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1. Trans-Asian Railway Network

On 11 June 2009 the 'Intergovernmental Agreement on the Trans-Asian Railway Network' came into force in Cambodia, China, India, Mongolia, Republic of Korea, Russia and Tajikistan (another 15 countries are currently simply signatories). The Agreement provides a framework for the coordinated development of 114,000 kilometres of rail routes across 28 Asian countries.

The Agreement commits to containerisation and multimodal transport. The lines of the rail network should provide 'unhindered movement of ISO containers of at least 20-foot dimension in length and above'. The aim is seamless transport, in spite of different railway gauges. The Agreement lists all lines and designates locations with maritime connections and ferry terminals.

Standards are also defined for container terminals located along the lines of the Trans-Asian Railway network. For example, the container terminals must:

- be located as close as possible to the main trunk line so that no time is lost entering and exiting the terminal;
- offer easy access to road vehicles so as to guarantee reliability of the road-rail interface; and
- have equipment comprising of gantry cranes, straddle carriers, top-lifters and/or reach-stackers able to handle ISO containers of at least 20-foot dimension in length.

- UNESCAP press release of 11 June 2009:

<http://www.unescap.org/unis/press/2009/jun/g41.asp?print=true>

- Full text of the agreement (also available in Chinese and Russian):

http://www.unescap.org/ttdw/common/TIS/TAR/tar_agreement_final_e.pdf

- Signatory States:


http://www.unescap.org/ttdw/common/TIS/TAR/text/tar_status.pdf

The TT Club is most interested in the railway's liability under its carriage contract. In many Asian and Eastern European countries, including China and Russia, the 'Agreement on international freight traffic by rail' (SMGS) is still in force. The official languages of SMGS are Russian and Chinese, but TT Club Members and brokers with access to the private section of the TT Club

website can find a summary of SMGS on www.ttclub.com in the Legal Section under 'Flotsam and Jetstream'. 

2. Thomas Miller course 'An insight into transport law and insurance'

This three-day course, to be held from 29 September to 1 October 2009 at the Thomas Miller London office, is an introduction to transport law and insurance and is aimed at individuals who are in the first few years of their shipping careers. The course will provide an overview of all aspects of transport law and insurance including hull & machinery and the cover provided by the TT, UKP&I, UK Defence, UK War and ITIC Clubs. The course involves a number of interactive workshops aimed at exploring the interaction between the various covers, how the covers respond to a major casualty and the legal issues involved. The course will also examine topical issues impacting on the industry and will conclude by exploring Alternative Dispute Resolution ('ADR') techniques.

If you would like to obtain further information please contact Lisa Fletcher at the Thomas Miller London office either by email (lisa.fletcher@thomasmiller.com) or by phone (+44 20 7204 2322). 

3. 'Telex release' by e-mail

a) Definition

The Club received the following enquiry from a freight forwarder:

'We are often asked by our overseas agent at the port of loading to act as their delivery agent and release goods to the final consignees against our overseas agent's house bill of lading. Usually we do not sign any contract with such overseas agents, and they send us all release instructions by email. In such cases, we are the named consignee in the ocean carrier's master bill of lading and release the goods to the ultimate consignee upon collection of the overseas agent's house bill of lading. However very often the overseas agent at the port of loading instructs us by e-mail to release the goods without presentation of his original house bill of lading and states that the full set of originals was collected in his office. Please comment whether such working procedures can be considered as appropriate and whether these e-mail instructions from our overseas agent at the port of loading are sufficient for us to release the goods.'

The process described by the forwarder is called 'telex release'. In the classical case, the shipper, after having received the carrier's bill of lading, does not, after receipt of payment, post the bill to the consignee or otherwise trade it, but, requesting 'telex release', returns all bill of lading originals to the carrier (typically, but not necessarily, at the port of loading). The carrier then instructs his agent (or branch office) at the place of delivery to effect delivery to the party which the shipper designated in his instructions to the carrier as consignee. The returned bills of lading can be stamped 'surrendered' or 'telex release' and can be filed (but should not be sent to the carrier's agent who releases the goods).

'Telex release' differs from the 'switch bill of lading' procedure, where the original set of bills of lading is surrendered to the carrier in exchange for a new set of bills in which some of the details have been changed. In recent years, carriers have typically transmitted these 'telex release' instructions to their agent by e-mail, and now an increasing number of carriers communicate 'telex release' instructions by using their internal real-time computer system, which allows their offices to view this information in real time.

In a variation of the 'telex release' process, the carrier prints the bill of lading but never actually hands it over to the shipper. Once the shipper has received payment, he authorises the carrier to release the goods to the consignee. If the carrier agrees to this process, he must ensure that the

terms and conditions both on the front and back of the bill of lading are validly incorporated into the carriage contract. Another step further is the practice never to actually print the 'bill of lading', but to store it solely in the carrier's computer system. However, it is doubtful whether such a virtual 'bill of lading' would still be deemed a bill of lading (or similar document of title) under carriage conventions or domestic laws. Again, the carrier must find a way that ensures valid incorporation of the terms and conditions.

Why do parties use the 'telex release', i.e. have a bill of lading issued and then return it to the carrier (usually) at the place of receipt? The main reason appears to be that a number of countries (for instance in the Far East) do not recognise sea waybills for some commercial dealings or that sea waybills are not customary to certain trades. 'Telex release' has in common with sea waybills the fact that the risks in connection with posting bill of lading originals are avoided.

b) Pitfalls and procedures

ITIC, the International Transport Intermediaries Club Ltd (www.itic-insure.com), who provides liability insurance to a large number of ship agents, published in September 2007 an excellent article on the pitfalls of 'telex release' (ITIC uses the terms 'third country receiving agent' and 'releasing agent', which are converted here into 'carrier' and 'carrier's agent'. ITIC identified two main problems:

(1) The e-mail message by the carrier to his agent is worded and dealt with carelessly. In one case cited by ITIC, the carrier wrote 'Shipper has confirmed COD charges and bills are now surrendered. Please kindly go ahead, Thanks'. The carrier's 'Go ahead' simply meant that the cargo should be shipped to a different destination, but his agent mistook it as instruction to release the goods.

(2) E-mail fraud. In the age of the fax machine, fraudsters sent forged fax messages ordering telex release; these days they attempt to trick the carrier's agent into releasing the cargo to an accomplice by e-mails which give the appearance of having come from the carrier. As ITIC points out, it is essential that the carrier's agent does not accept the 'telex release' e-mail at face value. The agent must verify - before releasing the goods - that the 'telex release' e-mail, which purports to come from the carrier, is actually authentic. If the agent is authorised to establish the authenticity of the carrier's 'telex release' e-mail by e-mail also, it is completely insufficient for the agent to do so by using the 'reply' button (and writing a text). Instead, the agent should respond to the purported 'telex release' by finding, checking and using the carrier's genuine e-mail address. The 'telex release' should be copied into the e-mail to the carrier who should be asked to confirm that the 'telex release' message originated from him.

If the carrier communicates the 'telex release' request to the agent through the internal computer system, procedures should define which party has to enter new information. As ITIC reports in 'The Wire' of March 2009, in one case a shipper requested 'telex release', which was duly entered in the computer system, but when the shipper later cancelled his instruction, no further entry was made, with the result that the agent released cargo worth US\$250,000.

The excellent ITIC article in 'The Intermediary' provides useful checklists. It recommends, for example, that the carrier ('third country receiving agent') send clear instructions to his agent ('releasing agent') which should include the following points:

- Confirmation that the full set of original bills of lading, properly endorsed in case of 'order' bills, have been surrendered and that the goods can be released;
- Confirmation that all charges (such as freight and other charges payable at the load port) have been collected;
- Full details of the cargo to be released (i.e. BL number, date and place of issue, container number and cargo details); and

- Full name, style, address, telephone, fax and e-mail address of the consignee (or endorsee in case of an 'order' bill) to whom the goods should be released.
- Please use the following two web links for the full texts of the ITIC articles:
- ITIC - The Intermediary September 2007 ('Telex release by e-mail - precautions and pitfalls'): http://www.itic-insure.com/publications/intermediary/2007-09_intermediary_pg7.php
- ITIC eNewsletter - 'The Wire', Issue 01 of March 2009 ('Telex releases - a continuing cause of claims against ship agents'): <http://www.itic-insure.com/publications/eNews/issue01-article1.php>

c) 'Telex release' in practice

The freight forwarder's enquiry in chapter a), first paragraph, shows that not only shipping lines and ship agents but also forwarders receive 'telex release' requests, either with respect to their own house bills of lading or when acting as correspondent for another forwarder.

However, while shipping lines define 'telex release' procedures in their agency manuals, forwarders' correspondent or cooperation agreements are unlikely to deal with matters such as 'telex release'. As the enquiry in chapter a), first paragraph, shows, forwarders may not even put their arrangements into writing. Naturally, if parties do not define procedures for matters such as 'telex release' requests, there is a much larger likelihood of costly errors and claims.

Ahmad v Mitsui OSK Lines Ltd (Federal Court of Australia, 2005) concerned the carriage of garments from Mumbai to Sydney. The carrier's Sydney office mistakenly handed out a delivery order without presentation of the bill of lading, because an internal colleague wrote 'telex release' on the freight slip that had been prepared in respect of the bill of lading.

Anouk Sireude, Claims Executive in the Thomas Miller (TT Club) Sydney office, encountered a case where the carrier's office at the place of receipt registered the shipper's 'telex release' request in the computer system and the carrier's office at the place of delivery duly handed over the goods to the consignee based on the system entry. It then transpired that the shipper, when making his 'telex release' request, failed to surrender all bill of lading originals to the carrier. The shipper then argued that the carrier should not have delivered the goods to the consignee and threatened to sue the carrier for misdelivery. Anouk Sireude comments: **'A carrier or forwarder who accepts 'telex release' requests should define clear and tight procedures with which all staff concerned are familiar. It is vital that the carrier or forwarder insists that the shipper returns all original bills of lading'**.

'Telex release' is a process and never by itself an instruction to release cargo without presentation of a bill of lading. 'Telex release' always concerns bills of lading, never sea waybills. 'Telex release' is very different from an 'express' bill of lading, which is a term sometimes used to describe a sea waybill. Ambiguous expressions such as 'express release' cause confusion and should therefore be avoided. Also, it is plain wrong to say that a 'telex release bill of lading' (presumably a bill of lading which is surrendered back to the carrier under the 'telex release' process) and an 'express bill of lading' (a sea waybill) are the same thing.


d) Indemnity form

In principle, the carrier has no legal obligation to substitute the 'telex release' process for the ordinary process of delivery against presentation of an original bill of lading. But carriers are ordinarily happy to comply with the shipper's 'telex release' request, which they see as good customer service and a chance to charge the shipper a small fee.

However, 'telex release' clearly carries additional risks. Carriers should therefore only consent to a 'telex release' request, if the shipper is prepared to sign the carrier's specific 'telex release'

letter of indemnity form (large shipping lines have developed such forms). In addition to the standard contents of a letter of indemnity, the TT Club recommends that a 'telex release' letter of indemnity:

- Defines the location where the full set of bill of lading original must be surrendered to the carrier;
- Requires surrender of the full set of bill of lading originals (in case of an 'order' bill, duly endorsed);
- Caters also for situations where the shipper changes or revokes the 'telex release' request;
- Is backed up by a 'guarantee' by a first-class bank, if there are any doubts about the shipper's credit standing;
- (if the bill of lading is never issued): confirms that the bill of lading terms and conditions are validly incorporated.

The TT Club has developed for its Members a 'telex release' letter of indemnity form, which is available from the Club on request. 

4. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information about any of them, or have any comments you would like to make, please email the editor at tt.talk@ttclub.com. We look forward to hearing from you.

Peter Stockli
Editor for the TT Club

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