

	COGSA	Senate Re-draft of MLA Proposal	WP.81
Jurisdiction	No attempt to limit choice of forum clauses. Without national legislation, choice of forum clauses are now upheld.	Section 7. (i) "a party to the contract ... may commence ... litigation or arbitration in any appropriate forum in the United States if one or more of the following ..." was in the U. S. 1) Port of loading or discharge; 2) Receipt or delivery by the carrier; 3) Principal place of business or habitual residence of defendant; 4) Place where contract was made; 5) Forum specified for litigation or arbitration.	Chapter 15, Article 69 Plaintiff may, despite choice of forum for litigation or arbitration, sue carrier at: 1) Domicile of the carrier; 2) Place of receipt by carrier agreed in the contract; 3) Place of delivery by the carrier agreed in the contract; 4) Initial port of loading or final port of discharge; 5) Place agreed in the contract
Exceptions to a choice of forum constraint.	There is no constraint to choice of forum and thus no exception.	This proposal would only apply in the United States. Everything outside the United States would be an exception.	Chapter 15, Article 70 1) (a) A choice of forum clause in a volume contract as between the parties to the volume contract.  2) A choice of forum in a volume contract may be extended to third parties if: (a) The place is one of the places designated in Article 69 and (b) The agreement is contained in the transport document (c) The third party is given timely and adequate notice.
Arbitration	There is no attempt to constrain the enforcement of an arbitration	Section 7. (i) "a party to the contract ... may commence ... litigation or arbitration in any appropriate	Chapter 16, Article 78 2) Arbitration shall take place, at the option of the claimant, at place

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	agreement.	forum in the United States if one or more of the following ..." was in the U. S. 1) Port of loading or discharge; 2) Receipt or delivery by the carrier; 3) Principal place of business or habitual residence of defendant; 4) Place where contract was made; 5) Forum specified for litigation or arbitration.	designated in arbitration agreement or at any of the places designated in Article 69
Exceptions to constraints on place of arbitration	none	Plaintiff may designate the place of arbitration in the United States for situations described in the box above this box. The COGSA proposal does not affect other nations and would not prevent another nation from exercising an anti suit injunction.	Chapter 16, Article 78 3) Volume contracts in the same manner as the volume contract exception applies to the jurisdiction provisions  Article 79 Non-liner trade 1) (a) If the bill of lading or other transport document is issued pursuant to a charter party. 2)(a)The terms of the arbitration agreement are the same as the terms of an agreement in a charter party or other document not governed by the Instrument (b)The arbitration agreement incorporates the terms of a charter party by identifying the parties to the charter party and the date of the charter party and

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			refers to the arbitration clause. <sup>1</sup>

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<sup>1</sup> We may be able to persuade the Working Group to delete 1(a) and to limit the Article 79 exception to charter party bills of lading that incorporate an arbitration clause from the charter party.