

**CMI UNIFORM RULES FOR INCORPORATION
INTO CONTRACTS OF CARRIAGE BY SEA,
NOT COVERED BY A BILL OF LADING OR
SIMILAR DOCUMENT OF TITLE**

Comment

The French Association makes the point that the Uniform Rules should be capable of applying to paperless transactions, i.e. contracts of carriage by sea without any formal document. Accordingly the new title omits any reference to sea waybills. It follows the language suggested by the French Association.

1. Scope of Application

These Rules are intended to apply to contracts of carriage not covered by a bill of lading or similar document of title. They are suitable for incorporation into sea waybills, and other similar documents.

Comment

The first sentence follows the language suggested by the French Association, supported by the Greek Association. The second sentence is desirable, if the Uniform Rules are to be known as the C.M.I. Uniform Rules for sea waybills.

The Japanese Association suggest the substitution of “valuable instrument” for “document of title”, since the latter expression finds no place in their law.

There was little support for the second sentence of SWB 58. The German Association suggest amending the second sentence so as to read "not being a document of title." The British Association suggest "A seaway bill is not a document of title." But this, as the U.S. Association point out, is a conclusion of law, rather than a statement of fact.

If the Rules are to be capable of being used in paperless transactions, the best solution is to omit the second sentence of SWB 58 altogether.

2. Definitions

These Rules may be known as the C.M.I. Uniform Rules for sea waybills.

Comment

This follows a suggestion of the Canadian Association.

In these Rules

"Contract of carriage" shall mean any contract of carriage subject to these Rules which is to be performed wholly or partly by sea.

Comment

The draft follows a suggestion of the Italian Association.

There was little support for the expression "sealeg" in SWB 58. The British and Italian Associations pointed out that "combined transport" may be ambiguous, and is in any event out of date as a term of art. The British Association suggest that the Rules should spell out the carriers liability in respect of the land part of the carriage. But it may be thought that this would overburden the Rules, and that the point should be met by the Carriers regular form of bill of lading.

“Goods” shall mean any goods carried or received for carriage under a contract of carriage.

“Carrier” and “Shipper” shall mean the parties so named in the contract of carriage.

“Consignee” shall mean the party so named in the contract of carriage, or any persons substituted as consignee in accordance with rule 6.

“Right of Control” shall mean the rights and obligations referred to in rule 6.

Comment

The Belgian Association suggests a further definition of “Lettre de Transport Maritime.”

3. Parties

Comment

The Irish Association suggest “Parties”, as a better title than “Agency”. This follows SWB 47.

The shipper enters into the contract of carriage not only on his own behalf but also as agent for and on behalf of the consignee and owner of the goods, and warrants to the carrier that he has authority so to do. This rule shall apply only if and to the extent that it may be necessary by the law applicable to the contract of carriage for the purpose of enabling the consignee to sue and be sued on the contract, and for the purpose of protecting the carrier from claims in tort.

Comment

The French Association regret the inclusion of this Rule. Other Associations, while recognising the need for the Rule in common law countries, hope that it may cease to be necessary in the near future.

Some members of the Canadian Association regard assignment of contractual rights as a better solution to the problem than agency. If agency is preferred, then the rule should exclude any liability on the part of the consignee for default of the shipper.

The British Association would prefer to go back to something like SWB 47. They ask that the decision taken in October be re-considered.

[4. Indemnity]

Comment

The majority of Associations are in favour of deleting this Rules.

4. [5] Carriers Responsibilities [Carriers Rights and Liabilities]

Comment

A number of Associations dislike the title "Regime". The draft follows SWB 47, as suggested by the Irish Association.

(a) The contract of carriage shall be subject to any National Law or International Convention which would have been [compulsorily] applicable if the contract of carriage had been covered by a bill of lading or similar document of title.

Comment

The Italian Association suggest the deletion of "compulsorily."

The Greek and U.S. Associations suggest the addition of "or similar document of title."

- (b) Subject always to (a),
- (i) The contract of carriage shall be subject to the same terms and conditions as are contained in the carriers regular form of bill of lading, including any terms and conditions relating to the land [non-sea] part of the carriage.
- (ii) In the event of any inconsistency or conflict between such terms and conditions and these Rules, these Rules shall prevail.

Comment

The re-arrangement of this Rule follows a suggestion of the British and Canadian Associations. The Greek and U.S. Associations suggest the omission of "long form" bill of lading. The Greek and German Associations suggest "non-sea" instead of "land". They point out that the non-sea part of the carriage might be performed by air or inland waterway.

UNCITRAL doubt whether the incorporation will be effective by some legal systems. Moreover in contrast to the normal Paramount Clause the Rule would incorporate the entire text of the Hague Rules, if they would have been applicable to a bill of lading, not just the provisions relating to rights and liabilities.

5. [6] Description of Goods

(a) The shipper warrants the accuracy of the particulars furnished by him relating to the goods, and shall indemnify the carrier against loss resulting from any inaccuracy.

[(b) As between the carrier and the shipper any statement in the contract of carriage as to the quantity and condition of the goods shall, in the absence of reservation by the carrier, be prima facie evidence of receipt of the goods as so stated. As between the carrier and the consignee, any such statement shall,

in the absence of reservation by the carrier, be conclusive, and proof to the contrary shall not be permitted, provided always the consignee has acted in good faith.]

Comment

Rule 6 (b) of SWB 58 was inserted at the suggestion of a number of Associations at the meeting in October 1987. Other Associations now say it is unnecessary in view of the incorporation by Rule 4 [5] of the Hague or Hague-Visby Rules in the great majority of cases. Accordingly I have placed the clause in brackets.

If the Rule is retained, the Canadian Association suggest that it should be limited to quantity and condition only. The German and Japanese Associations suggest the addition of a reference to good faith. UNCITRAL, and the Greek and U.S. Associations suggest the inclusion of the proviso "in the absence of reservation by the carrier".

6. [7] Right of Control

(a) The shipper shall, unless he has exercised his option under (b) below, be the only party entitled to [deal with the carrier and] give the carrier instructions in relation to the contract of carriage. In particular he shall be entitled (i) to change the name of the consignee at any time up to delivery of the goods in accordance with Rule 7 hereof, provided he notifies the carrier, [of any change in writing], and (ii) to change the destination of the goods provided the carrier consents, [such consent not to be unreasonably withheld]. The shipper shall indemnify the carrier against any [reasonable] additional expense caused thereby.

(b) The shipper shall be have the option to be exercised not later than the receipt of the goods by the carrier to transfer the right of control to the consignee. The exercise of this option must be noted on the sea waybill

or similar document, if any, [a copy of which shall be retained by the carrier]. Where the option has been exercised, the consignee shall have all such rights, and be subject to all such obligations, as are referred to in paragraph (a) above and the shipper shall cease to have such rights and obligations. [If the consignee disclaims the contract of carriage, the right of control shall revert to the shipper].

Comment

There was a welcome degree of approval for the substance of this Rule. UNCITRAL point out that, as drafted, the Rule would not work where it is intended to buy and sell the goods afloat. But it was always envisaged that a bill of lading would be used in such a case.

The British Association suggest the omission of (a) (ii).

On the other hand the French Association would extend it by adding "such consent not to be unreasonably withheld".

If the Rules are to be available for paperless transactions, the time for exercise of the option cannot be defined by reference to the issue of a sea waybill. I have suggested "receipt of the goods by the carrier" as in SWB 47.

The Italian and U.S. Associations suggest that it might be possible to transfer the right of control after the sea waybill has been issued. But this would defeat one of the objectives of the Rule, namely, to avoid any risk of the carrier receiving conflicting instructions during the carriage.

Various drafting suggestions have been made by the German, Irish, Italian and Japanese Associations. These have been incorporated in square brackets.

7. [8] Delivery

(a) The carrier will deliver the goods to the consignee, or his authorised representative, upon production of proper identification [and, where neces-

sary, proof of authorisation].

(b) The carrier shall be under no liability for wrongful delivery provided he, his servants and agents, have exercised reasonable care [due diligence] to ascertain that the party claiming to be the consignee or consignees representative is in fact such person.

Comment

UNTRICAL suggest the omission of the words in square brackets. The German Association would prefer "due diligence" to "reasonable care" in (b).

8. [9] Validity

In the event of anything contained in these Rules or any such provisions as are incorporated into the contract of carriage by virtue of Rule 4, being inconsistent with the provisions of any National Law or International Convention [compulsorily] applicable to the contract of carriage, such rules and provisions shall to that extent but no further by null and void.

Suggested Additional Rules

Right of Suit

The French Association suggest the reinstatement, with modifications, of Rule 7 of SWB 47.

Jurisdiction

The British and French Associations suggest a Rule to deal with jurisdiction.