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Subject: Dakar, Senegal: Update on Customs' fines for alleged shortages of cargo discharged bagged or in bulk

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Dear Sirs,

We would like to bring the attention of all Clubs, and their Members, to the recent resurgence of Customs' fines for shortages of cargo discharged (bagged or in bulk) at the port of Dakar. The fine is based on Senegalese Customs Code arts 62, 280, 30, 386, 396, 398 & 391.

The mechanism of the current system tends to be very adverse and disruptive with a certain amount of unpredictability.

Unlike in some other jurisdictions where Customs' fines still prevail, where the practice is for the local agent to approach the Owners through the local Club's Correspondent to request a security in respect of an anticipated Customs' fine, our recent experience at Dakar has shown that there is strictly no indication, until completion of discharge, that there is even a risk for the vessel to be delayed in respect of a Customs' fine.

Instead, as soon as a shortage is reported to Customs at the end of discharge, the latter would directly issue to the Harbour Master's Office an administrative arrest order. Frustratingly, neither Customs nor the Harbour Master's Office are willing to disclose this document to agents, Club's Correspondents or Owners in the first instance.

As no formal notice of the arrest will be given to the agent or the local P&I Correspondent, they are left in a very difficult position trying to investigate locally to obtain a verbal, and unofficial, understanding of the situation.

Likewise, Customs will not issue the document supporting a Customs' fine until the latter is directly negotiated with the local P&I Correspondent. In terms of quantum, the initial fine's amount before discussions tends to be based on allegedly short delivered cargo's customs market value e.g. 260,000 CFA Francs for 1 MT of rice in our recent case.

Customs accept a Club's Letter of Undertaking (LOU), issued directly or via their Correspondent, for the amount negotiated, and do not suggest any specific wording. However, experience has shown that Customs may raise objections to the wording typically suggested by Clubs and, in particular, tend to require the LOU to be governed by Senegalese law, and subject to the competence of Senegalese courts.

Furthermore, Customs require the negotiated amount for which security is issued to be settled within a certain number of days, also to be discussed with the local P&I Correspondent.

Once the final LOU is remitted to Customs, or the fine paid directly, Customs send a request to the Harbour Master's office for the withdrawal of the arrest. Only then will the Harbour Master grant the clearance for vessel's sailing.



McLEANS - WAMS

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It is only in the end that documents can be collected by the local P&I Correspondent.

From the first verbal notice that the vessel has been arrested to eventual clearance to sail, the vessel is likely to be delayed for several hours.

McLeans remain at the Clubs' and Members' disposal to provide more information and any assistance which may be required.

Sincerely yours

The McLeans – WAMS team

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