

美國 1999 年海上貨物運送法草案

(美國參議院 1999 年 9 月 24 日草案)

U.S. Senate, Sept. 1999 Draft of Proposed Carriage of Goods by Sea Act (COGSA)

US COGSA Draft 1999

A BILL To revise the Carriage of Goods by Sea Act, and for other purposes. 為修正海上貨物運送法及其他目的之草案，

SECTION 1. SHORT TITLE; TABLE OF SECTIONS. 第 1 條 簡稱；目錄

- (a) SHORT TITLE.--This Act may be cited as the "Carriage of Goods by Sea Act of 1999". (a)簡稱：本法簡稱為"1999 年海上貨物運送法"
- (b) TABLE OF SECTIONS.--The table of sections for this Act is as follows: (b)目錄：本法目錄如下：
- | | |
|---|-------------------------|
| Sec. 1. Short title; table of sections. | 第 1 條 簡稱；目錄 |
| Sec. 2. Definitions. | 第 2 條 定義 |
| Sec. 3. Application of Act. | 第 3 條 本法之適用 |
| Sec. 4. Rights and liabilities under other laws. | 第 4 條 其他法律下之權利及義務 |
| Sec. 5. Duties and rights of carrier. | 第 5 條 運送人之權利與義務 |
| Sec. 6. Responsibilities of carrier and ship. | 第 6 條 運送人及船舶之義務 |
| Sec. 7. Contracts of carriage. | 第 7 條 運送契約 |
| Sec. 8. Weight of bulk cargo. | 第 8 條 散裝貨物之重量 |
| Sec. 9. Rights and immunities of carrier and ship. | 第 9 條 運送人及船舶之權利與免責 |
| Sec. 10. Surrender of rights; increase of liability; general average. | 第 10 條 權利放棄；增加責任；共同海損 |
| Sec. 11. Special agreement as to particular goods. | 第 11 條 關於特別貨物之特別協議 |
| Sec. 12. Notice of loss or damage. | 第 12 條 滅失或損壞之通知 |
| Sec. 13. Statute of limitations. | 第 13 條 訴訟時效 |
| Sec. 14. Discrimination between competing shippers. | 第 14 條 競爭託運人間之差別對待 |
| Sec. 15. Repeal of 1936 Act. | 第 15 條 廢除 1936 年海上貨物運送法 |
| Sec. 16. Application of bills of lading rules to inbound goods. | 第 16 條 載貨證券規則對進口貨物之適用 |
| Sec. 17. Effective date. | 第 17 條 生效日期 |

SEC. 2. DEFINITIONS.

第 2 條 定義

- (a) IN GENERAL.--When used in this Act:
- (1) CARRIER.--The term "carrier" means a contracting carrier, a performing carrier, or an ocean carrier.
- (2) CONTRACTING CARRIER.--The term "contracting carrier" means the party who enters into a contract of carriage with a shipper of goods.
- (3) PERFORMING CARRIER.--The term "performing
- (a) 一般規定：本法下列用語意義如下：
- (1) 運送人：係指契約運送人、履約運送人，或海上運送人。
- (2) 契約運送人：係指與貨物託運人簽訂運送契約之人。
- (3) 履約運送人："履約運送人"係指：

carrier" means --

(A) **IN GENERAL.**-- The term "performing carrier" means a person--

- (i) that performs, undertakes to perform, or procures to be performed any of a contracting carrier's responsibilities under a contract of carriage; but
- (ii) only to the extent that the person described in clause (i) acts, either directly or indirectly, at the request of, or under the supervision or control of, a contracting carrier,

regardless of whether that person is a party to, identified in, or has legal responsibility under the contract of carriage.

(B) **EXCLUSION.** -- Notwithstanding subparagraph (A), the term "performing carrier" does not include any person (other than the contracting carrier) that --

- (i) is retained by the shipper or consignee; or
- (ii) is an employee, servant, agent, contractor, or subcontractor of a person retained by the shipper or consignee.

(4) **OCEAN CARRIER.**--The term "ocean carrier" means a performing carrier that owns, operates, or chartered a ship used in the carriage of goods by sea.

(5) **CONTRACT OF CARRIAGE.**--

(A) **IN GENERAL.**--The term "contract of carriage" means--

- (i) a contract for the carriage of goods either by sea or partially by sea and partially by one or more other modes of transportation, including a bill of lading (or similar document), whether negotiable or non-negotiable and whether printed or electronic; and
- (ii) a bill of lading (or similar document), whether negotiable or non-negotiable and whether printed or electronic, arising under or pursuant to a charter party from the moment at which it regulates the relations between a carrier and the holder of the bill of lading or other contract.

(B) **CERTAIN CONTRACTS EXCLUDED.**--The term "contract of carriage" does not include--

- (i) contracts for transportation in domestic trade exclusively on the Great Lakes, rivers, or other inland waters, or the intracoastal waterways;
- (ii) charter parties, contracts of affreightment, and similar agreements that are functionally equivalent; or
- (iii) towage agreements.

(C) **SPECIAL RULES FOR ELECTRONIC BILLS OF LADING.**--An electronic bill of lading may be used in accordance with procedures agreed upon by the parties to the bill.

(6) **GOODS.**--The term "goods" includes goods, wares, merchandise, and articles of every kind whatsoever,

(A) 一般規定："履約運送人"係指：

- (i) 履行、承諾履行、或籌組履行運送契約下之契約運送人之任何義務之人；但
- (ii) 僅限於(i)款所述之人，直接或間接地應契約運送人之要求或受其監督或受其控制而為行為之範圍，

不論該人是否為該運送契約之一方，或是否被列明於該運送契約中，或是否負有該運送契約之法定義務。

(B) 除外：無論(A)款規定為何，"履約運送人"不包括下列任何人(契約運送人除外)：

- (i) 託運人或受貨人雇用之人；或
- (ii) 託運人或受貨人雇用之人之受雇人、雇員、代理人、承包商或分包商。

(4) 海上運送人："海上運送人"係指擁有、經營或租僱用於海上貨物運送之船舶之履約運送人。

(5) 運送契約：

(A) 一般規定："運送契約"係指：

- (i) 經海運，或部分經海運部分以一種或多種的其他運送方式為運輸之貨物運送契約，包括載貨證券(或類似證券)，不論其是否可轉讓，且不論其為印刷或電子方式；及
- (ii) 租僱船契約下或依據租僱船契約所簽發之載貨證券(或類似單證)，不論其是否可轉讓，且不論其為印刷或電子方式，自其規範運送人及載貨證券或其他契約之持有人之關係時起。

(B) 某些契約除外："運送契約"不包括：

- (i) 專門用於五大湖、內河、或其他內陸水域、或大西洋沿岸運送之國內貿易契約；
- (ii) 租僱船契約、貨運契約及同樣功用之類似協議；或
- (iii) 拖帶契約。

(C) 電子載貨證券之特別規定：電子載貨證券得依據載貨證券當事人間所約定之程序為使用。

(6) 貨物："貨物"包括貨物、產製品、商品及任何種類之物件，然活動物除外。

except live animals.

- (7) **SHIP.**--The term "ship" means any vessel used for the carriage of goods by sea.
- (8) **CARRIAGE OF GOODS.**--The term "carriage of goods" covers the period from the time goods are received by a carrier to the time they are delivered by a carrier to a person authorized to receive them.
- (9) **SHIPPER.**--The term "shipper" means--
- (A) the person by whom, in whose name, or on whose behalf a contract of carriage has been concluded with a contracting carrier; and
 - (B) any person by whom, in whose name, or on whose behalf the goods are delivered to a carrier under a contract of carriage.
- (10) **SERVICE CONTRACT.**--The term "service contract" has the meaning given that term by section 3(21) of the Shipping Act of 1984 (46 U.S.C. App. 1702(21)).
- (11) **UNITED STATES.**--The term "United States" has the meaning given that term by section 2101(44) of title 46, United States Code.
- (b) **SPECIAL RULE FOR ELECTRONIC COMMUNICATION.**-- Whenever in this Act a notice, claim, or other communication is required to be made in writing, it may be transmitted in written form on paper or transmitted by an electronic medium, including electronic data interchange and other computerized media of transmission.

SEC. 3. APPLICATION OF ACT.

- (a) **IN GENERAL.**--This Act applies to any contract of carriage covering transportation to or from the United States.
- (b) **APPLICATION TO CERTAIN MOTOR CARRIER AND RAIL CARRIER SERVICES.**--This Act does not apply to a claim against an interstate or foreign motor carrier, or a rail carrier, that is not a contracting carrier to the extent that the claim relates only to motor carrier services or rail carrier services, respectively. This subsection does not prohibit any extension of rights to a motor or rail carrier by a contract of carriage nor does it adversely affect, or void, any rights so extended.
- (c) **APPLICATION IN ACTIONS AGAINST CARRIER OR SHIP.**--The defenses and limitations of liability provided for in this Act and the responsibilities imposed by this Act apply in any action against a carrier or a ship for loss of, for damage to, or in connection with goods covered by a contract of carriage without regard to --
- (1) the form or theory of the action; or
 - (2) the court or other tribunal in which the action is brought.
- (d) **REMEDIES.**--The remedies available under this Act constitute the complete and exclusive remedy against a carrier for loss of, for damage to, or in connection with goods covered by a contract of carriage.
- (e) **ADMIRALTY JURISDICTION.**--This Act provides an independent basis for admiralty jurisdiction.

- (7) 船舶："船舶"係指用於海上貨物運送之任何船舶。
- (8) 貨物運送："貨物運送"包括運送人接收貨物時起至運送人將貨物交付給有權接收貨物之人時為止之期間。
- (9) 託運人："託運人"係指：
- (A) 本人或委託他人以本人名義或委託他人為本人與契約運送人簽訂運送契約之人；及
 - (B) 本人或委託他人以本人名義或委託他人為本人將貨物交給運送契約名下之運送人之入。
- (10) 服務契約："服務契約"與「1984年航運法」第3條21項所規定該術語之意義相同(「美國法典」第46篇附錄1702(21))。
- (11) 美國："美國"與「美國法典」第46篇第2101條(44)項所規定術語之意義相同。
- (b) 電子通訊之特別規定：本法要求以書面作出之通知、求償或其他聯繫，均可以以紙面之書面形式傳送，或透過包括電子資料交換及其他電腦化傳送媒介在內之電子媒介傳送。

第3條 本法之適用

- (a) 一般規定：本法適用於運抵美國或運離美國之任何運送契約。
- (b) 適用於某些公路運送人及鐵路運送人服務：本法不適用於向非契約運送人之州際或外國公路運送人或鐵路運送人所提出，僅分別與公路運送人服務或鐵路運送人服務有關之求償。本項規定不禁止將任何權利透過運送契約擴大適用於公路或鐵路運送人，亦不影響任何此一擴大適用之權利或使其無效。
- (c) 適用於針對運送人或船舶之訴訟：本法所規定之抗辯及責任限制及本法所規定之強制義務適用於運送契約下之貨物滅失、毀損或與此貨物有關所提起針對運送人或船舶之訴訟，而不考慮：
- (1) 該訴訟之形式或理論；或
 - (2) 該訴訟被提起法院或其他裁判機構。
- (d) 救濟：本法可獲得之救濟為運送契約下之貨物之滅失、毀損或與該貨物有關針對運送人之全部且唯一之救濟。
- (e) 海事管轄：本法提供海事管轄之獨立依據。

SEC. 4. RIGHTS AND LIABILITIES UNDER OTHER LAWS.

This Act does not affect the rights and obligations of a carrier under--

- (1) sections 4281 through 4289 of the Revised Statutes of the United States (46 U.S.C. App. 181 et seq.);
- (2) the Shipping Act, 1916 (46 U.S.C. App. 801 et seq.);
- (3) the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.); or
- (4) any other law of the United States relating to the limitation of liability of the owners of seagoing vessels.

SEC. 5. DUTIES AND RIGHTS OF CARRIER.

- (a) **IN GENERAL.**--A carrier is subject to the responsibilities and liabilities under this Act, and entitled to the rights and immunities provided by this Act, for receiving, loading, handling, stowage, carriage, custody, care, discharge, and delivery of goods under a contract of carriage.
- (b) **CONTRACTING CARRIERS.**--A contracting carrier is subject to those responsibilities and liabilities, and entitled to those rights and immunities, for the entire period covered by its contract of carriage.
- (c) **PERFORMING CARRIERS.**--A performing carrier is subject to those responsibilities and liabilities, and entitled to those rights and immunities --
 - (1) during the period between the time it receives the goods, or takes them in charge, and the time it relinquishes control of the goods under the contract of carriage; and
 - (2) at any other time to the extent that it is participating in the performance of any of the activities contemplated by the contract of carriage.

SEC. 6. RESPONSIBILITIES OF CARRIER AND SHIP.

- (a) **IN GENERAL.**--A contracting carrier and an ocean carrier shall each exercise due diligence before and at the beginning of a voyage --
 - (1) to make the ship seaworthy;
 - (2) to man, equip, and supply the ship properly; and
 - (3) to make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried fit and safe for the reception, carriage, and preservation of the goods.
- (b) **RECEIPT, HANDLING, AND DELIVERY OF GOODS.**--A carrier (as defined in section 2(a)(1)) shall, properly and carefully, receive, load, handle, stow, carry, keep, care for, discharge, and deliver goods.

第 4 條 其他法律下之權利及義務

本法不影響運送人依據下列規定所享有之權利及承擔之義務：

- (1) 「美國法律修訂案」第 4281-4289 條（「美國法典」第 46 篇附錄 181 及以下諸條）；
- (2) 「1916 年航運法」（「美國法典」第 46 篇附錄 801 及以下諸條）；
- (3) 「1984 年航運法」（「美國法典」第 46 篇附錄 1701 及以下諸條）；或
- (4) 有關海船所有人責任限制之其他美國法律。

第 5 條 運送人之權利及義務

- (a) 一般規定：運送契約下之貨物收受、裝載、搬移、堆存、運送、保管、看守、卸載及交付，運送人須承擔本法所規定義務及責任，並有權享有本法所規定之權利及免責。
- (b) 契約運送人：就運送契約所涵蓋之整個期間，契約運送人應承擔義務及責任，並有權享有權利及免責。
- (c) 履約運送人：於下列期間內，履約運送人應承擔義務及責任，並有權享有權利及免責：
 - (1) 介於其收受或接管運送契約所載貨物時起，至其不再控制該貨物之時止之期間；及
 - (2) 其參與運送契約所規劃履行之行為之任何其他時間。

第 6 條 運送人及船舶之義務

- (a) 一般規定：於開航前及開航時，契約運送人及海上運送人均應善盡注意：
 - (1) 使船舶具適航能力；
 - (2) 使船舶妥善地配備船員、設備及供應；並
 - (3) 使貨艙、冷藏艙、冷凍室及其他載貨處所適於並能安全收受、載運及保管貨物。
- (b) 收受、搬移及交付貨物：運送人(如第 2 條(a)項(1)款所定義)應妥善且謹慎地收受、裝載、搬移、堆存、運送、保管、看守、卸載及交付貨物。

SEC. 7. CONTRACTS OF CARRIAGE.

- (a) **ISSUANCE.**--After a carrier receives goods into its charge, a contracting carrier shall, on demand of the shipper, issue to the shipper a contract of carriage in the form of --
- (1) a negotiable bill of lading; or
 - (2) if the shipper agrees, a non-negotiable bill of lading.
- (b) **CONTRACT TO STATE APPLICATION OF ACT.**--A contract of carriage issued under subsection (a) covering a shipment of goods from a port of the United States shall contain a statement that the contract is subject to the provisions of this Act.
- (c) **CONTENTS.**--
- (1) **IN GENERAL.**--A contract of carriage issued under subsection (a) shall --
 - (A) describe the apparent order and condition of the goods at the time a carrier receives them from the shipper (and an on-board contract of carriage shall also describe the condition of the goods at the time they are loaded on board the ship or other mode of transportation);
 - (B) show the leading marks necessary for identification of the goods, as furnished in writing by a shipper before a carrier receives the goods, stamped or otherwise shown clearly--
 - (i) upon uncovered goods; or
 - (ii) on the cases or coverings in which such goods are contained,in such a manner as should ordinarily remain legible until the end of the voyage; and
 - (C) show the number of packages or pieces, or the quantity or weight, as furnished in writing by the shipper.
 - (2) **LIMITATION.**--A contracting carrier is not required to state or show any marks, number, quantity, or weight information that a carrier has reasonable ground to suspect does not accurately represent the goods actually received, or which a carrier has no reasonable means of checking.
- (d) **STATEMENT AS PRIMA FACIE EVIDENCE.**--Except as provided in subsections (e), (f), and (g), a contract of carriage issued by or on behalf of a carrier is prima facie evidence of the receipt by that carrier of the goods described in the contract.
- (e) **QUALIFIED STATEMENT FOR NON-CONTAINER GOODS.**--
- (1) **IN GENERAL.**--If --
 - (A) a contracting carrier issues a contract of carriage for non-containerized goods stating any marks, number, quantity, or weight information furnished by the shipper or its agents; and
 - (B) the carrier can demonstrate that no carrier had a reasonable means of checking this information before the contract of carriage was issued, then the carrier may qualify the statement of marks, number, quantity, or weight information in writing in a

第 7 條 運送契約

- (a) 簽發：運送人接收貨物後，應託運人請求，契約運送人應當以下列形式向託運人簽發運送契約：
- (1) 可轉讓之載貨證券；或
 - (2) 如託運人同意，不可轉讓載貨證券。
- (b) 規定準據法之契約：依據(a)項所簽發有關將貨物運離美國港口之運送契約，應於契約中規定該契約受本法規定之適用。
- (c) 內容—
- (1) 一般規定：依據(a)項簽發之運送契約應：
 - (A) 載明運送人自託運人處收受貨物時貨物之表面情狀(且已裝運之運送契約另應載明貨物裝載上船或其他運送方式時之貨物狀況)；
 - (B) 依照運送人收受貨物前託運人書面提交、簽印或以其他方式清楚地顯示於下列物件上面之狀況，載明辨認貨物所需之標誌，
 - (i) 裸裝貨物上面；或
 - (ii) 包裝貨物之貨箱或封裝上面，該標誌應能正常保持至航程結束時均清晰可辨；且
 - (C) 依照託運人書面提交，載明貨物包數或件數或體積或重量。
 - (2) 限制：如運送人有合理依據懷疑貨物之標誌、數量、體積或重量與實際收受之貨物不符，或運送人無合理方式核對其真實性者，則契約運送人無須列明或載明貨物之上列資料。
- (d) 作為初步證據的陳述：除(e)、(f)及(g)項規定外，運送人或代表運送人簽發之運送契約係該運送人已收到該契約所載貨物之表面證據。
- (e) 對非貨櫃貨物之保留性記載：
- (1) 一般規定：如
 - (A) 契約運送人就非貨櫃貨物簽發一載明由託運人或其代理人提供貨物任何標誌、數量、體積或重量資料之運送契約；且
 - (B) 該運送人能證明，於簽發該運送契約前，運送人無合理方式可核對該資料，則該運送人可以一書面，表明無運送人可核實其準確性之方式，保留

manner that indicates that no carrier has verified its accuracy. The qualification may be made in the form of an expression such as "said to contain" or "shipper's weight, load, and count", or other expression of qualification that effectively indicates that no carrier has verified the accuracy of the statement of marks, number, quantity, or weight information.

(2) **QUALIFIED STATEMENT NOT PRIMA FACIE EVIDENCE.**-- A statement qualified under paragraph (1)--

(A) is not prima facie evidence that a carrier received the goods from the shipper as described in the contract of carriage; and

(B) does not preclude the carrier from proving that no carrier received the goods from the shipper as described in the contract of carriage.

(3) **EXCEPTIONS.**--Paragraph (2) does not apply if--

(A) the carrier was not entitled to qualify the statement under paragraph (1); or

(B) a person relying on the statement proves that the carrier did not act in good faith when issuing the contract of carriage.

(f) **QUALIFIED STATEMENT OF MARKS, NUMBER, OR QUANTITY FOR CONTAINER GOODS. --**

(1) **IN GENERAL.**--If--

(A) a contracting carrier issues a contract of carriage stating any marks, number, or quantity information furnished by the shipper or its agents for goods shipped in a container loaded and sealed by the shipper or its agents; and

(B) the carrier can demonstrate that no carrier verified the container's contents before the contract of carriage was issued,

then the carrier may qualify the statement of marks, number, or quantity in writing in a manner that indicates that no carrier has verified its accuracy. The qualification may be made in the form of an expression such as "said to contain" or "shipper's load, stow, and count", or other expression of qualification that effectively indicates that no carrier has verified the accuracy of the statement of marks, number, or quantity.

(2) **QUALIFIED STATEMENT NOT PRIMA FACIE EVIDENCE.**--If a carrier delivers the container intact and undamaged with the seal intact and undamaged, then a statement specifying any marks, number, or quantity in the contract of carriage that has been qualified under paragraph (1)--

(A) is not prima facie evidence that a carrier received the goods from the shipper as described in the contract of carriage; and

(B) does not preclude the carrier from proving that no carrier received the goods from the shipper as described in the contract of carriage.

(3) **EXCEPTIONS.**--Paragraph (2) does not apply if--

載明貨物之標誌、數量、體積或重量資料。該保留可透過例如"據稱告"或"託運人自己稱重、裝貨及計數"之措詞方式，或以其他有效地表明運送人無法核實貨物標誌、數量、體積、或重量資料準確性之保留性措詞作出。

(2) 保留性記載非表面證據：依第(1)款所為保留性記載：

(A) 非運送人已自該託運人處收受該運送契約所載貨物之表面證據；且

(B) 不損及該運送人證明，運送人未自該託運人處收到該運送契約所載貨物。

(3) 例外：於下列情況下，第(2)款不適用：

(A) 該運送人無權依第(1)款為此保留記載；或

(B) 信賴該記載之人證明該運送人簽發該運送契約時未善意行事。

(f) 對貨櫃貨物之標誌、數量或體積之保留記載：

(1) 一般規定：如

(A) 契約運送人，就裝於由託運人或其代理人裝箱並鉛封之貨櫃中之貨物，簽發一載明由託運人或其代理人提供貨物之任何標誌、數量或體積資料之運送契約；且

(B) 該運送人能證明，於簽發該運送契約前，

運送人無法核實該貨櫃內之貨物，則該運送人得以一書面表明無運送人核實其準確性之方式，並得保留載明貨物之標誌、數量或體積。該保留可透過例如"據稱告"或"託運人裝填、堆存及計數"之措詞方式，或以其他能有效地表明運送人未核實貨物之標誌、數量或體積之準確性之保留性措詞為之。

(2) 保留性記載非表面證據：如運送人交貨時之貨櫃及其鉛封均完好無損，則運送契約依第(1)款所保留載明貨物之標誌、數量或體積之陳述：

(A) 非運送人已自該託運人處收到該運送契約所載貨物之表面證據；且

(B) 不損及該運送人證明，運送人未自該託運人處收到該運送契約所載貨物。

(3) 例外：於下列情況下，第(2)款規定不適用之：

- (A) the carrier was not entitled to qualify the statement under paragraph (1); or
- (B) a person relying on the statement proves that the carrier did not act in good faith when issuing the contract of carriage.
- (g) **QUALIFIED STATEMENT OF WEIGHT FOR CONTAINER GOODS.--**
- (1) **IN GENERAL.--If--**
- (A) a contracting carrier issues a contract of carriage stating the weight of goods shipped in a container loaded and sealed by the shipper or its agents, or the weight of the container including the goods; and
- (B) the carrier can demonstrate that no carrier weighed the container before the contract of carriage was issued, then the carrier may qualify the statement of weight in writing with an express statement that the container has not been weighed.
- (2) **QUALIFIED STATEMENT NOT PRIMA FACIE EVIDENCE.--If a carrier delivers a container intact and undamaged with the seal intact and undamaged, then a statement of weight in the contract of carriage that has been qualified under paragraph (1)--**
- (A) is not prima facie evidence that a carrier received the goods from the shipper as described in the contract of carriage; and
- (B) does not preclude the carrier from proving that no carrier received the goods from the shipper as described in the contract of carriage.
- (3) **EXCEPTIONS.--Paragraph (2) does not apply if--**
- (A) a contracting carrier and the shipper agreed in writing before a carrier received the goods for shipment that the carrier would weigh the container;
- (B) the carrier was not entitled to qualify the statement under paragraph (1); or
- (C) a person relying on the statement proves that the carrier did not act in good faith when issuing the contract of carriage.
- (h) **RELIEF-FROM-LIABILITY CLAUSES.--**
- (1) **IN GENERAL.--Any provision in a contract of carriage relieving a carrier or ship from liability for loss of, for damage to, or in connection with goods from negligence, fault, or failure in the duties and obligations under this Act, or reducing such liability otherwise than as provided in this Act, is unenforceable as contrary to public policy.**
- (2) **INSURANCE.--A benefit-of-insurance clause in favor of a carrier, or similar clause, shall be considered, for purposes of paragraph (1), to be a provision relieving a carrier from liability.**
- (i) **FOREIGN FORUM PROVISION.--**
- (1) **APPLICATION.--This subsection applies to--**
- (A) a contract of carriage or other agreement entered into after the date of enactment of this Act governing a claim under this Act; and
- (B) a contract of carriage or other agreement entered
- (A) 該運送人無權依第(1)款為是項保留記載；或
- (B) 信賴該記載之人證明該運送人簽發該運送契約時無善意行事。
- (g) 對貨櫃貨物重量之保留記載：
- (1) 一般規定：如
- (A) 契約運送人簽發一運送契約，其上載明由託運人或其代理人裝箱並鉛封之貨櫃中之貨物重量，或該貨櫃之重量包括貨物；且
- (B) 該運送人能夠證明，於其簽發該運送契約前，運送人未對該貨櫃予以稱重，則該運送人得以書面明確載明未對貨櫃稱重之措詞保留性地記載貨物之重量。
- (2) 保留記載非表面證據：如運送人交貨時貨櫃及其鉛封均完好無損，則於運送契約中依第(1)款對貨物重量之保留記載：
- (A) 非運送人已自該託運人處收到該運送契約所載貨物之表面證據；且
- (B) 不損及該運送人證明，運送人未自該託運人處收到該運送契約所載貨物。
- (3) 除外：於下列情況下，第(2)款不適用之：
- (A) 於運送人收受該貨物運送前，契約運送人及託運人書面約定該運送人會對貨櫃為稱重；
- (B) 該運送人無權依第(1)款為該保留記載；或
- (C) 信賴該記載之人證明該運送人簽發該運送契約時未善意行事。
- (h) 減輕責任條款：
- (1) 一般規定：運送契約中任何減輕運送人或船舶因疏忽、過失或因未善盡本法所規定義務及責任而造成之貨物滅失、毀損或與該貨物有關責任之條款，或減輕本法未規定之類似責任條款，均為有背公共政策之不具強制力之條款。
- (2) 保險：有利於運送人之保險利益條款或類似條款，依第(1)款應視為減輕運送人責任之條款。
- (i) 外國法院管轄條款—
- (1) 適用：本項適用於
- (A) 本法通過日之後所達成，本法所規範之求償之運送契約及其他協議；及
- (B) 如該求償發生於本法通過日

into before the date of enactment of this Act governing a claim under this Act if the claim arose after that date.

- (2) **IN GENERAL.**-- Notwithstanding a provision in a contract of carriage or other agreement to which this subsection applies that specifies a foreign forum for litigation or arbitration of a dispute to which this Act applies, a party to the contract or agreement, at its option, may commence such litigation or arbitration in any appropriate forum in the United States if one or more of the following conditions exists:
- (A) The port of loading or the port of discharge is, or was intended to be, in the United States.
- (B) The place where the goods are received by a carrier or the place where the goods are delivered to a person authorized to receive them is, or was intended to be, in the United States.
- (C) The principal place of business or, in the absence thereof, the habitual residence of the defendant is in the United States.
- (D) The place where the contract was made is in the United States.
- (E) A forum specified for litigation or arbitration under a provision in the contract of carriage or other agreement is in the United States.
- (3) **SUBSEQUENT AGREEMENT OF PARTIES.**
--Nothing in this subsection precludes the parties to a dispute involving a claim under a contract of carriage or other agreement to which this subsection applies from agreeing to resolve the dispute by litigation or arbitration in a foreign forum if that agreement is executed after the claim arises.
- (j) **NONAPPLICATION TO SERVICE CONTRACTS.**
--Neither subsection (h) nor (i) of this section applies to a provision of a service contract to the extent that the provision affects only the rights and liabilities of the parties who entered into the service contract.
- (k) **SHIPPED CONTRACTS OF CARRIAGE.**--
- (1) **ISSUED ON REQUEST.**--After goods are loaded onto a ship or other mode of transportation, the contracting carrier shall issue a shipped contract of carriage if such a contract is requested by the shipper.
- (2) **SURRENDER OR ANNOTATION OF PREVIOUS CONTRACT.**--If the shipper has received a contract of carriage for the goods issued before they were loaded onto the ship or other mode of transportation, then--
- (A) the shipper shall surrender that contract to the contracting carrier in exchange for the shipped contract of carriage; or
- (B) the contracting carrier, at its option, may annotate that contract by noting--
- (i) the name of the ship or other mode of transportation upon which the goods have been shipped; and
- (ii) the date on which the goods were shipped.
- A contract annotated under subparagraph (B) shall be deemed to be a shipped contract of carriage.

之後，本法通過日之前所達成，本法所規範之求償之運送契約或其他協議。

- (2) 一般規定：無論本款所適用之運送契約或其他協議之規定為何，本法所適用之爭議於外國訴訟或仲裁，於有下列一或多條件存在時，該契約或協議之一方，可選擇於美國適當法域進行該訴訟或仲裁：
- (A) 裝貨港或卸貨港位於或擬在美國。
- (B) 運送人收受貨物之處，或將貨物交付給有權接收貨物之人之處，在或擬在美國。
- (C) 被告之主營業地，或無主營業地，其慣居地在美國。
- (D) 該契約訂立地在美國。
- (E) 該運送契約或其他協議條款規定之訴訟地或仲裁地在美国。
- (3) 雙方隨後協定：本款規定不妨礙本款所適用之運送契約或其他協議下之求償爭議各方，於求償發生後協議透過外國法院訴訟或外國仲裁解決該爭議。
- (j) 不適用於服務契約：本條第(h)項及(i)項規定不適用於服務契約中僅影響服務契約訂立人之權利及義務之條款。
- (k) 已裝船之運送契約—
- (1) 一經要求即簽發：貨物裝載上船或其他運送工具後，經該託運人要求已裝船運送契約，契約運送人應當簽發該類契約。
- (2) 繳還或簽註先前之契約：如託運人於貨物裝載上船或其他運送工具前已就該貨物收到一運送契約，則：
- (A) 該託運人應將該契約繳還契約運送人以換取已裝船之運送契約；或
- (B) 該契約運送人可選擇於該契約上簽註：
- (i) 該貨物已裝載上船之船舶或其他運送工具之名稱；及
- (ii) 該貨物裝船之日期。
- 依據(B)款簽註之契約應被視為已裝船運送契約。

SEC. 8. WEIGHT OF BULK CARGO.

If, under the customs of any trade, the weight of any goods in bulk inserted in a contract of carriage is a weight ascertained or accepted by a third party other than a shipper or a carrier and the fact that the weight is so ascertained or accepted is stated in the contract of carriage, then--

- (1) the contract of carriage is not prima facie evidence against a carrier of the receipt of goods of that weight; and
- (2) the accuracy of that weight at the time of shipment shall not be deemed to have been guaranteed by a shipper.

SEC. 9. RIGHTS AND IMMUNITIES OF CARRIER AND SHIP.

(a) **LOSS OR DAMAGE FROM UNSEAWORTHINESS.--** Neither a carrier nor a ship is liable for loss or damage from unseaworthiness unless the loss or damage is caused by a failure on the part of the carrier to exercise the due diligence required by section 6(a).

(b) **BURDEN OF PROOF.--** If it is proved in an action that loss or damage resulted from unseaworthiness, then the burden of proving due diligence is on the carrier or other person asserting no liability under subsection (a) of this section.

(c) **SPECIFIC EXCEPTIONS FROM LIABILITY.--**

(1) **IN GENERAL.--** Neither a carrier nor a ship is responsible for loss or damage from—

- (A) perils, dangers, and accidents of the sea or other navigable waters;
- (B) an act of God;
- (C) an act of war;
- (D) an act of public enemies;
- (E) the arrest or restraint of princes, rulers, or people, or seizure under legal process;
- (F) quarantine restrictions;
- (G) an act or omission of the shipper or owner of the goods, its agent, or representative;
- (H) strikes, lockouts, stoppage, or restraint of labor from whatever cause, except that this paragraph does not relieve a carrier from responsibility for its own acts;
- (I) riots or civil commotions;
- (J) saving, or attempting to save, life or property at sea;
- (K) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (L) insufficiency of packing;
- (M) insufficiency or inadequacy of marks;
- (N) latent defects not discoverable by due diligence; or
- (O) any other cause arising without the fault or privity of the carrier claiming the benefit of the exception

第 8 條 散裝貨物之重量

如依據貿易慣例，運送契約記載散裝貨物之重量係託運人或運送人以外之第三人所確認或接受之重量，且經此確認或接受之重量已記載於運送契約上者，則：

- (1) 該運送契約非運送人依該重量收受貨物之表面證據；且
- (2) 裝船時貨物重量之正確性不應視為業已獲得託運人之保證。

第 9 條 運送人及船舶之權利與免責

(a) 不適航所致之滅失或損壞：運送人及船舶不負責不適航所致貨物之滅失或毀損，然該滅失或毀損係因運送人未依本法第 6 條(a)項規定善盡注意義務所致者除外。

(b) 舉證責任：如訴訟中經證明貨物滅失或毀損係因不適航所致，則運送人或其他主張據本條(a)項免責之人須舉證證明其已善盡謹慎注意義務。

(c) 特定免責事項：

(1) 一般規定：運送人及船舶對下列原因所致之滅失或毀損不負責任：

- (A) 海上或其他可航水域之災難、危險或意外事故；
- (B) 天災；
- (C) 戰爭行為；
- (D) 公敵行為；
- (E) 君主、統治者或人民之扣留、拘禁或依法律程序之扣押；
- (F) 檢疫限制；
- (G) 託運人或貨主、其代理人或代表之行為或疏忽；
- (H) 不論何種原因所致之全面或局部罷工、停工或勞動限制，然本款規定不免除運送人對其自身行為應負之責任；
- (I) 暴動或民眾騷亂；
- (J) 救助或企圖救助海上人命或財產；
- (K) 因貨物之固有瑕疵、品質或缺陷所致之體積或重量之損失，或任何其他滅失或毀損；
- (L) 包裝不良；
- (M) 標誌不充分或不當；
- (N) 經謹慎注意仍無法發現之隱有瑕疵，或；
- (O) 非由於主張本項免責利益之運送人之過失或知情，及非

under this paragraph, and without the fault or neglect of its agents or servants.

- (2) **FIRE ON A SHIP.**--Neither an ocean carrier nor a ship is responsible for loss or damage from fire on a ship unless the fire was caused by the ocean carrier's fault or privity, with respect to a fire on a ship that it furnished. A contracting carrier is not responsible for loss or damage from fire on a ship unless the fire was caused by the contracting carrier's actual fault or privity.

(d) **BURDENS OF PROOF IN CERTAIN ACTIONS.**--

- (1) **NONSPECIFIC EXCEPTION.**--In an action for loss or damage in which a carrier seeks to establish no liability under subsection (c)(1)(O), the burden of proof is on the carrier to show that neither its fault or privity, nor the fault or neglect of its agents or servants, contributed to the loss or damage.
- (2) **NEGLIGENCE IN NAVIGATION OR MANAGEMENT.**--In an action for loss or damage in which a party alleges that the master, mariner, pilot, or servants of an ocean carrier were negligent in the navigation or management of a ship, the burden of proof is on that party to prove negligence in the navigation or management of the ship.

(e) **ALLOCATION OF DAMAGES.**--

- (1) **IN GENERAL.**--If loss or damage is caused in part by a breach of a carrier's obligations, or the fault or neglect of a carrier, and in part by one or more of the exceptions described in subsection (c), then the carrier or ship is--
- (A) liable for the loss or damage to the extent that the party seeking to recover for the loss or damage proves that it is attributable to that breach, fault, or neglect; and
- (B) not liable for the loss or damage to the extent the carrier proves that it is attributable to one or more of those exceptions.
- (2) **INSUFFICIENT EVIDENCE.**--If there is no evidence upon which the trier of fact in an action for loss or damage can base a determination of the extent to which the loss or damage is attributable under paragraph (1), and a carrier or ship is found liable for an undetermined portion of such loss or damage, then the aggregate liability of all the carriers and ships is one-half of the loss or damage.

(f) **SHIPPER'S LIABILITY.**--

- (1) **IN GENERAL.**--A shipper is not responsible for loss or damage sustained by a carrier or a ship from any cause without the act, fault, or neglect of the shipper, its agents, or its servants.
- (2) **SHIPPER'S GUARANTEE OF ACCURACY.**--A shipper is deemed to have guaranteed to each carrier the accuracy at the time of shipment of the marks, number, quantity, and weight furnished by the shipper, and shall indemnify any carrier against loss, damage, and expense arising or resulting from inaccuracy. The right of a carrier to indemnity under this paragraph does not limit the responsibility or liability of a carrier to any

因其代理人或受雇人之過失或疏忽造成之任何其他原因。

- (2) 船上失火：海上運送人及船舶不負責發生於其所提供之船上失火所致之滅失或毀損，然該失火為海上運送人之過失或知情所致者除外。契約運送人不負責船上失火所致之滅失或毀損，然該失火為該契約運送人之實際過失或知情所致者除外。

(d) 某些訴訟之舉證責任：

- (1) 非特定免責：運送人意圖依(C)項(1)款(O)目免責之貨物滅失或毀損之訴訟中，該滅失或毀損既非因其過失或知情，亦非因其代理人或受雇人之過失或疏忽所致之舉證責任由運送人負擔之。
- (2) 航海過失或管理船舶過失：一方當事人主張船長、船員、引水人或海上運送人之受雇人於航行或管理船舶之疏忽所致之滅失或毀損訴訟，航行或管理船舶過失之舉證責任由該當事人負擔之。

(e) 損失分配

- (1) 一般規定：如貨物滅失或毀損部分為運送人違反義務或運送人之疏忽或過失所致，部分為本條(C)項規定之一或數免責事項所致，則運送人及船舶：
- (A) 經請求賠償之當事人證明係因其違反義務、過失或疏忽所致滅失或毀損之範圍負責；而
- (B) 經該運送人證明係因一或數免責事項所致滅失或毀損之範圍不負責任。
- (2) 證據不充分：如無證據使貨物滅失或毀損訴訟之事實審法官據以確定(1)款之滅失或毀損範圍，且運送人或船舶應對該滅失或毀損之部分負責無法確定者，則該運送人及船舶之總責任應為該滅失或毀損之半額。

(f) 託運人之責任—

- (1) 一般規定：託運人不負責運送人或船舶所遭受非因託運人其代理人或受雇人之行為、過失或疏忽所致之損失或損害。
- (2) 託運人對正確性之保證：託運人應被視為於裝船時已向任一運送人保證其所提供之貨物標誌、數量、體積或重量之正確性，並應賠償任何運送人因其標誌等不正確所致或造成之損失、損害或費用。本款所規定之運送人求償權利不影響其對託運人以外任何其

- person other than the shipper.
- (g) **DEVIATIONS.--**
- (1) **IN GENERAL.--**Neither a carrier nor a ship is liable for damage or loss from--
- (A) a deviation to save or attempt to save life or property at sea; or
- (B) any reasonable deviation.
- (2) **UNREASONABLE DEVIATIONS.--**For purposes of this Act--
- (A) **LOADING AND UNLOADING.--**A deviation for the purpose of loading or unloading cargo or passengers is, prima facie, not a reasonable deviation.
- (B) **EFFECT OF UNREASONABLE DEVIATION.--** An unreasonable deviation constitutes a breach of a carrier's obligations under this Act, and the remedies for such a breach shall be determined exclusively under this Act.
- (h) **LIMITATIONS ON LIABILITY.--**
- (1) **IN GENERAL.--**Except as provided in paragraph (3), the aggregate liability of all carriers and their ships for loss of, for damage to, or in connection with goods under a contract of carriage may not exceed the higher of--
- (A) 666.67 Special Drawing Rights (as defined by the International Monetary Fund) per package; or
- (B) 2 Special Drawing Rights (as so defined) per kilogram of gross weight of the goods lost or damaged.
- (2) **SPECIAL RULE FOR CONSOLIDATED GOODS.--**If a container, pallet, or similar article of transport is used to consolidate goods, the number of packages enumerated in the contract of carriage as packed in the article of transport shall be deemed to be the number of packages for purposes of paragraph (1)(A). Except as provided in the preceding sentence, such an article of transport shall be considered to be the package for such purposes.
- (3) **EXCEPTIONS.--**
- (A) **DECLARED VALUE.--**Paragraph (1) does not apply if the nature and value of the goods have been declared by the shipper before shipment and the declaration is contained in the contract of carriage, but the declaration shall be only prima facie evidence of the nature and value of the goods.
- (B) **AGREEMENT ON GREATER LIMIT.--**Paragraph (1) does not apply if the contracting carrier and the shipper agree on a greater amount as the maximum liability of the carrier and its ship for loss or damage. Any such agreement is binding only on the parties who entered into the agreement.
- (C) **SERVICE CONTRACTS.--** Notwithstanding paragraph (1), the parties to a service contract may agree to a greater or lesser amount as the maximum liability of those parties for such loss or damage.
- (D) **CERTAIN CULPABLE ACTS OR OMISSIONS**

- 他人應承擔之責任。
- (g) 偏航：
- (1) 一般規定：運送人及船舶不負責下列原因所致之滅失或毀損：
- (A) 為救助或意圖救助海上人命或財產所為之偏航；或
- (B) 任何合理偏航。
- (2) 不合理偏航：為本法之目的：
- (A) 裝載及卸載：為裝貨或卸貨或為上下旅客所為之偏航為非合理偏航之表面證據。
- (B) 不合理偏航之效果：不合理偏航構成運送人違反本法之運送人義務，且對該違反之救濟應僅依本法予以確定。
- (h) 責任限制：
- (1) 一般規定：除第(3)款另有規定外，所有運送人及船舶對運送契約所載貨物之滅失或毀損或與該貨物有關之滅失或毀損之賠償責任總額不應超過：
- (A) 每件 666.67 特別提款權(依國際貨幣基金組織所定義)；或
- (B) 依滅失或毀損貨物之毛重計，每公斤 2 特別提款權(依國際貨幣基金組織所定義)，以二者賠償限額較高者為準。
- (2) 對貨櫃貨物之特別規定：如使用貨櫃、墊板或類似併裝工具集裝貨物者，則運送契約所載明裝載於該運送工具內之貨物件數應視為第一款(A)目所指之件數。除前段規定外，該裝運工具本身應視為一件。
- (3) 例外：
- (A) 申報價值：如於裝船前，託運人已申報貨物之性質及價值，且該申報載於運送契約上，則(1)項規定不適用之，然該申報應僅為該貨物性質及價值之表面證據。
- (B) 更高限額協議：如契約運送人與託運人就運送人及船舶對貨物滅失或毀損所承擔之最大責任達成更高限額之協議者，則(1)項規定不適用之。任何此種協定僅拘束作為該協議之雙方當事人。
- (C) 服務契約：不論(1)項規定為何，服務契約之當事人得就該滅失或毀損之最大責任約定更高或更低之限額。
- (D) 運送人某些有過失之作為或

OF CARRIER.--Paragraph (1) does not apply if it is proved that the loss or damage resulted from--

- (i) an act or omission of the carrier, within the privity or knowledge of the carrier, done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result; or
 - (ii) an unreasonable deviation if the carrier knew, or should have known, that the deviation would result in such loss or damage.
- (4) **LIABILITY CAP.**--Neither a carrier nor a ship is liable for more than the amount of loss or damage sustained.
- (5) **MISSTATEMENT BY SHIPPER.**--Neither a carrier nor a ship is liable for loss of, for damage to, or in connection with goods if the nature or value of the goods was knowingly and fraudulently misstated by the shipper in the contract of carriage.
- (6) **BENEFIT OF LIABILITY LIMITATION SEPARATELY DETERMINED.**--The loss by a carrier of the benefit of a limitation on liability under paragraph (3)(D) does not affect the application of that limitation to any other carrier.
- (i) **INFLAMMABLE, EXPLOSIVE, OR DANGEROUS CARGO.**--
- (1) **CARRIAGE WITH KNOWING CONSENT.**--If--
- (A) a carrier has consented to the carriage of goods of an inflammable, explosive, or dangerous nature with knowledge of their nature and character; and the goods become a danger to the ship or cargo,
 - (B) then the carrier may land the goods at any place, destroy them, or render them innocuous without liability except to general average, if any.
- (2) **CARRIAGE WITHOUT KNOWING CONSENT.**--If--
- (A) a carrier has consented to the carriage of goods of an inflammable, explosive, or dangerous nature without knowledge of their nature and character; and
 - (B) the goods become a danger to the ship or cargo, then the carrier may land the goods at any place, destroy them, or render them innocuous without compensation of the shipper for the damage or loss. The shipper is liable for all damages and expenses directly or indirectly arising out of or resulting from the shipment of those goods.

疏忽：如經證明滅失或毀損係由下列原因所致，則(1)項規定不適用之：

- (i) 貨物滅失或毀損為運送人知情或知曉之範圍內，故意或明知可能造成損失而輕率之作為或不作為所致。
 - (ii) 不合理偏航，如運送人知曉或應知曉該偏航會導致該滅失或毀損。
- (4) 最大責任：運送人及船舶對超過其應承受之貨物滅失或毀損部分，不負償責任。
- (5) 託運人不實陳述：如託運人於運送契約故意或詐欺不實陳述貨物之性質或價值，則運送人及船舶不對該貨物之滅失或毀損、或與該貨物有關之滅失或毀損負責。
- (6) 分別確定責任限制之權利：依據(3)項(D)目，某運送人喪失其責任限制之權利時，並不影響對任何其他運送人可得適用之責任限制權利。
- (i) 易燃、易爆或危險貨物：
- (1) 運送人知情且同意：如
 - (A) 運送人知曉易燃、易爆或危險貨物之性質及特性，並同意裝運者，且該貨物對船舶或其他貨物構成危險者，
 - (B) 則運送人得於任何地點將該貨物卸下、銷毀或使之無害，而不負賠償責任，然共同海損除外(如有)。
 - (2) 運送人不知情但同意：如
 - (A) 運送人同意裝運易燃、易爆或危險貨物，然不知曉其性質及特性者；且
 - (B) 該貨物對船舶或其他貨物構成危險者，則運送人得於任何地點將該貨物卸下、銷毀或使之無害，而不對託運人承擔任何滅失或毀損之賠償責任。託運人對直接或間接因裝運該貨物所致或所造成之所有損失及費用應負責任。

SEC. 10. SURRENDER OF RIGHTS; INCREASE OF LIABILITY; GENERAL AVERAGE.

- (a) **IN GENERAL.**--A carrier may surrender its rights and immunities, or increase its responsibilities and liabilities, under this Act, in whole or in part, under the terms of any contract. Any such contract shall be binding only on the parties who entered into it.
- (b) **GENERAL AVERAGE PROVISIONS.**--A contract of carriage may contain any lawful provision regarding

第 10 條 放棄權利；增加義務；共同海損

- (a) 一般規定：運送人得以任何契約條款之全部或部分地放棄本法所規定之權利及免責或增加義務及責任。任何該契約僅拘束簽訂契約之當事人。
- (b) 共同海損條款：運送契約中可規定任何有關共同海損之合法條款。

general average.

SEC. 11. SPECIAL AGREEMENT AS TO PARTICULAR GOODS.

- (a) **IN GENERAL.**--A contracting carrier and a shipper may enter into any agreement for the shipment of particular goods setting forth--
- (1) the responsibilities and liabilities of the carrier for the goods;
 - (2) the rights and immunities of the carrier with respect to the goods;
 - (3) the obligations of the carrier as to seaworthiness (to the extent that the stipulation regarding seaworthiness is not contrary to public policy);
 - (4) the care or diligence of their servants or agents for receiving, loading, handling, stowage, carriage, custody, care, discharge, and delivery of the goods carried by sea.
- (b) **LIMITATION.**--Subsection (a)--
- (1) applies to shipments where the character or condition of the property to be carried, or the circumstances, terms, and conditions under which the carriage is to be performed, reasonably justify a special agreement under subsection (a); and if--
 - (A) no bill of lading is issued; and
 - (B) the terms agreed upon are contained in a receipt that is a nonnegotiable document, marked as such; but
 - (2) does not apply to ordinary commercial shipments made in the ordinary course of trade.

SEC. 12. NOTICE OF LOSS OR DAMAGE.

- (a) **IN GENERAL.**--Unless notice of loss or damage and the general nature of the loss or damage is given in writing to the contracting carrier or its agent or to the performing carrier making the delivery or its agent--
- (1) before or at the time of the delivery of the goods to the person entitled to receive them under the contract of carriage; or
 - (2) within 3 days after the delivery if the loss or damage is not apparent on delivery, then the delivery is prima facie evidence of the delivery by the carrier of the goods as described in the contract of carriage.
- (b) **NOTICE BY ENDORSEMENT.**--Notice of loss or damage by endorsement on the receipt for goods by the person taking delivery constitutes notice in writing for purposes of subsection (a).
- (c) **WAIVER OF NOTICE-IN-WRITING REQUIREMENT.** -- Notice of damage or loss need not be given in writing if the state of the goods at the time of their receipt is the subject of joint survey or inspection.
- (d) **REASONABLE ACCESS.**--The carriers and the person who receives goods shall give all reasonable facilities to each other for inspecting and tallying loss of, or damage to,

第 11 條 關於特殊貨物之特別協議

- (a) 一般規定：契約運送人與託運人得就特殊貨物之裝運達成任何協議，規定：
- (1) 運送人對貨物之責任及義務；
 - (2) 運送人對貨物之權利及免責；
 - (3) 運送人對適航性之義務(該適航規定以不違反公共政策為限)；
 - (4) 其受雇人或代理人謹慎小心地收受、裝載、搬移、堆存、運送、保管、看守、卸載及交付海上運送貨物。
- (b) 限制適用：(a)項：
- (1) 適用於其所運送之貨物特點或狀況，或運送之環境及條件能合理地證明，依據(a)項簽訂之特別協議為正當；且如
 - (A) 未簽發載貨證券；且
 - (B) 商定之條件載有屬不可轉讓單證收據中，並為不可轉讓之標註；然
 - (2) 不適用於通常貿易所進行之一般商業運送。

第 12 條 滅失或損壞通知

- (a) 一般規定：除將滅失或損壞及滅失或損壞之一般性質於下列時間內以書面通知契約運送人或其代理人，或通知履行交貨義務之履約運送人或其代理人外：
- (1) 貨物交付給運送契約下有權收受貨物之人之前或當時；或
 - (2) 如已交付，而貨物的滅失或損壞不明顯者，則在交付後三天內否則此交付應作為運送人接受運送契約所載交付貨物之表面證據。
- (b) 批註通知：收受貨物之人於貨物收據上批註貨物滅失或損壞通知可構成(a)項所指之書面通知。
- (c) 放棄書面通知要求：如於收受貨物時，已對貨物狀況進行聯合檢查或公證者，則無需提交滅失或損壞之書面通知。
- (d) 合理便利：運送人及受貨人應相互對核對總數及清點所交付貨物之滅失或損壞，提供一切合理便利，包括適時進行

delivered goods, including joint surveys where appropriate.

聯合公證。

SEC. 13. STATUTE OF LIMITATIONS.

第 13 條 訴訟時效

- (a) **SUITS.**--A carrier or ship is discharged from liability for loss of, for damage to, or in connection with goods unless suit is brought within 1 year after the date on which the goods were delivered or should have been delivered. The failure to give notice of loss or damage, either apparent or concealed, does not affect or prejudice any party's right to bring suit within that 1-year period.
- (b) **ARBITRATION.**--If a contract of carriage provides for arbitration, then a carrier or ship is discharged from liability for loss of, for damage to, or in connection with goods unless the arbitration proceeding is commenced, or suit is brought, within 1 year after the date on which the goods were delivered or should have been delivered.
- (c) **ACTIONS FOR CONTRIBUTION OR INDEMNITY.**
-- Notwithstanding subsections (a) and (b), an action for contribution or indemnity may be brought by a carrier against any other party to a transaction within 3 months after a judgment is entered against that carrier or a settlement is concluded by that carrier.
- (a) 訴訟：除自貨物交付之日或應交付之日起一年內提起訴訟，否則運送人及船舶均解除其對貨物滅失或損壞或與貨物有關滅失或損壞之賠償責任。未提交通知者，無論滅失或毀損是否明顯或不明顯，均不影響任何一方於該一年內提起訴訟之權利。
- (b) 仲裁：如運送契約中有約定仲裁，除自貨物交付之日或應交付之日起一年內開始仲裁程序或提起訴訟，否則運送人及船舶均解除其對貨物滅失或損壞或與貨物有關滅失或損壞之賠償責任。
- (c) 分攤或追償訴訟：不論(a)項及(b)項規定為何，運送人請求任何他方分攤或追償之訴訟，得於對該運送人為判決或該運送人解決賠償後之三個月內提出。

SEC. 14. DISCRIMINATION BETWEEN COMPETING SHIPPERS.

第 14 條 競爭託運人間之差別對待

It is expressly stated to be the intent of the Congress that nothing in this Act may be construed to permit a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances--

本國會之意向是能明確規定，不得將本法任何規定解釋為允許水路公共運送人，就以下情況，對處於類似期間及條件之競爭託運人間有所差別對待：

- (1) with respect to their right to demand and receive bills of lading subject to the provisions of this Act;
- (2) when issuing contracts of carriage--
(A) in surrendering any of the carrier's rights and immunities; or
(B) in increasing any of the carrier's responsibilities and liabilities,
under section 10 of this Act; or
- (3) in any other way prohibited by the Shipping Act, 1916 (46 U.S.C. App. 801 et seq.) or the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.).
- (1) 要求及接受本法所規範之載貨證券之權利；
- (2) 於簽發運送契約時，依據本法第 10 條：
(A) 放棄運送人之任何權利及免責；或
(B) 增加運送人之任何義務及責任；或者。
- (3) 以「1916 年航運法」(「美國法典」第 46 篇，附錄 801 及以下諸條)或「1984 年航運法」(「美國法典」第 46 篇，附錄 1701)所禁止的任何其他方式。

SEC. 15. REPEAL OF 1936 ACT.

第 15 條 廢除 1936 年法

The Carriage of Goods By Sea Act (46 U.S.C. App. 1300 et seq.) is repealed.

廢除「海上貨物運送法」(「美國法典」第 46 篇，附錄 1300 及以下諸條)。

SEC. 16. APPLICATION OF BILLS OF LADING RULES TO INBOUND GOODS.

第 16 條 載貨證券規則對進口貨物的適用

- (a) **IN GENERAL.**--Chapter 801 of title 49, United States Code, applies to any contract of carriage that is subject to this Act.
- (a) 一般規定：「美國法典」第 49 篇第 801 章規定適用於受本法規範之任何運送契約。

(b) **APPLICATION TO INBOUND GOODS.**-- Notwithstanding section 80102 of title 49, United States Code, chapter 801 of that title (except for section 80116 of that title) shall be applied to any contract of carriage that covers a shipment of goods from a place in a foreign country to a place in the United States in the same manner as that chapter applies to a bill of lading for the transportation of goods from a place in a State to a place in a foreign country.

(c) **APPLICATION WITH CHAPTER 801 OF TITLE 49.**--If the application of any provision of this Act to any person or circumstance to which this Act applies conflicts with the application of any provision of chapter 801 of title 49, United States Code, to that person or circumstance, then the provision of this Act shall be applied instead of the provision of that chapter.

(b) 適用於進口貨物：無論「美國法典」第 49 篇第 80102 節規定為何，該篇第 801 章(該篇第 80116 條除外)適用於從國外運抵美國之任何運送契約，適用辦法同該章適用於從美國任一州運往國外之貨物運送之載貨證券。

(c) 與第 49 篇第 801 章之適用：如本法任一規定對任何人或任何情況之適用與「美國法典」第 49 篇第 801 章之任一規定對該人或該情況之適用造成衝突，則應適用本法之規定，而非該章之規定。

SEC. 17. EFFECTIVE DATE.

This Act shall take effect 90 days after the date of enactment and shall apply to goods received for shipment after that effective date.

第 17 條 生效日期

本法應自其頒佈之日後 90 天生效，並應適用於生效之日後收受待運之貨物。

