

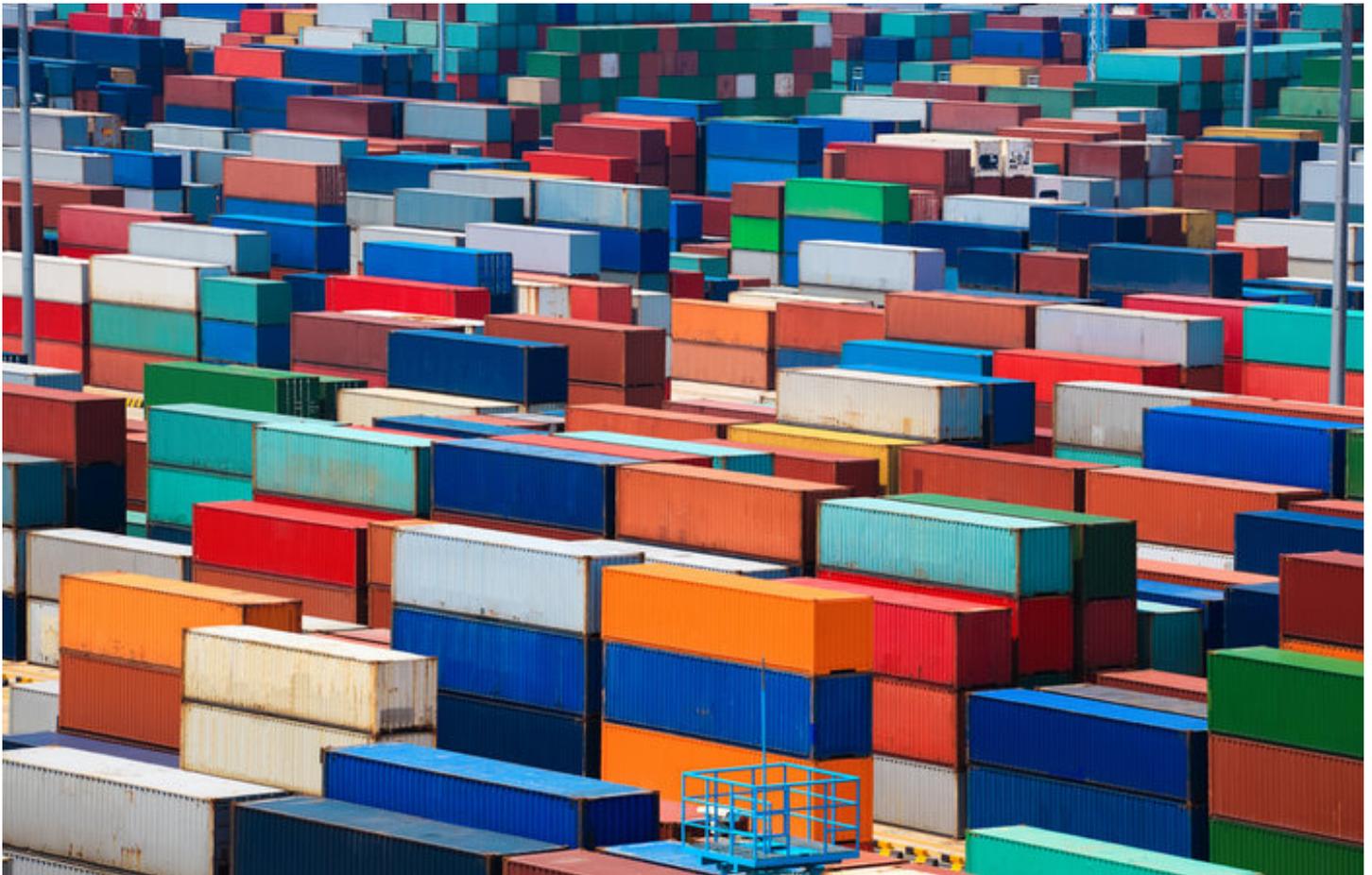


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## Pressure builds on FMC to act on demurrage, detention complaints

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Nearly 100 shipping and trade associations urged the U.S. Federal Maritime Commission to prohibit late fees for containers and chassis that can't be picked up or delivered on time because of port congestion.

“We believe these penalty payments should be prohibited when factors beyond the control of the shipper, receiver or motor carrier make it impossible for them to return chassis or empty containers, or pick up or drop off loaded containers within free-time limits,” the associations said [in a letter to the FMC](#).

Congestion at U.S. ports has [caused a surge in disputes](#) over demurrage and per-diem detention charges. Cargo interests have been hit by fees totaling up to several million dollars because of gridlock at West and East coast ports.

The fees are designed to discourage use of terminals for long-term storage, and to improve equipment utilization. Demurrage is assessed on cargo left at the terminal beyond allotted free storage time. Per-diem detention is charged for containers that aren't returned before free time expires.

During the worst periods of congestion at West Coast ports and at the East Coast ports of New York-New Jersey and Virginia, cargo interests and truckers have complained of being dunned for late fees even when port terminals even were too congested for trucks to enter.

Ocean carriers and terminals sometimes waive the fees. But even when waivers are granted, the process may take months to resolve and is costly to participants. Shippers and motor carriers have accused terminals and ocean carriers of using the charges as a profit center.

The FMC has been in a quandary about how to respond. After a series of hearings last fall, the commission voted 3-2 to approve a report that stopped short of recommending specific action but urged the industry to provide evidence that may warrant FMC action.

West Coast port slowdowns in late 2014 and early this year generated more than 100 arbitration claims filed under the Uniform Intermodal Interchange Agreement over container lines' per-diem fees for overtime use of their equipment. The UIIA does not cover demurrage charges for use of terminal space beyond allotted free time.

In the first batch of rulings on the West Coast claims, UIIA arbitrators ruled that said that unless a terminal was completely closed, truckers couldn't claim they were denied service unless they could supply hard evidence to support their claims.

Ocean carriers have pushed back against criticism. Christopher Koch, president of the World Shipping Council, which represents carriers with more than 90 percent of global container capacity, last month urged the FMC to resist appeals to take "some unspecified generalized action using some unspecified authority under the Shipping Act."

Koch, a former FMC chairman, said port delays are costly for every segment of the supply chain, and that most congestion problems result from a combination of causes that cannot be addressed by a broad FMC policy ruling.

"There are no simple, generic answers or appropriate scapegoats. There are no good guys and bad guys," Koch said. "There is no regulatory action that will address the combination of causes of port congestion or that can equitably resolve or simplify the various complex market forces trying to deal with the unavailable issue of cost recovery."

The shipping and trade groups that wrote to the FMC this week said it "is now time for the commission to take action" on the demurrage and detention issues discussed in the FMC's report on the issue.

The letter was signed by a diverse group of associations including the National Retail Federation, Agriculture Transportation Coalition, National Industrial Transportation League, and industry-specific groups such as the Motorcycle Industry Council and the National Onion Association.

"We strongly believe that the commission has full authority under the Shipping Act of 1984 (46 U.S.C. § 41102(c)) to ensure that a common carrier or terminal operator provides just and reasonable regulations and practices relating to receiving, handling, storing or delivering property," the associations' letter said.

“We believe this section of the governing statute applies to the rules for application of detention and demurrage fees that are published in carrier or terminal tariffs or schedules and to the practices followed by such parties in assessing these charges,” the letter said.

The associations said the FMC “can and should pro-actively ensure on a going-forward basis that carrier and terminal rules and practices for assessing demurrage/detention against a shipper, receiver or drayman are reasonable, and it should prevent the assessment of such charges when there is port congestion or other events that cause delays that are beyond the control of the shipper, receiver or motor carrier.”

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