

## THE PRESIDENCY ON FREIGHT FORWARDERS

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**Abstract:** As the current governing laws are more limiting than encouraging the development of this industry, Freight Forwarders in Taiwan have been long misunderstood, mistreated or, discriminated by both the Government and shipping field. However, there's a light in the end of tunnel now, the newly drafted "The Shipping Industries Law" will amend the definition of "freight forwarders" and make a fundamental change in the presidency of governance from "depositing security bond" to "filing Liability Policy". This paper is mainly to discuss the required basic terms that should be entered into the Law for building up an even fairer and healthier environment for Freight Forwarders to further develop in Taiwan.

**Key Words:** Freight Forwarder, Cargo-side Agent, Non-vessel Operating Common Carrier (NVOCC), Ocean Transportation Intermediary (OTI), Non-vessel Operator (NVO)

### 1. FOREWORDS

The amended drafts of the Shipping Industries Law and Governing Rules on Maritime Freight Forwarders are under perusal since 2000. In the drafted law, we found a new stipulation that "the freight forwarders who have operated for more than three years and made no bad record with customers within the latest three years will be allowed to dismiss the bond disposition and to file their liability insurance policies instead". The new stipulation has been passed in the internal meeting of The Ministry of Communication on July 2, 2003.

"Freight forwarders" are becoming a prosperous industry since the carriage of goods was containerized and logistics business became boomed. We had the "forwarding" business and the relevant freight forwarding regulations in the Civil Code since 1929. However, the definition of "freight forwarders" in the Civil Code is somewhat similar to "commission agents" of transport.<sup>1</sup> The liability of freight forwarders in the Civil Code is limited only to be liable for loss, damage or delay of the consignment when he is proved to be negligent in

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<sup>1</sup>Article 660, item 2, "...the provisions concerning Commission Agents shall apply *mutatis mutandis* to forwarding agency." **Civil Law** (as amended on 2002.6.26), Taipei.

the reception and custody of the goods, in the selection of carriers and in the other forwarding matters.<sup>2</sup> This definition is far from the requirement of the freight forwarders in the practice of multi-modal transport business. The Shipping Industries Law<sup>3</sup>, when firstly put into application in 1981, made a similar definition of “freight forwarders” to that in the Civil Code, and since this Law is also applied to govern the shipping agency industry, the confused governance has thus very much dissatisfied the industry since then<sup>4</sup>.

## 2. THE IDENTIFICATION OF “FREIGHT FORWARDERS”

### 2.1 “Freight Forwarders” in the Laws of Taiwan

The Shipping Industries Law, first enacted in 1981 in Taiwan, branded “Freight Forwarders” as “Ship Forwarding Brokers” and defined them “the enterprises which act on their own behalves but on account of other persons to make a carrier by ship transport goods for remuneration”. This is the similar meaning to the provision in the Civil Code. Though the Chinese name was amended in the revised Laws of 1995 and 1999, the statement of definition for “freight forwarders” had remained unchanged. The freight forwarders in practice are absolutely not just “on account of other persons”, nor just “making a carrier by ship transport goods”, nor “for remuneration” in the process only. In most times they used to acting as a common carrier, issuing the bills of lading in their own name, taking the responsibility of whole carriage to meet the requirement of the common carriers in the market. They survived to maintain their own brand and to establish their stand in the market. Moreover, they have been acting as a “principal” when accepting the consignment from foreign freight forwarders and customers, not as a consignor only. This is the key difference from the “ship forwarding brokers” in the Civil Code.

The “freight forwarders”, by definition in the lately amended Shipping Industries Law, are “the enterprises act under the consignment of cargo owners, in the name of a freight forwarder or in the name of a consignor, to handle the international carriage and other related matters, for remuneration”. In this statement of definition, it does make sense of the following points:

2.1.1 There is not any difference between “sea” and “air” freight forwarders while they still have to obtain two Permits before practicing the business in Taiwan. From the viewpoints of multi-modal transport, there should not be any difference among sea, air or even land transport as they used the same single piece of multi-modal transport document. Especially when the new “Draft Instrument on Carriage of Goods wholly or partly by Sea” was under drafting, the working group, leading by The United Nations Commission on International

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<sup>2</sup>Ditto, Article 661.

<sup>3</sup>The definitions of the “Freight Forwarder” in the “Shipping Industries Law” of 1981 and its 1995 Amendments are the same in “*the enterprises which act on their own behalves but on account of other persons to make a carrier by ship transport goods for remuneration.*”

<sup>4</sup>Chapter 4, Article 49, “*The provisions of Articles 42 to 46 and Items 1 & 2 of Article 47 concerning shipping agents shall apply mutatis mutandis to maritime freight forwarders.*” The Shipping Industries Law (1981.6.3), Taipei.

Trade Law, UNCTL, found that even there's not sea transportation involved in, there still might be sea document- bills of lading issued. We can also find and understand there is no reason needed to apply for two "permits" for the freight forwarders.

2.1.2 It is also easy to recognize the difference between "freight forwarders" who are under the consignment of cargo owners and "shipping agents" who are under the consignment of ship owners. Both industries are completely different.

2.1.3 The major difference between acting "in the name of a freight forwarder" and acting "in the name of consignor" lies in the identity in the "Master Bills of Lading". In the former case, freight forwarders have to issue their own "House Bills of Lading", while in the latter one, they only sign "Cargo Receipts" or sign owner's Bills of Lading on owners' behalf. However, in both cases freight forwarders are "under the consignment of cargo owners" to "handle the international carriage and other related matters, for remuneration."

2.1.4 As to handle the international carriage and "other related matters", it should be interpreted as logistic operating matters concerned to reflect the practical business items that freight forwarders are currently providing the services for.

## **2.2 "Freight Forwarders" and "Shipping Agents" in the Laws**

In most of the time, the "freight forwarder" is, in its own name, as a "contractual carrier" to take the contractual liability till the consignment is delivered and the contracted voyage completes.

Both the "shipping agency" and "freight forwarders" are governed by the same rules of Article 43, 45 and 47 of the Shipping Industries Law in Taiwan. So "when they are executing their agency consignment, they should be doing so in the name of a consignor and within the agreed range of authority. However, there is still difference. The freight forwarders in most cases are executing their business in their own name and are used to receive consignment in oral instead of being in written in shipping agency business. "Freight Forwarders" run their business and take responsibility independently. In the Article 170 of Civil Code of Taiwan, it clearly mentions that "a juridical act made in the name of an agent by a person of no authority of agency shall not be effective to the principal except it is acknowledged by the principal." It is thus especially important that an agreement in black-and-white to be made by the principal to the agent only. It's currently the Harbor Authority<sup>5</sup>, the governing authority, for the shipping agents to file the written agency agreement. As to the case of the freight forwarders, the Governing Rules on Maritime Freight Forwarder currently in force do require the freight forwarders to file "the copy" of their "agency agreements", too. But, in the new amendment, it will be changed to file "the copy of agreement" only if there is one,<sup>6</sup> making the difference between both industries.

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<sup>5</sup>Article 14, **Governing Rules on Shipping Agents** (as amended on 1996.7.17), Taipei.

<sup>6</sup>Article 15, **Governing Rules on Maritime Freight Forwarders** (as amended on 1996.5.29), Taipei.

### 2.3 “Freight forwarders” in the Laws of U.S.A.

In 1984, a new term of “Non-vessel Operating Common Carrier, NVOCC” was the first time ever raised in the “Shipping Act of the United States and then adopted worldwide to call the “freight forwarders” as “NVOCC”. However, if the freight forwarders are referred as “common carrier” by the Act, it means they take even heavier responsibility than the ships-owning “private carriers”<sup>7</sup>. The “NVOCC” was thus, by the Act, considered to bear the responsibility as same as an “Ocean Common Carrier” to do. It is the formal higher position of freight forwarders given by the Shipping Act of 1984.

The Ocean Shipping Reform Act of 1998 of the United States has taken the place of the Shipping Act of 1984 and been in force now. But due to the objections from those ocean common carriers”<sup>8</sup>, the “Assessment Agreement” of labors, and the lobbying attacks in the Senators, another new term was found to cap on the term “NVOCC”, that is “ocean transportation intermediary, OTI”, the term makes as equal level as “ocean common carrier, OCC” and there included “NVOCC” and “freight forwarders” under it. “NVOCC” means freight forwarders who issue their own house bills of lading and “freight forwarders” mean freight forwarders who issue “Cargo Receipts” or “owner’s bills of lading” as agents only. In fact there are only three to five per cent of freight forwarders in the world who only issue “Cargo Receipts” or “owner’s bills of lading which OSRA, 1998 defined.

The effects of the Ocean Shipping Reform Act of 1998 are as follows:

2.3.1 one level descent of “NVOCC”; “NVOCC” belong to “OTI” and “OTI” has the same level as ships-owning “OCC”;

2.3.2 the meaning of “freight forwarders” in the United States is different from the meaning of “freight forwarders” in other places of the world; and the most importantly is that we thus enhance our understanding to the industry of “freight forwarders” through the amendment and development of the statutes of the United States.

Furthermore, under the draft of Carriage of Goods by Sea Act, 1999 in U.S.A., the same term of “freight forwarders” in USA, in addition to not being allowed to act as the “ocean carriers” and “contracting carriers”, cannot even be “performing carriers” either when they are not issuing “Cargo Receipt” or Owner’s B/L on owners’ behalf. That is a kind of debasement of the industry of Freight Forwarders and once has been protested by International Freight Forwarders Association.

### 2.4. The Background of “Freight Forwarders” in the Mainland China

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<sup>7</sup>J. Bes, **Chartering and Shipping Terms**, Vol. 1, 10<sup>th</sup> ed. London: Barker & Howard Limited, 1982, p.169.

<sup>8</sup>Christina Wang, **General Comments on the Ocean Shipping reform Act of 1998 of the United States**, Lecture to the seminar at Chinese Maritime Institute. Taipei, May 1998.

Prior to the year of 1984, China had performed the “planned economy system”, there was not any investor allowed to run freight forwarding business, there was one government-run freight forwarder: The China Marine Agency Company, or SINOTRANS. After 1984, cross running of freight forwarding business and shipping agency business is allowed to SINOTRANS and “China Ocean Shipping Agency Company, PENAVICO” who is also government-run shipping agency company. It meant that the SINOTRANS could also run the shipping agency business and PENAVICO could also run the freight forwarding business, thus both companies, instead of one, could run the freight forwarding business in the Mainland China.

This business was not opened for entry into the Mainland China until the year of 1988. Since then there were free market mechanisms such as free competition was introduced into China. From July 1991, the Ministry of Foreign Trade and Economic Cooperation of China managed the freight forwarders by granting them the Approval Certificates, and from September 1993, the granted Certificates were changed to the “permits”. Since then the managing system, the areas of business limit etc. to run the business and business scope of a particular freight forwarder have to be approved by the authority. Then there was a document issued in 1992 by the Chinese Central Government, Order Number 64, the document stated “the Government policy and strategy including rules, regulations, statistics records on freight forwarders’ are all governed by the Ministry of Trade And Economic Cooperation, PRC; while policy and strategy including rules, regulations, statistics records on Ship-owners, Shipping Agents are all governed by the Ministry of Communication”. This is so called the “Ship and Cargo Separation Governing System” and since then there’re distinct administrations to supervise the industries of “freight forwarders” and “ship agency”.

The “Regulations of the People's Republic of China on Management of International Freight Forwarding Services” were promulgated on June 29, 1995, they’re the first formal administration rules on freight forwarding in China. The Regulations clearly stated, “The Ministry of Foreign Trade and Economic Cooperation takes the responsibility for supervision of international cargo side agents. The regulations also defined the “international cargo side agent” to be “an industry, consigned by receiver of import cargo and shipper of export cargo, in the name of a consignor or in his own name, handles the international cargo carriage on consignor’s behalf and collects his own earnings”. The formal name of “international cargo side agent” means an “agent” and the “agent” for cargo side, just on the opposite side of “shipping agents”. On January 26, 1998, they promulgated the “Provisions of Regulations of People's Republic of China on the Management of International Freight Forwarding Service”; the effect of Provisions is under that of Regulations. The Article 3 of the “Provisions” requires that “it is necessary for those international cargo side agents to include the words such as cargo side agent, transport service, consolidating, logistic works etc. into their company names.” “The bills of lading used must be covered by liability insurance and must be insured by the underwriters approved by the People's Bank of China. Moreover, for the administration of bills of lading, “the sample of all bills of lading issued must be registered and numbered by the Ministry of Foreign Trade and Economic Cooperation, PRC.” The Article 17 of the

“Provisions” requires that the “cargo side agent” to obtain its company license; the company organization should be limited liability company or share limited company. There are total seven chapters and 54 Articles in the “Provisions”. They are clear and complete regulations consisting of the “Provisions”, the Terms of “Examining and Approving”, Conditions of “Examining and Approving”, Procedures of “Examining and Approving”, “Annual Examining and Approving” and “Certification”, “Managing System” and the Fines concerned etc. The “Provisions” also provide a formal background to defend against the illegal business runners and create clear principles to govern and to supervise the national and local freight-forwarding associations. China National Tax General Bureau then designed specific Invoice for freight forwarders and published on July 1, 1998 for close supervision on freight forwarders- cargo side agents in the Mainland China.

There is another document of “Some Regulations of the Ministry of Foreign Trade And Economic Cooperation on the Management of International Freight-Forwarding Services” that was also released at the same time of July 13, 1990 by the Ministry of Foreign Trade And Economic Cooperation, PRC by Order Number 538. The Article 8 of the said document states that the “international cargo side agent” could, under the permitted managing field, accept consignment for handling all or part of the following business: such as accepting the consignment of cargo owners to choose diligent carrier, arranging transport instrument and transport route, negotiating competitive freight rate, and arranging transport, applying for customs clearance, applying for cargo inspection, supervising loading, supervising discharge, packing and unpacking the containers, distributing the cargoes, chartering airplanes, arranging couriers and issuing the transport document, providing transportation information and consulting service etc. Moreover, if, under the consignment of the carrier, they are to arrange cargo booking, cargo receiving, consolidation of containers, dispatching carriage, containers unpacking, and to arrange delivery of cargo, to advance freight and surcharge, etc. They can also accept the assignment of foreign freight forwarders to arrange consolidation and transportation of cargoes, consignment of carriage, consolidation of containers, packing or unpacking of container, storage, division of cargoes, transshipment, door to door delivery, express delivery and consulting services etc. They are allowed to run as well as to provide all other freight forwarding services, to provide the international multi-modal transport services, and to issue FIATA transport documents such as FIATA Bill of Lading or FIATA Sea Waybill etc. The Article 14 states that, in order to protect the industrial environment of freight forwarders, the cargo owners and the carriers are not allowed to provide freight forwarding services. Though the freight forwarder is defined as “international cargo side agent”, something like an agent only, the statutes including the “Provisions” and the relevant “Regulations” have already fitted the industry as the standard international freight forwarders. Therefore, they are entitled to run the worldwide business items as the international freight forwarders do in other countries instead of being the limited one in Taiwan.

In China, more than eighty percent of cargo import and export is dealt through freight forwarders. No doubt about it, the trend will prevail all over the world in the foreseeable future.

However, it is a pity that China released and enforced another law of “Regulations of International Maritime Transportation” on January 1, 2002. The new “Regulations” is thought to be backward regulations for freight forwarding industry, there they created a new term of “NVO” which is “non-vessel common carrier”, a product of the Shipping Act of USA. This is an absolutely wrong interpretation to freight forwarders to walk back. As there has been complete enough to govern freight forwarders in China with above-mentioned laws. According to the new Regulations, there is another “certificate” of NVO to be issued to freight forwarders when the freight forwarder is carrying out the consignment “in its own name”. Other parts of the new “Regulations” are almost all the same as the governing regulations of freight forwarders mentioned above. The most unbelievable part is to require NVOs to enter into shipping agency association. How misunderstood situation it is!

### **3. INTERNATIONAL LOGISTIC OPERATION AND FREIGHT FORWARDERS**

Since the “logistic operation” was commercialized, time-saving was not the only factor to satisfy customers. Cost saving, improvement of service quality, creation of economic efficiency and value-added service etc. has all been looked upon. However, money and time are still the most important factors in the operation of logistics. The value-added service depends on the efficiency of management and the complete of law and regulations. These are all the main body of commercialized logistics.

The activities of logistic operation in Taiwan mainly focused on the operation of international transport logistics. Due to small operating territory of the domestic market, the Taiwanese freight forwarders are confronting with restrictions to develop inland storage or regional value added activities, and there is not sufficient economic modal either in Taiwan to develop other logistics activities except international logistics. Freight forwarding is the main industry to operate international logistics service.

#### **3.1 The Development of International Logistic Operation in Taiwan**

There are about 580 freight forwarders in Taiwan at present as per latest statistics. There is not any approved company registered as logistics industries in Taiwan as Government deemed “logistics” as activities only. However, there are “Taiwan Logistics Association” and “China Logistics Association” in Taiwan. “Taiwan Logistics Association” was established in early 2003 but China Logistics Association was established much earlier. The major members of both associations are freight forwarders, as well as factories, logistics suppliers and consumers such as trailers, tractors, terminal operators, truckers, garbage collectors etc as contrary to the fact that, in the authorities’ point of view, logistics operators should have their owned working location, or storage space. Conclusively, such kind of companies has to be filed in the different authorities: mostly the Ministry of Finance and the Ministry of Communication separately. The Ministry of Finance is granting the required “permits”, and

requiring the registered capital to be as much as NT\$100,000,000 for Warehousing companies which is somewhat like logistic industries while there need only NT\$7,500,000 for freight forwarders by the Ministry of Communication . Moreover, the authorities also ruled such kind of companies has to own or rent the land connecting to the harbor area. However, as the logistics operators do not necessarily need the hardware of land or facilities, but need software of the knowledge in international laws, transportation, management skills etc as well as the customer relationship. Taiwanese logistics operators can still do well in the competition of international logistics even they do not own or rent the land connecting to the harbor area. As long as the government issues the “permits”, freight forwarders- logistics operators can still operate their business well including handling and designing work as the landowner or storage owner does the different kind of logistics work. It is worth serious evaluating by the government.

More positively, if the policy and authorities have not mistakenly posted them, the freight forwarders would have been guiding the way to break through the puzzle of both ”ROC flag” and “ROC license” which have not been acknowledged by the international society.

Because of the restriction of no direct shipping between China and Taiwan, Taiwanese ship owners are forced to fly “flags of convenience”. They have also chartered in foreign flagged vessels and do whatever they can do to make best use of the vessel’s flag, port of registry, class and crew nationality etc. They probably don’t have to bear the financial burden, depreciation and interest as some other Taiwanese national lines bear and, by taking advantage of the marketing factors, they have earned a windfall fortune in the market. However, because of the wrong presidency of the authorities, the freight forwarders have lost their best opportunity to seize the market with their advantage in international logistics operations and logistics dynamics, but can only sigh for their being misgoverned.

#### **4. THE PRESIDENCY OF FREIGHT FORWARDERS**

Taiwanese freight forwarding industry had offered the governing mechanism of liability policy filing to the Authorities as well as the mechanism of security bond deposit for more than ten years. Yet security bond deposit system is really an unreasonable bar to enter into the business, as we have known, it also prevails in a lot of countries such as China and the United States.

The security bond deposit system has been opposed for a long time that places restriction for entry of the newcomers, and thus the abolishment of the bond system at all by replacing with registration of liability policies only is suggested and supported in the Amendment made this time. However, in fact, there are some potential and implied problems with the Amendment made along the line as above-mentioned.



#### 4.1 Liability Insurance

The liability insurance history and background should be reviewed before the system being considered to be a governing instrument. The first owners' liability club is the "Britannia Steamship Insurance Association Ltd." established in 1855, but the mutuality idea was rooted even earlier in the 18<sup>th</sup> Century. It's about 1720 in the England.<sup>9</sup> The owners' mutuality clubs had been running for more than 100 years in the Europe and the U.S.A.<sup>10</sup> and about 90 per cent of tonnage in the world had entered into the clubs. However, multi-modal transport insurance wasn't developed until the 1970's. The participating members of multi-modal transport insurance are almost "Freight Forwarders". The coverage for multi-modal transport insurance includes containers, handling equipment, and terminals, and the participating members include ship owners, multi-modal transport operators, harbor authorities, terminal operators, container yard operators and freight forwarders. Take an example of "Through Transport Club" which has been much familiar to freight forwarders in Taiwan, its coverage is broader, thus is admired by the most Taiwanese insured. However, because of the problem of the higher rates offered, the business of the said club did not develop well to meet it actually required.

There is also another club such as "Intercargo or "TME", but the coverage were not as wide as "TT Clubs", the premium rates were comparably lower, too. However, both the foreign insurance companies and liability clubs provided more sufficient coverage than local insurance companies. If the governing mechanism is changed to depend on liability policy filing only instead of relying on security bond deposit, there must be some auditing principles to review the filed liability policies. In one word, there must be an established policy-auditing standard for the Government authority's reference to make a fairer situation for all the freight forwarders. Otherwise, the narrower policy conditions and cheaper premium rate<sup>11</sup>, the inferior competitive conditions for the ordinary enterprises. The less covered but cheap policy will certainly affect shippers' interest and potential trouble is going to occur.

#### 4.2 The Fair Level of Liability Insurance

The change of the governing mechanism by completely abolishing "security bond deposit system" and replacing with "liability insurance policy filing" should be highlighted. The initial step taken by the Government is to take the proposals of the Ministry of Finance. The proposals include the principles such as "the insured amount of each accident should not be less than NT\$5,000,000" and "the total compensation amount in the insured period is minimum NT\$10,000,000". However, the coverage, the wording of terms chosen, the

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<sup>9</sup>In accordance with its web site the "U.K. Club" is the biggest P&I Club in the world with entry of about 0.1 billion GRT.

<sup>10</sup>"American Club" was established in the year of 1917, about half a century later than the Clubs in the Great Britain.

<sup>11</sup>In accordance with the result produced by queries to the Taiwanese "Freight Forwarders".

deductible amount and aggregate amount insured etc. are more important than the above-mentioned compensation amounts regulated. The factors such as the coverage, the wording of terms and others as mentioned will dominantly affect the claims to be compensated or not. Regardless of the authority making the proposals, it's absolutely the responsibility of the mandatory authority to audit the detailed terms of the policies. It's the reason we should design the checklist for the Authority.

#### **4.3 The Coverage of Freight Forwarder's Liability Policy**

According to the different business scope of each particular freight forwarder's operation, a challenge for the governing Authorities to evaluate the terms of the policy is thus taking shape. Filing system therefore needs to set up a standard to audit the policies. Otherwise freight forwarders will face unfair competition, shippers will face potential risks of unpaid claims, and other marketing risks may happen.

The normal risks the freight forwarders have to face, the legal liability for the freight forwarders to take and the usual terms that underwriters would accept should be communicated and listed in the coverage for audit references. In conclusion<sup>12</sup>, the liabilities are comprised of three aspects.

In addition to the contractual liabilities, the national laws and international conventions all incur various legal liabilities for freight forwarders to bear. Furthermore, the error or omission, legal liability to the third party including injury occurred to the third party or environmental pollution made from running business, duty expenses being levied, relevant fines and liabilities duly imposed by the authorities etc. are also freight forwarders' liabilities to take. Moreover, if freight forwarders own property or equipment, they may have to take more liability because of being an owner of the property or equipment. Once laws or conventions are amended, the liability may thus become heavier or greater and the policy should also be amended to meet the requirements.

Taking reference to various types of cargo insurance policies applied in the multi-modal transport, the full set of liability terms should at least include the following details:

##### **4.3.1 Cargo liabilities:**

Including loss of damage or loss and the consequential loss thus caused,

##### **4.3.2 Loss of or damage to equipment including loss due to strikes, riots and terrorist risks,**

##### **4.3.3 Liabilities arising from errors and omissions including delay and unauthorized delivery:**

Including delay in delivery, consequential loss occurred in accordance with the contract of carriage, compensation for delivery of cargo to the incorrect receiver, other financial

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<sup>12</sup> Taking reference to the policies of "Through Transport Club", "Intercargo", and TME as I mentioned in previous paragraphs,

loss because of performance of contract, loss or damage due to erroneous statement on bills of lading or contract of carriage etc;

4.3.4 Third party liabilities including impact and sudden accidental pollution,

4.3.5 Fines and duty,

4.3.6 Property and business interruption risks,

4.3.7 Investigation, defense and mitigation costs,

4.3.8 Disposal, quarantine and disinfecting costs,

4.3.9 Misdirection costs,

4.3.10 Other third-party liabilities,

4.3.11 Non-contractual liability for loss or damage to cargo and for death, injury and diseases,

4.3.12 Other third-party liability due to performing contract of sales, contract of container leasing, or contracts of carriage.

It is also possible that, if required by the insured, the liabilities incur in “carrying equipment”, “handling equipment” including containers or pallet etc and others such as forklift, or “handling other facilities” etc, can also be attached to the policy. There are liabilities included, and also the expenses are involved.

Comparing with the currently available policy forms, we can propose to conclude the following basic terms into the freight forwarders’ liability policies:

4.3.1a Cargo liabilities:

4.3.1a.1 physical loss and damage;

4.3.1a.2 loss due to mistake in transportation and delivery by the insured, their employees or agents giving the wrong instruction;

4.3.1a.3 compensation liability due to negligence of the insured, their employees or agents in performance, or delivery of cargo without production of bills of lading;

4.3.1a.4 other liability because of errors or omissions of the insured, including delay in delivery and delivery of cargo without authorization;

4.3.1a.5 compensation liabilities occurred by delay in loading, delivery and transportation.

4.3.2a Expenses liabilities:

4.3.2a.1 handling expenses for the above-mentioned “cargo liabilities”, including suing and laboring, as well as legal expenses;

4.3.2a.2 recovering expenses to the third parties, as well as legal expenses;

4.3.2a.3 general average contribution expenses born by the insured while not recovered from the shippers.

4.3.3a Other financial losses due to delay in delivery, compensation for mistake made in delivery, financial loss in performing contract, liability of physical loss or damage and consequential loss due to wrong statement made in bills of lading and contracts of carriage;

4.3.4a The third-party liability due to sudden pollution accident;

4.3.5a Fines and duties;

4.3.6a Investigations, defenses, and suits and labor expenses;

4.3.7a Handling expenses quarantines, infections and prevention of infection expenses etc;

#### 4.3.8a Other third party liabilities.

Among the “cargo liabilities”, the second and the third items including “loss due to mistake in transportation and delivery by the insured, their employees or agents giving the wrong instruction” and “delivery of cargo without production of bills of lading” are much more important than “physical loss or damage” as there may be “exception of liability clause” in the bills of lading or contracts of carriage for “physical loss or damage”. So the insured must be guaranteed for payment for the claims due to these two situations.

Shore officers’ errors or omission or delivery cargo without production bills of lading will not be indemnified under contracts of carriage or covered under policies. However, they are all not covered by current formal policies in Taiwan. Therefore a shortcoming for responsibility is produced. In some cases the responsible freight forwarders always take the risks with themselves. However, there would be some irresponsible operators just let go the cases and escape from the claims by closing the companies in the end.

In addition to the policy items, the limitation of liability and the limitation amount of deductible must be ruled by the authorities because they affect the premium rates and thus affect the equity of the business. Moreover, even if the policy is filed in the authorities by the freight forwarders, but the insurance will still not be effective until the premium is paid.<sup>13</sup> Therefore, the casual checking is important, too.

#### 4.4 The Deductible

In order to avoid underwriting the small claims, the insurers design the deductible system. It also makes a point of serious self-management of claims by the assured to handle the deductible. The amount under the deductible has to be taken by the assured as their own risks. The basic principle is that if the deductible is high, then the premium will be low, vice versa. However, some companies will take the deductible as a target of management, such as NYK of Japan, they fix almost zero deductible and leave the claim handling works to be carried out by the insurers thus to save their personnel costs. However, some companies take higher deductibles and manage the claim cases for amounts under the deductibles with themselves. In the commercial point of view, the deductible is only an instrument; each operator’s decision in the amount of the deductible when he applies for being underwritten can opt for his own necessity and strategy. The filing system must make a standard for deductibles.

The deductible of current local policy for freight forwarders is NT\$30,000 for each accident, while foreign underwriters is offering US\$1,500-2,500 equal to NT\$50,000-80,000 for each accident. It is suggested that the deductible under NT\$50,000 for normal cases but for the cases due to “errors and omissions”. As the loss record may be higher than that of other

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<sup>13</sup>Ditto.

normal cases as to "errors and omissions" cases, the deductible suggested would be twice more than those normal cases, this proposal considered will be more acceptable by the insurers.

#### 4.5 The Aggregate Amount of Liability

The aggregate amount as suggested by the Ministry of Finance were "NT\$5,000,000 for each accident" and "NT\$10,000,000 for each insured period." However, there is only minimum amount at US\$250,000, but not to rule the aggregate amount as per Through Transport Club does in Taiwan. Placing no limitation on the aggregate amount is safer from freight forwarder's point of view, but for it to be accepted by the insurers is also another critical issue for the Authorities to care about. No one would think the amount NT\$5,000,000 is sufficient to indemnify such loss as the example. However, there are big freight forwarders as well as small freight forwarders in the market. To request the small ones to buy the large insurance amount is as unfair as to request the big freight forwarders to buy small amount liability only. It will also take into consideration of the capital amount as required to register to be a freight forwarder. Presently the required registry capital is only NT\$7,500,000 and the original filing security amount is only NT\$3,000,000. Therefore the amount of NT\$5,000,000 for "each accident" is relatively reasonable. However, in order to deal the cases arising out of "errors and omissions", the insurers may accept as much as NT\$1,000,000 to cover the risks of the same kind. The terms, deductibles and aggregate amounts are listed as follows:

Table 1. The Terms, Deductibles and Aggregate Amounts of Freight Forwarder's Liability Policy

Basic Policy Terms	Basic Deductible	Maximum /Minimum Aggregate Amount
1. Liability of loss made by mistake in transportation and delivery 2. Liability of loss made by delivery of cargo without production of Bills of lading 3. Other liability of "errors or omissions", including delay in delivery and delivery without authority 4. Liability of being delay in loading, in delivery and in carriage	NT\$10,000	NT\$10,000,000 /NT\$1,000,000
Liability for loss of physical loss or damage, expenses and other details of 4.3	NT\$50,000	NT\$10,000,000 /NT\$5,000,000

## 5. CONCLUSIONS AND SUGGESTIONS

For the purpose to emphasize democracy in Taiwan, government officials are avoiding mentioning the words about “presidency” in the law. Therefore if we notice the original statement in law, we will be able to find that the statements such as “for the sake of presidency...” and “for the convenience of presidency” are deleted in the new Amendment. It is an intentional avoidance of the things as they were, and is not correct as a supervision Authority should behave.

The Shipping Industries Law is also a kind of enterprise laws, or more aggressively to say a kind of laws to promote the enterprises. The purpose of the law is to strengthen the governing system, to proceed to development of shipping, to prospect the national economy”. It implies that the purpose of law is not only for the shipping-related industries but also for the economy of the nation.

For the above-mentioned purposes, the Law at least has to meet the requirement of taking care of common interest. The authorities, at least, have to interfere with the activities of the market and avoid the unfairness and inefficiency of the marketing operation. It is so important that the involvement of the authorities is necessary to meet the aforesaid requirements.

For further development of this Industry, the authorities have to require the points such as the entry into the market by the registration of the capital<sup>14</sup>, the activity limitation, the freight competition limitation etc. in order to achieve the justice of the industrial environment. The presidency of the business is clearly necessary in fact and the governing items are as follows:

- 5.1 The presidency of establishment;
- 5.2 The auditing conditions for issuance of permit certificate;
- 5.3 Tariff monitoring to avoid unfair competition;
- 5.4 Regulation of operations;
- 5.5 Governance of claim handling;
- 5.6 Capital registration;

The freight forwarding business is a kind of industry of permitted industry. The relevant laws and regulations rule the entire establishment, the issuance of permit certificate, and capital limitation of registration. The supervisory authorities are required to audit the finance and monitor the tariff of the industry. Without the registration of security amount in the port authorities, the only mechanism left is the registration of liability policies.

To avoid the unfair competition of the business and, in the meantime, to take care of the safety of liability insurance as well, we are emphasizing upon the basic terms of the liability insurance. I suggest to make a checklist for the authorities accepting registration to check item

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<sup>14</sup>Article 9, 14, and 16, **The Shipping Industries Law** (as amended on 2002.1.30), Taipei, and Article 6, **Governing Rules on Maritime Freight Forwarders** (as amended on 1996.5.29), Taipei.

by item. I also suggest the system of checklist to be entered into the relevant governing regulations as an enclosure and not only be stated in the Law itself.

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