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News from Brussels

CLECAT CALLS FOR FAIR AND EQUAL DEMURRAGE AND DETENTION CHARGING DURING THE COVID-19 CRISIS

CLECAT has issued a paper, which provides recommendations for a more transparent process with regards to the determination of detention and demurrage practices in container shipping. The paper sets out a number of issues freight forwarders have encountered recently with detention and demurrage charges, including references to the recent European court cases.

Commenting on the paper, Ms Nicolette van der Jagt, Director General of CLECAT, noted: 'Over the last couple of months, we have collected the experiences and concerns of our members with regards to detention and demurrage charges. Today, with the present global crisis caused by the COVID-19 pandemic, these concerns become even more pressing. Whereas our priority remains to ensure that freight keeps moving and containers reach their destination, we believe that all parties in the global maritime supply chain have a common interest to support the overall functioning of the chain.'



'Our members are particularly concerned about the impact the different national rules will have on the period of time containers will need to stay in ports before import or export. Above all, we need to

keep cargo moving to reach citizens, but in view of restrictions and delays caused by the current crisis, the burden needs to be shared amongst all the parties. As such, CLECAT underlines that charging unreasonable amounts of demurrage and detention should not constitute a revenue model for the shipping lines.'

The recent announcements of shipping lines to insist on current tariffs (in Europe), whilst anticipating a slow-down in the supply chains, without any offer of extended free times and review of tariffs, raises concerns among the freight forwarders. Equally, the proposal of carriers to 'offer a variety of solutions to avoid significant detention & demurrage exposure' reconfirms the suspicion that carriers are using their position within integrated logistics groups to undercut forwarders by charging D&D to merchants who arrange transport in merchant haulage, but waive the charge for merchants for whom they arrange the transport in carrier haulage. In doing so, the shipping lines are discouraging merchant haulage, thereby reducing competition and choice. Clearly, marketplaces become less efficient when entities have the power to levy unreasonable charges on their competition, and no matter whether the containers move in merchant haulage or in carrier haulage there should be equal and fair treatment of customers.

CLECAT is following with interest the recent US FMC guidance, arguing that demurrage and detention charges are only valuable when they work, i.e. when they are applied in ways that incentivise the merchant to move cargo promptly from ports and marine terminals. Ms van der Jagt concluded: 'While we appreciate that demurrage and detention charges are an important tool for the shipping lines to ensure the efficient use of their containers, this must be done in a fair and reasonable manner. Demurrage and detention charges must serve their purpose to incentivise cargo interest to move containers, and merchants should not be subjected to such charges if the pickup or return of a container is delayed due to factors beyond their control. This is particularly acute in the wake of the current COVID-19 crisis.'

The full press release is available [here](#) and the paper can be downloaded [here](#).

EC GUIDELINES ON THE FREE MOVEMENT OF WORKERS

On 30 March, the European Commission published a set of [Guidelines concerning the exercise of the free movement of workers during the COVID-19 outbreak](#). These guidelines concern several categories of workers who provide essential services, including transport workers. These new guidelines invite Member States to take specific measures ensuring a coordinated approach at EU level.

The main message is that those workers who exercise critical occupations by performing activities related to essential services, e.g. the supply of goods, should be allowed to enter the territory of the host Member States under the fast-track, burden-free procedures. The unhindered cross-border movement should also apply in cases where these workers use a Member State only as a transit country to reach another Member State.

With respect to transport, the Member States should allow workers to enter the territory of the host Member State and have unhindered access to their place of work if they exercise one of the following occupations:

- Workers involved in the supply of goods, in particular for the supply chain of medicines, medical supplies, medical devices and personal protective equipment, including in their installation and maintenance;
- Transport workers, in particular:



- Car, van and motorcycle drivers, heavy duty truck and bus/tram drivers as well as ambulance drivers, including those drivers who transport assistance offered under the Union Civil Protection Mechanism and those transporting repatriated EU citizens from another Member State to their place or origin;
- Airline pilots;
- Train drivers; wagon inspectors, maintenance workshops' staff as well as the infrastructure managers' staff involved in traffic management and capacity allocation;
- Maritime and inland navigation workers.

For these workers, the Commission urges the Member States to establish specific burden-free and fast procedures for border crossings with a regular flow to ensure a smooth passage. This may be done, for instance, by means of dedicated lanes at the border or with specific stickers recognised by neighbouring Member States to facilitate their access to the territory of the Member State of employment. Furthermore, the Member States should coordinate amongst themselves to ensure that health screening is only carried out on one side of the border to avoid overlaps and waiting times. The checks and health screening should not necessitate the workers to leave the vehicle and should in principle be based on electronic body temperature measurement.

To note, these guidelines, which can be found in attachment to this Circular, are in line with the [Guidelines for border management measures to protect health and ensure the availability of goods and essential services](#), published on 16 March. Moreover, they are without prejudice to the specific measures outlined in the Commission's [Communication on the implementation of the 'green lanes'](#) and the [Guidelines on facilitating air cargo operations during the COVID-19 outbreak](#).

Road

COVID-19 STALLS WORK ON THE 1ST MOBILITY PACKAGE

On 30 March, transport ministers of eight EU Member States sent a [letter](#) to the Presidents of the European Commission and the European Parliament, as well as the Croatian Presidency, asking to discontinue work on the 1st Mobility Package due to the economic effects of the COVID-19 epidemic.

In their claim, ministers from Bulgaria, Cyprus, Lithuania, Latvia, Malta, Poland, Romania and Hungary argue that the vast majority of road transport companies in the EU, which are particularly vulnerable to the effects of COVID-19 pandemic, are small and medium-sized. The EU should therefore focus on supporting these companies in the situation they are currently in, just as it helps the EU air carriers, rather than "adopting the 1st Mobility Package, whose provisions, combined with the aftermath of the coronavirus outbreak will bring many EU road transport businesses to an end," reads the letter.

"We believe that the adoption of the 1st Mobility Package in its current form is neither reasonable nor justified. The economic landscape of the EU when the coronavirus crisis is over will be surely a completely different one. The road transport sector needs new solutions addressing a new reality. Therefore, we urgently call for a suspension of works on the 1st Mobility Package until the pandemic is over and the reassessment of the situation of the road transport sector could be done with regard to the possibility of implementing its provisions," ministers write.

To note, the legislative process on the social and market access pillars of the 1st Mobility Package has been delayed due to the COVID-19 outbreak, with the first-reading position yet to be confirmed by



the Council. CLECAT will communicate once more the industry concerns to MEPs when the second-reading procedure starts in the EP, which is expected in mid-May 2020.

Air

COUNCIL ADOPTS TEMPORARY AMENDMENT OF SLOT RULES

On 30 March, the Council adopted a [Regulation amending the regulation on common rules for the allocation of slots at Community airports](#). This Regulation will suspend the airport slot requirements, which oblige airlines to use at least 80% of their take-off and landing slots in order to keep them the following year, until 24 October 2020.

The Regulation takes note of the cancellation of flights and/or operation of empty flights, and the consequences which this would have on the 80/20 'use it or lose it' slot usage rule. Therefore, it prescribes that the [EU Slot Regulation \(Regulation \(EEC\) No 95/93\)](#) should be amended so as to protect the grandfathering rights of air-carriers for those slots that have not been used during the crisis.

The waiver will apply from 1 March to 24 October 2020. Moreover, it will also apply from 23 January to 29 February 2020 for flights between the EU and China or Hong Kong, with 23 January 2020 being the date the first airport was closed by the authorities in China.

Thus, for the purposes of assessing accrual of grandfathering rights, slots allocated for that period should be seen by slot coordinators as having been operated by the air carrier to which they were initially allocated. Any slots freed by air carriers as a result could be reallocated by coordinators according to needs, e.g. to full freighters. However, any such reallocation would have an ad hoc character only.

AIR CARGO DEMAND DOWN 1.4% IN FEBRUARY 2020

On 31 March, IATA released its [data](#) for global airfreight markets, which indicates that the demand for air cargo in February 2020, measured in cargo tonne kilometres (CTKs), decreased by 1.4% year-on-year. However, in seasonally adjusted terms, industry-wide cargo tonne kilometres (CTKs) plunged by 9.1% in February, confirming the significant early impacts of the COVID-19 virus outbreak on air cargo. Simultaneously, cargo capacity, measured in available cargo tonne kilometres (ACTKs), decreased by 4.4% year-on-year.

According to IATA's analysis, by February, the negative impacts of the COVID-19 crisis on air cargo demand were becoming visible. The month witnessed several significant developments, including that the manufacturing production in China dropped sharply due to widespread factory closures and travel restrictions. Moreover, significant bellyhold cargo capacity was lost as a result of airlines reducing passenger operations in response to government travel restrictions due to COVID-19, severely impacting global supply chains.

Considering regional performance, European airlines posted a 4.1% decrease in cargo demand in February 2020 year-on-year. European carriers were among the first to cancel flights to and from Asia, contributing to the drop in demand in February. The Within-Europe market decreased by 7.8% year-on-year. This suggests that the region was affected by global supply chain disruptions and early COVID-19 containment measures – notably in Northern Italy, an important manufacturing region. Capacity



decreased by 3.8% year-on-year. North American and Asia-Pacific carriers experienced more moderate falls. Middle East, Latin America and Africa were the only regions to record growth in air freight demand compared to February 2019.

The full analysis is available [here](#).

Maritime

US FMC INITIATIVE TO ADDRESS COVID-19 SUPPLY CHAIN IMPACTS

On 31 March, the US Federal Maritime Commission (FMC) issued an [order](#), authorising the FMC Commissioner Rebecca Dye to identify operational solutions to cargo delivery system challenges related to COVID-19.

The order notes that “recent global events have only highlighted the economic urgency of responsive port and terminal operations to the effectiveness of the US international freight delivery system. Given the Commission’s mandate to ensure an efficient and economic transportation system for ocean commerce, the Commission has a clear and compelling responsibility to actively respond to current challenges impacting the global supply chain and the US economy. Accordingly, the Commission has determined there is a compelling need to convene new Supply Chain Innovation Teams to address these challenges.”



In addition to authorising Commissioner Dye as the Investigating Officer for the “Fact Finding No. 29 International Ocean Transportation Supply Chain Engagement”, the order allows her to form one or more FMC Supply Chain Innovation Teams to develop commercial solutions to port congestion and related supply chain challenges. The Innovation Teams will be comprised of key executives and representatives of the ocean supply chain system, including port authorities, terminal operators, beneficial cargo owners, ocean

transportation intermediaries, liner shipping companies, drayage trucking companies, longshore labour representatives and rail officials.

“The US depends on reliable international ocean freight delivery to support the economic security of our country. The maritime supply chain extends upstream and downstream from the ports and closely located logistics centres to American exporters and importers and keeping the system functioning is a priority of national importance. This initiative is an effort by the Commission to do everything we can to eliminate pressing problems in the freight delivery system,” said Commissioner Dye.

Source: [US FMC](#)

REAL-TIME DATA ON WAITING TIMES AT MAJOR EUROPEAN PORTS

The interactive logistics visibility platform Sixfold is now showing real-time waiting times at some of the major European ports. This is a new addition, the methodology of which is based on a similar tool that shows delays at the border crossings for trucks across Europe, introduced by Sixfold last month.



The map serves as a source of information and visibility for real-time cargo flows and can hopefully help improve transport planning for cross-border deliveries at the time of COVID-19 crisis.

The live map of all current border-crossing times in Europe can be accessed for free [here](#). It is possible to sign up for email updates [here](#) to receive alerts when something drastically changes.

Rail

EU SUPPORT FOR SHIFT TO RAIL IN POLAND

On 31 March, the European Commission approved, under EU State aid rules, an individual aid measure to encourage the shift of freight transport from road to rail in the Polish province of Podkarpackie.

The aid takes the form of a €6 million direct grant to the logistic company Treeden Group Sp.z o.o. The aid shall contribute to the costs of construction of a transshipment terminal equipped with facilities in the Wola Baranowska station, in Poland, along the broad gauge line No. 65 to Ukraine and to the regional intergovernmental organisation “Commonwealth of Independent States” (CIS). This terminal shall allow a shift between different modes of transport and storage of bulk materials and containers.

The Commission assessed the measure under EU State aid rules and took into consideration the suboptimal situation of the Podkarpackie Province with regard to intermodal transport and the unique character in Europe of the broad gauge track 65 as a cargo handling line connecting the Polish with the Ukrainian border. The Commission found that the aid measure promotes the shift of freight transport from road to rail. The Commission argued that the measure is also beneficial for the environment and for mobility as it supports rail transport. In particular, the Commission found that the support measure is necessary, as otherwise market operators would not have sufficient incentives to carry out investments into such infrastructure. On this basis, the Commission concluded that the individual aid measure is compatible with EU State aid rules, in particular [Article 93](#) of the Treaty on the Functioning of the European Union (TFEU) regarding transport coordination. More information will be available on the Commission's [competition](#) website in the public [case register](#) under the case number SA.52716 once any confidentiality issues have been resolved.

Source: [European Commission](#)

Customs & Trade

COMMISSION GUIDANCE ON COVID-19 AND CUSTOMS

On 30 March, the European Commission published a Guidance on Customs Issues Related to the COVID-19 Emergency in response to the emerging questions and issues concerning the crisis. The Guidance contains a number of provisions in the Union Customs Code, which can provide relief and facilitation during the COVID-19 emergency. The Guidance is a living document and has already been updated on 3 April.



Through the guidance, DG TAXUD has in principle addressed all of the points raised in [CLECAT's letter to Commissioner Gentiloni](#). In that sense, the guidance is appreciated by CLECAT. However, unfortunately, the Commission guidance only lists existing legislative provisions and does not attempt to harmonise procedures across the EU, nor does it encourage Member States to apply the measures. CLECAT Members reported that while several Member States had undertaken good measures to address the crisis, others had not yet done so in anticipation of more guidance from the Commission. Some countries had even introduced measures that impose additional burden and risks on economic operators. This is contrary to what other parts of the Commission have done to counter negative effects of the pandemic so far.

Many other supply chain stakeholders and even Member States have expressed the same worries over a lack of pro-activeness, flexibility and communication from DG TAXUD. As already mentioned by the Commission and the Council, keeping cargo flows running is vital for public health and the economy. It is crucial that the security of supplies and the integrity of the logistics chains in the EU are preserved in the interest of EU citizens and the EU economy. Customs plays a major role in ensuring the security of supplies and the integrity of the supply chains. Therefore, CLECAT together with other supply chain stakeholders, will continue to encourage DG TAXUD to take more action at EU-level regarding COVID-19 and prove the true value of having an EU Customs Union.

The latest version of the Commission Guidance on COVID-19 and Customs can be found on [the DG TAXUD website](#).

DG SANTE ALLOWS DIGITAL EXCHANGE OF HEALTH CERTIFICATES

On 31 March, the European Commission's DG SANTE adopted new temporary rules to facilitate the performance of veterinary and phytosanitary controls and the movement of agricultural goods in light of the COVID-19 crisis. [Commission Implementing Regulation \(EU\) 2020/466](#) allows for the electronic exchange of paper-based health certificates and other official attestations. The rules entered into force on 1 April and will be applicable for two months.

In particular, the legal act provides that official controls and other official activities on official certificates and official attestations may exceptionally be performed by way of an official control performed on an electronic copy of the original of such certificates or attestations, or on an electronic format of the certificate or attestation produced and submitted in TRACES. The person responsible for presenting the official certificate or official attestation should present to the competent authority a statement affirming that the original of the official certificate or official attestation will be submitted as soon as technically feasible.

Additionally, the rules allow for official controls and other official activities to be exceptionally performed by the national authorities by any available means of communication.

The new measures address the concerns raised in the CLECAT [Letter on COVID-19 and Official Controls submitted to DG SANTE](#), in which CLECAT urgently called the Commission to ensure the electronic exchange of official certificates and other documentation as much as possible in the given circumstances.

EU CUSTOMS UNION ACTION PLAN

Last week, the European Commission published a communication about the intention to create an Action Plan on the Customs Union. The Action Plan named 'Taking the Customs Union to the Next



Level' aims to improve the working of the Customs Union by laying out a long-term strategy on the basis of the results of the [Customs 2040 foresight exercise](#), to which CLECAT and several of its Members participated, and by suggesting a series of actions towards an integrated EU approach to reinforce customs risk management and support effective controls by customs administrations whilst facilitating legitimate trade.

The work on the Action Plan will be built on the continuous discussions the Commission holds with the Customs Union stakeholders, mainly in the Customs Policy Group, the Trade Contact Group, of which CLECAT is a Member, and appropriate international fora.

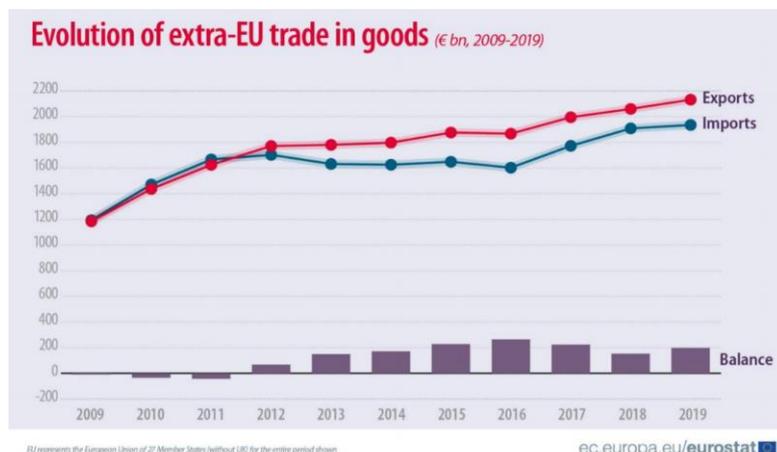
CLECAT of course welcomes any initiative of the Commission to improve the functioning of the Customs Union, but questions whether it is appropriate to start a consultation on this matter during the COVID-19 pandemic.

Source: [EU Commission](#)

EU TRADE STATISTICS 2019

On 25 March, Eurostat published a report outlining developments in EU trade in goods throughout 2019. The report indicates that trade in goods balance of the EU-27 was in surplus by €197 billion, a significant increase with respect to 2018 (+€152 bn). The US (15.2% of total sum of exports and imports), China (13.8%) and the UK (12.6%) were the three main goods trading partners of the Union, followed by Switzerland (6.3%), Russia (5.7%), Turkey (3.4%) and Japan (3.0%).

In almost all EU Member States, the main partner for exports of goods in 2019 was another Member State, except for Germany and Ireland (the US was the main destination of exports) as well as Sweden (Norway) and Lithuania (Russia). Overall, Germany was the main destination of goods exports for 16 Member States. As for exports, the main partner for imports of goods in 2019 was another Member State in all Member States except Ireland (the UK was the main partner for goods imported), Lithuania (Russia) and the Netherlands (China). Germany was again the main source of goods imports for 16 Member States.



In 2019, machinery and transport equipment continued to play a major role in EU trade in goods with the rest of the world, accounting for 41% of total extra-EU exports and 33% of imports. Other manufactured goods as well as chemicals also played a significant role.

Source: [Eurostat](#)



COUNCIL APPROVES EU-VIETNAM TRADE DEAL

On 30 March, the Council adopted a decision on the conclusion of the free trade agreement (FTA) between the EU and Vietnam. That decision clears the path, on the EU side, for the entry into force of the agreement. Once the Vietnamese National Assembly also ratifies the FTA, the agreement can enter into force, most likely in early summer this year.

The FTA provides for the almost complete (99%) elimination of customs duties between the two blocks. 65% of duties on EU exports to Vietnam will disappear as soon as the FTA enters into force, while the remainder will be phased out gradually over a period of up to 10 years. As regards Vietnamese exports to the EU, 71% of duties will disappear upon entry into force, the remainder being phased out over a period of up to 7 years. The FTA will also reduce many of the existing non-tariff barriers to trade with Vietnam.

More information on the EU-Vietnam trade relations, including the legal text of the trade agreement, you can find on the EU Commission's [website](#).

Source: [Council of the EU](#)

AMENDMENT OF EU-ESA RULES OF ORIGIN

On 31 March, new rules on origin entered into force between the EU and Eastern and Southern Africa (ESA) countries - Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe –in the context of the interim Economic Partnership Agreement between the parties. The [amended Protocol 1](#) concerns the definition of the concept of 'originating products' and methods of administrative cooperation to the Agreement. The revised rules were agreed on 14 January this year.

The revised rules allow for 'accounting segregation' for materials, in order to allow economic operators to save costs by using that method of managing stocks. Additionally, the Parties have agreed on a replacement of the provision on 'direct transport' by a rule on 'non-alteration', in order to allow for more flexibility for economic operators regarding the evidences that shall be supplied to customs authorities of the importing country when trans-shipment or customs warehousing of originating goods takes place in a third country. It was also agreed on the possibility to use registered exporter system (REX) for EU exports to the ESA countries.

Source: [EU Commission](#)

Forthcoming Events

CLECAT MEETINGS

CLECAT Maritime Logistics Institute

23 April 2020, **Online Meeting**

CLECAT Customs and Indirect Taxation Institute

22/23 April 2020 (TBC), **Online Meeting**



EU MEETINGS

Council of the European Union

Transport, Telecommunications and Energy Council
4-5 June 2020, Luxembourg

Environment Council
22 June 2020, Luxembourg

European Parliament

Extraordinary European Parliament Plenary
16-17 April 2020, Brussels
13-14 May 2020, Brussels

European Parliament Transport Committee
27-28 May 2020, Brussels

European Parliament Environment Committee
4 May 2020, Brussels
27-28 May 2020, Brussels

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