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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 envisaged in the draft new instrument (work in progress). 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.

2. Since the Commission assigned the topic to Working Group VI in 2022, three 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 6 to 10 May 2024 at the UN Headquarters in New York.*

3. The key features of the negotiable cargo document envisaged in the draft new instrument (*work in progress*) are summarized in the following paragraphs. The draft new instrument encourages and supports the use of negotiable electronic cargo records, but the relevant draft provisions have not yet been considered by the Working Group. 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?

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.

Who will issue negotiable cargo documents?

5. The Working Group currently envisages making it possible for any transport operator acting as a contractual carrier to issue a negotiable cargo document, 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.

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.

How to issue negotiable cargo documents?

6. It is also currently envisaged that negotiable cargo documents can be made out to the order of an unnamed person, to the order of a named person or to the bearer. While the draft instrument does not prescribe how many originals need to be issued, it envisages that a negotiable cargo document that is issued in a set of more than one original shall indicate the number of originals in the set.

What is the relationship between a negotiable cargo document and a transport document issued by the same transport operator?

7. The Working Group currently considers that as a default rule, the transport document (either negotiable or non-negotiable) issued by the same transport operator, who is requested to issue a negotiable cargo document, shall serve as a negotiable cargo document by inserting an appropriate reference to the draft new instrument. It is envisaged that the FIATA Multimodal Bill of Lading can serve as a negotiable cargo document with an appropriate reference to the draft new instrument.

8. As a fallback rule, it is currently envisaged that in the event that domestic 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.

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?

9. The draft instrument currently assumes that, in principle, the issuance and transfer of a negotiable cargo document should not affect the rights and obligations of the transport operator, consignor and consignee under applicable international conventions or national law. However, to the extent that the holder of the negotiable cargo document acquires the rights to control the goods during transit and, as a result, any pre-existing rights on the goods would cease to exist, which admittedly impacts the rights of the consignor under applicable international conventions.

10. 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 wrong delivery under the negotiable cargo document which has not yet been discussed by the Working Group.