

National Shipper Advisory Committee to Federal Maritime Commission (FMC)  
Subcommittee: Fees and Surcharges

### **Recommendation**

*Review of Port Imposed or Terminal Imposed Excess Dwell Fees as to whether payment of such charges can be extended to the account of the cargo.*

**Purpose:** Supply chain disruption and port congestion has brought about higher demurrage and detention charges that take on many forms, a variety of names, and an unlevel playing field in which they are applied. Some West Coast Ports, and some Marine Terminal Operators (MTOs) have created new charges in addition to standard demurrage tariffs that target dwelling containers and are subject to a variety of schedules.

**Dwell Fees:** Originally created in October 2021 with input from Port Envoy John Porcari, the ports of Los Angeles and Long Beach announced a Container Dwell Fee designed to incentivize long-dwelling containers to be removed from ocean terminals. This charge was intended to be imposed on Ocean Carriers. Subsequently other MTOs announced their version of a dwell fee which was intended to be for Beneficial Cargo Owners (BCO's). While the LA/LB charge has been continuously postponed (citing its effectiveness by threat only), SSA and other MTO's have charges in effect that are currently being assessed prior to container release.

The list of MTOs that are imposing such new Dwell fees include:

|                                   |   |
|-----------------------------------|---|
| Long Beach / ITS                  | Temporary Storage Charge, effective January 10, 2022          |
| Long Beach Container Terminal:    | LBCT Temporary Storage Charge, effective Jan 15, 2022         |
| Long Beach / SSA & Pier A         | Temporary Storage Charges, effective Dec 15, 2021             |
| Long Beach / TTI                  | On-Terminal Storage/Terminal Congestion Fee, eff Jan 10, 2022 |
| Oakland - SSA                     | OICT Extended Dwell Time Fee, effective Dec 20, 2021          |
| Seattle – SSA                     | Terminal 5, 18, 30 Temporary Storage Charge, eff Dec 1, 2021  |
| Seattle / Tacoma Husky Terminal   | Long Stay Rehandling Charge, effective Nov 1, 2021            |
| Seattle/ Tacoma Washington United | Long Stay Rehandling Charge, effective Nov 1, 2021            |

SSA's announcement included: "*The importer of record in the shipping documents will be responsible for paying or arranging payment of the Extended Dwell Time Fee by check, money order, wire transfer, or any other methods, and pursuant to instructions provided by Operator through the Forecast website. Once the fee has been paid, the container will show as available in Operator's container tracking system. Appointments on import lanes may not be made until the fee has been paid and the container is showing as available on the [Forecast] web site.*" This unilateral announcement does not take into consideration dwell time caused by a variety of conditions beyond the control of the importer, but assigns payment to importers, nonetheless.

When these terminals are overloaded, they can hold cargo for weeks on end in what they refer to as the 'brush pile', but do not compensate the importer when holding their cargo, yet they assess the extended dwell without regard to the cause, even when it may be carrier haulage or equipment issues at fault. When the same terminals are not accepting empties back in, thereby exacerbating the chassis shortage, they are helping create the extended dwell they are now charging for.

Importers do not enjoy a direct relationship with MTOs imposing these additional fees. Instead, it is the ocean carriers who have that direct customer relationship. Extended dwell is often caused by congestion on terminal, inadequate chassis supply, lack of appointments, closed yard areas, long lines, and lengthy delays for truckers at the gates, or a variety of reasons outside the control of the importer. In such cases the application of such charges should not be borne by the importer who cannot be incentivized by the application of these punitive charges to collect the cargo from the terminal any sooner.

While such charges may be appropriate from the marine terminal operator to the vessel operator, the pass-through from the vessel operator to the importer, or the direct billing from the MTO to the importer is frequently an area of abuse.

We would also note that under the present conditions, payment of such charges is required prior to cargo release, where the burden of proof is on the account of the cargo, regardless of any dispute, and where there is no clearly defined dispute protocol or appeals process to correct improperly applied charges. It is pay first, argue later, with little hope of recovery.

For these reasons, we, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission *codify regulation in concert with the Interpretive Rule incentivizing the movement of cargo that prohibits any unreasonable application of charges on containers for Dwell Fees while shifting the burden of proof to vessel operators and/or marine terminals and strengthening requirements for proper dispute resolution.*