



News & Types: Client Advisories

Increasing U.S. Action on International Shipping Costs

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Executive Summary

Companies shipping their products overseas during the past year have witnessed astronomical increases in freight costs. Shipping industry commentators have pointed to shortages of empty containers and other practical problems driving up costs for shippers. However, President Biden signed an executive order on July 9, 2021 directing the Federal Maritime Commission (“FMC”) to review the competitiveness of the ocean shipping industry. The President observed in his order that the ocean shipping industry had seen considerable consolidation in recent years, which appeared to raise costs for consumers of shipping services. In addition, the President called for “vigorous” FMC scrutiny of demurrage and detention practices.

Demurrage and detention are charged to cargo owners when the containers they use are not removed from terminals or returned to container lessors within the agreed time frame. With logistics slow-downs, cargo owners can be faced with exorbitant demurrage and detention charges, which may be beyond their control as delays in shipping occur while the containers are in the hands of ocean or motor carriers or marine terminals.

On the heels of President Biden’s order, the FMC announced that it would be opening audit programs observing the demurrage and detention practice of nine major ocean carriers starting from July 2021. In the past year, the FMC had already begun investigating unfair demurrage and detention practices without the need of a formal complaint. Traditionally, cargo interests would file claims for damages due to unreasonable demurrage and detention charges with the FMC in order to recover awards against the responsible carrier, terminal, or transportation intermediary. As recently as May 2020, the FMC updated and clarified its rules on determining the reasonableness of demurrage and detention practices in such cases, after a 2016 petition by shipping interests requested a brighter line rule.

The government and shippers now hope that these actions by the FMC, along with the investigations into the industry’s competitiveness required by President Biden’s order, will help to ease the exorbitant shipping charges facing cargo owners. However, with the complexity of shipping operations, spanning many countries and various modes of travel (ocean, air, rail, road, and inland water), even these hawkish measures may take some time to provide relief to shippers.