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

Comments and Proposals of the Government of Nigeria

Note by the Secretariat*

In preparation for the twentieth session of Working Group III (Transport Law), the Government of Nigeria submitted to the Secretariat the attached document indicating that it reflected the results of consultations between Central and West African Countries.

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

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



Annex

NIGERIA'S POSITION ON THE UNCITRAL DRAFT TRANSPORT LAW, SUBMITTED TO UNCITRAL SECRETARIAT, AUGUST, 2007.

1. Nigeria is pleased to submit the following comments and suggested amendments to the Draft Convention on the Carriage of Goods (wholly or partly by Sea) as contained in the working paper A/CN.9/WG.III/WP.81.

CHAPTER 1: GENERAL PROVISIONS.

ARTICLE 1

2. Action: The definitions section should have the word "*Sub-contractor*" defined separately and reflect freight forwarders, warehouse, terminal and inland depot operators, in order to introduce the door-to-door transportation concept, envisaged by the Convention.

ARTICLE 4

3. Action: The applicability of defences and limits of liability, should be reviewed to cover shippers' liability also.

CHAPTER 2: SCOPE OF APPLICATION.

ARTICLE 6

4. Action: Specific exclusions should be redrafted in line with the provisions of Article 2 section 3 of the Hamburg Rules, without prejudice to Articles 6 and 7 of the Hamburg Rules, for clarity.

CHAPTER 4: PERIOD OF RESPONSIBILITY.

ARTICLE 12

5. Action: Transport not covered by the contract of carriage has two variants; but variant B of the Draft Article is preferred. Variant 'A' should therefore be deleted.

CHAPTER 6: LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY.

ARTICLE 17

6. Action: Basis of liability of the carrier, paragraph 5 should be deleted in its entirety.

ARTICLE 20

7. Action: Paragraph 3 of this Article should be deleted as being of no importance.

ARTICLE 21

8. Action: The provision should read thus: "*Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of*

carriage within the time agreed upon” (by deleting the last three lines and the word expressly).

ARTICLE 23

9. Action: The period contained therein, for the notice to be given, should be 15 working days instead.

CHAPTER 8: OBLIGATIONS OF THE SHIPPERS TO THE CARRIER.

ARTICLE 28:

10. Action: Should be extended to cover the consignee by including sentence like this *“The rule stated above as it relates to the shipper and the carrier shall also apply in relation to the consignee”*.

ARTICLE 30:

11. The variant “B” should be adopted, while the words *“or delay”* in square brackets should be deleted.

ARTICLE 31:

12. Action: The position in New York deleting paragraph 2 should be maintained, as being acceptable.

ARTICLE 32:

13. Action: The deletion of the words *“or become”* as agreed in New York be maintained.

ARTICLE 34:

14. Action: Paragraph 2 of this Article (in brackets) should be deleted.

CHAPTER 9: TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS.

ARTICLE 38:

15. Action: Paragraph 1, is a new and welcome idea, while on paragraph 2, variant B should be adopted instead of variant A, because variant B is reasonable and best suits our interests as shippers.

ARTICLE 42:

16. Action: Paragraph C should be expunged as it derogates from the position in the Hamburg Rules which protects a consignee acting in good faith.

ARTICLE 44:

17. Action: Retain contents of first brackets and delete second bracket and its contents.

ARTICLE 47 AND 48:

18. Comment: *“Provides”* is the preferred option for the English text. Therefore, *“indicates”* and *“specified”* should be deleted in the English version of the Draft Convention. However, the word *“indiquant”* is the preferred option for the French text.

19. Action: Therefore, the words, “*disposant*” and “*precisant*” should be deleted in the French version of the draft convention.

ARTICLE 50:

20. Action: (1) Delete “*unless otherwise agreed and*” (3) deleted “*given reasonable*” and insert “*14 working days*”. Create a new Art 50 bis by transferring the contents of Art 23 to create the 50 bis.

CHAPTER 11: RIGHTS OF THE CONTROLLING PARTY.

21. Amend the heading to read RIGHT OF CONTROL

ARTICLE 52:

22. Action: Delete “*Exercise and*” from the title.

ARTICLE 53:

23. Comments: “*Provides*” is the preferred option for the English text, while the word “*indiquant*” is the preferred option for the French Text.

24. Action: Delete “*indicates*” and “*specified*” in the English text and delete “*disposant*” and “*persisant*” in the French text.

ARTICLE 53 (6):

25. Action: Expunge the entire paragraph (paragraph 6)

ARTICLE 54 (2):

26. Action: On the 3rd line insert “*diligently*” after “*of*” and delete the contents of the brackets.

ARTICLE 54 (4):

27. Action: Delete the brackets but retain the contents.

CHAPTER 12: TRANSFER OF RIGHTS.

ARTICLE 59 (b), (c):

28. Action: Delete “*without endorsement*”. Insert “*duly endorsed*”.

ARTICLE 60 (2):

29. Comments/Action: Remove the first brackets but retain the contents. Delete contents of second brackets.

ARTICLE 60 (3):

30. Action: Delete brackets but not the contents.

CHAPTER 13: LIMITS OF LIABILITY.

31. Action: Amend title to read “*Limits of Carriers Liability*”.

ARTICLE 62 (1):

32. Action: Limits of liability provided by the Hamburg Rules should be used. Insert 835 in the first brackets and 2.5 units in the second.

ARTICLE 62 (2) Variant A:

33. Action: Redraft according to suggestion made by Nigeria as follows:

“*Notwithstanding*” the Paragraph 1 of this Article;

(a) *The carrier cannot establish whether the goods were lost or damaged or whether the delay in delivery was caused during the sea carriage or during the carriage proceeding or subsequent to the sea carriage; and*

(b) *Provisions of an international instrument or national law would be applicable pursuant to Article 26 if the loss, damage or delay occurred during the carriage preceding or subsequent to the sea carriage, the sea carrier’s liability for such loss, damage or delay shall be limited pursuant to the limitation provisions of such applicable international instrument, national law or this convention whichever is higher”.*

ARTICLE 62 (2) VARIANT B:

34. Action: Expunge, variant B of paragraph 2.

ARTICLE 62 (4):

35. Action: Delete “*or the date agreed upon by the parties*”

ARTICLE 63:

36. Action: Delete the brackets but not the contents. Delete “*One*” and insert “*five*”.

ARTICLE 64:

37. Action: delete “*personal*” in both paragraph 1 and 2.

CHAPTER 14: TIME FOR SUIT.

ARTICLE 66:

38. Action: Delete the first line and part of the second line up to “*but*” on the third line delete “*during the running*” and insert after the *expiration*” insert “*limitation*” before “*period*”.

39. The amended clause should read as follows:

*“The person against whom a claim is made may at any time **after the expiration of the limitation period** extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations”.*

ARTICLE 68:

40. Action: Delete “*bareboat charterer*”

CHAPTER 15: JURISDICTION.

ARTICLE 69:

41. Action: Delete “*unless the contract of carriage contains an exclusive choice of court agreement that complies with Art 70 or 75*”.

ARTICLE 70:

42. Action: Delete the word “*exclusive*” in Article 70 (1)

ARTICLE 72:

43. Action: Delete the first bracket but retain the contents (“*or*”) and delete the second bracket and its contents.

ARTICLE 74 (1) AND 74 (2):

44. Action: Delete the first bracket but retain the contents (“*or*”) and delete the second bracket and its contents (“*or pursuant to the rules applicable due to the operation of Article 77 paragraph 2*”).

ARTICLE 76 (1):

45. Action: Delete “*when both states have made a declaration in accordance with Article 77*”.

ARTICLE 76 (2)(b):

46. Action: Delete the word “*exclusive*”.

ARTICLE 76 (2)(c):

47. Action: Expunge, the whole of subparagraph c.

ARTICLE 77:

48. Action: Expunge, the entire article.

CHAPTER 16: ARBITRATION.

ARTICLE 78:

49. Action: The heading should be amended to read “*Arbitration agreements before the dispute has arisen*”.

ARTICLE 79:

50. Action: End the clause at “*Transportation*” on the second line and delete the rest of the clause.

51. The clause should read as follows: “*Nothing in this convention affects the enforceability of an arbitration agreement in a contract of carriage in non liner transportation*”.

ARTICLE 81:

52. Action: Expunge the entire Article.

CHAPTER 18 – OTHER CONVENTIONS.

ARTICLE 83 (1):

53. Action: Delete reference to Hamburg Rules i.e. “*or alternatively to the United Nations convention on Carriage of Goods by Sea concluded at Hamburg on 31st March 1978*”.

CHAPTER 19: VALIDITY OF CONTRACTUAL TERMS.

ARTICLE 88 (2) 8:

54. Action: Delete brackets but not contents.

ARTICLE 89 AND 90:

55. Action: These Articles should be retained as they are. The contents of chapter 19 should come before Chapter 18.

56. Nigeria wishes to request that discussions be re-opened on Articles 1-41 especially with regards to areas where amendments and modifications are suggested by this paper.

57. This is in spite of the fact that conclusions have been reached on the majority of issues covered by these Articles. It is in the interest of all parties that this convention, when finally concluded should enjoy world wide acceptability, and ratification, which, in turn would ensure its efficient, effective and universal implementation by contracting parties.

58. We thank you for your kind consideration of our position on the draft convention on carriage of goods (wholly or partly) by sea.
