Warsaw convention as applied to the contents of a cargo waybill. The latter amendments to Resolution 600b were submitted to the Department as R–1 in Docket 49596, with a revised intended effective date of October 1, 1994, for the resolutions in both dockets.[2]

We will approve the text of Resolution 600b as submitted in Docket 48831, CSC(15)600b. As IATA noted in its justification in that docket, Order 89–10–52 approved the language of paragraph 7.1.1 only upon the understanding that the words ''immediately after discovery of the damage'' do not constitute a time limit for filing claims independent of the specified 14-day period from the date of receipt of the cargo. IATA assures us that the words are ''intended to encourage prompt reporting'' without constituting a separate requirement. We will therefore approve IATA's language, subject to a condition implementing this understanding.

However, with respect to the additional amendments to Resolution 600b submitted in Docket 49596, CSC(16)600b, we have two substantial difficulties. First, IATA has proposed a new paragraph 4.2 which states that in carriage to which the Warsaw Convention does *not* apply, a carrier ''may'' permit a shipper to increase its cargo liability limitation by declaring a higher shipment value and paying a supplemental charge if so required. The cargo liability limitation for this non-Warsaw carriage is the same as that set forth in paragraph 3 for Warsaw carriage: 17 Special Drawing Rights (as defined by the International Monetary Fund) per kilogram of cargo lost, damaged or delayed. Paragraph 4.2 is intended, in IATA's words, to provide the same ''option'' to shippers that is provided by paragraph 4.1 for Warsaw carriage. However, paragraph 4.2 is clearly permissive, while the language in paragraph 4.1 indicates that the shipper's right to declare a higher value under the Convention is absolute for cargo accepted for carriage. We have not objected to the extension of the Warsaw cargo liability limit to non-Warsaw carriage, but are firmly of the view that, in return, the complementary right of the shipper to declare excess value should be no less assured in the case of non-Warsaw carriage. We will therefore defer action on paragraph 3 of Resolution 600b until IATA changes the word ''may'' to ''shall'' in paragraph 4.2, or adopts other acceptable language that assures the shipper of the same right to declare excess value in non-Warsaw situations.

Our second problem with the latest amendments to Resolution 600b is the addition of language to the Notice on the face of the air waybill and similar language to paragraph 7 on the back which may be interpreted by carriers, shippers and the courts as expanding the applicability of the Warsaw Convention to carriage not heretofore considered covered by its provisions, and which could cause great uncertainty over its application.[3]

IATA indicated in its justification that the proposed language was prompted by ''recent court decisions'' interpreting Articles 8 and 9 of the Warsaw Convention.[4] Article 8 of the Convention requires, *inter alia*, that the air waybill shall contain various particulars, including ''the agreed stopping places.'' Article 9 of the Convention provides that if the waybill does not contain these and other particulars, the carrier shall not be entitled to avail itself of the provisions of the Convention which exclude or limit its liability. Apparently, IATA is concerned that courts may deny the carriers the Warsaw limits on their liability unless they list all intermediate points that might be used for any type of stop or else incorporate language such as that proposed which arguably makes any stop selected by the carrier one agreed to by the shipper.

If this is indeed IATA's position, we do not share its premise or agree with its interpretation of the proposed language. In the context of cargo service, whose hallmark is routing flexibility which benefits shippers as well as carriers, the language proposed by IATA is not objectionable from an operational standpoint, and we therefore approved it on that basis by Order 94–7–17 in the context of amendments to Resolution 600b(II). In this sense, the language is merely an elaboration of the right of the carrier under the waybill to determine the routing of the shipment.

However, it is neither necessary nor appropriate to construe the proposed language as broadening the meaning of ''agreed stopping place,'' as that term is used in the Warsaw Convention, where it appears not only in Article 8 but also in Article 1. Article 1 confines the applicability of the Convention itself to carriage between at least two contracting parties or within one contracting party if there is an ''agreed stopping place'' in another jurisdiction, whether or not it is a contracting party.

One of the primary goals of the Convention was legal predictability, and that goal would be undermined if ''agreed stopping place'' in Article 1 had been intended to encompass all possible routings rather than just those expressly agreed to by the shipper and entered on the waybill. Such an interpretation would mean that the determination of many important contractual rights of both carriers and shippers would depend on operational vagaries which may not reflect assent by either party for jurisdictional purposes and, indeed, which may engender wasteful litigation over the facts of individual routings which deviate from points specified on the waybill.

We will approve IATA's language as proposed in CSC(16)600b, but only upon the condition that its reference to intermediate points does not constitute an ''agreed stopping place'' for purposes of jurisdiction under Article 1(2) of the ''Warsaw Convention.'' We similarly clarify that our approval in Order 94–7–17 of amended paragraphs 8./8.1 and 8.2 of Resolution 600b(II), submitted in Docket 49595, is based on the same understanding.[5]

Acting under Title 49 of the United States Code, as amended, (''the Code'') and particularly sections 40101, 4013(a), 41308 and 41309:

1. We do not find Resolution 600b, set forth in the agreement in Docket 48831, to be adverse to the public interest or in violation of the Code, subject to the condition that the phrase ''immediately after discovery of the damage'' in paragraph 8.1.1 of Resolution 600b does not constitute a time limit for filing claims independent of the 14-day period specified elsewhere in that paragraph;

2. Except as provided in finding paragraph 3 below, we do not find R–1 and R–8 of the agreement in Docket 49596, to be adverse to the public interest or in violation of the Code, subject to the condition that the reference to intermediate stopping places in paragraph 2 of Resolution 600b does not constitute an ''agreed stopping place'' for purposes of jurisdiction under Article 1(2) of the Warsaw Convention;

3. We find paragraph 4.2 of Resolution 600b, set forth in R–1 of the agreement in Docket 49596, to be adverse to the public interest and in violation of the Code; and

4. These agreements are a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless approved on foreign policy and comity grounds by Order 85–5–32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, the conferral of antitrust immunity is mandatory under title 49 of the United States Code, as amended.

Order 85–5–32 contemplates that the products of fare, rate and services conferences will be subject to individual scrutiny and will be approved provided they are of a kind specifically sanctioned by Order 85–5–32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Act. Consequently, we will grant antitrust immunity to the agreements set forth in finding paragraphs 1

[2] A French version of the amended Resolution 600b (R–1) was submitted as Recommended Practice 16006 (R–8) in the same docket, along with various other cargo resolutions. Orders 95–2–3 and 95–3–12 approved all these resolutions except R–1 and R–8. In addition, an expedited agreement amending resolutions 600AA, 600AB, 600B(II) and 670A was filed in Docket 49595 and was approved by Order 94–7–17.

[3] The words ''shipper agrees that the shipment may be carried via intermediate stopping places which the carrier deems appropriate'' would be added to the Notice on the face of the waybill, and the underlined words ''Carrier is authorized *by the shipper* to select the routing *and all intermediate stopping places that its deems appropriate* or to change or deviate from the routing shown on the face hereof'' would be added to the last sentence of paragraph 7.

[4] IATA provided no further explanation of its position, but, upon request, provided the Department with a reference to one case, *Maritime Ins. Co. LTD. v. Emery Air Freight Corp.*, 983 F.2d 437 (2nd Cir. 1993).

[5] We understand that IATA intends for Resolution 600b to replace Resolution 600b(II), but wish to make clear the scope of our approval of the latter provisions to avoid the possibility of legal confusion until Resolution 600b comes into effect.