



LP Bulletin

Friday 20th August 2010

Bulletin 713 - 08/10 - Fertilizer shortages - Argentina

The following advice was recently received from the Associations correspondent in Buenos Aires relating to the discharge of fertilisers in Argentina.

"In view of the number of recent cases concerning shortages of fertilizers in bulk when arriving in Argentinean ports that have lead to customs fines, we would like to give the Association and its members a general briefing of the local scenario bearing in mind Customs Law and actual behaviour.

Although this is not a new problem, there has recently been an increase in the number of cases related to discrepancies between shore and manifested figures, especially with fertilizer cargoes. In general, there is a 2% allowance which applies to bulk liquid cargoes and 4% to solid bulk cargoes. In respect of customs fines this means that if the discrepancies are over those amounts, a fine could be imposed between 1 and 5 times the CIF value of the cargo.

In recent times the main problem relates to duties for the short landed cargo. In the past, if the discrepancy was up to 0.6% of the whole cargo then no charges were imposed but the Customs authorities consider that the 0.6% only applies to weights controlled through the draft survey system, if the weights were controlled through shore scales then the tolerance would be nil. For the sake of clarity, please note that the tolerance of 0.6% still applies to liquid bulk cargoes.

On many occasions the duties have already been paid by the receivers but, they have certain benefits/exemptions in respect of VAT and Income Tax so nowadays the customs department commence proceedings against the carrier/agents for both the VAT and the Income Tax of the short landed cargo stating that the exemption applies only to importers but not to carriers/agents. This would depend very much on the Customs office involved such as Rosario, San Lorenzo, San Nicolas, Campana and others because it seems that sometimes each Customs office has its own by-laws.



When charges are imposed most of them are defended to try to reduce the imposed charges/fines if they cannot be totally dismissed, this would depend on the amount at stake.

It seems that sometimes we are in a "catch 22" situation as far as Customs are concerned, bearing in mind that in this country agents are jointly and severely responsible with the carrier for Customs infringements and if proceedings are commenced against port agents directly then it is usual for Agents to require a Club's LOU in case of any discrepancies upon completion of unloading operations.

Presently we are recommending owners to control the off loading not only through draft survey but also by carrying out an off loading survey by checking each truck alongside the ship and at the shore scales as the official weights for customs purposes are controlled through this method. In the past year this exercise was carried out on a number of vessels with good results but unfortunately the last two vessels handled resulted in shortages. We are not completely sure whether the problem took place at the discharge port or whether the cargo was already short from the load port.

As you will realise the draft survey plus the loading control is an expensive exercise for owners so it is their decision whether they would like to proceed with this exercise. One alternative that we have considered for future cases is to proceed in the following way:

- 1) Draft survey to be carried out at loading if possible involving local customs.
- 2) If possible, all access to cargo spaces including hatch covers to be sealed upon completion (recommended) jointly with the customs authorities at the loading port.
- 3) Before ship's arrival to Argentina collated letters to be passed by agents to Customs/Receivers inviting them to carry out a joint draft survey on arrival and then to jointly proceed with the breaking of seals placed at the load port.
- 4) Upon completion "empty holds certificate" to be jointly issued between all parties concerned.

Both the Customs and Shippers will refuse to attend a joint survey in Argentina as the weighing method as per customs regulations is chosen by receivers who always go with the weights from the shore scales and they will most probably not attend the unsealing of hatches. If proceedings are commenced for any discrepancies, the attending lawyer would have more elements to try and defend the charges/fines by stating that both Customs/receivers were given the opportunity to attend onboard so as to comply with the aforementioned steps.

Members are advised to at least go ahead with a draft survey but they should be ready for a LOU to be issued in the agents favour in case of any discrepancies upon completion of discharge."

Source of information: Pandi Liquidadores S.r.l
pandi@pandi.com.ar