

October 18, 2019

VIA E-MAIL AND FIRST CLASS MAIL

FEDERAL MARITIME COMMISSION
800 North Capitol Street, N.W.
Washington, D.C. 20573

Attention: Rachel E. Dickon, Secretary - secretary@fmc.gov

Re: Request for Comments
Interpretive Rule on Demurrage
and Detention under the Shipping Act

Dear Ms. Dickon:

We have been retained by the Sea Group Shippers' Association and A.S.A. Management Corp. d/b/a Sea Shipping Line ("SSL") to submit comments in response to the Federal Maritime Commission's ("FMC") request for comments on the proposed Interpretive Rule on Demurrage and Detention under the Shipping Act (the "Proposed Rule").

Sea Group Shippers' Association is an association of shippers formed for the purpose of negotiating service agreements with ocean carriers. SSL is a member of Sea Group Shippers' Association and a licensed ocean transport intermediary non-vessel owning common carrier ("NVOCC") operating under FMC License # 10787N.

As an NVOCC, SSL issues SSL's house bills of lading to its shippers and is considered the carrier on SSL's house bills of lading. However, when SSL books the shipper's cargo with an ocean carrier, SSL becomes the shipper on the ocean carrier's bills of lading. SSL often finds itself in the precarious position of being charged demurrage and detention by an ocean carrier or terminal operator (as the shipper on the ocean carrier's bill of lading) and then having to charge those same demurrage and detention charges to its shipper customer. Although this situation can be difficult in the ordinary course of shipments, it is exacerbated when customs or other governmental inspections or holds are involved. In these instances, the demurrage and detention charges often significantly negatively impact the economics of the shipper's business transaction and sometimes the charges even exceed the value of the cargo being shipped, causing the shipper to abandon the cargo. This leaves SSL, the ocean carrier and the terminal operator with the time consuming and costly problems of disposing of the cargo and attempting to collect the unpaid charges.

The FMC's Proposed Rule suggests suspending demurrage and detention charges during the period the cargo is inaccessible due to the governmental hold. From the standpoint of a shipper, we believe this proposal would be a significant improvement over the current situation.

However, we believe this proposal fails to take into account the concerns of the carriers, terminal operators, and inspection facilities. The FMC's Proposed Rule is premised upon the "incentive principle" being the reason for imposing demurrage and detention charges. The FMC is

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correct, these charges are designed to provide an incentive to shippers to keep containers moving and to get them off the terminal. However, these charges also are designed to allow the carriers, terminal operators and inspection facilities to recover certain costs they incur when a container is taken out of circulation or is taking up space on their facilities. The Proposed Rule does not allow for the recovery of these costs. We ask that the FMC consider the following proposal which attempts to address the interests of all constituents.

Currently the costs associated with governmental inspections and holds are borne by the individual shipper that is involved with the particular shipment being inspected. We believe this practice unfairly places an excessive burden on individual shippers. Governmental inspections and holds are performed for the benefit of the shipping community as a whole and society at large, not just for the individual shipper involved in a particular inspection. Accordingly, we believe these costs should be spread among a wider constituency.

We propose that each laden container being shipped into or out of a United States port be charged a nominal fee to establish a fund (the "Container Inspection Fund"). The Container Inspection Fund could be used to pay carriers', terminal operators' and inspection facilities' charges for relocating containers, devanning and repacking containers, as well as reasonable demurrage and detention charges incurred while the containers are on governmental hold. We suggest that these demurrage and detention charges be reduced charges that are designed to allow these parties to recover their costs, and not the standard escalating incentive based demurrage and detention charges currently being charged to shippers. The Container Inspection Fund also could be used to fund the inspections themselves, which also currently are being paid for by individual shippers. Significantly, the Container Inspection Fund could be used to defray the rapidly escalating cost of the U.S. Customs and Border Protection's ("CBP") Congressionally mandated scanning and imaging program.

According to the Congressional Budget Office's ("CBO") June 2016 report titled "Scanning and Imaging Shipping Containers Overseas: Costs and Alternatives" (the "CBO Report"), each year approximately 12 million containers enter U.S. ports. The CBO Report also indicates that CBP spends approximately \$1.3 billion dollars on its current scanning and imaging program, which covers approximately 5% of all inbound containers. This amount currently is borne by U.S. taxpayers and is not charged directly to affected shippers. CBP estimates that to meet a Congressional mandate that 100% of all inbound containers be scanned and imaged, depending upon the methods used, the cost could range from as little as \$4.3 billion to as much as \$32 billion over a ten (10) year period. The Container Inspection Fund could be used to defray these costs.

A recent Journal of Commerce report indicates that for the six (6) month period from January 2019 to June 2019 approximately 12 million laden twenty foot equivalent units ("TEUs") were imported into the United States. The report also indicates that during that same period approximately 6.5 million laden TEUs were exported from the United States. If that is annualized, without adjusting for increased imports during the peak period from July to October, it indicates that it can be expected that approximately 37 million laden TEUs will be either imported into or exported from the United States during 2019.

If a fee of \$25 per laden TEU is levied on each laden container being imported into or exported out of the United States, the Container Inspection Fund can be expected to raise almost

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\$1 billion dollars per year, which would be almost \$10 billion over a ten (10) year period. Because this is fee would be levied on laden TEUs, it would not impact carriers shifting empty containers.

We do not have statics readily available as to the amount of demurrage and detention charges currently being levied for containers during governmental holds, but the foregoing demonstrates that a small fee on all containers could raise a significant amount of money and spread the burden and risk of the costs associated with governmental inspections over a wider constituency. We believe this would reduce the risk to individual shippers and ultimately result in less abandoned shipments. Moreover, a fee on each container is akin to a "use tax" and places the costs of use on all of the users of the system instead of on only a small handful of shippers or the taxpayers.

If the Container Inspection Fund fee is not too large, and it is charged on all laden containers, it should have a neutral impact on competition. The Container Inspection Fund could be administered by the FMC, CBP or by a non-governmental non-profit corporation.

We thank the FMC for its efforts in attempting to address these important issues and for affording us the opportunity to participate in the rule making process.

Respectfully submitted,



John Greco

Encl.

cc: Fred Morgenthaler (via e-mail)