

Welcome to TT Talk, No. 73 in the series.

Contents:

1. Young forwarder of the year award
2. US Department of Transportation's Top Twenty
3. Australia acts on overweight boxes
4. Hong Kong gets nearer to Montreal
5. More on the DG Harmony
6. TT Club seminars on hazardous goods
7. Natural hazards
8. Conclusion

1. Young Forwarder of the Year award

We congratulate Alicia Chin from Canada who was named the 2005 winner of the Young International Freight Forwarder of the Year at this year's FIATA World Congress in Moscow. The prize, sponsored by the Club together with FIATA and IATA, is worth over USD35,000 to the winner.

Ms Chin was selected from four regional finalists representing Africa/Middle East, Americas, Asia/Pacific and Europe. Her dissertation, entitled "The Nuts and Bolts of International Freight Forwarding", was judged the winner in a remarkably close contest.

The entries had been marked by a panel of six judges, marking independently and without knowledge of the others' marks. The chairman of the award steering group, John Nicholls, commented that the results from the judges were extremely close – not more than 1% between them – for all four of the regional winners.

The aim of the award is to encourage training and to enlarge the professional experience of candidates in the forwarding industry. The prize principally consists of a mixture of practical and academic training, including two weeks practical training based at one of the Club's regional centres in London, Hong Kong or New Jersey, as well as two week-long courses; one on air cargo at an IATA training centre and the other on transport law and insurance provided by the TT Club in London. The sponsors bear the cost of travel, accommodation and training.

This is the first year that the award has been run on a regional basis with the overall winner being selected from finalists from each of the FIATA regions. Together with the other sponsors, we plan to continue this successful innovation, which has made the contest more attractive and added to its international flavour.

2. Department of Transportation publishes Top Twenty

Hazardous Technical Information Services has recently published a list of the twenty most frequent hazmat violations in order of frequency reported by the US Department of Transportation:

- Failing to enter the proper description of the hazardous material
- Failing to make or sign a "shipper's certification" on the shipping document
- Failing to label properly the hazardous material container or package
- Offering hazardous material in an unauthorised package
- Failing to mark the overpack with the shipping name, etc .when required
- Failing to identify properly hazardous materials on a shipping paper that also contains non hazardous material entries
- Failing to enter the basic description of the hazardous material in the proper sequence

Failing to mark a non bulk package of hazardous material with the shipping name and/or identification number
Failing to list the emergency response number for an individual who assumes responsibility for said function
Failing to mark properly the hazardous material as required
Labels not clearly visible or the labels are obscured
Failing to enter the technical name in association with the proper shipping description
Failing to mark the package with orientation arrows as required
Failing to secure package(s) of hazardous material against movement
Failing to enter the total quantity of hazardous material on the shipping paper
Failing to mark the overpack with statement that inner packages comply with the hazardous material regulations
Offering hazardous material without preparing a shipping paper
Failing to include the words "limited quantity" (or "LTD QTY") as required
Improper package marking
Failing to enter the packing group on the shipping paper

Commenting on the findings, Ariel Rosa, an environmental protection specialist at HTIS notes that most hazardous materials shippers easily comply with the minimum requirements set out in the DOT regulations. However the checks show that there are still hazmat shippers who either do not know the regulations or deliberately ignore them. If someone ships hazardous materials in an unsafe manner the enforcement agencies have the authority to impose a civil penalty (usually in the form of fines) or to prosecute the offender. Ms Rosa acknowledges that obtaining sufficient evidence to secure a criminal conviction is very time-consuming and for that reason the department of transportation prefers to use the fines process for all but the most serious violations. However, repeated violations will inevitably lead to prosecution and the risk of substantial fines or imprisonment.

It must be said that nothing on this list surprises the Club's claims handlers; as it shows, manufacturers cannot always be trusted to get the documentation right, and so it is incumbent on transport companies to check the paperwork and raise queries if any discrepancy is discovered.

3. Australia acts against overweight containers

US President Harry S Truman famously had a sign on his desk that proclaimed "The Buck stops here". Iain Sharples of the Club's Sydney office reports that the Australian government is following that example and introducing legislation to make sure that responsibility for container overloading ends with the company that did it.

The reforms, known as Compliance & Enforcement, emphasise the importance of accurate container weight declarations (CWDs) in road haulage; they introduce the concept of "chain of responsibility", extending the obligation for accurate weight declarations to everyone involved in the movement. Penalties for non-compliance will be enforced against the person who gave the overweight (or incorrectly-declared) container to the haulier or the Australian entity that provides the inaccurate weight declaration. In the case of exports, this would usually be the shipper, but for imports it is likely to be the agent of the company responsible for the ocean transit. Civil claims could also be made against that agent on behalf of anyone killed or injured in an accident resulting from an incorrect declaration, as well as actions in respect of property damage.

While it is unlikely that anyone outside Australia could be successfully prosecuted for infringements of the regulations, carriers' agents in the jurisdiction will not be immune. In that case, they will certainly be looking to their principals for compensation or indemnity under the terms of their agency contract. Members are advised to make sure that their own contractual conditions will enable them to pass the responsibility back to the person or company

ultimately to blame. Members should of course also ensure that weights are checked and properly declared for any containers that they stuff.

A fuller report on this legislation will appear in the next edition of the Club's magazine HousetoHouse.

4. Hong Kong getting nearer to Montreal

In TT Talk No. 70 we reported that, while China had become a party to the Montreal Convention, it does not yet apply in the Hong Kong SAR. There is thus the anomalous position of one High Contracting Party (the People's Republic) applying two different liability regimes within its territory. We are grateful to Hong Kong lawyer Patrick Yeung for the following explanation.

China and the U.K. are both high contracting parties to the 1929 Warsaw Convention and the 1955 Hague Protocol. Before the handover of the sovereignty of Hong Kong to China in 1997, for the purposes of the convention, Hong Kong was regarded as part of the territory of the UK. Air transport between Hong Kong and cities in China was therefore considered to be "international carriage" because the places of departure and destination were situated within the territories of two different high contracting parties. After the handover in 1997, the position was reversed, with Hong Kong becoming part of the PRC high contracting party. Air traffic between Hong Kong and PRC airports no longer qualifies as "international carriage".

This all pre-dated the adoption of the 1999 Montreal Convention which has been ratified by the PRC government and been effective in China from 31 July 2005. As noted in TT Talk No. 70, the instrument of ratification contains a declaration by the PRC government that "the [Montreal] Convention does not apply in the Hong Kong Special Administrative Region of the People's Republic of China until notified otherwise by the Government of the People's Republic of China".

We understand from Hong Kong that the PRC government will allow Hong Kong to determine when it accedes to the new convention. The government of the SAR has introduced the Carriage by Air (Amendment) Bill in June this year, amending the existing Carriage By Air Ordinance to give effect to the Montreal Convention. We will report further when the bill becomes law and 1999 convention is extended to Hong Kong.

5. More on DG Harmony

A full note on the decision in the DHG Harmony case, reported in TT Talk No. 72, has been posted on the website of our legal editor, David Martin-Clark. It can be found at: http://www.onlinedmc.co.uk/in_re_m_v_dg_harmony.htm

6. Club's hazmat seminars

The series of seminars on the safe shipment of hazardous materials, organised jointly by the Club and ICHCA International, continues. The next ones are:

17 November	Hong Kong
6 December	Lima, Peru
8 December	Guyaquil, Ecuador

Entry is free but places must be pre-booked by email to Alice Rymill: alice.rymill@thomasmiller.com

7. Natural hazards

Although experienced insurance companies never rule any set of circumstances out as a possible source of a claim, the Club's role as an insurer of heavy machinery in maritime terminals does make some incidents highly unlikely. We therefore offer our sympathy to the unnamed Swedish insurers faced with a claim from a bicycle owner whose machine was attacked by an elk. The bicycle was carried off by the elk, hanging round its neck, and was later recovered, battered and twisted, some 500 metres away.

It seems that autumn is a particularly hazardous time for people living in areas favoured by elks (and their North American cousins, the moose). The animals gorge themselves on rotting fruit which then ferments in their digestive tracts. The resultant alcohol makes them as unpredictable as humans after a heavy night on the town. Last week, police in the Swedish town of Sibbhult were called out by staff at a retirement home to deal with a mother and her calf, who had filled themselves up on fermented apples. But then the Swedish elks began displaying some Dutch courage and turned on the police, so officers were forced to call in a hunter with a dog to deal with them, according to local media.

Local police commissioner Bengt Hallberg has obviously been listening to the Club's message about effective loss prevention, for he was not in favour of preventative hunting. "It is better to get rid of the apples from the home," he said.

<http://www.thelocal.se/article.php?ID=2453&date=20051108&PHPSESSID=60952ff41f36e008af85af7e222cc93e>

<http://news.bbc.co.uk/1/hi/world/europe/3742957.stm>

8. Conclusion

We hope that you will have found the above items interesting. If you would like to have 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.

Andrew Trasler
Editor
On behalf of
TTMS (UK) Ltd, London

David Martin-Clark
Legal Editor
Shipping & Insurance Consultant
Maritime Arbitrator
Commercial Disputes Mediator

TT Talk is a free electronic newsletter published as occasion demands, by the TT Club, International House, 26 Creechurch Lane, London EC3A 5BA, United Kingdom.

You can also read this newsletter and past issues on our website: <http://www.ttclub.com>

If you do not wish to receive future editions, please reply to this message and include the word "REMOVE" in the subject line. If you have received this edition via someone else and you would like your own personal copy in future, please send your name, company name and e-mail address to:

tt.talk@ttclub.com

If you would like to receive further editions in Microsoft Word, please reply to this message and include "E-MAIL" in the subject line.