



NEW ZEALAND
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Manatū Aorere

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United States Reforms Ocean Shipping Laws

A MARKET INTELLIGENCE REPORT

Summary

Prepared by: Washington Embassy

- In response to supply chain challenges stemming from the pandemic, the US made its first overhaul of ocean shipping laws in more than two decades in June last year, with the intention of lowering costs for consumers by addressing “ocean carriers’ high prices and unfair practices”.
- Some of the Ocean Shipping Reform Act’s key rules are yet to take effect, which could yet have an impact for New Zealand exporters. One rule to stop empty containers leaving port when US goods can be loaded on is being revised, and an updated rule to streamline the process for carriers charging late fees to shippers when they are slow to move their goods, is also being worked through.
- There has been some movement in the shipping alliance landscape, with the industry contending that the market for ocean services is highly competitive.

Report

US port congestion eased in late 2022 and early 2023. [Freightos](#) highlighted that “volumes of imported containers to the US continued to fall through November 2022, and congestion eased significantly, especially at LA/Long Beach, where congestion levels returned to normal in late November”. Recent reporting confirmed this view, with the executive director of the Port of LA saying that traffic fell more than 40 percent in February compared to last year, as retailers cut back on new orders because of reduced consumer demand, and US warehouses already full with current inventory.

In September [2021](#), container prices peaked at over US\$20,000 for a 40-foot container from Asia to the US. This compares to a current cost of around US\$1,071 per 40-foot container from Asia to America’s West Coast. The US Federal Maritime Commission (FMC) [advised](#) Commissioners in late January “both container volumes and freight rates on inbound trades have returned to essentially pre-pandemic levels”.

The easing of US port congestion delays since the pandemic has mainly been attributed to a slowdown in consumer spending, which had been responsible for increased sales among many importers over the last two years. But the US Government has also been acting to improve supply chains through the Ocean Shipping Reform Act (OSRA) which was signed into law in June 2022. At the time of passage, [US President Joe Biden said](#): “I called on Congress to address ocean carriers’ high prices and unfair practices because rising ocean shipping costs are a major contributing factor to increased costs for American families”.

Unreasonably refusing cargo space

Two key rules to implement OSRA are being worked through. The Act requires the FMC to prohibit ocean carriers from [unreasonably refusing to deal or negotiate](#) with respect to space aboard a carrier for goods. The idea is that the rule would stop empty containers leaving US ports by defining the elements necessary to establish a violation and the criteria the FMC will consider in assessing ‘reasonableness’.

The Commission has received push back on its proposed rule-making notice from September 2022, and in response to this feedback, has said that they will release a Supplemental Notice of Proposed Rulemaking ([SNPRM](#)) to address what they call a “multitude of substantive questions” with the proposed rule.

US agricultural exporters and the United States Department of Agriculture ([USDA](#)) criticised the proposed guidance on ‘reasonableness’ as too broad to be effective. Their

view is that the rule is too lenient on carriers, as carriers could refuse goods if this is in line with their business development strategy and their profitability.

It is unclear how this rule (once implemented) will affect the global availability of shipping containers. If this rule results in carriers waiting for containers to be filled with US products before leaving port this could slow down container movements and affect the availability of containers for New Zealand exporters.

Detention and demurrage charges

The Act also requires FMC to investigate complaints about detention and demurrage charges (i.e., late fees) charged by ocean carriers, determine whether those charges are reasonable, and order refunds for unreasonable charges. Detention and demurrage billing are two types of charges that ports can charge carriers, who in turn charge the shippers, when they do not move their goods in a timely manner. As of late January 2023, the Commission staff were reviewing the more than [180 public comments](#) on this proposed rule.

The [proposed rule](#), issued in October 2022, would make several changes to “bring more clarity, structure, and punctuality to demurrage and detention billing practices”. First, it would require additional information to be included in invoices. It would also require that invoices can only be charged to a shipper that the carrier has a contractual relationship with, and to be clear regarding the nature of the charges. It would also require that invoices be issued within 30 days after the charges stop accruing, and gives 30 days to dispute the charges with clear information about how charges should be disputed.

US Ports and carriers have contended that detention and demurrage charges are necessary to ensure goods move from the docks in a timely fashion. The view from shippers has been that they have little room for recourse when charged, and it was other bottlenecks (such as chassis shortages, driver shortages, and congestion on the ports/container yards) during the pandemic that left containers waiting at the docks. According to [FMC](#), between 2020 and 2022 around US\$8.9 billion worth of charges were made by carriers and around US\$6.9 billion of that was collected.

Carrier competition

1. Meanwhile, there has been some movement in shipping alliances, the cooperative agreements among ocean carriers that serve as a strategic alliance to cover different trade routes. Shipping alliances are important to New Zealand, as there are only a handful of major shipping alliances that operate on a global scale.

In January 2023, it was announced that the 2M alliance (made up of Switzerland’s MSC

and Denmark's Maersk) that has been in place since 2015, will end in [2025](#). In a [January briefing](#), the FMC noted "the market share of MSC has increased substantially in the US-Asia and US-Europe trades over the past two years". But "despite growth of alliance carriers, non-alliance carrier market share has been consistent on the US-Europe trade and trending upward somewhat on the US-Asia trade". They also noted that smaller lines (such as those who operate the Intra-Asia, Oceania, and Africa markets) have left the US market. These lines who "redeployed ships to the transpacific trade lane when cargo was abundant and rates were historically high", no longer have the "incentive to operate in what is not their usual markets".

Carriers contend that competition within the industry is healthy and there is no need for any additional scrutiny. For example, the [World Shipping Council \(WSC\)](#), highlighted the [FMC's report](#) on a two-year investigation on the effects of COVID-19 on ocean shipping, which concluded that "our markets are competitive and the high ocean freight rates have been determined by unprecedented consumer demand, primarily in the United States, that overwhelmed the supply of vessel capacity. Congestion further constrained available capacity". Following the passage of the OSRA, the WSC said "we are appalled by the continued mischaracterization of the industry by US government representatives, and concerned about the disconnect between hard data and inflammatory rhetoric".

It is not yet clear how the ending of the 2M alliance will affect New Zealand and its supply chains, in both the short and long-term.

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