



Ship Type: All Trade Area: Bangladesh

Bulletin 201 - 07/01 - Customs Fines - Bangladesh

In Bangladesh, ship agents are considered to be jointly and severally liable with ship owners for cargo claims and for customs penalties for shortlanded cargo. Thus, when a shortlanding is alleged at a port in Bangladesh it is not uncommon for the Club to provide Letters of Undertaking to the ship agents in order to avoid detention of the ship.

With regard to customs penalties, it has become increasingly common for ships agents to approach the correspondents or ship owners suggesting that they can arrange a significant reduction of the customs penalty which can appear quite attractive as it enables the Club Letter to be returned in exchange for a receipt from the agents despite the fact that this type of arrangement is unofficial and does not bind the customs authorities. Any customs penalty is imposed by government authority and only a direct settlement with the customs has any legal force - although in practice settlements directly with the customs are very rare. What seems to happen when settlement is made with the agents is that an arrangement is made with the customs office who then "lose" the documentation. Whilst this can be successful, the penalty is never formally removed from the record and there is no guarantee that it will not be pursued in the future. If this happens the release provided by the agents will have no validity. In addition to this the reputation of the Club is at stake in Bangladesh if it becomes generally known that the Club is involved in such arrangements.

There is a defined process of appealing customs fines in Bangladesh consisting of levels of customs tribunals and ending up in the Supreme Court. Unfortunately, at the first stage of appeal to the customs, it is necessary to provide security directly to the authorities for the full amount of the penalty. This is demanded in the form of 50% cash deposit and 50% bank guarantee. However, the Club's legal correspondents in Dhaka can usually obtain a court order compelling the authorities to accept a bank guarantee for 100% of the penalty amount. Whilst it is almost certain that any appeal will fail in the various levels of customs hearings, once the matter ultimately passes to the civil courts there is a good chance of success. Although this may take many years and incur some moderate legal costs, by adopting the official approach consistently we can give a signal to the ships agents and the local customs offices that claiming exaggerated penalties will not result in them receiving short-term cash payments.

It is therefore recommended that, except for cases where only a nominal sum is involved the owners should avoid unofficial negotiations with agents and should instead challenge such penalties through the legal appeal process.

Source of information: Alan Hedgeland / L6