

MEMORANDUM

From Mike Roderick / Rosalie Hart
Subject The Institute Frozen Food and Frozen Meat Clauses 01/03/17
Date 21 July 2017

INTRODUCTION

In March 2017 the Joint Cargo Committee introduced new Institute Frozen Food and Frozen Meat clauses as a revision of the previous 1/1/86 Clauses. The aim was to modernise the 1986 Clauses in line with the new Institute Cargo and Strikes Clauses introduced in 2009 and to reflect current market best practice. In this Briefing Note we highlight and explain the key changes in the new Clauses.

GENERAL AMENDMENTS

- 1.1 References to "*frozen food*" and "*frozen meat*" have been amended to include "*chilled*" food and meat as well. Consequential amendments have, therefore, been made where necessary. For example, in the Duration clause references to "*freezing works*" have been amended to "*freezing/cooling works*" (e.g. Cl 8 of CL 422).
- 1.2 "*Goods*" has been amended to "*subject-matter insured*" in line with the Institute Cargo Clauses (A) 01/01/09.
- 1.3 Cross-references to exclusions in the "*Risks*" clauses have been amended from "*as provided in Clauses ...*" to "*as excluded by the provisions of Clauses...*" in line with the Institute Cargo Clauses (A) 01/01/09.
- 1.4 References to transport by sea have been amended to include transport by air. Consequential amendments have, therefore, been made where necessary. By way of example, references to "*oversea vessel*" have been amended to "*oversea vessel or aircraft*" and references to "*discharge from the oversea vessel at the final port of discharge*" have been amended to "*discharge from oversea vessel or unloading from the aircraft at the final place of discharge*" (e.g. Cl 8 of CL 422). References to the "*port of distress*" have also been amended to "*place of distress*".
- 1.5 "*Underwriters*" has been amended to "*Insurers*" in line with the Institute Cargo Clauses (A) 01/01/09.
- 1.6 "*Servants*" has been amended to "*employees*" in line with the Institute Cargo Clauses (A) 01/01/09.
- 1.7 When cross-referring to clauses, the words "*above*" and "*below*" have been inserted for clarity.

- 1.8 The "Note" at the foot of the old clauses regarding "*held covered*" events has been amended in line with the Institute Cargo Clauses (A) 01/01/09.
- 1.9 "*Contract of affreightment*" has been amended to "*contract of carriage*" in line with the Institute Cargo Clauses (A) 01/01/09.
- 1.10 The phrases "*this insurance*" and "*the contract of insurance*" have been used in line with the Institute Cargo Clauses (A) 01/01/09.
- 1.11 As with the Institute Cargo Clauses (A) 01/01/09, side headings have been deleted and moved to above the clauses.
- 1.12 The word "*proximately*" has been deleted from the delay exclusion (cf. Clause 4.5 of CL 423) to bring it into line with the equivalent change in the Institute Cargo Clauses (A) 1/01/09.
- 1.13 The unseaworthiness of vessel exclusion (e.g. Clause 5 of CL 422) has been expanded and re-numbered so that the exclusion for loss damage or expense arising from unseaworthiness of the vessel will not apply where the contract of insurance has been assigned to a party who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.
- 1.14 The Strikes exclusion has been expanded (e.g. Clauses 7.3. and 7.4 of CL 422) to bring the exclusion into line with the 01/01/09 Clauses. Consequential amendments have therefore been made to the new Strikes buyback clauses (cf. Cl.1.2 and 1.3 of CL 424 and CL 428).
- 1.15 The clause titled "*Change of Voyage*" has been renamed "*Change of Voyage/Transit*" (e.g. Cl 10 of CL 422).
- 1.16 Special note – this clause at the bottom of the old Frozen Meat clauses has been deleted due to uncertainty as to its legal status and effect. Instead, a new exclusion for "*loss damage or expense caused by embargo, or by rejection prohibition or detention by any government or their agencies or departments*" has been created (e.g. Cl 6.4 in CL 425).
- 1.17 A new Special Note has been inserted at the foot of the Frozen/Chilled Meat Clauses which states as follows: "*The Continent of Europe shall be deemed to include Eire and the United Kingdom (but not the Crown dependencies) but excludes the Greek Islands, Cyprus, Malta, Sicily, Sardinia, Corsica, the Balearic Islands and Iceland*".
- 1.18 In the Frozen/Chilled Meat Clauses, the previous sub-clause dealing with prompt notice of any deterioration loss or damage to be given to Underwriters (e.g. Cl 11.3 of CL 323) has been turned into a standalone clause titled "*Prompt Notice*" (e.g. Cl 12 of CL 425). This has caused the consequential renumbering of the clauses that follow. The wording of the Prompt Notice clause has also been amended to read "*prompt notice of any loss damage or deterioration*" rather than "*prompt notice of any deterioration loss or damage*".

As many of these amendments apply across the range of the new clauses, we do not specifically refer to them below to avoid repetition.

THE FROZEN / CHILLED FOOD REGIME

Frozen/Chilled Food Extension Clauses (suitable for food in a mechanically temperature-controlled environment) – CL 422

Policies were often previously written incorporating both the old Frozen Food (A) clauses and the Frozen Food Extension clauses and the two clauses had to be read side by side. CL 422 effectively fuses the clauses together in a new self-contained wording, which eliminates the confusion, which may arise when having to have to read two separate clauses together.

As a self-contained wording, it has been re-named and the sentence in the old Extension clauses "*(For use only with the Institute Frozen Food Clauses (A) 1/1/86)*" is now redundant and has been deleted.

Clause 4.4

The words "*infection prior to attachment of this insurance*" have been moved to appear immediately before "*bone taint, salmonella...*" This is to make clear that loss damage or expense arising from bone taint or salmonella are excluded whether they occur before or after attachment. In the old Extension Clause wording it was unclear whether loss damage or expense arising from bone taint and salmonella were excluded only if they occurred prior to attachment.

The word "*packing*" has been amended to "*packaging*" in Clause 4.4. By contrast, Clause 4.3 uses the word "*packing*". The JCC considered that the packing and preparation perils excluded by Clause 4.4 were of a different nature from those excluded by Clause 4.3 e.g. the Clause 4.4 perils are more of a manufacturing nature whereas Clause 4.3 is intended to exclude packing and preparation carried out to make the subject-matter insured ready for transit.

For the same reason, the JCC decided against omitting the word "*fault*" from Clause 4.4 as it considered the type of packing in question was different in Clause 4.3.

Clause 1 provides cover subject to the proviso that the subject matter insured is "*in sound condition at the time of attachment*". It could be said that the infections listed in Clause 4.4 are simply examples of the subject-matter insured not being in sound condition, as required by Clause 1, and so an exclusion listing them is therefore unnecessary. The exclusion has been retained to counter any argument that goods are in sound condition even if infected (for example, if the infection is within acceptable limits) – any loss, damage or expense by that infection would remain excluded.

Clause 8.4

The old CL 334 Extension Clause wording contained a proviso that "*Nevertheless, in the absence of prior notice to the Underwriters and agreement of any additional premium required by them, this insurance excludes any claim for deterioration of or damage to the subject-matter insured where the period between the first passing of the goods into a Freezing Chamber and attachment of this insurance exceeds 60 days*". This has been moved to create a new Clause 8.4. The proviso is now within the body of the Clauses to remove any ambiguity as to its status and effect. However, the word "*Nevertheless*" has been removed as it is superfluous and the words "*Freezing Chamber*" have been changed to "*freezing/cooling chamber*".

Institute Frozen/Chilled Food Clauses (A) – 24 Hours Breakdown (suitable for food in a mechanically temperature-controlled environment) – CL 423

These clauses have been renamed to include reference to 24 hours breakdown to reflect the fact that they contain a 24 hours breakdown provision at Clause 1.2.1 in line with the equivalent Frozen Meat clause (cf. CL 426).

Institute Strikes Clauses (Frozen/Chilled Food) (suitable for food in a mechanically temperature-controlled environment) – CL 424

No specific comment.

Institute Frozen/Chilled Food Clauses (A) (suitable for food in a mechanically temperature-controlled environment) – CL 430

This is a new level of cover to bring the Frozen Food regime into line with the levels of cover in the Frozen Meat regime. The old Frozen Food clauses were on an All Risks basis other than for "*loss or damage resulting from a variation in temperature howsoever caused*" with a limited reinstatement of cover for variation in temperature losses at Clause 1.2. (cf. Clause 1.1 and 1.2 of CL.263). Clause 1.2 has been omitted from the new Clauses so the new clauses are on an All Risks basis without the limitation in respect of variation in temperature losses.

As a consequence of the omission of the old Clause 1.2, the cross-reference in Clause 4.4 to variation in temperature in Clause 1.2 has disappeared.

Institute Frozen/Chilled Food (C) (suitable for food in a mechanically temperature-controlled environment) – CL 431

No specific comment.

THE FROZEN/CHILLED MEAT REGIME

Institute Frozen/Chilled Meat Clauses (A) (suitable for meat in a mechanically temperature-controlled environment) – CL 425

The previous earthquake and volcanic eruption exclusion at clause 4.8 of CL 323 has been deleted. The intention is that if there is a known earthquake or volcanic eruption exposure that be dealt with as part of the underwriting process, not by way of standard exclusion.

The Duration clause is wider than the equivalent provision in the Frozen Food clauses. There is coverage at cold store following discharge for up to 30 days for EU, US and Canadian destinations and 5 days for other destinations. This is a key difference between the clauses. Practice varies in different markets on the extent to which storage cover on arrival should be given. The JCC felt it best to leave the Meat clauses unamended in this respect, it being for underwriters to amend and/or charge additional premium as appropriate on a case by case basis.

Institute Frozen/Chilled Meat Clauses (A) - 24 Hours Breakdown (suitable for meat in a mechanically temperature-controlled environment) – CL 426

No specific comment.

Institute Frozen/Chilled Meat Clauses (C) and 24 Hours Breakdown (suitable for meat in a mechanically temperature-controlled environment) – CL 427

No specific comment.

Institute Strikes Clauses (Frozen/Chilled Meat) (suitable for meat in a mechanically temperature-controlled environment) – CL 428

No specific comment.

IMTA Frozen/Chilled Meat Extension Clauses (suitable for meat in a mechanically temperature-controlled environment) – CL 429

As with the Frozen/Chilled Food Extension clauses discussed above, this is a complete stand-alone clause (i.e. Frozen Meat (A) incorporating the Extension Clause wording) in order to eliminate confusion which can arise when having to read two clauses side-by-side and confusion over where certain parts of the Extension Clause were intended to fit into the old Frozen Meat (A) CL 323 clauses.

As there is now a complete standalone clause, the sentence "*For use only with the Institute Frozen Meat Clauses (A) 1/1/86*" is redundant and has been deleted.

There is a new Clause 8.7 – please refer to our comment about prompt notice in our comments on General Amendments above.

For further information on any issue raised in this Briefing Note please contact mike.roderick@clydeco.com or rosalie.hart@clydeco.com.

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