

Are excise duties recoverable under Article 23(4) CMR? An unresolved riddle?

Daniel Dąbrowski

Associate Professor
University of Szczecin,
Poland



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Lost goods — and an unexpected tax bill

£449,557 of excise duty in respects of cigarettes worth £72,512 — a 6:1 problem (JTI v Jakubowski)



Who should bear the excise duty triggered by the loss?

The starting point – simple provision

Article 23 CMR

1. When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.
2. The value of the goods shall be fixed (...)
3. Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short.
- 4. In addition, the carriage charges, customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damage shall be payable.**



Does 'other charges' include excise duty becoming payable because the goods have been lost?

Three possible answers

Are excise duties `other charges incurred in respect of the carriage'?

1 YES - 'OTHER CHARGES'

BROAD INTERPRETATION

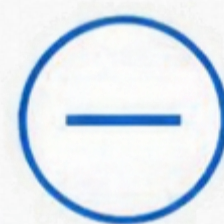
Excise duty is a charge arising in connection with the carriage and therefore falls within Article 23(4) CMR.



2 NO - 'OTHER CHARGES'

NARROW INTERPRETATION

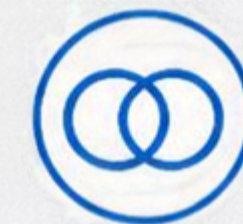
Article 23(4) covers charges connected with the properly performed carriage — not liabilities caused by the loss of the goods.



3 VALUE OF THE GOODS

ALTERNATIVE APPROACH

Excise duty is not an `other charge' under Article 23(4), but may form part of the value of the lost goods under Article 23(1).



A divided CMR world

National courts have reached three different solutions

BROAD INTERPRETATION

UNITED KINGDOM

House of Lords / Supreme Court
Buchanan v Babco — 1976
JTI Polska v Jakubowski —
2023

DENMARK

Højesteret (Supreme Court) —
1987

CZECH REPUBLIC

Nejvyšší soud (Supreme Court) —
2020

ITALY

Corte d'Appello di Torino (Court
of Appeal of Turin) — 2019

**Excise duty is
recoverable under
Article 23(4).**

NARROW INTERPRETATION

NETHERLANDS

Hoge Raad (Supreme Court)
Philip Morris v Van der Graaf —
2006

SWEDEN

Högsta domstolen (Supreme Court)
HZ Logistics v Thomsen & Streutker
— 2022

GERMANY

Bundesgerichtshof (Federal Court
of Justice) — 1980, 2003, 2009

AUSTRIA

Oberster Gerichtshof (Supreme
Court) — 1989

**Excise duty is not an "other
charge"
under Article 23(4).**

ALTERNATIVE APPROACH

FRANCE

Cour de cassation (Court of Cassation)
— 2010

Excise duty forms part of the value of
the goods under Article 23(1), rather
than an "other charge" under Article
23(4).

**A third solution
— neither
broad nor
narrow.**

Why read Article 23(4) broadly?

other charges incurred in respect of the carriage

1 BROAD WORDING

'In respect of' is broad — and the French 'à l'occasion du transport' is arguably even more open-ended. Neither formulation is limited to the ordinary costs of carriage.

2 'OTHER' MEANS OTHER

'Other charges' suggests a genuine residual category beyond carriage charges and customs duties.

3 FUNCTIONAL CONNECTION

No loss → no excise duty. If the loss of the goods triggers the tax liability, the excise is functionally linked to the failed carriage.

4 CUSTOMS DUTY ANALOGY

Customs duties are public-law charges, not payments for transport. Why should excise duty be treated differently merely because it is another fiscal burden connected with the goods?

5 THE CHEAPEST COST AVOIDER

The carrier controls the transport operation and can take measures to prevent loss. Allocating the resulting excise burden to the carrier may place the loss on the party best positioned to avoid it.

Why read Article 23(4) narrowly?

other charges incurred in respect of the carriage

1 COST OF CARRIAGE # CONSEQUENCE OF LOSS

'In respect of the carriage' does not mean 'in consequence of the loss'. Article 23(4) concerns charges connected with the carriage itself — not liabilities triggered by its failure.

2 THE 'BACK DOOR' TO ARTICLE 23(3)

If excise duty triggered by loss is recoverable in full under Article 23(4), the liability limit in Article 23(3) can be bypassed simply by characterising part of the loss as an 'other charge'.

3 WHAT KIND OF 'OTHER' CHARGES?

'Other' charges should share the essential character of freight and customs duties: charges arising in connection with the proper performance of carriage — not fiscal liabilities arising because the goods were lost.

4 THE CMR HAS OTHER MECHANISMS

Articles 24 and 26 allow the sender to declare a higher value of the goods or a special interest in delivery. This supports a system in which exceptional exposure is addressed expressly — rather than through an expansive reading of Article 23(4).

5 FORESEEABILITY MATTERS

Excise rates and liability depend on national tax regimes and the circumstances triggering taxation. Treating such liabilities as uncapped 'other charges' may expose carriers to losses difficult to predict, price or insure.

An unsolvable riddle?

Why is it so difficult to find an interpretation acceptable to both sides?

1 THE TEXT IS OPEN-ENDED

‘Other charges incurred in respect of the carriage’ can plausibly support both a broad and a narrow reading.

2 THE CASE LAW IS DIVIDED

National courts have reached fundamentally different conclusions — often relying on serious textual and systemic arguments.

3 THE SYSTEM POINTS BOTH WAYS

Article 23(3) favours limitation of liability.
Article 23(4) favours recovery of specified additional burdens.

4 THE TRAVAUX PRÉPARATOIRES DO NOT RESOLVE THE ISSUE

The preparatory materials do not provide a sufficiently clear indication of whether excise duty was intended to fall within Article 23(4).

Is there an argument capable of convincing the other side?

Starting again: Article 31 VCLT

Ordinary meaning · Context · Object and purpose

one combined operation

"As Lord Wilberforce acknowledged in Buchanan at p 151 E, there are '**powerful arguments**' in favour of the narrow interpretation. In particular, I consider that there is **considerable force** in the arguments based on the **object and purpose** of chapter IV and the **structure of the compensation scheme** for loss of goods under the CMR. *I find it impossible to hold, however, that the broad interpretation is **not tenable**.*"

JTI Polska v Jakubowski, UK Supreme Court

Ordinary meaning

ENGLISH

other charges incurred
in respect of the carriage

FRENCH

les autres frais encourus
à l'occasion du transport

ARTICLE 33(3) VCLT

The terms of the treaty are presumed to have the same meaning in each authentic text.

The French formulation appears broader than the English

one.
But Article 33 VCLT does not allow us simply to prefer the broader French meaning.

**THE ORDINARY MEANING REMAINS
INCONCLUSIVE.**

Context — Article 6 and Article 23

ARTICLE 6(1)(I)

charges relating to the carriage

other charges incurred from the making of the contract to the time of delivery



ARTICLE 23(4)

other charges incurred in respect of the carriage

SAME CONCEPT — OR DELIBERATELY DIFFERENT WORDING?

ARTICLE 23

VALUE OF THE GOODS

Article 23(1)–(2)

LIMITATION OF LIABILITY

Article 23(3)
8.33 SDR/kg

CHARGES / FURTHER DAMAGE

Article 23(4)
freight · customs duties · other charges
but no further damage shall be payable

Context connects the provisions — but does not resolve the classification.

Object and purpose

WHAT DOES THE CMR SEEK TO ACHIEVE?

A PREDICTABLE ALLOCATION OF RISK

The CMR does not make the carrier an insurer against every financial consequence of loss.
The carrier's exposure is deliberately defined and limited.

**20,000 kg of goods
€1 million in value**



ARTICLE 23(3)

166,600 SDR ~ €200,000

The CMR accepts that the carrier's liability may be substantially lower than the actual economic loss. This limitation is an integral part of the CMR liability regime.

Higher exposure only upon a paid declaration.

Articles 24 & 26

Bringing the elements together

ARTICLE 31 VCLT — A SINGLE COMBINED OPERATION

ORDINARY MEANING	'other charges incurred in respect of the carriage' is open-ended INCONCLUSIVE
CONTEXT	Article 6 and Article 23 are closely connected — but their wording does not resolve the issue INCONCLUSIVE
OBJECT & PURPOSE	The CMR establishes a predictable and limited allocation of the carrier's risk FAVOURS RESTRICTION

NO SINGLE ELEMENT IS DECISIVE.

THE COMBINED READING, HOWEVER, FAVOURS A RESTRICTIVE APPROACH.

The answer?

VALUE OF THE GOODS?

French approach

Problematic because
Article 23(1) fixes value
at the place and time of
taking over

OTHER CHARGE?

Possible linguistically

But creates tension
with the CMR's
allocation of risk

FURTHER DAMAGE — NON-COMPENSABLE?

**BETTER JUSTIFIED BY
THE OBJECT AND
PURPOSE OF THE CMR**

**Thank you for
your attention!**

