

**National Shipper Advisory Committee  
Committee Meeting  
Elizabeth, NJ  
August 19, 2024**

**Minutes**

**Introduction and Determination of Quorum**

Dylan Richmond, the Designated Federal Officer (DFO), called the meeting to order and gave notice that the meeting is being recorded. Mr. Richmond noted that today's meeting is being hosted at Maher Terminal in Elizabeth, New Jersey, and thanked them for allowing NSAC to use their space for this meeting. Mr. Richmond discussed how the committee works, who they are, and the agenda for today's meeting. He reminded those in attendance that meeting minutes are published per the requirements of the Federal Advisory Committee Act and the recording of the meeting would be made available following the meeting. The committee members were reminded that antitrust laws apply to them and that they cannot speak on behalf of the committee, the FMC, or the federal government outside of an official meeting of the NSAC. The DFO confirmed a quorum and turned it over to the NSAC leadership to continue the meeting.

**Remarks from NSAC Leadership**

Michael Symonanis, NSAC Chair, welcomed all participants, both in-person and virtual, and thanked Maher Terminal for hosting today's meeting. He conveyed his appreciation for the NSAC members continued engagement and dedication to the committee's mission to council the FMC on ways to enhance competitiveness, reliability, integrity and fairness of the international ocean freight delivery system. Mr. Symonanis gave acknowledgment to shippers, freight intermediaries, and the members of the trucking community, whose engagement is crucial to the committee's success. He noted the significant steps taken toward the committee's mission, with FMC finalizing the Administrative Law Judges (ALJ) ruling on chassis choice, demerge and detention, and refusal to deal, but acknowledged there is more work to be done moving forward.

Kenneth O'Brien, NSAC Vice Chair, thanked Maher Terminal for hosting the meeting. He expressed his optimism with the current work being done within the committee. He stated his belief that to keep supply chains fluid, and to understand where issues are arising, good data is the key. Mr. O'Brien believes there is a great opportunity and need to strengthen the data that is exchanged to make supply chains more resilient moving forward.

**Updates from FMC Commissioners**

Carl Bentzel, FMC Commissioner, thanked Maher Terminal for hosting the meeting. He agreed with Kenneth O'Brien's comments on data, and the need to use information more efficiently in the maritime intermodal transport supply chain. He noted that most of the commodities that go into the system of retail and manufacturing, has connectivity with the maritime intermodal transport supply chain. Mr. Bentzel stated that this supply chain is reliant on a system of information that is, at present, inadequate.

Mr. Bentzel mentioned that he is planning on working with the Advisory Committee as he moves forward with the Maritime Transportation Data Initiative (MTDI). He stated that there will be further

discussions and collaboration in putting together a final set of recommendations on maritime transportation data, which should be completed later this year.

Commissioner Bentzel stated that the Maritime Transportation Data Initiative has been an ongoing project over the last three years. The initiative is to consider the current quality of data, and to create recommendations on potential standards for data dissemination, and a way of describing and harmonizing the lexicon that could be used in aligning the transportation data system. Mr. Bentzel mentioned that all eighty MTDI meetings are available on the FMC website, and encouraged everyone to view the meetings, and the historical comments. Commissioner Bentzel believes that they have a good database of commentary on the challenges of relying on the information that is available today, and recommendations on what needs to occur to make the system better.

Commissioner Bentzel did submit a draft set of recommendations and put out two sets of questions for the public to consider, mainly focusing on macro issues. Mr. Bentzel also stated that he is working on a third set of questions for public review, focusing on specific recommendations in detail, as well as considering issues not directly related to the recommendations: security issues, cybersecurity issues and smart container implementation. Mr. Bentzel anticipates a submission soon and intends to collect further commentary after issuing the final report with recommendations. Staff are currently reviewing all comments that have been provided. Mr. Bentzel hopes to have a summary of the comments as part of the final report.

Commissioner Bentzel gave an overview of the specific areas of the intermodal supply chain that are being investigated. They include schedule reliability, in-transit visibility, earliest receiving date at terminals for exporters, terminal access and terminal container availability. These requirements extend to intermodal rail transit, and intermodal rail terminals if under a through bill of lading. Mr. Bentzel believes that the same requirements need to be extended to cover intermodal rail services. Commissioner Bentzel stated that there needs to be a dictionary of definitional terms that harmonizes the practices throughout the shipping system.

Commissioner Bentzel stated that through the MTDI, they do make recommendations on sourcing of information to ensure that information is provided by the entity that is in possession of cargo. They make recommendations on what sort of information should be kept confidential and what should be made publicly available. These are some of the pillar areas that we are considering in terms of making recommendations on. He would like to work with the NSAC in the future to go through the recommendations.

## Q&A

Michael Symonanis – on data security - are you coordinating with other federal departments and/or agencies.

Carl Bentzel – right now, the flow of information is not controlled by the federal government

## **Remarks from Commissioner Max Vekich**

Max Vekich, FMC Commissioner, thanked the NSAC for their service. He discussed the previous time he spoke to the NSAC, at TPM in Long Beach, and that their input was helpful at that meeting. Mr. Vekich said the FMC is moving forward with statutorily mandated rulemakings. He said the carriers are putting hoops in the way of those rulemakings but that they are moving forward. We want to make sure that we can proceed with the membership of the NSAC so the committee can keep making progress as it is irreplaceable.

Mr. Vekich said detention and demurrage is done for the moment, but his office is moving toward working on refusal to deal. His office is looking forward to input from the NSAC on refusal to deal. In his time as a longshoreman, he saw ships leave with half of their containers empty and that's not always in the nation's or industry's interest.

### Q&A

Michael Symonanis – We will see if there is any lack of clarity from the shipper community on what the refusal to deal rule will look like and funnel that back to him. Has anything new come in at the high level that the committee should be thinking about?

Max Vekich – nothing that sticks out

Morgan Jackson – We still see port authorities that have long term dwell fees instituted in a schedule for VCOs. Any thoughts on how that is duplicative of demurrage?

Max Vekich – I haven't heard as much from the port authorities. They are a mixed bag. He hears from some ports often and some not at all, so it is hard to summarize their practices. We don't want port congestion. He wants the committee to keep him updated on this. He's trying to visit as many ports as possible.

Carl Bentzel – This issue is important because two parties are charging the same fee. The nature of this has changed because more carriers used to own their own terminals. Defining the lexicon on demurrage will clarify this.

### **Data and Visibility Subcommittee**

Gabriel Rodriguez, chair of the subcommittee, said there is not much of an update. We are continuing to schedule meetings from stakeholders on these issues, including DCSA and ASTM International which was present later in this meeting.

### **Digital Container Shipping Association (DCSA)**

Dave van Diggele presented as the representative for DCSA. DCSA creates standards by collaborating with stakeholders of container shipping and this presentation was to give an update on progress they are making on standards development. This includes progress to electronic bill of lading and booking, track and trace, and operational vessel schedules, commercial schedules.

### Q&A

Gabriel Rodriguez – Can you elaborate on the industry support letter you discussed?

Dave van Diggele – It showed the need for a harmonized method. We will publish a final version by September.

Michael Symonanis – Is there any visibility on where members are on commercial schedules?

Dave van Diggele – We publish some information on this on our website, but also encouraged to reach out to individual shipping lines for information.

Gabriel Rodriguez – Is there work on certain terms that are not listed on website?

Dave van Diggele – We are harmonizing standards.

## **ASTM International**

Michael Darden presented on behalf of ASTM, which is a standards development organization. Members of the organization are members of the community, and the goal is to fill the standards gaps that exist. Mr. Darden walked through the process of developing new standards, which includes finding a gap, surveying currently existing glossaries, and working with stakeholders to determine the correct definitions. He discussed the process used by ASTM to evaluate the Mr. Bentzel's MTDI lexicon. They anticipate publishing a report on their findings of differences between glossaries by year's end.

ASTM compared the MTDI terms to several sets of definitions. The MTDI matched most closely to DCSA because that was a primary source of information. Many of the other organizations that were compared had vastly different sets of terms and definitions. They created a report on these findings and sought endorsements from supply chain experts; they received 43 responses and 31 personal endorsement statements on their three-page report.

## **Q&A**

Michael Symonanis – what is left on your timeline and the remaining work? What do you still need from the broader shipping community?

Michael Darden – We need people to be willing to help and review their work.

Michael Symonanis – How are you parsing the terms and splitting the work?

Michael Darden – There is a form and style guide that tells the organization how to define terms. They only allow one sentence to define the term, but also allow more extended discussion groups.

Gabriel Rodriguez – Once you have defined the terms, how do you see that rolling out and being adopted by the industry?

Michael Darden – Voluntary standards will remain voluntary. Commissioner Bentzel adopted 48% of terms from the DCSA glossary, but not all exactly as written. They want to put context and rigor to how these terms are defined.

Gabriel Rodriguez – Will this be free or will it require payment?

Michael Darden – We are not writing a standard, we are applying a best practice for form and style. We could do a publication on it or a co-publication, but it will be free; they don't need to make money on a glossary.

Gabriel Rodriguez – Ideally this is a free dictionary of agreed upon terms?

Michael Darden – Yes, agreed upon by multiple parties including the FMC.

Steve Hughes – There is a conflation between detention and per diem. We need clarity on these and different sized companies to use the same definitions.

Michael Darden – The Financial Data Transparency Act was passed a couple years ago, which created a standards development group among treasury groups. The shipping community should do the same using their roadmap.

Ken O'Brien – At this stage in the process, how do you see your work compared to DCSA? Are you complementing or competing?

Michael Darden – DCSA is focused on operational efficiency because they are owned by vessel operators. ASTM is looking for a broader group of stakeholders; they would like DCSA to be one of those stakeholders.

Alison Leavitt – Will ASTM's work be comparable to Incoterms that are broadly used by buyers and sellers?

Michael Darden – I think we could have gotten there if we had started working on this collaboratively 10 years ago, but at this point we will need a legislative push for complete adoption. Need to figure out the things we can all agree on, and then start working on pieces that are more difficult.

Mr. Darden said the first two work items created by ASTM are directly related to Commissioner Bentzel's MTDI. Those products are a great place for them to try to align with DCSA.

## **Subcommittee Updates**

### Fees and surcharges subcommittee

Bob Connor updated. They have been pretty busy; members submitted a lot of comments on detention and demurrage final rule by the FMC as well as the refusal the deal rulemaking. However, nothing new to report for this meeting.

### Chassis subcommittee

Steve Schult said there are no updates for today.

### Port best practices subcommittee

Debb Minsky discussed that this is a newly formed subcommittee that has only met twice. The group is aligned with the discussions on data and visibility during this meeting. They will begin talking to ports to get feedback on different data such as earliest return date, empty returns, and cargo availability.

## Refusal to deal working group

Michael Symonanis discussed that this will not be a full-blown subcommittee because they were waiting on the rule. He provided a timeline of the FMC rulemaking process. The three most common issues that came out during that process were related to vessel space, poor communication, and cancelations without sufficient notice. Importers are having more issues with refusal to deal now; this had previously been an issue for exporters. Importers and VCOs should review this rule.

Mr. Symonanis said there are key areas that people need to be clear about. They include documentation, negotiation in good faith, evaluation is on a case-by-case basis, the burden of proof, unreasonable conduct examples, the definition of deals versus negotiations, enforceable language within service contracts, impact to the shipper, and the definition of refusal. The working group will focus on feedback from the industry and funnel it to the FMC General Counsel.

## **Closing Remarks**

Michael Symonanis discussed upcoming committee business. The committee and the FMC are trying to finalize the dates for the fourth quarter public meeting of the NSAC. It will be in Washington, D.C. After that, the committee will need to plan for 2025 meetings. This will be the end of the first term for the advisory committee members and await information from the FMC.

Steve Hughes asked whether the committee would be meeting at TPM in 2025. Dylan Richmond said the FMC is aware of the invite to hold the meeting at TPM and expects to update the members soon on whether that will be accepted. Mr. Hughes said that TPM would like to start promoting the meeting as soon as possible. Mr. Symonanis said that the TPM meeting was well attended last year.

Attendee from the public asked if there was interest by the committee in looking into PierPass rates. Dylan Richmond said that the group has not looked into that, but it would fall into their purview if they decided to. Mr. Symonanis said fees and surcharges or port best practices could look into it.

Ken O'Brien said the goal is to find mutually beneficial solutions, not just identify problems. Most of the issues discussed today require both parties to come together and have a discussion in good faith.

Morgan Jackson said that the FMC does have jurisdiction of the West Coast Marine Terminal Operator Association.

Mr. Symonanis said we can continue to work on these things. Some things need to be regulated, others need agreement between the parties. We will continue to work on the priorities that we have identified.

## **Adjournment**