May 6, 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: Recommendations that NSAC has voted to approve and 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) have drafted, debated, voted upon, and subsequently approved two recommendations for the consideration of the Federal Maritime Commission. The recommendations are summarized below, but the full content of each recommendation is attached to this letter as well.

Recommendation 1: *A recommendation to 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.*

Recommendation 2: *A recommendation to expand the scope of the Federal Maritime Commission to include oversight over all carriers, subcontractors, rates, demurrage, detention, storage under any other name, terms and conditions, and modes reflected on any Bill of Lading issued by an ocean carrier. Additionally, this recommendation requests that the FMC begins mandating the provision of accurate transit, cargo location, and container pickup/return locations by carriers to shippers and their nominated forwarders and/or brokers. Finally, in the event of a conflict between the terms of the Uniform Intermodal Interchange Access Agreement (UIIA) and the FMC's oversight and Interpretive Rule, it is recommended that the terms of the FMC shall prevail.*

On behalf of the National Shipper Advisory Committee, I would like to thank each of you for the opportunity to serve both the Commission and our nation. We are further appreciative for your review and consideration of our recommendations both herein and still to come.

Should the Commission have any questions related to these two recommendations, please contact either myself or Mr. Rich Roche [redacted]).

Sincerely,

Brian Bumpass
Chairman, National Shipper Advisory Committee

Director of Logistics & Transportation
Brenntag North America, Inc.

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.

Recommendation. 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.*

Full Committee Vote:

Yea: 19

Nay: 0

Full Committee Signatory:

_____ 5/16/2022

Mr. Brian Bumpass, Chair Date

National Shipper Advisory Committee to the Federal Maritime Commission (FMC)
Subcommittee: Demurrage, Detention, & Freight Charges

Recommendation

Expanding the Scope of the Federal Maritime Commission to Include Oversight of Rail Carriage and Related Charges for Through Bills of Lading

Purpose. The purpose of this recommendation is to offer ample justification to expand the scope of the Federal Maritime Commission.

Definition. The term "through Bill of Lading" refers to any Bill of Lading including rail carriage as an extension to marine carriage.

Applicability and Scope. This recommendation, if accepted and implemented, would expand the scope of the Federal Maritime Commission to have oversight over (1) all rail carriage, (2) demurrage (including any charges labeled "rail storage") and detention (including any charges labeled "per diem") at rail ramps, and (3) commercial terms and conditions as they apply to shippers and carriers (ocean, rail, and motor) for all shipments with an ocean Bill of Lading including rail transportation until the final destination defined within the Bill of Lading. This would be the case for both import and export shipments.

Justification. Currently, the Federal Maritime Commission (hereafter, "FMC") has oversight over ocean transportation, related parties, and related terms and conditions per the Shipping Act of 1984. Moreover, the FMC has assumed oversight of demurrage and detention at marine terminals per the interpretive rule outlined in 46 U.S.C. 41102(c) and §545.5, but this oversight is specifically outlined to be at "marine terminals".

Many shippers, both importers and exporters, tender cargo to ocean carriers from inland points against rates inclusive of rail and/or motor carriage which are quoted by the ocean carriers and subsequently filed with the FMC.

There is currently no adequate dispute resolution process available to shippers when disputes involving the rail portion of cargo movement, including demurrage/rail storage and detention/per diem at rail ramps, invariably arise. More importantly, there is currently no direct governmental oversight over the rail portion of these shipments nor over their operational execution.

Without governmental oversight, and specifically oversight by the Federal Maritime Commission, the interpretive rule outlined in §545.5 is not applied to any demurrage/rail storage or detention/per diem assessed at rail ramps by rail operators, terminal operators, and/or ocean carriers against through Bills of Lading.

As the United States Congress is considering an update to the Shipping Act of 1984 with the current draft of the Ocean Shipping Reform Act and the FMC is evaluating an evolution of language in the interpretive rule with the recently announced advanced notice of proposed rulemaking, we must also consider this current gap of oversight involving rail.

The spirit of the FMC's oversight should be founded at the Bill of Lading level through to the final destination defined by the shipment parties within the Bill of Lading and not solely focused on the marine portion of cargo movement and fee structures. The Bill of Lading issued by ocean carriers is the contract of international carriage. As such, if the FMC has oversight over the parties to the Bill of Lading, it should also have oversight over the entirety of terms and conditions to the Bill of Lading. Indeed, the FMC currently has oversight over all rates filed by ocean carriers and NVOCCs including rates that have rail carriage in their composition.

Moreover, rail operators are not direct vendors to shippers. Instead, they act as subcontractors to ocean carriers and facilitate non-marine carriage *on behalf of* ocean carriers against through rates *offered* by the ocean carriers and against through Bills of Lading *issued* by the ocean carriers. Consequently, equitable protection of shippers across all Bill of Lading terms can only be assured under the direct oversight by the Federal Maritime Commission.

To further complicate matters, the National Shipper Advisory Committee has been provided with multiple examples of carriers discharging cargo at a different import port of entry than listed on the Bill of Lading. While this practice is acceptable in certain circumstances (i.e. force majeure, congestion avoidance, etc.), the change is not always communicated to the shippers or their nominated forwarders and/or brokers. Consequently, a customs broker can file an entry at the original port of discharge, but this entry is nullified if the cargo discharges elsewhere. Per the examples provided to this Committee, this scenario has resulted in demurrage for the importer even on carrier door moves as the carrier cannot pull the cargo until the original entry is withdrawn and the new entry is submitted.

For these reasons, we, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission be given oversight over all carriers, subcontractors, rates, demurrage, detention, storage under any other name, terms and conditions, and modes reflected on any Bill of Lading issued by an ocean carrier. Additionally, we recommend that the FMC begins mandating the provision of accurate transit, cargo location, and container pickup/return locations by carriers to shippers and their nominated forwarders and/or brokers. Finally, in the event of a conflict between the terms of the Uniform Intermodal Interchange Access Agreement (UIIA) and the FMC's oversight and Interpretive Rule, it is the recommendation of this Committee that the terms of the FMC shall prevail.

Full Committee Vote:

Yea: 19

Nay: 0

Full Committee Signatory:

_____ 5/16/2022

Mr. Brian Bumpass, Chair Date