Trading, Shipping and Swiss Arbitration

"Dry" Shipping: a complex chain of relations

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Shipping law has a reputation of high complexity. It is indeed quite a broad domain of law, including national legislations (e.g. Swiss Navigation Act, U.K. Carriage of Goods by Sea Act), international conventions (e.g. Hague-Visby Rules, the MARPOL-Convention regarding Prevention of Pollution), civil and public law.

The civil aspects arising out of international transportation of goods by sea are often referred to as "dry shipping". A textbook transaction would typically involve three parties (seller, buyer and carrier), two express contracts, namely the sales and purchase contract and the transport agreement (often a charter-party) and one implied contract incorporated into a bill of lading.

In "real life", however, there are mostly more than three players. A hypothetic though realistic iron ore export transaction from South America to the European steel industry might look as follows: A Brazilian producer sells the goods to a Swiss trader, who distributes them to EU consumers. The vessel transporting the cargo could sail under Dutch Flag, be owned by a Greek ship owner, who sublet (time-chartered) her via a London shipbroker to an operator in Singapore.

Typically, all the parties along the chain will not all know each other. What they will do to reduce their commercial risks is to "back" important terms of their respective contracts (warranty, transfer of risks, delivery time and conditions, etc.) with each contractual party (so called "back to back" contracts). In most cases, professionals along the chain ensure that everything works out without or with only minor frictions, solved without legal proceedings. In such cases, these contracts are very effective in accomplishing their economic goal. However, when a dispute cannot be settled out of court, they will only achieve satisfactory results when proper consideration had been given to the choice of arbitration clauses at the time of the contract drafting. It is a fact that judgements rendered on similar subject matters, decided under different perspectives, laws, jurisdictions, at different costs and speed, may give disappointing, if not contradictory results.

1. Choice of arbitration

When it comes to shipping, the incorporation of an arbitration clause into the contracts is the rule. We must remember that until the 1950's/1960's, ship owners and traders from around the world appointed ship brokers to negotiate charters at the Baltic Exchange in London. When a dispute arose, it was not an easy task for parties to assign each other in front of national courts and to have a judgement enforced. Therefore, the parties preferred to ask their London brokers to find a solution. If they could not, it is said that the two brokers would together invite an independent senior broker or mariner for a drink or two and ask for his opinion. This way, disputes were settled efficiently and professionals could return to business as usual.

With generalisation of modern information technology and the increased complexity of international trade, lawyers became more involved in shipping arbitration and proceedings more complex. Parties, who used to consider, if at all, the arbitration clause as the last issue of their contract, are now paying an increased attention to the choice of rules of proceedings and face, among several popular arbitration institutes, difficulty to choose the proper one.

2. Under several aspects, the user-oriented Swiss Rules should come into consideration.

First, the **people**: there is no imposed panel of arbitrators, so that competent experts from Switzerland

or abroad can be appointed. These can be lawyers or professionals having their roots in shipping or trading industry.

Second, there is a simple set of procedural **rules**, which can be amended by the parties. They can chose freely the most convenient law to be applied on the subject matter, determine the language and the seat of arbitration, which can be in another country.

Finally, the **rapidity**: in more than half of the cases, an award is rendered in less than one year, which allows a cost-effective and efficient proceeding (for dispute with values below CHF 2 million, the procedural rules provide for an award within six months). Awards can only be challenged in front of the Swiss Federal Supreme Court in Lausanne that generally rules within 4 to 5 months only. As a result, a party losing its case in an arbitration held in Switzerland only has a remote chance to further delay the enforcement of the award by challenging it (other jurisdictions provide sometime up to three levels of appeal).

Conclusion

In conclusion, professional, users-friendly, costs effective and rapid arbitration will often put Switzerland on the short list of parties looking for an efficient international arbitration.