

Introduction

The International Maritime Organization (IMO), from the start, has been most closely involved in developing maritime conventions and in ensuring that, these instruments keep pace with changes in shipping technology. The Convention on Safe Container (CSC) 1972 is one of the international regulatory frameworks adopted by the Organization to maintain a high level of safety of human life in the transport and handling of containers and to facilitate the international transport of containers by providing uniform international safety regulations.¹

The Convention applies to the great majority of freight containers used internationally, except those designed specifically for carriage by air.² The Convention particularly requires that containers be subjected to various tests which represent a combination of safety requirements of both inland and maritime modes of transport. Regarding the safety of the container in international transport, the study by the IMO from 1996-2002 found that of 19,704 containers inspected, 1,737, or about 9%, had Container Safety Convention (CSC) plate.³

Currently, in terms of value, the global seaborne container trade is believed to account for approximately 60% of all world seaborne trade. Following this, to avoid incidents that may occur during loading, unloading and movement of containers both in inland and ocean transport, the CSC has set standards for approval of containers safety and other measures that help to improve the efficiency of freight transport in international trade.

The Ethiopian, quantity of goods carried by containers has risen and the reports reveal that the Government owned Ethiopian Shipping Enterprise transported more Containers than it had planned in a budget year.⁴ However, despite the growth there is no effective legal regime particularly governing the handling of containers in ocean going vessels owned by the Enterprise. For these reason this draft law is being prepared with the aim to implement CSC in to Ethiopian Laws to ensure the safety of containers both in inland and ocean transport.

¹See, the Preamble of the Convention on Safe Containers, (CSC) 1972

² Article III, CSC, 1972

³U.S Department of Commerce, “*The Containerized shipping Industry and phenomenon of Container lost at sea*”, marine sanctuaries series ONMS-14-07, 2014

⁴See, Ethiopian Shipping Line (ESL) 2014/15 fiscal year report. The report also announced that starting from October 2015 reduced rent charged for containers.

What is container?

The Container is an article of transport equipment of permanent character, strong enough for repeated use and especially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading.⁵ Freight containers are defined by ISO, as containers designed to ISO standards which are intended for intercontinental freight transport.⁶ Most containers are now built to these standards.

Due to the constant increase in shipping activities and international trade, the use of containers have become more widespread than ever. The reason for this is that, containers are convenient, easier to transport and to stack, and insure high levels of protection to the cargo they hold. This widespread use of containers brought a need to regulate certain aspects of the standards aimed to protect human life and to reduce discrepancies existing between countries the containers will traverse. Appreciating these factors, IMO felt changes were needed and in 1967 prompted a study on the safety of containerization in marine transport the outcomes of which are discussed in the next section.

⁵Article II (1) of CSC, 1972

⁶According to the International Organization for Standardization (ISO), containers are used for the intermodal transport of freight. They are manufactured according to specifications from the ISO and are suitable for multiple transportation methods such as truck, rail, or ship. It defines a shipping container that meets size, strength, and durability requirements. The basis of these regulations is to guarantee that the container can withstand extreme environments endured during transport as well as possess the structural integrity needed to be lifted by cranes or other heavy equipment.

1. THE CONVENTION ON SAFE CONTAINERS (CSC), 1972

1.1 Background History of the Convention on Safe Containers (CSC), 1972

During the 1960s, there was a rapid increase in the use of freight containers for the consignment of goods by sea and in the development of specialized container ships.⁷ In 1967, IMO undertook a study on the safety of containerization in marine transport.⁸ The container itself emerged as the most important aspect to be considered. The IMO in cooperation with the Economic Commission for Europe, developed a draft convention and in 1972 the finalized Convention was adopted at a conference jointly convened by the United Nations and IMO. The Convention entered into force on 6 September 1977.⁹

1.2 General overview of the Convention on Safe Containers (CSC), 1972

The CSC has two goals, namely to maintain a high level of safety of human life in the transport and handling of containers, by providing generally acceptable test procedures and related strength requirements, and to facilitate the international transport of containers by providing a uniform international safety regulations, equally applicable to all modes of surface transport. In this way, proliferation of divergent national safety regulations can be avoided. The CSC sets out procedures whereby containers used in international transport must be approved for safety by the Administration of a Contracting Party or by an organization acting on its behalf. The Administration, or an organization authorized by it, will then authorize the manufacturer to affix a Safety Approval Plate containing the relevant technical data onto approved containers.¹⁰

The Convention also includes two technical Annexes. Annex I includes Regulations for the testing, inspection, approval and maintenance of containers. It sets out procedures whereby containers used in international transport must be safety-approved by the Administration of a Contracting State or by an organization acting on its behalf. Annex II covers structural safety requirements and tests, including details of test procedures.

⁷See, the Introduction of "*Interpretation and guidelines*" on International Convention on Safe Containers, CSC 1972
ibid

⁹Ibid

¹⁰See, Annex I of CSC, 1972

1.2.1 Application of the Convention

The requirements of the Convention apply to the vast majority of new and existing containers used in international transport,¹¹ that means, transport between points of departure and destination situated in the territory of two countries at least one which the CSC applies.¹² Containers designed specifically for carriage by air do not fall under the scope of the application of the Convention.¹³ In addition, considering that the Convention was not intended that all containers, vans or reusable packing boxes should be affected, its scope of application is limited to containers of a prescribed minimum size having corner fittings.

1.2.2 Entry in to Force

The CSC entered into force on 6 September 1977. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force twelve months after the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.¹⁴

1.2.3 Obligations of the Contracting Party

1.2.3.1 Testing, inspection, approval and maintenance of containers

The CSC specifically requires that the container be subjected to various tests in accordance with regulations for testing, inspection, approval and maintenance of containers prescribed under Annex I of the Convention. A State Party to the Convention is under obligation to establish an effective procedure for the testing, inspection, approval and maintenance of containers.¹⁵ This State also can entrust these obligation to the organizations duly authorized by it provided that, it informs the Secretary-General of IMO the entrusting of such testing, inspection approval and maintenance of containers.¹⁶

Once the container is verified as indicated above, under the Authority of the Contracting State, the application for approval may be made to the administration of any Contracting Party.¹⁷ However, if an approved container does not in fact comply with the requirements of the Convention, the State

¹¹Article III (1) of CSC, 1972

¹²Article II(6) of CSC, 1972

¹³Supra note 7

¹⁴Article VIII (2) of CSC, 1972

¹⁵Article IV of CSC, 1972

¹⁶ibid

¹⁷ibid

concerned shall take such steps as it deems necessary to bring the container into compliance with such requirements or to withdraw the approval.¹⁸ Here, IMO, through the Maritime Safety Committee(MSC), recognized that there was a need to give guidance to officers exercising control under this provision.¹⁹ The procedure created was to give direction to inspectors to detect deficiencies whenever there are serious doubt as to the integrity of the containers.²⁰ The subsequent maintenance of a container approved for safety is the responsibility of the owner, who is required to have the container periodically examined and maintained in safe condition.

1.2.3.2 Acceptance of approval

The principle of reciprocal acceptance of approved containers constitutes the cornerstone of the Convention.²¹ Approval under the authority of a Contracting Party, granted under the terms of the Convention, shall be accepted by the other Contracting Parties for all purposes covered by the Convention.²² It shall be regarded by the other Contracting Parties as having the same force as an approval issued by them.²³ Once approved and plated, containers are expected to move in international transport with the minimum of safety control formalities.²⁴

However, the CSC shall not preclude the application of provisions of national regulations or legislation or of international agreements, prescribing additional structural safety requirements or tests for containers specially designed for the transport of dangerous goods, or for those features unique to containers carrying bulk liquids or for containers when carried by air.²⁵

1.2.3.3 Control

Approved containers are subjected to limited control in the territory of the Contracting Parties, especially when a container carries a valid Safety Approval Plate as required by the Convention, unless there is a significant evidence for believing that the condition of the container is such as to create an obvious risk to safety.²⁶

1.2.4 Procedure for amending

Procedures for amending any part or parts of the Convention may be made by the proposal of a

¹⁸Article IV (5) of CSC, 1972

¹⁹ IMO, "Guidance on serious structural deficiencies in containers" IMO CSC/CRC.134 27 May 2005

²⁰ibid

²¹"*Interpretation and guidelines*" on CSC, 1972

²²Article V (1) of CSC, 1972

²³ibid

²⁴Supra note 19

²⁵Article V (2) of CSC, 1972

²⁶Article VI of CSC, 1972

Contracting Party.²⁷ Flexibility is also incorporated into the Convention by the provision of simplified amendment procedures for the technical annexes.²⁸

1.2.5 Denunciation

A Contracting Party may denounce the Convention by effecting the deposit of an instrument with the Secretary-General of IMO and Such denunciation shall take effect one year from the date of such deposit.²⁹

1.2.6 Settlement of disputes

Any dispute or controversy between two or more Contracting Parties concerning the interpretation or application of Convention which cannot be settled by negotiation or other means of settlement shall, at the request of one of them, be referred to an arbitration tribunal composed as follows: each party to the dispute shall appoint an arbitrator and these two arbitrators shall appoint a third arbitrator, who shall be the Chairman.³⁰ If, three months after receipt of a request, one of the parties has failed to appoint an arbitrator or if the arbitrators have failed to elect the Chairman, any of the parties may request the Secretary-General of IMO to appoint an arbitrator or the Chairman of the arbitration tribunal.³¹ Reservation are not allowed for these provisions of the Convention.³²

1.3 The Annexes to CSC

According to the General Obligation under CSC, the Contracting Parties undertake to give effect to the provisions of the Convention and the Annexes thereto, which shall constitute an integral part of the Convention.³³ The Convention includes two Annexes. They are discussed hereunder.

1.3.1 Annex I to CSC

Annex I of the Convention has Regulations for the testing, inspection, approval and maintenance of containers. It sets out procedures whereby containers used in international transport must be safety approved by an Administration of a Contracting State or by an organization acting on its behalf. The Convention imposes an obligation on the owner of the container to maintain it's container in a safe

²⁷Article IX of CSC, 1972

²⁸Article X of CSC, 1972

²⁹Article XI of CSC, 1972

³⁰Article XIII (1) of CSC, 1972

³¹ibid

³²Article XIV (1) of CSC, 1972

³³Article I of CSC, 1972

condition, and to examine the container in accordance with the procedure either prescribed or approved by the Contracting Party, at intervals appropriate to operating conditions.³⁴

Under Chapter II of Annex I there are regulations for approval of new containers by design type. To qualify for approval for safety purposes, all containers shall comply with the requirements under the Convention.³⁵ The Administration shall examine designs and testing of a prototype containers to ensure that the containers will conform with the requirement set out under Annex II of the Convention. Where the containers are to be manufactured by design type series, application shall be made to an Administration for approval by design type accompanied by drawings, a design specification of the type of container to be approved and such other data as may be required by the Administration.³⁶ In addition, there is an obligation for manufacturers to notify the Administration prior to commencement of production so that the Administration can conduct examinations at any stage during production.³⁷ Approval of individual containers may be granted where the Administration after examination, and witnessing of tests, is satisfied that the container meets the requirements of the Convention and the Administration shall then entitle the applicant to affix the Safety Approval Plate to such container.³⁸

The standard for approval of existing containers is prescribed under regulation 9 of chapter IV. As per this regulation, within 5 years from the date of entry into force of the Convention, the owner of an existing container presents an information to an Administration concerning details as to the container and data as required for the Safety Approval Plate, then the Administration, after investigation, shall notify the owner in writing whether approval is granted. If so, this notification shall entitle the owner to affix the Safety Approval Plate after an examination of the container concerned has been carried out in accordance with the Regulations of Annex I.

Where the existing containers do not qualify for approval after the investigation, it may be presented for approval under the provisions of regulations for approval of new containers or approval of existing containers of Annex I discussed above. For such containers, the requirements of Annex II relating to end and/or side-wall strength tests shall not apply.³⁹ The Administration may, if it is satisfied that the containers in question have been in service, waive such requirements in respect of presentation of

³⁴Annex I Regulation 2 (2) of CSC, 1972

³⁵Annex I Regulation 3 of CSC, 1972

³⁶Annex I Regulation 5 of CSC, 1972

³⁷Annex I Regulation 7 of CSC, 1972

³⁸Annex I Regulation 8 of CSC, 1972

³⁹Annex I Regulation 9(2) of CSC, 1972

drawings and testing, other than the lifting and floor-strength tests, as it may deem appropriate.⁴⁰

1.3.2 Annex II to CSC

Annex II covers structural safety requirements and tests, including details of test procedures. In setting these requirements, it is implicit that in all phases of the operation of containers the forces as a result of motion, location, stacking and weight of the loaded container and external forces will not exceed the design strength of the container. In particular, the container will be restrained so that it is not subjected to forces in excess of those for which it has been designed and the container will have its cargo stowed in accordance with the recommended practices of the trade so that the cargo does not impose upon the container forces in excess of those for which it has been designed.⁴¹

Annex II further provides that externally applied test forces prescribed for the static test for longitudinal restraint, together with the fulfilment of the criteria of the other prescribed tests, are to ensure that the structural strength of a container is sufficient to withstand the stresses resulting from normal operation.

1.4 Subsequent Amendments to the Convention on Safe Containers (CSC), 1972

It is noticeable that the technology and techniques in the shipping industry change very rapidly. This is the main reason for the IMO to amend the maritime conventions several times in the course of its activity. The practice in international sea born trade reveals that the quantity of goods carried by containers has risen and the global container fleet has grown from the time the CSC was initially drafted. As a result, the existing instrument needs to be kept up to date by way of amendments. Furthermore, flexibility is incorporated in the Convention by the provision of simplified amendment procedures (tacit amendment procedure) which makes it possible to speedily adapt the test procedures to the requirements of international container traffic. The CSC has been amended 6 times including those not in a force yet. They are discussed hereunder.

1.4.1 1981 Amendments to Annex I

On 2nd April 1981, the MSC at its forty-fourth session, adopted these amendments in accordance with

⁴⁰ibid

⁴¹ See, the Introduction of Annex II of CSC, 1972

the special procedure for amending the annexes of the Convention.⁴² CSC was amended to provide transitional arrangements for plating of existing containers (which had to be completed by 1 January 1985) and for the marking of the date of the container's next examination by 1 January 1987. The Amendments entered into force on 1 December 1981 for all Contracting Parties.

1.4.2 1983 Amendments to Annex I and II

CSC was again amended in 1983 by the MSC at its forty-eighth session to extend the interval between re-examinations to 30 months and to permit the choice of container re-examination procedures between the original periodic examination scheme or a new approved continuous examination programme. In accordance, with the article for special procedure for amending annexes of the Convention, the amendments entered into force on 1 January 1984.

1.4.3 1991 Amendments to Annexes I and II

In accordance with article X of the Convention, the MSC, at its fifty-ninth session (May 1991) adopted by resolution MSC.20(59) amendments to Annexes I and II to the Convention which entered into force on 1 January 1993.⁴³ The 1991 amendments to Annex I were adopted to prevent containers being marked with misleading maximum gross weight information, to ensure removal of the Safety Approval Plate when void for any reason, and to provide for the approval of modified containers. The amendments to Annex II clarified certain test provisions.

1.4.4 1993 Amendment to the Convention and Annex I and II

On 4 November 1993 the General Assembly adopted amendments to the CSC and its Annexes by resolution A.737(18). These amendments are not yet in force. For procedural reasons, many elements of these amendments were later incorporated into the amendments adopted by resolution MSC.355(92), the latter called amendments of 2013.

1.4.5 2010 Amendments to the Convention

At its eighty-eight session (December 2010) MSC, by resolution MSC.310(88), adopted amendments to the Annexes and the amendments entered into force on 1 January 2012. Amendments include new specifications regarding Safety Approval Plates (describing the validity of, and elements to be included in), approved examination programmes (a new test for containers being approved for operation with one door removed), and the addition of a new Annex III on control and verification. Annex III provides specific control measures for authorized officers to assess the integrity of

⁴²1981 Amendments to the CSC 1972, entered into force on 1 December 1981.

⁴³See, IMO Resolution MSC.20(59)

structurally sensitive components of containers and to decide whether a container is safe to continue in transportation or whether it should be stopped until remedial action has been taken.

1.4.6 2013 Amendments

Lastly, at its ninety-second session (June 2013), MSC adopted, by resolution MSC.355(92), amendments to the Annexes which entered into force on 1 July 2014. The amendments include new definitions at the beginning of Annexes I and II, along with consequential amendments to ensure uniform usage of terminology throughout CSC; amendments to align all physical dimensions and units to the system; the introduction of a transitional period for marking containers with restricted stacking capacity; and the inclusion in Annex III of the list of deficiencies which do not require an immediate out-of-service decision by the control officer but do require additional safety measures to enable safe ongoing transport.⁴⁴ These new amendments incorporate many elements of the 1993 amendments and although they are not identical to the 1993 amendments, in practice they have the same effect.

⁴⁴See, IMO Resolution, MSC 20(59) Adopted on 17 may 1991

2. UNDERLYING REASONS FOR ETHIOPIA TO ACCEDE TO THE CONVENTION ON SAFE CONTAINERS (CSC), 1972 AS AMENDED

Introduction

As a landlocked country, in the context of Ethiopia's topography, as well as its dependence on other countries' seaports for import and export, transporting goods safely, economically, and reliably, is crucial in facilitating the socio-economic development of the country. Despite being landlocked, to contribute towards the economic growth, the Government owned Ethiopian Shipping Line Enterprise (ESL) renders international marine transport services through dry cargo ships with a total carrying capacity of 400, 000 tons at a time (an average of 300 container by each vessel) and two oil tankers, each capable of transporting 42,000 metric tons of oil. The majority of the cargo is shipped in containers.⁴⁵ It would thus come as no surprise that the widespread use of container will bring the need to regulate the area.

Therefore, the incorporation of the CSC in to the laws of Ethiopia will ensure the safe control and management of containers both inland and in the sea transport services in and to different destination ports. As the Convention and amendments must be read and interpreted as one, the need for adopting the Convention includes the amendments. For this reason, the amendments which review the safety measure from time to time will help to ensure the status of containers in line with the changes that may occur in international maritime transport.

2.1 Ethiopia's Current Activities Related to Container and Legal Frameworks in the Area

Ethiopia's international trade is growing and efforts are being made to avoid the impact of being entirely enclosed by land. The country is acquiring land that stretches to the sea, and making arrangements on getting free transport of goods through neighboring states. Recently, a national logistics strategy is launched to use multiple ports in neighboring countries in order to improve the country's international trade. Supported by the United Nations Development Programme, the country will use the Mombasa port, the Port of Sudan and Berbera port in Somaliland, in addition to the Djibouti port.⁴⁶

⁴⁵Ethiopian Shipping Line (ESL), Website, www.ethiopiashippinglines.com.et

⁴⁶As stated by Mr. Workineh Gebeyehu, Ministry of Foreign affairs of Ethiopia, During the launching of a National Logistic Strategy to use Multiple Ports in Neighbouring Countries, 2015

Ethiopia uses the Djibouti port for our 95 per cent of its imports and exports. ESL is one of the major stevedores in the port of Djibouti that provides efficient loading and discharging services of import and export cargoes. ESL's Djibouti Branch also offers coordinated and efficient shore handling services with its CLT (Container Lifting Trucks), trucks, truck trailers, tractors and forklifts of various capacity. The activities through Djibouti port are supported by the newly launched railway line connecting the heart land and different dry ports in Ethiopia to the port of Djibouti.

The idea of dry ports is also the newly emerging trend. Currently, there are seven dry ports built at different strategic logistic stations which operate with container lifting equipment. The major services delivered in the Port and Terminal Sector include: receiving and delivering cargo, loading and unloading, stuffing and un-stuffing of container goods, temporary storage for import and export cargoes, container cleaning and, maintaining and weight bridge.

The review of the legal framework that deals specifically with containers, includes first the circular issued by the Ethiopian Maritime Affairs Authority (EMAA) regarding cargo rules that limit containers weight. This introduced a new scheme for containerized cargo shipments that limits the load of 20 TEU (Twenty Feet Equivalent Unit) containers not to exceed 20 tons, including the weight of the container. The circular decreased container loads from 24 to 20 tons in order to comply with regulations designed to lengthen life of roads and to increase the safety of containers.

The second legislative initiative is the International Convention for the Safety of Life at Sea (SOLAS) new requirements to verify the gross mass of a packed container which entered into force on 1 July 2016. As a Contracting Party to SOLAS, EMAA verifies the compliance with these new regulations, to add an extra level of verification of the mass of cargo and the container for all goods transported by container using Ethiopian ships.⁴⁷

2.2 Particular Benefits that will be Gained by Acceding to CSC

It is evident that, to improve the efficiency of freight transport and to minimize risks arising in handling containers, the container measures have to be in line with internationally accepted standards.

⁴⁷ See, EMAA letter No. C/70/MAA/1451/08 Aug, 2016 which requires shippers/exporters to submit the carrier the verified gross Mass (VGM) of all export containers tenable by certificate. For the better understanding and awareness for shippers and agents, the Authority in its website has uploaded the guidelines of IMO that require to verify the Gross Mass and possible template for Verified Gross Mass (VGM) declaration certificate.

The particular benefits that may be gained by acceding to the CSC are discussed below.

2.2.1 Safety of human life and goods

The risks arising due to unsafe handling and transporting of goods by containers are many, ranging from quality deterioration and falling of goods to damage the container, the vessel and danger to the safety of human life. In the service of ESL, the damage to goods and quality deterioration while in storage packing and transporting of containers is one of the problems witnessed. The CSC has a way to minimize such kind of risks on containers by prescribing control measures and standards that containers in international transport must meet.

2.2.2 Facilitation of the movement of containers and harmonization of laws

The CSC has a way for the coordination in the movement of goods by international container transport. The principle of reciprocal acceptance of safety approved containers is the basis of the Convention; and once approved and plated it is expected that containers will move in international transport with the minimum safety control formalities. This helps the Ethiopian ships to avoid unnecessary controls by the ports of other Contracting Parties. In addition, the Convention provides uniform international safety regulations, equally applicable to all modes of surface transport. In this way, the proliferation of divergent national safety regulations of neighboring coastal States and transit rules applicable to country's containers will be minimized.

2.2.3 Safety of navigation and vessels

The issue of safety of containers has to be seen beyond what may occur in loading and unloading. The aim of ship's officers and crew members on board should be to prevent damage or deterioration whilst the cargo is under their care and to deliver it, as far as possible, in good condition and order as it was when received. However, sub-standard containers transported on vessels could lead to proliferation and damage and sinking of the vessel.

For instance, the "*Annabella Incident*" on the 25 February 2007 which was in passage in the Baltic Sea encountered heavy seas which caused the vessel to roll and pitch heavily.⁴⁸ The collapse of cargo containers occurred as a result of downward compression and racking forces acting on the lower containers of the stack, which were not strong enough to support the stack as their maximum

⁴⁸Report on the investigation of the collapse of cargo containers on Annabella, Marine Accident Investigation Branch (september 2007) p.1

allowable stack weight had been exceeded and no lashing bars had been applied to them.⁴⁹

Thus, to avoid such kind of incidents the Convention has set out standards for approval of container safety. In particular, it provides that containers should not be subjected to forces and shall have the cargo stowed in accordance with recommended practices of trade. This helps Ethiopian ships to carry calculated load, so that cargo in transport does not impose any force upon containers in excess of those for which it has been designed.

2.2.4 Facilitate the implementation of SOLAS new requirement to verify the gross mass of container

Following the recent compliance procedure introduced by the EMAA, all exporters and shippers are required to verify the gross mass of container in accordance with new SOLAS requirements for Verification of Mass of Container. As a Contracting Party to SOLAS, effective implementation of the provisions of this instrument is an obligation of the country. These new SOLAS requirements of verification help to know the accurate gross mass of a packed container and cargo to ensure correct stowage and stacking and avoid collapse of containers or loss overboard. This is an important safety measure, which is aimed at saving lives and preventing injury and the destruction of property which the CSC initially attains to achieve. The CSC goes hand in hand with this regulation by providing maximum operating gross weight, allowable stacking weight and certain standard the container on international transport must fulfill.

⁴⁹ibid

3. THE INCORPORATION AND IMPLIMENTION OF CSC INTO THE LAWS OF ETHIOPIA

3.1 The Incorporation of CSC into the Laws of Ethiopia

The prime authoritative legal document with regard to adhering to international conventions/treaties in Ethiopia is the Constitution of the country which needs to be consulted. In accordance with article 51(8) of the Constitution, the power to initiate, negotiate and implement international conventions is given to the Federal Government⁵⁰. In this regard, the Chief of the Federal Government is the Prime Minister, and he/she is the person authorized to initiate negotiations, to sign and conclude treaties representing the State.⁵¹ However, the Prime Minister has delegated this function to the Ministry of Foreign Affairs by the operation of legislation to this effect.⁵²

The House of Peoples Representatives (the Parliament) of Ethiopia is the highest legislative body of the State.⁵³ The Parliament shall have the power to ratify international treaties once they are concluded by the Federal Government.⁵⁴ The ratification of international treaties in Ethiopia is the legal procedure whereby the Parliament issues a legislation acknowledging that a particular treaty is hereby adhered to by the country and that it shall be part of the laws of the country. Such a ratification legislation issued by the Parliament shall serve as an authoritative instrument to give legal enforceability to the treaty text which shall be annexed to the legislation. Thereafter, the instrument of ratification / accession shall be issued under the signature of the Minister of Foreign affairs for the purpose of deposition.

When an international treaty is incorporated in the laws of Ethiopia, hierarchically, it is primary legislation (proclamation)⁵⁵. The treaty provisions shall prevail over other laws of the country, except the Constitution.

⁵⁰The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation no. 1, 1995; entered into force on 21st August 1995.

⁵¹Ibid. Article 74 (1)

⁵²“Power and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia”, proclamation no.471/2005; Article 25(5)

⁵³Ibid. Article 55 (1)

⁵⁴Ibid. Article 55 (12)

⁵⁵Supra note 63. Article 9(4)

3.2 The Implementation of CSC into the Laws of Ethiopia

Coming to the implementation phase, the responsibility to follow up the implementation of the treaty shall be on the relevant ministry will be stipulated by the ratification legislation, depending on the subject matter of the treaty.

Therefore, concerning the implementation of CSC into the national laws, the provisions of the convention that deal with the matter which are expected to be implemented by a State party, that produces containers or by a coastal State shall not be strictly transformed and applied by the Ethiopian legal machinery. Taking these into account, as Ethiopia is going to be a party to the CSC, 1972 as amended, by way of accession, the draft legislation in the form of both accession Proclamation and implementation Proclamation is attached with this explanatory note.

Considering that the international treaty incorporated in the laws of Ethiopia, hierarchically, is primary legislation, after the accession proclamation is promulgated, the Convention is enforceable by implementation proclamation of the same nature which shall provide the incorporation of those matters which are prescribed by the Convention to be addressed by the national laws of the country. In fact as the convention is not complete law and it leaves it up to the domestic law to regulate detailed issues, the draft legislation shall provide particularly for the incorporation of the following matters:

a) The Organ empowered to carry out the functions of testing, inspection, and approval of containers

The legislation shall require a basic description of the organ to be empowered with testing, inspection and approval functions, together with requirements for of their capability to carry this out.

The organ shall provide facilities or means to grant approvals to foreign container owners or manufacturers seeking their approval of containers in accordance with the provisions of the Convention. Approval of container by the classification societies or other organization approved by other Contracting Party could be authorized to act in the country under arrangements acceptable to the parties.

b) Appointment of inspectors

The organ established by the legislation shall designate an inspector authorized to enforce the respective provision. Particularly the legislation should give power to the inspector to detain the

container and have it placed in confined area of dry port if the container appears to have structural deficiencies that reasonably will create a risk.

c) Owners duty of maintenance and modifications of containers

The legislation shall require the owner to be responsible for maintaining the container in a safe condition. This responsibility includes the obligation to ensure that any modifications carried out on an approved container do not adversely affect or render inaccurate the information recorded on the Safety Approval Plate.

Further the modification shall be governed by the terms of the Convention. Particularly under the provisions of Annex I, chapter V, regulation 11, the owner of a container which has been modified in a manner resulting in structural changes shall notify the organ established by this legislation of the changes. The organ may determine whether the results of the original tests conducted in accordance with Annex II for the initial container approval remain valid for the modified container.

d) Periodic or continuous examination scheme

The owner of the container has the option for the containers to be examined at intervals specified in the Convention in accordance with an examination scheme prescribed or approved by the Administration concerned, as set out in regulation 2, paragraph 2, and referred as "periodic examination programme"; or under a programme approved by the Administration concerned, as set out in regulation 2, paragraph 3, called "continuous examination programme". Both procedures are intended to ensure that the containers are maintained to the required level of safety and both should be considered equal, provided that the Administration is satisfied with the examination schemes submitted by the owner.

Therefore, to manifest this need, the legislation shall provide an approved examination schemes to allow the owners of containers to examine their containers.



FEDERAL NEGARIT GAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

... Year No.....

ADDIS ABABA, 2018

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PROCLAMATION NO./2018

A PROCLAMATION TO ACCEDE TO THE INTERNATIONAL CONVENTION ON SAFE

CONTAINERS(CSC) 1972 AS AMENDED

WHEREAS, recognizing the need to maintain a high level of safety of human life in the transport and handling of containers, and to facilitate the international transport of containers by providing uniform international safety regulations, equally applicable to all modes of surface transport;

WHEREAS, the Convention on Safe Containers was adopted by the International Maritime Organization (IMO) on 2nd December 1972 (Geneva);

WHEREAS, under the International Maritime Organization (IMO), the Maritime Safety Committee (MSC) adopted amendments to the Convention, at its forty-fourth session (1981), at its forty-eighth session (1983), at its fifty-ninth session (1991), at its eighty-eight session (2010) and lastly at its ninety-second session(2013);

WHEREAS, the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia has declared the accession of Ethiopia to the said Convention and the Amendments at its session held on the Day of, 2018;

NOW, THEREFORE, in accordance with Article 55(1) and (12) of the Constitution of the

Federal Democratic Republic of Ethiopia it is hereby proclaimed as follows:

1. Short Title

This Proclamation may be cited as “Safe Containers Convention Accession Proclamation No.-----/ 2018”.

2. Approval of the Convention

Ethiopia accedes to the Convention on Safe Containers 1972 as amended.

3. Implementations

This Proclamation shall be enforced through Implementation Proclamation. Notwithstanding the provisions of the Convention, the Implementation Proclamation may provide the necessary provisions for the implementation and enforcement of the Convention.

4. Responsibility of the Ministry of Transport

The Ministry of Transport is hereby authorized to undertake, in cooperation with the concerned governmental organs, all acts necessary for the implementation of the Convention.

5. Responsibility of the Maritime Affairs Authority

The Maritime Affairs Authority shall recommend to the Ministry particular acts required for the implementation of the Convention.

6. Inapplicable Laws

Any law, regulation, directive and customary practice contrary to this Proclamation shall have no legal effect.

7. Effective Date

This Proclamation shall enter into force upon the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this..... Day of, 2018.

DR MULATU TESHOME

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA



FEDERAL NEGARIT GAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

... Year No.....

ADDIS ABABA, 2018

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Proclamation No. -----/ 2018

A PROCLAMATION TO IMPLEMENT THE INTERNATIONAL CONVENTION ON SAFE

CONTAINERS (CSC), 1972 AS AMENDED

WHEREAS, following the increasing import and export trade in the country, the quantity of goods carried by containers has risen;

WHEREAS, being cognizant of the need to maintain the safety of life in loading, unloading and in transporting of containers both in inland and ocean transport, and the facilitation of the movement of containers as well;

WHEREAS, the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia approved the accession to the Convention on Safe Containers, 1972 as Amended in its session held on the -----, 2018;

WHEREAS, it has become necessary to enact specific legislation for the effective implementation of such Convention;

NOW, THEREFORE, in accordance with Article 55 (1) and (12) of the Constitution of the Federal Democratic Republic of Ethiopia it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as “ Safe Containers Convention Implementation Proclamation No. -----/ 2018”.

2. Definitions

Unless the context provides otherwise, the definition of words in this Proclamation is as follows:

1. “Minister” or “Ministry” means the Minister or Ministry of Transport respectively.
1. “Authority” means the Maritime Affairs Authority established in accordance with Article 3 of the Maritime Sector Administration Proclamation No. 549/2007.

2. "Convention" means the consolidated text of the Convention on Safe Container 1972, as amended including Annex I and the Annex II.
3. "Container" means a container as defined in the Convention and to which the Convention applies for containers in international transport.
4. "Container Verification Organ" means an organ established by the Administration according to Article IV of the Convention, for testing, inspection and approval of Containers.
5. "Administration" means the Government of the Federal Democratic Republic of Ethiopia.
6. "International Transport" means transport between points of departure or destination situated in Ethiopia and in the territory of any other State, including transport part of which takes place in Ethiopia and any other State.
7. "Owner" means the person or persons vested with the right of ownership, possession, use or usufruct of container.
8. "Inspector" means a person according to regulation issued by the Authority who is qualified to be so designated.
9. "Dry port" shall have the meaning assigned to it in Article 2(2) of Proclamation Defining the Liability of the Dry Port to the Consignee No. 588/2008.

PART TWO

APPROVAL MAINTENANCE AND REPAIR OF CONTAINERS

3. Approval

- 1) The owner of every Container shall ensure that the container is approved and examined in accordance with Annex I and Annex II of the Convention by the organ established under this Proclamation.
- 1) The owner shall affix at a readily visible place, adjacent to any other approval plate issued for official purposes, and where it will not be easily damaged, a Safety Approval

Plate that conforms to the specifications set out in Annex I and contains the information, both in Amharic and English language.

- 2) For the purposes of sub Article (1), a Container may be approved by the Government of a State, other than Ethiopia, that is a party to the Convention or an organization authorized by the Ethiopian Government.

4. Maintenance and Examination of Containers

- 1) The owner of every container shall ensure that it is maintained in a safe condition.
- 1) The owner of every approved container shall ensure that it is examined in accordance with Annex I of the convention.
- 2) The owner of every container who, in the case of a corporation, has its head office in Ethiopia or, in the case of an individual, his domicile in Ethiopia shall submit in writing to the verification Department for Approval the procedure he proposes to use in respect of periodic examination of Containers and shall set out in his submission the information requested by the guideline issued by the Authority.
- 3) Where, with respect to a submission for approval of a proposed procedure under this Article, the verification Department approves the proposed procedure, it shall give its approval in writing to the owner of the container or in case of refused to approve the proposed procedure, it shall give the reasons for its refusal in writing to the owner of the Container.
- 4) Notwithstanding sub Article (3), the owner of a container who has his head office or domicile in any State that is not a Contracting Party but who has a principal office in Ethiopia may, in accordance with the regulations issued by the Authority, submit for approval the procedure he proposes to use in respect of the periodic examination of the container.

5. Duration of Approved Containers

Every owner of a container shall keep for a period of at least two years the record of the last examination made in respect of that container.

6. Repairs

- 1) Where there is significant evidence that the condition of a Container creates an obvious risk to safety, the owner thereof shall withdraw it immediately from service and ensure that it is restored to a safe condition before it continues in service.
- 2) Where a Container referred to in sub Article(1) is to be repaired for the purposes of restoring it to a safe condition, the owner thereof shall submit the container to a repair facility along with specifications in writing for such repair and ensure that the repair has been carried out in accordance with the written specifications.
- 3) Every owner of a container who has submitted a container to a repair facility for repair pursuant to sub Article (2) shall keep for a period of at least two years a record of the repaired specifications.

PART THREE

ESTABLISHMENT OF CONTAINERS VERIFICATION ORGAN AND APPOINTMENT OF INSPECTORS

7. Container Verification Organ

- 1) The Ministry shall establish a Container Verification Organ in dry port established in the country to carry out the testing, inspection and approval of containers for the purposes of this proclamation and the Convention. The details of functions shall be provided by the regulations issued by the Authority. The Authority shall ensure the technical capability of the container verification organ to carry out the function under sub Article (1).
- 2) Container Verification Organ shall publish a schedule of fees for services provided by it in the performance of any of the functions referred to in this Proclamation, Such fees shall be based on the actual costs incurred by the Organ.

- 3) At the end of every budget year, the Container Verification Organ shall submit to the Authority a record of all approvals, testing and inspections of containers made by it during that year.

8. Inspectors

- 1) The Authority shall designate inspectors in a dry port established in the country for the purpose of inspecting a Container or any document or Safety Approval Plate with regard to containers used in international transport.

- 2) The Inspector appointed according to sub Article (1) may:

A) Detain a container that does not carry a valid Safety Approval Plate as required by the Convention;

B) Detain the container until it is restored to a safe condition, where there is significant evidence that the condition of container creates an obvious risk to safety;

C) Authorize a container that has been detained to be transported after appropriate means have been taken to protect the structural integrity of the container;

3. When detaining a container, the inspector shall forthwith affix to it a notice to that effect and shall send a written notice of the detention and the reasons thereof to the person who, according to the information at his disposal, is the owner of the container.
4. No person shall move or permit the moving of a container to which a notice of detention is affixed except in accordance with an authorization issued by the Authority.
5. An inspector shall forthwith release a container that has been detained where a procedure of valid Safety Approval Plate as required by the Convention and this proclamation has been satisfied for the container.
6. An inspector shall release a container that has been detained to continue in service, as soon as the container has been restored to a safe condition.

9. Disposal of Containers

Where a container is detained under this proclamations and is not repossessed by the

person entitled thereto within 180 days from the date of such detention, the Authority may sell the container by public auction.

10. Offences and Penalties

- 1) The owner or operator of containers who contravenes the provisions of this Proclamation commits an offence punishable with a fine imposed by the Authority.
- 2) Sub Article (1) applies without prejudice to the relevant provisions of the criminal law should an offence carry criminal liability with the provisions of the criminal law.

PART FIVE

MISCELLANEOUS PROVISIONS

11. Duty to Report

The Authority shall report the implementation of this Proclamation to the Ministry annually.

12. Interpretation

This Proclamation shall be interpreted in the light of the object and purpose of the Convention.

13. Power to Enact Guidelines

The Authority may enact regulations necessary to give effect to this Proclamation.

14. Inapplicable Laws

Any law, regulation, directive and customary practice contrary to this Proclamation shall have no effect.

15. Effective Date

This Proclamation shall enter into force upon the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this..... Day of, 2018.

DR MULATU TESHOME

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

APPENDICES

