

Welcome to the latest edition of TT Talk, number 33 in the series.

Contents

1. Feedback on the "Fireworks Scam", item 3 in Edition 32
2. Repeat performance on US Chassis Risks
3. Cargo security in the US - Keeping up-to-date
4. More on US Customs - enforcing the 24-Hour Rule
5. Africa scams reach Iraq
6. BIFA breathes again! English Court of Appeal upholds 9-month time-limit
7. Conclusion

1. Feedback on the "Fireworks Scam"

Mel Patterson from the Thomas Miller Insurance Services office in San Francisco reports that he has had some feedback from a surveyor and member on item 3 in Edition 32, the "Fireworks Scam". His message reads:

"Although one must admire their efforts, it was noted that it was highly unusual and typically not recommended that the Port Manager and Operations Manager (of the carrier) go to the importers' premises and crawl around inside a container essentially "taking the investigation (law) into their own hands". At minimum, it is recommended that a competent marine surveyor be assigned (and also other experts and legal counsel in appropriate situations) to a matter such as this. Carrier employees likely would be considered to be prejudiced.....and do they have the right qualifications to investigate/survey? Did they take pictures? Did they gather all the facts? Did they miss anything important?"

Points taken, but in this case, the "amateurs" did a pretty professional job!

2. Repeat performance on US Chassis Risks

Leo Kirchner, the head of Thomas Miller (Americas) Inc.'s operations as Managing General Agent for the TT Club in the United States, is hosting a second seminar on the topical issues of "Intermodal Chassis, Contracts and Insurance and the 'Romero Bill' in California and Other Legislative Acts". The keynote speaker will be attorney Sam Delich, of the San Francisco firm of Flynn Delich & Wise, who has vast experience in this (mine-) field. The seminar will take place in the Long Beach Hilton Hotel on Thursday May 29, 2003 and invitations are being handled through Stan Dorsey of the Miller office in San Francisco.

3. Cargo security in the US - Keeping up-to-date

How would you reply if someone put these questions to you??

I. True or False: Customs-Trade Partnership Against Terrorism (C-TPAT) regulations require that US importers compel vendors and service providers around the world to maintain anti-terrorism measure.

II. True or False: The Container Security Initiative (CSI) requires a US Customs inspector to examine high-risk freight at the port of export before it can be laden on a vessel to the United States.

III, True or False: The US Customs Commissioner was required to enact the 24-Hour Advance Manifest Rule because of a new law passed by the US Congress after the atrocities of September 11 2001 in New York and Washington, DC.

If, like your Editor, you are hesitating over your answer, go to the clear and concise 'Whitepaper' entitled "US Customs: Security Developments for Trading with the US", published by 'eyefortransport' at: <http://www.eyefortransport.com/cargosecurity/report.shtml?enc=1&emins1=vksacfnidedkyljideuviz>

Page 14 tells you what you thought you should have known already, namely that;

I. "The C-TPAT is not currently based on regulation. It is a voluntary government-to-business program, with flexibility for the participant to design its own approach. The program does not require US importers or any participant to obligate other corporate entities...."

II. The CSI does not require a US Customs inspector to examine high-risk freight once identified. Rather, the Customs inspectors work collaboratively with host country officials who examine freight while the Customs inspectors observe. The CSI is a reciprocal government-to-government initiative to enhance cargo security worldwide.

III. The US Customs Commissioner had existing legal authority to change the regulations regarding the 24-Hour Advance Manifest Rule for sea freight and vessels. He did not need to wait for new legislation. The Trade Act of 2002, however, was new legislation that, among other provisions, expanded Customs' authority to create similar rules for other modes of transportation and require the data electronically."

Remember that the 24-Hour Rule is a matter of regulation, rather than collaboration, hence the importance of Item 4 below.

You can find details of the Europe Cargo Security Forum 2003 that eyefortransport are organising in Brussels on June 16 to 18 @ <http://www.eyefortransport.com/cargosecurity>

The Forum is devoted to "strategies and technologies that will provide a secure cargo environment and still retain a fast, reliable and competitive supply chain". TT Club's Director of Loss Prevention, John Nicholls, will be hosting a roundtable discussion on "Cargo Liability Insurance Issues".

I reckon that he will do that rather well!

Eyefortransport are offering TT Club Members a discount of Euros100.00 on the Forum fee, if they quote "TT Talk" on registering.

4. More on US Customs - enforcing the 24-Hour Rule

If you access <http://www.ukpandi.com/3pib/3pib03.html#pib299> you will find the following helpful information from Loss Prevention Bulletin 04/03.

"From May 4th 2003 enforcement activity will be expanded to include the following:

I. Parties making untimely data submissions will be subject to penalties. Customs will conduct post-departure audits to review whether the requisite 24-hour notice was provided. Although the rule requires notice be received 24 hours prior to loading, the audits may measure the time period prior to departure when the exact time of loading cannot be established. Customs plans to assess penalties up to \$5,000 per violation, i.e. for each AMS (Automated Manifest System) transmission found to be untimely. The penalties will be assessed against the party making the transmission.

From May 15th 2003 Customs will expand enforcement activity to the following:

II. Submissions with inadequate consignee information will trigger "DO NOT LOAD" orders. The consignee field must include a name and address. Blank or "to order" submissions without any further identification of the consignee will be inadequate.
III. Parties submitting inadequate cargo descriptions for Freight Remaining On Board ("FROB") will be subject to penalties just like any other cargo.

Thus far, Customs have not initiated any enforcement action relating to FROB shipments."

The US Customs website for the 24-Hour Rule is

http://www.customs.ustreas.gov/xp/cgov/import/carriers/24hour_rule/

A comprehensive Question and Answer page on the rule can be found on the US Customs Service website @

http://www.customs.gov/ImageCache/cgov/content/import/carriers/24hour_5frule/24hour_5ffaq_2edoc/v6/24hour_5ffaq.doc

5. Africa Scams reach Iraq

Andrew Trasler of TTMS (UK) has drawn our attention to a note by Matthew Norman that appeared in Diary Column of the English daily newspaper, the Guardian, on Wednesday April 23. It read:

"From Iraq comes an early sign of recovery ... dementedly ambitious fraud of the kind famously pioneered by the Nigerians. Future historians may one day isolate an email from Mohammed Murgai as the first record of healthily unfettered entrepreneurship returning to the nation.

'Dear Sir/Madam, salamualeikum warahmatullah wabarakatuh,' begins Mohammed pithily. 'I am from Kono district north of Baghdad, from the family of late Alhaji Mustafa Margai the formal [sic] Minister of Petroleum ...' Yup, an oil scam. You can't beat the golden oldies. His father was a government minister, claims Mohammed, before succumbing to an American bullet. On his Kuwaiti hospital deathbed, however, 'my father confide in me about one metallic box that he made with a trust and finance house in Europe containing £30m.' Fantastic news. 'I am presently in the refugee camp . I propose that you stand as my proxy person ... so as to get the metal box, transfer it to your country where we can make use of it in a lucrative business investment. This transaction is now only known by you, myself and my old sick mother whom is now with me in the camp ... Please send me your private telephone and fax number for more confidential discussions.'

We wish him all the very best.

Clearly, disease spreads fast!

6. BIFA breathes again! English Court of Appeal upholds 9-month time-limit

Harry Lee, of the TT Club office in Hong Kong, has been keeping his eye on the Law Reports! At the end of April he sent us this report on the case of Granville Oil and Chemicals Ltd v. Davies Turner & Co. Ltd:

"I am pleased to inform you that the English Court of Appeal in a recent decision, has up-held the contractual limitation period clause (from the British International Freight Association Standard Trading Conditions) in favour of the freight forwarders. You will remember that this case was discussed in Editions 29 and 30 of TT Talk.

This is very welcome news, as most freight forwarder associations recommend their members to include a nine-month time bar in their standard form of contracts. This limitation period, despite being shorter than some statutory limits (such as the one-year period in the Hague/Hague-Visby Rules), was found justifiable by the Court under the Unfair Contract Terms Act 1977, reversing the trial judge's opinion on this point.

I believe that the shorter contractual time bar is justified, in particular for claims for physical loss or damage of goods, and when the party relying on it is acting as a transport intermediary, for whom recourse against the actual carriers is, more often than not, a must. Whether such a clause can afford benefit to a carrier when it comes to cargo mis-delivery, however, is another question. Given the present

strong policy considerations of the courts, a carrier may not be able to take advantage of the nine-month time bar in cases of mis-delivery of cargo without presentation of the relevant bills of lading - an issue not yet decided specifically by the common law judiciary."

The Court of Appeal's decision in the Granville Oils case is contrary to that reached by the High Court of Singapore in the recent case of Press Automation Technology Pte Ltd v. Trans-Link Exhibition Forwarding Pte Ltd, where a similar clause in the Singapore Freight Forwarders' Association Standard Trading Conditions (1986) ("the SFFA Conditions") was held unreasonable and therefore unenforceable under the Singapore Unfair Contract Terms Act.

For further details on the Court of Appeal decision, you can access the Editor's website, DMC's CaseNotes @ http://www.onlinedmc.co.uk/granville_oils_v_davies_turner.htm

7. 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

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 "MS Word" in the subject line.