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## **The CIFFA Conditions 2010**

As previously advised, CIFFA went through a full scale revision of its Standard Trading Conditions in 2004-2005. Since then, CIFFA has made minor revisions in light of the experience of its members.

The 2005 revision of the Standard Trading Conditions took into account the possibility that the Rotterdam Rules might come into force. Where do these Rules now stand?

The Rules obtained a large number of signatory countries at a signing ceremony in Rotterdam in September 2009. Still, signing is not ratification, and ratification by at least 20 countries is required. If all the signing countries do ratify the Rules, they will come into force, but the timeframe in which that might happen is uncertain.

The writer commented on the Rotterdam Rules and how parties engaged in international ocean transportation, shippers, carriers and their insurers, will be confronted with new problems when they come into force.

The Rules will catch more commercial transport than the Hague or Hague Visby Rules that are the current international regime. In general terms, the Hague/Hague Visby Rules apply only where a contract of ocean transport is to be incorporated in a bill of lading. The Rotterdam Rules govern contracts in which a carrier against payment of freight undertakes to carry goods from one place to another that includes carriage by sea.

Under the Hague/Hague Visby Rules, forwarders had a reasonable chance of staying clear of ocean carrier responsibilities if they did not issue a bill of lading. For example, Section 7.1 of the FIATA Model Rules on Freight Forwarding stipulated that a Forwarder shall not be deemed liable as Carrier (i.e. forwarder acts as an agent) if the Customer has received a transport document issued by a person other than the Freight Forwarder and does not within a reasonable time maintain that the Freight Forwarder is nevertheless liable as Carrier. Now the informal dealings that often take place between forwarders and their customers are probably the sort of undertaking that saddles them with the responsibilities under the Rotterdam Rules.

The approach of the 2005 Standard Trading Conditions was to rigorously categorize the forwarder as an agent. In the debates leading to the finalization of the Rotterdam Rules, the principal supporters of the Rules consistently stated that the Rules were not intended to apply to agents for shippers. As an example, the definition of performing party in Article 1 (b) recognizes this limitation. Therefore, if forwarders can properly confine themselves to agency roles, they are not affected by the Rules.

Although this is legally attractive, it has its disadvantages. Issuance of a bill of lading is, to a degree, a valuable way of cementing customer loyalty in almost every case and certainly in the myriad cases where the transport is successfully completed. Also, under the Hague/Hague Visby Rules, the liabilities under the bill of lading could be insured at a reasonable premium.

What now? Get out your crystal ball and start gazing!