



Covid-19 Insights

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THE IMPACTS FOR CONTAINER DEMURRAGES E DETENTIONS COSTS: AN ITALIAN PERSPECTIVE

The Covid-19 epidemic has affected the world of transport and logistics with regard to the container demurrages and detentions costs due to the delayed return of the empty containers to the Line or to the prolonged storage of the stuffed containers on the port terminal areas extra the “free-time period”.

In the ordinary practice of maritime traffic, the demurrage and detentions costs for containers accrue as a consequence of inspections ordered by the customs authority, or of seizures of the goods ordered by the public prosecutor or simply of the lack of receiver's interest in collecting the goods. Indeed, the delayed or failed delivery of the empties to the Line and /or the delayed or non-collection of the containers by the receiver, can also be caused by force majeure (i.e. strikes, congestion of the terminals' areas, bad weather conditions, etc.) or by any other event which prevents the timely return of the container to the port of destination.

In this context, the problem of container demurrages and detentions costs is amplified

by the emergency caused by the epidemic of Covid-19 and by the security measures imposed by the authorities,

The carriage contracts documented by a liner bill of lading do not generally have a specific exclusion from payment of container demurrages in case of a force majeure event (the reference is generally made to Hague Visby Rules or to the applicable law chosen by the parties). Such costs therefore remain at the charge of the merchant (as defined in the bill of lading, i.e. either the receiver or the shipper, or anyone acting in the collection or release of the goods on their behalf).

In Italy, the outcome of disputes arising for the payment of demurrage and detention costs depends on the qualification of the contract.

Italian case law is, in the majority of cases, to the effect that, the supplying of containers by the shipping company, does not constitute an ancillary obligation of the main contract (carriage contract governed by the bill of lading) but an independent and separate obligation

governed by the provisions of the Italian civil code provided for "lease contracts" (art. 1755 civil code).

The Italian civil code will therefore apply also with reference to the "force majeure" events and the other causes of exemptions from liability .

The Italian civil code provides that the debtor can be exempt from liability when it proves that the failure to perform its obligations is due to a cause not attributable to him (art. 1218 cc) or when performance has become, at least temporarily, impossible "for a cause not attributable to him" (art. 1256 cc).

As we reported in our previous articulate dated 1.4.2020, three elements concur to the definition of "force majeure": a) the extraordinary nature of the event; b) the unpredictability of the event and c) the existence of relevant circumstances outside the sphere of control of the debtor.

In this context, the orders of the public authorities (so-called "factum principis") are not

automatically considered as force majeure events, but can become such to the extent that they meet the above requirements.

Even in the lack of an express provision (i.e a "force majeure clause" in the bill of lading when it is governed by a common law), in any disputes and claim relating the use and the supply of the container during the marine transport,, with special regard to the demurrages and detentions costs, the principles stated in the Italian civil code and by the Italian jurisprudence on the exemption from liability for reasons of force majeure may be invoked.

The merchant would argue that failure or delay in returning the empty containers was due to the epidemic or, more precisely, to the related govern restrictions; he would however have the burden of proving that the relevant circumstances (i) amounted to force majeure (or were not "attributable to him") and (ii) were the cause of his inability to return the empty containers .



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