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1. US sanctions against Iran - list of 'blocked' vessels

One aspect of the US sanctions against Iran is a list of 'blocked' vessels compiled by the US Office of Foreign Asset Control ('blocked' in the sense used here means that the US government prohibits any transactions with such vessels). The US government considers these vessels 'blocked' without geographic limits. The list of these vessels can be found on the website of the US Office of Foreign Asset Control, on the list of 'Specially Designated Nationals and Blocked Persons':

<http://www.treas.gov/offices/enforcement/ofac/sdn/>
(first document, entitled 'SDN List (in PDF format)')

In the last version of this list dated 15 December 2009, the 'blocked' vessels are listed at pages 427 to 430 (we believe the list of vessels has not changed in recent weeks). Of the 214 vessels on this list, the 155 vessels marked '[NPWMD]' relate to US sanctions against Iran. A considerable portion of these 155 'NPWMD' vessels is not actually registered in Iran, but sails under other flags.

This list of 'blocked' vessels is expressly aimed at freight forwarders: at its start, the US Office of Foreign Asset Control instructs banks 'to reject any funds transfer referencing a blocked vessel' and freight forwarders (and shippers) not to charter, book cargo on, or otherwise deal with such vessels. Freight forwarders endeavouring to obey these sanctions may want to consider also the effect of activities by their (overseas) agents or subcontractors. Difficulties might arise due to transshipment or use of feeder vessels.

2. IATA adjusts air waybill form

TT Talk Edition 123 (item 2) of 25 November 2009 discussed the increase of the Montreal Convention 1999 liability limit from 17 SDR to 19 SDR per kilogram and mentioned that IATA would review Resolution 600b on which the IATA air waybill form is based.

We understand that IATA has just adopted a 'Finally Adopted Resolution' (FAR) by Cargo Service Conference (CSC) Mail Vote which adjusts the current text of Resolution 600b to the Montreal Convention 1999 liability limit of 19 SDR per kilogram. IATA Members are now requested to file this revised version of IATA Resolution 600b dated 11 December 2009 with their government authorities. Once all required government approvals are obtained, IATA will announce the effectiveness date of the revised Resolution 600b.

3. Rechargeable batteries pose greater risk

Dr Chris Foster of Dr J H Burgoyne & Partners LLP has highlighted the risks involved in transporting nickel metal hydride (NiMH) batteries in standard container units. There have been a number of fires and explosions in recent years. NiMH batteries, otherwise known as portable accumulators, are rechargeable type AA, AAA and P9 batteries that leave the factory partly charged.

Investigations are continuing into the definitive cause of fire from these batteries. However, different factors such as manufacturing defects, methods of packing and damage to packaging after manufacture are believed to facilitate short circuits that generate heat. The resulting increase in temperature can cause further damage, a greater number of short circuits and a self-worsening situation resulting in fire, and the possible release of explosive concentrations of hydrogen gas. This mechanism has parallels with those of self-heating reactions in unstable materials that lead to spontaneous combustion and a fire.

As a result of investigations that concluded the cause of a fire was a CTU of rechargeable batteries being stowed close to a heated settling tank, Germany submitted a proposal to the IMO on 13 July 2007 concerning amendments to the IMDG Code. The essence of the proposal was that NiMH batteries, other than button batteries, should be stored at a cool place not exceeding 60 degrees centigrade. This is a sensible precaution because increases in ambient temperature increase the risk of a runaway reaction, as happens with unstable materials that are susceptible to self-heating and spontaneous combustion.

However, there have been incidents of fire originating in packages of NiMH batteries in containers stowed away from sources of heat, supporting the proposition that manufacturing and packaging defects are important causative factors and that stowage away from sources of heat may not remove the risk of fire in those consignments in which a defect exists.

Although investigations have shown that, under certain circumstances, factory packaged NiMH batteries have the potential to cause a fire, the carriage of these batteries is not subject to the provisions of the IMDG Code. Freight forwarders, NVOs and liner operators are, therefore, advised to require shippers specifically to declare all consignments of NiMH batteries. Liner operators are thereafter able to exercise prudence in deciding where to stow the container, for example above deck in an accessible location, but shielded from the sun.

[This article was originally prepared for the Carefully to Carry Committee of the UK P&I Club and is used with kind permission.]

4. Hong Kong - how can a carrier limit liability for misdelivery?

TT Talk Edition 119 (item 2) of 16 June 2009 concerned the carrier's failed attempt in *Carewins v Bright Fortune Shipping* to exclude liability for misdelivery. There the Hong Kong Court of Final Appeal held that exempting the carrier in all circumstances of liability for misdelivery would mean to seriously undermine the purpose of a bill of lading.

On 9 September 2009 Judge Stone in the Hong Kong High Court gave judgement in another misdelivery case. In *Mau Wing Industrial v Ensign Freight*, three containers of garments were carried under an 'order' bill of lading from Singapore to Felixstowe. The carrier's agent delivered the goods to the UK buyer in return for a letter of indemnity. After the UK buyer became insolvent, the unpaid HK seller sued the carrier.

In contrast to *Carewins v Bright Fortune Shipping*, the carrier's bill of lading conditions did not exclude, but merely limit, its liability for misdelivery hence the carrier argued that the attitude of courts towards limitation clauses was not as hostile as their clearly adverse

disposition towards exclusion clauses. However, Judge Stone rejected this attempt, as he put it, '[to drive] a conceptual wedge between the judicial approach to exclusion and limitation clauses' and held the carrier liable for the goods' full invoice value.

This case illustrates the pitfalls of relying on a letter of indemnity (particularly if not backed up by a bank), but also raises the question under what circumstances a carrier might be able to limit liability for misdelivery. Judge Stone was of course the judge at first instance in *Carewins v Bright Fortune Shipping* who had held in 2006 that the carrier could rely on the exclusion clause in its bill of lading (but who was then overruled on this point by the two higher courts). In *Mau Wing*, he has now shown less sympathy for a carrier who attempted 'merely' to limit.

Please use the following web link for the full text of the judgement by Stone J (High Court of Hong Kong SAR) of 9 September 2009 in *Mau Wing Industrial v Ensign Freight*:

http://www.hklii.hk/hk/jud/eng/hkcfi/2009/HCCCL000027_2008-67501.html

5. TT Club and ICHCA International welcome mandatory IMDG Code Training

Both the TT Club and ICHCA International have endorsed an e-learning tool from Exis Technologies, which facilitates compliance with the revisions to the IMDG Code requiring training for all shore side staff involved in dangerous goods transported by sea, including shipping line booking staff, container packers, consolidators, shippers, forwarders, stevedores and other port staff. Amendment 34-08 of the IMDG Code enters into full effect 1st January 2010. The e-learning course provided by Exis Technologies is an efficient and cost-effective training resource fulfilling the mandatory requirements.

Peregrine Storrs-Fox, Risk Management Director, TT Club, comments 'The IMDG Code training requirement affects all shore-side staff involved in the transport of dangerous goods by sea. The real challenge for this training is not so much those who have awareness of maritime carriage - although reports to the IMO continue to demonstrate significant non-compliance - but particularly shippers and those who have little appreciation of the stresses and vagaries of transport. Internet based training is the only effective way of reaching this mass market and supplementing national training facilities that are already in place in some jurisdictions'. The IMDG Code revision affects all those involved in classifying, consigning, packaging, marking, declaring, documenting, container packing, handling and accepting dangerous goods. It is impossible to calculate accurately the numbers involved in these processes globally and many will not previously have been aware of the safety requirements demanded by dangerous goods transportation. Raising the competence levels of shore-side staff is an urgent regulatory and safety requirement. As identified in earlier editions of *TT Talk*, the pragmatic recommendation is that over time all those involved in the transport chain should seek confirmation of competence from their 'customers', based on knowledge of the activities that are undertaken or the cargo entered into the chain.

Mike Compton, Chairman of the International Safety Panel of ICHCA International added 'this initiative of the IMO to make such training on the shoreside mandatory is warmly welcomed and, after careful consideration, it has been decided to promote the Exis e-learning package as the most effective way to carry out the worldwide training that is now required. Ordering through ICHCA International, which is an IMO distributor, will additionally attract a discount for ICHCA members, which includes all TT Club Members'.

IMDG Code e-learning was developed by Exis Technologies with the support of industry bodies including the International Maritime Organization (IMO), and is independently certified by Det Norske Veritas (DNV). The course is individually configured to the student's job role and precisely follows the IMDG Code general awareness and function specific training requirements. e-learning minimises training time away from normal duties and

students are able to study at their own pace and at any location, within targets set by management. Costs are greatly reduced, which is appealing especially in situations where high staff turnover is the norm.

If you would like to purchase the e-learning course, please contact ICHCA International (www.ichca.com) or see www.hazcheck.com.

6. Conclusion

We hope that you will have found the above items interesting. If you would like further information about any of them, or have any comments you would like to make, please email the editor at tt.talk@ttclub.com. We look forward to hearing from you.

Peter Stockli

Editor

for the TT Club

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