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Research on “Sea Waybill” towards its promotion

Massive use of Sea Waybill will make World Trade more Comfortable

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< Massive use of Sea Waybill will make World Trade more Comfortable >

Japan Association for Simplification of International Trade Procedures (JASTPRO) has conducted research works for years, to encourage and facilitate international trade by providing beneficial information and recommendations.

In 2011, United Nations Economic Commission for Europe (UNECE) released “Revision of Recommendation 12 - Measures to facilitate Maritime Transport Document Procedures”, to recommend the use of the Sea Waybill in preference to the Bill of Lading (B/L).

Especially in the Asian Region, the situation is a bit more complicated. There exists a customary practice called Surrendered B/L or Telex Release that should be replaced by Sea Waybill. The purpose of this research is, to investigate and analyze the current situation, pointing out the problems, and to make effective recommendations.

The following text is a brief summary of the Research Report and Recommendations in English

The research was conducted by the Committee for ‘Trade Facilitation by promotion of Sea Waybill’ ,which is an ad-hoc committee provided by JASTPRO during the period from April 2013 to March 2014.

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I General Overview

1. Refreshing on what is Sea Waybill in comparison with B/L

Sea Waybill is a simplified form of maritime transportation document and, unlike B/L, it isn't a title document, so it's always Non-Negotiable. Thanking to such characteristics, its handling is easy and inexpensive, and moreover with Sea Waybill it isn't necessary to worry about so called B/L crisis i.e. B/L arrives later than Vessel. The suitability for the digitalization may be another merit of switching to Sea Waybill.

Before taking up the main subject, it will be better to have mutual common understandings by reviewing a bit precisely the characteristics of Sea Waybill in comparison with B/L as follows:

	<u>B/L</u> _____	<u>Sea Waybill</u>
< Basic Characteristic >	(Securities)	(Carriage bill)
(1) Contract of Carriage	Yes	Yes
(2) Carrier's receipt of the goods	Yes	Yes
(3) Where and to whom to deliver	Yes	Yes
(4) Document of Title	Yes	NO
(5) Transfer of Title	Negotiable*	Non-Negotiable
(6) Coping with resale during navigation	Available	Unavailable
(7) Cargo release in exchange for B/L	Yes	NO
(8) To be collateralized to secure payment	Yes	NO

* B/L is negotiable unless otherwise specified.

< Use fields >

(a) Payment Term: Letter of Credit	Yes	Limited
(b) Apply to D/A D/P Payment	Yes	Limited
(c) Remittance or Open Account	Possible	Best fit
(d) Short Sea Shipping (B/L crisis)	be avoided	Best fit
(e) Digitalization	Complicated	Easier

2. Back Ground

Many economies of Asia-Pacific are making every effort to promote regional alliances such as RCEP (Regional Comprehensive Economic Partnership) and TPP (Trans-Pacific Partnership), for which it is essential to make trade related procedures of each economy simpler and less stressing. The Sea Waybill is definitely one of the efficient tools that should contribute to such purpose.

Sea Waybill is derived from B/L, so before developing the argument on Sea Waybill, it will be helpful to remind the background of the creation of B/L, under what environment B/L has been created, and later on how such environment has been changed, motivating people to create the Sea Waybill.

3. Maritime Transportation Documents - Change with the Times

The type and the way of handling Maritime Transport Document has been changed from time to time in accordance with the change of the environment of international trade and the evolution of the ocean transportation.

The basic principle of commercial transaction is to exchange the goods and money directly between a seller and a buyer. However it is almost impossible to apply this principle to the international trade, where there exist a time gap and a spatial distance between the concerned parties. In order to fill in such gaps, B/L, a piece of paper that is deemed to have the same value to the loaded goods, has been invented. In the export-side, the negotiation bank pays to the exporter in exchange for the B/L, and in the import-side the collection bank hands over the B/L to the importer upon receiving payment. In this way a safe cross-border commercial transaction method has been established. The B/L system was matured

through the experience of innumerable accidents and troubles, making international rules to fix them efficiently and impartially.

However, as time goes by, the business style and the environment of ocean transportation have been changed beyond the supposition of the early days. So now we are facing to such situation as follows.

(1) B/L crisis:

Speed of ocean vessel has been increasing year by year and consequently, especially for short sea shipping, it becomes to occur frequently so-called B/L crisis i.e. the cargo-carrying-vessel arrives at the discharging port before the consignee receives the corresponding B/L through banks, impeding smooth delivery of goods.

(2) Increase of in-house trading – Less cost and risk transaction desired:

Among all cross-border transactions, the percentage of in-house trading has been increased drastically, such as between the head quarter and the over-sea's branches or among member companies of the same supply chain group, where there isn't so much conflict of interest, nor any doubt on delivery and payment. In such cases the most important factor is how to minimize the cost and risk of transaction. Under such circumstances the B/L, a title document, is considered to be too cumbersome that bothers desired agile handling and least-cost logistics. For example, the corresponding cargo can be released only in exchange for B/L; a loss of B/L will force one to take troublesome legal procedures, etc....

(3) Digitalization:

Digitalization of shipping documents is desired for a long time. It is comparatively not so complicated for other trade-related documents than B/L. Only B/L is a title document that requires securer administrative system to control the transfer of title. Therefore, just for taking B/L into the target of digitalization, the cost of the system for paperless trade will increase tremendously.

In consideration of such environmental changes, UNECE released the above mentioned Recommendation No.12, for discouraging unnecessary use of B/L for related industries, and excessive requirement of B/L as support document for government organizations, and instead, suggesting to switch from B/L to Sea Waybill. This kind of support by global standards -development organizations is indispensable to promote Sea Waybill, in addition to the individual efforts of Public and Private sectors of each economy.

4. Counter-measures for B/L crisis

Among those changes of environment, “B/L crisis” is the matter that should be taken care immediately.

Particularity of B/L is its function as a title document that works as collateral for banks to urge importer (consignee) settle the invoice amount, while such property (redemption bill) itself sometimes causes B/L crisis that should be solved anyway to receive cargo. In order to cope with such problem, various methods, such as follows, have been invented.

(1) Release cargo against Letter of Guarantee:

As a first-aid measure, “release cargo against letter of guarantee” was invented, although some legal doubts still remain on this method. With the letter of guarantee issued by bank or the consignee, the consignee guarantees to the carrier that the corresponding B/L will be presented upon arrival of the same and that all risks and costs related to the prior delivery of goods will be borne by the consignee, indemnifying the carrier.

(2) Send original B/L directly to consignee:

However when the B/L crisis is prospected at the time of making commercial contract between buyer and seller, some preparatory measures would be taken. One of the options is that the importer negotiates with the L/C opening bank to accept that one original of B/L would be sent to the importer directly, although it injures the collateral of B/L and it should be complemented to the satisfaction of the bank unless the bank expands their credit line to the importer. The consignee can receive goods by that directly-sent original of B/L.

(3) Issue B/L at the cargo delivery place:

Another option is that the carrier issues B/L at destination, instead of loading place, with which B/L crisis is fully avoided, and the risk of loss of B/L during post as well. Naturally for adopting this method, it is necessary for the importer to get the credit line of L/C opening bank, in the same way as mentioned in above (2).

What is common for all above models is that, although the route of transfer of B/L is somewhat conditional and different from the ordinary one, the characteristic of B/L as a title document and a redemption bill is still alive and the delivery of goods is effected in exchange for B/L. And another thing common is that banks don't have way to use B/L as collateral to ensure payment of invoice.

5. Creation of Sea Waybill

Now, if banks tend to provide option not to require B/L as collateral, by complementing security of invoice-settlement with another way such as to have additional deposit from L/C applicant or simply expand their credit line, there's no reason to stick to B/L that may cause B/L crisis and stressful handling.

Besides above, L/C tends to shrink and instead, Remittance or Open account increases comparatively, as in-house trade between parties with full confidence goes to occupy considerable portion of whole cross-border transactions.

In this way, the importance of B/L, as a title document, gets smaller in cross-border business, while on the other hand, it becomes to consider that the ideal maritime transportation document is a simple carriage bill that doesn't have characteristics as a title document or a redemption bill, unless B/L is definitely necessary for the case.

On this background, "Sea Waybill" was created in Europe, taking a hint from Air waybill, chipping off the characteristic of a title document from B/L.

5-1 Features of Sea Waybill

(1) Selection B/L or Sea Waybill:

Shippers can select B/L or Sea Waybill that should be issued by the carrier at the time of loading cargo, while some carriers are not prepared to issue Sea Waybill and also depending on destination, Sea Waybill is not available.

(2) Non-negotiable:

It is not negotiable nor used as collateral, since it is not a title document. By this same reason, it is impossible to cope with the reselling goods during navigation.

(3) No B/L Crisis:

It is not a redemption bill, therefore not required to be presented to the carrier at the time of receiving goods. Therefore there's no room that B/L crisis would happen. Carriers are entitled to deliver goods and indemnify themselves from wrong delivery if only they release goods

to a person who come to claim goods with identification to prove that the self is the consignee or his agent mentioned in the Sea Waybill.

(4) Available even without paper:

Sea Waybill can be printed onto proper form as B/L, but there's no restriction that it should be a paper document. It is not necessarily to be sent to the consignee in the import-side economy, either. It is even not necessary to distinguish original from copies.

(5) Easy and inexpensive handling:

As Sea Waybill is not a title document, it can be handled with less stress and less cost than B/L, even in an extreme case when it was lost or stolen.

(6) Description of General Terms and Conditions:

The request of booking of vessel's space by the shipper is deemed to have effected under his agreement to the general terms and conditions of Carriage Contract offered by the carrier. When Sea Waybill is printed onto proper form, it may sometimes be for the purpose of reconfirming such general terms and conditions on its reverse face.

(7) Digitalization:

Sea Waybill is far more adequate than B/L for digitalization. It can be transferred via ordinary data transfer system along with other shipping documents such as invoice and packing list. It isn't necessary to have the function to control the transfer of title, unlike the case of digitalizing B/L.

(8) Applicability for L/C payment:

To open a Letter of Credit, where Sea Waybill is required as a negotiation document, is also available whenever all related parties and banks agree on it.

(It is impossible to set collateral on goods with Sea Waybill, so another credential measures should be taken between the bank and the consignee (buyer side) or the bank simply expand the credit line for the buyer to receive goods before settlement of invoice amount.)

(9) Sea Waybill with bank's name in consignee box:

It may be possible to make a Sea Waybill stating the name of bank as consignee (instead of the name of real consignee) when it is so agreed among the carrier, bank, shipper (seller side) and consignee (buyer side). This is commonly taken place in case of Air waybill.

Sea Waybill is not a title document, so it is impossible that the bank set collateral onto Sea Waybill as mentioned before. However if the bank can be the nominal consignee by putting its name in the box of consignee of Sea Waybill, the bank can reserve right to receive goods upon arrival. It works as if the bank had set collateral onto goods. In this case, the bank issues "bank release order" when the payment of invoice amount is made by the buyer. The real consignee requires carrier to deliver goods presenting above bank release order.

This option would widen the use of Sea Waybill for L/C payment.

(10) International Rules for Sea Waybill:

International Legal Framework that covers transactions under Sea Waybill, such as the Rotterdam Rules, comes to be prepared rapidly.

Besides that, "CMI Uniform Rules for Sea Waybills" are established to control the transactions under Sea Waybill uniformly in order that all concerned parties of the world understand Sea Waybill in the same way without prejudices. The details of CMI Uniform Rules are mentioned in the item 6 below.

With the support of CMI Rules, both export and import parties can have common business basis.

A quick reference list to show the names of economies that have ratified each of various related International Agreements and where Sea Waybill is accepted for governmental procedures, are available in the item III 1.

5-2 Some governments require B/L for support document

Currently there are a few countries, mostly in Latin America, such as Brazil, Argentina, and Colombia etc... where B/L is strictly required in some specific case, when the government judges it necessary to require evidence of the sea transportation. Sea Waybill is not admitted as the document to substitute B/L. It seems to be a matter of policy of the governments.

6. CMI Uniform Rules for Sea Waybills (CMI Rules)

Sea Waybill has a legal support of “CMI Uniform Rules for Sea Waybills”. In that agreement, general rules for cross-border business are specified, together with standard rights and obligations of concerned parties. Similarly to B/L, domestic laws of each economy define details of commercial transactions.

The principal contents of CMI Rules are as follows:

- (1) CMI Rules are applied when related parties agreed to adopt for their contract. (Rule 3)
- (2) International Convention and National Law that cover B/L will be applied to Sea Waybill (Rule 4)
- (3) The description of goods on Sea Waybill is considered to be the prima facie evidence of the contents of the goods. (Rule 5)
- (4) The shipper is the only party entitled to give instructions to the carrier, including changing the name of consignee until when the consignee claims delivery of goods after its arrival at destination. (Rule 6)

By applying this rule, the shipper can keep goods under his direct control and can have lawful means to push buyer pay for the invoice.

- (5) The carrier shall deliver the goods to the consignee upon production of proper identification, while the carrier shall be under no liability for wrong delivery if he can prove that he has exercised reasonable evaluation on the identification of the consignee. (Rule 7)

7. Sea Waybill shall take the place of “Surrendered B/L”

General concept of the promotion of Sea Waybill is that by adopting Sea Waybill it is possible to increase the efficiency of cross-border transactions and accelerate paperless trade as well. From the characteristic of the trade documents, it isn't possible to promote only in one's own economy and the global common understanding and collaboration is indispensable. That is why UNECE issued Recommendation 12 for the promotion of Sea Waybill.

But mainly in Asia, the problem is a bit more complicated.

In Asia, there's a commonly-used practice called Surrendered B/L. Before adopting Sea Waybill, which was invented in Europe, in order to solve the clear and present problem of B/L crisis, some emergency scheme of handling B/L has spread, putting aside the legal issues. This is Surrendered B/L. The increase of in-house trade, where mutual full confidence rules, seems to have boomed the use of Surrendered B/L as an agile and inexpensive method. As the consequence, Surrendered B/L became to be applied even in case there's no prospect of B/L crisis. This commercial merit of Surrendered B/L would have surely masked its legal fragility and few people care for it. It seems that at present there are many users of Surrendered B/L who like it just because they are accustomed to using it. Besides, there's some opinion to prefer Surrendered B/L to Sea Waybill because of the convenience of some payment issue that can be solved with Sea Waybill, too.

In order to promote Sea Waybill effectively, especially in Asia, it will be better to focus on the cases for which Surrendered B/L is applied. It will be better to consider that most of the cases, for which B/L is adopted, the concerned parties should have certain reasons that they are obliged to use B/L, so it won't be easy to lead them switch to Sea Waybill. On the other hand the environment of the use and the needs of users of Sea Waybill and Surrendered B/L will be almost the same, while Sea Waybill can cover almost all the features of Surrendered B/L and moreover it provides legally protected business circumstances that Surrender B/L can't, although the concerned parties with much confidence don't care so much on legal aspect and sometimes ignore such important difference between Sea Waybill and Surrendered B/L.

In the following items, there explained on Surrendered B/L itself, its problems and finally proposed to switch to Sea Waybill.

8. Surrendered B/L

8-1 Creation of Surrendered B/L

While Sea Waybill was invented in Europe, other counter-measure for B/L crisis has been taken place mainly in Asia.

It is not a new document like Sea Waybill to substitute B/L, but a manner of handling B/L called "Surrendered B/L" (or in other names "telex release", "fax release" or "express B/L"), to surrender B/L out of normal practice (in a real sense, it is not "surrender" but just "voluntary return" of B/L regardless of cargo delivery).

The emerging field of Surrendered B/L is exactly the same as of Sea Waybill i.e. frequent happening of B/L crisis, for which the bank tends to provide to the applicant of L/C (consignee side) some measures not to

require B/L for the settlement of invoice, such as to expand simply their credit line to the applicant of L/C.

Anyway it is conceivable that if B/L is not required by the bank for collateral, it is better that the shipper surrenders B/L to the carrier in advance, at the place and time of loading goods. Then the carrier will no more require B/L for releasing goods to the consignee at the destination that means no more B/L crisis for the case.

“Surrendered B/L” model would have been taken into practice, at first, for solving the immediate trouble caused by B/L crisis. However, upon in-house trade between parties with confidence increased, this agile way of B/L-handling is welcomed and used even for the cases that won't suffer from B/L crisis, putting aside its irregularity, branching off from the right track of the use of B/L.

In this way Surrendered B/L became to be a commonly-used practice in Asia.

8-2 How Surrendered B/L works

(1) Application of Surrendered B/L

When Surrendered B/L model is applied, originals of B/L are surrendered by the shipper to the carrier right after being issued. Consequently the only document (or message) that exists is a Copy of the original B/L, which is marked “surrendered” or “used”. Therefore no particular document exists that is called a “Surrendered B/L”.

As the B/L is surrendered right after issuance, the carrier is released from the obligation of collecting original B/L in exchange for delivering goods to the consignee. It means that the carrier is free from worrying about being accused for a wrong delivery even if it happens. The carrier can release goods to the person who claims it

and identifies himself to be the one mentioned in the “consignee box” of the B/L (copy) or his authorized agent.

(2) Two models of Surrendered B/L.

- A) To issue only the copy of B/L stating “surrendered” or “used” and not to issue original B/L itself, considering that the original (only to be returned to the issuer on the spot) isn’t necessary to be issued, avoiding the risk of loss by any accident.
- B) The carrier issues original B/L and hands over to the shipper, who endorses and returns the full set to the carrier. The carrier, upon receiving endorsed original B/L, gives back to the shipper a copy after marking “surrendered” or “used”, as the evidence of the record that the original B/L was issued and surrendered...

When the model B) is chosen, the reasons may be like followings:

- ✓ B/L has a function to reconfirm the General Terms and Conditions of Carriage Contract on its reverse face. Therefore it is better to issue B/L anyway to avoid any confusion later.
- ✓ The originals of B/L, surrendered by shipper with their endorsement, can be clear evidence of the intention of the shipper to proceed documentation with Surrendered B/L.
- ✓ The shipper (seller side) can put the goods under his direct control for a while after the shipment being effected until the time when he really takes an action of surrendering B/L to the carrier. During this small period of time the shipper (seller) reserves a counter-measure not to surrender B/L to the carrier, if the buyer doesn’t settle invoice amount before the arrival of goods. In this way even when the buyer and seller do not have established sufficient relationship of confidence yet, while they can’t use B/L because B/L crisis is prospected, they can make an impartial transaction by adopting Surrendered B/L model.

<Remarks>

This solution with regards to the settlement of invoice under Surrendered B/L is not a proper advantage of Surrendered B/L, but it is also feasible with Sea Waybill, as per mentioned in above item 6 (4) under CMI uniform rule.

8-3 Problems that Surrendered B/L contains

(1) Irregularity

When B/L is proceeded as Surrendered B/L, B/L loses its status as a title document (or even as a claim tag), and stays as a simple document for handling of goods such as to indicate where and whom the goods should be delivered to. In this way, without doubt the surrendered B/L model would lessen the stress of handling for the related parties and reduce the cost, too. But again without doubt, this model is an irregular use of B/L, whether the users mind it or not.

(2) No support by the International Rules

In case of B/L, when it is used normally, there exists general and global consent on the obligations and rights of each related party. It is endorsed by the International Agreements and domestic legal framework of each economy and also by numerous judicial precedents. In case of surrendered B/L, although the document in itself is a B/L, caused by so much deviation from its original use, it can't be included in the scope the current international rules.

Surrendered B/L model is not acknowledged in INCOTERMS, nor in UCP (Uniform Customs and Practice for Documentary Credits), nor in the Letter of Hypothecation (Agreement on Bank Transactions).

In spite of such legally uncovered situation with conventional legal framework for B/L, there is no “proper rule” for Surrendered B/L, either.

(3) Disadvantage for digitalization

The document used for the Surrendered B/L model is no other than usual B/L, i.e. if the shipper didn't surrender such B/L at the time of shipment, it can be negotiated consecutively as a normal B/L, which is a title document. Therefore in order to digitalize the Surrendered B/L model, the system shall be capable and secure enough to bear with the handling of normal B/L in the case of what-if. The difficulty to handle B/L digitally is commonly known from both aspects of system and international legal framework. Consequently the digitalization of Surrendered B/L is as difficult as to digitalize ordinary B/L.

8-4 Switch from Surrendered B/L to Sea Waybill

The problems of Surrendered B/L mentioned in above item 8-3 will be totally solved as follows by adopting Sea Waybill:

- (1) The field of functions of Sea Waybill is not exactly the same as B/L, but it is just a “difference” and not an “irregularity” to B/L, because Sea Waybill is a unique document different from B/L, and controlled by its own international rules.
- (2) Sea Waybill has legal support by CMI Uniforms Rules for Sea Waybills established by Comité Maritime International.
- (3) Sea Waybill is not a title document, therefore it is not necessary to care for its negotiability at the time of digitalization.

To switch to Sea Waybill from Surrendered B/L is not a complicated work.

Sea Waybill is not an unfamiliar vehicle nowadays not only in Europa and USA but also in Asia including Japan. Just making up mind to change to Sea Waybill it is possible to enjoy various advantages that Sea Waybill offers as mentioned in above item 5-2, without losing anything by that change.

II Recommendations

1. Change to Sea Waybill when documentary draft gets unnecessary:

In case B/L is used for such reason that the payment term is with documentary draft (for L/C, D/A, D/P etc...) and the negotiation bank requires a title document to set collateral on goods, Sea Waybill can't substitute for B/L. However when the buyer and the seller have established a trustful relationship and a title document is no more required, it is highly recommendable to switch to use Sea Waybill replacing B/L.

2. Better to cease using Surrendered B/L and to switch to Sea Waybill:

Although Surrendered B/L was introduced at first to solve B/L crisis as an emergency measure, it became to use widely by its easiness of handling including even in case of B/L crisis not being prospected, especially among parties with mutual confidence.

However irregular use of B/L without support of international rules is potentially risky and may cause any kind of unexpected troubles, so it is recommendable to switch to Sea Waybill. It is as simple as surrendered B/L and yet much safer, as it has its proper legal support by international rules. Sea Waybill can fully cover objects of Surrendered B/L i.e. to avoid B/L crisis and to realize easy handling of documents, etc... So no sacrifice is required to replace Surrendered B/L with Sea Waybill, and moreover other superior advantages of Sea Waybill will be enjoyed additionally.

3. Particular usage of Surrendered B/L is also available with Sea Waybill:

Sometimes Surrendered B/L is used as a tool to urge consignee (buyer side) pay invoice amount. Even for such particular purpose, Sea Waybill can perform the same function. In case of Sea Waybill, based on the stipulations of CMI rules, the shipper can hold rights to control goods and to instruct the carrier to change the name of consignee, until the moment when the consignee claim for goods to the carrier after the goods reaches to the destination. If the consignee (buyer side) doesn't pay for the invoice amount in time, the shipper (seller side) can suspend the delivery of goods to the buyer by changing the name of consignee.

4. Better to select Sea Waybill among all other counter-measures for B/L crisis:

There are other options to solve B/L crisis, apart from the Surrendered B/L, such as:

- a) Shipper directly delivers 1/3 of the original B/L to Consignee and the rest 2/3 through Bank.
- b) Carrier issues original B/L directly to Consignee at their branch office or agent office at the destination instead of the place of loading.

By simply switching to Sea Waybill, above way of handling gets not necessary.

5. Possible to open L/C requiring Sea Waybill, instead of B/L:

It is not correct to consider that L/C can't be opened without B/L as a negotiation document. Once buyer could reach some agreement with banks on credit conditions (increase deposit money or expand credit line etc...), banks will be ready to open L/C with Sea Waybill as a negotiation document.

6. Apply Sea Waybill even when a collateral is required by banks:

It is impossible to set collateral onto Sea Waybill. However if the bank is indicated as the consignee of the goods nominally in the Sea Waybill, they will get the disposition rights on goods that will work equivalent to the collateral on goods. Unless the buyer (real consignee of the goods) settles invoice, the bank will not transfer their disposition rights to the buyer.

Once the payment is effected by consignee (buyer side) the bank will issue "bank release order" to the real consignee, with which the consignee claims delivery of goods to the carrier, just like the case of Air waybill where this operation is commonly carried out.

This operation is available when all parties such as the banks, the carrier, the shipper and the consignee agree on it.

<Remarks>

For this way of handling, banks may require to put remarks on Sea Waybill specifying (a) the Sea Waybill is in accordance with CMI uniform rules and (b) it shall be marked "NODISP" or "CONTROL" in order to transfer the shipper's rights of disposition (for changing the name of consignee during the period of navigation) to the consignee (this time, the bank) irrevocably.

7. Carriers to study accepting Sea Waybill nominally consigned to bank:

It is recommendable for carriers to conduct a study to accept Sea Waybill in which bank's name, instead of real consignee's name, appear in the consignee box, for the necessity related to the invoice settlement mentioned in above item 6.

This operation will require an additional work flow such as to issue arrival notice of vessel to both bank and real consignee of goods, and also to release goods to the bearer of "bank release order" when Sea Waybill is nominally consigned to the bank.

8. Banks to study the handling of "bank release order" for Sea Waybill:

As mentioned above "bank release order" is commonly issued in case of Air Waybill when banks play the role of "nominal consignee" to get disposition rights on goods in place of collateral rights as a tool for securing payment of invoice amount by the buyer. However for Sea Waybill, it is not yet common. So it is recommended for all banks to conduct a study on this issue in preparation for the probable massive requirements.

9. Shipper's decision is important to promote Sea Waybill:

Shipper is the first party to decide which sea transportation document to be selected from various options, depending on the commercial contract conditions. Therefore the most important point is that Shippers and Consignees (Exporters and Importers) share their understanding that Sea Waybill is the best choice. If the shipper and the consignee

conclude to use Sea Waybill, other related parties will do best to follow it, because such selection should be made based on the commercial contract.

10. Forwarders' recommendation is also important:

Forwarders may have a chance to suggest on the selection of sea transportation document to shippers when they are not so familiar with the characteristic of each option or the way of its operation. In such case it is recommendable to guide them to use Sea Waybill, which will be also helpful for Forwarders themselves to make their works more efficiently. In case of Japan, JIFFA (Japan International Freight Forwarders Association Inc.) is taking a very active initiative to promote Sea Waybill, through capacity building seminars, lecture meetings, and preparing references etc...

11. All carriers should be well prepared to accept the issuance of Sea Waybill:

There are some carriers that are not yet prepared to issue Sea Waybill. It is recommendable for such carriers to study the operation of Sea Waybill in preparation for the probable market tendency.

12. To realize Paperless Trade, better switch to Sea Waybill in advance.

Suitability for digitalization is a by-product of Sea Waybill. It is a good chance to study to eliminate paper works for shipping documentation. As there is no title document like B/L in the set of shipping documents, all documents can be transferred through network as electronic data if so agreed by concerned parties and allowed by both governments of export and import economies.

<Remarks>

In many cases Sea Waybill is requested to be issued on paper on top of data transfer from carrier to shipper. For enjoying the increase of efficiency by applying Sea Waybill model, it will be better to study to eliminate paper works.

13. Publicity is very important to promote Sea Waybill:

Since Sea Waybill is a commercial document, its adoption depends upon the needs, benefits and availability for the business sector. But before that, Sea Waybill must be familiar to all concerned parties, in order to be selected. Sea Waybill has its issuer, sender, recipient and many other concerned parties for the operation. Therefore the publicity is very important to promote Sea Waybill.

It is strongly recommended that all industries related to cross-border commercial transactions should share common understandings that Sea Waybill will contribute to make the World Trade more efficient and comfortable. They shall take action to move it forward, such as announcing encouraging messages, on their internet websites, that Sea Waybill is a safe and easy option for sea transportation document.

14. Seminars and Capacity-building workshops:

It was widely spoken by concerned people during hearing survey in China in 2013 that the lack of knowledge on Sea Waybill is impeding the increase of use of Sea Waybill, especially in Asia.

In order to break through such situation, it is desirable that the concerned organizations of each economy hold seminars and capacity-building workshops to appeal the merits of Sea Waybill, encouraging to use it.

15. Stance of government of each economy on Sea Waybill shall be clarified

Stance of government of each economy on Sea Waybill is desired to be clarified on their Website etc... to encourage trade concerned parties use Sea Waybill with confidence.

In Websites of the customs of various economies, it appears a traditional description like “Transportation document (B/L or Airwaybill)” as support documents that are required to present to the customs when so required. It may give wonder to trade concerned parties how Sea Waybill would be treated for governmental procedures.

III Situations of various economies and regions on Sea Waybill

1. Global rules for safe cross-border transactions

The cross-border transactions are controlled and protected by various global rules such as:

- ✓ Hague Rules (1924)
- ✓ Hague Visby Rules (1968)
- ✓ Revised Hague Visby Rules (1979)
- ✓ Hamburg Rules (1978)
- ✓ Rotterdam Rules (waiting status for the ratification of necessary numbers of countries)

Among above rules, in the Rotterdam Rules, the Sea Waybill is also included as the target of the rule, while for other previously established rules, the target was traditionally B/L.

In case of Sea Waybill, apart from above, there's CMI uniform rules, as mentioned in item I 6.

The following list shows the current stage on the ratification of International Rules per each economy and the economies where Sea Waybill (SWB) is applicable for import procedures. The data on Sea Waybill is basically taken from the information given in the website of Chilean shipping company CCNI as their work experience.

Ratification of International Agreements per each Economy in the order of Import Volume and Economies where Sea Waybill (SWB) is applicable for Import procedure

<Ratification of International Agreements source: PI Club Japan + UN for RR>

Yearly Volume of Import (top 60) (in 2011 or 2012 est.) (Source: CIA World Factbook)			Rotterdam Rules RR (△:Signed ○:Ratified)		Hamburg Rules (1978)		Revised Hague Visby Rules (1979)		Hague Visby Rules (1968)		Hague Rules (1924)		Experience of CCNI (Chile) on SWB acceptability	
	million US\$	%												
1 United States	2,299,000	12.89%	○		△	○								○ OK Acceptable as supporting document for Import Procedure
2 China	1,735,000	9.73%				○								○ OK Acceptable as supporting document for Import Procedure
3 Germany	1,222,000	6.85%	○			○								○ OK Acceptable as supporting document for Import Procedure
4 Japan	830,600	4.66%		○	○									○ OK Acceptable as supporting document for Import Procedure
5 United Kingdom	642,600	3.60%		○	○									○ OK Acceptable as supporting document for Import Procedure
6 France	641,300	3.60%	○	○	○		△							○ OK Acceptable as supporting document for Import Procedure
7 Korea, South	514,200	2.88%												○ OK Acceptable as supporting document for Import Procedure
8 India	500,400	2.81%												○ OK Acceptable as supporting document for Import Procedure
9 Hong Kong	487,400	2.73%	○	○	○									○ OK Acceptable as supporting document for Import Procedure
10 Canada	474,800	2.66%												○ OK Acceptable as supporting document for Import Procedure
11 Netherlands	474,800	2.66%		○	○		△							○ OK Acceptable as supporting document for Import Procedure
12 Italy	453,500	2.54%		○	○									○ OK Acceptable as supporting document for Import Procedure
13 Singapore	374,900	2.10%	○	○	○									○ OK Acceptable as supporting document for Import Procedure
14 Mexico	370,800	2.08%		○	○									○ OK Acceptable as supporting document for Import Procedure
15 Russia	334,700	1.88%		○	○									○ OK Acceptable as supporting document for Import Procedure
16 Spain	323,700	1.81%		○	○		○	○	○	○	○	○	○	○ OK Acceptable as supporting document for Import Procedure
17 Belgium	322,000	1.81%	○	○	○									○ OK Acceptable as supporting document for Import Procedure
18 Switzerland	287,700	1.61%	○	○	○		△							○ OK Acceptable as supporting document for Import Procedure
19 Taiwan	268,800	1.51%												○ OK Acceptable as supporting document for Import Procedure
20 Australia	239,700	1.34%		○	○									○ OK Acceptable as supporting document for Import Procedure
21 Turkey	228,900	1.28%	○											○ OK Acceptable as supporting document for Import Procedure
22 Brazil	223,200	1.25%												○ OK Acceptable as supporting document for Import Procedure
23 UAE	220,300	1.24%												○ OK Acceptable as supporting document for Import Procedure
24 Thailand	217,800	1.22%												○ OK Acceptable as supporting document for Import Procedure
25 Poland	195,400	1.10%	○	○	○		△							○ OK Acceptable as supporting document for Import Procedure
26 Malaysia	181,600	1.02%	○											○ OK Acceptable as supporting document for Import Procedure
27 Indonesia	178,500	1.00%												○ OK Acceptable as supporting document for Import Procedure
28 Sweden	163,600	0.92%		○	○									○ OK Acceptable as supporting document for Import Procedure
29 Austria	163,200	0.92%												○ OK Acceptable as supporting document for Import Procedure
30 Saudi Arabia	136,800	0.77%												○ OK Acceptable as supporting document for Import Procedure
31 Czech Republic	124,200	0.70%												○ OK Acceptable as supporting document for Import Procedure
32 Vietnam	114,300	0.64%												○ OK Acceptable as supporting document for Import Procedure
33 South Africa	105,000	0.59%												○ OK Acceptable as supporting document for Import Procedure
34 Denmark	96,990	0.54%		○	○		△							○ OK Acceptable as supporting document for Import Procedure
35 Ukraine	90,300	0.51%												○ OK Acceptable as supporting document for Import Procedure
36 Hungary	87,370	0.49%												○ OK Acceptable as supporting document for Import Procedure
37 Norway	86,720	0.49%		○	○		△							○ OK Acceptable as supporting document for Import Procedure
38 Slovakia	75,990	0.43%												○ OK Acceptable as supporting document for Import Procedure
39 Chile	74,860	0.42%												○ OK Acceptable as supporting document for Import Procedure
40 Finland	73,150	0.41%		○	○									○ OK Acceptable as supporting document for Import Procedure
41 Israel	71,400	0.40%	○											○ OK Acceptable as supporting document for Import Procedure
42 Portugal	69,480	0.39%	○											○ OK Acceptable as supporting document for Import Procedure
43 Romania	67,540	0.38%												○ OK Acceptable as supporting document for Import Procedure
44 Iran	66,970	0.38%	○											○ OK Acceptable as supporting document for Import Procedure
45 Argentina	65,560	0.37%	○											○ OK Acceptable as supporting document for Import Procedure

<Ratification of International Agreements source: PI Club Japan + UN for RR>

Yearly Volume of Import (top 60) (in 2011 or 2012 est.) (Source: CIA World Factbook)	(million US\$)	%	Ratification of International Agreements					Experience of CCNI (Chile) on SWB acceptability ○: OK Acceptable as supporting document X: no for Import Procedure
			Rotterdam Rules RR (△:Signed ○:Ratified)	Hamburg Rules (1978)	Revised Hague Visby Rules (1979)	Hague Visby Rules (1968)	Hague Rules (1924)	
46 Ireland	64,320	0.36%	○	○	○			○ EU
47 Philippines	61,490	0.34%					○	
48 Egypt	59,720	0.33%		○		○		
49 Venezuela	59,310	0.33%					X	
50 Iraq	56,890	0.32%						
51 Nigeria	54,600	0.31%	○			○	△	
52 Colombia	53,770	0.30%					X	X EU
53 Greece	53,530	0.30%		○	○		△	○ EU
54 Algeria	48,270	0.27%	○					
55 Kazakhstan	47,890	0.27%			○			
56 Puerto Rico	46,570	0.26%					○	
57 Belarus	45,010	0.25%						
58 Morocco	42,450	0.24%			○			
59 Peru	41,110	0.23%	○				○	*4
60 Pakistan	39,810	0.22%					○	
...						

2. Situation of some economies and regions on the use of Sea Waybill

(1) EU

✓ Intra-EU traffic:

The majority of intra-EU traffic by sea is Roll-On Roll-Out ferry type vessel and therefore the Transportation Documents is a Ferry Ticket i.e. not B/L nor Sea Waybill that are mostly used in case of Lift-On Lift-Out ocean vessel.

✓ Transatlantic trade (EU – USA/Canada):

Non-negotiable document is normally used except for the case where commercial custom and practice dictate their use.

✓ Africa and South America Service:

Foreign exchange controls, complex tariff procedures and other government controls are applied sometimes and in such cases the use of B/L is institutionalized.

✓ Use of Sea Waybill in EU:

As Sea Waybill was invented in Europe, every kind of government interference is already removed, while intra-EU and significant proportion of transatlantic trade is conducted on Open Account terms. Therefore concerned parties can make a free choice of maritime transport documentation including Sea Waybill.

✓ Use of Sea Waybill for L/C:

To use Sea Waybill for L/C is very rare. In case of L/C, B/L is normally required by the bank as security for its finance.

✓ Surrendered B/L

Surrendered B/L is basically not acknowledged in EU.

< Information source >

Above information is given, thanking for the kind collaboration of the United Kingdom Chamber of Shipping.

(2) USA

In USA, Straight B/L is called in another name “Express B/L” and regarded equivalent to Sea Waybill.

The carrier may deliver goods to the consignee without Straight B/L (the carrier must deliver goods with B/L) unless restricted by the shipper to stop delivery in transit. As far as the carrier reasonably identified the consignee, their responsibility on erroneous delivery of goods, even if it happened, will be indemnified. This is exactly the way of operation of Sea Waybill. Therefore in whatever name it is called, Sea Waybill is working in USA.

However when it is filed in other economy, Straight B/L may be deemed to be B/L that has the property as a redemption bill.

Therefore Sea Waybill will be safer to avoid any unexpected trouble.

(3) Japan

Sea Waybill is widely applicable for governmental procedures for international transactions.

(a) “Act on International Carriage” is applied to both B/L and others :

The particularity of Japanese Legal framework for cross-border business is that its principal law “Act on International Carriage of Goods by Sea”, which copes with the Hague-Visby Rules, is applied not only to B/L but also to maritime transportation Documents other than B/L, such as Sea Waybill, equally.

(b) Straight B/L is also transferable in Japanese Law:

Another point that should be taken note is that the Commercial Code stipulates, in its Article 574, that even a Straight B/L can be negotiated unless it is prohibited expressly.

< Article 574 >

An inland bill of lading (author’s comment: it is applied equally to maritime bill of lading), even when it is to a specified person, may be negotiated by means of endorsement; provided, however, that this shall not apply if the inland bill of lading states that such endorsement is prohibited.

(4) China

(a) Sea Waybill in China

In the Article 80 of the Maritime Code of China, it is stipulated as follows:

“Where a carrier has issued a document other than a bill of lading as an evidence of the receipt of the goods to be carried, such a document is prima facie evidence of the conclusion of the contract of carriage of goods by sea and the taking over by the carrier of the goods as described therein.

Such documents that are issued by the carrier shall not be negotiable.”

Sea Waybill is deemed to be “a document other than B/L” and therefore Sea Waybill is workable in China.

(b) Goods transferred without B/L

In the report of Mr. Gangfang Liu titled “The causes and solution to delivery of goods without B/L in China” dated May 2012, it is quoted following statistic figures that may be a reference to know the situation of China:

“According to the statistics of some scholars in China, the proportion of delivery of goods without B/L is 30% in bulk cargo transportation, up to 50% in container transport, and even 70% in bulk transport of liquid articles, especial in bulk transportation of oil. The cases concerning to delivery without B/L are increasing year by year in the recent 10 years on Chinese admiralty trial.”

(5) Taiwan (Chinese Taipei)

In Taiwan Sea Waybill is used without government restriction.

However the penetration ratio of the use of Sea Waybill is not so big for the moment. The reasons may be that Sea Waybill is not yet known widely by concerned parties and also in case of SME they prefer B/L to Sea Waybill.

According to some shipping company in Taiwan, they are prepared for issuing Sea Waybill, but its record of issuance is not so big.

(6) Malaysia

It is possible to use Sea Waybill in Malaysia.

(a) Overall image of the situation (not an official statistic data)

- ✓ The usage of Sea Waybill is up to 35-40% (both directions: import and export).
- ✓ Generally, for the shipments to/from Middle East ports, Bill of Lading is used. (due to the use of LCs).

✓ To Near & Far East ports, almost 30% are using Sea Waybill or Telex-Release mechanism.

✓ European Ports about 20% and USA within the range of 10 to 15%.

(b) Sea Waybill is not always encouraged to use.

Sometimes it is preferred to work-around by using telex release (if forced by customers). The reasons are as follows:

✓ When a shipper holds the B/L, he has the full control of the shipments until he surrenders the 3 originals to the loading port agents for explicit delivery instructions to the consignee. And also the surrender B/L can be done at the very last hour of the vessel's arrival at discharge port.

Whilst with the Sea Waybill, the shipper has no direct control over the shipment. Once issued, the shipper would probably lose his any direct control. *

(*Remark: There's a way to complement this point: item I 6 (4) under CMI uniform rules.)

✓ Some shipping liners are not comfortable in releasing consignment to someone just named in a document. Verification is difficult especially when the receiver of cargo at the port/terminal is usually another party, a forwarding agent or a transport company....

< Information source >

Above information is given, thanking for the kind collaboration of the ex-Chair of FIATA Advisory Body.

(7) Countries where Sea Waybill is not accepted

<for example: Brazil, Argentine and Colombia etc....>

(A) Brazil

Previously-registered customs operator accesses to the integrated system for import and export called SISCOMEX to get DI Extracto, on

which every procedure are carried out. As a support document, B/L is definitely required. Sea Waybill is not accepted to substitute B/L, while Air Waybill is accepted in place of B/L.

In preparation for B/L crisis, B/L is allowed to be issued in Brazil through the branch office or agent office of the carrier, instead of issuing the same at the time and place of loading in the export economy..

On the other hand, the optimization of customs procedures is rapidly going on and the priority category “Linha Azul” is set for the operators of good performance to provide preferential customs clearance.

In this way the situation in Brazil may change in future.

<information source>

USBrazil Trade Assist (Rosalienebacchus.com), Dirad Directyoria de Administracao etc... in internet sites and also thanking for the collaboration of NYK Line do Brasil.

(B) Argentine

B/L is required as a support document for import customs clearance.

B/L shall be original with manual signature.

According to the Article 453 of Customs Law, in preparation for B/L crisis, “cargo release based on Letter of Guarantee” is suggested officially with the obligation to present the originals of B/L within a period of allowance of 15 days. Anyway this method can be considered as an authorized one that can be used without legal doubt in Argentine.

<information source>

GISTNet and Customs Law of Argentine etc...

(C) Colombia

- ✓ Transport document is required for import procedures as support document, while the Transport document is defined as follows in the Article 121 of the Customs Law:

“Transport Document is a general term that is understood marine, air, land or railway document that the respective transporter or the international cargo agent, issues as a certification of transport contract and the receipt of the merchandise that will be delivered to the consignee at the place of destination and it can be the document for endorsement.”

- ✓ To our question through Colombian Embassy in Japan, the concerned agency of Colombia clarified that Sea Waybill is not considered as the “Transport document” specified in the Law explaining as follows:

“From the legal definitions, there is a substantial difference between the B/L as the transportation document and “non-negotiable marine bill”, because the former is endorsable, and a title document, while the latter is not a title document and not negotiable either.”

“These two documents are not convertible, in short we can’t take one for others, and by this reason, it is impossible to take this document (Sea Waybill) as the support document for the import declaration.”

- ✓ Therefore it is impossible to apply import procedures with Sea Waybill in Colombia.
- ✓ The import procedure in Colombia is conducted as follows:
 - The consignee hands over full set of import documents to their customs broker to proceed Import Declaration through electronic system of customs.
 - Customs reply is classified in following three:
 - 1) Automatic clearance: both document and site inspections are tolerated
 - 2) Document Inspection: Documents are checked

3) Site Inspection: Besides documents check, goods are inspected at the deposit site.

Customs brokers have obligation to store documents for customs clearance for 5 years.

< Information source >

Above information is given, thanking for the kind collaboration of the Embassy of Colombia in Japan, Colombian Manufacturing Firm and DIAN (Colombian Tax and Duty Bureau).

Reference:

ANNEX

Sample format of Sea Waybill rendered by Japan Shipping Exchange, Inc. (JSE)

Code name: "JSE-CTWAYBILL 2008"
(Published April 2008 by the Documentary Committee of the JSE)
Shipper (Shipper's Reference No.)

WAYBILL NON-NEGOTIABLE

Waybill No.

Consignee

RECEIVED by the Carrier the Goods stated below in apparent good order and condition unless otherwise noted, for transportation from the place of receipt to the place of delivery, subject to the terms and conditions provided for on the face and back hereof and the applicable Bill of Lading and there to be delivered to the Consignee named herein, or its authorized agents on production of proof of identity.

Notify Party

IN WITNESS whereof, the undersigned, has signed the number of Waybill(s) stated below, all of this tenor and date.

Place of Receipt

Port of Loading

This Waybill is not construed as a Bill of Lading or any other similar document of title referred to in the International Carriage of Goods by Sea Act of Japan, 1957 as amended in 1992 or any other foreign legislation of a nature similar to the international Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August, 1924 or the amendments by the Protocol signed at Brussels on 23 February, 1968 or the amendments by the Protocol signed at Brussels on 21 December, 1979.

Ocean Vessel

Voy No.

(Terms of this Waybill continued on the back hereof)

Port of Discharge

Place of Delivery

For delivery of the Goods please apply to:

Container No.	Seal No. Marks and Numbers	No. of Containers or Pkgs	Kind of Packages; Description of Goods	Gross Weight	Measurement
<h1>Sample</h1>					

Total number of Containers
or other Packages or Units
(in words)

Merchant's Declared Value (See Clause 3):

Note:

The Merchant's attention is called to the fact that according to Clause 3 of this Waybill the liability of the Carrier is, in most cases, limited in respect of loss of or damage to the Goods.

Freight and Charges	Revenue Tons	Rate	Per	Prepaid	Collect

Exchange Rate	Prepaid at	Payable at	Place and Date of issue
	Total prepaid in local currency	No. of original Waybill(s)	SIGNATURE as the Carrier

LADEN ON BOARD THE OCEAN VESSEL

Date _____ By _____

Particulars Furnished by Shipper

1. Unless otherwise set out on the face and back hereof, the Goods shall be carried subject to:
 - (1) the terms and conditions provided for on the back of Carrier's applicable Bill of Lading (JSE-CT B/L as amended in April 2008) which may be seen on request at the Carrier's office or at those of its authorized agents. Every reference therein to the words "Bill(s) of Lading" shall be read and construed as reference to the words "Non-Negotiable Waybill(s)" and terms and conditions thereof shall be read and construed accordingly, and
 - (2) the "CMI Uniform Rules for Sea Waybills" excluding Rule 4(iii), which are deemed to be incorporated herein.
 2. In accepting this Waybill, the shipper and all other parties covered by the term "Merchant" as defined in the applicable Bill of Lading agree to be bound by all the stipulations, terms and conditions on the face and back of this Waybill and the applicable Bill of Lading, whether written, typed, stamped or printed, as fully as if signed by the shipper any local custom or privilege to the contrary notwithstanding, and agree that all agreements or freight engagements for and/or in connection with the carriage of the Goods are superseded by this Waybill.
 3. (1) (i) The Carrier shall be liable for loss of or damage to the Goods occurring between the place of receipt and the place of delivery, unless such loss or damage was caused by:
 - (a) an act or omission of the Merchant or person other than the Carrier acting on behalf of the Merchant or from whom the Carrier took the Goods in charge; or
 - (b) compliance with the instructions of the person entitled to give them; or
 - (c) the lack of or insufficiency of or defective condition of packing; or
 - (d) handling, loading, stowage or unloading of the Goods done by or on behalf of the Merchant; or
 - (e) inherent vice or nature of the Goods; or
 - (f) insufficiency or inadequacy of marks or numbers on the Goods, coverings or containers; or
 - (g) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general; or
 - (h) any cause or event which the Carrier could not avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence.(ii) When the Carrier establishes that in the circumstances of the case, the causes or events specified in (c) to (g) of the preceding sub-paragraph could attribute to the loss or damage, it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by such causes or events.
 - (iii) When the Carrier is liable under this paragraph, compensation by the Carrier shall not exceed US\$2 per kilo of gross weight of the Goods lost or damaged, provided that higher compensation may be claimed if the value for the Goods has been declared by the Merchant and has been stated in this Waybill.
 - (2) Notwithstanding anything provided for in the preceding paragraph:
 - (i) if it is proved that loss of or damage to the Goods occurred during transport by sea or inland waterways, the liability of the Carrier for such loss or damage shall be determined by the provisions of the International Carriage of Goods by Sea Act of Japan, 1957, as amended 3 June, 1992 (Hague-Visby Rules Legislation), provided that if this Waybill covers the Goods moving to or from the U.S.A. (including its districts, territories or possessions), then the amount of the foregoing limitation shall instead be U.S. \$500 per package or customary freight unit; or
 - (ii) if it is proved that loss of or damage to the Goods occurred during transport by air, the liability of the Carrier for such loss or damage shall be determined by the provisions of the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, 12 October, 1929, as amended by the Hague Protocol, 25 September, 1955, additional Protocol No. 4, 25 September, 1975, and the Convention of Montreal, 28 May, 1999, whichever mandatorily applicable; or
 - (iii) if it is proved that loss of or damage to the Goods occurred during any particular stage of transport other than by sea, inland waterways or air, the liability of the Carrier for such loss or damage shall be determined by the provisions of the law, if any, which would be mandatorily applicable if a contract for such particular stage of transport had been made under the laws of the country where such loss or damage occurred, and if there are no such provisions of the law as above mentioned, paragraph (1) of this clause shall apply.
 - (3) When the Carrier is liable under this Clause, compensation by the Carrier shall be calculated by reference to the Merchant's net invoice value of the Goods plus freight and insurance premium if paid, unless the value for the Goods has been declared by the Merchant and has been stated in this Waybill.
4. The contract evidenced by or contained in this Waybill shall be governed by Japanese law and any and all disputes arising from or in connection with this Waybill shall be referred to arbitration in Tokyo by the Tokyo Maritime Arbitration Commission (TOMAC) of The Japan Shipping Exchange, Inc., in accordance with the Rules of TOMAC and any amendments thereto, and the award given by the arbitrators shall be final and binding on both parties.

JASTPRO

Japan Association for Simplification of International Trade Procedures

Yaesu No.5 Nagaoka Bldg. 2-29-11 Hatchobori Chuo-ku Tokyo 104-0032

Japan

URL: http://www.jastpro.org/about/outline_e.html