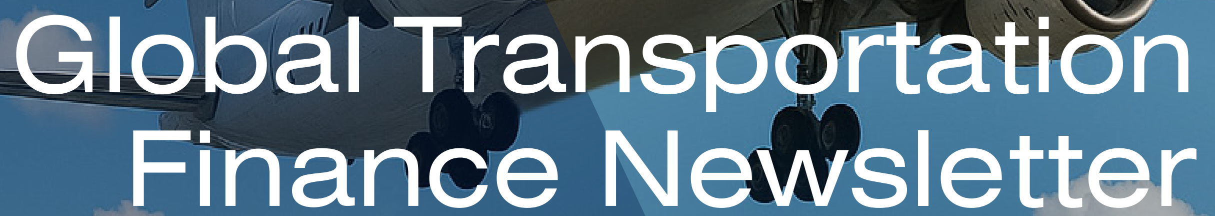

Global Transportation Finance Newsletter

April 2025

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VedderPrice

Vedder Price P.C. is affiliated with Vedder Price LLP, which operates in England and Wales, Vedder Price (CA), LLP, which operates in California, Vedder Price Pte. Ltd., which operates in Singapore, and Vedder Price (FL) LLP, which operates in Florida.

Remember Basic Import Rules when Calculating Tariffs

There is a lot of discussion regarding U.S. tariffs at this time, and it is still too soon to tell what the ultimate U.S. tariff landscape will look like. For now, however, it is important to recall that certain basic import rules and caveats still apply.

Rule 1:

New tariff rates that are being adopted apply only to permanent imports into the United States. While subject to a bond and certain other requirements, temporary imports will not be subject to tariffs. Keep in mind that temporary imports involve items that will not be sold or used in the United States. Instead, the item enters the United States on a temporary basis only and typically for the purpose of undergoing repairs, alterations or some processing and then will leave the United States within the required timeframe. The rules regarding permanent and temporary imports are complex, and legal counsel should be consulted.

Rule 2:

The new tariffs apply only to entry of items after the effective date of a new tariff. If the import or entry of the item at issue pre-dates the effective date of a new tariff, the new tariff will not apply to the import. Traceability and recordkeeping is critical to establish the date an item was imported into the United States. If proof of the previous import is unavailable, tariffs may apply.

Rule 3:

Tariffs adopted under U.S. law apply only to imports into the United States. If an EU subsidiary of a U.S. company sells and ships an EU-manufactured item from one EU country to a customer in another EU country, U.S. tariffs will not apply. There is no import into the United States. Rather, the customs laws of the EU country into which the item is imported will apply. Under this scenario, the purchaser/importer in the EU country at issue must be familiar with that country's customs laws, including any new tariffs it may have adopted (or eliminated).

Rule 4:

Country of origin is the key to which tariffs apply. When calculating tariffs for items imported into the United States, the item's country of origin determines which U.S. tariffs apply. It does not matter where the item is being shipped from. If an item's country of origin is China, and the item is being shipped from a distributor in Canada, U.S. tariffs applicable to items manufactured in China will apply to the item in question. U.S. tariffs applicable to items manufactured in Canada will not apply. For all imports, it is critical to establish in advance what the item's country of origin is under U.S. customs rules to ensure that the correct tariff is applied.

Rule 5:

U.S. Tariffs do not apply to U.S.-origin items. Tariffs will not apply to U.S.-origin items or, under certain circumstances, U.S. content in foreign-made goods. For example, if a U.S.-origin item leaves the United States, for repairs or alterations, or for demonstration or marketing purposes, it will not be subject to tariffs when it returns to the United States. However, please bear in mind that reciprocal tariffs on exported U.S. content products may be imposed by other nations.

Given the enhanced scrutiny on international trade from the U.S. government, clients are advised to confirm that all statements made in documentation submitted to the U.S. government, such as in the customs entry forms, are true and accurate to the best of the submitter's knowledge. All transaction documents should expressly address the impact of tariffs. Importers must also monitor their customs brokers, and consult with legal counsel, to ensure that there are no mistakes as importers are ultimately responsible for compliance. Customs and Border Protection generally rejects an importer's defense when based on holding the customs broker responsible for a violation. Note that we expect the U.S. government to be vigilant in reviewing customs documentation to ensure tariffs are being properly levied. Enforcement actions can result in severe fines and penalties under the U.S. customs laws and the False Claims Act, so the extra diligence in submissions will be worth the effort. Vedder Price's International Trade & Compliance and Global Transportation Finance groups are tracking changes in the law concerning tariffs. Please do not hesitate to contact us if your business requires assistance with compliance.

IN THE NEWS

Vedder Price Welcomes Helen Biggin as Partner to Lead New UK Litigation Practice

We are pleased to announce that Helen Biggin has joined Vedder Price as a Partner in the London office, where she will lead the firm's newly established UK Litigation Practice.

Helen is an experienced litigator with a strong background in commercial claims, breach of confidence claims and high-value fraud matters. She has a special industry focus in aviation and shipping matters, having previously advocated before the Commercial Court, Court of Appeal and Supreme Court. She is a member of the legal advisory panel for the respected and selective Aviation Working Group, reflecting her deep knowledge and long-standing connection to the aviation industry.

In addition to litigating matters before the commercial courts, Helen frequently represents clients in commercial arbitrations, including those pending in the London Court of International Arbitration and the London Maritime Arbitrators Association.

Helen earned her Graduate Diploma in Law from Nottingham Law School and holds an undergraduate degree from the University of Warwick. Before joining Vedder Price, she was with A&O Shearman in London.

Global Transportation Finance Attorney David Paterson Joins Expanding Vedder Price Singapore Office

The Global Transportation Finance team is pleased to announce that David Paterson joined the Singapore office as a Partner. David brings more than 14 years of experience to the firm, and in his new role working in the firm's growing Singapore office he will focus on multifaceted high-value, cross-border financing, leasing, trading and structured transactions involving aircraft, vessels and other transportation assets.

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David's practice also focuses on acting for financiers, equity investors, leasing companies, operators and export credit agencies, primarily on aircraft-backed international finance and leasing transactions. He also advises on acquisitions and disposals of assets and asset portfolios.

David received his Graduate Diploma in Law from the University of the West of England and his undergraduate degree from the University of Warwick. Prior to joining Vedder Price, he spent six years at Clifford Chance LLP in London and three years at Milbank LLP in both the London and Singapore offices.

Key Promotions Strengthen Our Global Transportation Finance Team

We are pleased to announce two key promotions within our Global Transportation Finance team, reflecting our continued growth and commitment to excellence.

Josh Alexander has been approved for admission as a Partner in our London office. He advises financiers, ECAs, lessors, and airlines on cross-border aircraft financing and leasing transactions, bringing valuable industry insights from his prior legal role at Qatar Airways.

Brian Wendt has been elevated to Shareholder in our Chicago office. He represents lessors, financial institutions, and investors in commercial aircraft and high-value equipment transactions, with expertise in securitizations, capital markets and M&A.

Please join us in congratulating Josh and Brian on their well-deserved promotions.

Taking Off: Financing the eVTOL Revolution

Imagine waking up in a peaceful, spacious community free from traffic and congestion, yet commuting quickly and comfortably into the bustling city center or directly to the airport within minutes. Picture military operations benefiting from rapid, quiet, and flexible transport to remote or challenging terrains. Their manufacturers claim that electric vertical take-off and landing (eVTOL) aircraft represent exactly this transformative potential, offering quieter, cleaner, and more sustainable alternatives to traditional helicopters and small planes.

However, the eVTOL industry faces significant financial hurdles that must be overcome to achieve commercial scalability, including the limited creditworthiness of some of the manufacturers, speculative collateral values, and the embryonic state of the secondary market. The absence of an established secondary market poses particular difficulty, as mainstream financiers typically rely on predictable resale values of aircraft to mitigate risk if a borrower defaults. Unlike the commercial aviation and shipping industries, which benefit from reports[1] from recognized valuers, lenders currently have no tested benchmarks for eVTOL aircraft valuation. Addressing these challenges requires alternative financing mechanisms, such as residual value guarantees (RVGs), and financial backing from strong corporate or governmental partners to reassure financiers about manageable risk exposure.

Current State of the eVTOL Industry

Companies such as Joby Aviation, Eve Air Mobility, BETA Technologies, and Vertical Aerospace are designing eVTOL aircraft with multiple rotors or ducted fans, capable of smoothly transitioning from vertical take-off to horizontal flight and carrying four to six passengers. Designed flight range varies significantly, with battery-electric models typically reaching 100 to 150 miles, while hydrogen-powered aircraft, exemplified by Joby Aviation's recent 523-mile test flight, offer substantially greater distances.[2]

Advanced autonomous flight technologies are integral to eVTOL development, promising increased safety, efficiency, and future fully autonomous operations. Electric propulsion systems leveraging lithium-ion batteries significantly reduce maintenance costs (having fewer parts than aircraft powered by traditional engine technologies), noise pollution, and environmental impact compared to combustion engines, making eVTOLs economically attractive for civilian and military applications.

An eVTOL aircraft could transport passengers from suburban New Jersey to downtown Manhattan in approximately 10 minutes, or from Orange County to Los Angeles in roughly 15 minutes, delivering efficient, emission-free travel without the disruptive noise associated with traditional transportation.

Lessons from Regional Jets

The historical introduction of regional jets offers valuable insights into addressing eVTOL financing challenges. Initially met with skepticism regarding market acceptance and uncertain resale values[3], regional jet manufacturers Bombardier and Embraer utilized innovative financial tools to help support the development of the regional jet market; Bombardier offered RVGs to assure lessees against potential resale losses, while Embraer leveraged export credit agency backing from Brazil's National Development Bank (BNDES), enhancing market confidence.[4]

Similar structured financing and governmental support can facilitate market adoption of eVTOL aircraft: Eve Air Mobility's recent $88 million loan from Brazil's National Development Bank (BNDES) and BETA Technologies' $169 million loan from the U.S. Export-Import Bank both demonstrate parallels with historical regional jet financing.[5]

Innovations and Milestones

Several companies are setting crucial industry benchmarks through strategic partnerships and financial innovations:

- Joby Aviation, nearing FAA certification, aims to launch commercial services by late 2025. Its eVTOL aircraft, with speeds of 200 mph and a 150-mile range, benefits from a $500 million strategic partnership with automotive giant Toyota, providing critical manufacturing expertise and scale.[6]

- Archer Aviation partnered with another automotive company, Stellantis, receiving $630 million in manufacturing and equity support to scale production of its Midnight eVTOL, targeting 650 aircraft annually.[7]

Global Transportation Finance Shareholder Justine Chilvers Joins the Inaugural ISTAT Executive Leadership Program

The Global Transportation Finance Team is pleased to announce that Justine Chilvers is participating in the newly launched ISTAT Executive Leadership Program, which focuses on advancing women in the commercial aviation industry.

This unique six-month program (February – July 2025) pairs participants with senior ISTAT members as mentors, offering valuable guidance and industry insights. Justine has been paired with Chris Dailey, President & Chief Commercial Officer of Jackson Square Aviation, as her mentor. The program includes two in-person cohort seminars: the first at ISTAT Americas in Phoenix in March and the second at PwC's facilities in New York in July.

We are proud to see Justine representing our team in this prestigious program and look forward to the insights and connections she will bring back.

Jack Goold Selected for 2025 ISTAT PDP EMEA

We're excited to announce that Jack Goold was selected to participate in the 2025 ISTAT Professional Development Program (PDP) EMEA, a highly regarded program tailored for aviation professionals with 1–5 years of industry experience. The ISTAT PDP offers a comprehensive look into the commercial aviation industry, with a focus on aircraft design, manufacturing, maintenance, valuation, and the intricacies of trading and financing. In addition to gaining valuable technical knowledge, participants enhance

- BETA Technologies secured $318 million through the U.S. Air Force's Agility Prime initiative, highlighting the potential for military-civilian collaboration and enhancing investor confidence through operational validation.[8]

- Meanwhile, Vertical Aerospace recently raised $90 million via an innovative upsized public offering involving milestone-linked warrants. Each unit, priced at $6, included warrants contingent on technological milestones, aligning investor incentives directly with company progress, though highlighting the dilution risks inherent in capital-intensive ventures. [9]

However, investors remain cautious as the industry is not impervious to failure. The recent insolvency of Lilium highlights this: despite raising around $1.5 billion, the company has entered insolvency due to funding shortfalls and technological setbacks.[10] Investors in the industry will therefore focus on prudent financial planning and realistic technological timelines.

Sustainability and Investor Considerations

For some investors, sustainability significantly influences their decisions, driven by ethical motivations and some tangible financial incentives linked to regulatory compliance, subsidies, and investor mandates. Companies prioritizing environmental, social, and governance (ESG) criteria argue that they often achieve better long-term risk profiles and market competitiveness, with the eVTOL space potentially representing a suitable space of investors interested in those criteria. Joby's successful hydrogen-electric test flight demonstrates may have gone some way to significantly bolstering investor confidence in long-term viability of investments in cleaner technology.

Infrastructure Investment Needs

Beyond aircraft development, substantial infrastructure investment—such as vertiports (being the airports for eVTOLs), charging facilities, and advanced air traffic management systems—is critical. This is a topic for extended discussion, but as with investments in airports and similar infrastructure, public-private partnerships and leasing arrangements will likely be essential for financing these infrastructure needs.

Conclusion: Grounded Optimism

In many ways, the financial hurdles confronting the eVTOL industry today mirror those once faced by regional jets. History demonstrates that structured financial tools and strong partnerships, together with sustainability-driven innovation may be able to overcome initial skepticism. Guided by historical lessons and leveraging proven strategies, the eVTOL industry could be well-positioned to achieve clear skies ahead.

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their negotiation, presentation, and communication skills—all while engaging directly with top-tier industry leaders and ISTAT members. Jack will join a select group of professionals in attending all four modules of the 2025 EMEA program in Dublin, Toulouse and Prague. Please join us in congratulating Jack on this exciting opportunity to deepen his industry knowledge, grow his skill set, and represent GTF within the global aviation finance community!

Global Transportation Finance Shareholder Clay Thomas Named to LABJ Thriving in Their 40s List

Global Transportation Finance Shareholder Clay Thomas was selected for the Los Angeles Business Journal's (LABJ) Thriving in Their 40s 2024 list. Clay is featured in the December 30 issue of the publication under the "Leaders of Influence" section.

Since joining the firm in 2009, Clay has focused his practice on the aviation and rail industries, representing a variety of clients in complex sale, leasing and financial transactions. In addition, Clay has been recognized by multiple publications and organizations for his leadership and involvement in high value transactions within the Global Transportation Finance realm.

Each professional featured on the list has been chosen by the publication's editorial department based on submissions that demonstrate their work and impact within the greater Los Angeles community.

THOUGHT LEADERSHIP

Edward Gross Co-Authors Article for Equipment Leasing and Finance Association (ELFA) Publication

Global Transportation Finance Shareholder Edward Gross was featured in the Equipment Leasing and Finance Association's monthly publication for his contributions to the article "Liability Considerations for Aircraft, Rail and Marine Lenders and Lessors." Eddie, along with his co-authors, discuss the risks associated with leasing, financing and investing in the titular transportation sectors. The article examines various liability concerns, along with available transaction protections that protect financiers from violating federal laws and established regulations associated across all three industries.

Court Decides Lessee's Failure to Engage Won't Fly

The High Court has delivered a decision in *AWAS Netherlands A320-1 BV v Pacific Airlines Aviation Joint Stock Company*[1] in relation to an amount of lease rental and other damages Pacific Airlines (the **Defendant**) owed AWAS (the **Claimant**) pursuant to a settlement agreement, following an initial dispute over the Defendant's failure to make rental payments under a lease agreement in respect of an Airbus A320-200 (the **Aircraft**).

Background

The dispute regarding the unpaid rental payments began in May 2022, at which time the Claimant demanded the return of the Aircraft, with legal proceedings following shortly after. Those proceedings were discontinued in December 2022 following the execution of a settlement agreement (the **Settlement Agreement)**, pursuant to which a repayment plan was agreed between the Claimant and the Defendant in relation to the **Instalment Balance Amount**, which was made up of:

1. the payment of an **Initial Balance Amount** of US$18,267,542.82, equal to the amount of the Claimant's losses based upon an assumed termination date of the lease agreement of 20 October 2022; and

2. the payment of a **final Reconciliation Amount**, reflecting the Claimant's final third-party expenses incurred in respect of the Settlement Agreement which had not been included in the Initial Balance Amount (covering legal and technical expenses).

The Settlement Agreement also provided for potential reductions from the Instalment Balance Amount:

1. to the extent that the Claimant re-leased the Aircraft at a monthly rate in excess of US$120,000, a deduction of such excess from the monthly payments in inverse order of maturity; and

2. a deduction in respect of 50% of the cost for any ferry flight for the Aircraft.

Failure To Agree Following The Settlement Agreement

The parties were unable to reach a formal agreement as to the final Reconciliation Amount prior to the instalment commencement date (being the date on which the monthly instalments were due to start being paid) on 15 November 2023.

However, there was correspondence between the Defendant and the Claimant's servicer in December 2023, where the Defendant indicated that an Instalment Balance Amount of US$19,064,540.46 "seems okay for [the Defendant's] working level" and that "there is no further enquiries"[2], before stating that there would be an internal approval process before the figure was confirmed.

In April 2024, by which time the Claimant had only received $100,000 of the $10,053,276.09 due and owing under the Settlement Agreement at that point, the Claimant issued proceedings against the Defendant seeking payment of all outstanding sums due under the Settlement Agreement. Although the Defendant had filed an acknowledgement of service, indicating that it intended to challenge this claim, the Defendant did not engage with the proceedings thereafter.

Decision

Following the Claimant's application for summary judgment, the Court granted summary judgment against the Defendant, ruling that the Instalment Balance Amount was US$19,064,534.17, and each monthly instalment was US$794,355.59, only slightly less than the figure which the Defendant said it considered to be "okay"[3]. The Court also ruled that, whilst the Aircraft was re-leased at rental in excess of US$120,000 per month, the excess was less than one month's instalment of the Instalment Balance Amount, so the Claimant would not have needed to give credit for it until the final monthly instalment had been paid by the Defendant.

The Court ordered that as of the date of judgment, the Defendant owed the Claimant the sum of US$10,053,276.09. As the agreed schedule of payment of the Instalment Balance Amounts continues until October 2025, the Claimant still retains the right to claim any unpaid monthly Instalment Balance Amounts which fall due post 15 November 2024 (being the date of the judgement) up to 15 October 2025 (being the last date on which the monthly instalments continued to be due).

Edward Gross, Troy Guglielmo and Claire Geitzenauer Author Article for World Leasing Yearbook 2025

Three members of the firm's Global Transportation Finance team, Shareholder Edward Gross, Associate Troy Guglielmo and Law Clerk Claire Geitzenauer, were featured in the World Leasing Yearbook 2025 for their article "Recent Developments in the Transportation Leasing and Finance Industry in the US." The World Leasing Yearbook is an annual publication that provides coverage on the global leasing and asset financing markets for professionals throughout the industry. The article reviews recent regulatory developments, enforcement actions and legislation in the United States and their impact on the country's transportation equipment leasing and finance industry.

John Pearson and Anne Marshall (for aviation), Mike Draz (for rail) and John Imhof (for shipping) also contributed to the update.

Edward Gross Co-Authors "Leases" Survey in the ABA's Fall 2024 The Business Lawyer

Shareholder Edward Gross of the Global Transportation Finance team recently co-authored the article "Leases" included in a collection of Uniform Commercial Code (UCC) survey articles in the Fall 2024 edition of *The Business Lawyer*.

Published annually, the UCC survey and articles cover case law and statutory developments during the previous year with respect to the spectrum of commercial law matters governed by the UCC. This year's "Leases" article discusses several disputes among parties to equipment leases or other personal property financings and cases involving third parties claiming to have related rights or interests. The article includes summaries of various equipment leasing disputes, with Eddie contributing to the sections "Lease Characterization and Damages," "Vicarious Liability," Forum Selection Clauses" and "Rights of Assignees" alongside his co-authors.

Conclusion

Despite the absence of a formal agreement between the parties with regard to a final payment amount, the Court was able to rely upon the email correspondence between the Defendant and the Claimant's servicer in order to ascertain that an accord on the amount had in fact been reached.

This case also serves as confirmation that failure to engage with an English Court proceeding will not prevent the Court from finding against the non-participant.

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HONORS & AWARDS

Global Transportation Finance Team Recognized in Chambers Global 2025

The Global Transportation Finance Team was recognized by Chambers Global in 2025 in Asset Finance – Global Market Leaders in **Band 2.** Additionally, Jeffrey Veber was recognized in Band 3 and Cameron Gee, Gavin Hill, Geoffrey Kass and Ji Kim were recognized in **Band 4**.

Global Transportation Finance Team Singapore Distinguished by *The Legal 500 Asia Pacific 2025 Guide*

The Global Transportation Finance Team was named to *The Legal 500 Asia Pacific 2025* guide as **Tier 3** in Asset Finance: Foreign Firm. This recognition highlights the growth of the firm's Singapore office and the exceptional client work completed by its attorneys. Additionally, Ji Kim was **Editorially Recommended**. In addition to the traditional Practice Group Ranking, the team received a "**Client Satisfaction**" accolade, a new recognition for firms who achieve the highest scores for client service and experience during our annual survey.

In Discussion with Molly McCafferty

Molly McCafferty is Senior Vice-President, Co-Global Claims Director for Shipowners Claims Bureau, Inc (SCB), Managers of the American P&I Club. She previously acted as General Counsel for Guardian Navigation Inc., a bulk owner/operator and pool manager. Molly has over twenty-five years of experience in the maritime industry handling charter party disputes (both as Owner and Charterer), marine casualties, cargo (wet and dry) and bodily injury claims, insurance coverage and other maritime disputes. Molly is also a practicing arbitrator and mediator.

Evolving risks associated with global shipping, driven by geopolitical tensions, piracy, cybersecurity attacks, environmental regulations and climate change, are significantly influencing ship finance transactions, risk management and funding sources for these transactions.

We were recently fortunate enough to be able to conduct an interview with Molly McCafferty, the Senior Vice-President of the American P&I Club who has over 25 years of experience in the maritime industry, by phone, to discuss some critical questions facing the continuously evolving marine insurance industry:

- How is marine insurance affected by the increasing risks associated with global shipping in 2025 and what are the main types of evolving maritime risks that will significantly affect the marine insurance industry in 2025?

  Shipowners make commercial decisions every day based on their risk tolerance. In 2025, the traditional risks associated with global shipping are significantly impacted by various external factors. Shipowners are faced with balancing their risk tolerance with the increased costs of insurance.

  Geopolitical tensions, conflict zones, cybersecurity attacks, climate change, piracy and increasingly complex regulatory environments (e.g., Energy Efficiency Existing Ship Index, Carbon Intensity Indicator, IMO 2020[1]) are all part of the evolving environment.

- How are marine insurers reacting to the changing nature of maritime risks in global shipping and what stance are insurers taking on transit through certain regions of the world?

  As these risks evolve, insurers modify their terms and conditions, underwriting strategies and pricing models, all of which lead to higher premiums, restrictions on coverage for certain routes, or the implementation of additional security measures in high-risk zones.

  Insurers' positions may vary based on the particular risk in key "hot spots". These "hot spots" present numerous risks for ships that may impact vessel safety, crew safety, the continuity of operations and the cost of insurance.

- Speaking of "hot spots", what are some of the risks and concerns currently affecting insurance on ships transiting through the Red Sea?

  The Red Sea, which is a critical route for trade between Europe, the Middle East and Asia, has seen increasing piracy and Houthi attacks in recent years, particularly due to regional conflicts and the ongoing conflict in Yemen, in addition to tensions between Iran and Saudi Arabia. Insurers are strongly concerned about ship transits through the Bab el-Mandeb Strait and areas near the Horn of Africa.

  Some insurers impose specific regional exclusions or require additional premiums for vessels intending to navigate through these areas.

  The Gulf of Aden, which is located between Yemen and Somalia, at the southern end of the Red Sea has long been considered a piracy hot spot and a place of potential terrorist activities. Insurers may either exclude coverage in this region or apply higher premiums for transit through the Gulf of Aden. Some underwriters have also required additional security measures including armed escorts or safe shipping corridors (i.e., navigating ships towards less risky sea routes).

- In the region, is the Strait of Hormuz also considered a hot spot for insurers?

  The Strait of Hormuz is also a hot spot for geopolitical tension, especially between Iran and the United States and its allies. Military tensions and sporadic attacks on vessels raise the risk for commercial shipping in this region, especially for vessels carrying oil and gas. Insurers commonly apply war risk exclusions or high premiums for vessels transiting the Strait of Hormuz, especially those that travel in proximity to Iran's territorial waters.

Global Transportation Finance Team Recognized in *Chambers Asia-Pacific Guide 2025*

The Global Transportation Finance team and Shareholder Ji Kim have again been recognized by *Chambers Asia-Pacific* in 2025. The Aviation Finance practice in Singapore and Ji have been nominated for two categories: Asia-Pacific Region and Singapore. The Aviation Finance practice in Singapore earned a **Band 4** ranking in the Asia-Pacific Region and a **Band 3** ranking in Singapore, with Ji individually recognized in both categories, achieving **Band 4** for the Asia-Pacific Region and **Band 3** for Singapore.

Edward Gross Named to *The Spear's 500* List for 2025

Global Transportation Finance Shareholder Edward Gross has been named to the 10th edition of ***The Spear's 500*** list. This annual merit-based recognition is awarded to the top private client advisers, lawyers, wealth managers and service providers for high-net-worth individuals (HNWs). Each professional named to the list has been evaluated by the Spear's research unit through their assessment of individual and firm research, submissions, nominations, peer reviews and interviews. Eddie's inclusion on the list is a testament to his work with and dedication to his high-profile clients across various sectors of the transportation finance industry.

- What about other “hot spots” like the Black Sea?

  The Black Sea is a high-risk region because of the ongoing conflict between Russia and Ukraine. Fierce geopolitical tension, including the various sanctions regimes imposed by the EU, UK and U.S. governments, make the Black Sea highly risky for commercial shipping. Traditional insurers have issued “war risk” insurance exclusions for vessels operating in or near the Black Sea, particularly in areas near Ukrainian and Crimean coasts, instead requiring special war risk cover insurance policies.

  Other risky areas include the South China Sea, the Straits of Malacca and Singapore, the Horn of Africa and the Central American Coast. All such regions are considered high-risk hot spots because of piracy, political instability or potential military conflicts.

- How is the ship finance market affected by higher premiums in the face of geopolitical developments, increasing restrictions in response to sanctioning and increasing claims? And are environmental investment measures and recent regulatory changes affecting marine insurance premiums and ship finance costs?

  Higher premiums are set by insurers in response to mitigating risk. All these risk factors increase operating costs and adversely influence the shipowner’s ability to maintain cash revenue, thereby affecting the ability to service the loans. The geopolitical landscape also increases financial risks for lenders and financiers, leading to more cautious lending practices which in turn affects the cost, availability and structure of financing in the maritime market.

  In response to environmental developments and a more complex regulatory regime (e.g., IMO 2020 and carbon emissions regulations), shipowners and operators may face higher risk premiums, increased financing costs (e.g., higher interest rates or additional collateral), stricter loan conditions, and a reduced amount of capital in the shipping market.

- How are ship finance transactions responding to new policies with regard to all these elements of change?

  In response to market volatility, geopolitics, regulations and the changing risk environment, ship finance transactions are adopting more comprehensive risk assessment and risk mitigation strategies, incorporating more stringent loan conditions and embracing alternative financing options that emphasize environmental sustainability (e.g., green financing).

  Marine insurers need to maintain their resilience to these various threats and regulations by developing flexible policies that can adjust with geopolitical and regulatory change. Considering the geopolitical and regulatory landscape in the maritime industry, traditional lenders are now more risk-averse and conservative in their approach to ship finance, opening the door to alternative financiers (including leasing companies, private equity firms and institutional investors) who are seizing the opportunities and taking a more significant role in the ship finance market.

Thanks Molly. We look forward to further discussions on shipping insurance and the role of P&I Clubs in the near future.

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Vedder Price to Attend ISTAT Financing Sustainable Aviation 2025 Conference in London

We are pleased to share that John Pearson, partner in our Global Transportation Finance team, along with Helen Biggin, Litigation Partner in our London office, will be attending ISTAT’s Financing Sustainable Aviation 2025 conference on 26 March 2025 at the Hilton Tower Bridge in London. Now in its fourth year, the conference is a key gathering for stakeholders across the aviation value chain, designed to tackle the industry’s most pressing issue: sustainability. Our team looks forward to engaging with industry leaders and contributing to the ongoing dialogue around sustainable aviation finance.

John Pearson Served as Moderator at ISTAT Financing Sustainable Aviation 2025

Global Transportation Finance Partner John Pearson moderated a session at ISTAT Financing Sustainable Aviation conference on March 26, 2025, hosted at the Hilton Tower Bridge, London. John directed the session titled “Utilising sustainable finance to maintain and grow your investor pool,” leading a panel of top professionals within the aviation finance industry. The session covered impactful topics such as EU Reporting and the corresponding mandatory disclosures for airlines, as well as financing trends and sources for aircraft operators and manufacturers lessors.

Recent Speaking Engagements

John Imhof Jr. Moderated Capital and Finance Panel at the 19th Annual Capital Link International Shipping

Global Transportation Finance Shareholder John Imhof Jr. moderated a session entitled “All Hands On Deck – Unlocking Capital & Financing Options for Shipping” at the 19th Annual Capital Link International Shipping Forum New York. During their session, John and a panel of finance professionals assessed global trends and developments to determine the advantages and disadvantages of various capital markets and financing options available to the shipping industry.

The Mouse That Roared: A Look Back at *TCW v Evergreen*

The Federal Maritime Commission (the "FMC" or the "Commission") recently issued its highly anticipated decision on remand in *TCW, Inc. v. Evergreen Shipping Agency (America) Corp. et al.* (the "Order on Remand"),[1] a contentious small claims case that tested the reasonableness of an ocean common carrier's detention practices with respect to empty container returns against the FMC's "incentive principle." As one of the first adjudicated proceedings involving the principle, *TCW* attracted widespread industry interest as its small-dollar issues had large-scale implications for the detention and demurrage (collectively, "D&D") practices of other regulated entities.

Prohibition of Unjust and Unreasonable Regulations and Practices

The Shipping Act of 1984, as amended (the "Shipping Act" or the "Act"),[2] regulates the competitive activities and business practices of "ocean common carriers" ("VOCCs")[3] and "marine terminal operators" ("MTOs"),[4] among others. Among the many proscriptions applicable to regulated entities and contained in the Act[5] is section 41102(c), which provides that a VOCC or MTO may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.[6] Such practices include those relating to the D&D practices of VOCCs and MTOs.[7]

Demurrage and Detention and the Interpretive Rule

The D&D practices of VOCCs and MTOs, including the application and reasonableness of such practices under section 41102(c), have occupied the FMC's attention for many years.[8] Following a major fact-finding investigation conducted by the FMC in 2018,[9] which produced detailed interim[10] and final[11] reports on the topic, the FMC initiated a rulemaking proceeding[12] to establish guidance concerning factors it may consider when assessing the reasonableness of D&D practices and regulations under section 41102(c). The so-called "Interpretive Rule", adopted by the FMC in 2020,[13] added a new section[14] to the FMC's existing policy guidance on section 41102(c),[15] and a new term in the agency's D&D lexicon: the "incentive principle."

The Interpretive Rule applies to "practices and regulations relating to demurrage and detention for containerized cargo"[16] providing guidance as to how the FMC will interpret the reasonableness requirements set forth in section 41102(c) of the Act and 545.4(d) of the FMC's rules in the context of D&D."[17] In assessing the reasonableness of D&D practices and regulations, the Interpretive Rule states that the FMC "*will consider* the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity."[18] This is the incentive principle.

The Interpretive Rule contains "a *non-exclusive* list of factors for the FMC to consider when determining whether demurrage and detention practices are 'just and reasonable'."[19] These factors "may be considered" in specific factual settings (cargo availability, notice of cargo availability and government inspections).[20] In the case of empty container returns, the Interpretive Rule states that, absent "extenuating circumstances," practices and regulations that impose detention charges "when empty containers cannot be returned, are likely to be found unreasonable."[21]

The Interpretive Rule further states that the FMC may adjudge reasonableness under section 41102(c) by considering the transparency and accessibility of definitions, as well as "the existence, accessibility, content and clarity of policies implementing D&D practices and regulations."[22] Lastly, and perhaps most importantly, the Interpretive Rule contains non-preclusionary language that allows the FMC to consider "factors, arguments, and evidence in addition to those specifically listed in this rule."[23]

The Interpretive Rule was not intended to subject regulated entities to "new legal authority" nor was it intended to impose new '"requirements' or mandates or dictates" for a regulated entity to violate.[24] The Interpretive Rule did not create blanket rules applicable to section 41102(c) cases; each case brought "thereunder would be decided on its own facts."[25]

TCW v. Evergreen: Factual Background

The claimant in *TCW* (the "Claimant") was a "preferred trucker" for the import loads of Yamaha Motor Company, Ltd. (the "Shipper")[26] in the Port of Savannah (the "Port"). The respondents were Evergreen Line Joint Service Agreement, an ocean common carrier, and its U.S. agent, Evergreen Shipping Agency (America) Corporation (collectively, "Evergreen").

The relevant controlling documents applicable to the Claimant consisted of various contracts and agreements through which the Claimant and the Shipper accepted Evergreen's assessment of per diem detention charges during weekends and holidays.

Bill Gibson Moderated Session at Ishka Investing in Aviation: Europe

Global Transportation Finance Partner Bill Gibson served as a session moderator at the Ishka Investing in Aviation: Europe conference on March 25, 2025 in London. Bill's session, titled "Operator Perspective: Financing Aircraft Deliveries," will investigate the logistics of financing new aircraft to meet the demands of global passenger and freighter fleets. The discussion covered topics such as financing requirements in 2025, the margins of securities lending and borrowing (SBL) deals, the role of Japanese Operating Leases (JOL) and Japanese Operating Leases with Call Options (JOLCO) in market changes, utilization of French tax leases and Pre-delivery payment financing and potential equity in new aircraft deliveries. Bill led the session alongside several professionals from various sectors of the aircraft finance industry.

Ji Kim Moderated Session at 7th Annual Capital Link Singapore Maritime Forum

Global Transportation Finance Shareholder Ji Kim moderated the session "The New Landscape of Ship Finance" at the 7th Annual Capital Link Singapore Maritime Forum on March 25, 2025. This year's conference featured a variety of seminars focused on Singapore's role in global shipping markets and its advantages as a maritime access point in Asia. Ji's session on ship finance brought together a panel of other well-versed professionals from within the maritime industry to discuss the current trajectory and potential economic impact of ship financing in Singapore and in Asia overall.

Dylan Potter Served as Moderator at 23rd Marine Money Hamburg Forum

Global Transportation Finance partner Dylan Potter moderated the session "Investing in Today's Market" at the 23rd Marine Money Hamburg conference on February 26th, 2025. This year's forums discussed modern challenges in the maritime shipping industry, including the impact of changing environmental and economic policies and the overall future of the industry. Dylan's panel focused on the various strategies and opportunities for investing equity in shipping in 2025 while maintaining the long-term transportation needs of industrial customers. He was joined by several other leaders from within the maritime and global transportation industries.

The relevant cargo was shipped in a container supplied by Evergreen on a port-to-house basis. When the Claimant retrieved the container at the Port of Savannah for inland delivery to the Shipper, it used a chassis also supplied by Evergreen. For each item of equipment, Evergreen allotted a specified number of days to return the equipment,[27] after which detention charges would accrue at agreed per diem rates.[28]

The Claimant failed to return the container and chassis within allotted free time, which resulted in per diem detention charges billed to the Claimant for the equipment. However, the Port was closed on each of the three days immediately prior to the date of return, which prevented the return of the equipment on those days. One of the days was a Saturday on which the Port was temporarily closed due to COVID-19, the second was a Sunday on which the Port was regularly closed, and the third was the following Monday on which the Port was closed for the Memorial Day holiday.

Although the Claimant had advance notice of all three Port closures, and accepted Evergreen's right to impose per diem charges on weekends and holidays, it contested the detention charges for the three days in question. The contested charges totaled a mere $510. When Evergreen declined to waive the charges, the Claimant paid them and then commenced a small claims proceeding against Evergreen in the FMC to collect reparations[29] and obtain a corresponding cease-and-desist order against Evergreen based upon the alleged violation of section 41102(c).[30]

The Initial Decision

On the facts presented, the Small Claims Officer ("SCO") issued an Initial Decision (the "Initial Decision")[31] in which she found that Evergreen's[32] detention charges for the three days when the Port was closed, and when the equipment could not be returned, were "unjust and unreasonable" in violation of section 41102(c) as they failed to serve an "incentivizing purpose" under section 545.5(c)(2)(ii). The SCO rejected out-of-hand the various "extenuating circumstances" and other "factors, arguments and evidence" proffered by Evergreen in their own defense.

The SCO awarded reparations to the Claimant in the amount of $510, plus interest,[33] and ordered Evergreen to "cease and desist from imposing per diem charges when imposition of per diem charges does not serve its incentivizing purposes, such as when empty equipment cannot be returned on weekends, holidays and port closures."[34]

The outsized importance of the *TCW* case was not lost on the full Commission, which quickly exercised its discretionary authority to review the Initial Decision.[35]

Order Affirming the Initial Decision

Upon review, the FMC issued an Order Affirming the Initial Decision (the "FMC Order") in which it upheld the Initial Decision in all respects.[36]

Commissioner Carl W. Bentzel[37] issued a vigorous dissent in which he took issue with the SCO's findings and legal rationale, emphasizing that "terms such as the 'incentive principle' do not replace reasonableness which is the underpinning of the Shipping Act," and expressing concern that the majority decision put the Commission at risk "of overstating the manufactured principle at the peril of usurping reasonableness."[38]

Commissioner Bentzel found that the detention charges assessed by Evergreen "were consistent with the 'incentive principle' and the need to promote cargo fluidity."[39] As factors favoring Evergreen, he noted that the Claimant (1) knew in advance when the Port would be open for business and when it would be closed, (2) had contractually agreed to the rules and standards governing free time and detention for the equipment (3) possessed sufficient free time, and (4) knew that the equipment had already exceeded its allotted free time before the Port closures.[40] Importantly, Commissioner Bentzel cautioned against any application of the incentive principle that would automatically prohibit the assessment of demurrage or detention for days that a terminal is closed for business or on a holiday.

Vacatur and Remand

On petition by Evergreen, the U.S. Court of Appeals for the District of Columbia Circuit (the "Court") vacated the FMC Order, as it applied to the reasonableness of Evergreen's[41] detention charges, and remanded the matter to the FMC for further proceedings.[42]

The Court held that the FMC's application of the Interpretive Rule was arbitrary and capricious in violation of the Administrative Procedure Act, observing that the FMC failed to consider relevant factors or "respond in any meaningful way to most of Evergreen's arguments."[43] According to the Court, such failures were due to the FMC's "myopic focus on the incentive principle," while its narrow application of the incentive principle was "in defiance of common sense to reach an illogical result."[44] As stated by the Court:

David Hernandez Presented at Corporate Jet Investor London 2025

Global Transportation Finance Shareholder David Hernandez spoke at the Corporate Jet Investor (CJI) London 2025 conference, hosted from February 3rd – 5th. This three-day event brings together a multitude of professionals involved in business jet transactions, including senior level financiers, brokers, lawyers, manufacturers, operators and more. David participated in the session "Making US business aviation even greater" on Wednesday, February 5th. His panel group discussed recent news and changes regarding the Federal Aviation Administration (FAA) and the potential trajectory of business aviation in the United States.

DEAL CORNER

Vedder Price Advised Aero Capital Solutions in Capital Raise for Investment Vehicle Set to Deploy $3.5 Billion in Aircraft Leasing

The Global Transportation Finance team represented Aero Capital Solutions, Inc. ("ACS") in connection with capital raising activities for its fourth, and largest, aviation investment vehicle. Vedder Price's Investment Services Group advised ACS in connection with fund formation activities, through which the investment vehicle secured total aggregate equity commitments of $936 million from a diverse group of institutional investors, registered investment advisers, and family offices. In addition, Vedder Price's Global Transportation Finance team advised ACS in connection with two cutting-edge warehouse debt facilities specifically tailored to ACS's mid-life aircraft investment strategy, which were arranged by Deutsche Bank and Atlas SP. The investment vehicle is expected to deploy $3.5 billion into mid-life aircraft leasing investments. The team was led by Global Transportation Finance Shareholder Adam Beringer and Mark Ditto, Jillian Musa, Jeff Landers, Ciara Davenport, Troy Guglielmo and Arman Amirkhanian (Global Transportation Finance), Cody Vitello, Laure Sguario and Devin Eager (Investment Services) and Matt Larvick (Tax).

Vedder Price Represented Constellation Oil Services in Connection with Multiyear Drilling Assignment with Petrobas

The Global Transportation Finance team represented Constellation Oil Services in connection with a multi-year drilling assignment with Petrobras, one of the largest oil and gas producers in the world.

> In effect, the Commission treated the incentive principle as just the sort of "bright line" rule it had denied creating when adopting the rule. Yet, as the Commission itself noted when it published the rule, and as Commissioner Bentzel explained in his dissent, an interpretive rule does not create any legal obligations; "terms such as 'incentive principle' do not replace 'reasonableness' which is the underpinning of the Shipping Act."[45]

To the extent that the FMC Order did address Evergreen's arguments, the Court was less than impressed:

> For those of Evergreen's arguments to which the FMC did respond, its reasoning is, charitably put, implausible. Bright line rule or not, the Commission errs insofar as it maintains a detention charge necessarily lacks any incentivizing effect because it is levied on a day on which a container cannot be returned to a marine terminal. On the contrary, being charged for detention during a port closing announced before the carrier picks up the equipment heightens the incentive to return equipment on time.[46]

Order on Remand

In its Order on Remand, the FMC stated that it would use a "broader lens" when applying the incentive principle in its reasonable analysis "to determine if the charges at issue are furthering the goal of freight fluidity".[47] Unfortunately, the FMC did nothing of the sort. Instead, the FMC once again rubber-stamped the Initial Decision as to its award of reparations,[48] this time on the basis of a results-oriented analysis of the competing incentivizing and extenuating factors.

The FMC acknowledged that there was an "incentivizing effect" for the Claimant to return equipment before the scheduled Port closures in order to avoid the buildup of per diem charges.[49] However, the FMC dismissed this factor, stating that the incentivizing impact of early equipment returns "will not always have a positive impact on freight fluidity."[50] As an example, the FMC stated that common carriers were unlikely to "process and turn around equipment returned late on Friday before a weekend closure because they too ... [were unlikely to] be working during a port's closure."[51] According to the FMC:

> There is likely minimal positive effect on freight fluidity for these containers returned right before port closures. Thus, detention charges in these circumstances would not serve the ultimate goal of promoting freight fluidity, but rather are serving to penalize shippers and truckers unreasonably. Additionally, multi-day scheduled closures could lead to congestion and logjams at ports when truckers rush to return equipment to avoid harsher penalties, which also hinders freight fluidity.[52]

This self-fulfilling argument, which is based upon pure conjecture without any factual support, is nonsense. The FMC provided no evidence to establish that empty containers returned to a marine terminal late on a Friday could not be processed over the weekend or that the returns would create universal port congestion. To the contrary, the mere fact that an empty container has been returned to the possession of its rightful owner or lessee means that it has re-entered the intermodal supply chain[53] and is available for reuse, a factor which inherently promotes "the efficient, competitive, and economical transportation system in the ocean commerce of the United States."[54]

In support of its position that detention charges assessed during port closures will "not incentivize behavior that will best promote freight fluidity," the FMC further stated that truckers may have their own "commercial reasons" to promptly return equipment. That may be so, but so what? If a trucker is incentivized to promptly return equipment for its own "commercial reasons,"[55] as well as a desire to avoid the buildup of detention charges, why should the former trump the latter for purposes of the incentive principle? The argument is indeed illogical; if a trucker is always incentivized "to return equipment as timely as possible" in furtherance of its own commercial interests, it seems self-evident that those interests would naturally include the avoidance of accreting per diem charges.

The FMC next argued that allowing the assessment of detention charges during port closures "disincentivizes" common carriers and MTOs from performing "efficiently" by opening marine terminal gates during weekend hours.[56] This argument ignores reality and the FMC knows better. The opening of terminal gates on weekends for cargo deliveries is an expensive proposition that may not be justified if truckers and cargo interests do not take advantage of the extended hours, which is very often the case. This is particularly true in demurrage cases since inland warehouses are themselves frequently closed on weekends, and truckers would rather leave their pickup loads safely parked in protected marine terminals until the warehouse reopens on the next business day.

The FMC found that because the Shipper had shuttered its own facility in Georgia, the Claimant could not pick up the equipment until the first day of the three-day Port closure.[57] The FMC made much ado about the uncontested evidence submitted by the Claimant in this regard and concluded that "no amount of detention charges over the Port's scheduled closures could have incentivized Claimant to return the equipment before the closures because Claimant could not collect the equipment any earlier."[58] This statement is baffling. As between the parties, Evergreen had nothing to do with the closure of the Shipper's facility, so why should this risk factor be credited to the Claimant in the balancing of competing factors?

Constellation, a Brazilian offshore drilling company, was declared the winner of a recent tender, and the operations will be performed using the Admarine 511 jackup owned by ADES Holding, part of Saudi Arabia-headquartered ADES Group at shallow waters in the Sergipe-Alagoas, Ceará, and Potiguar basins off the coast of Brazil. The team included New York Global Transportation Partner Hoyoon Nam, London Finance and Transaction Partner Trevor Wood and Legal Clerk, Robert Anderson.

Vedder Price Represented GA Telesis in $51 Million Purchase of AAR Landing Gear Overhaul Business

The Global Transportation Finance team represented GA Telesis in the $51 million purchase of AAR's landing gear overhaul business. The acquisition will allow GA Telesis to expand its workforce and service capabilities across various aircraft platforms and the acquired business will be integrated into GA Telesis's existing operations, adding capabilities for high-velocity oxy-fuel coating to the company's portfolio. The Vedder Team was led by Shareholders Geoffrey Kass and Joseph Kye, and included Corporate associates Jeffrey Lowry, Sara Levine, Allie Brydell and Tax Shareholder Andrew Falevich.

Vedder Price Advises DLL in $750 Million Securitization of Agricultural Equipment Financings

The Global Transportation Finance team represented DLL in connection with its DLLAA 2025-1 securitization, including DLL's affiliates AGCO Finance LLC, as sponsor, and De Lage Landen Financial Services (DLLFS), as servicer. The four classes of notes issued by DLLAA 2025-1 LLC are secured by a pool of loans and leases relating to agricultural equipment, particularly tractors. The contracts were originated by AGCO Finance. Capital Markets Shareholder Kevin MacLeod and Global Transportation Finance Shareholder Edward Gross led a Vedder Price team that included Tax Shareholder Matthew Larvick and Associates Sandy Chen and Sophia Sahagún.

The FMC rejected all of the “extenuating circumstances” and additional factors, arguments and evidence proffered by Evergreen, both individually and collectively, including its assertion that the allotted free time for the container was “generous,” and that factor should weigh in favor of a finding of reasonableness. Although the FMC agreed that the allotted free time was generous,[59] it concluded that this factor was not dispositive, and that it was simply unreasonable to assess detention charges during port closures.[60]

The FMC acknowledged that the Claimant had advance notice of the Port closures, and that advance communication of a port closure “is a relevant consideration in determining the reasonableness of detention charges,”[61] stating that “advance and well-publicized notice of port closures can weigh in favor of the reasonableness of assessing detention charges during those closures because parties will have more time to take steps necessary to return equipment prior to the closures.”[62] However, once again, the FMC concluded that this factor was not dispositive because the Claimant was unable to pick up the equipment until the first day of the Port closure due to the closure of the Shipper’s plant. Again, this factor is unfathomable as one favoring the Claimant’s position since Evergreen had nothing to do with the closure of the Shipper’s facility. The fact that the FMC gives credence to this argument underscores the pretzel logic of its own position.

Evergreen argued that because the Claimant had exceeded its allotted free time and that the equipment was already in detention status by the start of the three-day Port closure, these undisputed factors weighed in its favor. The FMC rejected this “once on demurrage, always on demurrage” argument, stating that this bright-line maxim was not outcome determinative under the Interpretive Rule,[63] which is true.[64] However, the FMC noted that the Interpretive Rule does not preclude VOCCs and MTOs from “arguing and *producing evidence* regarding the compensatory aspects of demurrage and detention”[65] and that such evidence might support application of the maxim in certain circumstances. However, according to the FMC, Evergreen produced no supporting evidence in this regard.

Lastly, the FMC reversed the blanket cease-and-desist order issued by the SCO, finding it necessary to make a “case-by-case determination as to the reasonableness of challenged demurrage and detention practices.”[66]

Conclusions

In its Final Rule, the FMC chided certain commenters for assuming that it “would be incapable of exercising common sense when applying the factors” contained in the Interpretive Rule.[67] It turns out that the doubters may have been right as the Order on Remand simply ignored a multitude of commonsense factors favoring the reasonableness of the disputed detention charges.

The decision seemingly illustrates the lengths to which the FMC will apply the Interpretive Rule in a manner most favorable to cargo interests. Although the FMC paid lip service to the balancing of competing factors and incentives, and went through the motions, in the final analysis its balancing act was clearly directed to the result that the FMC wished to achieve in the circumstances.

Although *TCW* may be limited, factually and legally, to the return of empty containers and the corresponding detention practices of VOCCs during “port closures,” the case has lessons for all regulated entities that charge D&D. Such entities must be prepared to present relevant evidence that meets their burden of production in reparation cases. For example, because demurrage involves the extended occupation of space on marine terminals, different economic forces are at work and should be emphasized. Marine terminals are enormously expensive for MTOs to operate. In landlord ports, rent is typically paid by MTOs 24 hours a day, seven days a week, 52 weeks a year, with no time-outs for weekends and holidays. Moreover, it is well established that the longer containers remain on-terminal beyond their allotted free time, the more they impact the terminal’s operational capacity and efficiency. If freight fluidity means anything, it is this.

In addition, regulated entities should require their “billed parties”[68] to meticulously document in a timely manner the specific reasons for any requested refund or waiver of D&D charges. If a regulated entity is gathering evidence only after a reparations proceeding has been commenced in the FMC, it is probably too late.

Lastly, regulated entities should use common sense in contested D&D matters. In hindsight, given the FMC’s questionable analysis in *TCW*, it may not have been a wise decision for Evergreen to have gone to the mat over a $510 detention bill. MTOs have taken notice. In September 2024, with the prospect of a prolonged ILA strike threatening to shut down U.S. ports from Maine to Texas, many MTOs publicly announced their intention not to charge demurrage during the pendency of a strike. Although a strike was eventually averted, these decisions dampened the prospect of costly and prolonged disputes under section 41102(c) which only may have served to extend the dangerous precedent set by the FMC in *TCW*.

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Counteracting China's "Extraordinary Control" Over Maritime, Logistics and Shipbuilding: The United States Trade Representative Proposes Port Fees on Chinese-Built Ships and Other Actions Following U.S. Trade Act Section 301 Investigation

The United States is no longer the global power in shipbuilding that it once was,[1] but under the Trump Administration, this may change, and for the better, at least perhaps as far as U.S. shipbuilding is concerned.

In the 1970s, U.S. shipyards were building about 5% of the world's shipping tonnage, or about two dozen new ships a year, but by 2023, U.S. shipyards accounted for only about 0.1% of the world's tonnage.[2] The People's Republic of China now dominates the shipbuilding industry, accounting for more than half of world tonnage in 2023 and 74% of newbuild ship orders last year.[3] In 1999, China accounted for 5% of the shipbuilding market, far behind Japan and Korea with 42% and 34%, respectively, but by 2023, China accounted for 59% of the market, more than Japan and Korea combined.[4]

On February 21, 2025, the Office of the United States Trade Representative (the "USTR") announced its proposed actions[5] in response to its January 2025 determination pursuant to Sections 301(b) and 304(a) of the U.S. Trade Act of 1974, as amended (the "Trade Act" or the "Act") and codified at 19 U.S.C. §§ 2411(b) and 2414(a), that the targeting of the maritime, logistics and shipbuilding sectors for dominance by China is unreasonable and burdens or restricts U.S. commerce, and thus is actionable under Section 301(b) of the Act.[6]

The USTR's proposed actions include the following:

1) Fees in the amount of up to US$1,000 per net ton or US$1,000,000 on Chinese-operated vessels entering U.S. ports, and up to US$1,500,000 or an amount based on the percentage of Chinese-built vessels in the operator's fleet for Chinese-built vessels entering U.S. ports, plus an additional fee on each vessel entering a U.S. port and operated by a maritime transport operator with one or more vessels on order from or to be delivered by Chinese shipyards regardless of the operator's nationality or the country in which the vessel entering the U.S. port was built;[7]

2) Requirements that the international maritime transport of a percentage of U.S. goods exported by vessel each calendar year be restricted to export on U.S.-flagged vessels by U.S. operators starting at 1% and increasing to 15% after seven years, with a certain percentage of those goods to be exported on vessels that are U.S.-flagged, U.S.-operated and U.S.-built after three years;[8]

3) Actions to reduce exposure to and risks from China's promotion of the National Transportation and Logistics Public Information Platform (LOGINK)[9] or other similar platforms;[10] and

4) Entering into negotiations with allies and partners in order to counteract China's acts, policies and practices and to reduce dependencies on China in the maritime, logistics and shipbuilding sectors.[11]

These proposed actions may negatively affect shipowners and U.S. importers and exporters and are likely to cause higher shipping costs and supply chain disruptions.

USTR's Investigation of China's Maritime, Logistics and Shipbuilding Sectors

On March 12, 2024, five labor unions filed a petition with the USTR under Section 301(a)(1) of the Trade Act requesting an investigation into the acts, policies and practices of China in the maritime, logistics and shipbuilding sectors.[12] Section 301 of the Trade Act allows the USTR to address unreasonable or discriminatory acts, policies or practices that burden or restrict U.S. commerce.[13] On April 17, 2024, the USTR initiated the investigation[14] and released a report with its determinations and findings on January 16, 2025, concluding that China has been targeting the maritime, logistics and shipbuilding sectors for dominance through state-led, top-down, non-economic industrial planning[15] and that this targeting is unreasonable because

1) it displaces foreign firms, deprives market-oriented businesses and their workers of commercial opportunities, and lessens competition;

2) it creates dependencies on China, increasing risk and reducing supply chain resilience; and

3) of China's extraordinary control over its economic actors and these sectors.[16]

The USTR also identified that China's targeting dominance burdens or restricts U.S. commerce by

1) undercutting business opportunities for and investments in the U.S. maritime, logistics and shipbuilding sectors;

2) restricting competition and choice;

3) creating economic security risks from dependence and vulnerabilities in sectors critical to the functioning of the U.S. economy; and

4) undermining supply chain resilience.[17]

The results of this investigation provided a basis for finding that responsive action is appropriate leading to the USTR's proposed actions.

USTR's Proposed Actions

Section 301 of the Trade Act authorizes the USTR to take certain actions against any goods or economic sector on a non-discriminatory basis or solely against the foreign country concerned.

If the USTR determines under Section 304(a)(1) of the Trade Act[18] that an act, policy or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce, and action by the United States is appropriate, the USTR shall take all appropriate and feasible action authorized under Section 304(c) of the Act, subject to the specific direction, if any, of the President of the United States regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the USTR to take under Section 304(c), to obtain the elimination of that act, policy or practice.[19] Section 304(c) of the Act provides that the USTR's actions may include, among others and notwithstanding any other provision of law, imposing fees or restrictions on the services of such foreign country for such time as the USTR determines appropriate.[20]

The USTR is proposing four actions to address China's unreasonable, burdensome and restrictive actions: (A) imposing fees on services at U.S. ports; (B) restricting services to promote the export of U.S. goods on U.S.-flagged, -operated and -built vessels; (C) restricting access to U.S. shipping data on LOGINK; and (D) entering into negotiations with allies and partners to counter China's policies and reduce reliance on Chinese-dominated maritime sectors.

A. Service Fees

Chinese maritime transport operators are to be charged a fee on the international maritime transport being provided (a) at a rate of up to US$1,000,000 per entrance of any vessel of that operator to a U.S. port; or (b) per entrance of any vessel of that operator to a U.S. port, at a rate of up to US$1,000 per net ton of the vessel's capacity.[21]

Maritime transport operators with fleets comprised of Chinese-built vessels are to be charged (a) a fee upon the entrance of a Chinese-built vessel to a U.S. port at a rate of up to US$1,500,000; (b) based on the percentage of Chinese-built vessels in that operator's fleet, a fee of between US$500,000 and US$1,000,000 per vessel entrance to a U.S. port;[22] or (c) based on the percentage of Chinese-built vessels in an operator's fleet, an additional fee of up to US$1,000,000 if the number of Chinese-built vessels in the operator's fleet is equal to or greater than 25%.[23]

Maritime transport operators with prospective orders for Chinese vessels are to be charged an additional fee based on the percentage of vessels ordered from Chinese shipyards: (a) for operators with vessel orders in Chinese shipyards or expected to be delivered over the next 24 months, a fee between US$500,000 and US$1,000,000 per vessel entrance into a U.S. port;[24] or (b) a fee of up to US$1,000,000 per vessel entrance to a U.S. port will be charged to a vessel operator if 25% or more of the total number of vessels ordered by that operator, or expected to be delivered to that operator, are ordered or expected to be delivered by Chinese shipyards over the next 24 months.[25]

The USTR provided that additional fees on the maritime transport services charged to an operator addressed above may be refunded, on a calendar year basis, in an amount up to US$1,000,000 per entry into a U.S. port of a U.S.-built vessel through which the operator is providing international maritime transport services.[26]

B. Restrictions on Services to Promote the Transport of U.S. Goods on U.S. Vessels

The USTR is proposing a seven-year schedule that restricts the international maritime transport of all exported U.S. goods, such as capital goods, consumer goods, agricultural products and chemical, petroleum or gas products, to export on U.S.-flagged, U.S.-built vessels by U.S. operators.[27] The schedule is as follows:

1) Effective as of the date on which the proposal is approved (the "date of action"), the international maritime transport of at least 1% of U.S. products, per calendar year, that is exported by vessel, is restricted to export on U.S.-flagged vessels by U.S. operators.

2) Effective as of two years following the date of action, the international maritime transport of at least 3% of U.S. products, per calendar year, that is exported by vessel, is restricted to export on U.S.-flagged vessels by U.S. operators.

3) Effective as of three years following the date of action, the international maritime transport of at least 5% of U.S. goods, per calendar year, that is exported by vessel, is restricted to export on U.S.-flagged vessels by U.S. operators, of which 3% must be U.S.-flagged, U.S.-built vessels, by U.S. operators.

4) Effective as of seven years following the date of action, the international maritime transport of at least 15% of U.S. goods, per calendar year, is restricted to export on U.S.-flagged vessels by U.S. operators, of which 5% must be U.S.-flagged, U.S.-built vessels, by U.S. operators.[28]

Additionally, the proposed action states that the export of U.S. goods by international maritime transport must be on U.S.-flagged, U.S.-built vessels, but may be approved for export on a non-U.S.-built vessel provided the operator providing international maritime transport services demonstrates that at least 20% of U.S. products, per calendar year, that the operator will transport by vessel, will be transported on U.S.-flagged, U.S.-built ships.[29]

C. Other Actions by the USTR

In addition to the proposed service fees and restriction on services, the USTR is proposing actions to reduce exposure to and risks from China's promotion of LOGINK or other similar platforms, such as recommending that relevant U.S. agencies investigate alleged anticompetitive practices from Chinese shipping companies, restricting LOGINK access to U.S. shipping data or banning or continuing to ban terminals at U.S. ports and U.S. ports from using LOGINK software.[30]

The USTR also may consider entering into negotiations with allies and partners to counteract China's acts, policies and practices and to reduce dependencies on China in the maritime, logistics and shipbuilding sectors.[31]

Other Action by the Trump Administration

On April 9, 2025, President Trump signed an Executive Order entitled "Restoring America's Maritime Dominance." The Executive Order directs, among other actions, the USTR to coordinate with the U.S. Department of Justice and Secretary of Homeland Security on the enforcement of any action USTR may take as a result of its proposals in response to its finding that China has been targeting the maritime, logistics and shipbuilding sectors for dominance,[32] but does not go as far as an earlier draft Executive Order entitled "Make Shipbuilding Great Again." That draft had suggested that the Trump Administration was prepared to take a tougher stance on U.S. port fees than has been proposed by the USTR.[33]

Like the USTR's proposal, the draft Executive Order to Make Shipbuilding Great Again would have imposed tonnage-based fees on Chinese-built vessels that dock in the United States, and fees on any vessel that enters a U.S. port, regardless of where the vessel was built or flagged, if the vessel is part of a fleet that includes vessels built in China.[34] Unlike the USTR's proposal, the draft Executive Order did not indicate how the fees would be calculated or whether they would be the same as, different from or in addition to those already proposed by the USTR.[35] The draft Executive Order would have also directed U.S. officials to engage U.S. allies and partners, and other countries to impose similar measures or risk retaliation from the United States.[36]

The Executive Order for Restoring America's Maritime Dominance signed by President Trump on April 9, 2025, contains many of the same directives contained in the earlier draft Executive Order to Make Shipbuilding Great Again, but unlike as was proposed in the earlier draft Executive Order and is still proposed by USTR in its proposed action, does not impose new U.S. port fees on Chinese-built or -operated vessels or vessels in fleets that include Chinese-built vessels, and unlike as is proposed in the USTR's proposed action, sets no requirement that a percentage of U.S. goods exported by vessel be exported on U.S.-flagged, -operated and -built ships.[37] The absence of specific requirements for U.S. port fees on Chinese-built and -operated vessels and for a percentage of U.S. goods to be exported by vessel to be exported on U.S.-flagged, -operated and -built vessels may be in deference to the USTR's ongoing consideration of these proposed actions pursuant to Section 301 of the Trade Act[38] or the result of industry reaction to the USTR's proposed action. The Trump Administration may impose U.S. port fees on Chinese-built and -operated vessels, but for the time being, appears inclined to do so through the USTR's proposed action pursuant to the Trade Act.

Industry Reaction to the USTR's Proposed Action

As of April 10, 2025, the USTR had received more than 580 written comments regarding its proposed actions.[39] Many of the comments express concern. The World Shipping Council, a trade organization representing most of the world's largest liner container shipping companies, noted that the proposals "would cause significant harm to U.S. consumers and exporters" by increasing the cost of everything from consumer goods to inputs used for production of items in the United States, and increasing the cost of exporting goods that U.S. producers hope to sell in foreign markets[40] while also noting that the proposed U.S. port fees and U.S.-flag./U.S.-built export requirements "are not plausibly designed to secure the elimination of the acts, policies, and practices"[41] used by China to dominate maritime, logistics and shipbuilding. Other trade organizations have expressed similar concerns.[42]

Support for the USTR's proposed actions in the written comments submitted to the USTR portal has been limited. Riley Ohlson, Legislative Representative for the AFL-CIO, noted that "[f]ees on operators utilizing ships built in China, export requirements that boost demand for U.S.-flagged and built vessels, and efforts to boost multilateral engagement to push back on China's distortive and predatory practices have the potential to level the playing field and strengthen [America's] domestic maritime sector, shipbuilding base and the upstream supply chains that support them."[43] Ohlson also noted that it is critical that the fees included in the USTR's remedies "lead to investments in [America's] shipbuilding and maritime industrial base and related supply chains, new demand for U.S.-built and -flagged vessels and good jobs for American workers [and be coupled with] actions to limit trade diversion and [tailored] to avoid adverse impacts in the near term on the exports of certain raw materials."[44] Ryan Lynch, writing on behalf of Hanwha Shipping, a U.S. shipowner with affiliated shipbuilding companies in the United States and Korea, expressed strong support of the efforts to counterbalance China's acts, policies and practices in the targeting of the marine, logistics and shipbuilding sectors for dominance and noted that the USTR's proposed actions would facilitate the entry of its vessels into the service of the United States, providing a clear pathway to help support the establishment of U.S. maritime capabilities.[45]

Analysis and Key Takeaways

While some have suggested that the USTR's proposed action is nothing more than a bargaining chip in a much larger geopolitical negotiation between the United States and China, any outright dismissal of the USTR's proposed action on the assumption that the Trump Administration will bargain them away in the first round of any discussions between two of the world's largest economies is likely ill-advised. The Trump Administration and many on Capitol Hill appear to be serious about rebuilding America's merchant marine and military sealift capabilities, as evidenced by the introduction of the proposed SHIPS for America Act in December 2024, and one attractive source of financing for rebuilding is fees on the operators of Chinese-linked vessels calling on U.S. ports. Nevertheless, the proposed action seems unlikely to work in the time frame proposed.

While the USTR's proposed action contains numerous ambiguities, some version of the proposed action may be possible, with significant implications for shipowners. To avoid the proposed U.S. port-entry fees, vessel operators may limit or eliminate visiting U.S. ports or redirect shipments to ports in Mexico and Canada to avoid potential fees through transshipment to the United States, although this avenue may be limited.[46] Any significant reduction in U.S. port calls will likely trigger supply chain disruptions resulting in increased costs being shouldered by consumers and retailers. In addition, "[o]ne obvious implication is that [ship]owners may soon have to think about their current orderbook and operating fleet. Another is how those non-compliant or looking to remain compliant, will even do so as their fleets age and shipyard capacity dwindles (while also pushing newbuild prices higher)."[47]

If approved, the USTR proposals may compel shipowners with ships calling on the United States to avoid fees by avoiding U.S. port calls or realigning their fleets, either to focus on U.S. markets by selling Chinese-built vessels or companies that own Chinese-built vessels, or to focus on non-U.S. markets while buying up Chinese-built tonnage or companies that own Chinese-built tonnage at reduced prices. The first signs of this realignment may already be apparent. On March 24, 2025, a New York Stock Exchange-listed shipowner was reported to be selling its only two Chinese-built Very Large Crude Carriers (VLCCs) in a move some have suggested may be linked to the USTR's proposed U.S. port fees on Chinese-built vessels.[48] Other shipowners have chosen to work with the current Administration. CMA CGM, the leading Marseille, France-based shipping and logistics company and operator of U.S.-flagged carrier American President Lines, announced a US$20 billion investment in the United States for port infrastructure development, capacity growth in U.S. logistics, and a tripling of CMA CGM's U.S. fleet from 10 to 30 ships over the next four years.[49]

The ambiguities of the USTR's proposals have also raised concerns with the owners and operators of vessels subject to Chinese leases. Many vessels, including vessels not built in China, have been financed under lease arrangements by which Chinese banks and leasing companies have purchased the vessels and chartered them to non-Chinese demise owners under bareboat charters, which are often described as giving the demise owners ownership of the vessels in all respects except title. Are references to "Chinese operators" in the USTR's proposed actions also meant to apply to financial owners like the Chinese banks and leasing companies under these arrangements?

The USTR's ruling on its proposed actions may be issued as soon as later this month. Clients and others with an interest in the proposed action or the Executive Order for Restoring America's Maritime Dominance are advised to closely monitor developments and are invited to contact the authors with any questions.

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AIRLINE ECONOMICS GROWTH FRONTIERS DUBLIN 2025 CONFERENCE

The Vedder Price Global Transportation Finance team hosted a vibrant reception at NoLIta in Dublin, Ireland, coinciding with the Airline Economics Growth Frontiers Dublin 2025 conference. The event served as a fantastic platform for industry professionals to connect, share insights, and engage in meaningful discussions about the future of aviation and global transportation finance.

A big thank you to everyone who joined us! Your participation contributed to an evening full of valuable exchanges, offering a glimpse into what lies ahead for the industry in 2025 and beyond.

Court Decides Lessee's Failure to Engage Won't Fly

1. [2024] EWHC 3194 (Comm)
2. Para. 12;14 [2024] EWHC 3194 (Comm)
3. This was due to a minor accounting discrepancy which the Claimant drew to the Court's attention and accepted.

Taking Off: Financing the eVTOL Revolution

1. Such as Ascend Worldwide, AVITAS, IBA Group and MB Aviation in aviation and Braemar ACM Valuations Limited, Clarkson Valuations Limited, Howe Robinson Partners Marine Evaluations Ltd, Maersk Brokers, Fearnleys, Grieg and Vessels Value in shipping.
2. Joby Aviation completed this historical flight on July 11, 2024. Joby Aviation, Joby Demonstrates Potential for Emissions-Free Regional Journeys with Landmark 523-Mile Hydrogran-Electric Flight (July 11, 2024), available here.
3. Alex Thomas, IN FOCUS: Boom and Bust, The Regional Jet Phenomenon, Flight Global (Mar. 26, 2012), available here.
4. Bryson Monteleone et al., Residual Value Guarantees, Regional Aircraft Market (Jan/Feb, 2014), available here; Embraer, BNDES Finances Embraer's Aircraft Production for Export (Nov. 14, 2022), available here.
5. Eve Air Mobility, Eve Air Mobility Secures USD$88 Million From BNDES to Finance eVTOL Manufacturing (Oct. 15, 2024), available here; Charles Alcock, U.S. EXIM Bank Approves $169 Million Loan for eVTOL Developer Beta, AIN (Nov. 17, 2023), available here.
6. Toyota, Toyota to Invest $500 Million in Joby Aviation (Oct. 2, 2024), available here; Joby, Joby Successful Conducts First FAA Testing Under TIA, Begins Final Phase of Certification Program (Dec. 20, 2024), available here.
7. Archer, Archer Announces Key Terms Of Contract Manufacturing Relationship With Stellantis (Aug. 8, 2024), available here.
8. Grace Nehls, Beta Technologies raises $300 million to fund AAM growth, commercialization, Composites World (Nov. 1, 2024), available here.
9. Vertical Aerospace, Vertical Aerospace Announces Closing of Upsized $90M Underwritten Public Offering (Jan. 24, 2025), available here.
10. Sylvia Schneider Horne, Lilium Insolvent, AOPA (Oct. 30, 2024), available here.

Marine Insurance In A Ship Finance Transaction

1. Note that IMO 2020 was introduced by the International Maritime Organization and is an *environmental* regulatory framework for limiting the sulfur content in marine fuels.

The Mouse That Roared: A Look Back at *TCW V. Evergreen*

1. *TCW, Inc. v. Evergreen Shipping Agency (America) Corp. et al.*, Order on Remand, Docket No. 1966(I) (Feb. 13, 2025), available at https://www2.fmc.gov/readingroom/docs/1966(I)/(16)%201966(I)%20Commission%20Order%20on%20Remand%20(PUBLIC).pdf/.
2. 46 U.S.C. §§ 40101-41310.
3. *See* 46 U.S.C. § 40102(18), 40102(7).
4. *See* 46 U.S.C. § 40102(15).
5. *See*, e.g., 46 U.S.C. §§ 41102-41106.
6. 46 C.F.R. § 41102(c). Section 41102(c) is one of the workhorse prohibitions in the Act upon which many statutory violation claims brought by and against VOCCs and MTOs are based.
7. The terms "detention" and "demurrage" are defined to mean "any charges, including 'per diem' charges, assessed by ocean common carriers, marine terminal operators, or non-vessel-operating common carriers related to the use of marine terminal space (e.g., land) or shipping containers, but not including freight charges." 46 C.F.R. § 541.3.
8. See Petition for Rulemaking Submitted by the Coalition for Fair Port Practices, Docket No. P4-16, at 1 (Dec. 7, 2016) (the "Petition"), available at https://www2.fmc.gov/readingroom/docs/P4-16/P4-16_petition.pdf/.
9. See Federal Maritime Commission, Fact Finding Investigation No. 28, Conditions and Practices Relating to Detention, Demurrage and Free Time in International Oceanborne Commerce, Order of Investigation at 2 (March 5, 2018) (the "Order of Investigation"), available at https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/ff-28_ord2.pdf/.
10. See Federal Maritime Commission. Fact Finding Investigation No. 28, Conditions and Practices Relating to Detention, Demurrage and Free Time in International Oceanborne Commerce. Interim Report (Sept. 4, 2018), available at https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF28_int_rpt2.pdf/.
11. See Federal Maritime Commission, Fact Finding Investigation No. 28, Conditions and Practices Relating to Detention, Demurrage and Free Time in International Oceanborne Commerce, Final Report, at 1 (Dec. 3, 2018), available at https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF-28_FR.pdf/.
12. See Federal Maritime Commission, Interpretive Rule on Demurrage and Detention Under the Shipping Act, Notice of Proposed Rulemaking, 84 FR 48850-48856 (Sept. 17, 2019) ("NPRM").
13. See Federal Maritime Commission, Interpretive Rule on Demurrage and Detention Under the Shipping Act, Final Rule, 85 FR 29638-29666 (May 18, 2020) (the "Final Rule"). An interpretive rule is "an agency rule that clarifies or explains existing law or regulations." See NPRM at 48851, n.8.
14. 46 C.F.R. § 545.5.
15. 46 C.F.R. § 545.4.
16. 46 C.F.R. § 545.5(b). The Interpretive Rule does not apply to chassis or break bulk cargoes.
17. Section 545.4(d) of the FMC's rules states that, in order for a claim to be actionable under section 41102(c), the practice or regulation must be "unjust or unreasonable."
18. *Id.*, § 545.5(c)(1) (emphasis added). Two things should be noted here. First, the use of the modal term "will" signifies that such consideration is mandatory, not optional. Second, by inserting the word "primary" immediately prior to "purposes," the FMC acknowledges that demurrage and detention may have other, non-primary purposes, including purposes relating to compensation. Final Rule, at 29652.
19. Final Rule, at 29641.
20. 46 C.F.R. § 545.5(c)(2)(i), (iii), (iv).
21. *Id.*, § 545.5(c)(2)(ii). Extenuating circumstances might include many unspecified factors, including noncompliance by cargo interests with their "customary responsibilities" and other factors and issues such as "cost, technical feasibility, and the conduct of shippers, intermediaries, and truckers." Final Rule, at 29647. It is clear from the Final Rules that VOCCs and MTOs were never intended to shoulder the entire burden of efficient freight movement. As stated by the FMC, "shippers, intermediaries, and truckers have an equally important role to play in enhancing the efficiency of the transportation system." *Id.*, at 29649.
22. *Id.*, § 545.5(d), (e).
23. *Id.*, § 545.5(f). For example, nothing in the Interpretive Rule precludes VOCCs and MTOs "from arguing and producing evidence regarding the compensatory aspects of demurrage and detention in individual cases." Final Rule, at 29652.
24. Final Rule, at 29642.
25. *Id.*
26. The Shipper is a sophisticated international company (www.yamaha-motor.com) that doubled as the beneficial cargo owner for the shipment.
27. Such allotment of days is known in the industry as "free time."
28. The controlling agreement allotted 21 days of free time for the return of the container and four days for the chassis.
29. Under section 41301(a) of the Act, 46 U.S.C. § 41301(a), any person aggrieved by a violation of the Act by a regulated entity may file a complaint with the FMC seeking "reparations for an injury to . . . [such person] caused by the violation."
30. The Claimant asserted that the Evergreen detention charges, imposed while the Port was closed and unable to receive empty container returns, violated section 41102(c) of the Act and contradicted section 545.5(c)(2)(ii) of the FMC's rules, dealing specifically with the return of empty containers.

1. TCW, Inc. v. Evergreen Shipping Agency (America) Corp. et al., Initial Decision, Docket No. 1966(1) (Feb. 19, 2021), available at https://www2.fmc.gov/readingroom/docs/1966(I)/1966(I)_Initial_Decision.pdf/.
2. Note, the definition of the singular "Evergreen" includes both entities.
3. *Id.* at 33.
4. *Id.* at 31.
5. *TCW, Inc. v. Evergreen Shipping Agency (America) Corp. et al.*, Informal Docket No. 1966(1), Notice of Commission Determination to Review (Feb. 24, 2021), available at https://www2.fmc.gov/readingroom/docs/1966(I)/1966(I)_Notice_to_Reviewunsigned.pdf/.
6. *TCW, Inc. v. Evergreen Shipping Agency (America) Corp. et al.*, Order Affirming Initial Decision, Docket No. 1966(1) (Dec. 29, 2022), available at https://www2.fmc.gov/readingroom/docs/1966(I)/1966(I)%20Order%20Affirming%20Initial%20Decision.pdf/.
7. Commissioner Bentzel has since left the FMC and is now the President of the National Association of Waterfront Employers.
8. FMC Order at 17.
9. *Id.*
10. *Id.* at 17-18.
11. Note, the definition of the singular "Evergreen" includes both entities.
12. See *Evergreen Shipping Agency (America) Corp. v. Fed. Mar. Comm'n*, 106 F.4th 1113 (D.C. Cir. 2024) (No. 23-1052).
13. *Id.* at 1117.
14. *Id.*
15. *Id.*
16. *Id.* at 1118. The Court concluded that it was "arbitrary and capricious for the FMC to commit to making a circumstantial, fact-bound inquiry in the interpretive rule and then, when it came time to apply the rule, to jettison all but its favorite factor." *Id.*
17. Order on Remand, at 9.
18. *Id.*, at 8.
19. *Id.,* at 9.
20. *Id.* at 10.
21. *Id.*
22. *Id.*
23. Indeed, as stated conversely by Commissioner Bentzel, when equipment is not returned it is "effectively taken out of the supply chain." Order Affirming Initial Decision, at 19.
24. The quoted language appears as one of the four Congressional purposes underpinning the legislative basis for the Act. See 46 U.S.C. § 40101(2).
25. See e.g., Final Rule, at 29652, 29653.
26. Order on Remand, at 11.
27. *Id.* at 12.
28. *Id.* at 12-13.
29. *Id.* at 13-14.
30. *Id.* at 14.
31. *Id.* at 15.
32. *Id.*
33. *Id.* at 16.

34. *See* Final Rule at 29652-29654.
35. Order on Remand, at 17, *citing* Final Rule at 29652.
36. Order on Remand, at 2, 18-19.
37. Final Rule, at 29654.
38. *See* 46 C.F.R. § 541.3

Counteracting China's "Extraordinary Control" Over Maritime, Logistics and Shipbuilding: The United States Trade Representative Proposes Port Fees on Chinese-Built Ships and Other Actions Following U.S. Trade Act Section 301 Investigation

1. *See* Inti Pacheco & Costas Paris, *In Shipbuilding, the U.S. Is Tiny and Rusty,* Wall St. J., Mar. 2, 2025 (https://www.wsj.com/business/logistics/in-shipbuilding-the-u-s-is-tiny-and-rusty-03fb214e?mod=article_inline).
2. *See id.*
3. *See id.*
4. *U.S. Maritime Legislation Update: Considerations and Potential Financing Impacts,* Marine Money Freshly Minted, Mar. 20, 2025.
5. *See* Office of the United States Trade Representative, Proposed Action in Section 301 Investigation of China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance (Feb. 21, 2025) (https://ustr.gov/sites/default/files/files/Press/Releases/2025/Ships%20Proposed%20Action%20FRN.pdf) (the "Proposed Action"); *see also* Office of the United States Trade Representative, USTR Seeks Public Comment on Proposed Actions in Section 301 Investigation of China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance (Feb. 21, 2025) (https://ustr.gov/about-us/policy-offices/press-office/press-releases/2025/february/ustr-seeks-public-comment-proposed-actions-section-301-investigation-chinas-targeting-maritime).
6. *See* Notice of Determination Pursuant to Section 301: China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 90 Fed. Reg. 8089, 8090 (Off. U.S. Trade Rep., Jan. 23, 2025) (https://www.govinfo.gov/content/pkg/FR-2025-01-23/pdf/2025-01540.pdf) (the "Determination"); *see also* Office of the United States Trade Representative, Section 301 Investigation: Report on China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance (Jan. 16, 2025) (https://ustr.gov/sites/default/files/enforcement/301Investigations/USTRReportChinaTargetingMaritime.pdf) (the "Report").
7. *See* Proposed Action at 78.
8. *See id.* at 9.
9. LOGINK is a Chinese state-owned and -controlled logistics data management platform that experts estimate controlled data associated with at least half of global container volume in 2020. *See* Report at 17 (citing Gabriel Collins & Jack Bianchi, *China's LOGINK Logistics Platform and Its Strategic Potential for Economic, Political, and Military Power Projection,* Baker Institute (Apr. 25, 2023) (https://www.bakerinstitute.org/research/chinas-logink-logistics-platform-and-its-strategic-potential-economic-political-and)).
10. *See* Proposed Action at 10.
11. *See id.*
12. *See* Petition for Relief under Section 301 of the Trade Act of 1974, as Amended: China's Policies in the Maritime, Logistics, and Shipbuilding Sector (U.S. Trade Rep. Mar. 12, 2024) (https://ustr.gov/sites/default/files/Section%20301%20Petition%20-%20Maritime%20Logisitics%20and%20Shipbuilding%20Sector.pdf); *see also* Report at x, Proposed Action at 2, and Office of the United States Trade Representative, Section 301-China-Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance (https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-targeting-maritime-logistics-and-shipbuilding-sectors-dominance).
13. *See* 19 U.S.C. § 2411(a)(1).
14. *See* Determination at 8089; *see also* Proposed Action at 2 and Report at vi.
15. *See* Determination at 8089; Report at vi ("Top-down industrial planning is a critical feature of China's state-led, non-market economic system. China organizes the development of its economy through broad national-level five-year economic and social development plans. It then employs industry-specific plans and local plans at central and sub-central levels of government that typically align chronologically with the national five-year plans. These plans often contain detailed quantitative and qualitative targets, including for production, domestic content, and domestic and international market shares, as well as outline the non-market policies and practices China should use to achieve these targets. China's plans reveal its targeting of the maritime, logistics, and shipbuilding sectors for dominance."); *see also* Proposed Action at 4.
16. *See* Determination at 8090; *see also* Report at viiviii and Proposed Action at 5.
17. *See* Determination at 8090; *see also* Report at viiix and Proposed Action at 5.
18. Codified at 19 U.S.C. § 2414(a)(1).
19. *See* 19 U.S.C. § 2411(b); *see also* Proposed Action at 6.
20. *See* 19 U.S.C. § 2411(c)(1)(B); *see also* Proposed Action at 6.
21. *See* Proposed Action at 7.
22. For operators with 50% or greater of their fleet comprised of Chinese-built vessels, the operator will be charged up to US$1,000,000 per vessel entrance to a U.S. port; for operators with greater than 25% and less than 50% of their fleet comprised of Chinese-built vessels, the operator will be charged a fee up to US$750,000 per vessel entrance to a U.S. port; and for operators with greater than 0% and less than 25% of their fleet comprised of Chinese-built vessels, the operator will be charged a fee up to US$500,000 per vessel entrance to a U.S. port. *See id.*
23. *See id.* at 78.
24. For operators with 50% or greater of their vessel orders in Chinese shipyards or vessels expected to be delivered by Chinese shipyards over the next 24 months, the operator will be charged up to US$1,000,000 per vessel entrance to a U.S. port; for operators with greater than 25% and less than 50% of their vessel orders in Chinese shipyards or expected to be delivered by Chinese shipyards over the next 24 months, the operator will be charged up to US$750,000 per vessel entrance to a U.S. port; and for operators with greater than 0% and less than 25% of their vessel orders in Chinese shipyards or expected to be delivered by Chinese shipyards over the next 24 months, the operator will be charged up to US$500,000 per vessel entrance to a U.S. port. *See id.* at 8.
25. *See* Proposed Action at 8.
26. *See id.*
27. *See id.* at 9.
28. *See id.*
29. *See* Proposed Action at 910.
30. *See id.* at 10.
31. *See id.*
32. *See* Executive Order, *Restoring America's Maritime Dominance,* Apr. 9, 2025, § 5 (https://www.whitehouse.gov/presidential-actions/2025/04/restoring-americas-maritime-dominance/).
33. *See* Eric Priante Martin, *Chaos for Shipping in Washington After Trump Hit the Ground with a Vengeance,* TradeWinds, Mar. 14, 2025 (https://www.tradewindsnews.com/tw/chaos-for-shipping-in-washington-after-trump-hit-the-ground-with-a-vengeance/2-1-1792408).
34. *See* Jonathan Saul, *Exclusive: US to Levy Fees on China-Linked Ships, Push Allies to Likewise, Draft Executive Order Says*, Reuters, Mar. 7, 2025 (https://www.reuters.com/world/us/us-levy-fees-ships-linked-china-push-allies-do-similar-draft-exec-order-2025-03-06/).
35. *See id. See also* Eric Priante Martin, *Industry on Tenterhooks After Draft US Order Proposes to Pile More Fees on Shipping*, TradeWinds, Mar. 11, 2025 (https://www.tradewindsnews.com/ports/industry-on-tenterhooks-after-draft-us-order-proposes-to-pile-more-fees-on-shipping/2-1-1790938).
36. *See* Saul, *supra* note 34. The new Executive Order also directs the enforcement of customs, duties and fees, including the U.S. Harbor Maintenance Tax, on foreign-origin cargo first arriving by vessel to North America and clearing the U.S. Customs and Border Protection process at an inland location from the country of land transit (Canada or Mexico) so long as the cargo being shipped into the United States is not substantially transformed from its condition at the time of arrival into the country of land transit. *See* Executive Order, *Restoring America's Maritime Dominance, supra* note 32, § 16(b).
37. *See* Executive Order, *Restoring America's Maritime Dominance*, *supra* note 32. The new Executive Order requires the U.S. Secretary of Transportation and Secretary of Defense to prepare a legislative proposal that will provide incentives to grow the fleet of U.S.-built, -crewed and -flagged vessels that serve as readily deployable assets for national security purposes and to increase the participation of U.S. commercial vessels in international trade. *See id.* § 17.
38. *See* Martin, *Chaos*, *supra* note 33.
39. These comments are available for public review by visiting the USTR's docket portal at https://comments.ustr.gov/s/docket?docketNumber=USTR-2025-0002.
40. Comments of the World Shipping Council, Mar. 24, 2025, submitted by Joe Kramek, President, 1-3 (USTR-2025-0002-00112151-CAT-6584-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=89CYM823Y4). The World Shipping Council also noted the impossibility of complying with the USTR's proposed requirements relating to the export of U.S. goods on U.S.-built, U.S.-flagged containerships due to the limited availability of U.S.-built containerships, the limited capacity of U.S. shipyards, the time and resources required to build new shipyards, the current shortage of qualified U.S. mariners, and the time needed to train and qualify new mariners. *See id.* at 1016. U.S.-flagged vessels require mariners who are U.S. citizens. *See id.* at 15; *see also* 46 U.S.C. § 8103.
41. Comments of the World Shipping Council, *supra* note 40, at 18.
42. In comments filed with the USTR, Lars Robert Pedersen writing on behalf of BIMCO, the largest direct-entry membership organization in the shipping industry representing almost two-thirds of the world's merchant fleet by deadweight tonnage and almost 2,100 members in 130 countries, noted that the USTR's proposed actions "will impose much increased transport costs on [U.S.] imports and exports [while] their impact on Chinese dominance is much less certain." Letter to HE Mr. Jamieson Greer, United States Trade Representative, Mar. 17, 2025, from Lars Robert Pedersen, Deputy Secretary General & Director of Regulatory Affairs, BIMCO, 3 (USTR-2025-0002-00111407-CAT-6056-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=9Q629JJ4G4). Pedersen noted that the proposed U.S. port-entry fees would significantly increase the cost of seaborne transport to and from the United States, even if operators are pursuing avoidance strategies, and result in a higher cost of goods for U.S. consumers and a negative impact on jobs at U.S. ports, and that the USTR's proposal to require U.S.-built, -owned and -operated ships for U.S. exports would result in lower U.S. exports due to the limited availability of such ships to meet the proposed requirement. *See id.* at 23. Tim Wilkins, Managing Director of The International Association of Independent Tanker Owners (INTERTANKO), a trade association representing the interests of 180 independent tanker owners with a combined fleet of nearly 4,000 oceangoing crude, chemical, product and gas tankers, expressed a similar conclusion, writing that "[n]ot only do the proposals not achieve their stated purpose but the high cost of the consequences of these proposals will be on the [United States], and its end-consumers, rather than China." Letter to Ambassador Jamieson Greer, Office of the United States Trade Representative, Mar. 23, 2025, from Tim Wilkins, Managing Director, INTERTANKO, 4 (USTR-2025-0002-00111796-CAT-6253-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=B6M9P6CBQ7). Doug Nation, Policy Advisor at the

American Petroleum Institute, a national trade association representing the oil and gas industry, commented that the USTR's proposals would likely make U.S. exports less competitive globally, significantly impacting the U.S. oil and natural gas industry and other industry sectors, and that the proposed requirements for a percentage of U.S. exports to be transported on U.S. vessels lack clarity on implementation, enforcement, segmentation and penalties. Letter to The Honorable Jamieson Greer, United States Trade Representative, Mar. 24, 2025, from Doug Nation, Policy Advisor: Tax, Trade, & Accounting, American Petroleum Institute (USTR-2025-0002-00112038-CAT-6507-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=R6TGKGBB7T).

43. Letter to Jamieson Greer, United States Trade Representative, from Riley Ohlson, Legislative Representative – Trade and Manufacturing, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), 2 (Mar. 27, 2025) (USTR-2025-0002-00112327-CAT-6604-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=MQHRV8KW7B).
44. *Id.*
45. *See* Letter to The Honorable Jamieson Greer, United States Trade Representative, from Ryan Lynch, Vice President, Commercial, Hanwha Shipping, 1 (Mar. 20, 2025) (USTR-2025-0002-00111992-CAT-6426-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=VGYGHRMB68).
46. *See supra* note 36.
47. *U.S. Maritime Legislation Update, supra* note 4.
48. *See* Eric Priante Martin & Harry Papachristou, *US-Listed Tanker Owner DHT Holdings Linked to Sale of Its Chinese-Built VLCCs*, TradeWinds (Mar. 24, 2025) (https://www.tradewindsnews.com/tankers/us-listed-tanker-owner-dht-holdings-linked-to-sale-of-its-chinese-built-vlccs/2-1-1796272).
49. *See* Letter to the United States Trade Representative, Mar. 24, 2025, from Alexis de Lavarène, Group General Counsel, CMA CGM S.A. (USTR-2025-0002-00111864-CAT-6302-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=JX43WPP46K); *Trump Hails $20 Billion Investment by Shipping Firm CMA CGM*, Reuters, Mar. 6, 2025 (https://www.reuters.com/business/trump-hails-20-bln-investment-by-shipping-firm-cma-cgm-2025-03-06/).

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