

Shipper/Carrier Contracts - A Move towards Fixed Agreements on Price and Capacity

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A consideration of potential changes in the market and how Reed Smith can assist in the light of such changes.

The traditional "gentlemen's agreement"

Traditionally, carriers' agreements with customers as regards how much cargo will be transported and at what price have taken the form of informal "gentlemen's agreements". This has allowed each party flexibility as regards the finer points of the agreement.

However, in the past couple of years the market has become far more volatile and rates can fluctuate by several hundreds of dollars within a short period of time. As a result, carriers have been trying to increase rates and surcharges wherever possible, while shippers have been seeking to renegotiate rates downwards. Such volatility, and inability of the parties to agree on a way to perform the contract at prices with which they are both satisfied, has led to an increasing number of difficulties in how to interpret these "gentlemen's agreements".

Parties who are faced with these difficulties of interpretation are starting to find themselves involved in litigation in an attempt to resolve them. The recent high profile claim brought by Argos against Maersk is the first recent example of a customer taking a carrier to court over a breach of contract. This is despite the fact that, according to the European Shippers' Council, several customers have complained in the last year that carriers have been ignoring terms and conditions previously agreed to. Although the Argos/Maersk case has recently settled, and so far no shippers have followed Argos' lead in commencing litigation, this case could open the door for other shippers to take similar action.

Going forward: fixed agreements on price and capacity

In the wake of the claim filed by Argos, Maersk announced that in future it proposes to focus on reaching fixed agreements with its customers on both price and capacity, and other major shipping lines may well

wish to follow suit. Indeed, in statements following the recent settlement of the litigation both Argos and Maersk stated that their relationship would be on a "significantly firmer contractual basis" going forward.

A more formal agreement could have benefits for both parties. As far as capacity is concerned, a customer will know exactly how much space on a given ship is available to them, and a carrier will be aware of the exact volume of cargo that a customer intends to ship. A fixed agreement will also mean that the price is not dependent on movements in the market, and neither party will have to worry about the other attempting to negotiate or even impose a different price.

However, any proposal to seek clarification in relation to a contractual arrangement should be approached cautiously by a party as, whilst fixed agreements on price and capacity may bring certainty, bringing to the forefront that an established potentially lucrative contractual arrangement lacks certainty may well result in the creation of difficulties between the two sides that simply did not exist before the approach by one party to the other was made.

How can Reed Smith help?

In light of these developments, it may be necessary to prepare a formal arrangement or to revisit current contracts with a view to identifying any potential problems and considering possible ways to avoid them as well as, if necessary, the best way to deal with disputes.

If you would like to discuss a contract review, or any other matter arising from this alert, please get in touch with one of the authors of this alert, or your usual contact at Reed Smith.

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