

DABELSTEIN & PASSEHL

Hamburg  Leer



**Germany's new forwarding
and transport conditions**

– or how to hold the German freight forwarder liable

1. Background: German transport and storage conditions

- Three sets of forwarding and transport conditions
 - (1) DTLB 2015
 - (2) ADSp 2016
 - (3) ADSp 2017
- incorporation into contract needed!

1. Background: German transport and storage conditions

Deutsche Transport und Lagerbedingungen („DTLB“) dated 18.9.2015

Position of German forwarder's and logistic association (DSLVL):

- Ø New German shipping law since March 2013
- Ø DSLVL proposed:
 - Ø Review and update of **uniform** ADSp 2003
 - Ø Eliminate „pro shipper“ changes in new maritime law, e.g. exclusion of fire defence of carrier!

2. New German transport and storage conditions „DTLB“

Position „shipper association“ in 2013:

- Ø ADSp 2003 not accepted any more
- Ø Medium and big companies always exclude applicability
- Ø Small companies no realistic choice to opt out
- Ø ADSp too old and not up to date
- Ø Proposal:
 - Ø Revision of ADSp 2003
 - Ø Based on German law!

2. New German transport and storage conditions „DTLB“

Target of shipper's associations:

- Ø Safer transport and supply chain
- Ø Customary market standards for all transports
- Ø Quality management/ bonus – malus rules
- Ø Fixed remuneration
- Ø Limited liability of shipper (again)

3. New German transport and storage conditions „ADSp 2017“

- Ø Each side had developed ist own set of Terms and Conditions
- Ø Both sides unhappy
- Ø Continuing secret negotiations
- Ø Agreement on one new set of Terms and Conditions on 17 October 2016
- Ø ADSp 2017 supported by all Associations as of 1 January 2017

3. New German transport and storage conditions „ADSp 2017“

Compromise regulations

1. Forwarders had to accept
 - Ø Limited liability of shipper for own faults
 - Ø Errors in calculation are for their own account
2. Shipper had to accept
 - Ø No liability for errors in navigation
 - Ø Limited liability for warehousing
 - Ø Fixed time frames for loading and unloading, waiting time compensation

3. New German transport and storage conditions „ADSp 2017“

Other main regulations

- Ø Forwarder to provide adequate insurance unless agreed otherwise
- Ø Limitation of Forwarder's liability:
 - Ø 8,33 SDR per KG (unchanged)
 - Ø 1,25 mio EUR per insured incident
 - Ø 2,5 mio EUR per insured event
- Ø Limitation of Shipper's liability for wrongful declaration etc.:
 - Ø EUR 200,000

4. Commercial Relevance

- Germany strong exporting country
- sales terms (Incoterms) decide on applicable law
- Bayer, Siemens, Linde, BMW, Adidas in fact do decide
- Likely German law to apply!

4. Commercial Relevance

- Look out for the German Freight Forwarder involved in multi-modal transport
- German law and liability regime to apply to forwarding contract
- Cargo recipient has a direct claim out of B/L, eben if abroad
- Liability cap might 8,33 SDR instead of 2 SDR per KG
- Cap easier to break under German law for gross negligence
- Look out for your German lawyer as well!



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