

Consequences of the 'Papismedov'
case – 10 years later
Possible liabilities for carrier and
ship agent under the CCC and UCC

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Introduction



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Introduction

Customs Union =

- a) one single customs law for all EU countries
- b) to be applied uniformly

EU Customs law is laid down:

Now:

- * in the Community Customs Code “CCC” (Regulation 2913/92)
applicable as from 01.01.1994
- * in the implementing provisions of the CCC “IPCCC”
(Regulation 2454/93)

Introduction

EU Customs law is laid down:

Tomorrow:

- * in the Union Customs Code “UCC” (existing Regulation 952/2013)
applicable as from 01.07.2016
- * in the implementing provisions of the UCC “IPUCC”
(Regulation in the making)

PAPISMEDOV

(case C-195/03 of 3 March 2005)

Facts:

- * Papismedov: Lithuanian truck driver
- * Sealed container
- * Smuggle of cigarettes
- * B/L's "cookware"
- * Summary declaration "cookware"
- * Customs declaration "cookware"

Identity of the customs debtor

Customs declaration

Article 201 CCC:

- * a) the person who makes the customs declaration,
- * b) the person who gave him these instructions whilst he knew or should have known that the information given to make that declaration was not correct.

Identity of the customs debtor

Irregular introduction

Article 202 CCC:

- * a) the person who introduced irregularly,
- * b) the persons who participated to the irregular introduction whilst they knew or should have known that the introduction was irregular,
- * c) the persons who acquired the goods whilst knowing that they had been introduced irregularly.

PAPISMEDOV

(case C-195/03 of 3 March 2005)

- * *“It is clear from the wording of those provisions as a whole that, for goods to be regarded as having been lawfully introduced into the customs territory of the Community, they must, on their arrival, be taken to a customs office or to a free zone and be presented to customs. The aim of the latter obligation, which falls on the person responsible for the introduction or on the person who assumes responsibility for the transport, is to ensure that the customs authorities are informed not only of the fact that the goods have arrived, but also of all relevant information about the type of article or product concerned and the quantity of those goods. It is that information which will enable the goods to be correctly identified, for the purposes of their tariff classification and, if appropriate, for the calculation of import duties.”*

PAPISMEDOV

(case C-195/03 of 3 March 2005)

- * Obligation to present the goods to customs
- * Obligation upon the carrier
- * Description of the goods
- * Accurate enough to define the tariff classification and to calculate the import duties

Contents of containers \neq description in summary declaration \rightarrow **“irregular introduction”**

Belgian court cases

Art. 24.2 Belgian General Customs Law

when ship agent files declaration for carrier / Master,
he incurs carriers's / Master's liability ...

SO ... CUSTOMS → SHIP AGENTS

BUT ... “ship agent participated to the irregular
introduction but did not know nor should have known”
(art. 202 CCC)

The person who introduces

Who introduces goods?

EU Court cases: by road

- truck driver
- **no condition of knowledge**

And by container ship?

- Master of the vessel (no case law as yet)

New law: UCC

1. WRONG PAPISMEDOV CASE LAW BECAME NEW LAW

Article 15 UCC:

Guarantee of ACCURACY is extended to **all types of declarations and statements to the customs**

→ Introduction of goods with incorrect description in summary declaration = **irregular introduction**

New law: UCC

2. LIABILITY OF THE CARRIER UNDER THE UCC

Article 127.4 UCC:

“The entry summary declaration shall be lodged by the carrier.”

Liability for irregular introduction lies with **the carrier** (as opposed to the “person” identified as the truck driver / Master of the vessel)

New law: UCC

3. LIABILITY OF THE SHIP AGENT UNDER THE UCC

Article 15, last paragraph UCC:

Liability for accuracy is extended to the “**customs representative**”

a ship agent is a customs representative

Direct or indirect??

New law: UCC

3. LIABILITY OF THE SHIP AGENT UNDER THE UCC

Article 79.3 (b) UCC:

Debtor is:

*“any person **who was or should reasonably have been aware** that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfill the obligation....”*

New law: UCC

EXCEPTION TO LIABILITY?

Article 124.7 UCC:

*“Where the customs debt was incurred pursuant to article 79 it shall be extinguished with regard to the person whose behaviour did not involve any attempt at deception and who **contributed in the fight against fraud**”.*

Who is such a person?

What if you did not know about the existence of fraud?

Thank you for your attention!