

1. NOTE FROM THE EDITOR

Welcome to the fifth edition of TT Talk - the 4th edition was sent to 1446 people. This issue sees a variety of articles ranging from changes in the US Occupational Safety and Health Act and its effect on longshoremen and terminal operators, to projects and initiatives that the TT Club has been personally involved e.g. Insight 99.

As always, we welcome your comments on any of the articles that appear in this newsletter.
Christine Williams, Editor

Please note that the views expressed in articles received from external sources do not necessarily reflect the views held by the TT Club

2. NEW US OCCUPATIONAL SAFETY AND HEALTH ACT

New requirements for complying with the US Occupational Safety and Health Administration's (OSHA) standards for longshoring and marine terminals came into effect on 27th July 1999.

The new rules affecting container top safety deal with containerised cargo operations, where a container gantry crane is being used to handle containers and will prohibit employers of longshoremen (i.e. terminal operators or stevedoring companies) from placing longshoremen on top of containers. There are, however, a few narrow exceptions, for example, where an employee is on top of a container only to perform a necessary function that cannot be eliminated by the use of positive securing devices (e.g. semi-automatic twist locks).

Employers must ensure that positive container securing devices are used wherever container gantry cranes are used to hoist containers.

Infringement of these regulations are subject to OSHA's Civil Penalties Policy which carries a minimum penalty of \$5,000 for a wilful violation of the OSH Act. The maximum allowable penalty is \$70,000 for each wilful or repeated violation. For further details of OSHA Civil Penalty Policy please refer to the following web address: www.osha-slc.gov/OshDoc/Fact_data/FSNO92-36.html

The above regulations apply whether the containers are handled above deck or below deck.

The Club issued a press release in June called "Top Safety for Stevedores" and the press release is on the Club's website (ttclub.com). The OSHA regulations will be also dealt with in more detail in the next edition of Door to Door.

Contributor: Leo Kirchner, Thomas Miller - New Jersey, USA

3. WOOLF REFORMS BEGIN TO TAKE SHAPE

In the last edition of TT Talk we discussed the introduction of the new Civil Procedure Rules, which came into effect in England and Wales on 26th April 1999. Three months on, we are now beginning to experience how these rules will affect the maritime industry. Already such areas as service of proceedings, instruction of expert witnesses and the signing of Statements of Truth have provoked some consternation amongst shipping lawyers and insurance companies alike. The instruction of expert witnesses is a particularly thorny area as the rules envisage that a single joint expert will be appointed.

On 7th July 1999 the London Shipping Law Centre organised a seminar at Lloyd's of London. Lord Justice Clarke and Mr. Justice Rix addressed questions relating to the impact on maritime law and industry of the new Civil Procedure Rules. Much time was spent discussing expert witnesses and it was recognised that this is potentially a very contentious issue. It was suggested that as the CPR becomes

more established, single joint expert witnesses will become more and more widespread with judges instructing litigants to agree terms of reference for experts. If they fail to do so, then the courts will.

The point was made by members of the audience that, at the outset of any incident, individual parties would instruct their own experts, but by the time the matter comes to trial months if not years will have passed, by which time the independence of an expert may be compromised by their allegiance to their originating instructor. It remains to be seen if single experts do become more widespread as the feeling from the floor was one of skepticism.

Statements of Truth whereby a party is required to sign a claim form attesting to the truth of its contents has also come under some criticism. In certain cases, difficulties have arisen in identifying who is the proper party to sign this document, for example where subrogated cargo claims are involved. There is a feeling that the rules should allow for greater flexibility.

In general, the view expressed by both Mr. Justice Rix and Lord Justice Clarke was that they felt that the reforms were working very well given the major changes introduced. Whilst they acknowledged that there were some teething difficulties, they believed that these would diminish in time.

Contributor: Christine Williams, TT Club - London

4. ONE LAST PUSH!

At the International Association of Ports and Harbours (IAPH) Conference in Kuala Lumpur in May, the TT Club gave an indication of the steps that the transport industry - particularly ports and terminals - should take in their last minute attempts to ensure that all systems are Y2K compliant. Contingency planning was highlighted as the final steps to be taken in the fast approaching critical period. Both Peter Struijs, 3rd Vice President of IAPH (Rotterdam) and Christine Williams of the TT Club, London spoke of the Code of Good Practice adopted in London in March at the offices of the IMO. The Code of Good Practice recognises that, despite the best will in the world, Y2K related failures cannot be totally discounted and therefore there is a need to have operational contingency plans in place to ensure that safety is not compromised.

The UK has a Year 2000 Information and Readiness Disclosure Act, which was passed last year. This Act provides a degree of protection to those people making Y2000 statements. However, unlike in the US, which has imposed financial caps on Y2K issues, UK legislation still leaves room for greater exposure.

The TT Club has been working to produce a Y2K Readiness booklet for its Port Authority and Terminal Operator members. The booklet, which will be distributed throughout the early part of August, deals with what it refers to as "business continuity". Endorsed by IAPH, the booklet brings together a methodology for developing and supporting fully integrated contingency measures that address all identified areas of risk both within a Year 2000 project itself and for the surrounding business environment as a whole. These collective measures are referred to as the Business Continuity Plan. The booklet will be distributed to the Club's port and terminal members. In addition it will be distributed by IAPH and the US Coast Guard. It will also be available electronically on the Internet at both ttclub.com and ship2000.com.

Contingency planning is the last - and probably the most important - action to be taken and therefore the industry is being encouraged to give safety "one last push" before the clock strikes twelve on 31st December 1999.

Contributor: Christine Williams, TT Club - London

5. NEW REPAIR STANDARD AIMS TO SAVE MONEY

The International Chamber of Shipping (ICS) has developed a new set of criteria for the inspection and repair of containers which is aimed better to reflect the needs of the shipping line community, reduce the amount of unnecessary repairs and container lifts, and thus save money for lines, lessors and repair depots.

The new standard, known as the Uniform Container Inspection and Repair Criteria (UCIRC) represents a change in approach compared to the repair requirements laid out by the International Institute of Container Lessors standard IICL-5. UCIRC is based upon the tried and tested repair standards practised by most shipping lines in the day-to-day maintenance and repair of their own container fleets. The ICS has run a number of tests in establishing the standards, which ensure that that they are sufficient to protect dry boxes against the wear and tear of everyday operations.

ICS' aim is for UCIRC to be accepted as the single standard for the container industry. So far, UCIRC has a substantial amount of backing from the shipping line community, including Maersk (or should we now say Maersk-SeaLand!), P&O Nedlloyd, Hapag-Lloyd, Zim, NYK, OT Africa Line and Wilhelmson. On the lessor side, GE Seaco, Capital Lease and Grey Box, (owned by Transamerica), have already given their support.

ICS is now seeking to involve the major Asian carriers in this initiative and the TT Club's George Fawcett has been assisting this aim by discussing UCIRC with some of the leading carriers during a recent trip he made to Malaysia, Singapore, Taiwan, Hong Kong and Korea.

David Cheslin, Dunelm Public Relations Ltd - London

6. INSIGHT 99 - A SUCCESS

Between 12th-16th July 1999, the third Insight into Transport Law and Insurance course was held at the offices of Thomas Miller & Co Ltd in London.

The course, which was jointly sponsored by the TT Club, ITIC and the UK Club, was attended by 18 delegates from Europe, the Middle East, the United States of America and Latin America. Included within the course programme were visits to Lloyds of London and the Baltic Exchange.

The Insight course provides an opportunity for both practical and technical training due to the diversity of knowledge spread between the Miller Transport Clubs. Due to the success of the course, arrangements are being made to run a similar programme next year in Asia Pacific and the USA.

If you would like further information about Insight, please contact:

The Event Administrator
Technical Training
Thomas Miller & Co Ltd
<mailto:zona.cooke@thomasmiller.com>

In addition, in Antwerp on 16th June, the Club held its first Loss Prevention seminar called An Insight into Loss Prevention. The seminar examined the issues relating to the field of container security and cargo care. Forty-nine delegates (nine of whom were non-members) attended and listened to papers on such topical and often sensitive issues as:

- theft or fraud
- correct container handling
- cargo stowage and storage
- the use of security seals
- box tracking and tracing.

Christine Williams, TT Club - London

7. Young International Freight Forwarder of the Year Award

This year saw the beginning of this award for the rising stars of the international forwarding industry and the panel of judges, along with the award steering group, has selected the winner for 1999.

The papers that were submitted for the 1999 award demonstrated a wide range of skills and knowledge. Once all papers had been read by at least three judges, representing the forwarding industry and educational aspects, the Steering Group selected the winner - the candidate from the Spanish National Association (FETEIA).

For this year, as there was great difficulty in separating two papers, there is also a "runner-up" and this has been awarded to the candidate from the British National Association (BIFA).

These two candidates will be invited to participate at the 1999 FIATA World Congress in Dubai, United Arab Emirates.

The TT Club, as the administrative centre of the award, has informed all of the FIATA National Associations whose candidates had submitted dissertations.

Contributor: John Nicholls, TT Club - London

8. It is Kolkata Now!

Residents of the eastern India city of Calcutta, once a major outpost of the British Colonial Empire in Asia, yesterday woke to find themselves citizens of a different city.

The Marxist government of the State of West Bengal on Tuesday changed the name of the more than 300-year-old city, set up by an Englishman named John Charnock to Kolkata following wide protests to drop the "anglicised" name.

West Bengal Information Minister Buddhadev Bhattacharya was ecstatic "It is a memorable day because not only have we just freed ourselves from colonial hangover but also rendered justice"

Contributor: Andrew Kemp, TT Club - Dubai

9. MAHARASHTRA IMPOSES STAMP DUTY ON IMPORTS

A transport operator member of the TT Club using the Club's series 100 bill of lading recently had a consignment to go to Mumbai in India. As usual, he subcontracted the carriage to a shipping line and received a bill of lading from the sea carrier claused:

"Merchant hereby agrees to pay on demand to the carrier/agent at discharge port, stamp duty on delivery orders and administrative charges thereon issued by vessel's agents for cargo stored and delivered in Maharashtra, India. Merchant further agrees to furnish copy of customs cleared bill of entry to the vessel's agent for ascertaining value of consignment covered by the bill of lading, for payment of stamp duty."

He wanted to know what this clause meant and asked the Club for assistance. The Club's correspondents in Mumbai told us the following:

"To give you a brief background to the necessity for such a clause: in a recent development the state government of Maharashtra has asked the shipping line agents to pay stamp duty on "delivery orders" on all cargoes imported via ports in Maharashtra state, such as Mumbai, Jawaharlal Nehru Port Trust (JNPT) and so on.

In September 1995 the Maharashtra state government amended the Stamp Act, so that delivery orders issued to consignees have to be stamped at the rate of 0.1% of the value of the cargo. The shipping community either ignored or was unaware of this amendment. However, the Stamp Act authorities have recently started demanding stamp duty on delivery orders, with retrospective effect to September 1995. In response the Mumbai and Nava Sheva Shipping Agents' Association (MANSA) has filed a writ petition in the Mumbai high court. The hearing of the argument took place recently and the court decided not to place a stay order on the operations of the Stamp Act on delivery orders. Effectively this means that agents and carriers will have to start collecting stamp duty on delivery orders, to stamp them and then collect stamp duty from the consignees.

The court has indicated that it will hear in the near future the substantive issue of whether stamp duty is payable or not. After that, an appeal by one side or the other to the Appeal Court is inevitable. The court also asked the Stamp Act authorities if they are sufficiently well organised to maintain records, by line or agent, of amounts deposited on roughly 2000 delivery orders a day, since these amounts would have to be refunded if the court eventually decides that duty is not payable.

It will be several years before the Supreme Court in Delhi decides the matter. In the meantime it will require a gigantic operation of unmanageable proportions for the Stamp Act authorities to keep track accurately of the transactions. Although the Stamp Act authorities informed the court that they would be able to do this and to refund the amounts, with interest if necessary, the court was very sceptical about such declarations. It ordered the Stamp Act authorities to disclose their plans for record keeping and the organisation of refunds, should they become necessary as the result of the Supreme Court's eventual decision. To ensure that the stamp dues are collectable from consignees in the meantime, it is necessary for bills of lading to be claused in this way for all cargoes imported into the ports of Maharashtra state.

The lawyers representing the agents' association (MANSA) have suggested that an appropriate clause be entered in all bills of lading when they are issued at the port or place of loading, so that ship owners, carriers and their agents are adequately protected from the burden of payment of stamp duty. The clause suggested by MANSA in its circular of 29 April 1999 is the same as quoted above. "

The Club correspondents point out that transport operators are particularly vulnerable, as they (or their agents) are usually shown as the consignees on the shipping lines' bills of lading and therefore the releases given in India will be subject to the stamp tax. Members should therefore ensure that their own bills of lading, issued for consignments imported into India through Mumbai, JNPT or other ports in Maharashtra state bear the same clause.

Contributor: Andrew Trasler, TT Club - London