

# California District Export Councils



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via First Class U.S. Mail & email

To: Federal Maritime Commission:  
Commissioner Daniel B. Maffei, Chair  
Commissioner Rebecca F. Dye  
Commissioner Michael A. Khouri  
Commissioner Louis E. Sola  
Commissioner Carl W. Bentzel

From: David Socher, Chair, Northern California DEC  
Nick Grooters, Chair, California Inland Empire DEC  
Tsvi Guy, Chair, Central California DEC  
Mark Ballam, Chair, San Diego & Imperial DEC  
David Habib, Jr., Chair, Southern California DEC

## **Re: Port Congestion and Remedies for California Exporters**

Earlier today, all five California based District Export Councils convened for a virtual conference hosted by the California Chamber of Commerce. The sole subject of today's meeting was the many difficulties faced by California exporters shipping everything from electronics, machinery, food stuffs and agricultural goods, and much more. Both the NorCal and SoCal DECs have written separately to the Federal Maritime Commission on this issue.

In fact, our members were honored today to have Commissioner Carl Bentzel make a very informative presentation to our District Export Councils, and the result was a meaningful conversation about port congestion, a key disrupter to economic recovery.

### **District Export Councils**

The over 60 District Export Councils (DEC) nationwide contribute leadership and international trade expertise to complement the U.S. Commercial Service's export promotion efforts through counseling businesses on the exporting process and conducting trade education and community outreach.

The DEC members are appointed by the Secretary of Commerce. These international trade professionals use their knowledge and international business experience to act as consultants to small and medium sized businesses who want to export their products into markets outside of the United States.

For more than 40 years, DECs have served the United States by assisting companies in their local communities' export, thus promoting our country's economic growth and creating new and higher-paying jobs for their communities.

## **Ports**

For many years, there have existed systemic issues which cause significant port congestion. Those issues were recently exacerbated by the pandemic, but have not disappeared. For approximately the last year, the Ports of Los Angeles, Long Beach and Oakland have experienced near crippling equipment shortages, trucker shortages and excessive terminal congestion. Additionally, the appointment system limitations have made it increasingly difficult for shippers to efficiently pick-up and drop-off containers during the allotted free-time or to conduct dual transactions (pick-up and drop off of different shipments on the same trip), all of which have resulted in increased drayage costs, unreasonable detentions and disproportionate demurrage costs.

These are only some of the systemic issues which exist. Others worth noting at this time include carrier practices having to do with how vessels are loaded and unloaded and the lack of load planning. Additionally, carrier practices are causing importers to incur massive assessments for demurrage, detention and similar storage charges, even when loaded containers are not made available for pick up or empties cannot be returned once unloaded within the free time allotted. For exporters, the problem is even worse as the carriers have chosen to ship empty containers back to Asia, having decided the revenue from reloading the empties at origin and returning them loaded to the U.S. produces greater revenue than allowing American exporters to ship their goods to export markets.

According to Roger Isom, President and CEO of the California Cotton Ginners and Growers Association and the West Coast Agricultural Processors Association, West Coast agricultural processors have been charged tens of thousands of dollars in fees as a result of re-booking and storing containers.

On May 18, 2020, the Federal Maritime Commission (“FMC”) released its Interpretive Rule on Detention and Demurrage Under the Shipping Act containing recommendations to carriers intended to alleviate port congestion, all of which were ignored. As a result, on November 20, 2020, the FMC approved a Supplemental Order expanding the authority of Fact Finding 29 to investigate ocean carriers calling at U.S. ports. We appreciate the FMC is pursuing its investigation further. However, that effort appears focused strictly on empty containers being shipped to origin and ignores the massive assessments by the carriers described above, despite the fact the carriers are the cause of these conditions. These massive assessments are devastating to small and medium sized businesses. Carriers are also deciding the value of individual customers and whether or not to waive some or all of these assessments without any transparency or accountability.

President Joseph R. Biden’s plan is to restore confidence in the U.S. government and Build America Back Better. In order for the U.S. to successfully compete in the 21<sup>st</sup> century, this will require a strategic and government wide approach. The American Jobs Plan is also vitally needed legislation that will improve highways, rebuild bridges, and upgrade ports, airports, and transit systems.

Here in California, many economists and port operators predict the current supply chain disruption will return to normal by summer and congestion will ease in time for the 2021 peak season. However, most in the industry expect congestion to return in the fall, during harvest

season, which is also the peak season for imports, plus the situation will continue to ebb and flow until the systemic issues are addressed. While some of the impact of these systemic issues are best addressed at the local level with stakeholders collaborating to identify workable solutions, until the ports, carriers and terminals participate in a meaningful manner, long term solutions are elusive. While the pandemic made things worse, it is not the sole or even the primary cause of the current congestion and those causes will persist as they have over the years.

The prospect that California exporters may yet face another year of congestion at ports during the 2021 harvest season is an emphatic reminder of the immediate task ahead, especially due to carrier practice of by-passing American exporters in favor of shippers located in other parts of the world whose cargo is thought to be a more valuable revenue source.

The Federal Maritime Commission (FMC) is the independent federal agency responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and the U.S. consumer, and thereby ensuring a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

This assembly of California District Export Councils respectfully requests the FMC take immediate action to support U.S. exporters and create a more level playing field for vital California agricultural and other goods and products being exported to the world. In particular, we ask the FMC to expedite its current investigation regarding the shipment of empty containers at the expense of U.S. exporters to the extent permitted by its procedural rules with the results being enacted as mandatory rather than discretionary. We also urge the Commission to recognize the many more significant long-term causes of the current port congestion challenge, and expand its inquiry accordingly.

Thank you for your consideration.

Sincerely,



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