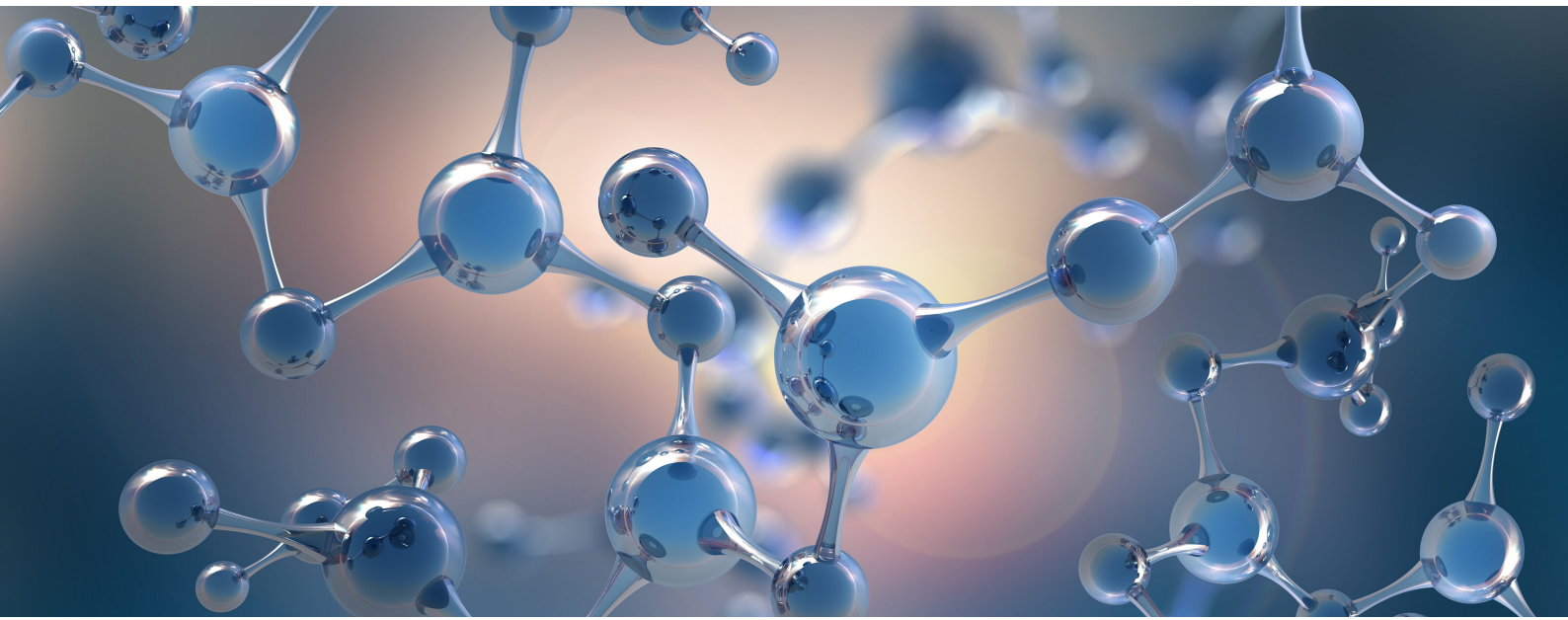


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# LOGICAL IN LOGISTICS NEWS



## NOVEL CORONAVIRUS (COVID-19)

Given the current & ongoing media exposure regarding coronavirus (COVID-19), and the recent declaration by the World Health Organisation (WHO) that COVID-19 has been officially declared as a pandemic, there wouldn't be many within the logistics industry who wouldn't be aware of the potential challenges this places on the trafficking of goods.

In light of the WHO declaration, this update considers the potential impact on ocean freight and supply chain management activities of freight forwarders and logistics operators should steps to curtail the spread of COVID-19 continue to disrupt the movement of goods. Whilst key concerns will usually distill to delays and potentially cargo deterioration, we have included some brief steps and guidance on the potential risks to freight operators and how to mitigate them.

Ocean container supply chains include physical, clerical and data entry processes, many of which involve people congregating and interacting in large concentrations.

Physical cargo packing/unpacking operations inherently involve human interaction. Similarly, clerical and data entry processes are normally executed in the offices of a range of supply chain stakeholders, including forwarders, ships agents, terminals, banks and customs authorities. Largely, digitisation of many operations is common, although there remains some reliance on transferring & dealing with physical documentation.

Considering the human interaction aspects of cargo movement, freight forwarders & logistics operators should consider reviewing/implementing their risk management procedures, including:



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- home quarantine regime for anyone who has travelled to an infected country or is likely to have been in contact with someone infected with COVID-19;
- updating, where necessary, human resources ('HR') policies on fitness for work, including possible quarantining of employees and formalising the requirement for employees to remain off work if affected;
- consideration of extending flexible working arrangements to reduce the likelihood of the spread of the virus in the workplace or the community;
- updating travel rules and arrangements limiting non-essential business travel;
- provision of sanitised hand washing stations for use by staff and visitors;
- reviewing arrangements for workplace hygiene and cleaning protocols including "cough and sneeze" etiquette;
- protecting the mental wellbeing of employees concerned about COVID-19;
- ensuring clear and honest communication to employees on their welfare.

Implementing these measures is likely to result in disturbance to business operations, including anticipated business travel to secure new customers & service and maintain existing relationships, although remote conferencing technologies may offer some continuity in that regard.

Clearly, any reduction in goods handled and shipped could have a significant impact on customer revenues, which means reduced volumes (& income) for logistics industry participants. There is also the risk that key customers will press forwarders to provide more expensive "workarounds", such as airfreight and using non-core ocean service providers to perform voyages, despite the fact that forwarders would typically have no contractual obligation to do so. However, we would expect that forwarders & logistics operators would generally be contractually required to consider and implement any reasonable "workarounds" if they involve modest additional cost.

Given that most of the forwarding industry operates/trades on incorporated Standard Trading Conditions (STCs) approved by insurers, it may be prudent to review those terms and obtain appropriate legal advice with respect to the possibility of pre-emptively sending force majeure notices to customers, setting out the problems in China (and other affected territories) and invoking their force majeure rights to be discharged from their obligations to perform.

We are also aware that some forwarders have in place supply chain or freight management agreements with their key customers, instead of incorporated STCs. In such cases, we believe it would be necessary to review all specific customer contracts for ocean-related services and identify the obligations on the forwarder (& others within the supply chain) to perform in the context of COVID-19. For example, Is the forwarder or its agent required to issue bills of lading? Is the operator required to undertake consolidations? Where force majeure clauses are included, the same would apply, including obtaining appropriate legal advice with respect to sending force majeure notices to customers, etc.

In that regard, we believe it is vital that freight suppliers keep their customers up to date with all difficulties experienced by others within the supply chain, such as vendors, hauliers, shipping lines, agents and terminals. We understand that to be able to rely upon force majeure clauses or to be discharged of an obligation under general law, forwarders/logistics operators need to evidence that the customer's losses and any failure to perform were caused by matters genuinely and reasonably outside its control.

Therefore, we believe it would be prudent for freight forwarders and logistics operators to maintain paper trails to minimise the risk of claims and to evidence that they did everything reasonable to avoid the customer's losses. This would include keeping written records of communications with supply chain stakeholders and contractors and send them notices holding them to their contractual obligations. We suggest that high-level summaries of the problems encountered, and the steps taken should be included in communications with customers.

Given that a high volume of freight traffic originates from China, Australian freight forwarders & logistics operators should note that problems are not limited to within China itself. For example, if original bills are not produced and/or not couriered to destinations, there is the risk that forwarders, purchasers and shipping lines will have to find "workarounds".

Those workarounds are likely to include where an original bill of lading issued to a Chinese agent or network office of the customer's forwarder has not found its way to the destination forwarder/agent owing to reasons outside its control. Under those circumstances, the shipping line is probably going to demand a letter of indemnity (LOI) at destination prior

to delivering the container to a party who is unable to present the original bill. Failure to do so could delay the goods being released and lead to container detention charges being incurred, which could easily grow to be large sums. In such cases, the shipping line may exercise a lien on goods if it stores the container at the terminal for a long time. Therefore, it is important for freight forwarders to keep their customers fully informed about all detention charges & hold their customers responsible for those charges.

Where a shipping line has issued a waybill, the requirement for an LOI should not generally arise. Therefore, forwarders and logistics operators may consider, where possible, instructing shipping lines only to issue waybills.

Where LOIs are sought and forwarders & logistics operators decide to accept their use, then they must ensure that the wording clearly responds to the risks arising and the party issuing the LOI is good for its money. LOIs should be signed by a reputable bank as the party providing the indemnity or as guarantor of the customer as the indemnifying party. Should the customer/receiver refuse to provide an acceptable LOI, we suggest appropriate legal advice be obtained.

COVID-19 has served as a timely reminder for forwarders and logistics operators of the need to continually take great care before releasing goods without the receiver presenting an original bill. Freight forwarders & logistics operators should bear in mind that liability insurance coverage may be prejudiced where claims arise from intentional release of cargo without presentation of an original bill.

Circumstances may also arise where customers/receivers abandon cargo at destinations if bills are unavailable, “stop” instructions have been issued by vendors and/or substantial detention charges have accrued. Forwarders should work proactively to avoid the costs, customs complications and operational problems arising from abandoned cargoes.

Specifically, forwarders must avoid the temptation of doing nothing in the hope that these problems will somehow resolve themselves, as invariably they don’t and typically develop into much bigger headaches down the track.

The situation continues to change rapidly and we should all remain alert for updates and advice from the relevant authorities on additional steps to manage the spread of COVID-19 and the health departments in each Australian state/territory are providing excellent resources, advice & regular updates.

For those considering any travel (business or leisure), particularly internationally, the ability to claim against corporate travel insurance policies for say, loss of deposits, medical & medical evacuation coverage may not be available. In cases where cover is available, it may be severely compromised where, for example, the traveller decided to travel despite DFAT travel warnings.

We suggest that prior to travelling, intending travellers should check for and take advice of travel warnings on [smartraveller.gov.au](http://smartraveller.gov.au), plus contact relevant travel insurance providers, seeking their approval until the situation improves.

Finally, a pandemic such as COVID-19 is just one risk facing modern organisations within the logistics industry. Having fully documented and exercised business continuity management plans is important for every business and we would be delighted to assist in that regard.

Who we are:

James and the team at Logical Insurance Brokers provide specialist risk management and insurance solutions to the logistics industry. Logical is delighted to be associated with the Freight and Trade Alliance (FTA) and is proud to be their appointed insurance adviser since its inception in 2012. James is also a regular presenter at FTA professional development events.

If you would like more information about how a carefully constructed insurance program and business continuity plans can help protect your business, please feel free to contact James on 02 9328-3322, email [jamesc@FTAlliance.com.au](mailto:jamesc@FTAlliance.com.au) or visit the Logical Insurance Brokers website at [www.logicalinsurance.com.au/logistics](http://www.logicalinsurance.com.au/logistics).

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