



STEAMSHIP MUTUAL

Comprehensive Cover. Exceptional Service.



Odessa Port - Uncollected Cargo

March 2010

Container lines often face a problem of delay or failure of consignees in collecting cargoes. Due to a recent peak in the financial crisis more Ukrainian consignees have become unable to pay and their goods remain stuffed in containers. Recent reports show 400 to 500 containers of uncollected goods occupying storage space at container terminals at Odessa Port.

According to the provisions of most bills of lading if the consignee fails to take delivery of the goods within a certain period of time (usually 30 days) from the date of expiry of agreed storage time the carrier may sell, destroy or dispose of the goods and apply any proceeds of sale in reduction of the sums due to him from the cargo owner.

Under Ukrainian law, carriers cannot simply pass the cargo to an auction company for public sale. They must declare a lien, discharge the cargo to a customs warehouse for responsible storage and then dispose of the goods as per the procedure provided for pledged property. In particular, the carriers must apply to court with a claim against the consignees and obtain a relevant decision following which the cargo will be sold at public auction by the State Enforcement Service of Ukraine. The length of the whole procedure is 3-4 months. The costs include de-stuffing of the containers, storage of goods at customs warehouse, legal fees and expenses, cost of auction (10-14% of sale price) and fees of the State Enforcement Service (10% of sale price).

Consignees may attempt to stall carriers and make promises to take delivery so as to delay the sale of the goods. However, if carriers do not delay and sell the cargo within 2-3 months of the time of delivery, whilst storage costs are relatively small, they have a good chance of releasing the container(s) and recovering the storage and demurrage for the cargo account.

In practice, however, carriers realise that something has to be done only after the containers have stayed in the port for 6 months to several years and they owe the port US\$50,000 to US\$250,000 for storage. As a rule, by that time many cargoes become worthless and the chance to release the containers gets smaller every day. The remaining options are:

- 1) make a declaration on abandoned cargo to the port and let port authorities dispose of it;
- 2) destroy the cargo;
- 3) take the container with cargo back on the vessel and deliver (re-export) the same to another country for disposal or destruction.

Declaration on Abandoned Cargo

This option will release the carrier from the obligation of port storage costs but not allow recovery of other losses as all sale revenue will go to the port. The procedure is very formalised. After carriers make a declaration on abandoned cargo to the port, the port obtains authorisation for sale from the so-called Committee on Uncollected Cargoes of Odessa Regional State Administration. The sittings of this Committee are held at intervals, sometimes only every 3 to 6 months. Due to the degree of congestion of containers the Committee can only consider a negligible number of cases at each sitting. Cases involving goods which retain some commercial interest for the port, i.e. those which are necessary to the port itself (e.g. construction materials or tools) or can be sold quickly and at good price (e.g. new cars) may be processed more quickly.

If the cargo is not "interesting" (e.g. cars more than 7 years old, expired food products etc) one can wait for the decision of the Committee for years and it may never be taken. Under Ukrainian legislation it is both the ports' right and duty to dispose of uncollected goods. However the port often says neither "yes" nor "no" to the carriers and unless they take a quick alternative decision, the prospect of payment of storage costs may be hanging over them for years.

It should be noted that the option of abandoning the cargo to the port, if the port/Committee accepts same, is the least costly and problematic for the carriers for the following reason: Any disposal steps for the cargoes are only possible after customs clearance which requires submission of an original bill of lading, invoice, certificate of origin, certificate of compliance etc. All these should normally be available with receivers, not the carrier who thus finds himself in a closed circle. The State Committee on Uncollected Goods does not need the above documents in order to sell the goods. This is a considerable advantage.

Destruction

This requires not only Customs permission but also permission from State Sanitary Service, Ecological Service and sometimes Phyto or Veterinary services. The difficult task of collecting the permissions may be given to the destruction company, however the total cost of destruction arrangements in Ukraine usually puts carriers off; in combination with storage costs aggregated by the time destruction is considered the price may exceed the total price of the containers. Moreover, not all cargoes can be destroyed in Ukraine (e.g. old/damaged cars are not accepted for destruction).

Re-Export

There is evidence to suggest that in other European countries destruction and sale of uncollected goods are processes which are less costly and formalised than in the Ukraine. Therefore after exploring all the above options, carriers often resort to re-export. This is quite expensive and also requires customs clearance but at least it allows removal of the containers from the Ukraine thereby avoiding the procedures set out above.

In addition, if carriers undertake destruction or re-export of uncollected cargoes they stand some chance of obtaining a discount for storage costs from the port which will be keen to liberate storage space.

Summary

Time is a key factor with uncollected cargoes in Ukraine. The carriers' losses/costs may only be reduced if they commence disposal of uncollected goods by any option within 2 to 3 months of the vessel's arrival. Carriers should also consider appointing a local correspondent and/or a lawyer to provide recommendations and practical advice.

With thanks to DIAS Marine Consulting PC, Odessa, for supplying this information.