

# Customs Violations in Latin America

## - PANAMA -

**This is the first in a series of Loss Prevention Articles specifically dealing with Customs Violations in various Latin American countries. In the future, we will be addressing other noteworthy jurisdictions in the region.**

### **I. PRELIMINARY CONSIDERATIONS:**

- The legal framework for customs matters in Panama is set forth by Law 30 of 8 December 1984 and its amendments (the "Law"); Decree-Law 1 of 13 February 2008; all applicable international treaties subscribed by Panama regarding custom matters and foreign commerce; and resolutions issued by National Customs Authority ("ANA"), an autonomous regulatory entity overseen by the Ministry of Economics and Finance.
- Before a vessel departs a foreign port bound for Panama, ANA must be notified of its schedule and cargo manifest. This is accomplished through the National Information System for Commerce and Safe Transportation, and the Panamanian Integrated System for Exterior Commerce ("SICE").
- All cargo entering into Panamanian territory must be declared before ANA, regardless of whether said cargo is subject to the payment of tributes or taxes.

### **I. CUSTOM VIOLATIONS UNDER PANAMANIAN REGULATIONS:**

➤ Pursuant to Law, customs violations fall into two (2) categories depending on the legal valuation of the offense, and these may be considered regulatory offenses or criminal offenses.

#### **1. Regulatory Offenses:**

These types of offenses are sanctioned by fines imposed by ANA directly on the Master of the vessel, and on either the consignee and/or the carrier, which the Law considers to be joint liable with the Master for payment of such fines.

The amount of the fine will depend upon the type of offense incurred, as these are qualified as either minor offenses or gross misconduct.

A. The following actions constitute minor offenses:

- i. Unauthorized anchorage, departure or movement of a vessel, except when such measures are undertaken due to force majeure.
- ii. Boarding or disembarkment of passengers from the vessel prior to formal inspection by ANA after arrival.
- iii. Loading and unloading cargo without proper authorization from ANA.
- iv. Incurring in errors or omissions while preparing custom declarations relating to import, export, or transit operations.

For minor offenses, the amount of the fine can range from **US\$10.00** to **US\$200.00**.

**B. The following actions constitute gross misconduct:**

- i. Not presenting the manifest and other documentation requested by custom authorities during the inspection of cargo.
- ii. Unauthorized alteration of manifests or any supporting documentation.
- iii. Violating of seals, containers and other security measurements that hold restricted or controlled cargo, if ANA determines contents of such cargo is not missing.
- iv. Refusing to produce supporting documentation upon request by ANA.

In the case of gross misconduct, fines are set from **US\$250.00** to **US\$500.00**.

**2. Criminal Offenses:**

These types of offenses are sanctioned through imprisonment of up to six (6) years of jail and fines ranging from two (2) to ten (10) times the value of the cargo associated with the crime, and/or the seizure of the cargo and the vessel. The seizure of the vessel will only occur if the party responsible for the offense is also the owner of the vessel or, if the owner of the vessel is proven to have participated or assisted in the commission of the crime.

If the value of the vessel involved in the commission of the crime exceeds the value of the cargo associated with the criminal offense by ten (10) times, the penalty of seizure of the vessel will be substituted by a fine, not exceeding five (5) times the value of said cargo.

The two types of criminal offenses sanctioned by the Law are contraband and customs fraud<sup>1</sup>. Although recognized as criminal offenses, all penalties product of these crimes shall be enforced by an Administrative Tribunal within ANA.

If the vessel is used in drug trafficking and it is established that most of the vessel was used to carry the drug, the vessel will be seized by Authorities. If drugs are only discovered in a relatively small portion of the vessel, and it can be established owners of the vessel did not participate in the trafficking of the drugs, the vessel will not be seized by Authorities.

**A. The following actions constitute customs fraud:**

- i. Having undeclared cargo on board a vessel.
- ii. Unloading cargo from one vessel to another prior to the formal inspection carried out by ANA upon arrival.

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<sup>1</sup>Any action or omission attempting to elude or diminish the imposition of custom tributes, fees or taxes

- iii. Preventing, through the use of deceitful means, the supervision of ANA in the introduction or extraction of cargo to/from the Panamanian customs territory
- iv. Storing undeclared cargo in customs facilities.
- v. The introduction or extraction of cargo through areas not authorized for international traffic in Panamanian waters.
- vi. The introduction or extraction of cargo consisting of weapons, explosives, or controlled substances.
- vii. The violation of seals, containers and other security measurements that hold controlled or restricted cargo, when the contents of such cargo are missing.

B. The following actions constitute customs fraud:

- i. Using forged documentation to alter the registered weight, amount, quality, type, value, and the origin of cargo.
- ii. Obtaining, through the use of deceitful means, a concession, permit or license to import cargo totally or partially exempt from taxes. Deceiving or misleading custom officials in charge of inspecting a vessel.
- iii. Bribing a custom official. Celebrating commercial agreements with tax-exempt cargo without the proper authorization from local authorities.
- iv. Being in possession of over US\$10,000.00 or its monetary equivalent without declaring it to ANA.

The Master of the vessel involved in these activities shall become personally liable for the fine imposed, together with either the consignee and / or the carrier, which the Law considers to be joint liable with the Master for payment of such fines.

### **3. Customs Supervision**

Whereas most control measurements currently employed by ANA involve nonintrusive verification methods and electronic supervision, ANA has the authority to restrict the entry, circulation and departure of cargo and vessels, if they become aware of any irregular activity.

Furthermore, ANA is able to issue and request information, regarding the schedule, cargo and destination of vessels in transit through Panama, bound for a Panamanian port or departing from one.

## **II. RECOMMENDATIONS TO AVOID LOSSES ASSOCIATED WITH CUSTOM FINES AND PENALTIES**

1. Maintain proper documents establishing operations and customs regime information in which the vessel partakes or interacts.
2. Keep records for a minimum period of five years.
3. Produce, upon request by ANA, all the relevant registry information records and books supporting the vessel's operation.
4. Transmit through the electronic systems established by ANA, custom declarations, manifestos and supporting information.
5. Abide by the parameters set forth in the Panamanian SICE.

6. Check the condition of all seals, containers and other security measurements that hold controlled or restricted cargo prior to arrival in Panamanian waters, making sure to notify any irregularities detected to ANA.
7. Comply with Panamanian regulations and requirements for foreign commerce.
8. Notify ANA of vessel's representatives prior to the engagement in any customs operation.
9. Ensure that crewmembers carry valid credentials and identifications.

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