



# LP Bulletin

Friday 22nd January 2010

## Bulletin 675 - 01/10 - Failure to Collect Cargo Problems - Ukraine

The Association has recently faced problems in the Ukraine with consignees failing to collect cargo. The following advice, on the matter, has been received from the Club's correspondent in Odessa.

"Container lines often face a problem of the delay or failure of consignees to collect cargoes. Due to the recent financial crisis more Ukrainian consignees have become unable to pay and their goods remain stuffed in the containers. At present 400 to 500 containers, with uncollected goods, occupy storage space in the container terminals of Odessa Port.

According to the provisions of most bills of lading if the Consignee fails to take delivery of the goods within a certain period of time (usually – 30 days) from the date of expiry of agreed storage time the Carrier may sell, destroy or dispose of the goods and apply any proceeds of sale in reduction of the sums due to him from the cargo owner.

Under Ukrainian law the Carriers cannot simply pass the cargo to an auction company for public sale. They shall declare a lien, discharge the cargo to a customs warehouse for responsible storage and then dispose of the goods as per the procedure provided for pledged property. In particular the carriers shall apply to the court with a claim against the Consignees and obtain a relevant decision following which the cargo will be **sold at public auction by State Enforcement Service of Ukraine**. The length of the whole procedure is 3-4 months. The costs include destuffing of the containers, storage of goods at customs warehouse, legal fees and expenses, cost of auction (10-14% of sales price) and fees of State Enforcement Service (10% of sales price).



If the Carriers do not linger accepting numerous promises of the Consignees and sell the cargo within 2-3 months from the time of delivery, whilst storage costs are relatively small, they have all chances to release the container(s) and recover storage and demurrage for account of the cargo.

In practice however the Carriers realize that something has to be done after the containers have stayed in the port for 6 months to several years and they owe USD 50,000 to 250,000 to the port for storage. As a rule by that time many cargoes become worthless and chances to release the containers get smaller every day. The remaining options to release the containers are:

1. Make a declaration on abandoned cargo to the port and let port authorities dispose of it;
2. Destroy the cargo;
3. Take the container with cargo back on the vessel and deliver (re-export) the same to another country for disposal or destruction.

**The first option** will release the Carrier of port storage costs but not allow him to recover any other losses as all sale revenue will go to the port. The procedure is very formalized. After the Carriers make a declaration on abandoned cargo to the port, the port shall obtain authorization for sale from the Committee on Uncollected Cargoes of Odessa Regional State Administration. The sittings of this Committee are held at intervals which sometimes reach 3 to 6 months. With the above mentioned congestion of containers they can only consider a negligible part of cases at each sitting. Priority may be given to goods which retain some commercial interest to the port, i.e. those which are necessary to the port itself (e.g. construction materials or tools) or can be sold quickly and at good price (e.g. new cars).

If the cargo is “not interesting” (e.g. cars more than 7 years old, expired food products etc) one can wait for the decision of the Committee for years and it may never be taken. Under Ukrainian legislation it is both the ports’ right and duty to dispose of uncollected goods. However the port often says neither “yes” or “no” to the Carriers and unless they take a quick alternative decision, the prospects of payment of storage costs may be hanging over them for years.



It should be noted that the option of abandoning the cargo to the port, if the port/Committee accepts same, is the least costly and problematic for the Carriers for the following reason. Any disposal steps with the cargoes are only possible after customs clearance which requires submission of an original bill of lading, invoice, certificate of origin, certificate of compliance etc. All these should normally be available with Receivers, not the Carrier who thus finds himself in a closed circle. The State Committee on

Uncollected Goods does not need the above documents in order to sell the goods. This is a considerable advantage.

**Destruction** of the cargo requires not only customs permission but also permission of the state sanitary service, ecological service & sometimes phyto or veterinary service. The difficult task of collecting permission may be given to the destruction company, however the total cost of destruction arrangements in Ukraine usually puts the Carriers off, as in combination with storage costs aggregated by the time destruction is considered the price may exceed the total price of the containers. Moreover not all cargoes can be destroyed in Ukraine (e.g. old/damaged cars are not accepted for destruction).

Destruction and sale of uncollected goods in other European countries is generally less costly and formalized than in Ukraine. So after exploring all the above options the Carriers often resort to **re-export**. This is quite expensive and also requires customs clearance, but at least it allows the containers to be removed from the Ukraine which is renowned for bureaucracy in resolving seemingly straightforward problems.

Besides if the Carriers undertake destruction or re-export of long-stuck cargoes they have some chances to obtain a discount for storage costs from the port which is also interested in getting its storage spaces free.

Summing up the above, time is a key factor with uncollected cargoes in Ukraine. The Carriers’ losses/costs may only be reduced if they start disposal of uncollected goods by any option 2-3 months upon the vessel’s arrival. It is also reasonable to appoint a local correspondent and sometimes a lawyer for providing recommendations and practical help.”

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