

No. 17 2015/2016 - Argentina - Customs Fines

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Translations: Chinese  Vietnamese 

Dear Sirs,

Argentina - Customs Fines

For several years the customs authorities in a number of Argentinian ports have been rigorously enforcing the Argentinian Customs Code regarding the accuracy of customs declarations. If a customs search gang boards a vessel and finds that a customs declaration (i.e. stores list) has been filed which does not accurately match the items on board, fines are imposed and undeclared items may be seized. Instances of such fines being imposed on entered vessels are continuing to occur.

The size of the fines may be considerable and in some cases have amounted to several hundred thousand US Dollars. If discrepancies are found, the undeclared items will, if practicable, be seized and a fine imposed equal to the market value of the goods as determined by the customs authorities.

This is common practice in many ports in Argentina. However, in San Nicholas, San Lorenzo, Necochea/Quequén and Bahia Blanca, vessels may face an additional fine if the nature of the undeclared items makes seizure difficult or impossible (e.g. bunkers, cargo grabs, spare propeller). If the items cannot be seized, vessels are not permitted to sail until the initial fine has been paid.

Penalties may also be imposed if the quantities stated on the customs declaration exceed the actual number of items or goods on board. This may result in a fine of up to five times the market value of the items concerned. Therefore, in addition to making sure that nothing is omitted when completing the customs declaration, care should be taken to ensure that all figures are accurate and that nothing is overstated.

In the event of discrepancies being found there have been reports of customs officers threatening Masters with civil action, heavy fines and even criminal proceedings unless a cash settlement of between USD 5,000 and USD 15,000 is made. Such demands should be resisted.

Under Argentinian law, local agents and owners are held jointly liable for any breach of the Argentinian Customs Code and for any fines for five years from 1 January in the year following the completion of cargo operations. This period may be extended to up to ten years if a new customs investigation is commenced prior to the expiry of the initial five year term.

In the past a Club Letter of Undertaking (LoU) issued to the vessel's agent regarding the fine was considered to be sufficient in most ports. However, in some ports this is no longer the case. If the goods cannot be seized, the customs authorities may now require cash or a bank guarantee to settle the initial fine before the vessel is allowed to sail. In the case of a bank guarantee, it may take up to three working days after the guarantee has been arranged for the funds to be processed and for the vessel to be released.

Vessels proceeding to all Argentinian ports, and to San Nicholas, San Lorenzo, Necochea/Quequén and Bahia Blanca in particular, are urged to ensure that their customs declarations are entirely accurate given that any discrepancies regarding

the items declared (e.g. bunkers, lubricating oils, grease, chemicals, paint and thinners, cargo handling equipment, lashing gear, ropes, entertainment equipment, spares, medical stores, spare propeller, bonded stores and provisions) may lead to their seizure, substantial fines and possible delay.

It should also be borne in mind that the ambit of the Argentinian Customs Code is very broad. Consequently anything on board that is not a part of the fabric of the vessel should be declared. For example, while it is not necessary to declare fixed pumps, portable pumps would need to be listed. If the Master is in any doubt as to whether or not a certain item should be added to the customs declaration, it should be included.

Cargo grabs are a particular target for mis-declaration. Due to their high value, their omission from the customs declaration can give rise to substantial initial and additional fines. In one case where a vessel's five grabs had not been declared, the customs authorities valued the grabs at USD 50,000 each, exposing the vessel to a maximum initial fine of USD 250,000 for the alleged mis-declaration and to an additional fine of USD 250,000 since cargo grabs are difficult to seize. On this occasion a guarantee for USD 250,000 was required in order for the vessel to be released.

Vessels have also been fined for not declaring used lubricating oil. Consequently all lubricating oil in use on board should be declared, including oil in the main and auxiliary engine storage tanks, cylinder oil storage and service tanks, sump tanks and stern tube tanks.

It is recommended that the Master sends the completed customs declaration to the vessel's port agent prior to arrival so that any obvious errors or omissions can be identified and rectified before berthing. The local agent may also be able to provide additional advice, for example, if the customs authorities are focussing on any specific areas or items during shipboard searches.

If customs officers board a vessel at some later stage after berthing, they will still expect all quantities of items on board to match those declared on arrival. Therefore if the Chief Engineer is asked to provide a list of bunkers or used lubricating oil, the figures should match those submitted in the customs declaration.

Vessels bound for the port of Necochea/Quequén are also required to submit their customs declarations in Spanish. Customs clearance will not be issued and cargo operations cannot commence until this requirement has been fulfilled. Only Necochea/Quequén requires a Spanish translation of the customs declaration at this time.

Members requiring further guidance should contact the Loss Prevention department.

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

M W H Williams
Director