

Welcome to the latest edition of TT Talk, number 49 in the series

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1. European Union ratifies the Montreal Convention

On 29th April the European Union ratified the Montreal Convention 1999. It will thus come into force in thirteen of the fifteen "old" member states from 28 June 2004, sixty days after ratification. The other two old member states, Portugal and Greece, have already applied the convention since the end of 2003, and some of the new members, including Estonia, Malta and Cyprus, have also already ratified the convention.

This brings the number of states applying the convention to fifty-three.

As far as airfreight is concerned, the 1999 convention will only apply where both the sending and receiving airports are in signatory states. In passenger transport, many courts take the view that a round trip - say from London to New York and back - is actually a journey from the point of origin back to the same point (in this example, London to London), with the other city (New York) being merely a stopping place: they therefore give effect to whichever version of the convention applies in the state of departure/arrival. Because airfreight is, in contrast, usually a one-way movement, cargo carriers still have to work out which version is common to both ends of the journey.

In TT Talk No. 38, published in December 2003, we wrote: " For airfreight operations, there is very little difference between the old Warsaw convention regime and the new Montreal convention: the main changes affect passenger carriage. However it is worth noting that it is no longer possible to break the convention limit of liability (SDR 17.00/kg) on grounds of "wilful neglect" or "reckless misconduct". The limit of SDR 17.00/kg is absolute. The other main change is that the air carrier is now liable for loss or damage that occurs while the cargo is in his care, irrespective of where it occurs. The Warsaw conventions apply only to the period between receipt at an airport and delivery at the destination airport. The Montreal Convention now incorporates the rules governing the relationship between actual and contractual carriers, previously found in the Guadalajara supplementary convention."

A full and up-to-date list of the signatory states, with the dates the convention applied to each of them, is available on the ICAO's website at <http://www.icao.int/icao/en/leb/mtl99.htm>

2. Insurance Intermediaries Directive and UK freight forwarders

Further to the note in TT Talk No. 46, Colin Beaumont, the Director-General of the British International Freight Association (BIFA) was able to give members of his association some qualified good news at their annual conference on May 25th. At a meeting in Brussels the previous day, a commission official had confirmed that it was never their intention that the Intermediaries Directive 2002/92 should regulate freight forwarders or other companies who make insurance available as an extra part of their general customer service. Since publishing the news in TT Talk 46, we have learned that most other member states are not intending to bring forwarders within the remit of the regulations. Generally freight forwarders have an open cover with an insurer and make the client the beneficiary of that cover for a specific consignment and

voyage. Other member states consider that this is not "insurance mediation" and are exempting forwarders from their national implementing legislation. The commission agrees that a forwarder offering his client some insurance cover as part of a package of transport-related services is not the sort of insurance mediation that is being targeted by the new directive.

Not for the first time the UK government thus appears to be out of step with both the European Commission and most of the other members of the EU. The commission is concerned that the UK's interpretation will lead to the creation of an "uneven playing field" (the very thing that the directive was intended to remove), but does not have the power to tell the UK that its interpretation is wrong.

Freight forwarders are not the only group to be affected by the UK Treasury's interpretation: people as diverse as veterinary surgeons and architects, who similarly make their clients beneficiaries of open cover insurance schemes, will also be caught. Like forwarders, these groups have discovered that the administrative and financial burden of complying with the new directive will be so substantial that many smaller companies will have to stop offering insurance to clients. The Confederation of British Industry (CBI) is so concerned at the potential impact of the legislation on such companies that it, too, has given its support to BIFA, calling for the implementing legislation to reflect the intentions of the commission.

3. Container terminals: benchmarking accident statistics

The International Safety Panel of the International Cargo Handling Co-ordination Association (ICHCA) was set up in 1990 and currently has 38 members across nineteen countries and international organisations. The TT Club is a member and has taken a very positive role in the panel's activities. This involvement continues with Andrew Webster, our Loss Prevention Manager acting as one of the three deputy chairmen.

ICHCA International's role is to represent cargo handling interests at international level and to inform and advise its members wherever necessary; the panel's role is to carry out that function as far as health and safety is concerned. It was in that context that it devised, in 1998, the concept that a specialised cargo handling terminal should be able to benchmark itself, in terms of accidents, against similar terminals in other parts of the world. Although the concept could equally apply to any type of specialised terminal, it was decided to start with container terminals. Trials were held in 1998 and 1999 with a number of interested facilities. As a result of the feedback received, the panel decided to offer the scheme to the container handling industry for the year 2000 and, thanks to the level of participation, has authorised its continuance through to this year.

The panel, which is composed of experts in various aspects of marine cargo handling, was well aware of the confidential nature of the data concerned. This was made a key factor and, as a result, operation of the scheme has been entrusted to one person - the panel chairman, Mike Compton. He keeps the information safe and sound, and does not even reveal it to other members of the panel. The chairman alone makes the calculations and only the participants receive the benchmark figures; each participant only gets its own assessment.

Mike is a well known person in international port and cargo handling circles, having roles with the International Association of Ports & Harbors (IAPH) and the International Labor Organization (ILO) as well as ICHCA International.

The aim of the scheme is to enable a participating container terminal to compare its safety record against an international benchmark figure and, if there are sufficient participants, a national and regional figure as well. There are participants in all five continents and, as participation has increased, it has proved to be possible to create national and regional figures in a number of areas. This scheme should be seen as another part of the very necessary management

assessment of how a terminal is performing. Apart from the human side, which must be the first consideration, accidents can cost a great deal of money and management time: constant attention to them will repay the investment.

The benchmark figure is expressed as the number of accidents per 100,000 TEUs handled. All container terminals are treated the same, irrespective of size, method of work, equipment etc. In each of the years of the full scheme the participation level (measured in TEUs) has increased substantially; the contributions for 2003 - with many more still expected - have already exceeded the previous year's. It is, therefore, a mature scheme respected and used by container terminals around the world. As a matter of interest, the panel is currently considering with the dry bulk terminal industry extending the concept to their operations.

Currently, participation is invited for the year 2003 and TT Club recommends that those members who may be interested should respond (terminals do not have to be a member of ICHCA International to take part in the scheme). It has deliberately been kept simple and needs only two pieces of information:

- * the number of accidents causing absence from work for more than one day
- * the number of TEUs handled

The information obtained can be very useful. Send your data or any queries to mike@portsafety.demon.co.uk. It is expected that the benchmark figures will be given to participants in August or September this year, once all the contributions have been analysed.

4. Container demurrage: who is responsible? You be the judge!

If there is any sort of hold up to the normally smooth delivery of cargo, container demurrage costs can escalate at an alarming rate. The question then arises as to who is responsible for the costs. Our friend Peter Jones addresses this issue in the newest edition of his forwarderlaw newsletter and invites readers to be the judge, in a case where a valued customer relationship deteriorated as the container demurrage costs mounted.

Go to <http://www.forwarderlaw.com/> and vote!

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.

Andrew Trasler
Editor
TTMS (UK) Ltd London

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

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