



Discharging soyabeans in China

We outline steps to be taken when vessels arrive with damaged soyabeans in China or when experiencing delays to discharge.

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Notwithstanding measures taken by Masters and crews at the loading port and during the sea voyage, soya beans shipped on vessels may still deteriorate as a result of high moisture content, high temperature, as well as prolonged storage period on board due to delay/lack of discharge instructions by charterers, often for reasons outside the vessel's responsibility and control (congestion and other commercial reasons).

As pointed out in previous Gard insights, it is international experts' opinion that there is nothing that a vessel can do to avoid cargo damage under these circumstances which is caused by the cargo's own propensities i.e. by inherent vice. Over the years, the Maritime Courts in China have been supportive of the cargo interests finding in their favour which resulted in shipowners and their P&I Clubs' paying very substantial claims for damaged soya beans.

Generally speaking, it has proved difficult so far persuading the Maritime Courts in China to accept that deterioration of soya beans may arise out of inherent vice. Inherent vice is a defence to cargo claims under English Law and also under the PRC law which however has not been availed to shipowners so far by the Chinese Courts. We discussed in our previous insights on the background as to why this is happening and what steps can be taken at the loading port and during the sea passage to enhance the chances of success or defend these claims in the best possible manner. This insight is a continuation of our previous insight and provides guidance on what further steps can be taken at the discharge port should the cargo arrive in a damaged condition or should there be a risk of cargo deterioration due to delay to discharge.

Steps to be taken at the discharge port

The following steps are recommended to be taken if the berthing of the vessel is delayed for a prolonged period, i.e. several weeks or even months:

- Send letters of protest on the delay in berthing / discharge of cargo daily to the consignees and notify parties through the ship agent, Charterers and Sub-charterers.
- Appoint competent surveyors to witness the hatch opening and check the appearance and temperature of cargo. Invite Charterers and Sub-charterers to attend the hatch opening jointly.
- Record the condition of the cargo on the top of the stow in all holds by comprehensive photographic record/videos when hatch covers are opened for the first time on completion of the voyage/on arrival and regularly during the period of the delay. In case surveyors or Charterers/Sub-charterers cannot attend on board before import formalities are completed or due to other reasons, proceed with the above unilaterally.
- Measure the cargo temperatures of surface layers at a depth of 1 metre in each cargo hold using a calibrated digital thermometer attached preferably to 1 metre long thermocouple probes and record the measurement results properly. If 1 metre long thermocouple probes are not available to the crew or the attending surveyors, then temperatures should be recorded at no less than 30 to 50 cm depth. It is recommended that readings taken on different days are made as close as possible to the same positions in the holds.
- Make local enquiries and investigation as to the cause of the delay which can be one or more of the following:
 - port / berth congestion
 - trade issues (change in tax rates, fluctuation of cargo prices, etc.)
 - availability of shore storage space
 - import formalities (conflicts between China and country of cargo origin, quarantine restriction, lack of import license for genetically modified cargo, etc.)

The following steps are recommended to be taken if the cargo is found to be damaged (wet, mouldy, burnt, caked, discoloured, contaminated, with high temperature etc.):

- Notify Gard and/or the Gard local correspondent and report the appearance of the cargo. When the condition of the cargo warrants it, Gard will appoint competent surveyors and experts to attend, investigate on the cause of damage and provide guidance on the evidence that should be captured (taking cargo temperature, moisture content, appropriate/representative sampling according to FOSFA Rules as being a recognised and standardised sampling method and/or as determined by surveyors/experts and testing them at reputable laboratories inside and outside China. Take pictures of the pattern of damaged cargo in the cargo holds, etc.)
- Upon Gard's instruction, the correspondent and surveyors will facilitate early liaison with consignee, CIQ, etc. on the arrangement for the discharge and best possible mitigation of the loss following expert advice
- Gard will assist in appointing competent local lawyers to take crew statements on the voyage (from commencement of the voyage till completion of discharge)
- The appointed local lawyers will assist in negotiation of security for the cargo claims with the cargo interests in exchange of early discharge and proper mitigation
- Gard appointed surveyors and experts will monitor cargo discharge including the segregation, storage / transshipment of damaged cargo on without prejudice basis
- Gard appointed surveyors and experts will follow up and witness the salvage sale or disposal of damaged cargo on without prejudice basis.
- Gard appointed lawyers and experts will assist in gathering evidence relating to quantum of the claim. For example, by obtaining expert opinions as to the calculation of depreciation rate of soya beans or soya bean products.

Documents should be retained and should be notarized/legalized with the assistance of the Gard appointed local lawyers. It is advisable to arrange notarization of documents when the ship is still lying alongside at the Chinese port. Local lawyers can bring the notary public on board the ship to verify the documents. This is important because it would be time consuming, costly and extremely difficult to arrange the notarization / legalization of documents after the departure of the vessel from the port. Documents that should be notarized include:

- Letters of protest on delay in berthing/discharge, if appropriate
- Any other letters of protest
- Notice of readiness at discharge port(s)
- Deck log
- Shipper's cargo declaration
- Certificates of quality of the cargo, if available
- Statement of facts at the loading and discharge ports. For statement of facts at discharge ports, Master should carefully check the remarks relating to delay in berthing / discharge. Any remarks relieving consignee's and Charterer's fault for the delay should be avoided.
- Mate's receipt/cargo manifest
- Outturn report
- Stowage plan / records on sequences of loading / discharge of cargo
- Charterer's sailing instructions

- Written instructions on fumigation of cargo / log book with entries relating to fumigation
- All log entries relating to ventilation
- Vessel's drawing plans and engine log showing no heating of fuel oil tanks adjacent to the cargo holds during the shipment
- Records on passing of cargo hold inspections at loading port(s), preferably with colour photographs showing the conditions of the cargo holds / hatch covers
- Pre-loading survey report, if any
- Any other records collected according to the [Master's Checklists](#) at the loading port and during the sea passage.

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For further information please refer to Gard's topic page on [Soya bean cargo damage](#) .