

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-
NATIONAL CARRIAGE BY RAIL**

Compensating and refunding the loss of goods

The expression "other amounts incurred in connection with carriage of the lost goods" - the issue of excise duties, e.g. tobacco duty
(Art. 40 § 3 of CIM 1980/Art. 30 § 4 of CIM 1999)

In past years, the case law of the OTIF Member States' courts has dealt differently with the question as to whether excise duties incurred by the consignor have to be refunded in the context of compensation for loss of the goods if the goods are stolen during transport. In so doing, the courts have not always followed the aim of the legislator. Court decisions reflecting opposing views have been published in the "Bulletin of International Carriage by Rail" (Bulletin), firstly in issues 3/1998 and 1/2001 and secondly in issue 2/2001 and in issue 1/2004 (p. 15-19).

This question has also several times been the subject of requests for information addressed to the OTIF Secretariat. The opinion of the OTIF Secretariat is in line with the view set out in the ruling of 26 June 2003 by the German Bundesgerichtshof, which is published in issue 1/2004 of the Bulletin. The complete text of this ruling is also available in this section.

As the legislator excluded from compensation the refunding of indirect damages in the event of loss of the goods (see the wording "to the exclusion of all other damages" in Article 40 § 1 of CIM 1980 or Article 30 § 1 of CIM 1999), there is no question of their being refunded by means of reimbursement of the costs in connection with transport (i.e. costs not incurred as a result of loss or damage) in accordance with Article 40 § 3 of CIM 1980 or Article 30 § 4 of CIM 1999.

The same principle also underlay the rules which preceded the CIM UR of 1980. However, the wording of the provision in question was changed when it was being developed in order to express the ratio legis more clearly and to avoid any misunderstandings that might arise. A detailed analysis of the problem, together with the history of the origins of the rule contained in Article 40 § 3 of CIM 1980, can be found in the study by Karl-Otto Konow, "The Refunding of Duties to be paid in Transit Transport as a result of the Goods being stolen" (see Bulletin 11-12/1987).

The question of compensation and refunding was also the subject of discussions during the work on revising COTIF in 1995-1999, both in the Revision Committee and in the General Assembly. In relation to the debate on a new wording (without the intention of making an amendment), it proved necessary to have another discussion on the principle of this provision. When the 5th General Assembly took a decision, it was eventually concluded that the **excise duties** referred to – as opposed to duties already paid – **must** (continue to) **be excluded from the carrier's obligation to refund** (see Explanatory Reports on the 1999 CIM Uniform Rules, Article 30, p. 33, paras. 6 and 7). This is made clear by the wording of Article 30 § 4 of CIM 1999: "The carrier must, in addition, refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost except excise duties for goods carried under a procedure suspending those duties."