



Container Detention Charges

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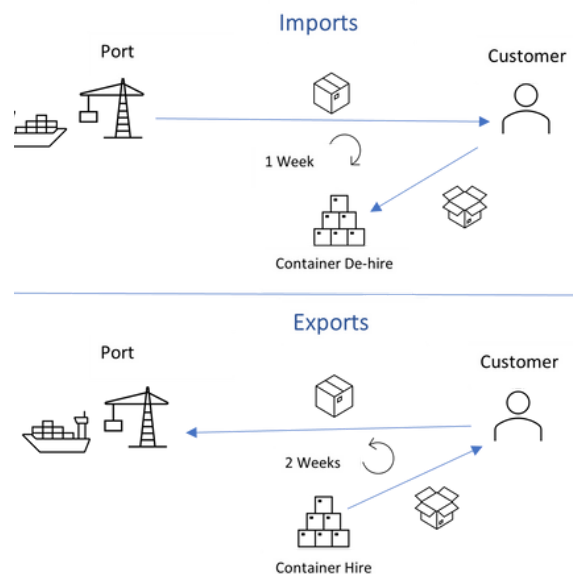
Concern Over Container Detention Charges

This year NineSquared has collected data on container detention charges along with other landside port charges. Detention charges have become a source of concern among industry groups and policymakers in recent years, and have recently been considered in the Productivity Commission's (PC) Review of Australia's Maritime Logistics System and in the Australian Competition and Consumer Commission's (ACCC) 2022 Container Stevedoring Monitoring Report.^{(1) (2)}

This article explains the basis for container detention charges and discusses why they are currently generating so much debate in the freight and logistics industry.

What are container detention charges?

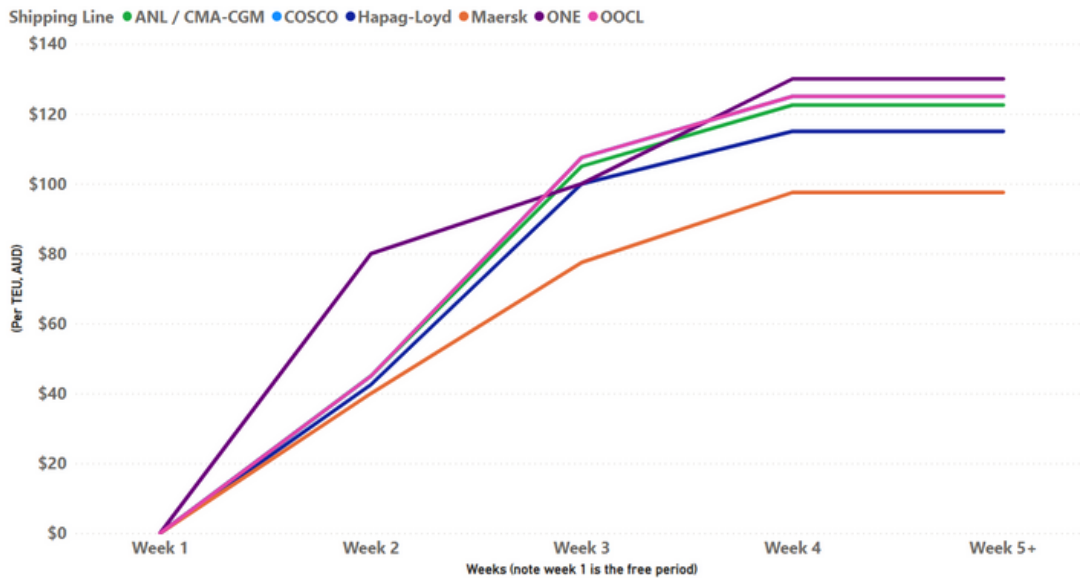
Detention charges are essentially 'late return fees' charged by shipping lines if their containers are not returned on time. Typically, cargo owners (importers or exporters) hire shipping containers that are owned and/or controlled by a shipping line (some being marked with the shipping line's branding). For most importers, the hire arrangement will include a one-week 'free time' period after the container has been discharged from the ship for the container to be picked up, unloaded, and then returned empty to its designated location for "de-hire". For exporters, the hire will typically include around two weeks of 'free time' for the empty container to be collected, loaded, and then delivered to the port for export. The graphic below demonstrates the general path for import and export containers.



Container detention charges are designed to incentivise the prompt return of containers back to shipping lines. Late returns represent an opportunity cost, as shipping lines can miss out on the opportunity to generate revenue by making the containers available for use by other customers.⁽³⁾ Typically, after the specified 'free period' runs out, container detention charges will be levied by shipping lines per container, per day, and increase over time.

The chart below shows the pattern of detention charges over the course of a month for six of the major shipping lines servicing Australian ports: ANL, COSCO, Hapag-Loyd, Maersk, ONE and OOCL. Note that these are based on the charges published on shipping lines' websites and are effectively 'standard' rates. Individual cargo owners with sufficient bargaining power may be able to negotiate different charges or longer free periods. The chart demonstrates how after the free period, rates for shipping lines typically increase for up to four weeks and remain constant thereafter.

Average Daily Container Detention Charges



What are the concerns?

Sections of the import, export, freight forwarding and transport industry have been raising concerns about container detention charges for some years. These and other charges were identified as an issue in a [study](#) of the NSW empty container supply chain conducted by NineSquared for the NSW Government. More recently, concerns have been raised over an increase in container detention charges being levied, and over the reasonableness of the situations in which these are being charged. This has been highlighted in reports from the PC and ACCC, as well as in commentary from industry bodies such as the Freight and Trade Alliance (FTA) and Container Transport Alliance Australia (CTAA).^{(4) (5)} Analysis of international data on container detention charges from Container xChange, an online container marketplace, has identified an increase of 12% in container detention charges between 2020 and 2022.⁽⁶⁾

Whilst some of this increase was due to unavoidable pandemic-related supply chain disruptions, industry groups have argued that much was due to unreasonable behaviour on the part of shipping lines.

Unreasonable here refers to charges which cannot plausibly influence behaviour before the detention free period ends and so fail to fulfil the incentive function of the charge. This would be the case if, for example a charge was levied for the late return of a container when the shipping line nominated de-hire location was closed or full.

It is worth noting that in Australia, shipping lines have not significantly increased their container detention charges over the past few years. Rather, reports suggest it is the frequency of the charges being applied that has increased. According to stakeholder consultations undertaken by NineSquared, the increased application of charges has been influenced by various factors, including shipping lines reducing their standard free time periods,⁽⁷⁾ variations in when 'free time' commences (which in some cases occurs before a container is able to be collected) and capacity limitations in empty container parks.

A key objection of cargo owners and land transport operators is that there is a lack of available avenues to dispute fees if they believe they have been charged

unfairly. Exemptions to charges are only considered on a case-by-case basis and landside parties argue that this imposes an unreasonable 'burden of proof' on them to provide evidence of why they were unable to return the container on time. They also argue that some shipping lines are not responsive to requests to extend free time when problems occur.

How much money is collected?

On the surface, daily detention rates levied by major shipping lines appear to be high. However, shipping lines contend that any penalty needs to be sufficiently high to influence behaviour. A key issue is establishing what is a 'reasonable' level of detention paid based on normal day-to-day operations, versus what could be considered excessive or unreasonable.

Data on container detention charges is not collected in Australia. For illustrative purposes, if 10% of Australian imports in 2021-2022 were returned two days after their free period had ended, the total cost to cargo owners and transport operators would have been around \$70 million.

Industry respondents to the ACCC's 2022 report consistently raised increased container detention fees as an issue.⁽⁸⁾ One operator provided data showing that between 2018-2019 and 2021-2022, the instances of detention fees being charged had doubled, and the total cost had risen from \$150,000 to close to \$1 million. Another medium-sized transport operator complained of receiving no leniency on a \$180,000 fee, which was charged for the late return of 100 containers that were unable to be moved due to labour and pallet shortages.

What are policy makers saying?

In Section 6 of its 2022 Container Stevedoring Monitoring Report, the ACCC concluded that "cargo owners in Australia currently do not have adequate protection against unreasonable detention fee practices and this has resulted in harm to cargo owners and, ultimately, Australian consumers."

Shipping contracts are currently exempt from Australian Consumer Law provisions on unfair contract terms. If this exemption was repealed this would allow unreasonable detention fees to be disputed under Australian Law. Both the ACCC and PC recommend repealing Part X of the Competition and Consumer Act 2010 which Permits shipping lines to collaborate on vessel sharing, slot capacity sharing and shipping routes. They say that repeal of part X would encourage competition among shipping lines, to the benefit of customers.

Australian policymakers are also monitoring actions being taken in other countries. The United States Federal Maritime Commission (FMC), introduced a new ruling in its US Shipping Act in 2020 to include penalties for unreasonable detention fee practices. Under the ruling, container detention fees are only reasonable when they are able to fulfil their role in incentivising the prompt return of containers. In the case where containers were unable to be returned for reasons outside the cargo owner's control, the incentive function cannot be served, and so, under the FMC's ruling, the cargo owner should not be charged. The ruling was enforced in 2022 when shipping giant Hapag-Lloyd was penalised US\$2 million for what were deemed to be unreasonable container detention charges. Transport operators and cargo owners hope that a similar approach will be taken by policy makers in Australia.

References

1. Productivity Commission. Overview - Lifting productivity at Australia's container ports: between water, wharf and warehouse, 2023
2. Australian Competition and Consumer Commission, Container stevedoring monitoring report 2021-22
3. "Container Hire and Late Return/Detention Charges" Shipping Australia, Accessed March 9th, 2023, <https://www.shippingaustralia.com.au/container-hire-charges/>
4. Paul Zalai, "Container detention - a Call for Regulation," The Daily Cargo News, June 2022
5. Neil Chambers, Shipping Line Container Detention Charges - Are They "Reasonable"? Across Borders, June 2022
6. Container xChange, Container Demurrage & Detention 2022 3rd Edition , 2022
7. NineSquared. Empty Container Supply Chain Study. 2019, accessed April 14, 2023, <https://ninesquared.com.au/projects/empty-container-supply-chain-study/>
8. Patrick Lawnham. Inquiry hears of 'unfair' charges for container use. The Australian. November 22, 2022.





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