

The Role of FIATA Multimodal Transport Bill of Lading in Business Exchange in International Transport

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Abstract: As we know, international trade now a days occupies a very large portion of the global economy. Economic development in many countries of the world depends on exports and sales of goods in global markets. Traditional international transport operations include 3 phases: Transport of the good to the loading port, its sea transport to the destination port and its transport to the final place. Each of these phases is subject to different legal regulations and to different conventions in international trade. With the advent of trailers; however, new methods have formed in modern global transport of goods through combined operations of transport. In this type of transport, the acceptance or reception place (provision) and delivery place are replaced with loading and unloading ports which proves that the goods are delivered from the acceptance or reception place to the transporter at the place instead of proving that the goods are loaded into a certain ship. In this regard, some regulations should be determined in order to unite these issues. Different organizations like United Nations Conference on Trade and Development (UNCTAD) and International Chamber of Commerce (ICC) attempt to lay down standard regulations in terms of combined transport and transport of Forwarders (FIATA). These regulations are presented in this research.

Key words: Business exchange, FIATA multimodal, ICC, economy, UNCTAD

INTRODUCTION

Due to the development of international transport in the world and the advent of trailers, another dimension of transport has formed in international transport system called multimodal or combined transport. In combined transport bill of lading which has been introduced instead of traditional sea bill of lading, following issues have been included: the acceptance or reception place (provision) and delivery place are replaced with loading and unloading ports, which proves that the goods are delivered from the acceptance or reception place to the transporter at the place instead of proving that the goods are loaded into a certain ship. Some transport regulations or all of them are referred to another reference or document except for the transport document itself (such as sketch transport document or white-back transport document). Labels like “combined transport bill of lading”, “combined transport document” or “port-to-port bill of lading” refer to the same thing.

Moreover, there are other relevant regulations like FIATA. FIATA is the International Federation of Freight Forwarders Associations (forwarders). Documents of this association possess important clauses and conditions in terms of obligations that are accepted by the transport

agent issuing that FIATA document. Issuers that use the services provided by the transport agents mostly receive a receipt from the transport agent (forwarder) for goods delivery. In an attempt to reduce transport costs, forwarders try to classify different goods in a trailer so that they can make the optimal use of the space available. However, multimodal transport agent has always expected the advent of a uniform bill of lading that is accepted by international trade beneficiaries. In this regard and due to this legal vacuum, the agents of multimodal operations try to practice such transport by utilizing a series of multimodal transport bills of lading prepared by different organizations. Examples of such a bill can be the multimodal bill of lading (LBF) prepared by the International Federation of Transit in 1970, the multimodal bill of lading prepared by the ICC in 1973 and the multimodal bill of lading proposed by the Institute of International Transport Law. However, the “United Nations Convention on International Multimodal Transport of Goods” was finally signed in 1980. This convention controls the responsibility of the contractual relationships between the forwarder and the agent of multimodal transport during good transport from reception to delivery, regardless of different methods of transport. Moreover, this question can also be posed,

“what nature can be considered for such lading bills?” In this regard, it is stated that the bill of lading as a written document of transport contract actualizes the willing of the parties; therefore, the parties mention the law or the international convention governing their relationship in the document. Multimodal transport contract is a type of contract that is subject to Private International Law and signed by the multimodal transport agent and the good forwarder. The present study was an attempt to make use of library method and refer to related resources and studying them in the form of note taking in order to collect required data to be analyzed. The method of the study was descriptive and analytical. There included two topics of laws governing multimodal transport and FIATA and their commercial nature.

LAWS GOVERNING MULTIMODAL TRANSPORT AND FIATA

With the advent of trailers, new methods have formed in modern global transport of goods through combined operations of transport. Multimodal bills of lading and FIATA are discussed in this study.

International regulations in multimodal transport lading bills: Traditional international transport operations include 3 phases: transport of the good to the loading port, its sea transport to the destination port and its transport to the final place. Each of these phases is subject to different legal regulations and to different conventions in international trade. With the advent of trailers; however, new methods have formed in modern global transport of goods through combined operations of transport. Meanwhile, the need for adopting and preparing a document that explains this type of transport was felt. Different organizations like United Nations Conference on Trade and Development (UNCTAD) and International Chamber of Commerce (ICC) attempt to lay down standard regulations in terms of combined transport. International Chamber of Commerce (ICC) has published a document entitled “Uniform Rules on Multimodal Transport Document”. Despite the fact that at the moment most transport operations of goods are carried out in a multimodal (combined) way and since such operations are international in nature, unfortunately no international law or convention supervising such operations has been passed and enforced. With their conception of domestic laws, judges and lawyers have different interpretations of multimodal transport and in contradiction with the general concept. Except for May 24, 1980 Geneva Convention on multimodal transport which has not enforced yet, there is no more comprehensive and precise definition for multimodal

(combined) transport in other international conventions on mono-modal transport and also in domestic laws; however, juridical scholars have proposed different definitions. Multimodal (combined) transport refers to displacement of goods from a point located in a country to another point in another country which is carried out with at least two transport vehicles that are subject to different legal systems (for example trailer and ship) supervised by an individual responsible for multimodal transport. In other words, the agent multimodal (combined) transport receives the good from the forwarder and delivers it to the receiver. Multimodal transport documents include a direct lading bill that contains all operation from the beginning point (the time when the agent takes the responsibility of the good) to the end point (the time when the good is delivered to the receiver) (Zadeh, 1994). In case of conduction of multimodal transport, such document can be utilized instead of the traditional sea lading bill controlling multimodal transport. However, the difference is that the multimodal transport document shows the place of acceptance or reception (provision) and the place of delivery instead of loading and unloading ports. In global transport, it also proves that the good has been received from the acceptance place and delivered to the delivery place by the carrier, instead of proving that the good is loaded onto a certain ship which can be issued by the transport agent and it is not necessarily taken into consideration by the ship owner in sea transport of goods. In cases of transshipment, i.e. transporting the goods from a means of transport to another, acceptance of transport document is subject to Cause B, Article 26, Uniform Regulations for Documentary Credits is as follow: if no other order is mentioned in the credit, banks will not reject the document in following cases. The document title is like “multimodal transport lading bill”, “combined document” or “port-to-port lading bill”, all of which have the same meaning or some conditions of transport or all of them are related to that reference or another document except for the transport document itself (such as sketch transport document or white-back transport document) or the reception place is different from the loading port and the final destination from the unloading port or it is related to cargos that are loaded onto trailers or pallets or it includes clauses like “to be considered” in regard with ship or other means of transport or loading and unloading ports. In 1980, the “United Nations Convention on International Multimodal Transport of Goods” was signed. This convention can be implemented for international transport contracts as soon as it becomes binding. This convention controls the responsibility of the contractual relationships between the forwarder and the agent of multimodal transport during good transport

from reception to delivery, regardless of different methods of transport. Through a specific legal regime, this convention responds to the need for new advances in technology of transport like containerization. The United Nations Convention on International Multimodal Transport of Goods not only provides the introduction but it also includes 8 main sections: general regulations like regulating and controlling the multimodal transport, documents, customs issues and final materials. Moreover, this convention prescribes a new document called multimodal document and determines the main contents of this document in order to facilitate the transport.

FIATA transport lading bill: FIATA is the International Federation of Freight Forwarders Associations (forwarders). The documents of this organization have important conditions and clauses on obligations that are accepted by the transport agent issuing that FIATA document. FIATA members should receive the permission from the Institute of Transport Agents to be able to issue necessary FIATA documents. This institute has been authorized by FIATA Organization to issue such permissions for FIATA members. It should also be noted that FIATA forms are not provided to nonmembers so they cannot use them. Issuers that use the services provided by the transport agents mostly receive a receipt from the transport agent (forwarder) for goods delivery.

In an attempt to reduce transport costs, forwarders try to classify different goods in containers to make the optimal use of the space. Afterwards, the containers are delivered to shipping company. Sometimes the shipping company issues independent lading bills for each of the goods that are placed in a container by the transport agent. Therefore, not only the transport agents (forwarders) sometimes issue a receipt for a part of a cargo placed in a container but also the shipping company issues the relevant lading bill whenever necessity arises. These documents issued by the transport agents are not anything more than a receipt which indicate the transport contract or the document for ownership transfer. These receipts; however are documents whereby the good receiver can receive his good at the destination from the transport agents. Therefore, the forwarders are responsible for the good while the carrier does not have such a responsibility toward the buyer (except for cases when the forwarder is the carrier, too).

FIATA Forwarders Certificate of Receipt (FCR): FIATA Forwarders Certificate of Receipt (FCR) has been prepared for FIATA intra-organizational forwarders. It enables the forwarder to provide the good senders with a document whereby it is claimed that the former has taken the responsibility of the good. FCR can be delivered to the

sender once the forwarder delivers the good. By completing FCR, the forwarder attests that he has received the good and according to irreversible regulations, he has been obliged to send it to the individual or company that the document has been forwarded to (Taleghani, 1994). FCR is non-tradable and since cargo delivery does not depend on the delivery of this document, only an original version of it is issued and if more copies are needed, “non-tradable” will be printed on them. FCR is subject to general conditions of good transport of the country where the document is issued, which are mentioned on the back of the receipt. Therefore, this document can only be used by the forwarders who observe these general conditions in the transport practice.

FIATA Forwarders Certificate of Transport (FCT): FCT introduced by FIATA in order to be utilized by the international transport agents. By issuing and delivering this certificate to the good sender, the forwarder accepts the responsibility for good delivery at the destination through the agent that he (i.e. the forwarder) assigns. When “to order” is issued, FCT is tradable. This certificate is tradable if the original version is well endorsed (Taleghani, 1994).

FIATA Combined Transport Bill of Lading (FBL): FBL is a combined transport document issued by FIATA to be used by international forwarders as the combined transport agents. FBL is tradable (except for when “non-tradable” is printed on it) and is affirmed by ICC. The forwarder issuing the FBL who performs as the combined transport agent is responsible for the good and conduction of transport operations (Taleghani, 1994).

The forwarder is responsible for not only the delivery of the good at the destination but also all carriers and the third parties that are employed by him during transport operation.

THE COMMERCIAL NATURE OF MULTIMODAL TRANSPORT BILL AND FIATA

Bill of lading is issued in two forms transferable and nontransferable document. When it is issued as nontransferable document, the receiver's name is mentioned in the document and if it is issued as transferable, it is issued as a bearer paper or payment order. The third and fourth regulations of the uniform regulations of combined transport document on issuance of multimodal transferable and nontransferable bill of lading postulate: when the combined transport document is issued as transferable: It should be issued as “to order” or “bearer” or if it is issued as “to order”, it is transferable

by endorsing, if it is issued as “bearer paper”, it is transferable without endorsement, if it is issued in more than one original version, the number of the original copies is mentioned on the document, if copies are also provided, each one should be printed on the phrase “non-tradable copy”, good delivery is exclusively possible by the multimodal transport agent or his representative after the multimodal transport document is endorsed and submitted, if the combined transport document is issued in more than one original version and the transport agent or his representative delivers the goods for one of the original versions, his responsibility will be ended (Taromsari, 2004). When the multimodal transport document is issued in nontransferable form: The receiver's name is mentioned in the document, if the multimodal transport agent delivers the good to the receiver whose name is mentioned in the multimodal transport document or to another person who is authorized by the receiver, the responsibility of the multimodal transport agent will be finished (Taromsari, 2004).

As a written transport contract document, bill of lading actualizes the wills of the parties. In so doing, the parties mention the international convention and law governing their relationships in the bill of lading. Multimodal transport contract is a type of contract that is subject to Private International Law and signed by the multimodal transport agent and the good forwarder. By establishing private contracts, transport organizations try to issue multimodal transport bills of lading. Although the principle of free will has many advocates and critics all over the world, it seems that as far as it is not against mandatory international law and habits, it is acceptable. In this regard, Prof. Batiffol's view, professor of Private International Law is noteworthy and thinkable. In criticizing the theory that postulates that international contracts can be created without resorting to the law, he stated that the theory that international contracts do not need to be subject to the law is not justifiable because acceptance of this theory leads to a juridical situation in which only the authorities make benefit. Logically, it is not reasonable to assume that the international contracts are not subject to the law. Even it is not reasonable that they are not subject to any laws on the international stage. There are power on the international stage that try to exploit others and there are third parties that are affected by contracts; therefore, some preventive measures need to be adopted in order to observe public interest, which is not always possible through the conditions included in the contracts. Therefore, all contracts should be subject to the law.

CONCLUSION

As we know, international trade nowadays occupies a very large portion of the global economy. Economic development in many countries of the world depends on exports and sales of goods in global markets. Traditional international transport operations include 3 phases: transport of the good to the loading port, its sea transport to the destination port and its transport to the final place. According to the long distance between the loading place and the good destination, each of these phases is subject to different legal regulations and to different conventions in international trade which can cause problems to the parties. With the advent of trailers; however, new methods have formed in modern global transport of goods through combined operations of transport. In this type of transport, the acceptance or reception place (provision) and delivery place are replaced with loading and unloading ports. Moreover, regarding international transport, there is another document of bill of lading called FIATA. FIATA is the International Federation of Freight Forwarders Associations (forwarders). Documents of this association possess important clauses and conditions in terms of obligations that are accepted by the transport agent issuing that FIATA document. In an attempt to reduce transport costs, forwarders try to classify different goods in containers to make the maximum use of the space. However, multimodal transport agent is always waiting for advent of a uniform bill of lading with all of the properties that were shortly mentioned above, a bill of lading that is proved by beneficiaries in the international trade. The United Nations Convention on Multimodal Transport of goods controls the responsibility of the contractual relationships between the forwarder and the agent of multimodal transport during good transport from reception to delivery, regardless of different methods of transport. In addition, according to the principle of free will on the international stage, the parties' will can be taken as the basis in establishing and enforcing the contracts. However, one should also pay attention to international laws and regulations in order to prevent contradiction with mandatory international law.

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