

The Papismedov
European Court of Justice ruling:
Possible Implications for the Liability
of the Ship Agents and Owners

WSC-ECSA JOINT SEMINAR
Brussels, 6 October 2014

Introduction

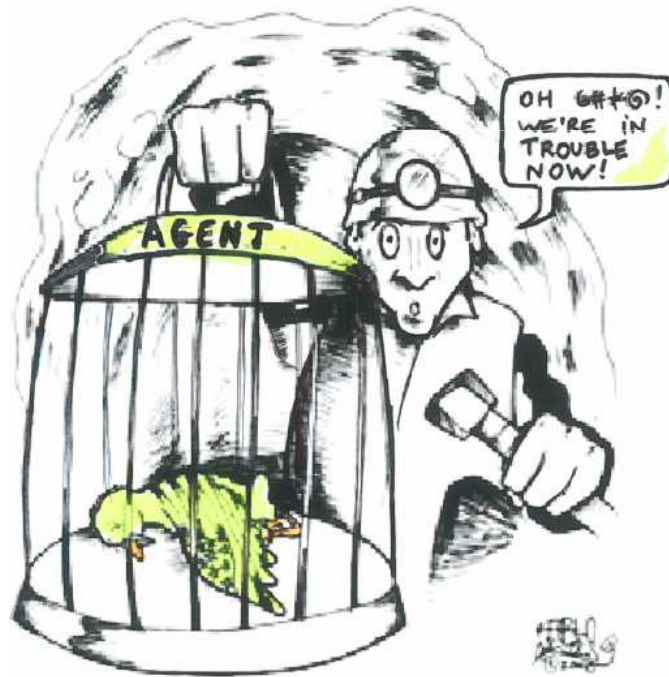


Hilde Bruggeman
Michel Cornette

On behalf of

The European Community Association
of Ship Brokers and Agents

Introduction



Raw figures

Cigarette smuggle

Example 1

Container Carrier A

July 2012 7 x 40' = 70 000 000 cigarettes

exposure Customs and Excise

€14 Million

Example 2

Container Carrier B

April 2014 10 x 40' = 100 000 000 cigarettes

exposure Customs and Excise

€ 20 Million

Summary Declaration “GOOD OLD CCC”

TO ALLOW THE CUSTOMS AUTHORITIES TO BE AWARE
OF THE FACT THAT GOODS HAD BEEN INTRODUCED

- No specific provisions as to the contents
- ... Just the container number

Introduction versus importation

CARRIER

INTRODUCES goods

“SUMMARY DECLARATION”

NIL

MERCHANT

IMPORTS goods

“CUSTOMS DECLARATION”

Full description of the goods
(*i.a.* 10 digits Harmonized Code)

Liability:

Person filing declaration (art. 202 CCC)

Extent: **guarantee** of **accuracy** of **ALL**
elements of the declaration (IPCCC)

PAPISMEDOV

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

- ... introduction of goods with a incorrect description in manifest/ summary declaration of entry is an **“irregular introduction”**.
- ... When the presentation of the goods to customs is accompanied by the lodging of a summary declaration ... which gives a [wrong] description of the goods ... those goods must be regarded as having been **introduced unlawfully**.
- ... that information ... will enable the goods to be correctly identified for the purposes of their **tariff classification** ...

Irregular introduction (CCC)

Art. 203 CCC

Debtor is:

- person who **INTRODUCES**
- Person who **PARTICIPATES** whilst he knew or should have **known** that goods were introduced irregularly

Belgian court cases (1)

Art. 24.2 Belgian General Customs Law

when ships' agent files declaration for carrier /master, he incurs carriers's / master's liability ...

SO ... CUSTOMS → SHIPS' AGENTS

BUT ... “agents participated but dit not know and could not know”
(art. 203 CCC)

Belgian court cases (2)

EU Commission is reluctant to interfere in matters that are subject to pending court cases

Free from pending cases (except for one)

Important for possible actions to be taken...

Additional side question

Who introduces goods?

EU Court cases: by road

- driver (C-238/02 and C-246/02 of 4 March 2004 *Viluckas*)
- not carrier, unless he knew (C-4014/02 of 23 September 2004 *Ulustrans*)

And by container ship?

Carrier? Operator? Master? and / or Pilot and /or Crane driver?

No case law as yet ...

New law: UCC after MCC

Still **“INTRODUCTION”**

as opposed to

“IMPORT”

BUT

“SUMMARY DECLARATION” is now ANNEX 30Bis of IPCC (introduced by **“Safety Amendment”**)

Art. 15 UCC

Article 198 IPCCC is now art. 15 UCC

GM1

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

Declaration for temporary storage (summary declaration in terms of the CCC) is a customs declaration

Slide 13

GM1

General Manager, 13/10/2014

Result old law + EC Court

**WRONG PAPISMEDOV CASE
LAW**

BECAME NEW LAW

Liability of the carrier under the UCC

Art. 15 UCC

incorrect description in the “entry summary declaration” and/or the “declaration for temporary storage” = **irregular introduction**.

liability for irregular introduction **lies** with **the carrier**

Liability of the agent under the UCC

article 15 of the UCC, (extending the liability for the accuracy of the information) extends that liability to the “**customs representative**”

a ship's agent is a customs representative

Exception to liability

Article 124.7 UCC : debt incurred extinguishes with regard to the person whose behaviour did not involve any attempt at deception AND who “contributed to the fight against fraud”.

who is such a person?

no legal guidelines to define that person

Recommended actions (1)

A. BY/ON BEHALF OF THE 2 CARRIERS of the 2 EXAMPLES (FOLLOWED BY AS MANY AS THEIR COLLEAGUES)

1. Go to the EU Commission, insist on opening of specific file and obtain a solution to their specific issue that will benefit all carriers in similar cases
2. Obtain clear and binding guidelines as to “person who contributes to fight against fraud”:

Is AEO status final proof of contribution to fight against fraud?

Should carriers (and agents) unite in a “Fraud Fighting Committee”?

On national level? On EU level ? “Fraud Fighting for Dummies Degree” ?

Other suggestions?

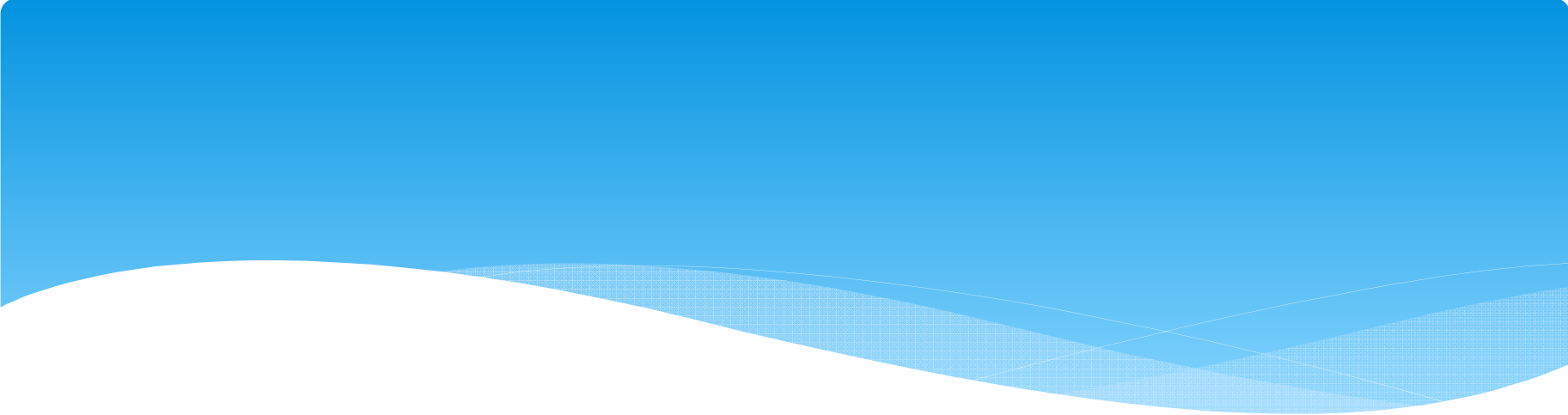
Recommended actions (2)

B. ALSO BY ALL ASSOCIATIONS INVOLVED

3. support the actions referred to under points 1 and 2
4. declarations done by/on behalf of cargo-interests are entirely different from declarations done by carriers who are not economically involved with the goods and who have no physical access to these goods

The EU Commission should continuously be reminded of that difference.

5. Ensure that the guidelines to be written once the IPUCC are final do contain clear rules as to the liability of innocent providers of information

- 
- * Why individual actions and why just **ALSO** in the previous slide ?
 - * Because experience learns that the EU Commission is more keen and fast to respond to tangible individual cases than when it has to deal with “general issues”, whether “general” indeed or merely perceived as such.