

From: [Capt. Allan Couto](#)
To: [Secretary](#)
Subject: Docket 19-05, Demurrage and Detention Comments
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Attachments: [image086124.png](#)

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Kind attention Rachael E. Dickon;
Secretary Federal Maritime Commission ;

Greetings from TLSS Inc,

I would like to begin by thanking you for giving us a chance to pen down our thoughts and suggestions which hopefully will enable address this rather complex matter of Demurrage and Detention and bring to conclusion the issues that have plagued our industry for eons;

Before I start would like to explain the rationale used in reaching our comments ;

1.The intention here is to do justice and to ensure that the importer/exporter/merchant is not exposed to the vagaries of uncertainty and incompetence of parties providing service, they should not pay for any conditions or situations that are out of their control;

2; To ensure that such optimum practices be used that helps the customer move his goods in the most economical way possible, any suggestion made here must make the

party causing a delay responsible / liable and be such that it makes sure that he is not rewarded when there are delays;

3; To make today's technology enable that the end customer to have clear transparency / traceability and ability to notify the service provider or carrier in real time any impediments he is facing so issues are resolved as they take place and do not need a lengthy post mortem; A log of events must be maintained on carriers site that is transparent and downloadable;

4; It must be clear that the merchant (importer or exporter) needs to have a finite cost in order to do business and if costs go up there must be some type of insurance available, if not, then the process should be such that limits liability and better business sense prevails;

CARGO AVAILABILITY;

The words "cargo availability" is almost self-explanatory . For cargo to be available every container in that particular bill of lading must be fully available for a trucker to pick up, the carrier must ensure that their website must have live information on the status of all containers on a particular bill of lading and send a notice via email of the same . The free time clock can only commence once such a notice is received /posted and containers are available throughout , Any change or disruption during normal pick up should automatically extend the free time accordingly . As far as the

carrier goes the free time starts and remains in force as long all containers are available for pickup, and no impediments (congestion, chassis availability , stoppage , holidays etc.) exist during the free time. It must be mentioned here that the arrival notice which is a courtesy information cannot be confused or construed to replace a cargo availability notice.

As far as ports go its important each terminal be certified with a capacity like in any other industry, this capacity should be based on the standard of efficiency and the turnaround time. This will encourage competition and force terminals to either improve their standards or work round the clock to keep productivity at peak levels'

DEMURRAGE AND DETENTION

1. Demurrage like ocean freight and THC has to be billed to the consignee prior release of the container as carrier has a lien for these mandated charges . If the carrier does not invoice all known charges (Demurrage, Customs exam charges) prior release then the carrier and NVOCC have voluntarily relinquished their lien and it will be deemed that any the outstanding due was waived ; The logic here is based on the fact that the consignee on the master bill of lading may not be the end customer and each party releasing the goods in the chain are basing their release on the fact that the carrier is using due diligence in ensuring that the Original bill of Lading is received, freight and THC is paid , customs release is posted and finally demurrage and customs hold charges are paid up prior release;

2. This process of billing Demurrage and customs exam charges prior release is the only way to collect any dues as the consignee on the bl could be an NVOCC , who in good faith has released the goods basis a UIIA agreement and not taken any guarantees from the end customer; Demurrage clock like free time runs only if cargo remains available and must not include weekends when cargo is not available ;

3. As far as per diem goes it must be clear that free time starts only once cargo is fully customs cleared, container leaves the port and is thereafter billed to the trucker as per terms of the UIIA agreement. If the container is in a customs exam facility no demurrage or detention should accrue as the billing done by the facility holding the container must include a fixed amount in their invoice for such charges that is sent through the carrier; If the customs exam site is charging demurrage while cargo is in his custody it will not be in his interest to hurry with the examination, causing even more delays;

4. All billings must be only done by the carrier and not their subcontractors as per terms on the BL .

5. Of late carriers have started billing importers for truck capacity issues at gateway ports (on carrier door moves) which, should immediately stop as the carrier is obliged to honor the terms of the” door bill of lading ”.

6. The time frame for billing demurrage and customs exam charges should be prior release of the cargo and for per diem should be as per terms of the UIIA agreement;

7. For liner door moves any truck detention must be advised instantly by the trucker/carrier so that the consignee can take corrective action. If the same is not possible suggest the trucker get the detaining party to agree in writing to the cause of delay in the truckers report so detention can be billed at a later date;

DISPUTE RESOLUTION PROCESS;

1. We have observed that most carriers have a desk called dispute resolution desk generally manned by a clerk or customer service agent who has very limited knowledge of our trade.

Most disputes end up with a standard response stating "Dispute is invalid and the invoice stands payable" , they even threaten to hold future cargos if the invoice remains unpaid.

In light of above suggest that the carrier cannot be the final judge and jury , the final verdict must be such that if the dispute stands unresolved some type of neutral arbitration be made available through a third party or through the FMC;

- 2, We also suggest that under no circumstances can a carrier hold any future cargo against a claim or dispute but settle the same through a proper channel or through the courts of law;

In conclusion it must be remembered that all parties who provide maritime or land based logistical services are in existence only because of merchants who import or export and they are our customers whom we are supposed to serve.

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It must be our joint effort to ensure that we help our customer

in every way possible and not make them always and fully liable for any limitations or lacunae's that exist;

Ultimately if this is not addressed we all become victims of higher prices and in turn will hurt all of us.

I am available anytime if any more information is needed;

Thanks once again ;

Regards

Capt. Allan Couto (Master Mariner, MICS)
President



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