INTERPORT MARITIME LTD
P&I Correspondents

HBFC Building (5th Floor)
1/D, Agrabad Commercial Area
Chittagong -4100 , Bangladesh
Phone:+880-31-2525064
Fax :+880-31-728262
E-mail chittagong@interport.org
Web : www.interport.org

Loss Prevention Bulletin

Issue Date: 7th October, 2017

Advice For Masters Proceeding To Chittagong Outer Anchorage To Carry Out Ship-To-Ship (STS) Transfer Operations

There had been considerable increase in the number of vessels calling the port of Chittagong, resulting in congestion at the Chittagong Outer Anchorage as most of the vessels carrying bulk cargo discharge their bulk cargoes into the lighter barges by Ship-to-Ship (STS) transfer operation at outer anchorage.

Last year, average number of vessels lying at anchorage at any time was between 60 and 90. The increase in the number of vessels in an anchorage open to South West Monsoon, with strong prevailing current (between 4 to 6 knots) and poor holding ground have contributed to a large number of accidents.

Three anchorage areas, lettered ‘A’, ‘B’ and ‘C’, at Chittagong Outer Anchorage lie off the entrance of the Karnaphuli River . The minimum charted depths in each anchorage are marked on the chart.

The general instruction provided by the Port Authority does not mention the required draft for shifting vessel from Kutubdia to Chittagong outer Anchorage. Generally, vessels with 10.5 m draft can safely anchor at Outer Anchorage, but some vessels with higher draft of 11.5 m are also seen arriving at Outer Anchorage. Most of these vessels are owned and operated by local owners, who have their own lighter vessels and the vessels are lightened immediately on arrival, to reduce her draft and reduce risk of dragging.

Most of the accidents have been caused due to the following reasons:

1. Trying to cross the bow of an anchored vessel while maneuvering to drop anchor or while shifting anchor position;

2. Arriving at Chittagong Outer Anchorage with excessive draft and inadequate under-keel clearance (UKC) resulting in dragging of anchor;

3. Allowing too many lighter vessels alongside at one time resulting in increased drag and dragging of anchor;

4. Allowing lighter vessels with inadequate fenders alongside;

5. Failure to keep the engine ready for immediate maneuvering in case the anchor starts dragging.

Guideline For Master's Anchoring At Chittagong Outer Anchorage

1. Anchor at a safe distance from other vessels at anchorage;

2. If the UKC is less than two meters, there is a possibility that the vessel will drag anchor. The risk increases during spring tides and during monsoons. The tide can be strong as 6 to 7 knots per hour. The vessels draft should ideally be reduced to less than 10.5 m at Kutubdia before she arrives at Chittagong Outer Anchorage if safe conditions are to be maintained throughout. Risk of dragging is greatest when UKC is minimum and the tide changes from low water to high water and the risk persists until the vessel had been adequately lightened.

3. For vessel's lightering with lighter vessels' alongside the chance of dragging anchor is even more. As a precaution vessels should use more chains (at least 9 shackles in the water), keep main engine on standby throughout and keep the number of lighter vessels' alongside to minimum.

4. When maneuvering for dropping anchor or for picking pilot vessels should never attempt to cross other vessel's bow at a close range. Master should remember that the current is very strong and the vessel may ride on other's cable.

5. Deep draft vessels lightering at Alpha Anchorage should shift to Bravo or Charlie once they attain required draft to make room for safe anchoring of newly arrived deep draft vessel.

6. Complete reliance on ECDIS is discouraged, cross check against up to date paper chart is advised.

7. Ship's Master are required to anchor clear off the prohibited anchorage.

8. Ship's Master must not anchor near the river entrance.

9. Ship's Master must maneouvre with great care when slowing down for embarking and/ disembarking pilot as the vessel at low speed may be overcome by the current and start to drift uncontrollably.

10. Masters should ensure that the lighter vessels provided for STS operation have adequate fenders and moorings should be attended regularly. Lighter vessels should be cast off immediately if the weather deteriorates.

Cargo Claims In Bangladesh

Bangladesh imports huge amount of various kinds of commodities in both bulk and break bulk from different corners of the world. Claims for shortage and damage to cargo is very common and the receivers would try to detain the vessel and demand cash settlement and make additional unlawful gains.

Dry Bulk Cargo

In case of dry bulk cargo, shortage or damage claims are common in the ports of Chittagong and Mongla. Carrier interests have to face both kinds of claims frequently when their vessels call at Chittagong Port or at Mongla Port. From the following discussion, readers will have a brief idea regarding cargo shortage or damage claims in Bangladesh:

A. Cargo Shortage Claims

In case of dry bulk cargo, for e.g wheat, raw sugar, cement clinker, fertilizer etc, the quantity of cargo is ascertained by draft survey which is carried out jointly by surveyors representing all concerned parties. The discharge quantity of cargo discharged estimated by a draft survey is accepted by the high court in Bangladesh as proof of the cargo discharged quantity.

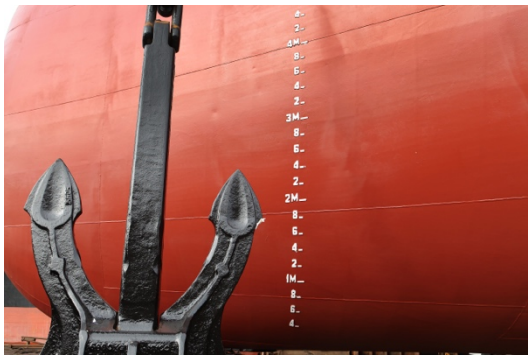
Observed Causes Of Shortage

- Measurement inaccuracies – both shore and ship measurements at load port;
- Loss due to spillage of cargo during loading and discharging operations;
- Manipulation of draft survey at discharge port;
- Pilferage of cargo by stevedore labourers, and lighter vessel staff in collaboration with tally men;

- Physical phenomena (inherent vice) - loss in weight resulting from natural shrinkage and moisture evaporation;
- Cargo damage claim at discharge port sometimes lead to cargo shortage claim.

Bulk cargoes are commonly shipped under Bills of Lading which include wording such as "*said to weigh*" or "*said to be*" or "*weight, measure, marks, numbers, quality, contents and value unknown*". However, it should be noted that Bangladeshi Courts may narrowly interpret such clauses and such a clause may not protect the carrier whether printed, typed or hand written on the Bill of Lading.

Draft Surveys At Chittagong



- The usual draft survey practice is to ascertain and record the vessel's net displacements at the initial load draft survey and at the final light draft survey. The difference between these two displacements with allowance for deductibles of the vessel is the quantity of the cargo discharged from the vessel.
- However, for import bulk cargo at Chittagong, the Customs Authority would impose penalty for both short landed quantity and excess landed quantity and the surveyor's would like to show the figure nearly as BL figure to avoid any such penalty.
- Therefore, during calculation of the initial load draft survey of an arriving vessel, the constant declared by the Master is to be applied and the quantity of ballast needs to be adjusted to make the load draft survey estimated figure same as the BL figure.
- Upon completion of discharging bulk cargo, the Final Light Draft Survey is carried out to determine the 'Observed Constant' of the vessel. Both 'Declared' and 'Observed' Constants are compared and the 'Difference' is added or subtracted from the initial estimated cargo quantity to determine the final discharged quantity.
- Here the Consignee's Surveyors frequently deceive the Chief Officer. At moderate to rough sea and swell condition, they read the drafts at low side and cargo less than the manifested quantity is estimated. Without adjusting ballast or any other deductibles, they convince Chief Officer to reduce the 'Declared Constant' quantity so that the quantity of cargo found is close to the manifested quantity. When the Constant has been reduced at Initial Load Draft Survey, it is almost certain that the discharged quantity would be found shorter during Final Light Draft Survey after completion of discharging.

Precautions For Preventing Alleged Draft Survey Shortages

1. The draught marks should ideally be read over periods of slack water (provided that at a low water slack there is sufficient under-keel clearance).
2. Currents of appreciable strengths are likely to cause the vessel to change trim or pitch slightly and/or sink bodily into the water from her static draught ('squat'). This phenomenon becomes more pronounced in shallow waters (shallow water effect).
3. Strong currents will result in raised water levels against the leading edge of a stationary vessel lying in flowing water. This is especially true when the flow is in the direction of a vessel's bulbous bow.
4. In order to take density of water, samples should be obtained using a closed sampling can at a depth of approximately half the existing draught of the vessel. The correct type and certified hydrometer should be used.
5. Most of the vessel does not carefully declare 'Constant'. Masters coming to Chittagong for discharging cargo should ascertain vessel's 'Constant' precisely in light condition at load port prior to loading of cargo, so that on arrival at Chittagong during Load Draft Survey, correct 'constant' can be used.
6. Vessels should take ballast as minimum as possible to maintain the stability until the Light Draft Survey is over. Once the cargo quantity has been ascertained, final ballasting should be done. Vessels should take ballast during high tide to prevent muddy water ingress.
7. If possible, Top Side Tanks should remain empty until the Light Draft Survey is carried out. With higher trim these Top Side Tanks can give erratic ballast quantity.
8. In many cases, the Chief Officers are not careful about ballast condition of the vessels. They should be aware of their ballast water density. At Chittagong, the density of the river changes at different conditions of tide.
9. At the time of reading the draught marks, the vessel should be upright with a minimum of trim. The trim at Survey should never exceed the maximum trim for which corrections are included in the vessel's stability book.

Recommendations To Avoid Shortage Claims

Some of the steps the Member could take to minimize cargo shortage claims at Chittagong are as follows:

- After loading cargo, the Bill of Lading quantity should be ascertained by Draft Survey. If at the Load Port, the shore scale figures are used as the B/L quantity and the figure is different from the figure obtained by draft survey, a letter of protest should be issued;
- Joint Draft Surveys at load ports and discharge ports, should preferably involve Owner's P&I Club appointed Surveyor, who can guide the Master;
- Joint sealing/unsealing of the hatch covers and other access to the cargo holds by Shippers and any prominent independent Survey Company. Clause may be inserted in the Charter Party that if the seals are found intact at the discharge port, then carrier will not be liable for cargo shortage claims;
- Measuring/recording the moisture content of the cargo at Load/Discharge Port;
- Inclusion of a trading/measurement allowance into the contract;
- Appropriately clausing the Bill of Lading, if the declared weight is not accurate;
- Maintaining accurate records for the quantity of bilge water being pumped out, ventilation timings duration and temperatures.

B. Cargo Damage Claims

Cargo damage claims are difficult to resolve in Bangladesh. Member's vessels may face detention caused by refusal of receivers to take delivery of cargo. Compelling receivers to take delivery of cargo such as for e.g affected food grain can be further complicated by requirements of local law.

Observed Causes of Damages

- Water from ballast tanks entering into adjacent cargo holds via a number of different routes such as for e.g ballast tank air pipes, leaking tank tops, leaking top side tanks etc;
- Water ingress from cargo holds bilge system;
- Carrying dry bulk cargo during the monsoons can increase chances of damage due rain water and/ sea water ingress, if hatch covers are not watertight and/ are not closed promptly during loading/discharging operations;
- Cargo loaded at Load Port during heavy weather or during heavy rain/storm etc;
- Moisture damage (ship sweat and cargo sweat) to cargo due to improper ventilation by ship;
- Mishandling by Stevedores at Load Port or at Discharge Port.

Recommendations To Avoid Cargo Damage Claims

- Should have stringent control and watch on ballast operations while carrying water-sensitive cargo;

- Ensure proper maintenance of hatch cover, rubber gaskets, compressor bar, drain channel etc. through which water may leak into the cargo holds;
- Take all precautionary measures during carrying and discharging bulk in the heavy weather or rain;
- Ensure proper ventilation in the ship's holds carrying the cargo;
- Arrange continuous discharge monitoring and cargo condition survey;
- Take all necessary measures to avoid cargo contamination during loading at Load Port;
- Issue necessary Protest Letter at Load Port, if there is any question regarding cargo quality.

Liquid Bulk Cargo

Shortage Claims based upon the shore tank outturn figures for the liquid bulk cargo have increased over recent years in Bangladesh and have become more and more common. Trade Allowance up to 1% in case of Petroleum Products is allowed as per Customs Manual and also as per decision of Apex Court unless there is any limitation imposed by contract. There is no precedence of trade allowance having been allowed for vegetable oil cargo.

Root Cause Of Liquid Cargo Shortage In Bangladesh

The following are contributing factors which cause shortage of liquid cargo at shore tank:

- Wrong method of calibration using dip and density instead of ullage;
- Dubious calibration of shore tanks which is a method adopted for pilferage;
- Pilferage of cargo, particularly when lightened onto lighter tankers at roads;
- Inadequate air – blowing prior to disconnection of ship's manifold;
- Excess sludge in shore tanks most of which are very poorly maintained;
- When lighter vessels are used to carry the cargo from outer anchorage to terminal there is inevitable shortage due to pilferage/

Relevant Law

The High Court Division of the Supreme Court of Bangladesh has recognized the evidentiary value of ship's ullage. There are several instances in the recent past, when the High Court Division of the Supreme Court of Bangladesh held the view that the quantity of cargo discharged and delivered in respect of bulk liquid cargo should be based on Arrival Ullage Survey findings and not on the basis of Shore Tank findings.

There is only precedent to accept 1% trade allowance by the local authority (Customs Authority) in case of Petroleum Products. However as stated earlier, in the case of Vegetable Oil, there is no precedent to accept 1% trade allowance in our High Court as well as local authority.

Following the recent ruling in the division bench declaring imposition of penalty on the basis of shortage found in shore tank quantity the customs authority has refrained from issuing any further adjudication order imposing penalty on the basis of shore tank survey findings.

Consignees' Claim

The following are the major Edible Oil/Vegetable Oil Importers in Bangladesh:

- **City Group of Industries**
  1. Deepa Food Products Ltd.
  2. Farzana Oil Refineries Ltd.
  3. VOTT Oil Refineries Ltd.

- **Meghna Group of Industries**
  1. Tanveer Oils Ltd.
  2. United Edible Oils Ltd.

- **TK Group of Industries**
  1. Bay Fishing Corporation Ltd.
  2. Super Oil Refinery Ltd.
  3. Shabnam Vegetable Oil Industries Ltd.

- **Other importers**
  - S A Oil Refinery Ltd.
  - Mohammad Elias Brothers Ltd.
  - Marine Vegetable Oil Ltd.
  - Uttam Oil Mills Ltd.
  - Rubya Vegetable Oil Industries Ltd.
  - Bangladesh Edible Oils Ltd.
  - Kamal Vegetable Oils Ltd.

Present Status Of Some Common Consignees' Claim

Some of the above consignees/importers usually file Admiralty Suit within the 1(One) year time limit against the vessel/declaring agents for realization of their cargo shortage claims based on shore tank outturn figure.

Recently, we have suggested the Pool Club/Members to settle some pending Admiralty Suits on the basis of proportional ullage shortage figure (if any) due to the following reasons:

1. The progress in the litigation has been less than satisfactory due to frequent adjournments taken by the claimants;
2. Although the Owners have good defences, due to the protracted nature of litigation Members may have to wait for many years, for a decree which is not desirable

In view of the above, in order for Club/Members to have their LOU returned and to avoid further time, cost/expenses, legal fees, we recommend settlement of the pending matter amicably out of court at proportionate ullage shortage figure.

Recommendations

- We strictly recommend carrying out Precautionary Surveys both at Load Port and Discharge Port through local P & I Correspondents nominated surveyor.

- Owners should insist that Charterers to get the vessel released without a LOU if possible. As and when there is a question of issuing LOU, we usually suggest Owners to insist Charterers to provide the LOU (if any) in the first instance. Even if our members have to provide LOU, they may have a very good basis for recovery from Charterers. In a number of cases handled by us, the Voyage Charterers pressurized the receivers and the vessels were allowed to sail without LOU.
- In light of the above, Charterer Members are advised to appoint an agent who would accept a Club LOU.

Claims In Relation To Bagged Cargo

In case of bagged cargo, shortage or damage claims are common in the ports of Chittagong and Mongla. Carrier interests have to face both kinds of claims frequently when their vessels call at Chittagong Port or at Mongla Port.

Cause Of Shortage

- Shortage claims may arise due to errors in tallying at loading port, leading to an incorrect figure in the Bill of Lading, or due to an error in tally during the discharge of the cargo;
- At the discharge port, a common cause of cargo shortage is negligent and rough handling of cargo by Stevedores during the discharge operation. Polypropylene bags are holed or torn apart as the Stevedore labourers commonly use hooks to sling the bags by rope slings. Thus contents are spilled inside holds and on deck. Later the spilled cargo is refilled into empty bags, but during refilling more than the actual quantity of cargo is filled in empty bags, thus number of bags become less, which leads to cargo shortage claim;
- The bags are discharged to overside lighter vessels or directly on the trucks by using rope slings. Due to negligent slinging of bags, sometime bags slips through the rope sling and falls in the sea or at gap between the ship and quay. These lost bags are not counted and thus the short claim comes on the carrier;
- Pilferage of cargo by Stevedore labourers and lighter vessel staff in collaboration with tally men.

Consequence Of Cargo Shortage

Most of the declaring agents in Bangladesh do not accept Club LOU in case of bagged cargo shortage. They usually do not allow sailing out the vessel until the consignees' claim are settled in cash or an unconditional Bank Guarantee is issued as per the agents'/receivers' demanded wording. In relation to anticipated customs penalty, the declaring agents also demand security in the form of Bank Guarantee.

Recommendations To Prevent Shortage Claims

- Perform tallies and cross-check them with other interested parties during both loading and discharge operations;
- Appoint independent Surveyors to supervise sealing of cargo holds and perform Draft Surveys on arrival and after completion of discharge at discharge port. We suggest member to carry out Draft Survey in addition to tally to minimize member's liability for potential shortage of cargo. In case of bagged cargo, cargo shortage which mainly occurs due to Stevedores rough handling and use of hooks. Draft Survey findings will be a defence for Owners to claim that vessel discharge full quantity of cargo and the shortage (if any) would be resulted due to Stevedores mishandling which is usually not Owners account;
- Shortage Claims seldom arise when loading supervision and tally surveys are conducted by qualified Surveyors;
- Ensure the cargo quantity, as agreed between shore-based and ship's tally, is accurately represented on Mate's Receipts and Bills of Lading

<u>Additional Recommendations In Relation To Particular Types Of Cargo</u>

Carriage Of Coal Cargo To Bangladesh

In recent years there has been significant increase in the quantity of coal imported to Bangladesh. It is true that some shippers have indeed failed to ship cargo as per declared specifications. This is more common with Indonesian shippers. Some of the declarations have been found to misrepresent the cargo by either stating that the cargo is Category A (a reference to the 1990 version of the Code of Safe Practice for Solid Bulk Cargoes meaning it does not self-heat or emit methane) whilst others provide no details on the self-heating or methane emitting properties of the coal.

There had also been issues with (a) the calorific value of the cargo and the actual calorific value at discharge port has been found much less than that declared at load port (b) cargo containing foreign materials, mud, stone etc more than that specified. Although quality issues have nothing to do with the vessel, receivers in Bangladesh usually detain the vessel for cargo off specification/cargo quality issue and raise their claim against the vessel owner/Master for settlement, if the shipper refused to settle their claim. Most of the shippers wash their hands off.

Although, strictly speaking the in rem jurisdiction of the Admiralty Courts cannot be invoked to arrest a vessel for security against such a claim for quality issue of cargo under the Admiralty Act of Bangladesh the receivers make out a fictitious case and get the vessel arrested if the shippers refuse to compensate them. In most cases the vessel is arrested for cargo damage and /or wrongful issuance of clean BL and the vessels risk facing prolonged detention in such circumstances and may not be released.

Also it is customary for Masters not to pay too much importance regarding quality of cargo when loading low priced cargo such as clinker/coal.

In view of above, we would recommend Master/Owner to do the following :

1. A reliable surveyor should be appointed at load port to check the condition of cargo and collect three sets of samples as per ASTM Method jointly with shipper's appointed surveyor. The sample should be retained until discharging has been completed. Condition during loading should be carefully monitored and noted.

3. Surveyors should also be appointed at discharge port to carry out draft survey, continuous monitoring and sample collection by ASTM method jointly with shipper/receivers surveyor

4. All Coal cargoes from Kalimantan/Indonesia should be treated as being liable to self heat.

3. The Master should strictly follow the recommendations for the safe carriage of coal as are contained in the IMSBC Code.

Carriage Of Stone Chips To Bangladesh

There has been quite a number of cases where vessels calling Bangladeshi Ports of Chittagong and Mongla have faced difficulty and suffered long detention. The main problem faced by owners was non payment of freight and demurrage by voyage charterers and receivers. The voyage charterers did not pay full freight and receivers used the vessels as floating warehouses and did not pay any demurrage taking advantage of the weakness of the local legal syatem which makes it is difficult to enforce contracts. Owners should only deal with reputed charterers when fixing vessels to carry low value cargo to Bangladesh.