

Terms of transporting Bulk, frozen products and livestock

Coverage and Exclusions

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Introduction

Throughout the year people consume fruits and vegetables out of season. It is taken for granted that we buy pineapples, avocados, mangoes, asparagus and the likes irrespective of the time of year. Argentinean beef or shrimps from Thailand also belong to the pallet of products we expect to see in our supermarkets.

These goods need to be imported and they need a special treatment in order to survive the transport from the place of origin to the final consumer.

A lot can happen during the voyage around the globe which will influence the cargo negatively wherefore shippers insure their cargo in order to minimise their potential losses.

Commercial insurance can be traced back to around 3000 BC when Babylonians developed a system of loans on maritime ventures and the Chinese allocated shipments among several vessels to spread the risk of loss.

The first marine insurance policy was issued in 1384 in London to cover a shipment bales of fabric carried from Savona to Pisa. By the end of the 16th century insurance contract wordings has been standardised.



Institute Cargo Clauses

Transport insurance conditions published by the International Underwriting Association of London

Originally they were issued for sea transportation only but have been expanded for land and air transportation

Transport insurance policies worldwide are issued in accordance with the ICC

The ICC are divided into three different classes

ICC A provides an all-risk cover

ICC B provides a cover for named perils

ICC C provides a minimum cover for named perils

Exclusions for loss or damage attributable to

Wilful misconduct of the assured
Ordinary wear and tear, ordinary loss in weight or volume
Insufficient packing or preparation
Inherent vice
Delay
Insolvency or financial default
Use of weapons or devices employing atomic or nuclear fission
Unseaworthiness of the vessel/unsuitability of the container
Civil war, revolution
Capture, seizure, arrest, restraint or detainment
Derelict mines torpedoes bombs or other derelict weapons of war
Strike, lockouts
Terrorism
Any person acting from a political, ideological or religious motive

Chilled/frozen cargo



In order to enable that products like fresh fruit or chilled meat are shipped and arrive at destination in a good quality two methods are used: temperature control and controlled atmosphere, or a combination of both.

Successful transportation is dependant on clear carriage instructions and on maintaining the agreed conditions during the voyage.

The responsibility for specifying the carriage instructions is that of the shipper, the owner of the goods who knows about the nature of the goods, their prior history and their special requirements. But the maintenance of the same by the carrier is just as important.

Exclusion of carriers

Art. 3 § 1 HVR: The carrier shall be bound before and at the beginning of the voyage to exercise due diligence:

Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation

Hyundai Merchant Marine B/L clause 12E: the Ocean Carrier does not guarantee the maintenance of the intended temperature inside the container

Maersk Line B/L clause 12.4: The carrier shall not be liable for any loss or damage to the Goods arising from ... breakdown, ..., stoppage of the refrigerating, ventilating or any other specialized machinery, ...

MSC B/L clause 12.1: ... the carrier shall exercise due diligence to maintain such supply air temperature, plus or minus 2 degrees Celsius while the goods are in its possession.

CSAV B/L clause 12: The carrier will exercise reasonable care to maintain the ambient temperature in the refrigerated chamber or container plus or minus 2°C [of the temperature mentioned on the face hereof]

In many cases the insurance covers the cargo value plus 10 – 20 %. Carriers are only liable for the value of the goods.

Additional claims related costs as sorting cost and surveyors costs are another item where the cover under the insurance policy and the carriers liability may differ considerably.

Livestock



Special clauses have been developed for transport of livestock and special wordings may be agreed in the insurance policies.

No 1

This policy covers risk of death and/or mortality from any cause arising (except resulting from being in a parturient condition), including destruction in the interest of humanity when suffering from fractured limbs; risk of jettison and washing overboard. Theft, General Average, and Special Charges (including maintenance through vessel putting into a port of refuge or distress).

The stock to be covered for twenty-four hours after arrival at ultimate destination as stated in the policy or until previous arrival in quarantine.

Animals to be in a good state of health at commencement of risk. With liberty to be shipped on deck but exercised only under control. Risks of injury from any cause whatever, inoculation and its after effects, prohibition of import or export, failure to pass tests, or slaughter by authorities through infectious diseases are absolutely excluded.

Claims subject to confirmation by a responsible Official, giving particulars and apparent cause of death.

This Clause is subject to the Terms, limitations and Conditions of the Policy to which it is attached.

No.2

The stock to be covered from the time of arrival at Wharf and/or Quay at port of embarkation until arrival in Sheds and/or trans on quayside.

No 3

Risk to commence from the time and at the place of purchase and/or elsewhere until finally shipped, limited to 10 days prior to shipment or held covered, including all loading, transit and shipping and discharging risks, whilst in quarantine, limited to 30 days and continuing without interruption until safely delivered to consignees at final destination as stated in the policy (includes risks of mortality for 30 days after arrival at destination).

Exclusions of carriers

If insurance companies offer a cover for these kinds of transports they face a rather limited liability of carriers.

Art. 1 c HVR: 'Goods' includes goods, wares, merchandise and articles of every kind whatsoever except live animals

Maersk Line B/L clause 18.3: Livestock ... are carried without responsibility on the part of the carrier for loss or damage of whatsoever nature or delay arising during the carriage whether caused by unseaworthiness or negligence or any other cause whatsoever ...

ANL Singapore B/L clause 13 (4): Any live animal received by the Carrier hereunder shall remain at all times at the sole risk of the Merchants, ..., and the Carrier shall not under any circumstances be liable in any capacity for any non-delivery, mis-delivery, loss, delay or damage of whatsoever nature arising howsoever to or in connection with such live animals.

There are a few carriers who specialized on the transport of livestock but they do not publish their general terms and conditions in the world wide web.

Livestock Shipping Company, Marshall Islands

Norland Shipping & Trading Corp., NY

Bulk



Although the standard A clauses cover is very wide, certain trades may require additional wording to suit the particular circumstances or the nature of the cargo. Any such additional wording needs to be carefully phrased if it is to achieve the desired result.

Coven SPA vs Hong Kong Chinese Insurance Co

In this case the Court of Appeal dealt with a cargo of beans insured from China to Italy under ICC A clauses which included the wording "shortage in weight but subject to an excess of 1 % in the whole shipment."

It was agreed that there was no physical loss on the voyage but there was nonetheless a short delivery of some 14% for one parcel of the cargo. It was accepted that the difference was due to a warehouse measurement error and that the loss was not recoverable under the standard A clauses wording.

Cargo interests however argued that the shortage in excess of 1 % was recoverable as a "shortage in weight" mentioned in the special wording.

The Court of Appeal rejected this argument. It considered that the relevant insuring words meant that there must be a loss of or damage to the goods. It failed to see that the parties could have intended to insure goods that never existed. The Court did not rule out the possibility of insuring this kind of "paper losses", giving a willing insurer, but the clearest wording would be needed to give effect to this intention.

Exclusions of carriers

Art. 4 § 1 HVR: *Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:*

Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;

Maersk Line B/L clause 18.3: Goods not being stowed in Containers ... are carried without responsibility on the part of the carrier for loss or damage of whatsoever nature ... whether caused by unseaworthiness or negligence or any other cause whatsoever and neither the Hague Rules nor US Cogsa shall apply

MOL B/L clause 5 (2) (a): The carrier shall be relieved of liability for any loss or damage if such loss or damage was caused by (xiii) any cause or event which the carrier could not avoid and the consequences whereof he could not prevent by the exercise by of reasonable diligence.

QUESTIONS

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THANK YOU