

**National Shipper Advisory Committee
Committee Meeting
Long Beach, CA
March 6, 2024**

Minutes

Introduction and Determination of Quorum

Dylan Richmond, the Designated Federal Officer (DFO) for the FMC, called the meeting to order and gave notice that the meeting is being recorded. He thanked the Journal of Commerce (JOC) and S&P Global for hosting today's session. Items on the agenda today will be discussed, then the meeting will move to public comment. He reminded those in attendance that meeting minutes are published per the requirements of the Federal Advisory Committee Act and the recording of the meeting would be made available following the meeting. The committee members were reminded that antitrust laws apply to them and that they cannot speak on behalf of the committee, the FMC, or the federal government outside of an official meeting of the NSAC. The DFO confirmed a quorum.

Remarks from NSAC Leadership

Michael Symonanis, the NSAC Chair, thanked everyone in attendance, including Commissioner Vekich and his counsel, as well as the JOC and S&P Global for hosting today's session. He highlighted his desire for the NSAC to continue engagement with the shippers outside the NSAC to ensure the Committee's work reflects the broad shipping community. The Committee's focus thus far has been on macro issues and how to work efficiently with carriers within the current system. The Chair appealed to the audience and members of the shipper community that may be in attendance virtually to provide their feedback to the NSAC, or even to the FMC via their rulemakings.

Fees/Surcharges Subcommittee Discussion

Rich Roche, the Subcommittee Chair, spoke to the Subcommittee's accomplishments over the past two years with four recommendations having been put to the FMC. Recently, two rulemakings have been put forward by the FMC which concerns the work of this subcommittee.

First, the carrier automated tariffs rulemaking, which is effective as of February 1, 2024, eliminated tariff access fees – anyone can now access NVOCC or VOCC tariffs online at no cost. The rule also defines the NVOCC passthrough process, co-loading for LCL versus for FCL cargo. Additionally, the FMC has said that disbursement fees are allowable if they are not included in the markup.

On the detention and demurrage billing rulemaking, which is effective as of May 8, 2024, the FMC's final rule confirms data elements to be included in invoices. VOCCs, NVOCCs, and MTOs must all comply with the required elements. The rule defines which parties can be billed. Third parties may still be entitled to pay but cannot be invoiced. The Subcommittee's so called 30/30/30 solution has been implemented through the rule, requiring invoices to be billed within 30 days of incurring the expense, any disputes to be filed within 30 days of the invoice being received, and the billing parties must resolve the dispute within 30 days. The rule does allow an extension of an additional 30 days if both parties agree. The Subcommittee Chair stated this rule has taken truckers out of the chain of

liability.

This subcommittee is now considering its next steps. The Subcommittee continues to watch the case currently before the FMC on the issue of rail storage fees. The Surface Transportation Board (STB) has stated they do not have jurisdiction, while the FMC has stated that they do have jurisdiction on detention and demurrage related to cargo moved on through-bills-of-lading but has not clarified if this applies to storage at rail terminals. The Subcommittee continues to watch this case develop to see if this issue is clarified further.

On the issue of early receipt date (ERDs), it seemingly has not been addressed in the detention and demurrage rulemaking as the Subcommittee had hoped. The Subcommittee Chair stated this issue leads to a lot of fees for storage and detention and demurrage for something that is outside of the shipper's control.

Lastly, the Subcommittee Chair stated he believes there should be more discussions on government holds. He stated all stakeholders should share in the related expense. Feedback from the FMC on this issue was that it is difficult to come up with a one-size-fits-all solution. The Subcommittee Chair requested feedback from other NSAC members on this issue.

Mr. Symonanis stated that the Data Subcommittee has considered the ERD issue from the data side and from the point of view of an exporter, and the combination of three data elements are important: the ERD, the dock cutoff, and the last receiving date. If any of these dates change unexpectedly or at the last minute a shipper may face additional costs. He encouraged members of the NSAC and the broader shipping public to provide feedback on this issue to make sure the NSAC is getting the full picture when considering possible solutions. The Subcommittee Chair agreed that it would be good to revisit the issue from the data point of view. It was reiterated that ERD issues are not as severe as they were in 2021 and 2022, but that the FMC should take this issue on now to prevent further pain in the future.

Data/Visibility Subcommittee Discussion

Gabriel Rodriguez, the Subcommittee Chair, provided an overview of the Subcommittee's work thus far. The Subcommittee has come up with three recommendations which were submitted to the FMC in December 2022, and which the FMC responded to in February 2023. The Subcommittee's work has been aligned with Commissioner Bentzel's Maritime Transportation Data Initiative (MTDI) and outreach between the Subcommittee and other members of the supply chain continued to ascertain which metrics needed to be made more transparent in the industry. Most of the data points were incorporated into the MTDI.

The Subcommittee Chair also highlighted the work of the Digital Container Shipping Association's (DCSA) on creating data standards for invoices which is already provided to many ocean carriers.

When asked about the relationship between this Subcommittee and the Department of Transportation's FLOW (DOT FLOW) initiative, the Subcommittee chair mentioned that they have been involved with meetings between members of the MTDI and DOT FLOW initiatives at FMC and DOT respectively. In answer to further questions, the Subcommittee Chair stated its members remain open to alternative recommendations and standards for

carrier invoices, but none are currently available. The biggest obstacle to adoption of standards is to get the largest carriers to adopt them. Once the nine largest carriers adopt them others should follow suite. Hapag-Lloyd was mentioned as one carrier that has been most engaged with members in working on these issues.

Chassis Subcommittee Discussion

Steve Schult, the Subcommittee Chair, highlighted meetings the Subcommittee has held, including with President Biden's Port Envoy, General Lyons, to get a national perspective on Chassis; the American Trucking Association; and other stakeholders within port, harbor, and inland trucking industry. However, a case has gone before the FMC between the Intermodal Motor Carriers Conference and the Ocean Carrier Equipment Management Association (OCEMA). As a result of this, the subcommittee has paused its work to avoid conflict with FMC commissioners and the case. The FMC subsequently upheld its view on box rules. Now the Subcommittee is planning to meet with the American Association of Railroads to look at chassis impacts and how this could be expanded to other ports in the U.S. In the meantime, the Subcommittee is hopeful of receiving more feedback from the shipping community to learn how box rules impact daily movement of chassis.

Listening Session-Public Comment Period

Carl Varner, Vice President of Logistics for Fornazor International

The speaker mentioned that his company faced an unexpected rollover of cargo for which they had reserved space on vessels one week apart but was then required to be delivered by rail within the same week given the rollover by the carrier. This inconvenienced the shipper because they have limited capacity on rail which does not allow them to move this much cargo in one week to make the sailing. He asked if the NSAC is working to address this sort of issue.

He expressed his view that it was uncalled for the FMC to allow carriers to invoice cargo without 30-days' notice at higher rates once the Red Sea Crisis began, particularly for cargo that was already in transit on the water.

Mike Shaughnessy, Balsam Brands

The speaker shared how government holds have a significant impact on their business. On one bill of lading, they experienced 400 days of detention and demurrage charges (20 containers held for 20 days each).

He further expressed appreciation for the NSAC's handling of issues related to detention and demurrage, and stated his belief that demurrage should only be used for incentivizing the movement of cargo. One idea he put forward was to devise some way to share the cost of a shared resource, space at the port. He stated that part of the reason they faced issues at the port in the past few years was due to other BCOs not moving their containers of the port fast enough.

Daniel Krassenstein, Procon Pacific

The speaker mentioned his company faces bottlenecks in the U.S., particularly the Port of New York-New Jersey, where they face delays in unloading their cargo from the ship and moving it to the rail. It is unclear whether the carrier or railroad, or some other party is

responsible for ensuring the cargo moves quickly through the port.

Commissioner Vekich, Federal Maritime Commission

Commissioner Vekich spoke during the public comment period. He shared with the NSAC that their feedback has been important to the FMC and they are looking forward to the NSAC's continued engagement on Commission issues. On the Red Sea issue, the Commissioner Vekich highlighted the recent FMC hearing on the subject, where the FMC made the carriers aware that any fees being assessed because of Red Sea diversions are being scrutinized by the Commission. The FMC continues to keep a close eye on rates as the crisis progresses.

The Commissioner stated the FMC is the expert agency in the realm of maritime supply chains and that the agency has exercised its enforcement powers more than in recent history. He encourages NSAC members to utilize the FMC's staff and resources to ensure they can continue to work as effectively as possible and help the FMC address key issues to make the supply chain better.

Closing Remarks

Michael Symonanis, the NSAC Chair, stated his viewpoint that the U.S. should be a leader in devising solutions to the ongoing and complex problems in the supply chain. The NSAC has an avenue to work structurally within the system by working with the FMC. He asked the shipping public to continue engaging with the NSAC on supply chain issues which affect their organizations. The Chair once again thanked everyone in attendance for the participation.

The DFO confirmed all agenda had been addressed and concluded the meeting.