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Chapter 2: The Major Players in Transport Operation

Objectives

- To understand each player and its role in transport operation
- To understand the liability of Freight Forwarder
- To understand the liability of Multimodal Transport Operator

There are several players in transportation; those players are categorized here below:

COMMON CARRIER

Common Carrier is known as Public Carrier who transports the goods or people for any person or company and has responsibility for any possible loss or damage to the goods, including delay in delivery during transport. Common Carrier offers its services to the general public under license or authority provided by a regulatory body without discrimination, unlike Contract Carrier who is also known as Common Carrier but offers its services to limited customers.

Common Carrier normally transports the goods according to defined and published routes, time schedules, and rate table in some mode of transport and in some country. Airlines, Shipping lines, railroad operators, truckers, barge operator are common carrier in this term. Another type of Common Carrier who serves Bulk carriage in the form of conventional also may transport the goods according to defined and published route, time and schedule as well.

Unlike, Voyage Chartering; Common Carrier will serve traders in accordance with one contract so called “Charter Party”. Charter Party will state the terms of carriage contract, the obligation of the ship-owner and charterer, rate and so on. In some case, contract of affreightment has been made between a ship-owner and charterer in which the ship-owner agrees to carry goods for the charterer in the ship, on a specified voyage or voyages at a specified time due to the volume of the cargoes are too large to carry on a single trip.

FREIGHT FORWARDER AND SCOPE OF SERVICES

Traditionally, in the past, the Freight Forwarder performed as an Agent of Consignor or Consignee for customs formality and dealing with Common Carrier such as trucking company, shipping line or airlines to move the goods from origin to destination on behalf of the Consignor or Consignee.

Freight Forwarder industry has been developed and provided a wide range of services since last century. The scope of services of Freight Forwarder can be determined as follows:

1. Customs Broker: Many freight forwarders act as a Customs Broker for Consignor or Consignee to make clearance of the goods from customs custody at origin or destination. He may merely perform formality or he may also perform formality including delivery, but still under the instruction of Principals, Consignor or Consignee. Freight forwarder does not assume liability for loss or damage in his service since his duty is only to clear to goods and hire the truck on behalf of the Consignor or Consignee.

2. International Forwarding: Many freight forwarders play a role in traditional performance moving the goods from one country to another country by liaison with a Common Carrier on behalf of the Consignor or Consignee. He does not issue any transport document, but only invoice of his handling service to the Consignor or Consignee and he does not assume liability for loss or damage during international transportation. He still acts as “Agent”. His responsibility is only on his omission and error occurred by his own performance against the instruction of the Consignor or Consignee.

3. Transport Service Provider: Development of the freight forwarder has created a change in its roles. Some freight forwarders become to be “Agent” of airline for GSA (General Sales Agent) dealing with Consignor or Consignee on behalf of the principal, the airline. Thus, freight forwarder becomes an agent of Common Carrier acting on behalf of carrier to carry goods from one country to another.

In many cases, Freight Forwarders become Principal as Common Carrier to Consignor or Consignee issuing transport documents, undertaking the goods from one place and deliver to the final destination which is known as **NVOCC** – Non Vessel Operating Common Carrier, or **OTI** – Ocean Transport Intermediary in U.S. FMC (Federation Maritime Committee) definition. Even though the fact is that such carriage is done by an Ultimate Common Carrier while freight forwarder performs like an intermediary, but the liability for loss, damage, and delay in delivery shall be borne by Freight Forwarder against the Consignor or Consignee.

Some of Freight Forwarder can also perform domestic trucking service or international Cross-Border transport by his own fleet of trucks. This means Freight Forwarder becomes Principal. In terms of subletting such service to Common Carrier, Freight Forwarder acts as Agent only.

4. Auxiliary services: Freight Forwarder also can provide auxiliary services such as a warehouse operation which Freight Forwarder acts as Principal who handles the goods through the overall warehouse operation at customer premises, receive, handling, put-away, pick-up and delivery including inventory management and stock maintenance. Freight Forwarder also is able to provide distribution services within and across the country domestically and internationally.

Many Multinational Freight Forwarders have own warehouse to operate warehousing for the customer as Common Warehouse Operator.

Packing service is provided by some Freight Forwarder who has knowledge of packing. Stevedoring for packing goods into containers or unpack the goods from containers is an another service of Freight Forwarders, either in the role of Agent or Principle which is based on how he offers the service.

5. Cargo Consolidation: Apparently, in maritime transport, Most Shipping lines are not willing to accept small consignments nowadays. This is because of a lot of effort to be made in handling consolidation and it is not worth for time of work of the shipping line.

Small consignments are collected by Freight Forwarder into a warehouse or container freight station, thereafter, these consignments known as LCL (Less than a full container load) will be sorted and stuffed into the same container bounded for the same destination. This operation is known as “Common Consolidator”.

In some occasion, Freight Forwarder will perform consolidation under instruction of buyer in overseas. Appointing Freight Forwarder as an Agent, Freight Forwarder will collect all shipments from the sellers whom buyer will instruct to liaison with Freight Forwarder to ship out the goods. Gathering all consignments from various sellers, Freight Forwarder will sort and stuff the goods into container according to the instruction of buyer, contacting with buyer’s nominated Common Carrier to arrange the carriage of goods. This type of service is known as “**Buyer Consolidation**” and of course, Freight Forwarder performs his duty as “Agent of buyer” in normal case.

On the contrary, Consignor supplies, small consignments or goods to various consignees at same destination. The consignor will gather all consignments and ship in FCL type and ask Freight Forwarder to deliver to multiple buyers at destination. This is known as “**Shipper Consolidation**” In this case, Freight Forwarder normally performs as “Principal or Carrier” to shipper.

6. Business Consultant: many Freight Forwarder who have a good network and strong overseas partner, would help sellers who would like to expand business in the overseas area where he has no idea about. Freight Forwarder can help seller giving the advice of benefit and disadvantage in trade facilitation in overseas, such as FTA, obstacle of customs formality, and difficulty of carriage of goods and so on.

7. Insurance: Freight Forwarder can assist or arrange on behalf of customers, the cargo insurance. However, the Freight Forwarder is not cargo underwriter and is not insured neither broker. Performing as Insurance broker, in some countries, the authorities may not allow doing so.

MULTIMODAL TRANSPORT OPERATOR

A multimodal transport operator acts as a principal who enters into the contract with the seller or buyer. He, therefore, performs as a carrier and has accepted all responsibility and liability to said transport contract.

TYPE OF MULTIMODAL TRANSPORT OPERATORS

There are two types of Multimodal Transport Operator, namely;

1. NVO-MTO: the Freight Forwarder who is NVOCC can become Multimodal Transport Operator by entering into the single contracts for the transportation of more than one mode internationally, NVOCC becomes a principal who assumes responsibility and liabilities of the carriage of goods from origin to destination point under his option in routing, lead time, Common Carrier to be used, his networking or subcontractors. Not only liable for customer satisfaction, he also assumes liability for loss, damage and delay in delivery.

2. VO-MTO: Shipping line or Vessel Operating Common Carrier can become Multimodal Transport Operator as well in the same manner as NVOCC, but Shipping line own means of transport, unlike NVOCC.

NVO-MTO will use subcontractor or partner along the transport route, at transshipment point and at the final destination, whilst VO-MTO may or may not use subcontractor or partner during the journey of transport.

SUBCONTRACTOR OR AGENTS/PARTNER OF MULTIMODAL TRANSPORT OPERATOR

To perform Multimodal transport linking node to node of transport, Multimodal Transport Operator shall have an agent as subcontractor to serve the connecting between modes of transport for transshipment process and to deliver at final destination.

Subcontractors mostly are freight forwarders appointed by Multimodal Transport Operator unless such Multimodal Transport Operator may have branch offices at transshipment point and or final destination.

Subcontractor shall perform a customs procedure and inland transport in some leg of transport at transshipment point, booking with common carrier and ship to final destination while the subcontractor at the destination may perform the same.

FACILITY OPERATORS & AVAILABILITY OF EQUIPMENTS

The facility operator in this context means those who provide infrastructure service, such as a sea port, air terminal, inland container depot and free zone where the multimodal transport operator will use such infrastructure to unpack the goods from or pack the goods

into the container when containerization is made during transportation including temporary storage wait for further arrangement of the next leg of transport, such as CFS. The facility operator will facilitate Multimodal Transport Operator and his agents according to his service availability.

CUSTOMS HOUSE

Customs is one of the key players in multimodal transport operation. Multimodal Transport can be seamless movement of the goods by facilitation of customs.

In some country, customs has great impact for the movement of the goods when transshipment is performed. The rules and regulation of customs can be the constraint for the movement of the goods in especially in the country where transshipment is done.

In ASEAN, the Customs Procedures and Trade Facilitation Working Group -CPTFWG still do not have consensus on the customs transshipment procedure in the same manner, but rather to concentrate on the ASEAN Customs Transit System – ACTS which facilitate of goods in transit according to the ASEAN Framework Agreement on Facilitation of Goods in Transit.

The Customs Procedure for transshipment of each ASEAN member countries, therefore, is not the same and keeps on performing according to the local rules and regulation.

CONSIGNOR, CONSIGNEE AND BANK

In the ASEAN Context and other conventions, the person who concludes the multimodal transport contract with the multimodal transport operator is Consignor while Consignee means the person entitled to receive the goods from the multimodal transport operator.

In reality, Consignee may enter into the contract of carriage with Multimodal Transport Operator in his home country and Multimodal Transport Operator may assign his agent in origin country of shipment to contact with Consignor. After the goods have been taken in charge by Multimodal Transport Operator's agent at origin country, the Multimodal Transport Operator's Agent shall issue the Multimodal Transport Bill of Lading and present to Consignor.

In the legal term, the Consignor hands over the goods to Multimodal Transport Operator who acts as Carrier which Consignor accepts such status of Multimodal Transport Operator's Agent, therefore, this means that he agrees to enter into the transport contract between him and Multimodal Transport Operator's Agent even though the freight payment is done by Consignee or on the other hand, Consignee has nominated Multimodal Transport Operator at origin, but the person who enters into the contract is Consignor as it deems on behalf of Consignee.

The Consignee in the Bill of Lading can be the Bank, which is shown as “To the Order of the Bank”. It is the normal practice in international trade when the Bank gets involved with buyer and seller on documentary credit. The Buyer requests the Bank to open a letter of credit in favor of the overseas seller. After completion of the obligation and requirement of the Letter of Credit, seller will present negotiating bank “Negotiated documents” including bill of lading for payment collection. The negotiating bank has to check and ensure if all documents are drawn up in accordance with the credit terms before forwarding to the issuing bank for final reimbursement. The issuing bank when receives the negotiated documents, will call buyer to pay all cost due in exchange with negotiated documents. The bank then will endorse on the back of Bill of lading transfer ownership of the goods to the buyer. Buyer thereafter will bring Multimodal Transport Bill of lading to exchange with Delivery Order from Carrier in case Buyer wishes to perform customs procedures with his/her customs broker, unless if the term of delivery is “Door”, then Buyer just return Multimodal Transport Bill of lading to Multimodal Transport Operator’s agent at destination.

Conclusion

The key player who performs Multimodal Transport Operation mostly is a Freight Forwarder who becomes Non Vessel Operating Multimodal Transport Operator. Acting as principal, Multimodal Transport Operator takes full responsibility for the entire transportation from origin to final destination shown in the contract of carriage, namely Bill of Lading. Common carrier who acts as Vessel Operating Multimodal Transport Operator mostly perform Multimodal Transport operation in those countries where the carriage contract requires deliver the goods beyond the port or terminal, such as U.S.A, India and Europe.

Freight Forwarder performs a multi-function in services for the seller and buyer, not only for transportation but also acts many activities including consultant in international business and logistics consulting.

The other key player in facilitating smooth transport operation during shifting mode is Customs who shall have the simple rules and regulation in making the customs transshipment procedure without any delay in their process. The delay in performing customs formality may create unreliability of Multimodal Transport Operator to Common Carrier in case of missing laden on board vessel or aircraft.

Buyer or Shipper’s Consolidation is one of logistics solution in term of saving cost and time of transport using Multimodal Transport Operation