



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

CONTRIBUTIONS TO THE LNG ACCOUNT

Submitted by Italy, Japan and Republic of Korea

Summary: This document contains a proposal for draft text to be included in the draft Protocol to the HNS Convention regarding contributions to the LNG Account.

Action to be taken: Consider the draft treaty text set out in paragraph 4.1 and decide on a solution to the issue discussed in this document.

1 Introduction

- 1.1 The 1992 Fund Assembly, at its 12th session in October 2007, decided to establish the HNS Focus Group with the aim of facilitating the entry into force of the HNS Convention.
- 1.2 At the 1st meeting of the HNS Focus Group, held in Monaco in March 2008, an intense debate took place with regard to the issue of contributions to the LNG Account, and, in particular, the fact that contributions may not be collectable where the contributor (the titleholder of the LNG cargo immediately prior to its discharge) is in a non-Contracting State.
- 1.3 Summing up the lively debate on this issue, the Chairman of the HNS Focus Group noted that there had been an extensive debate and that most delegations had supported the proposal contained in document 92FUND/WGR.5/2, submitted by Canada, Denmark, Germany, Latvia, the Netherlands, Norway, Sweden and the United Kingdom, whilst some delegations had expressed important objections. In addition, the Chairman stated that it was clear that, whilst the proposal would encourage some States to ratify the Convention, it would also deter others.
- 1.4 As a result, the HNS Focus Group approved the text of the relevant draft articles for drafting purposes only ('text for drafting purposes') and several States indicated that they would consider submitting an alternative proposal for a solution to the issue regarding contributions to the LNG Account at its 2nd meeting to be held in London in June 2008 (cf document 92FUND/WGR.5/8, paragraph 8.11).
- 1.5 The co-sponsors would like to point out to all delegations that the issue of contributions to the LNG Account is one of their most serious concerns and that the 'text for drafting purposes' could interfere with the current trade practices of the LNG industries throughout the world and would, as a result, have grave consequences to ratifications of a Protocol for concerned Member States.

2 Considerations

In submitting this document, the following elements were considered in depth:

- (a) the intention of maintaining the principle of 'shared liability' as generally agreed by the delegations even for other new articles proposed in the draft Protocol;
- (b) the concerns expressed by the majority of delegations who took the floor regarding the 'unenforceability' of the current Convention in respect of contributions from titleholders in non-Contracting States;
- (c) the need to facilitate ratification of the Protocol by the many States involved in LNG trade.

3 Policy Proposal

- 3.1 It is the intention of the co-sponsors to retain, in principle, the current provisions of the 1996 HNS Convention regarding the contributor to the LNG Account. However, it should also be recognised that balanced consensus is necessary for facilitating the rapid entry into force of the HNS Convention, as amended by the Protocol on a global scale.
- 3.2 Therefore, in response to the request referred to in paragraph 1.5 above, the following text is proposed as a compromise and practical alternative. It will resolve the concern expressed at the 1st meeting of the HNS Focus Group regarding contributions to the LNG Account.

4 Draft Treaty Text

- 4.1 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) by the receiver in that State of the relevant contributing cargo if and to the extent that the person referred to in subparagraph (i), who is in a non-Contracting State, does not fulfil the obligations in respect of any contribution or any part thereof and is in arrears;
- 4.2 The original texts of the related provisions referring to the contribution or contributor to the LNG Account in the current HNS Convention should be maintained or, if consequential amendments are needed, would be made at the editorial stage.

5 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;
 - (b) to consider the draft treaty text set out in paragraph 4.1 and decide on a solution to the issue discussed in this document.
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