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JOURNAL OF THE INSTITUTE OF SEATRANSPORT

Preloading Surveys for Chinese Steel Exports

Container Shipment Cycles and Risks













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 According to the IMO, over 90% of the world's trade is carried by sea. Goods are often loaded into containers and then placed on liner vessels to be transported to their destination.

<u>Container Shipment Cycle in general is</u> as follows:-

- Outbound: Booking Empty container pick up and stuffing cargo Laden container to container yard Shipping instruction submission Export customs declaration Ship stowage planning & loading container onboard Prepaid charges & Bill of Lading issuance
- The sea passage
- Inbound: Arrival notice issuance
 Import customs declaration
 Collect charges and cargo release instruction Laden container pick up at discharge port Empty container returns to carrier & service is completed

1. Booking

 Shipper (ABC Exporting Company) contacts customer service of the carrier to place a booking.

- A booking means space reservation for the cargo on the intended vessel for a container shipment from A to B.
- The vital information in a booking includes Shipper's Contact, Consignee's Contact (XYZ Importing Company) and Cargo Nature/Description.
- Before accepting a booking the Carrier Customer Service Team has a list of considerations. They are equipment availability (empty container), cargo nature (container size, capacity and type), ship cargo space for that particular trade and compliance requirements of local authority, e.g. In Australia, each state has its own gross road limit.

Risk: Is it a genuine shipment? Is the shipper or consignee an old customer or a new customer? Does the carrier need to conduct the background check of the customer?

2. Empty container pick-up & stuffing cargo at shipper's premises

 After reviewing the booking, the carrier will send a Booking Acknowledgement to shipper as confirmation. The shipper should then appoint a trucker to pick up the empty container, instruct factory or warehouse to prepare stuffing cargo & prepare the relevant export documents.

- The trucking service can be arranged by the merchant (Merchant Haulage) or the carrier working on the instruction of the shipper or the consignee (Carrier Haulage).
- Different commodities (General Cargo, Reefer, Dangerous Goods or Awkward etc.) have their own stuffing handling. Proper container stuffing allows shipper to pack more cargo to be transported safely.

Risk: What is really inside the container? Has the shipper declared all the DG goods (non-declared)? Is the cargo weight mis-declared?

3 Return laden container to carrier

- The stuffed container is returned to Container Yard (CY) before CY cut off time.
- CY (container terminal / depot / rail terminal / barge terminal / an inland city etc.) is a facility inside or outside the container terminal which accepts laden export container from shippers and laden import containers for delivery to consignees.

Risk: Cargo missing, shortage or not same cargo (Examples: Wooden handles turned out to be fireworks / Cargo should be cigarettes, but became resins inside cartons / Laden box became empty box / Shortage of cargo more than 2/3)

4. Shipping Instruction (SI) submission

- Shipper has to provide SI before the SI cut off time.
- Why does carrier need specific SI cut off time? Carrier needs sufficient time to prepare the document for export customs declaration and mandatory <u>Advance Manifesting regulations</u> as applicable.

Besides declaration to outbound customs, some importing countries require carriers to submit the advance manifest at least 24 hours prior to cargo loading onto vessels calling to the designated countries. The destination government will use the advance manifest to prescreen cargo details for national security reasons prior to the cargo being loaded onboard vessels destined to that country.

• SI provided by the shipper after stuffing the cargo helps the carrier know how the <u>Bill of</u> Lading (B/L) should be prepared.

 The data on SI will be used to construct a database showing all cargoes on the vessel. Then a document called "Manifest" can be created for the use of customs etc.

> The Bill of Lading (B/L) is an important and official legal document used in international trade which represents ownership of cargo, contract of transport of cargo between the shipper and the carrier and a negotiable document to receive cargo. The buyer or consignee can use it to claim the cargo in the discharging port. Nowadays a Sea Waybill in electronic form may be used as a substitute for the B/L to simplify the procedure in delivering the cargo at destination.

5. Export customs declaration

- Shipper, as an exporter, has to arrange customs clearance which will indicate that customs duties have been paid and shipment approved by local authority.
- At the same time the Carrier has to prepare a manifest, i.e. a detailed summary of all cargoes in a vessel and also for trade statistics.
- Vessel master does not carry the manifest onboard except for those DG, reefers and/or special cargoes, i.e. for port inspection or emergency handling.

6. Ship stowage planning & loading container on board

- Ship Operator (Carrier), based on cargo information obtained from shippers, has to prepare a ship stowage plan and send it to the terminal usually via EDI prior to vessel's arrival.
- Terminal operator loads the cargo on the vessel based on the ship operator's instruction.
- Planning arrangements shall take into account ship stability, cargo safety and so on. For examples, the proper segregation of DG, hot cargoes to be easily accessible (train cargo, first to discharge cargo.....).

7. Prepaid charge invoice issuance, settlement and B/L issuance

 B/L can be released if payment is settled, cargo is loaded and vessel departed and the relevant export documents are submitted. The payment term is either "prepaid" at loading port or "collect" at discharging port.

At this stage, the vessel master (captain) shall follow below procedures to ensure a safe voyage.

Voyage from A to B (before departure)

- Observe the sailing instruction.

 (The sailing instruction prepared by the charterer or the operator will list the ship's schedule, ports of call, agency information, cargo stowage contact information, ETA reporting requirements etc.)
- The vessel is properly manned (Minimum Manning Certificate).
- Navigational equipment & engines are in good order.
- Charts & publications are corrected up-to-date for the voyage.
- Passage Plan is well prepared and it takes into account weather conditions, surface currents, ship's safe route, ship stabilities, adequate UKC (underkeel clearance) at sea & in port, pirates etc.
- The bunkers onboard are sufficient to reach destination and ensure bunker segregation is done to avoid emulsification.
- Ensure adequate water / food / stores / medicines / spare parts (critical equipment) onboard.
- Customs / immigration etc clearance is done.
- <u>Vessel and cargo</u> are properly secured for the voyage.

- Shipboard search for stowaways
 / drugs / suspicious items has
 been carried out.
- Anti-pirate measures are in place if there is a chance to enter pirate active area.

To save cost and protect the environment, the carrier shall take measures to be fuel efficient.

- Procurement of bunker with low cost - supplier selection & terms negotiation.
- Replenishment of bunker at most cost efficient ports - decision model to cut cargo and/or empty repositioning.
- Allow buffer time on sea passage for maintaining the most economic speed and plan for slow steaming.
- Select optimal route for transocean sailing or coastal and taking advantage of currents.
- Pursue minimum ballast through proper stowage planning.
- Direct berthing and departure as soon as possible - more sea time to run at economic speed.
- Proper engine maintenance and hull/propeller polishing to avoid hull/propeller roughness.
- Incentive to key personnel onboard.

En route or before arrival

- Passage plan and charter party are observed and safe navigation all the time.
- Batten down if expecting bad weather.
- Take tanks sounding daily (especially the cargo hold bilge well).
- Carry out the deck and engine room maintenance (avoid unsafe practices).
- Carry out drills and exercises, i.e. safety and security trainings – fire drill, boat drill, man overboard exercise, bomb threat drill, oil spill drill etc.
- Vessel should have an Emergency Organization Chart in which crew duties and muster locations are listed for handling the emergency.
- Check reefer temp, cargo condition and cargo/containers lashings daily (OOG/ Awkward Cargo, etc).
- Exchange/treatment of the ballast water in time (to avoid <u>Invasive</u> <u>Species</u> immigrating to other areas).
- Search for <u>Asian Gypsy Moths /</u> Beetles / Stink Bugs.

- Change fuel before entering the SECA.
- Keep safe distance from typhoon or severe low pressure in case of need to change destination.
- Update ETA periodically (4, 2, 1 days & anytime that the ETA is changed).
- Changing route due to rendering assistance at sea – master's obligation.

Note: Bulker/Tanker cargo holds cleaning to commence.

Arriving Port

- Ensure navigation equipment and engines are in good order.
- Ensure vessel is ready for berthing or anchoring.
- Ensure pilot embarkation ladder is in good order.
- Follow the local regulations such as <u>slow down to avoid whales</u> and not to pass ships alongside in high speed etc.
- Documents for port formalities ready for customs/immigration/ USDA.
- Vessel is well prepared for port state control inspection.
- Crew ready for berthing and cargo operation.

- Safe navigation all the time to ensure proper bridge management.
- Avoid water pollution, oil pollution and noise pollution and ensure garbage segregation is done.

Note: Bulker/Tanker – Cargo holds shall be ready for inspection.

Cargo Operations

- Ensure proper cargo stowage via central planner, terminal <local planner> and ship.
- Achieve minimum ballast.
- Achieve optimum trim.
- Avoid long crane (too many boxes in one bay).
- Ensure correct cargo segregation (DG etc.) so as to avoid rehandling.
- Ensure DG documents are in place.
- Ensure reefers are checked and in good order.
- Keep cargo working area in good order (no grease) and clean.
- Physically check lashings for OOG (yacht) / flatrack cargo etc.

• Ensure cargo lashings are properly done before sailing.

<u>Risk In Port</u> - Vessel arrested (Liability Issue)

- Cargo damage/shortage –
 arrested by cargo interest
- Port facilities damage arrested by port authority
- After a collision (slight contact etc.) – arrested by opponent ship owner
- Alleged collision/oil pollution

 arrested by opponent ship owner/port authority
- Monetary dispute arrested by bank/charterer etc.
- Bunker dispute arrested by bunker supplier
- Others

----End of safe voyage----

8. Arrival Notice issuance

- The carrier sends arrival notice to the consignee advising of goods being imported prior to vessel arrival.
- Consignee shall then prepare the relevant documents for customs clearance, appoint trucker to pick up the laden container and get ready to un-stuff it at factory or warehouse etc.

9. Import customs declaration

- Carrier has to submit an import cargo manifest to customs.
- Consignee has to prepare customs declaration documents and submit to customs.
- The customs clearance to approve the shipment for import is granted to consignee if all applicable customs duties have been paid (usually via the customs broker).
- Customs will also need data to compile import trade statistics.

10. Collect charges invoice issuance, settlement & cargo release instruction

- In order to meet the import cargo release requirements, the consignee has to prepare a properly endorsed Original Bill of Lading for exchange of Delivery Order (Import FCL Release Order etc). Again for Sea Waybill issuance, the cargo delivery procedure is eased at destination.
- Pay all collect charges in full and ensure customs clearance has been granted by local authority.

11. Laden container pick-up at discharging port

- Terminal will rely on the instruction of the carrier to release the container to the consignee.
- Consignee has to appoint trucker to pick up the container (Merchant Haulage) or ask the carrier to perform haulage for them (Carrier Haulage).

Detention charge will be incurred if a customer does not return the emptied container to carrier's facility within the free container rental time allowed.

Demurrage charge will be incurred if a customer does not pick up the container from the port/terminal's container yard within the free storage time allowed.

12. Empty container return at destination & shipment done, i.e. service fulfillment

Once the consignee, XYZ Importing Company, has settled the outstanding charges, received all the goods and returned the empty container to the carrier, then this shipment cycle is completed.

---End of the Container Shipment Cycle ---

However, more Risks that may be encountered such as:

- Cargo pilferage onboard, at terminal and/or during the inland transportation
- Mass destruction weapons placed inside the box
- Stowaways/Refugees turn out as terrorists

(Captain L.C. Chan: Risk Management & Loss Prevention Consultant of CM Houlder Insurance Brokers Ltd.)

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This speech was given by Honorary President Dr. Helmut Sohmen at the Institute of Seatransport, 6th Asia Pacific Seatransport Conference, Hong Kong, 6-7 October 1997. The Editors consider Dr. Sohmen's comments on challenges in shipping to be equally relevant almost two decades later. Ed.

"Challenges in Shipping" was chosen as the title of this Conference. I have subtitled my comments with: "So What Else is New?" In one way or another, the problems remain essentially the same, just the emphasis and the priorities change over time.

I have now been in shipping for twenty-seven years, but in all that period have really only witnessed six good years, namely 1970-74, 1991, and 1996-97. As a consequence the greatest challenge for me has been the decision whether to stay in shipping at all, given the poor returns on investment compared to other industries. Other shipping principals, in the Far East as well as elsewhere, have decided to venture into new fields. Those that went into real estate have certainly done much better than we shipping folks.

A ship owner friend of mine makes his best profits in manufacturing porcelain; some of my family's investments have performed better in chips rather than ships, and with much less managerial input. But of course World-Wide is not going to change its essential commitment to shipping - - with VLCC rates doing so nicely just now, that would be really stupid.

Let me just run down a few other challenges, even at the risk of duplicating other people's comments.

We continue to be challenged by the physical environment in which our ships trade. The sea has always been, and will continue to be, a treacherous element, demanding its toll in lives of seafarers and in loss of assets.

Collectively we should be honest enough to admit that we could have done more in recent times, with the help of technological advances, to reduce the number of incidents that have given shipping a bad name. In this connection it is not much use allocating blame to one party or the other, or relying on particular sectors to polish our image again: the whole industry and all the players in it have to set the tone, not just classification societies, IMO, or flag administrations.

Speaking of regulators, they are of course becoming a more prominent challenge to shipping interests in our day and age. Whether one calls it the effect of globalization, or of better communications technology, or of more efficient data collection: whatever the cause, there is

no doubt in my mind that bureaucracy is on the rise, and that paper-shuffling is to a certain extent replacing on-the-spot initiative and a stronger sense of individual responsibility. "Going by the book" in the world of the ISM Code actually means "going by the library", and compliance often ends up in a more pronounced motivation to pass the buck. Of course, criticising ISO 9002 or the ISM Code, or other new rules and standards, is a bit like wetting one's bed.

However, believe me, whenever the critical distinction between governance or control of an activity, and its actual management, gets blurred or starts to overlap, we are going to ultimately see a reduction in performance. In our industry, that counts most on board the ships. I am already hearing the argument (or call it excuse) in our offices that when certain things are not done, or are overlooked, the huge amount of paperwork that has to be dealt with is to blame. In situations where quick decisions literally and often mean the difference between life and death, or less or more marine pollution, a growing habit to search in the manuals for solutions, or to refer the problem to the office, will not help.

At this point, people usually remind me of the good practices of the Pentagon, NASA, and the airlines. Fortunately I have run an airline myself at one point and know their operating practices quite well. Regrettably they also still have accidents.

Connected to what I just said, another challenge for shipping is the question of

manpower. Seafaring used to be a calling, at least for those who had a choice in the old days. And people learned on the job for many years, moving slowly up the ranks by proving themselves among their peers. In more recent times, we had excellent academies and technical institutes in many of the traditional maritime countries, which through their teaching provided the required theoretical knowledge. They also tended to foster respect for excellence.

Today, seafaring has lost most of its glamour. It is a job like any other, perhaps rather less attractive than working ashore. Long study or service periods are seen as boring or a waste of time by the impatient younger generation. Maritime academies are now often short of students and many teaching facilities have closed down, also in Hong Kong. Higher standards of living make prolonged absences from home and dirty manual work an unpleasant choice. Ship owners are forced to look for new pools of manpower from areas where education standards are by definition lower, and job commitments at best a temporary inconvenience.

I believe that education and training for seafarers, in all ranks, will be the most serious challenge we face in our industry in the coming few decades. The scissor effect of falling standards and of having to cope with ever more complex technology aboard ships will produce sharp pains for many. On the other hand, countries with large labour resources will find significant opportunities for the creation of new jobs by first and foremost tackling these educational needs.

Finally, let me talk about the challenges of the market. It is ever present, however sophisticated we get in our measuring devices for short-, medium-, and long-term trends, however complete the information flow from brokers, however detailed the statistical analyses. We will never be too accurate in forecasting supply and demand and relative prices, because at the end of the day, we are facing the biggest challenge: confronting human nature. We shipping people are by nature entrepreneurs, risk-takers, optimists, individuals with sizeable egos and short memories, yet strangely imbued with a prominent herd instinct. The fashion industry might provide a close analogy.

How about the following scenarios? Everybody of course makes mistakes, except perhaps we ourselves. The decisions we take are always correct for our own firms, and if they look wrong in retrospect, then it was the fault of other people's actions - - actions we could of course not predict. Over-tonnage situations or other market crises always come as a surprise. Significant corporate failures are hardly ever the result of false planning, more likely the fault of financiers who withdraw credit just when one needs it most, or of shipyards which have overbuilt capacity.

Ladies and Gentlemen, what we still need in shipping is perhaps a bit more self-discipline, and more rationality. That is the solution for a sustained better market over the longer term, for returns that fully reflect the risks we have to take, and ultimately for attracting the higher quality of manpower that we need. Other panaceas that are touted around, whether it is tonnage concentration, more professional shipmanagement, more intricate financing mechanisms, or an office full of business school graduates, are only band-aids but not cures.

Please keep in mind that the market is always stronger than any one of us. And that we are forever sitting in the same boat.

(Dr. Helmut Sohmen: Honorary President of Institute of Seatransport)



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前海是國家唯一批復建設社會主義法治示範區的區域,為切實貫徹落實習總書記的指示,中國政府積極推動前海經濟物流地區發展。國務院於2010年8月26日正式頒佈了《前海深港現代服務業合作區總體發展規劃》,明確表明:"根據前海的基礎條件和產業發展要求,積極發揮前海口岸聯通深港的優勢,沿前海灣形成特色鮮明、有機關聯的'三片一帶'佈局。"在"十二五"規劃綱要中,開發建設前海為一項重大戰略決策。前海被認為是轉變經濟發展方式、科學發展、兩地緊密合作的重要一環。前海將以市場化、創新及與國際接軌為中國經濟物流地區發展展開新的一頁。

現代物流業為前海其中一項主導產 業,前海地區擁有五大優勢:毗鄰香港的 區位優勢;突出的綜合交通優勢;創新的 體制機制優勢; 雄厚的產業基礎優勢以及 特殊的政策環境優勢。所以,前海地區將 打造亞太地區有重要影響的供應鏈管理 中心和航運衍生服務基地。前海地區毗 鄰港澳,包括廣州、深圳、澳門、珠海、 東莞及中山等主要城市,與毗鄰地區形成 了 1 小時交通及生活圈。從地理來看,前 海具有獨特區位優勢和重要戰略地位,集 結海、陸、空交通樞紐。區內緊接香港機 場、深圳機場、深圳西部客貨運港口群、 港深西部快速軋道、穗莞深城際線及地鐵 各支線(1號、5號、11號)。前海地區為 香港和珠江三角洲其他城市建立了重要 多聯式交通樞紐及貨物集散地。深圳前海 灣設立了保稅港區,保稅港區位於深圳西 部港區、珠江入海口東側、鏟灣路以南。

2008年10月18日,保稅港區經國務院批准設立,2009年年底正式封關運作。保稅港區規劃包括港口作業區(媽灣港區集裝箱碼頭5、6、7號泊位)0.456平方公裏和物流園區0.72平方公裏兩部分,以"物理圍網+電子圍網"方式進行監管。2013年底,保稅港區內已經落成了現代化倉庫7棟,建築面積約40萬平方米,其中保稅冷庫約1.2萬平方米。

前海地區將會發展為國際供應鏈管理中心,重點發展提供融資諮詢、融資擔保、結算、通關、資訊管理及相關增值服務的供應鏈管理企業。鼓勵區內企業承接採購、銷售等相關外包服務,搭建國際採購、國際配送和全球集拼分撥管理平臺。支持相關增值業務的綜合服務型企業及全面推廣電子商務交易提供物流。

前海積極發展港口航運配套服務。在 前海打浩港深國際航運服務平臺,為香港 航運經營者拓展國際航運服務提供便利。 支持發展航空交易市場,開展航材租賃、 航材交易、民用飛機融資和賃等多種創新 服務。積極引進航運業務管理中心、單證 管理中心、結算中心、航運仲介等在前海 設立機構,開展業務。推動航運航空金融 創新發展,支持組建航運產業基金、航運 金融和賃公司、航運保險機構,促進民用 飛機及航材金融租賃業務的發展。允許註 冊在前海,有離岸國際貿易需求、經營業 績和信用良好的企業在境內銀行先期開設 離岸專用賬戶或特殊賬戶。支持在前海服 務航空、航運的金融租賃公司進入銀行間 市場拆借資金和發行債券。

筆者於 2015 年 1 月親身考察前海地區。目前,前海地區正處於開發階段。中國政府積極吸引外資來到前海地區投放資源及資金。在不同的大型展覽館展示各類產業發展可能性。此外,前海地區與香港大專院校定期合作舉辦考察、講座及暑期實習,讓年青一代認識前海地區及為前海地區發展打穩將來基礎。2014 年度前海管理局各處室(司)共提出 26 個崗位,包括金融、法律、規劃、貿易、法律、中文等專業。首批大學生實習試點將與香港中文大學展開合作,2014 年 4 月,已有 24 名香港中文大學的學生報名。2014 年 5 月,首批香港大學生到前海實習,開啟了前海深港合作青年人才交流的重要一步。

(劉銳業先生:

香港專上學院、香港理工大學助理講師)

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ICSHK Column -

Preloading Surveys for Chinese Steel Exports

Ole Kraft

Chinese Steel Export Growth

2014 was a challenging year for most dry bulk owners. There was however one bright spot in the market. During the first 9 months of 2014 Chinese steel exports rose by more than 35 percent year on year to a level of 63.6 million metric tons. At the time of writing this article towards the end of 2014 we expect an annualized level of 85-90 million metric tons of steel exports from China. The steel exports consist of traditional exports to destinations such as South East Asia, USA and Europe as well as export growth to emerging markets such as Africa and Central and South America.

This export boom has mostly been to the benefit of owners of geared handy-size up to supra-max bulkers. Going forward the Chinese Steel exports may be affected negatively by a revised export rebate regime from China and growing protectionism worldwide as a response to the aggressive Chinese exports but by and large steel cargoes will remain an important option to consider for a dry bulk owner with a vessel open in China. So what are the steel products transported from China today?

Types of steels exported

In order to produce steel then iron is first produced in a blast furnace by melting down a charge of iron ore, coke and limestone. The iron is converted to steels and by means of continuous casting the molten steel is cast into ingots to be processed later or to semi-finished products such as steel slabs, blooms or billets. From these semi-finished products other sorts of steels are produced through a hot rolling process.

The steel slabs are rerolled into what is in the trade referred to as 'flat products' such as hot rolled coils and steel plates which are for example used as the raw material in manufacturing of cars, ships and domestic appliances.

The steel billets are used to produce the so called 'long products'. The billets are pierced or drawn into 'long products' such as reinforcement bars and wire rods. Reinforcement bars are used as a main element in construction in order to reinforce concrete. Wire rods, another semi-finished hot rolled product, is usually wound into coils with a weight of about 1-2 metric tons. The wire rods are then subject to further processing to be used in the manufacturing of a wide range of products such as nails, wire for fencing, closet hangers, bed springs etc. Besides the above types of steels a wide range of intermediate steel products will be transported from China for use in manufacturing or construction such as rails, pipes, and structural steels such as beams, channels and angles.

The hot rolled products are intermediate products and are destined for further manufacturing so these products are generally transported and stored in the open where the steel is exposed to the weather. The vessel owner will also come across steel products that have been further processed such as cold rolled coils and sheets and galvanized coils. These products are more sensitive and are generally stored in warehouses. The cold rolled and galvanized steel products are also packaged to provide protection from the elements.

Preloading survey as a preventative measure

Steel is by its nature a sensitive cargo. Steel rusts when in contact with the atmosphere. The process is worsened when in contact with moisture and any contact with salt water leads to aggressive rust formation and serious damage to the cargo. Nevertheless the hot rolled steel is mostly transported and stored in the open where it is exposed to the weather. Steel is also subject to mechanical damage during multiple handling processes from the steel works to the end user. In most cases, as is also the case for China, then a large part of the steel export is originally intended for domestic markets. Consequently the steel products are sometimes insufficiently packaged and are not prepared to be handled multiple times as an international ocean transport requires. The steel cargo may on arrival at the load port already have sustained handling damages or may be insufficiently packaged.

In contradiction to the above concerns the documentation requirements in terms of transport documents such as the bill of lading are very strict. As most steel is traded under letter of credits the shippers and traders will prefer to ship the cargo as 'clean' without comments or remarks in mate's receipts and bills of lading. In this respect it is important for the vessel owner to know the factual condition of the cargo.

The steel trades from China can be quite attractive for an owner, so the above concerns should not deter an owner from loading steel cargoes. If his vessel is in a good position in a Chinese steel load ports such as Shanghai or Tianjin the trade may allow him a premium. He may simply also appreciate the fact that he can position his vessel to more attractive areas in the Atlantic or South Asia with steel cargoes. Preventative measures are however absolutely necessary. As with any cargo, proper care, handling, stowage and documentation will protect the owner from damages and claims.

The best measure an owner can take when loading steels is to arrange a preloading survey. It doesn't matter whether the owner and his crew are experienced or not with loading of steels the preloading survey will in either case be of great value. The PANDI Club of the owner will recommend a suitable surveyor and will in the case of certain PANDI Clubs even participate in sharing the cost of the preloading survey. Experienced steel time-charter operators will generally speaking also have an interest in a preloading survey and may be ready as well to share the costs together with the owner.

The preloading survey will help the owner to clause his mate's receipts or bills of lading properly and is as such an excellent loss prevention measure.

The surveyor needs time to survey the cargo and should ideally be nominated well in advance of the arrival of the ship so that he has ample time to survey the cargo before loading starts. As a rule of thumb the surveyor should if at all possible be appointed min 3-4 days before vessel arrival.

The Preloading Surveyor's Duties

The Surveyor should inspect the steel cargoes for rust condition, handling damages and insufficient packing. He should take photographs with date and he should take notes of the cargo condition for his report. Upon inspection he should prepare descriptive and quantitative clauses of any damages/remarks to be inserted into Mate's receipts and bills of lading later. It is at this stage important that the shippers, charterers and the master of the vessel is informed of these remarks before the loading of the cargo starts as the charterer may want to reject cargo or the charterer may require the shipper to repackage some of the cargo. The shipper may also dispute the findings of the preloading surveyor and in such cases it is almost impossible to determine actual cargo condition if the cargo has been loaded already with other cargo loaded on top. All in all it may lead to unnecessary disputes if remarks are not presented in advance of loading.

A good surveyor will ensure that the remarks are factual, quantitative and well documented. He will also be on good terms with shippers and will on a routine basis have negotiated necessary remarks well in advance with shippers. Unquantified remarks of a general nature such as 'some'

will not be accepted by shippers and may lead to disputes with charterers. The regime for description of rust is also very specific and needs to be documented and followed.

It is also advisable that the surveyor does a pre-shipment survey of the vessel on owner's behalf on arrival of the vessel. He should establish a record of the cargo hold conditions and the sea and cargo worthiness of the ship. In order to avoid saltwater damage, the holds will have been washed down with fresh water and in order to avoid moisture damage the holds will be dry before loading. The surveyor can check for salt water contamination with a silver nitrate test both in the vessel hold and on the cargo (as the cargo may have arrived with barges or been exposed to salt while stored on the berth prior shipment).

The hatches have to be watertight in order to avoid saltwater ingress and damage to the steel cargo. The Surveyor can test the hatches with an ultrasonic test or hose test in order to demonstrate that hatches are watertight before loading of the steels commences.

Upon completion of loading the surveyor is expected to provide a preliminary report of cargo and vessel condition and stowage within 24 hours and a final report thereafter within a week. A timely report will be very useful in preparing for a smooth discharging operation.

In conclusion a preloading survey is a useful preventative measure when loading steel products in China. Steel cargoes are today an attractive option for a vessel open in China. The steel cargo requires special care, stowage and handling. The cargo is prone to rust and handling damages preshipment. Proper cargo condition remarks in mate's receipts and bills of lading based on a preloading survey is of major importance in order to protect the interests of the vessel owner. A good surveyor will protect the owner and will also help to ensure a smooth commercial operation with shippers and charterers.

(Mr. Ole Kraft: Chief Commercial Officer at GMT Shipping & Logistics Group, Hong Kong and FICS.)





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根據香港法律第 548 章《商船(本地船隻)條例》,每隻機動船舶停泊在香港水域內,必須領有牌照(licence),才能合法地使用該船,這些船隻稱為「本地船隻」;每年要驗船和續牌(商業船隻)。船隻必須在香港向海事處登記後,才可領取牌照,包括擁有權證明書(Certificate of Ownership)和船隻運作牌照(Operating Licence),當然還有保險証明。

如果你擁有一艘可行走世界各地的船舶,你可以把這艘船舶在香港註冊,註冊是根據香港法律第415章《商船(註冊)條例》辦理。註冊時,船名要待海事處批准才可使用,船舶的船噸位要由船級社丈量,並發出噸位證書等等。船隻的安全、設施及操作,均受國際海事組織(IMO)訂下的規條管制。所有IMO的規管,均已被納入為香港海事法律的一部分。若船舶在外地航行時,她就是浮動的香港領土,船長有責任維護這塊領土。該船隻在世界各

地航行時,必須同時遵守香港及當地的法律。若在公海發生事故,必須由註冊國(又稱船旗國)處理。

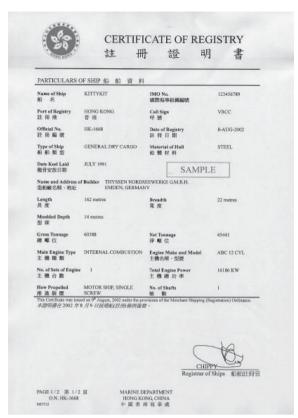
註冊船在港口時,必須顯示該船的國籍,即要懸掛註冊國的旗幟;而只辦理登記的本地船隻,並沒有這個要求,船東喜歡懸掛什麼旗幟,便可懸掛什麼旗幟,例如丹麥船東可在其擁有的香港登記的本地船隻,在香港港內懸掛丹麥旗。其次,註冊船必須懸掛她的註冊國旗幟,例如香港註冊的船舶,必須懸掛兩面旗幟,上方懸掛中國國旗,而下方懸掛香港區選;在日本東京註冊的船舶,就要懸掛日本國旗等等。



圖一:登記船擁有權證明書部份



圖二:登記船運作牌照部份



圖三:船舶註冊證明書

註冊船舶證書是沒有有效限期的,一經註冊後,只有取銷註冊時,才會暫停其註冊的法律地位。當恢復註冊時,船舶便會再次使用先前的註冊號碼,每年繳交噸位費。登記船隻的擁有權證明書,也是沒有有效限期的,一直使用至船隻轉換船東時為止。不過登記船隻的運作牌照是有有效限期的,最長只有12個月,每年要續牌(或驗船)。不續牌時,該船隻就不可使用。所以的執法部門,有權在海上截查船隻,進行查牌的工作。

(林傑船長: Master Mariner, M.I.S., MH.)



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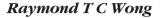
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We mentioned in our last issue the judgment of the "LONGCHAMP", Mitsui & Co. Ltd. & Others v. Beteiligungsgesellschaft LPG Tankerflotte MbH & Co. KG & Anor, handed down on 24th October 2014. We can report that at the annual general meeting of the British Association of Average Adjusters held in London on the 14th May 2015, Mr. Paul Rowland, in his Chairman's address, expressed his view on this case as follows.

"You will recall that the primary issue in the "Longchamp" (Mitsui and others v Beteiligungsgesellschaft LPG Tankerflotte, 2014) case was a claim for substituted expenses under Rule F of York-Antwerp Rules. The vessel was forcibly taken by pirates in the Gulf of Aden and there was an initial ransom demand of US\$6 million. Following a period of negotiation lasting roughly 50 days a ransom was agreed in the amount of US\$1.85 million. During the negotiation period, and during which the initial ransom demand was reduced by US\$4.15 million, certain expenses, including wages and maintenance of crew, continued to be incurred by ship interests and it was these costs that were claimed under Rule F of York-Antwerp Rules in substitution of a higher ransom cost which would otherwise have been admissible in general average. The Court agreed that the substituted expenses, i.e. wages of crew, etc., were properly recoverable under Rule F.

The decision is quite interesting as I believe that the instinct of many claims practitioners would be otherwise. To many practitioners it simply doesn't "feel right". This may be because the expense <u>claimed</u> i.e. wages, is delay-related. In most cases the position is reversed - the expense avoided is delay-related.

Take temporary repairs effected at a port of refuge. If by effecting temporary repairs instead of permanent repairs, a number of days GA detention costs are avoided, under most versions of York-Antwerp Rules one would make a comparison between the cost of temporary repairs effected and the detention expenses avoided. The detention expenses avoided will mostly be delay-related - wages of crew, bunkers, port charges, etc, which would otherwise be admissible under the numbered Rules of YAR. The position would be similar with excess cost of overtime.

So, in most cases, a cost has been incurred and delay-related expenses have been avoided. The "Longchamp" is the other way round; delay-related expenses are incurred and a Rule A expense has been avoided. In itself this is quite unusual. In fact, I've struggled to think of something else similar.

As you will appreciate the judgment outlines the reasoned view why such costs

are recoverable on a substituted expense basis but there is still one aspect that I find difficult to reconcile and this was not really touched upon to any great extent in the judgment. This is the apparent conflict between Rule C and Rule F of York-Antwerp Rules.

The current version of Rule C reads in part as follows:

"Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average......

Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever shall not be allowed as general average."

As you are fully aware, by reason of the Rule of Interpretation, the numbered Rules take precedence over the lettered Rules hence under certain specific circumstances, wages of crew, although a loss by delay, are specifically allowable under the numbered Rule. However, when a claim is not being made under the numbered Rules why should an allowance for a delay-related expense under Rule F overrule the delay exclusion under Rule C?

I am not the first Chairman to be troubled by this apparent conflict - it was an issue that was touched upon by Honorary Fellow John Wilson in his Chairman's address in 1988.

Whilst Rule F refers to any additional expense incurred in place of another expense which would have been allowable as general average, I struggle with the idea that the use of the word any, in itself, is enough to override the specific exclusion in Rule C. The only possible reason I can see for making the allowance (and I am not entirely convinced that the reason is particularly strong) is that in the case of "Longchamp" the York-Antwerp Rules that applied were the 1974 version. The relevant part of the 1974 Rules states "loss or damage sustained by the ship or cargo through delay whether on the voyage or subsequently such as demurrage and any indirect loss whatsoever such as loss of market shall not be admitted as general average". The difference between the 1974 version and the current version (or even 1994 for that matter) is that the 1974 version does not include the word 'expense'. Therefore an argument can be made that wages of crew are not 'loss or damage', but an expense. They are therefore not excluded. I can see no other reason why Rule F should override Rule C. If this is correct it would seem that the decision in the "Longchamp" may be of relatively limited effect and may only apply in circumstances should York-Antwerp Rules 1974 be applicable.

However, it still doesn't "feel" right."

We shall report on the outcome of the Cargo Interests' appeal to the Court of Appeal.

Examples of Substituted Expenses

- 1) Working overtime on repairs

 This will increase the cost of those repairs but reduce the period of detention in the port of average. The extra or excess cost of working overtime can be allowed as general average up to and in substitution for the wages and maintenance of crew and port charges that would have otherwise been incurred and allowed during the extra detention if repairs had been carried out in normal hours.
- 2) Dry-docking with cargo on board Dry-dock charges may be increased if the vessel dry-docks with cargo on board, but this extra cost can be allowed as general average up to and in substitution for the cost of discharging, storing and reloading the cargo, which would have otherwise been incurred and allowed.
- 3) Towage to destination A vessel may have lost her propeller, or sustained an engine breakdown, and if repairs were effected at a port of refuge the allowance in general average for port charges, crew wages, and where necessary discharging, storing and reloading cargo might be say \$200,000. If the extra cost of towage costs only \$100,000 then this will be allowed as general average in substitution for the greater \$200,000.

- 4) Forwarding cargo to destination

 Largely for the convenience
 of the cargo interests, cargo is
 sometimes forwarded from a port
 of refuge and the extra cost of
 such forwarding can be allowed
 as general average up to the
 cost of storing that cargo ashore
 in the port of refuge (assuming
 that such cargo needed to be
 discharged to enable repairs be
 effected at the port of refuge).
- 5) Temporary repairs - Rule 14 of the York-Antwerp Rules provides that "...Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as General Average without regard to saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in General Average if such repairs had not been effected there...". If permanent repairs to accidental damage at the port of refuge would involve a general average of say \$200,000 but temporary repairs can be effected at a cost of \$80,000 and reduce the period of detention in the port of refuge, the amount of \$80,000 can be allowed in general average up to and in substitution for the general average expenses avoided.

AAA Rules of Practice

At the annual general meeting of the British Association of Average Adjusters, the following probationary rules of practice were approved to become new rules.

B1 Basis of Adjustment

In all cases the adjuster shall:

- a) Give particulars in a prominent position in the adjustment of the clause or clauses contained in the charter party and/or bill of lading that relate to the adjustment of general average or, if no such clause or clauses exist, the law and practice obtaining at the place where the adventure ends.
- b) Set out the facts that give rise to the general average.
- c) Where the York-Antwerp Rules or similar apply, identify the lettered and/or numbered Rules that are relied upon in making the principal allowances in the adjustment.

A4 <u>Duty of adjusters in respect of cost of</u> repairs

 That in adjusting particular average on ship or general average which includes repairs, it is the duty of the adjuster to satisfy himself that such reasonable and usual precautions have been taken to keep down the cost of repairs as a prudent ship-owner would have taken if uninsured.

- 2) Where a claim for particular average arises and the Assured has elected to repair the vessel, the Assured is entitled to:
 - a) Recover the reasonable cost of repairs in terms of section 69(1) of the Marine Insurance Act 1906, irrespective of whether repairs are carried out before or after the expiry of the policy.
 - b) Defer repairs, subject to Class approval, to the first reasonable opportunity which is likely to be the next routine overhaul or dry-docking period. Any increase in the overall cost of repairs arising from deferment beyond the first reasonable opportunity will be for the account of the Assured.

Seminars

The Institute in conjunction with the HK Logistic Management Staff Association and C Y Tung International Centre for Maritime Studies, PolyU have been organizing a series of workshops on inter-

disciplinary marine practice covering various issues arising during the lifespan of the ship, from the decision to purchase to its final loss or scraping. The workshops are based on case studies format, guests being invited to share their experience on specific issues. The upcoming workshops will be as follows:

2nd July 2015 – Professional Services in Maritime Practice

6th August 2015 – Ship Employment, Chartering & Administration

3rd September 2015 – Ship Operations, Crewing & Technical Maintenance

Members are being notified separately on further details

Q&A

We had a collision case between our vessel and another vessel which ended up on a drop hands basis i.e. the apportionment of liabilities were in such manner that neither parties paid any claim to other party. However we in pursuing the matter through a legal firm incurred a considerable amount of legal fees and disbursements. Our P&I was covering 4/4th RDC.

In view of above could you please advise who in your opinion should bear the costs.

Thank you for your email. I am afraid the answer to your question can be quite complicated and based on the information contained in your email, it does not appear that the costs incurred in the collision proceedings would be borne by one party. Indeed, whilst the single liability settlement between the 2 colliding vessels is "0" (on "drop hands basis"), the settlement of the parties concerned in your vessel would not be as simple as it appears to be.

I presume that:

- (a) both vessels were to blame for the collision,
- (b) your vessel sustained damage and loss of earnings,
- (c) the RDC in the P&I cover on your vessel provides for "cross liability settlement" in the customary manner,
- (d) there was no question of limitation of liability arising in this case,
- (e) the insurance policies (both H&M and P&I) are subject to English law and practice.

You will appreciate that indeed to reach the settlement on a "drop hands" basis meaning that the single liability settlement amount is "0", the claim of your vessel was used to "set-off" against the claim of the opponent vessel. It would be unfair that owners' own claim for loss of

earnings and unrecovered policy deductible (and their H&M Underwriters' settled claim on policy), having used as a "set off", should be prejudiced. Therefore, it is recommended to show the RDC claim on the basis of cross-liabilities, thus preserving the rights of the Ship-owners (and their H&M Underwriters). Having ascertained the position under cross-liability settlement, the costs in collision (normally categorized between General Costs, Costs of Defence and Costs of Recovery) will be apportioned accordingly in the normal adjusting practice. The end result would likely be

that (a) the RDC claim on the P&I would not be "0" plus costs, (b) the Owners' bona fide claim (of the loss of earnings and any damages unrecovered from H&M Policy) would not founder.

(Mr. Raymond T C Wong: Average Adjuster)

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Law Column -

Court finds payment of charter hire is not a condition: *Astra* not followed

Michael Volikas / Fionna Gavin / Amanda Urwin

20.03.2015 | Shipping, Charterparties

Spar Shipping AS v. Grand China Logistics Holding (Group) Co. Ltd [2015] EWHC 718 (Comm)

In a decision handed down on 18 March 2015, a Commercial Court judge has declined to follow Flaux J's decision in *The Astra* and has concluded that payment of hire by the Charterers was not a condition of the charterparty. Mr Justice Popplewell reached his decision following a careful consideration of the authorities on this issue and, in particular, *The Astra* [2013] EWHC 865 (Comm).

The Court also considered issues concerning repudiatory breach, the validity of the charterparty guarantees and assessment of damages for repudiatory breach of charter. These issues are not discussed in this alert, but a more detailed article on the judgment will appear in our Spring 2015 Shipping E-Brief.

Brief background facts

By three charters dated 5 March 2010 on amended NYPE 1993 forms, three supramax bulk carriers were let on long term time charter to Grand China Shipping (Hong Kong) Co Ltd. The charters provided

for performance guarantees to be issued by the Defendant ("GCL") which is the parent company of the Charterers. By April 2011, the Charterers had fallen behind with their hire payments under the charters and, in September 2011, the vessels were withdrawn from service and the charters were terminated. The Owners claimed under the guarantees in respect of the loss of the balance of the charters.

The decision in The Astra

Mr Justice Flaux reviewed in detail the various previous cases which, over the last 100 years or so, have touched upon the question of whether a failure to pay hire amounts to a breach of condition as opposed to a breach of an innominate term (a breach of an innominate contractual term only entitles an innocent party to terminate the contract where the breach is sufficiently serious, whereas a breach of condition entitles the innocent party to terminate a contract regardless of the severity of the breach). Having reviewed the authorities, Mr Justice Flaux reached the conclusion that payment of hire is a condition of the contract and therefore that the failure to pay a single hire payment entitled the Owners to withdraw the vessel and claim loss of profit for the remaining charter period.

The Commercial Court decision

Mr Justice Popplewell also reached his conclusion following a detailed analysis of the authorities and, in particular, following a careful analysis of the principles set out in *The Astra*. Popplewell J considered and dismissed each of the reasons given by Flaux J in *The Astra* for finding that payment of hire was a condition of the contract. In summary:

- 1. Popplewell J disagreed with Flaux J that the right to terminate under the withdrawal clause for any failure to make punctual payment meant that any non-payment was sufficiently serious to justify termination and therefore that a failure to pay hire promptly was intended to be a condition. The withdrawal clause in this case provided only for a liberty to withdraw the vessel from service, in other words it did no more than give the Owners an option to cancel. Without express wording to that effect, the withdrawal clause did not make payment of hire a condition.
- 2. If there were no withdrawal clause in the charters and so no express right to terminate, payment of hire would not be treated as a condition of the charter. It could not have been intended that any breach of the hire payment obligation, no matter how serious or trivial, would have the same consequences and allow the Owners to terminate a long-term charter even for a trivial breach.

- In commercial contracts, the time 3. for payment is not generally "of the essence" i.e. a condition, unless the contract expressly says so. In a time charter context, there is no good reason to treat the payment of hire as a condition (unless the charter says so expressly) because an owner may exercise his contractual right to terminate the charter and put an end to future performance (and the future expense of operating the vessel for the benefit of the charterer). In Popplewell I's view, once an owner no longer has to provide a charterer with the services of the master and crew, then his interest in the prompt and punctual payment of hire disappears.
- 4. The need for commercial certainty did not mean that payment of charter hire should be treated as a condition. Commercial certainty can be achieved by the withdrawal clause which offers an option to cancel, without conferring on owners an unmerited right to damages (such as is conferred by a right to repudiate a contract for breach of a condition). The desirability of commercial certainty must be counterbalanced with the need not to impose liability for a trivial breach in undeserving cases.

Having gone through his careful and lengthy analysis, Popplewell J found himself unable to follow the decision of Flaux J in *The Astra* and concluded that payment of hire by the Charterers under the three charters was not a condition.

Comment

It may come as little surprise that the decision in *The Astra* has not been followed and should not be treated as settling the law as to whether a payment of hire under a charterparty is a condition, any breach of which would justify a claim for repudiatory breach. Whether there is an appeal on this issue remains to be seen. However, for now, at least, this decision is likely to go some way to restoring the previously accepted view that the obligation to pay hire under a time charter as it falls due is not a condition such that, if an owner wants to recover its future losses following a termination, it must seek to bring the charter to an end for repudiatory breach of contract and, in doing so, demonstrate that charterers' defaults are sufficiently serious as to deprive the owners of substantially the whole benefit of the charter.

(Mr. Michael Volikas, Managing Partner of Shipping

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