

Electronic Bills of Lading and CIF Contract

Michihiko Nishi
(西 道 彦)

Contents

Preface

I. Feature of CIF contract and Character of Bills of Lading

II. Problem of Property Transfer in Electronic Bills of Lading

Conclusion

Preface

The bank assumes the Bill of Lading (B/L) to be security after merchant bankers of London of the 19th century and has granted credit to an inside and outside trade trader. Money settlement in trade dealings of the present age and finance are done by Documentary Draft by which Shipping Documents by which the B/L is assumed to be a kernel is appended. In addition, the creditworthiness of buyer is guaranteed in general by the creditworthiness of the bank by a letter of credit (L/C). Then CIF terms which had the character as sale of documents was adopted as Trade Terms. This pattern is basic for trade dealings of the present.

In the export finance by which seller receives negotiation of Documentary Draft in the bank on the export ground, the B/L is security of finance. Moreover the B/L is security of finance in the

import finance by which buyer receives the finance of the foreign settlement capital.

However, the arrival of the ship at the destination is faster due to the increase in the speed of the ship based on recent technological reformation. On the other hand, shipping documents by which the B/L is assumed to be a kernel is sent by way of the bank as in old times, and then processed. As a result, a situation occurs in which the B/L does not arrive before the ship enters, and the consignee and the ship company are perplexed.

It is possible to use a Sea Waybill as one method of solving this “Bill of Lading Crisis” in place of the B/L. However, because a Sea Waybill is not a document of title, goods cannot be resold by transferring the Sea Waybill while navigating and it cannot be assumed to be security. Therefore, the Sea Waybill obviously has the limit compared with the B/L.

Therefore, the use of the Electronic Bill of Lading (B/L) is considered to be another method, one without the document by Electronic Data Interchange between computers to transmit the message between parties concerned. And, when the ship arrives at the destination, the right right person receives the goods from the ship company at once.

I seem to be able to solve the “Bill of Lading Crisis” according to this method while maintaining the function of the above-mentioned B/L.

Then, I wish to consider this Electronic B/L on the assumption of CIF trading. First of all, the feature of the CIF contract is described, and, next, the character of the B/L is arranged. I want to think about the problem of Property Transfer which can be put under the Electronic B/L.

I . Feature of CIF contract and Character of Bills of Lading

CIF terms is trade terms most widely used in a foreign trade as well as FOB terms. The most important feature of a CIF contract is that delivery is fulfilled by the delivery of documents and not by the actual physical delivery of the goods. The object of the advantages of a CIF contract is to enable cargoes afloat to be dealt with by moving the documents representing the goods.

It is based on the characteristic of the following CIF contract for the above-mentioned to become possible. Assignment of the bill of lading, accompanied by the policy of insurance, the invoice, operates as a symbolical delivery of the goods. Possession of the bill of lading places the goods at the disposal of the buyer.

This is decided as follows by the judicial precedent of Great Britain, "...the bill of lading by the law merchant is universally recognised as its symbol, and the indorsement and delivery of the bill of lading operates as a symbolical delivery of the cargo. . . ." ⁽¹⁾

Next, I want to arrange the function of the central B/L in the Shipping Documents. A bill of lading is a document used in the international carriage of goods by sea that performs three distinct functions. First, a bill of lading is a receipt for the goods, that is, an acknowledgment that the carrier has received the cargo from the shipper for shipment. Second, the bill of lading is evidence of the contract of carriage between the parties. Third, a negotiable bill of lading serves as a document of title to the cargo ⁽²⁾.

Property of cargo may be transferred by endorsement of the B/L in Paper B/L based on the function of this B/L.

The Function of this B/L is related to a Documentary Bill of Exchange. This Documentary Bill is the bill of exchange to which the

Shipping Documents, i. e., bills of lading, insurance policy, invoice and other necessary papers, are appended. These shipping documents become collateral securities when the exporter negotiates the documentary bill through the negotiating bank in exporting country, and so the bank becomes their lawful holder and acquires title to the goods they represent⁽³⁾.

This Paper B/L should specify (1) the name and nationality of the vessel, (2) the name of the captain or master of the vessel, (3) the number of the packages, their shipping marks, and their weights and measurements, (4) the name or firm name of the shipper or consignor, (5) the name or firm name of the consignee, (6) the port of shipment, (7) the port of destination, (8) freight charges, (9) number of bill of lading issued, (10) the date and place of issue of the bills of lading.

However, a problem has occurred in Paper B/L recently which I touched on in the preface. The advancement of ship technology has resulted in accelerted arrival of the goods at the destination port, but not in accelerated arrival of the shipping documents. Assignment of the bill of lading and of the right to claim the transportation goods takes considerable time. The arrival of documents at the port of discharge is usually delayed by a detour to a bank along the way for purposes of a documentary letter of credit⁽⁴⁾.

It is not desirable for both parties of the trade person concerned in the question of this old-fashioned Paper B/L. This question creates a predicament at the ports because the carrier cannot rightfully deliver the goods until the consignee presents the bill of lading.

A Sea Waybill is enumerated as one of the solutions to this problem. However, a Sea Waybill is a non-negotiabale document that constitutes evidence of the contract of carriage and of the receipt of the

goods by the carrier. It is not a document of title and it cannot be used to transfer ownership of the goods⁽⁵⁾.

Therefore, in the CIF contract, the use of a non-negotiable Sea Waybill is a problem. On the other hand, an Electronic B/L becomes a substitute for a Paper B/L and it is thought that it is admitted as an offer bond of the CIF contract.

The problem of an Electronic B/L will be taken up in the following chapter.

II. Problem of Property Transfer in Electronic Bills of Lading

In CIF trading, the bank will negotiate a Documentary Bill under a present trade settlement system in our country based on a Letter of Credit. In that case, Incidental Freight and an Attached Document are supposed to be transferred as security. That is, it should become a transfer mortgage. This transfer mortgage is a method of security to return the debtor's property if the property of collateral is transferred to the creditor, and there is a payoff.

This attached document is indicated as the Bill of Lading, Insurance Policy, and a document such as an Invoice. Incidental Freight indicates the import freight etc. which is presented by shipping documents of the B/L etc. or which proves their being sent out.

In CIF trading, the transfer mortgage provided that property transfers is required. The pledge might be a problem because it is assumed to involve no transfer of property.

The central document of attached documents is the B/L. This B/L is provided for valuable securities which has real right proficiency. Real right proficiency of this B/L is that the delivery of the B/L has the same proficiency as delivery of the transportation goods in the B/L

description. That is, the B/L holder has an indirect occupancy of the transportation goods based on “the right to claim the goods shipped” to the carrier. And, an indirect occupancy of the transportation goods transfers the occupancy by transferring the B/L⁽⁶⁾.

It is necessary to guarantee Electronic B/L the above-mentioned to use Electronic B/L instead of a Paper B/L in CIF trading.

“CMI Rules for Electronic Bills of Lading” provides for the method of making the B/L electronic. Transfer of “Right of Control and Transfer” is supposed to be done for a Paper B/L by the handing-over, and done it by Electronic Data Interchange for Electronic B/L. The confirmation work by the message switching between the transferor, the purchaser, and the shipping company is concretely obligated as for this method.

There are the following regulation in clause b of CMI Rules Article 7⁽⁷⁾. These regulations show the procedure by which “Right of Control and Transfer” is transferred in the electron. A transfer of “Right of Control and Transfer” shall be effected: (1) by notification of the current Holder to the carrier of its intention to transfer its Right of Control and Transfer to a proposed new Holder, and (2) Confirmation by the carrier of such notification message, whereupon (3) the carrier shall transmit the information as referred to in Article 4 (except for the Private Key⁽⁸⁾) to the proposed new Holder, whereafter (4) the proposed new Holder shall advise the carrier of its acceptance of the Right of Control and Transfer, whereupon (5) the carrier shall cancel the current Private Key and issue a new Private Key to the new Holder.

It is thought that the real right concerning the transportation goods (indirect occupancy) of Electronic B/L based on CMI Rules transfers like this by the transfer of “the right to claim the goods shipped” by this rules⁽⁹⁾.

Next, Title Registry is the Central Registry in the Bolero System, in which it takes charge of the registration of the Electronic Shipping Documents, preservation, and the right passing.

In Title Registry, the registration of the document of title is registered separately for Ownership and Holdership. Ownership and Holdership transfer separately respectively when the right transfers. Holdership and Ownership transfers are based on the instruction from a present holder or owner. Ownership cannot be transferred as long as the title person is not a holder⁽¹⁰⁾.

When those who export engage in CIF trading based on a Letter of Credit, the exporter will request payment to the negotiating bank using an Electronic B/L. In that case, the negotiating bank can access the Central Register. Moreover, to secure the function of Documentary Letter of Credit (L/C), the bank can obtain a copy of the registered shipping documents. Holdership of Electronic B/L transfers from the exporter to the negotiating bank. Ownership remains with the exporter. After that, the Holdership transfers from the negotiating bank to the L/C Issuing Bank. Ownership does not transfer as long as the title person is not a holder⁽¹¹⁾. It is thought that Ownership is transferred from the exporter to importer when the importer submits payment.

Conclusion

The concept of Ownership of Title Registry in this Bolero System and Holdership seems to be nearer the concept of Security Interest in the Vold theory and Beneficiary Interest.

The method of dividing the property in this case is clear and practical. The problem seems not to happen easily to this method for the trade person concerned.

Notes

- (1) David M. Sassoon & H. Orren Merren, *C. I. F. & F. O. B. Contracts* (*British Shipping Laws* Vol. 5), Stevens & Sons Ltd., London, 1984, P. 5.
- (2) A. N. Yiannopoulos, *Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems*, Kluwer Law International, 1995, P. 4.
- (3) Teijiro Kuribayashi and Norio Iwane, *Overseas Trade Practice*, Dobunkan, 1974, P. 149.
- (4) Yiannopoulos, *op. cit.*, P. 17.
- (5) Yiannopoulos, *op. cit.*, P. 19.
- (6) Tetuya Nishida, "Boeki Kinyu EDI no Saikin no Doukou to Kadai", *NBL* No. 639, 1998. 4. 15, P. 42.
- (7) Comité Maritime International, *CMI Rules for Electronic Bills of Lading*, CMI, 1990, Article 7. b.
- (8) "Private Key" means any technically appropriate form, such as a combination of numbers and /or letters, which the parties may agree for securing the authenticity and integrity of a Transmission. (CMI Rules, Article 2. f)
- (9) Kenjiro Egashira, "Denshishiki Funanisyoken no tame no CMI Kisoku ni tuite", *Kaihokaishi* Futtukan No. 34, 1990, P. 10.
- (10) (11) • Akira Yao, "Suifuto to Denshi Funanisyoken Shisutemu no Kadai", *Nihon Boeki Gattukai Nenpo*, 1998.
 - Akira Yao, "Boeki Syorui EDI (Bolero Project) ni okeru Title Registry no Kinou ni tuite", *Nihon Boeki Gattukai Nenpo*, 1999.
 - Akira Yao, *Kokusai Torihiki to Denshi Kettusai*, Tokyo Keizai Joho Suppan, 1997, PP. 199~201.
 - Bolero Project Team (*Home Page*) <<http://www.bolero-project.com>>, 1998. 3. 6.

Bibliography

- A. N. Yiannopoulos, *Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems*, Kluwer Law International, 1995.
- Bebjamin Wright, *The Law of Electronic Commerce*, Second ed., Little, Brown and Company, Boston, 1995.
- Bolero Consortium, *BOLERO FINAL REPORT*, 1995. 9.
- Comité Maritime International, *CMI Rules for Electronic bills of Lading*, CMI, 1990.
- Comité Maritime International, *CMI Uniform Rules for Sea Waybills*, CMI, 1990.
- David M. Sassoon & H. Orren Merren, *C. I. F. & F. O. B. Contracts* (*British Shipping Laws* Vol. 5), Stevens & Sons Ltd., London, 1984.

- International Chamber of Commerce, *Incoterms 1990*, ICC Publication No. 460, 1990.
- Lawrence Vold, *Handbook of the Law of Sales*, West Publishing, St. Paul, 1931.
- UNCITRAL, *UNCITRAL Model Law on Electronic Commerce*, 1996.

- Akira Yao, *Boeki Torihiki no Kisochishiki*, Tokyo Keizai Joho Shuppan, 1998.
- Akira Yao, *Kokusai Torihiki to Denshi Kettusai*, Tokyo Keizai Joho Shuppan, 1997.
- Kenjiro Egashira, *Denshishiki Funanisyoken no tame no Bankoku Kaihokai Kisoku to Funazumi Syorui no Kakushin*, *Yasuda Kasai Kinen Zaidan Sosyo* No. 35, 1991.
- Masaki Konda, *Kigyo Torihiki hou*, Kobundo, 1997.
- Ryohei Asaoka et al, *Kokusai Shomuron no Syomondai*, Dobunkan, 1998.
- Satoshi Niibori, *Jittusen Boeki Torihiki*, Nihon Keizai Shinbunsha, 1998.
- Teruo Kobayashi et al, *Boeki to Minato*, Seizando, 1998.