

# FORWARD Belgium

## *Alle Leden 20/019*

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Beste leden,

### **Betreft: The impact of the coronavirus on the freight forwarders' supply chain**

On 30 January 2020, the World Health Organization declared the outbreak of the Coronavirus (COVID'19) as a **public health emergency of international concern**.

Both the Chinese government and other countries have taken measures, aimed at containing the spread of COVID'19. These measures have a serious **impact on the international trade and supply chain**. As a consequence, many companies are unable to perform their contractual obligations or are at risk of not being able to do so in the future.

The question arises if the COVID'19 outbreak falls within the definition of **force majeure**.

In order to invoke force majeure, it is necessary to identify force majeure clauses in the agreement with the customer. While some freight forwarders operate with specially negotiated contracts, most of the freight forwarders rely on the incorporation of their standard trading conditions.

According to **article 23 of the Belgian Freight Forwarders Standard Trading Conditions**, the freight forwarder shall not be liable for damage caused by an event constituting force majeure. Also **article 13** refers to the fact that **all additional costs** caused by force majeure shall not be borne by the freight forwarder.

According to Belgian case law, force majeure can be invoked when:

1. The incident is not due to the operators' own fault or to a third party for whom he is responsible
2. The incident has a sudden character
3. The incident could not have been avoided and the operator was unable to prevent any consequences arising from the existence of the incident.

The outbreak of the Corona virus falls under the definition of force majeure. This means that any additional costs caused by the virus should not be borne by the freight forwarder during the entire affected period. This also includes detention, demurrage and storage charges.

It is recommended for freight forwarders to keep their customers aware of all problems experienced by other stakeholders in the given supply chain such as vendors, hauliers, shipping lines, agents and terminals. It is prudent to send force majeure notices to customers or clients.

To be able to rely upon a force majeure clause or to be discharged of an obligation under general law, an operator needs to evidence that the customers' losses and any failure to perform were caused by matters genuinely and reasonably outside its control.

Freight forwarders and logistics operators need to minimise the risk of claims and to evidence that they did everything reasonable to avoid the customer's losses.

Keep written records of communications with supply chain stakeholders and contractors and send them notices holding them to their contractual obligations. A high level summary of the steps taken and problems encountered should be included in communications to customers.

Met vriendelijke groeten,  
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