

## ROTTERDAM RULES SUMMARY

The Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the "Rotterdam Rules") has been approved by the United Nations General Assembly. Its purpose is to bring international uniformity to the law of carriage of goods and make amendments and additions so that the law will be based on modern circumstances that have changed since the many different regimes currently in force were created.

The Rotterdam Rules are attached as part of this report of the Committee on Carriage of Goods of the Maritime Law Association of the United States (CoCoG) and are described in the Report of the CoCoG Working Group that is also part of this report. Should they come into force, the Rules would eliminate U.S.COGSA, the Hague Rules, Visby Amendments, Hamburg Rules, and various national laws for those states that become party to them. Although contracting carriers for door-to-door transportation would be governed by the Rules, inland carriers would not be, and so domestic laws or international conventions that control such transportation would not be affected. In the United States, the Rules would not apply to carriers engaged in domestic or inland shipping by water unless made to do so by a statute. Some of the major points of the Rules include:

1. They can apply to door-to-door transportation when that is contracted for instead of the tackle-to-tackle coverage of COGSA.
2. They provide liability and limit rules for contracting carriers and maritime performing parties, but not inland carriers performing part of through carriage.
3. Liability is based on fault with a list of exceptions to liability similar to U.S. COGSA, except for error in navigation or management of the vessel. The fire defense is retained, but the burden of proof has changed significantly.
4. They have rules for burdens of proof, which largely follow current U.S. law, but expressly allow apportionment of liability based on excepted and non-excepted causes of damage or loss.
5. They do not apply to charter parties, and there are provisions whereby parties to volume contracts (service contracts subject to FMC regulations in the U.S.) may avoid some of the Rules by following strict procedures.
6. Chapters 14 and 15 contain provisions controlling jurisdiction and arbitration, which parties who sign the Rules may choose to make applicable or not. The places of jurisdiction and arbitration are spelled out, and mandatory jurisdiction and arbitration contractual requirements have some restrictions.
7. They contain detailed rules for carriage of cargo on deck and provide that deviation does not affect limited liability unless the action would eliminate a limit under

the intentional or reckless standard to avoid limitation in general. A carrier that expressly agreed to carry goods under deck, yet carried them on deck in violation of the agreement would not be able to limit liability.

8. There are requirements for transportation documents (e.g. bills of lading) and for control of a shipment en route to the destination.

9. They have rules for calculating damage, and base a carrier's limit of liability on packages or units or weight, whichever is greater. There are provisions to determine the number of packages or units in containers and like means by which small packages are carried in larger ones. The limits of liability are higher than those in the Visby Amendments and Hamburg Rules.

10. The limits of liability apply to contracting carriers and maritime performing parties (e.g. stevedores), but not to inland carriers.

11. Limits of liability may be lost for intentional or reckless acts, a standard used in some other conventions.

12. Delay is defined as failure to deliver by an agreed time and liability for loss or damage that is not physical is limited to 2.5 times the freight.

13. The time to sue is two years and there are separate provisions for time to bring indemnity actions.

14. The Rules cover the liability of shippers and there are provisions for dangerous goods.

15. Electronic communications, such as an electronic bill of lading, have rules covering their use.

Appendix I to the CoCoG Working Group Report contains a partial summary and comparison of COGSA and the Rotterdam Rules. Appendix 4 is an excellent description of the Rules distributed by Transport Canada. The Working Group Report and its other appendices provide much more information than this Summary on the Rules and their development.