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SPAIN – NEW DOMESTIC LAW RULING CONTAINER SECURITY MEASURES: LACK OF COMPLIANCE WILL MEAN DETENTION OF THE CONTAINER AND POSSIBLE SANCTIONS FROM EUROS 3,000 TO EUROS 90,000

In line with the co-operative G-8 action on transport security to develop and implement an improved global container security regime to identify and examine high-risk containers and ensure their in-transit integrity, **on 14th January 2006, the Royal Decree (RD) 2319/2004 of 17.12.04, a new law ruling container security measures, has come into force in Spain.**

This regulation incorporates the International Convention for Safe Containers, 1972 (CSC), and its modifications, and gives compliance to IMO Circulars CSC/100/Cir. and CSC/124/Cir., as well as to the recommendations of the Maritime Safety Committee (MSC) of the IMO, specially as regards control in ports and container handling terminals.

The RD 2319/2004 applies to containers as described in section II of the Convention (CSC), which are used in national and international transport and which are to be loaded or unloaded in Spain, with the exception of the containers specially designed for air transport. This Royal Decree details that containers manufactured after 13th September 1977 will need a certificate of conformity, in accordance with the type of container, and a Safety Approval Plate, in accordance with the International Convention (CSC). The containers manufactured before 13th September 1977 lacking the certificate of conformity will need a Safety Approval Plate with a countersign issued by the competent authority of the state signatory to the CSC. The new containers will need a certificate of conformity complying with the requirements described in the new regulation and the structural safety requirements and tests described in annex II of the Convention (CSC).

Containers which do not comply with the previous conditions can not be used for transport and will remain retained by the competent authority in Spain (Ministry of Industry) until the deficiency has been corrected. This would mean that the container can not be loaded on board the vessel. The cargo can however be removed to another container in order not to stop the transport chain. Containers which have been unloaded from a vessel will also remain retained and can not be delivered to destination, unless the authority agrees its transport to destination. It should be noted that in order to avoid a container to be declared in abandonment by the Customs within the six month term, the necessary information has to be given to the Customs as regards the detained container.

The repairs and modifications to containers, which means structural changes, will need a special authorisation from the competent authority and will have to be supervised by an authorised organism of control in Spain.

A good maintenance of a safety-approved container is the responsibility of the owner, who is also required to have the container periodically inspected. In this respect, the regulation also establishes that the validity of the inspection of a new container will be of five years and that of an existing container will be of two years and a half. The inspection will comprise a detailed visual inspection of the exterior and of the interior of the container. The container will be lifted to check its floor. The shutting and locking of the doors will also be inspected.

The breach of any article of RD 2319/2004 will be sanctioned by the Ministry of Industry in accordance with section V of Spanish Law 21/1992 of Industry. The sanctions detailed in this law depend on the type of infraction:

- a) Small infringement, fines up to Euros 3,005.06
- b) Severe infringement, fines from Euros 3,005.06 up to Euros 90,151.81
- c) Very severe infringement, fines from Euros 90,151.81 up to Euros 601,012.10

The owner of a container can incur an infraction if the container is not well maintained or has not passed the necessary inspection or has no Safety Approval Plate and he will be liable to pay the sanction, despite the fact that the container is being maintained by another company. According to the law, shipowners, operators and charterers calling to Spanish ports can incur severe infractions, if, i.e., they unload a container which does not comply with the regulations and / or when there is a risk or severe danger to people, flora, fauna and to the environment.

Having liaised with the Ministry of Industry, the advice given is that the first step will always be to detain the container. Then it will be decided whether a sanctioning procedure is started or not.

The Ministry of Industry can establish, in co-operation with the various Spanish Autonomous Communities, an annual plan of container control object of regulation in this RD 2319/2004. **All containers approved in accordance with article III of the Convention (CSC) can be object in Spain of the control from the competent authorities in charge of industrial security. Containers without Safety Approval Plate, without indication of a standing inspection date or which condition creates a risk to safety will be detained by the competent authority.**

INDECO suggests that vessels calling to Spanish ports should ensure, through their local agents in Spain, that the containers to be loaded are in compliance with the Convention (CLC) and with this new regulation RD 2319/2004, in order to avoid their detention and the impossibility to load them. The containers to be unloaded and their compliance to the CLC Convention should be ideally checked at the port of loading, in order to avoid their detention when being disembarked in Spain and a possible sanction by the Spanish Administration.

As this new regulation has only now entered into force, the Spanish Port Authorities (Ministry of Transport –*Ministerio de Fomento*–) and the Ministry of Industry, through the different local competent authorities, are now deciding how to co-operate in respect of its application. The ports of Barcelona, Valencia and Algeciras presently move in between 2 and 3.3 million containers each (Barcelona is expecting to grow to 4.5 million in 2008 with the new terminal), so a good co-operation between the various authorities involved (PA, local authority of Industry, Port Police and *Guardia Civil*) becomes necessary in order to avoid delays in daily port operations.

Further information can be obtained from INDECO
