

Uruguayan Shipping Law update



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Recent legislative initiatives aim to bring the maritime legal framework of Uruguay in line with the needs of the shipping industry. This article looks at the introduction of Law No 19.246.

Maritime law in Uruguay

As part of the Mercosur trading bloc (as discussed in *Standard Bulletin, Latin America Special Edition, July 2015*) and soon to be a trade partner of the EU, Uruguay is a key maritime player in Latin America. It is one of the most attractive locations for investment in Latin America since, by and large, it enjoys freedom from corruption, a relatively stable economy and constant growth.

Maritime law in Uruguay has been regulated by its Commercial Code, which dates back to the 19th century. The Uruguayan Maritime Law Association (MLA) has been engaged in legislative initiatives to update the maritime legal framework and bring it in line with the needs of the shipping industry of today.

Uruguay is not a party to major conventions that regulate the limitation of a carrier's liability and, therefore, major aspects of maritime law are regulated by national law.

Recently, the MLA concluded a project that was the driving force behind the passing of Law No 19.246 (September 2014), which deals with four key aspects of maritime law:

- cargo inspection;
- expert surveys;
- time bars;
- security and injunction bonds.

Cargo inspection

According to Article 1, there is a presumption that the carrier has delivered the goods in accordance with the bill of lading, irrespective of whether there is loss of or damage to the goods. However, there are two exceptions where the presumption shall not apply:

- a) If the goods have been directly delivered to the consignee and the consignee makes note of the defect at the time of receipt of the goods (in the same way as an LOP).
- b) If the goods were not delivered directly to the consignee and the consignee notifies the carrier in writing of the loss or damage the day after they receive the goods.

In both of the above cases, when the damage is not easily ascertainable, the consignee is entitled to notify the carrier within five business days of the day of the delivery of the goods.

Notice of loss of or damage to goods is not necessary where a joint inspection is arranged. Joint surveys are mandatory if requested by any of the involved parties.

Expert surveys

Private experts' findings can be used in trials as evidence when defending a claim (*conf* Art 2). Foreign experts' reports are admissible with the assistance of a local surveyor.

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Time bars

The most revolutionary change brought by the new legislation is that relating to time bars. Previously, under article 1018 of the Commercial Code, all claims that derived from commercial obligations had a 20-year time bar. Hence, a carrier remained exposed for a very long time after the incident occurred. This led to uncertainty and unfairness, and a demand for change.

According to the new Article 3 of Law No 19.246, the time bar has been reduced from 20 years to two years for all actions, including:

- cargo claims;
- collision;
- assistance and salvage;
- towage contracts; and
- General Average.

Cargo claims

The two-year time counts *from the date the goods were delivered or should have been delivered* (in case the goods are lost). The recovery action of the carrier or of the vessel against the shipper, subcontracted operators or third parties may be brought even after the expiration of that term, *within six months of being notified of the lawsuit or of having paid either in court or out of court*. In such a case, a carrier can file a recovery action in two ways:

- When responding to the plaintiff's claim, the carrier can also include the recovery action (30-day period).
- After the proceedings have been concluded and indemnity has been paid, the carrier can file a recovery action within a six-month period.

The purpose behind this provision, which uses the wording of article 3(6) of the Hague-Visby rules and article 294 of the Argentinean Law of Navigation, is twofold:

- To protect the carrier in case a claim/lawsuit is pursued in a foreign jurisdiction and either the lawsuit against the carrier is served, or a settlement is made after the case is time barred in Uruguay.
- To give the carrier the opportunity, when proceedings take place in Uruguay, to file a new recovery action in case they omitted to include in the same writ the response to the plaintiff's claim, within six months after the trial has finished and indemnity has been paid.

Other claims arising from maritime law

Any other claim arising from maritime law, from navigation or assistance services in connection thereto, shall also expire two years from the moment it becomes enforceable (*conf* Art 3).

Security and injunction bonds

Article 4 makes clear that a P&I club's letter of undertaking (LOU) will be sufficient for releasing a vessel's arrest. However, the security must be subject to Uruguayan jurisdiction to allow enforcement, and the club should fix a domicile in the country for such a purpose. If a vessel is arrested at a Uruguayan port, local courts will have authority to adjudicate on the primary cause of the lawsuit, although the defendant can request to bring the lawsuit to another jurisdiction, provided sufficient security is being issued. This is regulated in law 18803, which came into force in September 2011.

Conclusion

Law No 19.246, which was introduced on 9 September 2014, is a promising piece of legislation aiming to reduce bureaucracy, delays and costs, and to increase the competitiveness of Uruguayan trade. It remains to be seen how the courts will interpret the new provisions, in particular, in relation to time bars and provision of security.