Gateway
Global Logistics & Transportation Solutions
2006 - Issue 1
BDP INTERNATIONAL
40 years
A Culture of Customer Service

Commentary

National security vs. competitiveness

Balancing export priorities

To the majority of those involved in international transactions, information security may mean computer security, anti-virus efforts, or the distribution of overseas messages, e.g., Am I sending them to a secured area and do I know who I am sending them to?

There is another area, perhaps even more important, on which companies should focus: making sure the information being demanded and the elements contained within that data is information that can and should be shared versus data elements that should be confidential and NOT shared.

Importers and exporters and their resources are being asked to provide information at even earlier stages in the export process and at a more rapid pace. We have all felt the increase in the demand. Response to a request for information is often taken for granted, when, in fact, companies should make sure the request for information is something that can be complied with, not only from a regulatory point of view but also from a trade data perspective. *(continued on page 2)*

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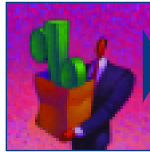

BUYER'S MARKET

Do changes in ocean services, rates bode well for shippers?

For the first time in three or four years, the supply and demand formula may actually favor the shipper. Due to an increase in vessel capacity entering the market in 2006-2007, what promises to be a substantial amount of new tonnage, we should see some longer-term downward pressure on rates, therefore providing a period of lower rate "stability." Even carriers acknowledge that excess capacity could exist into 2009.

Since 1999 or earlier, the supply and demand formula clearly has been in favor of the carrier, says Tom Keene, President of BDP Transport, the company's NVOCC organization. "Now that appears to be changing," he pointed out. "The projected industrial load factors for most carriers in the core trade lanes will be well below the prior years' performance. That should translate into lower or stable rates for shippers."

Many news reports certainly point in that direction. But, are ocean rates really dipping? Will Transpacific rates rise? What happens as East-West vessel deployments and schedules change, due to acquisitions, mergers, and alliances, as well as direct services and midweek arrivals to the US and to Europe from a number of ports in China? And what does it really mean if TEU growth more than doubles?

As 120 larger ships are launched into the markets, based on generally accepted economies of scale, the larger ships should mean lower costs for shippers. However, as reported in *The Journal of Commerce*, 11 shipping lines within the Westbound Transpacific Stabilization Agreement, which carry US exports to Asia, "intended to increase their rates in mid March on cargoes not specified in tariffs in the westbound Pacific. The increases are $200 per 40-foot container and $160 per TEU for the freight category known as "cargo not otherwise specified" (commodities not specified in standard carrier tariffs). It was also reported that the WTSA lines intended to increase their rates per FEU and TEU on "freight of all kinds," (e.g., mixed less-than-container loads). Also planned are increases for shipments of chemicals, resins and plastic scrap to Asia. According to the carriers, the hikes are supposedly in response to a greater demand for the commodities.

According to Keene, carriers say that the market is going to take a $200-300 increase, so they try to negotiate from the peak of the increase. "You don't negotiate from $300 down to zero," he says. "You don't negotiate from zero to give back $200. The carriers are trying to compress the negotiating window. Their rationale is if you begin at a $300 GRI with a client and you get him down to zero, the client is happy, you're happy and you walk away like you won. But if you start at zero and don't start at the $300 GRI number, the rate erodes into their profitability from the previous year.

"We are not accepting these levels of rate increases," Keene says. "Due to our leverage capabilities, BDP Transport is politely pushing back on the carriers, requesting they not execute the proposed increases. Shippers are also pushing back. The carriers are hearing it from everyone."

Is this yet another cycle?

The word from the carrier conferences indicates that rates will keep going up because of rail, trucking and fuel costs, salaries, and infrastructure enhancements. Keene says there is not one word about base ocean costs. "Carriers' extremely lofty profits over the last three or four years have been well documented. They want to maintain that level of profitability, so they are telling the market that, despite the swing of the pendulum on the supply and demand side, they are incurring additional costs. Thus, rates will continue to increase."

Is it all smoke? Keene thinks so. "This is yet another cycle. Once the carriers' load factors slip below their target level—usually around 85 percent of capacity—market disciplines will be ejected and they will begin to offer rate reductions, without any regard for their commitments to the conferences. The result is market turmoil. They want to prevent any massive reduction in *(continued on page 3)*

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It is not only a competitive issue, but also one of national security.

To comply or not to comply

For example, over the past few years, Costa Rica has demanded that US exporters—not the US government—send shippers' export declaration information to Costa Rican Customs, a government agency. The SED data contains many commodity details: classifications, values, and line-item specific information. "What shippers may not know is that if a company complies with that request, it is violating US regulations," says Michael Ford, BDP Vice President of Regulatory Compliance and Quality. "Providing any type of trade data to a foreign government is against US law. The US Census Bureau clearly states that companies should not meet such demands from a foreign government."

Why should companies focus on this issue? Besides the obvious illegality involved, it is because product information is being shared: its cost, as well who the product is being sold to. "The question is, 'Can you ensure that the foreign government is going to use the data for the right purposes?'" Ford says. "Competition is one reason. Are they going to share that data with their industries to work against US companies in those markets? Also, there is no protection from the US government once a company does this."

Ford points out that the Costa Rican government relaxed its original request and is now asking for commercial data that is included in normal transactions. However, as we move forward, we may begin to see other governments making similar demands for data from US companies, he says. "US companies should seriously review what will be asked of them: the nature of the data, and the purpose for the request. They should ensure they comply with US regulations, while determining how they can also meet the needs of the foreign government."

This issue is beginning to pick up speed because the World Customs Organization (WCO) has already adopted the US security model that is used for imports: 24-hour advance electronic information to US Customs. Since most of the WCO member countries have adopted that model, in principle, the demand for information on US exports could certainly spike. "US companies should look at their data and sectionalize it," Ford says. "For example, information being shared with customers today and will continue to be shared with them and with the foreign government versus data elements that are not given to customers today and should not be shared in the future.

"Because BDP is a facilitator of many of those data elements, as are many export compliance resources, we have to be sure we comply with US regs, while providing appropriate data to overseas governments. The message for exporters is that they are going to receive various requests from overseas customers and should take the time to step back and review those requests. Our objective is to help customers without com-promising security and competitive confidentiality."

> "Our objective is to help customers without compromising security and competitive confidentiality."
>
> *Michael Ford, BDP Vice President of Regulatory Compliance and Quality*

Although the WCO has a data model that spells out the parameters, Ford believes the model should be reviewed to ensure that only truly relevant data elements are communicated outside the US.

Some US trade groups do not have a formal position on their support for this particular issue. The trade group to which BDP belongs, NCITD in Washington, DC, has already submitted a letter saying they understand that data is eventually going to be shared but that they still need to agree on what is shared versus proprietary data. "BDP has submitted its list of what we consider to be proprietary elements," adds Ford. "A problem with the WCO model is that there is not a 'one party' consensus; one country may favor a particular data element, while others may not."

What about the US government?

Can US companies send the data to the US government and ask them to send the data to foreign governments, or do US firms go direct overseas? Ford says that currently, the US Customs cannot handle it because they do not have the systems capability to collect and share the data.

The US Census Bureau owns the US export data and historically has never shared the data with any foreign government. That could change. "Due to the WCO's role, the demand for commodity data is definitely out there," Ford says. "The pressure is on US exports for that information. So it's a struggle at the moment: will Census deliver the information or even allow it to be shared and will they send all the requested data? Or can US exporters consider what is proprietary data versus shared data?"

For more information, contact Michael Ford at mford@bdpnet.com, or (215) 629-8924.

Managing trade and security issues

US Customs is mandated to manage trade and security services from a resource and technology perspective, So, too, must importers and exporters.

Companies need to be as competitive as possible in the prices and services they offer their clients. They face significant pressures to balance the right level of security programs to keep their trade programs at the peak of efficiency.

The Security Model

Many companies have signed on to C-TPAT and are constantly reviewing their supply chains and updating their security plans. For those who have not signed on to C-TPAT, it is still an important consideration. There are many security issues to consider from a resource perspective: people, assets, systems. Due to a constantly changing business environment, companies must have a continuous improvement philosophy for all security measures. There are short- and long-term security projects that need to be studied, reviewed, and implemented across the board for companies and their partners. And while the security issue is predominantly a US issue at the moment, it is one that will become global because of the demands of the security model involved.

Keeping an edge

Questions facing companies include: Do I utilize my company's resources (time, money and people) to ensure my company's' competitive business model is operating effectively and efficiently under free trade agreements and am I maximizing my benefits from them? Am I able to implement the most current trade program while also ensuring security in the supply chain? Do I perform both programs at the same time? And do I have to do both?

On the inbound side, in particular, there are many changes to existing US Customs programs, as well as new programs, which were not in play a few years ago. Plus, there are now more free trade programs for US countries to consider for their business models. Will those programs affect supply chains and will buying from a free trade country be a benefit?

"There may be times when shippers are forced to balance both," says Michael Ford, BDP Vice President of Regulatory Compliance and Quality. "You want to obtain the right price for the right product, or if you are procuring goods you want to make sure they are being procured from the right region. If it is through a free trade agreement, it could be zero duties, which could help lower your overall cost but there may be security measures that need to be applied to your US model and to your overseas suppliers. Another consideration is do I need to operate a Foreign Trade Zone for assisting on my manufacturing process?"

While FTZs have been around for some time for US companies, there has been a change to the process: Customs is automating it and companies are now considering if they should delay duty payments to help make them more competitive. Shippers must now ask themselves: Do we develop a FTZ to help some of our exports if we are assembling products in the US? "It is an area where FTZs are increasingly being used," Ford adds. "Now companies are looking at them more closely to see if they can help their business models. Industry experts predict that FTZ programs will double by the end of the decade."

Automation

Technology is another issue. Companies are asking: If I'm implementing new processing technologies, can I also implement the trade programs? "Security issues are sometimes outside of the technology programs," Ford says. "There are legacy systems, as well as new operating systems. We have more free trade programs and they are growing and continuing to grow. Managing all the various activities and getting the right organizational structure to operate in that area is a major challenge."

The most effective location for managing all those activities is not necessarily the Imports area of a company, Ford points out. "Instead, it is better if it is a team effort, where security issues are within a shared management environment. This is not just a Customs issue: it is technology, policies and procedures, asset protection, and risk management. This where a team of the company's professionals can bring their individual expertise to the table and focus on handling these security issues."

BUYER'S MARKET

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rates. Carriers are shaking hands behind a vessel sharing agreement that this will not take place—if the load factors slip."

Short-term regional rate impact

Jack Bashkow, Director of Procurement, BDP Transport, sees rates staying flat to Asia, Latin America and Europe, in the trade lanes from the United States. "The consolidation of carriers (Hapag/CP Ships and Maersk/P&O) will be offset with the increase in capacity in these trade lanes," he says. "As the larger vessels are deployed into the Pacific trade, the vessels that are in the Pacific will be moved to the Atlantic trades."

Anthony Chang, Director of BDP's Ocean Product in the Asia Pacific, sees the Asia to US East Coast all-water market as still relatively strong, while the West Coast/IPI will sustain a rate drop, even though the market pressure is there. "New players are coming into the market," he points out, "so space capacity will increase, although not as drastic as the Europe trade. Carriers will mitigate the bunker (ocean and inland) for customers moving under contract."

From Asia to Europe, drastic rate drops over the past few weeks will be further affected as more 6,000-9,500 TEU vessels are deployed, Chang stated. Asia to other trade regions (Latin America, Africa, Middle East, and Australia) will experience a slack period from now through mid year. "There is no obvious increase of space capacity; rate levels are not as steady as US-Europe trade, and there is a relative high bunker amount for Australia/New Zealand," Chang says. "There is a lot of special equipment (open top/flat rack) moving into the Middle East, due to the increase in large projects shipments."

The direct routes and midweek arrivals to the US and to Europe from a half dozen ports in China should bring down the carriers' per unit costs. "When you have a direct call, it should reduce your operation costs, as long as you don't stretch out the total transit time of the voyage," notes Keene. "Additional days can have a major impact on vessel charters. Currently, the average charter rate is somewhere in the area of $45,000-$50,000 per day for a 4,500 TEU ship, so any days you can save directly affects the bottom line."

According to Bashkow, a major factor keeping rates in the Atlantic flat is that some carriers are initiating new services. "CMA-CGM and China Shipping are starting a joint service and Hamburg Sued will also be moving into the Atlantic trade." Lutz Wagner, Director of BDP Transportation in Europe, agrees. "Those new Transatlantic services will keep rates under pressure, so that they return to an acceptable level."

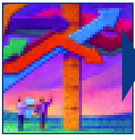
In Europe, Wagner expects rates in the Mediterranean to be reasonably stable, while rates from Europe to the Middle East/Indian subcontinent will remain weak and further (slight) reductions can be expected. However, Europe to the Far East, rates are close to "zero-level," as carriers look to get their containers back to the Far East. "It is expected that there will be an attempt later this year to raise rates again," he says, "as rates on the westbound leg have dropped dramatically." Another good sign is that Far East to Europe rates have recently dropped quite dramatically. And due to growing markets in the East Mediterranean/Black Sea region, rates will most probably stabilize and remain at their present level until late summer, when they will rise again.

Costs: real or imagined?

Everyone's concern is the fuel charges, Bashkow emphasizes. He sees the Transpacific carriers moving from monitoring on a quarterly basis to a monthly basis. "This change will keep the fuel costs more in line to the market costs for fuel but could take large swings both up and down based on the volatility of price of fuel," he adds.

Added to the mix is trade growth, especially US trade, which continues to expand, regardless of GDP growth. As Asia emerges as the epicenter of manufacturing, at least for the mid/long term, transportation and logistics costs may not see too much sustained relief. The larger capacity vessels may buy some relief through lower rates, but as import demands within the European Union and North America continues to increase (economists say containerized trade is projected to grow 7.6 percent in 2006, more than double the projections for worldwide GDP growth of 3.4 percent), the respective trade lanes will undoubtedly become busier, and as inbound transport and logistics infrastructure becomes further stressed, it is logical that the total delivered cost of goods will rise. Supply chains do not begin and end at seaports.

Supply and demand works both ways—eventually, everyone gets squeezed. Stay tuned.



YOUR FORWARDER WANTS TO BE YOUR NEXT SUPPLY CHAIN PARTNER. CAN IT MEASURE UP?

Excerpted from an article by Perry A. Trunick in the September 2005 issue of LOGISTICS TODAY, www.logisticstoday.com.

In a world that is increasingly compliance minded, correct and timely information is critical. "Part of managing data is to try to isolate and manage by exception," says Adrienne Graddy, Director of Compliance Solutions for BDP International. "If you're not managing the data, you can't manage a customer's supply chain. Any hiccup in paperwork and any time you don't have visibility to the paperwork, even if it is correct, will cause delays, costs and possible service failures in the supply chain."

Third parties with access and visibility inside the organization have an advantage in helping to identify cost savings, efficiency improvements and, importantly, compliance issues. Graddy offers an example of the kind of monitoring and responsiveness that is more important in a post-Sarbanes-Oxley environment and given the heightened security awareness following the September 11, 2001 terror attacks.

Graddy describes an import shipment which was reported to the *Food and Drug Administration* (FDA). The importer said it was not FDA regulated, that it was just a chemical that removed impurities. From what does it remove impurities, asked the FDA. Water, said the importer, but it's not drinking water. OK, said the FDA, where is that water used? It's used in machinery. Would that be machinery used for food preparation, the FDA rejoined. Yes was the answer. Suddenly, Graddy points out, this chemical the importer didn't think was regulated actually fell under FDA jurisdiction.

Many companies don't have enough information from further up their supply chain, says Graddy. They put themselves at a disadvantage because they don't understand their commodity [from an import compliance perspective].

One challenge forwarders face comes from established third party logistics companies. Many have been adding trade services capabilities through acquisitions. Only a few of the larger forwarders may have the means to add the supply chain management expertise they need through acquisition. While many are still focused on building or acquiring the information systems they need to meet current demands, further expanding skills to include supply chain management—and then earning the trust to enter that business—speak to a continuing challenge.

RISK MANAGEMENT

Know your liabilities under the Carriage of Goods by Sea Act

By Allan Kline, BDP Risk Manager - Transportation

As a risk manager, I am often asked by shippers about COGSA, the Carriage of Goods by Sea Act (Title 46 USC §§ 1300 - 1315) in relation to the limits of liability defined in the act. It is important for shippers to know what they can expect when filing a claim for loss or damage to cargo during an ocean move. *(Let me say at the outset that I am NOT an attorney, and that my familiarization with COGSA is only in the areas that relate to cargo claims.)*

The law that is relative to carriage of goods by sea is governed by the contract between the shipper and the carrier, with the carrier's freedom to contract to limit its liability restricted with respect of shipments to or from ports in the United States by federal statutes, principally the Harter Act of 1893 (46 USC App. §§ 190-196) and the Carriage of Goods By Sea Act (COGSA). The international convention similar to COGSA, in most respects, the Hague Convention, similarly restricts freedom of contract relative to shipments between foreign ports.

COGSA a short definition: "CARRIAGE OF GOODS BY SEA ACT - 1936 US Statute that governs the acts that a carrier is responsible for and defines the terms used in shipping. The act provides that the shipowner's (carrier) liability will be limited to $500 per shipping package, and it stipulates a one-year time limit for filing suit against the carrier. This act automatically applies to international ocean movements but not to domestic ocean transits unless the carrier agrees to be bound by it."

A good example of COGSA in action: The bill of lading is a contract between the carrier and the shipper; it defines the terms and conditions as well as the responsibilities of the parties. Carriers and shippers should be familiar with the terms and conditions and understand the implications should a claim arise.

In April of 2004 a federal appellate court held that the $500 package limit imposed by COGSA prevailed in the following case. A shipper contracted with a NVOCC, to transport a drilling rig, valued at $175,000, from Baltimore to Chile. At an intermediary stop, the rig was off-loaded in Charleston, South Carolina, and in the process of restowing was damaged beyond repair. An insurance company paid the shipper's claim and then filed suit against several entities to recover the $175,000 loss. The insurance company lost because the contract between the shipper and the carrier, the bill of lading, said that the NVOCC's liability was limited to $500 under COGSA.

Limits of liability

The package limitation…"Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package…or in the case of goods not shipped in packages, per customary freight unit…unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

By agreement between the carrier and shipper another maximum amount than that mentioned in the paragraph may be fixed…."

So what about the $500 package limitation? As seen above, COGSA is vague in its description of a package, and when the shipper and carrier cannot agree it is left to the courts to decide.

It is generally decided that a "container" is not a package; however a pallet containing numerous boxes has been considered to be a "package." In the case of the drilling rig, the customary shipping unit was considered to be the rig itself. At issue here is that the definition of a package is murky at best.

Another point that often arises is that the $500 per package limit is a limit, not an absolute; if the

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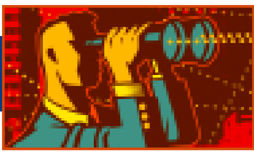

"MADE IN THE USA," OH YEAH?

Country of Origin marking

Is this product that I sell here in the good old USA a product of the United States, or what? We all know that imported products must be marked with the country of origin, right? But what if I use imported material to produce my widget? Can I mark the widget as "Made in USA?" The answer to this question is: yes, no, or maybe. There, does that clear it up?

The law requires the ultimate purchaser in the US to be aware of the country of origin. If imported material is used in manufacture, the US manufacturer may be the ultimate purchaser if the material is subjected to a process which results in a substantial transformation of the material. In a precedent Customs Service Ruling (HQ 561330, 7/2/99) US Customs considered the country of origin marking requirements for insecticide and herbicide products formulated in the United States from imported ingredients.

Scenario #1 - Imported bulk material was fed into a mill where its particle size was reduced to a specific range and then blended with a mixture of dispersants, wetting agents, diluents, and anti-foaming agents. The final product was then packaged for retail sale in the United States. Customs ruled that the imported material remained essentially the same in that the blending process simply produced a different grade of the imported material; therefore, there was no substantial transformation. The finished herbicide sold to the retail customer in the US must be marked with the country of origin of the imported active ingredient. Marking such as "Formulated in the US from components from Germany and USA" is not acceptable as it does not clearly indicate the country of origin. "Product of Germany. Formulated in the United States with US and imported ingredients" is acceptable.

Scenario #2 - Imported bulk material is blended with a proprietary mixture of formulation aids, as in the first example. However, a domestically produced second active ingredient is added to the mixture. After formulation, the batch is sampled, analyzed, trimmed into specification and packaged for retail sale in the US. The ruling held that the addition of another active ingredient significantly changed the nature of the imported material because the number of plants that the finished herbicide is effective against is significantly increased. Therefore, there is no requirement that the country of origin of the imported material be included on the retail container.

OK, we have satisfied Customs. Now, the Federal Trade Commission comes into the act. The FTC position is that a product must be "wholly domestic" or "all or virtually all" made in the United States to substantiate an unqualified "Made in USA" claim. The product must be all but de *minimis* amounts made in the United States. Therefore, the product in the scenario #2 may not be marked "Made in USA." It may have no origin marking at all on the retail container, or if marking is desired, "Formulated in the US with American and imported components" would be appropriate. As if this is not confusing enough, if the material is imported from a NAFTA country, different marking rules apply.

Jerry McManus, BDP Regulatory Affairs Consultant

Hazardous Materials

You may be aware that several cities or municipalities are seeking to ban the transport of Hazardous Materials through their city limits, or through certain parts of that city/municipality, including Washington, DC and Chicago.

As a private citizen, I can understand the desire to keep these "time bombs" out of my neighborhood, but as a realist I question whether the benefits outweigh the costs, which undoubtedly will be associated with this move.

What costs, you may ask? In the case of Washington, DC, it would mean that railcars, for example, would have to be re-routed several hundred miles to avoid the city. This will increase the freight costs, as well as transit time.

Also, it will be just a matter of time before more and more cities and municipalities jump on the bandwagon, and prohibit Hazardous Materials in their backyard. Ultimately, I believe, this will force manufacturers to look elsewhere, perhaps abroad, to produce their products. The potential for hundreds of thousands of jobs being eliminated is very real.

The Chemical and Transportation industries are working diligently to improve the safety and security of the transportation of all chemicals, not only Hazardous Materials. I believe that if we are given the time and support from our legislators (local, state and federal), the distribution and transportation of all chemical products will become a non-issue. Already, the industry is investing large sums of money in security, training and safety. If you are interested in contributing to these issues, please get involved in your industry associations, including the American Chemistry Council, and Dangerous Goods Advisory Council.

For more information on this and other HazMat issues, contact Torsten (Tom) Helk of BDP's Compliance Department at helkt@bdpnet.com, or (215) 629-8263.

Did you get a C-TPAT on the back?

- 10,000 companies have applied for C-TPAT membership
- At the end of 2005, C-TPAT members accounted for 42 percent of all imports by volume.
- There are three tiers of C-TPAT membership:
  - 1st level simply requires an attestation that a company has performed a risk analysis of its supply chain and has taken steps to eliminate vulnerabilities. 5,757 have been accepted by Customs)
  - 2nd tier companies have had their attestation validated by Customs (1,511 have achieved this level and another 2,273 validations are in progress)
  - 3rd tier companies follow supply chain security best practices and will be eligible for the Green Lane. (126 companies have qualified)

MARKET buzz

SOXing it to the supply chain

Section 404 of the Sarbanes-Oxley Act (Sox) requires companies to establish controls that provide reasonable protection against preventable events that could have an impact on a company's value. For CIOs, for example, this meant making sure that employees couldn't use a company's systems to commit acts of fraud. While the Securities and Exchange Commission did not focus on it during the first year of Sox compliance, the same logic applies.

Companies need to have controls that protect them against an adverse event within a supply chain. There are other sections of Sox that indicate that the supply chain will become an area of emphasis in the future as well. Section 401 requires companies to account for risk in their off-balance-sheet transactions, such as their supply chains. And Section 409 requires companies to report "on a rapid and current basis" events that could have a material impact. One can assume that a bomb in a cargo box would have such an impact.

Source: *CIO* magazine

Poor quality data is the norm today…inaccurate or incomplete data may eat as much as 10% of an organization's revenue. (Excerpted from "Data Quality: The Field Guide" - *Digital Press*.)

DID YOU KNOW?

$27.3 billion

The amount of money North American companies will spend on compliance issues in 2006, according to *AMR Research*.

KNOW YOUR LIABILITIES UNDER THE CARRIAGE OF GOODS BY SEA ACT

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package is worth less than $500 the recovery will be in line with the actual value. On the other hand, COGSA provides that the carrier must provide a "fair opportunity" to declare a higher value, obviously for a fee; this is usually done with shipper's interest insurance offered by the carrier and backed by an insurance policy.

Consequential Damages

"Special damages" or "consequential damages" are damages that do not directly relate to the cargo itself, but result from the cargo not being available for use or sale. In most cases, consequential damages are not recoverable under COGSA, unless it can be demonstrated that the carrier could foresee or had prior knowledge of the peril and therefore would be in breach of the bill of lading.

Consequential damages are usually not recoverable under an open cargo policy as the valuation clause limits payment to the invoice cost, plus freight, plus 10%. In some cases consequential damages may be recovered under the shipper's own business interruption insurance policy.

Delay

Most bills of lading disclaim liability for damages due to delay, and in fact, the common law rule of *Hadley v. Baxendale, 9 Exch.341 (1854)*, limits the liability of a carrier for consequential damages to only those damages which the carrier had reason to foresee when the contract was made and which would result as an ordinary, natural consequence of a breach of the contract of carriage.

The Bottom Line

In the flurry of activity that surrounds most bookings and the ever increasing pressures to manage cost, shippers tend to overlook, or in some cases elect to retain, the risk associated with the shipment of cargo. While most cargo arrives at destination without problem, ultimately Murphy's Law must prevail. If cargo moves without insurance, the recovery will be limited and the possibility of real financial loss becomes reality.

Ship owners and NVOCCs provide a service and do their best to deliver your goods without damage or loss. As a shipper you must recognize that there is an element of risk involved in the transport of cargo, and that there are available options to mitigate the associated losses. In most cases the obvious solution is cargo insurance. Ask your BDP representative about Shipper's Interest Insurance; it is a cost-effective way to manage the risks of getting your product to market.

References; Maritime Law Deskbook- Charles M. Davis 2005; CargoLaw.com - The Law Offices of Counryman & McDaniel

Gateway

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