



## **Export season for Brazilian soya beans is underway – reminder for the recommended precautions**

The Brazilian soya bean export season is underway with the bulk of the beans scheduled for export in March, April and May. The long voyage time to Chinese ports together with pandemic related delay in discharge increase the risk of natural deterioration and cargo claims. Documentation of care of the soya bean cargo during transit including ventilation records increase the chances of successfully defending claims in China due to inherent vice of the cargo.

Published 23 February 2022

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Gard's correspondent, Proinde [reports](#) that despite disruption due to the pandemic, the 2020-2021 soya bean crop was the best ever weighing in at an estimated 137.1 million metric tons according to the National Association of Grain Exports (ANEC). The forecast for the 2021-2022 crop is 142.8 mmt, a 4% growth compared to last year. China continues to be the main destination for Brazilian soya beans with more than 60% of Brazil's production going there.

### **The voyage time to China and delay in discharge raises the risk of deterioration**

The temperature and the moisture content of the beans at the time of loading determines their safe storage life. The higher the temperature and the moisture content of the beans in a vessel's hold, the shorter the safe storage period. So, a cargo of soya beans could transit from Brazil to Europe with no problem, but with the extra time taken to get to Asia (a trip of more than 40 days) the same cargo might not arrive in sound condition. Elevated temperatures, darkening, mould growth and caking are all signs of self-heating of the cargo during transit. Self-heating occurs by reason of a biochemical process in the cargo that cannot be prevented (inherent vice) as explained in our [video on microbiological instability](#) .

### **The pandemic has increased risks of delay**

The pandemic has raised a number of issues at the discharge ports in China one of which has been excessive delays to discharge which can be detrimental to perishable agricultural cargoes such as soya beans. It is uncertain whether the carrier will be able to rely on the article IV (h) defence of the Hague-Visby Rules (HVR) for "quarantine restrictions", which, as all of the HVR defences, is subject to the seaworthiness test of paragraph 1 of the said article. Furthermore, the available defences to the carrier may differ and be subject to different tests from jurisdiction to jurisdiction.

Aside from avoiding infections, it is advisable for Members to manage the risk of delay by taking advantage of the long sea passage to China to apply measures such as timely isolation of infected crew in order to limit the risk of positive cases on arrival in line with the [IMO's Protocols](#) .

### **Defending cargo claims due to deterioration in China**

In order to improve the claims experience in China with this cargo, Masters and crews are reminded to take the precautions set out in the [Master's checklists](#) before and during loading, during the sea passage and at the discharge ports (should claims arise). Proper record keeping showing that the duty of care obligation to the cargo has been fulfilled including good records on ventilation might improve the merits of these claims in the future. The Master's checklists and the ventilation spreadsheets for on board use as well as our videos and insights can provide the necessary guidance and are all [available here](#).

In their recent [Hai%20Tong%20Circular%203-1%202022%20EN.pdf](#) about the Chinese Supreme Court's Memorandum to the National Courts, Hai Tong and Partners stressed the importance of good record keeping on board in order for the carrier to successfully rely on the inherent vice defence. The circular states that according to Art 54 of the Chinese Supreme Court's Memorandum, if the carrier wants to maintain that heat damage to soya beans is caused by the nature of the soya beans and seek for exemption "it is necessary to prove that it has properly and carefully fulfilled its obligation to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods, and according to precedent judgements of the SPC, proper ventilation is one of the obligations for carrier to transport soya bean cargo". Thus, under Chinese law and practice, the carrier must demonstrate with documentary evidence that ventilation was performed properly. This is arguably a stricter standard than would be applied under English law. As set out in the UK Supreme Court's decision, [Volcafe Ltd and another v Compania Sud Americana de Vapores](#) \*, \*it is the carrier's burden of proof to show that appropriate care was taken of the cargo or, that regardless of whether the carrier discharged the duty of care, the cargo damage would have occurred anyway.

### **Words in the bills of lading such as "quality unknown" do not provide a defence**

Under the Hague-Visby Rules, the [Master has a duty to independently record the apparent order and condition of the cargo on the bill of lading](#) . In practice, the bill of lading is prepared by the shipper and includes the statement that the cargo as loaded is "*in apparent good order and condition*". Apparent good order without qualification means the bill of lading is issued "clean" as is generally required by the banks that are financing or facilitating the sale.

Some bills of lading contain qualifications such as “quality, quantity unknown”, “said to be”, “said to contain”, and “said to weigh”. Such qualifications are of limited if any assistance to the carrier in China. When the cargo is loaded under clean bills (being in apparent good order and condition when loaded) and arrives in a damaged condition, the carrier has the burden to prove that it has fulfilled the duty of care obligation to the cargo. Insufficient documentary evidence could prove to be detrimental even where there is expert evidence that there is nothing the vessel could have done to prevent the cargo damage. Therefore, having a system in place to properly maintain all supporting evidence that all obligations have been met is essential to defend claims even those arising from natural deterioration of soya beans.

*We thank Ricardo Martins of Representacoes Proinde Ltda. and Hai Tong and Partners for their assistance in preparing this article.*

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