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## United Nations Commission on International Trade Law

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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**

#### **3. New Zealand**

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##### **Introduction**

1. The New Zealand Government welcomes the opportunity to comment on the draft Convention on contracts for the international carriage of goods wholly or partly by sea.

2. The New Zealand Government is supportive of the intent of the draft Convention to harmonize, update and provide greater codification of current maritime carrier liability law.

3. There are three aspects of the draft Convention that the New Zealand Government would like to provide comment on. They are:

(a) Definition of volume contracts and the ability to contract out of the Convention;

(b) Liability limits;

(c) Access to records and documents.

##### **(a) Definition of volume contracts and the ability to contract out of the Convention**

4. New Zealand currently operates under the Hague-Visby Convention which is a mandatory regime and cannot be contracted out of. New Zealand industry has worked within a harmonized system for over 100 years, and has not experienced the disaggregated system that a contracting out provision could provide.

5. The New Zealand Government considers that the ability for volume contracts to derogate from the draft Convention is not desirable, first, because it is counter to the general principle of harmonization and, secondly, because it may expose the weaker party in a negotiation to an abuse of power.

6. The definition of “volume contract” in Article 1 (2) is very wide and may capture very small shippers, as contracting out under a volume contract could apply to as few as two containers.

##### **Harmonization**

7. An ability to contract out could threaten the effectiveness of the Convention, as one of its key aims is the harmonization of maritime carrier liability. If the contracting out provisions are highly utilized, the Convention may bring a high level of uncertainty into the law.

8. Representations from the New Zealand insurance industry are that such uncertainty would not promote good risk management.

**Potential for imbalance of power in the negotiation of contracts**

9. Given that the definition is so wide, Article 82 may expose New Zealand cargo interests to oppressive behaviour by carriers. New Zealand has long trade routes served by relatively few carriers, which may make it vulnerable to abuse of volume contracts.

10. Any benefits to cargo interests from flexibility and freedom to contract will depend on their commercial sophistication and their ability to negotiate. A narrower definition of “volume contract” would separate small cargo interests from larger, more commercially sophisticated cargo interests.

**New Zealand position**

11. The New Zealand Government considers that Article 82, the ability to derogate from the draft Convention, should be deleted. However, if Article 82 is to remain, the New Zealand Government supports a refinement of the definition of “volume contract”.

12. The New Zealand delegation proposes the following alternative definition:

“‘Volume contract’ means a contract that provides for the carriage of at least 500 containers of cargo or 7,500 revenue tons (1 revenue ton equals 1 cubic metre or 1 metric ton, whichever is the greater) in a series of 3 or more shipments during a set period of time of no less than one year.”

**(b) Liability limits**

13. The New Zealand Government supports the proposed liability limits set out in Article 61 (1), but would be satisfied with any range that supplies a modest increase from the Hague-Visby Convention that New Zealand industry currently operates under.

**(c) Access to records and documents**

14. The New Zealand Government has historically strongly supported Article 24 (6), the provision of access to records and documents in the event of actual or apprehended loss or damage. This support is reiterated.

**4. Denmark**

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15. The Government of Denmark has consistently supported the work in UNCITRAL’s Working Group III to produce a new Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.

16. In this work, Denmark has emphasized the importance of three key factors. The Convention should have real potential to bring about a wide global

harmonization. The Convention should reflect the needs of modern international transport and thus facilitate international trade. The Convention should strike a fair balance between the interests of carriers and shippers.

17. In the opinion of Denmark, the draft Convention as submitted to the Commission fulfils these three key factors and will be a great benefit for global shipping and thus global trade. In order to achieve this, the participating States have shown great determination and willingness to reach compromises that have ensured that a fair overall balance of interests in this comprehensive instrument has been struck. It is crucial that this overall balance should not be upset by changing the compromises reached on specific issues. The draft Convention must be seen as a whole.

18. However, some minor changes of a technical legal nature as well as a few clarifications are necessary in order to ensure that the Convention reflects the decisions made. We are confident that the Commission will be able to agree on these minor matters.

19. Accordingly, Denmark strongly supports that the Commission approves the draft Convention in the form submitted to it without upsetting the delicate overall balance that has been struck through a series of compromises during the preparation of this comprehensive instrument.

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