

ALERT: When international trade succumbs to the coronavirus



The coronavirus pandemic in its various ramifications, such as the transport restrictions resulting from cascading border closures, stands to impact on international commerce and to bring significant losses down on suppliers and on buyers alike. Please read on for some hints as to how international business law may offer succour to enterprises struggling with these problems.

In light of the coronavirus epidemic, the Polish government has decided to impose curbs on travel. Beginning Sunday, 15 March, the Polish border is closed to foreigners (with certain limited exceptions, such as foreign nationals based in Poland), and Polish citizens returning from abroad must submit to a compulsory 14-day quarantine. International passenger traffic on the railways has been suspended, as have scheduled passenger flights. These restrictions have been announced as a temporary measure –for 10 days, with possible extension thereafter, and they do not apply to cargo haulage. In this latter connection, the Polish government declares that goods can enter and leave Poland unimpeded.

Yet the overall international situation has become highly fluid, to the point where the prospect of disruptions to the international movement of goods is becoming an all-too-real possibility. International commerce is influenced not only by the legislative restrictions imposed by this or that given country (and such restrictions may vary between supplier and recipient countries), but also by corporate policy and by the human factor, to mention only internal limits on travel imposed by specific companies, mandatory home office regimes, quarantine and – in the worst case – illness of individual employees, and last but not least individual reactions to the indubitably stressful situation in which we now find ourselves.

All and sundry such factors may impact on the actual possibility of successfully completing an international delivery – or, as the case may be, on lack thereof. Some recourse may be had to the United Nations Convention on the Sale of Goods drawn up in Vienna on 11 April 1980. As long as both parties to a frustrated contract are from countries signatories of the Convention, or the law of a signatory state has been specified as the proper law of the contract, the UN Convention on the Sale of Goods shall apply even if not expressly provided for in the contract. The Convention has been ratified by almost 100 countries, including most Member States of the European Union (among them Poland), the United States, and China.

As we consider the present coronavirus crisis and its bearing on the market situation, especial regard should be had for art. 79 of the Convention, which excludes liability for damages of a party who can prove that its failure to perform in accordance with the contract was caused by an impediment beyond that party's control which the party could not have reasonably been expected to take into account at execution of the contract, and which the party could not have reasonably been expected to avoid, overcome or work around. Significantly enough, in light of the Convention, this exemption from liability applies also where the failure to perform was due to failure to perform by a third party (sub-supplier) retained to perform some or all of the contract, insofar as the same exemptions prerequisites apply also to such third party.

This exemption from liability applies only for as long as the impediment in question persists, and the non-performing party must notify the other party of the impediment's existence and of its impact on her ability to perform the contract. If the other party does not receive such notice within a reasonable time from the moment in which the non-performing party became aware, or ought to have become aware, of the impediment, the non-performing party shall be liable for harm arising from non-receipt of such notice.

The UN Convention on the Sale of Goods is somewhat neglected and underappreciated in international commerce yet, as adumbrated above, it affords an instrument of considerable power, and one quite independent of the express provisions of the given contract or of general laws in any one jurisdiction. If anything, the Convention's somewhat recondite status only adds to its potential. Accordingly, it is well worth knowing, and in times such as these its provisions on exemption from liability (and the timely notification upon which any such exemption will be predicated) should be kept in mind.

We encourage our Clients, and indeed all business people whose operations are now affected by the supply chain disruptions occasioned by the coronavirus, to review the relevant contracts and to duly work with their counterparties in what is a difficult time for all.

The members of GESSEL's international law and arbitration practice stand ready to assist you:

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On a related note, please see here for some comments on force majeure as regulated by Polish law: [here](#).

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