

RESTRICTED

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DISCRIMINATION IN TRANSPORT INSURANCE

Report transmitted by the International Chamber of Commerce

In L/383 there was reproduced a resolution on this subject adopted by the International Chamber of Commerce in May 1955. Further, the ICC has transmitted the following report prepared by its General Transport Commission and approved by its Council on 26 October 1955.

Contractual Freedom of the Parties with regard to Transport Insurance

INTRODUCTION

In 1949, the International Chamber of Commerce (ICC), which has always taken a stand against discriminatory measures of a nature to impede the free expansion of international trade, pointed out the danger involved in the measures introduced by certain governments, aimed at monopolizing transport insurance in connection with their foreign trade.

As, in the ICC's opinion, such legislation amounts to extremely dangerous interference in international trade, the ICC undertook to collect concrete examples of all the measures which it considered to involve this danger, so as to direct the United Nations' attention to it more effectively.

At the ICC's request, the 5th Session of the Transport and Communications Commission of the United Nations, held in March 1951, decided to place this problem on its agenda and to discuss it thoroughly.

Despite the interest aroused in these discussions and despite the extensive circulation of the report submitted by the ICC at that time, the latter deplored the fact, in 1954, that this tendency had not disappeared.

From discussion of the new cases recently reported to it, and from the comments of GATT - to which the United Nations had referred the question - following upon an inquiry launched among governments, it appears that the discriminatory nature of the cases mentioned was often questioned. The title of "Discrimination in Transport Insurance" was therefore perhaps ill-chosen and it would be better to replace it by "Contractual Freedom of the Parties with regard to Transport Insurance".

It was concluded that it was not enough merely to stigmatize particular cases. It was above all necessary to show that such measures not only created difficulties for foreign insurance companies that were competitors of the protected national companies, but that they also harmed international trade as a whole, including, in the last resort, the trade of the country which believed it was thereby protecting itself.

The countries consulted by the secretariat of GATT had already easily shown the disadvantages suffered by foreign insurance companies, but they had made little effort to assess the effects of these practices on exportation or importation.

The report drawn up as a result of this inquiry consequently deplored the lack of precise information on the amount of the resultant increases in the cost of insurance or on the precise effects of this type of intervention.

OBJECT OF THE INQUIRY

So as to go into this problem more carefully, the ICC has requested its National Committees to supply striking examples of the way in which the measures in question affect trade, and to show, if possible with figures, what their repercussions are.

However, as the inquiry of GATT had already shown, this is not an easy task. At least, this is what appears from most of the replies received, even after a thorough inquiry.

It is, however, considered that the absence of quantitative evidence should not weaken the ICC's case.

Harm is undoubtedly caused to trade, but it is not under the present circumstances readily measurable.

HARM CAUSED TO INTERNATIONAL TRADE

It therefore seemed more realistic to concentrate on further examination of the general effect of discrimination on conditions of trade.

It would thus be possible to reach agreement as to certain basic facts which themselves call for remedy, without the necessity of statistical proof.

It is unanimously considered that the most serious problem, frequently created by these measures, is the replacement of CIF by C & F trading. Above all, the practical consequences of this fact have therefore to be taken into consideration.

Under C & F terms, there is an artificial separation of obligations between seller and buyer. It is anomalous that the insurance should depend only on the goodwill of the buyer, who need suit himself alone when arranging the insurance, to the extent even, if he is willing to take the risk, of leaving the goods uninsured altogether.

From Sweden, it is reported that these measures cause numerous difficulties, since large quantities of Swedish staple goods, especially wood and wood pulp, are shipped from small ports in the north of the country, where, on account of the small quays and ice conditions, the seller must order the shipment himself. The seller may also retain an interest in the goods, even if the shipment is made at the buyer's risks, and it often happens that for deliveries to countries with discriminating legislation he prefers to have his own insurance policy, which involves the additional expense of insurance by both parties.

There is a further complication for the seller: if he wants to sell the goods during the transport, this is impossible if the transport insurance is covered by the original buyer.

In Belgium, the risks to which C & F sales expose the exporter are also stressed:

If the goods perish en route, or are damaged, and the buyer fails to take up the documents, because prices have dropped or the contract has become unfavourable to him, or because his government has not issued the necessary currency to him, the seller is left without recourse against the underwriters, whom he does not even know and for whom he is a third party without any legal bond. He will then be obliged to sue his buyer for non-fulfilment of contract, but then in many countries he will come up against excessive legal expenses or a violently nationalist jurisprudence, which will try every means to reject his suit. In many cases, his recourse will be illusory and in any case will remain in suspense for a long period. If, on the other hand, the seller had been in possession of the policy, he would have been able to apply to the underwriters to make good the loss.

It must be concluded from the foregoing that the widespread adoption of C & F sales in commercial practice is most harmful and should be opposed in the interests of sellers. Admittedly when sellers are paid in advance by means of confirmed credits, the danger does not exist to the same extent, but the system of confirmed credits is destined to disappear. As soon as world competition starts to be felt and the market becomes a buyer's market, confirmed credits are no longer granted by buyers, who are solicited on all sides at increasingly favourable terms.

For Belgian importers, the situation is equally critical when the insurance is imposed on them by the seller's country. For instance, if a vessel is lost on its way between the foreign country and Belgium, the importer will have to recover his loss from the foreign insurer. While the solvency of the latter need not be doubted, the question is: can he fulfil his commitments? Some foreign countries which make it compulsory to contract the insurance in their countries, prohibit the export of currency in the event of loss.

A concrete example is given. The vessel is declared to be under average. The ship-owners call for a deposit in cash, e.g. 50 per cent. Foreign insurance policies generally do not offer the same facilities as the Antwerp policy, by virtue of which the underwriters act in place of the insured in making this deposit. The insured parties in possession of a foreign policy will therefore have to start by paying the deposit before they can collect the goods, and then proceed to recover this deposit abroad with all the hazards this entails both from the point of view of the solvency of the insurance companies abroad and as regards restrictions on currency transfers.

In some cases, it has taken over a year to make such a transfer.

From the United States, it is also reported that exporters have complained that because of measures of this sort they have lost some business to competitive foreign sources of supply; some exporters, seeing that they are deprived of their right of free choice of insurance on their shipments, have even added to their costs of operation in order to secure protection by purchasing insurance on a contingency basis.

International trade is therefore hampered by these measures, which are likely to paralyze certain classes of trade.

While C & F sales may be adopted in certain particular cases, presupposing exceptional confidence between parties to the contract, they cannot be imposed by governmental regulations.

In short, from the considerations which have just been outlined, the repercussions which will be likely to result from any measure obliging a trader to sell C & F on a market where he is not accustomed to do so and where this practice may involve hazards, may be reduced to three types of drawbacks.

(a) Expense of double insurance resulting in a higher cost for the buyer

In the cases of exceptional confidence mentioned above, the seller may be confident that the foreign buyer has provided adequate insurance according to the custom of the trade and the particular risks of the market. But if this confidence is lacking, a prudent seller who is not certain that adequate cover has been arranged is obliged to take out a contingency policy. It is to be expected that the extra cost will be added to the price charged for the goods.

(b) Increased premiums in the absence of competition

The cost of the insurance in the importing country is likely to be higher if competition is not there to keep premium rates down.

It must not be forgotten that an exporter conducting a large volume of world-wide business often has the benefit of advantageous conditions, the risk to the insurer being reduced by the spread of business over countries having varying claims records.

If business is confined to an area with a bad claims record, premiums must be higher.

(c) Paralysis of international trade

- In a sensitive market, buyers may be discouraged by even such small increases in price as may be necessitated by the cost of contingency insurance mentioned under (a).
- The uncertainty attending transactions on a C & F basis may discourage trade with countries imposing this system.
- General uncertainty as to the existence and effect of such regulations in different countries has a repressive influence on international trade.

CONCLUSIONS

In short, therefore, it may be said that a restrictive measure adopted in country A affects not only insurers in other countries, but also

- the buyers of foreign goods in country A and consequently
- the producers and exporters of the said other countries,
- the foreign buyers of the goods in country A and,
- of course, the forwarding agents and banks concerned in these various negotiations.

Consequently, international trade as a whole will suffer.

Lastly, it must not be forgotten that the measures adopted in any one country are always likely to give rise to retaliatory measures elsewhere, leading finally to the paradox that a commercial transaction cannot be carried out between two countries without violating the law of one of them.

SOLUTIONS PROPOSED

While awaiting the abolition of discriminatory measures, one solution might be to insert a provision in bilateral treaties, under which both parties would undertake to leave the choice of the transport insurance to the decision of the seller and buyer.

However, it is pointed out that the number of bilateral trade agreements tends to diminish with the liberalization of trade and that, without directly introducing discriminatory measures, some countries are actively campaigning their exporters for CIF deliveries, while, at the same time, they are recommending the C & F system to their importers.

In conclusion, the ICC urgently requests the CONTRACTING PARTIES to GATT to take appropriate steps to restore contractual freedom of the parties with regard to transport insurance:

- either by a special intergovernmental agreement,
- or by way of recommendation.

