



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

POLICY PROPOSAL ON CONTRIBUTIONS TO THE LNG ACCOUNT FOR THE DEVELOPMENT OF A PROTOCOL TO THE HNS CONVENTION

Submitted by Singapore

Summary:	This document discusses a draft text for the contributions to the LNG Account in order to develop a protocol to the HNS Convention.
Action to be taken:	The Focus Group is invited to take note of the information contained in this document, to consider the draft treaty text in paragraph 3 and decide on a solution to the issue discussed in this document.

1 Introduction

- 1.1 Singapore has noted the intense debate on the issue of LNG contributions, centred round the proposal contained in document 92FUND/WGR.5/2.
- 1.2 Singapore recalls the position it expressed at the March 2008 HNS Focus Group meeting, that the issue of enforcement difficulties should not be resolved in a manner that would create a disproportionate or unbalanced solution.
- 1.3 In submitting this proposal, Singapore has considered the points raised by various delegations that:
 - (i) the burden of contributions to the HNS Fund should fall on the party best placed to manage the safe and efficient maritime transport of HNS cargoes;
 - (ii) the Convention should not interfere with the operation of long term supply contracts and lock parties into positions where they have to take on contingent liabilities not foreseen at the time of signing of the LNG supply contracts;
 - (iii) the Convention should respect and preserve parties' contractual freedom to allocate the risk of future contributions between themselves; and
 - (iv) the concept of shared liability between importers and exporters in the existing text of the Convention should be retained.

2 Policy Proposal and Justification

- 2.1 To preserve the concept of shared liability between importers and exporters, and to place contribution burdens on those in the best position to address them, we support retaining titleholders as the default contributors to the LNG account.
- 2.2 Our proposal follows the well established principle that 'risk follows title'. It will minimize the risk that the Convention will disrupt mid- or long-term supply contracts and impose unexpected contingent liabilities on LNG traders (specifically, receivers who purchase LNG on 'ex-ship' terms).
- 2.3 We have noted the proposal submitted by Italy, Japan and Republic of Korea (document 92FUND/WGR.5/11/1) and agree with them that to address the issue of titleholders outside of the jurisdiction of a HNS State Party, 'a compromise and practical alternative' would be for receivers to be liable, where such titleholders default on contributions.
- 2.4 However, there is a need for a legal disincentive to discourage titleholders outside of the jurisdiction of a HNS State Party from ignoring HNS Fund claims to remove unfairness to receivers in HNS States Parties. To address this, we propose the inclusion of a mechanism that could help receivers recover any payments that they may have made on behalf of defaulting titleholders.

3 Draft Treaty Text

- 3.1 It is proposed that the draft Protocol be amended as follows:

Article 19, paragraph 1(b) (Annual contributions to separate accounts):

- (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 such contribution or any part thereof and is in arrears for more than [36] months notwithstanding that the Director has during the same period taken action against such person to recover the amount due in accordance with the internal regulations of the HNS Fund, unless the Assembly has, in accordance with article 22, paragraph 2, decided that no action shall be taken or continued against the person referred to in subparagraph (i); or
- (iii) by the receiver in that State of the relevant contributing cargo if at the time of receipt the receiver has agreed with the person referred to in subparagraph (i) to make such contributions and this agreement is disclosed to the HNS Fund;

and

Article 23, paragraph 1 (Optional liability of States Parties for the payment of contributions):

- 1 Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, or 20 or article 21, paragraph 5, in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

Provided always that a State Party shall at the time that it deposits its instrument of ratification, acceptance, approval or accession, also declare that it:

- (a) assumes responsibility for and will repay to the HNS Fund all contributions paid by receivers under article 19(b)(ii) to meet any liabilities incurred under this Convention, in the [3] years period immediately preceding the date that the Convention shall take effect in that State, of persons referred to in article 19(b)(i) residing within its jurisdiction; or
- (b) shall, in accordance with its national law, and subject always to any limitation period therein, take appropriate measures to aid the HNS Fund to recover any contributions paid by receivers under article 19(b)(ii) to meet the liabilities under this Convention of persons referred to in article 19(b)(i) residing within its jurisdiction.

Any sums recovered by the HNS Fund under subparagraphs (a) or (b) of this paragraph, shall be repaid in accordance with the internal regulations of the HNS Fund to the receivers who made such payments under article 19(b)(ii).

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 consider the draft treaty text in paragraph 3 and decide on solutions to the issues discussed in this document.
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