EU and China sign landmark customs pact
– See pages 10-11
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Peter Quantrill’s Column

BIFAlink is the official magazine of the British International Freight Association
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Subscription rates: UK £38
Rest of the World £50

A spate of welcome developments

The last month has seen a number of significant developments that are likely to impact on the activities of BIFA Members.

In the ocean freight environment, we saw the abandonment of the planned P3 Alliance as a result of refusal by the Chinese Ministry of Commerce to give approval to the proposed vessel sharing agreement, with no right of appeal. Despite this development, BIFA Members will still be eager to hear how the three lines involved now plan to step up to the plate and deliver on their promises of improved services, enhanced operations, greater reliability and on-time performance.

Meanwhile, across the Atlantic, we have seen a further concession by the US on the plan for 100% container scanning, which was hardly surprising. As we have said repeatedly, the legislators have consistently under-estimated the enormity of the task in hand and the limited capacity of contemporary screening technology to penetrate dense cargo or large quantities of cargo in shipping containers.

Meanwhile, in the air freight sector, we applaud the action taken by a broad group of associations representing airfreight forwarding companies in calling on the US federal government to solicit input from small and medium-sized forwarders before expanding the Air Cargo Advanced Screening (ACAS) programme. BIFA shares the concerns expressed by the associations that the ACAS pilot programme has involved only a handful of forwarders, mostly larger operations that already have integrated supply chains and an overseas infrastructure. We agree with their call for more work to be done to determine how the ACAS programme would be applied to small and medium-sized forwarders before they are brought under its requirements.

Once again, this issue of BIFAlink is full of information that will be of use as you go about your day-to-day business.

China features strongly, and in the article on pages 10-11 we assess the benefits that may accrue from the agreement reached between the EU and China to mutually recognise each other’s trusted trader programmes. In the same article we review two other important initiatives that were also signed recently. One is for the development of a new Strategic Framework for Customs Cooperation between the EU and China. The second, for a new EU-China Action Plan on Intellectual Property Rights (IPR).

We have also had many enquiries from Members concerned about the potential impact on their business of a new edict from the Chinese Ministry of Transport requiring forwarders to register as an NVO with the Shanghai Shipping Exchange (SSE) for NVO movements from China. For some clarity on this issue, please read the article on page 12, which highlights some legal advice received by BIFA, which we are using when giving our opinion on the situation and the requirements.

Closer to home, in the article on page 6, we report on the actions taken by BIFA to oppose French government proposals to compel all foreign trucks to use only the country’s toll motorways, rather than the corresponding A-roads.

On page 7, we provide comprehensive information on the tighter rules governing the shipment of waste materials following the European Commission’s adoption of a regulation that lays down requirements for all waste shipments within the EU. And finally, on page 14, we reproduce an interesting article by the TT Club on the subject of container theft.

Many of the items and issues mentioned above reflect the fact that forwarders want a level playing field on which to conduct their business and I am pleased to report that the BIFA secretariat has been very busy of late in campaigning with the relevant authorities to ensure that this is achieved.
China blocks P3 alliance

ON THE OCEAN
Following the decision by the Chinese Ministry of Commerce (MOFCOM) not to approve the planned large-scale alliance between Maersk Line, CMA CGM, and MSC, the three lines subsequently agreed to stop the preparatory work on the P3 Network, which means the alliance as initially planned will not come into existence.

The International Maritime Organization’s maritime safety committee (MSC) has approved draft amendments to the Safety of Life at Sea convention chapter VI requiring mandatory verification of the gross mass of containers. The amendments will be put forward for adoption at the next MSC session – MSC 94 – in November and, if approved, will enter into force in July 2016.

IN THE AIR
The Airforwarders Association (AIFA), the National Customs Brokers and Forwarders Association of America (NCBF AA), The International Air Cargo Association (TIACA) and the Express Delivery and Logistics Association (XLA) have written to the US government urging it to consult with small and medium-sized forwarders before expanding the Air Cargo Advanced Screening (ACAS) security programme. Cathay Pacific Airways now operates 46% of its international cargo shipments using e-airwaybills, according to IATA’s latest e-AWB report. This is well ahead of Emirates, which is in second place among the world’s major carriers at 28%.

PORTSIDE
Dover Harbour Board has submitted a Harbour Revision Order to the UK government which would improve its fund raising abilities and so help it to deliver on its commitment to the regeneration of both port and town. The submission represents a clear sign of the board’s commitment to deliver its flagship Dover Western Docks Revival project.

Westbound Shipping Services is the first BIFA Member to operate from London Gateway. Director Ryan Clark commented that he sees London Gateway as a large part of the future.

OVERLAND
Political agreement has been reached by the EU’s transport, telecommunications and energy council on the weights and dimensions of commercial vehicles. The pact paves the way for safer, more environmentally friendly trucks on Europe’s roads by encouraging the use of alternative fuel vehicles and permitting a re-designed truck cabin.

According to the latest statistics published by the UK’s Department for Transport, some 2.53 million goods vehicles travelled from the UK to mainland Europe in the four quarters ending in June 2013. This was 5% higher than in the four quarters ending June 2012, but still 13% lower than the peak in 2007.

Freight trains carrying business supplies into major UK cities may start rolling for the first time in 20 years – delivering faster services to businesses. This follows a trial into Euston Station by TNT Express, run in conjunction with Colas Rail, Network Rail and Transport for London. The trial saw a specially commissioned train carrying tonnes of supplies from leading UK retailers/manufacturers Staples and Bristan.

IN BUSINESS
BIFA was pleased to note that some of our Members were finalists in the recent 2014 Everywoman Awards. BIFA supports Everywoman as an organisation that champions the advancement of women in business. The government is now open for bids on a £100 million fund intended for the support of domestic supply chains and bringing manufacturing back to the UK. The funding from the Advanced Manufacturing Supply Chain Initiative (AMSCI) will provide research and development support, skills training and investment capital, and will encourage major suppliers to reshore in the UK.

DG MOVE (Unit D1 – Maritime Transport and Logistics) has issued a call for tenders on e-Freight entitled “e-Freight implementing measures — support measures to improve the efficiency of information exchange in multimodal freight transport”. The contract will be for the provision of technical and operational support for the identification and implementation of measures that will improve the efficiency of information exchange in multimodal freight transport.

TRADING MATTERS
Business conditions in China are growing tougher and “a new sober reality is developing”, according to the European Union Chamber of Commerce in China’s Business Confidence Survey for 2014. Observers believe the results of the survey, covering more than 550 European firms, will provide food for thought for the many European freight forwarders who have enjoyed strong business growth in China through accompanying their shipper customers to the Asian economic powerhouse, which has compensated for stagnant markets elsewhere throughout much of the past decade.

A mutual recognition agreement signed between the EU and China, which commits each to recognising each other’s certified safe traders, should allow these companies to benefit from faster controls, lower costs, simplified procedures and greater predictability in their customs clearance activities.
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FOR YOUR CUSTOMERS
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- Job Booking Facility
- Purchase Order Creation & Tracking
- Warehouse Stock Management
- KPI Reporting

simplifying the supply chain

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EU backs new truck design

There has been considerable debate regarding truck sizes and design. In fact it is difficult to keep up with the arguments about what size is currently permissible and where trials are being held on longer trucks.

One area about which there does seem to be greater agreement is that truck design must change to make vehicles safer and more aerodynamic. The transport committee of the European Parliament has voted on and accepted a draft report supporting such changes. The draft rules allow for longer trucks, and lower and more rounded truck cabins. Aerodynamic flaps up to 50 cm wide would be allowed at the rear of the truck to reduce drag and emissions.

To encourage the use of less polluting motors, many of which are heavier and less commercially attractive than conventional engines, trucks and buses with low carbon alternatives can exceed the current maximum weight by up to one tonne, depending on the weight of the alternative system.

Smart tachographs agreed by European Parliament

The specifications for a new generation of digital tachographs have been endorsed by the European Parliament. The new smart tachographs are intended to improve the enforcement of current legislation such as drivers’ hours. Under the revised rules, smart tachographs will be fitted to new vehicles within three years once the Commission has laid out the technical specifications. Fifteen years after that they will have to be retrofitted to all vehicles used for professional transport.

The smart tachographs will be able to automatically record speed and distance, start and final destination. They will also allow the downloading and remote checking, via wireless data transmission, to control authorities for easier detection of misuse or manipulation.

It is envisaged that the use of smart meters will reduce the need for roadside checks, thus saving regulators money and reducing delays to hauliers.

So who is joining BIFA?

You can find details of new Member applications listed on the BIFA website, www.bifa.org. Simply select the tab JOIN BIFA and you will see a separate page titled NEW MEMBERS.

The new Member applications are published 14 days prior to the appropriate BIFA regional representative visiting the applicant for the final audit and welcome visit.

If you wish to bring any information to our attention regarding any application, an e-mail should be sent to Robert Keen with a copy to Peter Quantrill. Contact details are on the BIFA website. BIFA has a membership group which can evaluate any contentious applications.

We also list on the website those companies that have ceased membership of BIFA.

If you sign up for the BIFA e-newsletter it will make checking who has applied for membership really easy.

It is sent to subscribers every two weeks and there will be a prompt that will enable a one-click link to the appropriate page on the BIFA website.

You can register to receive the BIFA e-newsletter by a simple sign-up process on the front page at www.bifa.org. You can tailor the type of news that we feed to you.

If you have any questions concerning the website, our resident expert, Spencer Stevenson (s.stevenson@bifa.org), will be pleased to help you.

Is the French Ecotaxe dead?

The French government has put forward proposals that could force foreign trucks to take to the country’s toll motorways. Foreign operated trucks would be prohibited from using the corresponding A-roads where these exist. This proposal is viewed as being an alternative to the Ecotaxe scheme which has been postponed due to increasing opposition and the technical difficulties of implementing the systems.

BIFA contacted CLECAT (which represents BIFA’s interests in Brussels) because this proposal would discriminate against all non-French hauliers – and would therefore be illegal under EU law.

CLECAT replied that the Traffic Commissioner has issued a strongly worded statement advising the French that it would be illegal to introduce such a “discriminatory system”. The French government has publicly disagreed with this statement saying that forcing foreign truckers to use the motorway system and collecting tolls from them is a reasonable way to make them contribute to the upkeep of the French road system.

The French appear to have an aptitude for introducing transport-related legislation that is never actually implemented. BIFA will monitor the situation and will keep Members updated on developments.

Don’t keep it to yourself

Remember to circulate BIFAlink to your colleagues. Not your copy of BIFAlink? – register for your own copy by contacting Jane Robinson in membership (j.robinson@bifa.org).

BIFAlink is free to BIFA member companies or available by subscription to non-members.
Commission toughens rules on waste shipments

BIFA receives phone calls on a regular basis from Members who have run into difficulties with an export consignment of waste material.

The most frequent problems are twofold. Either the consignment has been found to contain items that were not declared, such as hospital waste including human materials, or the consignee has not taken delivery of the goods, often because their scrap values have fallen making their processing uneconomic.

The freight forwarder is often in a difficult position because the shipper is no longer traceable and the carrier is looking to it to both resolve the issues and pay the outstanding charges. This is an EU-wide problem and the Commission is taking steps to strengthen controls as a step towards at least reducing the incidence of these problems.

On the 6 May 2014, the Council adopted a regulation amending regulation 1013/2006 on shipments of waste within the EU. The original regulation contained only a general description of inspection requirements, which resulted in so-called “port hopping”, where exporters of illegal waste choose to send their waste through countries with less stringent controls.

The new regulation contains strengthened measures to ensure a more uniform implementation of the waste shipment regulation throughout the EU. By 1 January 2017, member states will have to establish risk-based inspection plans, the geographical area covered by the inspection plans, and the tasks assigned to each authority involved in inspections.

It is a requirement of the amended legislation that the inspection plans are regularly reviewed and updated at least every three years.

Regulators are required to make information regarding the outcomes available to the public on an annual basis. The Commission is required to review the regulation and its effectiveness by 2020.

Save the date!

Friday 27 February 2015 is the date for the Liverpool and North West region annual dinner. The lively event will be hosted by John Martin, renowned comedy writer and performer (www.johnmartincomedy.co.uk).

Tickets for the event are on sale now at £34.50 per person – contact BIFA Regional Representative Paul Young (youngyes@aol.com) for a booking form. Guests will enjoy a delicious three-course dinner followed by coffee and entertainment from the host, John Martin, and the Ellesmere Port Sea Cadets Corps of Drums.

This event has an impressive reputation for its fundraising achievements. The 2014 dinner raised in excess of £6,500 through an auction and raffle. The 2015 event will once again be supporting Zoe’s Place, a hospice for children with life-shortening illnesses and their families; Help for Heroes, a charity which supports those in our armed forces who have been injured whilst serving overseas; and the Ellesmere Port Sea Cadets.

Donations of auction lots and raffle prizes are welcomed.

Thanks go to CSAV, GenCo Logistics Limited, MCP plc and Peel Ports Group for their continued support of this event.

The Limits of Liability for Carriers

<table>
<thead>
<tr>
<th>Mode of Transport</th>
<th>Limit of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>By sea – Hague Visby rules (2 SDR):</td>
<td>£1.81 per kg, £604.85 per package</td>
</tr>
<tr>
<td>By road – CMR (8.33 SDR):</td>
<td>£7.56 per kg</td>
</tr>
<tr>
<td>By air – Montreal Convention (19 SDR):</td>
<td>£17.24 per kg</td>
</tr>
<tr>
<td>By air – Warsaw Convention (17 SDR):</td>
<td>£15.42 per kg</td>
</tr>
</tbody>
</table>

(The SDR rate on 17 June 2014, according to the IMF website, was 0.907268)
Know your BIFA Standard Trading Conditions

Another very important clause is dealt with this month. Clause 21 deals with getting paid and is backed by a High Court precedent from 1998. The ‘set-off’ issue was again considered in the Court of Appeal in 2011 (Rohlig v Rock Unique) and upheld.

Clause 21(A)
The customer shall pay to the company in cash, or as otherwise agreed, all sums when due immediately without reduction or defermnt on account of any claim, counterclaim or set-off.

Comment on Clause 21(A)
In February 1998, the text of this clause (when it was part of the BIFA 1989 STCs) was held in the Court of Appeal to be reasonable with regard to the Unfair Contract Terms Act 1977 in the case of Schenkers Ltd v Overland Shoes Ltd [1998], 1 Lloyd’s Rep 498. In that case (which concerned unpaid charges mainly other than freight) there was no significant inequality of bargaining power between the parties, a factor always taken into account with regard to reasonableness. If there had been a marked inequality of bargaining power there might have been a different outcome but it is certain that this clause has been thoroughly tested in the English courts and upheld.

A set-off is a setting of cross-claims against each other to produce a balance. A counterclaim is any claim that could be the subject of an independent action that is made against a claimant by a defendant. A counterclaim is called a ‘Part 20 Claim’ in the Civil Procedure Rules.

It frequently happens that a customer will try to obtain an arbitrary settlement of a claim or counterclaim by making a set-off, by refusing to pay charges, by making a deduction in payment, or by deferring payment. The purpose of Clause 21(A) is to overcome such action on the part of the customer so that the BIFA Member is paid in full when payment is due and the claim or counterclaim is dealt with as a separate matter.

As explained below, under English common law, a carrier is in a privileged position regarding the payment of earned freight charges which cannot be deducted or set-off in respect of a claim or counterclaim. Clause 21(A) extends this principle, whether the BIFA Member acts as an agent or a principal, to all charges and outlays including ancillary freight forwarding charges, customs duties, etc.

The general rule at English common law is that when there is defective performance of a contract, a deduction in payment of the contract price may be made by way of abatement – Mondel v Steel, All ER Reprints [1835-1842] 511.

However, the common law regarding the payment of freight charges is the exception to this general rule and in that respect the carrier is in a privileged position. This common law rule was reported to be well established in 19th century shipping cases and was affirmed in respect of sea freight in the relatively recent cases of Henriksens Rederi A/S v PHZ Rolimpex, All ER [1973] 3 58, and Aries Tanker Corporation v Total Transport Ltd, All ER [1977] 1 398.

This common law rule regarding freight charges was extended to road carriage under the CMR Convention in the important case of RH&D International Ltd v IAS Animal Air Services Ltd, All ER [1984] 2 203. The rule was further extended to road carriage within the UK by the case United Carriers Ltd v Heritage Food Group (UK) Ltd, Lloyd’s Rep [1995] 2 269 in which the judge reviewed the history and the application of the rule.

The common law rule regarding freight charges being payable without any set-off, claim or counterclaim was yet again upheld in the case Britannia Distribution Ltd v Factor Pace Ltd [1998] 2 Lloyd’s Rep 420, where it was stated that this rule applies to the carriage of goods by sea, land or air and that the rule cannot be circumvented unless there was a total failure of consideration – that is to say that the carriage was not performed.

Thus at English common law there is no right to reduction or defermnt of freight charges on account of a claim or counterclaim, but to go further than the common law rule regarding unpaid freight charges and to cover all charges and outlays, the BIFA STC – especially Clause 21 (A) – must be incorporated in the contract with the customer. Another factor to consider in respect of Clause 21(A) is that at English common law, for a counterclaim or set-off to operate as a valid defence, it must be so inseparably connected with the claim that it would be unjust to litigate one without the other (claim and counterclaim) – now referred to in the courts as a transaction counterclaim or transaction set-off, in contrast to an independent counterclaim or independent set-off which must be actioned separately from the claim. The cases Dole Dried Fruit & Nut Co v Trusten Kenwood Ltd, Lloyd’s Law Rep [1990] 2 309, Glencore Grain v Argo Trading [1998] 2 Lloyd’s Rep 410 and Benford Ltd and Another v Lopescan SL [2004] 2 Lloyd’s Rep 618 refer. Thus Clause 21 (A) prevents even a transaction counterclaim or a transaction set-off from being a valid defence to a claim for unpaid charges, etc, made by the BIFA Member (unless the parties agree otherwise).

In respect of the sale of goods, Clause 21(A) may be overridden by S.53 (1)(a) of the Sale of Goods Act 1979, by which a buyer may set up against the seller a breach of warranty in diminution or extinction of the price.

We are grateful to BIFA Legal and Insurance Policy Group Member Derek O’Brien who wrote the original publication Know your Trading Conditions, which is part of the STC training course and on which this series of articles is based.
Extension to US 100% container scanning deadline

A second two-year extension has been agreed to the deadline for the compulsory scanning of containers entering the US. And there are calls for the repeal of legislation requiring 100% scanning.

BIFA Members may recall legislation mandating that all containers being shipped to the US had to be scanned before loading at the port of origin. The legislation was due to be enforced from July 2012 but a two-year extension was introduced in 2012 putting the date back to 2014.

The US Congress has agreed another two-year extension of the deadline for implementation of 100% scanning of US-bound maritime cargo containers. It is argued that the current risk-based strategy employed by the Department of Homeland Security is the right approach to enhance global supply chain security.

Lobby group
We further understand that an association of 29 organisations representing US manufacturers, farmers, wholesalers, retailers, distributors, and transportation and logistics providers is writing to suggest that Congress needs to repeal the mandate and focus on practical supply chain security solutions instead of going through this exercise every two years. They urge Congress to repeal the statutory 100% container scanning requirement. They say the requirement has always been, and remains, impractical and does not actually improve security. If implemented, this provision would negatively impact global commerce and cause significant conflict with the governments of foreign trading partners, many of which have stated their opposition to the requirement previously.

Screening
US Customs and Border Protection (CBP), working with the support of US importers, exporters, and ocean carriers, has developed an effective risk-based strategy to screen all containerised cargo shipments bound for the US and to inspect those that are found to be high risk.

Unlike the 100% scanning mandate, this strategy does not impair the efficiency of the global supply chain.

US Customs and Border Protection (CBP), working with the support of US importers, exporters, and ocean carriers, has developed an effective risk-based strategy to screen all containerised cargo shipments bound for the US and to inspect those that are found to be high risk.

Unlike the 100% scanning mandate, this strategy does not impair the efficiency of the global supply chain.

The risk-based strategy enables CBP to use state-of-the-art screening systems and scanning technology to identify and thoroughly inspect any and all containers that it finds to be high risk, or that warrant a closer examination.

This strategy is fully embraced by industry as well as foreign trading partners and has proven to be highly effective.

July 2014
EU and China sign landmark customs recognition agreement

Under the agreement EU and Chinese trusted traders will enjoy lower costs, simplified procedures and greater predictability in their commercial and trade activities.

The EU Commission announced on 16 May that it and China have signed a mutual recognition agreement to promote trade. This follows on from similar agreements between the EU and Japan (2011) and the EU and the US (2012).

Under the agreement EU and Chinese trusted traders will enjoy lower costs, simplified procedures and greater predictability in their commercial and trade activities. It involves the EU and China committing to recognising each other’s certified safe traders, thereby allowing these companies to benefit from faster controls and reduced administration for customs clearance. Mutual recognition of trusted traders also allows customs to focus their resources on real risk areas, thereby improving supply chain security on both sides.

Pioneering agreement

The EU is the first trading partner to enter into such an agreement with China. Algirdas Šemeta, Commissioner for Taxation and Customs, was at the joint customs cooperation committee (JCCC) meeting in Beijing to sign off the agreement.

Commissioner Šemeta said: “By agreeing to mutually recognise each other’s safe traders, the EU and China are taking a big step forward in our trade relationship. Today’s agreement is fully in the spirit of trade facilitation, by making customs procedures easier, cheaper and faster for our trusted operators. It is also in the spirit of growth, by improving our business environment and accelerating trade.

Our citizens will benefit from greater protection too, as customs can focus more resources on where the real risks lie. In short, everyone is a winner with this customs agreement.”

Initiatives

Two other important initiatives were also signed at the JCCC in May. The first is a new Strategic Framework for Customs Cooperation, which defines ambitious priorities and objectives for EU-China collaboration in this field.

Key areas of focus for the coming years will be trade facilitation, supply chain security and fighting counterfeit and illicit trade. The latter is of particular concern as it is estimated that 10% of all goods emanating from China are counterfeit goods, which due to lower manufacturing standards pose a higher risk to consumer safety than legitimate goods.

An important new priority is a joint approach to tackling illegal waste shipments, an area of high concern for both sides and supporting important environmental objectives.

The second initiative signed in Beijing is a new EU-China Action Plan on Intellectual Property Rights (IPR). This aims to improve the clamp-down on counterfeit goods by intensifying EU-China cooperation, communication and coordination in this field.

The EU Authorised Economic Operator (AEO) status was launched in 2008 to improve supply chain security. In return for adopting compliant security standards, traders were

By agreeing to mutually recognise each other’s safe traders, the EU and China are taking a big step forward in our trade relationship.

– Algirdas Šemeta, Commissioner for Taxation and Customs
offered simplified customs procedures – such companies are referred to as ‘trusted traders’. Certified authorised economic operators (AEOs) have fewer inspections on goods and speedier customs procedures and formalities. The AEO companies benefit because their goods can move faster from one destination to another, lowering transport costs and facilitating more efficient trade. It also benefits EU customs administrations, who can concentrate their resources on checking high risk transactions.

There are currently around 15,000 companies approved as AEOs in the EU – a number that is rising continually. The take-up of AEO certification in the EU varies considerably between Member states. For instance Germany has approximately 5,000 AEO traders, whilst the UK has only 350. The agreement with China makes the EU certified trader system the most widely accepted in the world, given that the US and Japan (as well as the European Economic Area EEA countries) are already in mutual-recognition agreements with the EU.

**Harmonised approach**

Mutual recognition of certified traders prevents a proliferation of incompatible standards amongst international trade partners, and helps promote a more harmonised approach to customs practices worldwide.

As a vehicle for promoting trade facilitation and growth, this mutual recognition agreement with the EU’s second biggest trading partner is welcome. However, it has to be set against the background of some recent inconsistent Chinese legislation that has created what many regard as onerous regimes and regional inconsistencies. To maximise the benefits of this mutual recognition agreement it is essential that it is consistently applied across the board.

BIFA will monitor developments and will keep Members informed of any announcements regarding how the policies will be applied in practice.
Mixed messages over China NVOC regulations

Carriers have been alarming BIFA Members exporting goods to China with statements about NVOC regulations. However, investigations by BIFA have revealed that these regulations should not apply to freight forwarders in most cases.

Over the last few weeks BIFA has received many enquiries from Members regarding the potential impact on their businesses regarding statements made by carriers regarding Chinese NVOC regulations. The carriers have said they will not be able to accept bookings directly from UK-based freight forwarders unless the latter comply with the Chinese Ministry of Transport (MoT) requirements to register as an NVOC with the Shanghai Shipping Exchange (SSE) for NVO movements from China.

We have been in extensive and very sensible discussion with the carrier in question and it is clear it has major concerns about this legislation and its liabilities under it, should it inadvertently carry freight from a non-registered NVOC.

Its sole aim is to be compliant with Chinese law. However, BIFA has carried out its own research, including consulting with leading London-based solicitors and other trade associations, and has reached a very different conclusion, as have other international trade bodies and carriers.

Legal advice

Based on legal advice received, it is BIFA’s opinion that a UK freight forwarder who has negotiated rates with the UK office of a carrier, and makes a booking via it, does not need to register with the SSE if it uses a SSE-registered Chinese NVOC to complete the housebill of lading, etc.

The legal advice we have received is that where UK forwarders negotiate rates with the line’s agents in the UK, this is only negotiation and may actually cover several routes. The commercial contracts are arranged in China at the point when the shipper and Chinese NVOC make contact to physically move the goods.

The rates for shipping the goods that were negotiated in the UK are accepted under the bills of lading raised in China. Therefore, it is those NVOCs in China accepting the rates and the subsequent contract who need to be registered. This is because whilst the rates may have been negotiated in the UK, the contract is arranged in China when there is an actual offer of a shipment to the Chinese NVOC and its acceptance of that shipment. It would make no sense for a UK freight forwarder acting only as an agent for legal entities in China to have to be registered with the SSE.

The exception to that basic rule is when the UK-based freight forwarder issues its own housebills of lading to cover that consignment, in which case we believe that it would have to register with the SSE.

In reality this means that where an overseas forwarder enters into a contract with a carrier for goods being shipped in China, it must show its Chinese agent’s name as an affiliate on its rates agreement with the line, and this Chinese agent must be registered as an NVOC through the MoT. We understand that the filing of these rates when agreed outside China may be undertaken by either the carrier or the Chinese-registered NVOC.

This interpretation of the regulations is shared by other carriers and trade associations. Carriers have advised that where the rates are negotiated in the UK, they require only the registration details of the Chinese NVOC to be provided. It is believed that the legislation was only ever intended to cover Chinese-based companies because enforcement outside the jurisdiction of Chinese courts would be virtually impossible.

Ruling awaited

In the final analysis, until there is a court ruling on this matter or clearer information is received directly from the SSE, there will be a lack of clarity on this matter. Many carriers under the regulations are content to agree cargo rates and accept bookings directly from UK agents. Some lines, believe that the UK freight forwarder will have to register with the SSE and will not accept bookings from UK freight forwarders unless they can demonstrate that they are registered or are in the process of registering with the SSE. It will be freight forwarders’ commercial decision whether they decide to register as an NVOC, should they wish to comply with carrier-particular conditions, and for carriers to decide the basis on which they accept bookings.
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Container theft: agents and liner operators beware

A recent article in TT Talk number 188 highlighted the dangers of container theft, as well as advising readers on some warning signs and suggesting some questions to ask.

Shipping containers have been the target of thieves since they first started circulating the globe, with many shipping lines conceding through gritted teeth that some 'natural wastage' or 'mysterious disappearance' is an inevitable part of doing business in certain areas of the world.

The very nature of a freight container may make it prone to attention by criminals, not just because of what can be hidden inside, but also because it can be useful in other ways. It is predominantly uniform in size and shape, with little to differentiate one from another aside from the colour of the paint and the CSC plate, both of which it is possible to change. In fact the CSC plate, markings or container number may be irrelevant if the box is no longer to be used as a conventional freight container, whether it be for local storage, housing or scrap.

Escalation
The TT Club Stop Loss Bulletin on such losses (www.ttclub.com/publications/stop-loss/article/stop-loss-7-container-loss-602/) looks into this further and while small scale theft is difficult to eradicate, the problem is more serious when both the quantum and complexity of the theft escalates.

In recent times there have been a number of higher profile examples when theft morphs into organised and large scale fraud, when the quantum moves away from being a thousand dollars for a 10-year-old teu to a six-figure sum for multiple and potentially high-value unit losses.

Attention by criminals has been sporadic around the globe, but a recent example in Kuwait highlighted the potential pitfalls affecting multiple shipping lines. It was also a timely reminder of some of the steps that need to be taken in managing this risk, which affects both lines and agents at the point of arranging the booking.

In this instance, a first-time shipper requested a number of units from a range of different lines (totalling over 200 teu) using fraudulent bookings and licences. When the containers were not returned laden after a number of days and no bookings had been formalised, one shipping line became suspicious and looked to make contact with the proposed shipper.

It transpired that the purported shipper had disappeared, leaving no trace of the containers and no physical assets to target. While the case is still under investigation, initial findings indicated that on receipt of the containers, the shipper in all probability had transported to another country and sold to a third party primarily for scrap.

Questions worth asking

- Why do they need 50 units in one go, or why do they need a second batch of units before returning the first?
- Has the new customer been visited to verify that it actually exists?
- Is the haulier appointed to pick up the units known?

Requests for a number of high value units, specifically reefer or tank containers, should be treated with suspicion. Have free time extensions been requested up to unusual or unacceptable levels? It may be time for you to review your warning thresholds.

It must be remembered that the only dependable protection when units are given to a shipper is the due diligence already carried out and the financial security received. Financial security is a significant and additional step that the shipper may feel is unwarranted, inconvenient and costly. But security in the form of a cash deposit or bank guarantee can be relied upon whereas a promise, letter of indemnity or cheque are likely to be worthless if it comes from a shipper who chooses to abscond.

These aspects of the risk management process in knowing your customer and receiving adequate security are recommended forms of defence against being targeted and losing out to fraudsters. While much attention is rightly given by lines to cargo management – seeking to ensure that cargo entered into the supply chain is correctly declared, packed and placarded – lines can little afford not to attend to tight stock controls. And the essential 'know your customer' checks are the same for both elements.

BIFA is grateful to Peregrine Storrs-Fox of the TT Club for permission to reproduce the material.
Panama Canal expansion reinforces cascade effect

The upgrading of the Panama Canal is driving US East Coast ports to prepare for larger containerships. In turn the arrival of larger vessels will force down the value of Panamax ships

The following information is provided by KfW IPEX-Bank GmbH

The Panama Canal expansion, which began in 2007, was originally scheduled to be completed this year. Due to construction delays, however, commissioning has been pushed back by at least one year, to fourth-quarter 2015 at the earliest.

Until the expansion is completed, the Panama Canal will lose market share to the Suez Canal, which is less limited by size constraints (13,000 teu). According to calculations by Lloyd’s List, the Panama Canal’s share of traffic between Asia and the US East Coast has already fallen from 90% in 2008 to 60%. There has been a marked decline in the number of transits, especially in the past year (13,660 transits in 2013 compared with 14,544 in 2012 and 14,685 in 2011).

Even Panamax ships are now being displaced from the Panama Canal route. Shipowners such as Maersk are introducing new ultra-large container vessels on routes linking Asia and Europe. Due to overcapacity in the market, these are displacing the post-Panamax ships previously used on these routes. The post-Panamax vessels are subsequently being deployed between Asia and the US East Coast, via the Suez Canal. Although the route through the Suez Canal is longer, it is more cost-efficient for shipowners because the vessels used are twice as large (with the exception of the northern China-US East Coast route).

**Vessel capacity**

Once the expansion has been completed, the Panama Canal’s vessel capacity will increase markedly. Taking container ships as an example, it means that vessels of up to 13,000 teu will be able to transit after the upgrade instead of being limited to 5,100 teu. Post-expansion, with the present limits on vessel size removed, the Panama Canal will in our opinion be able to win back market share in traffic between Asia and the US East Coast.

Alongside the Panama Canal expansion, substantial investment in infrastructure is currently under way at US East Coast ports to enable them to handle the larger vessels that will transit the canal in the future. In addition, significantly raising these ports’ current size limitations will mean that larger ships can also be used on transatlantic routes.

At the same time these infrastructure investments, which are directly and indirectly related to the Panama Canal expansion, will enable shipowners to achieve economies of scale by operating bigger ships. This will affect not only routes through the Panama Canal, but also transatlantic routes as a whole.

**Displacement**

We therefore expect that these expansion works (Panama Canal and East Coast ports) will lead to further displacement of smaller vessels on transatlantic trade routes and heighten the cascade effect. On the routes from Europe to North America, Panamax ships are predominantly used at present. Ships in the 4,000-5,100 teu size category account for 55% of tonnage on these routes. The largest vessels currently operating on these routes range from 5,100 to 7,500 teu, representing a 22% tonnage share.

Following the Panama Canal expansion and the extension works at East Coast ports, we expect that the categories of vessels used will be larger. Since the largest European ports (Hamburg, Rotterdam, Antwerp, Bremerhaven) can already handle ships in excess of 10,000 teu, the bottleneck preventing the deployment of larger ships essentially lies at the ports along the US East Coast.

With this constraint removed, we assume that ships above 7,500 teu will represent the majority of tonnage in the future.

The routes between the Far East and North America illustrate how the removal of port size limitations affects the ships used. On these routes, vessels of over 7,500 teu constitute 45% of tonnage. Ships in the 4,000-5,100 teu size category represent approximately 28% of tonnage on these trade routes, of which an estimated 65% passes through the Panama Canal to reach the US East Coast.

**Replacement tonnage**

Overall, 34% of the global fleet with a capacity of 4,000-5,100 teu is being used on routes linking North America and Europe as well as North America and the Far East. Once the Panama Canal has been expanded, the majority of this capacity will be replaced by larger vessels. However, there is only a limited possibility that these ships will be transferred to other trade routes.

Despite a marked fall in deliveries, Panamax fleet overcapacity will grow over the next few years. Furthermore, this is not mitigated to any significant degree by the delays in the Panama Canal expansion, because of the increased market share of Asia-US East Coast traffic won by the Suez Canal.

We therefore expect a continued decline in the asset value of Panamax ships.

July 2014
Although bulk wheat shipments are not the usual commodity for most BIFA Members, we noted the following illustration from The International Transport Intermediaries Club (ITIC) where reference is made to “terms and conditions”.

Readers will know this is a topic we write about on a regular basis. The BIFA Standard Trading Conditions (STC) are viewed as an excellent set of conditions, so as we always say: “Make sure they are incorporated.”

The illustration that follows emphasises the need for marine surveyors and other shipping and transport intermediaries to include their terms and conditions in all their business dealings in order to protect their position in the event of potential legal action.

Case history
In the latest issue of its Claim Review, ITIC cites the case of a marine surveyor instructed by the shippers of a cargo of wheat to survey and certify the holds of a bulk carrier as fit for loading. The surveyor issued a certificate of fitness to load, and 70,000 tonnes of wheat was loaded. Following the arrival of the ship at the discharge port, the local authorities ordered the stevedores to stop discharge operations because they suspected that the cargo was heat-damaged.

A subsequent survey report obtained by the shippers indicated that the cargo was contaminated by de-laminating paint, rust, dirt and paint powder from the ship’s holds. The shippers negotiated a reduction in price with the receivers, and pursued a claim against the shipowners under the terms of the contract of carriage.

That dispute was resolved at mediation, but the shippers then brought a separate claim against the surveyor. They were seeking to recover alleged losses in excess of $1 million, including loss of sale proceeds, additional hire paid to the owners, and costs, on the basis that the surveyor had negligently certified the vessel as fit for loading when it was not.

Legal advice
ITIC appointed lawyers and expert evidence was sought. That evidence suggested that the damage may have been caused by bobcats used in cargo discharge operations. The surveyor had terms and conditions which – if properly incorporated into its business dealings – would have reduced its liability to a fraction of the shipper’s claim. Unfortunately, the surveyor had not explicitly made the shipper aware of the terms and conditions, so it was unlikely that a court would find that these had been incorporated into the business dealing.

It also became apparent that, after the surveyor had inspected the vessel, customs inspectors had carried out their own inspection and had ordered that the vessel be cleaned prior to loading. This was both helpful and unhelpful for the surveyor: while it was a strong indication that the surveyor had failed to properly carry out its survey, it also arguably meant that it was not the surveyor’s report that the shippers were relying on, but rather customs’ approval to load.

A mediation took place, but the claim could not be settled. Negotiations continued nevertheless, and the matter was resolved with the surveyor contributing to around 30% of the claim, which was covered by ITIC.

ITIC has written guidelines on the incorporation of terms and conditions which can be found at: www.itic-insure.com/rules-publications/article/guidelines-on-incorporating-standard-terms-and-conditions-129819/

BIFA is grateful to ITIC for permission to reproduce this item.

Support your local Member group

BIFA holds regional Member meetings around the UK and here are some due to occur soon. If you would like to attend and find out more about BIFA and what we do, why not contact your regional representative. Full contact details are on the BIFA website www.bifa.org in the Contacts section.

All BIFA members are entitled and encouraged to attend their regional meetings. However pre-booking is essential.
Call for Entries

The following categories of the BIFA Freight Service Awards 2014 are open for entry:

**General Categories**
- Environment Award
  Sponsored by: Red Recruit
- Project Forwarding Award
  Sponsored by: Peter Lole & Co
- Special Services Award
  Sponsored by: Forward Computers
- Staff Development Award
  Sponsored by: Albacore Systems
- Supply Chain Management Award
  Sponsored by: BoxTop Technologies

**Modal Categories**
- Air Freight Award
  Sponsored by: IAG Cargo
- European Logistics Award
  Sponsored by: TT Club
- Ocean Freight Award
  Sponsored by: Cargoguide

**Individual Category**
- Young Freight Forwarder Award
  Sponsored by: Virgin Atlantic Cargo

**Entry Cost**
£80.00 + VAT (non-refundable) per category (no charge for the Young Freight Forwarder Award)

**Submissions' Deadline**
Friday 10th October 2014 (5.00pm)
All registrations to enter must be received by Friday 26th September

**Awards Ceremony**
Thursday 22nd January 2015
from 12.00pm
The Brewery, London EC1

To enter visit www.bifa.org/awards > Enter Now

For further information please contact the BIFA Events Office:
E: eventsoffice@bifa.org  T: 020 8844 3641
Now in their 26th year, it is amazing how quickly these awards come round. It seems only a few weeks (actually five months!) since we photographed the happy category winners in the photo above at the last BIFA Awards ceremony in January.

If you were one of those companies or individuals that had good intentions of entering the competition last year, but found yourself running out of time, this is your chance to get well ahead of the game.

By registering your entry this month you will have over two months until the submission deadline – Friday 10 September.

Entries are open to full trading BIFA Members, as well as probationary Members, regardless of company size.

Most businesses have something to shout about, so whether you have a particular case study to present, or wish to tell BIFA about a special project or relevant service, we are looking forward to hearing your stories.

For the Young Freight Forwarder category, an unlimited number of candidates, who must be under the age of 32 at 31 December 2014, may be put forward from the same company.

A big thank you to eight of our regular category sponsors and new sponsor Cargoguide, who are offering their support to the event.

This year’s award categories are:

**GENERAL CATEGORIES:**
- Environment Award – Sponsored by: Red Recruit
- Project Forwarding Award – Sponsored by: Peter Lole & Co
- Special Services Award – Sponsored by: Forward Computers
- Staff Development Award – Sponsored by: Albacore Systems
- Supply Chain Management Award – Sponsored by: BoxTop Technologies

**MODAL CATEGORIES:**
- Air Freight Award – Sponsored by: IAG Cargo
- European Logistics Award – Sponsored by: TT Club
- Ocean Freight Award – Sponsored by: Cargoguide

Entries in these categories cost £80 + VAT/category.

**INDIVIDUAL CATEGORY:**
Young Freight Forwarder Award – Sponsored by: Virgin Atlantic Cargo

There is no charge to enter this category.

Entries now open
Entering is a must, not only for the recognition, but also for the massive publicity to be gained by becoming a finalist, including editorial coverage and advertising in the run-up to the awards, at the ceremony itself and afterwards.

For the ‘General’ and ‘Modal’ categories, entrants are required to put forward a submission of up to 2,000 words.

For the Young Freight Forwarder category, entrants are required submit supporting documentation about their career and training to date, as well as a 750-word article on the topic of: ‘BIFA’s engagement with the younger employees of the Association’s Member companies.’

The winner of the Young Freight Forwarder Award will receive a cheque for £1,000 (runners-up receive £250) and will be nominated as the UK candidate for the FIATA/ TT Club Young International Freight Forwarder of the Year Award 2015.

Registrations to enter one or more categories must be received by Friday 26 September 5 pm latest. It is quick and easy to register and submit entry payments online.

Judging meetings will be held in early November to select four finalists in each category. Winners will be announced at the awards ceremony on Thursday 22 January 2015 at the traditional venue, The Brewery in Chiswell Street, London EC1. More than 500 guests have attended this lively industry luncheon in each of the last few years.

If you require any further information regarding the competition, please email eventsoffice@bifa.org

Enter the BIFA Freight Service 2014 Awards now at www.bifa.org/awards
Training courses: July-September 2014

**AVIATION SECURITY**

Air Cargo Security Level A – General Awareness
As Level A – General Awareness

Air Cargo Security Level B - Drivers
Air Cargo Security Level D – Handling & Preparation of Air Cargo

Air Cargo Security Level E – Screening of Air Cargo
Screening by physical examination only, x-ray training not included

Air Cargo Security Level F – Security Supervisor
As Level E – Screening of Air Cargo

Air Cargo Security Level G – Security Manager
As Level E – Screening of Air Cargo

Air Cargo Security – Refresher Levels A and B
5 August          Feltham, West London
4 September       Feltham, West London

Air Cargo Security – Refresher Levels D and E
11 August         Feltham, West London
11 September      Feltham, West London

Air Cargo Security – Refresher Levels F and G
30 July           Feltham, West London
27 August         Feltham, West London
29 September      Feltham, West London

Air Security Cargo X-Ray Operator

Aviation Security NXT

**CUSTOMS PROCEDURES**

Customs Procedures for Export Cargo (CM1)
15 July            Feltham, West London
2 September       Midlands
30 September      North West England

Customs Procedures for Import Cargo (CM2)
16 July            Feltham, West London
3 September       Midlands
1 October         North West England

BTEC Intermediate Award in Customs Export & Import Procedures (CM3)
Commercing 10 Sept Feltham, West London

Customs Management (CM4)
Two-day optional add-on to CM3
See www.bifa.org/training for future presentations

BTEC Intermediate Award in Customs Import Entry & Procedures (CM5)
See www.bifa.org/training for future presentations

**DANGEROUS GOODS**

Dangerous Goods by Air (DG1)
7-9 July           Birmingham
4-6 August         Feltham, West London
1-3 September      Birmingham
8-10 September    Glasgow
8-10 September    Manchester
22-24 September   Leeds Bradford

Dangerous Goods by Air – Revalidation (DG2)
10-11 July         Birmingham
10-11 July         Feltham, West London
7-8 August        Feltham, West London
4-5 September    Birmingham
4-5 September        Feltham, West London
11-12 September   Glasgow
11-12 September   Manchester
25-26 September   Leeds Bradford

Dangerous Goods by Road (DGR1)
1-3 September      Manchester
15-17 September   Bristol

Dangerous Goods by Road – Revalidation (DGR2)
Days 2 and 3 of the above Dangerous Goods by Road course (DGR1)

**FREIGHT FORWARDING AND INTERNATIONAL TRADE**

Exports for Beginners (EXP1)
8 July              East London
2 September        Feltham, West London

Imports for Beginners (IMP1)
9 July              East London
3 September        Feltham, West London

Introduction to Air Cargo (AC1)
See www.bifa.org/training for future presentations

BTEC Intermediate Award in Multimodal International Freight Procedures (MFT1)
16, 17 Sep, 7, 8 + 21 Oct Scotland
15, 16, 22, 23 Sep + 7 Oct North East England

Multimodal International Freight Procedures 2 (MFT2)
Two-day optional add-on to MFT1
See www.bifa.org for future presentations

Sea Freight: The Basics (SF1)
26 July            Feltham, West London
30 September      Feltham, West London

Introduction to Letters of Credit
18 September      Feltham, West London

**HEALTH AND SAFETY**

Emergency First Aid – Appointed Person (FA1)
See www.bifa.org/training for future presentations
Air Cargo Security Training
from the leading industry training body

Find out more about our accredited courses and International Trade Programme:
e-mail us at bifatraining@bifa.org or call +44 (0)20 8844 2266