

SAFE CONTAINERS CONVENTION BILL
SUBMISSION TO PARLIAMENTARY PORTFOLIO COMMITTEE ON
TRANSPORT

FEBRUARY 2011

1. INTRODUCTION

The Chemical and Allied Industries' Association (CAIA) was established in 1994 to promote a wide range of interests pertaining to the chemical industry. These include fostering South Africa's science base; seeking ways to promote growth in the sector; promoting the industry's commitment to a high standard of health, safety and environmental performance; and consulting with government and other role players on a wide variety of issues.

CAIA is the South African custodian of the international Responsible Care initiative, which has been adopted by 53 countries worldwide. Responsible Care is an initiative of the global chemical industry in which companies, through their national associations, commit to work together to continuously improve the health, safety and environmental performance of their products and processes, and so contribute to the sustainable development of local communities and of society as a whole. It encourages companies and associations to inform the public about what they make and do, about their performance including reporting performance data, and about their achievements and challenges. Responsible Care provides the platform for the implementation of the chemical industry's climate change agenda.

2. INTEREST IN THE BILL

The chemical industry currently transports an estimated 90% of its freight by road and as a result is subject to a wide variety of requirements in respect of design and

operation of vehicles, design and marking of containers, marking of vehicles and documentation that must accompany each load.

In addition to the national requirements mentioned above, transport of flammable goods requires fire permits from the municipalities through which the vehicle must travel to reach a port. Most chemicals are exported by sea and as such compliance with the International Maritime Directive is required.

CAIA is therefore concerned to note the duplication and further complexity that this Bill introduces into the transport of dangerous goods.

CAIA is committed to continuous improvement in the safe transport of dangerous goods and in an effort to achieve a reduction in road incidents has introduced an auditing system for transport operators who transport dangerous goods for chemical companies and in no way wishes to reduce the level of control of transport of dangerous goods that currently exists. However duplication of requirements not only imposes an unnecessary regulatory burden on the state but also increases the cost of the transport of freight without improving safety.

CAIA also recognizes the need for South Africa to be party to international agreements that affect national economic activity. However compliance with such international agreement or convention does not require incorporation of the entire agreement into a national statute without considering whether current national legislation could ensure compliance, as appears to be the case here.

CAIA wishes to express appreciation for the opportunity to make a submission on the Bill.

Unfortunately CAIA was not aware of the date for the public hearings of 1 March so will not be able to provide an oral presentation even though it would probably have been more helpful if that had been possible.

In the absence of a presence at the hearings it is still hoped that the Committee will take note of the concerns set out in this submission and take steps to address them.

DETAILED COMMENTS

Section 5: refers to articles II to VI of the Convention as having the force of law in South Africa. This presents significant challenges as the approach used in these articles is not necessarily aligned to the approach in current national law dealing with the same issues.

The articles should have been redrafted to bring them in line with current legislation to avoid confusion and duplication.

Some examples of these challenges are presented below to illustrate the point.

For example it is not clear from the text of Article II who in Government will actually undertake the approvals contemplated. It is also important to note that containers that are used to transport dangerous goods on roads have to be certified by approved inspection authorities. As these containers will also be transported by road it is not at all clear how confusion and duplication will be avoided.

Article III refers to the date of application of the requirements and refers to the entry into force of the Convention. The Bill should refer to the date of entry into force of the Act.

The Article also refers to the approval procedures set out in Annex 1 of the Convention, which in turn does not make clear who is responsible for the decisions to be made in terms of the Annex.

Article IV deals with testing, inspection, approval and maintenance of the containers.

The National Road Traffic Act, 96 of 1996. (Regulation 273) states that the Competent Authority for transportation of all classes of dangerous goods by road is the National Department of Transport, which means that the Department of Transport is responsible for the integrity of containers used to transport dangerous goods by road.

One of the responsibilities of the Minister of Transport in terms of this legislation is the appointment of approved inspection authorities required in terms of this legislation.

It is clear that if another authority were also to have this responsibility there could be confusion as to which authority's approval is valid. Clearly approval of the same container should not be required by two different authorities.

It is important to note that the Minister of Transport has to date been unable to appoint approved inspection authorities as is required in terms of the road traffic legislation referred to above.

Article V deals with acceptance of approval under the authority of one contracting party being accepted by another. This mutual recognition approach is welcomed by CAIA but it cannot be implemented in practice unless explicit provision is made in the legislation with clear designation of authority.

Article VI deals with the jurisdiction of control by each party by “officers duly authorised” by such party. In order to give practical effect to this provision domestic law needs to make clear how such due authorisation will occur. It is assumed that this may be the provisions of sections 6 and 7 of the Bill. However the terminology is different, which makes it unclear and the scope of the provisions in articles 6 and 7 go beyond the scope of the Convention.

Section 6: provides for the appointment of inspectors to perform inspections in terms of this Bill.

In terms of the South African Maritime Safety Authority Act, the objectives of the Authority are—

(a) to ensure safety of life and property at sea;

(b) to prevent and combat pollution of the marine environment by ships; and

(c) to promote the Republic’s maritime interests.

This is understood to mean that the jurisdiction of the Authority is restricted to operations that occur at sea. While it is recognised that safety of sea can be dependent on the integrity of the containers used for dangerous goods, this does not mean that SAMSA has the authority to appoint inspectors who will inspect road vehicles as is contemplated in Section 7.

Section 7: deals with the functions of inspectors. In terms of National Road Transport Act and Regulation 283 Dangerous Goods Inspectors have similar powers to inspect or search the vehicle or premises, or examine, or detain a vehicle, demand from the driver documentation etc.

This provision is therefore a duplication of powers already assigned to the Dangerous Goods Inspectors, as regards dangerous goods and is beyond the scope of SAMSA's jurisdiction.

In addition the safety referred to in this section can only be at sea not roads as contemplated.

Section 9: deals with inquiries into accidents or incidents. Again the reference to accidents or incidents is not qualified to restrict them to those that occur at sea.

Section 10: (1) deals with the power of the Minister to make regulations. Again the power cannot cover modes of transport other than sea.

(2) The approach, although preferred by CAIA, is contrary to the recent amendment to National Road Traffic Act, namely Clause 76(4) - *if any standard incorporated in the regulations is amended or replaced, such standard shall remain in force until such time that the Minister by notice in the Gazette re-incorporate the amended or replaced standard.*

It appears inappropriate for the Minister to deal with standards in a different way in different laws.

CONCLUSIONS

It is clear from the above submission that the Bill would require substantial redrafting before CAIA's concerns are addressed. CAIA is willing to work with Government or Parliament in addressing these concerns if that would be helpful.