

RISKS OF MISDECLARED CARGOES

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Intentional misdeclaring of cargoes is not a new phenomenon. It has gone on for ages. The practice can be intentional or accidental. It can occur in the container, dry bulk, liquid bulk and even the break bulk trades. If cargo is intentionally misdeclared, it can be done for many reasons. In the past, the usual reason was to obtain a cheaper freight rate, or insurance premium. Although that was not an innocent deed, it was far less serious than avoiding a safety consideration or worse, a security consideration. While misdeclaring cargoes is not new, the liability and risks incurred have increased dramatically. Courts and insurers, via subrogation, are recognizing that shippers (and their agents) bear the traditional responsibility of properly declaring and describing cargoes.

Cargoes were misdeclared for hundreds of years, but it wasn't until the days of prohibition in the United States, when alcoholic beverages were being manifested as olives (in barrels) or other various innocuous commodities shipped in drums or barrels, that the public became aware of the practice. Then beginning in the 1960's we heard about drug smugglers hiding their consignments in a whole array of innocent cargoes, diverting attention from their forbidden commodity.

As time went on, we entered the age of unitization and then containerization. The Non-Vessel Operating Common Carrier (or NVOCC) was born. This group acting as a cargo or freight consolidator in ocean trades buys space from a carrier and sub-sells it to smaller shippers. The

NVOCC issues Bills of Lading, publishes tariffs and otherwise conducts itself as an ocean common carrier, except that it will not provide the actual ocean or intermodal service. Thus, yet another party is added to the chain of responsibility in a shipment possibly obscuring the original shipper or contents of a shipment. As an intermodal freight container is sealed when loaded, its contents are not visible unless the container is inspected. Only a small percentage of containers are inspected and thus the unscrupulous shipper is emboldened to intentionally misdeclare a cargo.

One simple way used to misdeclare a shipment was through the use of descriptive but vague terms such as household goods, oil well supplies, building materials, machine parts, or even freight, all kinds, abbreviated as FAK. One example of the practice, very common in the 1970's, was the use of the term "oil well supplies" or OWS. Most every ship going to the ports of the Middle East and the Persian Gulf had on their manifest, and carried, "oil well supplies." This term frequently included drilling mud, vehicles, explosives, alcoholic beverages, hair spray, pipe, lube oil and even drums of gasoline. It should be noted that all of those named items were actually used by the personnel while drilling for oil. Consolidators in order to expedite shipments utilized such terminology to excess until the 1980's. Various authorities and administrations such as the Water Police, Coast Guards, and the International Maritime Organization acted prohibiting the use of these general terms for reasons relating to safety of carriage (such as fire fighting). Today at least this practice is far less common. Many countries conduct random container inspections. The results of these inspections are reported to the International Maritime Organization (IMO) in London. 20% or 1 in 5 freight containers inspected are not in compliance with the regulations.

It has become quite common for freight consolidators to overload a container. A 20-foot-

long container is usually built and certified to weigh no more than twenty tons, while a 40-foot-long container is built and certified to weigh no more than thirty tons. By misdeclaring the weight, the container can be damaged, the ship's lashing gear overstressed and, perhaps, lead to cargo being lost overboard.

Another practice when shipping outsize cargo such as yachts, large vehicles or machinery aboard containerships is misdeclaring the size of the piece for the purpose of obtaining a lower freight rate.

Many containerized commodities have their chemical makeup certified by a laboratory. It is amazing to me how frequently laboratories issue biased or incorrect certificates. This practice is just as common in the developed nations as it is in the underdeveloped, as the stowage aboard is dependent on accurate information, correct information such as this is vital.

The number of refrigerated and control atmosphere containers have increased dramatically in the past few years. Whether the cargo is for human consumption or not, the possibilities for misdeclaration and wrongful certification are great.

Many hazardous cargoes are not properly declared or properly described in accordance with IMO regulations. Within the past few years there have been a number of incidents occurring on large container ships including two which could have been carrying fireworks. While investigations are ongoing we cannot say for sure what was the cause, but there have been many recent examples of what can happen when cargoes are misdeclared or misdescribed. Earlier this

summer a large container ship left a U.S. port. A tank container declared to be empty of a dangerous chemical actually contained a residual amount of the chemical, which leaked on the deck. After a number of the crew became ill, the ship had to return to port and have much of its deck cargo removed and the deck cleaned before continuing the voyage. This is yet another case of misdeclared cargo resulting in personal injury and financial loss.

Frequently a bulk carrier will carry containers on deck while carrying a bulk cargo underdeck. The dry bulk trades offer a much greater opportunity for the unscrupulous shipper to misdeclare a cargo, particularly in the carriage of bulk metal commodities. Such cargoes are frequently given names which are not listed in the *IMO Code of Safe Practice for Solid Bulk Cargoes*. This international code describes all bulk commodities, details the risks of carriage, and recommends practices and procedures for their safe carriage. When a cargo is being fixed for a ship, the ship owner, charterer or ship master will research the characteristics in the IMO publication to determine any hazard or characteristic which may require special care. If the cargo is not listed, the assumption will be "there is no risk." Then the cargo will be loaded aboard. Should the cargo emit hydrogen when wetted, such as the case with Direct Reduced Iron, an explosion may result. This has occurred a number of times recently, resulting in loss of life. Rather than the cargo being declared and loaded under the IMO requirements for Direct Reduced Iron, the cargo was declared under the alias names of Orinoco Iron Remet Fines, Metallic HBI Fines, Remet Fines, Orinoco Iron Remet, Hot Briquetted Iron Fines, Metallized Fines or even Iron Sands.

Other cargoes may be subject to liquefaction and must be tested by a laboratory to determine a moisture content. Should the laboratory falsify the test to the advantage of the

shipper, the ship will be at risk and be subject to shifting cargo and capsize. This occurred recently in a U.S. port and the ship sank in the North Atlantic. Should a falsified certificate accompany the documentation of a cargo, the cargo is misdeclared.

Since September 11, 2001 governments around the world have been most concerned with containerized cargoes, and their potential for aiding the terrorist. Containerized cargoes have always presented an easy opportunity for misdeclaring or smuggling cargoes into or out of a country as the contents are shipped in a sealed metal box. With the emphasis on "just in time delivery" and the constant pressure of speed in delivery, security in this mode of transportation has become a major concern for us all, and there are no easy answers.

Although misdeclared cargoes have always been a reason for concern for the safety of the ship's crew, the ramifications in today's world make this issue a threat to the security of a nation as well. Another reason for concern is recently a customs official corrected me in a related discussion. I was told Customs can treat misdeclared cargoes as having been smuggled, and the persons involved are thus considered smugglers.

(This presentation was expanded by detailing a number of examples of misdeclared cargoes which resulted in disasters.)