



Insect infestation on cargo – Insurance cover under cargo policy?

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The facts:

- A German shipper sells a production machine to a consignor in the US and orders a German forwarding agent to pack the consignment suitable for seaworthy transport in compliance with the ISPM standards for shipments to the US. The parts of the production machine are packaged in wooden crates manufactured for shipment and secured in the crates with wooden beams.
- Upon arrival in the US - regularly via the port of Houston, Texas - the Department of Agriculture and the Customs Border Control prohibits the import of the goods into the US, indicating that the wood used is not properly marked and treated in accordance with ISPM regulations. Quite often this prohibition is supported by the finding that larvae and/or live insects have been found in/on the crates and / or beams, which are considered as pest risk to living trees and are not to be brought into the country.

Emergency Action Notification (EAN) of the U.S. Department of Agriculture

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 0570-0102. The time required to complete this information collection is estimated to average 1 hour per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. FORM APPROVED - OMB No. 0570-0102

U.S. DEPARTMENT OF AGRICULTURE ANIMAL PLANT HEALTH INSPECTION SERVICE PLANT PROTECTION AND QUARANTINE		SERIAL NO. 117511	
		1. PPQ LOCATION 8301 - HOUSTON, TX	2. DATE ISSUED 1/22/2018
EMERGENCY ACTION NOTIFICATION			
3. NAME AND QUANTITY OF ARTICLE(S) Article Name Machinery, Equipment Quantity 1 Each Description		4. LOCATION OF ARTICLES City Dock	
		5. DESTINATION OF ARTICLES KEARL OIL SANDS WOOD BUFFALO, AB, CANADA	
6. SHIPPER BLS BREMER LOGISTIC SERVICE GMBH KONSUL-SMIDT-STR. 88A 28217 BREMEN		7. NAME OF CARRIER STAR ISMENE vys@618	
		8. SHIPMENT ID NO.(S) Airway Bill, B/L, Etc. GSSW18GOT0286A Container Num NC (1 Cont) ISPM 15 marking DE-ST400185-HT (Damaged)	
9. OWNER/CONSIGNEE OF ARTICLES AMBERCOR SHIPPING INC. BRANCH CALGARY 270 MOUNTAINVIEW DR VE T1S 0N1 OKOTOKS AB / CANADA +1 (416) 841-7000		10. PORT OF LADING 42859 - BREMEN, FR GERMANY	11. DATE OF ARRIVAL 10/19/2018
		12. ID OF PEST(S), NOXIOUS WEEDS, OR ARTICLE(S) Pest 12a. PEST ID NO. 143584 5301-2954658-DR01 Siricidae	
PHONE NO. FAX NO.		13. COUNTRY OF ORIGIN GERMANY, FED. REPUBLIC	14. GROWER NO
SS NO. TAX ID NO.		15. FOREIGN PHYTOSANITARY CERTIFICATE NO. Certificate Status	
		15a. PLACE ISSUED	15b. DATE
Under sections 411, 412, and 414 of the Plant Protection Act (7 USC 7711, 7712, and 7714) and Sections 10404 through 10407 of the Animal Health Protection Act (7 USC 6303 through 6306), you are hereby notified, as owner or agent of the owner of said cargo, parasites, and/or articles, to apply remedial measures for the pest(s), noxious weeds, and/or article(s) specified in Item 12, to a degree satisfactory to and under the supervision of an Agriculture Officer. Remedial measures shall be in accordance with the action specified in Item 16 and shall be completed within the time specified in Item 17.*			
AFTER RECEIPT OF THIS NOTIFICATION, ARTICLES AND/OR CARRIERS HEREIN DESIGNATED MUST NOT BE MOVED EXCEPT AS DIRECTED BY AN AGRICULTURE OFFICER. THE LOCAL OFFICER MAY BE CONTACTED AT: 281-842-0300			
16. ACTION REQUIRED <input type="checkbox"/> RE-EXPORTATION		The Wood Packaging Material (WPM) with this shipment is noncompliant. The WPM must be re-exported. Please contact an Agriculture Officer for further explanation. Note: No cost in the remedial measures for this shipment will be incurred by The United States Government. Importations of non-compliant WPM may result in penalties equal to the value of the merchandise. 7 CFR 319.40 - Regulated Wood Packaging Material, 7 CFR 352 - Safeguard Regulations, 7 CFR 330 - Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage <u>Live insects of the family Siricidae were extracted from the wood packing material in this entry. Intercepted pests of the family Siricidae in wood packaging materials require immediate export. All cargo and wood packaging imported under bill of lading GSSW-18GOT0286A has been refused entry and must be exported immediately from the Port of Houston. The cargo cannot be manipulated. This shipment cannot transit via land or discharge the United States, or Canada or Mexico and must be exported directly from the Port of Houston. Acceptance of an IE type 63 posted in ACE is required prior to the re-exportation of the shipment within 7 days. The current inbound must be cancelled. The shipment must be loaded in a sealed hold and cannot be opened while in US waters/ports. All actions of this Emergency Action Notification must be completed in 7 days. If the actions are not completed within 7 days, the importer/broker may receive additional CBP Penalties and a Notice of Violation for failure to comply with the Emergency Action Notification. Please discuss export requirements with CBP Agriculture. As a safeguarding measure, the entire shipment must remain tarped and quarantined as per Emergency Action Notification 117454. No one can enter the quarantine area without authorization from CBP/USDA and no further movement is authorized. Please discuss further details with CBP at 281-842-0300.</u>	
* Should the owner or owner's agent fail to comply with this order within the time specified below, USDA is authorized to recover from the owner or agent cost of any case, handling, application of remedial measures, disposal, or other action incurred in connection with the remedial action, destruction, or removal.			
17. AFTER RECEIPT OF THIS NOTIFICATION COMPLETE SPECIFIED ACTION WITHIN (Specify No. Hours or No. Days) 7 Days		18. SIGNATURE OF OFFICER JACOB A. MCDOWELL	
ACKNOWLEDGEMENT OF RECEIPT OF EMERGENCY ACTION NOTIFICATION			
I hereby acknowledge receipt of the foregoing notification.			
SIGNATURE AND TITLE		DATE AND TIME	
19. REVOCATION OF NOTIFICATION			
ACTION TAKEN			

ISPM mark:



Feeding walks:



Typical Wording of the EAN:

- The Wood Packing Material (WPM) with this shipment is noncompliant. The WPM must be re-exported. ...
- Live insects of the family Siricidae were extracted from the WPM. All cargo and WPM has been refused entry and must be exported immediately. ...
- All actions of this EAN must be completed in 7 days. If the action is not completed within 7 days, the importer will receive additional CBP penalties.

Legal consequences - the US authorities may impose the following sanctions if the EAN is not respected:

- Penalties up to the value of the shipment
- Claim for liquidated damages up to 3 x the value of the shipment
- Possible seizure and destruction of the cargo and collection of the costs from the sender

Financial consequences due to actions taken by the insured:

- Fumigation costs in US port
- Freight for re-exportation of the goods within 7 days or for transport to a nearby port out of the US, e.g. Panama.
- Repacking of the goods,
- Destruction of the WPM
- Freight for re-importation.
- customs clearance costs for re-export and re-import, detention, handling charges etc.

⇒ Regularly costs total up to 1.500.000 €

Usual regulations in German cargo policies:

- All goods / items are insured against all risks of damage or loss during the insured transport
- Insured is any damage caused by seizure, confiscation or other intervention by the authorities
- The insurer shall not indemnify for indirect damages of any kind unless they are covered by the clause for consequential damage to goods and financial losses.
- Expenses and costs of transshipment, temporary storage and additional transport costs as a result of an insured risk shall be reimbursed.
- Expenses incurred in averting or reducing damage or an imminent risk covered by the insurance shall be reimbursed by the insurer.

Insurance cover?

- No material damage to cargo or WPM
 - Insect infestation of the WPM before the beginning of the transport
 - Incorrect marking of the WPM according to ISPM before starting the packaging of the goods
 - No material damage to the goods itself due to the import ban
- Therefore, also the costs of transshipment, intermediate storage and damage mitigation etc. are not covered.
- Indirect damages are generally not insured

Exception: Clause for consequential damage to goods and financial losses:

- The insurer also pays compensation for a financial loss (pure financial loss), if a carrier involved in the insured transport (forwarder, carrier, shipper, warehouse keeper, transshipment company) or his agent is responsible for the financial loss within the scope of a normal transport contract including all related orders such as packaging ...

Cover under the financial loss clause

Is the lack of ISPM treatment/marketing attributable to the freight forwarder / carrier?

- Where was the wood purchased?
- Can the proper ISPM treatment be proven?
 - correct stamping with ISPM mark?
 - correct heat treatment for more than 30 min. with a core temperature of more than 56 °C?

What if the crates were ordered by the policyholder from a crate manufacturer who supplied only the crates and the dunnage?

Thank you very much for your attention



Any Questions?

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