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Content:

The main topic of this ULR is the responsibility of a carrier on road with a particular view on the subtleties in national laws. The short article about the review of the incoterms has been included for actuality reasons.

The responsibility of a carrier on road according to Norwegian law. And a little also on the other Nordic countries

The CMR Convention.

The CMR Convention ("Convention relative au contrat de transport international de marchandises par route », Génève 1956) is ratified by all the Nordic countries (except Iceland), as it is also by almost all other European states.

There are, however, differences in the way the four Nordic countries have implemented the CMR. In Norway it is translated to the usual Norwegian legal language in an act of 20.12.1974 № 68. The rules apply on all road transports, international as well as domestic, but with some modifications as for the domestic.

In Finland the legal framework is the same with one single act covering as well international as domestic transports.

In Denmark the CMR is translated and governs international transports. As for the domestic transports there is an act, but its provisions can be modified by contract. In practice will be applied the General Conditions of either the carriers or the forwarding agents.

Sweden has enacted the CMR by a statute which refers to it, making it directly applicable in Sweden. For domestic transports within Sweden governs a particular statute from 1974.

In the following I will deal with the Norwegian legislation, - if not otherwise stated.

The carrier's responsibility.

The carrier holds full responsibility for loss, damage or delayed delivery. To exempt himself from responsibility the carrier has the burden of proof that the cause of the damage was either negligence from the shipper, lack of instructions from the same, the risky conditions of the goods or a force majeure situation.

The responsibility and the block exemptions are similar to article 17 in the CMR. Much has been written about these

subjects, and much can be written, but not by me here and now… So I pass directly to

The compensation.

The basic rule is compensation for complete loss to be paid according to the general value of the lost goods. If damage, the compensation will be relative to the degree of damage.

As generally in transport law the carrier has the right of limitation of his responsibility. The CMR prescribes it in article 23 to 25 gold francs per kilo of the goods. This unity became problematic with the collapse of the gold based currency system around 1970. So, without modifying the CMR it was recommended to the states to change to so called special drawing rights in the International Monetary Fund, the SDR.

The Norwegian legislator fixed the limit to 8.33 SDR for international transports and 17 SDR for domestic ones. But there is no differentiation as for the weight of the goods, as Léonard reports from France.

The actual value of the SDR is to be fixed on the day payment takes place. Actually one SDR is about 1,1 €. The 8.33 and 17 SDR make respectively
9 € and18,7€.

This makes it an interesting question to determine whether a transport is international or domestic. It will mostly depend on how the waybill is filled in. If a transport goes from Hamburg to Hamar, and damage or loss happen on the way between Oslo and Hamar, it will be considered international if the waybill covers the whole distance. But if there are two waybills, one from Hamburg to Oslo and another from Oslo to Hamar, the latter part is a domestic transport and consequently subject to a higher limitation limit.

As for late delivery it lies on the receiver of the goods to prove his loss. The carrier's responsibility is anyhow limited to the amount of the freight.

Exemptions from limitation.

The carrier, and in practice mostly his insurer, cannot invoke the limitation when the carrier, or one of his helpers, have acted willfully or with gross negligence.

This is a delicate provision that has given reason to a number of lawsuits. The Norwegian courts have been rather willing to accept gross negligence. The leading case is the socalled "Nordland"-case (Norsk Retstidende 1995 p. 486), which I argued myself for the carrier, in the three court instances. Here a machine should be transported from Hamburg to Harstad in Norway. It arrived in pieces. The weight of the machine was 7 tons. The spring suspension of the vehicle should need a heavier load to smoothen the inevitable shaking on the road. Now the shaking caused the screws to loose, and the result was a total loss.

The Supreme Court held the carrier responsible for the full amount of the loss, since it was gross negligence of the driver not to have taken this element in consideration.

My client therefore lost the case, and I still feel that our highly esteemed Supreme Court then put the limit of gross negligence too large.

A number of cases come from robbery of trucks in Italy. In one case (Rt. 2006 p. 321) it was held to be gross negligence of a driver to park his truck on a not supervised parking place where he and his truck were robbed. In another case (Rt. 1998 p. 1815) another robbery in Italy was considered "force majeure" and exempted the carrier completely of responsibility… So, the cases must be considered individually..

In the 2006 case it was mentioned in the report that there are 8.000 to 10.000 truck robberies in Italy every year. (Can you explain or defend that Gaetano?).

In the other Nordic countries it seems that the courts have been more reluctant to establish gross negligence. So, the Supreme Court of Sweden held in 1986 that it was not gross negligence of a driver to go into a road underpass which was clearly marked with free height of 3, 6 meters, knowing that his cargo was 4,15 meters.

Notice of default and prescription.

A receiver of the goods has to give notice, not within 3 days as Léonard reports from France, but in the more softly "reasonable delay". This rule applies only for domestic transport. For the international the

CMR applies. Here I just refer to its article 30 and its 7 days provision.

Any claim is prescribed if legal actions have not been taken by one year. This is a rule that often precludes justified claims. The receiver gives his notice, often to the agent of the carrier. Then follows an extensive and voluminous correspondence between the agent, the carrier, his insurer, the forwarder, his insurer…

And suddenly: One year passed. Prescription!

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La responsabilité du transporteur (carrier's liability according to french regulation)

The liability of a carrier according to French regulation. Three points are being shortly presented: the liability of the carrier is being presumed (L 133-1) whenever any damage is observed at the moment of delivery. Before any judicial action against the carrier, the consignee must have complied with the obligation of a specific protest within 3 days after the delivery of the goods (L 133-3). Although the liability is presumed, remedies are limited to some extent unless an intentional fault (L 133-8) can be demonstrated against the carrier.

La responsabilité du transporteur de nature contractuelle est posée par l'article L 133-1 du code commerce qui dispose que :
« Le voiturier est garant de la perte des objets à transporter, hors les cas de force majeure.
Il est garant des avaries autres que celles qui proviennent du vice propre de la chose ou de la force majeure.
Toute clause contraire, insérée dans toute lettre de voiture, sauf tarif ou autre pièce quelconque est nulle ».
De cette règle d'ordre public découle le mécanisme suivant :

- Une présomption de responsabilité pèse sur le transporteur : le seul fait de l'existence d'un dommage à la livraison, engage la responsabilité du transporteur.
- Pour être libéré d'une telle présomption, le transporteur doit démontrer au moyen de preuves formelles que le dommage a son origine dans l'une des trois causes que reconnaît le droit français (un vice propre de la chose, la force majeure ou la faute de l'expéditeur).
- En cas d'un doute, la responsabilité du transporteur est engagée même si l'origine du dommage n'a pas été déterminée.

Ainsi de la présomption de responsabilité, découle que l'usager n'a qu'à établir l'existence du dommage à la livraison et le préjudice qu'il supporte.
Dans ce contexte, les causes d'exonération de responsabilité sont difficiles à rapporter. En ce qui concerne la force majeure, - qui suppose les critères cumulés d'extériorité, d'imprévisibilité et d'irrésistibilité – elle ne bénéficie plus aujourd'hui d'une définition légale. La notion de force majeure est ainsi laissée à l'appréciation des juges.
Ainsi ne relève pas de la force majeure le vol opéré sans violence d'un véhicule laissé en stationnement sur la voie publique. Un tel fait peut même être considéré comme une faute lourde.
En ce qui concerne une faute du donneur d'ordres (souvent l'expéditeur) : elle libère aussi le transporteur de sa responsabilité sans présenter le caractère d'une force majeure. Il peut s'agir de cas tels que :

- Un véhicule inadapté (simplement baché et contenant des marchandises de valeur ou des produits sensibles à la chaleur) ;
- Une insuffisance d'emballage ou d'arrimage (il est normal que le conducteur soit amené à freiner brusquement) ;
- Une insuffisante information du transporteur sur une particularité non apparente de la marchandise ;
- Une fausse déclaration (poids, valeur, nature, etc).

La mise en cause de la responsabilité du

transporteur en droit français :

Hormis le régime de la prescription (art. L133-6 Code de Commerce) qui prévoit un délai d'un an (comme en CMR) pour l'exercice de l'action principale (seulement un mois pour l'exercice de l'action en garantie), il convient de ne pas manquer à l'obligation préalable fixée par l'article L133-3 d'une protestation motivée par le destinataire dans les trois jours de la livraison au risque d'une forclusion.
L'observation de la formalité de l'article L133-3 du Code de Commerce conditionne la recevabilité de l'action contre le voiturier pour avarie ou perte partielle. L'article L 133-3 prévoit que :
« la réception des objets transportés éteint toute action contre le voiturier pour avarie ou perte partielle si dans les trois jours, non compris les jours fériés qui suivent celui de cette réception, le destinataire n'a pas notifié au voiturier, par acte extrajudiciaire ou par lettre recommandée, sa protestation motivée ».
La conséquence de l'inobservation de cette formalité entraine le fait que toute action contre le transporteur pour avarie ou perte partielle se trouve éteinte.
Cette règle est vraiment spécifique au transport interne par route et ne vaut pas pour les transports internationaux par route auxquels s'appliquent les règles de la CMR.

La forclusion (fin de non recevoir) édictée par l'article L133-3 du Code de Commerce ne peut être invoquée directement et à titre personnel que par le voiturier. Cette règle ne s'applique pas entre voituriers successifs participant à la mise en œuvre d'un même contrat de transport. La fin de non–recevoir peut par ailleurs profiter indirectement au commissionaire de transport dans le cas où celui-ci se trouve mis en cause en tant que garant du transporteur.

Si en principe la protestation motivée doit être exercée par le destinataire, elle peut l'être également par son manataire (son assureur) et même par l'expéditeur ou le commissionaire. Le délai de la protestation est respecté dès lors que la lettre recommandée est mise à la poste dans le délai légal des trois jours. En outre, une demande d'expertise initiée indifféremment par le transporteur, l'expéditeur ou le destinataire dispense le destinataire d'exercer l'obligation prévue par l'article L133-3 Code de Commerce.

De l'indemnisation des dommages résultant d'une perte, avarie.
Nous n 'évoquerons dans le cadre de cet article que le régime d'indemnisation prévu dans le cadre du contrat type « général ».
En effet, un décret du 6 avril 1999 a fixé les caractéristiques propres à sept contrats types. Ils concernent outre le transport sous contrat type « général », les transports en citernes, le transport de marchandises périssables sous température dirigée, le transport d'animaux vivants, le transport d'objets indivisibles en transport exceptionnel, les transports de véhicules roulants, les transports de fonds et valeurs.
Bien qu'il soit interdit à peine de nullité de déroger aux dispositions de l'article L133-1 Code de Commerce relatives au principe de responsabilité du transporteur, il est néanmoins possible au transporteur de s'exonérer et d'opposer de plein droit une limitation à sa responsabilité.
Ainsi dans le cadre du contrat type est opérée une distinction fondée sur le poids de l'envoi soit inférieur à 3 tonnes soit supérieur à 3 tonnes.
Dans ce contexte, le contrat type « général » règle l'indemnisation d'un préjudice en cas de perte ou d'avarie selon les modalités suivantes :
Pour les envois inférieurs à 3 tonnes : cette indemnité ne peut dépasser 23 € par kg de poids brut de marchandises manquantes ou avariées et 750 € par colis perdu (une palette entière cerclée ou filmée pourra être considérée comme un colis).
Pour les envois égaux ou supérieurs à 3 tonnes, l'indemnisation ne peut dépasser 14 € par kg de poids brut de marchandises manquantes ou avariées, sans pouvoir dépasser par envoi perdu ou avarié une somme supérieure au produit du poids brut de l'envoi multiplié par 2.300 €
Ex. : une machine de 4 tonnes faisant partie

d'un envoi de 20 tonnes. Le calcul suivant doit être effectué :
La limitation par Kg donne 14 € X 4000 Kg = 56.000 € comparée à la limitation par envoi qui donne 2.300 € X 20 tonnes soit 46.000 €.

Dans cet exemple, c'est donc un montant pouvant s'élever jusqu'à 46.000 € qui doit être considéré (non pas 2.300 € X 4 = 9.200 €).
Bien évidemment l'existence d'une faute inexcusable (article L133-8 Code de commerce : dol ou faute assimilée du transporteur) fait barrage à toutes les dispositions légales ou contractuelles qui restreignent ou exonèrent la responsabilité du transporteur. Dans cette hypothèse, la réparation intégrale du préjudice peut être réclamée.
La faute lourde qui a alimenté un énorme contentieux notamment au travers du vol des marchandises n'a maintenant qu'une valeur très provisoire (pour les instances en cours) et ne peut plus être invoquée depuis la nouvelle rédaction de l'article L133-8 du Code de Commerce issue de la loi du 8 décembre 2009, JO 9 décembre 2009, art.34).

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Liability of the transporter and article 23 section 4 CMR in The Netherlands

Article 23 section 1:
" When , under theprovisions of this Convention, a carrier is liable for compensation iin respect of total or partial loss of goods. Such compensation shall becalculated by reference of the value of the goods at the place and time at which they were accepted for carriage.

Article 23 section 4:
"In addition , the carriage charges, custum duties and other charges incurred in repect of the carriage of goods shall be refunded in full in case of total loss and in proportion to the loss sustainedin case of partial loss, but no further damage shall be payable.

Article 29 section 1:
The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burdon of proof if the damage was caused by his wilful misconduct or by such default on his par as, in accordance with the law of the court or tibinal seized of the case, is considered as equivalent to wilful misconduct".

Introduction
Recently the Dutch High Court answered the question if taxes, due as a consequence of theft of cargo, must be returned by the transporter, in accordance with article 23 section 4 CMR.

The High Court judged the question as a consequence of the following facts.
A transporter transported cigarettes with destination Milan, Italy. The drivers were instructed, separately from the general safety rules instructions, the very specific instruction, never to leave the car unattended.

The carrier couldn't reach the destination directly, and left the two trucks at a parking place in Italy, unattended.
Both drivers parked the cars in a way that, according to their judgments, the cars were impossible to move without their competence.

After their return, the cars and cargo were stolen. The cars only, were recovered again later.

In the court case the owner of the cargo, appealed on basis of article 29 section 1 CMR, to force a breakthrough of the limited liability of the transporter. The High Court gave her opinion on article 23 section 4.
.
She judged that this section should be read so that, if someone is behaving as described in this setting, he/she knows the connected danger and has the conscious that the chances that the danger will be realized, is considerably bigger, than the chance this will not take place.

Obligation and repayment of taxes
These additional taxes like excises, fines and VAT, come into being of the moment of theft. The cargo is considered to have been imported in the country where it had been stolen.

The relevant reclaim documents cannot be cleared with the consequence that the party who is carrying the name on the reclaiming documents, must pay the taxes.

If the taxes will be considered to be compensated, is of a great interest, because the level of taxes can go beyond the value of the stolen cargo.

Which costs of repayment by carrier, are considered defined in article 23 section 4 ?

The liability for these costs, as indicated in this article is not limited to any amount.

In the repaying of taxes, the essence is repaying of taxes, due in connection of the carriage.
Taxes due to theft of cargo are not included under this understanding.

Would it be possible to place these taxes in another way under the definition of article 23 section 4 CMR?

Interpretation of article 23 section 4 CMR
The interpretation of this article is free for al treaty members, because there are no "traveaux preparatiores", of the Treaty, and no Central Juridical Authority has been indicated, to give binding judgments regarding the explanation of CMR-definitions.
The consequence of this is, that article 23 section 4 CMR is explained in different ways in the Treaty states.

Judgment of the High Court
The High Court judged that article 23 section 4 CMR is not clear and needs an explanation.
At her explanation the High Court considers the first matter of importance, the aim and intension of article 23 section 4 and of the Treaty itself.

The High Court is considering in a restrictive manner of interpretation, which means that the taxes are not included.

The only costs considered to be repaid are those costs, which would have been made, when the carriage had been without incidents.

Taxes due to theft of cargo are not included, because they are related to the goods themselves and would not have existed in a normal way of carriage
.
The High Court in Germany has the same opinion, like the Austrian High Court.

Aim and Intention of CMR according to the High Court
The High Court is considering in the first place that with the aim and intention of article 23 section 4 CMR, it is to be considered to suppose that all costs have to be repaid by the owner of the cargo, which are a consequence of (normal) carriage.

The costs as requested, are not a part of normal costs. These costs are a consequence of the incompetent manner of carriage by the carrier.

In the second place, the High Court is referring to the CIM-treaty, which regulates international transportation by rail, with a similar regulation.

In the third place the High Court refers to the practical advantages of the restrictive interpretation.
The rules for the carrier, under the regulation of the CMR must be possible to enforce. According to the liability-system of the CMR, it wouldn't be in fairness, to blame the carrier for all costs, not to be for foreseen.

The High Court judgment of the 24th of April 2009 regarding Acts of God – article 17 section 2 CMR
The High Court refers to the judgment of the 17th of April 1998 (NJ 1998, 602) and confirms once again that a carrier can only successfully appeal to article 17 section 2 CMR when he is able to proof that he, in all fairness and within

the circumstances, acted as a careful carrier who took measures to prevent the loss of cargo.

In this case:

1- The transporter should have known that the cargo consisted of electronic devices and should have been aware that transportation was through Poland
2- The transport was, in spite of this, carried out by only one driver
3- The driver had no experience driving to Warsaw
4- The transportation took place with no other traffic on the road
5- The transporter did not have the driver drive in convoy
6- It has not been proven that the transporter took any specific security measures of any kind

which results in the fact that the carrier cannot appeal successfully to an act of God.

For a breakthrough of liability, limitation of the transporter ex article 29 CMR, is only possible when the carrier acted with wilful misconduct and by such default, that should be considered as reckless and with the knowledge that likely the damage would result.

Such behavior will be present when the one who acted as described, knows the danger as a consequence of that behavior and has been well aware of the fact that the danger would realise was considerably bigger, than the chance that this wouldn't be realised, but didn't feel restrained to act.

In this case the High Court judged on the 29th of May 2009 that as basis of facts and circumstances there was a wilful misconduct considered by the carrier.

Conclusion

The CMR treaty has been drafted 50 years ago to uniform the international transport of cargo over the roads. Uniformity of explanation is needed! So far, a uniform explanation of the CMR regulations has been an illusion. The consequence is law-uncertainty in the several states of the CMR. Regarding article 23 section 4 and section it would be logical to have agreed by all participating states in th treaty, which costs are, or not be eligible for compensation.

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Loss of transported goods following robbery during transportation. Italian case law

The incident.

1. An Italian shipper was hired to organise the international transport of a quantity of goods from Florence (Italy) to San Francisco (USA). The shipper entrusted the goods to an important German air carrier which in turn hired a haulage company to transport the goods by land from Florence (I) to Frankfurt airport (D). The remaining leg of the journey would have been made by air carrier to the final destination.
2. During transport in Italy the vehicle was parked in a motorway service station and was attacked at night by two criminals. Having broken the window on the cab-door the criminals immobilised, blindfolded and gagged the driver who was sleeping in the driver's cab, locked from the inside by him, and made it impossible for the driver to defend himself or react in any way. The criminals then drove the vehicle to a place (which remains unknown) where they quickly emptied the semi-trailer of its load. The criminals were extremely well organised and assisted by accomplices.
3. Subsequently, and having removed all documentation relating to the goods, set the tachograph to zero and rendered all communication instruments unusable (mobile telephone radio), the criminals abandoned the truck and the driver and fled in a car.
On the same day the driver reported the incident to the Police, reconstructing in detail all events of his kidnap and robbery.

The first instance proceedings.

4. The sender's insurance company indemnified its policy-holder and in place of such policy-holder it brought an action before

the Court of Milan against the shipper and air carrier for the total loss of the goods, seeking recovery of the sum paid to its policy-holder.
5. The air carrier in turn brought an action against the haulage company, asking to be held harmless and guaranteed in the event that the Court ordered it to compensate all or part of the damages requested by claimant.
All of the respondents disputed the grounds of the claim brought by claimant and in particular sustained that no liability could be allocated to the carrier or to the shipper, since the loss of goods was the result of an unforeseeable Act of God (robbery, kidnap of the driver and of the vehicle) and the driver could have done nothing to avoid the consequences of this attack.
6. The Court rejected the claims brought by claimant, acquitted the respondents (shipper, haulage company and air carrier) based on the following considerations:

a- on evaluating the facts there was no fault and/or negligence on the part of the driver of the truck since he was the victim of a robbery/kidnap whilst inside the locked vehicle, in a place (motorway service station car-park) frequented by numerous other truckers and therefore certainly not isolated or dangerous per se, as shown by the report made by the driver to the Police.

b- events described in the Police report were clear. None of the parties disputed either the events or the probative value of statements given by the driver to the Police Authorities.

c- the driver could not have done anything to avoid the robbery by criminals who acted extremely quickly and were very well organised. According to the Court this was an unpredictable and unavoidable event. It was therefore an Act of God which exempts the haulage company from liability for the loss of the goods.

d- The Court ordered the claimant to reimburse the respondents all procedural costs.

<u>The appeal proceedings.</u>
The insurance company appealed against the decision before the Court of Appeal of Milan, which completely overturned the first instance Court's decision. In fact the Court of Appeal held that the haulage company was liable for the loss of the goods even in the event of robbery of the driver, in compliance with recent Italian Supreme Court case law.
The Court of Appeal argued as follows:
a- the report made to the Police Authorities did not alone constitute proof that events actually occurred as described by the complainant;
b- robbery is not, per se, a cause for exemption from liability for the haulage company, since robbery is a typical risk for haulage companies and therefore they should pay particular attention to and apply diligence in their methods for the transport of goods;
c- a haulage company that claims to have been a victim of robbery is under a burden to demonstrate that the event was unforeseeable and unavoidable;
d- in consideration of the abovementioned case law principles, the actual way in which the robbery occurred as described in the report led the Court of Appeal to hold that the event was not so unforeseeable and unavoidable and that there was negligence on the part of the truck driver, since despite it being well-known that robberies frequently occur in the parking areas of motorway service stations, and particularly at night-time, no proof was provided regarding the adoption of measures suitable for eliminating or attenuating the risk of robbery. Simply locking the driver's cab whilst the driver was inside sleeping was unsuitable since this is an insignificant precaution which is easily breached.

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Author's note: significantly the same event was evaluated in completely opposing manners by two different Courts.
The first instance court held that although robbery is not in itself a cause for exemption from liability for the haulage company, the circumstances in which the robbery occurred were unavoidable and unforeseeable.
On the other hand the Court of Appeal sanctioned the principle whereby in view of the frequency at which vehicles travelling on motorways are attacked and robbed, the haulage company was under an obligation primarily to best prevent the robbery using every possible means, and also to demonstrate that the event occurred in

circumstances that were entirely unforeseeable and unavoidable and that any means of prevention would have been overcome by the robbers.
In this regard it is useful to refer to certain significant rulings by the Italian Supreme Court:
"A criminal complaint is not sufficient for the purposes of holding that the events reported are assisted by a presumption of credibility pursuant to articles 2727 and 2729 of the Italian Civil Code, even if a pre-trial decision has been issued holding that no proceedings should be taken since the authors of the offence are unknown; consequently in view of the particular diligence required of a haulage company for the custody of items entrusted to it, a simple statement to the police is insufficient for the purposes of exempting the haulage company - which by reporting the incident to the police is assumed to be the victim of a robbery - from responsibility for the loss of transported goods" (Cass. Civ., sez. III, 10-02-2003, n. 1935);
"Under a transport agreement in order for there to be an Act of God as provided by article 1693 Italian Civil Code, it is not sufficient for an event such as a robbery to appear to be merely improbable, rather it must also be unforeseeable, pursuant to a prudent evaluation to be conducted, in the case of a professional haulage company, employing diligence qualified by article 1176 (2) Italian Civil Code, and absolutely unavoidable, in consideration of all of the circumstances of the actual case and all possible measures suitable for avoiding or attenuating the risk of loss of the load" (Cass. Civ., sez. III, 28-11-2003, n. 18235);
"Despite being broadly independent in respect of the choice of transport times, procedures and itinerary, a professional haulage company is however obliged to make these choices in a manner which reduces to the minimum the risk of loss of the load, therefore the choice of the haulage company to transport the load during the night and in unprotected areas is not an incontestable choice, rather it can be held to be gravely negligent, since the risk of theft and robbery are typical risks in the road haulage sector, against which sector companies are under a particular obligation to protect themselves" (Cass. Civ., sez. III, 27-03-2009, n. 7533).

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Die Revision der Incoterms 2010

Die Incoterms sind Handelsklauseln, aufgestellt von der International Chamber of Commerce ICC, um Vertragspartnern mit genormten Vertragsbedingungen die Abwicklung von Kaufverträgen zu vereinfachen.

Die Vorgänger dieser Incoterms waren die sog. Tradeterms der Internationalen Handelskammer von 1923, bis die Internationale Handelskammer ICC dann die Incoterms unabhängig von den nationalen Handelsbräuchen erstmalig 1936 aufstellte und dann mehrmals auflegte, zuletzt 2000. Nunmehr erfolgte die Revision der Handelsklauseln 2010, die zum 01.01.2011 in Kraft getreten sind. Während die alten Klauseln DAF, DES, DEQ und DDU gestrichen wurden, wurden stattdessen – nunmehr den multimodalen Transport berücksichtigend – die Klauseln

DAP delivered at place
DAT delivered at terminal

eingefügt. Bei der Klausel DAP erfolgen die Lieferung und damit der Gefahrübergang der Ware grundsätzlich zu dem Zeitpunkt, zu dem der Verkäufer dem Käufer die Ware entladebereit am benannten Bestimmungsort zur Verfügung stellt. Der Verkäufer trägt während des Transports der Ware zu diesem benannten Ort alle Gefahren, während bei der Klausel DAT der Verkäufer die Ware zum benannten Terminal im Bestimmungsort, dies kann ein Hafen sein, zu liefern und zu entladen hat.

Die neue Struktur der Incoterms unterscheidet jetzt zwischen den Klauseln für den sog. Multimodalverkehr (rules for any mode or modes of transport)

EXW ex works
FCA free carrier
CPT carriage paid to
CIP carriage and insurance paid to
DAT delivered at terminal

DAP delivered at place
DDP delivered and duty paid

sowie der See- und Binnenschifffahrt (rules for sea and inland water transport)

FAS free alongside ship
FOB free on board
CFR cost and freight
CIF cost insurance and freight

Die See- und Binnenschifffahrtsklauseln FOB, CFR und CIF haben sich insoweit geändert, dass sich der Zeitpunkt der Lieferung, d.h. des Gefahrübergangs, geändert hat. Während in den früheren Formulierungen das Überschreiten der Schiffsreling als Zeitpunkt des Gefahrübergangs festgelegt wurde, ist es jetzt nunmehr grundsätzlich erst der Zeitpunkt, wenn die Ware verladen an Bord des Schiffes ankommt.

Insgesamt definieren die Incoterms die Pflichten der Käufer und Verkäufer bei der Lieferung von Waren unter Kaufverträgen. Sie regeln die Aufteilung des Kosten- und Gefahrübergangs zwischen den Parteien verbindlich, sofern sich diese im Vertrag ausdrücklich auf diese bezogen haben, wobei bei der Angabe der Incoterms zur Klarstellung immer die entsprechende Jahreszahl anzugeben ist, heute also die Incoterms (2010).

The Incoterms of the International Chamber of Commerce ICC have been adjusted in view of today's importance of the multimodal transport. DAF, DES, DEQ and DDU have been replaced by DAP delivered at place and DAT delivered at terminal. FOB, CFR and CIF have been changed in the question of passing of risk.

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