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Draft convention on contracts for the international carriage of goods wholly or partly by sea

Compilation of comments by Governments and intergovernmental organizations

Addendum

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II. Comments received from Governments and international organizations

A. States

7. Czech Republic

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[15 April 2008]

1. The Czech Republic welcomes the finalization of the draft convention on issues relating to the international carriage of goods by sea in Working Group III of UNCITRAL. The Czech Republic prefers that the draft convention would regulate international carriage of goods only by sea and within the scope corresponding to present international arrangements in force (“port to port”).

2. In respect of individual provisions of the draft convention, the Czech Republic considers suitable the arrangement of responsibility of carriers’ liability for loss of or damage to goods, or for delay (Article 18). The Czech Republic also supports an extension of the time limits for actions as compared with the provisions of the Hague and Hague-Visby Rules, as well as the adoption of a two-year limitation period as provided in the Hamburg Rules.

3. The application of Chapter 14 (Jurisdiction) and Chapter 15 (Arbitration) is a sort of concession to the Hamburg Rules. However, it is an acceptable compromise.

4. The Czech Republic finds it useful that provisions have been provided for the use of electronic transport records in Chapter 3 and in Chapter 8 as an alternative to the transport documents.

5. The Czech Republic also strongly supports the entry into force of the convention after the 20th notification of ratification, which would bring a universal character to the convention. Otherwise, the convention would be only the fourth set of regulations for the international carriage of goods by sea behind the present international arrangements in force: the Hague, Hague-Visby, and Hamburg Rules.

Conclusion:

6. The Czech Republic would welcome the limitation of the scope of the draft convention only to maritime transport so that the convention would become a unique and universal arrangement which could replace, in the future, present arrangements in the Hague, Hague-Visby and Hamburg Rules.

8. Republic of Korea

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(a) General View

7. The Republic of Korea believes that the new draft convention should greatly contribute to promoting international unification of maritime law and providing predictability for the industries. It supports several newly adopted or modified provisions in the draft Convention, such as electronic documents, delays, combined transport, right of control and concealed damage. However, it believes further review and discussion are necessary with regard to the limitation amount (Article 62) and volume contract (Article 82).

(b) Particular Provisions

(i) Limitation Amount (Article 62)

8. According to the draft Convention, the limits on the carrier's liability for breaches of its obligations are 875 SDR/package or 3 SDR/kg – even higher than the Hamburg Rules level (835 SDR/package or 2.5 SDR/kg). As at the 21st session of the Working Group, the Republic of Korea opposes these figures, taking into consideration that it had just adopted the Hague-Visby Rules level through revision of the Maritime Law Section of the Korean Commercial Code in July 2007. Therefore, adopting these figures, which are much higher than the new level adopted in the revised domestic law, may place an excessive burden on domestic carriers.

9. Furthermore, considering that the recent development of packing methods, which allows the shipper to divide goods into as many packages as possible, may result in an additionally increased liability for the carriers, higher liability limits put carriers at risk of an unreasonably heavy burden. In the Republic of Korea's view, therefore, the current limitation level is too high, and the level of limitation of the Hague-Visby Rules is adequate for commercial purposes.

(ii) Volume Contracts (Article 82)

10. With regard to Article 82, which excludes volume contracts from the application of the Convention, the Republic of Korea is concerned that the definition of volume contract in Article 1 (2), which has no specific threshold for the operation of the volume contract, is too vague, thereby allowing large shippers to easily derogate from its obligation or liability in the Convention, while leaving small shippers without sufficient protection.

11. Therefore, it suggests that the definition in Article 1 (2) should be elaborated to include specific guidelines for the application of the volume contract provision, such as a minimum shipment volume below which no derogation from the Convention may be made, so that Article 82 could not be abused for the purpose of sidestepping compulsory obligations or liability in the Convention.

(iii) Cost-Benefit Analysis

12. The Republic of Korea would like to request the UNCITRAL Secretariat that a thorough cost-benefit analysis on the draft Convention be carried out, the result of which could help each country or industry to understand clearly the advantages and disadvantages of the provisions in the draft Convention from its own viewpoint.
