



we wear® logistics

October 30, 2014

The Honorable Mario Cordero
Chairman
Federal Maritime Commission
800 North Capitol Street
Washington, DC 20573

RE: Port Congestion Greatly Hurting U.S. Apparel and Footwear Industries

Dear Chairman Cordero,

On behalf of the members of the American Apparel & Footwear Association (AAFA), I am writing to express our industry's urgent concerns with the untenable congestion present in the Ports of Los Angeles and Long Beach. We urge you to address immediately the causes of these delays, as outlined below.

Representing more than 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its four million U.S. workers, and its contribution of \$361 billion in annual U.S. retail sales.

97 percent of clothing and 98 percent of shoes that are sold in the United States are imported. Though our members use many entry ports, an overwhelming majority utilize LA and Long Beach as the first gateway for a substantial portion of their products. Nearly 50 percent of clothing and shoes sold here pass through the Ports of LA and Long Beach. Therefore, severe congestion issues in LA and Long Beach directly affect a huge swath of U.S. manufacturers, U.S. distributors, and U.S. retailers, as well as end-consumers of clothing and shoes, and if allowed to continue, will have a significant negative impact on the U.S. economy.

There are several urgent issues we wish to highlight which demand immediate attention by ports, terminals, carriers, U.S. government agencies, shippers, and other stakeholders. We have noticed and appreciate your efforts so far to address these problems, including holding public forums, but believe that in some cases more immediate and sustained attention is needed to make quick and substantial progress towards solutions.

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These issues are as follows:

1) Ports of LA and Long Beach Must Be Allowed to Work Together on Congestion Issues

Our members are commonly experiencing delays of two weeks or more just to get product through the Ports of LA and Long Beach, primarily due to the unavailability of chassis. This issue has been compounded by ships carrying holiday-season shipments of clothing and shoes being forced to anchor for lack of space on the dock. As you know, chassis unavailability is not only affecting truck shipments, but on-dock rail as well.

Chassis unavailability is the one of the root causes of congestion problems our members consistently encounter. This data is well-documented by many cargo stakeholders.

We would like to laud the Port of Long Beach for forming a Congestion Relief Team in October 2014 specifically to work on chassis issues. Additionally, we are looking forward to hearing more about the chassis purchasing and distribution program approved for development by the Long Beach Harbor Commission on October 13, 2014. These actions have been reported in conjunction with press reports that the Port of Long Beach is taking steps in the short, medium, and long terms to address congestion, including an “asset-sharing system” facilitated by major chassis-leasing companies (*Source: “Long Beach Enters ‘Crisis Mode’ to Attack Congestion”, Journal of Commerce, October 7, 2014*).

However, as you also know, the Ports of LA and Long Beach cannot form inter-port working groups to address congestion due to Federal Maritime Commission (FMC) regulations. These two major international trade gateways that share the same neighborhood must work separately to solve shared congestion problems. This may result in delayed or inefficient solutions.

While we understand the complicated nature of this scenario involving many parties, a permanent solution to chassis unavailability must be implemented as soon as possible. Accordingly, the ports have filed with your agency applications for a discussion agreement to work on port congestion issues together.

We urge the FMC to approve the discussion agreement application by the Ports of LA and Long Beach as soon as possible.

2) Unjust Demurrage

Many of our members have recently seen a high concentration of demurrage invoices in LA and Long Beach terminals throughout

September and October 2014, not for lack of trying to remove their cargo on time, but solely because of rampant port congestion. As good customers, they typically avoid demurrage by providing freight release and customs clearance in advance of vessel arrival. However, vessel bunching and volume spikes concentrate the last free day for multiple vessels into a narrow range of one or two days, and limited resources have made it impossible to move everything within the prescribed “free time”. Additionally, the recent fire at the Port of LA resulted in many of our members not being able to remove their containers within the free time.

On top of these problems, our members have experienced having their containers quickly dropped by carriers in “unassigned” locations amidst congestion chaos and have not been able to find their containers for pickup quickly. In some cases, this has resulted in unavoidable demurrage penalties of over \$100,000 per week.

Put simply, when truckers are only able to perform one turn per day due to congestion factors out of their control, we regard the demurrage charged as an excessive and inappropriate penalty.

The extension of free time within terminals by the Port of Long Beach from four to seven days between October 18 and October 31 is a first step towards addressing this issue. As mentioned above, our members are currently experiencing cargo delays of two weeks or more. While we believe this congestion-related extension should be a minimum of ten days, we have urged the Port of Long Beach to continue an extension and have urged the Port of Los Angeles to implement similar measures.

Additionally, we feel there must be triggers in place that extend free time automatically when certain conditions are met. These could include:

- 1) Container is on terminal but not available for pick-up due to common congestion factors.
- 2) Container is undergoing customs inspection.
- 3) Trucking appointments to get container within free time are exhausted.
- 4) Terminal has unscheduled closure (example: recent fire at the Port of LA).
- 5) Terminal productivity falls below a specific percentage for any day container is on terminal.
- 6) Chassis pool is running below accepted level or exhausted.
- 7) Container is discharged but is in a “closed location”. In this case, the calculation for the Last Free Day should not begin until the container is available in a spotted location.

In times of extreme breakdown where the terminals cannot make the containers available by reasons stated above, then free time should be extended or demurrage should be waived.

By putting such triggers in place, free time would be extended and demurrage penalties reduced thereby providing risk/reward to both parties, not a risk to one and a reward to the other as exists the way free time is set up today.

We have also strongly urged the Ports to encourage terminals to refund unjust demurrage charged due to unavoidable congestion during recent months. This would be contingent on our members being able to demonstrate inability of terminals to provide availability of their containers for any one or more of the causes listed above.

We urge the FMC to use their influence to the fullest extent possible by engaging the Ports of LA and Long Beach, as well as their terminals, in discussions on making the demurrage process make more sense in times of extreme congestion. We urge the FMC to review carefully terminal tariff filings on demurrage at this time. Finally, please seriously engage our members when they reach out to the Consumer Affairs & Dispute Resolution Services (CADRES) to contest unjust demurrage charges levied while container traffic was unavoidably choked by congestion. This is an industry-wide issue.

3) Unresolved ILWU/PMA Contract

As you know, the International Longshore & Warehouse Union (ILWU) and Pacific Maritime Association (PMA) are continuing to negotiate for a new coast-wide labor contract, and ILWU dockworkers are operating under one that is expired.

Many of our members were forced to implement expensive contingency plans leading up to the July 2014 expiration date for fear there would be widespread cargo disruptions. Though there have been no substantial threats of a work stoppage or lock-out since the contract expiration, we have heard directly from our members about work slowdowns related to offloading containers, as well as excessive and unnecessary inspections by ILWU labor. This has also been reported in the press (*Source: "Tedious' ILWU Inspections Contributing to LA-Long Beach Congestion, Journal of Commerce, October 9, 2014*). The lack of a contract means there is no arbitration process to address these slowdowns. Burdens on clothing and shoe importers related to the lack of a port labor contract have therefore continued.

Long term solutions to congestion problems cannot move forward without labor at the table, and labor cannot be at the table until there is

a final contract agreement. This was the subject of an October 20 letter signed by more than 100 industry associations, including AAFA (letter here: https://www.wewear.org/assets/1/7/Multi-Industry_ILWU-PMA_Negotiations_Letter_III_Final_-_102014.pdf).

While we understand the need for a media blackout on the contract negotiations, there has not been a progress update from the parties since August 2014. The longer we go without an update on the negotiations, the greater our concern.

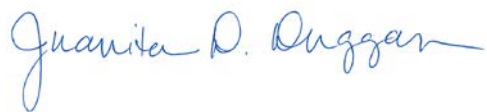
We urge the FMC to engage actively in the ILWU/PMA negotiations, and urge a resolution as quickly as possible. Furthermore, the FMC should urge the parties to distribute regular progress updates on the negotiations.

Conclusion

For all the reasons listed above, the U.S. clothing and shoe industry has had an extremely difficult time importing cargo through the Ports of LA and Long Beach in recent months. This situation cannot be allowed to continue. We thank the FMC for your work on these issues so far. We look forward to working with you to address these critical issues immediately.

Thank you for your attention to this urgent matter. Please contact David Lapidus of my staff at dlapidus@wewear.org or 703-797-9049 if you have any questions or would like additional information.

Sincerely,

A handwritten signature in blue ink that reads "Juanita D. Duggan". The signature is fluid and cursive, with a long horizontal flourish at the end.

Juanita D. Duggan
President and CEO
American Apparel & Footwear Association (AAFA)