



## General Assembly

Distr.: Limited  
10 September 2007

Original: English

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**United Nations Commission  
on International Trade Law  
Working Group III (Transport Law)  
Twentieth session  
Vienna, 15-25 October 2007**

### **Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]**

#### **Proposal by the delegations of Denmark and the Netherlands**

##### **Note by the Secretariat\***

In preparation for the twentieth session of Working Group III (Transport Law), the delegations of Denmark and the Netherlands submitted to the Secretariat their proposal in the attached annex.

The document in the attached annex is reproduced in the form in which it was received by the Secretariat.

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\* The late submission of the document reflects the date on which the proposals were communicated to the Secretariat.



## Annex

### Proposal by the delegations of Denmark and the Netherlands

#### Delivery of the goods – articles 49 and 50

1. Every day, goods arrive at their place of destination without someone appearing who is entitled to receive them. In particular, when a negotiable transport document has been issued, this constitutes a great practical problem to the industry. In this light, the sponsors of this proposal welcome that the draft convention addresses the important issue of delivery as set out in article 49.

2. Currently, in order to protect itself against the risk of being required to deliver the cargo a second time, the carrier takes various precautionary steps including, in particular, requiring an indemnity (letter of indemnity) from the shipper or from the party requesting delivery of the cargo. The letter of indemnity is most often backed by a bank guarantee. In this manner, the carrier can reasonably manage the risk. While this is neither a perfect nor a desirable solution, it does give the carrier the possibility of arranging for its own protection. This is, of course, so, because the carrier is completely without fault and does not have the means to remedy the consequences when a negotiable transport document is unavailable at the moment of delivery and the carrier has to ascertain the rightful consignee. This situation is always attributable to a default on the part of the cargo interest. This proposal is intended to clarify that the carrier will continue to be able to request such protection under article 49.

3. Under article 49 as currently drafted, the carrier is obliged to deliver the cargo in accordance with an instruction under article 49 (d). It is appreciated that the provision of article 49 (e) is intended to make the issuance of letters of indemnity superfluous in, hopefully, a great majority of cases. However, these new rules should not imply that the carrier is deprived of its option to require protection, such as a letter of indemnity, as a condition for delivering the goods in accordance with the instruction pursuant to article 49 (d). It is believed that such an implication is not the intention of the draft because, in accordance with article 49 (g), the risk remains that the carrier is met by a legitimate demand for a second delivery by a good faith holder of a negotiable transport document. Therefore, it must be made clear that the letter of indemnity protection remains available to the carrier.

4. Further, article 49 (g) as presently drafted does not give any indication of which circumstances must exist for a holder to be considered a “holder that did not have or could not reasonably have had knowledge” of a delivery subject to an instruction given under (d). It is in the interest of consignees, shippers and carriers to clarify this in order to achieve greater legal certainty. Thus, the consignee and shipper will have better knowledge of when and how to safeguard its interests, and the carrier will have better knowledge of what protection it can avail itself in order to avoid the risks connected with delivering in accordance with the given instruction.

5. In light of the above, it is proposed that the following amendments be made to articles 49 (g) and 50 (2):

**Article 49**

6. To add a second sentence to article 49 (g) as follows:

“When the contract particulars state the expected time of arrival of the goods, or include a statement on how to obtain information about whether or not delivery of the goods has taken place, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.”

**Article 50 (2)**

7. Add a new subparagraph (f) as follows:

“No security as reasonably required by the carrier is provided for the purpose of protecting the carrier against the risk that it must deliver the goods to a person other than to whom it is instructed to deliver them under article 49, paragraph (d).”

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