



Overview: The Current Export Crisis

Twenty-five years ago, 20+ ocean carriers carried containerized US imports and exports across the Pacific. Several were US companies: US-owned, US-managed, US-headquartered, with US citizen crew. Today, there are only 9 companies, operating trans-Pacific container services, none are US. In various important trade routes for significant cargoes (refrigerated, etc.) there is only one carrier serving that route. US exporters do not have many choices, they are completely dependent on these foreign carriers to deliver our ag and forest products to overseas customers.

Since July, import cargo has been flooding into the US, in unprecedented volumes. – everything people stuck at home during COVID are buying to wear, remodel, work, entertain ourselves. The import volumes overwhelm marine terminals at our ports, particularly those on the West Coast – LA and Long Beach hit the hardest, now essentially dysfunctional, due to:

- congestion in and around the terminals,
- lack of space on the terminals,
- lack of sufficient labor and automation to allow the marine terminals to load/unload efficiently,
- lack of information as to locations of containers, the times when they are available,
- ocean carriers' failure to provide accurate notice of arrival and departure,
- lack of appointments for truckers to enter terminal gates to retrieve import containers, or bring in containers with export cargo, or empty containers,
- carrier+chassis company agreements causing shortages of chassis to carry the containers in and out of the terminals,
- lack of capacity of near-port distribution centers to accept/process massive volumes of import cargo, thus import containers languish on terminals, at distribution centers or any storage locations, creating havoc for truckers trying to move containers back to the terminals or even out of the area.
- terminals so full they cannot accept the return of emptied containers, or containers loaded with exports

Demurrage and Detention – FMC Intervenes Against Unreasonable Ocean Carrier and Marine Terminal Practices

Ocean carriers are charging truckers, importers and exporters daily fees, known as “**detention**” or “**per diem**”, when they do not return the carrier’s container to the terminal within the time allotted under the contract of carriage. The carriers and marine terminals also charge “**demurrage**” when the trucker or shipper does not remove a container from a terminal quick enough, or returns the container to the terminals before the terminal wants it. These charges are now, in aggregate, in the hundreds of millions of dollars. Most disconcerting, the carriers and terminals are charging these fees (\$125 to \$425/container/day) even when it is not possible for the truckers or shipper to actually access the terminal to return or retrieve the container. These fees are jeopardizing the financial viability of exporters and importers. Exporters are stymied from moving containers to the ships by the carriers’ and terminals’ own actions.

These charges have become so unreasonable that the Federal Maritime Commission issued a Rule by which it provided carriers and terminals guidance as to what would be reasonable demurrage and detention practices. (Unreasonable practices are a violation of the Shipping Act.) To date the terminals and carriers have failed to implement any of these reasonable practices, thus continuing to collect millions of dollars of unreasonable, unfair charges. We now seek to have those practices identified by the Commission as unreasonable, to be statutorily prohibited. We seek an effective enforcement body to assure compliance.



Historically, containers with imported (usually consumer goods, auto and manufacturing components) are railed, in the containers, to the Midwest and eastern parts of the country— particularly Chicago, Memphis, Kansas City, Dallas. Then once unloaded, the empty containers (which must eventually be returned to the West Coast ports to return to Asia) are filled with ag export cargoes; many of the containers must be 'repositioned' (by truck or rail) to the rural ag origin points, for loading, before proceeding back to the West Coast ports. [NOTE: the same process occurs for containers bringing imports to East Coast or Gulf ports – railed or trucked to destination, emptied, filled with exports, to return to the ports. However, the port dysfunction, carrier demurrage/detention charges, while significant at some East Coast ports, has not been as pronounced as at West Coast ports.]

Historically, the freight rates for imported cargo (consumer goods/manufacturing components) are far higher (reflecting the high value of that cargo) than freight rates for our US exports (ag and forest products which typically are valued far less). With the current eCommerce economy the volume of imports is so great that every container, on every ship is in demand for cargo moving eastbound Pacific. There is no excess capacity (although carrier have controlled capacity to protect freight rates, from time to time). Currently freight charges from Asia to the US have been driven as high as \$10,000 or \$12,000 per container. Compare this to the export container carrying ag and forest products back to Asia, earning \$400 to \$1,800 freight charges.

Stranding our exports: Now, instead of letting a container to be loaded with ag and forest products (often in rural areas), ocean carriers are declining that export cargo, in favor of returning empty containers to Asia in order to quickly load US-bound imports, generating unprecedented high freight revenue. Stranding our agriculture exports here in the US, making it impossible to deliver timely to foreign customers.

AgTC members have submitted hundreds of documented instances of ocean carriers declining or cancelling export bookings. Some carrier communications explicitly say HQ (in Asia, etc.) want the containers back....not to accept westbound (export) freight.

The data shows this is a broad and continuing trend. It is not a matter of a shortage of containers, because the containers are on the ships heading back to Asia, but so many are empty. Typically, about 65% of containers on a ship leaving US ports for Asia will be loaded with cargo. Today the number is closer to 50%, because carriers continue to turn down the export cargo that could be filling those containers. This excellent CNBC article provides data and insight: <https://www.cnbc.com/2021/01/26/shipping-carriers-rejected-us-agricultural-exports-sent-empty-containers-to-china.html>

What Can FMC or Congress Do?

The FMC intensively studied the situation, and issued its Detention and Demurrage Guidelines. But a year later carriers and terminals are not complying. Now the Commission must determine how to convert these from 'optional', to mandatory, with strong enforcement. Congress should make violations of these guidelines statutory "Prohibited Acts" under the Shipping Act. The Commission must self-initiate, not wait for an injured exporter to file a complaint (which is a lengthy and expensive process). Potentially, a 'private right of action' should be introduced in the Shipping Act to gain compliance with these Prohibited Acts. The Commission must be converted into a 'consumer protection agency', with the US exporter, freight forwarder, importer, trucker as the "consumer". The Commission must recognize that these "consumers" are not equal in negotiating stature to the nine global ocean carriers, upon which our economy is now dependent. Our exporters and many importers are vulnerable to the actions, refusals to deal (refusal to carry exports) by these global ocean carriers. The FMC and Congress must take steps to assure there remains a viable commercial transportation system to serve our exports – current regulation and law is now being proven to be insufficient.