

A Note from the Editor

There are a number of lengthy articles in this issue which go into their subject in some depth. I think that they all have valuable advice for all sections of the transport industry. We also have contributions not only from within the Club but from two Miller companies, Signum Services and ShipServ as well as a contribution from a law firm in Shanghai.

In this issue on behalf of the TT Club, I would like to congratulate Mr Arijus Ramonas who was appointed Vice Minister of Transport and Communications for the Republic of Lithuania last month. He was with the Arijus JSC who have been Members of the TT Club since February 1999.

I have also included some useful website addresses regarding the foot and mouth problems in the UK which I hope you will find of interest.

As usual, if you wish to discuss any of the matters raised in TT Talk, please do not hesitate to contact me on the e-mail address given above.

Shirin Haque
Editor

Beware of Fraud

In October 2000, a Member in Shanghai received a fax from an unknown company in Hong Kong, who claimed to be a "consolidator/forwarder" and offered them a new business opportunity of arranging some shipments from Shanghai to Chittagong. The so-called consolidator alleged that they were introduced by another forwarder in South Korea and would like to nominate them to ship out the goods from China to Hong Kong first for consolidation and with a final destination in Bangladesh or Indonesia.

They asked the Member to arrange the shipment as follows: to issue a through bill of lading covering the whole voyage from Shanghai to Chittagong;
to arrange an ocean voyage from Shanghai to Hong Kong through a shipping line, whilst naming the consolidator as consignee on the ocean bill of lading;
Consolidator would take delivery of the cargo in Hong Kong and then arrange transshipment to the ultimate consignee in Chittagong;
letter of credit to be issued by the buyer.
This arrangement worked well for the first two shipments and the cargoes were of low value.

However, a problem arose with the third shipment involving the transportation of denim valued at USD500,000. The consignee shown on the Member's through bill of lading claimed that the cargo never arrived. The shipper in China who still held the full set of original house bills of lading, on the other hand, claimed that they never received money from the buyer because the letters of credit were fake.

Now the Member is threatened with legal action from the shipper for the full cargo value of USD500,000 and the buyer even suspects that the Member was involved with the fraud with the Consolidator regarding the shipment.

Recommendations

Never issue any bill of lading assuming responsibility for the whole voyage when you have no control of the voyage.

When you have only limited information about your business partner, seek to contract as agent only.

Avoid issuing your own bill of lading, but sign as agent on your partner's house bill of lading.

Carry out a thorough check of all new customers and business partners to find out as much of the following as possible:
date of foundation;

parent, subsidiary and affiliate companies;
licence details with renewal dates;
details and a copy of the company's liability insurance policy;
membership of professional associations or organisations;
list of other clients and any letters of recommendation;
the directors' names and the personal experience of the directors and the senior staff;
details of the company's trading conditions, bill of lading, etc.;
claims record (last 5 years).

If necessary, the Club's worldwide network of offices and correspondents could help in checking the identity of such companies.

Be alert to offers of new business opportunities which come from a remote and unknown source. In this case, the business relationship with named South Korean forwarder, was limited and had lapsed several years ago.
Contributor: Larry Kwok, TT Club - Hong Kong

Foot and Mouth Epidemic

Please note the following websites are for authorities in some countries where the latest local information can be found about the foot and mouth epidemic in the UK:

UK <http://www.maff.gov.uk/animalh/diseases/fmd/default.htm>

EU

http://www.europa.eu.int/comm/food/index_en.htmlTarget="_top">www.europa.eu.int/comm/food/index_en.html]

USA <http://www.usda.gov>

Australia <http://www.dpie.gov.au>

The latest restrictions regarding exports from the UK are: widespread bans on meat/meat products in most countries in Australia and US where there has been rejection/quarantine of secondhand machinery that has been in contact with land in UK.
According to recent Intertanko bulletin, Norway has imposed a ban on disposal of food waste from ships that have called in the UK. Holland is reported to be contemplating measures for ship's garbage.

Customers Power ShipServ Ahead

On 20 March 2001 at Shakespeare's Globe Theatre, London, ShipServ, the leading shipping procurement services company, won the CITIS 2001 Lloyd's Ship Manager award for innovation in IT for ship operations. The judges were looking for the product or service that has made the most significant contribution to improving an activity associated with ship operations within the last 12 months.

Nominations for the award were made independently by over 5,000 users from the maritime industry. To select the award winners, an expert panel of judges evaluated the nominations on four criteria: usability, training and support, commercial viability and technology. The judges were drawn from the Nautical Institute, the International Ship Managers Association, Intertanko and supported by representatives from Inmarsat and Ocean Voice incorporating Compuship.

Paul Ostergaard, Chief Executive Officer at ShipServ, commenting on the award said: "We are delighted on two fronts. First, we were the only e-commerce business of any sort to be nominated. Secondly, while it was the judges who chose us as award winners, we are even

more pleased that it was our users who in the first place nominated us - without our knowledge. We only learnt about it last week.”

Pointing out the appropriateness of the award, ShipServ says that its users are currently processing 2,500 transactions a month across its TradeNet from ship to head office to supplier using various parts of its software. ShipServ also sees the award as a strong endorsement of its customer focused approach which was further underlined this week by its launch of release 2.0 of its supply chain collaboration software. This version is based on the valuable feedback from its customers during the first eight months of its being fully operational.

Major enhancements include improved quote management, delivery tracking and invoice reconciliation as well as the integration of the Infospectrum credit reporting system within the supplier interface, allowing suppliers to check on the creditworthiness and payment performance of buyers.

Live and in full operation since July 2000, ShipServ has created a network of a number of leading ship owners/managers and more than 100 suppliers, including many of the leaders in each of the five main sectors of lubes, gases and chemicals, spares, paints and general chandlery. This makes ShipServ's TradeNet platform the most powerful procurement network in shipping. ShipServ also provides the tools necessary for a buyer or supplier to trade and collaborate with its trading partners and is in the process of integrating its products with all of the leading ship management software suppliers.

Thomas Miller, the TT Club's manager, is a minority shareholder in ShipServ and has seconded two senior managers to its management team. Thomas Miller sees this as providing a valuable service to its traditional customer base.

If you are interested in knowing more about the launch of the CITIS Award or ShipServ Release 2.0, please call Mark Holford at +44 020 7204 2350 or e-mail at mholford@shipserv.com

You can also arrange a demonstration session by calling the Global Customer Service Centre at +1 910 798 9406.

Contributor: Mark Holford, ShipServ - London

Security Seal Testing Authority

During 1998, the UK Cabinet Office Security Division had approached United Kingdom Customs and the Security Seal Industry Association, representing manufacturers, to discuss radical overhauls of the security seal management within the UK. As a result of various discussions, on 1 April 1999, Signum Services Limited, in-house investigation office for the TT Club, commenced the joint function of acting as the Security Seal Testing Authority (SSTA). The Authority acts as a conduit for national and international seal manufacturers to submit their seals for testing by the HM Customs Seal Tester, in order that he may review their qualities and ensure they meet the criteria of being accepted into one of three Groups of security seals. All seals which are accepted by UK Customs are held on a list managed by the SSTA on Customs' behalf.

All security seals submitted for acceptance by HM Customs must now fall into one of three groups – High Barrier, Barrier or Indicative - depending upon their properties. At the same time, a new security seal specification was introduced which clearly sets out requisite criteria and also gives some general security advice, together with information on storage and audit trails. The specification does not cover related products such as cable ties, security bags, tamper-evident packaging and labels, although subsequent amendments in the form of appendices may follow. Neither does it cover groups for electronic or re-useable mechanical seals, in respect of which specifications will hopefully be produced in the near future.

Security testing procedures used are a continuation of those carried out by HM Customs prior to 1996, with these testing parameters being confidential to the SSTA, and to the Tester, whose anonymity must be preserved.

Detailed procedures for the submission of seals to be considered for acceptance can be obtained from the SSTA on request. Briefly, six sample seals are submitted for testing, together with the test fee of £230.00 (including VAT). Following examination, the manufacturer is informed of the results and, in the cases of failure, offered assistance in attempting to rectify the problems.

Details of successful seals are appended to the HM Customs Acceptance List, which is generally available to seal manufacturers.

Arrangements are now in hand for the re-testing of all accepted seals, once their acceptance has reached five years, in order that it may be confirmed that they remain suitable and conform to current specifications. It is hoped by these methods that, firstly, an improved service is offered to seal manufacturers and, secondly, the standard of seals held on the Acceptance List should be greatly improved, which can only be of benefit to the transport and cargo industries as a whole.

Any further information can be obtained from the Security Seal Testing Authority, International House, 26 Creechurch Lane, London EC3A 5BA or telephone: +44 (0)20 7204 2259, fax: +44 (0)20 7626 8379.

Contributor: Mike Newstead, Security Seal Testing Authority - London

Valuable Cargoes and Secure Stopping Places

Just imagine that you are a lorry driver. You are on a motorway and have been driving for most of the day and are getting near the end of your permitted driving hours so you must, by law, stop soon for a rest period. You know that there is a service area ahead and decide to pull in there for your break. As car drivers, most of us will be familiar with that kind of scenario. You park your lorry in the well-lit area set aside for commercial vehicles, in among other lorries. Although the area is not guarded you know that there are always drivers wandering around and you all look after each other. In general, you reckon it is a pretty safe sort of place. Anyway, your load is a mixed one. You saw the manifest when you collected it: there are some packages of clothing, some machinery, some electronic spares, a few drums of chemicals. They are the stuff of routine international trade and nothing to get too excited about. Nobody has said anything about special security measures, but you take the usual routine precautions. You have a meal, and perhaps have a little chat with other drivers, before going over to your lorry to sleep in the bunk in the cab.

Suddenly, in the small hours, you are woken up by the sound of smashing glass. You realise that someone has broken the window of your cab and is now pointing a gun at you. He demands that you open the cab door. You try to sound your alarm but this only makes the robber and his accomplices more angry, and they threaten to shoot you. It's three or four against one, and they are armed: in the end you do as they demand. You get tied up and blindfolded and put in the bunk while they drive the lorry to some unidentified place off the motorway and quickly unload the cargo. The lorry is then driven round for a bit, before it and you are abandoned by some remote roadside.

Inevitably you get a claim from the cargo owners' insurers for the loss of the goods. Because you were moving the goods internationally by road within Europe, the Convention on the International Carriage of Goods by Road (CMR) applies to your contract with your client. You, not unnaturally, think that being faced with an armed gang at 2:30 am and giving in to their demands comes well within the scope of the phrase "circumstances which the carrier could not avoid" and therefore would exempt you from liability. You are surprised and not a little aggrieved to hear from your customer's lawyers that they think that, not only can you not rely on the exemption clause, but they believe that, in stopping with a load, which was both

valuable and attractive to thieves, at an unguarded service station on a motorway, you had been guilty of wilful or reckless misconduct. If correct, this would remove your rights to limit liability. Inevitably, the dispute goes to court.

The question of what constitutes "reckless or wilful misconduct" under the CMR has long been a subject of debate among lawyers specialising in this area; the arguments are naturally familiar territory to the Club's claims handlers. The debates amply illustrate the difficulties of reconciling such abstract legal ideas with the reality of a lorry driver's life on the road and the regulations governing his working time. Not unnaturally, many such cases have been finding their way to the supreme courts of different countries in Europe.

It is difficult to write of a consensus of opinion from cases arising from different facts and heard in different jurisdictions. However the general trend of decisions is that carriers must take proper precautions to ensure the safety of their load at all times. They must weigh up the known value of the cargo (and particularly its attractiveness to thieves) and the risks known to be associated with the area through which they are travelling. A consignment of, say, computers going through an area notorious for thefts requires a greater degree of care in planning the journey than, say, semi-manufactured products of low value in an area not generally regarded as unsafe. It is in general no defence to say that the driver had to make a stop in order to comply with the working time regulations. Judges, of all people, naturally accept that drivers must not break the law but, they reason, these regulations are well known to all road carriers. The carrier must therefore organise and plan the journey in such a way that stops are minimised and that, where they are necessary, they are in reasonably secure areas.

Judges in some countries have handed down decisions saying that carriers must employ two drivers when moving high-risk loads. To the counter-argument that such measures would be uneconomic they answer that the carrier should quote two prices: one for two drivers, the other for only one. It is then the customer's decision as to the degree of risk he wishes to accept.

Contributor: Andrew Trasler, TT Club - London

Ammonium Nitrate

It is that time of year when literally millions of tonnes of fertiliser, particularly ammonium nitrate, are coming into the UK ready for dispersing onto the land in the Spring. For surveyors it is often a time of great activity due to the problems associated with the handling and carriage of bags of ammonium nitrate and the subsequent claims. Here are a few points to consider.

Masters of vessels loading bagged ammonium nitrate, and other fertilisers, should be aware of the specific problems associated with these products.

Ammonium nitrate is extremely hygroscopic and readily absorbs moisture from the atmosphere or from excessive moisture in the vessel's holds.

Caking, or solidification, occurs when the material absorbs excess moisture, forms a homogenous "slushy" mixture, and then dries out leaving a very hard lump. The process usually takes weeks or even months therefore those cargoes that arrive in the UK in a "caked" condition after a very short sea voyage were almost certainly caked before shipment. Unfortunately some crews are not particularly diligent during loading and Masters often sign clean bills of lading for cargoes that are almost certainly damaged at loading.

Flexible intermediate bulk containers (FIBCs or "big bags") have an inner lining of (usually) low-density polyethylene which is designed to protect the contents from ingress of moisture. However, this lining is relatively delicate and repeated heavy handling by stevedores can lead to a breakdown of the integrity of the liner and moisture can then enter the cargo. The liner

need not necessarily be split or torn to allow moisture in. It can be severely weakened by being dropped too heavily onto rail trucks or into the vessel's hold. Walking on the bags can also damage the liner.

The International Cargo Handling Co-ordination Association (ICHCA) provide clear guidelines on how these big bags should be handled, and we have noted recently that some ports, both in the UK and elsewhere, do not handle the bags properly. Single belt slings should not be used to lift six or more bags together. This results in severe abrasion and weakens the bags.

We are always available to assist owners at load ports to avoid costly disputes at discharge ports, when often the vessel is not at fault, but not fully aware of the nature of these cargoes. Ship's officers can assist their owner and underwriters by taking photographs and making notes of the discharge procedures. Cameras should be of the date recording type and attempts made to include identifying port features to prove which port the vessel is at.

Contributor: Chris Spencer, C F Spencer & Co Ltd - United Kingdom

Chinese Government Revises Customs Law

China has revised its Customs Law to keep pace with a rise in smuggling through its borders. The old Customs Law, introduced in 1987, did not provide the Chinese customs authorities with sufficient powers to tackle the sophisticated smuggling which has come hand-in-hand with the opening up of trade (as evidenced by the recent smuggling and corruption trials centred around Xiamen).

The revised law gives customs authorities wide-ranging new powers to detect and investigate the evasion of customs duties and to enforce the Customs Law. It also aims to improve the administration of the customs system. It has been in effect since 1 January 2001.

General Provisions

The general provisions (Part One, Articles 1 - 13) set out the jurisdiction and authority of customs. A new General Customs Office is established to coordinate the detection and investigation of smuggling. Effectively, it is a new anti-smuggling police force under the wing of customs, confirming customs' role at the cutting edge of the fight against smuggling.

Inbound and Outbound

Carriers

While there are no significant changes to the procedures for vessels entering and leaving the People's Republic of China's (PRC) territorial waters, new powers contained in Part Two of the law allow customs (without resort to the courts) to detain a vessel which: violates the Customs Law or other PRC laws or regulations (excluding local regulations); is an accessory to or is otherwise involved in violating said laws; or is suspected of being involved in smuggling and that suspicion is supported by evidence.

The new law does not specify the duration of detention.

Furthermore, customs has the authority to forfeit a vessel that is knowingly involved in smuggling, or is used repeatedly to shield or commit smuggling. It also has the authority to impose a fine on a vessel for entering and leaving the PRC's territorial waters without clearing customs, for making a false declaration of goods and for interfering with goods under customs' control without prior permission. The new law does not specify the amount of the fines.

There is some protection for shipowners, whereby an owner can bring a lawsuit against customs for wrongful arrest or fine. The action must be brought within 30 days of service of the customs order on the vessel.

Goods

Part Three (Articles 23 - 45) deals with inbound and outbound goods, and has been expanded as follows:

There is a new general provision for customs control of raw materials that enter the country for processing (Article 33).

Article 44 has been added to empower customs to take measures to protect intellectual property rights related to inbound and outbound goods.

Companies providing customs clearance services for the import and export of goods must be licensed by customs.

An obligation is imposed on the unit responsible for customs clearance to make reasonable checks on the authenticity of the information provided to it by the shipper and consignee.

Customs Duties

Part Five deals with the imposition and payment of customs duties (Articles 53 - 65). The power to grant additional reductions of, or exemptions from, customs duties is restricted to the State Council, in recognition of the need to control duties centrally (Article 58). Customs is given a new power to demand security if there is evidence that a party might evade its liability to pay the duty (Article 61). If duties remain unpaid for three months, customs has the power to sell the cargo involved, to freeze the debtor's bank accounts and/or to seize other assets of the debtor.

Security and Supervision

Part Six (Articles 66 - 70) includes new provisions aimed at streamlining the system for the provision of security to customs, in return for the release of cargo before the completion of formalities.

Part Seven deals with the supervision of law enforcement. The new provisions aim to prevent abuse by customs of these wide new powers (Articles 72 - 81).

Liability for Breach

Part Eight (Articles 82 - 99) of the new law defines the meaning of an 'act of smuggling' as: violating the PRC law; escaping the supervision of customs; evading customs duties; or infringing prohibitions and other restrictions placed on the import and export of cargo.] Further, there is now specific liability for being an accessory to smuggling (Article 84) and penalties for irregularities in customs clearance (Articles 88 - 90).

For more information on this topic please contact Claire Morgan or Chen Zhensheng at Sinclair Roche & Temperley by telephone (+86 21 6841 0988) or by fax (+86 21 6841 0525) or by e-mail claire.morgan@srtlw.com.cn or zhensheng.chen@srtlw.com.cn
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