



Lamorte Burns - Legislative Advisory Bulletin

By Geoffrey Gill, LB Correspondent

A bipartisan initiative orchestrated by two United States Congressmen is likely to result in new legislation - The Ocean Shipping Reform Act of 2021 (2021 Act) - that would be the first major change in United States federal regulations affecting the global ocean shipping industry since 1998.

Among anticipated provisions of the 2021 Act are:

- ◆ requirement that ocean carriers to adhere to "minimum service standards" in the public interest that would reflect "best practices" in the global shipping industry;
- ◆ ocean carrier / marine terminal operator certification that their "detention and demurrage" charges comply with federal regulations;
- ◆ shift from the invoiced party to the ocean carrier or marine terminal operator of the burden of proving the reasonableness of the detention and demurrage charges; and,
- ◆ prohibit ocean carriers from denying opportunities for United States exports unreasonably as determined by the Federal Maritime Commission in new rulemaking.

The latter prohibition, and, indeed, the 2021 Act, is an out-growth of complaints over the past year that certain ocean carriers/NVOCCs were returning empty containers to the Far East instead of accepting United States agricultural exports, to the prejudice of domestic exporters and increasing the United States' negative trade imbalance. This alleged situation is under investigation by the Federal Maritime Commission. Commencing even earlier, there have been complaints alleging predatory detention and demurrage billing practices by ocean carriers and marine terminals arising out of port congestion. The regulatory view is that these charges should be judged by whether they in fact encourage timely retrieval of import containers and return of empties, and should not be designed as an income stream or revenue source.

The timing of passage of the 2021 Act through Congress, and its eventual enactment into law and subsequent rulemaking cannot accurately be predicted. However, the 2021 Act has broad bipartisan support and reportedly the only organized opposition is by the World Shipping Council, comprised of world-wide liner shipping companies; therefore, eventual passage and enactment into law appears assured.

In the meantime, greater scrutiny by the Federal Maritime Commission into shipping practices within its jurisdiction is to be anticipated, as well as action taken against violators.

Respectfully submitted,

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