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**THE ANALYSIS OF
UNDUE DETENTION REMEDY IN PORT
STATE CONTROL**

By

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DECLARATION

I certify that all the material in this research paper that is not my own work has been identified and that no material is included for which a degree has previously been conferred on me.

The contents of this research paper reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: The Analysis of Undue Detention Remedy in Port State Control

Degree: **MSc**

The main objective of port state control (PSC) is to eliminate substandard shipping, to promote maritime safety, to protect the marine environment and to safeguard seafarers working and living conditions on board ships. PSC has played an important role in safeguarding the safety of navigation and protecting the marine environment from pollution, and has become the last line of defense.

However, this control system also has a big drawback so that it harms the interests of foreign vessels calling the port state in some ways, especially undue detention of ship.

Undue detention of vessel by PSC has two different types. One is without legislative authority, the PSCO delay the ship to leave, or the PSCO did not comply in accordance with legal procedures or related requirement of the international conventions. Although International Maritime Organization and the member states provides procedures for remedy, review procedure and administrative appeal procedure of port states, as review procedures of memorandum organizations, domestic complaint procedure to relieve the adverse effect to the shipping companies. However, it is also difficult for the shipowner to comply the appeal procedures, for high cost, non-legal memorandum, mandatory etc.

To reduce undue detention and relief adverse impact, we recommend the ship

owners are familiar with local laws and regulations of port state, seek help from recognized organization and flag state as soon as possible when detention happens.

KEY WORDS: PSC , undue detention, remedial measures

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LIST OF ABBREVIATIONS

AMSA	Australia Maritime Safety Authority
APCIS	Asia - Pacific Computerized Information Systems
COSCO	China Ocean Shipping Company
FSC	Flag State Control
HRS	High Risk Ships
ILO	International Labour Organization
IMO	International Maritime Organization
LRS	Low Risk Ships
MARPOL	International Convention for the Prevention of Pollution From ships. 1973 as modified by the Protocol of 1978.
MLC	Maritime Labour Convention
MoU	Memorandum of Understanding
NIR	New Inspection
PSC	Port State Control
PSCO	Port State Control Officer
RO	Recognized Organization
SOLAS	International Convention for Safety of Life At Sea.
STCW	International Convention on Standards of Training; Certification and Watchkeeping for seafares
UN	Unite Nations
UNCLOS	United Nations Convention on the Law of the Sea
US	Unite State

USCG	United State Coast Guard
VIMSAS	Voluntary IMO Member State Audit Scheme

CHAPTER 1

INTRODUCTION

1.1 Port state control

The Port State Control (PSC) is the control of foreign flagged ships in national ports by PSC officers (PSCO) for the purpose of verifying that the competency of the master and officers on board, and the condition of the ship and its equipment comply with the requirements of international conventions (e.g. SOLAS, MARPOL, STCW, etc.) and that the vessel is manned and operated in compliance with applicable international law. When deficiencies are found which render the ship unfit to proceed or that poses an unreasonable risk to the environment, the ship will be detained.

Since the first regional organization on PSC was established in 1982, the institution of PSC has attracted more and more attention from the world. Memorandum of Understanding (MoU) is taken as an effective mechanism for implementing various requirements related to safety of life and maritime environment protection laid down in international conventions developed by International Maritime Organization (IMO) and International Labour Organization (ILO). Subsequently, different regional organizations have been established all over the world. According to international law, it is the flag states' responsibility to make sure that ships flying their flags are constructed, equipped, maintained and operated to comply with the standards laid

down by the relevant international organization (Xu Shiming, 2001). Unfortunately, certain flag states failed to fulfill their obligation, especially with the growth of open registration. PSC gradually plays more and more important role in eliminating substandard ships. In short, the PSC regime is becoming an indispensable component in the drive towards a goal of “safer ships and cleaner seas” (Payoyo, 1994).

Although the PSC regime has gained world recognition, there are still many problems needed to be taken into consideration, such as the undue detention. The action of detention has huge impact on the ship shipowner. How to avoid undue detention, how to protect the interests of the shipowner's when undue detention occurs. It is clearly stated in the relevant international procedure for port state control that all possible efforts shall be taken to avoid undue detention or delay of a ship; unduly detained or delayed ship shall be entitled to compensation for any loss or damage suffered. Any undue delay of unjustified detention may lead to civil liability (Mukherjee, 2000).

When the captain or the RO disagree with the PSC outcome, there are some remedial measures to solve the problem. In case an owner or operator declines to use the official national appeal procedure but still wishes to complain about a detention decision, such a complaint should be sent to the flag state or the RO, which issued the statutory certificates on behalf of the flag state. The flag state or RO may then ask the port State to reconsider its decision to detain the ship. If the flag state or the RO disagrees with the outcome of the investigation as mentioned above, a request for review may be sent to the authority in charge the PSC or the relevant MoU. If the owner suffered huge economic losses, he can seek compensation through the judicial process.

1.2 Objectives of research

This dissertation will introduce the development of PSC regime, discuss the remedial measures and the corresponding legal basis when ships receive undue detention. During the PSC inspection, some ships get detained in foreign port, some detentions are lawful and reasonable, but some are not. When detention is not lawful and reasonable, the ship owners or operators should try their best to solve the problem as soon as possible and protect their own interests by taking different measures.

1.3 Structure of dissertation

This dissertation consists of seven chapters. Chapter one is the introduction. Chapter two introduces the development of PSC and some MoU, the legal basis for PSC, such as some international conventions, and some data related to the detention under PSC. Chapter three presents an analysis of the reason for undue detention or delay treatment under PSC. Chapter four introduces the remedial measures and relevant legal basis, and introduces two cases. Chapter five put forwards some suggestions and improvement to reduce undue detention, such as unifying the PSC standards, strengthening the training of PSCO, etc. Finally, the last chapter discourses the overall summaries and conclusions.

CHAPTER 2

PSC and some Port State organizations around the world

2.1 A Brief Introduction to Port State Control

PSC is the port state authorities according to the relevant international conventions, the provisions of the port state and regional agreements, standards, having authority to inspect a foreign ship to enter its ports, and verify that the ship and its equipment in line with international requirements of the convention, manning and operating in compliance with applicable international rules. The purpose of the PSC is to correct and eliminate the deficiencies of the existing non-compliant subjects ship, to ensure the safety of ships, persons and property, and the protection of the marine environment, and promote economy and trade development and raise the level of shipping operators.

It is clearly stated in the United Nations Convention on the Law of the Sea (UNCLOS) 1982 that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard to:

- (a) the construction, equipment and seaworthiness of ships;
- (b) the manning of ships, labour conditions and the training of crews, taking into

account the applicable international instruments;

(c) the use of signals, the maintenance of communications and the prevention of collisions.

Unfortunately, in fact the flag states failed to fulfill their obligation. And with the development of flag of convenience, those open registry flag states focus on the the tax of registration rather than the duties to manage the fleet flying their flags. Therefore, they did not properly discharge their international obligations as a flag state. Moreover, some of them were even negligent to carry out FSC, being more focused on the commercial part of registration (Anton Kulchytskyy, 2012).

There is not genuine link required by UNCLOS between the flag state and the ship registered in this practice which is required by UNCLOS. The port states begin to take action to protect their own interest. When recognized organization (RO) and flag states failed to comply with the relevant international conventions developed by IMO and ILO, PSC undertakes the task to eliminate substandard ships. PSC is regarded as measures complementary to the Flag State Control (FSC), PSC is the last defense (Dong Jiufeng, 1997)

2. 2 The inspection of the PSC

2.2.1 Initial inspection and a more detailed inspection

In accordance with the provisions of the applicable conventions and relevant laws and regulations of various countries, PSC inspection is mainly divided into two stages: initial inspection and a more detailed inspection (Yang Xinzhai & Xiehui, 2000). Before the PSC officers are aboard the ship, they may proceed to the ship and get an impression of its standard of maintenance from the paintwork or pitting or corrosion. Then the PSC officers go aboard and examine the validity of the

certificates and some documents.

After the initial inspection, if the PSC officers have clear grounds for believing that the ship, its equipment or its crew do not substantially meet the requirements. The PSC inspectors will conduct a more detained inspection.

2.2.2 Clear grounds for a more detained detention

In chapter two, the procedures for the port state control stated in Resolution A.1052(27) which was adopted on 30 November, 2011, the clear grounds mainly are the follows:

1. the absence of principal equipment or arrangements required by the applicable conventions;
2. evidence from a review of the ship's certificates that a certificate or certificates are clearly invalid;
3. evidence that documentation required by the applicable conventions is not on board, incomplete, not maintained or falsely maintained;
4. evidence from the PSC officers general impressions and observations that serious hull or structural deterioration or deficiencies exist that may place a risk: the structural, watertight or weather tight integrity of the ship;
5. evidence from the PSC officers general impressions and observations that serious deficiencies exist in the safety, pollution prevention or navigational equipment;
6. information or evidence that master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.

7. indications that key crew members may not be able to communicate with each other or with other persons on board;
8. the emission of false distress alerts not followed by proper cancellation procedures;
9. receipt of a report or complaint containing information that a ship appears to be substandard.

If the PSC inspectors have clear grounds, they will carry out a more detailed inspection

2.2.3 The outcomes of PSC inspection

As to inspection, there are generally three kinds of results: first, there is no defect, the ship can be successfully passed PSC without incident; second, there are some defects in the ship, but it has not reached the degree of being detained; third, the deficiencies are so serious, if not rectified, may pose threaten to the maritime safety, the ship shall be detained. Once the ship is detained, the detained ship needs to undertake the ship deferred loss and high repair costs, at the same time, it caused bad impact on the reputation and image of the ship company and the flag state, the consequences will be very serious. Therefore, shipping companies attaches great importance to the quality standard of ship, and strive to improve the ship's own "hardware" and "software" level, to ensure that the ship can smoothly pass through the PSC inspection, to avoid ship detained and serious losses caused by detention.

However, in practice, the reason that the ship is detained by the PSC is varied, some are due to the poor quality of the ship and the defects of the ship, and some are completely because of the improper inspection of the supervision authorities of the port state. Under this case, the vessel which is unduly detained shall have the right to

lodge a claim for compensation to the port state.

2.3 Regional organizations on PSC around the world

2.3.1 The Paris MoU

The Paris MoU¹ on PSC is an administrative agreement between twenty-seven Maritime Authorities, the current member states of the Paris MoU are Belgium, Bulgaria, Canada, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovenia, Spain, Sweden and the United Kingdom, covers the waters of the European coastal States and the North Atlantic basin from North America to Europe.

In 1978, some maritime states or authorities of the western Europe developed the 'Hague Memorandum', the main function of the MoU is to make sure the living and working conditions on board meet the requirement as required by ILO Convention No.147. However the "Hague Memorandum" failed to come into effect in 1978 because of the serious aground incident of VLCC 'Amoco Cadiz'. A large number of crude oil leakage, a serious pollution of the marine environment off the coast of Brittany (France) .This incident caused the attention of the world, especially in Europe. The member States reconsidered the current mechanism regarding to the safety of shipping, and decided to build more strict regulations related to the safety of shipping. This incident resulted in a more comprehensive memorandum. People begin pay more attention to the safety of life and the prevention of marine pollution.

¹ A regional organization aimed at protect the safety of life and maritime environment .More information on www.parismou.org/

In 1982, fourteen European countries signed the Paris MoU at Paris, France, a new Memorandum of Understanding on Port State Control. The new MoU covers the following items:

1. safety of life at sea;
2. prevention of pollution by ships;
3. living and working conditions on board ships.

Paris MoU came into effect on 1 July 1982, it is the first regional organization on PSC of the world, which aimed at protecting the safety of life and maritime environment. During the past three decades, in order to comply with the new requirements with regard to the safety of life, maritime environment, and shipboard living and working conditions of crew, the Paris Memorandum has been revised several times. The organization expanded from fourteen to twenty-seven member states over the past three decades. It is one of the most important regional MoU of the world and set a good role model on how to protect the safety of life and maritime environment more effectively².

2.3.2 Tokyo MoU

The Tokyo MoU³ is one of the most important regional organizations on PSC in the world. The member states signed the agreement at its final preparatory meeting in Tokyo on 1 December 1993. The MoU came into effect on 1 April 1994. It consists of 20 member authorities in the Asia-Pacific region. The 19 member authorities are:

² More information on <https://www.parismou.org/inspection-search>

³ More information on website www.tokyomou.org/

Australia, New Zealand, Canada, Papua New Guinea, Chile, Peru, China, Philippines, Fiji, Russian Federation, Hong Kong, China, Singapore, Indonesia, Solomon Islands, Japan, Thailand, Republic of Korea, Vanuatu, Malaysia Viet Nam, Marshall Islands, Peru. Peru was the twentieth member Authority of the Tokyo MoU. In addition, Panama will be the twenty-first member state after being co-operating member state of three years.

The main objective of the Tokyo MoU is the same as the objective of Paris MoU, to develop an effective port state control regime, through co-operation of its members and harmony of their activities, to eliminate substandard shipping so as to promote maritime safety, to protect the marine environment and to safeguard working and living conditions on board ships. The Tokyo has built its database center: Asia-Pacific Computerized Information System (APCIS).

The new inspection regime(NIR) came into effect on 1, January, 2014 in the Asia-Pacific region. Under the NIR, ships would be divided into three categories:

1. High risk ships- HRS
2. Standard risk ships- SRS
3. Low risk ships- LRS

Under the NIR, different time windows/inspection intervals would be applied to the corresponding categories of ships in accordance with the risk levels so that high risk ships would be subject to more frequent inspections while the quality/low risk ships

would be awarded with a wider time window for inspections.⁴ The following elements will be taken into consideration when calculating the risk level, performance of the flag of the ship (e.g. Black or White List of flags, status on completion of the Voluntary IMO Member State Audit Scheme (VIMSAS)), type of ship, age of ship, performance of RO, performance of the company responsible for ISM management number of deficiencies, number of detentions.

Table 2.1: Ship risk profile and time window

Ship Risk Profile	Time Window since previous inspection
Low Risk Ships	9 to 18 months
Standard Risk Ships	5 to 8 months
High Risk Ships	2 to 4 months

Source: Tokyo MoU PSC annual report,2015.

As is shown in the figure, different risk level, different time window. Ship Risk Profile Time Window since previous inspection Low Risk Ships 9 to 18 months; Standard Risk Ships 5 to 8 months; High Risk Ships 2 to 4 months. The cycle of time window will be re-started for the ship after an inspection. Since the implementation of the NIR, the work of PSC has been done very well (Sun Yujie,2014).

⁴ TOKYO MOU WILL INTRODUCE A NEW INSPECTION REGIME (NIR) FROM 1st JANUARY 2014

2.3.3 USCG

The US Coast Guard (USCG) has been playing an important role in protecting the safety of life and maritime environment. USCG has made tremendous contributions to the world. The US does not join any one MoU, but as observer member. USCG carries out three basic roles: maritime safety, maritime security and maritime stewardship. The PSC conducted by USCG is drastically different from other regional PSC regimes based on MoUs, it stands outside the regional regime (Hou Limin, 2002). The USCG implements its PSC on the national level based on US legislation through its PSC programme. US has been implementing 21 quality ship project since 2001.

2.3.4 Indian ocean MoU

After Paris MoU and Tokyo MoU were established, the two regional organizations played an excellent role in promoting the safety of life, maritime environment, and the working and living condition on board. The MoU is a good example of regional co-operation between some countries when the global cooperation mechanism is unable to work. From this, the Regional co-operation between the countries on the Indian Ocean rim, would be a good way to eliminate the sub-standard ships in the region. The Memorandum came into effect on 1st April 1999. Until December 2015, there are seventeen member countries in the Memorandum. These are: Australia, Bangladesh, Comoros, Eritrea, France (La Reunion), India, Iran, Kenya, Maldives, Mauritius, Mozambique, Oman, Sri Lanka, South Africa, Sudan, Tanzania and Yemen. There are some observer countries and organizations, respectively are Ethiopia, Madagascar, Black Sea Memorandum of Understanding, Riyadh Memorandum of Understanding, Tokyo Memorandum of Understanding, West & Central Africa Memorandum of Understanding, the International Maritime

Organization(IMO), the International Labor Organization(ILO), United States Coast Guard(USCG) and Equasis.

2.3.5 Abuja MoU

The signatories are the following: Benin, Cape Verde, Congo, Coted’Lovrie, Gabon, Ghana, Guinea, Liberia, Mauritania, Namibia, Nigeria, Senegal, Sierra Leone, South, Africa,the Gambia and Togo.

2.3.6 Acuerdo de Vina del Mar

The member authorities are: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Honduras, Mexico, Panama, Peru, Uruguay and Venezuela. Its secretariat: Buenos Aires, Argentina.Its official language: Spanish,Portuguese.

2.3.7 Mediterranean MoU on PSC

Its member authorities : Algeria, Cyprus, Egypt, Lsrael, Jordan, Lebanon, Malta, Morcocco, Syria, Tunisia,and Turkey. Secretariat: Alexandria, Egypt.

2.3.8 Black sea MoU

Its member authorities : Bulgaria, Georgia, Romania, Russia,Ukraine and Turkey. Secretariat: Istanbul,Turkey.

2.3.9 Caribbean MoU

Its member Authorities : Antigua and Barbuda, Aruba, Barbados, the Bahamas, the Cayman islands, Cuba, Grenada, Guyana, Jamaica, the Netherlands Antilles, Suriname, Trinidad and Tobago. Secretariat: Christchurch, Barbados.

2.3.10 Riyadh MoU

Its member authorities: Oman, the United Arab Emirates, Qatar, Bahrain, Kuwait, and Saudi Arabia. Secretariat: Muscat, Oman.

2.4 Relative international conventions

1. The International Convention for the Safety of Life at Sea, 1974 as amended;
2. The International Convention on Load Lines 1966;
3. The International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto;
4. The International Convention on Standards for Training, Certification and Watch keeping for Seafarers, 1978, as amended;
5. The Convention on the International Regulations for Preventing Collisions at Sea, 1972;
6. The International Convention on Tonnage Measurement of Ships, 1969;
7. The Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147);
8. The Maritime Labour Convention, 2006 (MLC, 2006);
9. The International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001.

2.5 PSC inspections and detention percentages

This sub-chapter introduces the PSC inspections conducted by the two regional organizations: Asia-Pacific MoU and Paris MoU, and the two countries: the Australia and China.

2.5.1 PSC conducted by Asia-Pacific MoU

From the “PORT STATE CONTROL UNDER THE TOKYO MOU, 2015”, we can get the detailed number of inspection and detention percentage. In 2015, the member states carried out 31,407 inspections on 17,269 individual ships, out of which China carried out 8126 PSC inspections, accounting for 25.87 percent, Japan carried out 5400 inspections, accounting for 17.19 percent, Australia conducted 4050 PSC inspections, accounting for 12.9 percent, the three countries took up almost sixty percent of the total PSC inspections. These ships were registered under different 96 states. 19,142 inspections were found with deficiencies out of the total 31,407 inspections. 1,153 ships were detained due to serious deficiencies having been found onboard. The detention rate of ships inspected was 3.67%. It is hard to calculate the number of undue detention, in my opinion, the percentage may be 0.3%-0.8%, and one undue detention will cause huge loss to the shipowner or manager. The main deficiencies were related with fire safety measures, safety of navigation, load line, ISM related deficiencies and stability, structure and relevant equipment.

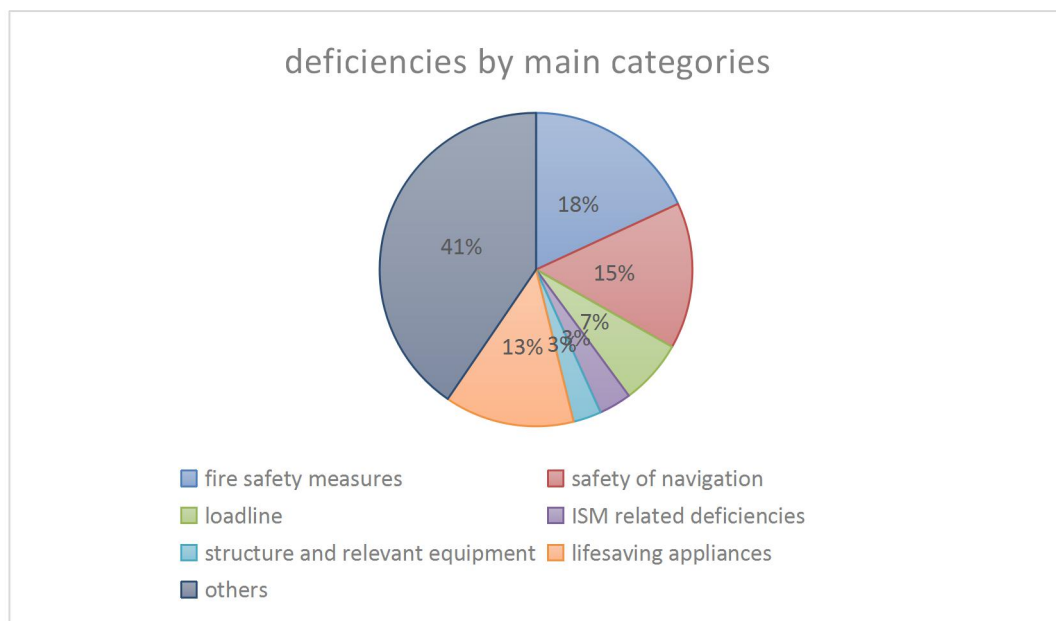


Figure 2.1: Deficiencies by main categories

Source: from port state control under the Tokyo MoU, 2015.

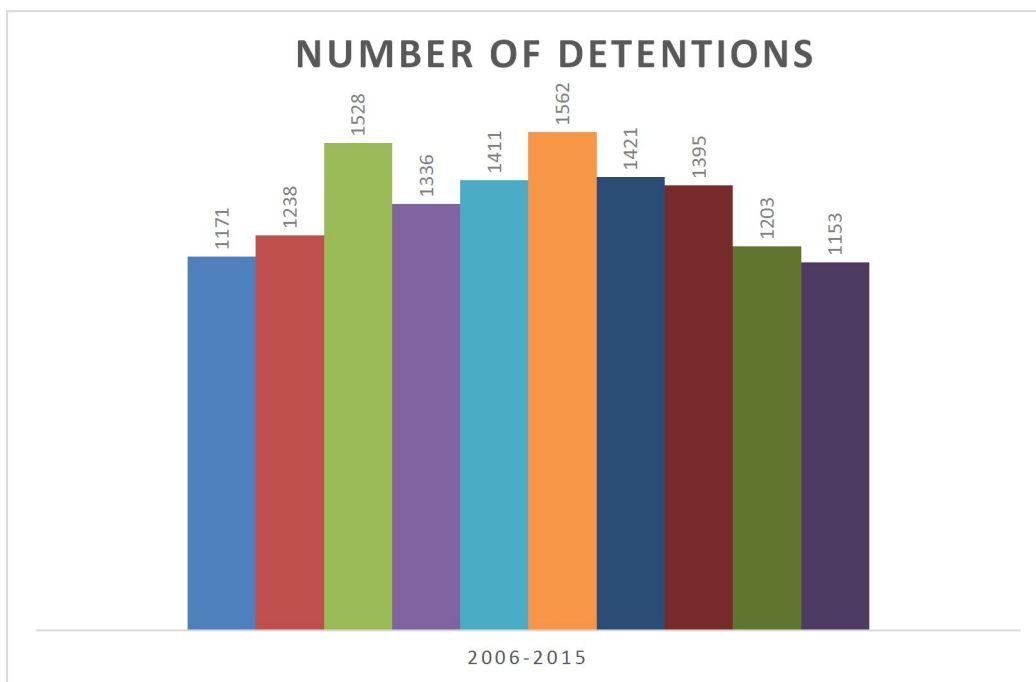


Figure 2.2 : Number of detention.

Source: from port state control under the Tokyo MoU, 2015.

As the numbers of detentions is gradually decreasing, the detention percentages is also decreasing.

Table 2.2: Detention percentage under Tokyo MoU 2006-2015

	2006	2007	2008	2009	2010
Detention percentage	5.4%	5.62%	6.90%	5.78%	5.48%
	2011	2012	2013	2014	2015
	5.46%	4.59%	4.50%	3.96%	3.67%

Source : From port state control under Tokyo MoU, 2015.

2.5.2 Paris MoU

From the annually Paris MoU PSC report, we can see that the member states of Paris carried out 19058 inspections in 2011, decrease by 21% compared with the figures of 2010. They carried out 18308 inspections in 2012, decrease by 4% compared with the figures of 2011. The number of inspections performed in 2013 was 17,687, a decrease of 3% compared with the figures of 2012. A total number of 18,430 inspections were carried out in 2014, compared with the figures of 2013, it showed an increase of 4%. 17858 inspections were performed in 2015, compared with the figures of 2014, it showed a decrease of 3.1%. As to the detention, 688 ships were detained in 2011, the detention rate was 3.61%. A total number of 669 ships were detained in 2012, the detention rate was 3.65%. The detention rate was 3.78%, the number of detained ships was 668. The numbers of detentions were 612 in 2014 and 595 in 2015. The detention percentage in 2014 was 3.32%, 3.33% in 2015. The total number of deficiencies found in every calendar year is gradually decreasing. The number was 50738 in 2011, 49261 in 2012, 49074 in 2013, 45979 in 2014 and the number of deficiencies found in 2015 was 41436. The average number of deficiencies per inspection also decreased from 2.6 in 2011 to 2.3 in 2015.

As to the detention review, the Secretariat received a total number of forty three requests for review during the past five years from 2011 to 2015. The Secretariat received ten requests for review, five cases of which failed to comply with the requirements for review, two cases were concluded that the detention was not justified. The Secretariat received thirteen requests for review in 2012, seven cases for review in 2013, and three cases were concluded that the detentions were not justified in 2012, two cases needed reconsideration in 2013. In 2014, five cases

were sent to the review panel, one detention was closed before the panel review, one case was concluded that it was not justified. One of eight cases was reviewed and concluded not justified.

Paris MoU is the first and one of the most regional organization in the world and play a key role in protecting the safety of life, maritime environment, and improving the safety level of navigation.

2.5.3 Australia PSC

From the 2015 Australia Port State Control annual report, we can find that: during the 2015, 5644 foreign ships, 27344 arrivals, entered into the ports in Australia, the PSCO of AMSA conducted 4050 PSC inspections in 61 Australian ports by 50 PSC officers, of which 242 ships were detained, compared with 2014 total 3742 inspections, of which 269 ships were detained. The detention rate is falling. The following diagram is the numbers about the past ten years PSC inspections and detentions in Australia.

During 2015, 12 appeals against detention were sent to AMSA, no one was sent to MoU secretarial, the all relevant information was well reviewed and at last, two detentions were canceled. No one appeal was sent to Detention Review Panel of MoU, and one appeal was lodged with the Australian Administrative Appeals Tribunal, but was withdraw at last.

Table 2.3: PSC of AMSA and detention rates.

	2011	2012	2013	2014	2015
Total inspections	3002	3179	3342	3742	4050
Total detentions	275	210	233	269	242

Detentions %	9.2	6.6	7.0	7.2	6.0
Deficiencies per detention	2.8	2.4	2.4	2.9	2.3

Source : Australia Port State Control Annual Report 2014

From the figure 2.3, we can find that the detention rate in 2015 is the lowest during the past 5 years, there is still undue detention. The number of detentions which were withdrawn at the end is 2 in Australia. In my opinion, the actual number of undue detention must be higher than the official number. It is a huge loss for the entire shipping industry.

The top 5 detainable deficiencies during 2013-2015 verified by PSCO of AMSA were related to ISM, fire safety, lifesaving, pollution prevention, emergency systems and water/weather tight, of which ISM problem was very serious and took almost 30 percentage. But as to the ISM, it is hard to judge. Some undue detentions are related to ISM.

Table 2.4: Deficiencies found in PSC

2013	2014	2015
ISM - 27.5%	ISM - 31.2%	ISM - 29.7%
Fire safety - 19.6%	Fire safety - 14.0%	Fire safety - 15.9%
Lifesaving - 14.5%	Lifesaving - 11.4%	Lifesaving - 11.2%
Pollution prevention - 9.2%	Pollution prevention - 10.4%	Pollution prevention - 9.8%
Water/weather-tight - 9.2%	Emergency systems - 8.3%	Emergency systems - 8.6%

Source : Australia Port State Control Annual Report 2014

2.5.4 China PSC

From the 2012 annual report on Port State Control presented by the China PSC data center, PSC offices of China MSA conducted 8327 inspections, and detained 603 ships flying foreign flags in 2012. Detention percentage was 7.2%. Compared with that of 2011, it decreased by 11.2%. During the period of Concentrated Inspection Campaign (CIC) of 2012 on Fire Safety Systems, PSC offices under China MSA carried out 1801 foreign ships, of which 74 ships were detained, the detention rate was 4.11% (Zhang, X.M., &Fu, H. X, 2014). During 2012, PSC officers carried out PSC inspection on 920 Chinese ships, and detain 8 ships under the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU). In the Tokyo MoU, the detention percentage was 0.87%.

Table 2.5: Chinese PSC data

year	2010	2011	2012
Detentions	534	679	603
Deficiencies per ship	6.69	6.34	5.57
Detention rate %	10.3	8.68	7.24
China PSC data			

Source : China PSC annual report 2012

From figure 2.5 we can find that the detention rate and the number of deficiencies per ship are decreasing during the past 3 years, the PSC has promoted the maritime safety greatly.

Table 2.6 : PSC under Tokyo MoU during 2010-2012

Year	2010	2011	2012
Detentions	1411	1562	1423

Deficiencies per ship	3.5	3.62	3.32
Detention rate%	5.48	5.46	4.6
Tokyo MoU			

Source : Port State Control under Tokyo MoU Annual Report, 2012

Compared detention percentage of China PSC with that under Tokyo MoU, the detention percentage of former was twice that of latter, and the detention percentage was decreasing.



Figure 2.3: Deficiencies per ship by ship age

Source : China PSC annual report 2012

As the ship becomes old, its functions have low efficiency and it can not work well as before, at this case, if it lacks maintenance, it is easily detained by the inspectors.

CHAPTER 3

The analysis of undue detention and negative impact.

As we all know, PSC plays an important role in promoting ships to strictly implement relevant international conventions, meet the relevant safety and pollution prevention standards. The aim of the PSC is to eliminate sub-standard ship out of the navigational trade. In recent years, although the flag state, shipowner and operator have taken effective measures to keep ship in good conditions, many rows of ships in foreign Port State Control are still repeatedly detained. Of course, there are many reasons for delaying, like poor technical condition of the ship, the poor shipping company safety management, lower quality of prime crew. PSC undue detention is also serious, and the reason is complex.

3.1 The definition of undue detention.

Detention, is defined in the “procedure for port state control, 2011” as: when the condition of ship or the crew can not substantially meet the requirements of requirement of the related international convention, the PSC officers ensure that the ship does not constitute a danger to the marine environment or person on board after sailing, regardless of whether that action has affected the normal planned departure of the ship. The so-called undue detention, in my opinion, can be understood as the detention of a ship by PSC officers without clear grounds to prove that the ship does not meet the requirements of conventions.

3.2 Reasons for undue detention

Because there is no fixed standard for substandard ship, it requires PSCO to use professional knowledge and ability to judge whether the ship's defects will pose a threat to the ship and the crew or to the marine environment. Once the PSCO is disturbed by some factors, it is hard to make appropriate assessment, resulting in inappropriate detention(Luo lei, 2011). The undue detention has a negative impact on the ship, the flag state, the shipping company. So it should draw people's attention to the issue of undue detention.

3.2.1 Detention of a ship without legal basis.

Unduly detained ships discussed here contains two meanings: First, the maritime authority in violation of domestic laws and regulations contained in relevant international conventions to detain ships, that is beyond the relevant domestic laws and international maritime conventions; Second, the Port Maritime Organization in the case of the implementation of detention, for abuse of discretion or subjective factors, PSC officers make undue detention of the ship (Zeng guang, 2014).

The reasons are complex. The first is that the PSC officers take PSC in accordance with the International Convention and some domestic laws. There are some differences on inspection and enforcement in accordance with the standard between different regional PSC organizations and member states in the same MoU (Li Pinfang & Zeng Qingshan, 2013). Further, the content of the Convention is continuously updated and amended, some of the PSCO find it is difficult to timely, accurate, comprehensive grasp of the changes in the Convention (Luo Chao, 2013). Different PSCO, different understanding of legal provisions of these conventions, different policies in different port, during an inspection, different results in the PSC.

For example, apply the terms which are applicable for large tonnage ships to small tonnage ships; apply the terms which is applicable for special ships to ordinary ships; apply the terms which is applicable for existing ships to new ships; take some non mandatory provisions as mandatory, so the final result just do not bear up at all. When PSCO check the oil-water separator of a small vessel, insisted that oil discharge monitoring device should be installed on the oil water separator, when the oil content in the discharge is more than 15PPM, it can send out alarm and automatically stop the discharge of oil mixture, in fact, there is no mandatory requirement for ships of no less than 10 thousand tons gross tonnage in annex I to MAR-POL73/78 Convention(Hu Qiangsheng & Hong Liping, 2003,p 32).

3.2.2 Political or personal factors

The authorities of the port state or the PSC officers intentionally violate the regulations, resulting in the undue detention of the ship. Because the political system and political views are not consistent, there are often political or economic conflict between countries(Wang, X, 2008). Thus, in practice, when the port state authorities implement the PSC inspection, due to the consideration of political factors or individual bias, the undue detention of ship often occur. Such detention, may be because of personal revenge, but also may be due to the tension between the two governments caused by diplomatic relations between the two countries. As in 90s, when the Chinese ships were passing through a port in South Korea, there were no defects or defects in the ships or the defects did not reach the degree of being detained, the Chinese ships were often detained by a PSC inspector(Liu Wang, 2011). It is difficult for us to understand the reasons for the detention of these ships, after the investigation carried out by the relevant departments, we found that when the inspector was still a captain, he was detained once when he arrived at Shanghai port.

So he took a personal revenge on the Chinese ship, eventually leading to many undue detention of Chinese ships(Liu Wang, 2011). The situation is that the port state supervision authorities do not act according to laws and regulations to implement their own law enforcement actions, but from their own subjective point of view, abuse their power, caused the ship to be unduly detained.

In addition, with the increasingly fierce competition in the shipping market, commercial factors will also affect the results of the implementation of the inspection of PSC. During the inspection, the PSC officer abused his power as a result of the temptation of interest, do not obey the international conventions or the relevant provisions of the state on the PSC on purpose, so that a particular vessel is unduly detained. This is a typical case, after a period of operation of the ship's lease. It was discovered that a huge loss was caused, and the date of this contract is very long. Under such circumstance, in order to reduce their own business loss, the ship leasing party will try to bribe the authorities of the port state, and by taking other illegal means, resulting in undue detention of the ship. So the ship's leasing parties have sufficient reason to shirk responsibility, and require the owner of the ship to take responsibility, and they do not constitute a breach of contract.

In addition, this undue detention is due to the commercial considerations. According to the relevant information, the port state authorities sometimes even use detention of ships to increase their funding (Wang, D. C, 2008). The PSC inspectors detain the ship on purpose supported by the state government, to get their own illegal gains.

3.3 The influence of undue detention

The PSC detention has serious impact on the ship owner. First, it is the time loss, from the detention information on the port state's website, we can know the time of

delay from one hour to many days, most of them are more or less than 10 hours. Second is the money loss, the crew wages, fuel cost , port of charge, liquidated damages due to the delay of delivery, and the high repair cost, for the shipowner, time is money. Third is the reputation and image. If a ship is frequently detained, it will be on the black list, this ship and the ships in the same shipping company will be frequently inspected. It is harmful to the reputation of the shipping company, flag state and RO.

CHAPTER 4

Remedial measures and relevant legal basis

In this chapter we will discuss some remedial measures when undue detention happens, and introduce the legislative basis about succor of undue detention.

4.1 Remedial measures

There are some measures for shipowner or manager to take to prevent from undue detention and reduce the unnecessary losses.

4.1.1 Site Defense

Port State Control procedure provides code of good practice for PSCO, it advises the PSCO shall listen to the crew earnestly when dealing with the found deficiencies. “Regulations of the people's Republic of China for the safety inspection of ships” article 13 states that the ship has the right to make a statement and defense on the defects of ship founded when PSCO conduct PSC inspection on the spot. Field defense is the most direct way, it does not need complex review process and can directly eliminate the unjust treatment of the ship, should be the first choice when the ship suffered unfair treatment. But this depends on the quality of the crew and the good behavior of PSCO. The captain shall master relevant requirements of conventions and the PSCO shall deal with any disagreement over the conduct of findings of the inspection calmly and patiently.

4.1.2 Appeal to port state

If the shipowner or operator thinks that the port state law enforcement behavior is wrong, and the detention caused unnecessary loss to the ship. The shipowner can lodge a complaint to the port state when they don't want to solve the problem through judicial way. After receiving complaints from the detained ship, the port state carries out investigation on the content of the complaint in a certain period of time, and then take corresponding measures according to the investigation. If the shipowner still does not satisfy with the results of the complaint, can also further put forward the appeal to MOU (Zhang, J. Y., & Wei, J. P, 2012). Compared with memo review panel, port state review is more direct, if handled in a timely manner, it may cancel improper measures, reduce or even eliminate the ship loss. As to the Australia maritime authority, about two appeals were withdraw every year.

4.1.3 Political or personal factors

Memorandum of Understanding is an intergovernmental agreement signed between countries within a geographical region, mainly responsible for coordinating the PSC activities of the Member States and building information database and sharing the PSC information. the port of supervision of information sharing. A total of 9 MoUs has been established as we describe in chapter 2. The memorandum will provide undue detention review procedures to the ship through the official website. Take Tokyo MoU for example, if the shipowner is not satisfied with the reply of the port state, he may appeal to the Tokyo MoU secretariat within three months from the date of detention. Secretariat will set up a "review group", including its own and 4 members of the memorandum of understanding. The members of the review panel shall take turns in alphabetical order, but the port state and flag state are not included when appeal happens. The review panel will consider the control procedures and

techniques for review, on the basis of the flag state and / or recognized organization and port state information. Within 30 days from the date of receiving the application, the Secretariat will prepare a summary of the views of the review group, and will notify the flag state or RO the situation as well as the port state and memorandum of understanding Advisory board. If the review panel supports the flag state or RO, the port state will be suggested to reconsider its decision, but the review panel's ruling is not binding, but can be a legitimate reason for the port state to modify the data within the system.

But there are still many problem, the effect of the complaint is limited by the memorandum, which is mainly due to the following reasons: first, only the flag state and RO have the right to appeal to the MoU, ship owners and operators do not have the right to file a complaint; second, the MoU itself does not have mandatory power, if the review committee believes that the detention is inappropriate, the committee can not release the detained ship directly, it can only recommend the port state to reconsider the decision of the detention; third, the conclusion of review committee under a MoU can not be used as evidence as supporting ship for economic compensation; fourth, procedures of MoU review are long, cumbersome. Effect of MoU appeal is limited to a certain extent, because the MoU is just a coordination agency, it can not interfere with the implementation of the various member states on their own administrative power (Yin, S. Z, 2007).

4.1.4 Administrative proceedings

PSC is a kind of administrative act (Lin, X. L, 2013). When the ship suffered undue detention and huge loss, the shipowner or manager can proceed directly to the state court, applying for state compensation. As to the administrative management of the

relative rights relief, China has promulgated “National Compensation Law” , “ administrative litigation law”, “Administrative Reconsideration Law” and other laws, established a more perfect administrative management relative person right relief system. If the ship owner refuses to accept the decision of the administrative organ, he may lodge an administrative lawsuit directly. The administrative litigation is to review and make the judgment by the court to conduct the specific administrative act of the administrative organ(Liu, M, 2013). To resolve administrative disputes, the core of administrative litigation is to examine the legitimacy of the specific administrative acts, In principle, it does not belong to the scope of the review of the court (Li, W. J, 2009), however, if the administrative punishment is obviously unfair, the administrative enforcement is obviously improper and so on. The court may still have right to review the legitimacy of the administrative sanction, and the right to make a decision.

4.2 Laws about succor of undue detention

The laws about succor of undue detention caused by Port State Control can be roughly divided into three categories, namely international maritime conventions, MOU appeal panel and internal laws

4.2.1 International maritime conventions

International maritime Conventions are international conventions related to maritime affairs. They refer to international legal documents negotiated and formulated by IMO or member states in accordance with certain procedures and principles, mainly in order to regulate relationships between rights and obligations of such aspects including technology, personnel, security and efficiency linked to maritime navigation. For instance, UNCLOS, MLC and LLC all belong to international maritime conventions. International maritime conventions are the most direct basis

for succor of inappropriate detaining. In UNCLOS, article 226 and 227 provide range of actual survey to foreign vessels, nondiscrimination of foreign vessels and so on. Article 232 provides that in order to prevent, reduce and control marine pollution. If the taken measures are illegal or beyond reasonable requests, states in implementation of these rules or in domestic legislation may bring the so-caused results to court. It is also provided that states should develop regulations to avoid such harms and lawsuits. SOLAS, MARPOL73/78, LOADLINE66, STCW78/95, etc. are all provided for the implementation and requirements of international maritime conventions as far as possible to prevent inappropriate ship detaining and delay. Once undue detention or delay occur because of convention implementation, the injured party may be compensated for the resulted loss. Procedures for Port State Control provides that PSC officials in exercise of ship detaining shall inform the captain that he has right to appeal against undue detention or delay.

4.2.2 Memorandum of Understanding

Memorandum associations regulate the affairs related to succor of undue ship detention of a ship in PSC. Take Tokyo MoU as an example, it provides ships' rights of appeal. If detained, the owner or management company of the ship may appeal toward the port state through official means according to following procedures: Appeal toward the port state first. If unsatisfied with the result, the flag state of ship or organizations authorized by the flag state of ship may broach the subject to Tokyo MoU secretarial then.

Although they are national instructive documents for specific issues and without legal effect, rules of MoU are gradually transformed into domestic laws and empowered legal effect by member states. If ships fail to meet requirements,

corresponding measures will be taken. If inappropriate behavior of port state causes harms to the ship, corresponding succor shall be provided. It should be said that with joint effort of all member countries of MoU, rules of MoU have become important basis for supervision of the port state and an effective mechanism of regional maritime security and ocean pollution prevention.

4.2.3 Internal Laws

The internal laws are primary criteria for various countries to carry out administrative activities. Any foreign vessel entering a port must first comply with the laws and regulations of the port state. No matter how the provisions of the international maritime conventions are, remedial procedures of inappropriate detaining caused by PSC ultimately requires the sovereign countries domestic legislation to recognize or regulate, that is, to recognize legal effect of international maritime conventions, or to transform them into domestic law to apply. Specific succor measures of inappropriate detaining are not provided in Chinese laws, but article 12 in Maritime Traffic Safety Law of PRC provides that foreign ships entering the port of China must be supervised and inspected by China's maritime authorities. And article 45 in the law provides the parties' right to sue if they cannot accept the punishment. In Ship Security Rules, it is provided that the ship in PSC has right to defend. Administrative Litigation Law stipulates the administrative relative person's right to apply for reconsideration and litigation for the specific administrative act(Li, X, 2012). Some other port states provide succor right for the detained ships in inappropriate detaining in PSC. For instance, Russian laws stipulate that ships that cannot accept detaining may submit request to port director. If still unsatisfied, the flag state of ship or ship classification society authorized by the flag state of ship may submit the request to Russian Federal Bureau of Transportation. Also British

laws stipulate that ship owner or captain may appeal against detaining and apply for compensation

4.3 Compensation subject for succor of undue detention

Legal succor requires qualified requesting and requested parties. In accordance with the general theory of administrative law, the requesting party for compensation relief of administrative acts is the party who was harmed by administrative acts and is entitled to request administrative compensation. The obligation subject of compensation is the administrative organization that makes specific administrative acts. To be more concrete, administrative organizations that violate citizens, legal persons or other organizations while performing administrative power shall give compensation to victims and organizations.

Undue detention of foreign vessels in PSC is improper administrative act in performing administrative functions and powers. In accordance with the theory of administrative law, in inappropriate ship detaining caused by PSC, the owner of detained ship is requesting party of damage compensation succor. Supervision and management departments of port state is the other party of succor of inappropriate detaining and has to face administrative litigation as respondent organization. It shall undertake national compensation obligation once infringement acknowledged.

4.4 Compensation scope of succor of unduly detaining

It has been discussed that inappropriate ship detaining caused by PSC belongs to administrative act and damage compensation belongs to national compensation liability. Many countries also have the relevant provisions, for example, Australian PSC procedures provide that without reasonable evidence, the official is responsible for costs, loss and damage caused by ship detaining or inspection.

Compensation is made up of costs, loss and damage caused by ship detaining. The provisions of the compensation law of various countries are not completely consistent, but it is generally believed that the damage must be objective actual damage or loss caused by improper detaining of the port state.

At present, there is no uniform regulation and practice on compensation scope of inappropriate detaining in PSC. Practice of various countries is relatively more mature while dealing with inappropriate ship detaining in maritime litigation. Countries such as Britain and the United States divide inappropriate ship detaining into malicious and non-malicious. Under non-malicious circumstances, only costs shall be paid without compensation. However, under malicious circumstances, real expenditure, loss of default, loss of profit and other reasonable loss shall be paid as compensation. The civil law does not distinguish between malicious and non malicious, loss limited to operating income and necessary cost. Drawing lessons from the system of compensation for the damage of the ship arrest, as well as the principle of fairness, compensation scope of succor of inappropriate detaining can be regarded as compensation of property violation, specifically including:

1. Actual expenditures incurred due to undue ship detaining, such as the wages and accommodation of the crew during this period, the cost of the ship at the port and the reasonable expenses for release.
2. Loss of the ship incurred during undue detaining, such as default loss, benefit loss, damage and deterioration due to shipment delay and so on.
3. Other actual losses not expected.

In China's laws there is no specific provision compensation scope of undue detention. According to Compensation Law of PRC, administrative compensation mainly refer

to compensation for violation of personal and property rights in administrative action. Since usually violation of personal right is not involved, inappropriate ship detaining mainly refers to violation of property right. New Compensation Law of PRC involves compensation for mental violation into the scope of state compensation. However, there is no clear definition of mental violation. Whether undue detention will lead to mental compensation still needs further discussion. Also there is no uniform provision among international conventions and domestic laws about whether relevant provisions of limitation of liability can be applied to ship property damage caused by inappropriate detaining. For instance, UK's Merchant Shipping Act set subjective intent of port state as basis to decide whether it enjoys responsibility limit. Only if port state was not deliberate or did not lead to serious misconduct, caused loss of ship and goods by inappropriate detaining may enjoy limitation of liability. Israel Port Authority Law provides that port state authorities shall assume full responsibility for the loss without limitation of liability. China's Maritime Law provides limitation content of liability, that is, mainly in serious marine accidents, the liabilities of shipowner and manager who are responsible for the accidents are limited, in order to reduce risk of responsible party and secure development of shipping industry. Since compensation of inappropriate ship detaining belongs to scope of national compensation, the author of this thesis holds that limitation of liability should not be applied here

4.5 Two cases of undue detention

4.5.1 Success of negotiation on PSC between China and Australia, the detention of Chinese ship withdrawn.

On 29, December, 2008, "Yuedian 6" which belongs to Chinese Yuedian Shipping Company accepted PSC inspection at Newcastle in Australia. Due to the discovery of

an emergency battery fault (battery terminal disconnect), the Australian Maritime Safety Authority implemented the detention, and ordered mandatory repair before departure. After the repair was completed, the ship received re-inspection by the AMSA PSCO, and removed from the detention, then left the Newcastle port. Australia PSCO immediately put the information of the wheel detained into the port state supervision information system in the Asia-Pacific region, and promulgated it to the public. This meant that the wheel was into the PSC "black list", and would be subjected to continuous strict inspection. After the detention happened, Guangdong Yuedian Shipping Co., Ltd. reported the case of detention to Guangzhou Maritime Bureau of ship security station and Shenzhen MSA in accordance with the detention reporting procedures of Chinese ship detained by foreign PSC. At the same time, shipowner immediately sent the PSC reports and pictures of the scene to safety inspect station. According to the information received, as well as the statement of the company and the crew, the Guangzhou Ship Inspection Station immediately organized the relevant professional personnel to carry out the analysis of detention, studied the requirements of emergency power supply in the SOLAS Convention in detail. After a discussion with the company's administrative staff, they initially believed that the failure of the battery was non mandatory requirements, in accordance with the principles of PSC defect treatment, the deficiency should not be regarded as a detainable deficiency. Luckily, the ship had left the port at scheduled time, without substantial time lost. Guangzhou ship safety inspection station advised the owners to carry out detailed investigation immediately when arriving at the first port in China, to find out the cause of the defects, distinguish the nature of defects, and suggested that the owners should actively safeguard their own interests and the reputation of the Chinese ship's quality, if it was detained unduly.

After a careful study, the RO and MSA confirmed that the design and arrangement of

the emergency power supply was in accordance with the requirement of SOLAS convention, and the battery which led to the detention was beyond the requirements of the Convention. On January 16, 2009, "Yuedian 6" wheel reached Dongguan Shajiao Power Plant, an on-site investigation on emergency power supply arrangement was immediately launched and the battery leading to detention was detected in detail, finally the CCS issued interim inspection report, confirmed that the emergency power supply arrangement and its conditions of the ship can meet the requirements of the SOLAS Convention and the battery was beyond the requirements of the Convention, it was the uninterrupted power supply and did not belong to the emergency power supply, it should not be regarded as a detainable deficiency. In fact, due to poor communication between the crew of "Yuedian 6" and PSC inspection officers, the ship was unduly detained. Finally, with the help of the maritime bureau, the owner of the ship, repeatedly sorted out and reviewed evidence. On March 2, complaint file about "Yuedian 6" detention in Australia was sent to the Australian Maritime Safety Authority headquarters in the name of the shipowner. At the same time, copy file was sent to the maritime safety administration of the people's Republic of China and Newcastle PSC inspection officer, expressing the request for review of detention cases and change deficiency code. On March 4, AMSA gave the reply in time, saying that they would reconsider the case of detention. On March 12, the chief PSC officer Dave Anderson of Australian Maritime Safety Authority contacted the Yuedian shipping company via email, expressing that in view of the detailed and clear complaint data, AMSA reviewed that the emergency power supply design of the ship was in compliance with SOLAS Convention requirements, the battery resulting in the detention was beyond the Convention requirements of the equipment, AMSA decided to remove the defects related to the "30/10" of the treatment, modified it to "17/10", and immediately eliminated the negative effect of detention. In the afternoon, AMSA deleted the record of the detention of "Yuedian 6"

in the Asia Pacific port state supervision computer information system (APCIS). Since 2008, Guangzhou Maritime Bureau of ship safety inspection station has helped COSCO, China shipping company, Pearl River shipping company, the Guangdong shipping enterprise, successfully in handling the undue detention of "Taojiang", "Chifeng mouth", "Mingquan", "Yueyou 901", effectively safeguarding the lawful rights and interests of Chinese shipping company.

This is a good example of undue detention caused by the misunderstanding of the requirement of convention, at the same time, it is a good example of detention withdraw. This is the first example of detention withdraw with the help of flag state in China. When ship is detained, the captain shall contact her company, the company should contact RO, and flag state immediately, seek help from the RO and flag state.

4.5.2 A case happened in Australia

The bulk carrier Lantau Peak left Kawasaki, sailed to Vancouver and arrived on April 5, 1997. On the way from Japan to Vancouver, the ship's crew discovered eight detached frames of vessel's hull and when the ship arrived at the port, five more frames had become detached. Two inspectors Warna and Hall boarded the ship and carried out PSC inspection on the day the ship arrived at Vancouver.

Unfortunately, the ship was detained for the structural detainable deficiencies. The ship was off-hire after the vessel was detained⁵. The Detention Order stated that only when the structural deficiencies were repaired and got verified by port state authorities, it could be lifted. The PSC inspectors required that the frames with degree of wear exceed 17% of their original thickness on construction must be

⁵ More detailed in the federal court decision
<http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/37976/index.do?r=AAAAAQAMTGFudGF1IFBIYWsgAQ>

changed. The shipowner promised to repair all defects, but had different opinion on changing those frames with wastage exceed 17%. According to the standard of Class NK, it is reasonable that frames with wastage at a certain level. This detention was appealed to the Chairman of the Board of Transport Canada. The Class NK and Malaysia government insisted that the ship was seaworthy and his requirement on wastage was much more stringent than that of the Class NK. The shipowner wanted to repair the defects in China, because the cost would be much lower than in Canada. This vessel was detained for a total of 122 days. It was released on 13th of August, and then it sailed to Shanghai. The owner brought a civil action to the federal court of Canada and demanded compensation for the unnecessary repair expenses loss of hire. The Plaintiffs claim damages for negligence arising from the detention and delay in releasing the ship. The Defendants defend primarily on the basis that Inspectors Warna and Hall were acting under a statutory authority conveyed by the Canada Shipping Act, and, thus, no claim for negligence lies.⁶What was the applicable law, whether steamship inspectors owed duty of care to the shipowner, whether classification society rules on wastage limits were to be accepted by steamship inspectors, and whether they were negligent in conduction of the inspection were the key issues before the trial judge to consider (Anton Kulchytskyy, 2012). Under what authority did Inspectors Warna and Hall detain the vessel and under what authority was the detention maintained by them. Whether were Inspectors Warna and Hall, and their supervisors, negligent in the conduct of their duties with respect to the inspection of the Lantau Peak? The case lasted long time, lengthy investigation and evidence collection, and was sentenced on April 5, 2004. Through a series of calculations, the total damages to the Plaintiffs was Cdn\$4,344,859.47, the prejudgement interest to the Plaintiffs should be Cdn\$1,624,212.75. So the total compensation was nearly Cdn\$ 6 million.

⁶ <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/37976/index.do?r=AAAAAQAMTGfudGF1IFBIYWsgAQ>

Unfortunately, it was ruled that the plaintiff's action should be dismissed at last. From this case, we can get the conclusion that it is hard to get compensation for loss caused by undue detention, but there is still chance. At the same time, the PSCOs shall comply with the PSC procedure more strictly to avoid undue detention during the PSC.

All possible efforts shall be made to avoid a ship being unduly detained or delayed . When a ship is unduly detained or delayed [under the provision of the convention], it shall be entitled to compensation for any loss or damage suffered. In most cases involving the issue of undue detention, shipowner chooses to make concessions to avoid trouble. Under normal circumstances, the detention will not last too long, a few hours to a few days, the shipowner or operator concern more about the PSC record in the information system.

CHAPTER 5

Improvement and suggestions to deal with undue detention

Due to the problem of relief mechanism, the ship and its company face many difficulties, such as cumbersome procedures, high cost and so on. Reducing inappropriate detaining requires joint effort of the world to promote a uniform standard of port states supervision and inspection and avoid inappropriate detaining. However, due to different port development, economic development and interest of various countries, it costs time to establish a unified inspection standard. Under the current circumstances, IMO and its member states, ship and its company may try from following aspects to reduce economic loss caused by inappropriate detaining.

5.1 Objectively, to unify detention standards and improve the system of PSC

A very important reason to cause undue detention is that there is not a unified standard of PSC detention. At present, whether the international convention or the domestic law of various countries on the definition of "low standard ship" are non quantifiable. For example, The laws and regulations and conventions all provide that "when the crew is insufficient or lack of certified crew", the ship belongs to the substandard ship, The port state authority may implement detention. But on the provisions of the ship's crew, it is not unified between different countries. In addition, whether the crew is qualified is a controversial question, the provisions of the convention do not clearly define the meaning of qualified, is holding the

corresponding certificate is qualified, or having the actual operation ability to operate equipment and technology is qualified, it is not clear. In addition, as to the ship defects, it lacks of a quantitative standard, such as what is the "obvious defects", and to what extent ship may be detained largely depends on the subjective understanding of the PSC inspector.

Therefore, the international convention should first establish a unified standard of detention, and then port states incorporate the standards into the country's port state supervision laws and regulations according to the actual situation of their own. Secondly, some of the current qualitative standards should be quantified, so during the process of PSC, the PSCO can maximize the reduction of human operational factors. In addition, for some standard which can not be quantified, the government can establish a detention index system to solve the problem. That is, to organize some experts to evaluate and analyse the object, and then to establish index system on the basis. According to this index system, the comprehensive value of the evaluated object is determined. The results obtained through the index system are not only more objective, reasonable and convincing, but also more fully reflect the actual situation of the ship.

Only through the establishment of a unified detention and inspection standards, the PSCO can have an objective basis for the standard to comply with, to effectively reduce the undue detention percentage.

5.2 Subjectively, to strengthen the training of the PSC inspectors and improve their own quality.

In a certain sense, to improve the quality of PSC officials, is the most effective measure to solve the undue detention of a ship. Therefore, port state authorities

should strengthen the training of staff, and comprehensively improve the staff's moral quality and professional quality.

First of all, it should improve the moral quality of the PSC officers. At present, many international organizations are actively taking measures to standardize the quality of PSC officers, for example the Tokyo memorandum of understanding on Port State Control Committee in September 2006, clearly put forward the "honest, professional and transparent" as the code of conduct. In the process of checking, PSC officers are subject to individual bias or business factors, the inspection result will not be appropriate. Therefore, it is necessary to strengthen the moral quality of PSC officers in the port state. Let the port state supervision and inspection officials recognize the seriousness of the inspection and its significance. Through education, so that the PSC officers can resist the temptation of economic interests in the face of the temptation of the business; in the face of the ship being inspected, hold an objective and impartial political stance, no matter which flag state they belong to.

Secondly, port state should improve the professional quality of the PSCO. The PSC requires very high professional knowledge and working experience. In practical work, in the face of a wide range of provisions of the Convention, even in the country which PSC work is well, it is common to see their staff side with the provisions of the law to carry out the inspection of the ship. If the quality of PSCO is not high, it is bound to affect the quality of the results of the PSC inspection, resulting in the undue detention. Therefore, the PSC authorities should appoint somebody with a high level of business and good professional knowledge to serve as PSCO, because the relevant international conventions are often revised and updated, the PSCO should continue to learn, comprehensive study and master the relevant international conventions and the relevant laws and regulations in China.

It can be said, only when PSCO have excellent professional quality and the ideological quality, with good professional background, master the wealth of knowledge, can PSC work be well implemented, thereby reducing undue detention.

5.3 Strengthen law enforcement supervision

The implementation and development of a good system can not be separated from effective supervision measures. To strengthen the supervision of law enforcement, is of great significance to the implementation of the PSC. In addition, through law enforcement supervision, various problems can be found in a timely manner in the work of the PSC, measures are taken to correct wrong behavior, to maximize the occurrence of improper detention.

Therefore, in addition to the establishment of a unified inspection standards, the PSC authorities should also strengthen supervision on the inspection of PSCO, establish a specialized law enforcement agencies to regular inspections of their work.

In the specific implementation of law enforcement and supervision measures, the PSC authorities can develop a "law enforcement supervision rules", which provide detailed provisions on the subject of law enforcement supervision and law enforcement and supervision of the way and content. In addition, the port state authority should also establish and improve the system of fault accountability and incentives, reward a person with good performance and punishing the person who intentionally violate the law during the PSC process.

Only by establishing the perfect supervision mechanism, can we ensure that the PSC officers exercise their right of inspection according to law, only through a clear

reward and punishment system, can we more effectively protect the effective development of the PSC.

5.4 Be familiar with and abide by the laws of the port state

Different countries have different provisions on succor of inappropriate detaining. Besides, these provisions are dynamic in a constant change. For example, in Canada, The Maritime Technical Review Board, which is responsible for review inappropriate ship detaining in PSC, carries forward the work of the original Ship Inspection Committee. Meanwhile, through Tokyo Memorandum Web, it clearly provides the time limit and specific procedures to apply for review for the ship if it cannot accept detaining. UK provides succor ways in Commercial Shipping Law and PSC Rules of Commercial Crew. Application of review shall be raised within 30 days after detaining in Canada, but 21 days in UK. Also, in UK, two ways of application are given, namely to independent arbitrator or to administrative review institution affiliated to maritime coastguard agency. In view of this, the ship and its company should know well laws of the port state it arrived at, which has a number of ports, thus better protecting their own rights and interests in inappropriate detaining.

5.5 Take the initiative to ask the flag state of ship for help

One of important reasons of inappropriate ship detaining is that detaining basis is not unified. Different countries, different regions or different officials may identify one same flaw differently, so that supervision officials make decisions of detaining much freely. PSC means supervision officials perform state power according to conventions or laws on behalf of state image and authority, so that the decision of detaining is difficult to change once it was made. Nowadays, it is difficult for a country relying on itself to develop. Countries pay more and more attention to cooperation and exchange. The same is true with PSC field. Communication and

exchange of views on detaining flaws judging between flag state and port state promote communication and cooperation of PSC among nations, thus getting support and recognition of the port state. Flag state's help can be the most satisfactory method among various remedies. However, as mentioned above, due to a large number of convenient flags, in accordance with existing laws and internal practice, once problems occur, it is difficult to find out real state of the ship to help with the succor. Therefore, from the perspective of long-term interests, ship and its company should better register in its real state to better safeguard their own rights and interests.

5.6 Actively cooperate with on-site PSC officials

There is a certain amount of human factors in PSC. With development of laws and regulations, PSC management procedures make detailed provisions on quality, professionalism and behavior of PSC officials, requiring them to fully listen to statement and defense of inspected ship in PSC process. When PSC officials carry out on-site inspection, one or two of the ship crew who are familiar with the ship and related laws should better accompany the officials to answer their questions about technical situation of the ship. Once detaining flaws are found, they may communicate with the officials in time, thus avoiding inappropriate detaining because of poor communication. Of course, it is closely related to quality of crew members and inspection officials. Therefore, advanced targeted cultivation and promotion is needed.

CHAPTER 6

SUMMARY AND CONCLUSIONS

Since the establishment of the Paris Memorandum Association, PSC system has been playing an important role in the safeguard of life and property at sea. However, effects of PSC system on different regions vary due to differences in developing levels, laws and regions. These differences lead to problems such as undue detention in PSC. The essential causes of undue detaining are inconsistent detaining basis in PSC and personal quality of port state officials. Various political systems also account for undue detention, which violates the ship's legitimate rights and interests. To avoid such damages, international conventions, MoU and domestic laws in various countries make corresponding provisions. Remedial measures and procedures are clear, but not perfect. Especially with inconsistent interests, various succor laws and regulations of different countries, complete objectivity and fairness is difficult. This difficulty can not be eliminated by one or several countries' efforts. During different periods, interests of nations differ and solutions to one problem vary. To protect our own rights and interests, we should better try to be familiar with local laws and regulations of port state and respect its provisions on succor conditions and procedures. Besides, seek help from flag state and coordinate through diplomatic channels. What's more, actively communicate with PSC officials to avoid inappropriate detaining caused by poor communication.

In the coming days, the maritime authorities, the IMO and the ship owners, the ROs shall work together to continuously improve the safety of navigation, the maximum extent to avoid the problem of the ship's detention, improve the efficiency of navigation. Efficient and safe navigation is our eternal goal.

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