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# MARITIME INSIGHT

**C.Y. Tung International Centre for Maritime Studies**

**Maritime Education | Research | Consultancy**

Volume 2, Issue 1, Spring 2014



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# Maritime Insight

Volume 2, Issue 1, Spring 2014

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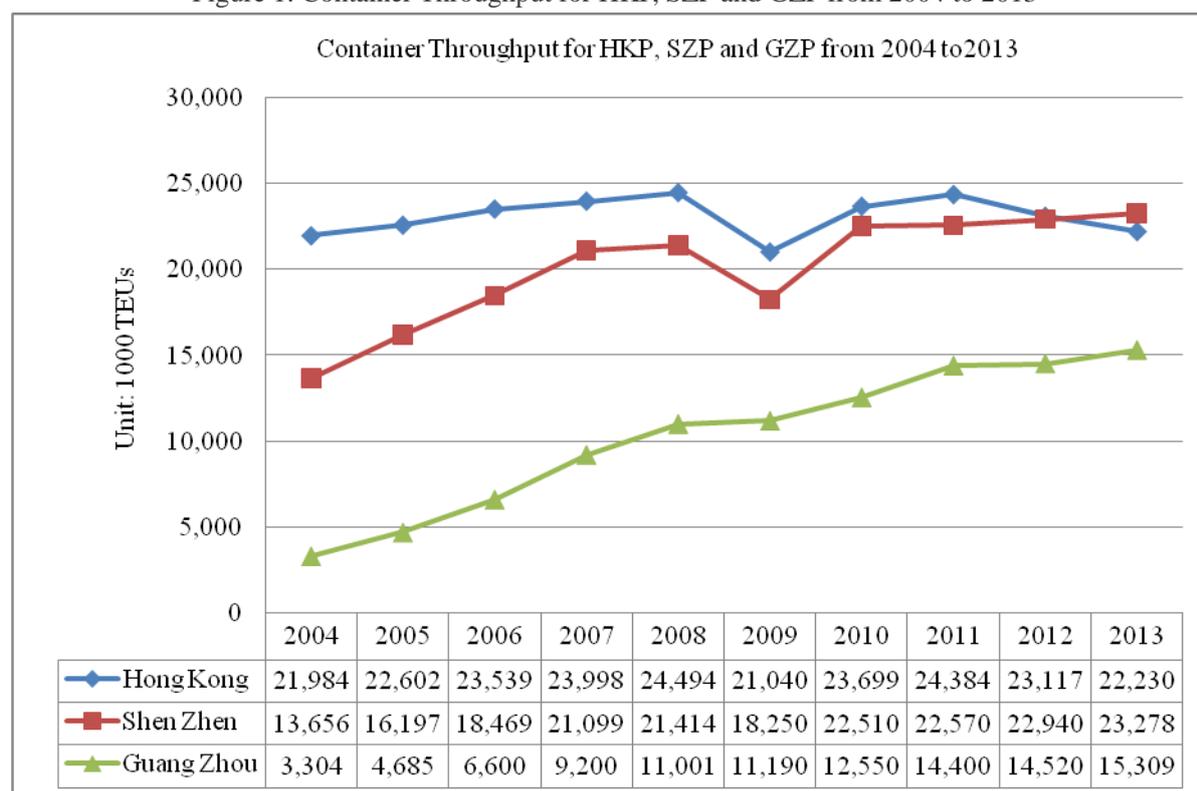
## Container Shipping-The Pearl River Delta (PRD) Market

### An overview of the container throughput for ports in PRD region over the last decade

Over the past decade, container ports in the PRD region have enjoyed a considerably advantageous position and experienced rapid development in terms of port container throughput growth. All eyes of the shipping industry and its allied industries have been focused on container volume growth globally, and as such the port throughput and development of the PRD region located in the southern China have been observed enthusiastically.

Following the rapid development situation of container ports in Hong Kong, Shenzhen and Guangzhou, we hereby present an overview of the container throughput for these ports over the last decade in Figure 1.

Figure 1. Container Throughput for HKP, SZP and GZP from 2004 to 2013



Sources: UNCTAD Review of Maritime Transport 2007, 2008, 2009, 2010, 2013

World Bank Container Port Traffic

Hong Kong Marine Department, Port and Maritime Statistics, 2004-2012

C Y Tung International Centre for Maritime Studies, TEU Forecasts

Shenzhen has grown remarkably over the last ten years, especially, and from 2004 to 2008 when its container throughput increased 11.4%. However, when taking a look at Guangzhou port, it is impressive that it has gained even more incredible growth during the same period with an increase of 233% in its container throughput. Moreover, Guangzhou has been able to sustain the container throughput growth even during the hardship year brought by the financial crisis. In addition, container throughput in Guangzhou port has been growing without interruption since 2004, while Shenzhen and Hong Kong, as is shown in Figure 1, both had a drop in their container throughput during the post financial crisis year.

Hong Kong is more like a mature and stable player. Except for the reduction after the financial crisis, its container throughput has always been experiencing small scale increase. The port throughput in terms of each year ranked the first among the PRD region nine times during the period. Presently, Shenzhen's container port is officially taking place of Hong Kong and is ranked in third place globally. In the following we will take a closer look at what has been happening and what led to the current situation in Hong Kong. The year 2012 seems to have been the turning point because from that point Shenzhen Port's throughput has risen above Hong Kong Port's. Reviewing the port throughput and development in the PRD region, there are various factors that could be counted as the change engine of container volume growth.

Shen Zhen proactively develops its multi modes of transport, especially by way of utilizing sea, rail and inland road transportation. As such the hinterland of Shenzhen port has expanded from the PRD region to cities such as Chongqing, Kunming, Changsha, and Nanchang, thereby ensuring a large number of customers and large amount of cargo. In terms of geography, Hong Kong Port is always the biggest competitor under the condition that the demand for cargo transportation is fixed. However, Shenzhen has been able to solicit transshipment transportation from its competitor, Hong Kong, due to its overall cost-effectiveness. Specifically, the overall handling cost for exporting a twenty-foot equivalent unit of container is 1, 200 CNY lower than it is in Hong Kong. This may explain why the amount of transshipment service in Shenzhen has risen sharply in recent years.

Though it was only a matter of time for Shen Zhen to overtake Hong Kong, there are some other factors which could further illustrate Hong Kong's decline. Industry observers take the stance that three major factors have led to the decrease of transshipment containers in Hong Kong: (1) The Hong Kong Port Strike which lasted 38 days had an impact on port operation which was later indicated in the drop in Hong Kong's container throughput. (2) Geographically, Hong Kong itself has neither hinterland nor connectivity to a possible distant hinterland. As a result, limited terminals and yards become too busy dealing with extra businesses. (3) With the establishment and development of China (Shanghai) Pilot Free Trade Zone, Hong Kong's transshipment business shrunk. International fleets to East China that used to transship via Hong Kong port can now directly export and import through Shanghai port.

It is worth noting that, in the face of Hong Kong’s losing out in the container throughput of 2013, industrial observers, analysts and governmental officials all agreed that container throughput is not the only indicator of port development. The port allied industries such as logistics and high value financial services are the real competitiveness of Hong Kong. Furthermore, the 100 percent free trade convenience that Hong Kong offers should not be supplanted by Shenzhen within a short time frame.

In the future, whether these two star ports would collaborate with each other in different divisions of work or compete with each other for the same port services cannot be predicted. What we can be pretty sure about is that the pace of port modernization and mechanization would increase in both two ports.

**The impact the PRD regional economic growth has on its ports’ throughput**

The main indications of the PRD regional economic growth would incorporate the gross domestic products (GDP), foreign direct investment (FDI), the gross product value of industries (GPVI), and the trade volume of import and export (TVIE) when analyzing Guangzhou and Shenzhen’s economic growth. However, the economic growth composition of Hong Kong, as it is an international financial centre, varies from those of Guangzhou and Shenzhen. For example, gross product value of industries is used to evaluate the industrial development of a mainland city, while Merchandise Trade and Service Trade indicators are mainly used to measure Hong Kong’s economic development.

Table 1. Main economic indicators of Guangzhou, 2004-2013

Indicators	GDP 100 million yuan	GPVI 100 million yuan	FDI 100 million USD	TVIE 100 million USD
2004	4450.55	5749.48	24.01	447.88
2005	5154.23	6767.96	26.49	266.68
2006	6081.86	8112.4	29.32	323.77
2007	7140.32	9875.79	32.86	379.03
2008	8287.38	111468.4	36.23	819.33
2009	9138.21	12355.46	37.73	766.85
2010	10748.28	14438.99	39.79	1037.68
2011	12423.44	16624.18	42.70	1161.72
2012	13551.21	17090.18	45.75	1171.67
2013	15420.14	17310.24	48.04	1188.88

Source: [www.gzstats.gov.cn](http://www.gzstats.gov.cn)

Guangzhou and Shenzhen are definitely two large contributors to the GDP growth in Guangdong province, which has had the highest GDP in China for 24 years. Guangdong has in particular made itself the country’s largest exporter, and hence Shenzhen and Guangzhou, two PRD cities, handled a large quantity of import and export. How are the port container throughput growth and PRD regional economic growth related? Table 1 and Table 2 present

the main regional economic indicators of Guangzhou and Shenzhen, respectively. Table 3 presents the main economic indicators of Hong Kong.

Table 2. Main economic indicators of Shenzhen, 2004-2013

Indicators	GDP 100 million yuan	GPVI 100 million yuan	FDI 100 million USD	TVIE 100 million USD
2004	4282.14	8588.83	23.5	1472.83
2005	4950.91	10174.54	29.7	1828.17
2006	5813.56	12278.48	32.7	2373.86
2007	6801.57	14362.89	36.6	2875.33
2008	7786.79	16283.76	40.3	2999.55
2009	8201.32	15828.63	41.6	2701.63
2010	9581.51	18879.66	43.0	3467.49
2011	11505.53	21273.09	46.0	4140.93
2012	12950.08	20570.86	52.29	4667.85
2013	14500.23	NA	54.7	5373.59

Source: [www.szjt.gov.cn](http://www.szjt.gov.cn)

Table 3. Main economic indicators of Hong Kong, 2004-2013

Indicators	GDP 100 million USD	MT 100 million HKD	ST 100 million HKD	FDI 100 million USD
2004	1658.86	41302.37	6556.89	222.16
2005	1777.72	45796.43	7352.87	409.60
2006	1899.32	50608.31	9178.28	449.12
2007	2070.87	55555.24	10388.35	621.10
2008	2153.65	58494.44	11097.57	670.35
2009	2093.10	51614.45	9749.89	542.74
2010	2241.76	63958.59	11731	827.08
2011	2433.02	71018.49	12902.56	961.25
2012	2632.6	73465.09	NA	840
2013	2806.82	NA	NA	NA

Note: MT: Merchandise Trade, ST: Service Trade

Source: UNCTAD STAT, <http://unctadstat.unctad.org>

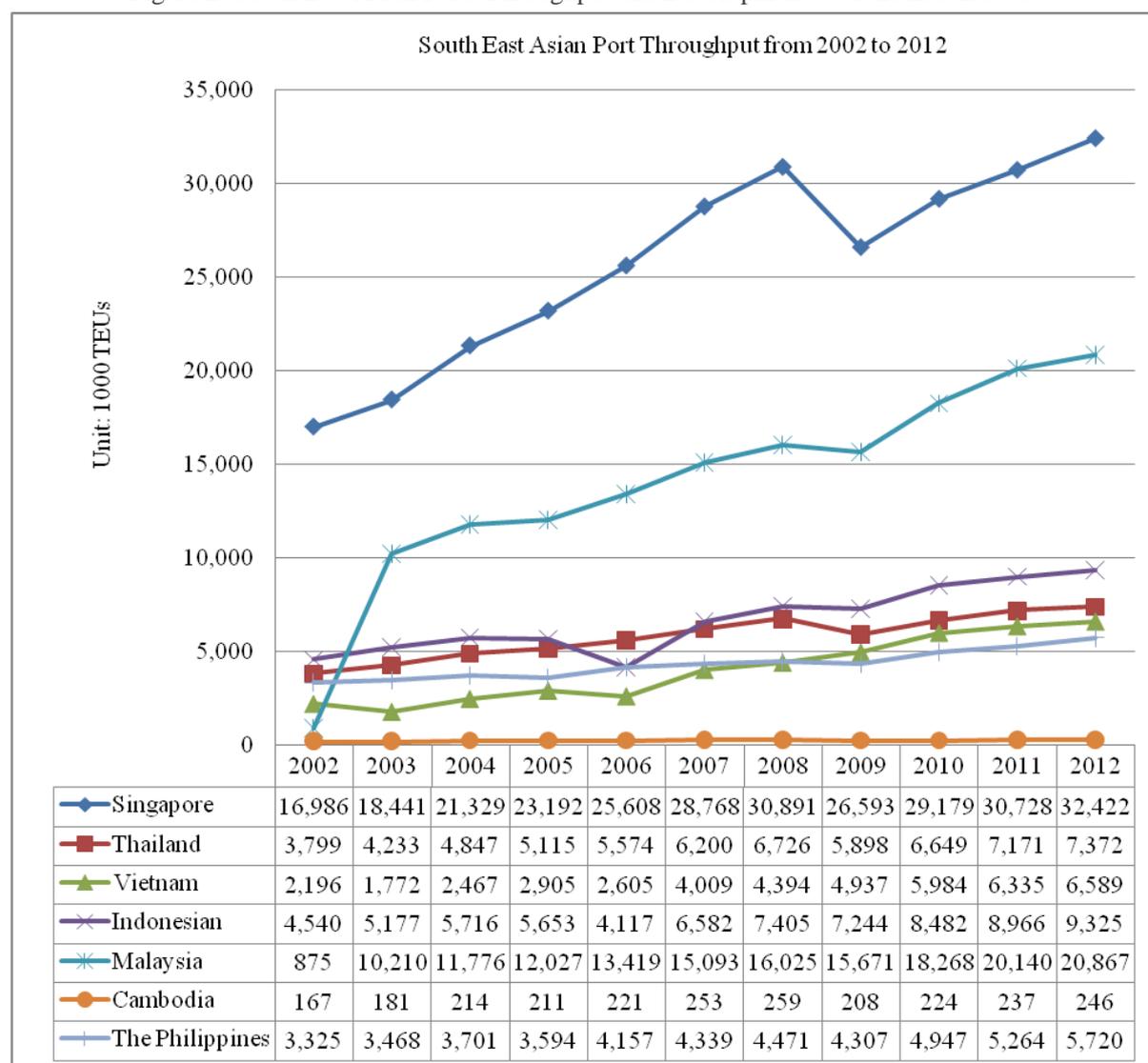
Hong Kong Annual Digest of Statistics, [www.statistics.gov.hk/pub](http://www.statistics.gov.hk/pub)

Furthermore, as the Port Technology described in its report titled “Port development in East Asia: From efficiency enhancement to regional competitiveness”, there would be a substantial decline in the already overlapping hinterland, and thus demand for stevedoring services among PRD ports. During the past decade, Hong Kong port has faced considerable challenges from its geographical neighbors. Presently, with regards to the hinterland access costs, manufacturers are relocating their plants from the PRD region to the Yangtze Delta region. Therefore, PRD ports now face competition that hardly existed before, and YRD ports are gradually becoming the serious market rival of PRD ports.

**Upcoming analysis: Container Shipping Market – South East Asian Market**

The analysis will be available soon in the section of Container Shipping Market, Maritime Insight, Volume 2, Issue 2, Summer 2014. Figure 2 presents an overview of the South East Asian Ports Throughput and Development over the Last Decade.

Figure 2. South East Asian Ports Throughput and Development over the Last Decade



Sources: UNCTAD Review of Maritime Transport 2005-2013

World Bank Container Port Traffic

## News Highlight

- **Ukraine Crisis: Impact on Ukraine's Corn Export**

China, the world's largest corn consumer, started importing corn from Ukraine for the first time in 2012, as reported by China Daily (April 7, 2012). Ukraine corn's lower price was particularly attractive to Chinese processing factories. Over the past two years, China saw an increase of corn imports from Ukraine, with the country becoming the largest corn export after the U.S. and Brazil and planning to ship 18.5 million metric tons of corn in the 2013-14 season, more than triple the amount three years ago, according to the U.S. Department of Agriculture.

According to Reuters (March 21, 2014), while China's corn imports from the United States, the world's top exporter, decreased sharply in February this year, hurt by Beijing's rejection of an unapproved genetically-modified strain, imports from Ukraine surged. China's imports of non-genetically-modified corn from Ukraine surged to 192,374 tonnes in February. The Financial Times (September 11, 2013) reported that China has a rising appetite for corn imports, especially from alternative countries such as Ukraine and Argentina. Late in 2013, Ukraine sent its first shipments of corn to China under a loan-for-grains deal.

*Would the recent political chaos in Ukraine create uncertainty for its grain market and further affect Ukraine's crop exports and have a major impact on global food supplies?*

Ukraine's unrest has pushed up corn prices, reported Rich Nelsen in Agriculture (February 28, 2014). There has been a sudden turnaround in the price of corn, which was said mainly to be due to the unrest in Ukraine. With Russia sending troops into two of Ukraine's airports, fear of an escalation has led to short covering and speculative traders jumping on board not only in the corn market but in beans and wheat as well.

The Wall Street Journal (March 3, 2014) expressed concern as U.S. wheat futures surged 4.6% due to traders worrying about exports in Ukraine's escalating crisis. Corn futures also gained from the Ukraine unrest, finishing at their highest price in more than five months.

China is still importing corn from Ukraine even though the country is now at high risk of being directly affected by the unrest, with grain shipments from Ukraine to China flowing normally, as reported Lloyd's List on March 19, 2014.

As China's grain imports grow, its connection to Ukraine will also increase. Ukraine's plans for its agricultural industry are coupled with China's need to increase grain imports (The Diplomat, February 28, 2014).

- **To Bypass Malacca Strait by Kra Canal in Thailand**

According to Global Times (March 14, 2014), the Thai Canal preparation work has been started recently with a centre for preparing the construction of the 100-kilometer-long canal being set up. The work team is formed by Chinese construction enterprises.

*Kra Isthmus Canal's future is actually not in Thai hands: interests-related countries would all contribute their capital as well as political leverage in bringing this old idea into reality.*

The Strait of Malacca is the doorway to the Indian Ocean from the broader Asia-Pacific region and enables the transport of water-borne crude delivery and other strategic resources to East Asia's many ports, from Manila to Tokyo.

China Daily Mail (March 16, 2014) stated that the trade route to the Indian Ocean through the Malacca Straits has the problems of pirates, shipwrecks, haze, sediment and shoals. It has twice rate of accidents as the Suez Canal and it is four times higher than the Panama Canal. As such, the proposal to build a passageway through southern Thailand as an alternative international shipping route to the Strait of Malacca has been recently brought back to the table. The proposed canal would significantly cut the shipping distance from eastern Asia via the Suez Canal to Europe, according to Executive Intelligence Review (October 11, 2013). The traffic of the Straits of Malacca has been increasing at an annual rate of 20%. The Straits is very busy with an estimated one fifth of world trade going through it, which causes congestion and increases the cost of trade in the end. Thus it's not surprising that the idea of a canal through the Kra Isthmus in Thailand has been a topic of interest for seafarers, traders, and geostrategists since roughly the late 17<sup>th</sup> century.

Were the Kra Canal to be build, some countries around the Strait of Malacca would suffer somewhat even though the Straits will always be strategically significant for trade. With regards to the consequences of constructing the Kra Canal, here we provide some speculations made in several media reports.

The Diplomat (December 01, 2013) is concerned that the Thai Canal (Kra Canal) would deeply transform the strategic and economic landscape of the Asia-Pacific region. While Malaysia and Singapore would suffer, Myanmar, Cambodia, and Vietnam would benefit greatly from the Kra Canal. However, the project would be an opportunity and platform for Southeast Asian countries to conduct mutually beneficial trade cooperation. Politically, India, Japan and China should be interested in developing such a canal since they would contribute capital and political leverage in putting this old idea into practice.

The Nation (December 6, 2013) states that it is an inspiration to cut a channel through southern Thailand and it could change the political and economic landscape of the whole region. **We just cannot help thinking that the Kra Canal, is it a dream or one step closer to reality now?**

# Trade Allowance – Law and Practice

**Dr Wei Fan**

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In an ideal world, the shipowner will deliver the cargo to the receiver in the same quantity as it was loaded if there is no accident during the voyage. However the reality is that it is not unusual to find the cargo slightly short landed, in particular for the bulk cargo or liquid oil product, without any sound explanations. This is called trade allowance. You can find other names in English cases, such as transit loss tolerance, wastage, or transpiration losses and so on. We are not going to discuss the scenario where owners should be responsible for the loss or shortage, say failure to discharge all cargo due to pump breakdown or fire loss as this is not trade allowance. Instead we want to look into the cases where the loss seems inevitable due to the cargo's nature, transportation, or handling of the goods, or it is due to the imprecise measurement of goods and it is not anyone's fault. Theoretically speaking, the shipowner should not be responsible for it at all, or is this actually the case?

Many types of cargo are inclined to shrink, evaporate or deteriorate during the carriage, no matter how diligent a carrier has been. This type of loss happens without the fault of carriers. Potatoes tend to lose water during carriage and they can lose as much as 1% of the total quantity. Wheat, especially weevil cargo loses weight from shrinkage and up to 1.2% could be lost in past decades. Turpentine has a strong propensity to vaporize. We have seen 5.86 % was evaporated in an English case. Cotton will lose moisture and weight due to hot weather. Similar things happen to sugar and timber. Bananas are fragile and they are expected to lose 1-4% during carriage as an unavoidable result of the handling. Such wastage is also common in the carriage of oil. Oil sticks to the side of the oil tanks and pipes and cannot be fully removed, which leaves a certain amount of oil remaining on board. Its evaporation and sedimentation can also cause shortages upon delivery. Other possible reasons include settling out as water on an ocean voyage flaring-off, leakages and so on. All the above contribute to wastage and levels as high as 1.19% have been accepted by court. See *the World Prestige*, [1982] 1 Lloyd's Rep. 60. Of course, if the shortage is caused by inefficiency or break down of the vessel's pumps, such a loss will not be deducted.



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On the other hand, it should not be forgotten that the allegation of short delivery depends upon the measurements taken on loading and discharging. It is taken by different people at different places (port of loading and discharging) using different measuring equipment. Its inaccuracy was clearly shown in *The Kriti Rex* [1996] 2 Lloyd's Rep 171 where the number of discharged boxes was even more than loaded, a terrible mistake by tallyman at either ports or probably both. If the measurement method is inaccurate or unreliable, it is very doubtful whether or not there is a loss in the first place. In *North Shipping Company Ltd v Joseph Rank & Co Ltd*, (1926) 26 Ll. L. Rep. 123, the court found that the recipient tallied empty cargo bags, and multiplied the weight of one bag to figure out the whole weight after discharge. It was highly likely that they had received the cargo but just lost some empty bags, which affected the result. There was also doubt cast on the accuracy of the machine and the successful and fair selection of the bags to be weighed. Therefore the court denied the claim for short delivery. Similarly in *the Filiatra Legacy* [1991] 2 Lloyd's Rep. 337, there was 4.3% shortage of loaded oil based on the shoreside evidence after discharge. Because such an evidence was probably imprecise, the court rejected claims for short delivery. In practice for the carriage of dry bulk cargo, if the weight is measured by scales at loading and discharge, and compared to the same through a draft survey done by the Master, there is bound to be significant differences produced.

**U**nder the Hague/Visby Rules Art. IV 2 (m), the carrier will be exempt from liability for cargo loss or damage caused by “wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods”. Generally the cargo-owner can raise a *prima facie* case against the shipowner by showing that there is a discrepancy between cargo delivered and marked in the bill of lading. This can be rebutted by proving that it was caused by normal transit losses. This argument is particularly potent when the missing part is very small and unexplainable, unless the shipper proves otherwise. Alternatively, he can argue that the measurement adopted in tallying cargo was inaccurate and unreliable, especially when there is no convincing theory of why the cargo is missing. However, for any assertion of a serious crime, *i.e.*, cargo was stolen by the shipowner, the claimant must give irrefutable evidence. Otherwise the court is more likely to accept the theory of wastage from the shipowner's side. The above is a likely summary of what would happen if the case is heard in English courts.

In accordance with art.51 (exemption of liability) of the Chinese Maritime Code, which is entirely based on art. IV (2) of the Hague/Visby Rules, the shipowner should not be liable for any damage or loss caused by the “nature or inherent vice of the goods” (Art.51 (9) of the CMC) or “...any other causes arising without the fault of the carrier or his servant or agent” (Art.51 (12) of the CMC). Its legal position should be the same as under English law. However compared with English courts, Chinese courts are less flexible and arguably too harsh towards such defence. From a review of Chinese cases, Chinese courts are notably persistent in giving 0.5% or less as a benchmark for bulk cargo, fishmeal, Brazil beans or soybeans. In *Sinochem Guangdong I&E Co Ltd v Asahe Shipping Co Ltd and Others*, Guangzhou Maritime Court, 29th Dec 2003, (2003) GHFCZ 266, there was about 1.12%

short delivery of fuel oil compared with the bill of lading figure. The court held that 0.4% was deductible as the “shipping custom”. In *Shenzhen Bao’an Dalong Trading Co v Guangzhou Kaida Shipping Co and others*, Guangzhou Maritime Court, only 0.3% was held deductible for a carriage of rape-seeds. In general, the carrier is more likely to be responsible for such a loss in China with less generous allowance than in England.

As a matter of fact, there is no universally accepted standard used to judge reasonableness of trade allowance scale. The unfortunate shipowner is exposed to the different views towards trade allowance in different jurisdictions. A solution for this? A realistic method to avoid the dispute is that both parties should try to make an agreement on the trade allowance figure in their contact beforehand; the higher the better for the shipowner. Having said the above, in today’s market, all I can say is that I wish shipowners the best of luck in finding such a nice and tolerable charterer.



Photography by Prof. Chin-Shan Lu, 2014

## Reducing Marine Emissions in Hong Kong and the Pearl River Delta

### Will the Pearl Shine Again?

**Ms Catherine Smith**

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#### Introduction

In early March 2014, Premier Li Keqiang declared a "war on pollution" at the National People's Congress (NPC). The level of air pollution in the Pearl River Delta (PRD) region has become of increasing concern to the Hong Kong SAR and Chinese Central Government.

Although carriage of goods by sea is one of the most efficient forms of transportation in terms of green house gas emissions per tons of cargo carried, in comparison to rail, road and air, shipping still accounts for 900 million tones of greenhouse gas emissions per year globally. The PRD is home to two of the four largest container ports in the world, Shenzhen and Hong Kong.

According to the Civic Exchange, a not-for-profit think tank based in Hong Kong, over the last four years ship emissions were Hong Kong's largest source of the green house gases sulphur dioxide (SO<sub>2</sub>), respirable particulates (RSP) and nitrogen dioxides.

The cities around the PRD are home to some 50 million people. That total is only set to increase. As a result, emissions from ocean going vessels as well as smaller river vessels have a direct impact on the environment and on public health in the region. This poses a challenge for the PRD as it looks to formulate a cohesive plan for emissions control from ocean going vessels coming in and out of some of the busiest waters in the world.

This article looks at what steps are being taken by the Hong Kong government to reduce shipping emissions together with the steps and challenges towards creating a Emission Control Area (ECA) for the entire PRD.



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## International Regulations and Global Goals

The key International regulations and initiatives aimed at reducing emissions from ocean going vessels are as follows:-

- (a) Amendments to the International Convention for the Prevention of Pollution from Ships. ("MARPOL" 73/78");
- (b) Ship Energy Efficiency Management Plan ("SEEMP") and Energy Efficiency Design Index ("EEDI").

The International Maritime Organisation (IMO) regulates the sulphur content of bunker fuel under MARPOL Annex VI "Regulations for the Prevention of Air Pollution from Ships".

There are two sets of bunker fuel quality requirements under Annex VI. These are:-

- Global required bunker quality; and
- The existence of Emission Control Area (ECAs).

The current ECAs are in the Baltic Sea, North Sea, North America and the US Caribbean.

Outside the ECAs the current requirement under Regulation 14 of Annex VI is that bunker fuel oil must not contain more than 3.5% sulphur oxides (SO<sub>x</sub>). Inside the ECAs the level is 1%.

Regulation 13 to Annex VI deals with diesel oil and sets out three allowable levels for Nitrogen Oxide (NO<sub>x</sub>) a vessel may emit by weight depending on the vessel's engine speed and depending on the date of construction of the Vessel. At a rpm of more than 2,000 per minute the current allowable NO<sub>x</sub> emission rate is 7.7 grams. The IMO's aim is for this to be reduced even further to 2.0 grams by January 2016.

The Hong Kong government gives effect to the MARPOL Annex VI regulations through the Merchant Shipping (Prevention of Air Pollution) Regulation. These emissions controls apply to vessels with a gross tonnage over 400 GT when in Hong Kong waters and to suppliers of bunkers to either a Hong Kong registered vessel or a vessel within Hong Kong waters.

China has also acceded to MARPOL Convention and to Annex VI in particular.

## The Voluntary Fair Winds Charter and Hong Kong's Clean Air Plan

In January 2011, some 17 shipping companies voluntarily signed a two year "Fair Winds Charter" (the "Charter"). This Charter was promoted by the Hong Kong Shipowners Association (HKSOA) and the Hong Kong Liner Shipping Association.

Under the Charter, the signatories agree to switch to using 0.5% SOx fuels when berthing in Hong Kong. Since coming into effect, the Charter has applied to some 3,600 vessels. According to the Civic Exchange, the Charter contributed to the reduction in 890 and 670 tonnes of sulphur dioxide in 2011 and 2012 respectively.

The Hong Kong Marine Department (MARDEP) responded in September 2012 by launching an incentive to encourage more shipowners and operators to burn low SOx fuel when berthing in Hong Kong waters. Under MARDEP's scheme, ocean going vessels burning low SOx fuel oil receive a 50% discount on port facilities and a discount on light dues of HKD43 per 100 tons, based on the vessel's tonnage.

Comments have been raised in the industry as to whether or not the MARDEP scheme is incentivising ship owners and operators enough. This is because the costs savings on port facilities and light dues do not cover the additional costs of using more costly low sulphur fuels. Further, some larger shipping companies are concerned that although they are paying the additional costs for better quality fuel oil, other ship owners and operators are not.

Arthur Bowring, the Managing Director of the HKSOA, has advised that the position of the HKSOA has always been that the Fair Winds Charter was put in place to encourage Government towards introducing regulation, and then with the understanding that Government would first introduce an incentive scheme, followed by regulations applicable to all owners and operators, and furthermore would liaise with Guangdong and Shenzhen for similar regulations throughout the PRD.

Despite the perceived shortcomings of the MARDEP scheme the Charter has been extended voluntarily to the end of 2014.

The Charter was intended to apply until such time as the Hong Kong government introduced equivalent legislation. In March 2013 the Hong Kong Environmental Protection Department announced its plans to introduce legislation requiring ocean going vessels to burn low SOx fuel oil while berthing in Hong Kong waters (i.e. fuel switch at berth). The Environmental Protection Department has indicated that draft legislation will be ready for presentation and adoption by the Hong Kong Government in July 2014. According to the Government Press Release "LCQ15: Marine Emissions of 17 July 2013" this legislation will be implemented in 2015. It is not yet clear what the penalties will be for non compliance with the new legislation and how it will be enforced. However, hopefully this legislation will create the level playing field the HKSOA is seeking as well as result in significantly improving the air quality around Hong Kong and the PRD.

## Regulations Focussed on Quality of Marine Fuel Stemmed at Hong Kong

In January 2014 the Hong Kong government finalized the "Air Pollution Control (Marine Light Fuel) Regulations" (the "Regulations") which place controls on the quality of light diesel stemmed at Hong Kong. These Regulations will come into force on 1 April 2014.

The Regulations provide that the sulphur content of marine light diesel supplied to vessels in Hong Kong (whether Hong Kong flagged vessels or not) must be 0.05% or less and either (1) be defined as "Category ISO-F-DMA" in the ISO specifications or (2) be define as "Gasoil 0.05% Sulfur" in the Platts specifications. The current limit is 0.5%.

The supply of light diesel fuel oil not complying with these sulfur levels is prohibited. Any bunker supplier supplying prohibited bunkers is liable on conviction to a fine of between HKD25,000 and HKD50,000 and 3 months imprisonment.

The Hong Kong Environmental Protection Department stated that marine vessels operating on 0.05% sulphur diesel emit about 90% less SO<sub>2</sub> and about 30% less respirable air particles than vessels operating on 0.5% sulphur marine diesel. That is a considerable reduction. These Regulations aim to reduce SO<sub>2</sub> emissions by 19% and respirable particles by 10%.

At present, although the Hong Kong Government has implemented compulsory legislation in respect of the sulphur content of bunker fuel supplied in Hong Kong (and therefore likely emissions), the Government has not yet implemented legislation to compel ocean going vessels coming into Hong Kong to switch fuels to low sulphur fuels when berthing in Hong Kong.

## Initiatives in other major ports around the PRD

The Chinese State Council issued an "Action Plan on the Prevention and Control of Air Pollution" in September 2013. Part of that plan is to improve air quality in the Beijing-Tianjin-Hebei Province, the Yangtze River Delta and the PRD. The State Council aims to reduce the level of fine particles found in the air in the PRD by 15% over the next 5 years.

In September 2013 the Shenzhen Government released its "Shenzhen Air Quality Enhancement Plan". This plan sets out target for various ship emission control measures. The aim is to achieve most of these measures by no later than 2015. The main development under the Shenzhen plan is to use shore power in place of vessels generating power by using their onboard auxiliary engines and burning fuel in the process. Instead, ships at berth are connected to shore electric power, resulting in zero emissions from the vessel in port. Shenzhen's plan states that no less than 15 berths in Shenzhen port will be equipped with shore power systems by the end of 2015. The Shenzhen Government is also developing an incentive scheme to encourage the uptake of shore power and also the burning of low sulphur

fuel in port.

In February 2014, the Guangdong Government released its "Guangdong Province Green Port Action Plan (2014-2020)". Under that plan the goal is to have the majority of port working vessels using shore power at berths by 2020. Shore power will also be used for larger cruise ships and at the container terminal for vessels over 100,000 grt. This plan also set out goals for the construction of "green" ports in Guangdong, Zhenhai, Shantou, Huizhou, Dongguan and Chaozhou.

There has been an upward trend of emissions regulations around the world, notably in France, where new reporting requirements have been implemented for CO2 emissions. Under the French Transport Code, since 1 October 2013 carriers on voyages to or from a destination in France have had to record and notify the CO2 emitted during those voyages.

### **An ECA for the Pearl River Delta – Dream or Reality?**

As set out above there are different schemes for the reduction of emissions from ships being applied in Hong Kong, Shenzhen and Guangdong in particular including switching fuel initiatives and shore power initiatives.

The "Clean Air Plan for Hong Kong" was published in March 2013 by the Hong Kong Environment Bureau in collaboration with the Transport & Housing Bureau, the Food & Health Bureau and the Development Bureau. One of the key objectives of that plan is the creation of an ECA in the PRD.

The Hong Kong government has began discussions with the relevant authorities around the PRD on the feasibility of a fuel switch programme for all the ports of the PRD. Those discussions are ongoing.

At the China Maritime 2014 Exp, held in Hong Kong in February 2014, the Undersecretary for the Environment, Christine Loh, stated that it was the Hong Kong Government's policy to make the PRD an ECA. Ms Loh acknowledged however that "*this cannot happen in a short time*". As an example, the USA and Canadian ECA plan was submitted to the IMO in March 2009, it was adopted in March 2010 and was not entered into force until 2012.

### **Conclusion**

A coherent marine emission plan is clearly of acute importance for the PRD as home to some of the biggest and busiest ports in the world and as home to more than 50 million people. The Hong Kong, Shenzhen and Guangdong governments are taking substantial steps to reduce ocean going vessel emissions at berths.

Given the large geographical area, the number of government departments and agencies which need to be consulted and work together, as well as the long process within the IMO, an ECA for the PDR is some way off. Local regulations and incentive schemes are already showing signs of working. However, varying emissions regulations and bunker quality regulations in the region will only serve to add confusion and make compliance by ship owners, operators and bunker suppliers in the region more difficult.

Cooperation between the different governments and agencies around the PRD will be essential so that the Pearl River Delta can shine again.



Photography by Prof. Chin-Shan Lu, 2014

## Is a “Clean” Bill of Lading Clean?

**Dr Liang Zhao**

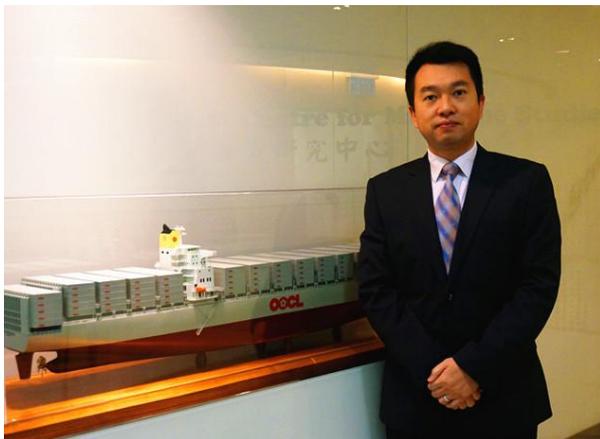
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*The bill of lading is an important shipping document in the international trade of goods carried by sea. The clean bill of lading states that the goods have been shipped “in apparent good order and condition”.*

Generally speaking, only clean bills of lading without qualification are accepted for trade purpose, e.g. payment of price of good with letter of credit through banks. Some bulk cargoes, such as steel and timber, are slightly spoilt by rusting or splitting which could be considered as an inherent vice of the goods. In shipping practice, such ‘spoiling’ is not considered sufficient enough to qualify the clean bills of lading. Consequently, carriers, normally on the demand of shippers for sales purpose, will issue clean bills of lading without clausing them. The well-known clause to this effect is the Retla clause (named after the US case, *Tokio Marine & Fire Insurance Co v Retla Steam Ship Co*) [1970] 2 Lloyd's Rep 91).



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In *Breffka & Hehnke GmbH & Co KG and others v Navire Shipping Co. Ltd and others (The Saga Explorer)* 2012 EWHC 3124; [2013] 1 Lloyd's Rep 401, cargo interests brought a claim under the bills of lading for the damage to a cargo of steel pipes. The pipes were in fact heavily rusted on shipment to the knowledge of the shipowners, but the bills of lading contained a Retla clause, based on which the shipowners disclaimed the statement with respect to the condition of the cargo on the bills. It is the first time that the English courts had considered the Retla clause which had been popularly added to the face of bills of lading when the carriage involved iron, steel, metal products

or timber. Simon J in *The Saga Explorer* disagreed with the decision of no representation in *Tokio Marine* and held that the statement with the Retla clause made on the bills as to the cargo's apparent condition was a fraudulent misrepresentation.

In *The Saga Explorer*, the bills included the usual statement that the goods were “SHIPPED in apparent good order and condition . . .” In addition, the bills included a Retla clause as follows:

“IF THE GOODS AS DESCRIBED BY THE MERCHANT ARE IRON, STEEL [OR] METAL ..., THE PHRASE ‘APPARENT GOOD ORDER AND CONDITION’... DOES NOT MEAN THE GOODS WERE RECEIVED... FREE OF VISIBLE RUST OR MOISTURE... IF THE MERCHANT SO REQUESTS, A SUBSTITUTE BILL OF LADING WILL BE ISSUED OMITTING THIS DEFINITION AND SETTING FORTH ANY NOTATIONS WHICH MAY APPEAR ON THE MATE’S OR TALLY CLERK’S RECEIPT.”

In *The Saga Explorer*, the shipowners, knowing the damaged condition of the goods on shipment, did not clause the bills of lading. Instead, at the shippers’ request, they issued the bills containing the Retla clause against a letter of indemnity from the shippers. One of the questions in this case is whether the bills of lading contained a fraudulent representation as to the condition of the goods on shipment.

The authority to the question is *Canada and Dominion Sugar Co Ltd v Canadian National Steamships (West Indies) Ltd* (1946) 80 Ll L Rep 13 (PC). This case involved the shipment of a cargo of sugar. Bills of lading were issued by the shipowners stating that sugar had been received in apparent good order and condition. They also entered a marginal endorsement “signed under guarantee to produce ship’s clean receipt”. In fact, the sugar had been damaged before loading and the mate’s receipt eventually recorded that many bags were stained, torn and re-sewn. The sugar was found to be damaged and the assignee of the bills brought an action against the shipowners arguing estoppel. The crucial question was the true construction of the bill of lading in regard to the statement as to the condition of the cargo. Because the statement was qualified, in the opinion of their Lordships, the estoppel which could have been set up by the assignees as against the shipowners could not be relied on.

From the endorsement “signed under guarantee to produce ship’s clean receipt”, it could be reasonable to infer that the mate’s receipt had not reached the shipowners when they signed the bills. In *Canada and Dominion*, evidence was given and not questioned that there was a practice at the port to issue bills of lading before the completion of the loading and the issue of the mate’s receipt in order to facilitate the shipper’s business arrangements, i.e. the bills could be presented to the buyer for acceptance of an payment before the carrying vessel’s arrival ((1946) 80 Ll L Rep 13 (PC), 16). That could be the reason why the ship-owners issued a “received”, not “shipped”, bill of lading with such a qualification to the condition of the cargo. Therefore, the Privy Council held that there was no ground for holding the shipowners guilty of any breach of conduct or duty in regard to the carriage of the goods ((1946) 80 Ll L Rep 13 (PC), 18).

If the shipowners in *Canada and Dominion* were not guilty because they did not know the damaged condition of the goods when the “received” bill of lading was issued, the shipowners in *Tokio Marine* might be guilty because they knew the damaged condition of the goods when they issued clean bills of lading which did not state the damaged condition. The

latter case involved the shipment of a cargo of galvanised and ungalvanised pipes. Despite the fact that heavy rust and wetness was noted on the tally sheets and the mate’s receipt, the bills of lading stated that the goods were shipped on board “in apparent good order and condition”. A rust clause (i.e. the Retla clause) in the lower portion of the bills recited that “term ‘apparent good order and condition’... does not mean that the goods, when received, were free of visible rust or moisture”, and provided for a substitute bill if that information is requested. In the opinion of the US judges (in District Court and Court of Appeals), the decisive point was not the conduct of the shipowners, but the construction of the bills of lading. The judges followed *Canada and Dominion* and took the view that there was no representation as to the condition of the cargo. As the shipper had not requested the issue of a substitute bill, the US courts held that the bills of lading issued and qualified could not form the basis for an estoppel ([1970] 2 Lloyd's Rep 91, 96).

In *The Saga Explorer*, although the mate’s receipts contained a reservation that the cargo was received in the damaged condition, the bills of lading contained no such reservation because the shippers requested that the bills of lading be issued unclaused against letters of indemnity. The shipowners denied liability for the damage and contended that there was no misrepresentation as to the apparent order and condition of the goods in the bills of lading. This argument was rejected by Simon J. He pointed out that the issue of the clean bills in this case was not an honest conduct of the Master. In his view, before issuing bills of lading the Master “must form an honest and reasonable, non-expert view of the cargo as he sees it and, in particular, as to its apparent order and condition” ([2013] 1 Lloyd's Rep 401, at [32]). Because the appearance and condition of the cargo was not reasonably and honestly represented by the bills of lading, Simon J held that the statement as to the apparent order and condition of the goods on those bills of lading involved false representations by the owners (([2013] 1 Lloyd's Rep 401, at [55]).).

In order to emphasize the importance of honesty, Simon J cited *Standard Chartered Bank v Pakistan National Shipping Corporation* ([1995] 2 Lloyd’s Rep 365 (No. 1); [1998] 1 Lloyd’s Rep 684 (No. 2)) in which Clarke J and Cresswell J described that “Honest commerce requires that those who put important documents, like bills of lading, into circulation do so only where the bill of lading, as far as they know, represents the true facts.” ([1995] 2 Lloyd’s Rep 365, 374 and [1998] 1 Lloyd’s Rep 684, 704, respectively) However, representing “the true facts” does not mean the representation of all facts. Parties to the bill of lading, including the carrier, are free to provide a disclaimer in their contract unless otherwise prohibited by law. In fact, no such a law applied in *Tokio Marine* and *The Saga Explorer*, and there is no reason to request that the shipowners represent all the true facts. If they represented with a disclaimer, e.g. the Retla clause, it means that they in essence represented nothing.

It may be argued that the shipowners were not honest businessman because they knew the damaged condition and they could but did not represent the truth. In *Canada and Dominion*, the shipowners did not issue a “shipped” bill of lading to replace the “received” bill in order to state the damaged condition of the cargo even they knew the damaged condition later.

Could it be said to be dishonest conduct or performance of carriage? Simon J answered in the affirmative. The answer, however, is not under the Hague Rules. Article III r. 7 provides that the carrier may issue a “shipped” bill of lading “if the shipper so demands”. If there is no such demand, why should the shipowners issue a clean bill of lading? In relation to English law, the Privy Council in *Vita Food Products, Inc. v Unus Shipping Company* held that “there is indeed no law which prevents goods being carried at sea without any bill of lading at all” ([1939] AC 277, 294). Simon J’s request of honest conduct might be a requirement of good faith in business. However, it should be noted that good faith has been applied in very limited fashion to business in English common law.

In English law it is clear by now, by virtue of the decision of *The Saga Explorer*, that the inclusion of a RETLA clause will only protect an owner in cases of merely superficial rust or moisture. It seems to be a cargo-friendly decision. However, because the shippers always request the clean bill of lading for trade purpose and never call for a substitute bill of lading showing the true condition of goods, shipowners will inevitably continue to issue bill of lading if they have no other better way of protecting themselves in the situation of *Tokio*



Photography by Fang Zhang, 2013

*Marine* or *The Saga Explorer*. A letter of indemnity may provide illusory protection for a shipowner who deliberately issues a clean bill of lading when he knows the defects of condition because the indemnity was held to be illegal and void on the grounds of fraud. For the present, the decision of misrepresentation in *The Saga Explorer* might mean it is impossible to change the position of the assignees of the bill of lading.

# Summary of the Legal and Policy Framework Relating to Vessel-source Pollution in Hong Kong

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**H**ong Kong suffers from the typical marine pollution problems associated with shipping activities. In 2012, for example, 136 oil pollution incidents were reported,<sup>1</sup> and the port collected 4,351 tons of refuse from vessels.<sup>2</sup> In addition to this, the busy schedule of vessels in Hong Kong and nearby regions “amounts to a recipe for a rich lethal potion of SO<sub>2</sub>, PM and NO<sub>x</sub>”.<sup>3</sup> To meet the ever-increasing challenges, Hong Kong has formulated a legal and policy framework to prevent and rectify vessel-source pollution.

Under the policy of “one country, two systems”, Hong Kong does not have a so-called constitutional law. However, its constitutional legal framework is embodied in the Basic Law.<sup>4</sup> Under the Basic Law, Hong Kong enjoys a high degree of autonomy, except for specific issues relating to defense and foreign affairs.<sup>5</sup> Such sphere of autonomy is reflected in its marine environment protection, including its environmental lawmaking.<sup>6</sup> This empowers Hong Kong as an independent party in international environmental agreements, including the marine environment.<sup>7</sup> As a result of the UK’s historic influence, Hong Kong has been subject to most of the relevant international conventions, and Hong Kong’s obligations under the majority of these international treaties and conventions did not change after its return to China.<sup>8</sup> Hong Kong is a party to almost all the marine pollution conventions, and its vessel-source pollution laws are primarily an implementation of the relevant conventions. One important aspect of the international obligations undertaken by Hong Kong concerning protection of the marine environment is its implementation of these laws at the domestic level. This has been done through appropriate legislative measures by putting in place various provisions of particular international conventions that regulate and protect the marine environment from vessel-source pollution. These domestic laws provide the legal basis for

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<sup>1</sup> The Port of Hong Kong Handbook & Directory 2013, p.59.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, p.54.

<sup>4</sup> Articles 1 and 2 of the Basic Law, Preamble.

<sup>5</sup> Annex III of the Basic Law.

<sup>6</sup> BL Liebman, ‘Autonomy Through Separation? Environmental Law and the Basic Law of Hong Kong’, *Harvard International Law Journal* 39 (1998) p.234.

<sup>7</sup> R Mushkat, ‘International Environmental Law: How Green Is the Future?’ in *The New Legal Order in Hong Kong*, R Wacks (ed) (Hong Kong: Hong Kong University Press, 1999), p.631.

<sup>8</sup> Article 8 of the Basic Law.

various measures taken by Hong Kong authorities in tackling vessel-source pollution.

**A**t an administrative level, the Environmental Protection Department under the Environment Bureau is responsible for developing policies covering environmental protection, enforcing environmental legislation and handling pollution complaints and incidents. The Hong Kong Marine Department is the port authority empowered by the Shipping and Port Ordinance.<sup>9</sup>This department is responsible for ensuring compliance with international and local safety and marine environmental protection standards in respect of ships registered and licensed in Hong Kong and using Hong Kong waters.<sup>10</sup>Hong Kong takes effective measures to fulfill its obligations associated with vessel-source pollution as a flag and port state. As of December 2013, 2,327 ships having a gross tonnage of 86.43 million were registered in Hong Kong, and this number has continued to grow since the beginning of 2014.<sup>11</sup> The Marine Department ensures that all ships flying the Hong Kong flag comply with vessel-source pollution regulations. All Hong Kong-registered ocean-going ships and locally licensed vessels are required to be surveyed and certified according to pollution prevention regulations.<sup>12</sup>In particular, for the control of oil pollution, Hong Kong ships are required to carry a Hong Kong Oil Pollution Prevention (HKOPP) Certificate for internal water voyages, and an International Oil Pollution Prevention (IOPP) Certificate or HKOPP Certificate for international voyages.<sup>13</sup>To exercise the port's jurisdiction, the Hong Kong Marine Department is authorized to ensure that non-Hong Kong registered ships also comply with requirements under international conventions whilst in Hong Kong waters. The Marine Department will therefore carry out Port State Control (PSC) inspections according to IMO Resolution A. 1052(27)<sup>14</sup> and the Tokyo Memorandum of Understanding on Port State Control Manual. Under such PSC inspection, the officers will assess whether the ship and/or crew is able to prevent pollution of the environment throughout its forthcoming voyage.<sup>15</sup>For example, one area of specific inspection campaigns involves checking the "oil record book"<sup>16</sup> and those oil tankers "older than 15 years" so as to control vessel source pollution as required under MARPOL conventions.<sup>17</sup>Serious violation may lead to detention or notice of

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<sup>9</sup> The Laws of Hong Kong, Cap 313.

<sup>10</sup>The Marine Department, Organisation, Functions and Services, available at <http://www.mardep.gov.hk/en/aboutus/dept.html> (last accessed on 12 March 2014).

<sup>11</sup>Statistics, Number and Gross Tonnage of Ships Registered in Hong Kong, available at [http://www.mardep.gov.hk/en/pub\\_services/pdf/mon\\_stat.pdf](http://www.mardep.gov.hk/en/pub_services/pdf/mon_stat.pdf) (last accessed on 11 March 2014).

<sup>12</sup>Advisory Council on the Environment, 'Control of Ship-sourced Pollution within Hong Kong Waters', ACE Paper 30/2008, p.3.

<sup>13</sup>*Ibid*, p.4.

<sup>14</sup>Procedures for Port State Control, adopted in 2011, available at [https://www.dpc.mar.mil.br/sta/proc\\_psc.pdf](https://www.dpc.mar.mil.br/sta/proc_psc.pdf)(last accessed on 11 March 2013).

<sup>15</sup>*Ibid*.

<sup>16</sup>Advisory Council on the Environment, 'Control of Ship-sourced Pollution within Hong Kong Waters', ACE Paper 30/2008, p.4.

<sup>17</sup> Port State Control: A guide for ships involved in the dry bulk trades, p.15.

rectification before being allowed to leave Hong Kong.<sup>18</sup>

In addition, there have been some new advances made. The Marine Department, for example, launched Smoke Emission Control to monitor smoke emission from vessels, as well as making random inspections for Dangerous Goods Control on vessels conveying dangerous goods in Hong Kong waters.<sup>19</sup> In order to be prepared for oil spills and be able to tackle oil pollution incidents, the Marine Department has developed an effective Maritime Oil Spill Response Plan that co-ordinates both public and private resources. Regular drill exercises and staff training are provided under this Plan.<sup>20</sup> Although the HNS convention is not yet in force, Hong Kong joined the Protocol on Preparedness, Response and Co-Operation to Pollution Incidents by Hazardous and Noxious Substances (“HNS”) in 2013 for collaboration and exchange on matters concerned with HNS pollution.<sup>21</sup>

**E**fficiency, safety and sustainability should be the three main objectives that Hong Kong has in order to maintain and improve its competitive position among international ports. Various legal and policy methods are continuously being adopted in Hong Kong to protect its marine environment and prevent it suffering from vessel-source pollution. However, with the integration of its infrastructure and increase in activities in the Pearl River Delta region, Hong Kong’s marine environment is being challenged. This presents both opportunities and challenges for updating the legal and policy framework so as to combat vessel-source pollution in Hong Kong. The Hong Kong government has actively adopted various measures in response to issues affecting marine pollution in the Pearl River Delta region. For instance, in response to oil spills within Hong Kong waters, the Hong Kong Marine Department now has a regional co-operation guide<sup>22</sup> shared with its counterpart administrations in Guangdong, Shenzhen and Macao. Regarding vessel-source air pollution, ‘A Clean Air Plan for Hong Kong’<sup>23</sup> was published in March 2013, in which the government promises that before 2017 or 2018 ships will use low-sulphur diesel while berthing, instead of burning high sulphur bunker fuel,<sup>24</sup> and as mentioned by the chief executive of Hong Kong in his ‘2014 Policy Address’, it is actually possible to implement this new requirement next year.<sup>25</sup>

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<sup>18</sup>Advisory Council on the Environment, ‘Control of Ship-sourced Pollution within Hong Kong Waters’, ACE Paper 30/2008, p.3.

<sup>19</sup>Marine Department, Marine Department Environmental Report 2012, pp.7-8.

<sup>20</sup>*Ibid*, p.10.

<sup>21</sup>Government of Hong Kong, Press Release 2013, available at <http://www.info.gov.hk/gia/general/201301/10/P201301100325.htm>, 29(last accessed on 11 March 2014).

<sup>22</sup>Regional Maritime Oil Spill from Ship Response Plan for the Pearl River Estuary.

<sup>23</sup> Environment Bureau, Transport & Housing Bureau, Food & Health Bureau and Development Bureau, A Clean Air Plan for Hong Kong, available at [http://www.enb.gov.hk/en/files/New\\_Air\\_Plan\\_en.pdf](http://www.enb.gov.hk/en/files/New_Air_Plan_en.pdf) (last accessed on 12 March 2014).

<sup>24</sup> The Port of Hong Kong Handbook & Directory 2013, p.54.

<sup>25</sup> Policy Address 2014, available at <http://www.policyaddress.gov.hk/2014/eng/index.html>, 159 (last accessed on 11 March 2014).

# Insurances for a Charterer or Operator

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*Enough has been spoken about the marine insurances related to ships but we don't always realize that we are talking of Insurances from the point of view of an Owner and not from the perspective of Charterers/ Operators or Traders/Shippers. These are an important link in the shipping chain whether it is dry bulk cargo, containers or tankers. Let us collectively call them Charterers for the sake of this article.*

**T**his article is a practical approach to the design of coverage for all major insurances that cover the risks for Charterers in their business; the intention is not to educate the readers on the intricacies of insurance covers but to give a Charterers perspective on the design of coverage. So, all my friends in the Marine Insurance industry should pardon me for possibly over simplifying the subject.

To start with, Charterers are a very varied and fragmented fraternity; we can always see Shipowners associations but less so for such Charterers associations. There is always a concern in Owners mind that the Charterers are not credible if they do not have sufficient cover for eventualities; "sufficient" being the key word there. Almost everyone considers that IGA club P&I covers (or a few fixed premium insurance covers) are sufficient to prove that the Charterers have a cover for 'any' eventualities. Sadly, this misconception leads to the predictable truth that Charterers sometimes have so much risk on themselves that they are almost always under-insured. They may have a good cover for Charterers liabilities but may not have a cover for costs. Irrespective of this, barring a few, Charterers themselves really do not appreciate the risk or the need for extensive cover apart from liability and costs.



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*Main insurances for any Charterer are broadly divided as follows:*

- **Charterers Liability (P&I)**

Very simply, P&I is to cover liabilities - any situation where Charterers have to make additional payments to some party during the Charter period whether under contract or otherwise. There are many types of claims possible under the cover, with common claims being: Cargo shortages, cargo damages, damages to the ship due to cargo work or cargo operations including ship-to-ship transfers, customs fines, bunker quality related claims, contribution to General Average portion of Bunker Ownership, as well as several other examples. Under each header the claims can range from minor to major. Unlike P&I for Ship-owners, where there is a fixed rate per GT for the whole year for a specific ship, the Charterers business entails different types, age, and size of ships for their business and there are changes every time a ship is chartered even if for a single trip on voyage or time charter. Charterers cover would have premiums based on GT ranges for the specific trades or commodities that the Charterers are generally involved in. Bunkers are the property of the Charterers in most time charter parties and most P&I clubs will cover bunkers liability at no additional cost but normally under a different header; it is also possible to have a separate bunker insurance cover.

P&I for Charterers is almost always a fixed premium per GT per ship's voyage duration (per annum pro\_rata); in recent times P&I insurers have also been innovative enough to fix a premium per MT of cargo carried if they are covering a risk that relates to a contract of affreightment or traders who move same commodity under the cover. Fixed premium also means that the upper limit of the cover is important. Charterers liability market is predominantly a fixed premium market whether with IGA or with the many reliable fixed premium insurers available for underwriting the risk. Whilst the IGA clubs are able to afford USD 500 million - USD 1 billion coverage, fixed premium clubs will be able to provide up to such limits as USD 500 million but have the option of lesser premium for small upper limits at as low as USD 5 million.

- **Freight Defense and Demurrage (FDD)**

For the sake of new entrants into the industry, FDD is an insurance that covers legal and survey costs when there are disputes related to the Charter Party (CP) or the Bill of Lading (BL). It is surprising always to note that P&I is given so much importance that FDD's role is undermined. FDD is possibly the most useful tool also to avoid having disputes under the CP or BL - because all FDD insurers provide legal advice and a quick opinion on whether you are correct in assuming what you assume when a Owner alleges a Charterer of supplying incorrect bunkers or when there is a Speed & Consumption claim under Time Charter. Most common types of claims faced are the huge demurrage disputes, speed & consumption claims, and legal costs incurred for either fighting a sub charterer who has not paid freight or an Owner who will not return overpaid hire. FDD does not pay the money that the other party may owe you but will pay the costs involved in recovering the money from the other party.

- **Bunkers & Freight insurance (Freight)**

The Charterers main asset in a Time Charter is the bunkers onboard the ship which the Charterers pay for when they take delivery from Owners; whilst the only income in a charter is the freight which is normally (deemed) earned upon completion of loading (different trades have different norms). That is the reason we can consider both of them in unison. The bunkers onboard can be covered under P&I or otherwise. Freight insurance is to prevent the eventuality of losing the ship or cargo before freight is deemed earned. To illustrate the importance of such a cover, consider this scenario: Time charterers take delivery of a Handy dry bulk cargo ship from North China for USD 8,000 per day hire and pays 15 days charter hire in advance along with USD 300,000 for bunkers on delivery and order ship to ballast towards Busan for bunkering worth USD 500,000 and then ballast across Pacific for a standard NOPAC R/V (North Pacific Round Voyage). The Vessel then encounters bad weather after passing Alaska and sinks a few days before reaching Vancouver, when vessel was already on hire for 15 days. Charterers just lost their bunkers and hire without earning estimated freight of USD 1,500,000. Imagine these numbers with a Cape size ballasting from China to Australia or a VLCC ballasting all the way from Rotterdam back to Arabian Gulf.

- **Loss of Hire (LOH)**

One of the foremost topics of discussion nowadays is piracy mainly when transiting Indian Ocean and related costs to Charterers and their liabilities. Most of the Time Charter Parties will allow for clauses related to costs apportionment under the Piracy Clause. Whilst most Owners adopt the BIMCO Piracy clause, there are various costs (SEC D) that are commercially dealt with during negotiations wherein the Owners may prefer to have a lump sum from Charterers to cover extra war risk insurances, K&R (Kidnap and Ransom) premiums, costs of security equipment, crew bonus and possibly also armed guards. Whilst many Owners will consider having their own K&R insurance, they will want the BIMCO Piracy clause intact related to Charter hire payments (SEC F) if the ship is hijacked. Charterers can and should take their own insurances for standalone LOH even though Owners may have LOH cover because Owners cover is not for the sake of covering Charterers liability under SEC F of the Piracy Clause.

Open covers for LOH are available from a select few niche insurers who specialize in K&R and LOH sectors. None of the P&I and H&M (Hull & Machinery) insurances of Owners or Charterers include this insurance automatically. Cover is generally per transit, and can be extended to areas such as West Africa as well. Cover has evolved over the last few years to attach vessels to this insurance from port to port notwithstanding the period of transit or whether the vessel is in a designated 'High Risk Area' when hijacked.

A common misconception is that Charterers liability is restricted to 90 days of Charter hire under this piracy clause, although Charterers still stand to lose the bunkers value after the 91st day until the vessel is released; standalone LOH can include this only by specific arrangements.

- **Strike & Delay (Strike)**

Possibly offered by only 1-2 insurers world-wide, this is practically the most useful insurance for Charterers regular operations for delays due to scenarios that are beyond Charterer's operational control. Such cover is available as a mutual insurance for Owners and for Charterers. Charterers part of the insurance covers time lost due to any incident onshore such as strikes by port workers, mechanical breakdown of onshore equipment (such as a shore crane), and the closure or physical obstruction of a port or waterway. The insurance also covers time lost/ delays due to congestion as a result of such onshore incidents, even after the incident onshore has ended. Common claim situations include strikes, industrial disputes, fire or mechanical breakdown on land, port closures due to obstructions, stowaways or saving life at sea, and quarantine among other scenarios. Insurance normally has a 1 day deductible and 9 days of cover which is both useful and characteristic of the incidents that this insurance covers.

- **Ship-owners Liability (SOL)**

Actual practice is something that differs from typical handbook theory. SOL cover is possibly the bridge between when Charterers sometime have to agree to some documentation or some carriage procedures that are not normally covered by P&I. The best example of the reality vs cover is possibly the LOI (Letter of Indemnity) which is the document demanded from shippers by Charterers and from Charterers by Owners for doing anything out of the norm including releasing cargo without the Original Bill of Lading or at a different discharge port than what is mentioned in the Bill of Lading. Whilst P&I clubs also provide standard formats for such LOIs, they will not cover the situations that will arise from it.

In various trades, the Charterers are at times pushed to agree to terms that are not covered, normally for commercial reasons. It is increasingly common for Charterers to be named as carriers on Bill of Lading rather than Owners; it is also becoming common for Charterers to absolve Owners from shortage claims when calling at a few ports that are 'notorious' for claims. During the practical course of business, Charterers encounter various such scenarios for which they can get coverage on a case-by-case basis or as an open cover.

- **Other Insurances**

There are several insurances that can be procured and are both major and necessary in their own way. War risk insurances that Owners would take coverage for are normally not sufficient to cover the risks of the Charterers under an actual war risk (or disturbance such as the current Ukraine-Russia situation or the Middle East crisis not so long ago). Cargo insurances for traders could well be a point of contention if traders do not cover for all risks when cargo is on a ship or if they will have multi-handling or multi-transportation over water which may not be covered unless specifically agreed.

## Conclusion

Many insurance brokers are able to handle most of these insurances all under one roof. However, as mentioned earlier, Charterers are a varied lot and each one is peculiar in their operations and need for various insurances. Charterers, Operators and Shippers are surely the least regulated essential link of Shipping in various sectors. Whilst tanker Charterers and even terminals have imposed several regulations upon themselves, there are many dry cargo (Bulk, Break Bulk, General cargo, Containers, Heavy lift etc) Charterers who are still far from any kind of possible regulation.

That said, there is a distinct difference between managing all risks and over insuring yourself without regard to commercial aspects. Therefore, it becomes the self-imposed discipline of the Charterers not only to convince the Ship Owners that they are sufficiently covered for any eventuality but also to protect themselves sufficiently against all risks that their business presents.

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# The Policy Paradox of Container Security

Special Report of Laboratory of Container Security

Dr Girish Gujar, Prof. Hong Yan and Mr Mukul Jain

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## Background

According to Michael McNicholas, the author of 'Maritime Security' (Butterworth-Heinemann Homeland Security) "misdeclaration of cargo in manifests filed by carriers with respective Customs continues to be a very worrisome ongoing problem, that increasingly offers an illegitimate back door to all kinds of nefarious characters to transport all manner of illegal/illicit cargoes with disastrous consequences for importing countries". The International Maritime Organization's (IMO) cargo committee has also noted that they inspect approximately 15,000 containers every year and regularly find a substantial percentage of containers with misdeclared contents. Similarly the US Customs have stated that after conducting a yearlong audit of containers in seven countries (Belgium, Canada, Chile, Italy, South Korea, Sweden and US) they found 32% of containers with misdeclared cargoes. This is a particularly distressing situation if we take into consideration the fact that less than 6% of containers are inspected by customs on arrival.

A majority of the global supply chains today are to a great extent dependant on marine containers. These containers are of particular concern as they originate at many different locations and are transported through complex logistics networks before reaching their final destination. In addition, the transportation process involves many different participants and many points of transfer. As the procedure for stuffing/de-stuffing of containers is more or less the same in most countries of the world, broad inferences that are drawn here for one country could easily be applicable to others too (RMG, 2004). It should also be recognized ab-initio that the Customs do not and will not assume any responsibility for the failure of container security. On the contrary, in order to prevent loss of Customs revenue during the land and sea transit, liability for the same is passed on to the Custodian who furnishes a bond guarantee (which is quite different from a bank guarantee) for a specific amount equivalent to the value of the Customs revenue which is at risk.

Several studies of maritime security conducted by numerous scholars have concluded that the movement of oceangoing cargo in containers is at all times during transit vulnerable to either natural or some man-made risks. As a result, vulnerabilities exist that criminals can and do take advantage of, by exploiting the containers for transporting illegal cargoes and illicit substances. There have been several cases detected in different parts of the world where even live explosives were transported in a container without the knowledge of either the Customs or the Custodian (Eriksson, 2001).

The misdeclaration of the cargo in a manifest given by the shipping line to customs, i.e. the mismatch between the cargo in containers and its description in the manifest can be due to two probable causes, what we may term as a non-invasive mismatch and an invasive mismatch. Non-invasive mismatch may be due to an inadvertent error in packing, stuffing and reporting or may be deliberate false declaration of the contents by the consignor. It could be an attempt to wrongfully avoid customs duty or smuggle prohibited goods. On the other hand, the invasive mismatch is most likely to be a result of theft from a container or criminal trespass of a container where someone switches the cargo in a container, often with the cargo having the same weight so as to evade detection by weighing and by cursory examination.

Invariably Customs at the destination assume that if a container has arrived with the door handle seal intact, then the cargo inside the container has not been tampered with, despite considerable empirical evidence being available which substantiates that container doors can be quite easily unhinged and replaced without cutting the door seals. Nonetheless, unless there is *prima facie* evidence of theft en route, made obvious by a broken seal, locks or other manifest damage to the container, the mismatch of cargo from the consignor/shipping line's manifest, is not considered by the Customs as an incident worthy of reporting to any law enforcing agencies.

This said, one cannot ignore the fact of non-invasive mismatch, which while fairly common can only be detected by Customs after the opening of the container. After that it is left to the discretion of the local Customs Collector to decide what follow up action needs to be taken such as levying penalties, allowing amendment of the manifest or confiscation of cargoes. In most countries, the consignee/carrier is given an opportunity of amending the manifest by filing an amended 'Bill of Entry' to conform the cargo to the declaration and pay the additional duties/penalties if any.

Technically, as per the law, misdeclaration is an offence. The onus of correct declaration is on the agency that is making the declaration, i.e. the shipping line that is landing the containers. It is clear that in most cases the shipping lines are not accorded an opportunity to examine the cargo that has been entrusted to them. As such, the shipping lines have no option but to trust the information stated in the forwarding note given to them by the consignor. Several Courts have upheld the shipping line's viewpoint that they indeed cannot, despite their best efforts, examine the contents of the container and match it with the information stated in the forwarding note as the same has been sealed by Customs and therefore they should not be held liable for mismatch if any between the cargo in containers and its description in the manifest. However all the judgments have strongly emphasized that the shipping lines should make all possible efforts to verify the information provided by the consignor before using it as a defense to avoid liability.

During our research, we observed that the application of the liability principle varied in different countries. In some countries, the shipping lines are held responsible, while in others,

the consignee is held responsible. As one customs officer explained, “We consider the beneficiary of the misdeclaration to be responsible for the same. As the consignee is the beneficiary in most cases he is held responsible by Customs”. This is despite the argument put forward by the consignee that they never imported the offending cargo that arrived in the container in the first place and the consignors or the carrier should be held responsible for it. This argument of the consignees has also been upheld by the courts in various legal disputes. Having said that, a majority of such consignees prefer to plead guilty and pay the penalty rather than get into a long drawn litigation with Customs.

However the Customs are unable to make any headway where the consignees do not come forward to clear their cargo, especially the cargo that is not legally allowed to be imported, such as explosives, hazardous goods or medical waste. There are a large number of such uncleared containers lying at various locations, particularly in developing countries like India. These were landed there under false declaration and when the authorities detected the fraud, the country of origin refused to accept them. Even the carriers have abandoned those containers. In most circumstances the consignor manages to escape liability as he is beyond the jurisdiction of the Customs officials of importing countries. As regards to whether the consignor should be held responsible, if at all, will be left to the jurisprudence of the courts to verify the intention of the consignor- termed as *mens rea* in legal parlance - who may or may not have known as to what precisely was packed in the container.

During our research we also noticed that the percentage of containers reported to be found with misdeclared contents due to either invasive or noninvasive mismatches was quite insignificant. The near zero reporting of incidents of cargo thefts and cargo mismatch led us to deeper investigation which confirmed our suspicion that the instances of misdeclaration, even when they take place, are seldom recorded.

It is a widely recognized and accepted fact that most of the thefts occur during the inland transportation or the warehousing stage of the supply chain. However as the incidents of invasive mismatch of containers at inland warehouses is insignificant, it could be concluded that container security in warehouses is quite satisfactory. While the credit for safe arrival of containers goes to the inland transport haulers, the onus of security at the destination is that of the warehouse operator or his duly appointed security agent. Thus the question arises as to what extent can the prima-facie improvement in the security environment be attributed to the security agency and could the practices be replicated elsewhere with similar results?

Present day global supply chains rely extensively upon outsourcing of various activities for a variety of reasons, such as cost reduction, avoidance of liability or for availing of specialized expertise. However some activities are not usually outsourced due to being prohibited by law (policing and judicial functions). Despite this, security management of ports, airports, dry ports and similar establishments is entrusted to the ‘custodian’ of such facilities by Customs. It is also not uncommon to notice that almost all such custodians further outsource the security functions to either auxiliary police/army forces or to private security agencies. This could have been considered fair and reasonable if such security

agencies possessed specialized expertise and knowledge and were also permitted to exercise adequate discretion and judgment of their own in discharging their duties.

Our research also revealed that the security agencies in numerous cases possessed neither any special expertise nor knowledge. The sole objective of the outsourcing exercise appeared to be simply reduction of labor costs and not enhancement of security environment. It should also be emphasized here that outsourcing of security functions, does not, in any way, reduce the primary responsibility of the custodian with regards to security. Complicating the matters further are the legal regimes governing the powers, responsibilities and liabilities of the security firms, which are fairly ambiguous in most countries. As such these lacunae will have to be addressed sooner rather than later.

Furthermore it also came to our notice that the warehouse operator did not actually outsource the security function, even while engaging security agency, as he continues to retain the power to supervise the security agency personnel. The warehouse operators were found to exercise, in almost all instances, their own discretion with regards to the number of security personnel deemed necessary for providing adequate security and then subsequently went on to instruct the security agency to provide the necessary personnel at the cheapest cost. The warehouse operator then went ahead to instruct the agency personnel to perform certain security related tasks such as manning the gates, warehouses and perimeter walls, and also supervises their performance. In this manner the security agency gets converted into a mere labor supply agency. As such the security agency did not in any way enhance the security environment.

Hence the question that begs to be answered is whether it is necessary to outsource security functions in the first place. What purpose does this exercise of outsourcing really serve?

### **Securing the Supply Chain**

All the stakeholders involved in the global trade have comprehensively recognized the fact that it is difficult and practically impossible, due to time and cost constraints, to open and examine all containers in transit, as proposed by the United States. This is despite the widely acknowledged fact that on numerous occasions the cargo packed inside the container does not match the description of that mentioned in the manifests. At the moment the only alternative to avoid opening all containers, at least on the face of it, appears to be the usage of non-intrusive scanners or similar devices to inspect the containers externally.

However several questions remain to be answered. Should the scanning process be conducted by Customs themselves or can it be outsourced to the Custodian/Security Agency? Who should own and operate the scanners and what action, if any, should be initiated after a mismatch between the details mentioned in the cargo manifest and actual cargo found in the container is noticed? Can this function be outsourced to the private security agencies without compromising national interests? Should the security agency conducting the examination take any cognizance of cargo that is not a security threat, but has not been mentioned in the

cargo manifest? What kind of liability or guarantees would be required from private scanning agencies? Will they not need to be further empowered?

It would not be entirely inappropriate here to highlight the specific ‘security’ concerns of the Custodian. First and foremost (as stated earlier), the Custodian has a legal obligation to provide ‘security’ in the Port/ Dry Port as a condition for becoming the Custodian. However Customs has neither precisely defined the security requirements that the Custodian has to ensure, nor has it stated any specific acts that would be monitored by the local in-charge of Customs to determine the adequacy or otherwise of the security. In turn, the Custodian also outsources the security functions to private security agencies without stating their duties and liabilities in detail. The concerned security agency is simply “required to *provide* round the clock security at the entire Port/Dry Port complex and exercise the *greatest possible care* and take *adequate* preventive measures against theft, fire, sabotage, pilferage or damages of Custodian’s property including material, cargo and machinery”. The agency is also threatened that any theft, pilferage or damages to cargo, property or machinery, equipment entrusted to the Custodian or within the Custodian’s premises shall be charged to the agency, if it is proved that it was caused due to negligence of the security personnel.

Job specification of this nature raises several issues with regards to the definition of the *greatest possible care* and what is meant by *adequate* preventive measures. A closer reading of the security contract in question indicates that the contract is *de facto* a contract of supplying manpower to the Custodian. The Custodian then deploys the manpower according to his own risk perception for conducting certain acts such as regulating entry/exit of cargo and personnel by manning the entry/exit gates and checking gate-passes of vehicles exiting the facility. The security agency is not assigned any discretion in matters of security, for instance in deciding whether CCTVs need to be provided, whether it can deploy agents to gather intelligence, examine a few vehicles intensively instead of examining each vehicle and so on. There is no guidance on the technical aspects of the container or seal-checking either. Thus a very sensitive task is degraded into a mundane one. Hence in such circumstances how can, if at all, the security agency assist in allaying the risk concerns of the custodian?

There are seldom, if any, specifically laid down guidelines for discharging security functions and duties. There are no mandatory or even recommended Rules of Use of Force (RUF) for the private security agencies. They vary with the stated (or unstated) objectives and instructions of the facility in-charge. As ports/airports/dry ports are plum targets for criminals, preventing unauthorized access across the perimeter is an important activity for the private security agency. Naturally there are some determined criminals who need to be prevented from unauthorized entry only by use (or the threat of use) of firearms.

However, legal regimes of most nations strictly restrict the use of firearms and they can be used only for the purpose of ‘personal defense’. Being a weapon of personal defense, the liability for using firearms lies solely with the individual guard. Thus the consequence of the total liability for firing the weapon without the need for ‘personal defense’ is that of the individual guard. Hence the guards are reluctant to use the weapon, even when warranted by

the situation. The criminals are well aware of this reluctance of the guards to fire their weapon; as such the ports/airports/dry ports become extremely vulnerable to all manners of crime. In such circumstances there is no reason to believe that private security agencies provide or are capable of providing any superior security when compared to the in-house security.

### **The Liability of Security Agencies**

The Custodian, when appointing the security agency, transfers the entire liability arising out of theft, pilferage or damages to cargo, property, machinery or equipment to the security agencies. However he can do so only if it could be conclusively proved that the security agency was directly responsible for the loss/theft of cargo. Thus the onus of proof lies with the Custodian. However, our research reveals that in spite the large number of containers transported to various inland destinations, the actual number of claims for shortage filed with Custodians is negligible. As such the security agencies are rarely if ever held responsible for theft/shortages of cargoes. This is despite the widely acknowledged belief that cargo theft is a serious problem in most countries and is particularly more so in emerging economies like India.



Photography by Fang Zhang, 2014

**T**he actual reason for such under reporting of loss/theft is a question that warrants additional research. However according to anecdotal information received by us (on the condition of confidentiality), there is a suggestion that the cargo interests prefer to absorb the losses rather than report it as the process of reporting and filing of claims is time consuming and mostly fruitless. This is because it is difficult to precisely locate the point at which pilferage from a container might have occurred in the entire journey. It becomes even more daunting particularly if, the container has arrived with no evidence of tampering of the seal.

At any given moment, the total worth of cargo and other property under the protection of the security agency could easily be more than a thousand times the net worth of the security agency. More often than not, it would not be possible to recover a serious quantity of money from the concerned agency, as compensation for any serious loss. In the worst-case scenario, the security agency would become insolvent, much to the discomfort of the Custodian.

### Conclusion

The outsourcing of security services by Custodians has become a norm everywhere. The entire exercise is primarily motivated by considerations of reducing labor costs and related liabilities while the Custodians continue to remain liable for all the acts of commission and omission of the Security Agency. We believe that professionalization and empowerment of security agencies will become imperative as the risk perceptions assume serious proportions and losses begin to cut deeper into the bottom lines of cargo interests. Perhaps this has already become overdue.

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# An Exclusive Interview with Prof. Dr. Hans-Dietrich Haasis

## Make the Noodle Soup Delicious

An interview by Dr Girish Gujar and Ms Fang Zhang

**R**ecently we had the good fortune to meet Prof. Haasis and solicit his views on the latest development in global logistics in general and European logistics in particular. In an extensive freewheeling interaction with us Prof. Haasis emphasized the importance of underlying regional culture, philosophy and work ethics on which the manufacturing industry as a whole, of which supply chain management forms an important component, is founded upon. He went on to expound the necessity of developing a holistic perspective while understanding and analyzing the logistics and supply chain management policies being practiced and adopted by a region.

### *What is the USP of North European Hinterland Logistics vis-à-vis South European and East European logistics systems?*

**Prof. Haasis:** To begin with, there was a very strong bond between the various logistics service providers such as the rail, road and barge operators. Furthermore the ports, airports and inland logistics centers (colloquial termed as Freight villages) also cooperate closely (while continuing to compete with each other) with an objective of providing value added services to their customers. All these aspects result in the North European Ports in the Le-Havre-Hamburg range gaining competitive advantage vis-à-vis the South European Ports in the Adriatic- Mediterranean region.



*Prof. Dr. Hans-Dietrich Haasis, Director of the Institute of Shipping Economics and Logistics, University of Bremen, Germany.*

*Prof. Dr. Haasis is amongst others member of the Council of Supply Chain Management Professionals and member of the panel of experts of the BMBF framework programme on Research for Sustainability. He is member of the Editorial Board of "Logistics Management", member of the Advisory Board of "OR Spektrum" and member of the Editorial Review Board of the "International Journal of Operations and Quantitative Management".*

However this competitive advantage of the North European Ports would be short lived as improved technology and better port managerial practices implemented by the global port operators such as APM, PSA and DPW would make strategically located South European Ports like Koper, Trieste and Rijeka more competitive, thus giving the La-Havre-Hamburg range ports a run for their money.

*What's your opinion on the European Union's adoption of more equitable policies by bailing out the Southern European states like Greece, Italy and Spain?*

**Prof. Haasis:** I feel that finance would not be an obstacle in developing the infrastructure in this region. I am even optimistic about Black Sea and Aegean Sea ports such as Constanza and Thessaloniki, particularly where the European Union Far East trade is concerned. The possibility of Southern Turkish ports providing a land bridge to North Europe at some point in future could not ruled out either, provided the bottleneck in the form of Bosphorus straits could be resolved successfully. However as far as the European Union United States trade is concerned the Le-Havre-Hamburg range ports would continue to have an upper hand due to better productivity and higher efficiency.

*What about the development of Freight Villages in the North European region and what are the advantages of those Villages?*

**Prof. Haasis:** I was very impressed with the growth and development of Freight Villages in the North European region at Duisburg, Venlo, Tilburg and Breda. This region is well served by the Rhine river system which provides excellent connectivity to the Le-Havre-Hamburg range ports as well as to various industries located in this region famously termed as the Blue Banana.

The freight villages not only accord a platform to service providers but also facilitate information and knowledge flows which is conducive to agglomeration of industrial clusters. These freight villages also act as extended gates of the Le-Havre-Hamburg range ports thus enhancing their capacity and efficiency.

Another major advantage of Freight Villages is their proximity to the markets. This aspect permits them to delay their decision making to the very last moment thus degrading risk and enhancing reliability and customer satisfaction. It also means lower costs and higher profit margins. These freight villages thus provided connectivity between numerous converging supply chains and permitted the integration of benefits availed by mass production "Massification" with individual wants desires and tastes "Atomization". In a value addition pyramid, the freight villages occupy the middle region and connect Macro-Logistics with Micro-Logistics. This function is termed as Meso-Logistics where information gets converted into knowledge.

*As regards sustainability and lowering of carbon emission, do you have any suggestions?*

**Prof. Haasis:** The development of such freight villages and facilitation of information and knowledge flows also leads to lowering of carbon emissions and adoption of sustainable supply chain management practices. It also aims at shifting freight traffic from road to rail and promotion of short sea shipping. There is a need of a regulator/coordinator that could help in enhancing the effectiveness and reliability of the supply chains. Transfract or Combifaweiks could be adopted as good role models for playing such a role. Also, the importance of subsidies for encouraging sustainable supply chains cannot be ignored.

*What will be the impact of future development in technology on efficiency of hinterland logistics?*

**Prof. Haasis:** The impact would be more felt in logistics processes, information analysis and cargo flow controls within the hinterland logistics rather than in the cargo handling hardware systems in the ports. Specifically, the role of hand held smart devices and cloud computing will be important. It would also result in the elimination of waste and sharing of transport and storage capacities thus optimizing the overall supply chain competencies.

*What's your view about the container security?*

**Prof. Haasis:** The present security initiatives and cargo scanning equipment are unlikely to satisfactorily resolve the issue of container security as the identity of responsibility for security failure is ambiguous. As such the container transportation process should be made more transparent and visible by the additional use of various cargos and container tracking devices such as RFID's and satellite transponders. I myself strongly back the usage of electronic seals.

The carriers as well as inland transporters should exercise caution before accepting cargo by making all efforts to verify the various cargo interest as well as examining the cargo before issuing bills of lading. Stakeholders should increase their awareness of container security related issues by adopting more cooperative policies. However, 100% security was a chimera and not possible in real life. The more pragmatic solution for this problem is better quality control.

*What are your thoughts on the critical importance of training education and knowledge sharing?*

**Prof. Haasis:** The world faces the threat from complacency and the lack of soft skills, such as communication and interpersonal interaction skills. I opined the need for greater interaction between industry, academics and governments. A good case in point is the

“Beerufs Academies” or vocational training institutes set up in Germany where real life case studies faced by the industry are discussed and resolved. Such examples need to be emulated in other countries too. In order to do so the industry should increasingly adopt corporate social responsibility policies and the government should encourage such initiatives by offering more scholarships and encouraging international student exchange programs. To conclude, not all logistics policies adopted by European Union can be replicated in totality. They need to be customized according to local and regional demands and conditions. On the whole, the entire logistics “Noodle Soup” needs to be delicious in order to maximize customer satisfaction and not just made from a few strands of noodles or some bits of ingredients. What goes into making the soup delicious will naturally vary from place to place and from time to time.



Photography by Prof. Chin-Shan Lu, 2014

# Development of the Cross-Border Transport Infrastructure

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## Overview

*Growing economic interdependency creates enormous demand for connectivity at international level. Goods and people move across borders and the level of efficiency of this process has a deep impact on economic development on the both sides of the border. The part of transport infrastructure that is used for international delivery and travel is referred to as cross-border transport infrastructure. This can be roads, railways and bridges that pass through the border, and ports (sea, river, lakes) that are entry points for international freight and passengers.*

**A**part from usual transport planning, technical and financial aspects, development of such cross-border infrastructure requires international agreement to establish a border crossing point (BCP) and set its management rules and operations schedule; construction of facilities to allow for customs, quarantine, and immigration checks; and adjustment/creation of the transport and cross-border movement domestic regulations to facilitate transport movement.



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The first point is quite straightforward and in practice it might mean additional agreements or amendments to the existing ones on border management. Examples from Northeast Asia would be

- 1) addition of the four new BCPs (Ceke - Shivee Khuren, Arxan – Sumber, Mandal – Hangi, Ebuduge - Bayan Hushuu) to the China-Mongolia Agreement on China-Mongolia border crossing points and their management system in 2004 that replaced the previous one of 1991;
- 2) separate China – Russia Agreement on joint construction, operation, maintaining and management of railway border crossing bridge over Amur river (Heilongjiang) at the

section of Russia - China state border in the vicinity of settlement Nizhneleninskoe of Jewish Autonomous Oblast (Russia) and Tongjiang city of the Heilongjiang province (China) of 2008.

The way in which the countries agree on the BCPs depends on their previous practices. Domestic regulations also have to be adjusted to accommodate budget expenses on the new BCPs, their staffing requirements and to guarantee the opening of the new passage.

The second point means that apart from construction of a road, railway, ferry berth, or bridge and installation of respective equipment, a border crossing requires the design and building of inspection facilities, storages facilities, loading/unloading complexes depending on what are differences in technical standards on both sides of the border, and what transport and custom facilitation measures are adopted by the proponent governments. For example, whether paperless trade procedures are adopted, whether single window technologies are available, and what share of the vehicles or containers are subjected to control by the risk management standards, and so on. Decisions to implement joint customs control (such as Zamyn Uud (Mongolia)-Erenhot (China), Kalzhat (Kazakhstan) – Dulaty (China) implemented in Central Asian Regional Economic Cooperation) or single stop inspection (Lao-Bao (Laos) – Dansavanh (Vietnam) under Greater Mekong Sub-region) would influence both design and construction costs and their division as well.



Source: GTI Secretariat, <http://www.tumenprogramme.org/>

The last point is that transport facilitation is an important part of cross-border transport development: regulations and “soft” infrastructure are no less important than the facilities themselves. For instance, when opening a new BCP, relevant authorities of bordering countries should ensure that the road is within the list of the routes allowed for bilateral vehicle access in case the other country vehicle is not allowed to travel along the whole domestic network but only on agreed routes (situation on China-Russia border). In case if joint custom control or single window is agreed to be implemented, the national legislation

should allow their usage as well as access of the other party's inspection staff on a daily basis. As a rule, for any measure of an international (bilateral or multilateral) agreement respective domestic legislation should be amended to put it into force.

**D**ifferent approaches to the cross-border investments exist: setting up a joint company that carries out the work after being capitalised by both parties; or setting up two companies and task each with constructing up to an agreed point between the borders, capitalized again either by proponent governments or public companies in the sector. There are a number of public-private partnership forms available for these cases: for instance, build, operate, transfer (BOT); design, build, finance and operate (BDFO). As a side note, in all the cases, these companies are concentrated on transport facilities per se; separate domestic discussions are on-going on how to finance related inspection facilities. Normally, it is a task for customs and border authorities and strong commitment of the governments is needed to ensure timely construction of such inspection facilities. Next, driving forces that push cross-border connections into existence might originate from 1) purely bilateral trade, tourism and business needs and/or 2) from the prospective of international freight and passenger flows.

In the first case, the cross-border link might be in the interest of the countries as a whole or in the interest of the bordering regions (provinces, municipalities, etc.) from both sides of the border. Careful planning and thorough analysis of the existing networks is required before actual investments to decide on desirable capacity and junction points to wider networks for optimal balance of local and central benefits and costs. An example is the length of discussion between China and Russia on the number of bridge border crossings to be constructed in Heilongjiang province (China)/Amurskaya oblast and Jewish Autonomous Oblast (Russia): the discussion has continued since early 1990.

The second case is when cross-border facilities construction follows international arrangements, such as those reached under the auspices of UN ESCAP Asian Highway Network Agreement, 2003, Intergovernmental Agreement on the Trans-Asian Railway Network, 2006, Intergovernmental Agreement on Dry Ports, 2013, or agreements on establishment and development of particular international transport corridors.

There are multiple examples of transport corridors initiatives in different regions of the World. They might be focused on single corridor, such as Maputo Corridor (South Africa – Mozambique) or TRACECA (Transport Corridor Europe-Caucasus-Asia) or a regional grouping might promote creation of a network of regional corridors, as it is done by European Union, Greater Mekong Subregion (GMS), Central Asian Regional Economic Cooperation (CAREC) and Greater Tumen Initiative (GTI).

*A multilateral approach provides certain benefits to participating countries:*

- 1) Shared access to information on prospective freight and passenger flows, projects and developments that will have an impact on the flows size and directions for the whole region. This allows the parties to take into account the wider picture while planning domestic transport networks and its cross-border connections.
- 2) Coordination in planning of the corridors, including routing, modes, technical standards and timing that makes room for the increase of the efficiency of the cross-border and domestic investments in participating countries.
- 3) Creation of a multilateral commitment to transport facilitation and conditions for the respective measures to be implemented along the corridor in time to allow smooth movement of freight and people as soon as possible after the transport corridor was agreed upon.
- 4) The presence of multilateral commitment also attracts international donors and their consortiums as well as creates conditions for the private sector to invest in the transport facilities (logistic terminals, loading facilities, storages, etc.). This commitment has several aspects: from financial (guarantees on investments, preferential loans) to business (ensuring certain cargo base and respective investment in creation of one if needed) and regulative (companies are able to count on transport and custom facilitation that will reduce their transaction and operation costs).

The multilateral approach is not the opposite to the bilateral though: coming to the particular points along the corridors approved for development by several partner countries, the construction projects themselves still becomes domestic or bilateral issues. This is the unavoidable technical aspect of the development of the cross-border transport infrastructure.

The above benefits are strong enough to bring countries together to discuss transport issues even in the face of apparent individual costs of cross-border construction. This is true for regional groupings heavily supported by international donors where the financial aid and technical assistance are apparent benefits, such as GMS and CAREC. These are supported by a team of donors including Asian Development Bank, the European Bank for Reconstruction and Development, the International Monetary Fund, the Islamic Development Bank, the United Nations Development Programme, and the World Bank. GTI is a good example of regional cooperation induced by inner regional forces.

## GTI example

*GTI member countries, China, Mongolia, Republic of Korea (ROK) and Russia, whose cooperation stems from 1995 agreement promoted by United Nations Development Programme, deem creation of a fully operational and efficient transport network with wide coverage in Northeast Asia (NEA) as the backbone for overall regional economic prosperity. This vision led them to increase the scope of cooperation from a narrow area at the borders of China, Democratic People's Republic of Korea (DPRK) and Russia to the current one that includes eastern Mongolia, Northeast China, ROK, and Russian Primorsky Territory; in the same time, DPRK is still considered as important prospective partner in NEA for transport network development.*



Source: GTI Secretariat, <http://www.tumenprogramme.org/>

Cooperation between the four countries allows them to take a comprehensive approach when designing their domestic railways, roads and ports, making bilateral arrangements on border crossing connections, taking into consideration not only bilateral flows, but potential regional ones. One important factor is the development of the mining sector in Mongolia (Tavan Tolgoi coal, Oyu Tolgoi copper, etc.) and the respective generated freight. For instance, these flows are the strategic justification of development of Mongolia (Ulaanbaatar – Baruun Urt – Khuut – Sumber) – China (Arxan – Ulan Hot – Changchun – Hunchun) – Russia (Makhalino – Zarubino) transport corridor (Tumen Transport Corridor). To have a clearer picture on the regional freight flows and their prospects, member countries jointly carried out the Integrated Transport Infrastructure and Cross-Border Facilitation Study for the Trans-GTR Transport Corridors<sup>26</sup> and based on the results developed GTI Regional Transport Strategy. Since GTI is not backed by a financial

<sup>26</sup> Available at GTI web-site: <http://www.tumenprogramme.org/?info-584-1.html>.

institute and, apart from Mongolia and China, other parties are not eligible for aid financing by donors, member countries are accepting that they are fully responsible for the implementation. The work is under way:

- China and Russia are in active cooperation and negotiations on Tongjiang (China) – Nizhneleninskoe (Russia) bridge BCP, Heihe (China) – Blagoveschensk (Russia) bridge BCP with a number of agreements signed and construction companies set up;
- Russian Railways completed modernization of Russian part of Hunchun (China) – Makhhalino (Russia) railway;
- Russian Railways in cooperation with Rajin Port are working on modernization of Rajin (DPRK) – Khasan (Russia) Railway and Rajin port modernization.
- Hunchun (China) – Makhhalino (Russia) railway was reopened for regular traffic in December 2013.

In 2013, GTI member countries established a unique mechanism that allows coordinated financing in all GTI countries: Association of NEA EXIM Banks Association. This flexible mechanism is formalised at the moment via a memorandum of understanding signed in 2012-2013 by Export-Import Bank of China, Development Bank of Mongolia, Export-Import Bank of Korea, Vnesheconombank (Russia). The Association principles are: equal access to the information on available projects, independence in loan applications appraisal and approval and a focus on hard infrastructure projects in GTI covered area. Members of the association are now discussing the projects that might be financed under the Association framework, based on Regional Transport Strategy and GTI member governments' proposals.

Railways and roads are the most common cross-border infrastructure



Source: GTI Secretariat, <http://www.tumenprogramme.org/>

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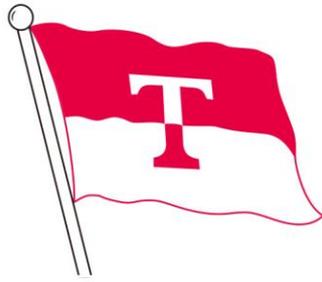
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