

THE LAW AND PRACTICE OF CONTAINER SHIPPING



Introduction

The evolution of container shipping has played a crucial role in transforming international trade and shipping, making it more efficient, cost-effective, and interconnected. Today, container shipping is ubiquitous and has evolved to the extent that there are now ultra-large container vessels (ULCV) that can carry up to thousands of Twenty-Foot Equivalent Units (TEUs), for example, the most recent ULCV, the MSC Irina, has an astonishing capacity of 24,346 TEUs.[1] The evolution of container shipping has been a transformative force in global trade, fostering economic growth, reducing costs, and connecting distant markets in ways that were once unimaginable. This article aims to provide an overview of the container shipment.

What is Container Shipping?

Containers are commonly utilised for the shipment of goods in the context of international trade, both for exporting and importing purposes.[2] This is because containers are well-suited for multimodal transportation which is often required in international trade.[3] For instance, containers can seamlessly transit between sea transportation (ships) and land transportation (trucks), facilitating efficient and versatile movement across various modes of transportation.

The two main types of containers are the Twenty-Foot Equivalent Units (TEU) and the Forty-Foot Equivalent Units (FEU). Of course, there are many other sizes and specialised containers for specific cargoes. A FEU is twice the length of a TEU container. However, this does not mean the shipper can pack 21 tons of cargo in a TEU container, and pack 42 tons of cargo in a FEU container.[4] TEU are designed to carry *more weight than voluminous cargo*.

For examples, Minerals, Metals, Machinery, Sugar, Paper, Cement, and Steel Coils all of which are heavy cargo. FEUs are designed to carry voluminous cargo rather than heavy cargo. For examples, Furniture, Steel Pipes, Paper scrap, Cotton, and Tobacco all of which are voluminous cargoes.[5] While the shipper cannot pack double the TEU cargo weight into a FEU container, they can definitely pack more than double the TEU cargo volume into a FEU container.

Types of Container Packing

There are two types of container shipping: Full Container Load (FCL) and Less than Full Container Load (LCL).

FCL shipment was described in the case of *The "Axel Maersk"; Atlas Electronics (Mal) Sdn, Bhd. v MV "Axel Maersk", Owners & Others Interested* [1981] 2 MLJ 315 as follows:

*"...A CY/CY equates to an FCL/FCL. In this situation the container would belong to or be leased by the carriers. Maersk Line only undertakes to send an empty container to the shipper when the **shipper himself will stuff the container** from Maersk Line being present. We will also give one of the Maersk seals to the shipper. **On completion of stuffing the shipper will seal up the container. From the shippers' premises to the ship is the responsibility of the shipper.** From the quay side the container is loaded on to the ship. We ourselves would not know what the contents of the container are or the condition of the contents. We accept what is given by the shipper as the contents. Shipped in apparent good order and condition, this only refers to the container and not to what is inside it."*
[emphasis added]

In the case of LCL shipment, the exporter must deliver the cargo to the Container Freight Station (CFS), where it will be combined with the merchandise of other exporters within a consolidated container.[6] Upon reaching the destination, the shipment will undergo 'degrouing'. This process involves separating the contents of the container and subsequently distributing the individual parcels to their respective consignees.[7]

Duty of the Shipper

Although container shipments significantly lower the likelihood of claims, they do not ensure there will be no claims at all. Therefore, it is important to note that claims can still occur if the shipper neglects to inspect the container before loading.

We recently handled a Container Shipment case which was decided last year. In this Admiralty Case, there were 3 batches of goods shipped separately onboard 3 different

vessels on different dates. Upon arrival at the Plaintiff's warehouse in Spain, and upon opening of the containers, the goods were found to be damaged, i.e. observed to have some melting, were wet and infested with insects.

The Admiralty Judge held on the balance of probabilities that the Defendant, as an FCL shipper, has failed to properly prepare and package the goods in the container in a manner suitable to endure the transit from Malaysia to Spain. From this judgment, the Admiralty Court has emphasized the duty of an FCL shipper in taking the necessary precautions in preparing the empty container and the packaging of the goods to be loaded in the container.

The basis of the judgment is as follows. As mentioned earlier, an FCL is a Full Container Load, which means that an empty container will be delivered to the shipper for exclusive use, allowing shipper to load their goods without sharing the space with other shipments. The Cargoes in the case were loaded in the Defendant's warehouse in containers which were then closed and sealed. The only time they were opened was upon arrival at the Plaintiff's premises. There were no intermediate stops where the containers could have been opened.[8] In addition, there are no other mutual factors of the three separate shipments aside from the Defendant's warehouse.

The Judgment also referred to the case of *LG Bominflot Bunkergesellschaft für Minerale mbh & co KG v Petroplus Marketing AG* [2009] EWHC 1088 (Comm), where the Court concluded as follows:

*"[38] ... there is to be implied into an fob contract a term under s 14(2) of the 1979 Act that **the goods will be of satisfactory quality not only when the cargo is delivered onto the vessel but also for a reasonable time thereafter.** Such a term is also implied at common law with the additional dimension that the **goods should not only be of satisfactory quality for a reasonable time but also should remain in accordance with the contractual specification (if any) for such a period.**"[9]*

Hence, the shipper has to ensure that the cargoes maintain satisfactory quality throughout the shipment period.

Carriage of Containers on Deck

Container ships possess space beneath the deck, specifically in the cargo hold, for storing containers.[10] However, most containers are typically stacked, secured and carried on the deck.[11] The location where a container will be placed on the ship, whether below deck in the cargo hold or secured on deck, is determined by the software system managing the

vessel's trim, stability, and ballasting.[12] The Hague Rules treat containers carried on deck differently due to it deviating from the common law duty of carrying goods below deck in the cargo hold.[13]

Transporting cargo on deck usually breakbulk cargo is considered riskier than below deck carriage.[14] While a container is constructed to endure the normal impact of wind and waves when stored on deck during transit, it is argued that such on-deck carriage still presents a higher risk compared to storing the container in the cargo hold below.[15] Containers stacked high on the deck might topple overboard in the event of equipment failure used for securing them to the deck and each other.[16]

Additionally, deck cargo is exposed to temperature variations, and if the container is a standard steel, without thermal insulation, the cargo inside becomes susceptible to temperature fluctuations. Therefore, shipper should also note that insulation work should be done properly to protect the goods from temperature fluctuations.[17] Therefore, shipper should also note that insulation work should be done properly to protect the goods from temperature fluctuations.

Packing of Cargo

The importance of proper packing of cargo should not be overlooked especially when the container travels by sea. Even though containers undergo thorough testing to withstand various stresses, relying solely on this protection is not sufficient. When the container is on board a ship and the ship is sailing, there are 6 ways in which the ship can move as shown on **Diagram 1**.

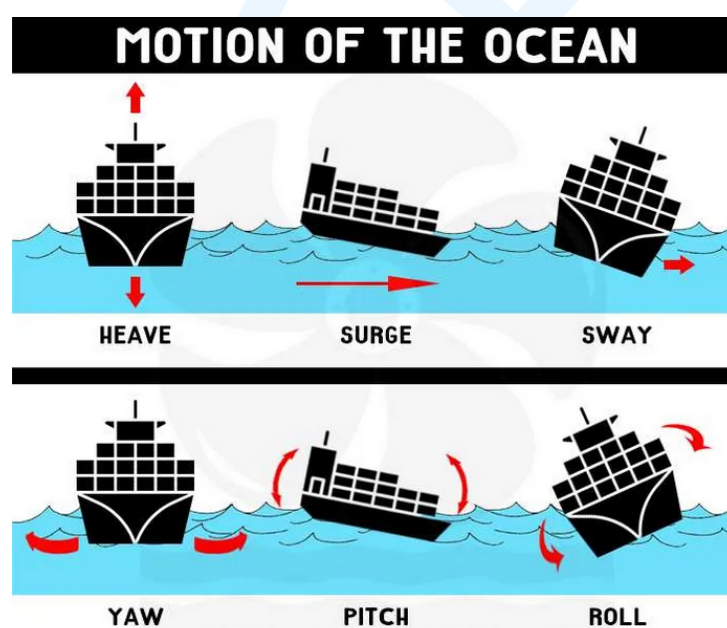


DIAGRAM 1

Photo source: <https://www.shippingandfreightresource.com/pack-your-container-properly/>

When the ship moves, so does the container and the cargo inside the container. There are several options to secure the cargo:[18]

- ensure that all container weight limitations of the container are met as per the markings on the container;
- distribute the weight equally inside the container;
- do not exceed permissible weight concentrations per square foot of deck;
- avoid concentrating heavy weights at one side or one end;
- stow heaviest items on the bottom for stability; and
- box, crate or place on cradle the heavy items.

Therefore, if the shipper packs the container, the contents must be properly blocked and shored, otherwise the defect may be an inherent vice of the goods.[19]

Conclusion

In essence, this article highlights the multifaceted responsibilities of shippers in container shipping, highlighting the need for meticulous preparation, packaging, and adherence to industry standards to ensure the integrity and quality of goods throughout the shipping process.

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 2. Carole Murray, David Holloway and Daren Timson-hunt, Schmitthoff The Law and Practice of International Trade (12th edition, Sweet and Maxwell 2012) 361.
 3. Ibid.
 4. Hariesh Manaadiar, '5 points to consider before packing your cargo' (Shipping and Freight Resource, 22 January 2024) <<https://www.shippingandfreightresource.com/points-to-consider-before-packing-your-cargo/>>>.
 5. Hariesh Manaadiar, '5 points to consider before packing your cargo' (Shipping and Freight Resource, 22 January 2024) <<https://www.shippingandfreightresource.com/points-to-consider-before-packing-your-cargo/>>>.
 6. Carole Murray, David Holloway and Daren Timson-hunt, Schmitthoff The Law and Practice of International Trade (12th edition, Sweet and Maxwell 2012) 362.
 7. Carole Murray, David Holloway and Daren Timson-hunt, Schmitthoff The Law and Practice of International Trade (12th edition, Sweet and Maxwell 2012) 361.
 8. BG Oleochemicals SL v Evyap Sabun Malaysia Sdn Bhd [2024] MLJU 19 [13].
 9. Ibid [53].

10. Dr Irwin Uj Ooi, 'The Pandora's Box Of Unimodal Regimes In A Multimodal World: Reasons Why Malaysia Needs A Multimodal Framework' [2007] 1 MLJ cxlviii.
11. *ibid.*
12. *ibid.*
13. *ibid.*
14. *ibid.*
15. *ibid.*
16. Chapter 31, titled Deck Carriage of Tetley, *Marine Cargo Claims* (4th Ed).
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