TRADITIONALS BILLS OF LADING V. ELECTRONIC BILLS OF LADINGS: PROS AND CONS AND THE WAY FORWARD

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Abstract - The nature of the bill of lading used in international trade transactions established and added a kind of simplicity and certainty for the parties who found it better, easier and more secure for conducting trade. The bill of lading by employing modern processes also made clear that it is the best vehicle to regulate such transactions. It can be noticed that the role the bill of lading plays contributes to a huge extent to the development of trade transactions all over the world. On the one hand and as it was established earlier the traditional bill of lading faces many problems because of its existence as a paper document. Yet, this emphasises the need for an electronic bill of lading. On the other hand, whilst the electronic bill of lading faces problems in some jurisdictions relating to its legal recognition, it is just a matter of time until the traditional bill get replaced by its electronic equivalent.This work demonstrates the chief role that the bill of lading plays in the international trade realm. The nature of the bill of lading, which came into use to solve the financial, physical, legal and political problems that were facing international trade transactions, contributes to a huge extent in regulating and making these transactions more secure and safe for the parties involved.

Keywords - Bill of Lading, Electronic bill of lading

I. INTRODUCTION

A bill of lading is one of the most important documents that are used widely in the international trade realm. A legal definition of a bill of lading has been pointed up by Mustill LJ in (The Delfini) case as follows:

"1- It's a symbol of constructive possession of the goods which (unlike many such symbols) can transfer constructive possession by endorsement and transfer. 2- It's a document which, although not itself capable of directly transferring the property in the goods which it represents, merely by endorsement and delivery, nevertheless is capable of being part of the mechanism by which property is passed".

In other simple words, a bill of lading is a document which is issued by a carrier to a person who contracts with the former to ship the latters' goods. In Lickbarrow v Mason it has been held that such a paper has three functions that ascertain and maintain the different desires and interests of its holder. In fact, the bill of lading is a receipt which gives information about the goods, their quantity and condition. Also, it is an evidence that the contract of carriage has took place and been duly concluded. Finally, it is a document of title which allows its holder (usually the buyer) to acquire the goods' possession and by sending it to the buyer the seller discharges his duty that is assigned to him under a sale contract.

Since many centuries the traditional paper bill of lading has been the only form which different international trade parties have known but yet an electronic alternative has appeared on the scene in the last few decades due to the problems that have faced traditional bills of lading. This paper examines the problems associated with the traditional bill of lading that led to the formation of the electronic bill of lading. On the same token, this paper reviews the problems that the electronic bill of lading faced and is still facing to the moment. Yet, at this stage, it is important to confirm that in spite all of the obstacles that have faced and still facing the bill of lading in its two forms; the electronic and paper forms, the bill of lading is a paper which cannot be neglected or replaced by any other document due to the unique and effective role that it plays in the international trade realm.

While this work addresses the important role played by the paper bill of lading, it also illustrates the fact that a paper bill of lading cannot comply with the new changes connected with the era of speed and technology and as a result it considers the electronic bill of lading as a necessity to deal with these new changes. Furthermore, this work suggests how an electronic bill of lading can surmount the problems that it is facing in relation to its legal recognition. Finally, it suggests that the international trade realm without the recognition of the electronic bill of lading would be very complicated and full of problems.

II. PROBLEMS ASSOCIATED WITH TRADITIONAL BILLS OF LADING

The slowness of traditional bills of lading is one of the important problems that is linked to this form of bills of lading. As it has to be handled hand to hand in different places and intervals, the traditional bills of lading proved incapable to cope with the development and the speed needed in this new century. The slow nature of a negotiated bill of lading and its interference with other contracts such as the documentary letter of credit has revealed its inability to develop. It should not be forgotten that

the delays that are caused by the slowness of the paper bill of lading can result in demurrage and extra freight charges.

In this regard Nicoll noted that:"These days, paper bills of lading represent an outmoded technology. The need to present a document to the carrier in return for the cargo means it must find its way to the port of discharge before or at the same time as the cargo if delays are to be avoided. With faster vessels and quicker turn-around times this is not assured. How much simpler to pass the necessary instruction to the carrier by some instantaneous means of communication!

"The cost of the paper-backed documents is another problem that faces traditional bills of lading. An official statistic held by the UNCITRAL affirmed that about 420 billion dollars is the cost of shipping documents per year. Part of such frightening number originates from the need of physical presentation of the documents to different people in different places. Fraud is another problem which traditional bills of lading suffers from. Such fraud is committed by using fraudulent bills of lading which may result in the carriers being sued for misdelivery. Moreover, the fact that the traditional bill of lading is issued in three or six original sets adds insult to injury..

III. ELECTRONIC BILLS OF LADING

As one commentator found:

"It is widely expected that the impact of computerization will be as great as that of the industrial revolution. Computers are already providing all sorts of services at rising speed and diminishing costs. International trade data communication, however, seems to be the missing link. Yet the need is great. Not only do paper documentation and procedures represent as much as 10 per cent of goods value; they are slow, insecure, complicated and growing. The possibilities of cost reduction are in the order of 50 per cent, to the benefit of not only the main parties, but everyone involved, not least the authorities".

Electronic bills of lading has been created to eliminate the slowness, cost and fraud that the traditional bill was suffering from. Recent international sale of goods contracts are often concluded and handled automatically by computers as part of Electronic Data Interchange ("EDI") networks. This can include automatic reservation of cargo space and generation of shipping documents. Such process cuts down on clerical labour and transcription errors. The electronic bill is different from the traditional bill of lading but it has the same functions. Furthermore, no-one disputes that the electronic bill of lading came into use because of the various problems that the paper bill of lading was facing. In fact, the use of computers helped international trade as a result of their accuracy and massive capacity to record the containers' numbers. Also, the birth of the internet helped to a large extent to make communication easier. For example, in some circumstances, the traditional bill of lading takes a longer time than the goods to reach the port of destination. Hence the need for an electronic bill of lading which will reach the port of destination by a click without huge wasting of time, costs and efforts, is clear. The use of electronic bill of lading reduced the cost that the parties were paying when using the traditional bill of lading and it raised the accuracy percentage in such transactions. .

IV. PROBLEMS FACING ELECTRONIC BILLS OF LADING

Hacking is one of the most risky problems that the electronic bill of lading is facing. From one point of view, electronic widespread communication is untrustworthy and able to encompass fraud. Taking into consideration the sensitive nature of the bill of lading as evidence of title, with many important issues such as the passing of property depending on it, it is difficult to imagine the dangers posed by an unreliable electronic bill of lading and its impacts.

An electronic bill of lading has to acquire the courts' recognition as a document in order to be duly and safely used. The writing element which is internationally requested in any document of title is also an obstacle that is facing electronic documents in many jurisdictions. To be written in a physical form is one of the important conditions for a document to be considered as a document of title. Article 6 of the UNCITRAL Model Law on Electronic Commerce provides a solution in this regard as it states: "Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference."

The lack of a signature is another problem facing the electronic bill of lading. The signature shows that the document is authentic and it also binds the parties who signed the document to discharge their duties as provided by the bill. The need for a manual signature remains a must in the sphere of any contract until the recognition of electronic signatures. However, electronic signatures can work by certain systems implementing a secret numerical cipher which will be inserted by the parties to encrypt and decrypt their messages. Article 14(3) of the Hamburg Rules provides that: "the signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means". However, as these rules are not applied broadly, there is a need for an

international harmonization in regard to the laws about this issue in order to achieve success in using electronic bills of lading. Hence the possibility of fraud is weaken to a significant extent because it is only the parties who know the secret numerical cipher.

An English court held that the law does request the signature as a personal act which implies authentication. Nowadays, such a matter is subject to the Electronic Communications Act 2000. Section 7(2) of the Electronic Communication Act 2000 provides that: "a digital signature is admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data". These Articles provide obvious evidence for the implementation of an electronic signature nowadays in international trade transactions.

CONCLUSIONS

This work demonstrates the chief role that the bill of lading plays in the international trade realm. The nature of the bill of lading, which came into use to solve the financial, physical, legal and political problems that were facing international trade transactions, contributes to a huge extent in regulating and making these transactions more secure and safe for the parties involved.

The nature of the bill of lading used in international trade transactions established and added a kind of simplicity and certainty for the parties who found it better, easier and more secure for conducting trade. The bill of lading by employing modern processes also made clear that it is the best vehicle to regulate such transactions. It can be noticed that the role the bill of lading plays contributes to a huge extent to the development of trade transactions all over the world. On the one hand and as it was established earlier the traditional bill of lading faces many problems because of its existence as a paper document. Yet, this emphasises the need for an electronic bill of lading. On the other hand, whilst the electronic bill of lading faces problems in some jurisdictions relating to its legal recognition, it is just a matter of time until the traditional bill get replaced by its electronic equivalent.

Finally, in the author's opinion, in order to achieve success through implementing electronic bills of lading a number of recommendations should be taken into consideration. Firstly, it is necessary to establish some reliable security devices which can makes gaining access for fraudsters or hackers impossible. Secondly, the international agencies and national laws should put in place some standard measures in order to overcome hackers and fraudsters immoral practices. Thirdly, it is necessary to encourage co-operation among countries in relation to the exchange of important data through the use of electronic documents that benefit all of them. Fourthly, it is important to help the developing countries to build a technological infrastructure that is compliant with other developed countries. Finally, to establish new legal frameworks in order to protect commerce in a way that will save the users of the electronic bill of lading from encountering problems. The electronic bill of lading, if receives the same international recognition as the traditional bill, will become more useful and secure than the traditional bill of lading.

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