

## UNCTAD discusses Covid-19 implications for commercial contracts

The United Nations Conference on Trade and Development (UNCTAD) has recently published a paper on 'Covid-19 implications for commercial contracts: International sale of goods on CIF and FOB terms'. The briefing note illustrates the way in which the mechanics of international trade may be affected by the Covid-19 pandemic, identifies a number of common legal and commercial issues arising from it, and suggests approaches for the purpose of encouraging discussion between the affected parties and stimulating preventive measures for future agreements and their performance.

Following are some excerpts of the report:

The world has seen pandemic outbreaks before and international trade has been around for millennia, however, the logistical chain has never been as efficient and complex as it is now, and the timing of every step of it has never been more crucial. Shippers, customs authorities, ships, agents, banks, receivers, and underwriters, all rely heavily on the efficiency of the system and the ability to procure, produce, transmit goods and documents and turn them around very quickly. This is where the pandemic has caused severe disruption. Temporary closures of factories, partial closures of logistic providers, ports and port services has caused shortages of supplies and delays to the logistical chain with compound effects around existing bottlenecks.

Manufacturers are struggling to procure their components and ship their products, shippers and vessels are delayed at port and in transit, and sellers struggle to meet their banking deadlines for payment. In turn there is a compound failure to pay business suppliers on time, with an increased risk of insolvency.

A large proportion of the world trade has been affected in some degree or form by the COVID-19 pandemic and both the cause and the effects of this disruption are likely to stay for some time.

Example: Factory A produces microchips. Factory A supplies Factory B - the maker of 100,000 mobile phones per month, which in turn supplies C - a large retailer of electronic products. One of the employees of Factory A tests positive to COVID-19. The law of the Country in which Factory A is located imposes a precautionary 30 days shut down of every factory, plant or office with ascertained COVID-19 cases. Factory A has to shut down and suspend production. Factory B has 20 employees affected by the pandemic but the law of the Country where its plants are based only requires personal isolation and testing. Production of the phones could go on, but without microchips, production has to be suspended. C is out of phones and cannot deliver them to its customers.

In the short-term, parties who have been affected by the pandemic and/or COVID-related governmental actions should seek dialogue and cooperate between themselves and within their market, to try and limit the consequences of the disease. Existing contracts will be affected, and solutions must be negotiated quickly; companies should work on pandemic response measures fit for their trade, in order

to avoid falling foul of local legislation, bearing in mind that their counterparties may not be aware of the restrictions and limitations imposed on them.

Going forward, when entering/drafting new contracts, parties must keep the possibility of other waves of pandemic and epidemic events and/or relevant response measures in mind and should consider catering for such eventualities as part of their contractual agreement. Force majeure clauses expressly addressing the issue are a possibility, but each trade sector should focus on its need and seek the most appropriate solution. While a clause suspending all time terms in the contract could be a solution in the metal business, it may not work with perishable cargo and so on.

Business relationships are extremely important in international trade and must be preserved by each individual player. One issue which has clearly come to the market's attention is that of delay in documentation which, it is hoped, will provide an impetus for the more widespread adoption by commercial parties of secure electronic solutions that are already available and accepted by the market.

All players should assess the costs and risks brought to light by this pandemic and increase their level of preparedness for the future. To this end, commercial parties may wish to consider taking the opportunity to adjust their practices, to make better use of modern technology to prevent disruptions and allocate fairly the risks arising out of unforeseen and serious events, thus helping to protect the essential flow of goods across all trade routes.

## **Notifications**

### **PIB**

India attracted FDI inflow of US\$ 67.54 billion during April to December 2020

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Maritime India Summit-2021 concludes with 'Chabahar Day'

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