



General Assembly

Distr.: General
30 April 2008*

Original: English

[Start]

United Nations Commission on International Trade Law

Forty-first session

New York, 16 June-3 July 2008

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

Compilation of comments by Governments and intergovernmental organizations

Addendum

Contents

	<i>Page</i>
II. Comments received from Governments and intergovernmental organizations	2
A. States	2
9. Japan	2

* Submission of this note was delayed because of its late receipt.



II. Comments received from Governments and intergovernmental organizations

A. States

9. Japan

[Original: English]
[30 April 2008]

Introduction

1. The following are the comments of the Government of Japan on the Draft Convention. Please note, however, that the following comments are not intended to be comprehensive and we may change or add comments subject to further review.

(a) Definitions of “transport document” and “electronic transport record”

2. Until the twenty-first session of the Working Group, “transport document” was defined in draft article 1, paragraph 15 (renumbered as paragraph 14 in the current draft) as a document issued under a contract of carriage by the carrier or a performing party that (a) evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage or (b) evidences or contains a contract of carriage. Under this previous definition, a mere receipt that evidences a performing party’s receipt of the goods would constitute a transport document and, thus, a performing party was supposed to issue a transport document. However, the Working Group agreed at its twenty-first session to replace “or” between (a) and (b) with an “and” in order to reflect the Working Group’s agreement that a mere receipt would not constitute a transport document for the purposes of the draft convention (see A/CN.9/645, para. 114). Therefore, it should be questioned whether a performing party is still supposed to issue a transport document on its own (instead of on behalf of the carrier) under the current definition of “transport document” in draft article 1, paragraph 14. If the answer is “no,” the phrase “or a performing party” in the definition must be deleted.

3. The same discussion applies to the definition of “electronic transport record” in draft article 1, paragraph 18.

(b) Form requirement

4. References to article 24, paragraph 4, article 69, paragraph 2 and article 77, paragraph 4 should be included in draft article 3 for consistency.

(c) Correction in accordance with the renumbering of article 1, paragraph 11

5. The phrase “article 1, subparagraph 11 (a) (i)” in draft article 49, subparagraph (a) (i) and article 53, subparagraph (3) (c) should be replaced with the phrase “article 1, subparagraph 10 (a) (i)” since article 1, paragraph 11 was renumbered as article 1, paragraph 10.

(d) Special rules for live animals

6. The phrase “done with the intent to cause such loss or damage to the goods or the loss due to delay or” should be added immediately after the phrase “in article 19,” in draft article 83, subparagraph (a) as shown below in order to keep the consistency with the wording in article 63:

Article 83. Special rules for live animals and certain other goods

Notwithstanding article 81 and without prejudice to article 82, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

(a) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery resulted from an act or omission of the carrier or of a person referred to in article 19, done with the intent to cause such loss or damage to the goods or the loss due to delay or done recklessly and with knowledge that such loss or damage, or that the loss due to delay, would probably result; or

(b) [No change]
