

ROTTERDAM RULES VS COGSA COMPARISON TABLE

	COGSA	Rotterdam Rules
Parties covered	Ocean carrier. May be extended to subcontractors by <i>Himalaya</i> clauses (can extend to inland carriers, but rail carriers governed by Carmack Amendment?)	All “maritime performing parties” (includes terminals, stevedores, harbor area truckers). Inland carriers are on their own (liable for negligence, breach of contract under third-party beneficiary analysis)
Periods covered	Shipboard only, “tackle-to-tackle.” Can be extended by provision in contract of carriage to other periods in possession (docks, terminals, inland carriage)	“Door-to-door”, all times goods are under carrier’s supervision or control (including while in control of subcontractors)
Shipments covered	Excluded “on deck” cargoes, live animals, private carriage (charters of all or major portion of carrying space of ship)	Excludes “non-liner transportation” unless negotiable transport document is issued. Covers cargo carried on deck
Carriers’ duties	Prerequisite for exemption: due diligence to provide a seaworthy vessel at the beginning of the voyage.	“properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods” Relative to voyages by sea, carriers shall exercise due diligence to (1) make and keep the ship seaworthy, (2) to properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied through the voyage, and to make and keep the holds and all other parts of the ship, and any containers supplied by the carrier, fit and safe for their reception, carriage and preservation
Liability for unsuitable or defective containers	None specific	Carrier must keep carrier-supplied containers fit and safe for reception and carriage of the goods
Exclusions from liability	If it meets its duty to exercise due diligence to provide a seaworthy vessel at the beginning of the voyage, carrier has no liability under seven categories of defenses including: fire; perils of the sea; act of God; act of war; inherent vice of goods; insufficiency of packaging; strikes and lockouts (where no fault of carrier); latent defect of ship; any other cause arising without actual fault or carrier; and “error in navigation and management of the vessel” (although that obviously involves fault of the master and crew of the vessel. Error in navigation and management can be important in heavy weather container loss cases: if storm isn’t of “extraordinary nature or arising from irresistible force or overwhelming power which could not be guarded against by ordinary exertions of human skill and prudence”, the loss might be due to error in navigation of master in failing to adjust course and speed to avert damage.	Similar, but eliminates defense of “errors in navigation and management” of the vessel.

Limitation of liability	\$500 per package or, for goods not carried in packages, per customary freight unit. Usually look at number of packages stated in bill of lading. "Freight unit" can be an entire container, a vehicle such as a yacht or locomotive, or large assembled machinery. Fair opportunity to declare a higher value is prerequisite.	Greater of 875 SDRs (\approx \$1335) per package or 3 SDRs per kilo (\approx \$4.56) (\approx \$2.07 per pound) (04/13/10 rates)
Avoid limitation of liability	Deviation for normal or agreed route or stowage (such as on-deck stowage where not provided for in bill of lading) or otherwise exposing goods to unjustifiable risk not contemplated by the parties in the contract of carriage	Eliminates geographic deviation rule. Carrier loses contractual limitations for loss or delay resulted from intent to damage or reckless & with knowledge that such loss or damage would result
Liability for delay in delivery	Essentially none (liability limited to loss of market value)	Maximum of 2.5 times freight payable on the goods delayed. Notice of delay must be given to the carrier within 21 days of delivery
Notice of loss	Rebuttable presumption that goods were properly delivered unless notice of damage at or before time goods removed from custody (3 days if damage not apparent)	Presumption that carrier properly delivered goods unless notice of damage given before or at time of delivery. If damage not apparent, within 7 working days.
Time bars	One year from date of loss or date goods should have been delivered	Two years from dates goods should have been delivered
Contractual Choice of forum	Generally enforceable. Extended to subcontractors. Perception of expense of litigating in foreign venues and in venues where there is no provision for contingency fees or losing party is liable for prevailing party's attorney fees has resulted in most smaller claims (under \$50,000 to \$100,000) not being litigated	Carrier: claimant has choice of (1) domicile of carrier, (2) place of receipt, (3) place of agreed delivery, (4) port of discharge, or (5) where agreed. Maritime performing party: where domiciled, place where received or delivered goods, or where it performed its activities re the goods
Contractual provision for arbitration	Generally enforceable, extended to subcontractors	Similar to choice of forum, plus any place so designated in the arbitration agreement
Opt out	Can opt out of COGSA under Ocean Shipping Reform Act (1998) if parties enter into "service contracts", no negotiable bill of lading issued	Can opt out where "volume contracts" (specified quantity of goods during an agreed period of time) – big change from Hague Visby, no substantial change from U.S. law

Notes: Changes from Hague Visby Rules:

Greater of 666.67 SDR per package to 875 SDR/2 SDR per kilo to 3 SDR per kilo

Opt out for "volume contracts"

Supersede legislation and treaties governing inland shipping between nations (especially in Europe)

Virtually all maritime nations other than United States do not enforce choice of forum and arbitration clauses to bar litigation/arbitration against carriers in nation where carrier received or delivered the goods