

## memorandum

DATE: February 4, 1981

REPLY TO  
ATTN OF:

RIG/A/W, George L. DeMarco

SUBJECT:

Memorandum Audit Report No. 81-41 on Claim Follow-up of India  
Audit Report 81-1

TO:

Acting AA/PDC, Mr. Gordon Pierson

Summary

A recent audit <sup>1/</sup> of Church World Services and Lutheran World Relief PL 480 Title II Programs in India showed poor claim follow-up of losses. These claims were initiated for CWS and LWR by the same counterpart agency in India. Our cursory review was done to determine the reasons for poor follow-up and the causes of delays in processing claims. Our work was done at the home offices of CWS and LWR located in New York City, and included a review of claim files and documentation, a review of claim procedures and discussions with CWS and LWR personnel.

Church World Services (CWS) and Lutheran World Relief (LWR) processing of claims for food losses incurred in transportation need to be expedited. We found that claim settlements were delayed because:

- carriers were generally not participating in joint surveys of losses,
- documentation supporting claims was not being submitted in a timely manner by the India field office, and
- LWR was not routinely following up processed claims for settlement.

Background

CWS and LWR are nonprofit voluntary agencies authorized by AID, to distribute PL 480, Title II commodities outside the United States, in compliance with AID Regulation 11. Since January 1, 1977, CWS has shipped 128.4 million pounds of Title II food to five countries and LWR has shipped 54.8 million pounds to two countries. Of these totals, 60% of CWS's and 90% of LWR's shipments were to India. Statistics indicate that about one to two percent of the weight of Title II food shipped to India resulted in marine losses for which final claims were made.

AID Regulation 11 governs the transfer of food commodities overseas under PL 480, Title II programs. The regulation assigns responsibilities to voluntary agencies to obtain independent surveys, to report marine losses, to file claims against carriers and to obtain restitution.

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1/ Audit Report No. 5-386-81-1, RIG/A/NE.



The USDA, the procurer of Title II commodities, is responsible for ensuring that marine claims are prepared and collected from liable parties. The USDA operates a Claims and Collection Division in Kansas to manage claims that are referred or assigned to the Commodity Credit Corporation (CCC), a corporate agency and instrumentality of the USDA. At the Claims Division, a computerized file of shipments and reported data serve as a check to see that the voluntary agencies have prepared and collected their claims.

Claim filing and follow-up by voluntary agencies is guided, assisted and monitored by the USDA. Their Claim Division has distributed to the voluntary agencies instructions for claim handling called "Instructions to Voluntary Agencies and Intergovernmental Organizations Concerning the Filing, Pursuit, Adjudication and Collection of Ocean Transportation Claims Arising From Shipment of Title II, Public Law 480 Commodities."

The period of limitation for settling a claim is generally one year from discharge of cargo unless the carrier agrees to extend the time. The USDA requests that claims that are not collected by the voluntary agency within a reasonable period be assigned to CCC for further collection effort or litigation.

#### Status of Claims

To test the procedures and controls for processing claims, we selected and reviewed ten larger losses--five CWS and five LWR--that occurred between October 1, 1977 and December 31, 1979. The ten losses resulted in ten claims being filed for 759,000 pounds of food, valued at \$136,400. As of November 30, 1980, eight of the claims, totaling \$40,600 had been settled. Two LWR claims, totaling \$95,800, were still open--one has been assigned to CCC for collection. A USDA official told us that the claim assigned to them had been referred to General Council for legal action.

Four of the eight settled claims involved compromises. The largest compromise, \$3,174, made by USDA was for a LWR shipment of bulk wheat. A moisture certification had not been obtained by the independent surveyor when the cargo was discharged making the claim difficult to settle. Compromises are not uncommon, according to a USDA official, because in cases of dispute the law favors the carriers. The burden of proof is on the consignee to show that a loss occurred, that the carrier was responsible and, in the case of damage, to prove that steps were taken to mitigate losses.

Remittances totaling \$23,309 were received for seven of the eight settlements. After deducting CWS and LWR collection fees of \$1,496, the balances were transferred to or retained by CCC. Monies received were promptly sent to CCC by the month following collection.

### Joint Surveys Could Facilitate Claim Collection

Independent surveyor reports were on file for each of the ten claims. In only three cases were the surveys conducted jointly with the carrier. Section 211.9(c)(1) of AID Regulation 11 states that: "If practicable, the examination of the cargo shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties."

Four of the five carriers included in our test did not participate in the surveys. Few carriers participate because according to USDA officials, the carriers are concerned about being "wide open" to a loss or damage claim if they participate and sign the survey reports. Another point is the carriers have to share in the cost of survey fees. These appear to be valid reasons for not participating in joint survey and appear to be a major constraint in getting the carriers to participate.

It seems inconsistent that when losses are not surveyed jointly, CCC pays the total fee, but, when the carrier participates the carrier must pay one-half the cost. This would seem to discourage carrier participation rather than encourage it. USDA officials, however, do not think that a survey can be considered neutral if one party pays all the fees.

One shipping company, liable for three of the claims reviewed, did participate and pay one-half of the survey fees. The CWS and LWR files did not show why the other carriers did not participate or if any attempts were made to have a ship's representative sign the survey report. USDA officials state that over the years they have aggressively approached the carriers with the idea of getting joint surveys but have been generally unsuccessful.

We believe joint surveys are important to avoid misunderstandings and to encourage carriers to take more care on future shipments. In addition time would probably be saved in negotiations and clearing claims if joint surveys were made. Although carrier participation in surveys is apparently difficult to obtain it should in our opinion receive additional attention to get more participation.

### Need for Complete and Timely Documentation

The USDA encourages the voluntary agencies to obtain within 90 days complete documentation supporting each claim and to aggressively collect claims so that carriers will take more care and concern in the stowage, carriage and discharge of Title II food. Also, in our sample, delays of more than the 90 days were common for receipt of independent survey reports and related documents from the CWS and LWR field office in India.

Information received on the 10 claims reviewed was not always complete. For example, moisture reports were missing from a bulk wheat shipment that resulted in a compromise. In another case, a Port Authority shortlanding report was received twenty months after the shipment arrived. The loss reported by the Port Authority was different from that shown in the independent survey. The difference is still being investigated and the claim is still open after 23 months. Delays in getting timely and complete documentation have contributed to delays in issuing claims. For example, four of ten claims reviewed had been prepared more than six months after losses had occurred.

#### Need For More Routine Claim Follow Up

LWR does not effectively pursue the collection of claims. In our sample, it took an average of 2.0 years from discovery of the loss to settlement and collection of the claims, compared to 1.2 years for CWS. The LWR claims were assigned to CCC before collections were made. The USDA guidelines state that the voluntary agencies "...must actively and aggressively pursue collection of marine claims, using every reasonable effort short of litigation...(including)...timely follow-up with the ocean carriers..." The guidelines recommend 45 to 60 day collection action intervals after claims are filed. LWR efforts however appear to be more geared to preventing claims from becoming time-barred, than to collection effort. This is reflected by a lack of 45 to 60 day follow-up action. The lack of active and aggressive follow-up tends to perpetuate claims, increases the number of claims outstanding, results in more claims being assigned to CCC than may be necessary and increases the cost of administering claims.

The USDA guidelines are not mandatory according to USDA officials but are intended to instruct and make it easier for Voluntary Agencies to comply with AID Regulation 11. AID officials state that the USDA guidelines will be incorporated into the AID Handbook 9 that is currently being revised.

#### Conclusion:

CWS and LWR claim processing and follow-up procedures meet Regulation 11 requirements, however, we believe processing can be expedited and follow-up can be pursued more vigorously. Although we were told that it is extremely difficult to get carriers to participate in joint surveys because the carriers must acknowledge loss when they participate, we feel carriers participation is important in speeding up settlement and is worthy of additional effort.

Receipt of documents from India is slow and is delaying claim processing. The personnel in India should be encouraged to expedite claim processing.

Finally more vigorous and systematic follow-up of claims filed with carriers will, in our opinion, speed up collection of LWR claims. CWS, which systematically follow up their claims, collects them on an average of 10 months sooner.

### Recommendations

1. PDC/FFP should reemphasize to CWS and LWR the importance of (a) increasing carrier participation in joint surveys and (b) speeding up submission of claim documents from India so claims can be processed sooner.
2. PDC/FFP should encourage LWR to more systematically and vigorously follow up on processed claims to speed up collection.

If you have any question regarding our review please contact Mr. Mervin Boyer on 235-9645.

cc: PDC/FFP, Mr. Robert C. Chase  
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