

# GUIDANCE ON CARGO OPERATIONS AT ANCHORAGE IN THE UKRAINE



The Ukraine is a key shipping export nation, producing significant quantities of raw materials such as coal, iron ore, sunflower oil and wheat, but also industrial products including steel products as well as manufactured materials including vehicles, aircraft and vessels. Many Skuld members have the Ukraine as a regular port of call, and the association would like to provide the following guidance to assist members complete their voyages successfully.

## BACKGROUND

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During recent years, a large number of cargo operations have been carried out while vessels are at anchorages in the Ukraine, and this has continued to be an increasing trend.

In particular, at the Port of Kerch a significant proportion of all cargo operations are carried out at anchorage, and on occasion, even beyond Port limits. There also appears to be an increasing amount of cargo operations carried out at anchorages at Odessa, Yuzhny and other Ukrainian ports.

Often such cargo operations are performed by means of floating cranes and cargo is delivered to the anchorage by barge and then loaded on the vessel by grabs. This can be advantageous as it can make the ship's call less expensive because she will not incur mandatory port charges, which are incurred when cargo operations are conducted inside the port.

While there may be perceived economic advantages, the association has often dealt with cases where issues arise with cargoes being laden at anchorage. When these issues cannot be easily resolved, a subsequent discharge of part of the cargo or even a call into the port can ultimately become necessary.



*Loading of grain at anchorage in the Ukraine*

## CONCERNS FOR CARRYING ON CARGO OPERATIONS AT ANCHORAGE

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Attending surveyors for member's vessels have found that during loading at anchorage of grain cargoes, iron ore concentrate cargoes, and other similar bulk cargoes, cargo quality problems have arisen on occasion. In particular, cargo has been found to be contaminated by foreign matter, admixtures, pieces of rags, foam, timber, or even large pieces of plastic, metal and rust, etc.



*Pieces of rust and foreign material found in a cargo of grain.*



*Foreign material found in a cargo of grain.*

The contaminants found range from small parts, stones, rust, timber, debris, to entire plastic bottles, polyethylene bags or wire rope, all of which seriously affected the cargo condition.

Furthermore, such pieces of foreign matter may cause damage to discharge equipment, especially if conveyor belts are part of the discharge process. This results in delays to the cargo operations as well as possible claims and disputes.



*Cargo of iron ore pellets stored in an open area of the Port, contaminated with paper and plastic rubbish.*



*Foreign material, including rags, paper and wood, found in a cargo of iron ore pellets.*

Although these issues are well known to those on the shore side, not all owners calling Ukraine are aware of these problems, which in the past has led to disputes and delays. When these issues cannot be resolved at anchorage, it becomes necessary to proceed into port to deal with them. Where a significant quantity of cargo presented for loading is found to be contaminated, this becomes a must.

## LOADING AT BERTH

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Usually cargo is loaded on the pier at the port and this allows the attending P&I surveyors to intervene by screening the cargo, installing grates to separate the cargo from foreign materials and having the cargo sorted by the stevedores.



*Cargo being screened to take out foreign materials*



*Cargo of iron ore at Port storage site containing scrap metal*

Undertaking such manual work is not uncommon in Ukrainian ports, especially for cargo stored in open storage sites. The operations may be carried out by stevedores in the presence of a P&I surveyor, who is able to monitor and control the cleaning operations and check the cargo condition during the loading process to prevent contaminated cargo from being laden.

One issue that affects cargo operations, whether undertaken in port or at anchorage, is that P&I surveyors may not always have free access to the cargo stockpiles prior to loading and the association is aware of circumstances where it was made very difficult for the attending surveyor to carry out his inspection, up to a complete refusal by the cargo side to allow such an inspection. Should such a situation arise, it is important to be extra careful about checking the cargo that is ultimately tendered for loading.

## LIMITATIONS ON LOADING AT ANCHORAGE

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If cargo operation are being performed at anchorage and the cargo contains foreign materials, then the possibility to filter these out or separate the affected cargo parcels may be very limited due to the physical restrictions of loading at anchorage and the smaller pool of stevedores available to undertake this work.



*Pieces of foam and lumps found in a cargo of grain*



### Particular challenges include:

- The impact of weather

Cargo operations at anchorage are possible only if the weather is fair as any operations involving floating cranes may be restricted due to weather or sea conditions as per the port's safety rules. Therefore, if bad weather prevails for a longer period, this will significantly delay cargo operations. At times the cargo barge may stay with loaded cargo on-board and wait by the vessel; but the cargo on-board may be inspected only if such inspection is permitted by the barge operators. Should bad weather strike, then not only should the vessel be checked, but any barge staying by the vessel in bad weather should also be checked to ensure barge, vessel and cargo safety.

- Arranging survey attendance at anchorage

If it is necessary to arrange a surveyor, then there are both practical and bureaucratic hurdles that may impact such attendance. Not only is there cost involved in travelling to and from the anchorage (hiring a launch can cost USD 1,000 and up), but there may be local port and immigration rules that present administrative challenges to obtaining the necessary permission to attend the vessel at anchorage.

## PRACTICAL ADVICE

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First and foremost, loss prevention starts at the fixing stage of the business. Chartering teams need to be aware of:

- what cargo the vessel will load
- where she will load the cargo
- and how such cargo is to be laden

That means when trading to and from Ukraine, where it is being considered to agree to load at anchorage, the risks and challenges associated with this need to be understood at the very outset of the charter arrangements. This is where close co-operation between chartering and operation teams leads to bottom line results for shipowners and operators.

It would also be prudent to consider what kind of survey attendance may be required for prudent loss prevention, and how the cost of this may be apportioned in the fixture. It is also important, if the decision is made to have a survey conducted, to secure the attendance of surveyors well in advance as attendance may be delayed due to the need to secure transportation and the necessary permits.

In any event, even if no survey attendance is arranged, it would be prudent for the crew supervising the cargo operations to watch out for any cargo that clearly contains foreign material and to stop loading when contaminated cargo is being brought to the vessel. A robust attitude from the master is useful, as problems typically become worse once bad cargo is on-board, and possibly comingled with sound cargo.

Crew should, where appropriate, seek to take (and retain) high resolution pictures, especially if cargo is found to contain foreign materials.

Should cargo be laden that contains foreign material then care needs to be taken to ensure cargo documents such as mate's receipts and bills of lading are suitably claused to reflect the actual condition of the cargo on board. Clean bills of lading for unclean cargo may not only lead to cargo claims, but can also be prejudicial to insurance coverage.

Practical assistance can be rendered by the association's correspondents if alerted in time.

## LEGAL RESPONSIBILITY FOR CARGO OPERATIONS

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### Time charters

At common law, the owners are obliged to load, stow, trim and discharge the cargo. Owners can, however, endeavor to include clauses in the charterparty that serve to transfer these obligations to charterers. Incorporation of clause 8 of the NYPE '46 achieves this.

*NYPE '46 – clause 8: "Charterers are to load, stow and trim the cargo at their expense under the supervision of the Captain"*

*NYPE '93 – clause 8: "Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashng, discharging, and tallying, at their risk and expense, under the supervision of the Master."*

Despite the wording of clause 8, the vessel's master owes no positive duty to the charterers to supervise these operations. The responsibility for any loading issues or stevedore damage will only be transferred back from the charterers to the owners if the master actively interferes in the stevedoring / cargo operations.

Clause 8 may at times be amended to include “and responsibility” after “supervision”. Where this is the case, responsibility for cargo operations stays with the owners unless they are able to prove that the charterers actively interfered in the cargo operations/stevedoring operations.

### **Stevedore damage**

Where charterers are under an obligation to load and discharge cargo, the losses caused by the negligence of stevedores, prima facie, remain with them.

It is common, however, to include additional stevedore rider clauses holding charterers liable for stevedore damage in charterparties. If such rider appears in a charter in which clause 8 is amended to include “and responsibility”, the responsibility for stevedore damage is considered to rest with the owners, with the rider clause only transferring liability to charterers where their intervention is the direct cause of the damage.

*(London Arbitration No. 2/89 (LMLN 242))*

Conflicting rider clauses can sometimes lead to uncertainty in respect of liability for stevedore damage, as demonstrated in the London Arbitration Award [1992] 318 LMLN 1. However, as a general rule, liability for stevedore damage usually rests with the party responsible for the loading and discharging operations and clear words are necessary to transfer this responsibility to the other party.

### **Voyage charters**

Similar considerations will have to be made in connection with voyage charterparties. Again, if the voyage charterparty has no express clause allocating responsibility for cargo operations / stevedores, then these may fall to owners.

### **Additional clauses**

Parties are free to determine and allocate responsibility in their own contract. Under a charterparty fixed on a FIOS (Free In, Out Stowed) basis, responsibility of loading, stowing and discharging should lie with the charterer. The owner is usually free of any risks and expenses in respect of cargo damage, unless the alleged damage is caused by owners or owners' agents, at times qualified to exclude acts of negligence.

## **CREDITS**

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