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Twenty-two percent of US ag exports that could be shipped, are not being shipped due to container shipping restraints, according to AgTC. Photo Credit: Shutterstock.com

Following are two highest priorities of US agriculture exporters. Currently shippers are pursuing congressional mandate (legislation), including AgTC's own proposals described below. However, if ocean carriers are genuinely interested in addressing these, the door is open - we invite ocean carriers to sit down with ag exporters, to find solutions. But time is running short.

Detention and Demurrage: Shippers (exporters and importers) are reluctant to file complaints, for good reason – do you really want to start a legal action against a carrier, when you desperately need a booking from that carrier, a container, space on the ship? It's not difficult to understand why virtually no complaints have been filed, even after the Federal Maritime Commission (FMC) issued a

very good rule setting standards for demurrage and detention charges. And the complaint process at the FMC, as at the Surface Transportation Board, is neither quick or inexpensive, and requires lawyers. So the aim of the AgTC proposal is to reduce the number of detention and demurrage charges, without the need to file a complaint at the FMC – better for shippers, worse for lawyers. The AgTC proposal would incentivize carriers to “self-police” – to confirm (“certify”) for themselves and the shipper, before imposing a detention or demurrage charge, that it complies with the FMC Rule. In other words, the burden of compliance would be on the carriers who issue the charges, not on the shipper or trucker which receives them. By requiring the certification to be given to the shipper along with the charge, the burden shifts to the carriers -- they would simply issue fewer detention/demurrage charges. While the AgTC proposal facilitates FMC enforcement (by holding carriers to their certifications, with substantial penalties if they have deviated) we feel a far more important role of this provision would be to dramatically reduce the frequency of detention and demurrage charges in the first place, and thus the need for complaints and enforcement actions.

Carriage of export cargo. A top priority of the AgTC. Can the government regulate carriers to carry more exports? Yes. The US has a long history of regulating private transportation companies to serve the public interest – airlines, railroads for examples. So it’s consistent that the FMC assure that ocean carriers carry US export cargo, it’s even one of the stated purposes of the Shipping Act. The economic incentive of carriers to decline to carry our export cargo in favor of taking containers back to Asia empty, in order to gain additional loaded import voyages, at much higher freight rate revenue, is obvious. But the Shipping Act (as well as aviation and rail laws) exist to balance between carriers’ desire to maximize revenue, and what is in the public interest. Over 150 Members of Congress and several FMC Commissioners have emphatically stated that carrying our exports is in the public interest.

Our proposed legislation would mandate that carriers take export shipments if they can be carried safely, on ships scheduled for the export destination. Enforcement would require the FMC undertake a very different role than it has, since the Shipping Act of 1916. It would not wait for a complaint to be filed, but rather, self-initiate. Frankly, everyone – port directors, longshore labor, truckers, terminal operators – can attest to the large numbers of empty containers being loaded, even while exporters’ bookings are being denied or cancelled. In fact, carriers have been honest, either publicly stating policies to decline export bookings in order to expedite the return of containers to Asia, or informing shippers individually when declining or cancelling export cargo bookings. Once FMC investigators confirm this is happening, that the cargo could be safely and timely loaded and carried on vessels scheduled for that cargo’s destination, the Commission could initiate enforcement. No doubt, this is an entirely new approach and function for the FMC, but urgently needed as our informal surveys of ag exporters find that about 22 percent of US ag exports that could be shipped, are not - for some companies the number is lower, for others it is higher. It is devastating for some companies, terrible for our economy. Getting more export cargo on the ships is a top priority for AgTC.

Mandate or collaboration?

As shippers pursue Congressional intervention, including AgTC’s own proposals, the door is still open. If ocean carriers are genuinely interested in addressing the detention/demurrage charges and export carriage, the door is open - we invite ocean carriers to sit down with us, to find solutions. Time is running short

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