



# Shortage of solid bulk cargoes in Brazil

Practical Guidance

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## 1. Foreword

Solid bulk commodities account for the largest share of global seaborne cargo by gross weight, underscoring the scale and significance of bulk shipping operations. Handling such cargo involves inherent risks and operational challenges for carriers, crews, and insurers. Certain dry bulk materials are intrinsically prone to losses from shrinkage, evaporation, and liquefaction. Additionally, substandard cargo handling equipment and mishandling during loading, unloading, and transshipment can exacerbate cargo wastage.

The absence of standardised, internationally binding regulations for quantifying bulk cargoes and establishing permissible shortage allowances leads to frequent disputes during loading or discharge, often resulting in legal claims. Cargo shortage is among the most common and costly claims for bulk carriers. Although individual claims may be small, the sheer volume of bulk shipments and the prevalence of ‘paper’ shortage claims contribute to substantial cumulative costs and resource allocation.

Brazil plays a crucial role in the global bulk trade, standing out as a leading exporter of commodities such as iron ore, soya beans, maize, and sugar, while heavily relying on fertiliser imports to sustain its thriving agricultural sector and record crop yields. Over 80% of Brazil’s exports and 50% of its imports comprise cargoes carried in bulk, accounting for more than two-thirds of the nation’s port throughput, highlighting the strategic importance of the bulk market to the country’s trade balance and port operations.

Nonetheless, Brazil’s regulatory landscape introduces additional challenges, including inconsistent laws and jurisprudence, divergent shortage allowance standards, uncertainties surrounding the reach of subrogated claims, and an overwhelming judicial backlog.

Drawing on 50 years of hands-on experience as P&I correspondents and surveyors covering Brazilian ports, this free guide offers insights for shipmasters, shipowners, charterers, P&I clubs, and marine insurers. It walks through the domestic legal framework, relevant conventions, and customs regulations, providing practical guidance on the management of cargo shortage claims. Covered topics include the scope and duration of carrier liability, measurement and quantification methodologies, allowances, legal exclusions and limitations, dispute resolution procedures, and initiatives for loss prevention.

This guide is structured for easy navigation, featuring hyperlinks to sections that cover specific topics. Its purpose is to support industry stakeholders in implementing effective risk management and claims response strategies. We welcome your feedback to help us keep future editions of this guide valuable and practical. We also invite you to subscribe to our regular newsletters through our website.

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## 2. Solid bulk cargoes

### 2.1. Definition

Under the definition of the International Maritime Organisation (IMO), maritime solid bulk cargo “means any cargo, other than liquid or gas, consisting of a combination of particles, granules or any larger pieces of material generally uniform in composition, which is loaded directly into cargo spaces of a ship without any intermediate form of containment”<sup>1</sup>.

Solid bulk cargo is typically transported in vessels specifically designed for this purpose. Examples include ores, grains, sugar, coal, and fertilisers. While some dry cargoes can also be shipped inside dry containers or flexible intermediate bulk containers (FIBC), this publication primarily focuses on dry bulk commodities transported in large quantities onboard bulk carriers or similar ships.

### 2.2. Regulatory framework

#### 2.2.1. International conventions

The SOLAS Convention<sup>2</sup> contains regulations for the safe carriage of cargo by sea, including specific provisions for dry bulk cargo as well as dangerous goods transported in solid form in bulk. These mandatory requirements are further detailed in the IMSBC Code<sup>3</sup>, addressing carriage of solid bulk cargo other than grains<sup>4</sup>, which are otherwise covered by the International Grain Code<sup>5</sup>.

Supplementing the IMSBC Code, the BLU Code<sup>6</sup> aims to prevent accidents, deaths, and loss or damage to ships carrying solid bulk cargo associated with improper loading and unloading practices. It focuses on procedures, duties and responsibilities between the ship, port operator (terminal) and other stakeholders concerned with the handling, loading, and unloading of solid bulks in ports. The BLU Code is complemented by the BLU Manual, which offers guidance and recommendations for terminal representatives and individuals involved in training related to the safe handling of dry bulk cargoes in ports. **Figure 1**

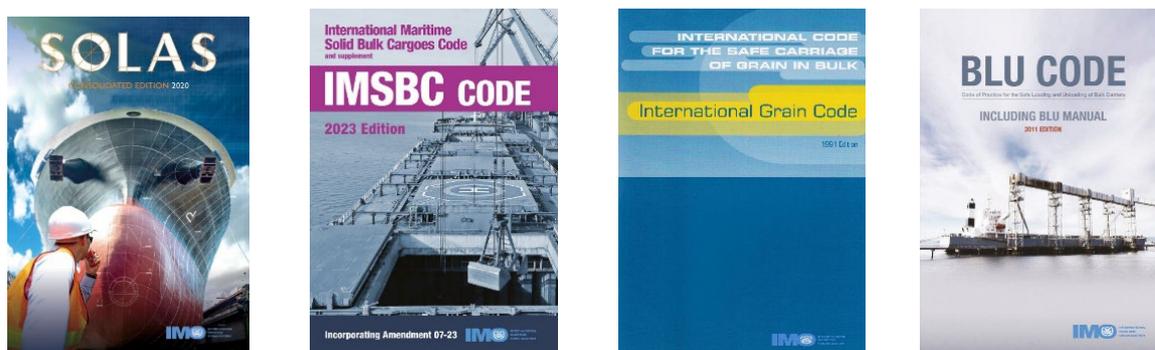


Figure 1: SOLAS Convention, IMSBC Code, Grain Code, BLU Code, and the IMDG Code. Source: IMO

While the IMDG Code<sup>7</sup> primarily addresses carriage of dangerous goods in packaged form, the SOLAS Convention requires that dangerous goods in solid bulk form also comply with relevant provisions of the IMDG Code.

<sup>1</sup> Regulation 1-1 of the International Maritime Solid Bulk Cargoes (IMSBC) Code, adopted by the International Maritime Organisation (IMO)

<sup>2</sup> The International Convention for the Safety of Life at Sea, 1974 (SOLAS Convention), adopted by the IMO

<sup>3</sup> The International Maritime Solid Bulk Cargoes (IMSBC) Code, adopted by the IMO

<sup>4</sup> According to the definition of the IMO International Grain Code, the term “grain” encompasses wheat, maize (corn), oats, rye, barley, rice, pulses and their processed forms, whose behaviour is similar to that of grain in its natural state

<sup>5</sup> The International Code for the Safe Carriage of Grain in Bulk (International Grain Code), adopted by the IMO

<sup>6</sup> The Code of Practice for the Safe Loading and Unloading of Bulk Carriers (BLU Code), adopted by the IMO

<sup>7</sup> The International Maritime Dangerous Goods Code (IMDG Code), adopted by the IMO

## 2.2.2. Domestic regulations

Brazil implemented all relevant IMO conventions related to the safe stowage and carriage of dry bulk cargo. These are regulated and enforced nationwide by the Brazilian maritime authority, through the Navy's Directorate of Ports and Coasts (DPC). The DPC has issued a series of standards known as NORMAM (maritime authority standard, in the Portuguese acronym), which, among various subjects, addresses the safe operation of bulk carriers in Brazilian waters. **Figure 2**



Figure 2: NORMAM-201/DPC, NORMAM-203/DPC and NORMAM-204/DPC. Source: MB/DPC

## 2.3. Prevalence of solid bulk cargo

Approximately 60% of all cargo moved within Brazilian ports in the inland waterway navigation, cabotage and foreign trade in recent years consists of solid bulk commodities. **Figure 3**

### Brazilian port handling by cargo profile (in million m/t)

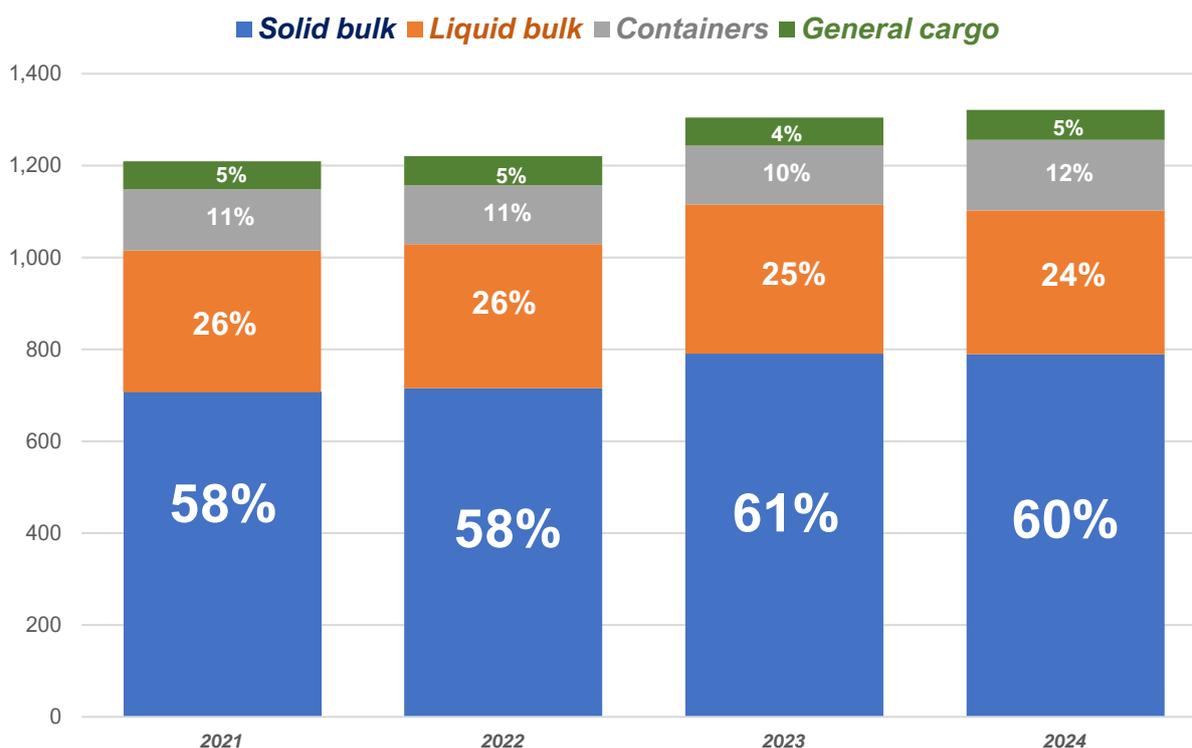


Figure 3: Brazilian port handling by cargo profile (in million m/t and % of share). Source: ANTAQ

Over the last years, the volume of cargo managed at Brazilian ports has increased by 19%, rising from 1.2 million metric tons (Mmt) in 2021 to 1.3 Mmt in 2024. During this same period, the volume of dry bulk commodities rose from 690 Mmt to 789 Mmt per year, an increase of 14% year-on-year. **Figure 3**

In 2024, 688 million m/t of solid bulk cargoes were moved at Brazilian ports in overseas trade, which accounted for 73% of all volumes handled in the country. Approximately 88% of this volume was exported, primarily consisting of iron ore, soya beans, maize, sugar, and soya bean meal (seedcakes). **Figure 4**

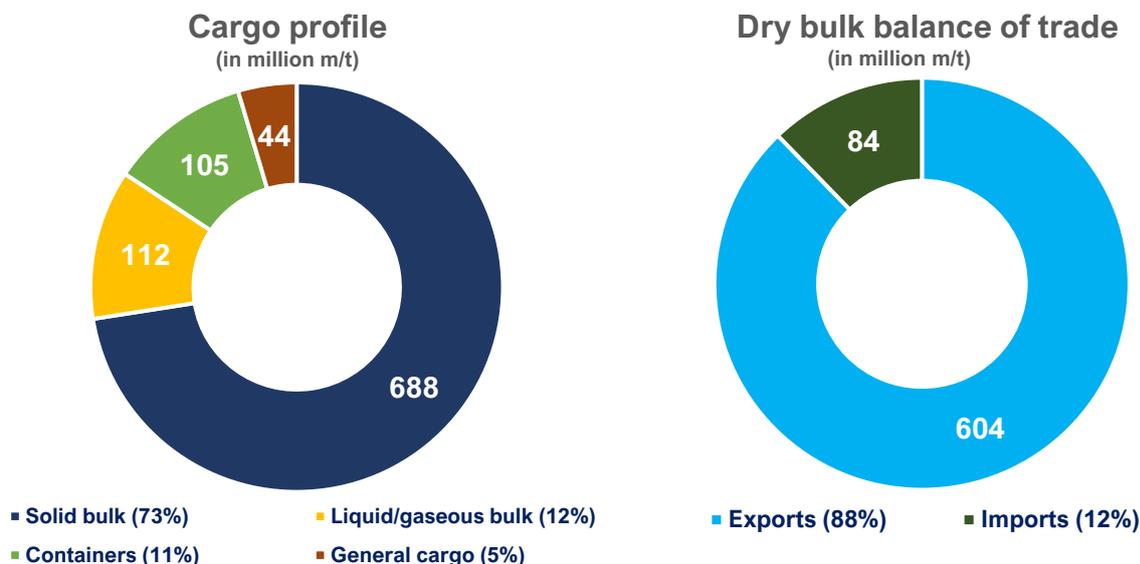


Figure 4: 2024 cargo profile and percentage of dry bulk cargo in the Brazilian foreign trade (in million m/t). Source: ANTAQ

### 2.3.1. Dry bulk exports

Brazil is a leading supplier of mineral and agricultural products in the global market, so it is no surprise that around 80% of its seaborne exports consist of dry bulk commodities. Last year, out of the 605 Mmt of dry bulk cargo shipped through Brazilian ports, 64% comprised iron ore, 16% soya beans, 6.2% maize, 5.4% cane sugar, and 3.5% seedcake. **Figure 5**

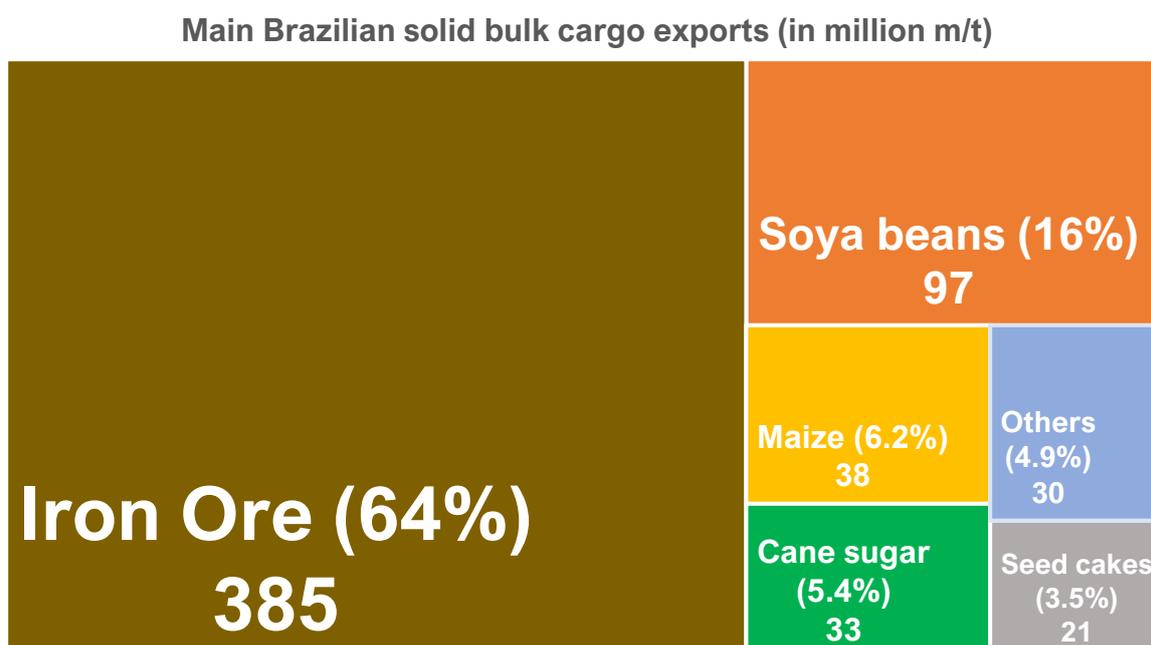


Figure 5: Main Brazilian solid bulk exports in 2024 (in million m/t). Source: ANTAQ/MDIC/ComexStat

About 80% of last year's dry bulk exports were shipped to China and other Asian countries, while the remainder went to various destinations across the European Union and the Middle East.

The top exporting port terminal for solid bulk commodities remains the Ponta da Madeira Terminal in São Luis, Maranhão, the world's second-largest iron ore exporting port facility, accounting for a third of all dry bulk exports by gross weight. Significant volumes of bulk mineral products are also shipped from private terminals in Tubarão and Praia Mole (Vitória), in Espírito Santo, as well as from Itaguaí, Ilha Guaíba, and Porto do Açú in the state of Rio de Janeiro.

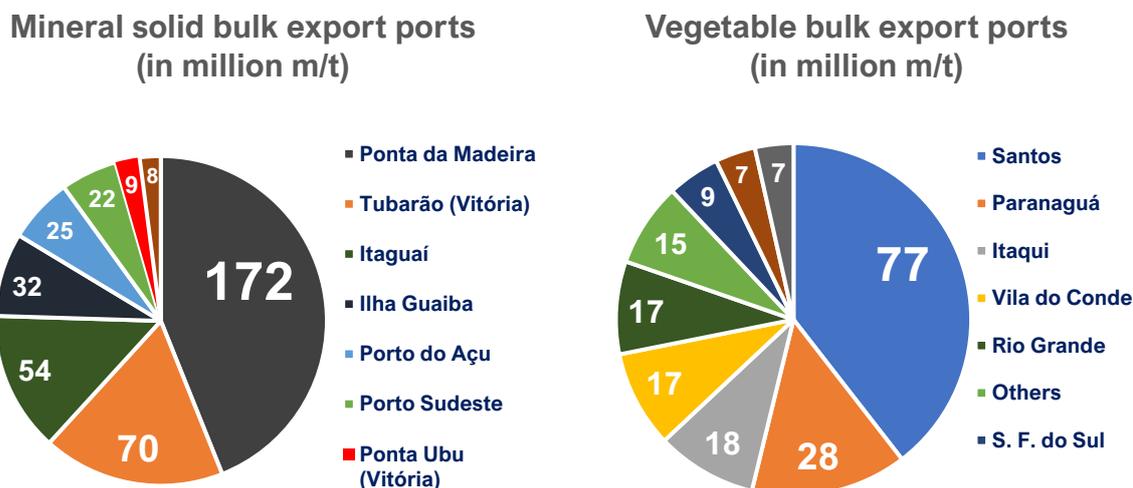


Figure 6: Top solid bulk export ports in 2024 (in million m/t). Source: ANTAQ

Santos, on the coast of São Paulo, is Brazil's largest agricultural export port complex, shipping massive volumes of soya beans, maize, seedcakes, and sugar to hundreds of ports around the world. The Northern Arc ports of Itaqui and Vila do Conde (Barcarena), together with the southern ports of Paranaguá and Rio Grande, also handle substantial amounts of soya bean products and maize. **Figure 6**

### 2.3.2. Dry bulk in cabotage

Despite the cost efficiency and advantages of coastal and inland waterway transport compared to rail and road, only a small fraction of domestic cargo is transported by ships through cabotage, amounting to less than fifty million metric tons (Mmt) each year. Typical solid bulk cargoes transported within domestic ports include bauxite ore, which is loaded at Amazon port facilities of Trombetas and Juruti and shipped downriver to Vila do Conde and further down the Northeastern coast, to the ports of São Luis and Itaqui. Other dry bulk commodities regularly transported domestically by ships include iron ore, salt, clinker, wheat, and pet coke.

### 2.3.3. Dry bulk imports

Approximately 50% of Brazil's seaborne imports are made up of solid bulk commodities, with fertiliser products accounting for half of this volume. The country is not self-sufficient in fertiliser production and relies heavily on imports to sustain its thriving agrobusiness sector and successive record-breaking harvests. As the productivity and planted areas for key crops continue to expand, Brazil's demand for imported fertilisers is expected to increase accordingly. This trend should keep fertiliser products as the top imported commodity in terms of gross weight. **Figure 7**

**Main Brazilian solid bulk imports (in million m/t)**

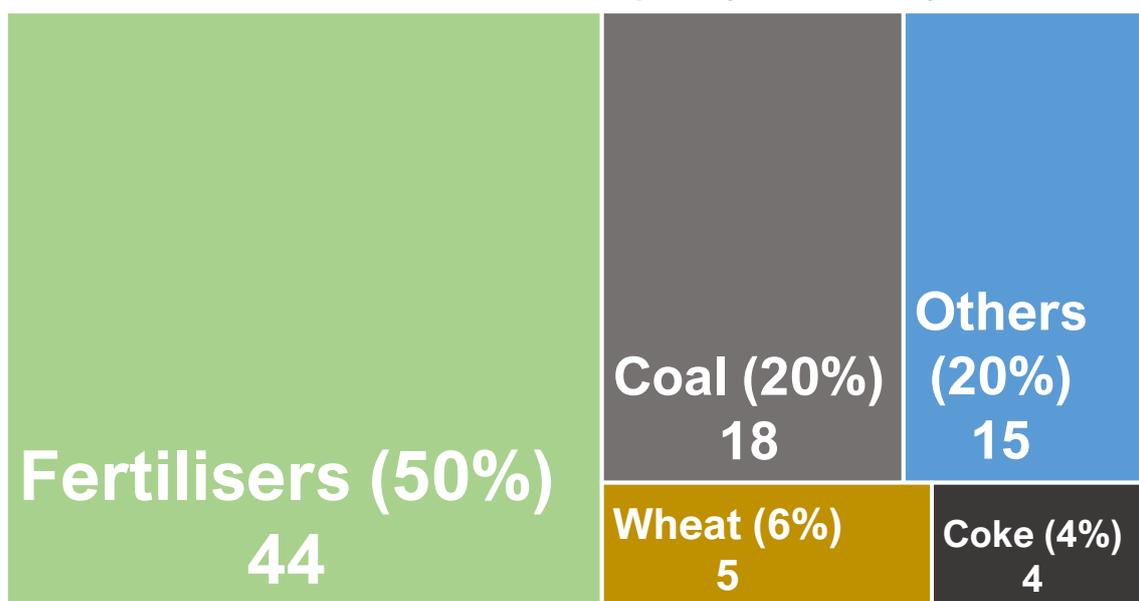


Figure 7: Main Brazilian solid bulk imports in 2024 (in million m/t). Source: ANTAQ/MDIC/ComexStat

In 2024, Brazil imported over 44 Mmt of various fertiliser products, FOB valued at US\$13.5 billion. The primary sources of these imports were Russia, China, Canada, Morocco, and the USA<sup>8</sup>.

**Main solid bulk imports by port (in million m/t)**

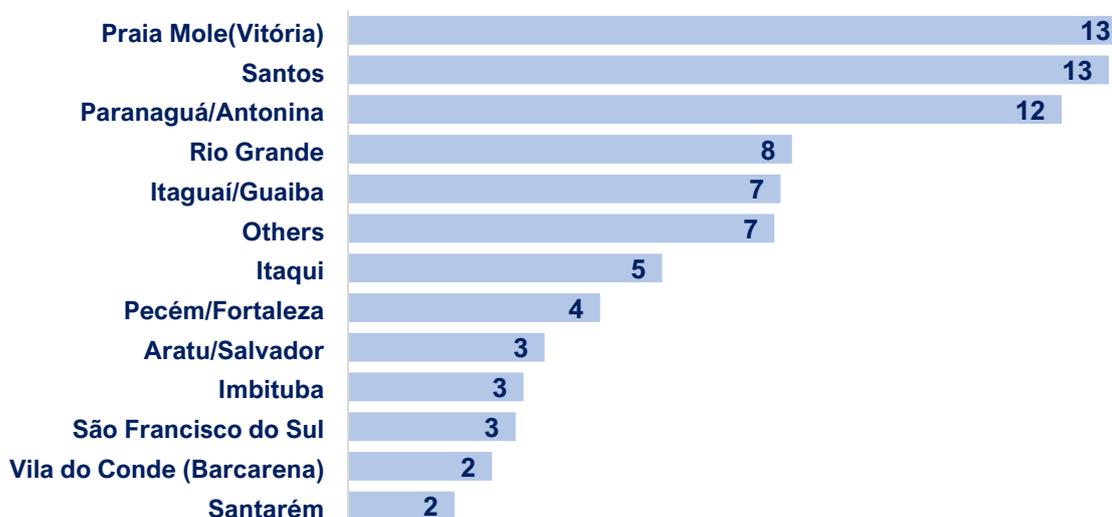


Figure 8: Main Brazilian solid bulk imports by port in 2024 (in million m/t). Source: ANTAQ/MDIC/ComexStat

The main national ports receiving fertiliser imports included Paranaguá, Santos, Rio Grande, Itaqui, and São Francisco do Sul. In addition to fertilisers, Brazil regularly imports large volumes of coal, shipped from the United States, Australia, Colombia, Russia, and South Africa. Coal shipments are typically unloaded at port facilities such as Praia Mole (Vitória), Itaguaí (near Rio de Janeiro), Pecém (near Fortaleza) and Itaqui (São Luis). **Figure 8**

Brazil regularly imports expressive quantities of wheat from Argentina, Uruguay, Russia, the USA, and Canada. The cereal is unloaded at different ports along the coast, mainly Santos, Pecém, Rio Grande, Suape (near Recife) and Rio de Janeiro.

<sup>8</sup> Considering all fertiliser products under Chapter 31 of the HS Code. Source: Ministry of Development, Industry and Foreign Trade (MDIC)

### 3. Solid bulk quantification

#### 3.1. Lack of specific regulation

The Navy’s Directorate of Ports and Coasts (DPC) is responsible for providing guidelines and requirements for determining gross and net tonnage, displacements and deadweight of Brazilian-flagged vessels engaged in oceangoing navigation. DPC has also established standards for mandatory condition surveys for ageing bulk carriers operating in Brazil. However, there are currently no specific rules or guidelines within the maritime authority’s regulatory framework, nor, indeed, any legal statutes, which regulate acceptable methods for the quantification of bulk cargo transported by ships.

#### 3.2. Customs quantification

For customs control and tax assessment, the Federal Revenue Service of Brazil (RFB), in its role as the customs authority, regulates the quantification of imported and exported goods.

Methods for quantifying solid bulk cargo differ from port to port and are regulated regionally by the local Customs House. Different quantification methods may apply to terminals within the same port.

The procedures for expert assessment to identify and quantify customs-controlled goods are established in Normative Instruction RFB 2,086/2022, which also governs the accreditation process for service providers and independent experts, specifying acceptable methods for determining the weight of bulk cargo and for collecting and retaining cargo samples. According to this regulation, the customs auditor responsible for the clearance process must designate experts to quantify bulk cargo transported by land or sea. In the latter case, ships are selected for expert cargo quantification based on risk management criteria established by the local customs inspector.

Any party with a vested interest in a bulk cargo shipment, such as the importer, exporter, carrier, or bailee, can request the engagement of customs experts for cargo quantification. The expert’s fees and expenses are borne by the contracting parties, based on a table of fees set out in the regulation<sup>9</sup>.

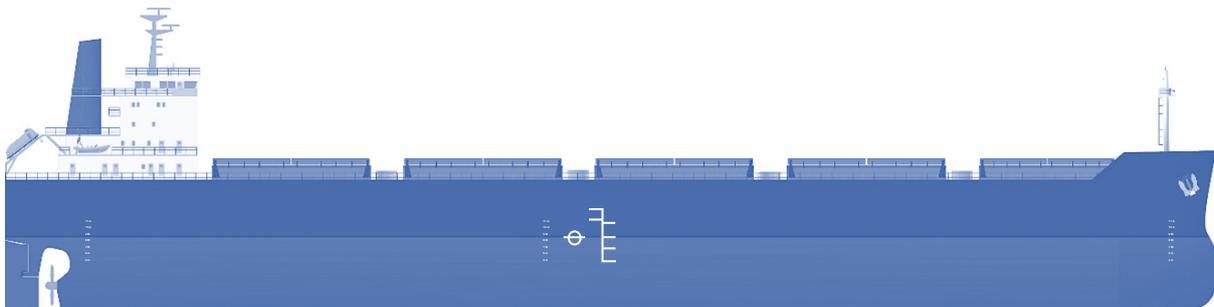


Figure 9: Bulk carrier with load lines and draft marks on the side of the hull. Source: Shutterstock/Proinde

#### 3.3. Draft surveys

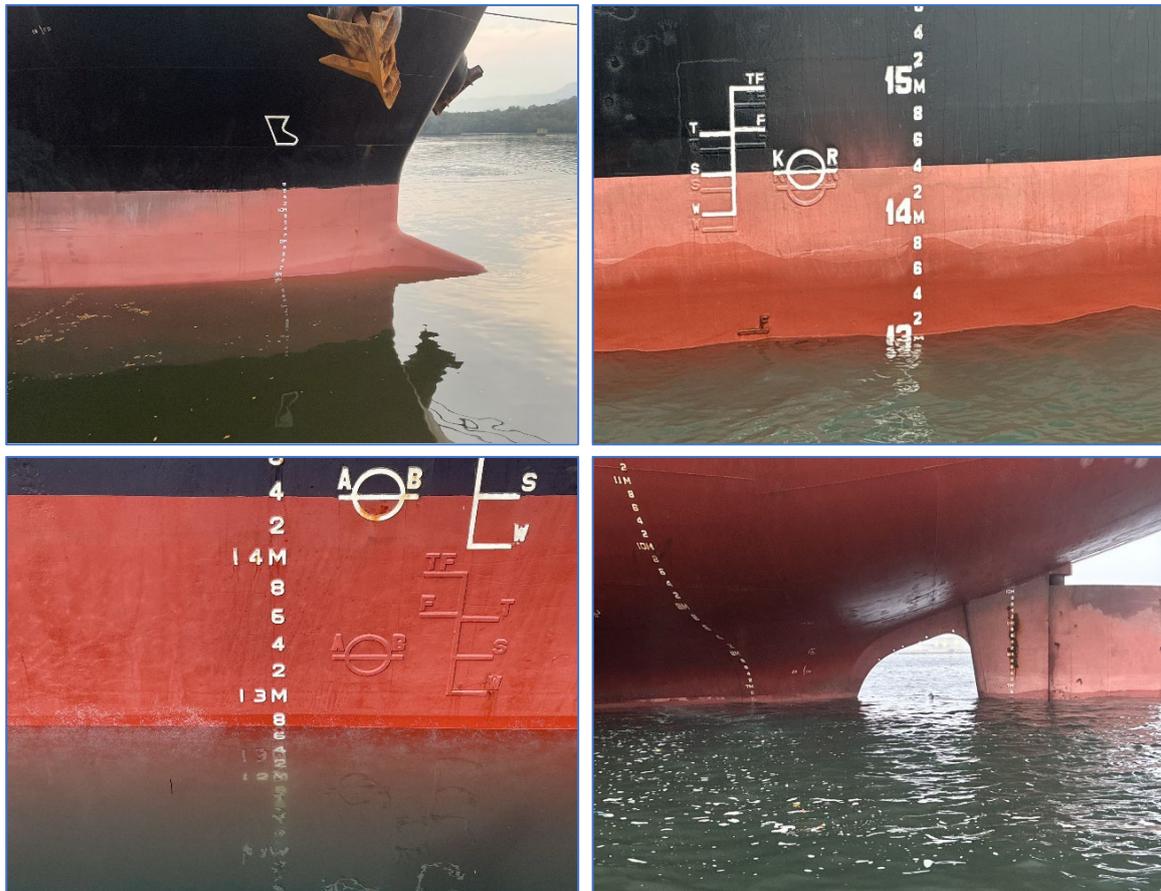
A draft (or draught) displacement survey, while not an exact science, is a simple and practical method for estimating the weight of dry bulk loaded or unloaded from a ship by measuring the changes in its displacement, based on Archimedes’ law of buoyancy. Draft survey is the most common method used for seaborne bulk cargoes and, indeed, the only means available to the ship’s command allowing them to verify the accuracy of the cargo quantity information provided by the shipper or port operator.

Cumulative errors can occur when reading and correcting draft displacements. Most marine experts and draft surveyors agree that a well-prepared and conducted draft survey should achieve an accuracy within  $\pm 0.5\%$ . Some would typically assess this margin of error between 0.5% and 1%. **Sections 3.3, 4.2 & 9.2; Pictures 1 to 4**

<sup>9</sup> Articles 19, 20 & 44 of Normative Resolution RFB 2,086/2022, by the Federal Revenue Service of Brazil (RFB)

In addition to the experience and care taken by the draft surveyor or ship's officer in performing the draft survey, its accuracy and reliability are influenced by several variables, such as:

- **Hull draft marks:** poorly painted, faded, rusted, or biofouled hull draft marks
- **Hydrostatic data:** outdated ship-specific hydrostatic data and sounding tables
- **Adverse sea and weather conditions:** surface disturbances from wind waves, swells, strong currents, or choppy seas, compromising precise draft readings
- **Night-time readings:** reading draft marks with torchlights after dark can be challenging, especially under adverse sea and weather conditions
- **Accessibility constraints:** limited or obstructed access to hull draft marks, and the absence of a boat, or lack of shoreside access for close-range draft readings on both sides of the hull
- **Unaccounted weights:** unaccounted weights such as bilge water in cargo holds, machinery spaces, duct keel, voids, chain lockers, and accumulated silt and mud in double bottom tanks
- **Non-linear draft changes:** dynamic phenomena like squat and other non-linear alterations in draft due to listing, trimming, hogging, sagging, and touching of bottom, cause asymmetric weight distribution and hull deformation, further affecting the accuracy of the calculations.



Pictures 1 to 4: Reading draft survey marks at the bow, midships, and stern. Source: Proinde

### 3.4. Acceptable methods

There are several acceptable methods for determining the weight of seaborne dry bulk cargo. According to RFB 2,086/2022, cargo can be quantified using various techniques, including weighing, direct measurement, mensuration, or any other specific method approved by the customs authority<sup>10</sup>.

#### 3.4.1. Weighing

Cargo quantification for imports or exports can be conducted using road or rail weighbridges, as well as intermittent or continuous flow scales.

#### 3.4.2. Direct measurement

Quantification can also be performed with automated instruments that measure the flow of solid, liquid, or gaseous bulk cargoes, including flow meters.

In modern bulk handling facilities, notably grain elevators, the official weighing method recognised by the local customs authority may involve various automated systems, such as conveyor scales, load cell gross weighers, and automatic bulk grain weighers. In less developed ports, which typically move smaller shipments of grains and minerals, the customs authority may permit an estimation of cargo weight by tallying grab (or bucket) loads or weighing truckloads on shore weighbridges.

#### 3.4.3. Mensuration

Under the relevant customs regulations, cargo weight can also be determined through any of the following methods:

- **Automatic measurement:** uses diverse types of customs-approved automated equipment to measure the weight of solid, liquid, and gaseous cargoes.

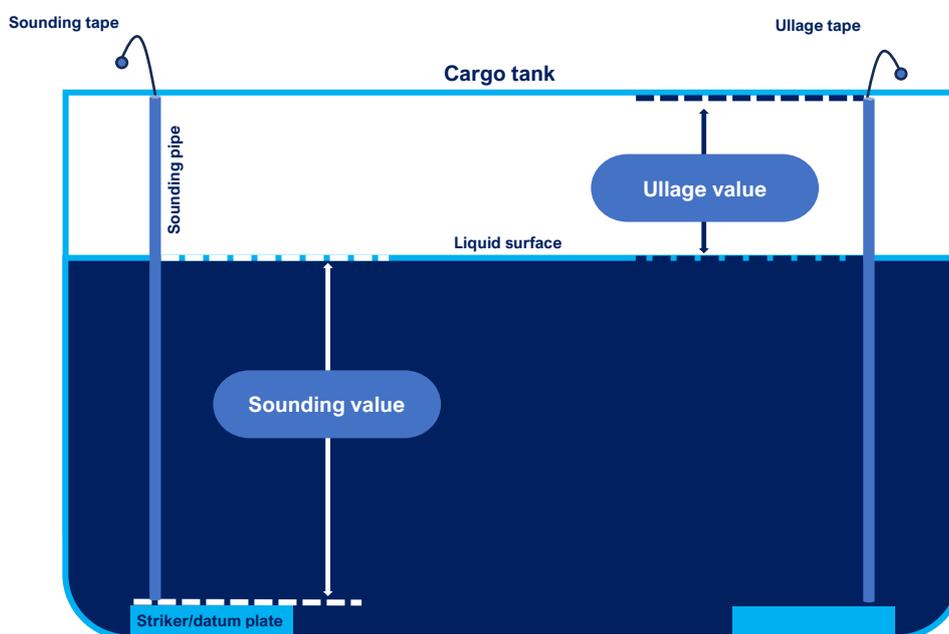
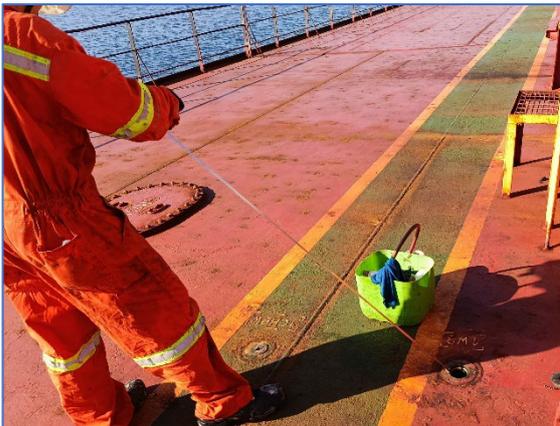
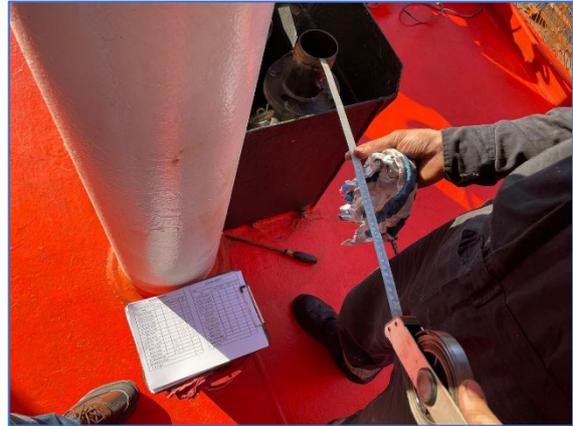
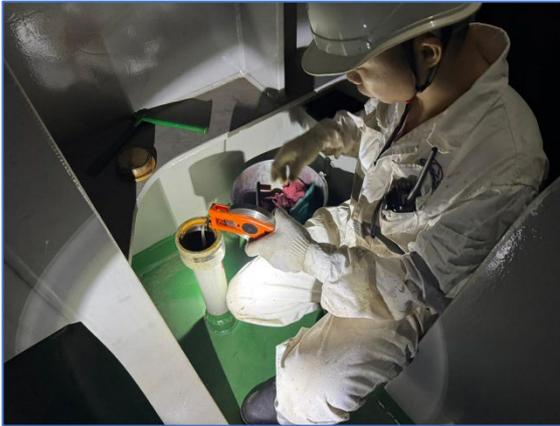


Figure 10: Basic diagram of sounding and ullage for quantification of liquid bulk cargo on board a ship

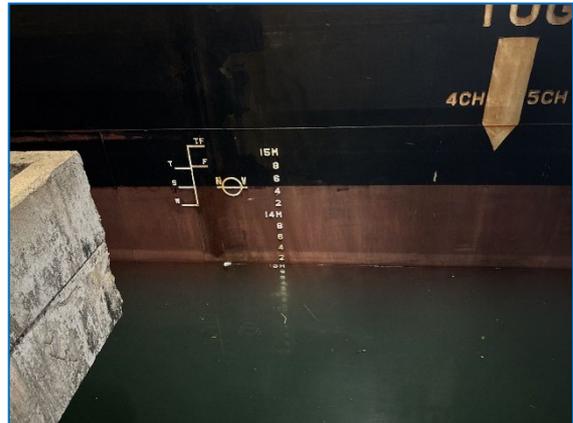
- **Ullage:** measures the unfilled space (headspace) between the surface of a liquid in a tank and the top of the inner surface of the tank to determine the cargo weight using an ullage tape or an electronic gauge. **Figure 10; Pictures 5 to 8**

<sup>10</sup> Articles 30 to 36 of Normative Resolution RFB 2,086/2022, by the RFB



Pictures 5 to 8: Ship's crew taking ullage and soundings of oil and ballast tanks. Source: Proinde

- **Sounding:** measures the depth of a liquid in a tank from the bottom to the upper surface of the liquid to determine the cargo weight using a sounding tape or an electronic sounding device.



Pictures 9 & 10: Reading draft survey marks from a boat (right) and from the quayside. Source: Proinde

- **Draft (or draught) displacement survey:** calculates the difference in the vessel's displacement, empty or loaded (or loaded and empty), to determine the weight of dry bulk cargo loaded or discharged. Essential tools for this method include a sounding tape, a calibrated hydrometer, and the vessel's hydrostatic table. **Sections 3.3 & 9.2; Pictures 9 & 10**

The draft survey, ullage, or sounding must be performed at both the commencement and completion of the cargo loading or unloading operation, regardless of how many importers or exporters are involved. An intermediate draft survey, ullage or sounding during cargo operations may be conducted if the vessel shifts berth or at the request of the interested party.

Unless different types of cargo are loaded or discharged simultaneously, there will be one customs expert report for each type of goods being handled, accompanied by documentary evidence of the methods and calculations used to support the expert's conclusions. The regulation allows interested parties to lodge complaints and challenge the expert's findings following specific procedures<sup>11</sup>.

### 3.5. Preferred methods

#### 3.5.1. Automated measurement

According to Normative Instruction RFB 2,086/2022, cargo quantification conducted by automated equipment is preferred over that performed by customs-accredited experts. The choice of the method to be adopted lies with the customs authorities and depends on historical discrepancies between measurements taken by automatic devices and those conducted by experts.

#### 3.5.2. Weighbridges

The quantification of solid bulk cargoes transported by land, or unloaded directly from vessels onto land vehicles, should preferably be conducted by weighing using a road or rail weighbridge during the gating-in or gating-out process. **Pictures 11 & 12**



**Pictures 11 & 12: Grain lorries on weighbridges. Source: Alf Ribeiro/Shutterstock**

#### 3.5.3. Customs expert surveys

When quantification is conducted on board through methods such as draft survey, ullage or sounding, shore measurement is waived unless the customs inspector in charge of the port facility requires it for a justified reason.

### 3.6. Calibrations and certifications

Customs Normative Instruction RFB 2,086/2022 does not provide any tolerances or margins of error for the approved quantification methodologies. This aspect is partly addressed by Ordinance RFB 143/2022, which requires all measuring instruments used in customs-bonded spaces to comply with the International System of Units (SI) and possess valid certification of calibration and accuracy. Such certification must be substantiated by testing reports, calibration certificates, or similar documentation. Regular maintenance and calibration protocols must be performed according to the standards of the weights and measures authorities<sup>12</sup>.

Certification should be valid and issued by accredited laboratories recognised by (i) the National Institute of Metrology, Quality, and Technology (Inmetro); (ii) organisations that are part of the International Laboratory Accreditation Cooperation (ILAC), or the InterAmerican Accreditation Cooperation (IAAC); or other laboratories or experts, if accredited options from Inmetro, ILAC, or IAAC are not available.

<sup>11</sup> Articles 31 & 33 to 43 of Normative Resolution RFB 2,086/2022, by the RFB

<sup>12</sup> Article 13 of Ordinance RFB 143/2022, by the RFB

### **3.7. Information disclosure**

Disclosure of expert reports on customs assessments conducted under the terms of Normative Instruction RFB 2,086/2022 to third parties is prohibited<sup>13</sup>.

The current customs framework does not impose an obligation on operators of bonded port facilities to provide copies of test reports or calibration certificates to sea carriers or their representatives. However, it does not prohibit them from doing so. Port operators may choose to share these documents with carriers to promote transparency and support risk assessment initiatives. Sharing this information can also help address concerns or disputes regarding potential discrepancies between the quantities measured by the vessel and those obtained during measurements taken ashore. **Chapter 6**

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<sup>13</sup> Article 41 of Normative Resolution RFB 2,086/2022, by the RFB

## 4. Shortage allowances

### 4.1. Loss and wastage (natural loss)

Solid bulk cargo inherently entails a higher risk of loss or damage compared to shipments that can be handled and counted individually, such as breakbulk and containerised cargo. Throughout the entire logistics chain – starting from origin to the port of loading, during storage, loading, unloading, storage at the port of discharge and finally delivery – some amount of the cargo, however small, will unavoidably be lost at each stage, a consequence commonly referred to in legal doctrine and customs regulations as ‘natural loss’.

#### 4.1.1. Operational factors

Operational inefficiencies often contribute significantly to cargo loss. Problems can arise from improper loading/unloading techniques, unfitting or poorly maintained cargo handling equipment, unsuitable storage conditions before loading, and an untrained or unmotivated workforce.

Dry bulk cargoes can be lost due to dusting and spillage while conveying, loading, and discharging. Granular, powdery, and hygroscopic products are particularly vulnerable to in-transit loss as well as cross-contamination<sup>14</sup>. **Pictures 13 & 14**



**Pictures 13 & 14: Cargo wastage due to dusting and spillage from grabs and hoppers during discharge. Source: Proinde**

This type of cargo is also subject to errors in quantification, stemming from inaccurate draft survey calculations or defective, miscalibrated shore weighing equipment, leading to a misrepresentation of the actual quantity loaded or unloaded and disputes between carriers, cargo owners, and port operators, often founded on ‘paper’ losses. **Sections 3.3, 3.4 & 6.6**



<sup>14</sup> Cross-contamination of solid bulk cargoes includes physical mixing with different grades of bulk cargoes, contamination from substances such as oil, ballast water, residues of previous cargo, rainwater, and debris, as well as pest infestations in organic materials



Pictures 15 to 18: Cargo wastage due to spillage on deck and hatchways. Source: Shutterstock/Proinde

#### 4.1.2. Cargo-specific factors (inherent vice)

Certain types of cargo possess intrinsic properties that render them susceptible to losses resulting from shrinkage and evaporation. Some mineral commodities, such as ore concentrates, can pose a hazard due to moisture. If these materials are shipped at a moisture content above their transportable moisture limit (TML), they may experience liquefaction or dynamic separation<sup>15</sup>. These phenomena result in a loss of mass, form, and volume due to the cargo’s intrinsic chemical and physical properties, irrespective of external events, otherwise known as inherent vice (defect).

While domestic legislation may not expressly define inherent vice, the concept is widely recognised within legal doctrine and jurisprudence as a legitimate exclusion of liability, as there is no element of fault involved. The Commercial Code exempts insurers and carriers from liabilities for goods that are naturally prone to weight fluctuations, irrespective of external influences. As a result, cargo owners should bear associated costs and are still required to pay freight charges based on the measured or weighed quantity at discharge<sup>16</sup>. The Commercial Code includes old-fashioned provisions offering impractical solutions to address the complexities of liability allocation for cargo shortages, especially given the vast volumes of bulk commodities transported in contemporary shipping operations and the scale of modern bulk carriers<sup>17</sup>.

#### 4.1.3. Environmental factors

Adverse environmental conditions can exacerbate losses associated with bulk cargo handling. High winds and extreme thermal fluctuations can lead to windage and dusting of particulate matter and spillage of granular or powdery materials onto quaysides, deck surfaces, and overboard during cargo operations.

### 4.2. International trade allowances

In the international dry bulk trade, it is a standard practice to accommodate an allowance – often referred to as ‘customary shortage’, ‘in-transit loss’, or ‘trade allowance’ – to account for natural losses and discrepancies in cargo quantification. This allowance typically encompasses a tolerance of ±0.5% of the manifested weight. This practice is well established within the oil industry, which recognises that bulk cargoes may experience unavoidable losses due to factors beyond the carrier’s control.

<sup>15</sup> IMSBC Code (2023 Amendments): “Dynamic separation means the phenomenon of forming a liquid slurry (water and fine solids) above the solid material, resulting in a free surface effect which may significantly affect the ship’s stability”

<sup>16</sup> Articles 617 & 711 of Law 556 of 1850 (Commercial Code)

<sup>17</sup> Article 616 of the Commercial Code: “When the freight is agreed by number, weight or measurement, and there is a condition that the cargo will be delivered at the ship’s gangway, the captain has the right to request that the effects be counted, measured or weighed on board the same ship before unloading; and if this diligence is not carried out, he will not be liable for shortages that may appear ashore; if, however, the goods are unloaded without being counted, measured or weighed, the consignee will have the right to verify the identity, number, measurement, or weight ashore, and the captain will be obliged to conform with the result of this verification.” (free translation)

As a result, claims for short delivery are not pursued in certain jurisdictions unless the discrepancy exceeds the 0.5% threshold when comparing the outturn weight with the gross weight manifested in the bills of lading<sup>18</sup>.

While some countries and national regulatory bodies have adopted a percentage of shortage allowance for bulk cargo, typically 0.5% or higher, either through local practices and customs or through national laws and regulations, no international conventions or binding industry standards address this issue.

**4.3. Customs allowances**

The Customs Regulation<sup>19</sup>, which focuses on customs controls and taxation related to foreign trade transactions, establishes that any shortages (or overages) in dry bulk cargo identified during the clearance process will not be subject to penalties if they remain within certain limits. No duties or fines will be levied for discrepancies within 1% of the official outturn compared to the manifest. Similarly, there will be no fines for shortfalls of up to 5% of the bill of lading figures. **Figure 12**

Source	Allowance	Regime
Customs allowances	≤ 1%	No customs penalties or fines imposed for short delivery of up to 1% of the manifest.
	≥ 1% ≤ 5	Payment of import duties proportional to the shortfall up to 5% of the manifest, with no fines applied.
	> 5%	Payment of duties proportionate to the shortfall, plus a cumulative fine of R\$5,000 for each percentage point above 5% of the manifest.
Trade allowance	± 0.5%	International practice.
Insurance policies	0.5% to 1%	Typical deductibles in dry bulk cargo insurance policies.
Federal courts (Customs penalties)	≤ 5%	No tax liability within the customs allowance.
State civil courts (Cargo claims)	≤ 0.6%	Maximum shortage allowance that is usually recognised by the State Civil Courts in Santa Catarina and Rio Grande do Sul.
	0%	No shortage tolerance for the State Courts of Paraná.
	≤ 1% or ≤ 5%	Shortage allowances from 1% up to 5% of the manifest are typically recognised in the other state civil court systems.

Figure 11: Table of shortage allowances acceptable to various sources. Source: Customs Regulation

However, if a shortage exceeds 1% of the manifest, the party found responsible will be required to pay the duties corresponding to the quantity of short-delivered goods above this threshold, with a maximum tolerance of 5%. If the shortage surpasses the 5% upper limit, customs fines will be imposed in addition to proportional import or export duties<sup>20</sup>. **Chapter 7**

<sup>18</sup> "Carefully to Carrier - Consolidated Edition 2023", 2023, by the UK P&I Club; "Inaccuracies in Draught Surveys - Loss Prevention Bulletin", 2023, by the West of England P&I; "Draft surveys – a critical tool to defend dry bulk cargo shortage claims", 2021, by Gard P&I; "Draught Surveys – A Guide to Good Practice - 2<sup>nd</sup> Edition", 2009, by the North of England P&I Association; "Code of Uniform Standards and Procedures for the Performance of Draught Surveys of Coal Cargoes", by the UN Economic Commission for Europe (UN/ECE)

<sup>19</sup> Federal Decree 6,759 of 2009, as amended, known as 'Regulamento Aduaneiro' (Customs Regulation), regulates the administration of customs activities, inspection, control and taxation of foreign trade operations

<sup>20</sup> Article 169 of Law-Decree 37/1966; Article 66 of Law 10,833/2003; Articles 72, 238, 251, 702, 706, 718 & 728 of the Customs Regulation

#### **4.4. Civil statutes**

In Brazil, there are general laws governing contracts of carriage of goods and a specific law delimiting liability for shortages or damage to cargo transported by sea. But while the Commercial Code does allow carriers and cargo insurers to exclude their liabilities for loss of goods inherently subject to weight fluctuations, regardless of external factors, neither the Commercial Code nor the Civil Code specifies any tolerances or allowances for short or over-delivery of liquid or solid bulk cargoes<sup>21</sup>.

#### **4.5. Cargo insurance policies**

Cargo insurance policies often acknowledge that inherent shortages in dry bulk cargoes are almost unavoidable, so much so that standard policies would include deductibles ranging from 0.5%, the international shortage allowance, to 1%, in line with customs shortage allowances.

#### **4.6. Doctrine and jurisprudence**

The legal framework governing allowance for short deliveries of bulk cargo is inconsistent, primarily due to the absence of uniform jurisprudence and specific statutory provisions regulating this matter. Federal courts addressing tax-related shortage fines and civil courts hearing cargo shortage claims tend to rely, by analogy, on customs allowances, which exempt carriers from liability for short deliveries within specified percentage limits. **Chapters 7 & 8**

The prevailing legal doctrine and judicial rulings from state and federal courts of appeal maintain that solid bulk cargoes are inherently prone of natural loss. Consequently, allowances exonerating carriers from liability for these inherent shortages are recognised. However, the threshold for permissible shortages is not uniform, varying significantly across different jurisdictions.

Most civil state courts tend to apply the 1% shortage allowance provided for in the Customs Regulation, while federal courts endorse allowances extending up to 5% of the cargo manifest. Noteworthy exceptions are some civil courts in the southern states. Established jurisprudence in the state courts of Santa Catarina and Rio Grande do Sul tolerates short deliveries of up to 0.6% of the declared quantity. In contrast, the state court of Paraná does not accept any allowances at all. **Figure 11**

The determination of an allowable shortage hinges on the discretion of the court hearing the claim. Some judges may entertain a short delivery allowance as a valid defence. In contrast, others might hold the carrier strictly liable for delivering the cargo in the exact quantity stated in the bill of lading.

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<sup>21</sup> Articles 730 to 756 of Law 10,406/2002 (Brazilian Civil Code); Law-Decree 116/1967; Article 616 of the Commercial Code

## 5. Liabilities for cargo shortage

### 5.1. Contract of carriage

In Brazil, the substantive commercial and civil laws dictate general rules governing contracts of carriage of goods<sup>22</sup>. According to these laws, the bill of lading (or similar document) must contain specific information, along with applicable terms and conditions.

When a cargo is loaded on board and the bill of lading is issued, the carrier, represented by the master, assumes both physical and legal custody of the goods. The carrier remains liable for transporting the cargo safely to its intended destination within an agreed-upon or reasonable timeframe, being liable to the cargo owner for loss or damage caused during the period of custody<sup>23</sup>.

#### 5.1.1. C/P terms

Charter party terms must be fully incorporated into the bill of lading, which will take precedence over the C/P if there is a conflict between them<sup>24</sup>.

#### 5.1.2. Reservation clauses

Bills of lading often include pre-printed reservation clauses, or ‘unknown clauses. These clauses are designed to protect carriers from issues beyond their control or knowledge. Standard B/L forms typically include statements and disclaimers such as “*shipped in good order and condition*”, “*weight, quantity, and quality unknown*”, and “*said to weigh*”. Popular forms, such as the Congenbill, include extensive reservation clauses<sup>25</sup>.

Unknown clauses may be recognised in the carrier’s favour in some jurisdictions by indicating that the master has not made any representations as to the accuracy of the information provided by the shippers and inserted in the bills of lading. Under Brazilian law, such clauses have little to no value to limit or exclude the carrier’s liability.

B/L figures are usually regarded as prima facie evidence, meaning that the burden of proving a limitation, exclusion, or calculation error rests with the carrier. If the carrier fails to present a valid defence, it will be liable to pay compensation to the cargo interests for the value of the short-delivered quantity. This compensation may be adjusted, with or without deductions for any shortage allowances or applicable deductibles, at the discretion of the judge. [Section 6.2](#)

#### 5.1.3. Standard forms (contracts of adhesion)

Brazilian law regards standard forms of bills of lading with reservation clauses where the contracting party was unable to discuss or negotiate terms and conditions as contracts of adhesion. When they contain ambiguous or contradictory clauses, the interpretation most favourable to the adherent should apply. Clauses that imply the adherent’s waiver of a right arising under the contract of transport are null and void<sup>26</sup>.

<sup>22</sup> The contract of carriage, usually evidenced in the form of a bill of lading, functions as a proof of the contract, a receipt for the goods and a title of credit (Articles 575 & 586 to 589 of the Commercial Code; Articles 1 & 3 of Decree 19,473/1930). Article 730 of the Civil Code: “*By way of the contract of carriage, someone undertakes to carry from one place to another, people or things, in return for remuneration*” (free translation)

<sup>23</sup> Article 744 of the Civil Code: “*Upon receipt of the thing, the carrier will issue the bill of lading mentioning the data that identify it, subject to the provisions of special law*” (free translation). Article 749 of the Civil Code: “*The carrier will take the thing to its destination, taking all the necessary precautions to keep it in good condition and deliver it within the agreed or expected timeframe*” (free translation)

<sup>24</sup> Articles 565, 566 & 576 of the Commercial Code

<sup>25</sup> The ‘Congenbill of Lading’ (CONGENBILL) is a specific type of bill of lading developed by BIMCO for use with GENCON charter party. Its pre-printed clauses typically state: “*SHIPPED at the Port of Loading in apparent good order and condition on the Vessel for carriage to the Port of Discharge or so near thereto as the Vessel may safely get the goods specified above. Weight, measure, quality, quantity, condition, contents and value unknown*”.

<sup>26</sup> Articles 423 & 424 of the Civil Code

#### 5.1.4. Arbitration and forum selection clauses

Arbitration and choice of exclusive forum clauses in contracts of transport are allowed under Brazilian law, provided they are clearly specified<sup>27</sup>. [Section 8.7](#)

#### 5.1.5. Non-indemnity clause

The Federal Supreme Court (STF) and the specific legislation have established that clauses intending to exclude, restrict, or modify the carrier's liability and duty to compensate are considered unwritten under Brazilian law and, therefore, are unenforceable<sup>28</sup>.

### 5.2. Nature of carrier's liability

The law establishes that carriers are responsible for the safekeeping, transportation, and delivery of cargo at the destination. Nevertheless, carriers may be exempted from liability if they can demonstrate the existence of legal exclusions, limitations, or a lack of causation.

While fundamental principles of civil law broadly follow the theory of subjective liability, rooted in wilful misconduct or gross negligence<sup>29</sup>, prevailing Brazilian legal doctrine and jurisprudence regard the carrier's liability as strict. In practice, the claimant needs only to demonstrate legal standing (the existence of a contract of carriage) and provide evidence of cargo loss or damage to shift the burden of proof onto the carrier. The carrier will only be able to dismiss the claim if it establishes that the alleged loss or damage occurred outside the period of liability or resulted from an exclusion or limitation recognised under Brazilian law.

### 5.3. Scope of carrier's liability

The duration of the sea carrier's liability, and the moment of transfer of custody, is delimited in Law-Decree 116/1967. According to this special law, the carrier's liability commences when the goods are received on board at the loading port and subsists until they are safely delivered at the destination port, following the 'tackle to tackle' principle<sup>30</sup>. [Figure 12](#)

#### 5.3.1. Cargo receipt

The liability of the carrier begins when it receives the goods from the shipper or a customs-bonded port facility (bailee), or a port operator, which is hired by the shipper or consignee and is responsible for the stevedoring services on board the vessel.

Cargo is deemed delivered by the port to the ship at the point it is lifted alongside (if the ship's tackle is used) or when it is disconnected inside the vessel (if shore equipment is used). In case of solid bulk cargo loaded by automatic loading equipment, such as ship-loaders and chutes, the goods are deemed delivered to the vessel when they are poured into the cargo hold<sup>31</sup>.

<sup>27</sup> Articles 421, 422 & 853 of the Civil Code; Articles 4, 8, 32 & 33 of Law 9,307/1996 (Brazilian Arbitration Law)

<sup>28</sup> Federal Supreme Court (STF) Precedent 161 of 1963: "*non-indemnification clause in contract of carriage is inoperative*" (free translation); Article 1 of Decree 19,473/1930: "*The bill of lading, issued by the sea, air and land carrier, proves the receipt of the goods and the obligation to deliver them in the place of destination. Any clause restricting or modifying this proof or obligation shall be deemed not written*" (free translation)

<sup>29</sup> Article 186 of the Civil Code: "*The party who, through action or voluntary omission, negligence or imprudence, violates the right, or causes damage to the other party, even if exclusively moral, commits an unlawful act*" (free translation). Article 927 of the Civil Code: "*Anyone who, through an unlawful act (articles 186 and 187) causes damage to another party is liable to repair it. Sole Paragraph: there will be a duty to compensate, regardless of fault, when specifically stated in the law, or when the activity performed by the party who caused the damage implies, by its nature, a certain risk to third parties*" (free translation)

<sup>30</sup> Law Decree 116/1967, as regulated by Decree 64,387/1969, regulates the operations inherent to the carriage of goods in Brazilian ports, delimiting responsibilities and dealing with cargo shortages and damages. Article 750 of the Civil Code: "*The responsibility of the carrier, limited to the value appearing in the bill of lading, commences when it or its servants receive the thing and finishes when it is delivered to the consignee, or deposited in court if the consignee cannot be found*" (free translation). Article 519 of the Commercial Code: "*The Captain is the true bailee of the cargo and any other effects that he receives on board and as such he has the duty of their custody, good stowage and conservation and their prompt delivery at sight of the bills of lading. The liability of the Captain for the cargo commences from the moment he receives it and continues until he delivers it at the agreed place or the place which is in use at the port of discharge.*" (free translation)

<sup>31</sup> Article 2 of Law-Decree 116/1967: "*The responsibility of the port entity commences with the entry of the goods in its warehouses, yards or other places designated for storage and only ceases after effective delivery to the vessel or to the consignees. §1 the effective delivery to the vessel is considered from the commencement of loading operation alongside by way of vessel's gear. (...)*" (free translation); Article 6 of Law-Decree 116/1967

Shipmasters may refuse the carriage of cargo if they consider that it is inadequately packed, poses a threat to public health or is a risk to the ship and property onboard. They may also deny carriage of cargo not accompanied by the necessary documentation required by law or by international regulations to which Brazil is a signatory, such as the IMSBC Code and the International Grain Code, or commodities for which trade is controlled or prohibited<sup>32</sup>. [Section 2.2](#)

The weight of dry bulk cargo will be postulated according to methodologies endorsed by the local customs authority, employing either measurements or draft surveys, or both when cargo is simultaneously loaded or unloaded to or from shore and barges. These constitute the “official figures” for customs purposes and issuance of mate’s receipts and bills of lading. Although these figures serve as prima facie evidence of the quantity delivered to the vessel, the master retains the right to challenge them.

Should the master have substantiated grounds or well-founded reasons to believe that the official figures are inaccurate or erroneous beyond acceptable tolerances, he may remark the cargo receipts with clauses reflecting the disputed quantity. There will be legal and financial repercussions if the official figures are wrongfully challenged. [Sections 6.1 & 6.2](#)

Upon completion of loading, the master (or someone on their authority, usually the shipping agent) must sign and surrender the bills of lading to the shippers or their representatives in exchange for the complete set of signed mate’s receipts no later than 24 hours. The party that unjustifiably delays the issuance of these documents will be held liable for ensuing losses<sup>33</sup>.

### 5.3.2. Cargo safekeeping

The master takes legal custody and assumes the duty of care for the cargo at the time it is loaded aboard. From that point forward, the master is required to take all necessary precautions and exercise due diligence to ensure the safety and integrity of the cargo until it is delivered to the consignee at the destination. In the event of an unjustifiable deviation from the planned voyage or an unreasonable delay, the carrier will bear liability for any damage arising from late delivery<sup>34</sup>.

### 5.3.3. Cargo delivery

The carrier is responsible for delivering the cargo to the consignee or whoever presents the endorsed bill of lading<sup>35</sup>. Nonetheless, in maritime transport, inbound cargo is typically not delivered directly to the consignee named in the B/L, unless in cases of early clearance (direct delivery). Instead, it is handed over to the port operator and then stored ashore under the custody of a bailee, who will remain responsible for the secure storage until the consignee has completed all relevant customs formalities, including payment of any duties, taxes, and accrued storage charges<sup>36</sup>.

<sup>32</sup> Articles 746 & 747 of the Civil Code

<sup>33</sup> Article 744 of the Civil Code: “On receiving the thing, the carrier must issue a bill of lading setting out the information that identifies the thing, in accordance with provision of the relevant special legislation.”. Article 575 of the Commercial Code and Article 2 of Decree 19,473/1930 specifically set out the information to be inserted in the B/L; Article 578 of the Commercial Code: “The bill of lading will be signed and delivered within 24 (twenty-four) hours, after the completion of cargo loading, in exchange of the mate’s receipts, the master or the shipper who have been remiss in the delivery of the bill of lading being liable for all damages resulting from delay in the voyage.” (free translation)

<sup>34</sup> Articles 733, 749 & 750 of the Civil Code; Articles 509, 519, 529 & 745 of the Commercial Code

<sup>35</sup> Article 754 of the Civil Code: “The goods must be delivered to the consignee, or to whoever presented the endorsed bill of lading, who must check them and lodge a claim under penalty of lapse of rights.” (free translation)

<sup>36</sup> Article 542 of the Customs Regulation (Decree 6,759/2009, as amended): “All goods coming from abroad, either imported for definitive purpose or not, subject or not to the payment of the import duty, must be submitted to customs clearance for importation, which shall be done based on the declaration presented to the customs office under whose control the goods is located (Law-Decree 37/1966, art. 44 with wording given by Law-Decree 2,472/1988, art. 2)” (free translation)

Cargo clearance and delivery processes are managed electronically through a single-window foreign trade system, 'Siscomex Carga' (or 'Siscarga'), devoid of any direct intervention from the carrier. However, the carrier retains the right to withhold delivery until any outstanding freight or general average contributions are settled<sup>37</sup>.

#### 5.3.4. Early clearance (direct delivery)

Usually, customs clearance begins once the bailee confirms to the authorities that imported goods have entered bonded storage and meet all documentary requirements, including the original bill of lading. Nonetheless, the customs regulations permit importers of bulk cargo to initiate the customs clearance process before the vessel arrives or to take delivery of the goods before completing the procedure<sup>38</sup>.

Early customs clearance and direct cargo delivery are regulated under Normative Instruction RFB 680/2006<sup>39</sup>, based on an import declaration filed by the consignee. This regulation allows imported bulk cargoes to be unloaded directly from vessels into unbonded shore warehouses, sheds, silos, or tanks. With prior customs permission, bulk imports may also be directly discharged into other conveyances such as lorries, railcars, feeder ships, or barges for transport to non-bonded areas or taken straight to the importer's premises.

The customs clearance process involving bulk cargo already delivered must be completed with the presentation of the final cargo quantification assessment within twenty days (or fifty days for oil and gas products) after discharge completion<sup>40</sup>.

As standard for bulk cargo imports, the quantification of products subject to a direct discharge and delivery regime is conducted by the port facility under customs control. The attendance of an expert or certified private entities accredited by the local customs for cargo measurement may be waived, provided quantification can be accomplished using automated measuring equipment.

Normative Instruction RFB 680/2006 does not require correction of the customs import declaration in cases of cargo short landing on direct delivery, as long as the shortfall does not exceed 5% of the manifested gross weight<sup>41</sup>. **Sections 4.3 & 7.3**

#### 5.3.5. Termination of carrier's liability

Imported cargo is deemed delivered by the vessel when it is connected to the shoreside unloading equipment while still on board. If the ship's tackle is used for discharge, delivery is deemed to occur when the cargo is landed alongside the vessel. Once the cargo has been discharged, the carrier's liability automatically ends unless there is a contract that specifies cargo delivery beyond the ship's tackle. At this stage, legal custody of the cargo transfers to the bailee, which remains liable to customs and cargo owners for shortage or damage verified upon delivery to consignees but not remarked in official discharge documents upon receipt from the ship<sup>42</sup>. **Figure 12**

<sup>37</sup> Article 7 of Law-Decree 116/1967; Article 40 of Normative Instruction RFB 800/2007

<sup>38</sup> Articles 578 & 579 of the Customs Regulation

<sup>39</sup> Articles 62-A to 62-K of Normative Instruction RFB 680/2006

<sup>40</sup> Article 62-G of Normative Instruction RFB 608/2006

<sup>41</sup> Article 169 of Law-Decree 37/1966; Article 62-G of Normative Instruction RFB 680/2006

<sup>42</sup> Article 3 of Law-Decree 116/1967: "*The responsibility of the vessel or craft commences upon receipt of the goods on board and ceases with the delivery of the goods to the port entity or municipal wharf at the port of destination, alongside the vessel. § 1 the effective delivery on board is considered when the goods are handled by vessel's gear, from the commencement of the operation alongside the vessel. § 2 the goods to be discharged from the vessel by port entity or municipal wharf gear, or for its account, are considered effectively delivered to the latter from the beginning of hoisting of the cargo from within the vessel*" (free translation)

Upon completion of discharge, the master should request an 'empty hold' certificate signed by the port operators or receivers, confirming that the vessel's holds are entirely empty after cargo discharge at that port. Timed pictures of the empty holds are also helpful. This evidence, along with draft surveys and hold sealing/unsealing certificates, should serve as proof that all cargo received at the loading port has been removed. **Section 9.5**

Party	Duties and responsibilities
<b>Shipper</b>	<ul style="list-style-type: none"> <li>▪ Accurately and timely describe the nature, quantity, weight, and characteristics of the goods.</li> <li>▪ Comply with all applicable statutory requirements.</li> <li>▪ Remit prepaid freight and local taxes owed to the carrier.</li> <li>▪ Bear the risk of cargo loss or damage associated with inherent vice, act of God, or force majeure.</li> <li>▪ Compensate carriers for losses arising from cargo pre-shipment conditions or incorrect or false cargo declarations.</li> </ul>
<b>Carrier</b>	<ul style="list-style-type: none"> <li>▪ Receive and safely stow the cargo on board.</li> <li>▪ Issue mate's receipts and bills of lading to shippers, including remarks for any short shipments or partial damage verified upon loading.</li> <li>▪ Take all necessary measures to keep the cargo in good condition.</li> <li>▪ Proceed to the destination following the scheduled route.</li> <li>▪ Seek instruction from shippers if carriage cannot be accomplished or will be delayed.</li> <li>▪ Report cargo manifest information to customs in a timely and correct manner.</li> <li>▪ Deliver the cargo at the destination within a reasonable time or as agreed.</li> <li>▪ Compensate cargo owners or subrogated cargo insurers for shortage or damage verified upon discharge and recorded in official documents, if timely protested.</li> <li>▪ Pay import duties and fines falling on beyond-allowance short deliveries as recorded in official discharge documents.</li> </ul>
<b>Port facility (Bailee)</b>	<ul style="list-style-type: none"> <li>▪ Report cargo receipt, loading, and delivery to customs in a timely and accurate manner, including notations of the quantity, quality, and condition upon receipt.</li> <li>▪ Receive the goods from the ship or shipper and safely keep them until delivery to the ship or consignee.</li> <li>▪ Deliver the goods to the rightful consignee after obtaining customs permission.</li> <li>▪ Compensate cargo owners for loss or damage to cargo received from the shipper or carrier if there are no remarks or protests upon cargo transfer.</li> <li>▪ Pay import duties and fines falling on short-delivered goods received from the carrier if there are no remarks in the official damage reports or protests.</li> </ul>
<b>Port operator</b>	<ul style="list-style-type: none"> <li>▪ Perform cargo operations on board according to instructions from the master or duty officer concerning safe cargo handling and stowage.</li> <li>▪ Compensate cargo owners for loss or damage to cargo caused during port operations.</li> <li>▪ Compensate shipowners for damages caused to the ship or the ship's equipment during port operations.</li> </ul>
<b>Consignee</b>	<ul style="list-style-type: none"> <li>▪ Complete the customs clearance procedure and pay the import duties and taxes.</li> <li>▪ Pay collect freight, taxes, and any demurrage charges owed to the carrier.</li> <li>▪ Submit a formal protest to the carrier, port operator, or bailee for any cargo shortage or damage within 10 days of discharge from the ship.</li> <li>▪ Bear the costs of short-delivered falling below allowances and deductibles.</li> <li>▪ Provide general average (GA) bond and average guarantee (and salvage security, if required), signed by cargo insurers.</li> <li>▪ Pay the GA contribution once adjusted.</li> </ul>

**Figure 12: Table of apportionment of liabilities for short delivery of solid bulk cargoes**

#### **5.4. Third parties' liabilities**

While the sea carrier bears the broadest range of liabilities in the transportation of bulk cargo, the Brazilian legal framework also assigns specific responsibilities to shippers, port facilities (bailees), and port operators. The extent of accountability for each party is established by law according to their respective roles within the logistics chain, in accordance with relevant laws and regulations. **Figure 12**

##### **5.4.1. Shipper**

The shipper must comply with international standards and regulations regarding the safe carriage of solid bulk cargoes, particularly concerning cargo information and declarations. Under domestic law, the shipper is required to provide all necessary descriptions and characterisations of the goods tendered to the carrier. The shipper remains liable for any losses arising from inaccurate or false cargo information, provided that the carrier files a claim within a 120-day time limit<sup>43</sup>.

##### **5.4.2. Port operator (stevedores)**

The port operator, who may also act as the cargo bailee, is responsible for executing cargo operations on board following directives from the master or duty officer related to safe cargo handling and stowage. Regardless of whether the stevedores are employees or casual port workers, the port operator is accountable to the cargo owner for any loss caused to the cargo and to the shipowner for any damage sustained by the vessel during port operations or as a consequence of them<sup>44</sup>.

##### **5.4.3. Port facility (bailee)**

Upon discharge from the vessel, the carriers relinquish all control over the cargo, thereby transferring liability for the cargo custody to the bailee. This liability includes loss or damage not indicated in the official damage report. Additionally, the bailee is responsible for the cargo delivery to the rightful consignee upon customs clearance and payment of import duties, taxes, and associated storage charges<sup>45</sup>.

#### **5.5. Evidence of cargo loss**

General average and private average are governed by the Commercial Code, which stipulates that cargo losses arising under the former should be proportionally shared among the vessel, freight, and cargo, while under the latter, cargo losses should be borne either by the ship or the cargo interests<sup>46</sup>.

##### **5.5.1. Damage reports**

The Customs Regulation stipulates that any goods that are discharged with physical damage, weight discrepancy or evidence of tampering must be repaired and weighed. These conditions must be documented immediately in a discharge record (damage report or similar document)<sup>47</sup>.

##### **5.5.2. Discharge outturn certificates**

Cargo short or over deliveries are recorded in the discharge outturn certificates or similar documents issued by the port operator in charge of the unloading operation or the bailee, whether based on shore scale or draft survey figures.

<sup>43</sup> IMSBC Code, Chapter VI, Part A, Regulation 2: "The shipper shall provide the master or his representative with appropriate information on the cargo sufficiently in advance of loading to enable the precautions which may be necessary for proper stowage and safe carriage of the cargo to be put into effect. Such information shall be confirmed in writing and by appropriate shipping documents, prior to loading the cargo on the ship"; Article 575 of the Commercial Code; Articles 743 & 745 of the Civil Code

<sup>44</sup> Article 4, § 2, Law-Decree 116/1967; Article 26, II & III of Law 12,815/2013, as amended (Law of the Ports)

<sup>45</sup> Articles 571 to 576 & 662 of the Customs Regulation; Articles 5 & 54 to 60 of Normative Instruction SRF 680/2006

<sup>46</sup> Articles 761 to 770 of the Commercial Code

<sup>47</sup> Article 63 of the Customs Regulation; Article 5 of Law-Decree 116/1967

Documents issued by customs-bonded facilities, whether privately owned or public, represent prima facie evidence of the quantity and condition of cargo delivered by the vessel. However, the carrier has the right to challenge the accuracy of the official figures in administrative or judicial proceedings if there are substantiated grounds for doing so. [Sections 6.2, 6.5 & 6.6](#)

### 5.5.3. Formal protests

The carrier is liable to the consignee for any cargo loss or damage, as verified at the time of delivery by the vessel and documented in damage reports or discharge certificates. Nevertheless, to preserve their right to claim, cargo interests must file a formal protest against the carrier within 10 days after the cargo is discharged; otherwise, their right to compensation will lapse<sup>48</sup>.

The formal protest is grounded on the principle of full defence within the adversarial system, allowing the carrier the opportunity to conduct surveys and protect its rights concerning any alleged loss or damage. At the same time, it ensures that the consignee retains the right to claim indemnity under the insurance policy, while safeguarding the subrogated cargo insurer's right to seek reimbursement for indemnity paid under an insurance policy.

Nevertheless, some court rulings have dismissed the need for a formal protest for shortages when the discrepancy has been timely documented in customs-trusted discharge records issued by the bailees. Additionally, some courts have understood that this rule only applies to the direct relationship between the carrier and consignee and does not extend to the subrogated cargo underwriter. [Sections 8.4 & 8.9](#)

### 5.5.4. Joint surveys

Minutes from joint cargo surveys conducted between the carrier and cargo interests can serve as evidence in cargo disputes. However, the Superior Court of Justice (STJ) has established a binding precedent ruling that the right to compensation for bulk cargo shortage does not depend on surveys<sup>49</sup>. Thus, as long as the short delivery is reflected in official discharge outturn reports issued by the bailee at the time of discharge, the carrier's duty to compensate cannot be excluded, unless there is a valid limitation or exclusion of liability available to the carrier. [Section 8.5](#)

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<sup>48</sup> Article 754 of the Civil Code: "Sole paragraph: in case of partial loss or damage not perceptible at first sight, the consignee retains right of action against the carrier provided it denounces the damage within ten days from delivery" (free translation); Articles 726 to 729 of the Civil Procedure Code

<sup>49</sup> Superior Court of Justice (STJ) Precedent (*Súmula*) 109 of 1994: "Recognition of the right to compensation for the shortage of goods transported by sea is independent of inspection" (free translation)

## 6. Weight discrepancy disputes

### 6.1. Shore figures vs. draft survey dilemma

Weight discrepancy disputes in bulk cargo shipping are common worldwide. Indeed, cargo shortages represent a significant category within the cover for cargo liabilities afforded by protection and indemnity (P&I) clubs and fixed-premium facilities to bulk carriers. Such disputes rank high in both the number of incidents and value of claims, leading to significant pay-outs to cargo owners and subrogated cargo underwriters.

In Brazil, cargo shortage disputes and claims pose distinct challenges due to a lack of legally binding regulations or standardised methodologies for quantification and tolerances for weight discrepancies. So, quantity-related disputes often arise during loading operations. [Section 3.1](#)

#### 6.1.1. Civil legislation

The Brazilian legal framework does not provide specific guidelines on how bulk cargoes should be identified, measured, and quantified, nor does it establish tolerances or allowances for shortages or overages. In practice, courts hearing customs penalties and cargo claims tend to rely on provisions outlined in the customs regulations to fill this regulatory gap. [Chapters 3 & 4](#)

#### 6.1.2. Customs regulations

For customs control and tax assessment purposes, local customs inspectors define the official methodologies for cargo quantification applicable to each bonded facility, considering factors such as the facility's location, infrastructure, and cargo throughput. Consequently, various methods for quantifying bulk cargo may be used within the same port.

Customs regulations are inclined to endorse automated cargo quantification methodologies, such as shore scales, weighbridges, and flowmeters, over traditional shipboard measurement techniques, such as draft surveys for dry bulk or sounding and ullage for liquid bulk, whenever certified automated systems are available. [Chapter 3](#)

#### 6.1.3. Industry standards

To protect buyers' interests, standard contracts prevalent in the agribulk sector require sellers to procure 'clean on board' bills of lading in exchange for the goods, with quantity determined by onshore measurements. For example, the 'Sugar Charter Party', which is common in the sugar trade, stipulates that the shipmaster must sign clean mate's receipts and bills of lading for each parcel of sugar loaded, as presented by the charterer or shipper. On the other hand, the master has the authority to reject any cargo that would involve the clausing of these documents<sup>50</sup>.

Most grain products shipped from Brazil are governed by sales contracts drafted by the National Association of Grain Exporters (ANEC). ANEC contracts for commodities such as Brazilian soya beans, maize (corn), seedcakes, and wheat include a clause requiring cargo weight to be ascertained through an official shore scale if one is available; otherwise, the customs draft survey figures will be deemed conclusive according to the contractual terms<sup>51</sup>.

<sup>50</sup> Clause 16 of the Sugar Charter Party 1999: "MATE'S RECEIPTS AND BILLS OF LADING – 16. Clean Mate's Receipts to be signed for each parcel of sugar when on board, and Master to sign Bills of Lading in accordance therewith as presented by Charterers or Shippers. Master to reject any cargo that would involve the clausing of Mate's Receipts and/or Bills of Lading. (...)"

<sup>51</sup> Clause 9 of standard 2025 edition of ANEC 41, 42, 43, 44, 45, 71 & 72 FOB contracts: "9. WEIGHT: To be final at time and place of shipment per certificate(s) issued by the Independent Superintendent at Seller's option and account, based on figures ascertained by official shore scales. In case official shore scale is not available at loading terminal, custom's Draft Survey figures will be final. Buyer has the option, at its expense and for its own guidance, to request for joint weight control, advising the Seller in due time the name of the Independent Superintendent it is appointing (as per clause 3). For all effects and purposes, results of the Seller's appointed Independent Superintendent will be final and binding on the parties. Any figures other than those described above will not be acceptable."

## 6.2. Clausing of bills of lading

Mate's receipts and, consequently, the quantities noted in bills of lading are usually based on shore official figures, which are obtained from weighbridges, weightometers, or other automated cargo measurement devices approved by customs. Typically, there is always some discrepancy between shore figures and those derived from a draft survey; they rarely match, however minor the difference.

When a substantial shortfall between shore and ship figures is identified, the master is under no obligation to sign clean documents. Of course, the master should consider the limitations and potential inaccuracies associated with draft survey calculations when deciding whether to challenge shore figures and insert remarks on the mate's receipts and bills of lading to reserve the carrier's position regarding the quantity of cargo reportedly delivered to the vessel. [Section 6.2](#)

### 6.2.1. Clean B/L as prima facie evidence

Should the bills of lading not be objectively claused with written remarks to indicate discrepancies regarding the actual quantity and condition of the cargo at the time of loading, it will be legally presumed that the cargo was delivered to the vessel as stated by the shipper. At this point, the carrier becomes responsible to the holder of the B/L for delivering the cargo at the destination. The carrier will be liable to pay compensation for any shortages or damages that occur during the vessel's liability period, unless there are exclusions or limitations available to the carrier, who will have the burden of proving them. [Sections 8.2 & 8.5](#)

### 6.2.2. Duty to clause

There is a misconception in the bulk trade that the master is obliged to sign 'clean on board' mate's receipts and bills of lading, as dictated by industry-standard contracts. It is often assumed that the master must unreservedly accept the 'official figures', as determined by the customs authority, for inclusion in the cargo receipt documents.

However, the carrier is not a party to the sales contract; only the seller and buyer are bound by its terms. Additionally, while the customs may have a preferred quantification method for control and taxation purposes, the master remains nonetheless legally liable for accurately recording the apparent condition and quality of the cargo at the time of loading. This obligation is similar to that outlined in the Hague-Visby Rules<sup>52</sup>, which, though not applicable in Brazil, could come into play for exports to jurisdictions where this liability regime is recognised.

Under specific provisions of Brazilian law, the delivering entity – either the shipper or port operator – bears responsibility for cargo damage to or shortage identified during loading operations. At the same time, the master is required by law to record any visible damage or discrepancies in the mate's receipts and bills of lading<sup>53</sup>. Similarly, the Commercial Code empowers the master to insert written remarks on the cargo documents if there are reasonable grounds to suspect that they do not accurately represent the cargo received, whether in terms of apparent condition or quantity or if the master had no reasonable means to verify it.

<sup>52</sup> Article III Rule 3 of the Hague-Visby Rules: "After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things: (...) (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper., (c) The apparent order and condition of the goods. Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking."

<sup>53</sup> Article 4 of Law-Decree 116/1967: "The goods will be delivered to the vessel or carrying ship against receipt issued by the carrier or its agent. § 1. Receipts must be passed in one of the non-negotiable copies of the bill of lading, which must contain space for notes on partial shipments and remarks concerning short delivery and damage to cargo and its packaging. § 2. The delivery entity shall be responsible for shortage or damage verified at the time of shipment. § 3 - The damaged goods will be returned to the deliverer and will be subject to immediate inspection in the presence of the interested parties, it will only be re-loaded after the delimitation of the damage and clausing of the original bill of lading. § 4. The inadequacy of the packaging, according to use and customs and official recommendations, equates to inherent vice of the goods, the carrier not responding to the risks and consequences thereof. § 5. The non-delivery of a receipt by the vessel receiving the goods presupposes the delivery by the port entity or municipal wharf to the vessel of the manifested volumes indicated in the conditions mentioned by the delivering entity." (free translation)

### 6.2.3. Cargo recount

In instances where a shipper disagrees with the master's remarks on the mate's receipts and bills of lading, the Commercial Code prescribes a straightforward yet impractical solution: the entire cargo must be recounted, and the party at fault will bear the costs incurred<sup>54</sup>.

When the commercial law was drafted in 1850, cargo ships were much smaller, and bulk cargo transportation was not as common. Nowadays, due to the massive size of bulk carriers –ranging from small handysize bulkers with a deadweight of 20,000 m/t to very large ore carriers (VLOCs) of 400,000-dwt – it is impractical and extremely costly to unload shipped cargo for recounting, particularly because discrepancies are typically detected nearer to or upon completion of the loading operation.

An added difficulty encountered in the unloading of bulk carriers, especially in the Amazon, is that many of the newer port structures designed to handle dry bulk cargo, especially grains and seedcakes, were primarily built for loading operations. Some bulk cargo handling facilities lack essential unloading infrastructure and equipment, including unloaders, grab-fitted cranes, and bulldozers. Additionally, dedicated cargo loading facilities frequently do not even have enough space alongside to deploy mobile cranes, resulting in limited options for cargo offloading on site. In this scenario, either the cargo is unloaded to barges by way of floating cranes, where available, or the vessel is shifted to a berth outfitted with suitable cargo unloading machinery.

Therefore, unless the dry bulk cargo has sustained physical damage or contamination, unloading it for recounting purposes is often time-consuming and economically unfeasible. The resulting costs, along with the increased risks of cargo handling damage and wastage, would easily surpass the value of the disputed cargo shortfall.

### 6.2.4. Legal disputes upon loading

The clausing of mate's receipts and bills of lading affords protection to innocent third parties – the future holders of the B/L – while also safeguarding the carrier's position and ensuring that there will be no restrictions on the vessel's P&I cover for cargo liabilities. However, this practice might trigger commercial and financial consequences for the shipper.

A claused (or 'dirty') bill of lading can lead to a bank's refusal to pay shippers for the goods stowed on board, as it constitutes a breach of a letter of credit prerequisite, which mandates the surrender of a clean document.

A shipper holding a claused bill of lading may contest the master's remarks in court. This can be done by submitting evidence of contractual agreements that stipulate the issuance of clean documents. The shipper would also submit supporting documentation, such as tally sheets or loading reports, to substantiate their claim that the cargo was loaded according to the 'official figures' sanctioned by customs, and, consequently, alternative methods of cargo quantification, such as draft surveys performed by the ship's officer or an independent draft surveyor, should not be legally accepted.

The outcomes of such disputes can vary depending on the circumstances of each case and the judge's understanding. Aside from the extreme remedy of cargo recount, the court may either dismiss the shipper's application, thereby upholding the master's duty to clause the bill of lading when deemed necessary or grant an injunction requiring the master to sign clean documents, provided the shipper places security with the court for the disputed quantity.

<sup>54</sup> Article 582 of the Commercial Code: "If the loaded goods have not been delivered by number, weight or measure, or in the case of doubt in the count, the captain may declare in the bill of lading that the same number, weight or measure is unknown to him; but if the shipper does not agree with this declaration, a new count must be carried out, with the expense being borne by whoever caused it." (free translation)

### 6.2.5. Refusal to sign the B/L

Whenever the cargo receipt contains obvious errors or omissions – such as incorrect date of loading, port of loading, or cargo description – the master must refuse to sign it. However, in case of discrepancies regarding cargo damage or short loading, the master should sign the mate's receipts and bills of lading when presented by the shipper to avert the carrier's exposure to liability for delays. Nonetheless, before signing, the master must annotate the actual condition of the cargo upon receipt on board and any discrepancies in quantity on these documents.

### 6.3. Letters of protest at loading

Letters of protest (LOP) issued by the master, ideally supplemented with good-quality photographic evidence, are valuable for documenting issues encountered during loading – particularly concerning cargo wastage during conveyance and stowage on board, and to put on record that whilst the master considers the discrepancy to be within an acceptable margin, he relies on the representation made by the shippers in respect of the cargo quantity.

LOPs may provide documentary evidence and function as formal notices to shippers and charterers, thereby preserving shipowners' rights of indemnity for cargo discrepancies identified at loading<sup>55</sup>. However, a master's protest does not affect the figures of bills of lading signed clean on board, and it is not binding on the B/L holder. While LOPs may have evidentiary value in legal disputes, their effectiveness in excluding liability for the safety and integrity of the goods is limited. They will not change the carrier's contractual obligation to deliver the cargo at the destination in the same quantity and condition as stated in the bill of lading. Indeed, some shipowners believe that tendering letters of protest is not only pointless but can alert the cargo consignees about the apparent discrepancy and instigate opportunistic claims.

Tendering letters of protest may be advisable in cases of significant cargo quantity discrepancies. In the absence of legal stipulations, as a parameter, these should be considered for differences exceeding trade allowance and the margin of error associated with draft surveys ( $\geq 0.5\%$ ) up to the customs shortage allowance ( $\leq 1\%$ ).

The determination of what is a discrepancy within an acceptable margin should be grounded on the circumstances of the case and the level of confidence of the master in the accuracy of the draft surveys conducted by the chief officer or an independent surveyor to the detriment of shoreside official figures. For any discrepancies surpassing the one per cent threshold, the master should consider remarking the bill of lading accordingly. Failure to do so could leave the carrier completely vulnerable to shortage claims and potentially jeopardise the P&I cover. [Section 6.2](#)

### 6.4. Letters of indemnity

Disputes regarding discrepancies between ship and shore figures are often resolved through letters of indemnity (LOI). Shippers require a clean bill of lading to meet letter of credit requirements; as a result, they may pressure charterers and the shipowners to accept an LOI when discrepancies are detected upon loading, in exchange for the master refraining from clausing the mate's receipts and bills of lading.

LOIs are usually exchanged back-to-back among the involved parties: initially from shippers to the voyage or time charterers, and from those to the head owners. These LOI serve to hold the beneficiary harmless for any claims related to cargo shortages that may be ascertained at the destination. The party issuing the LOI commits to indemnifying against any claims that arise concerning the disputed quantity.

<sup>55</sup> Article 745 of the Civil Code; Article 3, Rule 5 of the Hague-Visby Rules

These instruments may assist in resolving short-loading disputes when discrepancies fall within reasonable margins. They are generally honoured when issuing parties are dependable and have sufficient financial standing. However, in many jurisdictions, letters of Indemnity may be viewed as an attempt to defraud future bill of lading holders, potentially rendering them invalid. Issuing an LOI in exchange for a clean bill of lading could also prejudice the vessel's P&I cover.

In Brazil, LOIs are enforceable in certain situations, such as when cargo is delivered without production of the original bill of lading or when port operators cause damage to the vessel and undertake to pay damages at a later stage. However, they do not discharge the carrier from liability for cargo shortage or damage to the consignee under a clean B/L.

## **6.5. Discrepancies at loading**

### **6.5.1. Wastage during loading**

Significant losses can occur between the location where the bulk cargo is weighed and the vessel's holds. This risk is heightened when the shore scale or weighbridge is away from the ship, as it may be exposed to spills, leaks, windage, or pilferage during conveyance. Any quantity lost during this transit is invariably accounted for as if it were loaded on board, even though the loss occurred before the cargo reached the carrier's custody.

### **6.5.2. Shore miscalibration and errors**

Shortages may arise due to miscalibrated or defective weighbridges, weightometers, and errors in measuring silo levels before and after loading.

### **6.5.3. Draft survey miscalculation**

Errors in calculating draft displacements can occur from inaccurate readings of draft marks, an incorrect value of 'constant'<sup>56</sup> applied, or improper soundings of tanks and wrong overboard water density. The use of uncalibrated measurement equipment can further contribute to inaccuracies in draft survey calculations.

### **6.5.4. Loading from shore and barge**

In certain regions, especially at Amazon riverports and port facilities in Rio Grande do Sul, it is common for dry bulk cargo, such as grains and cereals, to be loaded at the same time from both barges moored alongside the ship and from shoreside loaders or grab-fitted cranes.

Cargo loaded from barges is measured using draft surveys, while cargo loaded from shore relies on weighbridge or belt scale measurements. This dual-loading process, employing different quantification methods, may result in measurement discrepancies and potential miscalculations. The situation can be further complicated when more than one type or grade of solid bulk products is loaded simultaneously.

## **6.6. Discrepancies at discharge**

### **6.6.1. Loss due to inherent vice**

Hygroscopic commodities, including grains, seedcakes, salt, and sugar, tend to absorb, retain, or release moisture depending on the surrounding atmosphere. Certain hygroscopic minerals, like coal, may be loaded in the rain or sprayed with water during loading to suppress dust emissions. As moisture-laden cargo settles in the stow, it is subjected to the ship's motion, engine vibrations, and wave impacts, leading to the release of free water from the cargo. This water drains down into bilge wells and is pumped out during the voyage, contributing to a decrease in cargo mass.

<sup>56</sup> 'Constant' is the difference in weight of the calculated lightship weight (by draft survey without cargo) and the lightship weight recorded in the vessel's stability booklet

In extreme conditions, minerals such as iron ore and bauxite can experience liquefaction or dynamic separation during sea carriage. These phenomena can lead to a loss of mass as they transition to a fluid-like state, potentially affecting the ship's stability and safety due to the shifting slurry that forms, creating a free surface effect.

### 6.6.2. Wastage during discharge

Cargo wastage frequently arises during unloading due to improper handling practices or deficiencies in cargo handling equipment. These issues can result in leaks and spills during the process of discharge and transfer to shore storage or vehicles. When the cargo is weighed away from the vessel, any cargo lost between the quayside and the weighing point is considered short-delivered by the carrier, even though the loss happened outside the orbit of the vessel's custody.

Another factor to consider is cargo remaining on board (ROB), as well as the management of sweepings<sup>57</sup>, which are often disposed of or washed away without being weighed or accounted for, thereby resulting in a loss that ends up being recorded as short-landed. [Section 4.1](#)

### 6.6.3. 'Paper loss'

In the context of dry bulk trade, a 'paper loss' (or 'paper shortage') denotes discrepancies between the quantity of cargo recorded in the bill of lading and the actual quantity discharged. The divergence may stem from measurement inaccuracies, calculation errors, or the application of different cargo quantification methodologies at the loading and discharging ports, rather than actual physical losses that occurred while the cargo was seaborne.

Although paper shortage claims are common, mainly because of the prevalence of dry bulk cargoes in foreign trade and uncertainties in the application of allowances, they are not easy to defend. Where no draft surveys are conducted and no sealing of cargo holds has been arranged, the carrier will have little argument to refute a shortage claim. [Chapter 8](#)

### 6.6.4. Discharge to shore and barge

When two or more separate cargo lots are concurrently discharged to barges alongside the vessel, or directly to trucks lined up on the quayside, two distinct methods of quantification may be employed: the shoreside quantity based on shore scales or weighbridges, or through estimations or tallying of bucket or grab loads; in contrast, the outer side quantity is determined by draft survey. The risk of confusion and paper loss is significantly heightened when diverse types or grades of bulk commodities are handled at the same time.

## 6.7. Apportionment of short deliveries

The apportionment of bulk cargo is a standard commercial and operational practice in the bulk trade. It applies when the vessel carries a homogeneous cargo of the same type and grade, loaded at foreign ports, but consigned to multiple receivers at one or more discharging ports. Although there is no specific regulation governing this practice, the customs authority and cargo underwriters do not object to this mechanism of self-composition to offset import shortages (or overages).

Total manifested: 60,000 m/t		Total discharged: 59,400 m/t (- 1%)	
Before apportionment		After apportionment	
B/L	Manifested (m/t):	B/L	Delivered (m/t)
1	20,000	1	19,800
2	25,000	2	24,750
3	15,000	3	14,850

Figure 13: Example of apportionment of solid bulk imports proportional to each B/L figure

<sup>57</sup> Sweeping is the residue of dry bulk cargo collected from within cargo holds, deck areas, quayside, and cargo handling equipment after completion of loading or discharge operations

The procedure involves deducting any allowances and proportionally dividing the cargo delivered by the vessel – whether determined by draft survey or shore measurements – among the various consignees, based on the quantity each receiver imported, with any remaining balances (shortages or overages) being offset against previous or future imports of the same cargo at that port.

Nevertheless, while this apportionment provides for an even distribution of the cargo based on each bill of lading figure, the carrier will only be liable for the above-allowance difference between the cargo manifest and the official discharge outturn, irrespective of any apportionments or adjustments agreed upon among traders and receivers. **Figure 13**

## 7. Customs shortage penalties

### 7.1. Tax liability

Irrespective of any liabilities to consignees for cargo shortage, the party responsible must compensate the Federal Union for any tax and duty credits associated with short-delivered goods, which it failed to collect from the importer, including fines, if the shortage exceeds specific allowances. This compensation is formalised through a notice of tax assessment (notice of infraction)<sup>58</sup>.

The following parties may be held responsible for shortages of cargo under customs control:

- **The carrier:** when the loss of weight, compared to the bill of lading, is confirmed at the time of transferring legal custody of the goods from the carrier to the customs-bonded port facility.
- **The port facility (bailee):** when the shortage occurs while the goods are in the custody of the customs-bonded facility after being delivered by the carrier. This liability is presumed when the port facility takes the goods in storage without a reservation (damage report) or formal protest.

The tax assessment will be waived if the importer voluntarily agrees to pay the assessed import duties, taxes, and fines associated with any over- or short-delivered quantity. Should the importer choose not to do so, the carrier or the bailee will be liable to settle the corresponding tax assessment notice after the customs authority completes the “final checking of the manifest”<sup>59</sup>. **Section 7.2**

Cargo profile	Allowance	Customs regime
<b>Bulk</b>	≤ 1%	Import duties on over- or short-delivered quantities are waived.
	≥ 1% ≤ 5%	Import duties proportional to the over- or short-delivered quantity, up to a limit of 5% of the manifest, payable by the carrier or bailee. Fine waived.
	> 5%	Import duties proportional to the over- or short-delivered quantity, plus a cumulative fine of R\$5,000 for every percentage point above the 5% limit, imposed on the carrier or bailee.
<b>Container or Breakbulk</b>	<b>None</b>	No shortage allowances apply. Import taxes proportional to the over- or short-delivered quantity, plus a fine of 50% of the import duty levied upon the carrier or bailee over the short-delivered quantity.

Figure 14: Table of customs allowances and penalties for shortage of solid bulk cargoes. Source: Customs Regulation

The tax liability for cargo shortages (or damages) may also be excluded in cases of force majeure or fortuitous event. This exclusion must be supported by a formal protest tendered by the shipmaster within 24 hours of the vessel’s arrival at the first Brazilian port of call following the event and ratified by the competent judicial authority<sup>60</sup>. **Section 8.5**

<sup>58</sup> Articles 660 to 664 of the Customs Regulation

<sup>59</sup> Articles 658 & 659 of the Customs Regulation

<sup>60</sup> Article 664 of the Customs Regulation; Articles 393 & 734 of the Civil Code; Article 505 of the Commercial Code; Articles 766 to 770 of the Civil Procedure Code

**7.1.1. Import duties**

No duties or fines for over- or short delivery of bulk cargoes will be levied if the discrepancy is within 1% of the manifested quantity. If the shortage exceeds this threshold, the liable party must remit the corresponding duties and taxes that the importer would have otherwise paid had the goods been fully delivered, proportionate to the shortfall up to a limit of 5% of the cargo manifest. No customs fines will be imposed for over- or short deliveries within this limit<sup>61</sup>. **Figure 14**

The various duties that apply to imports are assessed based on different criteria, resulting in a collection process that varies depending on the nature of the specific customs duty or tax. Any discrepancies verified upon discharge will not be subject to collection if the difference is within 1%. However, for certain tax liabilities, such as Import Duty, a discrepancy that exceeds this 1% threshold will not qualify for this allowance.

Customs duties for cargo over or short deliveries		
Tax	Discrepancy in relation to the cargo manifest	
	≤ 1%	> 1%
<b>Import Duty (II)</b>	Waived.	Collect the difference <sup>62</sup> .
<b>Duty over Industrialised Goods (IPI)</b>	Waived.	Collect only the difference above 1% <sup>63</sup> .
<b>Contribution to the Social Integration Plan/ Contribution for Social Security (PIS/COFINS Import)</b>	Collect the difference.	Collect the difference <sup>64</sup> .
<b>Antidumping Duty</b>	Collect the difference.	Collect the difference <sup>65</sup> .

**Figure 15: Import duties applying to shortage or overage of solid bulk cargo. Source: Customs Regulation**

Consequently, if the difference surpasses 1% of the cargo manifest, collection must be made on the entire short-landed quantity without any tolerances. For other taxes, if the difference exceeds 1% of the manifest, only the amount above this threshold should be considered for tax assessment of customs duties up to a limit of 5%, after which there will also be fines. **Figure 15**

**7.1.2. Customs fines**

If the discrepancy in the cargo shortfall exceeds 5% of the cargo manifest, without a valid exclusion of liability, the liable party must pay a fine of BRL 5,000 for each percentage point exceeding the 5% tolerance limit. In addition to this fine, the party is also required to pay the import duties and taxes falling on the goods that were over- or short-delivered above the 1% threshold. **Figure 16**

<sup>61</sup> Articles 72, 238, 251 & 702 of the Customs Regulation

<sup>62</sup> Article 72 of the Customs Regulation. It provides that discrepancies verified upon discharge will not be considered for the purpose of collecting Import Duty (II), up to the limit of 1%. This exemption becomes invalid if this limit is exceeded. It means that if the difference surpasses the 1% limit, the entire difference must be collected by the party responsible for the shortage or overage (carrier or bailee)

<sup>63</sup> Article 238 of the Customs Regulation. It provides that discrepancies verified upon discharge will not be considered for the purpose of collecting Tax over Industrialised products (IPI), up to the limit of 1%. If the difference surpasses the 1% limit, only the amount exceeding this limit should be collected by the party responsible for the shortage or overage (carrier or bailee)

<sup>64</sup> Article 251 of the Customs Regulation. There are no allowances for shortage or overage for the collection of Contribution to the Social Integration Plan (PIS) and Contribution for Social Security (COFINS Import). PIS/COFINS must be collected by the party responsible for the shortage or overage (carrier or bailee)

<sup>65</sup> Article 788 of the Customs Regulation. Antidumping legislation is silent on discrepancies of bulk cargoes, providing no reservations. The customs authorities understand that, in the absence of any reservation, the general rule applies, that is, the entire difference must be collected by the party responsible for the shortage or overage (carrier or bailee)

Customs fines for cargo over or short deliveries		
Cargo profile	Discrepancy in relation to the cargo manifest	
	≤ 5%	> 5%
Bulk	Fine waived.	Fine of R\$5,000 for every percentage point exceeding the 5% limit <sup>66</sup> .
Container or breakbulk	Fine of 50% of the amount of the import duty (II) falling on the over- or short-delivered quantity <sup>67</sup> .	

Figure 16: Customs fines applying to shortage or overage of solid bulk cargo. Source: Customs Regulation

**7.2. Final checking of the manifest**

The customs assessment process, termed ‘final checking of the manifest’, entails a comparative analysis of the official discharge outturn figures against the cargo manifest to identify any discrepancies. This procedure enables customs to levy the corresponding duties and penalties upon the liable party for short deliveries beyond customs allowances.

In instances where a vessel discharges the same type of bulk cargo across multiple national ports within a single voyage, the total quantity actually delivered will be ascertained by aggregating the outturn figures from each respective discharging port. This aggregated figure is then compared with the total amount stated in the cargo manifest for all Brazilian ports<sup>68</sup>.

For tax purposes, any reservations in the cargo manifest aiming at excluding the carrier’s liability for cargo shortage or overage will not be considered<sup>69</sup>.

**7.3. Offences and penalties**

The Customs Regulation imposes penalties on carriers for late, wrongful, or non-declaration of cargo, as well as for delivering cargo that is damaged or short in quantity, exceeding the statutory allowances. The tax liability remains regardless of the carrier’s intent<sup>70</sup>.

Carrier liability is presumed when cargo is lost after loading or when the weight of the delivered cargo is less than what is stated in the manifest. If a shortage occurs after the cargo has been delivered by the vessel, liability shifts to the port operator or the port facility (bailee) that took custody from the carrier<sup>71</sup>.

**7.4. Tax appeals**

**7.4.1. Administrative proceedings**

Carriers are entitled to file an administrative defence with the customs to challenge penalties, usually within 30 days of receiving the relevant tax assessment notice, with the right to appeal to a second administrative instance, where appeals are heard by collegiate bodies made up of tax authorities and taxpayer representatives appointed by trade associations.

<sup>66</sup> Article 107 of Law-decree 36/1966; Article 728 of the Customs Regulation

<sup>67</sup> Article 106 of Law-Decree 36/1966; Articles 702 & 704-A of the Customs Regulation

<sup>68</sup> Articles 53, 658 & 659 of the Customs Regulation

<sup>69</sup> Article 49 of the Customs Regulation

<sup>70</sup> Articles 660 & 673 of the Customs Regulation

<sup>71</sup> Articles 660 & 661 of the Customs Regulation

Filing an administrative defence halts the enforcement of the tax liability. There are no direct costs associated with the administrative proceedings, apart from the carriers' expenses (for instance, fees for legal counsel and expert witnesses). Nevertheless, pending customs penalties are subject to an adjustment based on a benchmark rate set by the Central Bank of Brazil, the SELIC rate, encompassing interest and indexation<sup>72</sup>.

There is no set timeframe for resolving tax appeals within the administrative sphere. Despite improvements in the customs' information-monitoring and cross-referencing capabilities, resolution of tax appeals can vary significantly, taking anywhere from one to seven years or more, contingent on factors such as the complexity of the case, the jurisdiction involved, the amount in dispute, and the number of appeals filed by the parties.

#### 7.4.2. Legal proceedings

Carriers may choose to challenge customs penalties within the federal court system, either directly or subsequent to unfavourable rulings at any stage of the administrative proceedings. Such judicial appeals are governed by a double degree of jurisdiction, comprising federal lower courts and federal regional courts of appeal, with the possibility of appealing to higher courts under specific legal conditions and stringent procedural prerequisites<sup>73</sup>.

In contrast to administrative proceedings, carriers are required to deposit the full amount of the contested tax assessment or provide appropriate guarantees to the federal court prior to commencing legal proceedings against the Federal Union to challenge the levying of customs penalties. This deposit or guarantee serves to suspend the tax enforcement and is necessary to obtain a tax clearance certificate from the Federal Revenue Service of Brazil (RFB).

Apart from guaranteeing payment of the penalties in case of defeat, plaintiffs must pay initial legal costs and court fees, typically calculated as a percentage of the amount in dispute, subject to a cap. In cases of unsuccessful judgment, they may also be liable for a 'success fee' payable directly to the prevailing attorneys, ranging from 10% to 20% of the claim amount, at the court's discretion, along with any associated legal expenses.

Legal proceedings in federal courts tend to be protracted, often extending from two to eight years or more. Nonetheless, the likelihood of effectively challenging customs penalties through judicial review is higher, as courts frequently rely on customs allowances and established legal principles in their rulings on tax disputes.

#### 7.5. Time bar for customs penalties

As a rule, the customs authority has a five-year statutory period, commencing from the calendar year following the date of the alleged tax offence, to conduct tax assessments and impose penalties allegedly owed to the Federal Union for breach of customs regulations<sup>74</sup>.

<sup>72</sup> The *Sistema Especial de Liquidação e de Custódia* – SELIC (Special System for Settlement and Custody) is the reference interest rate for the Brazilian economy. It is applicable to loans, financing, investments, and outstanding tax liabilities. In July 2025, the SELIC rate was 14.9% per year

<sup>73</sup> If a second-instance court misinterprets federal law or treaties, a 'special appeal' may be filed with the Superior Court of Justice (STJ). If the dispute involves constitutional precepts or fundamental rights, an 'extraordinary appeal' may be submitted to the Federal Supreme Court (STF)

<sup>74</sup> Articles 174 of the National Tax Code (*Código Tributário Nacional*) – CTN, Law No. 5,172 of 25 Oct 1966, as amended

## 8. Cargo shortage claims

### 8.1. Prevalence

Brazilian foreign trade heavily relies on bulk commodities. Dry bulk cargoes represent an astonishing 80% of total exports, primarily iron ore, soya bean products, maize (corn), and sugar. On the opposite flow, dry bulk cargoes account for 50% of all imports, with fertilisers making up half of this volume.

#### Section 2.3

Given the dominance of bulk commodities in the country's international trade and the absence of legally binding regulations regarding cargo quantification and shortage allowances, it is unsurprising that disputes over short deliveries are among the most prevalent categories of maritime cargo claims filed in Brazil, both administratively and in court.

### 8.2. Duty to compensate

The party which is legally responsible for causing damage in tort is obliged to repair it or compensate for it, following the principle of full reparation<sup>75</sup>. In the case of carriage of goods under a contract, the carrier's liability is limited to the value of the cargo as shown in the bill of lading or an equivalent document, plus legal interests, adjustment for inflation, and prevailing lawyers' fees. This carrier can only be exempt from this liability if the loss is attributable to an unforeseeable, unavoidable, and irresistible event<sup>76</sup>. **Section 8.5**

### 8.3. Claim prerequisites

#### 8.3.1. Title to claim

Any party to the contract of carriage is entitled to bring a claim against the carrier for breach of obligations, including endorsees of the bill of lading and insurers acting under subrogation.

If the claimant lacks the title to claim – or if the claim is filed against a party with no legal standing to be sued (passive illegitimacy) – it can be challenged and dismissed on procedural grounds, irrespective of its substantive merits<sup>77</sup>.

#### 8.3.2. Jurisdiction

Brazilian courts have jurisdiction to hear claims when: (i) the defendant is domiciled in Brazil, regardless of nationality; (ii) the obligation must be performed in the Brazilian territory; or (iii) the facts or the acts giving rise to the claim occurred within the country<sup>78</sup>.

Lawsuits filed by Brazilian cargo interests are tried by state civil courts and are subject to a double degree of review. Under certain conditions, parties may also have the right to appeal to higher courts. As a rule, proceedings are commenced in the jurisdiction of the state civil court at the port of loading or discharge, or at the defendant's domicile if located in Brazil<sup>79</sup>.

<sup>75</sup> Article 186 of the Civil Code: "The party who, through action or voluntary omission, negligence or imprudence, violates the right or causes damage to the other party, even if exclusively moral, commits an unlawful act" (free translation); Article 944 of the Civil Code: "Compensation is measured by the extent of the damage. Sole paragraph. If there is an excessive disproportion between the severity of the fault and the damage, the judge may equitably reduce the compensation" (free translation)

<sup>76</sup> Articles 186, 187, 393, 750 & 927 of the Civil Code; Articles 553 & 559 of the Customs Regulation; Article 389 of the Civil Code: "For the non-fulfilment of the obligation, the debtor is liable for damages plus interests, monetary restatement according to official figures regularly established, and attorney's fee" (free translation)

<sup>77</sup> Articles 17, 70, 337, 339 & 485 of the Civil Procedure Code

<sup>78</sup> Articles 9 & 10 of Law-Decree 4,657/1942 (Law of Introduction to the Rules of Brazilian Law); Article 21 of the Civil Procedure Code. A foreign legal entity that has a branch, subsidiary or affiliate in Brazil is deemed as domiciled in the country

<sup>79</sup> Articles 42 to 46 of the Civil Procedure Code

In the context of international contracts, the parties are free to expressly select an exclusive foreign jurisdiction or incorporate an arbitration clause for dispute resolution. To curb ‘forum shopping’ and safeguard the interests of the party with less bargaining power, legislation mandates that the chosen jurisdiction maintain a connection either to the domicile of one of the contracting parties or the place where the contractual obligations are to be performed<sup>80</sup>.

### 8.3.3. Limitation period

Claims under a contract of sea carriage are subject to a one-year time bar from the date of completion of cargo discharge (or the date when the cargo should have been discharged), while claims in tort can be filed within three years. The time bar can be interrupted judicially only once for an equal period. [Section 8.9](#)

### 8.3.4. Legal subrogation

Upon settlement of an indemnity for an insured loss, the insurer automatically subrogates the insured’s rights and actions to seek recovery from third parties responsible for that loss, up to the amount of the indemnity paid under the policy<sup>81</sup>. The insured is expected to act prudently, as an uninsured party would, including taking reasonable measures to mitigate potential damages. Additionally, the insured must promptly notify the insurer of any condition that could exacerbate the insured risk<sup>82</sup>.

Arbitration agreements and choice of exclusive jurisdiction clauses are legally valid and binding. However, there is ongoing debate in the state courts and the Superior Court of Justice (STJ), Brazil’s highest court for non-constitutional matters, regarding the binding effect of these clauses on subrogated cargo insurers. Recent STJ monocratic rulings have held that while subrogation transfers the insured’s substantive rights over the credit to the insurer, it does not automatically authorise the enforcement of an exclusive foreign jurisdiction clause – especially if the insurance company was unaware of such stipulation at the time of underwriting the risk<sup>83</sup>. As a result, the enforceability of foreign jurisdiction clauses in subrogated claims before Brazilian courts remains a contentious and evolving legal issue.

### 8.3.5. Burden of proof

Given that the carrier’s liability is strict, with fault presumed, it suffices that the claimants submit evidence, such as a ‘clean on board’ bill of lading, and proof of a loss or damage occurring while the cargo was under the vessel’s custody. The burden then shifts to the carrier to prove any applicable defences, exclusions, limitations, or that causation has not been established<sup>84</sup>.

Although the carrier’s liability does not depend on fault or intent, the claimant must demonstrate a direct causal link between the carrier’s conduct and the damages claimed.

<sup>80</sup> Article 25 of the Brazilian Civil Procedure Code: “*The Brazilian judicial authority is not competent to process and judge the action when there is a clause for the election of an exclusive foreign jurisdiction in an international contract, alleged by the defendant in the defence*” (free translation); Article 63 of the Civil Procedure Code: “*The parties can change the jurisdiction based on the value of the claim and the territory, choosing the venue where the action deriving from rights and obligations should be filed. § 1. The choice of venue is only enforceable when it is declared in a written document, expressly referred to a specific legal transaction and relevant to the domicile or residence of one of the parties or the place of the obligation, except in the case of consumer agreements, when favourable to the consumer. § 2. The venue chosen in a contract is binding on the heirs and successors of the parties*” (...) (free translation)

<sup>81</sup> Article 728 of the Commercial Code: “*If the insurer pays damage to the insured thing, it will be subrogated in all rights and actions that the insured has against a third party; and the insured cannot act in any way to the detriment of the insurer’s vested right*” (free translation). Article 786 of the Civil Code: “*Once the indemnity is paid, the insurer subrogates itself, within the limits of the respective amount, to the rights and actions that compete to the insured against the one that caused the damage*” (free translation); Federal Supreme Court (STF) *Súmula* (Precedent) 188 of 1963: “*The insurer has the right to recover from the causer of the damage the amount effectively paid, up to the limit of the insurance policy*”. (free translation)

<sup>82</sup> Article 728 of the Commercial Code; Articles 768 & 769 of the Civil Code

<sup>83</sup> Articles 421, 422 & 853 of the Civil Code; Articles 4, 8, 32 & 33 of Law 9,307/1996 (Brazilian Arbitration Law); STJ Special Appeals (REsp) REsp 1.038.607/SP, REsp 1.877.818/SP, 1.893.754/MA, REsp 1,908.406/PR, REsp 1.962.113/RJ, REsp 1.982.133/RJ

<sup>84</sup> Articles 373 to 376 of the Civil Procedure Code; Articles 734 & 750 of the Civil Code; Articles 3 & 4 of Law-Decree 116/1967

#### **8.4. Essential claim documents**

When filing a claim against the sea carrier for cargo shortage or damage, claimants must submit a comprehensive set of supporting documents.

##### **8.4.1. Bill of lading**

A copy of the original bill of lading is required as evidence of shipment, cargo receipt by the carrier, title over the goods, and absence of any remarks for shortages or damages verified upon delivery to the ship at the port of loading<sup>85</sup>. However, Courts have been downplaying the need for the presentation of the B/L when title to claim is evidenced by other documents, at the judge's discretion.

##### **8.4.2. Commercial invoice**

A copy of the original commercial invoice signed by the seller must be provided to establish the cargo value<sup>86</sup>. Ideally, it should be accompanied by a copy of the customs import declaration filed by the consignee, along with any subsequent rectifications related to short deliveries or discrepancies. This document is helpful to verify the declared cargo weight, value, and rate of exchange ruling at the time of customs clearance.

##### **8.4.3. Claim notice (formal protest)**

The claim file must include copies of formal protests for cargo loss or damage filed against the carrier within ten days from delivery by the vessel, under penalty of lapsing of the right to compensation<sup>87</sup>. **Section 5.5**

##### **8.4.4. Evidence of loss or damage**

Supporting evidence should include official reports issued by the customs-bonded port facility where the cargo was discharged, and additional documentation, including but not limited to damage reports, discharge outturn reports or discharge certificates, draft survey certificates, cargo apportionment reports (*'mapa de rateio'*), survey reports, photographic reports, sale receipts for salvage proceeds, and certificate of destruction or disposal of damaged cargo

##### **8.4.5. Claim value calculation**

The claim must be supported by a detailed calculation memo clearly explaining the methodology used to determine the quantum of the loss and the indemnity paid to the insured party. This calculation should consider policy deductibles, applicable shortage allowances, salvage proceeds deductions, incidental costs (for destruction or disposal of damaged cargo), import duty and taxes collected on the allegedly short-landed cargo.

All elements of the claim value calculation must be corroborated by proper documentation, noting that, under applicable law, the carrier's liability is capped at the cargo value<sup>88</sup>.

##### **8.4.6. Evidence of subrogation**

There are no statutory requirements for standardised subrogation forms. The legitimacy of a subrogated claim is established through the insurance contract and conclusive proof of indemnity disbursed by the insurer in favour of the insured.

<sup>85</sup> Articles 586 & 589 of the Commercial Code

<sup>86</sup> Articles 553 & 559 of the Customs Regulation

<sup>87</sup> Article 754 of the Civil Code; Articles 726 to 729 of the Civil Procedure Code. State civil courts and the Superior Court of Justice (STJ) have established a prevailing jurisprudence in the sense that formal protests are dispensable when cargo short delivery has been timely documented in customs-trusted damager report and/or discharge records issued by the port operator or bailee

<sup>88</sup> Article 750 of the Civil Code

Claimants must provide a copy of the insurance policy, including endorsements, and clear proof of indemnity payment. This is evidenced by a receipt of indemnity acknowledged by the insured, along with the corresponding bank slip showing irrevocable transfer of funds to the insurer's designated account. The receipt of indemnity functions as both a claim release and evidence of subrogation<sup>89</sup>.

While cargo insurers often submit internal payment orders or screenshots from the insurance company's systems as supporting evidence, such documents are insufficient proof of payment. Indeed, established jurisprudence from state courts of appeal and the STJ has ruled that recovery claims should be dismissed on the grounds of the insurer's lack of legal standing (active illegitimacy) should it fail to produce unequivocal evidence of indemnity and, by extension, subrogation rights<sup>90</sup>.

#### 8.4.7. Power of attorney

When submitting administrative or legal claims, recovery agents and attorneys acting on behalf of cargo owners or subrogated underwriters are required to furnish a valid power of attorney. This document must be issued by the right holder, expressly granting them authority to pursue indemnity claims against third parties that caused the cargo loss or damage on behalf of the grantor<sup>91</sup>.

Essential claim documents
<ul style="list-style-type: none"> <li>▪ Bill of lading</li> <li>▪ Commercial Invoice</li> <li>▪ Import declaration (<i>declaração de importação</i> – DI)</li> <li>▪ Claim Notice</li> <li>▪ Evidence of loss or damage                             <ul style="list-style-type: none"> <li>○ Formal protest</li> <li>○ Damage reports</li> <li>○ Discharge outturn reports or discharge certificates</li> <li>○ Draft survey certificates</li> <li>○ Cargo apportionment reports (<i>mapa de rateio</i>)</li> <li>○ Survey reports</li> <li>○ Photographic reports</li> <li>○ Sale receipts for salvage proceeds</li> <li>○ Certificate of destruction or disposal of damaged cargo</li> </ul> </li> <li>▪ Claim value calculation/cost breakdown</li> <li>▪ Evidence of subrogation (for subrogated claims)                             <ul style="list-style-type: none"> <li>○ Cargo insurance policy, including any endorsements</li> <li>○ Receipt of indemnity acknowledged by the insured</li> <li>○ Receipt of transfer of funds from the insurer to the insured</li> </ul> </li> <li>▪ Power of attorney (for recovery and subrogated claims)</li> </ul>

Figure 17: Essential documentation to support cargo shortage claims under a contract of carriage

#### 8.5. Exclusions & limitations

The domestic legal framework governing cargo carriage by sea emphasises the carrier's strict liability. In this sense, error or negligence of the master, crew, shipowner, or pilot is not acceptable as an exclusion of liability. It is because shipowners are liable for the actions and omissions of their employees, servants, and advisers, without prejudice to a third-party recovery<sup>92</sup>.

<sup>89</sup> Articles 109 & 728 of the Commercial Code; Articles 320, 346, 758 & 786 of the Civil Code

<sup>90</sup> Ordinary appeals 1003771-04.2016.8.26.0003 (TJ-SP), 1029478-38.2019.8.26.0562(TJ-SP)

<sup>91</sup> Articles 653 & 654 of the Civil Code; Articles 104, 105 & 287 of the Civil Procedure Code

<sup>92</sup> Article 932 of the Civil Code

### 8.5.1. Allowances and deductibles

While customs laws allow short or over deliveries in bulk imports and exports ranging from 1% to 5%<sup>93</sup> of the cargo manifest, civil legislation does not specify any allowances. Despite this, both state civil courts and federal courts tend to follow the customs allowance, except in the southern civil courts, where the paradigm precedent was set at 0.6% of the bill of lading figure.

Cargo underwriters usually set deductibles in their policies, typically either the 0.5% trade allowance or the 1% customs allowance. **Sections 4.2 & 4.3**

### 8.5.2. Force majeure/act of God

Liability is excluded when damage results from a fortuitous event (act of God) or force majeure. While legal doctrine often differentiates between these two types of liability exclusions, and there can be disagreement on their definition, the Civil Code treats them just the same.

In this context, a carrier may be exempt from civil (and tax) liabilities if it can prove that the loss or damage to cargo resulted solely from an unforeseeable, unavoidable, and irresistible event. Furthermore, the shipowner, master and crew must demonstrate that they undertook all reasonable and prudent measures to minimise and mitigate the resulting losses<sup>94</sup>. **Section 8.5**

In Brazil, unlike in other jurisdictions where a simple public notarisation is sufficient to validate a sea protest issued on board, the document must be ratified by the competent court at the first port of call after the extraordinary event. A court-homologated sea protest, which includes the hearing of the shipmaster and witnesses, is an indispensable requirement for the document to have legal effect as evidence of a valid exclusion of cargo liabilities.

Irrespective of a sea protest ratified in court, claimants are still entitled to challenge the unpredictability, severity, and degree of contribution of the force majeure or act of God invoked by the master as the determining cause of cargo shortage or damage<sup>95</sup>.

### 8.5.3. Inherent vice

Inherent vice (or vice of origin) and pre-shipment loss or damage that is undetectable at the time the carrier assumes custody of the cargo are typical causes for liability exclusion, as provided in various statutes<sup>96</sup>. **Sections 4.1 & 8.5**

### 8.5.4. Victim's fault

The victim's fault as an exclusion of liability is defined in the Civil Code, which states that if the claimant has culpably contributed to the damage, any compensation due will be fixed considering the degree of concurrent fault<sup>97</sup>. Of course, there will be no obligation to compensate if the damage occurred solely and exclusively because of the victim's fault.

### 8.5.5. Third-party fault

In certain circumstances, the carrier may invoke third-party fault as a basis to exclude or mitigate liability or to file a recovery claim against entities such as the shipper or port operator. **Section 5.4**

<sup>93</sup> Articles 72, 238, 251, 702, 706, 718 & 728 of the Customs Regulation

<sup>94</sup> Article 393 of the Civil Code: "*The debtor shall not be liable for damages resulting from a fortuitous event or force majeure, unless expressly accepted them. Sole paragraph: The fortuity or force majeure is verified in the necessary fact, which effects could neither be avoided nor resisted*" (free translation)

<sup>95</sup> Article 664 of the Customs Regulation; Articles 393 & 734 of the Civil Code; Article 505 of the Commercial Code; Articles 766 to 770 of Civil Procedure Code

<sup>96</sup> Articles 621 and 711 of the Commercial Code; Article 4 Law-Decree 116/1967; Article 784 of the Civil Code

<sup>97</sup> Article 945 of the Civil Code: "*If the victim has participated culpably for the harmful event, his indemnity shall be fixed considering the seriousness of his fault in comparison with that of the causer of the damage*" (free translation)

### 8.5.6. Cargo value limitation

The Civil Code stipulates that the carrier's liability is limited to the cargo value indicated in the bill of lading. Losses that exceed this amount are theoretically excluded from the carrier's duty to compensate<sup>98</sup>.

Since bills of lading for imported solid bulk cargoes typically will only indicate the cargo gross weight and the applicable freight rate, the valuation of the cargo for calculating compensation and customs penalties for shortage or damage should be based on the original commercial invoice and the customs import declaration filed by the consignee<sup>99</sup>.

### 8.5.7. International conventions

Brazil has not adopted any of the relevant international conventions that limit or exclude cargo liabilities<sup>100</sup>. Therefore, limitations and exclusions outlined in those conventions do not apply to cargo claims within Brazilian jurisdiction, unless the contracting parties have voluntarily chosen an exclusive foreign jurisdiction where those conventions are enforceable, and defendants raise this argument in their defence<sup>101</sup>. **Section 8.3**

## 8.6. Court proceedings

Alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration, are available for resolving cargo claims under international transport contracts; nevertheless, judicial litigation remains the primary option – particularly for subrogated claims brought by Brazilian-based insurers. **Section 8.7**

As of 2024, all new lawsuits are submitted through the judiciary's digital platforms, with very few exceptions. Approximately 95% of outstanding claims in Brazilian civil courts are now processed via electronic court systems, which enhance procedural efficiency, reduce administrative burdens, and promote sustainability.

Despite improvements brought by this digital shift, the judicial system remains heavily congested, leading to prolonged delays often lasting several years before final court decisions are reached. The National Council of Justice (CNJ) estimates there is a backlog of 60 million pending cases, with around 78% of these cases bottlenecked in state civil courts<sup>102</sup>.

### 8.6.1. Right of defence

The Federal Constitution affords a full right of defence through adversarial proceedings, due process, and equal protection under the law. Civil claims are filed in first-instance courts with the right to appeal to the respective state appellate courts.

Litigations may be escalated via special appeals or extraordinary appeals to the Superior Court of Justice (STJ) or the Federal Supreme Court (STF), respectively. Appeals to the STJ or STF are admissible when the decisions involve a violation of federal law, divergence from binding jurisprudence, or breaches of constitutional principles and fundamental rights. Nonetheless, such appeals are subject to strict procedural criteria<sup>103</sup>.

<sup>98</sup> Article 750 of the Civil Code

<sup>99</sup> Articles 553 & 559 of the Customs Regulation

<sup>100</sup> These include the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules), the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules), the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) and the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules)

<sup>101</sup> Article 25 of the Civil Procedure Code

<sup>102</sup> 'Justiça em Números, 2024' (Justice in Numbers, 2024 Yearbook), 2024, by the National Council of Justice (CNJ); statistics from the National Judiciary Branch Database (Datajud), available at <https://justica-em-numeros.cnj.jus.br/painel-estatisticas/> [retrieved 05/08/2025]

<sup>103</sup> Articles 994 to 1,003, 1,029, 1,031, 1,036, 1,041 & 1,042 of the Brazilian Civil Procedure Code

## 8.6.2. Claim value

The continuous accrual of monetary indexation and legal interests can cause the total amount of a cargo claim pending in court to increase substantially every month. Additionally, currency fluctuations and evolving economic conditions can influence a foreign defendant's financial exposure and risk management strategies. [Section 8.6](#)

**a) Principal amount:** the plaintiff must specify the value claimed, which serves as the basis for calculating court fees and associated legal expenses. Both indexation and interests accrue on this principal amount. The defendant may challenge the value attributed to the claim<sup>104</sup>.

**b) Indexation for inflation:** claims under judicial consideration are adjusted monthly according to the relevant court index and rules, reflecting inflation from the date the damage occurred until the claim is fully satisfied<sup>105</sup>.

**c) Legal interest:** in addition to inflation adjustments, interest accrues monthly on the principal amount from the date of damage (in tort claims) or the date of service of the summons (in contractual claims), continuing until an amicable agreement is reached or a final judgment is enforced. Typically, legal interest in contractual lawsuits is set at 1% (one per cent) per month<sup>106</sup>.

**d) Prevailing lawyer fees:** the losing party is responsible for paying 'winning lawyer fees' directly to the counsel of the prevailing party. These should not be confused with the professional fee agreed upon between counsel and their client under a retainer agreement. Prevailing lawyer fees are fixed by law between 10% and 20% of the updated claim award, at the court's discretion<sup>107</sup>.

## 8.6.3. Litigation costs

**a) Legal costs:** the plaintiff bears the initial court fees and expenses, typically calculated as a percentage of the claim amount, with minimum and maximum limits determined by each state court's regulations. Each party is responsible for its procedural expenses throughout the litigation until a final, unappealable judgment or enforcement of the claim. Legal costs are fully recoverable from the losing party<sup>108</sup>.

**b) Lawyer fees:** legal counsel fees are payable by the respective retainers and may be structured as a lump sum fee, a percentage of the claim amount ('success fee') or billed on time and effort<sup>109</sup>.

As a rule, fees paid by the prevailing party to its lawyers are not recoverable from the losing party, unless they form part of a settlement agreement.

<sup>104</sup> Articles 291 to 293 of the Civil Procedure Code

<sup>105</sup> Article 322 of the Civil Procedure Code

<sup>106</sup> Article 406 of the Civil Code: "When default interest is not agreed or is agreed without a stipulated rate or is determined by law, it will be set at the rate that is in force for default payment of taxes due to the National Treasury" (free translation); Article. 161 of Law 5,172/1966 (National Tax Code): "The credit not fully paid at maturity shall be increased by default interest, regardless of the reason for the default, without prejudice to the imposition of applicable penalties and the application of any guaranteed measures provided for in this Law or in a tax law. §1. If the law does not provide otherwise, interest for late payment is calculated at the rate of one per cent per month." (free translation, emphasis added)

<sup>107</sup> Articles 85 & 827 of the Civil Procedure Code

<sup>108</sup> Articles 82 & 98 of the Civil Procedure Code. Article 84 of the Civil Procedure Code: "Expenses include the cost of pleadings, compensation for travel expenses, the compensation of the retained expert and the travel allowance of witnesses". (free translation)

<sup>109</sup> Law 8,906/1993 (Statute of the Brazilian Bar Association – OAB)

#### 8.6.4. Security requirements

**a) Plaintiffs:** in addition to applicable legal expenses, claimants are not required to post security with the court to initiate legal proceedings, unless they are non-resident Brazilians, foreign entities or individuals with no real estate or assets in Brazil to guarantee payment of fees and expenses in case of defeat. The court arbitrates the amount of security to be posted, which will be refunded to the foreign-based plaintiff if the final judgment is favourable<sup>110</sup>.

**b) Defendants:** typically, no security is required from the defendant until a condemnatory judgment is issued. Exceptions apply if the claimant can categorically demonstrate (i) irreparable harm (*periculum in mora*) if immediate interim relief for security or other urgent remedies is not granted, and (ii) the likelihood of a valid legal claim supporting the invoked right (*fumus boni iuris*). In such cases, the court may require the claimant to provide countersecurity<sup>111</sup>.

**c) Ship arrest:** In the context of cargo claims, ships owned by the carrier cannot be arrested until at least a first instance decision ruling in favour of the claimant, unless the claimant fully meets legal requirements and conditions for granting of interlocutory relief – namely *periculum in mora* and *fumus boni iuris*.

The judge may demand security from the claimant to cover potential damages to the defendant due to a wrongful arrest. Acceptable forms of security to lift a ship arrest include cash deposits into the court's account, bank guarantees, or surety bonds<sup>112</sup>.

Letters of undertaking (LOU) issued by Protection and Indemnity (P&I) clubs are only accepted if the claimant expressly consents and the LOU is translated into Portuguese for attachment to the court records<sup>113</sup>.

#### 8.6.5. Service of process (summons)

If the complaint filed by the claimants meets the essential procedural requirements and the claim is not dismissed outright, the judge will schedule a conciliation or mediation hearing at least 30 (thirty) days in advance, and the defendant will be summoned at least 20 (twenty) days in advance, to attend, except where there has already been a preliminary repudiation of the claim or the parties have expressed their disinterest in an amicable settlement of the dispute.

Writ of summons against a foreign carrier without domicile, branch or legal representation in Brazil may be served on the shipping agent who attended the vessel in the port involved at the time of the fact or else the summons must be made by letter rogatory processed between the Brazilian court and the judicial authority at the defendant's domicile abroad.

The service of summons is indispensable for the validity of the proceedings unless the defendant spontaneously appears in court. If the defendant is adequately summoned and fails to respond to the lawsuit within the legal time, it will be considered in default. Consequently, the plaintiff's factual allegations will be accepted as accurate<sup>114</sup>.

<sup>110</sup> Article 83 of the Civil Procedure Code

<sup>111</sup> Articles 294 to 302 & 497 of the Civil Procedure Code

<sup>112</sup> Articles 300 to 302 of the Civil Procedure Code

<sup>113</sup> Articles 98, 162 & 192 of the Civil Procedure Code

<sup>114</sup> Articles 238 to 259 & 344 to 349 of the Civil Procedure Code

#### **8.6.6. Timeframes**

The defendant has 15 (fifteen) business days to file a response to the lawsuit, counted from the date the served writ of summons is attached to the court records. Should a conciliation or mediation hearing take place, the deadline for the response commences from the date of that hearing or when the parties inform the court that they do not wish to pursue an amicable resolution<sup>115</sup>.

There are no fixed deadlines for civil courts to render a final decision. Depending on the jurisdiction and complexity of the case, a lower court may take up to two years to issue a first instance judgment. If an appeal is filed to the state court of appeals, the resolution of the dispute can extend two years or longer. Should the parties exercise all available rights of appeal, and the conflict escalates to higher courts (STJ and STF), it may take an additional two years or more until a final and unappealable decision (*res judicata*) is rendered.

#### **8.6.7. Evidence and disclosure**

All legally admissible and ethically permissible means of evidence supporting the claim or defence are permitted.

Under the Brazilian legal system, the judge assumes an active role in the fact-finding process and may order production of additional evidence as deemed necessary to resolve disputes. This includes disclosure of documents in possession of the parties, expert examinations, and witness testimonies.

Documentary evidence submitted by the parties is incorporated into the court records, either physically or electronically. With a few exceptions, documents in a foreign language must be accompanied by sworn translations into Portuguese to be admissible<sup>116</sup>.

### **8.7. Alternative dispute resolution**

In Brazil, alternative dispute resolution (ADR) mechanisms such as conciliation, mediation, and arbitration are increasingly employed as effective alternatives to traditional court proceedings. The legal framework actively encourages ADR to alleviate judicial backlog and facilitate expedited, cost-effective dispute resolution. Procedural law requires parties to be convened to a conciliatory or mediatory hearing prior to litigation whenever possible<sup>117</sup>.

Despite the growing judicial recognition of ADR's advantages and its widespread adoption across various sectors of industry and commerce, cargo interests, sea carriers, and cargo underwriters seldom resort to these methods for cargo-related claims. Instead, such disputes predominantly proceed through negotiation or lengthy court proceedings.

### **8.8. Claim settlement**

Cargo claims may be amicably resolved by the parties at any time to prevent or settle disputes. Settlement agreements entered during ongoing litigation are generally not confidential – unless stipulated by a confidentiality clause within an arbitration agreement. When settling on the course of court proceedings, the parties must expressly request the court to close the case; ideally, the payment of the settlement amount should only be made after the court ratifies the agreement<sup>118</sup>.

<sup>115</sup> Articles 224, 231, 334 & 335 of the Civil Procedure Code

<sup>116</sup> Article 5, LXIII of the Federal Constitution; Articles 192, 193, 369 to 374, 379 & 396 of the Civil Procedure Code

<sup>117</sup> Article 3 of the Civil Procedure Code; Law 13,140/2015 (Brazilian Mediation Law); Law 9,307/1996 (Brazilian Arbitration Law)

<sup>118</sup> Articles 320 & 840 to 850 of the Civil Code; Articles 513 to 527 of the Civil Procedure Code

Whether settled in or out of court, carriers must obtain a full claim release signed by claimants or their representative. The settlement agreement should clearly specify all terms and conditions, including the payment schedule, coverage of legal and expert fees, legal costs, expenses, release of securities, payment of final court fees, bank charges, and penalties for late or defaulted payments<sup>119</sup>.

## 8.9. Time bar for cargo claims

Brazilian civil legislation differentiates between *prescrição* (prescription) and *decadência* (peremption). While the former disallows enforcement of a right after the statutory period expires, the latter involves the lapse of the right itself due to inaction within a specified timeframe. In both cases, courts are required to dismiss lawsuits with prejudice<sup>120</sup>.

### 8.9.1. Peremption (lapsing of right)

The liability of the carrier for cargo loss or damage is established upon discharge, evidenced by an official damage report or discharge certificate issued by customs-accredited port facilities. However, cargo interests must file a formal protest within 10 (ten) days of delivery to preserve their right to seek redress for shortage or damage from the carrier<sup>121</sup>. **Sections 5.5 & 8.4**

### 8.9.2. Prescription (limitation period)

Until 2002, the statutory limitation for contractual cargo claims was unequivocally set at one year from the date of discharge, as expressly mandated by the Commercial Code and reaffirmed by the special law, Law-Decree 116/1967, which remains in force<sup>122</sup>.

Following the full enforcement of the then-new Civil Code in 2003, a legal controversy emerged. The Civil Code had repealed Part I of the Commercial Code – including the one-year limitation period – and introduced a general three-year limitation for civil damages. Nonetheless, it did not specify a limitation period for maritime cargo claims. Although Law-Decree 116/1967 continued to impose a one-year time limit for claims, some claimants argued that the five-year time bar of the Brazilian Civil Consumer Code should apply. **Figure 18**

Term	Situation	Initial term
1 year	Cargo claim under a contract	Completion of discharge (for direct claims) Subrogation (for subrogated claims)
3 years	Cargo claim in tort (unlawful act)	Completion of discharge
5 years	Cargo claim in a consumer relation	Consumer knowledge of the damage or defect

Figure 18: Time bars for cargo claims in Brazil

Legal jurisprudence has since consolidated the position that cargo claims under a contract of carriage are governed by the one-year limitation period established by Law-Decree 116/1967. As a special law, it takes precedence over general statutes and aligns with contemporary multimodal and road transport regulations, which also impose a yearly limitation<sup>123</sup>. Additionally, consumer protection laws are not applicable to contractual transactions between companies<sup>124</sup>.

<sup>119</sup> Articles 304 to 333 of the Civil Code

<sup>120</sup> Articles 189, 191, 193, 205 & 206 of the Civil Code; Article 487 of the Civil Procedure Code

<sup>121</sup> Article 754 of the Civil Code

<sup>122</sup> Article 449 of the revoked Part I of the Commercial Code, which Part II remains in full force

<sup>123</sup> Article 8 of Law-Decree 116/1967; Article 22 of Law 9,611/1998 (Law of Multimodal Transport); Article 18 of Law 11,442/2007 (Law of Road Cargo Transport) STJ Special Appeals REsp 1.877.818/SP, 1.893.754/MA, REsp 1,908.406/PR

<sup>124</sup> STJ Special Appeal REsp 2.092.308-SP; STJ Repetitive Theme 1,282

### 8.9.3. Time bar counting

While courts have resolved the debate on the time bar for contractual cargo claims at one year from the date of discharge, or the date on which the cargo should have been discharged, recent discussions have reignited uncertainties regarding the applicable timeframe for maritime cargo claims under subrogation.

In this context, *Súmula* (Abridgement) 151, issued by the Federal Supreme Court (STF) in 1963, stipulates that a subrogated insurer's right to seek compensation for losses or damages to cargo from sea carriers expires after one year<sup>125</sup>. Notably, the constitutional court did not specify when this one-year period begins.

In recent years, cargo insurers have argued in court that their right to pursue recovery claims is triggered upon indemnification to the insured, according to the insurance policy's terms, when the one-year limitation period starts counting. Conversely, sea carriers maintain that the special law unequivocally defines the onset of the time bar counting as the date of cargo discharge<sup>126</sup>. They further contend that, when an insurer is subrogated, it effectively steps into the shoes of the insured, inheriting both the substantive claim and the procedural rights and limitations against the debtor.

Despite some court decisions favouring a literal interpretation of Law-Decree 116/1967, appellate courts have supported the position of subrogated cargo insurers. This trend aligns with the prevailing recurrent thesis established by the Superior Court of Justice (STJ), which holds that “*the initial term of the prescriptive period for the subrogated insurer to file a recovery action is the date of full payment of the compensation to the insured, in line with the ‘actio nata’ principle*”<sup>127</sup>.

As such, the triggering event for counting the time limit on subrogated claims is poised to remain another contentious issue within Brazilian appellate courts until a cohesive and well-established jurisprudence is formed. **Figure 18**

### 8.9.4. Time extension

The limitation period may be extended once, for an equal duration<sup>128</sup>. This means that, if a claim is subject to a one-year time limit, the right to claim will be renewed for an additional year, during which the claim must either be settled amicably or filed in court; failure to do so will result in the expiration of the right to claim, irrespective of the substantive merits of the case.

Statutory time limits cannot be altered or extended at the discretion of the involved parties, as these provisions are considered matters of public policy under Brazilian law<sup>129</sup>. Accordingly, administrative (or contractual) time extensions agreed upon by the parties, which are common in other jurisdictions, are not legally binding before Brazilian courts.

The limitation period can only be extended through a straightforward application to the court, which will serve a notice on the opposing party. The notified party is not required to respond; yet it retains the right to challenge the validity of the time extension when and if the substantive claim is filed within the renewed period<sup>130</sup>. In the case of foreign carriers, the notification is served on their local agents, similarly to the service of a writ of summons. **Section 8.6**

<sup>125</sup> STF Abridgement 151 of 1963: “The subrogated insurer’s action to obtain compensation for shortage or damage to cargo transported by ship shall be subject to a one-year statute of limitations” (free translation)

<sup>126</sup> Article 8 of Law-Decree 116/1967: “Actions for loss of cargo, as well as actions for lack of contents, reduction, losses and damage to cargo, shall expire after one year, counting from the date of completion of unloading from the transport vessel” (free translation)

<sup>127</sup> “*Jurisprudência em Teses*” (Jurisprudence in Theses), Issue 232, March 2024, by the Secretariat of Jurisprudence of the Superior Court of Justice (STJ). This collation of STJ understanding was extracted from judgments published up to that moment but is not binding

<sup>128</sup> Articles 202 to 204 of the Civil Code

<sup>129</sup> Article 192 of the Civil Code

<sup>130</sup> Article 193 of the Civil Code

The commencement of legal proceedings, arbitration or mediation automatically suspends the running of the limitation period. Conversely, the filing of an extrajudicial claim does not, though the debtor may waive the time bar after its expiration, without prejudice to third-party rights<sup>131</sup>.

### 8.9.5. Time suspension

Maritime incidents and casualties, such as collisions, groundings, fires, and sinkings, which may result in loss or damage to cargo and impose liabilities on sea carriers, are adjudicated by the Brazilian Maritime Tribunal (also referred to as the Maritime Court or the Admiralty Court)<sup>132</sup>.

Although this administrative court does not have jurisdiction to determine civil liability and its judgments are not binding on courts of law, its decisions may influence the outcome of cargo claims and carry significant weight as technical evidence. In fact, the findings of the Maritime Tribunal constitute prima facie evidence, though always subject to review by the judicial authority<sup>133</sup>.

In principle, the limitation period is suspended and does not run against any interested parties until the administrative proceeding of the Maritime Tribunal is concluded<sup>134</sup>.

### 8.9.6. Stay of proceedings

The Civil Procedure Code provides for a stay of proceedings when the matter in court of law derives from an accident or navigational fact under the jurisdiction of the Maritime Tribunal. However, the adjective law does not specify the duration of such a stay<sup>135</sup>.

As this is a relatively new matter, jurisprudence is still developing. In practice, civil judges have halted the lawsuit when the issue under discussion in the administrative maritime court is relevant to the resolution of the claim. Nonetheless, in accordance with the constitutional principles of procedural efficiency and a reasonable duration of the process<sup>136</sup>, any suspension granted is subject to a specific timeframe. After this period, procedural acts are resumed irrespective of whether the Maritime Tribunal's judgment is still pending.

<sup>131</sup> Article 191 of the Civil Code

<sup>132</sup> The *Tribunal Marítimo* (Maritime Tribunal), created in 1931 and governed by Law 2,180/1954, is an administrative, autonomous body auxiliary of the judiciary branch linked with the Ministry of Defence and the Brazilian Navy Command. It is based in Rio de Janeiro and has jurisdiction throughout Brazil to judge accidents and facts of navigation and administer the Brazilian ship registry

<sup>133</sup> Article 18 of Law 2,180/1954: "The technical matter of the decisions from the Maritime Tribunal in respect of accidents and facts of navigation is a piece of evidence presumed correct, however liable to review by the Judiciary Power." (free translation). Article 19 of Law 2,180/1954: "When discussing in court an issue arising out of a matter under the jurisdiction of the Maritime Tribunal, which technical or technical-administrative aspect falls within its attributions, a copy of the final decision must be attached to the court proceeding." (free translation)

<sup>134</sup> Article 20 of Law 2,180/1954: "No time bar counts against any of the parties interested in the assessment and in the consequences of the accidents and facts of waterborne navigation until there is a final decision of the Maritime Tribunal." (free translation)

<sup>135</sup> Article 313, VII, of the CPC: "The proceeding will be halted: (...) VII- When the matter under court consideration derives from an accident or a fact of navigation within the competency of the Maritime Tribunal." (free translation)

<sup>136</sup> Article 5, LXXVIII, of the Federal Constitution

## 9. Loss prevention measures

### 9.1. Cargo operation monitoring

While the carrier’s liability extends from tackle to tackle, cargo losses often arise from negligent stevedoring practices or the use of substandard or inadequate cargo handling equipment. These deficiencies can result in cargo spillage on deck surfaces, quay structures, and overboard.

Since bulk cargo is seldom weighed immediately before or after crossing the ship’s rail, any losses incurred during transfer to or from land vehicles or barges are generally attributed to the vessel, either as fully loaded cargo or short-landed cargo. To mitigate cargo shortage and prepare for eventual disputes, the crew must systematically document all such losses through detailed time logs, photographs, and short video recordings throughout cargo operations. **Section 4.1; Pictures 19 to 22**



**Pictures 19 to 22: Cargo wasted on deck during loading and discharge operations. Source: Proinde**

Prompt lodging of notes of protest against the port operators, shippers, or consignees, to formally reserve the vessel’s liability in respect of any short-loading or short-landing incidents. In cases where significant discrepancies are detected between the ship’s draft survey and shore official figures, the master should consider clausing the mate’s receipts and bills of lading to safeguard the carrier’s position. **Section 6.2**

The duty officer must exercise caution to prevent the discharge or loading of moisture-sensitive or dusty cargoes during adverse sea and weather conditions. Such conditions can increase windage and leakage during cargo handling. **Sections 4.1 & 5.3**

## 9.2. Draft surveying

Regardless of the cargo quantification method acceptable by the local customs authority as the official figure to be recorded in the mate's receipts and bills of lading, it is strongly recommended to perform draft surveys both prior to and upon completion of cargo loading or unloading operations. **Section 3.3; Pictures 23 to 26**

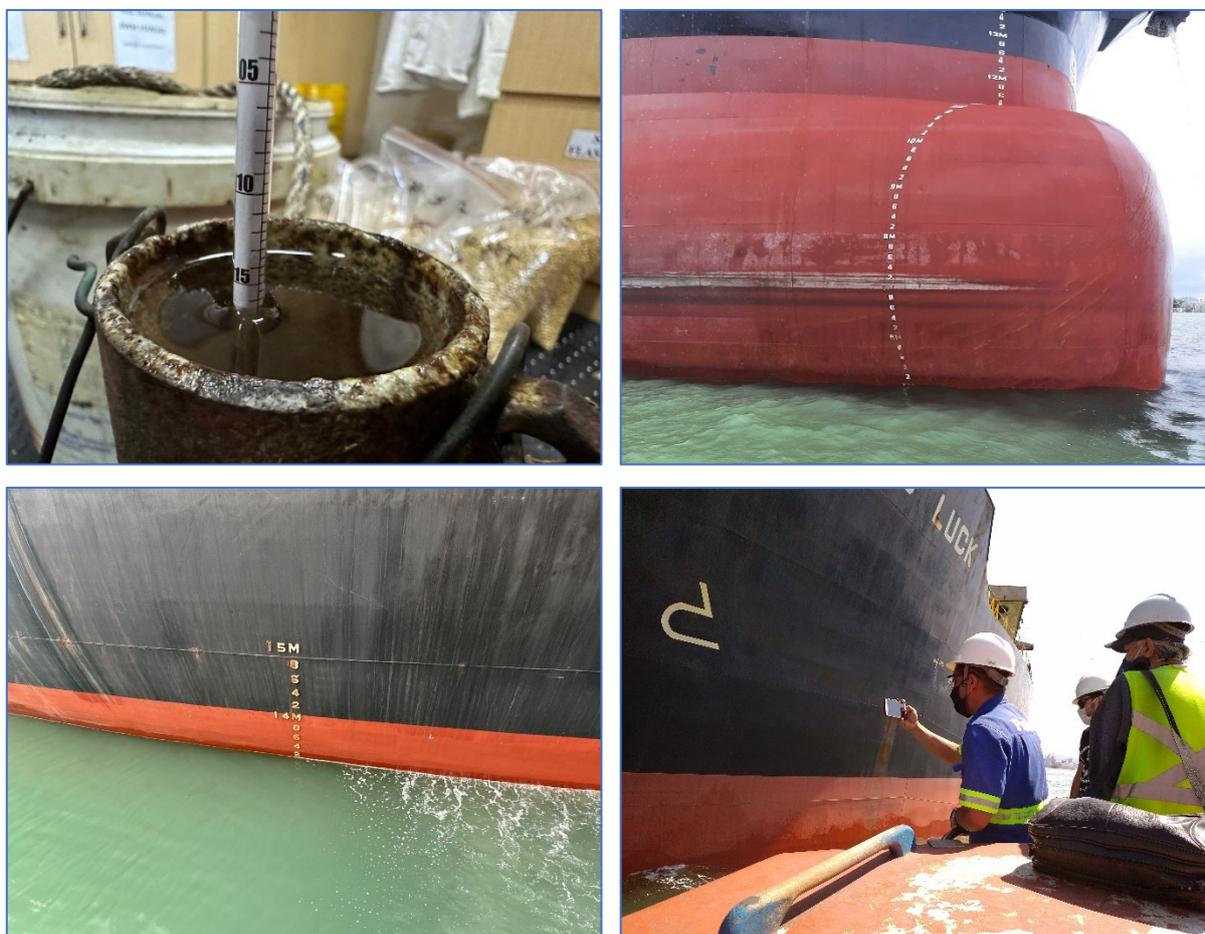
A thorough draft survey requires accurate measurements of overboard water density, ship's constant, and consumables such as ballast and fresh water, and fuels, using calibrated equipment.

While trained deck officers are qualified to conduct draft surveys, it is advisable to appoint experienced independent local draft surveyors. Preferably, the P&I club, or local correspondent, should vet these surveyors and be familiar with port conditions and cargo characteristics.

The appointed surveyor's role includes assisting the master in evaluating whether, based on accurate and reliable draft displacement calculations, letters of protest should be issued, or the M/Rs and Bs/L remarked with clauses addressing any discrepancies that exceed acceptable limits. **Section 6.2**

When feasible, draft surveyors representing the various stakeholders – including shipowners, charterers, shippers, receivers, port operators, and customs – should jointly perform the draft readings, soundings, and calculations. Their respective findings should be documented in the statement of facts (SOF).

The master must retain copies of all draft survey certificates issued by attending surveyors, ensuring they are securely archived for future reference. If requested to sign these certificates, the master or chief officer must include the remark “*without prejudice, for receipt only*”. **Section 9.5**



Pictures 23 to 26: Surveyors reading draft marks and overboard water density. Source: Proinde

The frequency of draft surveys is determined by variables such as cargo type, cargo lots, and the number of loading or discharging ports involved.

### 9.2.1. Multiple cargoes

In the dry bulk trade, it is common for two or more different cargoes or cargo grades to be loaded to or discharged from the same berth, either sequentially or separately. When such cargoes are loaded or unloaded separately and entirely, it is advisable to conduct an initial draft survey, followed by an intermediary draft survey after each cargo load or discharge, to accurately determine individual cargo lot weights. A final draft survey must be conducted to determine the total weight and the weight of the final cargo parcel.

### 9.2.2. Simultaneous operations

When multiple cargo lots are loaded or unloaded concurrently – either directly at the quayside or via barges alongside the vessel – only initial and final draft surveys are required.

Cargo weights among the lots loaded or discharged should be determined by comparing the draft survey results with the shoreside measurements to establish a factor (f) to be applied to each cargo, as follows<sup>137</sup>:

$$\frac{\text{Surveyed weight}}{\text{Shore weight}} = \text{factor (f)}$$

The individual cargo weights are calculated by multiplying the shore weight by this correction factor:

- Weight of cargo A = shore weight x (f)
- Weight of cargo B = shore weight x (f)

This approach aims to ensure allocation of cargo weights, accounting for any significant divergencies between the vessel's draft survey and shoreside measurements.

### 9.2.3. Multiple ports

For cargoes to be loaded or unloaded at multiple Brazilian ports, initial and final draft surveys must be performed at each port. The initial survey will ascertain the weight already or still on board and can assist in determining that the ship's constant is correctly applied.

When different cargoes or cargo grades are loaded or discharged separately, an intermediary survey must be undertaken to quantify each cargo lot. Conversely, if multiple cargoes are handled simultaneously, only the initial and final draft surveys are required to establish the conversion factor for apportioning weights among the various cargo lots.

For the same bulk cargo discharged across multiple ports within a single voyage, the total delivered quantity is calculated by summing the outturns from all ports. This aggregate is then compared against the full cargo manifest to identify discrepancies and assess the percentage of shortages or overages. The customs authority performs this 'final checking of the manifest' to verify deviations beyond allowances and collect applicable duties and taxes proportional to the short or over-delivered quantity from the responsible party<sup>138</sup>. **Sections 7.1 & 7.2**

<sup>137</sup> Formula recommended by the "Code of Uniform Standards and Procedures for the Performance of Draught Surveys of Coal Cargoes", by the UN Economic Commission for Europe (UN/ECE)

<sup>138</sup> Articles 658 & 659 of the Customs Regulation

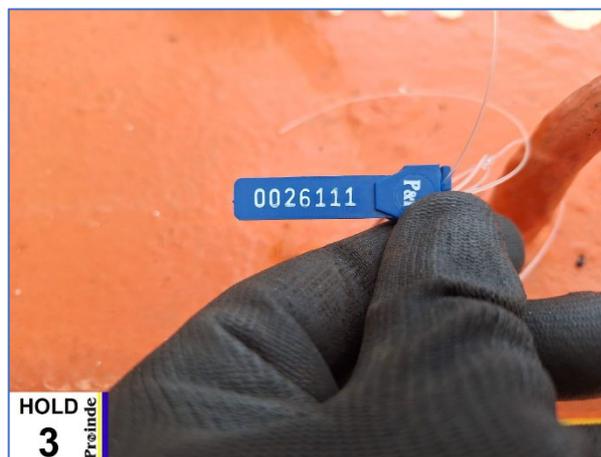
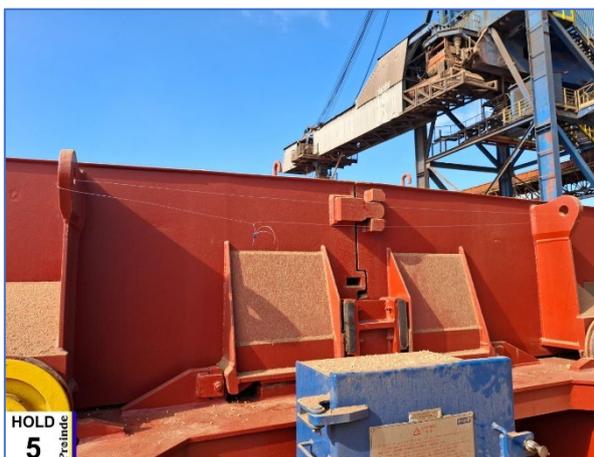
**9.2.4. Contingencies and limitations**

In cases where an accurate draft survey cannot be performed due to adverse sea or weather conditions, or any other factors beyond the carrier’s control, the chief officer must document this event in the deck logbook and consider issuing a formal note of protest. The purpose of this measure is to record that, despite diligent efforts by the vessel’s command, shore-based measurements could not be fully verified.

In such cases, deck officers should conduct measurements of cargo hold volumes, determine cargo stowage factors, and broken stowage to attempt to approximate cargo quantities and identify significant discrepancies.

**9.3. Sealing of cargo holds**

The carrier should also arrange for the independent sealing and unsealing when carrying solid bulk commodities of significant value. Hold sealing, integrated with draft surveys and active monitoring of cargo operations, constitutes a cost-effective measure to demonstrate the carrier’s diligent efforts in safeguarding the cargo integrity and ensuring its safe delivery.



Pictures 27 to 30: Sealing of hatch covers and manholes on completion of loading. Source: Proinde

Sealing of holds assists in preventing unauthorised access to the load during sea transportation, thus mitigating risks of cargo manipulation, contamination, and pilferage. It serves as evidence that the load remained undisturbed throughout the voyage; therefore, whatever quantity was placed in the cargo holds will be effectively delivered; any discrepancies in quantity are attributable to inherent vice (‘natural loss’) or miscalculations at the origin or destination, beyond the ship’s control. **Pictures 27 to 30**

Exact times of sealing and unsealing should ideally be recorded in statements of facts (SOF) of the loading and discharge ports, with copies of the respective certificates attached to the SOF.

### 9.3.1. Post-loading sealing

A reliable surveyor must be engaged to affix numbered weatherproof seals on the hatch covers and associated manholes of all cargo holds immediately upon completion of loading and fumigation, if any. The duty officer should accompany the sealing process and, if possible, surveyors acting for the shipper and port operator should be invited to attend.

The sealing should be documented with good-quality photographs of all seals applied, capturing their serial numbers, placement, and integrity. A sealing certificate must be issued by the surveyor and countersigned by the master or chief officer. Shipper and port operator surveyors should be requested to sign the certificate as witnesses.

### 9.3.2. In-transit seal breakage

There may be circumstances in which the hold seals need to be removed during the voyage. For instance, to comply with in-transit fumigation protocols, implement cargo ventilation strategies mandated by shippers or charterers, or investigate suspected issues such as cargo self-heating or combustion. The sealing may also be compromised in inclement sea and weather conditions.

In these cases, the seal breach should be documented with photographic or video evidence, witnessed by two crew members. The date, number of broken or missing seals, and the reason should be entered in the deck logbook, and a note of protest should be issued and signed by the chief officer and witnesses.

### 9.3.3. Pre-discharge unsealing

Before opening the hatch covers and manholes at the destination, an independent surveyor should be engaged to inspect and certify the integrity of the seals applied according to the sealing certificate. The seals must be broken only in the presence of the ship's officer and, if possible, consignee and port operator surveyors.

The unsealing should be recorded with good-quality photographs showing the number and condition of the seal, and an unsealing certificate issued and countersigned by the master or chief officer. Whenever possible, surveyors acting for the consignee and port operators should be asked to co-sign the unsealing certificate as witnesses only.

If there are multiple ports of loading or discharge, all partly discharged holds or holds to be topped up at the next port should be sealed and unsealed by independent surveyors at each port.

### 9.3.4. Sealing clause in C/P

Where feasible, the shipowner should negotiate with the time charterers to include a 'sealing clause' in the charter party, stipulating that, provided the seals applied at the loading port are found intact upon arrival at the discharge port, the owner shall not be liable for shortage claims. Such claims shall be settled directly between the charterer and the cargo interests<sup>139</sup>. To produce legal effects in Brazil, C/P stipulations must be incorporated into the bills of lading. [Section 5.1](#)

## 9.4. Prompt notification

If significant discrepancies are identified during cargo loading or discharge operations, the master must immediately inform the shipowner and consult with the P&I club or its local correspondent. They should be able to appoint suitable surveyors to assist and provide guidance on necessary precautionary actions, reservations, and communication with relevant stakeholders, including the charterer, cargo interests, and port operator.

<sup>139</sup> Examples of such sealing clauses: "Seals applied at loading in the presence of Charterer/Shipper representatives and shall only be broken in the presence of Charterer/Consignee representatives and the Master. If seals remain intact upon arrival, the vessel shall bear no responsibility for shortages."; "All cargo holds shall be sealed in the presence of independent surveyors and the respective parties. The responsibility for any discrepancies shall rest with the cargo interests if seals are unbroken at discharge."

All third-party surveyors attending on board should be clearly identified in the ship's visitor log, with proof of identity, company affiliation, and the entity on whose behalf they are acting.

In cases where notes of protest are issued against the vessel for alleged short landing, the master may, upon the owner's instructions, sign the document with a remark such as *"for receipt only, all cargo discharged as per bills of lading and charter party terms. All holds are empty"*.

## 9.5. Collection of evidence

Whenever substantial discrepancies are ascertained, the master and owners must ensure that all relevant records are maintained and readily available to the P&I club and local correspondent to properly defend the vessel's interests in the event of a shortage dispute or claim. **Picture 19**

Documentary evidence
<p><b>Discrepancies upon loading:</b></p> <ul style="list-style-type: none"> <li>▪ Cargo holds cleanliness certificate</li> <li>▪ Shipper's cargo information/cargo declaration</li> <li>▪ Moisture content (MC) certificate</li> <li>▪ Transportable moisture limit (TML) certificate (for mineral cargoes)</li> <li>▪ Preliminary cargo stowage plan</li> <li>▪ Draft survey records</li> <li>▪ Loading reports/tally sheets</li> <li>▪ Statement of facts (SOF)</li> <li>▪ Deck logbook covering loading operations</li> <li>▪ Evidence of loss:               <ul style="list-style-type: none"> <li>○ Formal protests</li> <li>○ Survey reports</li> <li>○ Photographs and video recordings covering cargo loss during loading</li> </ul> </li> <li>▪ Hold sealing certificate</li> <li>▪ Mate's receipts</li> </ul>
<p><b>Discrepancies upon discharge:</b></p> <ul style="list-style-type: none"> <li>▪ Cargo holds cleanliness certificate issued at the loading port</li> <li>▪ Shipper's cargo information/cargo declaration</li> <li>▪ MC certificate</li> <li>▪ TML certificate (for mineral cargoes)</li> <li>▪ Final cargo stowage plan</li> <li>▪ Water discharge logs or bilge pumping records</li> <li>▪ Ballast exchange logs</li> <li>▪ Draft survey records from the loading and discharging ports</li> <li>▪ Discharge outturn reports/discharge certificates/ tally sheets</li> <li>▪ SOF covering loading and discharge operations</li> <li>▪ Deck logbook covering loading and discharge operations</li> <li>▪ Evidence of loss:               <ul style="list-style-type: none"> <li>○ Formal protests</li> <li>○ Survey reports</li> <li>○ Photographs and video recordings covering cargo loss during loading and discharge</li> </ul> </li> <li>▪ Hold sealing and unsealing certificates</li> <li>▪ Empty hold certificate</li> <li>▪ Mate's receipts</li> <li>▪ Bills of lading</li> </ul>

**Figure 19: Documentary evidence to be collected in the event of discrepancies upon loading or discharge**

## 10. Conclusion

Solid bulk cargoes play a pivotal role in Brazil's foreign trade, accounting for the largest share of exports and imports. However, the inherent risks associated with handling, quantifying, and transporting these commodities often lead to disputes and claims, particularly regarding shortages. This guide has aimed to provide a comprehensive yet practical overview of the regulatory framework, quantification methods, liability allocation, and loss prevention strategies to help stakeholders manage these challenges effectively.

The absence of standardised international regulations for bulk cargo quantification and shortage allowances often exacerbates disputes. As a result, ship operators, shipmasters, and crews must adopt best practices, including draft surveys, hold sealings, and meticulous cargo operation monitoring, to avert or mitigate risks and defend against claims.

In Brazil, customs regulations permit some shortage allowances for dry bulk cargoes, inconsistencies in civil statutes and jurisprudence can lead to varying interpretations of civil liability. Stakeholders should stay vigilant by understanding the legal framework and proactively addressing discrepancies to avoid customs penalties and lengthy cargo disputes.

Shortage claims represent one of the most common and financially impactful seaborne cargo disputes in Brazil. Effective claim management hinges on timely notification, proper evidence collection, and adherence to procedural requirements.

By analysing key aspects such as liability, quantification methods, losses, wastage during handling, and acceptable tolerances, this guide seeks to empower shipmasters, shipowners, charterers, P&I clubs, and cargo liability insurers with the knowledge need for effective risk management and claims mitigation. Given Brazil's strategic role in the global bulk trade and the intricacies of its regulatory environment, initiative-taking strategies and informed decision-making are essential for minimising losses and maintaining operational efficiency.

We encourage readers to share their experiences, insights, and feedback to enrich future editions. Your contributions will help us to refine our understanding further and enhance the value of this resource for the shipping and maritime communities.

Please refer to our [disclaimer](#).

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