

International trade logistics - container regulatory compliance

background

The Customs Brokers and Forwarders Council of Australia Inc (CBFCA) as the peak industry body representing Australian service providers to international trade logistics and supply chain management has developed this compendium of commentaries for importers and clients of CBFCA members to foster a better understanding of the way the supply chain operates in order for the trading community to maximise benefits, ensure the efficient flow of goods in the international trade process and be aware of their regulatory compliance.

Container x-ray

Why Container X-ray is important and necessary

Container X-rays improve Customs capacity to detect prohibited goods, including illicit drugs and illegal firearms that may be illegally shipped in containers. They also help identify non compliance with import and export requirements.

The container selection process is not random. Selection is intelligence driven and based on risk.

Current CEF operations indicate that the number of imported containers subject to x-ray examination totals to 100,000 per year.

Where are CEFs currently located?

Customs container examination facilities are currently utilised in Melbourne, Sydney, Brisbane, Fremantle and Adelaide.

The process

The Container Selection and Inspection Process

Customs screens and risk assesses all import and export cargo and will select around 10% of loaded import containers for inspection at the CEFs. Empty containers and export cargo are inspected where

there is an identified need to do so and of all of these containers approximately 10% are subject to further examination based on the analysis of X-ray images

Critical components of the process

Timely reporting

Cargo must be reported to Customs 48 hours prior to vessel arrival in most cases. Late reporting means the inspection process may commence late, take longer

and this may result in additional storage and related costs from container terminal operator(s) (CTO).

Who is responsible for cargo reporting to customs?

The shipping company and sub manifest reporter is responsible for reporting the contents of each container. As container examination is intelligence driven, detailed information is critical to process outcomes.

Storage Charges

CTO's currently provide three days free storage for containers once they are declared available after discharge of the vessel. Customs endeavours to return all containers from the CEFs so that it can be collected without

the importer incurring storage charges, however, this is not always possible due to a variety of regulatory and CTO requirements.

Transportation Logistics

While slot times can be booked in the CTO's vehicle booking system prior to the cargo being cleared by Customs, it is a commercial reality that this process is dependent upon booking container receipt slots in advance. Where slot bookings are made prior to Customs release to try and facilitate a speedy cargo turnaround, you become exposed to additional costs occurred from the cancellation of the slot time and subsequent cascading costs involving both transportation and labour time.

Understanding the challenges experienced by your logistics solution provider

Your logistics solution provider has no control over the compounding effects of the sea cargo logistics chain when CEF intervention occurs. This chain is complex and requires as far as possible integration of regulatory agencies, CTO's and all other parties involved in the cargo logistics delivery chain. The links within the logistics chain include:

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- Predictability in Customs release
- Vehicle booking system slot times
- Transport and importer availability
- CTO operational patterns
- Customs operational patterns

It only takes one of these links to become out of step to disrupt the entire cargo logistics delivery chain process. Many of these issues are outside the control of, and are not the direct responsibility of, your logistics solution provider. As such additional costs involved are a result of government policy and CEF intervention and unfortunately will be to your account – the client.

What is the impact on your business?

If your container is subject to the CEF examination process you may experience delays in the delivery of your cargo which will impact on your business and incur additional logistic costs.

Why you will be subject to additional costs

Delays gaining access to cargo, the possibility of extra storage and subsequent CTO and transportation charges could be incurred for the reasons explained within this Bulletin.

What you can do

As the challenges involved with the CEF process have arisen from government policy there is little that can be done to avoid the issues detailed. You can however, take note of the possibility of Customs CEF

intervention as part of your normal operations and liaise carefully with your logistics service provider who will continue to facilitate your cargo release and communicate with you throughout the CEF process.

What happens if goods are damaged in the CEF?

While Customs and their contracted service providers should exercise appropriate care for all cargo, it is good business practice to ensure you have arranged for the appropriate packing and insurance of goods. Any claims for damages, where there is evidence to suggest this has arisen as a result of the CEF activities should be directed to the local Customs CEF manager in the first instance as to Customs or their sub contractor's liability.

Empty Container

What is Empty Container Demurrage?

Container demurrage is commonly known in industry as container detention.

Empty container detention is a cost applied by shipping lines for the late return of empty containers to a nominated container park. In the majority of cases the return period is ten (10) days from first day of availability at the container terminals. It's important to note that some shipping lines start the detention clock from the date of vessel discharge not first day of availability, which further reduced the free period.

The decision of certain container shipping lines to reduce the free time available for import containers to be de-hired from

(10) calendar days to seven (7) calendar days will increase international trade costs in Australia for both importers and exporters.

The CBFCA position did not support this change of practice and the likely associated costs for the entire supply chain. In relation to this change the recent decision (Cosco Decision) in the New South Wales District Court in March 2012, whereby it was held that container detention fees charged by Cosco Shipping (Cosco) and its Australian agent, Five Star Shipping and Agency Company ("Five Star") were enforceable as against a freight forwarding company is of note. The Court decision is seen as being pivotal to the contractual basis for container detention fees.

Who is liable for paying the detention costs?

Shipping Lines invoice such detention costs to the consignee as referenced on the Bill of Lading as per associated terms and conditions. As the ultimate consignee (cargo owner), the importer is responsible to pay these charges.

The importer is also responsible for returning the empty container(s), with interiors clean (suitable for use as received), to the point or place designated by the shipping line, and within the time prescribed. Should a container not be returned within the prescribed time, the importer

is liable for any detention, loss or expense which may arise from such loss or late return.

Issues Affecting Detention

Mismatch of operating hours

With 24 x 6 (and in some places and instances 24 x 7) operations by stevedores the “mismatch” of operating hours has been exacerbated as many importers and exporters limit their operations to receive and deliver containers during “normal” business hours. This mismatch of operating hours extends to the operating hours of empty container parks.

Costs associated with the delivery of a shipping container, cease when the empty container is de-hired. As most empty container parks (ECP) only open ten (10) hours per day during normal working days (weekends and public holidays excluded), it is often impossible to de-hire the empty container on the same day that the unpack is completed. Therefore transport companies are forced to co-ordinate the staging of the importer’s empty container to meet these time constraints. Such staging incurs additional cartage, container lifts, yard storage fees and booking notification fee at some ECP’s that have implemented Containerchain. Staging also absorbs “detention free” time that may be left after the unpack of the container has been completed.

Regulatory delays in cargo release

Further impacting on the available “detention free” time are the additional complexities and delays in regulatory cargo

release after cargo availability. More specifically, these delays have been generated by increased Department of Agriculture, biosecurity intervention, ongoing limitations in the Australian Customs and Border Protection Service (ACBP) Integrated Cargo System, late “targeted” containers for ACBP examination and an increase in containers selected by the ACBP for x-ray and unpack requirements.

Calculation and invoicing of charges

It is important to note that Australia’s import container volumes far outweigh exports; hence the majority of de-hired empty containers sit idle in empty container parks. During this time the shipping lines pay fees to the empty container parks to store containers until they are relocated overseas. While it is acknowledged that shipping lines require an appropriate mechanism to effectively manage empty containers, the question is posed “Is the level of the charge appropriate to this requirement?” Charges should reflect the cost to the shipping line in regard to storage and repositioning.

The CBFCA has advocated shipping lines apply a consistent “rule” of ten (10) working days from the last day of availability. This would limit the effect of Sundays and public holidays on the calculation of turnaround time. Shipping lines currently charge detention daily (including weekends and public holidays) however most empty container parks are not open during these periods.

Industry would also benefit if there was an on line portal that

all industry participants could access to view container de-hire information (i.e. time, date, place that the container in question was de-hired and by whom). This would save hours of investigation in the verification of detention invoices.

What can Importers do to mitigate the detention risk?

- Provide to your customs broker / freight forwarder all necessary documentation to allow customs clearance and other statutory requirements well before vessel arrival
- Be aware of the date when free container detention ends
- Take delivery of your container as soon as possible
- Unpack your container as quickly as possible (do not use it as a storage unit)
- Notify your customs broker / freight forwarder or transport company that the container is empty and ready for collection, at least two (2) full working days prior to expiry of the detention free period
- Timely payment of detention invoices received (from the customs broker / freight forwarder) is important to avoid further costs

Container weight declarations and responsibility

What is the chain of responsibility?

The chain of responsibility means that persons (individual or corporate) - not just the driver - who have control in a

transport operation can be held responsible for breaches of road laws. In other words, if you use road transport as part of your business, you share responsibility for ensuring compliance with the legislation.

If a breach of road transport law occurs due to your action, or inaction, liability may accrue.

Simply this means: Control = responsibility = legal liability

The principle of chain of responsibility currently applies under driving hours and dangerous goods regulations. However new legislation will take the chain of responsibility to mass and dimension limits, and load restraint requirements.

The National Transport Commission provides comment on the Chain of Responsibility at www.ntc.gov.au under Publications, Information Bulletins, July 2006.

What is a container weight declaration and do I need one?

A CWD for a freight container is a declaration that states, or purports to state, the weight of the container and its content.

A compliant CWD, must include:

- Number and other details necessary to identify the container.
- Weight of the freight container and its contents.
- Name, home address or business address in Australia of the responsible entity.
- Date of the declaration.

The Compliance & Enforcement (the Bill) legislation mandates that CWD's must be provided

by the person (defined as the responsible entity, namely the person in Australia) who engages the road carrier or offers the container for transport by road in Australia. Without a CWD, a driver is not legally able to transport the container.

The legislation is designed to ensure that drivers and road transport operators receive the correct information to enable the selection of the appropriate vehicle to transport the container within the relevant legal mass limits.

The CWD must be in a form to enable inspection / verification and is an evidentiary document. It may consist of more than one document and may be wholly or partly a placard attached or affixed to the container.

How to comply with container weight declaration requirements?

Members arranging container transport must, so as to comply with legislation, ensure they review all available commercial information (e.g. packing lists, invoices, Bills of Lading etc.) before providing a CWD to a third party transport provider. It is imperative to ensure the content weight plus the tare weight of the container is included as total gross weight on the CWD.

Members issuing CWDs should instigate risk mitigation processes with third party service providers to ensure those parties:

- Have in place compliance assurance processes as part of commercial arrangements with other responsible persons (importers / exporters).

- Request information from those parties as to what systems and controls are in place to ensure compliance.

Failure to comply may lead to penalties and sanctions. Administrative guidelines as to any sanctions include:

- Formal warnings
- Infringement notices
- Improvement notices.

Reasonable steps defence

The chain of responsibility means all persons in the chain who have control in transport operations can be held responsible regardless of who issues the CWD. Responsible entities such as consignors, consignees, drivers, loaders and operators have access to the "reasonable steps defence" for CWD offences if they can demonstrate:

- All reasonable steps to prevent the breach were taken or
- There was nothing that they could reasonably have been expected to do to prevent the breach.