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1. Venezuela - Fines on containers

In accordance with Article 79 of the Venezuelan Organic Customs Law Regulations an import container unit is exempt from customs formalities applicable to the temporary admission regime for a period of three months. The general purpose of this exemption is to facilitate unloading operations in the country in the normal course of international trade. However, there is evidence over recent years that the application of Article 79 has become more stringent and in recent months there have been strong signs that the Venezuelan Customs Authorities are enforcing it more strictly.

If an inbound container is not shipped out of Venezuela within three months, Customs typically impose a fine 'equivalent to the total value of the goods'. This fine is calculated on the value of a used container as stated in a table prepared by Customs; for example the fine for a 20 foot container will be US\$1,800 and for a 40 foot container US\$2,500. As a result, fines have been imposed running into hundreds of thousands of dollars.

Customs levy fines either on the carrier or its agent. In the event of non-payment, enforcement against the locally based agent is likely.

There is an argument that the regulations permit containers to be considered as 'elements of transport' rather than 'goods', which reduces the fine very substantially. Cases on this point are under appeal and a Supreme Court judgment is awaited. Alternative arguments at administrative level that the calculation should be based on actual or depreciated value of the container units, rather than the Customs table, have so far been unsuccessful.

Approaches to Customs have shown that there are differences in policy and practice in different ports and therefore considerable uncertainty. Thus, while it is possible to seek an extension to the exemption period, without providing a guarantee, the process by which this may be done differs.

Due to the changing situation and varied application of the regulations, there are limited steps available to protect container operators. It is generally safe to assume that:

- a) this applies to all types of containers, including whether or not laden at the point of import; and
- b) the exemption period should be calculated from the earliest point, ie. the date of arrival in the country.

Breach does not, however, give Customs the right to confiscate the container.

Those container operators who import or plan to import containers into Venezuela in the normal course of international trade should:

- 1) Implement strict equipment control procedures to ensure as far as possible that container units are exported in a timely fashion;
- 2) Implement procedures to file the necessary petition to extend the exemption period before its expiry;
- 3) Consider incorporating provisions into contractual documentation imposing liability on the shipper and/or consignee to return container units quickly; and
- 4) Seek to obtain bank guarantees from the shipper and/or consignee for timely return of units.

This volatile situation is difficult to manage. The Club offers assistance in relation to the above steps and strongly recommends that Members cooperate with their normal Club contacts in developing such procedures and handling any problems that arise.

The Club acknowledges the assistance of its correspondent lawyer, Jose Alfredo Sabatino Pizzolante of Sabatino Pizzolante Abogados Maritimos & Comerciales, Puerto Cabello, Venezuela, in the preparation of this item. ***

2. Crane collapse at Southampton - information update

The following is an update to the item in TT Talk Edition 121 alerting readers to the advice from the UK Health & Safety Executive recommending Non Destructive Testing to crane structures. While investigation into the collapse on 13 July 2009 continues, the HSE has issued important interim advice as follows:

- There are particular concerns about dockside container gantry cranes manufactured by Morris Mechanical Handling in the 1980's and 1990's. Following the 13 July collapse further inspections and thorough examination, including appropriate NDT, has identified a number of other significant defects which may not have been previously identified. These defects are not confined to the backstays themselves - corrosion and/or cracks have been identified at backstay welds and connections and in the A-frame top sheave block base plates for instance.

- While concerns are currently focussed on specific Morris dockside container cranes, HSE recommends that owners of similar cranes should contact a competent person for advice on whether it is appropriate to undertake further examination and, if necessary, to have a competent person identify all safety critical parts and ensure that they have been thoroughly examined and tested, employing, where appropriate, suitable NDT inspection techniques.

The manufacturer is no longer in business and it would appear that there are a limited number of such cranes in operation. If any member has concerns about cranes manufactured by Morris, or having a similar design featuring a collared connection on both backstays, please advise the Club.

Further details of the UK HSE update can be found in the ICHCA International Information Paper 42/2009:

[http://www.ttclub.com/TTCLUB/resource.nsf/Files/Information%20Paper%20No.%2042/\\$FILE/Information+Paper+No.+42.pdf](http://www.ttclub.com/TTCLUB/resource.nsf/Files/Information%20Paper%20No.%2042/$FILE/Information+Paper+No.+42.pdf) 

3. German Commercial Code contains no liability limit for loss or damage to goods during warehousing

A Singapore based transport operator undertook to provide logistics services for a large German manufacturer. The agreement incorporated the German manufacturer's model contract, expressly excluded application of the operator's trading conditions and was subject to German law and jurisdiction.

Readers may know that the German Commercial Code (HGB) deals with carriage, forwarding and warehousing contracts in three consecutive chapters. Under carriage and forwarding contracts, the operator's liability is limited to 8.33 SDR per kilogram unless the parties agree to digress from that limit within the range of 2 SDR to 40 SDR (provided they comply with the requirements listed in section 449 HGB or section 466 HGB).

In contrast, the chapter on the warehousing contract (sections 467-475h HGB) contains no financial limits for loss or damage to goods. The parties are free to agree their own liability regime (subject to rules on unfair contract terms), and many warehouse operators can routinely incorporate favourable warehousing or general industry conditions.

Not so the Singapore based operator whose trading conditions were expressly excluded. The TT Club, in its contract review service, made this operator aware that he would face unlimited liability for his warehousing operations, with goods worth several million USD at one location. Fortunately, the logistics operator was able to limit his exposure in further negotiations with his client. 

4. Thomas Miller course 'An insight into transport law and insurance'

This three-day course, to be held from 29 September to 1 October 2009 at the Thomas Miller London office, is an introduction to transport law and insurance and is aimed at individuals who are in the first few years of their shipping careers. The course will provide an overview of all aspects of transport law and insurance including hull & machinery and the cover provided by the TT, UKP&I, UK Defence, UK War and ITIC Clubs. The course involves a number of interactive workshops aimed at exploring the interaction between the various covers, how the covers respond to a major casualty and the legal issues involved. The course will also examine topical issues impacting on the industry and will conclude by exploring Alternative Dispute Resolution ('ADR') techniques.

If you would like to obtain further information please contact Lisa Fletcher at the Thomas Miller London office either by email (lisa.fletcher@thomasmiller.com) or by phone (+44 20 7204 2322). 

5. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information about any of them, or have any comments you would like to make, please email the editor at tt.talk@ttclub.com. We look forward to hearing from you.

Peter Stockli
Editor for the TT Club

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