



Export ban on medical protective equipment

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With effect from 4 March 2020, the German Federal Ministry of Economics and Energy issued an export ban on medical protective equipment. This mainly affects protective goggles, face shields, FFP2/3 masks, and suits (for details see [BAnz AT 04.03.2020 B1](#)). Apart from a few exceptions, the ban applies both to deliveries to countries within the European Union and to third countries.

For importers of such products resident outside of Germany who have entered into purchase agreements with German suppliers, the question arises as to which steps should now be taken towards their suppliers. This in turn depends on who bears the risk of exporting the goods - an aspect that has, in the course of the liberalisation of the EU's internal market, often been lost sight of when drafting contracts. In general, consideration should already now be given to limiting adverse economic consequences.

When it comes to the question of who bears the export risk, the following distinctions should be made:

1. If a clause of the Incoterms (e.g. EXW, FCA, CIP etc.) is agreed for the purchase contract, the relevant interpretation rules established by ICC/Paris for the Incoterms determine the further course of action.
2. If no Incoterms clause is included in the supply contract and the contract does not explicitly or implicitly regulate the situation that has now arisen, the legal consequences shall be governed by the law applicable to the supply contract. In the case of export transactions of German suppliers, this is generally the UN Sales Law/CISG, unless the parties have validly excluded the UN Sales Law/CISG. Then it depends on how the parties' spheres of risk are to be separated according to the national law applicable to the supply contract.

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