

From: [Bruce Louthan](#)
To: [Secretary](#)
Subject: Docket 19-05, Demurrage and Detention Comments.
Date: Monday, October 21, 2019 12:35:35 PM

I am writing to express my opinion related to demurrage and detention being charged by Ocean carriers which have caused disputes because customers feel they are being unfairly treated when containers are not available for pickup.

The situation at major container ports in areas such as Los Angeles continues to evolve with terminals trying to control truck congestion being subject to appointments which restricts access to the containers.

Some in the Container transport industry act as if they believe the container lines are the ones responsible for terminal operations. They complain that the ocean lines bill them for port storage and for per diem while the container is unavailable due to congestion at the terminals.

This is the result of the ocean carriers doing the industry a favor and consolidating the invoicing of port storage with their freight invoices. They are guilty of accepting greater cargo volume and growing their capacity faster than the infrastructure of US ports has developed the capacity to handle the same increased volume.

I do not think it is fair to say the ocean lines are responsible for the problems associated with billing port storage and container per diem when they are required by your tariff requirements to bill everyone according to their published tariff.

The question that needs to be solved is the mechanism by which the charge becomes applicable or not based on actual shipment release and availability. This would need to make transparent the failure of the ports to make a container accessible to the customer in a timely manner. This would serve shippers and carriers who are handling the billing equally well.

It should take into account both container availability and also appointment availability so a carrier can be allowed in to pull the container.

I am concerned that the complaints regarding unfair billing of port storage and demurrage while a container is unavailable will pressure carriers to disconnect the billing relationship with terminals. I would really **not** like to see the separation of invoicing through terminals and ocean carriers. The billing efficiency created for the terminals by billing the ocean lines and leveraging the existing billing relationships with their shipper clients is an undervalued efficiency. It would be a big pain for every shipper to have to register with every port for an account and create new duplicative billing relationships where the ocean carrier already has set this up.

Carriers also have the advantage of credit terms with facilitate payment efficiency. or can allow shipments to move in bond because they can still hold a container at the final destination when payment is needed before release. For inland deliveries this is a great efficiency. having to pay the port in real time would add inefficiency and cost.

So if the FMC can do anything to improve this it would be to require ports to establish a system of visibility which provides real availability date/time and appointment availability for the carriers so the billing only starts when a container is truly available. If the port needs to re-organize and a container is placed in an inaccessible location for a time the per diem & demurrage should be held. Ocean carriers may want to consider billint the terminal for per diem when this is the case so that per diem collection would be constant but the party billed would be based on accessibility or inaccessibility of the container at the terminal.

The above carrier to port bill back scenario would require great integrity on the part of the terminal and a willingness to be accountable for the time when they bury or relocate containers. It requires that they provide data which they may not have in a systemic communicable way. But if they were to devise such a system that would be a major improvement....provided they could be trusted to be accurate. This would require the proverbial "fox to watch the hen house".

I do not believe there are adequate mechanisms in the marketplace to encourage terminals to invest in a real time location system with the ability to provide to clients (carriers and BCOs)the ability to view container location and availability in real time.

The competition between terminals at ports is enough to discourage that level of investment. Additionally, because the ocean lines are only passing through charges they likewise do not have incentive to push for this unless they are forced but the cost of such a system would likely be prohibitive.

FMC intervention may be the only way to move such an initiative forward.

Ultimately the cost would be passed along to shippers but I think the FMC could have a role in requiring visibility which could create a standard set of requirements so that all terminals would have to adjust together and thus none would be disproportionately disadvantaged. The industry could progress and all shippers/importers would share in the cost through price adjustments.

To accomplish this I think it would be best for the FMC to impose a requirement that all terminals provide accurate real time and persistent (for 2 years or so) data about container availability that any party to the shipment could access.

This would increase ocean carrier billing accuracy and should alleviate the concerns about billing for container that were not available.

chassis and appointment availability would also be needed.

a report could detail the container availability with an available chassis count and appointment availability at that first moment and then if either appointments or chassis dropped below a threshold of 1 (or some other reasonable number) the per diem should stop till a chassis is again available.

Use of a private chassis may be required (such as tri-axle chassis for a 20' heavy container) this could negate the chassis requirements. However it would also be important to figure out when a private chassis was used *only because* the port chassis supply was inadequate. In that case the extra cost to compensate is already being borne by the shipper and therefore the terminal should not be billing demurrage because the shipper was not provided the means necessary to pull their container. The responsibility to provide a chassis does not necessarily belong to the terminal however so if chassis provision is the responsibility of the shipper to begin with this could be eliminated as a criteria for demurrage applicability.

Generally I feel the market should be allowed to work but given the tangled web of interrelated parties who disperse responsibility FMC help as an intermediary to standardize service expectations may be helpful.

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