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Discharging bulk Grain and Ores cargoes in Guangdong Province

UK Club has issued a circular regarding the sharp increase for shortage claims at ports in Guangdong Province, mainly Nansha, Guangzhou, Dongguan, Shenzhen, Yangjiang, Zhanjiang in China. Local receivers file a claim actively against Carriers once cargo shortage exceeding 0.5% is discovered by China inspection and quarantine (CIQ) or cargo survey report.

To avoid potential shortage claims, Carriers are highly recommended to

1. Carry out a joint draft survey at both loading port and discharging port with all relevant parties. If the draft calculation indicates the short-loading at loading port, letter of protest by Master should be issued and put charterers on notice without delay. Due to language barrier between the foreign Master and CIQ, Carriers are highly recommended to appoint an independent surveyor to take part in the draft survey to avoid communication problem.
2. While vessel en route to the discharging port, Charterers' voyage instruction such as cargo ventilation, bilge water's sounding etc should be followed. All records should be kept and keep charterers informed of such records.
3. In case there are more than one discharging ports, closely monitoring of the discharging operation is required and ensure all figures are accurate.

Below are some effective defences for Carriers discharging in Guangdong Province,

1. **Carrier's responsibility period:** Carriers would only be responsible for the cargoes once loaded on board and discharged. All shortage claims arise post-discharge, Carriers are not responsible for.
2. **The defence of the shipper figure in the B/L:** Although there is always printed wording "weight, measure, condition, contents and value unknown" on the standard form of bill of lading, the Chinese Court would not deem to relieve the Carriers' obligation to check the loaded cargo quantity and enter a remark that actually describe the cargo. Without such additional remark, Carriers have no defence.
3. **Removal of water en route:** During transportation of some bulk ore cargo, water would separate out from cargo and be pumped out en route. Some local courts opine that the bilge records suspiciously since they are produced by ship rather than an independent third party. Therefore, some judges reject defences based on these bilge records. Though, there are some successful cases in the past.
4. **Trade allowance:** The internationally accepted trade allowance's application is only arguable at best

in Guangzhou. Although the majority of the courts in the PRC have already permitted its application, an important decision in 2012 by the second instance Guangdong Provincial Higher People's Court rejected a Carrier's defence based on trade allowance and/or measurement error. The Court decided that no evidence exists to support the application of a trade allowance and/or measurement error in the shipping industry.

Moreover, because the CIQ report had been corrected in that instance there could be no considerable measurement error. This decision lies at the root of the current difficulty experienced by Carriers in defending cargo shortage claims in the above ports. Carriers should be reminded that, in court a CIQ report will usually have more weight than any other report issued on a commercial or private basis.

5. **Moisture variation defence:** According to the Chinese Maritime Code a Carrier is not liable for loss or damage arising or resulting from the nature of the cargo or an inherent vice. If a Carrier is able to produce evidence that the shortage arises from inherent vice or a loss of moisture during the voyage, the Carrier might have a viable defence.

Carriers should obtain a cargo quality certificate (that includes moisture content data) at both load and discharge ports. Consignees should have this type of certificates as it is a key component in the trading process.

Consignees tend to retain these documents even when the Carrier makes an application to court for their disclosure (either by the Consignee or possibly by CIQ) because judges have rejected such applications in the past.

In practice, even if the quality certificate (whether obtained upon request or by application to court) records a reduction in moisture level, it is open to the judge to decide that there is no correlation between the shortage and that reduction if the shortage quantity is far in excess of the draft survey result.

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