

## The coronavirus and Dutch freight forwarders

The coronavirus (COVID'19) does not need any further introduction, as it has set the world in a status of great care. The impact of COVID'19 on international trade and supply chain is big as many countries and companies take measures to prevent COVID'19 to be spread. For example, air carriers do no longer fly to China and also many sea carriers have restricted the amount of vessels to and from China. Therefore, contractual obligations may no longer be fulfilled. This causes lots of damages in the contractual chain. This article discusses the risks of damage of Dutch freight forwarders caused by COVID'19, for example because carriers refuse to ship de goods to its destination.

### Carriers

Can carriers just refuse to ship the goods to its destination? If we take a look into the terms and conditions of bills of lading / air waybills we see that carriers have covered themselves against possible risks which prevent performing the contract. Sea carriers usually have contracted the right to (summarised) suspend the carriage, abandon the goods or take an alternative route in case of any hindrance, risk, danger, delay, difficulty or disadvantage of any kind. Air carriers usually have contracted the right to cancel, terminate, divert, postpone, delay or advance any flight if there are circumstances beyond the air carriers control or if the air carrier considers that any other circumstances so require.

Since the clauses have been formulated so broadly, refusals to ship the goods because of COVID'19 will be covered under these clauses. Of course there are always legal arguments to claim that, given certain circumstances, a call upon these clauses is (for example) in violation of the principles of reasonableness and fairness or that the situation does not fall under the clause's scope. Though, it does not seem likely that these arguments succeed. However, one may always contact a lawyer (for example TLN advocaten) to ask for any advice on the feasibility of a claim against the carrier. Do not forget to send the contracts concerned including the applicable terms and conditions to your lawyer.

### Dutch Forwarding Conditions (DFC)

The DFC are usually part of the contract between the freight forwarder and its customer. Art. 11 sub 1 DFC states that all services are for the expense and risk of the client. This is only different if the client can prove that the damage has been caused by fault or negligence on the part of the freight forwarder or the latter's employees. Since COVID'19 is not caused by fault or negligence on part of the freight forwarder or its employees, the freight forwarder is not liable for any damage the client suffers as a result of COVID'19. Though, the freight forwarder is under a duty of care and should therefore prevent the client's losses by doing everything reasonably possible.

### Clients risk

This means that all damage caused by COVID'19 is for the risk of the client. It will depend on the commercial contract between the client and its counterparty whether or not the risk can be shifted to the counterparty. It is recommended that the client checks its insurance to see whether or not the damage is covered under the insurance. Though, unfortunately most insurance companies will only cover physical damage and not financial damage. If financial damage is covered, epidemics are usually excluded because it can cause a danger to the solvability of the insurance company. National regulators therefore usually demand the exclusion of epidemics of the insurance cover.



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**Advice to freight forwarders**

Freight forwarders are advised to inform their clients as soon as possible of all problems concerning the performance of the contract. Freight forwarders should minimise the client's damage by doing everything reasonably possible. It is advised to keep written records of all problems, communications and actions in order to be able to defend any claim concerning breach of the duty of care.