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**“NARCO TORPEDO” CASES IN SPANISH PORTS**

The purpose of this letter to advise your Members of a type of incident which may affect vessels coming to Europe from Colombia and/or Venezuela.

Our company has been involved in two cases in the past months in Spanish ports where the vessel concerned was detained by the criminal court after a so called “narco-torpedo” was found attached to the hull below water level. The whole crew and the Master were also detained and interviewed, but eventually let free without charges.

Under Spanish criminal law, these facts are considered a criminal offence against public health (drug trafficking). This type of offence implies a penalty which can range from three (3) to nine (9) years of imprisonment plus a fine which can be up to three times the value of the drugs found. Additionally, according the Spanish Special Anti-Smuggling Act, these facts could be also considered as contraband dealing in illegal goods, which implies similar penalties of imprisonment but can extend the fine up to four-fold the drugs’ value, as well as the seizure of means by which they are carried, in this case the vessel.

In these types of criminal proceedings, during the preliminary investigations the Court can also order temporary injunctions. In this respect, the vessel could be provisionally seized and compelled to stay at the Port until the Judge makes a final decision on the case, which could take several months. Alternatively, the Judge could authorise the vessel’s departure once the police investigation has been concluded, under the premise that the ship owner pays a bond to respond in case of a conviction involving the ship in any way (i.e. the Master, the Owners, etc.). Please note that such bond could also amount to up to four times the drugs’ value.

The procedure in the two cases we have dealt with has been very similar. The Police initially had a suspicion that the vessel could be carrying drugs attached to her hull, partly because they came from areas well known for drug trafficking, but we presume that the real explanation was that the Police had got a ‘tip-off’. After the vessel’s berthing at the Spanish port, the vessel received the visit of the Civil Guard’s special Anti-Drug Division, informing the Master that they suspected a container carrying drugs was attached to the hull underwater. The divers found a container with a cylindrical form, like a torpedo, attached to the hull, which was taken ashore and opened, and large amounts of cocaine was found inside. The Police opened the criminal investigations and decided not to allow the vessel to sail, whilst interviewing the Master. Fortunately, cargo discharging operations were allowed to proceed as usual. The initial suspicion of the Police, as usual in these cases, was that the Master or the crew could be aware of the existence of this container placed on the hull, or even worse, could have collaborated actively with the drug traffickers either in origin or destination.

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**COVERAGE AT ALL SPANISH PORTS**



In our cases, the Master was detained for a suspected crime against public health (drug dealing). After a long interview with the Judge, he decided that the Master should be released without charge, but ordered that the whole crew also be detained and interviewed, postponing the final decision about the vessel's potential detention or possible request for a guarantee. After clarifying some further aspects on shipping, the Judge decided to free the whole crew and allowed the vessel to sail with no guarantee.

The outcome of these two cases was very positive for the ship owners, but slight changes in the events and the Court's attitude could have completely changed this.

Several issues to take into account here are:

- Master's & crew's attitude: At all times, even in especially difficult and worrying moments, the attitude of the Master and the crew must be of absolute co-operation, and this attitude, together with the (presumably) clear absence of liability, of course, will more likely persuade the Civil Guard and criminal court to adopt a more friendly and open approach to the case.
- Vessel black out: If the Police request the Master to black out the vessel so that the divers can inspect the hull, in view of the danger, a formal letter must be sent to the Harbour Master office holding them liable for whatever consequences could arise from this.
- Press: These are obviously irresistible cases for the media. Therefore, proper advice to the parties involved, especially the agents, must be given so that no information on what is happening is provided other than that which is strictly authorised.
- Post hull inspection: The ship owner should carry out a survey of the hull area where the "narco-torpedo" was attached, to ensure that the hull had not suffered damages which could endanger the vessel's navigation, of course with the intervention of the vessel's class surveyor.

It would be interesting to investigate whether other vessels calling other European countries coming from Colombia or Venezuela are facing similar problems. Should this be the case, ship owners calling those ports and then coming to Europe must be put on alert and underwater hull surveys prior to sailing are more than recommendable.

We hope the above is of assistance.

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