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新法速递 NEW LAWS AND REGULATIONS WATCH

海关总署进一步明确加工贸易货物监管问题

3月24日，海关总署发布《关于执行〈中华人民共和国海关加工贸易货物监管办法〉有关问题的公告》（以下简称《公告》），自公布之日起执行。

《公告》进一步明确了加工贸易货物不予办理抵押手续的情形、加工贸易货物分开管理和存放场所问题、外发加工问题等。

根据《公告》，企业应当在货物首次外发之日起3个工作日内向海关备案外发加工基本情况；企业应当在货物外发之日起10日内向海关申报实际收发货情况，同一手（账）册、同一承揽者的收、发货情况可合并办理。

GAC Clarifies Issues concerning Supervision of Processing Trade Goods

On March 24, the General Administration of Customs ("GAC") issued the Announcement on Issues concerning the Implementation of the Measures of the Customs of the

People's Republic of China for the Supervision and Administration of Processing Trade Goods (the "Announcement") with immediate effect.

The Announcement further clarifies issues in relation to the circumstances under which formalities for processing trade goods being pledged shall not be handled, the separate administration and storage of processing trade goods, and the outward processing of processing trade goods.

According to the Announcement, an enterprise shall, within three working days from the date when its processing trade goods are contracted for outward processing for the first time, submit the basic information regarding the outward processing for filing with the competent customs; and the enterprise shall, within ten days from the date when its processing trade goods are contracted for outward processing, submit the information regarding actual receipt and delivery of its processing trade goods for declaration with the competent customs which may handle the formalities for receipt and delivery of the goods that are

under the same manual (account book) or are processed by the same contractor on a consolidated basis.

(Source: www.customs.gov.cn)

《中国（上海）自由贸易试验区仲裁规则》下月施行

4月8日，上海国际经济贸易仲裁委员会(上海国际仲裁中心)颁布《中国（上海）自由贸易试验区仲裁规则》。该《仲裁规则》将于5月1日起施行。

《中国（上海）自贸区仲裁规则》共10章85条，吸纳了诸多国际商事仲裁的先进制度。“这部仲裁规则的发布，有利于满足境内外当事人争议解决方式的多元化需求，推动自贸试验区完善国际化、法治化的营商环境。”市委常委、常务副市长屠光绍说。

1. 仲裁员选定方式更开放

《自贸区仲裁规则》的制定，充分尊重境内外当事人的自治意愿，在赋予仲裁庭更多程序管理权和决定权的同时，让当事人拥有充分的程序选择权和自主权，是境内外开放程度、灵活程度最高的国际化仲裁规则之一。

自贸区商事仲裁规则纳入了很多创新性规则，比如确立了仲裁员开放名册制。即在仲裁员人选方面，当事人除了可以从上海仲裁中心仲裁员名册中选定仲裁员外，还可推荐名册外的人士担当仲裁员，甚至首席仲裁员，经仲裁委员会主任依法确认后，即可担任。

2. 小额争议仲裁缩短期限降低费用

《自贸区仲裁规则》引入了“小额争议程序”。该程序适用于争议金额不超过人民币10万元的国内争议案件。引入“小额争议程序”压缩程序期限，提高了仲裁效率。“小额争议程序”审理方式更为灵活。根据《自贸区仲裁规则》规定，仲裁庭可以按照其认为是适当的方式审理案件，可以开庭审理，也可以仅依据当事人提交的书面材料和证据进行书面审理。据悉，小额争议案件目前拟定的案例受理费和处理费分别仅为100元和1250元，减低了当事人经济负担。

3. 增设紧急仲裁庭

自贸区商事仲裁规则增设了“紧急仲裁庭”制度。紧急仲裁庭的设立，体现了与国际仲裁发展趋势接轨，使《自贸区仲裁规则》具有更广泛的适应性，使当事人在仲裁庭组成前能够获得仲裁程序中的临时性救济。

China (Shanghai) Pilot Free Trade Zone Arbitration Rules on Effect Next Month

On April 8, Shanghai international economic and trade arbitration commission (Shanghai international arbitration center) promulgated the China (Shanghai) Pilot Free Trade Zone Arbitration Rules, which will be on effect as of May 1.

The Rules consist of 10 chapters, 85 articles, absorb kinds of advanced international business arbitration rules. "Its issuance helped to meet multiple disputes settlement ways for domestic and foreign interested parties, promoting free trade zone improvement in internationalization and legalization for business operation circumstance." Standing committee of the municipal party committee, deputy mayor Tu Guangshao said.

1. Arbitrator selection will be open

The Rules fully respect interested parties' will, grant them full program selection rights and autonomy, which is one rule of in and outside arbitrations rules with the highest open and flexibility.

The Rules adopt plenty of innovative rules, such as open arbitrators roll. That is, the parties can select arbitrators from the roll, and also can recommend others out of the roll, even chief arbitrators, only if the chairman of the arbitration commission can legally approve.

2. Shorten deadline for small controversy and low the costs.

The Rules adopt "small controversial procedure", which applies for the domestic case whose controversial money quantity less than 100 thousand Yuan, shortens the procedure time limitation, improves arbitration efficiency. And the case trial way is more flexible. According to the Rules, arbitration court can hear cases as per their own proper way, by open court session or only on paper to hear cases based on the parties. As learned, the sketched court acceptance fee is only 100 Yuan, and case handling fee is 1250 Yuan, which cuts down parties' economic burden.

4. Set additional emergency arbitration tribunal.

The Rules set the additional emergency arbitration tribunal system, which reflects that the Rules be in line with international arbitration development trend. And this system brings the Rules more adaptabilities, authorizes the interested parties to get interim relief rights before the formation of arbitration court.

(Source: www.chineseshipping.com)

国税总局：预期未办理的出口退（免）税可延期

4月4日，国税总局发布《关于逾期未办理的出口退（免）税可延期办理有关问题的公告》，自发布之日起施行。

《公告》明确，企业2013年12月31日前出口的货物，如有国家税务总局公告2013年第12号第二条第（十八）项规定的七种情形，且未按规定期限申报退（免）税的，企业在2014年6月30日前向主管税务机关提出申请，并提供举证材料，仍可延期办理。税务机关应在规定的申请期限截止之日后的20个工作日内办结。

《公告》还延长了《委托出口货物证明》电子信息读入时限。

SAT Pushes Deadline for Declaration of Export Tax Rebates

The State Administration of Taxation ("SAT") on April 4 released the Announcement on Issues concerning the Extension of the Period for the Declaration of Export Tax Rebates (the "Announcement"), with effect from the date of promulgation.

It is clarified that, if an enterprise fails to declare tax rebates within the prescribed time limit for its goods that were exported before December 31, 2013 and fall under any of the seven circumstances as specified in Article 2(18) of the SAT Announcement [2013] No.12, it may still declare the tax rebates by filing an application with the competent taxation authorities before June 30, 2014, with the documentation attached. The taxation authorities shall handle such application within 20 working days from the date on which the acceptance of the applications expires.

The Announcement also pushes the deadline for the exporting of the electronic information of the Certificate for Export of Goods by an Agency into the tax rebate review system.

(Source: www.chinatax.gov.cn)

《2006年海事劳工公约》将升级

编译 中华航运网

据 JOC 报道，近日，在国际劳工组织（International Labor Organization, ILO）召开的日内瓦会议上，来自海员、船东和政府的三方代表一致同意修改《2006年海事劳工公约》（2006 Maritime Labor Convention），新修正案要求船东为在海外港口被遗弃的海员提供经济担保和相应赔偿。

新规规定，船舶将一律持证航行，建立经济担保制度，确保船上海员利益。未按规定给海员提供保障的船舶在港口将可被扣船。据悉，修正案将于今年5月提交给 ILO 国际劳工公约部门审批。

ILO 总干事 Guy Ryder 指出，上述三方的通力合作意义非凡，如果提案获批，全球被遗弃和因工伤、疾病和危害导致死亡或长期残疾的海员及其家属的权益将得到有效保护。

《2006年海事劳工公约》已于2013年8月20日对我国生效，该公约整合了国际劳工组织85年来制定的68个现行海事劳工公约和建议书，涵盖了海员就业条件、船上设施、海员社会保障等方面的内容，从而使全球海员劳动权益保护有了统一的国际标准。

2006 Maritime Labor Convention Will Update

Compiled & translated by www.chineseshipping.com

Reported by JOC, recently in the conference of International Labor Organization (ILO) in Geneva, the representatives of seamen, ship owners, government unanimously agree to revise the 2006 maritime labor convention, requiring the ship owners to provide economic securities and corresponding compensations for the seamen abandoned in abroad ports.

In the new revision, to ensure the crew's interests, ships to sail with certificates under economic guarantee rule, otherwise, the ships can be arrested in ports. As learned, this revision will be submitted to ILO department for ratification.

The secretary - in general of ILO pointed out, above three are significant, if they can be approved, all around the world, both those seamen abandoned, long term disabled of work injuries, diseases or harm and their families can be effectively protected.

2006 Maritime Labor Convention effected to our country as of August 20th 2013, which integrated ILO 68 existing maritime labor conventions from 1985, covered those seamen employment requirements, on board facilities, social securities, and so on, built up united international standard for global seamen's labor interests.

(Source: www.chineseshipping.com)

船舶转籍检验程序将简化

日前，交通运输部海事局对《国内航行船舶变更船舶检验机构管理规定》进行了修订。新转籍规定从简化船舶检验程序、强化船舶档案管理、进一步明确检验责任等方面入手，加强船舶转籍活动管理，提高船舶营运效率。

新转籍规定明确，船舶检验由初次检验变为附加检验，船舶可在分支机构之间直接转籍，大大减少了检验项目，降低了检验费用，节省了船舶检验时间。新转籍规定增加了转籍船舶必须转档案的要求，保证了船舶检验技术资料的完整性，从制度上避免低质量船舶流入航运市场，并要求转出、转入船检机构均要对船图一致性、证书有效性、历史检验记录等情况进行核查，加强转籍船舶检验质量控制。

新转籍规定还进一步界定了转籍过程中的检验责任，要求分支机构负责船舶核查、寄送档案和附加检验等具体工作，省级机构负责转籍规定的监督管理。船东仅通过分支机构就可完成转籍，省级机构由事前审批转变为事中事后监督。此外，新转籍规定在船检机构推进“首检负责制”方面进行了有益尝试。

Ship Registry - Change Survey Procedure Will Simplify

Days ago, Maritime Safety Administration (MSA) of Ministry of Transport (MOT) revised Domestic Sailing Ship Change Vessel Survey Administration Regulations. The revision stipulates to strengthen management of ships change registry administration, improving its operation efficiency by simplifying survey procedure, strengthening ship documents management and defining ship surveyor's responsibilities.

The new ship registry - change procedure rules that when ships change the registry, the needed survey turn to additional survey instead of initial one, and ships can directly change their registry between its branches of the same administration, which cuts down inspection items, costs and survey time. And, it also rules that the registry - change vessels to transfer documents, to ensure its integrity of the survey items papers, preventing low classified vessels entering into the shipping market. At the same time, the new rule requires the change administration to strengthen quality control, to examine ship plans uniformity, certificates validity and history records of inspection.

The new change rules clarify survey responsibilities during changes, order that, branches to check ships post documents and additional survey, and provincial administration to supervise. Ship owners can only finish the change jobs through branches, provincial administration jobs turn to post supervision instead of prior approval. Besides that, the new change rules made helpful try on initial survey system.

(Source: www.chineseshipping.com)

两岸航运市场“晴雨表”发布 加快推进两岸直航升级发展

轻点鼠标，内地至台湾的 6 条典型航线的集装箱运价指数便可一目了然。4 月 2 日，由上海航运交易所和厦门航运交易所联合编制和发布的台湾海峡两岸间集装箱运价指数（简称“TWFI”）对外试运行，这是两岸航运市场的“晴雨表”。

试运行期间，TWFI 于每周三（除节假日外）下午发布北方一台湾、华东一台湾、东南一台湾往返 6 条典型航线的分航线运价指数。各分航线运价指数以 2014 年 1 月 22 日为基期，基期指数 1000 点。社会各界可通过指数变动，了解台湾海峡集装箱运输市场价格变动趋势，具体指数可从上海航运交易所和厦门航运交易所官方网站查询。

业内人士认为，TWFI 的发布，将全面反映两岸间集装箱运输市场供需态势与价格变化，有利于促进海峡两岸间经贸往来与合作交流，加快推进两岸直航升级发展，为各类市场主体的经营和政府部门的宏观调控提供更好的参考依据。

据了解，2013 年，全年完成厦台货物吞吐量 1653.26 万吨，增长 22.3%；厦台集装箱吞吐量 40.23 万标箱，增长 9.2%，两项数据均

占全省总量的 6 成左右。

The Shipping Market Barometer Published, Direct Shipment between Mainland and Taiwan Promoted.

For 6 typical routes from mainland to Taiwan, the clear container freight indices can be easily looked up in internet. On 2nd April, Shanghai Shipping Exchange and Xiamen Shipping Exchange started trial operation on their jointly worked out and published container freight indices between the mainland and Taiwan (TWFI), which is the shipping market barometer.

During the trial operation, except on holidays, on every Wednesday TWFI will be published for 6 routes including the round trips of the North China - Taiwan, the East China - Taiwan, the Southeast China - Taiwan. Every route freight index is based on 1000 point which was on 22nd Jan, 2014. From the indices fluctuations, we can get to know the shipping market trend across the Strait, and find the indices details in Shanghai Shipping Exchange and Xiamen Shipping Exchange official webs.

In professional eyes, the TWFI will fully reflect the demand and supply situations of the shipping market across the Strait and its price changes, promote the economic and trade and cooperation between the two sides, speeding the direct shipment upgrade development, and also provide better reference for market entities' operations and the government macro regulations.

As learned, in 2013, the Xiamen - Taiwan cargo throughput is 16.5326 million metric tons, growth rate is 22.3%; the Xiamen - Taiwan containers throughput is 400.23 thousand TEU, with 9.2% growth rate, which both are about 6% of the total quantity in the province.

(Source: www.sse.net.cn)

海关总署决定在全国海关推进通关作业无纸化改革

海关总署日前发布《关于深入推进通关作业无纸化改革工作有关事项的公告》，自2014年4月1日起施行。

《公告》决定将通关作业无纸化改革的试点范围扩大至全国海关的全部通关业务现场。同时启动快件、邮运货物通关作业无纸化改革试点。

《公告》还赋予了试点企业选择权。经海关批准的试点企业可以自行选择有纸或无纸作业方式。

China Deepens Paperless Customs Clearance Reform Nationwide

The General Administration of Customs ("GAC") recently issued the Announcement on Deepening the Paperless Customs Clearance Reform (the "Announcement"), with effect from April 1, 2014.

According to the Announcement, the regulator has decided to expand the scope of the pilot programme for the paperless customs clearance reform to all the customs

clearance sites of the Customs nationwide, and meanwhile launch the pilot reform programme for the paperless customs clearance of express items and goods by mail.

The Announcement also grants qualified pilot enterprises the right of choice by allowing them to choose at their own discretion either paper or paperless clearance procedures.

(Source: www.customs.gov.cn)

长江海事局严查三类“重点”，便利“诚信”船舶

为了构建以船舶、船员、船公司和船检为主体的“四位一体”长江水上诚信管理体系，鼓励和促进航运公司及其船员自觉遵守水运法律法规，保障长江水上交通安全，长江海事部门通过严查三类“重点”、便利“诚信”船舶的方式强化水上安全监管工作。

三类“重点”即将安全状况不良的航运公司列为重点监管航运公司；将2013年度运输船舶一般及以上等级事故当班船员、累计被计分15分及以上船员、累计被计分4次及以上船员等三类船员，列为重点跟踪管理船员；将载运一类危险货物单壳液货船、交通运输部海事局重点跟踪船舶、2013年度长江海事局“黑名单”船舶、2013年度发生一般及以上水上交通事故或污染事故的船舶、2013年度发生3次以上海事违法行为的船舶、2013年度发生违法行为或被滞留的危险品船舶等六类船舶列为重点监管船舶。

对待此三类“重点”，海事部门将一律实行到港必查，并从严处理其相关海事违法行为，必要时通报相关的管理部门予以处置。

相反，对于那些两年内在船舶安全检查中未被滞留；两年内未发生一般及以上水上交通事故或污染事故；两年内未发生性质恶劣、后果严重的违法行为；公司及其船舶已实施安全管理体系并取得DOC和SMC证明书两年以上，且公司在最近两年内未被实施跟踪审核的船舶

将可参选“诚信船舶”评选。而一旦被评为“诚信船舶”后，将享受简化船舶报港方式、减少船舶安全检查频次、禁航后优先放行、简化船舶中间审核、船舶港务费定期结算等九项优惠便利措施。

CMSA Investigate 3 Objects, Facilitate Honest Ships.

In order to construct waterage honesty management system in ships, seamen, shipping companies and ship survey, encourage and promote shipping companies and seamen to obey waterage rules, ensure Changjiang river transport safety, Changjiang Maritime Safety Administration will strengthen water transport supervision by strictly investigation of 3 objects, facilitate honest ships.

The 3 objects include: the shipping companies with bad safety conditions; the seamen who are classified C or D in accidents in 2013, those accumulatively penalized for 15 points or above and those penalized four times or above; the ships of: single hull liquefied cargo ships for A dangerous cargo, China Maritime Safety of MOT key - tracked ships, those blacklisted in CMSA IN 2013, the ships happened water transport accidents or oil pollutions in 2013,

the ships with 3 or more acts in violation of law, the ships been detained by danger cargo in 2013.

The maritime department will strictly examine above 3 objects, and inform relevant government department when necessary.

At the same time, for those ships who not detained in safety inspections in last 2 years, and no ordinary accidents or oil pollutions in last 2 years, and no serious violations in law in last 2 years, and for the companies and their ships fitted with safety management safety system and DOC SMC certificates without tracking by government, they can participate the selection of "honest ships", once succeed, they can enjoy the preferential in 9: simplify the in - port declaration, cut down safety inspections, prior to sail after navigation ban, simplify intermediate examination, port dues term settlement etc.

(Source: www.ccmt.org.cn)

《放射性物品运输货包和运输车辆辐射检测技术指南》征求意见

近日，环保部公布《放射性物品运输货包和运输车辆辐射检测技术指南（征求意见稿）》，并于 2014 年 5 月 15 日前向有关单位征求意见。

根据意见稿，该指南规定了放射性物品运输中运输货包和运输车辆的检测项目、检测仪器、检测程序、检测方法、数据处理、质量保证等内容。此外，该指南将适用于与核技术应用相关的各类放射源货包运输，包括 I、II、III 类放射性物品运输货包和运输车辆。

Guide for Detecting Packages and Vehicles Carrying Radioactive Goods under Consultation

The Ministry of Environmental Protection ("MEP") recently released the draft Technical Guide on the Radiation Detection for Transport Packages and Vehicles Carrying Radioactive Goods (the "Guide") for comment by the relevant entities until May 15, 2014.

The Guide specifies the items, instruments, procedures, methods, data processing and quality assurance for the

radiation detection for transport packages and vehicles carrying radioactive goods. It will apply to the package transport of various radioactive sources relating to the application of nuclear technology, including transport packages and vehicles carrying radioactive goods in Classes I, II and III.

(Source: www.mep.gov.cn)

上海海事法院依法扣押商船三井株式会社船舶

据报道，4月19日，中华人民共和国上海海事法院(简称上海海事法院)为执行生效判决，依照《中华人民共和国民事诉讼法》、《中华人民共和国民事诉讼法海事诉讼特别程序法》的有关规定，在中华人民共和国浙江马迹山港对被执行人商船三井株式会社的船舶“BAOSTEEL EMOTION”轮实施扣押。

1988年12月30日，原告陈震、陈春等为与被告日本海运株式会社(现为商船三井株式会社)定期租船合同欠款及侵权赔偿纠纷一案向上海海事法院提起诉讼，追索“顺丰”轮、“新太平”轮船舶租金及经济损失。上海海事法院对该案进行了公开审理，2007年12月7日，依法作出判决，被告商船三井株式会社支付及赔偿原告陈震、陈春“顺丰”轮和“新太平”轮租金、营运损失、船舶损失及孳息2916477260.80日元。2010年8月6日，中华人民共和国上海市高级人民法院作出维持原判的终审判决。2010年12月23日，中华人民共和国最高人民法院裁定驳回被告的再审申请。

上述案件是一起涉外商事案件，该案判决生效后，原告方依据法律规定，向上海海事法院提出强制执行申请，要求被告履行判决确定的支付和赔偿义务，依法支付迟延履行期间的债务利息。

上海海事法院于 2011 年 12 月 28 日依法向被执行人商船三井株式会社发出《执行通知书》。期间，双方当事人曾多次进行和解协商未果。为此，上海海事法院依法对被执行人所有的“BAOSTEEL EMOTION”轮予以扣押。如商船三井株式会社仍拒不履行义务，法院将依法处理被扣押的船舶。

SMC legally arrested MOL ship

As reported, in order to execute effective court decision, on 19th April, in Majishan port, Zhejiang, China, Shanghai Maritime Court (SMC) legally arrested one ship "Baosteel Emotion" of Mitsui O.S.K Lines Ltd (MOL), the party against whom execution is filed, according to Civil Procedure Law of the People's Republic of China and Special Maritime Procedure Law of the People's Republic of China.

In December 30th, 1988, the plaintiff Chen Zhen & Chen Chun charged Nippon Shipping Ltd (now as MOL) in SMC for the arrears in time – charter and dispute over compensation by tort, with recourse of the hire and economic loss of MV Shun Feng and MV New Taiping. After trials, on December 7, 2007, SMC made judicial decision

under law: the defendant MOL to pay the plaintiff ships' hire, operation and ships loss & interests, total 2916477260.80 Yen. And, the Shanghai High People's Court affirmed the final judgement in August 6th, 2010. Also, in December 23th, the Supreme People's Court of the People's Republic of China ruled to refuse the retrial application.

When its judgement in effective of the said foreign - related commercial case, according to relevant laws, the plaintiff applied for enforcement, asking the defendant to pay and compensate as the judgement, to pay the interests of delay performance.

SMC legally sent MOL the notice of execution on December 28th, 2011, from then on, the two parties negotiated many times but reached nothing. So SMC arrested MV Baosteel Emotion owned by MOL, if they still refuse, the arrested ship will be legally disposed by the Court.

(Source: www.ccmt.org.cn)

案例分析 CASE STUDY

冷藏集装箱货物受损，承运人应否承担赔偿责任

〔提要〕

在海上货物运输合同货损赔偿纠纷案件审理过程中，承运人一般会以货损的发生不在承运人责任期间内、原告损失缺乏合理性等理由来进行抗辩。在用集装箱运输的情况下，承运人交付货物的地点随着承、托双方的约定，而远离船舷和码头。此时，如何确定承运人责任期间是案件审理的关键，只有明确了承运人责任期间的起止，才能对承运人的责任有正确判断。此外，由于从承运人向收货人开出提货单，至收货人实际收货之间有一定的时间，期间承运人对货物保管仍有责任。而对于原告的损失，需结合原告提供的证据加以分析，从而决定是否予以支持。

〔案情〕

原告：山哥拉一多明戈斯公司（SHANGOLA-DE DOMINGOS LEITE FERREIRA DE CEITA）

被告：尼罗河航运私有有限公司（NILE DUTCH AFRICA LINE B.V.）

原告与东方环球公司签订了两份购销合同，约定原告向东方环球公司购买大蒜。为两票货物出运，被告出具了抬头人为被告的提单。提单记载：托运人东方环球公司，收货人原告，装运港上海，卸货港卢安达（LUANDA），货物品名大蒜，分装两个集装箱，货物交接方式

堆场至堆场（CY TO CY）。

2006 年 11 月 26 日，货物到达目的港卢安达。同日，被告向原告开具提货单，原告办理完了清关手续。11 月 28 日，货物到达冷藏箱专用堆场。12 月 27 日，目的港海关向原告收缴关税。2007 年 1 月 6 日，原告提货后发现大蒜发生变质，经检验，大蒜发生变质是因为集装箱在到达堆场后至原告提货的 42 天内缺少制冷。

原告认为，被告作为承运人有妥善保管、照料货物的义务，因被告疏忽大意导致货损，被告应承担赔偿责任。请求判令被告赔偿货物损失和关税损失及港口费用 74,935 美元、公证认证费 1,511 美元，并承担本案诉讼费用。

被告认为，涉案货物交接方式为堆场至堆场（CY TO CY），承运人的责任期间应至承运人开具提货单之日时终止，因此货损的发生不在承运人责任期间，即使在承运人责任期间，因目的港长期存在断电现象，收货人有尽快提箱义务，原告迟延提货导致的货损不应由被告承担赔偿责任，且原告的损失不具有合理性。

〔裁判〕

上海海事法院经审理认为，被告作为承运人的责任期间应从装货港堆场接收货物时起至卸货港原告实际将货物提离堆场时终止。货损系发生在被告责任期间，且被告主张原告迟延提货缺乏事实依据，因此被告应依法承担赔偿责任，遂判决被告赔偿原告货物损失 53,716 美元。鉴于原告诉请的关税损失、港口费用以及公证认证费等损失缺乏相应依据，上海海事法院未予支持。

一审判决后，被告不服提起上诉。上海市高级人民法院驳回上诉，维持原判。

【评析】

本案原、被告的主要争议在于货损是否发生在承运人责任期间、收货人是否存在迟延提货以及对原告损失范围的认定。

一、承运人责任期间的认定

承运人的责任期间，是指承运人应对货物负责的期间。在此期间内因承运人不能免责的原因，致使货物发生灭失、损坏，或者迟延交货的，承运人应负赔偿责任。如果导致货物灭失或者损坏的起因发生在承运人责任期间，承运人对此仍不能免责，则即使货物的灭失或者损坏事实发生在承运人的责任期间届满之后，承运人仍应对灭失或者损坏负责，盖因该损害系由于处于承运人责任期间的发生的原因所导致。

我国《海商法》第四十六条规定，承运人对集装箱装运的货物，无论是承运人装箱，还是托运人自行装箱，其责任期间为从装货港接收货物时起至卸货港交付货物时止，货物处于承运人掌管之下的全部期间。承运人对非集装箱装运的货物的责任期间，是指从货物装上船时起至卸下船时止，货物处于承运人掌管之下的全部期间。但承运人可以和托运人就此种货物在装船前和卸船后其所承担的责任，达成任何协议，即对于此种货物在承运人从装货港接受至装船期间，以及从卸货港卸船至交付期间，承运人对货物的灭失或者损坏是否应当负责或承担何种责任，根据承运人与托运人的协议确定。

本案中，货物系用冷藏集装箱装运，交接方式为堆场至堆场（CY TO CY），被告作为承运人的责任期间应从装货港堆场接收货物时起至卸货港堆场交付货物时止，货物处于被告掌管之下的全部期间。现有事实表明，涉案货物于 2006 年 11 月 26 日到达目的港，11 月 28 日到达目的港堆场，2007 年 1 月 6 日原告从堆场提货。被告虽于 2006 年 11 月 26 日向原告开具了提货单，但货物尚未实际交付，仍处于被告的掌管之下，被告的责任期间应至原告实际将货物提离堆场时终止，而不是至被告开具提货单之日时终止。

涉案货损发生的原因系因装载货物的冷藏集装箱缺少制冷，冷藏箱温度不足以确保货物完好无损所致，且该事实系发生在冷藏箱堆场。如前所述，承运人的责任期间应从装货港堆场接收货物时起至卸货港堆场交付货物时止，因此，涉案货物发生货损处于承运人的掌控之中。

二、收货人是否存在迟延提货的认定

我国《海商法》第八十六条规定了收货人提货迟延或拒绝提货给承运人带来损失的赔偿责任：“在卸货港无人提取货物或者收货人迟延、拒绝提取货物的，船长可以将货物卸在仓库或者其他适当场所，由此产生的费用和风险由收货人承担”，据此，如果收货人不明或者收货人迟延或是拒绝提取货物，收货人应向承运人支付货物存于仓库或者其他适当场所的仓储、保管费用并承担相应的风险，但期间并未排除承运人应妥善保管货物的责任。

本案中，被告认为，由于原告迟延提货，因此发生货损的风险

和责任已转移给原告承担。本案事实表明，目的港海关向原告收缴关税的时间为 2006 年 12 月 27 日，从这个时间起算，到次年 1 月 6 日原告提货应属在合理期限内完成提货。而且，货物在不同的港口办理提货手续所需的时间各不相同，货物运至目的港卢安达后，被告主张原告在合理时间内未提货而构成迟延提货，应举证证明货物到达目的港至原告实际提取货物的时间已经超出货物在卢安达办理提货手续所需的合理时间，但是被告并未提供证据证明原告存在迟延提货的情况，因此，被告认为原告故意拖延时间，迟延提货，缺乏事实依据。即使原告在提货过程中存在一定延缓，由于承运人承诺的责任期间为从装货港堆场接受货物时起至卸货港堆场交付货物时止，在承运人交付货物给收货人、由收货人实际掌管货物之前，承运人仍负有保管义务，对于保管不善引起的货物损失，应当承担赔偿责任。

三．原告损失范围的认定

在审理海上货物运输合同货损赔偿纠纷案件过程中，对被告的责任予以确定后，主要就是对原告损失范围的认定，具有相关资质的专业检验机构出示的检验报告是判断原告损失范围的主要依据。

我国《海商法》第五十五条规定：“货物灭失的赔偿额，按照货物的实际价值计算，货物损坏的赔偿额，按照货物受损前后实际价值的差额或者货物的修复费用计算。”

本案中，原告的诉请包括货物损失、关税损失及港口费用、公证认证费用。根据涉案购销合同和报关单记载，两票货物共 52 吨，单价为 1,183 美元/吨，货物总价为 61,516 美元。涉案检验报告结论显

示，两票货物 70% 推定全损，30% 将以每 10 公斤低于 5 美元的价格销售。因此，推定全损的部分货物价值为 43,061.20 美元，降价销售的部分货物损失为 $(61,516 - 43,061.20) \div 11.83 \times (11.83 - 5)$ ，即 10,654.80 美元，原告的货物损失共计 53,716 美元。至于原告请求的关税损失及港口费用是原告为实现贸易合同所必须支出的成本，不应计算在货损比例中由被告承担；公证费用金额从证据上难以辨识；认证费用无法看出和本案具有关联性。据此，法院对原告请求的关税损失、港口费用和公证认证费用均未予支持。

（转载自：中国涉外商事海事审判网）

Forwarder Must Compensate Exporter for Cargo Damage

By Gill Nadel + Or Cohen-Sasson (Goldfarb Seligman)

Recently, an exporter's appeal was accepted, which claimed compensation from the international freight forwarder for delays in the arrival of agricultural goods to their destination and their subsequent decay. The Magistrate Court, which gave a verdict regarding the claim in March 2013, rejected the exporter's claim, reasoning that he had failed to prove that the goods were sent for export in good condition, and that the damage was caused by the shipment.

The Tel Aviv District Court reversed this ruling, and determined that the freight forwarder is responsible for part of the damage caused to the goods, and therefore will compensate the exporter accordingly, while the compensation will be determined by means of evaluation.

In our opinion, the appeal's verdict is a good example of a situation in which the court prefers justice considerations over formal considerations which relate to the exact method of proof of damage.

The facts and the parties' claims:

The R.T. Fresh company ("**the Exporter**"), which engages in the production and export of agricultural produce, contracted with the Fritz Advanced Logistics & Freight Forwarding Solutions company ("the Freight Forwarder") for the shipment of vegetables from Israel to Russia. According to the parties' agreement, the exporter is responsible for loading the goods into the shipping containers.

The goods reached the Novorossiysk Port at the time determined, but without the necessary documents; therefore it was not possible to release the goods on time. According to the parties' agreement, the shipment of the

necessary documents for the release of the shipping containers at the port was the responsibility of the freight forwarder.

Eventually, the documents reached the destination port in delay, and when the shipping containers were opened, the exporter unfortunately discovered that practically all of the vegetables were in the advance stages of decay, which denounced the possibility of trading them; the Russian client reasonably refused to receive them in this condition.

The exporter claimed that the freight forwarder was negligent in filing the documents on time, which led to the delay in releasing the shipping containers, which in turn led to the vegetables' decay and their complete loss of value. The exporter added that he repeatedly emphasized to the freight forwarder that these are sensitive goods, and that every delay could cause irreversible damage.

The exporter claimed compensation of 216,000 ILS, which includes the value of the goods and additional expenses made by the exporter following the incident.

Opposing, the freight forwarder claimed that he did not obligate to provide customs broking services, unloading and/or releasing the goods in Russia, but to only provide freight forwarding services. The freight forwarder added that the delay in the shipment of the document was caused by the exporter's mistake in not providing the correct address, and that the sensitivity of the goods was not brought to his attention.

The Magistrate Court's verdict:

The Tel Aviv Magistrate Court ruled that as part of the freight forwarder's responsibility, he was required to deliver the documents relating to the release of the shipping containers on time, and when he failed to do so - he was negligent.

Nevertheless, the court exempted the freight forwarder from bearing responsibility and paying compensation to the exporter, reasoning that it is not possible to prove a connection between the freight forwarder's negligence and the delay in releasing the shipping containers to the damage caused.

Among other, the court relied on the exporter's admission that the packaging and loading into the shipping containers were defective while taking place in Israel, before being delivered to the freight forwarder, and that these defective actions caused the decay to begin.

The court ruled that even if we assume that the beginning of the decay process, which was caused by the defective loading into the shipping containers, was accelerated by the freight forwarder's negligence and by the caused delay, indeed there are no sufficient evidence which could "draw the line" between the damage caused in the loading process, and the damage caused in the release of the goods.

Considering the aforementioned, it was determined that the exporter could not claim against anyone else but himself. Accordingly, the court rejected the exporter's claim and imposed on him legal expenses totaling 7,500 ILS.

The appeal's verdict:

The District Court reversed the Magistrates Court's verdict, which first discussed the matter.

The District Court deepened the review of the appraiser's professional opinion which examined the damaged cargo, and reached different conclusions than the ones reached by the Magistrates Court.

It was concluded that there is a possibility to separate, even though it is not clearly outlined, between the damages caused by the defective loading into the shipping containers and the smashing of some of the goods, and the damages

caused by the delay in releasing the goods, caused by the freight forwarder's negligence.

Eventually, it was determined that the exporter is entitled for compensation, due to the freight forwarder's contribution to the loss of value of the goods. Due to the difficulty to attribute which part of the damage was caused by the defective loading into the shipping containers and which part was caused by the delay in releasing the shipping containers, the compensation was determined through assessment.

The court partially accepted the exporter's appeal and ruled compensation of 45,000 ILS and imposed on the freight forwarder legal expenses and fees for professional services, totaling 15,000 ILS.

[The District Court: civil appeal (Tel Aviv District Court)
29904-04-13 *R.T. Fresh vs. Fritz Advanced Logistics & Freight Forwarding Solutions*, ruling given on 18.11.13,

Justice Roth Lavhar Sharon. Representatives of the parties - for the exporter: Adv. Shohat, for the freight forwarder: Adv. Sapir.

The Magistrates Court: civil suit (Tel Aviv Magistrates Court) 14823-05-11 *R.T. Fresh vs. Fritz Advanced Logistics & Freight Forwarding Solutions*, ruling given on 3.3.13, Justice Mordechai Ben Haim. The names of the representatives of the parties were not mentioned].

Comments:

In certain circumstances, adhering to the legal formality leads to a ruling which varies from the natural justice perception. The case aforementioned is one of them.

In this case, the District Court ruled that injustice was caused to the exporter due to the freight forwarder's conduct, even if there is a difficulty to assess the damage to the goods, its timing and exact value. The court requested to "amend" this matter partially, and calculated the damage

"by assessment", meaning by assessing the compensation via an inaccurate evaluation.

This result emphasizes a trend of a decrease in the importance of formality and an increase in the importance of values. It seems that sometimes the court searches for the essence and prefers justice, even when it requires the use of tools which bypass formal-technical obstacles.

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(Source: www.forwarderlaw.com)

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