人文社會科學論叢 2007年 15號 pp. 279~295

# The Definition of Package or Unit in the English, Canadian, U.S. Maritime Law

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## 국문요약

구체적 사건의 해결을 위하여 해상운송인 책임제한제도를 적용함에 있어서는 사건의 내용에 따라 객관적 기준을 제시하기가 그리 쉽지 않을 뿐만 아니라, 기준이 되는 헤이그/비스비 규칙 역시 영미법계 국가와 대륙법계 국가의 타협에 의하여 이루어 진 법이기 때문에 해석상 어려움이 많은 것이 사실이다.

운송인 책임제한의 기준으로서의 포장 또는 단위 역시 법문 상으로는 단순하지만, 실제 해석에 있어서는 이와 같이 어려움을 초래하고 있다. 국제해상물건운송은 그 국제성으로 인하여 국수적인 법률 해석은 곤란하다. 그러므로 유사한 입법체계 가진 국가의 판례를 참고하지 않을 수 없다.

헤이그규칙을 수용한 미국법이나 캐나다 법에 있어서 책임제한의 기준으로서의 포장을 정의함에 있어서 기준은 사실상 동일한 것으로 보인다. 즉, 가장 중요한 것은 당사자간의 의사인데, 이때 당사자간의 의사의 해석에 있어서 분쟁이 있을 경우에는 객관적 기준에 따른 포장의 개념 정립이라고 생각된다. 캐나다 법정과 미국 법정에서 정립한 기준을 헤이그/비스비 규칙의 입법 방식과 정신을 실질적으로 수용한 우리 상법의 규정을 해석함에 있어서 그대로 적용하여도 무리는 없을 것으로 보인다. 그러나 역시 구체적 상황을 종합적으로 고려하여 객관적 타당성이 있게 그때그때 사실판단의 문제로 해석할 수 밖에 없다는 어려움이 있다. 이러한 기준에 따르면 선하증권에 나타나 있는 기재를 중심으로 당사자의 진정한 의사를 객관적으로 판단하는 기준의 정립이 중요하다.


## 1. Introduction

Package Limitation can see as Unique legal regime that go back in the view point of modern laws' basic direction as protection for consumer in the Maritime

* 이 논문은 2005년도 한국해양대학교 학술진흥재단의 해외파견연구교수로 선정되어 캐나다의 UBC에서 연구한 결과물임. (Professor, Law Department, Ph.D.)

field But, this legal systems is based upon consideration theory to concept of English. Therefore, this is not a concept that is advantageous to on cargo owner and profitable system carrier. That is, We should focus on low freight and limitation keep in terms of preserve consideration's relation.

But, it is not so easy to present objective standard according to contents of the event being that apply Package Limitation that is carriage by sea for solution of the specific event. Also, because Hague-visby Rule that become standard is attained by compromise of the country and the continental method country, there are a lot of difficulties to analysis legal concepts.

Package or unit as Package Limitation's standard is simple to law text, but there is difficulty in actuality analysis. International Carrigae of Goods by Sea has international charateristic, so it is not good method to construe incestuous method. Therefore, precedent of the country that have similar legislation system can help to construe similar cases.

Hereupon, this papers wish to present tests of judgment for the concepts of package or unit that is examined analysis Canada and the United States of America's precedent, Japan law.

## Ⅱ. Package or Unit in the Admiralty Cases of Canadian, U.K. and U.S.

### 1. Canadian Court's Precedent about the Definition of Package or Unit

(1) Falconbridge Nickel Mines Ltd., Janin Constructions Ltd. and Hewitt Equipment Ltd. v. Chimo Shipping Ltd.; Clarke Steamship Co. Ltd. And Munro Jorgensson Shipping Ltd., (Can. Sup. Ct.)[1)]

In 1966, Sep. the set of a tractor and generator was fallen, while a barge was shifting the set to the ground after the set was recharged from a steamship, P.M crosbie, from a barge to the sea and lost it.

1) [1973] 2 Lloyd's Rep. 469.

An accuser who is not only a ship owner but also a leaseholder of equipment claimed a lawsuit persisting carelessness and a breach of delivery in contract to the carrier as a defendant.

This case in the Supreme Court of Canada at a trial was decided the set of a tractor and generator is a separated unit that can impose US 500 dollar concerning the limitation of liability in compliance with water transportation law in Canada Article4, r. 5, in 1936.

(2) J. A. Johnson Co. Ltd. v. The Tindefjell, Sealion Navigation Co. S./A. And Concordia Line A/S, (Can. Ct.)[2)]

An accuser loaded a couple of charged freight delivered from Montreal and divided two containers on a steamship, Tindefjell, from Bilbao. There were 173 cartons of shoes in a container and 148 cartons in the other. It was mentioned at the Bill of Landing they are supposed to apply to the water transportation law in Canada.

A judge, Collar, decided as followed.

The first evidence is that a container is not a pack to calculate the limits of liability. A party ought to agree on limitation of liability that considersa carton as a unit.[3)]

Second, a container is not a unit, but it's just a modern way to transfer cartons.[4)]

Third, there is no basis in Canada Law about the concept regarding a regular fare unit and it's not allowed a way of measuring that commences limitation of liability. Although each regular fare unit can be applied to such a situation that is notpacked in cartons, this case is not eligible for that way.

In addition, Collar explained most contract of carriages are determined as parties' design. I establish a standard that counts cartons in the container or a container according to a design between a shipper and a carrier about the limitation of liability like this case. A shipper knew goods were loaded in the container or the way by the contract (commonly by the B/L). A shape of the goods and the number of cartons are delivered in the container, and a carrier accepts mentioned items or

2) [1973] 2 Lloyd's Rep. 253.
3) The Mormaclynx, (1971) 2 Lloyd's Rep. 476, 적용.
4) Falconbridge Nickel Mines Ltd. and Other v. Chimo Shipping Ltd., (1973) 2 Lloyd's Rep. 469, 참고.

value. Therefore, my opinion is that the parties tended to specify cartons' number for an object as to the number of units at this case.

(3) International Factory Sales Service Ltd V. The Aleksandr Serafimovich And Far Eastern S.S. Co., (Can. Ct.)[5]

An accuser loaded 150 cartons of sewing machine's head made in USA to deliver from Kobe, Japan, to Vancouver by a ship, Alexandre Sera-Fimovich, and then the accuser got the Bill of Landing. A bunch of 50 cartons were banded in 3 pallets thus, there was a series of number from 151 to 200 at each carton. The beginning of the B/L was mentioned "3 pallets of 150 cartons" in packages section. While the goods were discharging in Vancouverone of the pallets including 50 cartons was fallen beside the ship. 45 cartons were beyond retrieval and 4 cartons were saved with seriously broken sewing machines'head. And even 3 cartons were delivered in twisted and broken armrest condition. The accuser insisted on total loss, 2,886.75 Can dollars. The dependence agreed on the liability, but they argued limitation of liability for 500 Can dollars per pallet.

A federal court of Canada decided as followed.

1) Whether the pallet is a unit or not in accordance with Article 4 r. 5 depends on the fact, situations and especially parties'design covering things such as mention and process between parties and documents.[6]
2) Barring the parties' design, take into account the details of freight and number of cartons and even the external appearanceof goods out of the pallet. In conclusion, a carton is a unit rather than the pallets were a unit of 50 cartons.

## 2. Cases about the Definition of package in United States' law of court

(1) Royal Typewriter Co., Division Litton Busines Systems Inc. V. M.V. Kulmerland And Hamburg-Amerika Linie. Hapag Lloyd A.G. (Sued As Hamburg Amerika

5) [1975] 2 Lloyd's Rep. 346.
6) Opposit: J. in Standard Electrica S.A. v. Hamburg Sudameri-kanische Dampfschiffahrts and Columbus Lines Inc.,[1967] A.M.C. 881; [1967] 2 Lloyd's Rep. 193, applied.
Johnston Co. Ltd. v. The Ship "Tindefjell"[1973] F.C. 1003;[1973] 2 Lloyd's Rep. 253, considered.

Linie) V. Pioneer Terminal Corporation, International Terminal Operating Co.Inc. And Sullivan Security Services Inc.(The Kulmerland), (U.S.Ct Of Appeals)[7]

At the 1st trial, an accuser who is owner of calculators let a representative in the West Bertlin load 350 of calculators in a container by a steamship, Kulmerland, and sailed to Hamburg heading to New York. The B/L prescribes that Carriage of goods by sea in 1936 of USA is applied and there is no comment about the number of cartons and the contents are just machines.

The container arrived in New York and stored out-of-doors in terminal. After that damaged portion was found, all contents were also damaged in the container. The accuser claimed for damaged goods and the defendant insisted their limitation of liability, 500 dollar asthe package meant the container basis on related law 1304(5). In this case both the first trial and a trial on appeal case approved the container as the package and 500 dollars for limitation of liability.

(2) Insurance Company Of North America V. S/S Brooklyn Maru. Japan Line Ltd., (U. S. Ct)[8]

"K" who was insured an accuser's insurance company sold equipment of photography to N company in Japan. An employee of K packed 534 boxes of dried freight and 102 boxes of chemical substances into a40ft standard container. The container packed and sealed by the employee was transported to Japanafter loaded in Boorlyn Maru ship owned by the defendant.

The bill of landing describes as follows:

1-40' Van : according to shippers lead, stowage and count is said to contain 534 packages: dry cargo 102 package of chemicals.

No value for the goods was declared on the B/L. The B/L also provided by cl.25 that where the goods have been packed into containers by or on behalf of the Merchant, it is expressly agreed that each container shall constitute one package for the purpose of application of limitation of carrier's liability.

After being arrived in Japan some of the cases of chemicals were broken causing contamination of contents so N company refused to accept cargo.

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7) (1973) 2 Lloyd's Rep. 428.
8) [1975] 2 Lloyd's Pep. 512.

The accuser brought an action claiming $42,982.14 damages being the value of the contents of the container. The defendants did not admit liability but contended the container constituted a single package and that in accordance with Carriage of goods by Sea of USA they were entitled to limit their liability $500.

According to a judgment, 1st, since the individual boxes were not suitable for overseas shipment without further packaging or special shipping arrangements, the 636boxes placed in the container failed the "functional economics test"and could not quality as Carriage of goods by Sea of USA.[9]

2nd, the container had been chosen, packed, and sealed by K. on its own premises, and there had been no supervision or participation by the carrier prior to the receipt of the container; the container was therefore a package and the defendants were entitled to limit their liability.

(3) Shinko Boeki Co. Ltd. V. S.S Pioneer Moon And United States Lines Inc., (U.S. Ct)(1975)[10]

F.I., as the plaintiff's agent, ordered from the defendants 24 "lift on lift off tanks" of liquid latex for shipment to plaintiffs in Japan. The tanks which belonged to the defendantswere filled with liquid and delivered to the ship Pioneer Mood for storage in its hatches.

The bill of landing was mentioned as follows.

"It is agreed that the meaning of the word package includes containers articles of any description except goods shipped in bulk."

Upon arrival in Japan, 11 of the tanks were found to be severely damaged and their contents totally lost. The plaintiffs claimed damages for the loss and the defendants admitted liability but contended that s. 1304(5) Carriage of goods by Sea of USA they could limit their liability to $500 per tank.

A court of justice determined at a trial on an appeal case that the tanks furnished by the defendants were not packages but they were "functionally part of the ship"[11] hence the liquid latex was within the exception for goods shipped in

9) Royal Typewriter Co. Division of Litton Business Systems Inc. v. The Kulmerland, (1973) A.M.C. 1784; (1973) 2 Llod's Rep. 428 적용.
10) 1 Lloyd's Rep. 199.
11) Leathers Best Inc. v. S.S. Mormaclynx, (1971) A.M.C. 2383; (1971) 2 Lloyd's Rep. 476 판례 적용.

bulk in the B/L.

(4) Hartford Fire Insurance Co. V. Pacific Far East Line Inc. (The Pacific Bear), (U.S. Ct.)[12]

A large electrical transformer owned by B. Co. was insured by the plaintiffs for a voyage from San Francisco to Agenda, Guam. It was attached by bolts to a wooden skid, but was not otherwise boxed or crated, and was shipped at San Francisco on the defendants'motor vessel Pacific Bear under a bill of landing governed by Carriage of goods by Sea of USA, 1936, s.4(5). In other words, "Neither the carrier nor the ship shall in any event be or become liable for any loss or damaged to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the US, or in the case of goods nit shipped in packages, per customary fright unit."

When the transformer was discharged, it was found that it had been damaged. The plaintiffs paid US. $5000 to B. Co. in respect of the cost of repairing it, and claimed to recover this sum from the defendants. The defendants contended that the transformer bolted to the skid was a "package"and that they could limit their liability under s.4 (5) of the Act to US. $500.

However, a court of justice determined at a trial on an appeal case that 1st the transformerbolted to the skid was not a package, 2nd the case would be remanded for a determination of the defendants'liability according to the number of customary freight applicable to the transformer.

(5) Primary Industries Corporation V. Barber Lines A/S And Skilos A/S Tropic (The Fernland), (U.S. Ct.)[13]

The plaintiff shipped 25 bundles each containing 22 tin ingots on the defendants' vessel Fernland from Phuket, Thailand to New York under a bill of landing. Under the words "Number of Packages" in the bill of landing the figure "550" was typed in and under the heading "Description of Packages and Goods"

12) [1974] 1 Lloyd's Rep. 359.
13) [1975] 1 Lloyd's Rep. 461.

the words "Ingots Tin Ingots (In 25 bundles each 22 Ingots)…(Total Ingots 550 in 25 bundles Only)" were typed in, yet only 24 bundles were delivered to the plaintiffs.

The plaintiffs brought an actionclaiming $4026(the value of the bundle of 22 tin ingots). There were 25packages not 550 packages because each bundle containing 22 tin ingots constituted a single package by U.S Civil Ct. of city of New York.

(6) Cameco Inc. V. American Legion Her Engines Etc. And United States Lines Inc.; Same V. Sullivan Security Services Inc.; Amercan Legion Her Engines Etc. And United States Lines Inc. V. Sullivan Security Service Inc. And International Terminal Operating Co. Inc.(The American Legion), (U.S. Ct.)[14]

500 cartons and four pallets (of 100 tins each) of tinned ham were packed in a 40 ft. x 8 ft. x 8 ft. refrigerated shipping container at Odensa, Denmmark. The container was shipped at Hamburgon board the defendant ocean carriers' containership American Legion. The bill of landing, under the heading "Number and kind of packages-description of goods" stated "one container said to contain" and then gave the number of cartons with tins and weight per tin.

However, the plaintiff consignee was notified that the cargo would be carried on a vessel leaving Hamburg at a later date. American Legion arrived at New Yorkon Nov. 28, 1968, and the container was delivered to the terminal operator. On Dec. 6, the carrier notified the plaintiff that the shipment was to be picked up and verified that notification on Dec. 10. However, a few hours later on Dec. 10, the plaintiff received notification from the police that the hams had been stolen, and 230 cartons only had been recovered.

The plaintiff claimed against the vessel and the carrier, who in turn impleaded the security services and the terminal operator. The plaintiff also claimed against the security services.

_____ Held, by Metzner, D.J. that the plaintiff was entitled to judgment against the carrier and the container was not a single "package"within the meaning of the United States carriage of Goods by Sea Act;

_____ Held, by U.S. Ct. of Appeals (Lumbard, Feinberg and Oakes, Ct.JJ.) that

14) [1975] 1 Lloyd's Rep. 295.

the cases of tinned hams and pallets of tinned hams respectively met the functional package unit test; accordingly the burden of proof was on the carrier to show that the parties intended to treat the container as a package.[15] In conclusion the carrier had not overcome this burden because:

(a) The use of the container was as much for the carrier's benefit as for the shipper's;

(b) The vessel was a containership and the goods could not have been shipped by way of the ship absent a refrigerated container;

(c) A discount was given to the shipper on the basis that the carrier could avoid stuffing and unstuffing and unloading costs thereby;

(d) The trucker who carted the carrier's container was the carrier's agent and he was present at the shipper's tally and count

(e) The bill of landing specifically set out the number of cartons of tinned ams and the respective number of tins and weight per tin in each carton;

Per Oakes, Ct.J.: To hold in all cases that all cases that a container is a package is to defeat the purpose of COSGA, which is to protect shippers from the overreaching of carriers through contracts of adhesion and to provide incentive for careful transport and delivery of cargo.

(7) The Aegis Sprit (U.S. Ct.)[16]

The steamship Aegis Spirit was let out by her owners, Estrella Dischosa Navigation to Tokai shipping Co.under a time charter-party. Matsushita Electric Trading Co. of Japan packed a quantity of color television sets, stereophonic equipment and other electricalappliances into cartons, which were them stowed in containers owned by Tokai. The containers were then shipped on the vessel at a Japanese port for delivery at Tacoma, Washington, under bills of landing which stated inter alia:

1. (Definition) The following words on the face and back hereof have the meaning hereby assigned.

15) Royal Typewriter Co. v. M.V. "Kulmer-land," [1973] 2 Lloyd's Rep. 478, applied.
16) [1977] 1 Lloyd's Rep. 93.

(a) "Carrier means Tokai Shipping Co. Ltd. and the vessel and / or her owner.

(b) "Merchant" includes the shipper, consignor, consignee, owner and receiver of the Good and the holder of this Bill of Landing;

(c) "Goods" means the cargo described on the face of this Bill of Landing and, if the cargo is packed into container(s) supplied or furnished by or on behalf of the Merchant, include the container(s) as well.

26: (limitation of liability)…In case the declared value is markedly higher than the actual value, the Carrier shall in no event be liable to pay any compensation and (ii) where the cargo has been either packed into container(s) or utilized into similar article(s) of transport by or on behalf of the Merchant, it is expressly agreed that the number of such container(s) or similar article(s) shall be considered as the number of the package(s) or unit(s) for the purpose of the application of the limitation provided for herein.

The containers were consigned to Matsushita Electrical Corp of America ("Matsushita"). On arrival at Tacoma the contents of 11containers were found to be in a deterioratedcondition due to concussive forces and the entry of sea water into the containers during the voyage. The containers themselves also sustained damage. The plaintiffs in the first section, Matsushita claimed damages from Tokai and Estrella, and the plaintiffs in the second action, Sumitomo Marine & Fire insurance Co. Ltd. ("Sumitomo"), who were the insurers of the containers, and who had indemnified Tokai in respect of the damage to the containers, claimed damages from Estrella. The actions were consolidated. In previous proceedings it was held that in the first action Tokai and Estrella were liable to Matsushita, and in the second action Estrella was liable to Sumitomo, Both Tokai and Estrella in the first action pleaded that under the U.S Carriage of Goods by Sea they could limit their liability to U.S $500 in respect of all the goods packed in a container, for the container was the "package"referred to in that sub-section. In the second Estrella pleaded that their liability in respect of each container was limited to U.S$500.

_____Held, by Dist. Ct. for the Western Dist. Of Washington at Seattle (BEEKS, D.J),

As to the first action:

(1) the word "package" must be given its plain, ordinary meaning;[17]
(2) the individual cartons stowed in the containers constituted the "packages" to which the limitation of $500 applied;
(3) Tokai and Estrella were entitled to limit their joint and several liability to $500 per carton;

# Ⅲ. Interpretation on Limit of Liability for Package or Unit

## 1. Precedent of Canada

The British Commonwealth of Canada's precedent represented that standard of the limit of liability about carrier is briefly three summaries.

First of all, the container is not for the limitation of liability, it's only for convenience to the carrier.[18]

Second, what is standard of the package for the limitation of liability by following both parties' agreement but the party's opinion is considering true fac t,[19] deal of processing, situation and shipping document before judgment.[20]

Third, the package of standard of fare is judged for unpacked cargo but it's not going to take a responsibility of packed cargo for standard of limitation of liability.[21]

## 2. The United States Of Americas' Precedent

According to Untied States' precedent of carrier's the limitationof liability are

17) Hartford Fire Insurance Co. v. Pacific Far East Lines Inc, (1974) 1. Lloyd's Rep. 359, 판례를 적용함
18) Falconbridge Nickel Mines Ltd., Janin Constructions Ltd. and Hewitt Equipment Ltd. v. Chimo Shipping Ltd.; Clarke Steamship Co. Ltd. And Munro Jorgensson Shipping Ltd., (Can. Sup. Ct.).
19) Falconbridge Nickel Mines Ltd., Janin Constructions Ltd. and Hewitt Equipment Ltd. v. Chimo Shipping Ltd.; Clarke Steamship Co. Ltd. And Munro Jorgensson Shipping Ltd., (Can. Sup. Ct.).
20) INTERNATIONAL FACTORY SALES SERVICE LTD v. THE ALEKSANDR SERAFIMOVICH AND FAR EASTERN S.S. CO., (Can. Ct.).
21) Falconbridge Nickel Mines Ltd., Janin Constructions Ltd. and Hewitt Equipment Ltd. v. Chimo Shipping Ltd.; Clarke Steamship Co. Ltd. And Munro Jorgensson Shipping Ltd., (Can. Sup. Ct.)

hereby three things.

First of all, the container is not for the limitation of liability, it's only for convenience to the carrier.[22)]

Second, the party's opinion is decided to follow the general rule such as Functional economics test[23)] or custom of transportation unit in order to make a decision for standard of limitation of liability.

## 3. Standard for Limit of Liability on Korean Commercial Code

As matter a fact, It's like the same to interpret about what is standard of limitation of liability among U.K and Japan' law adopted Hague Visby Rules, U.S and Canada adopted Hague Rules, also our commerce law of Act 789(2), which followed Hague Visby Rules, might be accepted that interpretation. It's going to be suggested standard.

First, the container is not for the limitation of liability, it's only for convenience to the carrier.[24)]

Second, the party's opinion is decided[25)] to follow the general rule such as Functional economics test,[26)] or custom of transportation unit[27)] in order to make a

22) SHINKO BOEKI CO. LTD. v. S.S PIONEER MOON AND UNITED STATES LINES INC., (U.S. Ct)(1975); CAMECO INC. v. AMERICAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC.; SAME v. SULLIVAN SECURITY SERVICES INC.; AMERCAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC. v. SULLIVAN SECURITY SERVICE INC. AND INTERNATIONAL TERMINAL OPERATING CO. INC.(THE AMERICAN LEGION), (U.S. Ct.).

23) INSURANCE COMPANY OF NORTH AMERICA v. S/S BROOKLYN MARU. JAPAN LINE LTD., (U. S. Ct); CAMECO INC. v. AMERICAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC.; SAME v. SULLIVAN SECURITY SERVICES INC.; AMERCAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC. v. SULLIVAN SECURITY SERVICE INC. AND INTERNATIONAL TERMINAL OPERATING CO. INC.(THE AMERICAN LEGION), (U.S. Ct.); The Aegis Sprit (U.S. Ct.).

24) Falconbridge Nickel Mines Ltd., Janin Constructions Ltd. and Hewitt Equipment Ltd. v. Chimo Shipping Ltd.; Clarke Steamship Co. Ltd. And Munro Jorgensson Shipping Ltd., (Can. Sup. Ct.); SHINKO BOEKI CO. LTD. v. S.S PIONEER MOON AND UNITED STATES LINES INC., (U.S. Ct)(1975); CAMECO INC. v. AMERICAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC.; SAME v. SULLIVAN SECURITY SERVICES INC.; AMERCAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC. v. SULLIVAN SECURITY SERVICE INC. AND INTERNATIONAL TERMINAL OPERATING CO. INC.(THE AMERICAN LEGION), (U.S. Ct.).

25) Falconbridge Nickel Mines Ltd., Janin Constructions Ltd. and Hewitt Equipment Ltd. v. Chimo Shipping Ltd.; Clarke Steamship Co. Ltd. And Munro Jorgensson Shipping Ltd., (Can. Sup. Ct.).

26) INSURANCE COMPANY OF NORTH AMERICA v. S/S BROOKLYN MARU. JAPAN LINE LTD., (U. S. Ct); CAMECO INC. v. AMERICAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC.; SAME v. SULLIVAN SECURITY SERVICES INC.; AMERCAN LEGION HER ENGINES ETC. AND UNITED STATES LINES INC. v. SULLIVAN SECURITY SERVICE INC. AND INTERNATIONAL TERMINAL OPERATING CO. INC.(THE AMERICAN LEGION), (U.S. Ct.);

decision for standard of limitation of liability.[28]

Third, the package of standard of fare is judged for unpacked cargo but it's not going to take a responsibility of packed cargo for standard of limitation of liability.[29]

These problems easily can have trouble in case of as below.

First, the shipper uses Unknown Clause for putting cargo into the container, second, in case that the cargo was packed by carton and then to place on the pallet processing for transportation.

Third, generally when the package of unit is judged by both parties, but, for instance "sort of package, list of cargo, the shipper's inspection, banning, 104 pallets (2496 units), onthe B/L. on the other hand, the container or the number of packages of blank was wrote "40 fit container 4 (104 pallets)" it doesn't make a clear what is the party's opinion.

Here is almost similar precedent of foreign country, which is Canada's'precedent that INTERNATIONAL FACTORY SALES SERVICE LTD v. THE ALEKSANDR SERFIMOVICH AND FAR EASTERN S.S. CO (CAN. CT),[30] 150 cartons of heads of sewing machine were divided separately 50boxes into 3 pallets to load on the container. Part of package was wrote 3 pallets (150 cartons). In this case was considered B/L, price of cargo, and appearance of pallet, as a result, the carton is standard for the limitation of liability.

Another similar case is U.S precedent that PRIMARY INDUSTRIES CORPORATIN v BARBER LINES A/S AND SKILOS A/S TROPIC (THE FERNLADN), (U.S CT),[31] 22 tin ingot was secured by 25 bundle to ship, punched on 550 B/L of sort of packages, Description of packages and Goods was wrote ingots tin lngots (in 25 bundles each 22 ingots) (total ingots 550 in 25

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The Aegis Sprit (U.S. Ct.).

27) HARTFORD FIRE INSURANCE CO. v. PACIFIC FAR EAST LINE INC. (THE PACIFIC BEAR), (U.S. Ct.); PRIMARY INDUSTRIES CORPORATION v. BARBER LINES A/S AND SKILOS A/S TROPIC (THE FERNLAND), (U.S. CT.).

28) INTERNATIONAL FACTORY SALES SERVICE LTD v. THE ALEKSANDR SERAFIMOVICH AND FAR EASTERN S.S. CO., (Can. Ct.).

29) Falconbridge Nickel Mines Ltd., Janin Constructions Ltd. and Hewitt Equipment Ltd. v. Chimo Shipping Ltd.; Clarke Steamship Co. Ltd. And Munro Jorgensson Shipping Ltd., (Can. Sup. Ct.)

30) [1975] 2 Lloyd's Rep. 346.

31) [1975] 1 Lloyd's Rep. 461.

bundles only). Even though descriptionof packages was wrote ingot tin that was one unit, the court decided the limitation of liability is bundle.

Refer to these cases, we're going to understand.

First, though unknown clause has problem to interpret what the cargo is inside the container, when the container of package unit was stated on the B/L, it needs to be acknowledged Hague Visby Rules or law of commerce Act of the limitation of liability, to avoid useless these rules. By the way, when package and unit of shipping on the B/L is different that compared with real package and unit of shipping, we have to follow the real things.

Therefore, it' doesn't matter unknown clause in case that when packageand unit of shipping on the B/L is different that compared with real package and unit of shipping, we have to follow the real things as the limitation of liability.

Second, when B/L was wrote differently between sort of package and definition of cargo, it's not a priority where writes on the B/L, considering everything to do understand what is really the party' opinion. In particularly, to be needed to concern about price of cargo, carton of unit, possible to see independent unit, the pallet which can be seen for advantage of shipping or not, and etc. the fare of regulation is not for standard of the limitation of liability according to U.S and British'sprecedent; however the fare of regulation is obviously distinguish compared to any other cargo, for example, paid too much fare more than expectation. It might be inferredfor one material.

In this case is according to INTERNATIONAL FACTORY SALES SERVICE LTD v. THE ALEKSANDR SERFIMOVICH AND FAR EASTERN S.S. CO (CAN. CT),[32] the carton can be standard for the limitation of liability.

## Ⅳ. Concluding

The Regime of limitation of marine carrier's liability, which remarkablygoes against the viewpoint for the protection of a victim or a consumer in the fundamental course of the present law, is the legal regime peculiar to the maritime

32) [1975] 2 Lloyd's Rep. 346.

law. But this regime is different from the regime of limitation of ship owner's liability and is based on the consideration theory of an onerous contract. So this is not a regime that is favorable for a carrier and is favorable for a shipper unilaterally.

That is to say, it shall be watched with keen interest that low rate and limitation of liability maintain relations of consideration.

But, in the application of the regime of limitation of marine carrier's liability for the solution of a concrete case, it is difficult to come up with the objectivestandard. Also there is no denying the fact that the difficulty of interpretation is big because Hague Visby Rules is a law accomplished by the compromise between the nation of Angle-American legal system and the nation of Continent legal system.

In this case, the package or unit, as a standard of limitation of marine carrier's liability, is simple in the law, but the actual interpretation causes such a difficulty. Because of the internationalism of the internationalcarriage of goods by sea, it is hard to give a nationalistic interpretation of law.

When defining package as limitation of liability, actually the standard seems like same in British, Japan, United States, and Canada law who accepts Hague Visby Rules. That is to say, the most important thing is the partiers" opinion. At this time, providing an objective standard on package is required to solve troubles between partiers'opinion. Therefore, as we have considered so far, it is possible applying to explain Commercial law which accept Canada and United States' Hague Visby Rules' form and mind. Nevertheless, here are difficulties to consider specific total matters, and objectively and properly decide based on facts in every time.

According to this, it is important to follow partiers' real opinions basis on comments on Bill of Landing objectively.

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