

# *Position Paper*

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July 20<sup>th</sup> 2006

## **RE: Draft UN/CEFACT Recommendation 12**

In their respective capacity as European and worldwide representatives of freight forwarders and logistic operators, CLECAT and FIATA have followed with interest the work undertaken by ITPWG-TBG15 on a draft Recommendation 12 and Guidelines on Measures to Facilitate Maritime Transport Documents Procedures.

The draft recommendation 12 suggests that all traders involved in an international commercial transaction of goods encourage and support the use of a sea waybill to replace a bill of lading when the latter is deemed "unnecessary" (i.e. goods not intended to be sold in transit or no case for independent documentary credit).

CLECAT and FIATA would like to express their disagreement with the content and grounds of such Recommendation, at least for three reasons.

Firstly, we believe that Recommendation 12 would consist in a harmful restriction of freedom and legal protection for shippers and consignees. Indeed, encouraging the use of sea waybills instead of bills of lading might limit shippers' freedom to use the document they consider appropriate. In addition, the absence of a bill of lading could entail several negative effects for shippers and consignees alike:

- The Hague and the Hague Visby Rules would in principle apply only to contracts covered by a bill of lading, the absence of which might entail a more uncertain liability regime;
- Consignees would hold no legal instrument to impose delivery of cargo in case of difference;
- Shippers, operators and intermediaries would cease to benefit of all historical document of title features.

Secondly, we do not perceive the sea waybill as the panacea. Indeed, it is not accepted in all trades, many international markets are not as advanced as others. In some areas of the world, which often coincide with those most wanting facilitation, this recommendation would translate into a serious limitation of choice, if not in a technical barrier to trade. Moreover, the many different sea waybills used in different areas of the world would lead to uncertainties in the stipulations of the contract of carriage and its obligations.

Thirdly, we do not regard the absence of electronic transmission of bills of lading as a good reason to justify Recommendation 12. Our sector has always followed with attention all the industry led attempts to "bridge the digital divide" between paper BOL's and paperless environment. The fact that results are not universally available has little to do with technical problems. Nor does it mean that electronic transmission of bills of lading is an unrealistic or unachievable goal. With adequate resources and political will solutions can be found.

In addition, we take the view that the justifications for such Recommendation are not forceful, whether they refer to the lack of electronic transmission or the need to avoid the "institutionalisation" of bills of lading by commercial practice. In this regard, we believe that the trade itself is best placed to define its own needs, the latter including appropriate documents which hold historical background, legal base, powerful enforceability and next to universal circulation.

For the above reasons, neither CLECAT nor FIATA support the draft UN/CEFACT Recommendation 12.

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