

# Navigating Legal Precedents and Trade Allowances in Turkish Maritime Law Towards Shortage Claims

*In the complex world of maritime law, understanding legal precedents and regulatory allowances is crucial for navigating disputes effectively. This article examines key aspects of paper shortage claims in Turkish ports, focusing on the differences between draft survey and shore scale figures, applicable trade allowances for bulk cargoes such as urea, and the evidential value of shore scale calibration certificates, together with the preventative measures that can be taken against paper shortage claims in general.*



## I. Supreme Court Precedents in Cargo Quantity Disputes

Under Turkish law, the decisions of the Supreme Court, while not binding, serve as influential precedents often considered by courts of first instance. One notable area where this is evident is in cases involving discrepancies between draft survey figures and shore scale measurements.

While most of the shortage claims are depending on the slight disappearances on the shore figures, the majority of Supreme Court rulings have established that if the bill of lading (B/L) quantity is determined according to a draft survey at the loading port, these figures/measurement method should be taken into account when determining shortages at the discharge port. The rationale behind these decisions is the inherent methodological differences between draft and scale measurements, which can lead to small but claimable variations in total cargo quantity. Therefore, if cargo quantity is entered to B/Ls based on a draft survey at the loading port, the same method should be taken into account while determining the total quantity of discharged cargo. These rulings hinge on the presence of draft survey reports at the port of loading, issued by independent surveyors either jointly with the crew/vessel or individually.

Consequently, a properly conducted draft survey at the loading port significantly strengthens the defensibility of shortage claims in Turkish ports.



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## II. Trade Allowances for Bulk Cargoes: The Case of Urea

Trade allowances play a key role in maritime cargo disputes, particularly for bulk commodities. It is important to note that there are no specific allowance rates for all commodities and allowance rates can vary depending on the Chamber of Commerce where the cargo is being discharged and type of carriage, and are ultimately determined by the Turkish Union of Chambers and Exchange Commodities and/or the Istanbul Chamber of Commerce upon court request once the matter has been litigated.

As an example, for urea in bulk, the Istanbul Chamber of Commerce generally sets the allowance rate at 2.5%. A precedent from 2017 highlights the significance of this allowance where the Supreme Court rejected a shortage claim for urea in bulk because the alleged shortage was less than the trade allowance.

## III. Checking the Reliability and Validity of Shore Scale Calibration Certificates

In shortage disputes, the reliability and validity of shore scale calibration certificates is crucial. These certificates must be issued by an authorised service accredited by the Turkish Accreditation Agency, as required by law. Calibration certificates are valid for two years from the date of issue. Thus, the validity of calibration certificates can form a core part of the defence argument in shortage claims and this evidence should be sought before or during the litigation phase.

## IV. Recommendations

Shortage claims are unfortunately very common in the course of maritime trading and most of the time, small shortages occur due to the methodological differences between measurement methods, such as the draft survey and shore scale weighing. Additionally, calibration errors in the shore scales can also result in minor shortages, and local laws often credit the shore figures even when joint draft readings indicate otherwise. To mitigate these issues, we recommend the following actions:

### a) Appointment of a Discharge Tally/Monitoring Survey:

Appointing a discharge tally and/or monitoring survey can help minimise the total amount of shortages, as receivers may tend to exaggerate the figures. Although this measure may only reduce exposure and not eliminate claims entirely, it is a worthwhile step to take.

### b) Special Clauses in Charterparty:

The inclusion of special clauses in the charterparty, such as sealing clause, indemnity clause, etc., can provide indemnity and, in the worst case, recourse against the charterers.

### c) **Special Laytime Wording for LOI from Charterers:**

It may be worth obtaining a Letter of Indemnity (LOI) from the charterers prior to the commencement of discharge and/or voyage, particularly when calling at known troublesome ports. Note that while an LOI may not provide full indemnity, it is better than having no protection, particularly if the dispute proceeds to arbitration in London alongside other claims, such as demurrage.

While doing so, adding special laytime wording to the charterparty at the fixturing phase can be helpful in avoiding disputes and clarifying expectations.

### d) **Incorporation of Charterparty Provisions:**

Incorporate charterparty provisions into the bill of lading by using the phrase "to be used with charterparties" on the second page. However, be aware that the validity of such incorporation depends on local law, and many jurisdictions may not recognize it.

### e) **LMAA Small Claims Clause:**

For small claims, consider incorporating the following LMAA Small Claims wording into the standard arbitration clause:

"In cases where neither the claim nor any counterclaim exceeds the sum of US\$[XXXX], the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced."

As this procedure is faster and more cost-effective than regular arbitration proceedings and has a limitation on costs, it may be wise to include this clause in the charterparty for minor disputes that may arise.

## V. **Conclusion**

Understanding the nuances of Turkish maritime law and anatomy of paper shortage claims, including Supreme Court precedents, trade allowances, and the evidential value of calibration certificates, is essential to effectively managing and defending shortage claims. These elements collectively provide a robust framework for addressing discrepancies and ensuring fair outcomes in maritime commerce. As pursuing legal remedies against cargo receivers in their own jurisdictions is often impractical and costly, strengthening your position against charterers for recourse and/or claims handling purposes may generally be more effective. Implementing the above recommendations can help mitigate the exposure that may arise from the potential shortage disputes and ensure smoother and more predictable maritime operations.