

# **‘Paramount clause’ in a bill of lading as choice of law under Rome I - the Supreme Court of the Netherlands in *Airgas USA v Universal Africa Lines***

*In Airgas USA v Universal Africa Lines (7/11/2025, ECLI:NL:HR:2025:1665), the Supreme Court of the Netherlands considered the interpretation of a so-called ‘Paramount clause’ in a bill of lading. Such clauses commonly signpost which rules govern the international carriage of goods by sea. The Court addressed such clause as a choice of law and held that article 3(1) of the Rome I Regulation does not preclude the parties from agreeing on such clause.*



## **Facts**

The dispute concerned liability for fire damage that occurred during the discharge of dangerous goods (refrigerated liquid ethylene in containers) transported by sea from the USA to Angola under a bill of lading.

The conditions of the bill of lading provided for jurisdiction of the Dutch courts; this is how the parties Airgas USA (Radnor, Pennsylvania, US) and Universal Africa Lines (Limassol, Cyprus) came to litigate in the Netherlands.

These conditions also included a so-called ‘Paramount clause’. Such clauses have been used in contracts for the international carriage of goods by sea, primarily to designate which uniform substantive law convention on the carriage of goods by sea applies. The clause in this case provided that Dutch law governed the contract and declared that if the goods were carried by sea from or to a port in the United States, the 1936 Carriage of Goods by Sea Act of the United States (COGSA)

applied. The COGSA is the U.S. implementation of the 1924 Hague Rules.

## **Dispute**

As the regimes of liability diverge across the conventions containing uniform law, and across national laws, this dispute revolved around the choice of law. The cassation claim advanced various arguments against the application of COGSA (and in favour of the mandatory application of Dutch law which implied a different limitation of liability).

The main arguments were that COGSA is not a 'law of a country' that may be chosen within the meaning of the Rome I Regulation, that even if the GOGSA applied, its application should not set aside those provisions of Dutch law that may not be modified by contract, and that the lower courts applied the COGSA incorrectly (requiring the Court to review this application, arguing that the COGSA's content was identical to the Hague-Visby Rules and to Dutch law).

## **Decision**

In its decision, the Supreme Court of the Netherlands referred to article 3(1) of the Rome I Regulation. First, it held that, according to this provision, the parties are free to choose the law governing their contract. They may choose either the law applicable to the entire contract or the law applicable to a specific part of the contract. This part of the contract is then governed by the chosen rules of law, which replace national law in its entirety, including those rules of national private law which cannot be modified by contract (at [3.1.2]).

Second, the Court held that article 3(1) of the Rome I Regulation does not preclude the parties from designating a part of a national legal system — and not that system in its entirety — as the applicable law. In this case, the parties had the right to choose COGSA as applicable law, while for matters not regulated in the COGSA the parties should fall back on Dutch law (at [3.1.3]).

Finally, the Court reminded that the question of whether lower courts correctly applied foreign law cannot, in principle, lead to a claim in cassation under Dutch civil procedure laws. Only if the lower courts had compared the rules of the legal systems potentially applicable and held that the outcome was identical to Dutch law could an exception be made; this was not the case in this dispute (at [3.2.1] e.v.).

## Comment

The decision in *Airgas USA v Universal Africa Lines* sheds light on the exact effects, in Dutch courts, of a contract clause widely used in contracts for the international carriage of goods by sea. This enhances legal certainty. At the same time, one inevitably runs into various questions cognate to this decision. For example, should the Court's considerations on partial choice of law be understood as confined to 'Paramount clauses,' or do they have broader implications? In this regard, does it matter that rules such as COGSA implement an international treaty (the Hague Rules)? Or is the 'partial' character of the choice of law related only to carriage to or from U.S. ports? These and undoubtedly other questions are themes for further reflection.

For inspiration: the clause that gave rise to this litigation, as quoted by the Court at [2.1], is this:

'The law of The Netherlands, in which the Hague-Visby Rules are incorporated, shall apply. Nevertheless if the law of any other country would be compulsorily applicable, the Hague-Visby Rules as laid down in the Treaty of Brussels of 25th August 1924 and amended in the Protocol of Brussels of 23rd February 1968 shall apply, save where the Hamburg Rules of the UN Convention of the Carriage of Goods by Sea of 1978 would apply compulsorily, in which case the Hamburg Rules shall apply. If any stipulation, exception and condition of these conditions would be found inconsistent with The Hague-Visby Rules or Hamburg Rules, or any compulsory law, only such stipulation, exception and condition or part thereof, as the case may be, shall be invalid. In case of carriage by sea from or to a port of the USA, this Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved 16th April 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act shall, except as maybe otherwise specifically provided herein, govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in custody of the carrier. The carrier shall not be liable in any capacity whatsoever for any delay, non-delivery or mis-delivery, or loss of or damage to the goods occurring while the goods are not in the

actual custody of the carrier.'