



Best practices as proposed by FIATA

# DEMURRAGE AND DETENTION IN CONTAINER SHIPPING





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The FIATA Working Group Sea Transport has produced this best practice guide to assist both FIATA National Associations and their individual Member freight forwarders.



Working Group Sea Transport is comprised of freight forwarders and trade association staff that specialise in maritime transport whether as practitioners or in advising on disputes and legal issues that may arise. The working group is managed by the FIATA Secretariat and usually meets three times each year in February, June and at the FIATA World Congress. The working group is part of the FIATA Multimodal Transport Institute (MTI) and reports at the FIATA Spring Headquarters session and at the FIATA World Congress.

from which industry sector, can see the logic and validity in each of the scenarios; clear, transparent and to the point. It is hoped that the guide will create a better understanding of this subject for readers who are not so deeply involved in maritime transport.

In lieu of intervention by regulatory authorities, this document aims to examine the current situation and outline best practices that could be implemented voluntarily by all parties moving cargo through ports. These best practices may help reduce unnecessary supply chain costs and inefficient behaviour that lead to detention and demurrage charges.



Demurrage and detention charges are intensely disliked by customers using maritime transport and should be avoided whenever possible. This guide identifies the legitimate reasons why charges can be incurred but further explores situations where charges can be minimised or avoided.

Anti-trust and Competition Laws worldwide prohibit representative bodies such as FIATA from any involvement in commercial action. However, FIATA suggests that commercial partners can use this guide to argue their case in commercial disputes.

The intention of this best practice guide is that any reader, no matter

**For further information about the activities of FIATA Working Group Sea Transport or to make comments about this guide, please contact the FIATA Secretariat [info@fiata.com](mailto:info@fiata.com)**



# EXECUTIVE SUMMARY

Demurrage and detention charges are an important tool for shipping lines to ensure the efficient use of their container stock which represents a substantial investment. For shipping lines, it is essential to turn around their containers as fast as possible, consequently merchants who use containers for longer periods should be discouraged from this practice.

**In principle, demurrage and detention tariffs have two main purposes:**

- Compensation to the shipping line for the use of its container.
- Encouragement for the merchant to return the container as soon as possible for the shipping line to re-use it and have a fast turnaround.

**It is an obligation for shipping lines to provide a reasonable free period to allow the merchant a realistic period of time for:**

- the loading and delivery of the container for an export.
- the pick-up, unloading and return of the empty container for an import.



During the last few years, free time periods have been reduced and tariffs for demurrage and detention have increased considerably. Shipping lines have been accused of abusing their position by charging unjust and unreasonable demurrage and detention to the merchant. The opinion prevails that shipping lines abuse such charges in order to increase income and profits. Drewry reported in 2016 “...additional revenue from demurrage that is outside of the freight helped .....to push them back into the black.”

In this context, the FMC (Federal Maritime Commission of the USA) started an investigation referred to as “Fact Finding 28”. This is focused on “the practices of vessel operating common carriers and marine terminal operators related to detention and demurrage charges.” The Commission undertook this investigation as a result of a petition and testimony from a coalition of shippers, intermediaries, and container transport interests. Those interests requested FMC guidance on what constituted “reasonable” detention and demurrage charges under U.S. law.

In lieu of intervention by regulatory authorities, this document aims to examine the current situation and outline best practices that could be implemented voluntarily by all parties moving cargo through ports. These best practices may help reduce unnecessary supply chain costs and inefficient behaviour that lead to detention and demurrage charges.



# DEFINITIONS

There are various publications and tariffs that contain definitions. For the purpose of this document FIATA has decided to use the following definitions:

## **Demurrage**

The charge that the merchant pays for the use of the container within the terminal beyond the free time period.

## **Detention**

The charge that the merchant pays for the use of the container outside of the terminal or depot, beyond the free time period.

## **Merged demurrage & detention**

The charge paid by the merchant for the use of containers beyond the free time period, when demurrage and detention are merged into one single period.

## **Free time**

The period of time offered to the merchant free of charge, beyond which demurrage and detention charges apply.

## **Storage charges**

Related costs (but not limited to quay rent) charged by terminal operators for containers staying on the ground. These charges are usually passed by the terminal operator to the shipping line where a margin may be added.

## **Demurrage time - import**

For import cargo, the demurrage time is the period from container discharge from the vessel until gate-out of the full container from the terminal.

## **Demurrage time - export**

For export cargo, the demurrage time is the period from gate-in of the full container into the terminal until the full container is loaded on board a vessel.

## **Detention time - import**

For import cargo, the detention time is the period from gate-out of the full container until gate-in of the empty container into the restoration point.

## **Detention time - export**

For export cargo, the detention time is the period from the pick-up of the empty container from the terminal or depot until gate-in of the full container in the terminal.





# BEST PRACTICES

The objective of FIATA is to recommend “best practices” that should be considered by commercial partners in their relations and dealings. This paragraph summarizes the scenarios in which demurrage and detention is charged, followed by the proposed “best practices” for commercial partners to consider in their negotiations. Justifications should also be provided.

## DEMURRAGE AND DETENTION FOR EXTREMELY LONG PERIODS

### Scenario

Containers are blocked for an unusual and extremely long period of time, usually due to legal disputes or other highly exceptional reasons. There are known cases in which demurrage and detention charges accrued to 20 times and more than the value of the container itself. In one extreme example, an FMC witness noted that it would have been less expensive to park their container in midtown Manhattan than at the Port of New York/New Jersey.

### Best practice

It is unreasonable to insist on indefinite accumulation of demurrage and detention charges. There should be a limit on charges accrued that represent a reasonable compensation for the shipping lines in relation to the value of the container.

FIATA is of the opinion that there is no legal base for charging demurrage and detention for an indefinite period of time. Under the contract of carriage covered by the Bill of Lading the merchant is indeed obliged to take delivery of the container. However, should circumstances such as a legal dispute or Customs issue make it impossible for the merchant to fulfil

this contractual obligation, the practice of shipping lines to refer to the contract of carriage by charging demurrage or detention is highly questionable.

Instead of insisting on the continuous charging of demurrage and detention, FIATA is also of the opinion that it is the responsibility of the shipping lines to proactively act in good faith in finding solutions, for example by proposing unloading of containers – if possible.

FIATA suggests that commercial partners negotiate limits to the accrual of demurrage or detention charges to a maximum, ideally the value of the purchase price of a new container.

## DEMURRAGE AND DETENTION FOR CIRCUMSTANCES BEYOND THE MERCHANT'S CONTROL

### Scenario

Various events such as bad weather conditions, labour strikes, and (above all) terminal congestion have led to the inability of merchants to have their containers released by the terminals. Labour issues, choice of terminal, and terminal congestion related to the impact of increasing size of vessels on ports and terminals that are already geographically constrained are examples of issues that are within the control of supply chain partners, but beyond the control of the merchant. These issues lead to detention and demurrage charges for merchants who are unable to obtain release of laden containers or return empty containers through no fault of their own.

### Best practice

The lack of contractual privity between supply chain partners at ports is one of the key issues under investigation by the FMC in Fact Finding 28. Entities (including merchants) that do not have contractual recourse to entities that cause delays leading to detention and demurrage charges, should not be responsible for those charges when the terminal is not able to release or receive the container(s) in question. There is no logic insisting on a charge that is supposed to motivate the merchant to pick up or return a container quickly if the terminal is not able to comply with this request.

FIATA suggests taking into consideration the tendency for congestion due to the higher peak cargo handling times related to newer, larger container ships and shipping line alliances and consolidations.

FIATA suggests that commercial partners negotiate terms to extend free time for a period that is equal to the duration of the inability of:

- the terminals to release a container for import or receive a container for export.
- the depots to receive an empty container.



## DEMURRAGE AND DETENTION FOR PERIODS IN WHICH CONTAINERS ARE BLOCKED

### Scenario

Containers are used to cross borders and the goods loaded in them require Customs clearance and control. Depending on the commodity and the requirements of Customs, the process may take extra time. Customs authorities may also decide to inspect containers or block goods for import.

In all mentioned cases, the merchant is thwarted from picking up the containers.

### Best practice

FIATA suggests that commercial partners negotiate terms where neither partner is victimized by bureaucratic inefficiency so that daily charges are kept to the minimum when delays are caused by Government and not by the private parties involved.

The merchant should only be charged for “compensation to the shipping line for the use of the container”.

The second element related to “encouragement for the merchant to pick up and return the equipment as soon as possible” should be waived.



## DEMURRAGE AND DETENTION FOR CONTAINERS IN MERCHANT HAULAGE

### Scenario

Pre-carriage to the port as well as onward carriage can be arranged in carrier haulage as well as in merchant haulage. During recent terminal congestion, reports indicated that shipping lines charged demurrage to merchants who arranged the transport in merchant haulage but waived the charges for merchants who they arranged the transport in carrier haulage. There are indications that shipping lines abuse their position.

### Best practice

When arranging inland haulage, shipping lines are in effect competing with the freight forwarders who are also their customers. Marketplaces become less efficient when entities have the power to levy unreasonable charges on their competition. No matter whether the containers move in merchant haulage or in carrier haulage there should be equal and fair treatment of customers. FIATA suggests that commercial partners negotiate terms to reduce this unfair differentiation.

FIATA also encourages its Member Associations to understand the anti-trust regulations related to this issue in their respective jurisdictions, and to advise their members as appropriate.





## DEMURRAGE IN RELATION TO EXPORT CLOSING DATES

### Scenario

Until a few years ago, the timely delivery of export containers to the port was only limited by the physical closing date and time, being the last day / time for the container to be delivered to the terminal in order to ensure loading on board the vessel. In some ports it was possible to deliver a container and documents as little as 2 days prior to the departure of the vessel.

With the introduction of various security related measures, the deadlines for the delivery of containers to the port has increased, but above all there are additional timescales related to the export documentation and information of a container and its cargo. Among others, these deadlines relate to the following:

- Advance Manifest Rules
- SOLAS regulation relating to the declaration of the Verified Gross Mass (VGM)

### Advance Manifest Rules

Documentation and VGM closing is now often five days prior to the vessel departure, with the physical closing for delivery being three days prior to vessel departure. At the same time, the free demurrage period may have been reduced to only four days prior to vessel departure.

Reduced demurrage free time combined with earlier closing times has led to an ever smaller window for delivery of the containers.

### Best practice

Decreasing the free period for export demurrage runs counter to the market position of higher peaks and congestion. Extending the demurrage free period would help to relieve such peaks and congestion and allow the merchant more flexibility.

To the extent that ocean carrier alliances, consolidations, and larger container vessels contribute to higher peaks and congestion, FIATA expects that shipping lines would consider giving merchants more flexibility through longer demurrage free periods.

FIATA suggests that commercial partners negotiate increased demurrage free periods in order to relieve current congestion and allow the merchant more flexibility for the delivery of the export containers, rather than forcing the merchant into a “rat race” of making the various and narrow closing dates on time.

Reasonable free time allowances are vitally important to ensuring a level playing field for merchant haulage, and for unique scenarios where shippers and merchants must wait for information from carriers. For example: a scenario where the shipper is prepared to provide a VGM or AMS document on the relevant closing days but wishes to load the container only a day or two later. In this case, the merchant needs the container number (subject to SOLAS method 2). But usually the shipping line is not able to provide a container number unless the empty container has been picked up. In such scenario the merchant may be forced to pick up, load and deliver the loaded container well before the physical closing and in the process faces demurrage charges due to the early delivery of the container to the terminal.

## DEMURRAGE WITH DELAYS IN SAILING

### Scenario

For each vessel, shipping lines announce physical closing dates for the actual delivery of the loaded export container into the port. Usually export demurrage is calculated as follows:

“for export cargo, the demurrage time is the period from gate-in of the full container into the terminal until a full container is loaded on board the vessel”.

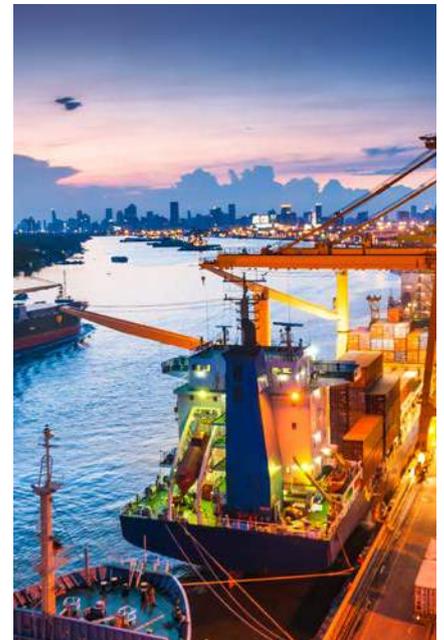
Based on the aforementioned definition, a container can go into demurrage because of a delay of the vessel departure and some shipping lines have enforced this method of calculation.

### Best practice

The merchant that ensures delivery of a container within the demurrage free period and within the closing date, should not be penalized with extra charges due to the delay of the vessel departure.

FIATA suggests that commercial partners negotiate language such as the following for calculation of export demurrage charges:

“for export cargo, the demurrage time is the period from gate-in of the full container into the terminal until the announced closing date for the delivery of the loaded container to the terminal. “





## DEMURRAGE FOR IMPORT CONTAINERS - TIMELY CHARGES AND TRANSPARENCY

### Scenario

Import containers that travel on a forwarder's bill of lading are released to the actual importer / consignee by the forwarder, who is the consignee in the shipping line's bill of lading. After the actual release, the forwarder has no control when the container is picked up from the terminal

on behalf of the importer / consignee. Often the forwarder receives invoices for demurrage charges weeks after the actual pick up of the container and may have problems to collect related charges from the importer / consignee. Accrued charges can be substantial.

### Best practice

FIATA encourages earlier notification of detention and demurrage charges. FIATA further proposes consideration of levying demurrage charges within a week of the release of the container from the terminal.

FIATA also encourages more data sharing in the maritime supply chain which would lead to more transparency of related information.

## DEMURRAGE FREE TIME LIMITATION AND HIGHER PEAKS IN TERMINALS

### Scenario

In recent years, the free time demurrage period has decreased considerably. With this decision, the time window for merchants to pick up import containers from the terminal and deliver export containers to the terminal has been reduced.

This trend is counterproductive in an environment in which many terminals and land side operations are dealing with bigger vessels, bigger peaks, congestions and unreliable vessel schedules.

The introduction of Ultra Large Container Vessels (ULCV) has led directly to increasing delays and dwell times within terminals.

Higher peaks also lead to a bigger concentration of land side delivery and pickups, with the result that many ports have to deal with road congestion as well. Whilst additional land side infrastructure investment may be required, the easing of peaks through extended free time periods must be considered as well.

### Best practice

In view of the ever-increasing peaks and related landside concentration of pickups and deliveries and to the extent that ocean carrier alliances, consolidations, and ULCV contribute to higher peaks and congestion (not only at the terminal but in the hinterland as well), FIATA expects that shipping lines would consider giving merchants more flexibility through longer demurrage free periods.

Instead of decreasing free time periods, FIATA suggests that commercial partners negotiate an increase in free time periods to allow merchants more flexibility in their planning.

## DETENTION AND THE ENVIRONMENTALLY DRIVEN MODAL SHIFT

### Scenario

In many countries the protection of the environment is very high on the agenda and many merchants have ecological statements and objectives to protect the environment and reduce their carbon footprint. In the Paris agreement on climate change the global community tries to deal with greenhouse gas emissions and organisations such as the International Maritime Organisation (IMO) set rules to ensure a reduction in ship emissions in general.

In terms of global container shipping and logistics the focus is on the carbon footprint measured for a container transport from door to door. In this context, Governments are investing in order to promote a modal shift to more environmentally friendly modes of transport related to the pre-carriage and onward carriage of the containers.

However, the round trip of a container in a more environmentally friendly transport by barge or rail takes longer and inherits the risk of accruing detention charges.

### Best practice

Shipping Lines should accept their responsibility to contribute to the protection of the environment by supporting the modal shift. This can easily be achieved with extended and more realistic free detention periods for containers moving inland by barge or rail in merchant haulage.

In this context, shipping lines should not thwart merchant haulage services by not releasing or accepting containers in inland depots.



## DETENTION LIMITATIONS AND MERCHANT HAULAGE

### Scenario

The ability of the merchant to arrange for their own pre-carriage and onward carriage is an essential right that must be protected. It would be unfortunate if carrier haulage becomes a monopoly with merchants being limited in their choice.

In order to perform merchant haulage and not have disadvantages towards carrier haulage, a reasonable free detention period is essential.

### Best practice

FIATA suggests that commercial partners negotiate terms that ensure that merchants can compete on a level playing field by providing a fair and realistic free detention period for containers under merchant haulage. There is no question that merchant haul operations are more flexible and cost effective, to the ultimate benefit of the cargo owner.





# CONCLUSION

FIATA respects that demurrage and detention charges are valid and important tools for shipping lines to ensure that their equipment is being returned as fast as possible. Merchants exceeding relevant free times should be penalized for the use of the container.

However, merchants should not be subjected to unjust and unreasonable charges. In this context, there are strong indications that shipping lines abuse the charging of demurrage and detention to maximise profits. It is understood that shipping lines have been suffering in a very tough business environment and do everything they can to develop revenue streams that are not necessarily derived from freight, but FIATA does not believe that merchants should be subjected to predatory pricing of this nature, especially as delays often occur through no fault of the merchant.

**FIATA suggests that commercial partners review the following issues related to demurrage and detention charges and negotiate an agreement to:**

- Limit the demurrage or detention accrued to a maximum amount.
- Extend the free time period in case the terminal is unable to release / receive a container by the period that is equal to the duration of the inability.
- Limit the charging of demurrage or detention to the item that covers the “compensation for the shipping line for the use of the container”, in case the merchant is unable to pick up / return a container. The (escalating) item that covers the “encouragement for the merchant to return the container” should be waived.
- Ensure a level playing field for containers in merchant haulage and negotiate terms to reduce unfair differentiation.
- Increase export demurrage free periods in order to allow the merchant more realistic export planning and comply with the various closing dates related to VGM, Advanced Manifest requirements and physical closing.
- Change the calculation of export demurrage to transfer the responsibility of vessel delays to the shipping line.
- Ensure that demurrage and detention charges on import shipments are charged much faster, ideally within a week.
- Help to relieve terminal congestion as well as land side concentration of pickups and deliveries due to bigger vessels and higher peaks and allow merchants more flexibility by increasing demurrage free periods.
- Support the modal shift towards more environmentally friendly modes of transport by increasing the detention free period.
- FIATA further encourages more data sharing in the maritime supply chain which would lead to greater transparency of information related to these charges.