



## **DEALING WITH CARGO SHORTAGE CLAIMS IN ALGERIA**

### **WEIGHT DETERMINATION PROCEDURES FOR BULK CARGOES IN ALGERIAN PORTS:**

As part of the precautionary measures undertaken in respect of the discharge of bulk cargoes in Algerian ports, the carriers generally arrange initial & final draft surveys prior to and on completion of the discharging operations.

In this respect, it should be noted that although the draft surveys carried out on the vessel's behalf have the advantage of determining the quantity of delivered cargo, such draft surveys cannot be used as a conclusive evidence of the quantity of discharged cargo, due to the fact that the Algerian cargo receivers do not generally take part in such draft surveys, since the only weight determination procedure applied in all Algerian ports and recognized by the Algerian courts is the weighing of cargo on the shore weighbridge or silo scale, being the procedure followed by the receivers, the stevedores, and imposed by the customs authorities. Draft surveys are thus performed by the carriers as an indication only of the quantity present on board, and also generally to assist Owners in pursuing counter-claims against the shippers/charterers when they are found answerable for a cargo shortage claim put forward against them by the local receivers/underwriters. Performing a draft survey at the discharge port will thus not permit to avoid a shortage claim in case a shortage is found on the basis of the shore weighbridge scale, and will not prevent the receivers from claiming the value of any such cargo shortage from the carrier.

### **ORGANISATION OF DRAFT SURVEYS BY COURT APPOINTED SURVEYORS:**

Some carriers have often enquired about the possibility of organizing a court draft survey: in this respect, please note the Algerian courts do not authorize the appointment of court surveyors unless there is an actual dispute between the parties justifying the recourse to a court surveyor. Thus, in the absence of a formal claim on the part of the cargo interests, the judge will automatically reject our application for the appointment of a court surveyor. In any event, findings/conclusions reached by court surveyors are not binding on the parties, and are taken into consideration as guidance only by the judges when looking into a dispute. Since draft survey results are not recognized by the local courts as a reliable weight determination procedure, even a court appointed surveyor's draft survey report will bear no relevance in the event of a cargo shortage claim being put forward by the cargo receivers.

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### **RECOMMENDED PRECAUTIONARY MEASURES AGAINST FRAUDULENT PRACTICE:**

On the other hand, bearing in mind the often fraudulent practice noted in many ports whereby a few loaded trucks are allowed to leave the port without passing on the weighbridge scale, the presence of a surveyor to monitor the discharging operations and perform a tally of the trucks departing from the discharging quay/check the discharge figures at the weighbridge scale may prove quite dissuasive in avoiding such situations. It is therefore advisable keeping a vigilant watch throughout the discharging operations to at least discard any possibility of undue shortage claims due to a local fraudulent practice. Past experience has shown that when a surveyor is in attendance to check the number of trucks and monitoring the weighing procedure at the weighbridge, the receivers are less prone to come up with inflated shortage claims; however in the case when a real shortage exists due to a short-shipment, or to extensive losses caused during the discharging operations, the surveyor's monitoring of the discharge will naturally not prevent the occurrence of a shortage claim.

### **APPLICATION OF A 0.5% TRADE ALLOWANCE BY OAIC, THE STATE OWNED GRAIN IMPORTING COMPANY:**

Regarding the discharge of bulk wheat cargoes, it should be noted that this commodity is almost exclusively imported by the state-owned grain importing company OAIC, who do not usually come up with cargo shortage claims unless the ascertained shortage is in excess of the applicable 0.5% trade allowance.

### **POSITION OF LOCAL COURTS REGARDING SHORTAGE CLAIMS:**

As regards the chances of successfully defending shortage claims before the Algerian jurisdictions, please note the same are rather slim. Indeed, the local courts do not take into consideration the draft surveys results as a conclusive evidence of the quantity of delivered cargo, and exclusively rely on the results of the shore scale which is also the official procedure relied upon by the stevedores and the customs authorities to check the weight of discharged cargo. In this respect, it should be noted that the Algerian jurisdictions are known to systematically hold the carriers liable for cargo shortage claims of this nature, due to the fact that the results of the shore weighbridge scales results, certified by the differential reports and weighing statements issued by the Algerian Port authorities, are considered by the local courts as the only acceptable evidence of the quantity of delivered cargo.

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### **CAUSES OF SHORTAGES OF BULK CARGOES IN ALGERIAN PORTS:**

Shortage of bulk cargoes in Algerian ports are usually due to the extensive cargo spillage generally noted by the Master/our surveyors throughout the discharging operations, due to the use by the stevedores of overloaded and leaking steel grabs, rough handling resulting in cargo spillage from the hoppers and also from the overloaded receivers' trucks, absence of protective tarpaulins between the ship's side and the quay, quantities of cargo spilled on the quay surface and not collected by the receivers/stevedores, etc... Furthermore, when important discrepancies are found between the obtained draft survey results and the shore scale results, this is generally due to faulty weighing procedures, unreliable shore scales, or simply to fraudulent under-statement of the number of loaded trucks, not excluding a loss of weight in transit, or an incomplete shipment at the load port.

### **DIFFICULTY TO DEFEND SHORTAGE CLAIMS BEFORE THE ALGERIAN COURTS:**

In practice however, at the exception of the cargo spillage which can be proved by the taken photographs and the Master's letters of protests/remarks in the receivers' documents, the other causes of shortage are difficult if not impossible to prove before the courts, due to the fact that the delivered cargo weight is certified by the port authorities in the presence of the customs authorities. These documents, along with the differential report issued by the port authorities, are considered by the Algerian judge as a conclusive evidence of the shortage which makes it difficult for the foreign carrier to repudiate liability for shortage claims asserted on the basis of certified shore weighbridge scale results.

As regards the used shore scale, it is very difficult to prove that its unreliable results are due to a dysfunction of the scale, as the port authorities re-calibrate their scales and obtain a calibration certificate once a year. Thus, arguing that the scales are unreliable will in any case not exonerate the carrier from his contractual liability towards the cargo interests, and can only be used to assert a counter-claim or recovery action against the stevedores, after indemnifying the cargo interests as required by the present jurisprudence.

This is due to the fact that under the Algerian maritime law, the stevedores are considered as the carrier's servants, performing their work under the carrier's supervision and liability (article 780 of the maritime code), and their fault or negligence in the conduct of the discharging operations or weighing procedures cannot therefore be invoked by the carrier to elude his liability towards the cargo interests.

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The carriers are thus systematically held liable by the local courts, based on a restrictive application of the Maritime Code (in particular article 802), for shortages ascertained on the basis of the shore weighbridge scales, without taking into account the draft survey results obtained by our surveyors or by the Master, and also without accepting the principle of the trade allowance/loss of weight in transit which is yet duly referred to in article 803 of the Maritime Code and for which the carrier is normally exonerated from any liability.

### **DIFFICULTIES LINKED WITH THE DISCHARGE OF NON BULK CARGOES IN ALGERIAN PORTS:**

The situation is virtually the same with the discharge of non bulk cargoes, such as bagged cargoes. The cargo receivers generally arrange for the tally of such cargoes jointly with the stevedores, and even when the carriers take the precaution of also arranging their own tally by an independent surveyor, shortages are systematically ascertained on completion of the cargo discharge, due to the extensive pilferage noted with such types of highly coveted commodities. It is very difficult for the vessel's staff to repress such pilferage due to the often aggressive behavior of the local labor/stevedores, and even the police authorities rarely accept to interfere.

### **HOW TO DEAL WITH CARGO SHORTAGE CLAIMS IN ALGERIA:**

We generally instruct our surveyors to keep a vigilant watch in order to recover the maximum possible empty bags to prove that the losses are due to pilferage of cargo rather than to a short-shipment, and to take photographic evidence of such pilferage/assisting the Master in filing regular letters of protest recording the facts. This will enable the carrier to successfully hold the stevedores liable for cargo shortage claims sustained as a result of extensive pilferage, and to file successful legal actions against them in recovery of any claims paid to the cargo interests.

On the whole, given the difficulty in defending this type of shortage claims before the Algerian jurisdictions under legal actions brought up against the carrier by the cargo interests, it is generally deemed preferable and more cost-effective (in particular when a bank guarantee is in place), to settle such claims amicably, especially when the claimants are cooperative and accept reasonable offers of settlement, which generally range between 70% and 80% up to 85% of the claim amount.

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For further information, please do not hesitate to contact:

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