

Port of Paranagua – Brazil

Inspections on Board by Sanitary Authorities

From the beginning of April 1999, the Brazilian Ministry of Health through the Secretariat of Sanitary Vigilance, Technical and Operational Department, Co-ordinating Office of Ports, Airports and Frontiers, has become extremely strict in so far as the inspections on board of the vessels arriving at Paranagua are concerned.

Every irregularity found on board, even those considered to be of minor importance, result in a Deed of Infringement being issued against the vessel and the vessel's agents. Such irregularities could result in fines to be levied on a latter stage. For the majority of the vessels calling at Paranagua at least one irregularity has been found but there are several cases where up to eight irregularities have been reported.

The Sanitary Authorities are supported by local regulations specifically by Law No.6.437 of 20 August 1997 and Administrative Rule No.48 of 1 June 1995. The most common infringements are:

- Vessel's compartments (toilets, kitchen, hospital, provision store) failing to meet the required standards of cleanliness;
- Presence of cockroaches;
- Provisions with the period of validity expired.
- Provisions without having mentioned the period of validity;
- Provisions not properly wrapped i.e. with aluminium foil
- Medicines with the period of validity expired;
- Absence of rubbish bins in the kitchen and toilets;
- Absence of plastic bags inside the rubbish bins;
- Absence of soaps in the toilets;
- Absence of protection against rats on the ropes;
- Absence of tank for residues;
- Absence of grate covers;
- Absence of gangway protection net or protection net not properly placed;
- Absence of standard vaccination cards and derating certificate.

The provisions and medicines found to be out of date or stored inadequately are confiscated and destroyed by Sanitary Authorities.

As soon as the irregularity has been reported, the Deed of Infringement is issued and tendered to the vessel's local agent. An appeal can be lodged within 15 days and the matter will be further judged at the Ministry of Health. The Ministry will then determine the nature of the infringement and the amounts of fines to be levied although it is expected that this could take up to 1 or 2 years.

The Administrative Rule No.181 of 10 March 1998 establishes the amounts of fines to be levied as follows:

Nature of Infringement	Amounts	
	From	To
Minor	US\$ 256	US\$ 1,280
Serious	US\$ 1,280	US\$ 2,560
Very Serious	US\$ 2,560	US\$ 10,243

The definition of the nature of the infringements mentioned in the regulations is very vague i.e. minor when there are mitigating circumstances, serious when there is an aggravating circumstance and very serious when there are aggravating circumstances but such circumstances are not specified.

In case of generic reoccurrence, the fine to be levied will be increased by 50% and in case of specific reoccurrence, the fine will be increased by 100%.

The Sanitary Authorities consider the agents to be the responsible party as regards payment of the eventual fines. This caused great concern among the local shipping agencies particularly as many of them are appointed as

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Venezuela – Foreign Jurisdiction Clauses in Bills of Lading Declared Invalid

agents by the charterers of a vessel and not the owners. When, after 1 or 2 years, the shipping agencies are asked to settle the fines, it is likely that the vessel is no longer on charter to the same company and the agents face difficulties in seeking reimbursement from the owners.

In light of the above situation, William van Herp warns that there is the possibility that some shipping agencies may require a guarantee from the owners in order to cover the fines resulting from the Deeds of Infringement issued for irregularities ascertained on board. As with most cases it is always more advisable to take precautionary measures in order to avoid such infringements, particularly those listed above, rather than deal with them once they arise.

In a landmark decision (SEGUROS AVILA v CGM, HARRISON LINE, et al), the Venezuelan Supreme Court has ruled that foreign jurisdiction clauses in bills of lading do not prevent Venezuelan receivers from claiming against foreign carriers before their local courts.

This decision arose out of claim brought by cargo underwriters as a result of the sinking of the MV "JANS". As a defence the carrier claimed that the Venezuelan court lacked jurisdiction based on the existence of a foreign jurisdiction clause in each of the bills of lading which provided that all claims under the contract of carriage had to be brought in France or the UK.

In reaching its conclusion the Supreme Court considered the "connecting factors" involving Venezuela, such as a Venezuelan receiver and the fact that

the carrier had a local agent. It ruled that unless the bill of lading had an express Venezuelan jurisdiction waiver clause then claims could be brought before the Venezuelan courts against the carrier notwithstanding the foreign jurisdiction clause.

The effect of this decision is that the carrier could always be sued in the local courts where the receiver is a Venezuelan interest. This is of course good news for cargo receivers and their underwriters as they no longer have to pursue their claims in foreign jurisdictions. However, for the carrier the prospect may be less attractive particularly given the widespread concern over the reliability of the Venezuelan judiciary. It would seem that the only way to overcome this ruling would be for the carrier to include an express Venezuelan jurisdiction exclusion clause in all bills of lading.

International Convention on Arrest of Ships

On 12 March 1999 after a diplomatic conference held in Geneva representatives of one hundred nations and twenty organisations unanimously adopted the new International Convention on Arrest of Ships. This Convention contains both good and bad news for shipowners.

On the good news side, the convention continues the established practice of having a closed list of maritime claims for which a claimant is able to arrest a vessel. After considerable discussions the definition of a maritime claim was decided upon which should not effectively widen the grounds under which ships could be held for security. On the down side, the closed list was extended by a paragraph

which will allow the arrest of vessels for claims relating to environmental damage, its clean up and also preventative measures.

The concept of the corporate veil remained intact. A radical proposal to allow the arrest of so-called associated ships was discussed, but it was decided not to change the underlying