



Abandoned cargo: Challenges for freight forwarders

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Definitions and practices

Definition of abandoned goods

- What are abandoned goods
- National practices and jurisdiction

Prevention and due diligence

- Identify the counterparty (the contractual party)
- Identify the cargo (the goods involved)
- Identify the trade route (the trade lane involved)
- Cover suitable liability insurance with global coverage

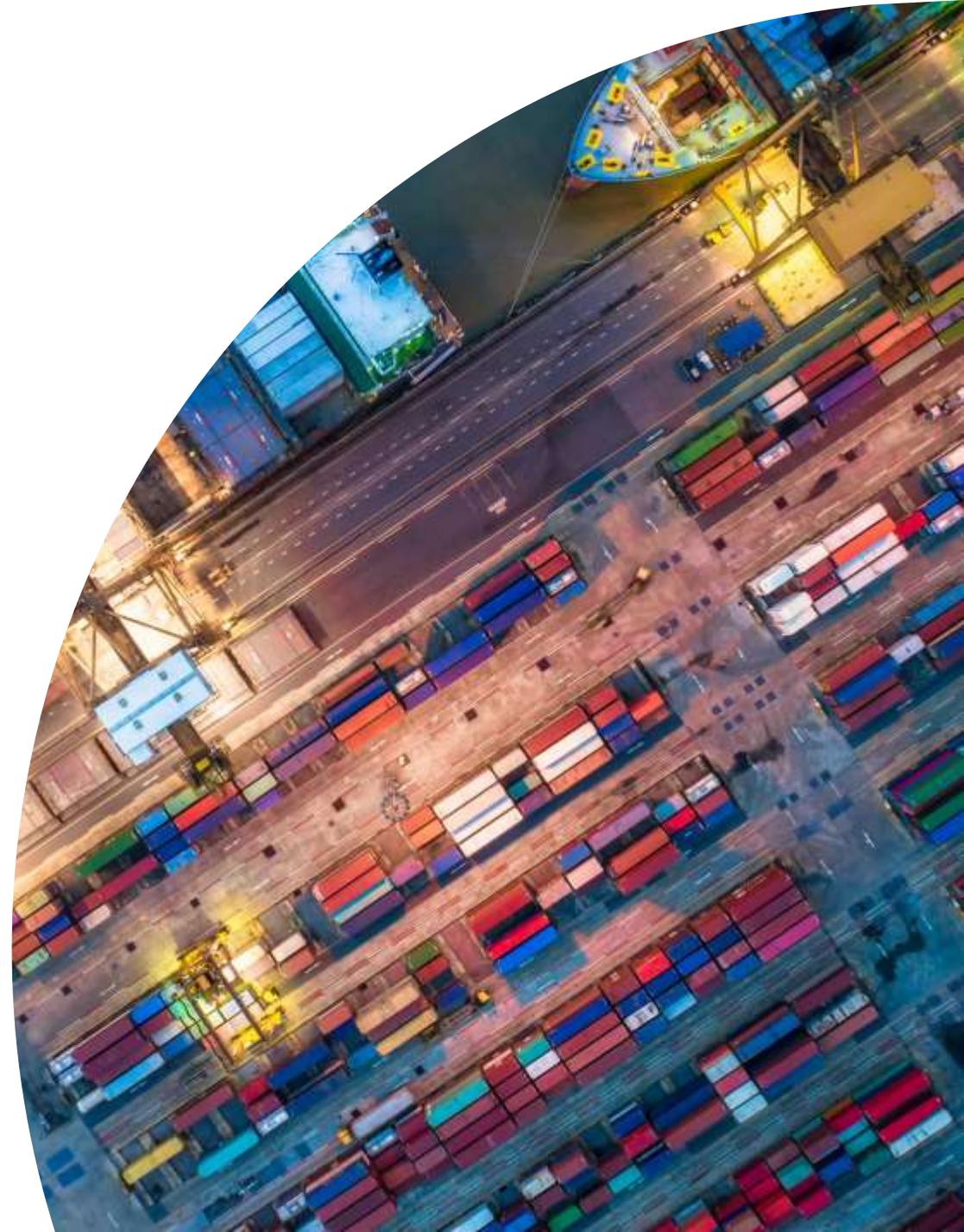


Contractual liability: principal and agent

Forwarder acting as principal

- Forwarder acting as principal issuing own Forwarder's bill of lading
- Acting as shipper in the OBL and party to the contract of carriage
- Forwarder is fully liable towards the shipping line for the abandoned goods

..... related risk can be substantial, but also accumulated cost related to demurrage and detention and others is high and often exceeds the value of the goods!



Contractual liability: principal and agent

Forwarder acting as agent

- No Forwarder's Bill of Lading issues
- Direct contractual relationship between shipping line and cargo interest
- Forwarder is not party to the contract of carriage
- Shipping Line should seek direct recovery of their charges from the shipper or consignee under their Bill of Lading and contract of carriage



Merchant clause: a potential risk for the forwarder acting as agent

Shipping lines may find it difficult to claim against the actual cargo interest, because

- they may be domiciled in an unfavorable jurisdiction
- they may not have sufficient assets
- it is simply an easy way out

Through the merchant clause shipping lines may try to recover from Freight Forwarders

- even though Freight Forwarder may not be party to the contract of carriage
- exposing the Freight Forwarder to huge liabilities that are in no relation to the function of the Freight Forwarder acting as agent



The Merchant Clause and its enforceability

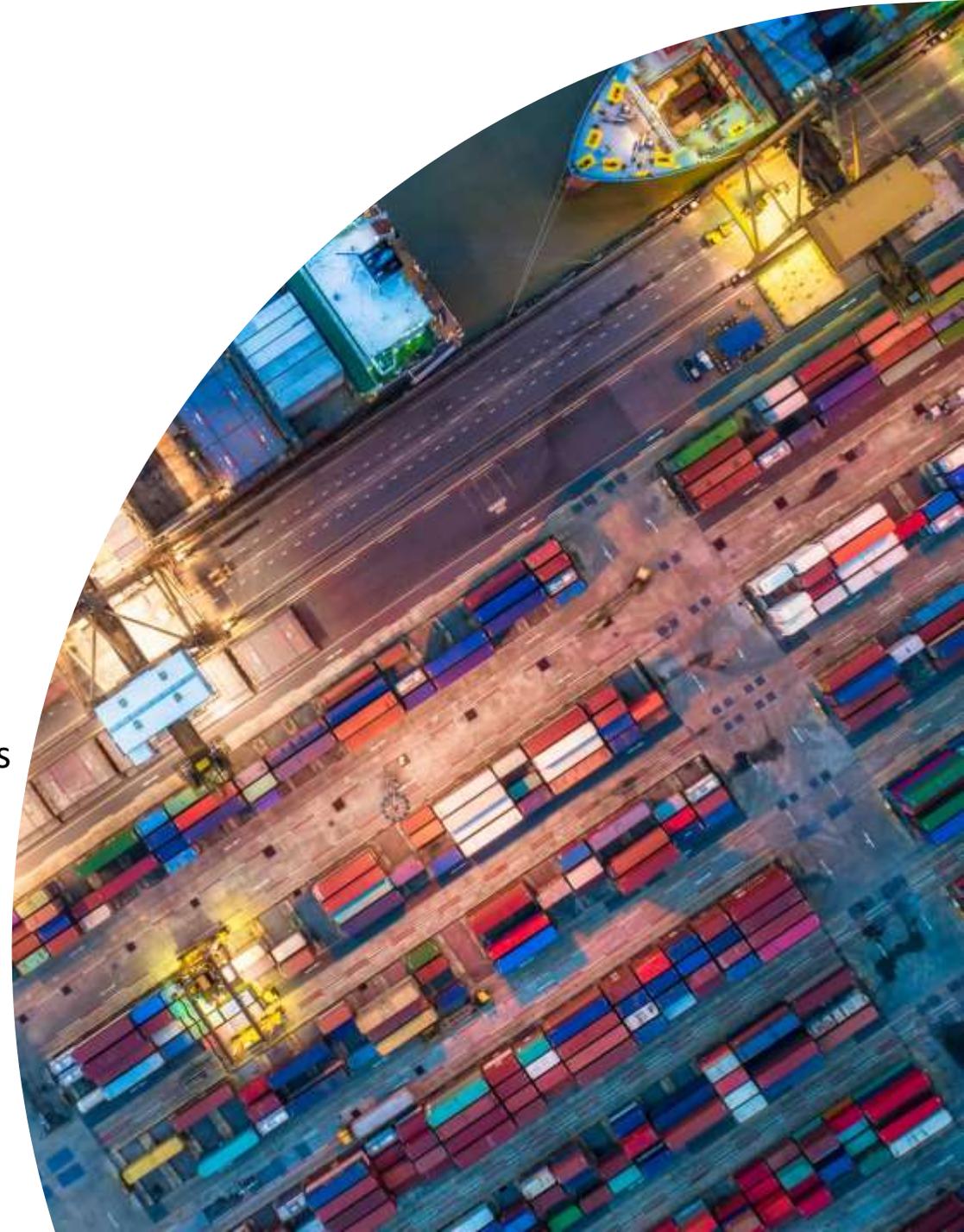
- It is FIATA's opinion that shipping lines should not be able to impose liability out of the contract of carriage to Freight Forwarders or other third parties that are not party to the contract of carriage
- Freight Forwarders should seek immediate legal advice in the country of jurisdiction as to whether the merchant clause is enforceable under the circumstances..... or not.



Merchant clause subject to an investigation by the FMC

FIATA submitted their position on behalf of the global Freight Forwarding industry arguing that

- “ Merchant’ clauses are a common phenomenon, through which carriers are trying to extend liability beyond the contractual parties to those who do not have any beneficial interest in the cargo in question.
- In doing so, such third parties are often exposed to joint and several liabilities, despite not having consented to such terms and conditions of the bill of lading.
- This is particularly noted in relation to liability situations concerning abandoned cargo, as well as demurrage and detention charges.”



Claims handling procedures

Some general comments

- Speed is key: Fast and pro-active action is decisive
- Management involvement and pro-active management control
- Good record keeping
- Monitoring and controlling of key milestones, free periods and deadlines



Communication

- **Shipper and consignee must be contacted immediately after being made aware**
 - explain the situation and possible consequences, rights and obligations under the contract of carriage and trading conditions.
 - provide possible deadlines involved in the case warning that any further delay or failure to take delivery may result in legal proceedings
 - provide own deadlines to act to collect the goods and pay charges already occurred.
- **Continuous communication**
 - share and communicate developments if and when they occur.
- **In the case goods are confirmed to be abandoned**
 - issue a final notice explaining all measures to be taken, such as sale or disposal, and that all related cost incurred will be for the account of the customer



Damage control and demurrage and detention

Storage solutions and Demurrage and Detention

- Alternative storage solutions should be found
- Demurrage and detention charges are unreasonably high and should be mitigated
→ high exposure for Freight Forwarders (merchant clause)

Demurrage and Detention

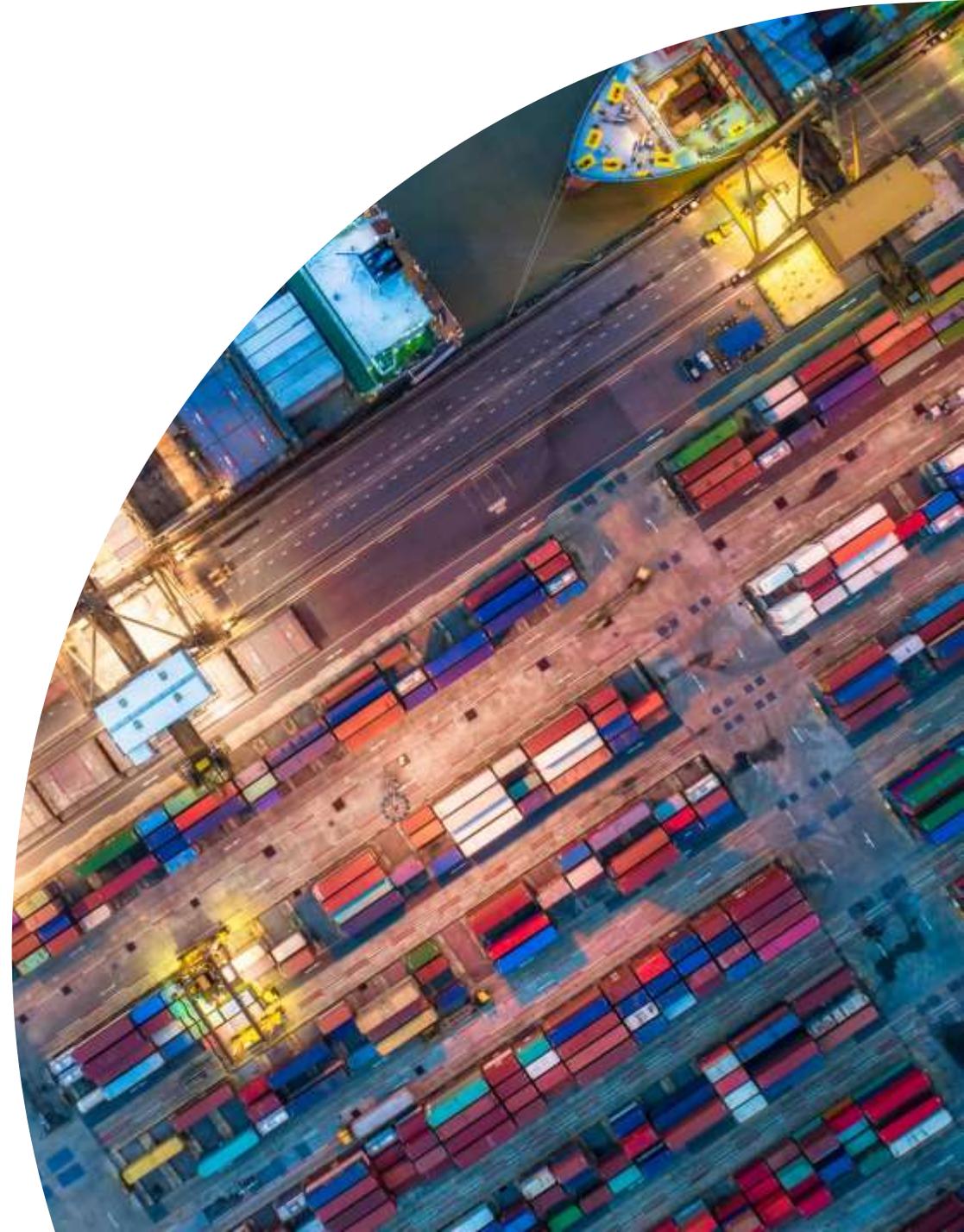
- Unreasonable charges lead to delays of the claim handling procedures
→ such delays are in nobody's interest, incl. the shipping lines
- Containers are the assets of shipping lines but need to move, rather than rot in some terminals
- For abandoned cargo, it is unreasonable to insist on indefinite accumulation of dem/det charges
→ also because it leads to delays to negotiate solutions with the consequence that all parties involved are stuck with a problem and possibly a ticking bomb.



Demurrage and detention

FIATA “Best Practice Guide “ on demurrage and detention

“There should be a limit on charges accrued that represent a reasonable compensation for the shipping lines in relation to the value of the container. FIATA suggests that commercial partners negotiate limits to the accrual of demurrage or detention charges to a maximum, ideally related to the value of the purchase price of a new container.”



Customs considerations

The role of customs authorities

- Interest of customs is focused on duties and taxes
- The Kyoto Convention states

“provided that no offence has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment there of when, at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned.”



Retention rights

Retention rights

Lien on the goods

The carrier has certain right and duties which may include the right of lien or retention. Including the right to sell the goods to get paid with the proceeds

Standard Trading Conditions

Most standard trading conditions negotiated and published by the national freight forwarders associations do have a lien clause.

Mode of transport specific regulations

- **CMR**
regulates the right to store the goods at the disposal of the consignee and to sell them, in accordance to local practices or regulations (art. 16).
- **CIM**
Can sell the goods in accordance to local customs or prescriptions.
- **Rotterdam Rules**
The carrier, may take any appropriate and reasonable measures to dispose of the goods, including to have them sold in accordance to local practices, laws or regulations of the place where the goods are located



Role of digitalization

The future: The role of digitalization

Advantages of digitalization

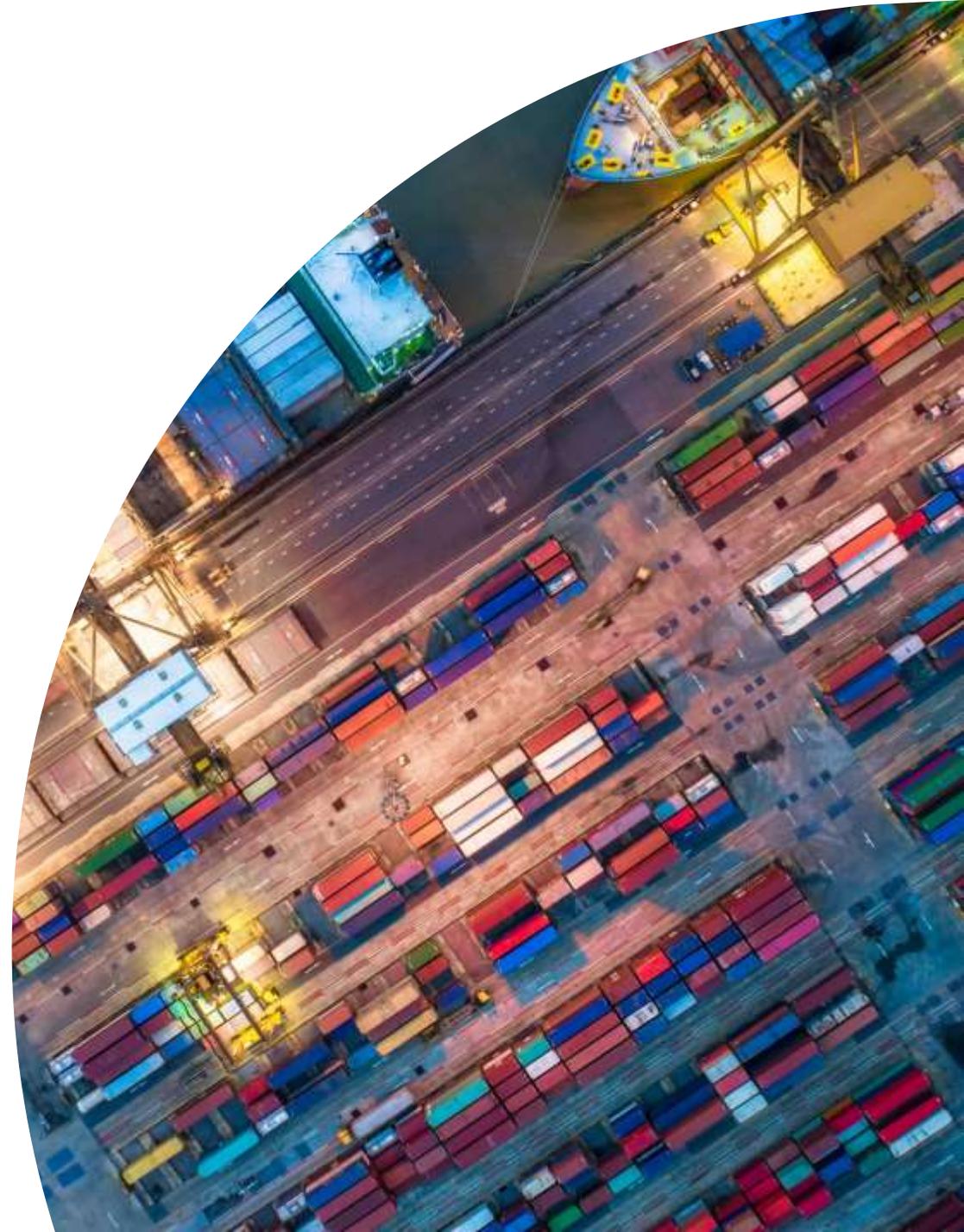
- digital contracts and multilaterally communication
- fast and accurate communication and information of all parties involved
 - location of a shipment
 - arrival times and delays
 - smart containers



Conclusion

- abandoned goods continues to be a main issue
- all the more due to the current environment
- standards and due diligence and cargo management processes are more important than ever before
- FIATA continues to be committed to shaping policy and practice to aid freight forwarders and supply chain professionals to tackle such situations.

FIATA encourages the cooperation of all actors within the supply chain to proactively act in good faith in dealing with such situations, and to collaborate on industry-level initiatives to find solutions for the benefit of the whole supply chain, such as through the adoption of digital means in a situation of abandoned goods.



Thank You



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