



## General Assembly

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**United Nations Commission on  
International Trade Law**  
**Working Group III (Transport Law)**  
**Twentieth session**  
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### **Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]**

#### **Proposal by the Government of China on Delivery of the Goods when a Negotiable Transport Document or a Negotiable Electronic Transport Record has been issued and on Goods Remaining Undelivered**

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

In preparation for the twentieth session of Working Group III (Transport Law), the Government of China submitted to the Secretariat the attached document.

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 China on Delivery of the Goods when a Negotiable Transport Document or a Negotiable Electronic Transport Record has been issued and on Goods Remaining Undelivered**

#### **Comments on Article 49, Paragraphs (d)-(g) of the draft convention**

1. Article 49, paragraphs (d)-(g) of the draft convention aim to solve the problem that arises when the holder of negotiable transport document does not claim delivery of the goods after their arrival at the place of destination, which frequently puzzled the carrier at the port of destination. It was noted that in the mechanism designed in paragraph (d)-(g), the function of the bill of lading as a document of title is ensured and the carrier is not also obliged to deliver the goods against negotiable transport documents. In other words, the carrier with due diligence, is allowed to deliver the goods without negotiable transport documents. Thus, a reasonable balance could be achieved among different parties such as the carrier and the consignee and so on.

2. However, the Chinese delegation considers that, firstly, with reference to paragraphs (d) and (e), the carrier is endowed with the right to deliver the goods pursuant to the instructions of the controlling party or the shipper, however, as paragraph (g) prescribes, an innocent third party holder of a bill of lading still possesses the right of claiming delivery from the carrier. In addition, no rules in the present provisions are available for carriers to judge whether an innocent third party bill of lading holder is likely to appear in the future or not. Therefore, the present stipulations do not currently provide clear directions for the carrier about when it can deliver the goods upon instruction of the controlling party or the shipper without concern.

3. Secondly, the entitlement of this right on the part of the shipper and the documentary shipper is likely to increase fraud, and may damage the interests of the holder and thus implicate the carrier as well. Furthermore, the pledge and guarantee effect of the bill of lading would be reduced and thus the bank as an intermediary could have its interests jeopardized. Besides, when the shipper and the documentary shipper fail to give these kinds of instructions, they may claim against the carrier for compensation, which is different from the practice of current international trade.

4. In conclusion, the present stipulation of Article 49 may not assist the carrier to solve effectively the problem of a failure to claim the delivery of the goods under the negotiable transport document and also seems to differ greatly from widely-used international trading laws and customs, which may bring a number of uncertainties and great impact to the current international trade system and practice. Therefore, it should be done with great caution and carefulness.

#### **Comments on Article 50 of the draft convention**

5. With respect to Article 50 of the draft convention, it was suggested in the process of deliberations that although a system similar to that proposed in Article 50 had been implemented in the maritime realm for many years, it proved futile in eradicating this problem.

6. However, the Chinese delegation considers that Article 50 of the draft convention concerning how to deal with undelivered goods should assist the carrier in solving this problem effectively. In our opinion, obviously, the reason for such failure is related to the fact that there is no explicit adoption of such a system in any international convention. It is positive and foreseeable that, through the improvement and express stipulation of such a system in the draft convention, the merchant would perform its duty of taking delivery of the goods more actively.

**Suggestions and a proposal for amendment to the related items of the draft Convention**

7. Based on the above discussion, we suggest deleting sub-paragraphs (d)-(g) of Article 49.

8. In addition, we suggest amending the related items of Article 50 as follows:

“Article 50. Goods remaining undelivered

“1. Unless otherwise agreed and without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:

(a) To store the goods at any suitable place;

(b) To unpack the goods if they are packed in containers, or to act otherwise in respect of the goods, including by moving the goods or causing them to be destroyed;

(c) To, after 60 days from the day that the carrier give notice of arrival of the goods in accordance with paragraph (3) of this article and the day of the goods' arrival at the port of destination, cause the goods to be sold in accordance with the practices, or pursuant to the law or regulations of the place where the goods are located at the time. Whereas, if the goods are perishable or other unsuitable cases of preservation are in existence, the carrier may cause the goods to be sold earlier.

“2. For the purposes of this article, goods shall be deemed to have remained undeliverable if, after their arrival at the place of destination:

(a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 11, paragraph 2;

(b) When no negotiable transport document or no negotiable electronic transport record has been issued, the controlling party or the shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 46, 47 and 48;

(c) When a negotiable transport document or a negotiable electronic transport record has been issued, the holder does not claim delivery of the goods from the carrier within a reasonable time after the carrier giving notice of arrival of the goods to the notify party, if any, and to one of the consignee, the controlling party or the shipper in accordance with paragraph (3) of this article;

(d) The carrier is entitled or required to refuse delivery pursuant to articles 46, 47, 48 and 49;

(e) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested;

(f) The goods are otherwise undeliverable by the carrier.

3. The carrier may exercise these rights only after it has given reasonable advance notice of arrival of the goods at the place of destination to the person stated in the contract particulars as the person if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.

4. ....

5. ....”

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