Welcome to the latest edition of TT Talk, number 24 in the series.

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1. ISM Code in full force as from 1 July 2002 - Feedback from Lloyd's Register

Our item on the entry of the ISM Code into full force with effect from 1 July 2002 prompted Andrew Mitchell, the head of Marine Management Systems at Lloyd's Register of Shipping to write to us saying:

Quote
I should like to comment on the section concerning the implementation of the ISM Code and specifically on the paragraph which talks about 'flexibility where ISM certificates expire during the course of a voyage'.

I understand that the term 'flexibility' as used in this context refers to the insurance industry. From our point of view as Recognised Organisation we would have no flexibility in this scenario. A vessel arriving in a port with non valid ISM certification would be subject to detention by the port state and the raising of a 'major non conformance' by Lloyd's Register on behalf of the flag state. Delays may be incurred whilst an additional audit is carried out.

With the range dates for an intermediate SMC audit being 12 months, we see no practical reason why a company cannot comply. Failure to comply
would be an indication of a weakness in the management system which may have the potential to affect the level of risk accepted by [the insurance] industry In other words, 'good companies do not allow this to happen'!!
Unquote

2. Maritime Security in the United States - proposed new Customs Service Rules

The US Customs Service has given notice of its intention to enforce strictly the present rules which provide that the cargo declaration must state:
"(vii) A precise description (or the Harmonised Tarriff Schedule numbers under which the cargo is classified if that information is received from the shipper) and the weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically such as 'FAK' ('freight all kinds'), 'general cargo', and 'STC' ('said to contain') are not acceptable."

Several Members have already alerted the Club Managers to this new requirement, which is founded on US government concerns about terrorist threats and the fear that bombs or other devices might be smuggled into the country under the guise of innocuous cargo. Many shipping lines are already refusing to issue bills marked "said to contain",

While supporting the general aim of the new regulation, Members have rightly been concerned about the impact on their liability if this "said to contain" clause is omitted. We understand, however, that, although "said to contain" is now prohibited, there is nothing to stop carriers clausing their bills with something of similar intent such as "shipper's load,stow and count". The Club's advice to Members is that, when they are contracting as carriers of goods either to or via the US, they should not issue bills of lading marked "said to contain", nor should they request bills thus marked from the actual carriers, where they are not themselves the actual carrier. Instead they should use the clause "shipper's load, stow and count" (unless there is a specific wording referred to in the Member's conditions on the reverse of the bill, in which case that wording should be used). Unfortunately, none of these wordings offers a cast-iron guarantee against a claim for shortage or other discrepancy but they are nevertheless worth using.

There remains, of course, a problem in relation to LCL and co-load traffic. Here the contracting carrier will issue to his shippers individual bills for each consignment but will receive from the actual carrier a bill for the container marked "Shipper's load, stow and count". In these circumstances, the contracting carrier is subject under both the Hague and Hague Visby Rules to the obligation in Article III Rule 5. That states that the shipper [in this case, the NVOC] is deemed to have guaranteed to the carrier [here, the actual carrier] the accuracy at the time of shipment of the details of the cargo provided by him to the carrier and shall indemnify the carrier against all loss arising from inaccuracy in such particulars.

This is the situation today, regardless of the changes in Customs practice proposed. The only remedy for the NVOC is to do his best to ensure that the cargo he stuffs into the container is indeed what his shipper has declared it to be, and then to take out good insurance. Standard cover in the TT Club for NVOC operations include s insurance against indemnities of this type.

In announcing its proposals on August 8, US Customs invited industry comments. The consultation period closes on September 9 2002.

Further information can be found at: http://www.customs.ustreas.gov/impoexpo/impoexpo.htm

Members may also be interested to access comment on the US Customs proposal from Peter Jones, the Editor of Forwarder Law, at:
http://www.forwarderlaw.com/Feature/stcusage.htm

3. NVOC Bills of Lading in China

Edgar Wong, of the Club's office in Shanghai has clarified for us certain regulations in China that affect foreign NVOCs and the bills of lading under which they operate.

a) Under the new regulations, a local agent of a foreign NVOC needs to register its own B/L and to get NVOC status before it can continue to act as a B/L signing agent for a foreign NVOC.

For example. DandCo, a non-Chinese NVOC, has a representative office in Shanghai. As this is only a liaison office, it cannot operate or trade in the PRC. The first step is for DandCo. to register its bill of lading (by paying RMB800,000 as a cash deposit); unless the bill is so registered, it cannot be issued in China.

However DandCo still needs to appoint a local agent, whom we will call XinCo, to sign the DandCo B/L on its behalf. Such an agent must itself possess NVOCC status. In order to achieve that status, XinCo must first register its XinCo NVOC B/L, by also depositing a cash bond of RMB800,000! Only when this is done can XinCo accept instructions from DandCo to sign DandCo bills of lading as its agent.

b) The Shanghai Shipping Exchange has issued a "recommended" form of bill of lading for container traffic. It does not apply for breakbulk or bulk cargo transport. The use of this form is not mandatory. It can be accessed at http://www.moc.gov.cn or at http://www.chineseshipping.com.cn

4. Logistics Joint-Ventures in China
On 31 July 2002, Fairplay Daily Shipping News carried an article reporting that China will limit foreign investment in internatonal logistics joint ventures to 50%. Such ventures will only be allowed in the cities of Beijing, Chongqing, Shanghai, and Tianjin, and in the provinces of Guangdong, Jiangsu and Zhejiang.

Edgar Wong explains:
"Under the 'Logistics Pilot Programme', a logistics joint-venture can operate either 'international logistics' or 'third party logistics'. Third party logistics refers to cargo carriage by road and its related logistics service within China. Both operations must have a minimum registered capital of USD5 million and the

Chinese partner or the largest foreign shareholder is required to have experience in transport or logistics, international trade and cargo or agency services. However for third party logistics, as opposed to international logistics, there is no specific mention of the allowable percentage of foreign ownership. The 20-year franchise will be renewable."

5. Strict Liability for Shippers of Inherently Dangerous Cargoes under US Carriage of Goods by Sea Act, 1936

Karen Hildebrandt, of the Thomas Miller office in New York, has drawn our attention to an important recent decision of the Second Circuit Court of Appeals in the case of Senator Linie GmbH v. Sunway Line Inc. Karen writes:
"In a case of first impression, the U.S. Court of Appeals for the Second Circuit ruled that, where neither the carrier nor the shipper had actual or constructive knowledge of the inherently dangerous nature of shipped goods, the US Carriage of Goods by Sea Act (COGSA) imposes strict liability on the shipper for damages and expenses arising out of that shipment. In the instant case, 300 drums of thiourea dioxide (TDO) were shipped by defendant shippers, Sunway Lines, on a Senator Line vessel in 1994. Fire broke out on the vessel en route when one of the drums spontaneously ignited due to an exothermic reaction, severely damaging plaintiff's vessel. At the time of the shipment, TDO was considered to be a stable cargo. Subsequently, TDO was listed as a hazardous or dangerous cargo both in the International Maritime Dangerous Goods (IMDG) Code and in the U.S. Code of Federal Regulations. The court noted that a strict liability construction of COGSA would foster fairness and efficiency, since the shipper has greater access to and familiarity with the goods and their manufacturer than does the carrier. If an unwitting party must bear the loss, it should be the one who is in a better position to ascertain ahead of time the dangerous nature of the shipped goods."

This ruling also reflects the position under English law. For a more detailed note on the case, access: http://www.onlinedmc.co.uk/senator_v__sunway.htm

6. 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.

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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.