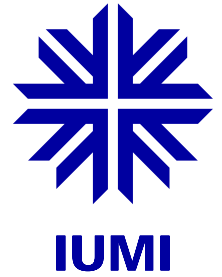


# Covid-19 impacts on demurrage and detention



9th April 2020

Carlos Rodriguez, a Washington DC-based partner with law firm Husch Blackwell LLP and leader of the firm's Supply Chain Logistics group, has written a blog on the impact of Covid 19 on demurrage and detention.

He said that, counterintuitively, there were issues beginning to appear dealing with the gluts as well as shortages.



There were signs in the US of an import backlog appearing, as some retailers and manufacturers failed to pick up containers because warehouses were either full or closed because they were not deemed essential service providers responding to Covid-19.

Rodriguez said that this was a development with implications for all stakeholders in the supply chain and would have some impact on retailers/manufacturers, ocean carriers, ocean transportation intermediaries, and warehouses.

## Demurrage

Ocean carriers and/or marine terminals would be assessing demurrage on containers which were not picked up within the free time period (usually a few days) from when the containers become available. These daily charges accelerate after a period of time.

## Detention

Detention are charges assessed on a daily basis after a free period has been exceeded. They are assessed per container after the chassis/containers has been picked up from the marine terminal and the importer does not unlade the goods, but rather 'warehouses' the chassis/containers in their yards. Detention charges, like demurrage charges, can accrue quickly into hefty figures.

## Demurrage and Detention Impacts

### Ocean Carriers.

On the ocean carrier side there was currently and would continue to be a concern for equipment availability, which was a function not only of having the equipment on hand, but also properly positioned at a global origin or destination location.

Rodriguez observed that at this stage there had been a strong continuation of blank sailings, as well as in some cases ocean carriers having cancelled service strings that would impact various

US ports. He said that the equipment logistics puzzle would get complicated and one could expect ocean carriers to become aggressive in going after container equipment, so that they could be properly placed in their system.

There was likely to be demurrage and detention collection activity from the ocean carrier side, which would be nothing new, but there might be a new urgency in the activity, said Rodriguez.

Some retailers and manufacturers appeared to be abandoning their cargo at marine terminals by failing to pick them up. Rodriguez said that a couple of things to keep in mind were that ocean carriers and marine terminal operators would be aggressive in going after demurrage and detention charges. The other thing to consider was that these charges could accrue to hefty amounts in a relatively short time.

Other factors to bear in mind were the potential actions to be taken by ocean carriers when the containers were considered abandoned, which would involve the assertion of liens and the sale of the goods to recoup the amounts owed.

If the amounts owed exceeded the amounts collected from public or private sales, the importer parties would still be liable for the difference between amounts collected and amounts owed.

### **Ocean Transportation Intermediaries (OTI) and Customs Brokers.**

Non-vessel operating common carriers (NVOCCs) and Customs Brokers routinely appeared as consignees on ocean carrier master bills of lading. As “merchants” this category of person was susceptible to demurrage and detention charges, even though they were not the true importers of the goods which were not collected from the marine terminals, nor were they parties holding up containers which were accruing detention charges at the premises of the true importer.

Husch Blackwell advises Customs Brokers never to allow their company to appear as consignee on a master bill of lading if the only functions being performed were custom clearances. A better location for the Customs Broker would be the Notify Party box.

If the Customs Broker is also acting as an agent for a foreign-domiciled NVOCC as an OTI (per Federal Maritime Commission regulations), Husch Blackwell suggested that it be designated “AS Agent for Named Registered NVOCC” in the ocean carrier’s master bill of lading.

When OTIs are acting as NVOCCs when their customers are not picking up the containers, and the NVOCC is the designated consignee on the master bill of lading and is arguably liable for demurrage and detention charges, such NVOCCs should have a plan in hand to assert carrier liens and apply them lawfully to containers being held for all charges owed to it from the importer, including demurrage and possible detention charges.

### **Conclusion**

Rodriguez concluded that the current reasons for these additional probabilities for demurrage and detention were new in connection with COVID-19, but the issue of who would be liable for these charges, and under what conditions they might not be liable, were well-worn issues in this arena,

which were in the process of being redefined by the Federal Maritime Commission (FMC).

Another item of interest was that in anticipation of demurrage and detention and that other cargo delivery events might be different in the Covid-19 era, the FMC ordered on March 31st 2020 that Commissioner Rebecca Dye identify operational solutions to cargo delivery system challenges related to Covid-19. Commissioner Dye will convene new Supply Chain Innovation Teams to address these challenges.

Husch Blackwell expected that, before these Supply Chain Innovation Teams come into play, there would be live legal issues on demurrage and detention within a Covid-19 context.

<https://www.internationaltradeinsights.com/2020/04/covid-19-impacts-supply-chain-creating-demurrage-and-detention-issues/>

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