

# Latest Trends in Delay Claims

From a Marine Cargo Perspective

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# INTRODUCTION

## Modern manufacturing:

- Lean inventories
- Just-in-time production
- Next day deliveries

## Containerized transport:

- Intermodal transport
- Worldwide suppliers
- Interconnected economies (raw materials and production schedules)



## Challenges

and risks:

- The manufacturers may run out of stock as they maintain zero inventory.
- There is a need for a dedicated supplier to achieve zero delays in delivery.
- The delivery of unexpected demands may get delayed.

And then...

**The Sea voyage...**



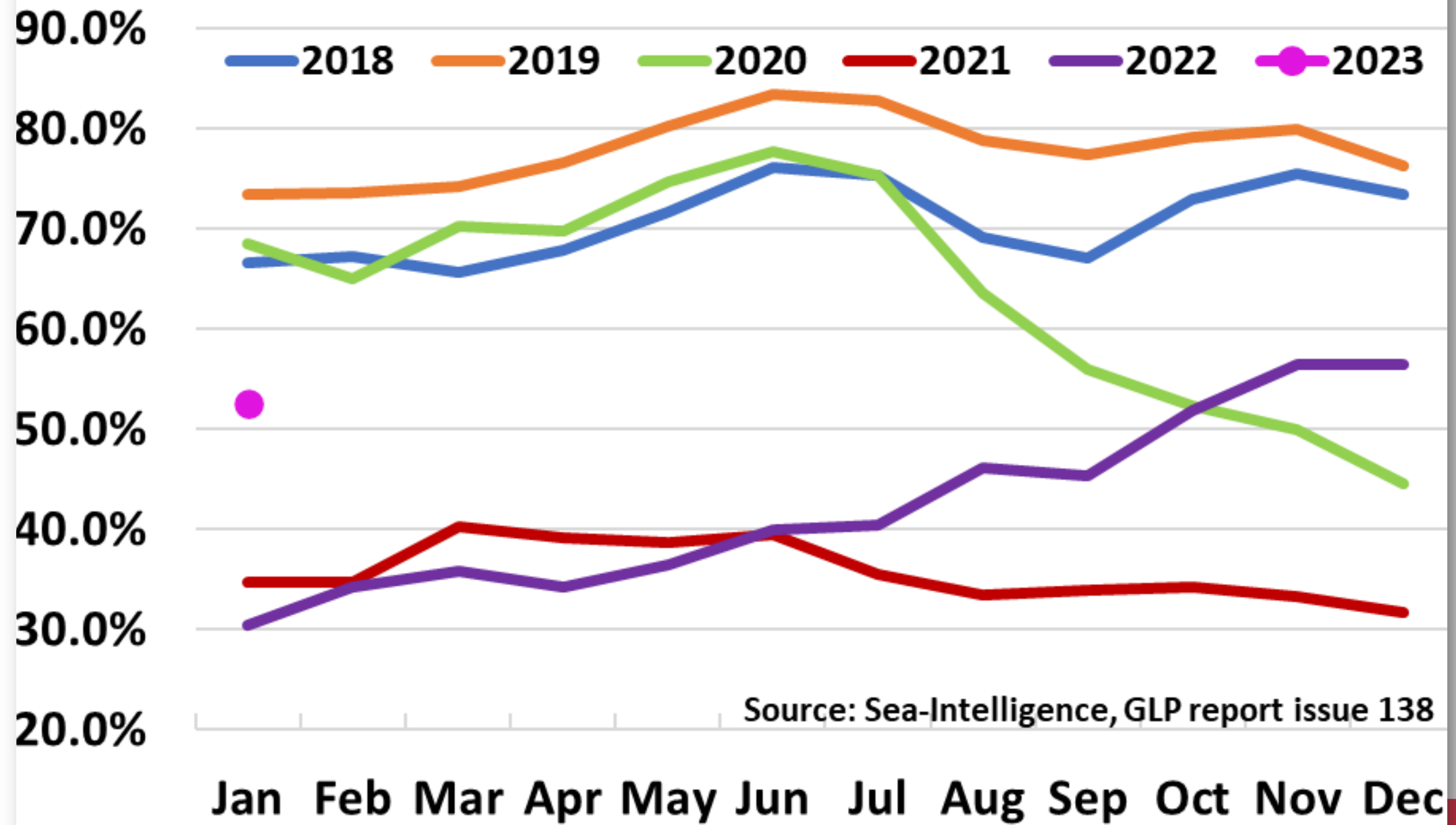
# Challenges and risks:

- Covid-19 pandemic:
  - National lockdowns
  - Slow or temporarily stopped flow of raw materials and finished goods.
  - Supply chains disrupted.
- When trade was resumed, the demand for goods and supplies burst worldwide and the consequences were exposed:
  - Port congestions
  - Labor shortages (crew and port staff)
  - Container shortages
  - Increase in freights costs
  - Longer transit times
  - Delays!

**Purpose of the presentation:**

- Trends that have impacted the most on the transit times in the maritime industry.
- Many of these issues are expected to decline during 2023. What we aim to show is the trend of losses and claims we have been seeing in the past years.
- No ICA cargo claims or any other cargo claim between owners and charterers.

### Fig. 1: Global Schedule Reliability



Source: Sea-Intelligence, GLP report issue 138

# Port congestions

- First stage Covid 19 restrictions:
  - Lockdowns / port closures / operations suspended
  - lack of workers affected by Covid or isolation/quarantines / stranded at sea
  - surge in demand for consumer goods
- Second stage after Covid:
  - inflation
  - drop in activity and
  - longer storage times at port or
  - lack of workers in the inland transit sector.
  - Strikes

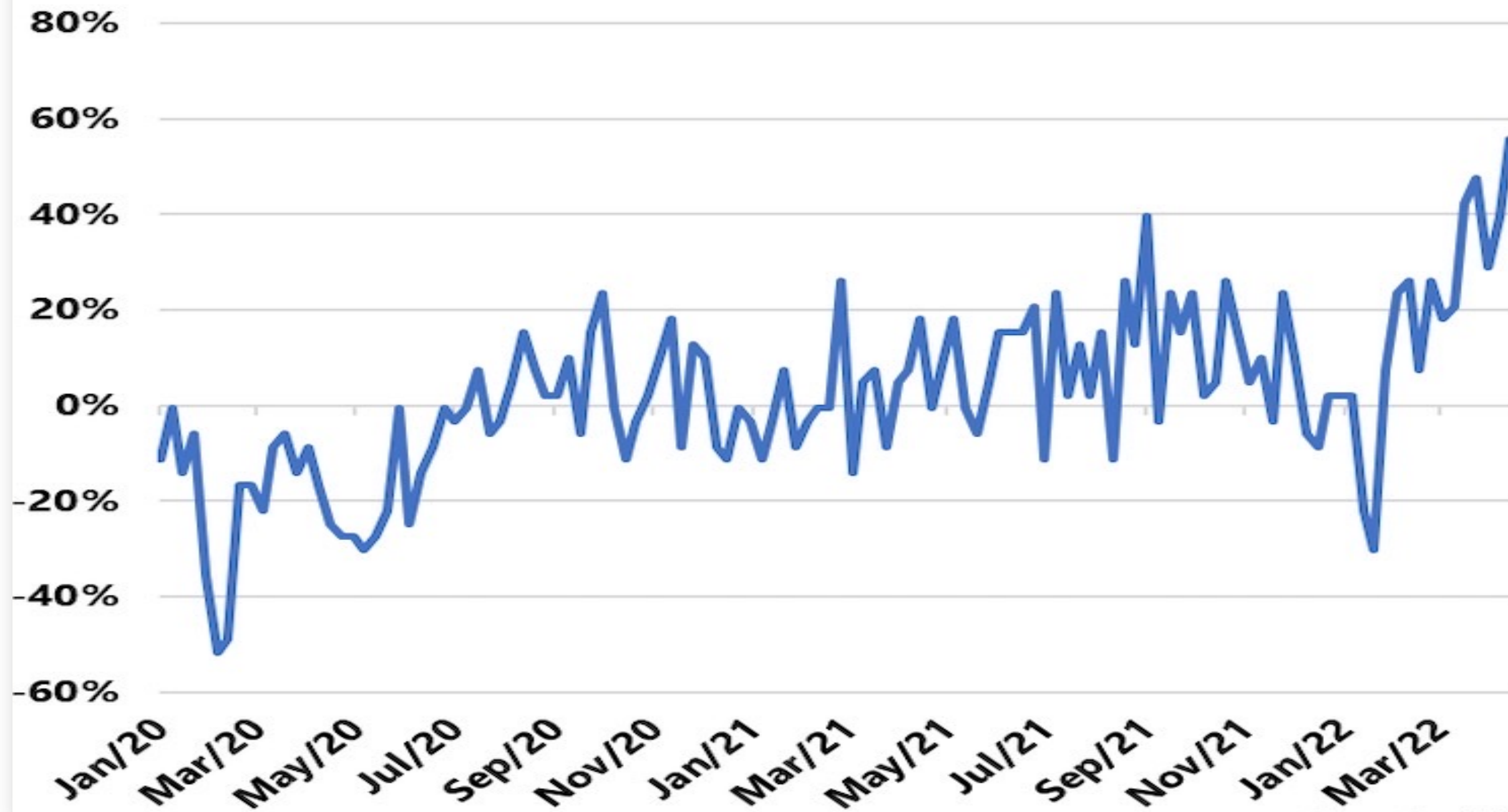
Anchorage or Pre berthing times got extended: In 2019, waiting time just over 17% of the total port time. In both 2021 and 2022 pre-berth waiting increased to more than 25% of the total port time.



- In an aerial view, container ships (Top L) are anchored by the ports of Long Beach and Los Angeles as they wait to offload on September 20, 2021 near Los Angeles, California.



**Fig. 1: Asia-NAWC  
Additional weekly vessels compared to  
2017-19 baseline**



Consequences:

**Delays** in delivery of cargoes.

**Lack** of availability of ships and containers.

**Increased** freight costs.

# Container Shortage

- **Reduced number of available containers** – disrupted containers' normal flow. Scarcity of containers in the right locations
- **Congested ports** - vessel delays, missed sailings and limitations on volumes that could be loaded.
- **Reduced number of operational vessels** - fewer vessels in the market, some voyages interrupted due to on-board COVID-19 cases.
- **A changed flow of goods** – Unpredictable changes in people's buying behavior - irregularities in global trades.
- **Prolonged storage at ports** - increased exposure to risk. Commercial decision. Deadfreight.

Consequences:

**Delays** in availability of containers

**Increased** freight costs

**Fewer** capacity

# Extended **Life Cycle** of Vessels

- Surge in demand for consumer goods during lockdowns
- Congestion at ports that tied up ships for longer than expected.
- Slowdown in new shipbuilding, partly due to uncertainty about whether vessels would comply with new environmental rules.
- new vessels, most won't come online until 2023/2024

Vessels being chartered at record prices for extended periods of time

- (IMF) container shipping boom in 2021 accounted for 1.5 percentage points of global price rises this year, or about a quarter of the U.S. inflation rate.

# Extended **Life Cycle** of Vessels

- ships that are 10 or 15 years old (scrap age) are worth up to 10 times what they were two years ago.
- No container ships being scrapped in 2022: the average age of these vessels has risen to 13.9 years from 11 years back in 2017
- In 2022, MSC bought the vessel Xin Feng Yang Pu for \$70 million. The same ship, which has been renamed the MSC Freeport, was sold for \$7 million in 2007.
- Reuters

Consequences:

**Lower** speeds

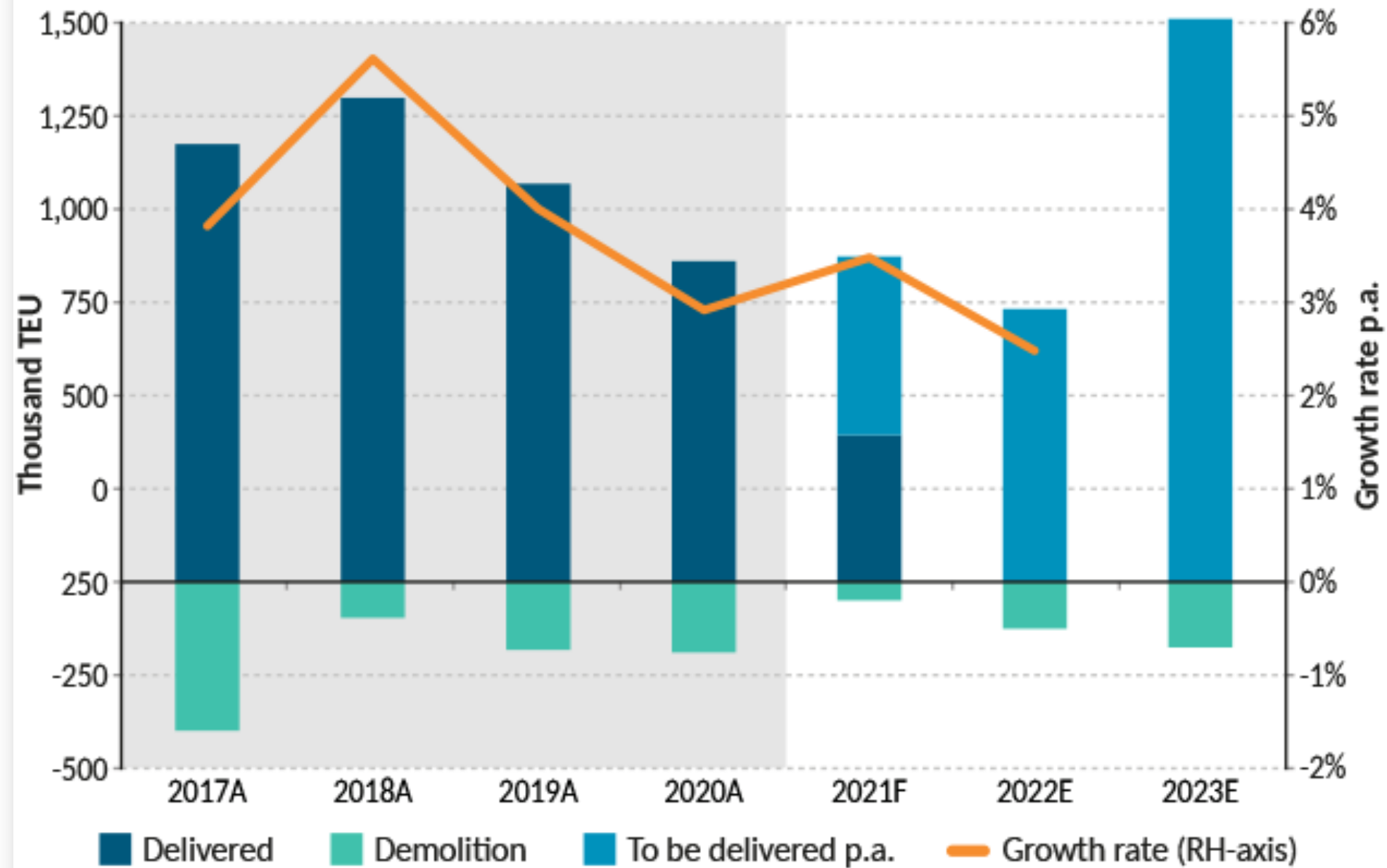
**Lower** capacity

**Breakdowns** and maintenance

**Higher risks**

# Container ship fleet growth

2017A-2023E



Source: BIMCO, Clarksons

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2021-2023 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 25% of the remaining vessels on order are delayed/postponed.



# Larger Vessels

65% of fleet growth will be concentrated in the segment of ships larger than 15,000 TEU (BIMCO) – this will translate in longer loading and downloading times and more port congestions.

New infrastructure requirements

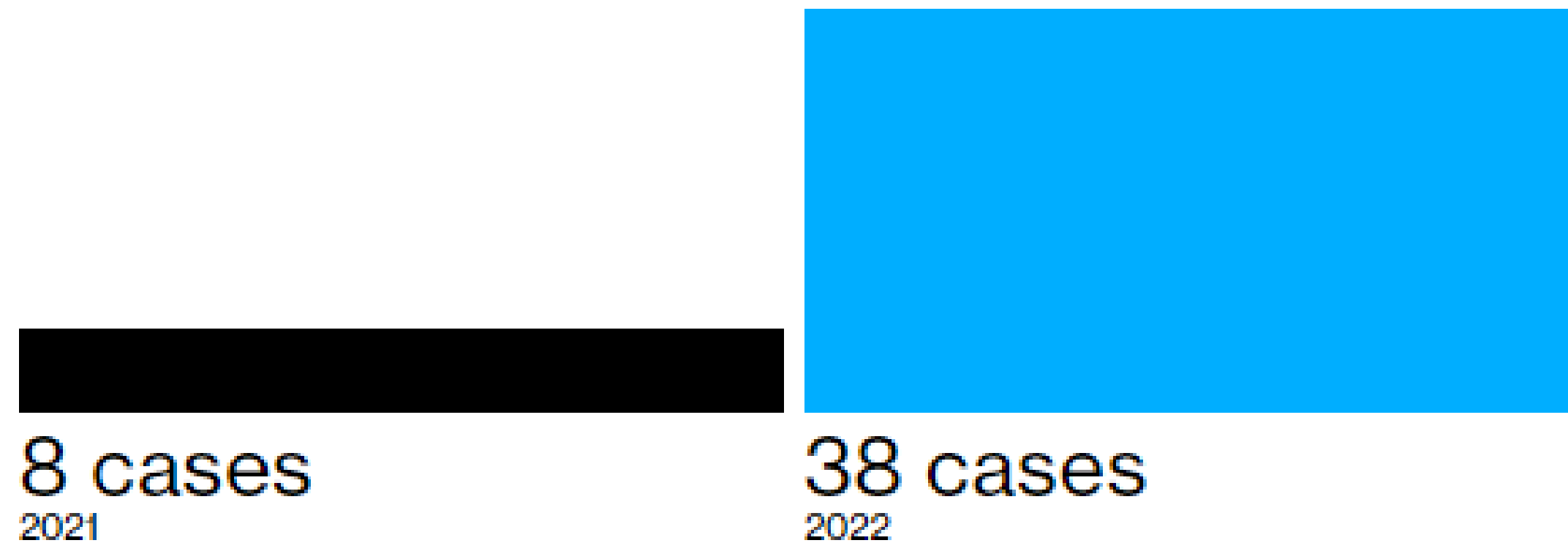
## Consequences:

- Longer transit times.
- Damages and repairs that extend transit times.
- Delays.

# Labor Strikes

## World's ports grappled with four times as many labor strikes in 2022

Civil unrest, worker protests surged amid worsening inflation



Source: Crisis24. Data tracks instances where port operations were impacted by protests.

Consequences:

**Delays** in deliveries and in loading

Port **Congestion**

**Increased** freight costs

**Fewer capacity**

# Ocean Blank Sailings

Carrier decides to skip a port or an entire string of its schedule to manage changes in demand and capacity.

This affects delivery times, and it strains relationships between retailers and customers who are expecting their orders in a timely manner.

According to **Forbes**, blank sailings are expected to remain high during 2023 due to still volatile market conditions in ocean shipping

Owners commercial decision



What  
constitutes  
a  
**delay**

***The delivery of the cargo beyond the agreed date  
or the reasonable time of the voyage.***

- No guaranteed delivery time: Higher standard of responsibility. Carrier liable for the consequences of delay.
- Some shipping lines provide an ETA – No fixed/agreed delivery date.
- Shipping lines public schedules: Carriers intention. Not a guarantee.
- Reasonable time of voyage – objective and subjective
- Available Jurisdictions

# Liability regimes (HR/HVR/HR):

- Hague Rules (24') Hague-Visby (68').
- Minimum standards of responsibility.
- Obligation to:
  - Exercise due diligence to:

Provide a **seaworthy ship** – properly man, equip and supply the ship – make it fit and safe for their reception, carriage and preservation

**Carefully handle**, carry, keep, care and discharge the cargo.

To conduct the voyage **without deviation** unless reasonable.

- No further derogations by private agreement.
- Delay not regulated:

Carrier's primary obligation is to make a reasonable effort to deliver the cargo in a reasonable time and to be diligent in the care of the cargo.

Was the voyage diligently planned? Safe passage

# Hamburg Rules:

Article 5(1): "The carrier is liable for **loss resulting from** loss or damage to the goods, as well as from delay in delivery (...) unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequence".

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea **within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances** of the case.

Fault is presumed



# CASE STUDIES





# 1.

Sea transport of pineapples from Puerto Limon, Costa Rica to Rotterdam in October 2021.

## Analysis:

- Damages/total loss due to a delay of 9 days (shelf life of 24 days).
- Opponent alleged that they delays were not covered under T&C and that in any event they had encountered an unpredictable port congestion due to covid.
- Delay limits compensation to freight as per T&C of the B/L.

## Strategy:

- Port Congestions in October 2021 due to covid were not unpredictable nor unforeseeable and that would not constitute a force majeure event.
- T&C for the liner BL where unilaterally drafted - advantageous positions for the carrier - no room for negotiation. Carriers are not allowed to withdraw from the HVR obligations by private agreement.
- Used carrier's own web page to show the offer in days to arrive to destination.
- Pushed for the carrier to prove due diligence in taking the necessary measures to avoid delay consequences on perishable cargoes.

**Results: Amicable agreement of over 90%**

# 2.

Sea transport of mandarins from Peru to Hong Kong in September 2021 with a delay of 22 days.

## Analysis:

- 22 days delay for unexplained reasons.
- Opponent alleged that the times given are estimates only (as indicated in the relevant booking confirmation to cargo interests), and the carriers are not responsible for delay (clause 7 (5) (a) of the sea waybill terms and conditions).
- Delay limits compensation to freight as per T&C of the B/L.

## Strategy:

- We argued that despite any estimated dates, 22 days of delay is an unjustified and unreasonable delay and an absolute breach of the contract.
- We pointed out that Peru as a port of loading may attract this claim into a cargo interest's favorable jurisdiction which expressly contemplates carrier's liability for delays.

**Results: Received a without prejudice offer to settle the claim**



# 3.

Sea transport of pears from Chile to St. Petersburg during August of 2021.

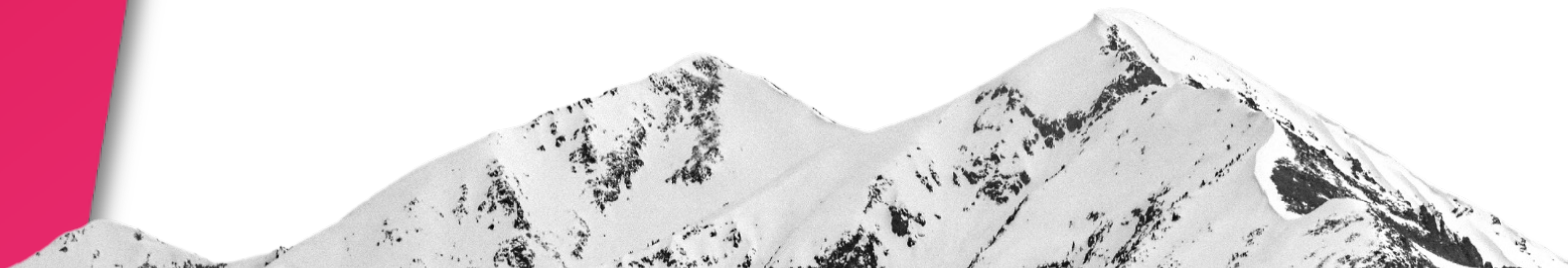
## Analysis:

- Cargo arrived at final destination with a delay of 18 days as per carriers provided ETA.
- Opponent alleged that the delays took place due to a prolonged storage at the transshipment port of Antwerp due to strikes that were beyond their control.

## Strategy:

- We pressed with the fact that if the carrier looked to be exempted from liability, any alleged force majeure event should be proved existent as well as unforeseeable and unavoidable.

**Results: Carrier agreed that the event never existed and agreed on a 50% settlement.**



# 4.

Sea transport of frozen shrimp from Ecuador to China.

## Analysis:

- Cargo arrived at final destination with a 36 day delay and symptoms of defrosting.
- Opponent alleged that a delay in delivery is not a cause for defrosting and that the temperatures were maintained accordingly.

## Strategy:

- We argued that a 32 day delay is completely out of the normal and unreasonable and that it is the carrier who should prove that the cargo was diligently maintained and properly cared for during this time and hence we pressed to receive the temperature records of the reefer unit.

**Results: Carrier denied showing their records and agreed on a without prejudice offer to settle the file.**



# 5.

Sea transport of 42,000 MT of Sulphur from UAE to Argentina and Uruguay.

## Analysis:

- Vessel arrived to the port of Montevideo having declared a GA and with a 57 day delay.
- Opponent declared a GA after alleging that the vessel was loaded with bad fuel at origin.
- The owners took 8 months to repair the ship which was 18 y/o at the date of the incident.
- Cargo interests had to procure supply from alternative source.
- Cargo interests were only covered for direct damage to the cargo.

## Strategy:

- Damage to the engine was found to be due to lack of proper maintenance in a part of the engine (carter) where fuel/oil should not be and was not found.
- The owners were responsible for not being diligent in the maintenance of an old ship.

**Results: A substantial settlement was achieved on behalf of cargo interests**





Thank you!

May 2023  
Pablo de Estrada

