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To: Transport Industry Operators

**Container demurrage - time bar**

The PRC Supreme Court on 26/11/2015 issued a Judgment holding a shipping company's container demurrage claim against a shipper time barred. [2015 民提字第 119 號]

In January 2010, the shipper asked the shipping company Maersk to ship 5 laden containers from Yantian, Shenzhen to Mumbai, India. The shipment arrived at Mumbai on 23/2/2010. However, the consignee did not take the cargo delivery. About one year later, the Mumbai Customs auctioned the uncollected cargoes on 28/2/2011.

Maersk in accordance with the contract of carriage based on its Bill of Lading claimed against the shipper for the container demurrage of RMB1,029,554.

From the second day of the arrival at Mumbai, Maersk allowed 5 days' free usage of the containers i.e. from 24/2/2010 to 28/2/2010. Starting from 1/3/2010, Maersk charged the container demurrage until the 5 containers were returned to Maersk after the uncollected cargoes were auctioned by the Mumbai Customs one year later.

Both the Guangzhou Maritime Court and the subsequent appeal court of the Guangdong High Court held that the container demurrage of RMB1,029,554 was excessive and unreasonable. Both Courts in their Judgments held that the maximum container demurrage should be the value of the containers. The market value of a 40-foot container was about RMB30,000. Accordingly, both the Guangzhou Maritime Court and the Guangdong High Court held that the shipper should compensate the container demurrage of RMB 30,000 x 5 containers = RMB150,000 to Maersk.

However, the shipper did not agree to pay the container demurrage of RMB150,000 as it thought that Maersk's container demurrage claim had been time barred, and so the shipper appealed to the PRC Supreme Court.

According to the PRC Supreme Court, the suit time limit for the carrier's claim against the shipper, the consignee or the Bill of Lading's holder in the carriage of goods by sea is 1 year, counting from the date the carrier knew or should have known that its right was infringed. After the free usage period expired on 28/2/2010, the right of Maersk to charge the container demurrage started on 1/3/2010. This meant that Maersk from 1/3/2010 onwards knew or should have known its right was infringed. However, Maersk argued that its right was being continuously infringed and so the suit time limit should count from the date when the act infringing Maersk's right ended. The PRC Supreme Court did not agree to this submission, and opined that Maersk's right to claim the container demurrage was not created on the date the act infringing its right ended. Moreover, whether the container demurrage amount was finalised or not would not affect Maersk's exercise of its right to sue the shipper. The PRC Supreme Court maintained that Maersk knew or should have known its right infringed on 1/3/2010. Having said that, as the shipper emailed Maersk on 30/3/2010 promising to be responsible for the container demurrage, the one-year suit time limit was discontinued on 30/3/2010 and should be counted anew from the time of discontinuance. Accordingly, the PRC Supreme Court held that the one-year suit time limit of Maersk's container

demurrage claim should run from 30/3/2010, and that Maersk's suit against the shipper in the Guangzhou Maritime Court on 27/2/2012 already exceeded the one year's suit time limit. The PRC Supreme Court also rejected Maersk's argument that different suit time limits should count from the various times which the container demurrage continuously incurred.

The PRC Supreme Court dismissed the Judgments of the Guangzhou Maritime Court and the Guangdong High Court, and so the shipper did not have to pay the RMB150,000 to Maersk.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

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