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Draft provisions for a new instrument on negotiable cargo documents

Submission from the Global Shippers Forum

Note by the Secretariat

The present note contains a submission received on 9 December 2024 from the Global Shippers Forum in preparation for the forty-fifth session of Working Group VI. The submission is reproduced as an annex to the present note in the form in which it was received by the Secretariat.



Annex

Documents [A/CN.9/WG.VI/WP.108](#) (CMI) and [A/CN.9/WG.VI/WP.109](#) (FIATA)

1. The Global Shippers Forum (GSF) has considered the concerns express by CMI in Document WP.108 but wishes to align itself with the counterarguments and positions expressed by FIATA in Document WP.109. As FIATA states the applicability of other international conventions is expressly provided for in Article 1, and provision is also made for the transport operator and the shipper to agree the applicability of the NCD convention. Refinement of this wording is preferable rather than the explicit disapplication of the Convention to an entire category of international freight movements.
2. Maintaining the applicability of the NCD Convention to multimodal shipments involving a sea leg is crucial as such journeys will account for a majority of the movements where shippers might usefully request the issuance of a multimodal NCD.

Documents [A/CN.9/WG.VI/WP.110](#) (ICC Banking Commission)

3. GSF supports clarifications of the draft text in so far as they may aid the operational use of multimodal NCDs and especially their recognition by institutions financing trade transactions. The points raised by ICC Banking Commission are therefore of significance.

1. Definition of Transport Operator

4. In considering whether a Freight Forwarder acts as an agent for the shipper, or as a Multimodal Transport Operator in its own right, GSF notes that this would be settled by the actions of that entity, not by the identified services it purports to provide. Thus, if an entity, how so ever identified, issues an NCD that includes a contract for transport of goods in which that entity is named as the carrier then that entity is *de facto* the carrier for the purposes of that contract for carriage with the shipper to whom the NCD is issued.
5. The actual performance of the carriage may be subcontracted to another party or parties but this is not material to the fact that the entity has entered into a binding contract with the shipper to transport the goods.
6. ICC's concern may arise because the name or brand of the entity is being followed rather than the role it performs. This was a point made by GSF in the Side meeting held at the 43rd session – “it not what you are but what you do that determines your responsibilities”.
7. Rather than amend the definition of Transport Operator, another approach may be to note in the Convention the many different roles that can be played by an entity identified as a freight forwarder. This has been the approach taken, for example, in recently drafted text for the revised edition of the IMO/ILO/UNECE Code of Practice on the Packing of Cargo Transport Units (the CTU Code). Here the role of the freight forwarder is defined as follows:

The party that provides services relating to the carriage, consolidation, storage, handling, packing or distribution of goods, as well as ancillary and advisory services in connection therewith including customs clearance. Freight forwarding services may also include logistics services in connection with the carriage, handling or storage of the goods.
8. The CTU Code also notes that in providing these different services, a freight forwarder will assume the responsibilities of that role. Thus a forwarder may play the role and assume the responsibilities of a shipper (of consolidated shipments to a

shipping line); a carrier (as a Multimodal Transport Operator for a shipper by issuing a Transport Document (whether negotiable or not). Situations have also been known where a forwarding entity has played the role of a consignee, having bought goods from itself when acting as an MTO and issuer of a negotiable cargo document.

9. GSF was surprised to read at paragraph 7 that UCP 600 does not recognize a Multimodal Transport Operator as an issuer of multimodal transport documents. This seems to imply that freight forwarders acting as MTOs would not be recognized as legitimate issuers of FIATA Bills of Lading.

10. By the logic of “it is not what you are but what you do that determines your role and responsibilities” then any entity which issues a multimodal transport document in which it is named as the carrier, is by definition a multimodal transport operator. Indeed, the current evolution of many container shipping lines into providers of “door-to-door” services (rather than just port-to-port) will mean that most ocean Bills of Lading will come to be issued by entities that are providing multimodal transport services.

11. These are clearly established practices and trends, and the reasoning for the exclusion of MTOs as issuers of MTDs under UCP 600 is unclear.

2. Rights of the Holder

12. GSF recalls that one of the purposes of a Bill of Lading is to act as a receipt for the custody of the goods by the issuer described in the document. Thus, the issuer of the Bill of Lading will invariably have taken possession, or at least taken control, of the goods prior to the Bill of Lading being issued.

13. If the Bill of Lading is also a Negotiable Cargo Document, then the same considerations apply and the NCD will only be issued by the transport operator upon receipt of the goods. GSF is unclear in what circumstances a transport operator would issue a Bill of Lading or NCD without having taken custody of the goods described. The Holder of an NCD can therefore assume that the goods are in possession or under the control of the transport operator who issued the BoL/NCD, by virtue of that document acting as a receipt of the goods until it is surrendered and the goods released.