PORT PRACTICES

[1] GRIGORUT CORNEL, [2]ANECHITOAE CONSTANTIN, [3] GRIGORUT LAVINIA-MARIA

[1,2,]University "Ovidius", Constanta, [3]National Institute of Economic Research "Costin Kiriţescu", Bucuresti, Romania

ABSTRACT

Commercial practices are practices or rules applicable to contractual relations between the participants to international trade activities. Commercial practices require a determined objective element of a particular practice, attitude or behavior. They are characterized by: continuity, consistency and uniformity and require duration, repeatability and stability. Depending on how many partners apply them, practices differ from the habits established between certain contracting parties.

Keywords: *Port practices, conventional practices, normative practices.*

1. DEFINITION OF PRACTICES

The practice represents a long practice (attitudes, behavior), which has some degree of experience, repeatability and stability, applied to an indefinite number of traders, which may or may not have the character of a source of law [1]. In laws where the practice is maintained as a source of law, next to the commercial written law, there is no problem of interpretation. In the absence of written provisions, the practice will be applied, just as the written law, with the same binding power. In some legislations (Italian law), these general, local or special practices appear under the formula of *"use"* [2]; in Romanian law, the term is mistaken for that of *"custom"* [3], and in international trade law, the term used is "*practice*"[4]. Regardless of terminology, these practices have:

- a general, collective, impersonal and repeated nature, applying to an indeterminate number of traders, on a given territory, or on a particular product category. By means of their general, collective, impersonal and repeatable nature, practices are similar to legal rules but, unlike them, they cannot be sanctioned by the State. Practices are rules of conduct, created by traders in their commercial practice;
- an objective nature, meaning that they are reflected in legal documents and material facts (positive, negative), which were applied repeatedly over a longer period of time. The age, the continuity, is the essence of practices.

2. CLASSIFICATION OF PRACTICES

Commercial and maritime practices are divided according to their legal force in:

- normative practices (legal, customary law), in international practice and
- conventional practices (interpretative, of fact) [5].

Another criterion for the classification of practices refers to the extent of their application in space; from this perspective, practices can be:

- **local,** when applied to a specific commercial market, port etc.;
- **particular** those relating to a particular industry, or products (wood, cereals, fruits);
- g**eneral,** when applying to all commercial relations.

2.1. Normative practices

The particularities of normative practices are expressed by: generality, impersonality and obligation. These practices represent a source of law and are applied as a legal norm. They determine the rights and obligations of parties, governing social relations, yet not covered by law, or interpreting the provisions of law; in some cases, practices are applied against a legal disposition, which is not of public order. Trade practices and rules made at trade fairs, especially in maritime trade, have been incorporated into collections. Among them most important are the *Roles d'Oleron,* which include maritime practices applied in the Atlantic Ocean, *Consulat de la Mer* or *The Tables from Amalfi,* which include maritime practices in the Mediterranean Sea, *The Collection from Wisby,* comprising commercial practices applied in Nordic markets; *Guidon de la Mer,* which include provisions relating to maritime insurance [6].

2.1.1. The scope of the normative practices

The scope of normative practices is both contractual and extra-contractual *(eg. Port practices or scholarship practices).* The normative practices, where recognized, have the value of non-imperative legal rules. Parties may decline to apply normative practices by establishing clauses contrary to their content, within the contract. In terms of proof, normative practices are presumed to be known just as the law, being applied by the judge, even ex officio.

3. PORT PRACTICES

Port practices have a uniform nature; when applied continuously, by the mutual consent of parties, they gain local law value over time [7].

The arrival of vessels in roadsteads, their stopping at the anchor, their entering and leaving the port – are made under the rules and regulations established [8] by each country, for all ports (with or without implementing them regionally or internationally), or differently, for categories of ports, or by special rules applicable to a single port [9]. In order to be recognized, port practices must meet certain conditions:

 are well defined and uniformly applied in order to allow a certain and safe interpretation of the charter party, and in order to be used equally, in all situations;

 are fair, in order to be considered valid and recognized by courts in case of disputes, unless the party which made the complaint knew this practice and it is proven that it had accepted it, even tacitly;

 are consistent with the principles of law, because circumstances may arise when the "port practices" come in conflict with these principles, or even with some local rules and can not get an applicable general nature.

Foreign laws can not affect "port practices". In the absence of a contrary agreement (C / P), the laws of a State regarding the establishment of fines for cargo embankment delays can not be applied in a foreign port, whose practices provide other rules. *"Port practices"* refer particularly to:

 the legal holidays of the State, that are mandatory for any vessel;

 the means of introducing the vessel into the port and docking it to the operating berths;

 the means of establishing the fines for cargo embankment delays and for establishing the details of loading and unloading of vessels;

 the official office hours and work hours in ports;

 the number of the exchanges of working crews;

 the working hours;

 the obligation of using crane operators and time keepers;

 the means for interpreting contract provisions or trade terms;

 the means for taking delivery of goods;

 the means for vessels' bunkering;

 the means for applying port taxes - sometimes, depending on the nature of the vessel's tonnage certificate.

"The port practice" is a constant source of dispute between the vessel and the charterers, receivers or loaders. Thus, in some ports, according to the practice:

 the unloading is done on the quays, or in port warehouses, under the supervision of local time keepers; the goods remain under customs control;

 the proof of delivery of goods (of the vessel) is not signed yet and, contrary to the terms of the bill of lading, or of Hague Rules of 1924, the complaints about defaults or damaged goods are presented long after the vessel departure.

Therefore, clocking is not made in contradiction to the vessel. If the discharge of goods is made in warehouses, the risks during their transportation to dry land can come to the vessel, under "the port practice", contrary to the terms specified in the bills of lading and Hague Rules, which state that the risk for the vessel stops once with the passage of goods across the vessel's over-side. Also, according to the port practice, and especially in English ports, the rules for loading or unloading shall be subject to a number of factors which make it impossible to collect the demurrage. *"The port practice"* varies from one port to another, even across the same country. Thus, in some English ports, practices do not refer to the rapidity, or norm, wherewith vessels should be loaded or unloaded, but covers only the means for delivering or taking delivery of goods; despite the principles of law, local courts gave numerous decrees against vessels when only the interested party imposed the enforcement of "the port practice", in contradiction to the provisions of the bill of lading [10]. "The port practice" can not go before the clauses in the charter party.

In other ports like Antwerp - Belgium and Kotka – Finland, the practices interpret the "F.O.B." Clause, i.e. the goods are stored "somewhere on the shore", near the vessel and not on the vessel, and sometimes the "alongside" clause (v), i.e. the goods can be delivered to the vessel at a greater distance than the one reached by the derrick; the reach "under the garnet" is made on behalf of the vessel.

In some English ports, and especially in London, the "alongside" clause implies that the vessel is not forced to dock at a certain loading berth, but, in the lack of an operational berth, it may remain on the river, where shippers are bound to bring the goods in barges etc. and to load them on the vessel. In most English ports, at Anvers and in the main Greek ports etc., port practices require the vessel to use port bailiffs.

In English ports, port fees are reduced by 20% if the vessel uses an English tonnage certificate. The clause "under the port practice" is not favorable to vessels.

Regarding the category of normative practices, it is known that, in the interwar period, they had the force of law. Under them, the court could decide outside contractual provisions. Later, however, it was adopted the view that port practices were designed to interpret or supplement the terms of contracts of carriage by sea, with a sense of (interpretative) "conventional practices".

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