Detention and Demurrage Through the Lens of FF-28

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FMC Jurisdiction Over Detention, Demurrage, and Port Charges

• 46 U.S.C. § 40101
  ▪ Stated goal of FMC to provide an efficient and economic transportation system

• 46 U.S.C. § 41102(c)
  ▪ Requires MTOs and common carriers to adopt just and reasonable practices relating to handling and delivery of property
Fact Finding Investigation No. 28

• Fact Finding = non-adjudicatory investigation

• Commissioner Dye designated as Fact Finding Officer

• Purpose of FF-28: Collect and analyze information regarding demurrage and detention practices of shipping companies, ports, and marine terminals
Coalition for Fair Port Practices

- December 2016 Petition for Rulemaking (P4-16)

- Request for an interpretative rule to clarify what constitutes “just and reasonable rules and practices” with respect to demurrage, detention, and per diem charges
FF-28: The Process

• March 2018: following hearings on P4-16, FMC orders FF-28

• Information demands issued shortly thereafter
  ▪ 23 ocean carriers; 44 MTOs and operating ports
  ▪ Requested information and documents relating to detention and demurrage charges, free time, cargo availability, and billing practices
  ▪ Sought statistics regarding the frequency and amount of charges

• Solicited information from other stakeholders
  ▪ Shippers, drayage providers, OTIs
Interim Report

• Issued September 4, 2018
• Identified various areas of concern, including:
  ▪ Standardized definitions of detention and demurrage
  ▪ Simplification of billing practices and dispute resolution procedure
  ▪ Consistency of notice to shippers of container availability
Same Terms, Two Approaches

1. Based on whether container is on-terminal or off-terminal
   - Demurrage – charge for exceeding free time on the terminal
     - Could be either for use of terminal space (terminal demurrage) or use of equipment (carrier or line demurrage)
   - Detention – charge for use of equipment beyond allotted time outside the port
     - After full container has left, until empty returned

2. Based on whether container is being charged for use of terminal space or use of carrier equipment
   - Demurrage – MTO charge for exceeding free time on terminal
   - Detention – charge for use of equipment beyond allotted time, whether at terminal or outside port
Varied Billing Practices

- Three broad approaches to demurrage billing:
  1. MTO bills for demurrage (both terminal and line) from cargo interest or drayage provider
  2. MTO collects demurrage from cargo interest or drayage provider; carrier collects its demurrage independently
  3. MTO collects terminal demurrage by billing carrier; carrier bills customer for both MTO and carrier demurrage

- 34 of the surveyed MTOs followed first two approaches

- Detention typically billed directly without any MTO involvement or knowledge
Container Availability

- Two-thirds of carriers reported providing cargo interests with notice of vessel arrival, but NOT notice that container is available for retrieval

- One-third reported providing notice of both vessel arrival and container availability

- “Impediments” to retrieval
  - Customs holds
  - Driver or chassis availability
  - Congestion
  - Unavailability of appointments
Phase Two

• In-person and telephonic meetings conducted in October and November 2018

• Locations:
  ▪ Port Everglades, Port of Miami, Port of New York and New Jersey; Port of Long Beach; Port of Los Angeles

• Focus on areas identified in Interim Report and how those ideas could be implemented
Final Report: December 3, 2018

• Core Findings:
  ▪ Value of demurrage and detention in incentivizing prompt movement of cargo
  ▪ Industry would benefit from standardized terminology and practices
  ▪ Focus on actual cargo availability would improve supply chain performance

• Recommendation that Innovation Teams be formed to refine commercially viable approaches
  ▪ FF-28 continued until September 3, 2019