

StopLoss

Abandonment of cargo

Avoiding the pitfalls



TT CLUB
IS MANAGED
BY THOMAS
MILLER



Contents

1. Introduction p06
 2. Why is cargo abandoned? p08
 3. When is cargo abandoned? p11
 4. Mitigating the associated risks p12
 5. Recommended action p13
 6. Methodical steps p14
 7. Demurrage and detention p16
- Ten-point checklist p17

StopLoss series

StopLoss briefings are developed on a broad range of topics that give rise to recurring problems. They seek to provide a straightforward summary of an issue, essential good practice advice and, where applicable, sources of further information. The complete series and further information is available at www.ttclub.com/lossprevention and printed copies are available from the TT Club's Regional Centres.

Disclaimer

The information contained in this briefing has been compiled from various sources. TT Club, its Managers and all other contributors do not accept responsibility for loss or damage which may arise from reliance on the information contained herein.

Copyright © Through Transport Mutual Services (UK) Ltd 2021. All rights reserved. Users of this briefing may reproduce or transmit it verbatim only. Any other use, including derivative guidance based on this briefing, in any form or by any means is subject to prior permission in writing from Through Transport Mutual Services (UK) Ltd.



Avoiding the pitfalls relating to the abandonment of cargo

Abandoned cargo is a continuous challenge for supply chain stakeholders, resulting not only in considerable costs on container demurrage, detention, storage and disposal costs, but also increased safety and regulatory risks. Aside from these identified risks, incidents of abandoned cargo demand a significant management resource to resolve and have the potential to impact commercial relationships.

This StopLoss is intended to provide practical guidance to those stakeholders for whom the consequences of abandoned cargo are greatest.

Who is this for?

- Freight forwarders
- Logistics operators
- Non-vessel operating carriers (NVOCC's)
- Terminal operators
- Cargo interests

1

Introduction

In this section:

- Who is most exposed?
- Safety considerations
- Importance of management controls and prevention

Abandoned cargo is not a new challenge to the transport industry. NVOCs are particularly exposed to liability for costs when issuing house bills of lading, thus acting as “carrier”, although freight forwarders can be similarly exposed under “Merchant” clauses of the ocean bill of lading, even when not actually named on the face of the bill of lading.

Other stakeholders, such as the container terminal and container owner or lessor, are similarly exposed to the risks arising from abandoned cargo. Terminal operating systems (TOS) typically will dynamically position arriving cargo for ease of access to dispatch and taking account of space constraints. Abandoned cargoes disrupt operational efficiencies, affecting throughput and service levels. Safety is a further cause for concern for those storing abandoned cargo. Knowledge of the cargo type, its condition, the condition of the cargo transport unit (CTU), potential reactivity with adjacent cargoes or how to handle the cargo in the case of an emergency, are all prudent considerations.

Abandoned cargoes might additionally attract the interest of the local authorities, such as customs, safety authorities, crime agencies and those responsible for phytosanitary checks. Inspections and, where appropriate, remedial actions, might make it more complex and costly to resolve the issues around an abandoned consignment.

Avoiding the abandonment of cargo can be challenging. However, management controls and mitigation strategies can assist in reducing the frequency and impact of such incidents. Identifying heightened risks early and being empowered to mitigate the consequences will reduce exposures. All incidents are complex and will incur costs, prevention is therefore better than cure. Crucial to prevention is maintaining management procedures to identify shipments that require closer monitoring and/or to take evasive action, such as avoiding the shipment, to protect your business.



Maintain management procedures to identify shipments that require closer monitoring





2

Why is cargo abandoned?

In this section:

- The commodity (some are more prone than others)
- The nature of the shipper (natural person)
- Trade routing
- Sales contracts & trade fluctuations
- Sanctions issues

There are a multitude of underlying reasons that lead to incidents of cargo abandonment. This section looks to address the key triggers.

Typically, the goods are abandoned at the destination port and are low value cargoes, such as waste and materials intended for recycling. Management controls are required to identify problematic commodities, routings and destinations. Other 'red flags' may include the shipper being a natural person, with few material assets, and instances where the sale of cargo has not been finalised at the time of shipping ('shipped to the order of'). Effective due diligence leads to an informed commercial decision to decline the booking or allocate additional operational attention to the shipment.

The commodity

Some commodities are more prone to be abandoned than others. Where these can be identified during the booking process, it may be possible to reduce your exposure to this type of incident. While it must be acknowledged that there will be geographical variances, below are a list of commodities commonly presenting higher risk.

- Waste (all kinds including fabric, paper and wood)
- Scrap (metals, plastics, wood)
- Cargoes intended for recycling (these are often waste shipments with an alternate descriptor)
- Used computer equipment
- Used tyres
- Personal effects

The reasons why these commodities are more prone than others varies. However, these are all relatively low value, high volume and often not newly manufactured goods.

Apart from awareness of and compliance with the rules of the Basel Convention, all those involved in the transport chain need to be increasingly vigilant concerning the movement of cargoes that are viewed as waste. Many countries have introduced increasingly stringent measures in this regard, including bans, quotas and authentication.



Waste and scrap cargoes are commonly abandoned commodities

¹ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as amended

In a similar way, companies need to be alert to the risks presented by counterfeit, non-compliant and prohibited goods. Inevitably, identifying such shipments, and the criminals who are seeking to exploit legitimate transport operations, presents substantial difficulty. It is likely that the goods will not be declared accurately, both as concealment of the illicit trade and in terms of the nature or potential hazards presented. To be alert to the risks in the places of origin or destination and aware of information from governmental and trade organisations are important steps in avoiding these risks.

The nature of the shipper

Due diligence is fundamental where the risk of abandoned cargo is concerned. Knowing your shipper is critical in identifying heightened risks. Not all cases of abandoned cargo involve a shipper who intentionally seeks to deceive, however there are commonalities which could be considered:

- Is the shipper a natural person (rather than a company)?
- Is the shipper reliable?
- Where the shipper is a company, does it exist?
- Is the company financially viable?
- Does the company have a website?
- Do internet searches verify that the shipper trades in the commodity in question?

Identifying the type and nature of the shipper will assist in identifying further risk indicators. A natural person, for instance, might not necessarily present a greater upfront risk, but is arguably much less likely to be able to meet the ensuing costs, in the event of the cargo being abandoned. The reliability of the shipper is an important consideration. Have you worked with the shipper previously, were there any concerns around the collection of the cargo, delays or payments due? Has the shipper changed their name or contact details?

The volume of publicly available data means that even fairly rudimentary validation procedures may assist in protecting your business.

Trade routing

Consider the routing of the cargo being presented for shipment. Deliberately develop knowledge over time in relation to usual trade routes for certain commodities. There could be a leading indicator that something is wrong in the declaration of the cargo or the identity of your counterparty. How likely, for example, is it that a consignment described as “Toys” is being shipped from France to Myanmar? Where illicit trade is concerned, be alert that a shipper may wish to disguise the origin or routing of the movement, by shipping through a third country which raises less suspicion. How likely is it that a consignment described as “Toys” is going to be shipped from Oman to Ireland? Consider:

- The place of loading and destination
- Known ordinary trade routes
- Previous shipments/experience
- New regulations/restrictions



Be aware that a natural person presenting no upfront risk may not be able to meet the associated costs in the event that cargo is abandoned

2

Why is cargo abandoned?

While it may not be possible to develop an in depth knowledge of global trade routes, there may be obvious red flags which you can act upon. Your or industry prior experience might also provide guidance in identifying problematic destination countries. Over the last decade a number of countries have introduced restrictions on the import of waste, for example. Maintaining close relationships with local agents, national forwarding associations, your peers and reading trade press will assist in recognising such changes. For example, receiving a booking for a consignment of “recycled material” for delivery to a country with a known restriction on waste could trigger a red flag.

Sales contracts & trade fluctuations

The underlying sales contract will not usually be visible to the freight operator, but such terms could point to a reason for cargo abandonment. Being alert to factors that are likely to be known may be indicative of the underlying relationships and assist in avoiding problems. You could consider:

- Whether the sale of cargo has been finalised or is “shipped to the order of”
- Current economic conditions (recession)

- Access to market (are there any known issues in the destination country that could impact the shipment?)
- Lack of market (are there any known issues that suggest that the market for the goods may not exist?)

Carrying out some level of due diligence on the entity named as consignee in relation to the transport arrangements may provide an indication of whether the goods are being traded.

Sanctions issues

Stakeholders in the global logistics industry will already be alert to the checks necessarily flowing from the imposition of economic sanctions applied by countries or organisations against specific targets, including states, groups and individuals. Establishing robust procedures to maintain compliance with this complex and regularly changing aspect of trade regulation is important. In the context of the abandonment of cargo, keep alert to the identity of the counterparties involved.



Watch out for countries with known restrictions on the import of cargoes

Has the sales contract been finalised or is the cargo “shipped to the order of...?”

3

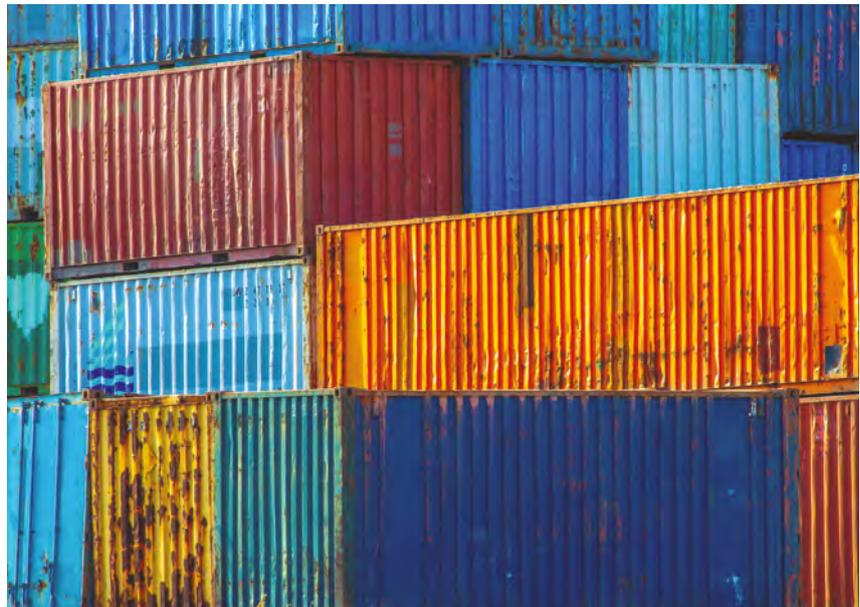
When is cargo abandoned?

In this section:

- Abandonment defined
- How it becomes apparent
- The role of enforcement agencies

A shipment is deemed 'abandoned' when the consignee has manifested, by action or in-action, that it has no intention to take delivery of the cargo within a reasonable period which typically would be the agreed 'free' period. This will often be the first alert the cargo will not be collected and emphasises the importance of early identification and proactive management. Once the free period has expired, the shipping line and container operator will start to incur costs which can rise rapidly. These will be passed to contractual partners as demurrage and detention charges.

Moreover, the consignment may become subject to increased interest and scrutiny from authorities who may not have been directly involved previously. This may include those with responsibility variously for safety and emergency response, phytosanitary concerns, customs, and crime/security agencies.



4

Mitigating the associated risks

In this section:

- Monitoring key milestones
- The importance of good management controls
- Communicating with local agents

It is prudent to establish good management controls for all shipments. Having these controls in place will help you readily identify problem shipments at a very early stage. You could consider developing a reporting and escalation structure based on key milestones in the expected process. Consider the recorded monitoring of:

- The actual arrival date
- Pre-arrival notifications (if applicable)
- Clearance through customs
- Presentation of the bill of lading
- The allowed free period

Negative outcomes at any of the established milestones, should trigger immediate action to be taken.

Good record keeping and management control over shipments in transit are crucial. All stakeholders should maintain electronic systems to monitor arrival dates and the associated free periods. Management information (MI) can then be developed to visualise the status of key milestones, such as surrender of bills of lading, as leading indicators of potential issues.

It is prudent to ensure that your local agents are aware of this risk and are also monitoring the arrival of shipments on your behalf. The role of the shipping agent can be crucial in early identification, prompting action. Having robust communication protocols in place and setting clear expectations with your local agent will prove valuable.

There exists no national law or international convention which states that freight forwarders or NVOs can recover the costs associated with abandoned cargo, for example container demurrage, port storage or fines. The only means you have to make a recovery is if your contract with your customer (whether agency contract, freight forwarding contract or house bill of lading) provides for this.



Be wary of any missed key milestones in the expected process

5

Recommended action

In this section:

- Taking immediate action
- Value in transparency and persistence

When a cargo is identified as being at risk of abandonment, it is prudent to take immediate action to mitigate exposure to costs. Consider:

- Identifying all involved parties
- Verifying the number of free days and the tariff thereafter
- Reviewing the applicable contractual conditions and assessing from which party(ies) you might be able to make a recovery
- Talking to both the contractually responsible party(ies), calling on them to come forward and pay any outstanding charges and to clear the cargo
- Ensuring that records of all correspondence are maintained
- Alerting the parties to their contractual obligations and the carrier's rights
- Being alert to false promises that the goods will be cleared

In the absence of action, communicate again with the shipper and consignee, demanding immediate instructions, whether to change consignee or destination, to arrange for re-shipment or formally to abandon the cargo. It is prudent to be consistently transparent about outstanding or continuing charges. Ensure that any local agent or branch maintains full and clear records of all costs that are incurred in relation to the abandoned cargo, keeping the shipper and consignee fully apprised.



Beware of false promises - never take assurances at face value

6

Methodical steps

In this section:

- Defining processes
- Jurisdictional differences
- Maintaining clear communication

Unfortunately, there is no commonly accepted practice available in all jurisdictions. This adds a further layer of complexity to the handling of this type of case, especially for the freight operator who may not be domiciled in the country where the cargo is abandoned. It may not be possible, for example, for the freight operator to hold a lien over the goods. Additionally, every jurisdiction will have specific provisions and rules on how liens can be exercised, which will need to be observed. In the USA, there exists a process called General Order, which could assist in facilitating the sale of the goods. Such jurisdictional differences place great importance on maintaining close dialogue with your local agent.

While this is ongoing, seek to mitigate demurrage/detention costs as far as reasonably practicable. Consult and explore options with the carrier and local agent as appropriate. Alternative storage solutions could be more cost effective. Close attention should be paid to any responses and progress towards resolution, giving a second formal notice no later than 45 days after the date of discharge if required.

A final notice should be issued within three months (in some jurisdictions this can vary up to six months) from the date of discharge. In the event that the carrier has not exercised a lien over the subject cargo, be explicit that inaction

will leave no option but for the NVOC to notify the relevant Port Authority requesting it to take necessary measures, which may include sale or disposal, and that any and all costs incurred in this regard will also be to the contractually liable party's account.

In some jurisdictions, there may be an obligation on the NVOC to notify the authorities after the expiry of 30 days that the concerned parties have not come or are unlikely to come forward to collect the cargo.

After the final notice is sent, it will generally be necessary to issue to the authorities a 'Letter of Abandonment of Cargo' on behalf of the shipper and/or consignee, requesting the authorities to allocate a date for disposal or auction the cargo.

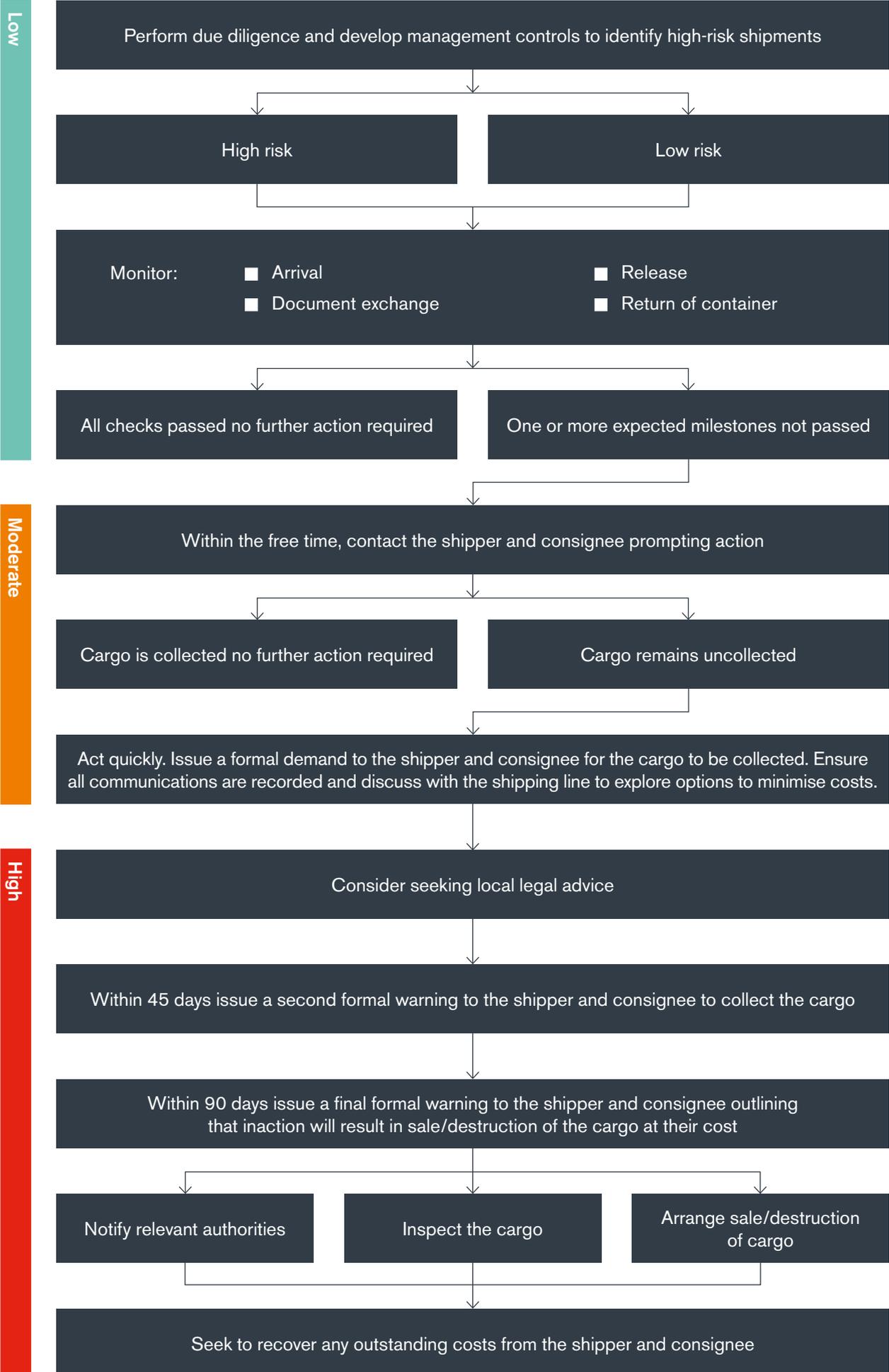
It is prudent not to arrange the sale/ destruction of abandoned cargo without the prior approval of the shipper or consignee – and always consult with your liability insurer. If the shipper and/or consignee agree to abandon the unclaimed cargoes, ensure that this intention is confirmed in writing with specific agreement to fully indemnify you under a letter of indemnity, and that the original bill of lading is returned.

There may be local jurisdictional challenges in handling these cases and it may be prudent to obtain a legal opinion before proceeding.



It is important to take action without delay





7

Demurrage and detention

In this section:

- Demurrage and detention explained
- Contractual variances
- Minimising exposure

A typically unavoidable consequence of abandoned cargoes is the costs that build in connection with demurrage and detention. These charges serve two primary functions. The first is a simple fee for use of the container. The second is as a mechanism to motivate the stakeholder using the container to ensure its timely return. If containers are returned in a timely fashion, the container operator increases efficiencies and maximises the productivity of the asset. The level of fees charged by location is influenced by imbalances of availability; in high use, low availability locations, the fees are typically higher.

Demurrage is the cost associated with the use of the container within the container terminal beyond the contractual free period. For example, where an import shipment is concerned, the time between the container crossing the ship's rail to the time when it is 'gated out' of the container terminal.

Detention is the cost associated with the use of the container outside of the terminal, beyond the contractual free period. For example, where an import shipment is concerned, the time between the containers being gated out of the container terminal to the time it is recorded having been returned empty.

There are numerous contractual models and each container operator will be different. Differences are also likely by

port, route and whether it is an import or export shipment. The use of a container is typically based on an agreed free period, followed by a period of daily charges that can incrementally increase at various milestones in the event that the free period is exhausted. It is not unusual for demurrage and detention charges to mount rapidly in the context of abandoned cargoes, potentially exceeding the value of the cargo, which creates additional challenges in reaching resolution.

In the context of abandoned cargo, noting that the chargeable demurrage and detention fees vary by container operator and by port, stakeholders should be mindful of the contractual rates that are applicable for the particular transport. This information should be considered at the booking stage, when assessing exposure to abandoned cargo risks.

Additionally, at the point abandonment of cargo becomes an issue, communicating – potentially through your local agent – with the container operator and terminal/port may be prudent. Consider what options exist to find lower cost storage that is consistent with your contractual obligations and keeps the cargo safe and secure.

Ten-point checklist

Abandonment of cargo

-
- Due diligence - develop processes to identify red flag shipments
-
- Maintain management controls to monitor arrival, collection and associated free periods
-
- When abandonment looks likely, take swift action
-
- Correspond with the shipper/consignee to bring the shipment to their attention
-
- Where possible work with the shipper/consignee to clear the shipment
-
- Explore whether lower cost storage options are available
-
- Ensure written instructions are obtained regarding the shipment in connection with abandonment, sale or destruction
-
- Obtain a letter of indemnity from the shipper/consignee where instructions are received to abandon, sell or destroy the goods
-
- Notify your liability insurer
-
- Where appropriate obtain a legal opinion on the proposed actions to be taken
-

For more information

Please contact us at riskmanagement@ttclub.com
or visit us as ttclub.com

TT Club

TT Club is the established market-leading independent provider of mutual insurance and related risk management services to the international transport and logistics industry. TT Club's primary objective is to help make the industry safer and more secure. Founded in 1968, the Club has more than 1100 Members, spanning container owners and operators, ports and terminals, and logistics companies, working across maritime, road, rail, and air. TT Club is renowned for its high-quality service, in-depth industry knowledge and enduring Member loyalty. It retains more than 93% of its Members with a third of its entire membership having chosen to insure with the Club for 20 years or more.

ttclub.com

Thomas Miller

TT Club is managed by Thomas Miller, an independent and international provider of market leading insurance services. Most of the businesses we currently own or manage are acknowledged leaders in their chosen market. Our portfolio includes mutual organisations and, increasingly, specialist insurance services businesses.

thomasmiller.com

ttclub.com