if the container sits in port for longer than six days.

With this fee structure in place, the costs may increase astronomically. A container that has accrued fees for 30 days will be issued a hyper-demurrage fee of \$46,500. Among other possible violations, this punitive fee structure appears contradictory to the spirit of the Commission’s “reasonable” practices outlined in 46 CFR § 545.5. - *Interpretation of Shipping Act of 1984 - Unjust and unreasonable practices with respect to demurrage and detention*, which the Commission published on May 18, 2020. Under this rule, to be reasonable, the fee must serve its “intended primary purposes as financial incentives to promote freight fluidity.” If the fee cannot serve this purpose, it would unfairly penalize the importer and function as an improper revenue stream.

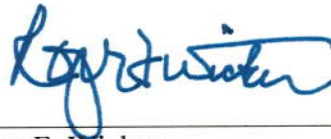
In addition to being excessive, these fees fail to take into account that freight congestion is the result of complex interactions among numerous stakeholders. Labor shortages, empty container congestion, and lack of available intermodal equipment all add to the congestion. With the current logistical issues facing these two ports, it is often not feasible for importers to pick up containers in a timelier fashion. Punishing importers via fees levied against ocean carriers is an ineffective and particularly punitive incentive that not only fails to decongest ports, but ultimately trickles down and hurts the American consumer.

The Commission's mission is to protect American shippers from the unfair practices of ocean carriers, freight consolidators, and port operators. Now, in the midst of these already challenging times, oversight is needed more than ever. As the nation grapples with the recovery from the coronavirus pandemic, it is essential that port operators adhere to the existing regulations. We urge the Commission to move expeditiously to review the ports of Los Angeles and Long Beach for violations within the Commission's jurisdiction. As is visible from the fee structure, time is a critical factor. Thank you for your attention to this urgent matter.

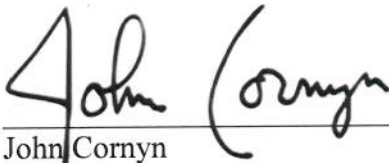
Sincerely,



Jerry Moran  
United States Senator



Roger F. Wicker  
United States Senator



John Cornyn  
United States Senator



John Thune  
United States Senator



James E. Risch  
United States Senator



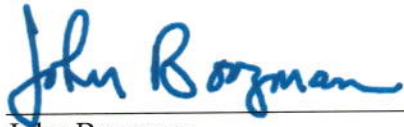
Roger Marshall, M.D.  
United States Senator



Joni K. Ernst  
United States Senator



Shelley Moore Capito  
United States Senator



John Boozman  
United States Senator



Deb Fischer  
United States Senator



Rick Scott  
United States Senator



Mike Crapo  
United States Senator



John Hoeven  
United States Senator



Steve Daines  
United States Senator



Ben Sasse  
United States Senator

cc: The Honorable Rebecca F. Dye, Commissioner, Federal Maritime Commission  
The Honorable Michael A. Khouri, Commissioner, Federal Maritime Commission  
The Honorable Louis E. Sola, Commissioner, Federal Maritime Commission  
The Honorable Carl W. Bentzel, Commissioner, Federal Maritime Commission