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FIATA welcomes FMC's Final Interpretative Rule on Demurrage and Detention Charges

Zurich, 7 May 2020 – FIATA welcomes the US Federal Maritime Commission's (FMC) new landmark guidance on its approach to assessing the reasonableness of detention and demurrage regulations and practices of ocean carriers and marine operators (MTOs).

"This is a welcome decision for the freight forwarding community, providing certainty on the need for detention and demurrage practices to be reasonable and in line with the purposes they serve. In the context of the unprecedented difficulties faced due to COVID-19, this timely supports the continued functioning of the supply chain," said Dr Stéphane Graber, FIATA Director General.

Issued on 28 April 2020, the Final Rule, [Docket No. 19-05 Interpretive Rule on Demurrage and Detention under the Shipping Act](#), follows years of complaints from the freight forwarding community that demurrage and detention practices unfairly penalised them for circumstances outside their control. This approach is the result of an extensive fact-finding investigation and industry consultation, to which FIATA together with the Transport Intermediaries Association (TIA) actively participated, and reflects many of the key issues raised by FIATA.

Demurrage and detention charges can play an important role in the efficient movement of container stock, however unjust practices in recent years have spurred concerns regarding their reasonableness in achieving their intended purposes, particularly in circumstances outside of the freight forwarder's control. As stated in FIATA's Best Practice Guide on Demurrage and Detention in Container Shipping, *"...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."*¹

The FMC's Final Rule considers the extent to which detention and demurrage charges and policies serve their primary purpose of incentivising the movement of cargo and promoting freight fluidity, and is intended to reflect three main principles:

1. Importers, exporters, intermediaries, and truckers should not be penalised by demurrage and detention practices when circumstances are such that they cannot retrieve containers from, or return containers to, marine terminals, because under those circumstances the charges cannot serve their incentive function;
2. Importers should be notified when their cargo is available for retrieval;
3. Demurrage and detention policies should be accessible, clear, and, to the extent possible, use consistent terminology.

The Final Rule also comprises guidance as to: (1) the adoption of a policy regarding demurrage and detention practices and government inspections; and (2) clarification that the rule does not preclude the Commission from considering additional factors outside those specifically listed, including extenuating circumstances.

¹ FIATA, ['Demurrage and Detention in Container Shipping'](#), FIATA, 2018

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As reflected in its final report, the FMC's interpretative approach is consistent with that advocated by FIATA in its comments to the FMC. It is also in line with FIATA's Best Practice Guide², as well as its recent press releases in November 2019³ and April 2020⁴, in which FIATA urged the FMC to provide the necessary guidance to ensure a level playing field, and supported the adoption of the incentive principle as part of the FMC's interpretive approach. FIATA welcomes, among others, the FMC's consideration of its comments on the need for like treatment between merchant and carrier haulage, fair and reasonable free periods, and caps on demurrage and detention charges.

FIATA notes the pragmatic and comprehensive approach taken by the FMC in its consultative process, as presented in its transparent and reasoned report. FIATA continues to support the global freight forwarding community and to engage closely with industry stakeholders to ensure a coordinated approach in these challenging times. A detailed FIATA commentary on the FMC's Final Rule will be released in due course.

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About FIATA

FIATA, the International Federation of Freight Forwarders Associations was founded in Vienna, Austria on 31 May 1926. It is a non-governmental organisation representing the freight forwarding industry, the 'Architects of Transport', which today constitutes approximately 40,000 forwarding and logistics firms, employing in excess of 5 million people in more than 100 countries. FIATA has consultative status with the Economic and Social Council (ECOSOC) of the United Nations (inter alia ECE, ESCAP, ESCWA, etc.), the United Nations Conference on Trade and Development (UNCTAD), and the UN Commission on International Trade Law (UNCITRAL) as well as many other UN related bodies, e.g. the World Bank. For further information, please go to: www.fiata.com

² FIATA, 'Demurrage and Detention in Container Shipping'

³ FIATA, '[FIATA critical of detention and demurrage process](#)', FIATA, 7 November 2019

⁴ FIATA, '[FIATA invites shipping lines to adapt their practice on Demurrage and Detention Charges during the COVID-19 Crisis](#)', FIATA, 1 April 2020