



Soya Bean claims in China - Wang Jing reports a positive outcome in appellate decision

Since the China-US trade war, China's imports of soybeans from South America have been rising. In the meantime, Wang Jing & Co. has witnessed an increase in substantial soybean damage claims in recent years, where Chinese courts usually find carriers fully or at least primarily liable. This is even when inherent vice could be the most probable cause of soybean damage, or vessels encountered unavoidable delays before discharge, or, in some cases, where carriers have both defences in hand. In a recent appellate decision in the Shandong Province, the court reversed the first instance judgment reducing the liability on the carrier from 70% to 30%.

This case offers some hope to ship owners of a more equitable outcome in Chinese courts in cases involving damage to soybeans caused or exacerbated by inherent vice.

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Background

The carriage started on 7 April 2017 in Brazil and the vessel, “ADELANTE”, arrived at the discharging port in China on 25 May 2017, ready for discharge. Issuance of a letter of credit was postponed by the cargo receiver until 16 June, and the import permit was issued 13 July. Due to the delayed clearance of import formalities, the vessel waited at the anchorage for almost three months until 22 August 2017. The cargoes were found seriously damaged when discharged, consequently, the cargo receiver claimed USD 18 million against the carrier.

Judgments

The court of the first instance held the carrier 70% liable despite finding that the cargo receiver's delay in discharge and the carrier's improper ventilation both lead to the condition at outturn. In other words, the court's view was that, given that the carrier shall properly dispose of cargoes and mitigate loss under statutory obligation when delivery fails to be completed within a reasonable time, the cargo receiver should not be heavily blamed for the cargo damage directly caused by its delay in discharge.

However, the appeal court reversed the liability apportionment finding the carrier 30% liable and the cargo receiver 70%. According to the appeal court, it is only improper ventilation, for which the carrier should be liable. The carrier was not liable for the damage resulting from the delay in discharge in consideration of the carrier's incapability of disposing the cargoes and avoiding the heat damages in hot weather. The delayed discharge was attributed to the cargo receiver's failure in handling import formalities.

Highlights

The inherent vice of soybeans, including high hygroscopicity, sensitivity to high temperatures, and rapid deterioration in stow, means that soybeans are vulnerable to the impact of both internal and external factors during carriage. It is not unusual to see soybean damages arising from complex causes where it is impossible to completely draw a distinction between internal factors and external factors. In light of the above, if soybeans were tested to be sound at the loading port, Chinese maritime courts often heavily rely on the test reports of the China Entry-Exit Inspection and Quarantine Bureau (CIQ) or the China Certification & Inspection (Group) Co. Ltd. (CCIC), and find that cargo damages are caused by carriers' improper care of cargoes, mostly improper ventilation.

In accordance with previous judgments, the minimum liability for soybean damages on carriers adjudicated in Shandong, China was 50%, and this occurred in only three cases. In two of these cases discharge was delayed for about three months. Regarding the other one, the cargo moisture content exceeded 13%, the maximum Chinese standard for safe storage. Nevertheless, the burden of proof always heavily rests on the carriers consequently with unsatisfactory results.

The appeal court, in the case “ADELANTE”, shifted the balance in liability apportionment between the cargo and the ship, particularly liabilities relating to ventilation and delay in discharge, towards a lower liability for the ship than in previous cases. There are two groundbreaking points of view in the appeal judgment:

1 Natural ventilation during delay in discharge only has an effect on the surface of the soybean stow.

Compared with previous judgments that concentrate on the importance of ventilation but fail to account for the actual limited impact of ventilation to soybeans in bulk, the appeal court, in this case, admitted that the effect of natural ventilation was very limited particularly when the vessel was at anchor. The court acknowledged that the effect if any, would be on the surface of soybean cargo only. Accordingly, the carrier was released from liability for damages in the middle and bottom parts of the stow.

1 A carrier's duty to mitigate loss during delay in discharge should be subject to the "reasonable and feasible" test.

The reason that carriers have been held liable by Chinese courts for delay in discharge caused by faults of the cargo interests consists in carriers' duty to mitigate loss by cargo disposal, including discharging soybeans to warehouses or reselling them, which is deemed to be "mission impossible" to carriers. In this circumstance, the appeal court did not follow such logic but confirmed that except for taking proper care of goods and urging the cargo receiver to timely handle necessary formalities, the carrier would neither be capable of nor entitled to dispose of the soybeans on board during the delay in discharge. This new approach is not only practically reasonable but also more fair, as the hands of carriers are often tied during delays in discharge when import formalities are not met

Comments

To summarize, the appellate judgment in the "ADELANTE" case suggests that the liability apportionment in soybean damage claims will get increasingly sophisticated, and more factual details are bound to be taken into consideration by the Chinese courts. Although the appeal court in the "ADELANTE" case still found "improper ventilation" (which is never absent in judgments of soybean claims in China) as one of the causes of damage, at least it started to distinguish different impacts ventilation could have on soybeans in different situations. In addition, the appeal court took a longer look at the carrier's capability of cargo disposal as well as the cargo receiver's obligation to handle import formalities. Cargo receivers may no longer be as relaxed as they previously were when soybeans are left deteriorating on board at discharging ports for months.

By holding the delay in discharge as the primary cause of damage, the appeal court in the "ADELANTE" case denied one of the conclusions of the CIQ reports that held improper ventilation as the only cause of damage. This suggests a chance for carriers to fully or partially overturn CIQ reports with the support of sufficient evidence, although the undue reliance on CIQ reports in soybean damage cases in Chinese jurisdiction is hard to change.

All in all, the appeal judgment of "ADELANTE" could be considered as one positive step towards fairer and more sound allocations of liabilities between ship and cargo particularly in cases involving a delay in discharge attributable to the receiver. At the current stage, it is unlikely that the carrier may completely walk away from soybean cargo damage claims which occur during the voyage, but we may expect judgments that are more reasonable and just to carriers concerning soybean damage cases.

It is expected that the judgment will be very persuasive within the Shandong Province which includes the ports of Qingdao, Rizhao, Longkou, Yantai and Weihai.

We thank our guest authors and Wang Jing law firm for their insights. Gard lawyer, Louis Shepherd, reviews the differences in approach to soybean damage cases in China and in English arbitration in our [video](#) which is also available sub-titled in [Traditional](#) and [Simplified](#) Chinese. A compilation of Gard's loss prevention materials on soya bean cargo damage is available on our [Hot Topic page](#)