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Country Briefing
Trading to China
during COVID-19



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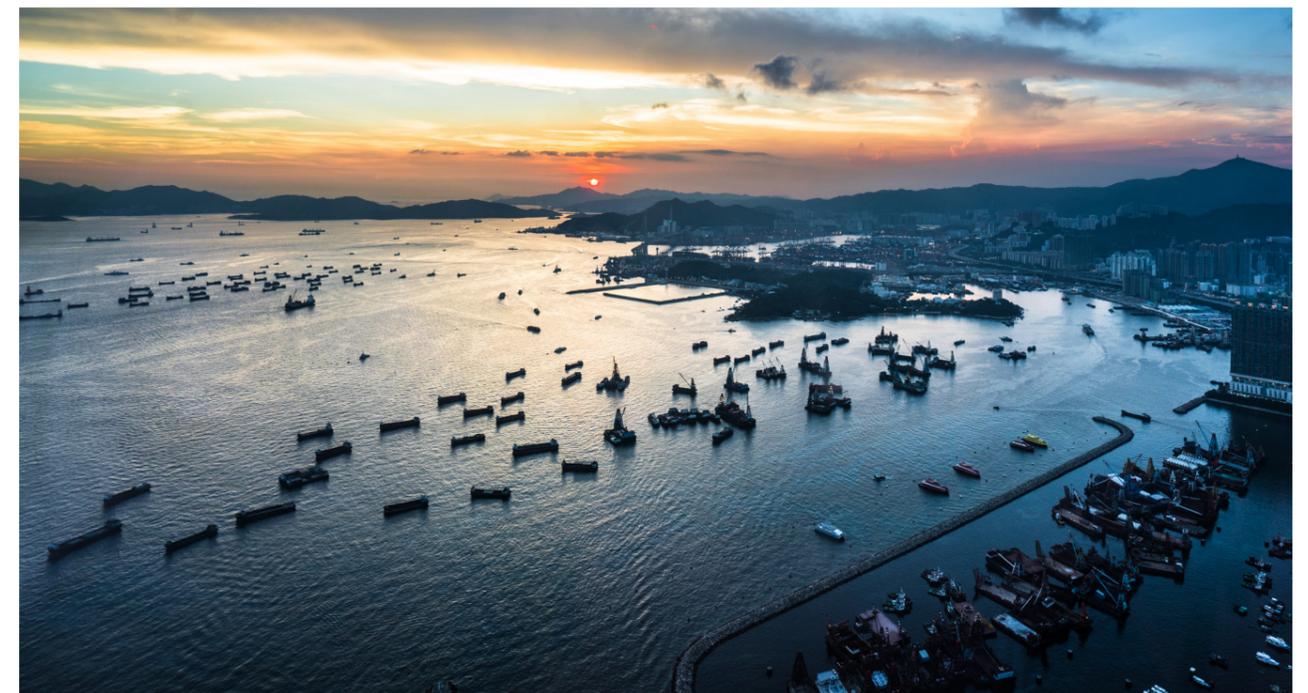
Trading to China during COVID-19

The COVID-19 pandemic continues to challenge shipowners operating vessels globally. The patchwork of regulations in different countries is everchanging and we recommend that Members always check the latest situation using MyGlobeView AND check with the vessel's agents as changes can occur at very short notice.



Trading to China during COVID-19

In this article we look at some of the challenges that are arising when trading to the People's Republic of China (PRC).



Barriers to entry – keeping COVID-19 out of China

The Chinese authorities have introduced a COVID-19 protocol for ships arriving at PRC ports. Two of the key components of this protocol are:

1 Confirmed or suspected COVID-19 aboard

If a crew member tests positive or has symptoms of COVID-19 prior to arriving at a PRC port, this must be reported. The vessel may be denied permission to enter Chinese waters until the affected crew has been disembarked. If the ship is allowed to proceed to port, quarantine awaits.

2 The 14-day rule

All crewmembers who have joined the vessel within 14 days of arrival at a PRC port must be tested for COVID-19 upon arrival. For example, should a vessel divert to the Philippines for a crew change before arrival at a PRC port, the new crew are likely to be tested on arrival. Our experience with testing in PRC shows a high instance of crew testing positive even where they are completely asymptomatic and/or have previously tested negative.

Quarantine for COVID-19

The authorities' reaction to a positive test can differ from port to port but it is common for affected crew to be placed under quarantine ashore at the Member's expense. Additionally, the vessel is likely to be placed in quarantine for a period of at least 14 days.

Experience shows that it is very difficult to get any medical information concerning the quarantined crew, or any associated medical costs, until they are finally released from the quarantine or medical facility.

Towards the end of the quarantine period, the authorities may insist that all crew are tested again. This can result in more crew testing positive despite having been in isolation. Again, they are then taken ashore for quarantine and the cycle starts over, unless the vessel requests to depart the port without disembarkation. Every situation is different, we have experience of cases where the vessel and affected crew were allowed to depart PRC immediately but also cases where both the vessel and crew were quarantined.

It is not always possible for a crewmember to be discharged from quarantine until all the vessel's crew test negative, even if that individual has tested negative.

We recommend that all crew changes are carefully considered and planned. Ideally, they should be arranged for no less than 14 days before arrival at a Chinese port or, preferably, after departing from China.

Consider disembarking any crew who have tested positive or are displaying COVID-19 symptoms before proceeding to China.

Members should obtain the latest advice from their agent.

Cargo Operations Under Quarantine

During quarantine, cargo operations might be permitted, depending on the cargo and the port. However, the authorities may decide to suspend cargo operations.

The authorities may also require the quarantine of any shoreside personnel (including stevedores) that have boarded the vessel or had contact with the crew. This quarantine is for a minimum period of 14 days, which is at Member's expense. There may also be a requirement that the vessel remains at the berth, incurring a daily charge, rather than proceeding to an anchorage.

The "Emergency Notice of the Ministry of Transport on Coordinating the Quarantine Measures and the Administration of Waterway Transportation" issued on 29 January 2020 states that a port operator is not allowed to restrict vessels from berthing for cargo operations or impose a 14-day isolation on the vessel at anchorage without explicit instructions issued by the competent maritime authority or port authority. The PRC Supreme Court has confirmed that if a port operator imposes quarantine restrictions without this permission, the Chinese Courts are to support a shipowner's demand for compensation.



Crew Changes

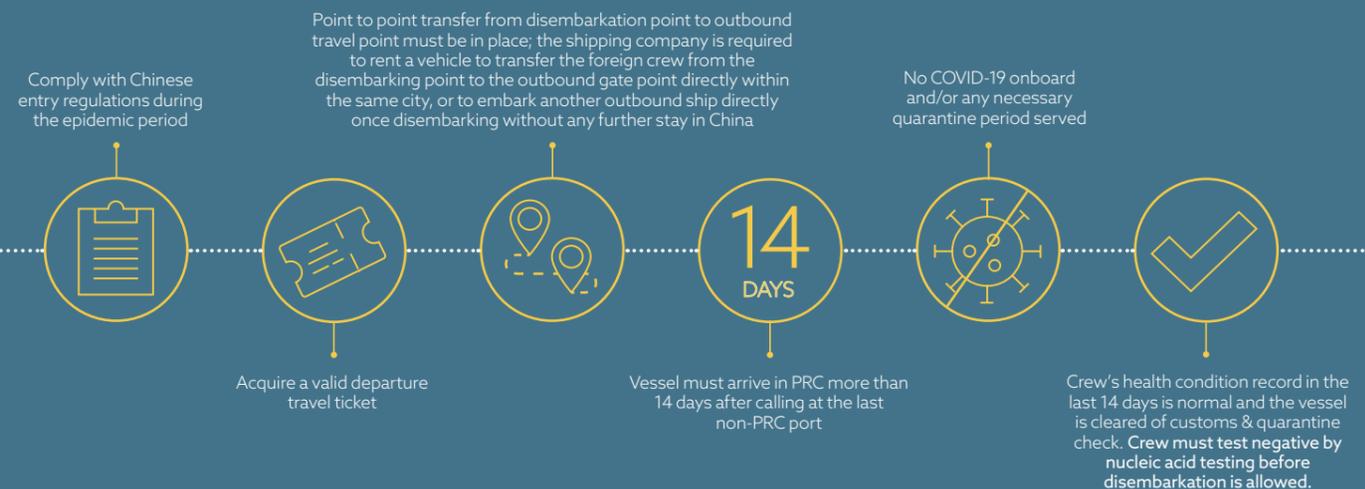
Extensive delays are being experienced in some Chinese ports. This may mean that seafarers who may already be on extended voyages are remaining onboard for several months more until a berth becomes available.

Until recently it has not been possible to conduct crew changes in PRC. However, the PRC authorities have now moved to allow crew changes, subject to certain restrictions. The regulations on crew changes are onerous and in practice the vessel may be significantly delayed and/or the requested crew change denied. Members can find more information on these latest regulations on MyGlobeView.

MyGlobeView

CREW CHANGES

Crew changes are permitted at Dalian, Tianjin, Qingdao, Shanghai, Ningbo, Fuzhou, Xiamen, Guangzhou, Shenzhen and Haikou, subject to the following general conditions



The PRC authorities have designated institutions located in seafarer supply countries and may accept their tests for COVID-19. Details of the designated institutions can be found on PRC Embassy websites in those countries.

It is important to note that the final say on crew changes rests with the local port authority. Members must consult local agents to be sure that they are fully up to date with any local restrictions that may be in place.

What to Expect if A Disembarking Crew Member Tests Positive?

Crew changes will be suspended for:

- 15 days if a shipping company has five positive tests
- 30 days for 10 positive tests

In the event of more than 10 positive tests, crew change operations by the shipping company will be suspended until reassessment by the relevant authorities.

Be aware that no nucleic acid test for COVID-19 is 100% accurate. It is inevitable that false positives will occur. This may mean that even where a vessel has taken every precaution, and is sure that it is coronavirus-free, positive tests may still occur.

Delays and cargo delivery issues

Where there are significant delays, cargo issues may arise. These can be particularly acute for some cargoes, such as soya beans from North and South America. Members should continue to liaise with charterers on cargo care during this period.

Details of any inspections or monitoring of cargo that take place should be carefully recorded. The Club can provide practical guidance where there will be delay in discharging perishable or short shelf-life cargoes due to port congestion or COVID-19 restrictions.

There are reported instances where vessels have been compelled to discharge all of its cargo in one port when the bills of lading call for multi-port discharge. This raises a risk of a claim for delivery at the wrong port or misdelivery, which is outside the scope of International Group standard P&I cover. In the absence of an express requirement under a charterparty, a carrier cannot be compelled to deliver at a port other than one named in the governing bill of lading.

One solution is to retrieve all original sets of the bills of lading and to switch them for replacement bills of lading which name the new discharge port. A carrier will often want a letter of indemnity in return for agreeing to switch bills. Another common commercial solution is for the carrier to accept a letter of indemnity on standard International Group form for requests to deliver cargo at a port other than that stated in the bill of lading.

The wordings of these letters of indemnity can be found at www.nepia.com together with the Club's circulars on **BILLS OF LADING – DELIVERY OF CARGO**, 01 February 2001, **INTERNATIONAL GROUP STANDARD FORM LETTERS OF INDEMNITY**, 01 October 2010 and 18 October 2010. Charterer members would need to contact the Club for an alternative wording.



COVID-19 and the contract of carriage

Cargo interests who suffer losses as a result of an onboard outbreak of COVID-19 might seek recovery from the carrier by arguing the vessel is unseaworthy, therefore a breach of the contract of carriage

From an English law perspective, difficult questions are likely to arise; such as whether the outbreak is an attribute of the ship that is capable of affecting her seaworthiness, and how the obligation on the carrier and its delegates to exercise due diligence to ensure the vessel is seaworthy operates in these circumstances.

In June 2020, the PRC Supreme Court issued guidance which stated that a ship might be held to be unseaworthy if, at the commencement of the voyage, she is not fit to take measures to control COVID-19 or does not have a sufficient number of “certified healthy crew members”. The guidance emphasises that a vessel is not unseaworthy merely because she has berthed at an area affected by COVID-19 or if the crew test positive for COVID-19. The guidance also states that carriers will not be found to have deviated from the agreed or customary route to diagnose COVID-19 or to quarantine, provided the shipper is given notice. Equally, there would be no liability for delay caused by port traffic restrictions in place for COVID-19 reasons. Nor is a carrier to be held liable, says the guidance, for discharging at a safe place “adjacent to the original discharge port” due to berthing restrictions.

Care should be taken in relation to this advice, with any planned diversion from the discharge port named in the bill of lading. Discuss this with your usual contact at the Club in advance as this could be considered a deviation from the contract of carriage.

Finally, the guidance reminds carriers to properly take care of cargo even after discharge, presumably until the cargo is legally delivered to receivers. Although this guidance mentions the shipper, there seems to be no reason why it should not apply equally to receivers.

It follows that vessels calling to China should have a system in place that enables them to show that they have exercised due diligence. Whilst limited guidance has been given by the PRC Supreme Court, it is not clear exactly what would be required of owners to show due diligence was exercised. A good start, however, would be to ensure your crew change system follows the IMO recommended framework for ensuring safe ship crew changes.

MIND CALL

Supporting Seafarers at sea through COVID-19. If you are worried, stressed or anxious please contact our confidential helpline

Mind Call (provided in association with ISWAN) is a confidential* helpline available 24/7, 7 days a week and 365 days a year. The helpline operators speak several languages including Tagalog, Chinese and Russian.

Mind Call can be contacted via:

Tel: **+44 191 235 3917**

Email: contact@mindcall.org

WhatsApp: **+44 7464 327451**

Live Chat via the website

www.mindcall.org

*please see our website regarding confidentiality.



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