

December 12, 2022

Chairman Daniel Maffei
Commissioners Carl Bentzel, Rebecca Dye, Louis Sola, Max Vekich
Federal Maritime Commission
800 North Capitol Street NW
Washington, D.C. 20573

Subject: December 8th NSAC recommendations approved to submit to the Commission

Dear Chairman Maffei and Commissioners Bentzel, Dye, Sola, and Vekich:

I am writing to formally notify you that the members of the National Shipper Advisory Committee (NSAC) continue their diligent and focused work in our subcommittees and our final public committee meeting on December 8, 2022. The full committee reviewed, discussed, voted upon, and subsequently approved another four recommendations for the Federal Maritime Commission. These recommendations are listed below and each recommendation has been attached to the e-mail containing this letter:

1. Fees and Surcharges Subcommittee – Government Holds
2. Data Subcommittee – Shipment Level Data Alignment
3. Data Subcommittee – Container Level Data Alignment
4. Data Subcommittee – Intermodal Data Alignment

We believe the Fees and Surcharges Subcommittee recommendation aligns within Commissioner Dye's Fact Finding 29 work and the Data Subcommittee recommendations align within Commissioner Bentzel's overall MDTI initiative. Both subcommittees look forward to continued engagement with Commissioners Dye and Bentzell in their important work. As mentioned in the public meeting, the respective subcommittees will follow up with specific questions to existing responses to our recommendations from past meetings. We look forward to receiving responses for these recommendations before our first meeting in 2023.

Should the Commission have any questions related to these four recommendations, please contact Mr. Rich Roche, Fees and Surcharges Subcommittee Chair, Mr. Gabriel Rodriguez Data Subcommittee Chair or myself.

Sincerely,

Michael A. Symonanis
Vice-Chair and Acting Chair, National Shipper Advisory Committee

Director, Strategic Network
Louis Dreyfus Company

Recommendation

Seeking consideration into practice of liner and terminal storage/demurrage/detention or liner demurrage imposed on containers that have been held, delayed, or otherwise detained outside the control of the Account of the cargo.

Purpose. One aspect of international containerized shipping is the chance that containers, either for imports or exports, will be randomly flagged and held for release by U.S. Customs & Border Patrol (CBP) or other government agency (including DEA, FDA, USDA, etc.) for screening, sampling, or intensive inspection for the purposes of national security. While shippers are understanding of the need for such scrutiny, there is a resultant conflict between storage/demurrage/detention or liner demurrage, (hereafter referred to as [D&D]) that is consequential to government holds and the spirit of the Interpretive Rule of the Federal Maritime Commission (FMC) that specifically pertains to the incentive principle.

In extreme cases, government holds may continue for weeks or months, well outside the control of all other parties, and may impact multiple containers, resulting in catastrophic result to the Beneficial Cargo Owner (BCO) that could amount to millions of dollars in [D&D] fees. Similarly, system issues (IE. ISF or AMS data transmission) have been found as root cause of government holds resulting in [D&D] charges, again beyond the control of all parties

Therefore, the purpose of this recommendation is to address this conflict and better marry the reality, and necessity, of government holds, and the incentive principle of the Interpretive Rule.

Applicability and Scope. This recommendation, if accepted and implemented, would apply the incentivization concept of the Interpretive Rule to all containers, both import and export, that are subject to any type of government hold.

Justification. As all parties involved in international trade understand, and support, the necessity of cargo inspections for the purposes of national security, they must approach this issue with objectivity.

More often than not, government holds do result in storage, demurrage, and/or detention charges being levied against the shipper. Moreover, these charges are multiplied for shipments with multiple containers on a bill of lading as all linked containers are held even if only one container is flagged.

Historically, these charges are passed to the shipper in full and rationalized as a “cost of doing business” in international trade. This statement, however, conflicts with the Interpretive Rule which outlines storage, demurrage, and detention as charge schedules to incentivize the movement of goods and not a punitive measure. The spirit of maritime law has always protected carriers from such financial risk as their vessel movement only happens per contract with, and instruction by, shippers. Nevertheless, this same protection is not in place for shippers or terminals. As neither the shipper nor the terminal is at

fault for random government holds, the FMC's Interpretive Rule does not directly address who should bear costs associated with such events.

Complicating the situation is the absence of control that shippers have over the length of time required by government agencies to complete their inspections of cargo. While a hold and inspection that takes just one day to complete is benign, some cases can drag on for weeks or months depending on the intensity of inspection and government resources available to complete the work. Certainly, the argument that consequential storage, demurrage, and/or detention are merely a "cost of doing business" for shippers begins to fall apart as costs increase exponentially with government productivity slowed by budget constraints, health concerns, large waves of cargo throughput, or any other factor impacting government operations. As shippers have no control over the speed of hold resolution, the application of [D&D] is therefore not to incentivize the movement of cargo but instead to penalize the shipper while generating windfall profits for ocean carriers and terminals.

Our proposal is to remove the punitive aspect of the [D&D] fees charges and replace it with an amount closer to the asset cost. We recognize this can vary greatly from one ocean carrier or terminal to another, however, our figure is representative of that amount that is fair for the BCO while compensating the ocean carriers or terminals for their asset cost.

Every type of government hold and inspection will result in fees to the shipper unrelated to storage. These fees are not directly charged by the government and are instead paid to a number of third parties including, but not limited to, the following:

- **The Centralized Examination Station (CES)**, which is a private facility that CBP uses to inspect shipments. The staff at the CES will take care of the logistics of your inspection, such as loading and unloading your shipments, and you'll pay for that service. They may also charge you storage fees for holding your shipment in their warehouse.
- **The drayage carrier**, who moves your shipment to and from the CES. You'll see these on your invoice as drayage charges.

Such charges are customary and are outside the scope of this recommendation. Instead, [D&D] for the purposes of this recommendation includes those charges that are generated for the period of time the container is held and for the space the container occupies.

In regards to [D&D] charges on government holds, the Interpretive Rule must be applied uniformly and tailored to meet its intended purpose. Therefore, we must find a way to apply the spirit of the Rule to the arena of government holds while also maintaining objectivity and consideration for terminals' opportunity costs, shippers' delivered product costs, and the efficiency of cargo flow in the United States.

Recommendation. We, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission codify regulation that fees related to random Government inspections be charged on a reduced scale to shippers. We recommend that the following structure be the foundation for such action.

- Terminals and/or VOCCs agree to invoice, and shippers agree to pay, up to 25% of the contracted or published [D&D] amount for any storage days required by government holds and/or inspections. No dwell fees or tiered structure allowed. Alternatively, a universal flat fee for government hold demurrage or detention, could be considered.
- If the government hold is released within the initial free time, and container(s) is removed within that period, then no [D&D] charges should apply. Once the government hold is released, contractual free time will commence.

National Shipper Advisory Committee to Federal Maritime Commission (FMC)
Sub-Committee: Data & Visibility

Opening: Reduce data complexity and opacity within existing ocean carrier processes and practices by aligning data points relating to vessel data transparency at all points in the transport, from origin to destination.

Purpose: The ocean container shipping environment is extraordinarily complex, and one critical dimension of the complexity is the lack of data and data alignment for vessels and vessel operation among ocean carriers on the same vessel calling US ports each week. Varied carriers operating on a vessel can have multiple versions of the vessel name, estimated and actual arrival, or departure dates, varied early return dates, documentation cutoff and physical cutoff dates. Due to these inconsistencies, the logistics industry must manage different shipment information for the same vessel among different carriers which unnecessarily increases workload and national systemic complexity.

Recommendation: Require ocean carriers to align and make consistent Vessel Level Data. For a single vessel call one data set for all ocean carriers to align the following data with the operator of the vessel:

Minimum required U.S. Export Cargo data set:

- Vessel Name as defined by IMO
- Vessel earliest container receiving date
- Vessel last container receiving date
- Estimated vessel port call departure date
- Actual vessel port call departure date
- Port & Terminal of Loading
- (If applicable)
 - Port of transshipment
 - Estimated arrival at port of transshipment date
 - Actual arrival at port of transshipment date
- Port of arrival
- Estimated arrival at port of destination date
- Actual arrival at port of destination date
- Vessel discharge date

Minimum required U. S. Import Cargo data set:

- Vessel Name as defined by IMO
- Port & Terminal of arrival
- Estimated port of loading departure date
- Actual port of loading departure date
- Transshipment port of arrival
- Estimated arrival at port of transshipment date
- Actual arrival at port of transshipment date

- Estimated arrival at port of destination date
- Actual arrival at port of destination date
- Estimated vessel berthing date
- Actual vessel berthing date
- Vessel discharge date

If this data set, as established by the operator of the vessel, is not adopted, and implemented by participating carriers and provided in a timely manner by all carriers on an ocean vessel, it should be considered an unreasonable practice by the Federal Maritime Commission.

For these reasons, we, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission require the data alignment and make consistent for a single vessel call one data set for all carriers on an ocean vessel, to be determined by the operator of the vessel.

National Shipper Advisory Committee to Federal Maritime Commission (FMC)
Sub-Committee: Data & Visibility

Opening: Reduce data complexity and opacity within the supply chain by requiring defined data points for each ocean container.

Purpose: Marine Terminal Operators use various platforms to manage their container-level data. Some MTO(s) do not publish container data. Of those that do publish data, there are varying data sets and varied definitions of this data.

Recommendation: Require ocean carriers to publish these container level data elements maintaining historical time stamps of these milestones in a public format for 180 days and accessible for up to two years.

Minimum required U.S. Export Cargo data set:

- Empty pickup container yard location
- Empty pickup date
- Loaded container location and earliest return date
- Loaded container ingate return
- Last free port demurrage date
- Last free equipment detention date
- Actual origin departure date
- Port of transshipment, when applicable
 - Estimated arrival at Port of transshipment
 - Actual arrival at Port of transshipment
 - Actual departure from Port of transshipment
 - Additional unplanned transshipment information
- Estimated arrival at Port of destination
- Actual arrival at Port of destination
- Vessel berthing date at Port of destination
- Container unloaded at Port destination
- Container location on terminal
- Container pickup available date

Minimum required U. S. Import Cargo data set:

- Loaded container origin terminal ingate date
- Estimated origin departure date
- Actual origin departure date
- Port of transshipment, when applicable

- Estimated arrival at Port of transshipment
- Actual arrival at Port of transshipment
- Actual departure from Port of transshipment
- Additional unplanned transshipment information
- Estimated arrival at Port of destination
- Actual arrival at Port of destination
- Vessel berthing date at Port of destination
- Container unloaded at Port destination
- Container location on terminal Container Hold details (when applicable):
 - Carrier holds
 - Terminal holds
 - Customs hold
 - Partner Government Agencies hold other
- Container pickup available date
- Container last free port demurrage date
- Container last free equipment detention date
- Laden container out gate – include trucker SCAC & chassis number
- Empty ingate return date – include trucker SCAC & chassis number

If this data set is not followed by all ocean carriers and provided in a timely manner, it should be considered an unreasonable practice by the Federal Maritime Commission.

For these reasons, we, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission initiate rulemaking to require the data alignment for specific container detail prior to and while in the ocean carriers' network.

These actions will greatly reduce data complexity and increase supply chain visibility by aligning data points relating to individual container data.

National Shipper Advisory Committee to Federal Maritime Commission (FMC)
Sub-Committee: Data & Visibility

Opening: Improve supply chain data visibility between contractual parties by defining required container intermodal data be published and accessible through web-based platforms, with historical chronology of intermodal container movements. The contractual obligation is between the ocean carrier and shipper.

Recommendation: Require ocean carriers make intermodal data accessible online, maintaining historical time stamps of these milestones in a public format for 180 days and accessible for up to two years, for all ocean containers moving on US railways on a through bill of lading.

To ensure real time transparency following minimum required data for ocean cargo moving through intermodal rail:

- Estimated railcar loading date
- Actual railcar loading date
- Estimated train departure date
- Actual train departure date
- Estimated train arrival date
- Actual train arrival date
- Estimated rail connection
- Actual rail connection Real time status at destination specific to container ground or on chassis
- Container available for pick up date and time
- Loaded container yard location
- Container last free container yard demurrage date
- Container last free equipment detention date
- Empty ingate return

The failure of ocean carriers to provide time stamped chronological data of each ocean container movement in a timely manner should be considered an unreasonable practice by the Federal Maritime Commission.

To reduce data complexity and increase supply chain reliability, we, the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission initiate rulemaking to define the required data sets ocean carriers must make available online, at the container level, for each of these movement milestones while the container is traveling on the US rail on a through bill of lading.