



Best practices as proposed by FIATA Vol 3

CONTAINER SHIPPING AND CONTAINER DEPOSITS (CASH GUARANTEES)





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This is the third best practice guide by the FIATA Working Group Sea Transport and has been produced to both assist FIATA National Associations as well as their individual Member freight forwarders.

Working Group Sea Transport is comprised of freight forwarders and trade association staff that specialise in maritime transport whether as practitioners or in advising on disputes and legal issues that may arise. The working group is managed by the FIATA Secretariat and usually meets three times each year in February, June and at the FIATA World Congress. The working group is part of the FIATA Multimodal Transport Institute (MTI) and reports at the FIATA Spring Headquarters session and at the FIATA World Congress.

During the FIATA World Congress in September 2018 held in New Delhi, the FIATA Working Group Sea Transport released its first "Best Practice Guide" with a focus on **demurrage and detention charges in container shipping**. The Guide was very timely, because during the last few years, free time periods have been reduced and tariffs for

demurrage and detention have increased considerably. Shipping lines have been accused of abusing their position by charging unjust and unreasonable demurrage and detention charges to merchants.

During the FIATA Spring Meeting in March 2019 in Zurich, the FIATA Working Group Sea Transport published its second "Best Practice Guide" with a focus on **"Container Shipping and the quality of containers"**. FIATA Working Group Sea Transport noticed that the quality of containers when collected empty has decreased significantly and there are practical considerations that frequently lead to disputes, additional costs and above all to disruptions in the supply chain. The Working Group Sea suggest that shipping lines are cutting costs in the maintenance of their equipment. When it comes to the empty return of containers, the FIATA Working Group Sea Transport

has identified unfair practises of shipping lines related to the charging of unjustified cleaning and repair charges during empty return.

The FIATA Working Group Sea Transport is pleased to present its third Best Practice Guide with a focus on container cash deposits charged by shipping lines. Whilst the first two Best Practice Guides had global relevance, the focus of container guarantees is on Africa and other developing countries.

The intention of this best practice guide is once again that any reader, no matter from which industry sector, can see the logic and validity in each of the scenarios: clear, transparent and to the point. It is hoped that the guide will create a better understanding.

For further information about the activities of FIATA Working Group Sea Transport or to make comments about this guide, please contact the FIATA Secretariat info@fiata.com



EXECUTIVE SUMMARY

In the previous Best Practise guides we have (among others) established that:

- Containers are an important investment of the shipping lines and it is in the interest of shipping lines to turn around their containers as fast as possible.
- It is the responsibility of the shipping lines to ensure that their containers are safe and fit to be used for the required purpose.
- The merchant is obliged to treat and handle the containers with good care, and clean the container as well as the interior to remove all traces of the cargo, especially loose powders, grains and noxious materials and fumigants, unless otherwise agreed with the shipping line.

Whilst the charging of detention charges is a global instrument for shipping lines to encourage the return of the empty containers after discharging, in some countries shipping lines seem to have greater concerns that empty containers will not be returned altogether. An empty container may have multipurpose use and the location and recovery of a container may prove very costly if not impossible by the shipping lines.

For this reason, shipping lines collect container deposits in cash (also referred to as container guarantees) from the importer that are supposed to cover the “non return” of a container. In fact, it is not very clear for what purpose these deposits are demanded and there seem to be different practices in different countries. In some countries these deposits seem to also be used to cover possible cleaning and repairing charges.

Often these deposits are considered unreasonable and in some cases shipping lines are not only collecting cash deposits, but also demanding guarantee

letters as well as a fixed charge (non-refundable) per container on top. For many years stakeholders have been complaining about this one sided and unreasonable practice and the FIATA Working Group Sea Transport is trying to conclude best practices in the interest of all stakeholders.

Whilst container deposits are a general practice in many countries, there does not seem to be one common global practice. There are differences in the approach and amounts involved and it is impossible to focus on each of the different practices in detail. However, all of them have in common a highly questionable process of demanding cash deposits with delays and nightmarish procedures for the return of the funds.

The amount involved is considered to be held by the shipping lines in trust for the merchant and should be returned immediately after the empty return of the container. Shipping lines should not withhold cash deposits (or part thereof) without a valid reason after the empty container has been returned to



the appointed container depot. In many countries though, shipping lines take many weeks to process and return cash deposits. This delay is unreasonable with immediate consequences on cash flow and the productivity of the forwarder who has to implement procedures and processes to follow up on any cash deposit to ensure its legal return.

Also this third Best Practice Guide, examines the current situation and outlines best practices that could be implemented voluntarily by all parties moving cargo through ports – they may help reduce inefficient behaviour that lead to delays and unnecessary supply chain costs.



BEST PRACTICES

Whilst in many developed countries shipping lines do not impose container cash deposits shipping lines have traditionally been demanding all kind of cash deposits and documentation in developing countries. We are of the opinion that for many countries the practice of demanding cash guarantees must be reviewed as they are outdated and above all unreasonable.

Forwarders exposed to those practices not only incur extra cost in providing the cash deposits, the administrative overheads involved to follow up and ensure return of the deposits are nightmarish, slow and completely unreasonable.

The objective of FIATA is to recommend “best practices” that should be considered by commercial partners in their relations and dealings. The following paragraphs summarize the scenarios involving the cash deposits for containers, followed by the proposed “best practices” for commercial partners to consider in their relations.

TRANSPARENCY AND VALID (OBJECTIVE) REASON

Scenario

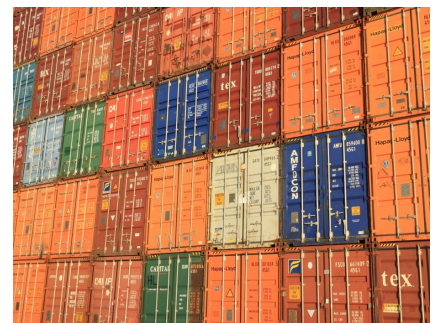
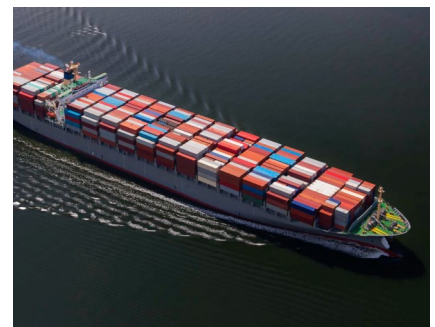
Shipping lines use their tools of demurrage and detention charges to ensure the fast return of their containers. During empty return, containers are checked on their state and quality – with possible cleaning and repairing charges imposed.

In some developing countries, shipping lines also impose container cash deposits and often additional documentation to ensure the empty return. These measures are invoked at will and without any risk assessment.

In developing countries there is generally a higher ratio of logistics costs in relation to the country GDP (Gross Domestic Product), this scenario further deteriorates the situation and the competitiveness of developing countries.

Best Practice

If shipping lines need additional securities to ensure the empty return of a container in good condition for a given country, they should provide transparency to their risk assessment and related conclusions. There should be data available (for example the number of containers that have not been returned), to document and explain a decision to collect such a cash deposit. All we ask are reasonable explanations and transparency on how decisions to insist on additional securities are derived. The fact that a country may be developing is not enough and is even discriminating – good reasons should be given and documented.





CASH GUARANTEES AND PROCESSES INVOLVED - DELAYS AND ADMINISTRATIVE NIGHTMARES

Scenario

As mentioned above, guarantees and deposits are usually demanded in cash upon the pickup of the container in the terminal and are supposed to be returned upon empty return at the container depot. These processes involving cash are an administrative nightmare in days when one talks about digitalization and automatization. In addition to that shipping lines are known to delay the repayment of the cash usually for unexplained reasons.

Best Practice

Cash transactions should be considered as a relic of the past and if there is a valid reason to ask for additional securities to ensure the return of containers

in a good condition (see above), shipping lines should ask for bank guarantees. The bank guarantees should also not be calculated per container handled, but based on a risk assessment involving a percentage of the average containers in transit of a given freight forwarder (or Freight Forwarders Association who may negotiate on behalf of their members).

Freight forwarders either act on behalf of the cargo owner or are engaged by the cargo owner as contractual carrier (acting as NVOCC). In both cases, the freight forwarder is not the actual cargo owner and deals with a huge number of cargo owners (customers). Shipping lines should review the volumes

handled by a freight forwarder and demand a bank guarantee based on a percentage of the average containers in transit handled by a given freight forwarder. This should be based on an easy and transparent risk assessment.

Using this procedure, shipping lines would have their risk covered. The unreasonable aspects related to

- the amount per container
- the administrative nightmare
- the unreasonable delay for repayment,

would have come to an end.





Scenario

Pre-carriage to the port as well as onward carriage from the port can be arranged in carrier haulage as well as in merchant haulage. Various container carriers have the ambition to provide similar services as freight forwarders. There are possible market distortions of competition between carriers that don't need to calculate with such cash guarantees in carrier haulage and freight forwarders that are exposed to them in merchant haulage.

There are indications that shipping lines abuse their position to gain an unfair market advantage.

Best Practice

When arranging inland haulage, shipping lines are in effect competing with the freight forwarders who are also their customers. Marketplaces become less efficient when entities have the power to levy unreasonable charges and procedures on their competition. No matter whether the containers move in merchant haulage or in carrier haulage there should be equal and fair treatment of customers. It is simply neither fair nor ethical to demand cash guarantees for containers in merchant haulage in today's business environment and it must be assumed that the only motivation for this practice is to make life difficult for the forwarder arranging transport in merchant haulage.

FIATA suggests that commercial partners negotiate terms to reduce this unfair differentiation. FIATA also encourages its Member Associations to understand the anti-trust regulations related to this issue in their respective jurisdictions, and to advise their members as appropriate.





CONCLUSION

The merchants / forwarders have a clear obligation to return the empty container within a reasonable time and in a good quality. By charging demurrage and detention charges shipping lines have tools to encourage the fast return of their containers. Likewise, by charging well founded cleaning and repairing charges shipping lines have tools in place to ensure good quality of their returned containers.

Yet, in some (developing) countries shipping lines demand additional security from the merchant prior to the release of the import container. Such securities can be cash deposits, guarantee letters and additional charges combined with unreasonable administration processes.

In order to improve the situation, FIATA suggests the following best practices:

- Shipping lines should provide transparency to their risk assessments and any related conclusions. The fact that a country may be developing is not enough and is even discriminating – the shipping line should provide good reasons to ask for deposits and these should be documented.
- Cash transactions should be considered as a relic of the past and if there are valid reasons to ask for additional securities to ensure the return of containers in a good condition (see above), shipping lines should ask for bank guaranties. The bank guarantees should not be calculated per container handled but based on a risk assessment involving a percentage of the average number of containers in transit.
- No matter whether the containers move in merchant haulage or in carrier haulage there should be equal and fair treatment of customers. It is simply neither fair nor ethical to demand cash guarantees for containers in merchant haulage in today's business environment and it must be assumed that the only motivation for this practice is to make life difficult for the forwarder arranging transport in merchant haulage.