THE OPEN CARGO POLICY

Insurers offer two basic types of ocean cargo insurance policies. A voyage policy is used when insuring a single voyage, sometimes referred to as a "stray risk" or "trip risk." Voyage policies are used primarily to cover shipments made by infrequent shippers. The other basic type of policy is the open cargo policy. Designed for the frequent shipper, the open cargo policy covers all the shipments that the assured is obligated to insure under the terms of the sales contract, as well as all shipments that the assured has agreed to insure.

Cargo insurance clauses developed by the American Institute of Marine Underwriters are included in most cargo policies written by American insurance companies, whether the policy is a broker's form or the insurer's own form. Additional clauses, prepared by the broker or the insurance company, are combined with the American Institute Cargo Clauses to complete the policy. The problem inherent in any attempt to explain the various clauses contained in an open cargo policy is that almost all cargo clauses (other than the American Institute Cargo Clauses or equivalent standardized clauses of other nations) lack uniformity.

This chapter explains the American Institute Cargo Clauses as well as the additional provisions that are commonly contained in open cargo policies. In this text, the American Institute Cargo Clauses are identified as such by the letters "AI" following the subheadings identifying such clauses.

The various provisions of open cargo policies are discussed under six general categories:

1. Parties covered
2. Property covered
3. Additional coverages
4. When and where coverage applies
5. Causes of loss covered
6. Amounts recoverable
7. Miscellaneous clauses

These headings are for purposes of facilitating study and showing logical relationships between clauses. The arrangement of clauses in this order does not indicate the actual arrangement within a policy. An insurer may combine the clauses in any order it wishes.

Parties Covered

An open cargo policy typically contains two clauses that identify the assured and other parties eligible to receive payment. The party or parties covered by an open cargo policy are identified in the Assured Clause, which often appears as the first clause of the policy. Another clause, titled Loss Payable, permits the assured to direct that a settlement under the policy be paid to some other party that is not listed in the Assured Clause.

Assured Clause

An important point in naming an assured, particularly when including subsidiary companies, is to have a firm understanding that the policy will cover all shipments for which the assured or the subsidiary companies are at risk. In their desire to do a thorough job, agents or brokers often insist on inserting wording in the Assured Clause such as the following: "including subsidiary and affiliated companies that are now or may hereafter be constituted." Nothing is wrong with including such wording, but the underwriter must constantly be alert to determine whether any new corporate acquisitions have occurred and, if so, that reports of their shipments are being submitted. The assured's insurance or risk management department must be in complete control of both the parent company's and the subsidiary or affiliated company's ocean cargo insurance program. If that is not the case, double insurance is likely to be in effect. The problems this can cause are discussed later in this chapter, in connection with the Other Insurance Clause.

Loss Payable Clause

The Loss Payable Clause states that insured losses will be payable to the assured "or order." The phrase "or order" means that the assured can direct payment to the consignee, a bank, or some other party that has an insurable interest in the shipment. The payee on these claims is generally the consignee unless otherwise directed by the assured. Some assureds send replacement shipments to consignees immediately and thus direct the payment to themselves.

Property Covered

The principal purpose of an open cargo policy is to cover financial loss resulting from particular average or total loss of cargo belonging to the assured or for which the assured has agreed to be responsible. Therefore, the policy must contain a description of property covered by the policy. This description is provided by the Goods Insured Clause. In addition, the Insurable Interest Clause states the basic requirement that the assured must have an insurable interest in the property in order for it to be covered.

Goods Insured Clause

The Goods Insured Clause typically states that the policy will cover "all shipments of lawful goods and merchandise of every kind and description consisting principally of…." A general description of the product or products shipped by the assured is inserted in the clause. "Lawful," as used above, is ordinarily interpreted to apply only to the country in which the policy is issued and from which the goods are being exported. If the government of that country declares an embargo on trade with a given country, or on shipments of a given commodity to a country, the policy will not cover shipments made in violation of the embargo. If, for example, shipments of food and medicine to a certain country are approved by the government, but shipments of firearms are prohibited, shipments of firearms by the assured under the guise of being food or medicine would not be insured under the policy.

Although the principal commodity shipped by the assured might be tractors, shipments of any other lawful merchandise or goods would also be covered. The manner in which these other products would be insured depends on how the terms and conditions are written into the policy for specific products and commodities, especially for assureds who ship a variety of products. This issue is important. For example, a policy may stipulate that if a particular kind of product is not named, or if the insurer's permission is not received before shipment, coverage on these other goods may be subject to more restrictive terms.

Insurable Interest Clause

The Insurable Interest Clause typically states that the insurance will cover all shipments in which the assured has an insurable interest. All such shipments are covered, whether made by or to assureds for their own account as principals or as agents for others or for the account of others who have instructed assureds to insure the shipment(s).

Most cargo policies contain the words "lost or not lost" in the Insurable Interest Clause or some other provision. This phrase originated before the development of modern communications, when it was often impossible for either the merchant seeking insurance or the underwriter to know whether the goods on which insurance was being sought had not already been lost or damaged. The effect of the clause was that the assured would be paid for a loss that had already occurred at the time the insurance attached, as long as the assured was not aware of the loss. Although this provision is less important today than in the past, it is still a common feature of cargo policies.

In many open cargo policies, the Insurable Interest Clause (or some other clause in the policy) excludes coverage for the following:

1. Shipments sold by the assured on terms (such as FOB Vessel or FAS) under which the assured is not obligated to furnish ocean marine insurance
2. Shipments purchased by the assured on terms (such as CIF) whereby the seller provides insurance to the final destination

The purpose of the exclusion is to prevent the assured's policy from duplicating coverage provided by the assured's buyer or seller or even by the assured's own inland marine transit policy. However, the exclusion may leave some significant coverage gaps, which can usually be covered by the methods described next.

FOB & FAS Shipments Coverage

FOB Vessel terms make the buyer responsible for loss to the goods once they are placed aboard the overseas vessel, and FAS Vessel terms make the buyer responsible for loss once the goods are placed alongside the vessel. However, in each case, the seller is responsible for loss or damage occurring before the goods reach those points. If the seller's cargo policy contains the exclusion