



CONSIDERATION OF A DRAFT TEXT OF A PROTOCOL TO THE HNS CONVENTION

CONTRIBUTIONS TO THE LNG ACCOUNT

Submitted by the International Group of Liquefied Natural Gas Importers (GIIGNL)

Summary:	This document proposes a solution to the issue of contributions to the LNG account, as referred to in the mandate of the HNS Focus Group.
Action to be taken:	Approve the draft text set out in section 3 for inclusion in the draft Protocol to the HNS Convention.

1 Introduction

- 1.1 At the 1992 Fund Assembly's October 2007 session, an HNS Focus Group was created with the objective of developing a draft Protocol to the 1996 HNS Convention, in order to resolve, *inter alia*, three issues which have been identified as inhibiting the entry into force of the Convention, one of which is contributions to the LNG Account.
- 1.2 In order to contribute to the Focus Group and explore practical solutions, and in particular to provide details of the financial security solutions, GIIGNL proposed in January 2008 some key areas of discussion in an attempt to maintain the original balance achieved in the text of the Convention in respect of the sharing of LNG contributions.
- 1.3 The solution proposed by some delegations and considered by the Focus Group at its March meeting may impact LNG importers, since it involves simplifying the existing HNS regime by limiting contributions to the HNS Fund to the receiver of the LNG instead of the 'titleholder' to the cargo (potentially the DES ('Delivered Ex-Ship') sellers) by modifying the definition of the person liable to pay contributions to the LNG Account under Article 19.1 (b) of the HNS Convention.
- 1.4 Therefore, GIIGNL, as the representative of the major LNG importers, is trying to focus the discussion on practical solutions which could preserve as much as possible the existing principle of contribution in order to preserve the sharing of payments to the HNS Fund between LNG players (DES sellers and FOB ('Free On Board') buyers).
- 1.5 GIIGNL has prepared a brochure giving an overview of the LNG industry with regard to the implementation of the HNS Convention. This brochure is available in English only to all Member States for information and to complement the discussion of the issue.

2 Possible solution

- 2.1 GIIGNL has considered various solutions aimed at preserving the spirit of the HNS Convention (and in particular the specific balance of financial contributions between the main parties in an LNG chain involved in the transportation of LNG cargoes), whilst at the same time giving sufficient comfort to Member States that the financial contributions will actually be collected from the relevant parties.
- 2.2 GIIGNL's preferred solution consists of adding to the original mechanism of the HNS Convention (ie contributions received from titleholders post accident) a supplementary comfort or 'fall-back' to be provided by the 'receiver' which would then become the 'default contributor' in the event that the relevant titleholder had not paid the levied contributions (and only if such receiver was a different person from the titleholder), despite reasonable efforts by the HNS Fund to recover it.
- 2.3 In this regard, it should be noted that, in accordance with article 19.1 (b) of the Convention, the necessary reporting to be made by each State Party in order to identify any person liable to pay contributions will have to include the relevant 'titleholders' of imported LNG cargoes: in that respect, the GIIGNL suggests that such reporting should be carried out on an on-going basis, cargo by cargo, for instance through specific mandatory forms identifying the titleholder(s) of the LNG cargo prior to unloading, that would have to be provided to the port authorities in order to be authorised to discharge. In addition, the reporting should also take care of the LNG receivers, as fall-back potential contributors: it seems that national customs may be a convenient source.
- 2.4 GIIGNL concluded that this solution was preferable since it took into account Member States' implementation concerns by giving them sufficient reassurance that the financial contributions would actually be collected from the relevant parties. At the same time, it would preserve as much as possible the original spirit of the HNS Convention. Although risks between the parties would be less perfectly balanced because of the end guarantee provided by the LNG receiver, it does not currently appear to the LNG industry that this difficulty could be remedied through the negotiation of sales and purchase agreements ('SPA's'). On the contrary, identifying the LNG receiver as the usual contributor would generate an unbalanced situation that would be very difficult to rebalance through provisions in SPA's.

3 Example of amendment to the HNS Protocol that could be made in application of such solution

- 3.1 It is proposed that the draft Protocol amend Article 19, paragraph 1(b) (Annual contributions to separate accounts) as follows:
- (b) in the case of the LNG account,*
- (i) by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State, or*
- (ii) without prejudice to article 21, in case such person described in (i) above cannot be identified or does not pay the relevant annual contribution despite appropriate action from the HNS Fund to recover it, by any person, who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of any quantity of LNG (and only if such receiver is another person).;"*
- 3.2 It is proposed that the draft Protocol not amend Article 17. Therefore, Article 6 of the Protocol has to be deleted.
- 3.3 GIIGNL supports any proposal that could be made by States delegations to amend the Protocol to the HNS Convention in that way.

4 Action to be taken by the HNS Focus Group

The Focus Group is invited

- (a) to take note of the information contained in this document; and
 - (b) to approve the draft text set out in section 3 for inclusion in the draft Protocol to the HNS Convention.
-