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

Proposal of the delegations of Denmark, Norway and Finland on draft article 37 (1)(a) regarding contract particulars

Note by the Secretariat

In preparation for the nineteenth session of Working Group III (Transport Law), the Governments of Denmark, Norway and Finland submitted to the Secretariat the proposal attached hereto as an annex with respect to draft article 37 (1)(a) on contract particulars in the draft convention on the carriage of goods [wholly or partly] [by sea].

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



Annex

Contract particulars

1. Under draft article 37 (1)(a) the carrier is obliged to include a “description of the goods” as furnished by the shipper. The carrier may, however, protect itself by entering a reservation on the document if it has no physically practicable or commercially reasonable means of checking the accuracy of the information (see draft article 41 (2)(a)). In any event, the carrier must include the information provided by the shipper. The draft convention provides no limits as to the amount of information, the nature of the information, descriptions, etc. which the shipper may require to have included in the transport document. This is new as compared to the equivalent provision in the Hague, Hague-Visby and Hamburg Rules.

2. In practice, there is an increasing tendency of shippers to provide lengthy and detailed technical descriptions of the goods which they ask to have included in the transport document. It is important that the draft convention provides for a limit as to the length, nature and degree of detail of the information that the shipper may require to have included in the transport document. If such a limit is not provided for, the carrier is obliged to perform a reasonable checking of all such information furnished by the shipper which it is physically practicable and commercially reasonable to check (see draft article 41 (2)(a)). When a considerable amount of information or information of a specific nature is to be included in the transport document, it will often be a matter of opinion – and therefore give rise to disputes – whether such checking will be physically practicable or commercially reasonable. By permitting too many and too detailed particulars in the transport documents, compliance with the obligation of the carrier to exercise a reasonable control of those particulars is made significantly more difficult and burdensome. One element is the increased insecurity connected with reading several pages of information; another is that the way is paved for including particulars remote or even unrelated to the contract of carriage and hence unfamiliar to the carrier. In addition, it may adversely affect the standard of reasonableness to be applied to the carrier.

3. In order to meet these concerns it is suggested that the following amendment be made in the text:

Draft article 37 (1)(a) should be altered to read as follows: “A description *in general terms* of the goods;”.

This proposal is based on the wording of UCP 600 (Uniform Customs and Practice for Documentary Credits (6th revision)), Article 14 (e), which ensures that the transport document will still fulfil its purpose in international trade. It is also quite similar to the solution in the Hamburg Rules, Article 15 (1)(a) which speaks of “the general nature of the goods”.
