

Welcome to the 50th edition of TT Talk.
July 5, 2004

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1. Hazcheck Online: special offer for TT Club members

We recently appealed to you for ideas as to how to combat the growing menace of undeclared hazardous cargoes. Among the responses was a suggestion that there should be a database where shippers and carriers could easily check the requirements for any given hazardous commodity.

Hazcheck Online provides just such a service at a modest cost. For an annual payment of UKP 95.00, USD 175.00 or EUR 140.00 subscribers have access to the full and up-to-date IMDG code. By inputting either the name of the commodity or its UN number, they can find out the packing, stowing and segregation requirements for the cargo. The subscription also allows users to obtain up to 100 validations, which checks and confirms that all the substances in the load are compatible and may be carried together. The validation also allows a user to check on the packaging and to produce a dangerous goods note. For heavier users, the "Hazcheck Online Gold" option, costing UKP 295.00/USD 545.00/EUR 440.00, allows up to 500 validations in a year.

We are also pleased to announce that, in line with its policy of providing added-value services, the TT Club has negotiated a special discount for Club members of 10% on the price of either subscription. If you wish to take advantage of this offer, you should contact your usual underwriter or claims handler, who will be able to give you the necessary entry code. (Please do not contact TT Talk).

2. Container detention charges: updates

In TT Talk No. 49, we drew your attention to Peter Jones's forwarderlaw.com website and its comments on the case of Evergreen Ltd -v- Aldgate. Peter has now posted the results of the poll, as well as the court's decision on his website www.forwarderlaw.com

In that decision, the court sided with the customer, Aldgate. David Martin-Clark points out that the court of appeal in the Australian state of Victoria has also been examining the issue of responsibility for payment of container detention charges. It was recently asked to decide, in the case of Malaysian International Shipping Corp. Berhad v VI SA Australia Pty Limited, whether the consignee named in the bill of lading was responsible for demurrage incurred when the container was detained at a third party's warehouse. (This, of course, happens fairly frequently when an NVOC has undertaken carriage particularly of FCL movements. The shipping line's customer is the NVOC, but the container is usually devanned at the premises of a third party, the NVOC's client.)

The case concerned a claim by MISC, a container liner operator, against its consignee, a non-vessel-operating carrier/freight forwarder, VI SA, for container detention costs. The claim failed on the grounds that the consignee could not be held responsible for such charges where, as explained above, the container had been unpacked, not at its premises, but at the premises of its customer.

As a consequence of this case, container liner operators would be well-advised to check the wording of their bills of lading/sea waybills on the issue of payment of container detention charges.

The case note was contributed by Drew James, a partner in the Sydney law firm of Ebsworth & Ebsworth.

You can access the case note at http://www.onlinedmc.co.uk/misc_v_vi_sa_australia.htm

3. Letters of Credit and ante-dated bills of lading

Mark Sachs of the law firm Thomas Cooper and Stibbard recently wrote in Lloyd's List about the problems facing many carriers operating to China. It is apparently an increasingly common practice for consignees to ask the courts for freezing orders, instructing local banks not to pay the amounts due under letters of credit, under the terms of the Chinese Maritime Procedure Law of July 2000. The courts will readily accept applications to preserve evidence, and will attend on board arriving ships to ascertain whether there has been any fraud. If investigators discover that the bills of lading may have been ante-dated in order to comply with the L/C requirements, there is an automatic presumption of fraud and the court will make a freezing order preventing the payment to the seller. Mr. Sachs comments that while this is perhaps fine in theory, the system is open to abuse and has the potential of undermining the trust that is inherent in the documentary credit system

In July 2003 the Supreme People's Court in Beijing issued a notice to all its subordinate courts emphasising the importance of the system and the faith China's trading partners must have in the integrity of the Chinese banks. It noted that steel prices had recently dropped considerably and stated that this had led to some merchants to "request banks to refuse payments on the basis of discrepant documents or ... to stop payments under letters of credit on the basis of so-called 'fraud'. Some courts have readily granted orders ... causing unfavourable results internationally." The notice went on to instruct courts to uphold the rules underlying the documentary credit system. Mr. Sachs writes that it will probably take an amendment to the maritime procedure law to stop courts taking action on simple allegations of fraud. While the law remains as it is there is a great temptation for unscrupulous traders to seek freezing orders.

While most of these cases appear to relate to very large shipments, carriers of smaller consignments could also find themselves in difficulty. The Club reiterates its advice never under any circumstances to issue bills of lading showing an incorrect date of shipment. This advice applies to all countries, not just for movements to China.

4. ave atque vale

Last week was the editor's final week at the TT Club's management company, as he has reached retirement age. He will however continue, with that other retiree, David Martin-Clark, to edit and produce your favourite electronic newsletter. The coincidence of retirement and the fiftieth edition of the newsletter has led him to look back at the world of shipping in the "BC" (Before Containerisation) era.

In the late 1950s, many parts of the City of London still bore the scars from the second world war. Wild campion and willowherb sprouted from the many bomb sites, while trolleybuses still roamed the streets. Offices had only modest amounts of efficiency aids: telephones were big and black and made of bakelite, with a silver dial (but you could not dial directly any number outside London), and they were definitely not portable. The telex machine clattered away in the corner, for urgent long-distance messages, while elsewhere the typewriter reigned supreme. With a combination of imperial weights and measures and the old duodecimal monetary system of pounds, shillings and pence, it took ages just to work out the landing charges for any consignment. Calculations were usually done using mental arithmetic and scrap paper as

mechanical calculators - using complicated systems of cogs - were still a rare luxury. Photocopies really were produced by a photographic process and were only available on Wednesday afternoons (and possibly on Fridays, if you had bought the old guy who ran the post room a lunch-time drink), but only if you were armed with a requisition signed by the director. Any document requiring multiple copies was usually produced on waxed stencils and an inked roller; a system that almost guaranteed you would end up with ink all over your fingers.

The docks were busy with shipping. The big enclosed docks were generally fully occupied and the river itself was full of barges bringing cargoes to and from the many riverside wharves and sufferances. But as with office work, all this activity hid the fact that productivity was appallingly low. In most places the only mechanical cargo-handling aids available to stevedores were those that had existed at the end of the nineteenth century: the docker's hook and the sack-barrow. The former was a wickedly sharp spike used for almost any activity, from prising a heavy wooden case out of a tight stow, to maneuvering a jute sack, hopefully without spilling too much of its contents, while the latter was used to trundle everything to or from a temporary storage space. Cranes looked imposing, but could rarely lift more than 5 tons. Consequently it took a week or more to discharge a full cargo, and another week to load a fresh one. Ships still spent more time in port than they did at sea, while lorries queued for hours to deliver or collect consignments.

In 1960 the government created a commission of enquiry to consider the state of the UK's ports. It makes fascinating reading today, with its concentrations on what were really nothing more than sticking-plaster solutions to the serious underlying problems. The report, issued after many months of earnest deliberation, dismissed the port of Felixstowe in a few lines as being a small and insignificant port on the east coast, handling occasional grain and general cargo shipments mainly to Holland. In an outstanding example of why you should never let politicians anywhere near important decisions on transport, the committee considered the new-fangled idea being developed in the United States of loading cargo into big standard-size steel containers. Having looked at the idea, they thought that it would never really catch on in the UK. Too much land was required to store all those containers, and too much investment in infrastructure. Anyway the existing docks were rather too small and there were too many warehouses in the way for the concept to work on this side of the Atlantic. And who, in any event, had enough cargo to fill a whole 35'0" container?

Forty years later, the only cargo handled in the massive enclosed docks are a few daily tonnes of airfreight at the London City Airport. Meanwhile down on the coast, one man in a crane in the "little grain and general cargo port" of Felixstowe, as well as his counterparts in Southampton or Thamesport, is shifting more weight in ten minutes than a whole gang of 1950s dockers managed in a full day. Ships of a size well beyond the wildest imaginings of that 1960 committee are routinely discharged and reloaded within two or three tides. And that is all down to a simple steel box.

5. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information on them, or have any comments you would like to make, then e-mail the Editor at tt.talk@ttclub.com. We look forward to hearing from you.

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TT Talk is a free electronic newsletter published as occasion demands, by the TT Club,
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