THE MARITIME LAW ASSOCIATION OF SINGAPORE

Newsletter Vol. 4 - 2025

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MLAS HIGHLIGHT

ARTICLES

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About MLAS

The Maritime Law Association of Singapore (MLAS) aims to promote the study and advancement of maritime law and its administration in Singapore, and to promote and consider with other associations proposals for the unification of maritime law and practice of different nations.

The MLAS is a member organization of the **Comite Maritime International (CMI)** a non-governmental international organization devoted to the same object of the unification of maritime law and is the only organization in Singapore entitled to attend the International Conferences of the CMI.

THE MARITIME LAW ASSOCIATION OF SINGAPORE
Newsletter

MLAS President's Message

Dear Members,

On behalf of the Committee, I am pleased to present the latest edition of our Newsletter.

I am grateful to our Publications' Sub-Committee, led by our Vice-President, Mr Bazul Ashhab, for collating the articles for this Newsletter. I hope you will find them to be thought provoking and of interest to you as members of the maritime community. The importance of presenting our Newsletter is to ensure that our members are assured of quality and reliable legal and maritime content in a written form that will be of assistance in the matters that we handle in the course of our work. I wish to encourage all our members to actively contribute towards content creation for our future Newsletters. Remember, sharing is caring!

Lastly, I hope to receive feedback from you as to how we can improve on our Newsletter. This is your Newsletter, as much as it is our efforts in bringing it to you and your comments and feedback will be greatly appreciated for our future Newsletters.

Leong Kah Wah
MLAS President
2025/2026

THE MARITIME LAW ASSOCIATION OF SINGAPORE
Newsletter

Chairperson of Publication Subcommittee's Message

Dear Members,

Once again, in my capacity as Chairperson of the MLAS Publication Committee, I am pleased to introduce the latest edition of the MLAS e-publication.

This year, the shipping and trade sectors continue to face considerable uncertainty, particularly with the resurgence of tariffs and evolving regulatory frameworks. Against this backdrop, the legal community plays a vital role in helping stakeholders navigate complex challenges and emerging trends.

In this edition, we explore a range of developments that reflect the dynamic nature of maritime law — from regulatory updates and dispute resolution practices to the growing influence of sustainability and ESG considerations in shipping. These themes underscore the importance of staying informed and engaged as the industry adapts to shifting global currents.

As always, the publication features contributions from highly experienced and well-regarded professionals in the field. Their insights offer valuable perspectives and foster continued dialogue within our maritime legal community.

I would like to extend my sincere thanks to all contributors and to the MLAS Publication Committee members for their dedication and invaluable input. Your efforts ensure that this publication remains a relevant and useful resource for our members.

We look forward to your continued support and contributions in future editions.

Warm regards,

Bazul Ashhab Bin Abdul Kader
Chairperson of MLAS Publication Subcommittee
2025/2026

Dawn of a New Era in Global Shipping – An overview of the United States Trade Representative's Proposed Fees, Requirements and Restrictions and its implications on Charterparties, Shipbuilding Contracts, Ship Sale and Ship Purchase

John Sze, Kunal Mirpuri

Overview

1. The Maritime and Shipping Industry is entering unprecedented times.

2. On 2 April 2025, the 47th President of the United States of America, Donald J Trump, announced sweeping tariffs against almost all its trading partners, unveiling a two-tier tariff structure – a baseline 10% tariff applying universally to all imports from all countries with the exception of Canada and Mexico, and additional "country-specific" reciprocal tariffs based on what the Trump administration deemed "unfair trading practices"[1].The People's Republic of China, long seen as a threat to US global dominance, was the hardest hit[2]. This day was widely known as the "Liberation Day", a term coined by President Trump himself [3].

3. On 9 April 2025, President Trump issued Executive Order 14269 titled "Restoring America's Maritime Dominance", stating, inter alia, that "*the commercial shipbuilding capacity and maritime workforce of the United States has been weakened by decades of Government neglect, leading to the decline of a once strong industrial base while simultaneously empowering our adversaries and eroding United States national security*"[4].

4. Following Executive Order 14269, on 17 April 2025, the Office of the United States Trade Representative (USTR) issued a final notice of action for its Section 301 investigation on "China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance", following the proposed actions that USTR originally published in February 2025[5] . According to the USTR's final notice of action, it proposed the following fees, requirements and restrictions:

4.1 Phased Fee on Chinese Vessel Operators and Chinese Vessel Owners

4.2 Phased Fee on Chinese Built Vessels

4.3 Phased Fee on Vessel Operators of Foreign Vehicle Carriers

4.4 Requirement for the use of U.S. Vessels for the maritime transports of a certain percentage of LNG Exports

4.5 Additional duties on STS Cranes and other cargo handling equipment of China (including containers and certain chassis of China)

5. The fees are not cumulative and only one fee will be applied[6] . That is, either a vessel is subject to the fees set forth in Annexes I, II, or III, or, a vessel is subject to the requirement of Annex IV. If any fee is applied, only one fee will be applied under the terms of the respective Annex.

6. The USTR port fees are slated to go into effect on 14 October 2025, with rates increasing after such time on a phased schedule. This USTR Notice of Final Action also appears to have bipartisan support in the House of Representatives and the Senate, and the steps that are now finalised now were in fact initiated under the previous Biden administration. Therefore, it is worthwhile to consider its practical effects in the context of charterparties, shipbuilding and ship sale and purchase.

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Phased Fee on Chinese Vessel Operators and Chinese Vessel Owners

7. Under this phased fee scheme, Vessel Operators of China and Chinese Vessel Owners will be subject to the following fees[7]: -

7.1 Effective as of April 17, 2025, a fee in the amount of $0 per net ton for the arriving vessel.

7.2 Effective as of October 14, 2025, a fee in the amount of $50 per net ton for the arriving vessel.

7.3 Effective as of April 17, 2026, a fee in the amount of $80 per net ton for the arriving vessel.

7.4 Effective as of April 17, 2027, a fee in the amount of $110 per net ton for the arriving vessel.

7.5 Effective as of April 17, 2028, a fee in the amount of $140 per net ton for the arriving vessel. The fee will be charged up to five times per year, per vessel.

8. The fee will be charged up to five times per year, per vessel. The vessel operator is responsible for calculating this fee and providing supporting documentation, upon request.

9. The definition of what constitutes a Vessel Owner and a Vessel Operator can be found here.

Phased Fee on Chinese Built Vessels

10. Upon the arrival of a Chinese-built vessel to a U.S. port or point from outside the Customs territory on a particular string, a vessel operator that is not a vessel operator of China, must pay the higher of these two fee calculation methods[8]: -

10.1 Effective as of April 17, 2025, a fee in the amount of $0 per net ton for the arriving vessel.

10.2 Effective as of April 17, 2026, a fee in the amount of $23 per net ton for the arriving vessel.

10.3 Effective as of April 17, 2027, a fee in the amount of $28 per net ton for the arriving vessel.

10.4 Effective as of April 17, 2028, a fee in the amount of $33 per net ton for the arriving vessel.

OR

10.5 Effective as of April 17, 2025, a fee in the amount of $0 for each container discharged.

10.6 Effective as of: October 14, 2025, a fee in the amount of $120 for each container discharged.

10.7 Effective as of: April 17, 2026, a fee in the amount of $153 for each container discharged.

10.8 Effective as of: April 17, 2027, a fee in the amount of $195 for each container discharged.

10.9 Effective as of: April 17, 2028, a fee in the amount of $250 for each container discharged.

11. The fee will be charged up to five times per year, per vessel.

12. If the per container fee is assessed, the

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vessel operator must report to US Customs and Border Protection (CBP) the total number of containers discharged at a U.S. port or discharged with an ultimate destination in the Customs territory of the United States.

13. However, CBP will suspend this applicable fee on a particular vessel for a period not to exceed three years if the vessel owner orders and takes delivery of a U.S.-built vessel of equivalent or greater net tonnage. Owners will be eligible for the remission upon order of, and until delivery of, a U.S.-built vessel. If a prospective vessel owner does not take delivery of the U.S.-built vessel ordered within three years, the fees will become due immediately. Proof of the order must be provided on demand and may include information such as order and contract information related to the order.

14. The fees do not apply to the following Chinese-built Vessels in the following circumstances[9]: -

14.1 U.S.-owned or U.S.-flagged vessels enrolled in the Voluntary Intermodal Sealift Agreement, the Maritime Security Program, the Tanker Security Program, or the Cable Security Program;

14.2 vessels arriving empty or in ballast:

14.3 vessels with a capacity of equal to or less than: 4,000 Twenty-Foot Equivalent Units, 55,000 deadweight tons, or an individual bulk capacity of 80,000 deadweight tons;

14.4 vessels entering a U.S. port in the continental United States from a voyage of less than 2,000 nautical miles from a foreign port or point;

14.5 U.S.-owned vessels, where the U.S. entity owning the vessel is controlled by U.S. persons

14.6 specialized or special purpose-built vessels for the transport of chemical

14.7 substances in bulk liquid forms; and vessels principally identified as "Lakers Vessels" on CBP Form 1300, or its electronic equivalent.

15. Upon the entry of a non-U.S. built vessel at the first U.S. port or place from outside the US customs territory, the vessel operator must pay[10]:

15.1 Effective as of April 17, 2025, a fee of $0 on the entering non-U.S. built vessel.

15.2 Effective as of October 14, 2025, a fee in the amount of $150 per Car Equivalent Unit (CEU) capacity of the entering non-U.S. built vessel

16. The vessel operator is responsible for calculating this fee and providing supporting documentation, upon request and must pay all accumulated fees for which that entity is liable as determined by CBP.

Requirement for the use of U.S. Vessels for the maritime transports of a certain percentage of LNG Exports

17. All Liquified Natural Gas ("LNG") carrier vessels (whether Chinese-built or Chinese owned or operated) are exempt from the new fees. However, there will be restrictions on transporting LNG via non-US built Vessels. LNG will only be permitted to be exported on vessels that

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receive a licence, which will take effect from 17 April 2028, with incremental increases up until 17 April 2047, where 15% of all LNG exports must be transported by a U.S. built, U.S. Flagged and U.S. operated Vessel.[11]

Tariffs on Ship-to-Shore (STS) Cranes and Cargo Handling Equipment of China

18. Additional tariffs on certain Chinese cargo handling equipment will also be imposed, which was not part of USTR's original proposed action. The proposal is based on instructions from Executive Order 14269. In the order, President Trump directed USTR to consider imposing tariffs on "ship-to-shore cranes manufactured, assembled, or made using components of PRC origin, or manufactured anywhere in the world by a company owned, controlled, or substantially influenced by a PRC national;"[12] and "on other cargo handling equipment" as part of the Section 301 action.

19. The proposed rates are as follows: -

Item	HTSUS	Proposed Rate
Containers	HTSUS 8609.00.00	20% to 100%
Chassis	HTSUS 8716.39.0090	20% to 100%
Chassis Parts	HTSUS 8716.90.30	20% to 100%
Chassis Parts	HTSUS 8716.90.50	20% to 100%
Ship-Ship-to-shore gantry cranes, configured as a higher low-profile steel superstructure and designed to unload intermodal containers from vessels with coupling devices for containers, including spreaders or twist-locks	provided for in subheading HTSUS 8426.19.00	100%

Implications on Charterparties, Ship Building Contracts, Ship Sale and Ship Purchase

20. Calculating fees on a net tonnage basis would significantly disadvantage Chinese carriers and carriers operating Chinese-built Vessels, particularly Vessels with the largest capacity such as the Aframax and Suezmax Vessels. Parties may also seek to replace larger vessels with smaller MR tankers, LNG Carriers or non-container carrier vessels to avoid the additional fees.

21. Charterers may also be at risk of incurring high port fees in the event a Vessel calls at a US port. This may be problematic if charterers have no right of refusal of Chinese owned and operated vessels when the Owners nominate a particular Vessel.

22. Another thing that is unclear and is presently being clarified is the exact nature of the USTR port fees. Existing charterparties talk about dues, charges and taxes (or similar language) but it is unclear if this "fee" falls within this category. Parties to a charter party should consider negotiating a specific clause on this, pending clarification,as the port fees come into effect on 14 October 2025.

23. Parties may also wish to amend their contracts of affreightment to take advantage of the exemption from fees of a voyage of less than 2,000 nautical miles from a foreign port or point. Parties may re-route their Vessels to Canada or Panama, before calling at a US port.

24. In the context of sale and leaseback transactions, Owners who have bought from and leased back to Chinese Vessel Owners should review their agreements to see if they will be liable for any fees if the Vessel were to call at a US port. This is because what constitutes a Vessel Owner is very expansive under the USTR Notice of Final Action and it also covers owners from Hong Kong and Macau.

25. Many vessel and commodity related

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contracts are long term in nature. As the port fees are expected to come into effect on 14 October 2025, operators and traders need to make long-term plans even if they are presently not exposed, such as negotiating contracts that provide a wider "force majeure" definitions or perhaps introducing an "adverse material market conditions clause". Owners, operators and/or traders whose contracts are implicated by this need to see if there is room to re-negotiate terms, in order to preserve long-term business relationships.

Conclusion

26. As the USTR port fees come into effect on 14 October 2025, decisions need to be made regarding the ability to pass on/allocate the port fees. That decision needs to be made through the shipping chain, from head owner, charterers, freight forwarders as to their shipping contracts, as well as future contracts.

27. The USTR Notice of Final Action also brings direct operating cost implications through the shipping chain and may hit profit margins in the long run. Therefore, this will need to be carefully managed. Ultimately, market forces will determine if costs of shipping will become prohibitively expensive – whether through the use of non-chinese built vessels, non-chinese owned vessels, or through paying the port fees, or indeed committing to build commercial vessels in the US. Many calculations need to be made but operators and traders will need to monitor this space carefully to see if this impacts on global demand and supply of goods and commodities, including supply chain implications such as potential delays due to a lack of vessels.

[1] https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitiveedge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/

[2] https://www.forbes.com/sites/alisondurkee/2025/04/10/trumps-tariffs-on-china-are-now-at-least-145-white-house-confirms-higher-than-he-previouslyclaimed/

[3] https://www.whitehouse.gov/videos/my-fellow-americans-this-is-liberation-day-april-2-2025-president-donald-j-trump%F0%9F%87%BA%F0%9F%87%B8%F0%9F%A6%85/

[4] https://www.whitehouse.gov/presidentialactions/2025/04/restoring-americas-maritime-dominance/

[5] Notice of Action and Proposed Action in Section 301 Investigation of China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Request for Comments, p. 9-10

[8] Notice of Action and Proposed Action in Section 301 Investigation of China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Request for Comments, Annex II

[9] Notice of Action and Proposed Action in Section 301 Investigation of China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Request for Comments, p.33

[10] Notice of Action and Proposed Action in Section 301 Investigation of China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Request for Comments, Annex III

[11] Notice of Action and Proposed Action in Section 301 Investigation of China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Request for Comments, Annex IV

[12] https://www.whitehouse.gov/presidentialactions/2025/04/restoring-americas-112 maritime-dominance/

For more information, please feel free to contact our Shipping, International Trade and Logistics Practice Group: https://jtjb.com/areas-of-practice/international-trade-shipping-logistics/

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Law setting out compliance requirements impacting Singapore's Sea Transport Sector comes into force

Nicola Loh

Introduction

The Transport Sector (Critical Firms) Act 2024 ("Act") is a legislation that aims to enhance the resilience of key firms in the air, land, and sea transport sectors and safeguard their provision of essential transport services in Singapore. The law came into force on 1 April 2025.

The Act empowers the Civil Aviation Authority of Singapore ("**CAAS**"), the Land Transport Authority ("**LTA**"), and the Maritime and Port Authority of Singapore ("**MPA**") to designate key transport firms. **CAAS, LTA and MPA** will also provide their respective designated entities with sector-specific guidance on compliance with certain requirements.

A designated entity refers to a designated operating entity or a designated equity interest holder:

- *Designated operating entity*: An entity that provides any essential transport service in Singapore and are strategically important within the sector (e.g. if the services theyprovide are not readily replaceable due to significant market share or specialized expertise).
- *Designated equity interest holder*: An entity that holds an equity interest in a designated operating entity and has a strong nexus of control over the designated operating entity.

An entity that was formerly designated as a public licensee or a designated business trust, would now also be classified as designated operating entity under the new law – this applies to PSA Corporation Limited (a designated public licensee since 15 January 2018). PSA International Pte Ltd, being a person who holds equity interest in PSA Corporation Limited is a designated equity interest holder.

In accordance with the Maritime and Port Authority of Singapore Act 1996, the essential transport services identified within the sea transport sector are bunker supply and delivery, salvage operations, monitoring and management of shipping traffic and passenger ferry operations.

PSA Marine (Pte) Ltd and Jurong Port Pte Ltd are key players in the Singapore maritime sector and they were specified as designated operating entities with effect from 15 April 2025. PSA Marine supports the operations of PSA International (which operates a global network of ports and terminals) in various locations around the world. Jurong Port is a leading international port operator which begun its operations ever since Singapore's independence.
These entities play a critical role in Singapore's national security, providing essential services that facilitates global trade.

After consultation with the Minister, the MPA may also designate a licensee that is not a designated operating entity as a designated licensee if the MPA considers that the designation is necessary in the public interest. In this regard, the MPA listed *Singapore Cruise Centre Pte. Ltd*. as a designated licensee by way of a notification made on 25 March 2025.

Operations and Resourcing Controls

The implementation of these controls ensure that designated operating entities are equipped and able to provide essential transport services in Singapore under all

Law setting out compliance requirements impacting Singapore's Sea Transport Sector comes into force

circumstances, including during crises.

Designated operating entities are also required to notify the MPA within 7 days after becoming aware of the occurrence of any of the following:

- Civil or criminal proceedings (whether in Singapore or elsewhere) instituted against the designated entity, or any event that materially impedes or impairs the operations of the designated entity carried out in the course of providing any essential transport service.

- The designated entity being or becoming, or being likely to become, insolvent.

- The designated entity being wound up or subject to any receivership or judicial management order or entering into a compromise or scheme of arrangement.

Upon receiving a notification in relation to an agreement or the occurrence of an event, the MPA may direct the designated entity to submit information relating to the agreement or event within a specified period.

Under the Act, the Minister can issue a special administrative order to direct that the affairs, business and property of a designated entity are managed by an appointed person (which may be the MPA) for the purposes of, amongst others, the security and reliability of the business, undertaking or activities of the designated entity in Singapore of providing essential transport service.

Ownership Controls

These controls are to ensure oversight of significant changes in effective control of the designated entities.

If a person becomes a 5% controller of a designated entity on or after the effective designation date as a result of an increase in the holding of equity interest, or in the voting power controlled, by that person or any associate of that person, that person must within 7 days after becoming the 5% controller give written notice to the MPA of that fact.

Except with the prior written approval of the MPA, a person must not as a result of an increase in the holding of equity interest, or in the voting power controlled, by that person or any associate of that person, become a 25% controller, 50% controller or 75% controller of a designated entity on or after the effective designation date. A person must not become an indirect controller of a designated entity on or after the effective designation date unless the person has obtained the prior written approval of the MPA. Approval may be given by the MPA if the following requirements are satisfied:

1. Fit and proper: The requirements apply to the person who is to become a 25% controller, 50% controller, 75% controller or indirect controller of a designated entity and every associate of that person.

2. Ongoing prudent management and compliance with legal obligations: Having regard to the influence of the person referred to in 1. above and every associate of that person known to the MPA, the designated operating entity/ the designated operating entity in respect of which the designated equity interest holder is so designated will continue to conduct the business of the designated operating entity prudently and comply with the provisions of the Act. The designated equity interest holder will continue to comply with the provisions of this Act.

3. Reliable, efficient, economical and safe provision of the essential transport service: An example of when this requirement applies is where the

Law setting out compliance requirements impacting Singapore's Sea Transport Sector comes into force

essential transport services provide is a licensed service and the provision is by the designated operating entity of the designated operating entity of which the person is to become a 25% controller, 50% controller, 75% controller or Indirect controller.

4. It is in the public interest to do so.

Management Appointment Controls

These controls ensure oversight of the key persons responsible for the management of the Designated Entities and operations affecting the continued provision of the essential transport service Designated entities must notify the relevant authority and obtain prior written approval for leadership changes and where the business of the designated operating as going concern.

Leadership changes include the appointment of key positions such as the chief executive officer, the chairperson of its board of directors or any of its directors. Approvals for appointments are granted subject to any conditions that the MPA considers appropriate to impose. The specific criteria guiding these approvals have not been made public.

In relation to ownership changes, prior written approval must be obtained by the MPA before the acquisition of the designated operating entity's business of providing any essential transport service (or any part of such business). The application must be made jointly by the person intending to acquire the business and the designated operating entity or, if the designated operating entity is a business trust, its trustee-manager.

Penalties

Individuals that contravene the aforementioned regulations could be subject to a maximum fine not exceeding $500,000 or to imprisonment for a term not exceeding 3 years or to both. In any other case, entities could be subject to a maximum fine of $1 million.

Conclusion

The introduction of regulatory controls over key firms, particularly in the maritime sector, is timely and necessary considering Singapore's growing reliance on global trade to secure essential supplies and sustain economic growth. These measures strengthen national resilience and support the development of a more robust and secure maritime infrastructure while ensuring that our transport industry remains open, pro-business and investor-friendly.

Designated entities should carry out business continuity due diligence to ensure compliance with the applicable controls. A keen understanding of the applicable regulatory requirements is crucial for potential investors in order to avoid legal, financial, and reputational consequences due to non-compliance.

The controls introduced safeguard the provision of essential transport services in Singapore against major disruptions and mitigates the risk of our key transport entities falling under the control of hostile or unqualified parties, whilst promoting greater stakeholder accountability.

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AIS Data in Insolvency Proceedings: Singapore Court of Appeal Affirms Use of VesselFinder to Uncover Fraud

Rafizah Gaffor

Introduction

The Court of Appeal's decision in *Yit Chee Wah v Inner Mongolia Huomei-Hongjun Aluminium Electricity Co, Ltd* [2025] SGCA 27 marks a significant development in insolvency law. It not only clarifies the test under Rule 133(1) of the CIR Rules but also provides the first authoritative local endorsement of **vessel tracking data (specifically from VesselFinder)** as a reliable evidentiary tool in challenging proofs of debt.

Background

The case arose from attempts by the liquidator of Zhong Jun Resources (S) Pte Ltd to expunge previously admitted proofs of debt by two related PRC-based entities, Inner Mongolia and Shenzhen. Both claims related to trades involving the shipment of alumina allegedly loaded in Australia and supported by bills of lading.

Subsequent investigations raised serious doubts about whether the trades occurred at all.In particular, **AIS (Automatic Identification System) data from VesselFinder** suggested that the vessels in question had not been anywhere near the alleged loading ports in Australia during the relevant periods.

High Court's Reluctance to Rely on VesselFinder:

At first instance, the High Court dismissed the applications. It found that the VesselFinder data raised only "suspicion" and noted its disclaimers about accuracy. Critically, the High Court placed **insufficient weight** on the AIS data in the absence of independent expert evidence, and relied instead on contractual documents and financial records.

Court of Appeal's Findings: AIS Data Vindicated

On appeal, the Court of Appeal overturned the decision and allowed both expungement applications. In doing so, the Court:

- **Clarified the test under Rule 133(1):** Under the first limb, the liquidator need only show a prima facie case that the proof of debt sought to be expunged/reduced was improperly admitted, not prove the underlying debt is invalid (rejecting the "Higher Standard").

- **Affirmed the evidentiary value of VesselFinder:** The Court gave **significant weight** to AIS data, relying and accepting expert evidence from Captain White (a Master Mariner with 58+ years of experience) that:

1. AIS gaps are normal due to coverage issues or vessels involved in "dark activities".With legitimate gaps occurring when the AIS transmission is not picked up by receiving stations within the range of the transmitters.

2. VesselFinder is widely regarded as a reliable source. VesselFinder amongst others lead the market, with 7,000 Data sources, providing comprehensive tracking capabilities, ensuring that users can monitor the movements of vessels across the oceans.

3. General disclaimers do not negate the integrity of raw AIS data when corroborated.

AIS Data in Insolvency Proceedings: Singapore Court of Appeal Affirms Use of VesselFinder to Uncover Fraud

This use of **geolocation technology forensic liquidation investigations** sets a notable precedent.

Broader Implications

This judgment is noteworthy for several reasons:

- **Expanded Evidentiary Toolkit**: AIS data from VesselFinder and similar platforms can now be relied upon as primary evidence in insolvency, shipping, and trade finance disputes.
- **Heightened Risk for Sham Transactions**: Parties relying on fabricated or dubious trade documents may face serious consequences if **vessel movement data contradicts their claims**.
- **Liquidators' Vigilance Endorsed**: The Court affirmed the right—and duty—of liquidators to act decisively when faced with red flags, especially involving **related party claims** or **prior fraud investigations.**
- **Future Litigation Strategy**: AIS data should now be considered at an early stage when assessing the credibility of shipping-based claims, whether in insolvency, arbitration, or court proceedings.

Conclusion

Yit Chee Wah v Inner Mongolia signals an important evolution in how Singapore courts assess and verify shipping-based claims in insolvency proceedings. With this decision, **AIS tracking data has crossed the threshold from investigatory tool to courtroom evidence**, and its probative value will likely feature prominently in future commercial and shipping litigation.

For more information or advice on how this decision may impact your company's interests or claims strategy, please contact our team at JTJB LLP.

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Liner Container Contracts – Contractual Issues

M. Jagannath

Our below article focusses on both the formation of a contract and the limitation of liability available for Delay related claims with respect to Container Shipments.

1. **When is a contract formed?**

a. It is uncontroversial that for chartering contracts under English Law, the contract is formedi when parties (Owners & Charterers) agree on all aspects of the contract with no subjectsii remaining to be lifted. In Liner contracts, parties are at unequal bargaining power and the terms of the contract are invariably based on a boilerplate[iii] Bill of Lading ("BL") wordings issued by the Carrier. The BL is only issued after the shipment is effected and therefore, they are only considered as evidence of a contract of carriage. This simply means that if there are any agreements between the Shipper and the Carrier made at the time of the booking, the terms of the BL can be displaced.[iv]

b. The booking process for container shipments is generally as below:

i. Carrier provides a freight quote.
ii. If this meets with the approval of the Cargo interests, they will issue a Booking Order ("BO") to the Carrier.
iii. The Carrier will subsequently issue a Booking Confirmation ("BC") providing details of the intended vessel and the location / terminal it will be berthing together with details where the empty container (Equipment Release Order "ERO") is to be picked up for loading the cargo.
iv. The cargo interests would pick up the container and transport it to their warehouse for loading the cargo and subsequently transport and gate into to the designated bay / terminal as advised by the Carrier.
v. Depending on the loading space available, the cargo will be loaded and subsequently, the vessel will sail on its intended route.
vi. The Carrier will then issue its BL to the Shipper and with the date of BL generally being the date of the vessel sailing out from the port.

c. We submit that the freight quotation provided by the Carrier is akin to an *Invitation to Treat* and the BO is an Offer made by the Cargo interests to the Carrier and if accepted (this is where the contract is formed), the Carrier issues a BC together with the ERO. In this regard, we chanced on a video[v] which discusses the difference between an Offer and an *Invitation to Treat*.

d. If the Carrier and Cargo interests sign an annual contract, then the terms of the contract would be governed by the annual contract and which would provide various provisions including the volumes to be loaded. Our comments on 1b would not apply as there are specific provisions which have been agreed by the parties prior to the booking.

2. **Delay**[vi]

a. One of the duties of a Carrier is to progress the voyage with *Due Despatch* and which simply means that the Carrier must proceed with the voyage as quickly as reasonably possible. It is possible for Carriers to shift this duty by incorporating clauses to reduce this duty subject to the application of mandatory laws, if any.

b. Given the unpredictable nature of weather and potential risks during voyage, Delays do occur. This being the case, if the cargo shipped is time sensitive, then Cargo interests must seek guaranteed timelines (*Ocean Carriers*

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will never provide any guaranteed timelines given that this will breach their liability cover) or ship by other modes of transport which provide for quicker transit time.

c. The Hague & Hague Visby Rules do not have any provisions for delay[vii]. Hence, Carriers incorporate provisions in their BLs to deal with delay related claims. The common clauses are as below

i. … *the Company is nevertheless found liable for delay, its liability shall in no circumstances exceed the amount of the Company's Charges in respect of the relevant Services*[viii].

ii. …, *the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport*[ix].

d. If there is payment of positive freight and should the Carrier be found liable for Delay related claims, the Carrier would be entitled to limit their liability to the value of freight which they had earned for that specific movement.

e. There are some trade routes in which due to weak demand and surplus inventory, Carriers provide "Zero" or "Negative" Freight so that their containers are moved to a location of demand. We had earlier written an article arguing that "Zero" or "Negative" freight does not mean that there is no considerationx and therefore we will not touch on this. The issue is what is the amount which the Carrier should tender to the Cargo interests should they face a Delay Claim? Unfortunately, we have not been able to sight any case laws on "Delay" provisions and therefore we submit as below:

i. If the provisions of the "Delay" clause provide for Company's Charges, then this would include landside and documentation charges (both at load and discharge port) charged by the Carrier. This being the case, the total charges including the freight would be the amount which the Carrier would be entitled to limit liability to. If the freight provided is negative (i.e. the Carrier makes a payment to the Shipper) and which is more than charges charged by the Carrier, then it would be nonsensical to seek payment of charges from the Cargo interests. Instead, we submit that the Carrier would be entitled to limit liability with no further payment to be made to the Cargo interests.

ii. If the provisions of the "Delay" clause provide for freight, then this would not arguably include the other charges collected by the Carrier for both Load and Destination Terminal Handling Charges (which in turn the Carrier may be paying to the Terminals), documentation charges etc. In this case, as mentioned in 2di above, the Carrier's liability should arguably be nil.

[i] See article on Formation of the contract: What happens when the fixture is on 'subject to …'? published at Shipowners website.
[ii] See article on 'Charterparty "Subjects" – Latest Case Law' published in North of England's website Charterparty "Subjects" – Latest Case Law.
[iii] See article on "Boilerplate Clauses in English Law Contracts" published by Clifford Chance.
[iv] See *The Ardennes*
[v] See video by Lavocat Law – Singapore Law – offer versus an invitation to treat
[vi] See our earlier article, Delays – Container Shipments.
[vii] Both the Hamburg Rules and the Rotterdam Rules have provisions related to Delay related claims.
[viii] Maersk Bills of Lading Standard Terms and Conditions, Clause 40d.
[ix] TT Series 100 Bills of Lading Wordings, Clause 6(3)(D).
[x] See our earlier article, All about Freight.

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Carrier Liability – Containers

M. Jagannath

1. The NUS Centre for Maritime Law ("CML") recently published a paper on "The Impact of Containerization on Carrier Liability" authored by Mustafa Yilmaz, a research associate with CML. This paper is a must read for claims practitioners involved in containerized cargo given that it discusses the tensions created by use of the outdated legal rules to deal with cargo claims.

2. The paper touches on Container – related cargo loss or damage and broadly categorizes these into two groups – those associated with the physical soundness of the container and those concerning container handling and integrity[i].

i. The challenge remains to determine whether the containers used for transportation were fit for purpose (physical soundness) and whether there were any incidents during the voyage / transit which caused loss or damage to the cargo (container handling). We submit that the cargo interests have a concurrent duty to inspect the containers prior to accepting the same for loading of their cargo (unless they are not involved in this part of the shipment – for instance LCL/FCL shipment)[i].

ii. With respect to losses arising during the transit (container handling), technology[ii] is presently available to ascertain where the loss occurred and whether it was due to any specific stresses (bangs, etc.). Even for reefer containers, data can continuously be transmitted, and which would result in quicker repairs during outages, either by repairing or replacing the equipment. Unfortunately, this technology has only been harnessed by one Carrier, Hapag Lloyd[iii] and therefore it remains to be seen whether other Carriers will also invest to take advantage of data which can be captured instantaneously and provided in real time.

iii. While there would be a cost for the use of technology, there will be corresponding benefits. One of these would be that parties will now be able ascertain who was at fault and which would, in turn, lead to higher chances of recovery. This information will also assist parties in instituting preventive measures to avoid future recurrence of similar losses. The unfortunate fact in the Shipping Industry is that technological changes generally happen at a very slow pace[iv] and therefore use of Technology should be incentivised by Insurers (both cargo and liability insurers), say by providing a lower premium. Alternatively, cargo interests should demand for the use of technology and should be prepared to bear the minor increase in costs.

3. Period of responsibility: The paper discusses the period of responsibility[v] as provided in the Hague / Hague-Visby Rules and its application to container shipping and for which two cases, *Volcafe* and The *MV Maersk Chennai*, were discussed on. As was pointed out, this will be fact and jurisdiction based i.e. some jurisdictions give a wider definition beneficial to the cargo interests whereas other jurisdictions will prefer a narrower application. Our issue with the wider application is that most Carriers have no control over events at the Terminals / Ports and whose contracts with the Carrier may be more restrictive with lower limits and shorter time bars[vi]. This being the case, it would be incorrect to simply make the Carrier the punching bag unless they were at

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fault.

4. In conclusion, we believe that the use of appropriate technology may aid in the development of law, particularly for container carriage. However, only time will tell whether this actually happens.

i. See our earlier article, Container Operators – Equipment related issues
ii. See information provided on Smart Containers — The Internet of Cargo The IoT Transformation Company
iii. Hapag-Lloyd starts installation of tracking devices on its dry container fleet – Hapag-Lloyd
iv. See our earlier article on Electronic Bills of Lading – 3 where we had mentioned the slow pace for the adoption of this technology.
v. See our earlier article, Container Issues – CY/CY & Detention
vi. See for instance, The General Conditions of Business of Port of Tanjung Pelapas and which provides for limitation of liability for cargo damage for a sum of RM 55,000 (approx. USD 12,405) for 20'containers and RM 80,000 (approx. USD 18,044) for 40' containers …

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The Merchant Clause

M. Jagannath

1. Bills of Lading ("Bs/L") issued by Container Carriers/NVOCC's invariably contain a definition clausei in which a Merchant is defined as "*including the Shipper, Holder, Consignee, Receiver of the Goods, any person owning or entitled to the possession or of the Bs/L and anyone action on behalf such Person*". The intention of this clause is to hold 3rd parties such as Freight Forwarders ("FF") who may be involved in assisting the Shipper and/or Consignee, also liable for the acts of the Shipper and/or Consignee.

2. The reason why Carriers wish to pursue the FF is understandable is that they may be a better target for pursuit rather than the Shipper or Consignee who may have limited means or seated at a jurisdiction not conducive to pursuit or recovery. The issue is whether the Merchant who may be a 3rd party, such as a FF could be correctly pursued by the Carrier when the FF is not listed in the BL issued and/or has no knowledge of the provisions of the Bs/L.

3. Our research (limited to web searches and newsletters) does reveal that in common law jurisdictions

i. if the Merchant is a holder of the BL, courts will generally give effect to the Merchant Clause (see MSC Mediterranean Shipping Company S.A. & Others v Interglobal Technologies Ltd & Others and an article by Hill Dickinson).

ii. If the Merchant is a third party, the courts will generally deny that they are party to the terms of the Bs/L irrespective of the presence of the Merchant Clause (see an article on "Who is the liable "merchant" under a contract of carriage?" by Norton Rose Fulbright and "The Merchant Clause – Who is a "Merchant"?" published in ForwarderLaw).

iii. With respect to outstanding freight, there is an Australian court judgement, *Australian Tallow & Agri Commodities Pty Ltd v Malaysian International Shipping Company [2001] NSWCA 16 (2 March 2001)*, holding the FF liable jointly and severally under the Merchant Clause[ii]. If there is a practice to invoice the FF (instead of the Shipper) for the payment of freight (as is the case in most jurisdictions), then this may be considered as an implied agreement by the FF to be responsible for the payment of the outstanding freight (we believe that this would be the better way to pursue instead on the basis of the Tallow commodities case).

iv. We had earlier seen a newsletter published by Sechang & Co, lawyers in South Korea, in which they discussed a case of Carriers pursuing Shippers who contracted on EX Works basis with their counterparts. The Consignee did not take delivery of the cargoes and which resulted in costs being accrued. The Carrier pursued the Shipper/Exporter for recovery on the basis of the Merchant Clause and was unsuccessful in the Court of First Instance. We understand that this case has been appealed, and we await developments.

4. The Hague or Hague Visby Rules generally apply to the Bs/L issued (either by force of law or due to the incorporation of the Clause Paramount). In this regard,

i. Art III Rule 8 of the Hague Visby Rules states "*Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from*

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liability for loss or damage to, or in connection with, goods arising, from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability".

ii. Art IV Rule 3 of the Hague Visby Rules states "*The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants*". Arguably, this clause (Art IV R 3) should only apply to the Shipper and not to other parties defined in the Merchant Clause. However, it remains to be seen whether a court would purposively define the Merchant as also being a Shipper so that the Merchant is entitled to defend claims in the absence of any fault or negligence.

5. Our view is that parties such as the FF who purely act as agents, if pursued on the basis of the Merchant Clause, should be entitled to deny liability given that they (FF) were not a party to the Bs/L contract and further may have had no knowledge of the terms of the Bs/L. One way for Carriers to get around this is to only accept bookings from FF, who voluntarily agree (either explicitly or by implication) to their (FF) joint and several liability arising from the fault or negligence of their clients / cargo interests.

Conclusion:

i. The Merchant Clause serves an important purpose in cautioning parties for the potential of the imposition of liabilities due to the acts of others on third parties, such as the FF, for no fault of theirs.

ii. It would however be difficult to pursue a third party such as a FF in the absence of any fault unless they contractually agreed for the imposition of such joint and several liability.

[i] See Clause 1 of the Maersk Bills of Lading Terms and Conditions & TT Series 100 BL.
[ii] See FMC's decision given against Mediterranean Shipping Company S.A.
See also article by Wotton Kearney which discusses the Tallow Commodities case.

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Arbitration – requirement for dispute!

M. Jagannath

1. We recently attended the SCMA Jakarta Conference 2025 held on 16th July 2025. As usual, SCMA conducted a very nice conference with speakers speaking on various developments. It was nice to come across one of the slides of Sue Ann Gan of Norton Rose Fulbright who spoke on Trends in Ship Finance, and which listed 19 reasons due to which there is interest in financial arbitration growing. We submit that these reasons are common for other shipping and maritime disputes. Two of the reasons listed in the slide were *Difficulty of Enforcing Court Judgements and Ease of Enforcing Award* under the New York Convention.

2. Arbitration clauses are creatures of contract in that parties agree in their contract to arbitrate issues which include disputes and differences. Crucially, the model clauses used in LMAA[i], SCMA[ii], SMA[iii] and HKMAG[iv] all provide for the requirement of a dispute for the arbitration clause to kick in. In the event, there is no dispute, say for a money claim and which has been acknowledged and accepted in full by the respondent, then obviously, there is nothing to arbitrate given that contractually, parties agreed only to arbitrate disputes. In this regard, the Singapore Court had to grapple with similar issues in *Crystal Moveon Technologies Pte Ltd v Moveon Technologies Pte Ltd* (which is an appeal against a AR's decision) on whether to grant a stay to the respondent for the matter to be arbitrated when there was no "dispute" at hand.

3. The Singapore International Arbitration Act ("IAA")v defines an Arbitration Agreement in S 2A (1) as "… "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not". Additionally, the wordings of Article 7 of the Model Law and which is a part of the IAA has similar wordings. Accordingly, it suggests that for the application of the IAA, there is a requirement of a dispute such that even if the words of the arbitration clause is tinkered with, this may not bite sufficiently to allow for the undisputed claims to be arbitrated.

4. With respect to enforcement under the New York Convention, there is no similar provision defining an arbitration agreement such that the bite of the word "*dispute*" should not apply. Article II.I of the New York Convention provides for *all or any differences* instead of the word dispute and therefore it does appear to us that non disputed claims would not be barred from enforcement if there is a difference and which could include the time of payment.

5. In some circumstances, it would actually be tactically better for the defendant to unequivocally admit its liability so that the matter cannot be arbitrated and which would mean that the claimants do not have the benefit of the faster processes available in arbitration together with the potential for easy enforcement (court awards of another jurisdiction may only be enforced if there is a treaty between the countries or there is a practice in law to enforce such judgements[v]).

If there is an intention for arbitration to also be the process for non-disputed claims, the relevant legislation such as the IAA[vi] including the model law would have to be amended. Till such time, arbitration can only be considered as the chosen dispute resolution method to deal only with disputes. Accordingly, if the defendant has unequivocally admitted its liability but refuses to make payment, the claimants must

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consider initiation of legal action to pursue recovery, and which should be at the jurisdiction which will have the best bite (which in most cases would be the jurisdiction where the defendant is sited) together with its warts and all. We believe that this is ultimately a KYC issue[vii] and which parties should always consider together with their chosen dispute resolution method.

[i] *This Contract shall be governed by and construed in accordance with English law and any dispute*.
[ii] *Any and all disputes arising out of or in connection with this contract, including any question …*
[iii] *Should any dispute arise out of this contract …*
[iv] *… and any dispute arising out of or in connection …*
[v] See Singapore Comparative Guide 2023 on Enforcement of Judgements in Civil and Commercial Matters published by Wong Partnership LLP.
[vi] There are similar wordings in the English Arbitration Act 1996 such that a *dispute* is required.
[vii] See Pt 5 of our earlier article, Logistics Contract – Arbitration.

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