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Note by the Secretariat

Fact sheet: UNCITRAL project on negotiable cargo documents

This Note contains a short description of the key features of the negotiable cargo document (in both paper and electronic forms) envisaged in the draft new instrument (work in progress) as revised after the forty-fourth session of Working Group VI. It was prepared by the UNCITRAL secretariat to facilitate consultation among relevant industry bodies.



Fact sheet: UNCITRAL project on negotiable cargo documents

1. Working Group VI of the United Nations Commission on International Trade Law (UNCITRAL) is currently developing a new instrument on negotiable cargo documents.¹ While bills of lading have been widely used as documents of title in the maritime sector, transport documents issued by rail, road and air carriers (often known as “consignment notes”), which are typically non-negotiable, cannot serve that function. The new instrument intends to create a new type of document of title entitled “negotiable cargo document”, which could perform an analogous function as a maritime bill of lading for the carriage of goods for any mode of transport in a multimodal or unimodal context. The new instrument also provides a legal framework for the recognition and use of negotiable electronic cargo records.

2. Since the Commission assigned the topic to Working Group VI in 2022, four Working Group sessions have been held in Vienna and New York to consider a set of preliminary draft provisions for a new instrument on negotiable cargo documents. ***The next session is scheduled to take place from 9 to 13 December 2024 at the Vienna International Centre in Vienna.***

3. The key features of the negotiable cargo document envisaged in the draft new instrument (*work in progress*) are summarized in the following paragraphs. It should be noted, for the avoidance of doubt, that these key features reflect working assumptions by the Working Group, which may still be revised or adjusted at future sessions so as to adequately address, for example, the needs and concerns of relevant industry bodies.

Why is there a demand for negotiable cargo documents and negotiable electronic cargo records?

4. Documents of title can be transferred to another person, making it easier to buy and sell goods while in transit. This is particularly valuable in international trade where shipments can take some time or have to be reloaded during the voyage (e.g. multimodal transport) and the parties may wish to be able to sell or otherwise dispose of the goods for financial, operational, or strategic reasons. In addition, documents of title can provide better security for banks and financial institutions providing trade finance, such as the letter of credit.² By becoming holders of documents of title, banks and financial institutions could exercise control over the goods. To sum up, documents of title can provide flexibility in international trade and can also facilitate the use of trade finance. The negotiable cargo document under development at UNCITRAL is intended to serve as a document of title, thus filling a gap in multimodal and unimodal transportation not involving a maritime leg.

5. Moreover, the ability to switch between different modes of transport in case of need while retaining the document of title function of the transport document is preferred by shippers so as not to diminish the value of collateral in the context of trade finance. For example, the decision by many shipping lines to reroute vessels away from the Red Sea and Suez Canal has prompted the development of new services combining shipping services with road, rail and/or air transport. Under such circumstances, the use of a negotiable cargo document (unlike a maritime bill of lading) covering the whole carriage would not call for the issuance of non-negotiable road/rail consignment notes or air waybills by the issuer of the negotiable cargo

¹ At the 52nd session of UNCITRAL in 2019, China presented a proposal on possible future work towards the development of a negotiable transport document to facilitate carriage of goods, particularly by railway in the Euro-Asian space. The proposal indicated that, unlike the ocean bill of lading, the railway consignment note did not serve as a document of title and could not be used for the settlement and financing of letters of credit. The limited function of the railway consignment note also constrained the ability of banks to provide financial services and increased the financial pressure on importers and the risks faced by exporters in collecting payments.

² The letter of credit is a widely used trade finance instrument and continues to be important to facilitate trust between partners in international trade transactions, particularly where buyer and seller have no previous dealings with each other.

document in case of switch of mode. The flexibility to sell goods in transit to another buyer is also becoming an important part of building resilience into supply chains by shippers at times of disruption.

6. Last but not least, a uniform legal framework in the form of an international convention (as currently envisaged by the Working Group) could provide the same legal standards on the recognition and use of negotiable electronic cargo records and thus help facilitate interoperability of data exchange models.

Who will issue negotiable cargo documents and negotiable electronic cargo records?

7. The Working Group currently envisages that any transport operator acting as a contractual carrier could issue a negotiable cargo document or negotiable electronic cargo record, irrespective of whether or not that person performs the carriage itself. This includes any rail/road/air carrier or freight forwarder who concludes a transport contract with the consignor and thus assumes responsibility for the performance of the contract in a multimodal or unimodal context. For the avoidance of doubt, freight forwarders acting merely as agents (not as contractual carriers) cannot issue negotiable cargo documents or negotiable electronic cargo records.

How to issue negotiable cargo documents and negotiable electronic cargo records?

8. It is also currently envisaged that as a default rule, the transport document (either negotiable or non-negotiable) issued by the same transport operator that meets minimum information requirement³ shall serve as a negotiable cargo document or negotiable electronic cargo record if it contains wording such as “to order”, “negotiable” or an equivalent expression as well as a conspicuous annotation entered by the transport operator stating that the transport document shall serve as a negotiable cargo document or negotiable electronic cargo record from a specified date and with reference to the draft new instrument. It is envisaged that, for instance, the FIATA Multimodal Bill of Lading can serve as a negotiable cargo document if it meets the above conditions.

9. As fallback rules, it is currently envisaged that in the event that applicable laws prohibit the transport document from functioning as a negotiable document (such as COTIF-CIM Uniform Rules, art. 6.5), the negotiable cargo document can be issued as a separate document in addition to a non-negotiable transport document. The issuance of two negotiable documents in respect of the same goods by the same transport operator would not be possible. It is also envisaged that in the absence of

³ It is currently envisaged that a negotiable cargo document or negotiable electronic cargo record shall indicate:

- (a) The name and address of the transport operator;
- (b) The name and address of the consignee, if required by the law applicable to the transport contract for inclusion in the transport document or provided by the consignor;
- (c) The name and address of the consignor;
- (d) The general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the gross weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the consignor;
- (e) The apparent order and condition of the goods as taken in charge by the transport operator;
- (f) The place and date of taking in charge of the goods by the transport operator;
- (g) The place and date of issuance of the negotiable cargo document or negotiable electronic cargo record and, if issued separately, of the transport document;
- (h) The place of delivery of the goods;
- (i) The number of originals of the negotiable cargo document, when more than one original is issued; and
- (j) A statement as to whether the freight has been prepaid or an indication as to whether the freight is payable by the consignee; and
- (k) [A conspicuous annotation with reference to this Convention.]

any transport document issued by the transport operator, a negotiable cargo document or negotiable electronic cargo record can still be issued by the transport operator.

How would the draft instrument affect the rights and obligations of the transport operator, consignor and consignee and their liability under applicable international conventions or national law?

10. The new instrument will introduce a new type of document of title and will only apply to such new type of document of title (namely, negotiable cargo documents and negotiable electronic cargo records). Accordingly, the new instrument will not apply to transport documents issued under transport contracts governed by existing applicable international conventions (e.g. maritime bills of lading, rail and road consignment notes, air waybills). The new instrument will, however, apply to “annotated” transport documents which meet the conditions as stated in paragraph 8 above, including a conspicuous annotation entered by the transport operator stating that the transport document shall serve as a negotiable cargo document or negotiable electronic cargo record from a specified date and with reference to the draft new instrument.

11. The draft instrument currently assumes that, in principle, the issuance and transfer of a negotiable cargo document or negotiable electronic cargo record should not affect the rights and obligations of the transport operator, consignor and consignee under applicable international conventions or national law. However, the holder of a negotiable cargo document or negotiable electronic cargo record will acquire all rights under the transport contract, and any entitlement to such rights conferred upon the consignor or the consignee (as applicable) shall extinguish. Such a mechanism should function as an assignment of rights by the consignor to the holder. The consent of the consignor to assign all rights under the transport contract to the holder would be implied when the consignor requests the transport operator to issue a negotiable cargo document or negotiable electronic cargo record.

12. The draft instrument intends to avoid interference with existing liability regimes for the international carriage of goods. It is currently envisaged that issues concerning liability of the transport operator will generally be dealt with under the law governing the transport contract, except, for example, liability of the transport operator for damages caused as a result of its breach of the obligations under the draft new instrument which has not yet been discussed by the Working Group.

13. It is explicitly stated in the draft instrument that it does not affect the application of any international convention or national law relating to the regulation and control of transport operations.
