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Chapter 4: Cargo Policy Coverage

Objectives:

- To identify the important terms of a cargo policy and understanding the open cover policy
- To identify the different coverage between the ICC (A), (B) and (C)
- To understand the concept of burden of proof and warranties
- To identify policy exclusions
- To understand the duration of cargo insurance

The Insurance Policy

In international sales transactions, with goods generally having to be transported over long distances and being subject to a variety of hazards en route, the risk of loss of, or damage to, goods is relatively high. If the loss or damage does occur, profitability will be lost unless the goods are covered by insurance. Marine cargo insurance is aimed at removing, as far as possible, the financial burden of the risks of loss or damage associated with the transportation of goods between exporters and importers, and placing it with specialist insurance underwriters. These underwriters are skilled in assessing risks, and they manage reserve funds (made up of premiums paid by others) out of which those who suffer losses can be compensated.

Insurance enables the liability for loss or damage to be shared out equitably amongst the many instead of having to be borne by, say, a single cargo owner or shipowner. By paying an insurance premium, to an insurer (e.g. an insurance company or a Lloyd's underwriter), the assured (e.g. the exporter or importer) earns the right to claim compensation from the insurer for a loss arising from any of the risks covered by the insurance policy.

Marine insurance used to refer to only the limited insurance of ships and their cargoes. Today, however, the term really means 'transportation insurance' and covers all modes of transport from source to destination, i.e. road haulage, airfreight, rail, and/or sea, or even by post. Marine insurance may, in fact, apply to the movement of cargo which involves no ocean transport at all.

Marine insurance can be broadly classified as either property or liability insurance.

- **Property Insurance:** insures against financial loss resulting from damage to, or destruction of, property in which the insured has an insurable interest.
- **Liability Insurance:** insures against financial loss resulting from some person or organization making a claim against the insured for damages because of bodily injury, death, property damage, or some other injury for which the insured is allegedly responsible.

Property Insurance

The principal branches of marine property insurance are (1) cargo insurance, (2) hull and machinery insurance, and (3) loss of income insurance.

- **Cargo insurance** – Cargo insurance covers the interest of shippers, consignees, distributors, and others in goods and merchandise shipped primarily by water or, if in foreign trade, also by air. Most cargo insurance involves foreign trade across oceans, but the cargo may also be transported within a nation or between nations on inland waterways.
- **Hull and Machinery (H & M) insurance** – H & M insurance protects ship-owners and others with an interest in vessels, and the like against the expenses that might be incurred in repairing or replacing such property if it is damaged, destroyed, or lost due to a covered peril. Usually, hull insurance on pleasure craft and tugs and barges, is provided as part of a package policy providing both property and liability coverage.
- **Loss of income insurance** – Marine loss of income insurance covers a ship-owner against loss of business income resulting from damage to or loss of the insured vessel. When written for cargo vessels, whose income is called freight, the coverage is referred to as freight insurance.

Liability Insurance

Liability insurance can also be divided into three categories: (1) collision liability, (2) protection and indemnity, and (3) other liability insurances.

- **Collision Liability Insurance.** Collision liability insurance is included in most commercial hull insurance policies. Due to reasons such as the size of the H & M policy deductible and prompt guarantees issued by the P & I Underwriters, it is often more prudent and practical to have this aspect of cover underwritten under the P & I policy. It covers the liability of the insured vessel for damage to another vessel and property resulting from collision.
- **Protection and Indemnity Insurance,** commonly known as P&I is a form of international maritime insurance provided by a P&I Club, a mutual insurance association that provides, risk pooling, information and representation for its members, typically ship-owners, ship-operators or demise charterers. Unlike other marine insurance company, which reports to its shareholders, a P&I club only reports to its members.
- **Other liability policies include the following:**
 - Liability insurance for maritime businesses such as ship repairers, stevedores, wharfingers, marina operators, boat dealers and terminal operator.

Types of Policies – ICC (A), (B), (C)

The Marine Open Cover

A Marine Open Cover is a permanent facility that allows you to automatically insure every shipment within pre-defined parameters.

The Open Cover document sets out clearly a number of important factors:

- Names of insured
- Types of goods to be covered
- Routes to be covered
- Basis of valuation of goods to be insured,
e.g. FOB + 15%, C&F + 10%
- Maximum value per shipment
- Premium rates
- All terms and conditions of insurance contract

These are all agreed between you and the insurance company, and the aim is to ensure that the Open Cover covers the vast majority of your marine insurance needs. Every shipment you then make or receive, as long as it is covered by the Open Cover, is automatically insured. Whenever there is a shipment to be insured under the Open Cover, all you need to do is declare it to your insurer or broker, who will issue an insurance certificate. Whilst the cover is automatically enforced, a premium is charged on the basis of the value of each actual shipment.

Both you and the insurance company agree that all shipments made or received that fall within the defined parameters of the Open Cover will be insured under the Open Cover. In other words, your insurer cannot refuse to insure any shipment and you are obliged to declare every shipment to the insurer.

An Open Cover should cater for most of your marine insurance needs. If, however, there are occasionally shipments that do not fall under the Open Cover, for example they are larger than the limit set down in the document, then these can be easily dealt with on an ad hoc basis with your insurer.

Although the most common form of insurable interest is ownership, the point at which title passes from seller to buyer can be complex. In order to determine insurable interest, it is necessary to look at the terms of sale governing the contract.

The terms of sale are the starting point of all international movements of cargo. The sale of goods in the international market normally brings together two or more individuals who do not know one another, who speak different languages, and who have different customs and currencies. In order to overcome these many differences and encourage world trade a set of standard definitions, known as the “incoterms”, were

established. Once incorporated into sales contracts, these terms legally outline the obligations and responsibilities of buyers and sellers.

The Institute Clauses

The **(UK) Marine Insurance Act** of 1906 provides the basis for marine insurance contracts and, within the legal parameters laid down in this Act, the **Institute of London Underwriters** have approved numerous 'clauses' defining the risks covered, circumstances excluded, etc. to be incorporated into insurance policies. Some of these have broad application and are therefore in everyday use. Others are specific to certain trades and classes of goods. The tenets of the Marine Insurance Act, and the Institute Clauses, have been widely adopted amongst all trading nations.

The standard policy document represents only the skeleton of a marine insurance contract. It is the clauses, which are incorporated by attachment to the policy, that are the essence of the contract, but the policy may contain, by agreement, specific wordings which extend or restrict the basic cover by imposing, for example, warranties, special conditions, a franchise or an excess.

Every effort has been made to achieve a more direct approach by simplifying or replacing wordings wherever possible which, while having stood the test of time, have been criticized as archaic and antiquated and unintelligible to some to some. With this criticism in mind it will be seen that the new Institute Cargo Clauses (A), (B) and (C) dated 1.1.1982, are capable of standing on their own and are for use only with the New Marine Policy Forms which act merely as vehicles for the clauses. They present an easily understandable cover, which no longer involves cross-reference to the policy.

The main clauses are:

- **Institute Cargo Clauses**, which consist of:
 - Institute Cargo Clauses (A)
 - Institute Cargo Clauses (B)
 - Institute Cargo Clauses (C)
 - Institute Cargo Clauses (Air)
- **Institute War Clauses**
- **Institute Strikes Clauses**
- **Institute Trade Clauses**

Each set of clauses is self-contained and designed to stand on its own. The clauses are divided into the following 9 sub-clauses, which are arranged in a logical sequence, viz.

1. **Risks covered** (lists those risks actually covered in each case)

2. **Exclusion** (clarify the position of underwriters regarding unseaworthiness, insufficiency and unsuitability of packing including stowage and insolvency etc)
3. **Duration of cover**
4. **Claims**
5. **Benefit of insurance**
6. **Minimising losses**
7. **Avoidance of delay**
8. **Law and practice** (It applies where a foreign jurisdiction clause attaches to the policy and requires that the foreign court shall base its decisions on English law and practice)
9. **Footnote**

1. Institute Cargo Clauses

These clauses are detailed in reverse order for ease of explanation. The Institute Cargo Clauses build upon one another in the following way: (C) provides cover against risks; (B) incorporates (C) and provides cover against additional risks; (A) incorporates (B) and provides cover against further risks. Thus, the insurer will incorporate one of Institute Cargo Clauses, i.e. (A), (B) or (C), into an insurance policy, depending on his assessment of the risk and the extent of cover most appropriate in the circumstances.

1.1 Institute Cargo Clauses (C)

These cover loss of, or damage to, the goods reasonably attributable to the following:

- Accident to the conveyance, such as crashing of aircraft, fire, explosion, stranding, grounding, sinking or capsizing, overturning or derailment
- Collision of the vessel, craft or conveyance with any external object other than water
- Discharge of cargo at a port of distress
- Loss of, or damage to, the goods caused by jettison and general average sacrifice
- General average and salvage charges.

Institute Cargo Clauses (C) are generally used for shipment of bulk cargo.

1.2 Institute Cargo Clauses (B)

These cover the goods against loss or damage attributable to any one of the risks covered by Institute Cargo Clauses (C) as well as:

- Earthquakes, volcanic eruptions or lightning
- Washing overboard
- Entry of water (i.e. sea, lake or river) into the vessel, hold, conveyance, container, or place of storage
- Total loss of any pack lost overboard or dropped whilst loading/unloading

Where necessary, supplementary risk cover can be added, e.g. in respect of theft, pilferage, non-delivery, malicious damage, etc.

1.3 Institute Cargo Clauses (A)

These cover the cargo for *all* risks of physical loss or damage i.e. all fortuities and do not embrace inevitabilities. Accordingly the clauses specify that it does not cover loss from inherent vice or delay.

Risk	(A)	(B)	(C)	Remarks
Handling damage	Yes	No	No	Easily more than 70% of claims
Wet damage	Yes	Yes, if entry into vessel/ Container, but not wet by rain	No	Common in the tropics
Theft/ pilferage	Yes	No	No	Common for expensive cargo
Non-delivery/ missing	Yes	No	No	Common type of loss
Contamination/ staining by other cargo	Yes	No	No	
Washing overboard	Yes	Yes	No	Important for deck cargo
Fire and explosion	Yes	Yes	Yes	Major casualty
Overturning or derailment of land conveyance	Yes	Yes	Yes	Major casualty
Collision with external object other than water	Yes	Yes	Yes	Major casualty
Heavy weather, causing stowage to collapse/break loose in ship's hold	Yes	No	No	
Discharge of cargo at port of distress	Yes	Yes	Yes	Major casualty
Earthquake, volcanic eruption or lightning	Yes	Yes	No	Uncommon casualty, tsunami also covered

General average contribution	Yes	Yes	Yes	Major casualty
Salvage contribution	Yes	Yes	Yes	Major casualty
Piracy- both land and sea	Yes	No	No	Common in S.E.A. waters and certain parts of Indo-China

1.4 Institute Cargo Clauses (Air)

These are similar in scope to the Institute Cargo Clauses (A) except they are used specifically for airfreight.

2. Institute War Clauses

The purpose of these clauses is to provide cover against the risks of war/warlike operations or activities. If one were shipping goods to a 'war zone', the premium rate would be very high. These clauses are only applicable when goods are being transported by sea or air or international post. This cover does not operate during land transit.

3. Institute Strikes Clauses

These cover loss or damage caused by the action of strikers, locked-out workmen and the like. They also cover loss and damage 'caused by any terrorist or person acting from a political motive'. This, however, does not confer full political risk cover, e.g. a civil war is not covered.

4. Institute Trade Clauses

The Institute Cargo Clauses are not used for all types of cargo where there is a special 'trade risk' (i.e. related to the specific nature of a product), specialised clauses are used. These clauses have usually been formulated in conjunction with the trade body concerned and are based on the Cargo Clauses. Examples of trade clauses are those relating to the following commodities: coal, oil, corn, flour, frozen meat and produce, raw sugar, rubber and timber.

5. Additional clauses

These may be added to a policy to ensure cover for specific risks not otherwise insured against in the Institute Cargo Clauses e.g. Malicious Damage Clause, or Institute Replacement Clause.

6. Additional terms

Apart from the printed clauses that may be attached to the insurance policy, these may be typewritten:

- exclusions
- warranties, i.e. conditions imposed upon the assured with whom he must comply, e.g. 'Warranted packed in a container'
- excesses, i.e. a pre-determined monetary amount or a percentage of the shipment value which is deductible from the value of a claim
- franchises, i.e. a percentage below which the underwriter will not consider any claim but above which the whole loss will be recoverable. Thus, where a policy contains a franchise clause, the assured must suffer a certain level of loss before any compensation is payable. Once that level is reached, however, compensation is payable in full.
- malicious damage

Specialised Insurance e.g. Bulk oil, frozen food & natural products

The standard Institute Cargo Clauses were adequate for most general cargoes, a practice developed over the years, where insurers would add, amend the printed wordings of the clauses to conform to the special requirements of particular trades. This led to confusion between the trades and insurers because the wordings agreed differed with each other even in the same trade. Eventually, arrangements were made for associations representing various trades to get together and agree to a standard set of clauses for each trade. Thus, various sets of these clauses were published by the Institute of London Underwriters and became known as the "Institute Trade Clauses". Subsequently it was found that it was possible to combine most of the requirements of a variety of trades (e.g. frozen products) into another set of clauses and saw the introduction of the Institute Commodity Trades Clauses.

Bulk Cargoes

Bulk cargoes need special handling, commodities shipped in huge quantities travel more cheaply and safely if carried loose in bulk. Grain may be shipped in bags but more often it is shipped in bulk, being piped into the open holds and piped out by suction at the discharge port. Care must be exercised by the carrier to ensure that the holds are clean and dry. Loose grain attract rats and a watch must be kept and action taken to disinfest the ship when necessary. Care must be taken to avoid contamination from previous cargoes. Grain dust has a low flash point and fire precautions must be observed, particularly during loading and unloading. Generally, ores and coal are carried in bulk both in barges and on the ocean going vessel. Liquids, such as oil, are carried in bulk in special tankers. Tankers may also be used for dry cargo carriage.

Oil Cargoes

Mineral oils can be segregated into light oils, refined oil products, heavy oil products and crude oil. The latter is the unrefined oil as produced from oil wells (inshore or offshore), and is carried in bulk. Heavy oil products embrace petroleum and diesel oil, in a variety of grades and insured under bulk oil clauses conditions unless special petroleum or diesel oil clauses are agreed. Oil is particularly susceptible to loss in volume due to evaporation, and, in some cases the expansion or contraction of the oil can make significant difference to loading and discharging calculations, possibly resulting in a distortion of the position regarding claims for shortage, particularly when

applying deductions for natural loss in weight or volume. To compensate for this, bulk oil claims are subjected to a special method of calculation.

More obvious in such cargoes as petroleum, is the very low flash point of the gas that emanates from the cargo. This produces a high fire and explosion risk, both these risks covered by the bulk oil clauses. Precautions as air vents to reduce possible build up of gas in tanks and the prohibition of anything that is liable to produce a spark or naked flame; even to the extent of banning footwear that can cause a spark, no matter how small, on any person on the ship. Hull insurers are equally concerned over fire and explosion, even after tanks have been emptied, because gas remaining in the tank can be more dangerous than the full tank of oil. Gas free certificates are required before repairs can be carried out on oil tankers.

Exclusion under *ordinary leakage* is generally applied to evaporation, which is a natural loss to cargoes with a liquid content and it's regarded as a form of inevitable loss. Customarily an agreed percentage is deducted for partial loss claims.

Frozen Products

With the progress in freezing methods it became practical for many foodstuffs that previously have not been the subject of freezing to be deep-frozen. Many vegetables, such as peas, that had previously been dried and shipped in sacks, were now frozen for shipment and storage. This led to a demand for insurance conditions to be designed especially for frozen food. It is important to remember that refrigeration does not eliminate deterioration of perishable foods; nor does it remedy deterioration that has already occurred. Refrigeration simply arrests deterioration for so long as the food remains in a refrigerated state and with modern freezing methods, may be for years. Also refrigeration does not prevent taint or contamination and care must be exercised to ensure that food that may taint each other are not stowed in the same compartment.

The benefits of refrigeration cannot be effectively applied to all foods for some are adversely affected by low temperatures. For example, egg must not be allowed to freeze but be carried in cool chambers. Apples and pears also deteriorate at low temperatures, full refrigeration should be avoided for all fruits and temperature should remain constant during transit.

Fish and most meat can be carried in a deep frozen state however not all products take kindly to it. The flavour of beef is impaired by deep freezing and its texture also suffers during thawing. Also large carcasses of meat takes longer to thaw which is the reason why it is usually carried in a chilled state.

Exclusions in frozen foods are identical to ICC (A) and (C) clauses. However, attention is directed to special exclusions in frozen food clauses regarding refrigeration and suitability of containers etc to carry goods. In particular to package and preparation of frozen food that its vital to its survival during transit.

New Trends

There are many new risks that will be facing the Marine underwriter which were unheard of even in the last decade. Today, the underwriter and insured are facing some

very big challenges brought about by the rapid changes in the mode of cargo transportation. The following are some of the more important new developments:

New methods of cargo shipments are rapidly replacing the old, slower means of water shipment of only a few years ago. Modern containerships, roll on/roll off, and the LASH (Lighter aboard ship) and SEABEE vessels are being constructed and put into service to get cargo from place to place more rapidly and far more efficiently both in cargo handling and cost. Also the frequency of small claims, particularly from theft and pilferage is greatly reduced. The percentage of cargo being shipped by air continues to increase.

Modern tankers are both larger and faster than their pre-World War II counterparts. Today there are already a number of supertankers in service in excess of 400,000 dwt. Several new tankers on order will exceed 500,000 dwt. LNG Tankers (Liquefied natural gas) are now being used that will carry more than 100,000 cubic meters of LNG. Many other highly sophisticated types of specialized cargo vessels are being built today. These include special automobile carriers, and bulk carriers with their own unloading equipment. A new development is the ITB (Integrated Tug Barge) combination. This involves bulk carrying barges with notched sterns. The specially designed tug locks into the stern of the barge forming a single unit while at sea.

Most forms of carriage today are subject to a statute or set of rules which, amongst other things, governs the limit of liability of the bailee. Unfortunately, this limit varies so that once more we are faced with the problem of determining which form of carriage was involved at the time of loss. For e.g., road carriage maybe subjected to C.M.R. while sea carriage is subjected to the Carriage of Goods by Sea Act.

Shippers looked to underwriters hopefully for a reduction in insurance rates for containerised goods on the grounds that such carriage must reduce claims. Regrettably, the system also reduces recoveries and underwriters are careful in the rating the risk. He prefers to charge higher rates and to leave experience to justify any reduction in rates.

Burden of Proof

The onus of proving that the loss was caused by a peril insured against lies upon the Assured and unless he discharges the onus, the claim may not subsist.

When goods are shipped from abroad, cover commences from the time the goods leave the shipper's premises say by road or rail, continue until delivery to carriers, it then undergoes the sea voyage until arrival at a port of destination, and discharged from the vessel or aircraft, thereafter, the goods are left in the custody of the Ports or Airport authority, who in turn release them to the Assured or their agents after having performed customs formalities before delivery to final destination.

As the goods change hand from one carrier or bailee to the other, receipts are exchanged and responsibility to exercise due care is also transferred from one carrier to the other, each carrier having its own liability to protect.

Naturally, clean receipts should in all appropriate cases be given before property is handed over, otherwise it is the duty of every carrier to note the order and condition of the cargo at the time of transfer, in other words, when a discrepancy or shortage is noted at any stage during transit, the receipt should be claused noting the discrepancy or shortage.

In commercial practice there are numerous documents that have been introduced for particular purposes, which are also useful in verifying claim under policies of marine insurance.

When considering a claim, it is always necessary to determine whom and what gave rise to the loss and on whom responsibility fall.

The cover granted by underwriter is designed to protect the insured, who in turn is required under the provisions of the policy, in all cases to take reasonable measures to ensure that all rights against the carriers, bailees or other third parties are properly preserved and exercised.

Therefore, it is very important that in the event of loss or damage, the insured is required to protest against the negligent party and lodge claim for the full amount of the loss.

It is important to note that Underwriters, only protect the Assured and do not protect Stevedores, Carriers or Bailees who are paid for their services and all of whom have legal liability and are expected to have their own insurance protection.

Good Faith. Most commercial contracts are subject to the doctrine of ‘caveat emptor’ (let the buyer beware). These contracts are subject to various acts among them the Sale of Goods Act but basically it is the responsibility of each party to ensure they make a good or reasonable bargain. So long as one does not mislead the other and answer questions truthfully, there is no question of the other party avoiding the contract. There is no need to disclose information that is not asked for.

However in insurance when one party (the insurer/underwriter) knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the insured...to make a full disclosure to the insurer without being asked of all the material information. This is expressed by saying it is a contract of the utmost good faith (Rozanes v. Bowen (1928)). In order to make the situation more equitable the law imposes a duty of ‘uberrima fides’ or ‘utmost good faith’ on the parties to an insurance contract. The contract is deemed to be one of faith or trust and most contracts of a fiduciary nature are subject to the same doctrine.

Proposal forms, common in most branches of insurance, are rarely used for marine insurance, but, as all insurance contracts are contracts to which the legal requirement of the utmost good faith applies, absence of a proposal form enhances rather than diminishes the duty of the proposer to disclose all material facts.

What is the information the insurer is expected to know?

- Matters of common notoriety or common knowledge i.e. from daily newspapers

- Matters, which in the ordinary course of insurer's business it ought to know i.e., access to Lloyd's Register of Shipping, trade terms, shipping conditions, navigational hazards, climatic conditions, and types of packing.

What is the information the Insured is expected to provide?

- Material facts which would influence an insurer to accept or reject the insurance or fix an appropriate premium.
- Material facts which he actually knows and which he should know in the ordinary course of his business (if a material fact is not disclosed the result is the same – innocent or deliberate – the insurer is entitled to avoid the contract).

Policies Exclusions/Warranties

A warranty is an **absolute** undertaking that something shall or shall not be done (e.g., that goods will be unloaded direct from the ship on to railway wagons), or it affirms or negates a particular state of facts (e.g., that the goods are packed in cases).

A warranty **must be complied with exactly and literally** whether it is material to the risk or not, otherwise the insurer will be discharged from liability from the moment of the breach. It is thus very important that the Insured comply strictly to the warranty *whether or not it is material to the risk*. This is because in the event of a breach, the insurer is discharged from the liability as from the date of the breach. The right to repudiate the policy belongs to the insurer and thus he is open to him to waive the breach.

The following are examples of express warranties:

- Warranted no loss before XX date and time
- Warranted pre-loading inspection carried out by XX company
- Warranted no hooks (e.g. bagged cargo)
- Warranted no transshipment

When a warranty is imposed by the insurer, the insured must understand its implications and most importantly, whether he is able to comply with it. If he is not able to comply, he should negotiate with the insurer for it to be amended or for its removal. A good example is that the warranty that the dangerous cargo be carried in accordance with the IMDG Code. Insurers would expect all parties carrying dangerous goods to be familiar with the code and abide it. Should one party, such as the trucker did not comply and this caused the cargo to be stowed near heat and caused fire, then there is a breach of warranty and the insurer has the option to avoid the policy from the time of the breach. The insured may be left with no recourse but seek recovery against the trucker directly.

In practice the insurance would probably be worded:

“Warranted unloading direct from ship on to railway wagons or held covered,” or
“Packed in cases or held covered.”

The phrase “or held covered” means that if the warranty is not complied with the insurance will remain in force but the insurers are to be informed without delay and an additional premium paid if so required.

Implied Warranties: There are 2 warranties which are incorporated in a cargo policy by the Marine Insurance Act and they are warranties of 1. Legality and 2. Seaworthiness. “Implied” that is warranties which are understood to apply but which are not written into the policy.

Exclusions: Normally, underwriters will indemnify a cargo owner against certain occurrences. The major exclusions include:

- Misconduct of the assured
- Ordinary leakage or loss in weight
- Inherent vice
- Insufficiency or unsuitability of packing or preparation
- Delay
- Nuclear weapons of war
- Wars
- Strikes, riots and civil commotions
- Insolvency of ship owners
- Unseaworthiness or unfitness of vessel, container or conveyance
- Radioactive contamination arising from, for example, nuclear fuel or nuclear waste, or any weapon of war employing atomic or nuclear fission.

Duration of cover

The definition of the point at which the risks are the responsibility of the insurer and the point at which the insurer is then relieved of responsibility for the risk. The period of cover for cargo insurance is said to be from “**warehouse to warehouse**” or transit clause i.e. from the shipper’s warehouse up to delivery to the consignee’s warehouse, subject to the proof of insurance interest at the time of the loss.

Commencement: The insurer is not at risk until the goods actually leave the warehouse place of storage *for the commencement of transit*. Thus, when an insured machinery is mishandled during loading and toppled and dropped from the truck in preparation for the road transit to the port, the policy would not have commenced at the point of loss and such loss would not be covered under the policy. Similarly, there is also no cover during the process of stuffing the cargo into an FCL in preparation for transit.

It is thus necessary for the insured to extend the policy to include loading and unloading onto land conveyance, including stuffing and unstuffing operations.

The transit clause does not specify from which warehouse at the risk commences. The cargo could have been stored at the shipper’s warehouse or his agent’s or forwarder’s warehouse. Most importantly, for the policy to respond, the goods must have been prepared for the transit and indeed left for the commencement of transit.

Termination: In most instances, the policy terminates when the goods are delivered to the consignee at the port of discharge. However, where the insured chooses to use a transit warehouse for allocation or distribution, the policy will terminate once the goods arrive at such a warehouse i.e.

- on delivery to the consignee's or other final warehouse or place storage at the destination named herein,
- on delivery to any other warehouse, place of storage, whether prior to or at the destination named herein, which the Assured elect to use either

For storage other than in the ordinary course of transit or
for allocation or distribution
Or

- on the expiry of 60 days upon completion of discharge overseas of the goods hereby insured from the overseas vessel at the final port of discharge whichever shall first occur"

Useful Insurance Terms

Abandonment

Giving up the proprietary rights in insured property to the Underwriter in exchange for payment of a constructive total loss.

Actual Total Loss

An actual total loss occurs when (1) the insured property is completely destroyed or (2) the Assured is irretrievably deprived of the insured property or (3) cargo changes in character so that it is no longer the thing that was insured or (4) a ship is posted "missing" at Lloyd's, in which case both the ship and its cargo are deemed to be an actual total loss.

Assignment

The passing of beneficial rights from one party to another.

Average

A marine partial loss. This can be particular average or general average.

Average Clause

A clause in a marine insurance policy, whereby partial losses are subject to special conditions (e.g. a franchise or deductible is to be applied to claims).

Benefit of Insurance Clause

A clause by which the bailee of goods claims the benefit of any insurance policy effected by the cargo owner on the goods in care of the bailee. Such a clause in a contract of carriage, issued in accordance with the Carriage of Goods by Sea Act, is void at law.

Bill of Lading

Contract of carriage and receipt for goods, issued by carrier.

Classification Clause (Cargo)

A clause in a cargo insurance open cover which details the minimum classification for an overseas carrying vessel that is acceptable to the insurers for carriage of the insured goods at the premium rate/s agreed in the contract. Goods carried by lower class vessels are accepted under the open cover, subject to payment of an additional premium.

Co-Insurance

Where two or more parties share the same insured risk. A reinsurer is not a co-insurer with the original insurer.

Contribution

The term relates to circumstances where more than one party covers the risk. Each party is deemed to be liable for his proportion of the loss. If the Assured recovers in full from one insurer, that insurer is entitled to recover from the other insurer for that part of the loss which should have been paid by the latter. The term is used in marine insurance, also, in relation to contributions paid by the Assured in connection with salvage and/or general average.

Contributory Value

The value on which a contribution to a general average loss or salvage award is calculated.

Country Damage

Damage to baled or bagged goods (e.g. cotton) caused by excessive moisture from damp ground or exposure to weather, or by grit, dust or sand forced into the insured property by windstorm or inclement weather.

Direct or Held Covered

A condition requiring that the insured voyage be direct from one place to another. If the voyage is delayed en route or there is a deviation from the direct route the insurance cover continues subject to payment of an additional premium, but only if the Assured gives prompt notice of such delay or deviation immediately on receipt of advices, unless the policy provides otherwise.

Disclosure

The duty of the Assured and his broker to tell the Underwriter every material circumstance before acceptance of the risk.

Duty of Assured Clause (Cargo)

This appears in the Institute Cargo Clauses published for use with the MAR form of policy. It directs the attention of the Assured, his agents, etc. to the duty (as required by the MIA, 1906) to take reasonable measures to avert or minimise any loss which is recoverable under the policy; also to ensure that all rights against carriers and others are properly preserved and exercised. Underwriters agree to reimburse the Assured for any reasonable expenditure incurred by his compliance with the clause; in practice, these expenses are termed "sue and labour" charges (which see).

English Jurisdiction Clause

A condition, printed in the MAR form of policy, whereby Underwriters agree to recognise judgements only from courts convened within English jurisdiction. Subscribing Underwriters may agree to replace this clause with a foreign jurisdiction clause. Please note this is not applicable to business emanating from the United States of America which is subject to the Service of Suit Clause (USA) appearing in the Standard Conditions.

English Law and Practice Clause

This clause appears in Institute clauses published for use with the MAR form of policy. It applies where a foreign jurisdiction clause attaches to the policy and requires that the foreign court shall base its decisions on English law and practice.

Franchise

A provision in freight insurance conditions which exempts the insurer from particular average losses, in any one accident, under 3%. The provision is waived if the loss is caused by fire, or by the ship stranding, sinking or being in collision.

Freight

The remuneration earned by a shipowner or manager for the carriage of goods; including the profit derived from carrying his own goods.

General Average (GA)

A deliberate sacrifice or expenditure incurred for the common safety of a maritime adventure. Those interests that benefit from the sacrifice or expenditure contribute rateably to make good the loss.

General Average Contribution

The proportion paid or payable by a saved interest involved in a general average act.

General Average Deposit

Paid by a consignee to obtain release of the cargo from the carrier following a general average act. This may be replaced by an Underwriter's guarantee.

General Average Guarantee

An undertaking by Underwriters to pay the contribution due from a cargo assured on completion of the general average adjustment.

G.A. in Full

An agreement in a cargo insurance whereby Underwriters do not reduce a claim for general average contribution in event of underinsurance.

General Exclusions Clause

A clause in the Institute Cargo Clauses 1982, which specifies risks that are excluded, irrespective of the risks covered elsewhere in the wording.

Held Covered

A provisional acceptance of risk, subject to confirmation at a later date that the agreed cover is needed. Where applicable to an existing insurance, cover is conditional, in practice, on prompt advice to the Underwriter as soon as the Assured is aware of the circumstances to be held covered coming into effect, and a reasonable additional premium is payable if the risk held covered comes into effect.

Institute Cargo Clauses (ICC)

There are three basic sets of these clauses (A, B and C). The A clauses cover "all risks", subject to specified exclusions. The B and C clauses cover specified "risks", subject to specified exclusions.

Inherent Vice

A property in cargo which causes, or is liable to cause, loss or damage to the cargo, without any accident occurring (e.g. spontaneous combustion). It is always excluded by the insurers of the cargo because of its inevitable nature.

Insurable Interest

It is illegal for anyone to insure without an insurable interest or, in the case of marine insurance, a reasonable expectation of acquiring such interest. In general one has such interest when his relationship to property at risk may expose him to loss or liability where he stands to gain by the safety of such property.

Known Loss

A loss known to one or both parties when a broker and Underwriter are negotiating a placing.

Location Clause

Used in cargo open covers this limits Underwriters' liability in any one location.

Malicious Damage Clause

A clause published by the Institute of London Underwriters for use in a cargo policy that is subject to the Institute Cargo Clauses (1982) B or C. It adds the risks of malicious acts, vandalism and sabotage to the cargo policy.

MAR Policy

A market term for the form of marine policy used by Lloyd's and the London company market. It is a basic contract form to which the conditions agreed by the insurers subscribing a marine insurance contract are attached.

Open Cover

An agreement whereby the Assured undertakes to declare every item (e.g. shipment, vessel, etc. as appropriate) that comes within the scope of the cover in the order in which the risk attaches. The insurer agrees, at the time of concluding the contract, to accept all valid declarations up to the agreed limit for each declaration. An open cover may be for a fixed period or always open; subject to a cancellation clause.

Overage

An additional premium charged on a cargo open cover declaration because the carrying vessel is outside the scope of the classification clause.

Particular Average

Accidental partial loss of the subject matter insured proximately caused by an insured peril. In a freight at risk policy the term may be applied to a claim for loss of freight following particular average loss of goods.

Peril

A term used in the Marine Insurance Act (1906) to denote a hazard. The principle of proximate cause is applied to an insured peril to determine whether or not a loss is recoverable. In modern practice the term "risk" often replaces "peril".

Proximate Cause

The most direct cause of loss, that is, the most effective and dominant cause in a chain of events which ends in the loss.

Recovery

Amount recovered from a third party responsible for a loss on which a claim has been paid.

Replacement Clause

A clause limiting Underwriters' liability for damage to machinery cargo.

Risk

A fortuity. It does not embrace inevitable loss. The term is used to define causes of loss covered by a policy.

Salvage Charges

The award due to a salvor for services rendered in saving the insured property.

Salvage Loss

Occurs when the Underwriter agrees to settle a cargo claim by paying the difference between the insured value and the proceeds realised by selling the damaged goods.

Schedule

A list attached to a slip, open cover, policy or other document, usually detailing the rates of premium for various voyages, interests and risks.

Seaworthiness Warranty

There is an implied warranty in every voyage policy that the ship must be seaworthy at the commencement of the insured voyage or, if the voyage is carried out in stages, at the commencement of each stage of the voyage. To be seaworthy, the ship must be reasonably fit in all respects to encounter the ordinary perils of the contemplated voyage, properly crewed, fuelled and provisioned, and with all her equipment in proper working order. Cargo policies waive breach of the warranty, except where the Assured or their servants are privy to the unseaworthiness. Breach of the warranty is not excused in a hull voyage policy, literal compliance therewith being required. Although there is no warranty of seaworthiness in a hull time policy, claims arising from unseaworthiness may be prejudiced if the ship sails in an unseaworthy condition with the knowledge of the Assured.

Security

The Underwriters subscribing a risk.

Subrogation

The right of the Underwriter to step into the shoes of the Assured following payment of a claim to recover the payment from another party who was responsible for the loss. Limited to the amount paid on the policy.

Sue and Labour (Marine)

Expenses incurred by the Assured or their representatives with the intention of preventing or minimising a loss for which the Underwriter would have been liable. They do not include expenses incurred in general average or salvage acts; these being recoverable under the policy only as part of the Underwriters' liability for contribution to general average or salvage, if any. Sue and labour charges are recoverable under a policy that incorporates a sue and labour clause (SG policy), or in accordance with the wording of the policy (e.g. under the "duty of the Assured" clause attached to a MAR policy).

To Pay as Cargo

Used in ancillary insurances relating to the cargo (e.g. increased value) when the Assured is not required to show evidence of loss or interest and can claim on the policy if he can show that a corresponding loss has been settled on the main cargo policy.

Total Loss

This can be actual total loss or constructive total loss.

Transit Clause

A clause in the Institute Cargo Clauses, specifying the attachment and termination of cover.

Void Policy

One which is inadmissible as evidence in a court of law (e.g. P.P.I. policy).

Waiver Clause

A clause which entitles both Underwriter and Assured to take measures to prevent or reduce loss without prejudice to the rights of either party.

Warranty

An undertaking by the Assured whereby he promises to comply with the terms of the warranty. Non-compliance constitutes breach of warranty and the Underwriter is discharged from liability as from the date of the breach. Breach of warranty may be excused in certain circumstances, or where the breach is held covered under the policy conditions.

Waterborne Agreement

A market understanding whereby Underwriters cover goods against war risks only whilst they are on the overseas vessel. This rule is relaxed only in the case of goods in a transshipping port for a short period awaiting onward carriage.

Without Benefit of Salvage

A term in a marine insurance policy, whereby the Underwriters forgo their subrogation rights. A policy incorporating such a term is deemed to be a gambling policy in law, and is therefore invalid in a court of law.

Without Prejudice

The claim is paid on this occasion, although the Underwriter feels it does not attach to the policy, but this action must not be treated as a precedent for future similar claims.

Tutorial Questions

1. Explain co-insurance, giving in your answer a hypothetical situation which acts as an example of the application of the term.
2. What does the term 'abandonment' mean in relation to marine insurance?
3. Explain duty of utmost good faith with reference to the Insurance Act.
4. Explain the application of the terms 'ex-gratia' and 'proximate cause'.
5. Explain briefly how double insurance may occur and how claims officers could detect it?
6. List 5 standard exclusions under a marine policy.