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**Cheese Importers Association of America  
Spring 2022 Membership Meeting**

**Today's Ocean Shipping Challenges and  
Solutions**

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May 6, 2022

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# Sources of the Challenges



- Multiple sources:



**The COVID  
Continuing  
Impact**



**Port  
Congestion**



**Equipment  
Shortages**



# The COVID Continuing Impact



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- COVID outbreaks at Chinese **major ports** is growing
- **Chinese manufacturers** are seriously being impacted by the infection of the Omicron variant
- **Zero tolerance by Chinese government** resulted in bringing **Shanghai** to a stop
- Chinese **Truck drivers, warehouse operators** are being impacted
- Above causes a slow down in Chinese exports and results in **Port Congestion in China ports**

**THIS RAISES QUESTION : SO HOW DO CHINA SUPPLY CHAIN ISSUES IMPACT CHEESE IMPORTERS IN THE U.S. SINCE LITTLE OR NO CHEESE IS IMPORTED FROM CHINA TO THE U.S?**

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# The COVID Continuing Impact



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**GOOD QUESTION: 75% of "Cheese and curd" into USA in 2020 Was From Europe and Canada (mainly Europe)**

- **Italy** ----share of **24%** (300 million US\$)
- **France** ----share of **13.1%** (162 million US\$)
- **Switzerland**----share of **8.43%** (104 million US\$)
- **Netherlands**----share of **7.83%** (96 million US\$)
- **Spain**----share of **7.32%** (90 million US\$)
- **Canada**---share of **3.86%**
- **Ireland**---share of **3.34%**
- **U.K.**----share of **3.32%**
- **Greece**----share of **3.09%**

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# The Mechanics of Port Congestion--



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- **Port Congestion and pricing slides in China trade lanes** due to lower demand is leading to blank sailings
- **Blank sailings** skip previously served ports, creating further port congestion and equipment and vessel dislocations, **as well as fluid unpredictable transport pricing**
- For example, the **2M alliance (Maersk, MSC)** is preparing to **blank three Asia-North Europe sailings** next month. Will that lead to equipment shortages in Europe?
- While the flow of imports to U.S. West Coast ports has fallen, and pricing has somewhat lowered there will **still be a backlog of vessels**.
- Of interest to this Association, **congestion at North Europe's container ports is on the rise again** due to the **China disruptions** and complications related to the **Russian/Ukraine war** (sanctioned Russian cargo causing issues).

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# The Mechanics of Port Congestion: The Port of New York and New Jersey Today



- Counterintuitively, due to current lag in China traffic, **high import volumes are still being diverted** from the West Coast **to the Port of New York and New Jersey**.
- Recently there were **64 container ships waiting off East and Gulf Coast ports** last week. In Los Angeles/Long Beach the ship queue has fallen to 42 or under.
- The potential result: escalating vessel backlogs along the East Coast and **deteriorating service for importers**.
- **Equipment Issues for Cheese Importers:** CMA CGM, Hapag-Lloyd, ONE, OOCL, HMM, Yang Ming, and Wan Hai Lines — sent notices to New Jersey truckers **blocking returns of various types of empty containers** on various days during the week of April 18-22 to free up congested terminal space. **This will continue**.

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## Equipment Shortages---



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1. **Reefer container (reefer) distribution** is likely to be disrupted by port congestion issues, especially in relation to **European ports** from where cheese products originate.
2. Of special interest is the **Hapag Lloyd IoT product**, Hapag-Lloyd LIVE, which implements **real time monitoring** of its reefer container fleet since 2019. **How is that working?**
3. Port congestion will continue to impact the pickup of cargo as in the Port of New York and New Jersey which will put pressure on the supply chain for cheese imports. Need to monitor **LFD to avoid demurrage**.
4. **Chassis shortages** will be of interest for the pickup of loads. Need to monitor closely the return of empties to **avoid detention charges**. **Note the previously discussed Port of New York and New Jersey empties issues**.
5. Chassis issues are also common on the intermodal side of transport when ocean carriers have difficulty **interfacing loads with railroad companies** for intermodal deliveries. The ocean carriers tend to shift demurrage and storage blame to the importer on these shipments.
6. **Railroads** have their own issues in timely delivery of loads at the intermodal destination which can result in rail storage charges. Usually these are caused by **chassis shortages**.

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## The Challenges (and Solutions): Demurrage, Detention

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- **FMC Interpretive Rule on Demurrage and Detention**

- The Interpretive Rule evaluates the “**reasonableness**” of demurrage and/or detention in terms of an “**Incentive Principle.**”
- The facts which gave rise to a demurrage and/or detention invoice to a party must make it clear that the invoice incentivizes that party to **promote freight/equipment fluidity.**
- **If it does not**, the invoicing act is to be considered unreasonable under 46 USC § 41102(c) and **can result in civil penalties.**





# The Challenges (and Solutions) Demurrage, Detention



## • FMC Interpretive Rule on Demurrage and Detention

- The interpretive rule was intended to reflect **three general principles**:
  - Importers, exporters, intermediaries, and truckers must **not be penalized** by demurrage and detention practices **when they cannot retrieve containers from, or return containers to, marine terminals** because under those circumstances the invoices do not serve an incentive function. (This implies an **impossibility**)
  - Importers should be **notified when their cargo is actually available** for retrieval.
  - **Demurrage and detention policies should be accessible, clear,** and, to the extent possible, use consistent terminology



## The Challenges (and Solutions): Demurrage, Detention

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- **FMC Interpretive Rule on Demurrage and Detention**

The rule would not foreclose parties from raising, or the Commission from considering, **factors beyond those listed in the rule. (Facts are important!)**

- **Main thing:** What was **the reason** for demurrage or detention? Was the charge reasonable?
- Appointments availability? Government holds? Is the right party being charged?



# The Challenges (and Solutions): Demurrage, Detention

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## DEVELOPMENTS TO WATCH ON THE FMC Side:

- The Interpretive Rule on Demurrage and Detention (**the Incentivizing Principle**)---**Hapag Lloyd case (April 22, 2022)**
  - **FMC assessed Hapag-Lloyd civil penalties of \$822,220**
  - Penalty based on Hapag charge of **\$10,135** for detention from the trucker----
  - Decision based on facts that the trucker **could not get appointments** to return the containers ---trucker could not be properly incentivized if billed.
  - This is clearly a **message case** from the FMC
  - Case is being **appealed**. Will be interesting to see how this ends up;



## The Challenges (and Solutions): Dealing with Demurrage, Detention

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- **DEVELOPMENTS TO WATCH ON THE FMC/DOJ SIDE:**
- More cases being filed at FMC as Small Claims under Subpart S
- Jurisdictional amount: \$50,000 or less
- A Small Claims Officer is appointed to case
- Quicker results without expensive discovery
- Small Claims Officer decisions are adopted by the Commission and can serve as precedent



# The Challenges (and Solutions): Dealing with Demurrage, Detention



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- **DEVELOPMENTS TO WATCH ON THE FMC/DOJ SIDE**
- **Maersk subpoenaed by DOJ** on March 15 expected to be related to anti-trust, competition, and price collusion issues. Shipping Alliances will come under scrutiny
- **Congressional inquiry** has also included CMA CGM and Hapag Lloyd on similar topics.
- We are aware that **Hamburg Sud, Maersk (including Twill) and Hapag** have modified their involvement with shippers' associations, and intermediaries, and prefer to deal directly with BCOs on their (ocean carriers') terms).
- We are also aware that Maersk has **tied service to them** for some shippers only if they **utilize their intermediary services such as Customs brokers.**
- Need to **focus on the FMC/DOJ working together** on supply chain issues including tying devices as noted above.

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## The Challenges (and Solutions): Dealing with Pricing and Service Levels



- **Pricing Instability or Pricing Stability?**
  - During this COVID period **Spot Pricing** has largely replaced predictable pricing of Service Contracts.
  - Carriers are **reducing volume allocations** to BCOs and Intermediaries, and **spot pricing kicks in** after smaller volumes are shipped.
  - Carriers are providing **gensets** for reefers only for shippers for whom they arrange **door delivery**. What has your experience been?
  - There are distinct **disadvantages to the smaller shipper**.



## The Challenges (and Solutions): Dealing with Pricing and Service Levels



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- The Shipper Association Model---is this a viable alternative?

### The Shipping Act definition:

**SHIPPERS' ASSOCIATION.**—The term “[shippers' association](#)” means a group of [shippers](#) that consolidates or distributes freight **on a nonprofit basis** for the members of the group to obtain carload, truckload, or other volume rates or **service contracts**.



## The Challenges (and Solutions): Dealing with Pricing and Service Levels

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- **The Shipper Association Model---continued**
  - Association enters service contracts with **volume commitments**
  - Members participate at rate levels which can be the same or different from other members---individual members can privately **negotiate levels specific to them related to volume commitments**
  - **Non-member management needs** to obtain volume commitments and pricing information which is not shared with other members---this complies with DOJ guidelines

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# The Challenges (and Solutions): Dealing with Pricing and Service Levels



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- **OTHER DEVELOPMENTS**

**National shippers Advisory Committee**---Formed to Advise the FMC on Conditions of the Ocean Freight Delivery System. Very Active. **Two Actions taken:**

- To have the **FMC investigate the Dwell Fees** being charged by West Coast Terminals
- Have FMC assert authority over **through bills of lading** to destination---- important for issues with **rail deliveries** due to lack of chassis, and resulting rail storage charges
- Next on the agenda: **Customs and other govt. holds** and **resulting demurrage charges.**

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# SOME PARTING THOUGHTS:

- **Ocean Shipping Reform Act** could be on President's desk by July 4<sup>th</sup>---

Main feature---puts burden of proof on ocean carriers for demurrage and detention---that it is reasonable. Rather than shipper having to prove that the charge is unreasonable.

- **Supply Chain has Government Attention:**

**Federal Maritime Commission**----Interesting decisions (Hapag Lloyd); encouraging Small Claims hearings to resolve demurrage and detention issues

**Department of Justice**---has started taken steps, for example subpoena , against Maersk; Maersk has taken questionable steps against Shippers Associations, Customs Brokers---other steps coming from DOJ?

**Executive Branch**---John Porcari, Port Envoy to the White House Supply Chain Disruption Task Force---has been active on the Ports side. Not sure of his current status.



# SOME PARTING THOUGHTS:

## • STRATEGIES FOR MINIMIZING DEMURRAGE & DETENTINON

- Develop **precise SOPs** with truckers picking up your loads and returning empties
- Communicate **LFD information** to truckers and **set Delivery Orders** early
- Have trucker report **appointment problems** while they are happening
- Get **written notices from truckers** when empties are returned
- Create a **written record** with ocean carriers and terminals when you cannot pick up a load or return empties through **no fault** of your own: closed terminals; Customs, FDA holds on cargo; work stoppages; wrong party invoiced, etc.
- Remember the FMC **Interpretive Rules and the Incentivizing Principle analysis**

# Thank You!

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