

Welcome to the latest edition of TT Talk, No. 70 in the series.

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1. China joins Montreal

On 31 July the Chinese People's Republic became the 65th state to accede to the 1999 Montreal Convention on international carriage by air.

Curiously, the Chinese government's instrument of ratification carried a statement that the 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. It does however apply in Macao.

2. German court rules on carriage within the port area

Our legal editor David Martin-Clark draws our attention to a decision of the Hamburg appeal court in the case of "Atlantic Concert". The case concerned some large items of machinery which were loaded on "Mafi" trailers in Bremerhaven. The trailers were shipped on board Atlantic Concert to Portsmouth, Virginia where the mafis were discharged and towed to a warehouse area, where the cases were to be transferred to a road vehicle for the on-carriage to Durham, North Carolina. During the transshipment operations, one of the cases, weighing 25 tonnes, fell and was damaged.

At first instance, the court agreed with the defendant carrier's submission that the transshipment operation was part of the sea carriage and was therefore covered by his bill of lading conditions limiting liability to SDR 2.00 per kg. The claimants appealed and the lower court's decision was overturned. The appeal court decided that the movement of the trailers within the port area constituted a separate leg of the journey, which turned the carriage into a multimodal one. This finding then triggered the application of the multimodal carriage sections of the Commercial Code, and raised the carrier's liability to SDR 8.33 per kg.

Commenting on the judgment, Daja H. Böhlhoff of Hamburg law firm BBL said that it confirms the prevailing opinion among German lawyers that transport within a port during the course of transshipment constitutes a separate leg of carriage and is not to be considered an annex to the sea transport, with the result that maritime law does not apply. This principle - which would also govern transshipment from vessel to vessel - has far-reaching consequences for the liability of the sea carrier and the combined transport operator under German law.

We would like to emphasise that German law contains very strict and precise rules on the incorporation of liability limitations in printed contract forms and if these are not observed to the letter the carrier can find himself exposed to much higher levels of liability than he intended. This is another example of German jurisprudence taking a different approach to many jurisdictions and one that is often more onerous for the transport industry.

More on this case can be found on DMC's CaseNotes:
http://www.onlinedmc.co.uk/m_v_atlantic_concert.htm

3. Ladies' underwear causes problems for transport operators

A crisis may be brewing in Europe for transport operators and shipping lines this autumn, with record shipments of ladies' underwear and cotton garments on their way from China ready for the late autumn and Christmas period sales.

Following the abolition of the old Multi-Fibre Agreement at the beginning of this year, many wholesalers and large retail chains have been sourcing increasing amounts of clothing from the PRC, taking advantage of its low manufacturing costs. As a result of political pressure from manufacturers within the EU, the trade commissioner, Peter Mandelson, reached an agreement with the Chinese government in June to restrict imports of certain types of clothing. Unfortunately, the quotas seem to be too low and too late. Import sources report that many of the quotas are already nearing exhaustion, and that is before the expected big autumn surge. Many companies have placed firm orders with Chinese manufacturers, which are now becoming ready for shipment. The manufacturers are obliged to ship the goods (to comply with the requirements of their documentary credits) but the importers cannot legally import them. As usual, the transport companies find themselves caught between the two and face the real possibility of cargoes accumulating on import terminals across Europe. .

Although this is not something covered by the Club's standard insurance, the Club is only too aware how quickly the costs of holding containers in ports and terminals can escalate. The problem with these Chinese imports is that, if the importer is unwilling to pay, the goods cannot even be sold to meet the costs incurred in storage. Members should therefore be alert to the potential risks with these commodities and make sure that clients are aware of the costs that may be incurred and are prepared to pay them. Internal controls should be strengthened to make sure that all such consignments are kept under supervision.

Meanwhile, Mr Mandelson is now under political pressure from importer associations across the EU, seeking to get an increase in the quotas...

4. Chile changes rules on cargo release

Readers of this newsletter will be aware of the problems that can be encountered with the release of cargo in Chile. The system there has been recognised as open to fraud and led to the cases of *East West Corporation v DKBS* and *Utaniko Ltd v P&O Nedlloyd BV* in 2002. The Club's correspondents in Chile reported at the time that the Chilean government was involved in discussions with interested parties to bring in a system more in tune with international practice.

Writing in the bulletin of the International Law Office, Mr Ricardo Rozas, a partner in the firm of Baeza, Larraín & Rozas in Santiago reports that the new system has finally been adopted. It does away with the contentious use of "legalised copies" of bills of lading and requires the original bill of lading to be submitted to the customs office with the customs entry.

Full details of the new regulations can be found on the International Law Office website at http://www.internationallawoffice.com/ld.cfm?Newsletters__Ref=11109

5. 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.

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