



DACHENG
LAW
OFFICES

大成律师事务所

总第三十八期

海商海事法规信息速递

2014 年第 4 期

大成律师事务所 海事海商部



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海关总署明确加工贸易货物销毁处置有关问题

海关总署日前发布《关于加工贸易货物销毁处置有关问题的公告》，自2014年5月1日起施行。

《公告》明确，加工贸易货物销毁处置，是指加工贸易企业对因故无法内销或者退运的边角料、剩余料件、残次品、副产品或者受灾保税货物，向海关申报，委托具有法定资质的单位，采取焚烧、填埋和用其他无害化方式，改变货物物理、化学和生物等特性的处置活动。

《公告》还明确了加工贸易企业申报加工贸易货物销毁处置所应提交的单证材料。同时，企业应明确销毁处置时限，及时完成货物销毁处置，并在手册有效期或电子账册核销周期内办理报关手续。

GAC Clarifies Issues concerning Disposal of Goods in Processing Trade

The General Administration of Customs ("GAC") has released the Announcement on Issues concerning the

Destruction and Disposal of Goods in Processing Trade (the "Announcement"), with effect as of May 1, 2014.

Under the Announcement, the phrase "destruction and disposal of goods in processing trade" refers to leftover materials, remaining materials and parts, defective goods, by-products or bonded goods affected by a natural disaster that cannot be sold in the domestic market or returned for some reason, which processing trade enterprises declare to the Customs office and in relation to which enterprises entrust a qualified entity to change the physical, chemical and biological characteristics of such goods by way of burning, landfill or other harmless ways.

The Announcement also clarifies the documents and materials to be submitted by processing trade enterprises when applying for the destruction and disposal of goods in processing trade. In the meantime, the enterprises shall determine a time limit for the disposal, complete the disposal of goods in time and go through the relevant customs procedures within the valid period of their manual

or period for the verification and cancellation of their electronic account book.

(Source: www.customs.gov.cn)

《中华人民共和国航道法（草案）》公开征求意见

近日，全国人大常委会公布了《中华人民共和国航道法（草案）》，并向社会公开征集意见。意见征集截止日期为2014年5月24日。

草案完善了航道规划的规定。根据草案，航道规划是航道保护、利用的具体依据。航道规划分为全国航道规划、流域航道规划、区域航道规划和省、自治区、直辖市航道规划。此外，草案强化了航道保护制度。针对拦、跨、临航道建筑物选址和建设对航道通航条件的要求保障不够，导致航道通航条件恶化的问题，草案明确和强化了航道保护的相关制度。

NPC Seeks Comments on Draft on Waterway Law

The Standing Committee of the National People's Congress ("NPC") has released the Waterway Law of the People's Republic of China (Draft) (the "Draft") for public comment by May 24, 2014.

The Draft perfects the provisions on waterway planning.

According to the Draft, the waterway planning, as the detailed basis for the protection and utilization of waterways, consists of national waterway planning, waterway planning for river basins, regional waterway planning and waterway planning for provinces, autonomous regions or municipalities directly under the Central Government. Moreover, the Draft, aiming at resolving the problem of worsening navigation conditions caused by insufficient protection of waterways by the site selection and construction of buildings blocking, crossing or along waterways, specifies and strengthens the relevant waterway protection system.

(Source: www.npc.gov.cn)

《中国—瑞士自由贸易协定》7月1日起施行

日前，经国务院关税税则委员会第三次全体会议审议通过，并报国务院批准，《中国—瑞士自由贸易协定》2014年协定税率将于2014年7月1日起正式施行。

根据协定，按照2010年双边贸易额测算，中方将逐步对瑞士84.2%的对华出口产品实施零关税，瑞士将立即对中方99.7%的对瑞出口产品实施零关税。按照税目数测算，中对瑞和瑞对中的零关税税目比例分别达到92%和89%，双方参与降税的货物贸易额比例超过96%。

China-Switzerland Free Trade Agreement Takes Effect from July 1

Adopted at the third plenary session of the Customs Tariff Commission of the State Council and upon approval of the State Council, the conventional tariff in 2014 under the China-Switzerland Free Trade Agreement (the "Agreement") will take effect from July 1, 2014.

Under the Agreement, according to the calculation of the bilateral trade volume in 2010, China will gradually implement a zero tariff on 84.2% of the commodities exported from Switzerland to China, and Switzerland will immediately implement a zero tariff on 99.7% of the commodities exported from China to Switzerland. According to the calculation based on the number of taxable items, the percentages of zero-tariff taxable items from China to Switzerland and from Switzerland to China have reached 92% and 89% respectively, and the percentage of the bilateral trade volume of goods subject to reduced tariffs has exceeded 96%.

(Source: www.mof.gov.cn)

海关总署明确陆路口岸实施内港海关 AEO 互认事项

5月14日，海关总署发布《关于在陆路口岸实施内港海关“经认证的经营者（AEO）”互认的公告》。

根据公告，从5月18日起，内地海关接受香港海关认证的“香港认可经济营运商”为香港的“经认证的经营者”企业（简称“AEO 企业”），香港海关接受内地海关认证的 AA 类进出口企业为内地的 AEO 企业。同时，内港海关相互给予对方 AEO 企业的进口货物如下通关便利措施：降低进口货物查验率；简化进口货物单证审核；进口货物优先通关；设立海关联络员，协调解决企业通关中的问题；非常时期优先处置。

（来源：海关总署）

Mainland and Hong Kong Mutually Recognize AEO

The General Administration of Customs ("GAC") on May 14 released the Announcement on the Implementation of the Mutual Recognition of "Authorized Economic Operators" ("AEO") between the Mainland and Hong Kong at Land Ports

(the "Announcement").

According to the Announcement, starting from May 18, the Customs in mainland China shall recognize "Hong Kong authorized economic operators" as Hong Kong "authorized economic operator" enterprises (the "AEO enterprises"), and the Hong Kong Customs shall recognize the import and export enterprises in Class AA as certified by the Customs in mainland China as the mainland AEO enterprises. Meanwhile, the Customs in both mainland China and Hong Kong agree to provide the AEO enterprises of each other with convenient customs clearance measures for their imported goods, including reducing inspection rates, simplifying the document review process, giving priority to the clearance of imported goods, installing customs liaison officers to coordinate in the resolution of issues encountered in customs clearance, and giving priority in emergency periods.

(Source: www.customs.gov.cn)

保监会发布支持中国（上海）自由贸易试验区三项举措

发文日期：2014-05-19

近日，保监会下发了《关于进一步简化行政审批支持中国（上海）自由贸易试验区发展的通知》（以下简称《通知》）。

《通知》允许上海航运保险协会试点开发航运保险协会条款，备案后会员公司可以自主使用。同时，《通知》允许航运保险营运中心设立分支机构，取消在沪航运保险营运中心、再保险公司在自贸试验区内设立分支机构的事前审批，由上海保监局实施备案管理。此外，《通知》取消了自贸试验区内保险支公司高管人员任职资格的事前审批，由上海保监局实施备案管理。

（来源：中国保险监督管理委员会）

CIRC Launches Three Measures to Support FTZ's Development in Shanghai

Promulgation date: 2014-05-19

The China Insurance Regulatory Commission ("CIRC") has released the Circular on Further Simplifying

Administrative Approval to Support the Development of the China (Shanghai) Pilot Free Trade Zone (the "Circular").

The Circular allows the Shanghai Shipping Insurance Association ("SSIA") to develop terms and conditions of the SSIA which may be adopted by member companies of the SSIA at their own discretion after being filed for the record. Moreover, the Circular allows shipping insurance operation centres to establish branches, cancels the prior approval for the establishment of branches in the China (Shanghai) Pilot Free Trade Zone ("FTZ") by shipping insurance operation centres and reinsurance companies in Shanghai, and such establishment is now subject to the record-filing with the Shanghai Bureau of the CIRC. In addition, the Circular cancels the prior approval for qualifications of senior executives of insurance companies' branches in the FTZ, and such qualifications are now also subject to the record-filing with the Shanghai Bureau of the CIRC.

(Source: www.circ.gov.cn)

“船舶行业规范条件实施工作专题研讨会”在 CCS 总部召开

4 月 24 日，“船舶行业规范条件实施工作专题研讨会”在中国船级社总部召开。工业和信息化部装备工业司曹钢副巡视员、中国船级社孙峰副总裁出席了本次会议，会议由装备工业司陈颖涛调研员主持。

会上，来自辽宁、江苏、浙江、安徽、福建、江西、山东、湖北、广东等省的国防科工办、经信委领导以及中国船舶工业集团、中国船舶重工集团公司、中国远洋运输（集团）总公司、中国海运集团总公司、中国外运长航集团公司等单位的 60 名代表汇聚一堂，认真听取了由中国船舶工业行业协会和 CCS 组成的专家组的工作汇报，并对《船舶行业规范条件评审细则（征求意见稿）》提出了意见和建议。本次研讨会为《船舶行业规范条件》的顺利实施打下了良好的基础。

（来源：中国船级社）

Implementation Seminar on Shipping Industry
Standard Conditions Held in CCS Headquarters

On April 24th, implementation seminar on shipping industry standard conditions was held in China Classification Society (CCS) headquarters. The vice inspector MR Cao Gang from Ministry of Industry and Information (MII) Technology Equipment Industry Division of the people's Republic of China and the vice president MR Sun Feng from CCS attended the discussion, which was presided by the investigator MR Chen Yintao from Ministry of Industry Equipment of MII.

In the meeting, the leaders from National Defense Science and Industry Offices/ Economic Information Committee of Liaoning province、Jiangsu、 Zhejiang、 Anhui、 Fujian 、 Jiangxi 、 Shandong 、 Hubei 、 Guangdong, and representatives from China State Shipbuilding Corporation China Shipbuilding Industry Corporation, China Ocean Shipping Company Ltd, China Ocean Shipping Group Corporation, Sinotrans & Changjiang Shipping Corporation Holdings Co., Ltd, total 60 to get together and heard the panel's working report from China Association of

the National Shipbuilding Industry and CCS, and also, made opinions and suggestions of Shipping Industry Standard Conditions Review Details (Draft). This seminar laid good foundation for the smooth implements of Shipping Industry Standard Conditions.

(Source: www.ccs.org.cn)

交通运输部关于在上海市试点下放无船承运业务管理权限有关事项的公告

交通运输部公告 2014 年第 16 号

2014 年 5 月 2 日

为进一步贯彻简政放权，推动政府职能转变，交通运输部拟调整无船承运业务管理权限。为促进保证无船承运市场继续持续健康发展，近期将先在上海市进行试点，现将试点工作有关事项公告如下：

一、自 2014 年 5 月 15 日起，公司（含分支机构）或境外公司指定联络机构注册在上海市的无船承运业务经营资格审批由上海市交通运输主管部门负责。交通运输部已颁发的无船承运业务经营资格登记证继续有效。2014 年 5 月 15 日以后到期需办理延期或其他变更业务的，注册在上海市的经营人到上海市交通运输主管部门办理相关手续。

二、已向交通运输部“无船承运业务保证金专户”交纳保证金的无船承运业务经营人，交通运输部颁发登记证到期前，拟终止经营或换成保险（保函）方式继续从事无船承运业务的，按原渠道向交通运输部申请办理保证金退款手续；登记证到期后，保证金依经营人申请全部退回。

三、上海市交通运输主管部门负责制定发布无船承运业务审批办事指南，受理申请材料、办理许可和发放证书，及时汇总并对外公布具备经营资格企业名录，并定期向交通运输部报送审批和市场监管情况。

四、上海市交通运输主管部门负责对辖区内无船承运业务经营活动实施监督管理，包括行政执法。

五、上海市交通运输主管部门和相关部门或机构应按照《中华人民共和国国际海运条例》及其实施细则、《交通运输部关于无船承运业务经营者保证金责任保险制度操作办法的通知》（交水发[2013]600号）和《交通运输部关于试行无船承运业务经营者保证金保函制度操作办法的通知》（交水发[2013]601号）的要求，就无船承运业务财务担保使用和无船承运业务经营资质的存续等情况及时沟通衔接，以保证无船承运业务财务担保的有效性及无船承运业务经营资质的合法性，切实保护国际海上运输相对人的合法权益。

特此公告。

Notice Concerning MOT's Experimental Delegating Administration Authority in Non-vessel Shipping Business in Shanghai

The MOT announcement No. 16, 2014

May 2nd, 2014

In order to further implement simplifying administration, delegating the powers, and promoting changes of government functions, the Ministry Of Transport (MOT) will adjust administration authority in non - vessel shipping business. For the sake of the market's successive and healthy development, this experiment will be carried in Shanghai, now, the jobs be announced as following.

One, from May 15th 2014, companies (include branches) or the designated agency of abroad companies, in non-vessel shipping, their business qualification will be certified by the competent authorities of Shanghai, the certificates issued by MOT still in effect. From May 15th, for the operators who registered in Shanghai, they only need to handle some formalities in the competent authorities of

transport in Shanghai if they extend their qualifications or change business.

Two, for the non-vessel shipping operators who made deposit in "non-vessel shipping business deposit account" in MOT, before expiration of registered certificate, if they plan to terminate the business or change to insurance style(LOI), their deposits can be applied back in the way they applied for the business. When certificates expire, deposits be returned as per the operators' application.

Three, the Shanghai competent authority of transport take in charge of formulating non-vessel shipping business application guide, accept application papers, handle and issue permits and certificates, timely gather and publish certified operators list, regularly report ratification and markets supervision to MOT.

Four, the competent authorities of transport in Shanghai are in charge of supervision and management of non-vessel shipping business in their jurisdiction, including administration enforcement.

Five, according to Regulations of the People's Republic of China on International Ocean Shipping and the implementing rules, MOT Notice of operation of guarantee deposit rules on non-vessel shipping business (NO.600, 2013), and Notice on operation of experimental non-vessel shipping business guarantee deposit (NO.601, 2013), Shanghai competent authorities of transport or relevant departments to timely communicate and link non-vessel shipping business finance guarantee and operators qualification, so that to ensure the finance guarantee in validity and qualification in legal, actually protect the parties' interests of the other parties in transport business.

It is hereby announced.

(Source: www.simic.net.cn)

IMO: 2016年5月前集装箱或执行强制称重

国际海事组织(IMO)计划修改海上人命安全公约(Convention on the Safety of Life at Sea, SOLAS), 修正案旨在强制执行集装箱装船前的称重操作。按照新规, 集装箱上船前必须强制称重以确认是否与货主申报一致, 或是启用一套重量确认方案以便货主对集装箱托盘、衬垫、皮重等所有包装和货物计重。此外, 近洋航线上由拖车装卸上下滚装船的集装箱不在此次强制称重货箱之列。

该草案将在5月提交给 IMO 海事安全委员会批准, 预计11月有望批复, 由此推算2016年5月前或将生效。

(来源: 中国水运网)

IMO: Mandatory implement of container weighing may start before May 2016

International Maritime Organization plan to revise Convention on the Safety of Life at Sea (SOLAS), intending as to strengthen container weighing operation before shipped on board. According to the new rule, the mandatory container weighing is to check the conformity with the

shipper's declaration, and for the shipper to weigh cargo and all the packages including pallets, dunnages and tare by another weighing way. And, for the containers loaded or discharged by trailers on / off RO-RO vessel in near sea shipping line, mandatory weighing not be necessary.

Above draft will be submitted to Maritime Security Committee of IMO, expected to be officially replied in November this year, thus, the new rule will probably on effect from May 2016.

(Source: www.chinasy.com)

上海海事局召开《中华人民共和国船舶安全检查规则》修订立法项目启动会

为全面适应和履行东京备忘录 NIR、相关国际公约、国内法律规范等新的需求，规范船舶安全检查活动，保障水上人命、财产安全，防止船舶造成水域污染，现行的《中华人民共和国船舶安全检查工作》（以下简称安检规则）已经不能适应当前我国船舶安全检查形势的要求，对《安检规则》的修订已刻不容缓。

根据部海事局2014年船舶监督管理工作重点，上海海事局承担了对现行《安检规则》的修订工作。2014年5月6日，上海海事局组织召开了《安检规则》修订立法项目启动会。部海事局船舶处陈德丽副处长、主管陈星森和上海海事局船舶监督处俞勤伟处长出席了会议，其他参会人员包括来自天津、辽宁等七家直属海事局专家及上海海事局船舶监督管理领军人才和首席船舶安全检查官共15人参加了会议。

会上，来自各直属局的专家及领军人才就《安检规则》修订的方向及框架进行了深入的讨论和交流，明确修订的总体思路。陈德丽副处长和俞勤伟处长分别就对现行《安检规则》修订的背景、意义及必要性进行了详细的阐述，对修订工作的落实和推进计划作了明确的要求。旨在通过对东京备忘录 NIR、相关国际公约、国内法律规范等内容研究，将相关内容纳入安检规则，使中国 PSC 检查程序 and 标准符

合备忘录和国际公约及国内法律法规的要求；另结合船旗国质量管理的要求，探讨将 NIR 应用于对国内航行海船和内河船的管理，从而达到从源头上提高航运公司管理水平，提升海船和内河船质量的目标。

下一步，上海局将根据项目的推荐计划深入开展调研和研究，细化项目的具体细节和内容，保质保量完成《安检规则》的修订工作。

(来源：上海海事局)

SMSA Held Kick-Off Meeting of Legislation to Amend the Rules for Ship Safety Inspection of the P.R.C

In order to fully adapt and fulfil Tokyo MOU PSC New Inspection Regime (NIR), relevant international conventions, domestic rules, to standardize ship safety inspection, ensure safety of life and property on water, prevent ship pollution, it is urgent to revise the current Rules for Ship Safety Inspection of the People's Republic of China (the RULES) which cannot adapt present ship safety inspection requirements.

According to the Maritime Safety Administration of the Ministry Of Transport of the P.R.C, Shanghai MSA to take the job of amendment of the current Rules for Ship Safety Inspection of the People's Republic of China. On May 6th, 2014, Shanghai MSA held the kick-off meeting, in which the vice director of ship department of MSA of MOT MR.Chen Deli and the executive Chen Xingsen, the director of supervision department of Shanghai MSA MR.Yu Qinwei attended, other attendee included MSA experts from Tianjin, Liaoning and some able persons from Shanghai MSA and the chief ship safety inspection officer, total 15 persons.

In the meeting, all attendee from deeply discussed the amending direction and outline, made clear train of thought. MR. Chen Deli and Yu Qinwei respectively elaborated the revising background, meaning and its necessity, and clear requests of implement and promotion plan; studied NIR, relevant conventions, domestic rules to adopt concerned contents so that Chinese PSC inspection procedures and standard can meet NIR and the international conventions and domestic rules, and considering ship quality

management requests of flag state, to discuss applying NIR FOR domestic sailing sea ships and inland river ship, so that the shipping company management can be promoted at beginning, upgrading inland vessel and sea ships quality.

In the following, Shanghai MSA will deeply investigate and research the recommended project, specifying the details, to complete the revising jobs with full quality and quantity.

(Source: www.smsa.gov.cn)

上海海事司法鉴定中心在上海海事大学正式成立

5月13日，沪上首家海事司法鉴定机构——上海海事司法鉴定中心在上海海事大学正式成立。

新成立的上海海事司法鉴定中心与上海海事大学共建。中心负责人蔡存强教授说，中心主要鉴定方向包括船舶海事海损事故、船舶货损等。除此以外，还将依托高校在行业的影响力及专业综合优势，对我国海事司法鉴定行业规范、行业标准、海事司法鉴定人职业规范等展开学术研究，促进我国海运和水运法律法规体系及海事司法体系不断完善。

Shanghai Maritime Judicial Identification Centre Set Up in Shanghai Maritime University

On May 13th, 2014, the first maritime institution - Shanghai Maritime Judicial Identification Centre in Shanghai was Set Up in Shanghai Maritime University.

The newly built center will be jointly developed with Shanghai Maritime University. The PIC of the center, professor Cai Cunqiang said, the main fields covered by the center include maritime ship accident, ship and cargo loss and damage. In addition, relying on the influence in shipping and professional comprehensive advantages, the center will make academic research on maritime judicial identification codes, standard and identifier's career standard, promoting shipping and water – borne transport laws, regulations and judicial system.

(Source: www.shhsfy.gov.cn)

案例分析 CASE STUDY

承运人适货义务、管货义务的认定

----莫瓦萨拉特运输公司诉中远航运股份有限公司海上货物运输合同货损纠纷

【问题提示】

承运人使用件杂货船运输汽车导致损害的责任认定。

甲板货免责的适用条件。

【要点提示】

承运人使用件杂货船运输汽车违反了适货义务和管货义务，应对由此造成的损失承担责任。

承运人主张甲板货免责必须证明其就此种装载方式同托运人达成协议，或者此种装载方式符合航运惯例，或者符合有关法律规定。否则，依法不得享受免责。

【案例索引】

一审：广州海事法院(2008)广海法初字第392号(2008年12月9日)。

二审：广东省高级人民法院(2009)粤高法民四终字第44号(2009年7月8日)。

【案情】

原告：莫瓦萨拉特运输公司[MOWASALAT (THE TRANSPORT CO)]。

住所地：卡塔尔多哈 1186 信箱(P. O. BOX-1186 DOHA-QUTAR)。

被告：中远航运股份有限公司。

住所地：广州市五羊新城江月路颐景轩 2—3 楼。

广州海事法院经公开审理查明：

2007 年 1 月 15 日，原告与金龙联合汽车工业（苏州）有限公司（下称金龙苏州公司）签订合同，约定原告向金龙苏州公司购买 KLQ6109 客车 150 辆，单价 68,150 美元，购买 KLQ6896 客车 210 辆，单价 61,630 美元，价格条件为 CIF 多哈，包装：裸装。

2007 年 7 月 24 日，中国上海外轮代理有限公司代表被告签发了编号为 B003 的提单。该提单记载，承运船舶“银桥 09”轮，装货港中国上海，卸货港卡塔尔多哈。托运人为金龙苏州公司，收货人凭卡塔尔国家银行指示，通知方为原告，65 辆客车装在甲板上。“银桥 09”轮从上海到多哈的运输过程中遇到了八级大风的恶劣天气，船舶常常倾斜 15 度，甲板和舱盖时而被海浪覆盖。

卡塔尔国家银行在提单正面盖章背书后，原告向被告提取了货物。2008 年 3 月 13 日，多哈港的港口主管签发卸货证书。证明“银桥 09”轮于 2007 年 8 月 15 日挂靠多哈港，没有发生短卸，285 件运输货物有 274 件损害，损害主要表现为车轮拱罩刮花、车身刮花、车身凹陷、挡风玻璃破裂等。

2007 年 9 月 5 日、6 日、9 日、11 日，阿拉伯商业集团卡塔尔公司检验员到原告单位对上述车辆进行检验。2008 年 4 月 22 日出具检验报告，记载涉案货物交货时间为 2007 年 8 月 15 日至 27 日，记载了客车受损的详细情形，货损损失为 96,322.47 美元，并认为货损的原因是采取件杂货船运输而不是滚装船运输，滚装船运输是适当的，也是运输车辆和或类似货物的现代运输方式。

2008 年 8 月 4 日，金龙苏州公司出具证明，确认通过 T/T 收到整个合同 360 辆车 10% 的定金 2,316,480 美元（包括涉案货物 285 辆车的定金 1,810,571 美元），通过信用证方式收到 285 辆车的余款 16,295,139 美元。8 月 27 日，卡塔尔国家银行也证明该 285 辆车的余款 16,295,139 美元是其通过信用证支付。

原告请求法院判令被告赔偿原告损失 110,000 美元及其从 2007 年 8 月 27 日起算的利息。

【审判】

广州海事法院经审理认为，原告依据提单提起货损纠纷，本案是一宗海上货物运输合同纠纷。涉案货物是从中国上海运至卡塔尔多哈，属于涉外案件。庭审时原、被告均选择适用中国法律，根据《中华人民共和国海商法》第二百六十九条“合同当事人可以选择合同适用的法律，法律另有规定的除外”的规定，解决本案纠纷应适用中国法律。多哈港口主管出具的卸货证明表明本案货损是在卸货当时就已经发生，被告签发了提单，是本案货物的承运人。根据《中华人民共和国

海商法》第四十六条的规定，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货物卸下船时止，货物处于承运人掌管之下的全部期间，因此，应该认为本案货损发生在被告的责任期间，被告认为货损不是发生在其责任期间的主张，不能成立，不予支持。阿拉伯商业集团卡塔尔公司出具的检验报告认为货损的原因是采取件杂货船运输而不是滚装船运输。虽然现行的法律规定并没有明确规定运载汽车所必须使用的船舶，但是，根据《中华人民共和国海商法》第四十八条的规定，承运人应当妥善地、谨慎地装载、搬移、积载、运输、保管、照料和卸载所运货物，从而在目的港完好地交付承运货物。除了法律规定的免责事由外，承运人应该对货物在其责任期间发生的损坏承担责任。本案被告作为承运人，并没有举证证明其已经尽了妥善、谨慎的义务，也没有举证证明涉案货物的损害是因可免责事由所致，被告应对其承运货物的损坏承担责任。被告主张对甲板货的损失免责，但是，被告并没有证明涉案装载于甲板的汽车的损坏是由于甲板货装载的特殊风险造成的，对其主张不予支持。原告已经支付货款，持有的提单是经背书后的提单，因此，应该认为原告合法持有提单，对提单项下的货物损失有权向被告提出索赔。被告应向原告赔偿货物 96,322.47 美元及其利息，原告请求从交货完成之日即 2007 年 8 月 27 日起计算的利息合理，予以支持，按中国人民银行公布的同期同币种存款活期利率进行计算。

综上，依照《中华人民共和国海商法》第四十六条、第四十八条、第五十五条的规定，判决如下：一、被告中远航运股份有限公司赔偿

原告莫瓦萨拉特运输公司货物损失 96,322.47 美元及其自 2007 年 8 月 27 日起至判决确定支付之日止按中国人民银行规定的同期美元活期存款利率计算的利息；二、驳回原告莫瓦萨拉特运输公司的其他诉讼请求。本案受理费 11,789 元，由被告负担 10,323.14 元，原告负担 1,465.86 元。

二审中，原、被告双方自愿达成和解协议，由被告向原告支付 8 万美元和解款项作为本案最终的解决方案。

【评析】

本案被告通过代理签发了编号为 B003 的指示提单，记载托运人为金龙苏州公司，收货人凭卡塔尔国家银行指示，通知方为原告，原告支付货款后，经卡塔尔国家银行背书，依法取得提单，并在目的港向被告领取了货物。原告为涉案货物的收货人，被告为涉案货物运输的承运人，双方成立海上货物运输合同关系，原告有权向承运人主张本案货损。

根据我国海商法第四十六条的规定，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。在承运人的责任期间，货物发生灭失或者损坏，除法律另有规定外，承运人应当负赔偿责任。涉案货物装船后，被告开出了清洁提单，货物运抵多哈港后进行卸货，发现货物损坏，说明货物发生损害是在货物装上船起至卸下船期间，属于承运人的责任期间。

在海上货物运输中，承运人对货物所承担的义务包括适货义务和管货义务。适货指运载货物的货舱和其他处所应适于安全收受、载运和保管货物。管货义务是指承运人在货物运输从装船到卸船的全过程，包括装卸、搬移、积载、保管、照料和卸载的各个环节，都应尽妥善和谨慎的义务。本案海上货物运输的对象是汽车，就现代海上运输而言，汽车适宜的运输方式是滚装船运输。滚装船的特点是车辆可以通过船的首门、尾门或舷门的跳板开进开出，无需起重设备；并且，为了运输安全，滚装船设有专门的防摇水仓和其他防摇设备，以减少船舶摇摆；等等。本案承运人使用件杂货船运输汽车，违反了适货义务，增加了货物装载、运输、卸载过程中的风险。

当然，使用件杂货船运输汽车并未为法律所明文禁止，承运人违反适货义务也并非必然产生货物损失，就本案而言，如果承运人尽了谨慎、合理的管货义务，也可能避免本案货损。承运人是否违反管货义务是通过合理推定进行认定的，货物在承运人控制期间发生了货损，除非承运人能够证明货损是由于不能归责于承运人或者承运人的受雇人、代理人的过失的原因造成的，否则，承运人即应对货物损害承担责任。涉案运输中，由于使用件杂货船运输汽车，承运人在装卸过程中使用了吊机对汽车进行起重，并且，由于受海上风浪的影响，汽车产生擦碰，最终导致本案货物损失。承运人未能举证证明其管货无过失，也不能证明货损是由于法律规定的可免责事由所致，故应认定承运人违反了管货义务，应对涉案货损承担责任。

本案另一争议问题是承运人是否可以对甲板货享受免责，被告主

张部分汽车装载于甲板，其可以依照海商法第五十三条第二款对因甲板货的特殊风险造成的损坏予以免责。但是，根据我国海商法第五十三条的规定，承运人享受甲板货免责有两个主要条件：1、承运人在舱面上装载货物，已经同托运人达成协议，或者此种装载是符合航运惯例或者符合有关法律、行政法规的规定；2、货物的损害是由于此种装载的特殊风险所致。本案中，货物遭受损害的主要原因是船舶不适货以及承运人未尽合理、谨慎的管货义务双重原因所致，尽管甲板货的特殊风险可能加剧了损害的后果，但是，承运人难以证明哪些损害是甲板货的特殊风险所致。并且，被告也未能证明其同托运人达成协议将汽车装载于甲板舱面，或者此种装载符合航运惯例或相关法律规定，因此，被告主张免责不能成立，应对原告因本案运输而遭受的损失承担全部责任。

（作者单位：广州海事法院）

China: Proposed Draft Provisions on Arrest and Judicial Sales of Ships

By Wang Zhonghua (Youhua Law Firm)

In order to regulate the procedures of arrest and judicial sales of ships, the Supreme People's Court of the People's Republic of China recently drafted the provisions. Below are the introductions on some main points of the drafts, which we believe are very interesting topic of discussion, and also we will keep updated of any developments on it.

1. Non-arrest process

The claimant may apply for prohibiting the transfer of ownership, mortgage and demise chartering of ships and the maritime court shall permit such application with a notification to the ship registry for assistance in enforcement of court order. The non-arrest process shall not prejudice an actual arrest in respect of another claim.

2. Multiple arrest for another maritime claim

A ship which has already been arrested may be arrested in respect of another maritime claim. Where the former claimant does not apply for judicial sale of the arrested ship, the latter claimant may apply for the sale to the maritime court permitting the latter arrest.

3. Judicial sale of a demise chartered ship

Where a demise chartered ship is arrested in respect of a maritime claim for which the demise charterer of the ship is liable, the claimant may pursuant to Article 29 of the Maritime Procedure Law of PRC apply for judicial sale of that ship to enforce a judgment in respect of that claim.

4. Exceptions to counter-security

In principle, the maritime court shall require the claimant to provide counter-security for ship arrest with two exceptions that: (a) the claimant has good credit, good financial position for civil compensation and no obstacles to honor a judgment; or (b) the claim arises out of crew

member employment contract or personal injury with strong evidence.

5. Amount and adjustment of counter-security

The maritime court shall determine the amount of counter-security according to such damage or losses that could be caused to owners as a result of wrongful arrest as ship maintenance cost and expenditure, loss of earnings and cost for security, among which, the maintenance cost and expenditure and loss of earnings could be calculated temporarily based on 30 days arrest period. In case of emergency, the counter-security could be provided in phases. If the counter-security is found to be insufficient or owners raise a reasonable objection to it, the maritime court may have the counter-security modified or increased.

6. Refund of counter-security

The maritime court may refund the counter-security to the claimant when any of the following happens: (a) owners agree to the refund; (b) owners fail to file claim against

claimant for wrongful arrest after six months from the day on which the ship was released from arrest or was judicially auctioned; (c) an effective judgment, mediation order or arbitration award held owners to be liable for maritime claim and the judgment amount is equivalent of the security provided by owners.

7. Custody of arrested ship

Owners or demise charterers shall be responsible for custody of arrested ship.

8. Judicial sale of arrested ship

The maritime court shall set a retentive price which should not be open to the public, based on the assessment price of an auction ship.

9. Distribution of auction proceeds

The proceeds from auction of a ship and interest thereon shall be distributed as per following order of priority: firstly, court fee, custody and auction fee and other

expenses incurred for the common interest of all claimants; secondly, the claim secured by a maritime lien; thirdly, the claim secured by a possessory lien; fourthly, the claim secured by a ship mortgage; fifthly, other claim associated with the auction ship.

April 21, 2014

(Source: www.forwarderlaw.com)

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