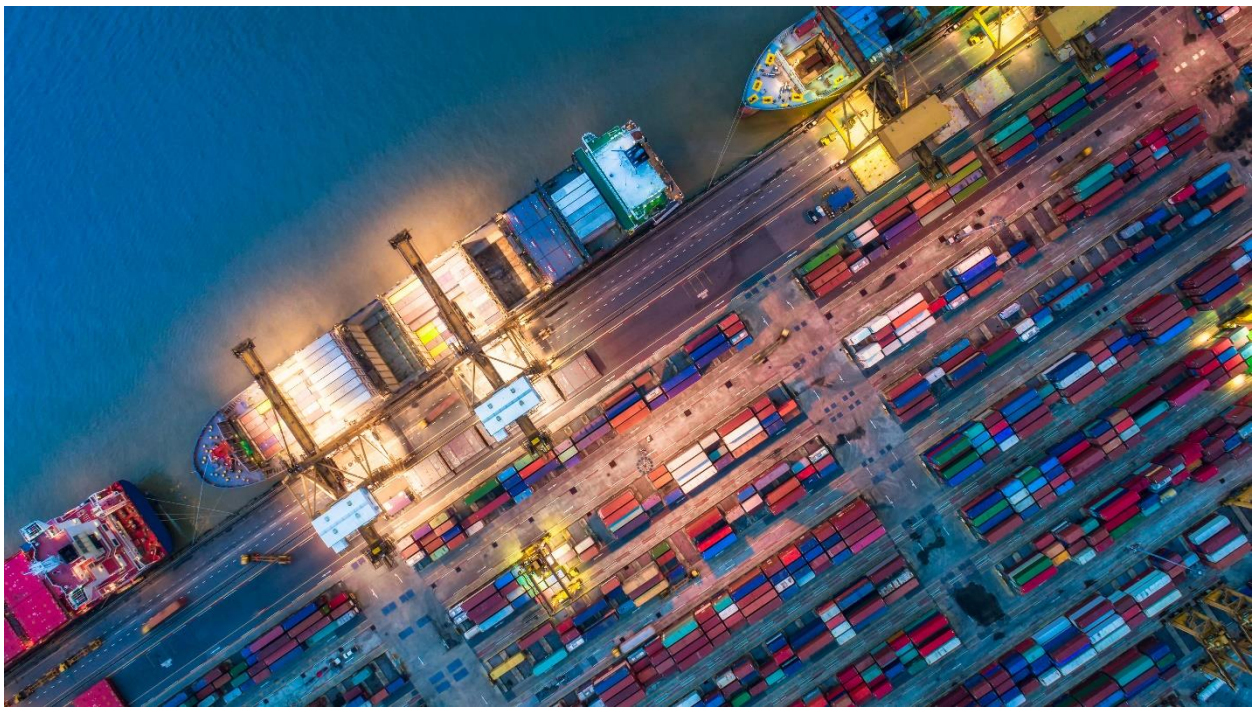
DZUNGSRT
& ASSOCIATES

AN INTERESTING INTERPRETATION OF VIETNAMESE COURTS ON THE 'SAID TO WEIGH' BILL OF LADING

Newsletter 10 April 2024 Vietnam Shipping



1. Introduction

Despite not being a Contracting Party to either the 1924 Hague Rules[i] or the 1968 Visby Protocol, Vietnam is not out of the picture regarding international regulations on contract of carriage evidenced by bills of lading. Every version of the Vietnam Maritime Code, with the latest being the 2015 version, incorporated certain provisions of international norms into domestic regulations. Accordingly, the local Courts, while applying the 2015 Maritime Code, occasionally rely on the 1924 Hague Rules as a reference when resolving related disputes. In consideration of the matter, recent judgments[ii] from local Courts should be drawn attention upon.

2. Summary of the case

The dispute arose between the Claimant being the cargo insurer and the Respondent being the shipowner over a claim of cargo shortage. The cargo was 10,000MT of jaggery in bulk with CFR FO terms loaded into 02 shipments for the journeys from Thailand to Vietnam. The shipper provided the weight particulars and requested not performing draft survey. The loading and unloading of cargo with security seals were to be conducted by the agents of the shipper and

receiver. The bills of lading were issued by the agent of the shipowner with clear remarks as "said to weigh…" and "weight, quality, quantity, condition, contents and value unknown …".

Upon the delivery at discharging port and survey, the seals remained intact, yet the shortage of cargo was found out. The Claimant, being the cargo insurer, accordingly, made compensation to the cargo receiver and obtained the subrogation to claim against the shipowner. The Claimant then filed a lawsuit against the shipowner claiming reimbursement of the compensated sum. The first-instance Court held that the shipowner is not liable for the cargo shortage and rejected the claim of the cargo insurer. The decision was later upheld by the appellate Court. Among the reasons set out in both judgments, there are certain findings worth discussing.

3. Law application and discussion

At first, the Courts declared that the burden of proof vested in the Claimant to establish the default of the shipowner because they agreed to insure the cargo with "said to weigh" bills. By doing so, the facts and evidence provided by the Claimant were further examined.

Subsequently, the Courts reasoned, without mentioning the precise rule being referred, that "under the 1924 Hague Rules, if the bills of lading indicated "said to weigh…", the carrier shall not be liable for cargo weight, when they had no reasonable means of checking." Unfortunately, the most likely relevant rule as cited as above seems to be the provision of Article 3.3(c) of the 1924 Hague Rules, which provides that "no carrier […] shall be bound to state or show in the bill of lading any […] weight which […] he has had no reasonable means of checking". The Court's interpretation, however, seemed to extend even in case the carrier did state the weight of the cargo in the bills of lading. The Courts also cited Article 151.2(r) of the 2015 Maritime Code, a provision similar to circumstance (q) of Article 4.2 of the 1924 Hague Rules, to support their findings that there is no ground to hold the shipowner at default given that the weight particulars were declared by the shipper and the seals were still intact at discharging port.

The Court also reject the request of the Claimant to hold the shipowner liable by applying the limitation of liability of shipowners under Article 152.3 of the 2015 Maritime Code, which provides similar condition as Article 4.5 of the 1924 Hague Rules. The reasoning is that the limitation of liability only applies when the nature and value of the cargo were declared by the shipper before shipment, not the weight of the cargo as discussed in the case.

Lastly, the 2015 Maritime Code prescribed the one-year time bar for cargo claim (i.e., loss/damage, shortage) to be calculated from the date on which the cargoes were delivered or should have been delivered. That time bar is generally similar to the time bar stipulated under Article 3.6 of the 1924 Hague Rules. It is interesting to note that in consideration of the above provision, both the first-instance and appellate Court seemed impliedly applying the calculation of one-year time bar from the date on which the cargo insurer received the subrogation from the cargo owner to hold that the subrogated claim is still within the time bar.

4. Conclusion

In summary, although the facts of the case is very

unique, it can be drawn from the above reasonings that Vietnamese Courts seem follow the recognition of English Courts[iii] that a combination clauses of "said to weigh" and "weight, quality, quantity, condition, contents and value unknown" means that the bill of lading is not even a prima facie evidence of the quantity stated to have been shipped./

---o0o---

For further advice, please contact:

Tran Ha Han
Shipping Partner

Saigon Office - Unit 1605, 16th Floor,
Saigon Riverside Office Center, 2A – 4A
Ton Duc Thang Str., Ben Nghe Ward,
District 1, Ho Chi Minh City, Vietnam
+ (84-28) 3822 0076
+ (84-24) 3772 6971
+ 84 (0) 986 414 702
han.tran@dzungsrt.com

[i] International Convention for the Unification of Certain Rules of Law relating to Bills of Lading.
[ii] Judgment no. 06/2022/KDTM-ST dated 24 August 2022 of the People's Court of Hai Phong City; Judgment no. 36/2023/KDTM-PT dated 28 July 2023 of the High People's Court in Hanoi City.
[iii] West P&I, Claims Guides, Bill of Lading 3 - Issue with Quantity and Quality of the Cargo at the Loadport, available at: https://www.westpandi.com/getattachment/a5e211b6-d5a6-4dab-b3b5-8c8d41484ce5/p-i_guide_bills_of_lading_3_4pp_v2_lr.pdf.