# The Hamburg Convention 197 (Hamburg Rules)

### Jurisdiction (Art. 21(1) (c))

### United States

*Best Cheese Corporation*v.*All-Ways Forwarding Int'l Inc. and Hapag-Lloyd Container Linie GmbH*(Supreme Court of the State of New York-County of Westchester 6 October 2004) \*

In September 2001, Best Foods Corporation ("Best Foods") contracted with All-Ways Forwarding International, Inc. ("All-Ways") to act as freight forwarder of shipments of cheese from Gauda, Slovakia to the United States. In turn, All-Ways contracted with Maritime Freight America, Corp. ("MFA") to provide the ocean transport.

In connection with that arrangement, Maritime Freight Forwarders, a non-party Austrian corporation, executed Hapag-Lloyd Container Linie GmbH ("HLCL")'s Sea Waybills ("Waybills") in Vienna, Austria, listing MFA as consignee. This established HLCL as carrier of the subject cheese from Bremerhaven, Germany, the "port of loading", to New York, New York, the "port of discharge" as noted on the Waybills. The four cargoes of cheese were eventually delivered, allegedly in damaged condition, to the Port of Newark, New Jersey.

Third-party defendant HLCL sought the dismissal of the action and the transfer of proceedings to the courts of Hamburg, Germany. This is required, HLCL argued, since the Waybills contained a mandatory forum selection clause which provides, in pertinent part:

"… any claim or dispute arising under [the Waybill] shall be governed by the law of the Federal Republic of Germany and determined in the Hamburg Courts to the exclusion of the jurisdiction of the courts of any other place …"

Held, by the Supreme Court of the State of New York, that:

*[1] The port of discharge, reference to which is made in article 21(1) (c) of the Hamburg Rules, is the actual port of discharge and not the port listed in the transport document.*

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\* By the courtesy of Mr. Michael Marks Cohen, New York, mcohen@nhcslaw.com

### Scope of application (art.2)

### France

Cour d’Appel of Paris 3 December 1997, *Ocean View Shipping Ltd. and Others* v. *Cargill International Antigua and Others*(1998 DMF 588)

          In August 1994 a full cargo of rice was loaded at Yangon (Burma) on the *Teesta*. A shortage was ascertained during discharge at Conakry (Guinea) and the consignee, Cargill International Antigua commenced proceedings against the carrier, Ocean View Shipping Ltd. in the Tribunal de Commerce of Paris. By judgment dated 23 January 1996 the Tribunal de Commerce affirmed its jurisdiction pursuant to Art. 21 of the Hamburg Rules, since the bill of lading had been issued in Paris. The Tribunal de Commerce held that the Hamburg Rules applied since the port of discharge was in a State party to the Hamburg Rules. The carrier appealed against the judgment.

          Held, by the Cour d’Appel of Paris, that:

          *(1)> France has not ratified the Hamburg Rules and therefore Art. 25 thereof is not applicable, even if the port of discharge is located in a State party to the Hamburg Rules.*

### Italy

Corte di Cassazione 14 February 2001, No. 2155, *Brendani AB*v. *Magazzini Generali & Frigoriferi S.p.A.*(2002 Dir. Mar. 227).

          A consignment of paper rolls carried on the m/v *Lech* was discharged in Naples in damaged conditions. The consignee sued the carrier in Naples. The Tribunal of Naples held the carrier liable for the damage and its decision was affirmed by the Court of Appeal of Naples who found that the provisions of the Hamburg Rules applied, since its ratification had been authorized by Italy with Law 25 January 1983, No. 40. The carrier appealed to the Supreme Court.

          Held, by the Corte di Cassazione, that:

*(1)  The Hamburg Convention of 1978 is not in force in Italy since its ratification, although authorized by Parliament, has never taken place.*

### United States

*Caterpillar, Inc.*v. *m/v Karonga*, United States District Court for the Southern District of New York 23 April 2008 (2008 AMC 1128)

          Five generators carried on board the m/v *Karonga*were damaged during an ocean voyage from Cristobal (Panama) to Valparaiso (Chile). Shippers (Caterpillar, Inc.) brought proceedings against Neptune Lines, Inc., owners of the *Karonga* in the United District Court for the Southern District of New York claiming damages, maintaining that the Hamburg Rules applied since they had been ratified by Chile. Neptune Lines instead argued for the application of the Carriage of Goods by Sea  Act of the United States. The bill of lading contained a Paramount Clause of the following tenor:

          “Except where the Carriage covered by this Bill of Lading is to or from a port of locality where there is in force a compulsorily applicable ordinance or statute similar in nature to the International Convention for the Unification of Certain Rules relating to Bills of Lading, dated at Brussels, August 25, 1924, the provisions of which cannot be departed from, this Bill of Lading shall have effect subject to the Carriage of Goods by Sea Act of the United States (COGSA), approved April 18, 1936.”

Claimants argued that pursuant to the terms of the Paramount Clause the Hamburg Rules should apply since they were in force in Chile and they were “similar in nature” to the Hague Rules.

          Held, by  the U.S. District Court for the Southern District of New York, that:

*[1]    A bill of lading clause providing that except where the carriage is to or from a port where there is in force a compulsorily applicable ordinance or statute similar in nature  to the Hague Rules the United States Cogsa applies cannot entail the application of the Hamburg Rules that are in force in the country of destination since the Hamburg Rules cannot be deemed to be similar in nature to the Hague Rules*