

### **Country: Senegal**

Marseille  
9, place Félix Baret  
PO Box 50319  
13177 Marseille Cedex 20  
Tel. +33(0)4.96.10.25.25  
Fax. +33(0)4.91.37.29.81



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### **Subject: Current status of Customs' fines for alleged shortages of cargo discharged bagged or in bulk**

Please be recalled that Customs' fines remain imposed for shortages of cargo discharged (bagged or in bulk) at the port of Dakar since the practice of such fines was reinstated a couple of years ago. The fine is based on Senegalese Customs Code arts 62, 280, 30, 386, 396, 398 & 391.

The mechanism of the Customs' fines "system" remains very adverse and disruptive with a certain amount of unpredictability.

The appreciation of a shortage and thus of the fine by Customs is based on final figures reported by stevedores upon completion of discharging operations.

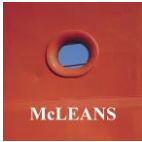
Unlike in some other jurisdictions where Customs' fines still prevail e.g Benin and Ivory Coast, where the practice is for the local agent to approach the Owners through the local Club's Correspondent to request a security in respect of an anticipated Customs' fine, our experience at Dakar for the last couple of years 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 by stevedores at the end of discharge, Customs tend directly issue to the Harbour Master's Office an administrative arrest order copy of which is notified to the Port Police.

Frustratingly, it is rare when Customs or the Harbour Master's Office are willing to disclose this document to agents, Club's Correspondents or Owners in the first instance. As formal notice of the arrest is not always 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.

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.



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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.

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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, with copy to the port police who often threat to confiscate the crew passports when they consider that discussions in respect of the fine are too long.

Only then will the Harbour Master grant the clearance for vessel's sailing.

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.

### **The McLeans – WAMS team**

[wams@mcleans.fr](mailto:wams@mcleans.fr)

[Wams@mcleans.fr](mailto:Wams@mcleans.fr) / [info@mcleans.fr](mailto:info@mcleans.fr)

Département de McLEANS S.A. au capital de € 400.000  
Siège social : 9, place Félix Baret 13006 Marseille  
RCS Marseille B 399 651 645  
<http://www.mcleangroup.fr>

