

**NEW ZEALAND COMMENTS ON THE
DRAFT CONVENTION ON CONTRACTS FOR THE
INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA
AS APPROVED BY THE WORKING GROUP
AT ITS TWENTY-FIRST SESSION (VIENNA, 14-25 JANUARY 2008)**

Introduction

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

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

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

- 1 Definition of volume contracts and the ability to contract out of the Convention;
- 2 Liability limits;
- 3 Access to records and documents.

1 Definition of Volume Contracts and the Ability to Contract Out of the Convention

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 harmonised system for over 100 years, and has not experienced the disaggregated system that a contracting out provision could provide.

The New Zealand delegation 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 harmonisation and, secondly, because it may expose the weaker party in a negotiation to an abuse of power.

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.

Harmonisation

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

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

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.

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

New Zealand position

The New Zealand delegation 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 delegation supports a refinement of the definition of 'volume contract'.

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 tonnes (1 revenue tonne equals 1 cubic meter or 1 metric tonne, whichever is the greater) in a series of 3 or more shipments during a set period of time of no less than one year.

2 Liability Limits

The New Zealand delegation 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.

3 Access to Records and Documents

The New Zealand delegation 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.