



Over a barrel

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Importers are caught between a rock and a hard place, and it's costing them money. The rock is the demurrage charges for keeping containers at terminals longer than the ever-shrinking free time that's allowed. The hard place is when government inspections cause unavoidable delay in moving the containers.

The squeeze has become tighter since the Sept. 11 attacks caused Customs and Border Protection and other agencies to step up inspections. Some importers complain that containers are delayed for up to 10 days at a time, producing demurrage fees that can cost a company hundreds of thousands of dollars a year in fees.

The extent of the problem varies by port. Some ports don't even charge demurrage, and others have forced terminals to waive demurrage charges until a box is released by Customs, the Agriculture Department or whichever government agency is involved.

But at most ports and terminals, importers and their forwarders face stiff demurrage bills when their boxes are caught up in inspection delays that eat up their free time. Adding to the problem is the fact that most major ports on the East and West coasts cut free time from five days to four last spring, and some are considering a further cut this year.

Freight forwarders and customs brokers in ports on all coasts say they believe terminal operators are turning demurrage into a profit center and thus have no incentive to make their containers available for prompt inspection by authorities.

"For the most part, when cargo is held beyond free time by a government hold, primarily for security reasons, the importer who cannot get the goods off the pier has to pay demurrage charges," said Stewart Hauser, president of the New York/New Jersey Foreign Freight Forwarders and Brokers Association and chairman of D. Hauser Inc., a customs broker and freight forwarder in Rosedale, N.Y.

"We don't object to the demurrage charges being higher or the free time being reduced to encourage getting the cargo off the pier, but we do object to paying when there's no way we can get our hands on the cargo," he said. "It's even worse if you have more than one container on a ship because you're not allowed to move the other containers off the pier when the government wants to inspect just one of them."

Hauser said one of his recent import shipments of four containers was held up in the Port of New York and New Jersey when Customs wanted to inspect just one container. By the time he was able to recover all four containers, it had cost his customer \$12,000 in demurrage.

Terminal operators say having excess containers at their facilities adds to costs, regardless of whether the delay is the importer's fault or is caused by inspections.

"Demurrage is used to offset rent, and the fact of the matter is that just because we have security inspections doesn't mean our rent goes down," said Donald P. Hamm, president of the Port Newark Container Terminal. "If you are holding boxes because the government wants to inspect them, you are losing capacity on the terminal. You pay rent for so many acres, and you can move so many boxes. If you don't get paid for them, you're losing profitability at the terminal. It's an out-of-pocket expense."

Hamm said that if the terminal operator causes a delay in getting a box to Customs, the terminal has the right to extend free time, "and we very often do that. If we have issues, then we make exceptions."

On the Gulf Coast, hurricanes Katrina and Rita added to demurrage problems. John Hyatt, vice president of Irwin Brown & Co., a New Orleans customs broker and forwarder, said one carrier in Houston wanted to charge \$3,445 in demurrage on one of his customers' containers that was stranded by the storms. The carrier finally said it would settle for repayment of its costs, \$289. "Obviously, the rest of that \$3,445 was pure profit," Brown said.

On the West Coast, problems with delays and demurrage threaten to worsen as more 7,000-TEU-plus ships enter service. The larger ships will make it harder to position the containers that have been pre-selected for inspection by government agencies.

In addition, because of tight capacity and the need to speed the flow of containers, some West Coast ports are already considering cutting free time from four days to three. Terminals, meanwhile, have begun counting free time from the moment a container hits the dock, instead of after an entire ship is unloaded.

"There are delays between the time when a container is ordered held for an exam and when it is made available for that exam - sometimes days, sometimes a week to 10 days or more," said Daryl Sekin, president of D.J.S. International Services Inc., a Dallas-based broker and forwarder.

The problem is that although Customs chooses the containers for its nonintrusive inspections before a vessel arrives in port, the boxes are sometimes delayed by three or four days before they are made available for inspection by X-ray or gamma ray under the so-called VACIS exam.

"All the while the free time has expired on that container, and it is incurring demurrage charges," Sekin said. "The appearance is that possibly the terminal operators or the carriers or those who are in control of the containers are not making them available as quickly as they could because, heck, they're making demurrage."

That's why the National Customs Brokers and Forwarders Association of America, which represents more than 800 companies, has formed the NCBFAA and Ocean Carrier Better Practices Committee. The committee is working with ocean carriers to convince terminal operators to speed the process under which containers that Customs has selected for inspection through its Automated Targeting System are made available for inspection. "We think it's a problem from a security standpoint when we're letting a container sit for 10 days at a pier where it might do damage," said Se-kin, who is co-chair of the committee.

The committee is working on the issue with about 10 large ocean carriers, including OOCL, Maersk Line and APL, which are exploring ways to solve the problem. The model that the committee would like to follow is one established last year by Long Beach port commissioners. There, free time does not begin until a container is released by Customs or the U.S. Department of Agriculture.

"It's a matter of fairness. The free time cannot count against a container when it's on a Customs security hold," said Dan Meylor, a customs inspector with Carmichael International Services in Long Beach. "The whole purpose of not charging it in Long Beach is that if the terminals are efficient, there should be no problems.

"If they're not efficient, importers should not be charged for their inefficiencies," Meylor said. "Our problem in the ports was that sometimes the terminals just took their time. For whatever reason they weren't getting it done in a timely way, so that you'd run four or five days before the containers got inspected. That's not right. Basically the consignee was paying for the inefficiency of the terminal and that's wrong."

Meylor is also president of the Los Angeles Customs Brokers and Freight Forwarders Association, which is preparing to approach the Port of Los Angeles about adopting rules similar to those in Long Beach.

He said the Port of Los Angeles is considering cutting free time to three days from four, and that this will make it even harder to get containers off the pier quickly, especially if there is a Customs hold and the carrier or the terminal has not been able to get a container staged for inspection.