

GENERAL AGREEMENT ON TARIFFS AND TRADE

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FREEDOM OF CONTRACT IN TRANSPORT INSURANCE

Note by the International Chamber of Commerce

The following memorandum on the effects of restrictive marine insurance laws was adopted by the International Chamber of Commerce for submission to the CONTRACTING PARTIES in connexion with their consideration of the above item at the Thirteenth Session¹:

At the Tenth Session of GATT, a draft recommendation for elimination of restrictions in regard to transport insurance was drawn up by the Working Party set up to study the question (L/462).

However, more urgent problems created by international events made it impossible for the CONTRACTING PARTIES to resume their examination of the draft at the Eleventh and Twelfth Sessions.

The ICC supports the position taken up in this draft and, as early as 1956, it stressed that it is in the interest of international trade as a whole that the draft recommendation in question be adopted.

As authorized by its Council in October 1956, it has pursued its work with the object of making clear the harm actually caused to international trade, as already illustrated in the brochure "Freedom of Transport Insurance" so as to submit to the CONTRACTING PARTIES at their Thirteenth Session further considerations likely to convince them of the importance of adopting the draft recommendation drawn up by the Working Party.

In submitting the following table of difficulties specifically affecting trade, the General Transport Commission hopes to facilitate for the CONTRACTING PARTIES the examination of this question.

Effects of Restrictive Marine Insurance Laws

Table adopted by the Commission for submission to GATT

The ICC would draw attention to the different circumstances existing for Life, Fire, Burglary and such like insurance, where all the elements of the risk are within the country where the property is being insured, and transport insurance

¹ The ICC has also submitted a document on restrictive measures in force in certain countries and this is on file at the secretariat.

where the supplier is in one country, the buyer in another with yet a third party, the shipping company, which may not be of the nationality of either the supplying or importing country.

The ICC, therefore, recommend that this clear distinction be recognized and that transport insurance be considered independently from any national insurance considerations.

I. Disadvantages to both Exporter and Importer

Marine Insurance should facilitate and not interfere with Negotiation of International Transactions

Marine Insurance is intended to be a service to world trade. Its contribution consists not only in affording protection, but also of being a small cost and conveniently arranged. That is to say, neither the cost nor the process of obtaining insurance should be a difficult factor in the consummation of an international transaction. The serious impact of restrictive insurance measures is their hampering effect on traders, introducing an added factor and deterrent (both as to detail and cost) to the facility of negotiation.

Currency Problems

Restrictive insurance requirements complicate and embarrass currency matters associated with world trade. Goods may be paid for in one currency whereas losses or claims may have to be reimbursed in another country. If restrictive insurance laws prevail in the latter country, a collateral difficulty frequently proves to be currency or foreign exchange restrictions which impede or prevent reimbursement for losses and claims.

Effect on Commercial Credits

Restrictive measures affecting transport insurance can present difficulties in the matter of commercial credits. Banks may be more cautious and hesitant to extend financing should they be at all uncertain about the insurance arrangements. Even if the Banks are not involved it is quite likely that some sellers will insist on stricter financial terms if restrictive insurance conditions apply in the buyer's country.

Undoubtedly the existence of such measures increases the requirements of payment by confirmed or irrevocable letters of credit or even for payment in advance of shipment.

Restrictive Decrees Breed Restrictive Decrees

The existence of restrictive decrees is a deterrent to achieving expansion of world trade by removing barriers to freer trade. For example, when both countries involved in an international transaction have restrictive decrees, the exporter in the one country and the importer in the other country find themselves caught between "the irresistible force and the immovable object". Some law must be broken or the sale cannot be consummated. Self-protection and retaliation by creating more restrictive decrees is an ever-present danger.

II. Disadvantages to Consumer

Lack of Experience

An importer who has been accustomed to buying c.i.f., allowing the exporter to arrange insurance, must, under restrictive conditions, learn to make his own arrangements. He does so without experience and knowledge of the technicalities and problems of rates and other factors.

Increased Cost of Delivered Goods

Restrictive nationalistic insurance laws eliminate the advantages of international competition and inevitably lead to higher marine insurance rates. Costs to the ultimate consumer are correspondingly increased.

Lack of Expert Advice

Buyer and seller should be free to select the insurance carrier on the basis of which side can give most expert advice on packing, trade routes, trade customs, etc., as well as on terms of coverage most suited to these needs.

III. Disadvantages to Exporter

Danger to Uninsured Exporter

The exporter may learn that his importer did not take up the negotiable papers on the transaction and has rejected the goods as not being in apparently sound condition. An uninsured exporter may be left with the consignment lying abroad at his own risk and expense, in circumstances where he has granted extended credit.

An exporter granting credit will remain in doubt whether he is protected, or whether, if the goods are lost or damaged en route, he will be compensated. There are examples on record where importers in countries having discriminatory laws have received compensation for a loss but because of currency and insurance restrictions have not been able to reimburse the exporter.

Additional Cost for Contingency Insurance

The exporter often feels the need to protect his investment by taking out contingency (i.e. supplementary) insurance, in a company in which he has confidence in those cases where the restrictive insurance measures require that goods be insured in the country of destination. This results in additional expense to the exporter.

IV. Disadvantage to National Economy

Lack of Spread of Risk

Countries with limited volume or great specialization of commodities in foreign trade lack the diversified business to furnish an insurance market with the spreading of risks. The spreading of risk is the fundamental

principle of insurance, i.e. "the losses of the few are distributed from the proceeds of the many". Restrictive, nationalistic insurance markets under the circumstances must reinsure heavily abroad. The result can be an increase in costs, partly to cover added commissions; a multiplying of loss, and settling problems; and an increase of possibility of the insurer being unable to meet his obligations promptly.

Countries which have adopted discriminatory measures in this particular field of commerce have decreed that part of their foreign trade must be insured with local companies; often the portion retained for their own companies is imports, leaving the country's exports to be insured with companies abroad.