

Welcome to the latest edition of TT Talk, number 37 in the series.

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1. Delivery of cargoes in Chile

The item on this topic that appeared in TT Talk Edition 35 in July this year continues to provoke discussion. One correspondent was very discouraged to learn "that in this day and age there are still countries allowing release of cargoes in the manner described". He goes on to say that, in his view, "it is high time reciprocal action is taken against such countries/authorities but in the meantime carriers should summarily refuse shipments to Chile unless carried on a pre-paid basis. That would at least protect the freight."

Another correspondent, taking perhaps a more practical approach, says that his Line has adopted a policy of clausing all its bills of lading for shipments to countries in South America to this effect:

"As per local regulations customs authorities at destination may release cargo to notify party or consignee without production of original Bill(s) of Lading and without notifying carriers. Carriers not responsible for such deliveries and do not accept any liability."

After some initial opposition from shippers in a certain area, the policy has become accepted. Since its introduction, the Line claims not to have had any more claims for mis-delivery at South American ports of discharge.

2. Closer Economic Partnership Arrangement - Comments from Hong Kong

Following the recent announcement of the signing of the Closer Economic Partnership Agreement between the People's Republic of China and the Hong Kong Special Administrative Region, we asked the TT Club's office in Hong Kong for its comments on the likely impact of "CEPA" on bi-lateral trade.

Harry Lee of that office, writes as follows:

"The Hong Kong shipping industry should welcome the recent Mainland and Hong Kong Closer Economic Partnership Arrangement just signed between the governments of the HK SAR and People's Republic of China in late June. There are "three pillars" under the scheme: (1) Trade in Goods (zero import tariff for certain commodities), (2) Trade in Services, and (3) Trade and Investment Facilitation Measures.

The CEPA is expected to allow Hong Kong companies' earlier access to the PRC market and enjoyment of more extensive concessions than those were set out in China's WTO schedule.

The CEPA covers 18 sectors of "Trade in Services", such as, as regards the shipping industry, transport services, logistics services, freight forwarding agency services, and storage and warehousing services. In general, Hong Kong Companies (as defined in the CEPA), are permitted to set up wholly-owned enterprises to operate international ship management services, storage and warehousing for international trade, container depots, logistics as well as NVOCC services. The most important breakthrough is that Hong Kong companies are no longer subject to joint venture requirements. The minimum registered capital requirement is also expected to see a reduction. For quick reference, readers may like to look

back to our TT Talk Edition 24 (items 3 and 4) for present company registration and capital requirements of foreign transport operators in the PRC.

A possible implication is that foreign companies who want to start operations in China in advance of the WTO arrangement may have such a right by partnering with or buying Hong Kong companies.

The third pillar of the CEPA should also be a highly welcome innovation for the industry, in that it emphasizes cooperation in customs clearance facilitation and transparency in laws and regulations. Establishment of a customs information exchange system supported by electronic technology between the two parties is in progress. The PRC authorities have also recognized the merit of a transparent legal system and see Hong Kong as a good example.

Although exact details and the programme for implementation are unresolved as yet, Ms Alice Lau, Principal Assistant Secretary for Economic Development and Labour in the HK Government, has told a local press that the finer points are to be worked out before the start of next year. On 29 September, the SAR and the Central People's governments have just signed the six CEPA Annexes and agreed on the implementation details. A recent questionnaire conducted by the Hong Kong Logistics Development Council reviews that a vast majority of the interviewees in the sector are hopeful of the business prospect under the CEPA. In a nutshell, it is a good signal for ambitious transport operators looking to the China Market."

3. Duty Guarantee not "customs duty or other charge" under Art.23(4) of CMR

Andrew Trasler of TTMS(UK) has drawn to our attention the interesting decision of the English Court of Appeal in the case of Sandeman Coprimar SA v Transitos y Transportes Integrales SL and Others.

The case arose out of the carriage of a consignment of paper seals from Spain to Liverpool, which was lost in transit. Under Spanish law, these seals are placed on each bottle of spirits to show that excise duty has been paid. The Spanish importer provides a guarantee to the government tax office, in return for which he obtains the seals; these are then sent to his supplier who applies them during the bottling process. The importer then has to account to the tax authority for the duty, or return the unused seals. His guarantee is forfeited for any seals that are unaccounted for. In this case, the importer, Sandeman Coprimar (part of the Seagram group) claimed around £420,000 (EUR 681,093) which he had to pay under the guarantee.

At first instance the judge held that the first carrier, Transitos & Transportes Integrales ("TTI"), was liable for the full amount but that, while the other two defendants, Spain-TIR and Bradford Cargo Terminal, were liable for the loss, they were not liable for the full amount of the claim. TTI had, however, gone bust, so Sandeman's victory was an empty one; it appealed against the decision, seeking a judgement against the other two defendants.

The appeal court, having studied the chain of contracts, held that Sandeman's claims against Spain-TIR and BCT were in bailment, but that the terms of the bailment were those of the CMR. There was therefore no claim against Spain-TIR because it was neither the first, last nor actual carrier. BCT did have a liability but the hidden "value" of the seals (the amount of the guarantee) was too remote for them to be liable for it. The court was able to distinguish the facts in this case from those in *Buchanan v Babco* (1978), which involved a claim for the excise duty on a consignment of whisky stolen while in transit. The court decided that the duty charge was a direct and understandable consequence of the theft within the customs territory, while the guarantee was not. The guarantee was not "customs duty or other charges incurred in respect of the carriage of the goods" and therefore was outside the scope of Article 23(4) CMR. Sandeman's appeal was therefore rejected.

The full text of the judgement is on <http://www.bailii.org/ew/cases/EWCA/Civ/2003/113.html>

A note of the judgment is on the Editor's website, DMC's CaseNotes @

http://onlinedmc.co.uk/sandeman_v_tti.htm

4. Countdown to ISPS Day

One of the most high profile strategic issues facing the port and terminal industry at present relates to security, where the ISPS (International Ship and Port Facility Security) Code takes effect on 1 July 2004. The code sets out in some detail not only the security requirements in relation to ports and ships but also the process by which operators can reach compliance by security risk assessment, preparation of a security plan and implementation.

In early 2003 the TT Club developed, in collaboration with the US/UK security experts HudsonTrident, a security regulatory database and self-assessment tool, under the name SecurityStart, the first freely available on the Club's website, the second only to registered users. These two elements have now been supplemented by an outsourced programme that delivers a thorough risk assessment and plan that leads to compliance with the ISPS Code, as well as C-TPAT (Customs-Trade Partnership Against Terrorism) and any specific Port and Flag-State regulations. It is felt that the port and terminal industry worldwide may well require additional resource and expertise in order to reach compliance within the limited timeframe.

Additional information is available from any office in the Club network or via riskmanagement@ttclub.com.

5. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information on any of 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.

David Martin-Clark

Editor

Shipping & Insurance Consultant

Maritime Arbitrator

Commercial Disputes Mediator

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