

SABATINO PIZZOLANTE

Circular for P & I Clubs

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Correspondents for:

British Marine Mutual P&I Insurance Association Limited, North of England P&I Association with Newcastle P&I Association (through Associated Maritime Consultants), Through Transport Club, The Charterers Mutual Assurance Association Limited, Dragon P&I and Assuranceforeningen SKULD.

Fines under the New Venezuelan Organic Customs Law

It has been over four months since the amendments to the Organic Customs Law (OCL) came into force, and no Regulations have been yet published. The former has brought as a consequence that many gaps still exist in the application of the new rules, a situation that in our opinion will remain unchanged for the time to come. Nevertheless, it is the new set of fines included in the OCL, imposed upon Carriers, the topic to deal with this time, taking into account that the said gaps are often giving rise to the application of unpleasant fines.

Thus, art. 121 of the OCL prescribes that the infringement of customs rules made by haulage, consolidators, **Carriers**, depot and warehouse operators, customs brokers, international couriers, will be fined as follows:

- a) Where documents required by Customs Law and its Regulations are not timely presented, with fine from Five Tributary Units (5 T.U.) to Fifty Tributary Units (50 T.U.)
- b) When loading and unloading of cargo is prevented or not carried out in the due opportunity, for reasons imputable to them, with fine from Five Tributary Units (5 T.U.) to Fifty Tributary Units (50 T.U.)
- c) When cargo (bultos) is discharged in more or less quantity than the figures annotated in the cargo manifest, not declared to the customs

within the period indicated by the Regulations, with fine equivalent to Five Tributary Units (5 T.U.) per gross kilogram in excess or shortage. The same fine will be applicable to the depot or warehouse that do not declare timely to the customs the cargo in excess or shortage in the delivery.

d) When the arrival of shipment has not been notified to the consignee under the conditions prescribed by the Regulations, with fine of Five Tributary Units (5 T.U.)

e) When cabotage vessels for justifiable reason have called at foreign ports, without participating it to the customs authority, with fine of Five Tributary Units (5 T.U.) per each kilogram of gross weight loaded in that place, excluded the provisions onboard and ballast.

f) When the exercise of the customs control (Potestad Aduanera) is prevented or delayed, with the fine equivalent to One Hundred Tributary Units (100 T.U.) and One Thousand Tributary Units (1,000 T.U.)

A Tributary Unit (T.U.) is equivalent at the moment to Bs. 9,600 (roughly US\$ 16.13), but it should be borne in mind that this T.U. may be increased from time to time by the government.

An important point to be mentioned is that from the fines stated above, the most common applied by customs authorities after the new OCL was enacted last January, are those related to presentation of paperwork (letter a) and notification of cargo shortage or that in excess at discharge (letter c), for which reason both deserve particular comments.

By virtue of proviso 20 of the OCL, Carriers through their agents must register with the corresponding customs office the cargo manifests, not later than the date of arrival or departure of the vehicle. Cargo manifest could also be filed with the customs before arrival of the vehicle. Consequently, paperwork has to be given prior to discharge and assessment of condition, shortage or average at discharge, otherwise, proviso 121 (letter a) could be applied, i.e. fine from 5 T.U. to 50 T.U.

On the other hand, any discrepancies and exceptions that are discovered during discharge, must be notified by carriers through their agents to the customs authority not later than the following working day of discharge, this in the light of proviso 22 of the OCL. (although the new law does not state to notify damages or averages to cargo, it is advisable to mention it) It is important to point out that there is a heavy fine for cargo discharge in excess (sobrante) or in shortage (faltante) not declared to the customs authority within the period of time prescribed by the Regulation, is of 5. T.U. for gross kilogram in excess or in shortage.

Unfortunately, it is not clear the meaning of the statement “not later than the date of arrival or departure of the vehicle”, inserted in proviso 20 of the OCL: The customs authority has interpreted it as “date of arrival” for imports and “date of departure” for exports; however, some ship agents have interpreted as alternative options.

Our law firm is currently handled two fines imposed in application of the new customs regulations: In the first case, the fine was applied to a ship agent in the port of La Guaira due to late presentation of paperwork, since cargo manifests and bills of lading were presented to the customs authority two days later after arrival; the second one, was applied to a ship agent in the port of Maracaibo, due to an alleged container mentioned in the cargo manifest and not arrived to this port (faltante) that was not declared to the customs authority within the period of time prescribed by the law. In this case the fine amount surprisingly was of US\$ 600,000!!!

As explained at the beginning, a factor that is affecting the right application of the new customs law is that its Regulations are still under preparation. In the meantime, and after the interpretation of the new customs rules is settled, it is advisable for Carriers and their agents to avoid the application of undesirable fines:

- 1.- To register paperwork not later then the arrival of the vessel, in case of import cargoes.
- 2.- To notify the customs authority of any discrepancies and exceptions that are discovered during discharge (faltantes and sobrantes), not later than the following working day of discharge.

Should you need any assistance or further information regarding the topic stated above, please feel free to contact:

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