HOUSE OF LORDS

Electronic Trade Documents Bill [HL] Special Public Bill Committee

Oral evidence: Electronic Trade Documents Bill [HL]

Thursday 19 January 2023

9.10 am

Watch the meeting

Members present: Lord Thomas of Cwmgiedd (The Chair); Lord Bassam of Brighton; Lord Clement-Jones; Lord Davies of Brixton; Lord Harlech; Lord Holmes of Richmond; Lord Lansley; The Earl of Lindsay; Lord Parkinson of Whitley Bay.

Evidence Session No. 2 Heard in Public Questions 1 – 11

Witnesses

I: Chris Southworth, Secretary-General, International Chamber of Commerce United Kingdom, and Co-Chair, Legal Reform Advisory Board; Dominique Willems, Head of Public Affairs & Government Relations, Digital Container Shipping Association; Hannah Gilbert, Policy Adviser (Legal & Taxation), UK Chamber of Shipping.

Examination of witnesses

Chris Southworth, Dominique Willems and Hannah Gilbert.

Q1 **The Chair:** Good morning and welcome to the second evidence session of the Electronic Trade Documents Bill. We have two sessions this morning and are pleased to welcome to the first: Mr Chris Southworth, secretary-general of the International Chamber of Commerce UK and co-chair of the Legal Reform Advisory Board; Dominique Willems, head of public affairs and government relations at the Digital Container Shipping Association; and Hannah Gilbert, policy adviser, legal and taxation, to the UK Chamber of Shipping. Welcome to the committee.

We are very interested in understanding how the trade works currently and how the Bill will change it, so it would be helpful if you could say, in a sentence or two, what your particular experience is and what jobs you currently perform. Then I will ask a more substantive question.

Chris Southworth: Good morning and thank you for the opportunity to come and talk to you. From my perspective, this feels like we are coming to the end of a very long journey. I got involved in this whole agenda in 2016-17, when we were talking about the digitalisation of trade, but desperately needed a framework in which to operate and a campaign and an infrastructure to drive legal reform and standardisation across the trade ecosystem.

At that point, we published the ICC's *Digital Trade Roadmap*, in which the number one priority was legal reform. That is where the journey began to investigate English law, then convening with the Law Commission and the Department for Digital, Culture, Media and Sport, and here we are today.

Dominique Willems: Thank you for giving us the opportunity to speak at this evidence session. The DCSA is the global organisation of the nine largest shipping container lines. Our goal is to increase efficiency in that environment and the customer experience in that sector across the globe. On the one hand, we set standards for electronic bills of lading and, on the other hand, we drive their adoption at a global scale.

Hannah Gilbert: Thank you very much for the opportunity to speak today. My role is as a policy adviser at the UK Chamber of Shipping, which is a trade association that speaks on behalf of ship owners. We have a very diverse membership within that of ship managers, classification societies, P&I clubs, et cetera. It is because of that diverse membership that we are here today, and we want to speak more about the legal and practical side of things. I hope I will be able to enlighten some of you today.

Q2 **The Chair:** Thank you very much for introducing yourselves. Before turning to the questions, I should say that I am president of the London Shipping Law Centre; a vice-president of the British Maritime Law Association, which is the UK branch of the CMI; chair of the London Financial Markets Law Committee; and chair of the steering committee of

the Standing International Forum of Commercial Courts.

The first question that we want to ask today is to set the background. As we understand it, attempts have been made in the past to get widespread international use of electronic trade documents. What has happened in the past and why has this not worked? Does the agreement of the Model Law on Electronic Transferable Records—MLETR—mark a turning point and a way forward? I will first ask Mr Southworth for his views.

Chris Southworth: The hurdles have been, in effect, legal. They have been holding up the market for a long time. This goes back primarily to the 2013 WTO Trade Facilitation Agreement, in which the global community came together to establish a more digitalised trade environment, but focused primarily on customs and governance systems and missed the opportunity to look at the commercial system. That meant that all the commercial documents stayed on paper. Since then, we have seen terrific progress on the digitalisation of customs around the world.

Today, we have come to a crossroads, where we have a great opportunity to integrate the digitalisation of commercial trade documents into an existing drive to digitalise the trade ecosystem. That has been the big hurdle: the legal environment just has not been there to scale technology.

Today, technology is not a problem at all. There are plenty of technology solutions in the market already and lots coming into the market. The UK is also a huge source of those technology solutions, so there is a great export opportunity for the UK here. It was not that long ago when we did not have secure technology platforms like blockchain and those sorts of technologies. That has started to mature really only in the last three to five years. MLETR coming in, in 2017, combined with new technologies coming into the market has unlocked the opportunity, except that the MLETR framework is an UNCITRAL framework and Governments need to align their national legal systems to the MLETR framework. That piece was missing when we got involved in 2017 and that is the basis on which we started the campaign to change and amend English law and, now, the Electronic Trade Documents Bill.

So the hurdles have been legal and technical, but MLETR was certainly a turning point. I do not underestimate the turning point that this Bill will be; it will be huge. English law governs 80% of bills of lading worldwide. There is a terrific amount of attention on the UK right now. The UK brokered the ministerial agreement at the G7 and there is a terrific opportunity to replicate this Bill across the Commonwealth. All eyes are on the UK because of that fundamental relationship between English law and the international trading system, so this will be the next big turning point, in my view.

Dominique Willems: I can speak only on electronic bills of lading, by the way; other documents do not much relate to our activities. When it

comes to bills of lading, we are far behind compared to other industries, where digitalisation has already happened. Electronic bills of lading exist in only 1% or 2% of cases, at this point. So it is possible, but only under workarounds and extra measures. If the goal of going electronic is cost reduction, more efficiency and those kinds of things, but it actually becomes more complex and costly, there will be no uptake.

Over the past couple of years, we have been studying what should be done to get this up to 100% eventually. We see several things but, focusing on the legal aspect, there are different pieces to the puzzle. One side is in the commercial environment, when a contract or a document needs to be presented before a court of law. That is possible in most countries, but the conditions are not explicitly made known, which leads to huge legal ambiguity. There is also a fear of going electronic in case something goes wrong.

Another piece to the puzzle is regulatory matters, where information in those documents has to be transferred to government agencies. Customs, tax administrations and transport authorities, for example, also rely on these documents, so that is another part.

Going back to the commercial side of it, adoption of MLETR is not that great at the moment, even though it has existed for several years already. As Chris pointed out, the concept behind MLETR is very good and we are very supportive of it, but there is no one size fits all that works in every country. Therefore, the UK initiative is very important, especially to our members. The largest members of the DCSA conclude their bills under the law of England and Wales, which amounts to 50% to 60% globally. MLETR is a very good concept as such but does not solve everything. It is the same for UK law, but it is an essential piece of the puzzle in getting to 100% electronic.

The Chair: We may want to come back to the regulatory issues, as someone may want to ask you about that, but we will go on to ask Ms Gilbert for her views on the question.

Hannah Gilbert: Thank you. I can only concur with both my colleagues here, Mr Willems and Mr Southworth, who have painted a good picture from the beginning to where we are now.

I will tease out some of the points they raised, one of which is anticipation with regards to the law of England and Wales. A lot of eyes are on this Bill for that reason. Part of the work even of international organisations, like the Baltic and International Maritime Council, is to create standard contracts and clauses for the industry. For the vast majority, they advise that the governing law is that of England and Wales. Even if parties are able to choose a different governing law, if they do not choose anything, the default is normally the law of England and Wales. So I can only emphasise what Mr Southworth is saying: that a lot of eyes are on this Bill.

This presents a unique opportunity for the UK Government. The UK-Singapore digital economy agreement has meant that pilot projects have been able to be started to test the interoperability between two jurisdictions. That is important. I would almost venture to encourage the Department for International Trade, moving forward, to consider including more digital chapters in upcoming renewals and new trade agreements for that reason. You can probably tell from the way we are all speaking that MLETR is the backbone, but this is really about spreading the good word and ensuring that other jurisdictions pick up on that.

Q3 **The Chair:** I will ask one question about harmonisation with MLETR. Others will come up, but mine is much more of a legal question. When one looks at what has happened, other major trading jurisdictions that have implemented it, such as Singapore, have looked at exclusive control rather than possession. Is it right that this Bill follows possession, or is there really no difference in approach and they will both work very well together? It is quite important that two major common law jurisdictions go forward in step.

Hannah Gilbert: My opinion is that, in practice, there is not too much substantive difference in the Bill using the term possession versus exclusive control. There is a link between exclusive control and possession in the Bill, albeit indirect. For the purposes of the Bill, for a document to be possessed, it needs to be an electronic trade document. In order to be an electronic trade document, you need the capability of having exclusive control over it.

The substantive part of the Bill is more to recognise the "possession problem", as I believe the Law Commission called it when the Bill was first drafted. The nuance in English common law is the difference in possession in fact and in law. The difference in language, I think, just deals with that nuance in our common law system. Otherwise, I do not think there is too much substantive difference in practice.

Dominique Willems: I do not have much to add to that. We think exactly the same. As I mentioned, there is no one size fits all; it has to be tailored to the national situation. The proposal that is there now is quite good; practically, it solves the issue and thereby serves its goal, whether it focuses more on possession or on exclusive control.

Chris Southworth: This is the hot topic from a legal perspective. We have spent hours and hours discussing this issue with lawyers in the UK, internationally and with UNCITRAL. We have been around and around the arguments but, in the end, we fully support the position of the Law Commission. Sarah Green's explanation last week was spot on. I think we will see this type of thing in other jurisdictions more and more, where you want to maintain the strengths and advantages of their existing legal systems and align them with the MLETR framework. I completely agree that there is no real substantive difference between the two; they operate perfectly happily in a paper environment, so why would that not be the case in a digital environment? It is absolutely fine and has been tested to death by the experts in our network, for sure.

The Chair: It might be quite helpful to have your subsequent thoughts, if you have any, on how we can make it clear in the Bill, or otherwise, that the view you take is that there is no real difference and no interoperability problem, because one does not want to give rise to the impression that the UK is going off on its own. If you could reflect on that, we would find it very helpful—not now, but do put it in writing, if you would be kind enough. It is rather a difficult question, and I thought it might be easier to give you time to reflect.

Q4 **Lord Clement-Jones:** Good morning. I want to ask a couple of questions about other jurisdictions. You have mentioned them in different ways this morning. The first important jurisdiction that I will ask about is the European Union. Is it taking steps to recognise electronic trade documents, and if so, how is it doing it? Again, back to interoperability, do you have any concerns about that?

Chris Southworth: We have been in a lot of conversations with the European Commission on this issue and they are part of the G7 electronic transferable records working group. The central problem in Europe is that the competence for legal reform is at national level, so there is no central mechanism within the EU framework to mandate or enforce legal reform across all members of the EU. That is their primary challenge. They are extremely aware that the G7 group—Germany, France and Italy—are moving ahead on a faster track, because they are already committed and working on legislation. We are expecting Germany to have full legislation this year; they have half legislation in place already. We are expecting the French to have legislation by 2025, probably in 2024. They are actively working on drafting legislation and have done all the groundwork. Italy is slightly behind.

It is worth noting that the rest of the EU, or the EU as a block, is committed to MLETR alignment in the e-commerce negotiations, or what will become the e-commerce agreement, alongside the 86 countries in that agreement. The MLETR commitment is in the text. That was tabled by Singapore in the UK and agreed by that negotiating block. I am confident the EU will come, but it has to work through what the mechanism will be, and how it will support it. Its primary concern is legal fragmentation. It totally supports what the UK and others are doing and the direction of travel. From its perspective, it is very practical: how do you get a pan-EU approach to this within the structures of the EU?

It will happen, but I think it will happen at slightly different paces, with the G7 group going first and others following. The commitment of the WCO will come in 2024, and after that we will probably see a raft of action across the major nations.

Lord Clement-Jones: The most important thing is this group of 86, rather than the EU as an entity.

Chris Southworth: Yes.

Lord Clement-Jones: And there no civil or common law split in approach.

Chris Southworth: No, everyone is committed in that block, I think primarily because they have seen all the business cases. We have 60 business cases, published in 2021 and 2022, that cover a whole raft of nations: north, south, east, west, all geographies and all sizes of economy. The WCO community has seen those, and recognises the point about the trade facilitation agreement in customs digitalisation: that it has not led to the transformation that was originally envisioned. Some 1% of documents are digital, despite all that investment in customs. That is the most extreme example in the EU, which is the most sophisticated trade facilitation system and framework in the world. The WCO community knows that there is a problem and can see that MLETR alignment dealing with commercial documents is the solution to addressing that problem, and the whole ecosystem can then digitalise. It is very aware of that.

Lord Clement-Jones: You mentioned the Commonwealth earlier. Is it part of this movement, or are we, as the UK, having to move the pace on ourselves?

Chris Southworth: That is a good question. The Commonwealth Secretariat is really supportive. There is a meeting of Commonwealth officials on the legal environment and digitalisation of trade in the middle of February, and there is a Trade Ministers' meeting on the same issue in June. They are super-supportive. Interestingly, the number of countries already aligned to MLETR are more Commonwealth than other countries, like Singapore and Belize and other smaller countries, and the UK will obviously join that group.

The opportunity in the Commonwealth is huge. The business case, by the way, for digitalising commercial trade documents in the Commonwealth is worth £1.2 trillion; that is from the Commonwealth's own study. The Commonwealth's massive advantage is that we all share English law, so this Bill could form the template by which we could replicate this Bill across the 52 countries that do not have legislation already in place. That is the big opportunity in front of us, and I would argue that the UK has a really important role to catalyse that conversation across the Commonwealth and facilitate with the likes of Singapore, and others such as Canada, Australia and New Zealand, which are also committed to doing the same work. There is a terrific opportunity to fast track this digitalisation of commercial trade documents more quickly than any other global network, for the simple reason that we all share the same legislation almost exactly word for word. The Electronic Trade Documents Bill is the answer to that legislation.

Lord Clement-Jones: So it is a subset, in a sense, of the 86, which is even more closely aligned. Let me turn to Dominique and Hannah. There are other jurisdictions of great importance that may or may not be part of the 86: China, for instance, and the US. Where do our biggest trading partners sit in all this?

Dominique Willems: I will come back quickly to the EU. I lead the commission's expert group on these matters. As was mentioned, the EU does not have a mandate when it comes to commercial law—that is up to the member states—but it does set certain frameworks that are necessary for such documents to become electronic, especially when it comes to trust aspects, digital signatures and their validity. For several years, the EU has already eIDAS regulation, which is about uniquely identifying a person, legal or actual, in an electronic way. Those are very important, as is data protection—GDPR and that kind of thing—so that all works well. Several EU member states have it in their national law; France and Germany are the main ones working on it at the moment.

On other parts of the world, I had a call earlier this week with several people from the US Federal Government, including some of their trade negotiators. They recognise they have to move further on this and look to their partners on both the Atlantic and the Pacific sides. They have the same tendency as the UK of supporting MLETR and wanting to align with it, and they have an eventual goal to be electronic, especially with their Asian partners, China and Singapore.

In those countries, they might have been first movers and very quick to act on this, but they have very restrictive ways in which the electronic bill of lading could be used. In the current paper situation, I can sign it, hand it over and that is it, but electronically I have to use multiple platforms and all kinds of things such as registries and systems accreditation. That is not the case with paper. If the cost increases tenfold, even for some of the frontrunners that have had it for several years, we are still stuck at 1% or 2%. It is even worse when countries are required to use some kind of national registry or submit all the data of the bills of lading to a government entity, which is generally not liked in this part of the world.

Lord Clement-Jones: Thank you. Hannah, you may want to come back to the questions that I have asked. This is a work in progress. Is business currently being impeded by the lack of ability to use digital documents in jurisdictions, because, after all, the 86 have expressed intentions and we are a work in progress here? Are businesses that want to use electronic documents being impeded? Is this a cause for concern?

Hannah Gilbert: I would not necessarily say that it is a cause for concern, which implies that something is wrong, but certainly there are far more benefits. It is recognised in business and in practice that in commercial terms it is far more efficient in terms of the environment, administrative burden, et cetera—I could go on—to use electronic trade documents. If we look at some of the tests that have been carried out previously, it is a matter of minutes if you are using an electronic bill of lading, for example. Once it is issued to then being surrendered right at the end of the process takes only eight minutes.

Professor Green spoke about this last week as well. If we take a bill of lading as an example—it is such a complex system, and it is easy to use it to illustrate the point I am trying to make here—the cargo leaves, going from port A to port B. Along that journey is a bill of lading, which

can be sold on to another person and passed to another and another. It passes through five hands before it can reach port B. All that time, the cargo is just sat waiting there, because it cannot be surrendered because of the document of title that Professor Green spoke about last week. So the Bill provides a lot of opportunity for business, and I do not think that is disputed in commercial practice at all.

I will return to the point of Mr Willems and Mr Southworth and perhaps illustrate it. On the EU, we have certainly had conversations with the European Community Shipowners' Associations—another trade association—on this and on the possibility of mutual recognition, as it were, to make this a lot easier. But, as has been pointed out, because it is an individual member state competency, those were very early-day discussions.

You can clearly see that the Bill is not the be-all and end-all; there is work to be done afterwards. I would emphasise that the ICC, the DCSA, the WTO et cetera have already done the majority of the groundwork of reaching out to the relevant stakeholders and making those connections. Government's role is to lean on and support the initiatives that are already out there. This is really their bread and butter at the end of the day. We are not trying to create more work for the sake of it, because the Bill is not the be-all and end-all. It is about looking to the stakeholders in industry that already have the experience and relevant connections, and spreading the good word, as it were.

Lord Clement-Jones: If we crack the 86, would we cover the bulk of it?

Chris Southworth: That is a really good point. There has been a lot of groundwork to get us to this point, but, when the Bill becomes an Act and comes into force, that is actually just the starting gun. The big work that needs to be done is incorporating the standards, systems and everything else across business. The good news is that there is a terrific amount of support. I am not aware of any push-back or challenge in any quarter on this piece of work. It is decades overdue and everyone knows it, particularly in the current environment.

I will make some practical points on China. China is absolutely supportive of MLETR alignment, and it is actually a faster adopter of model laws than most countries, so it has done all the preparation work in relation to other connected model legislation from UNCITRAL. There is currently an Asian Development Bank programme to support China to put legislation in place. That launched a month or so ago, so China is expected to have legislation in the same timeframe as the G7.

The US is part of the G7 group. The big issue there is that it has legislation but it is Delaware law, so it does not have a federal solution. That was always the problem. It has identified a federal solution, which is expanding and amending Article 12 of the Uniform Commercial Code—the UCC. This is important, because if you are trading into other states, when they adopt the new article you will not have to adopt a different state's law—Delaware's—in order to then operate in a digital form. So the US is

absolutely on track in the G7 group. I think it is actually on the same timeframe as Germany and France.

It is worth noting that there is wider momentum around the ASEAN and APEC regions, which in many ways are the most sophisticated digital economy frameworks in the world right now. Asia is a long way ahead of the rest of us on many fronts in this area. ASEAN and APEC are now in the process of integrating MLETR and those commercial trade documents into the existing digital economy framework, so that whole Asia region is likely to move much faster than everyone else.

Q5 **Lord Parkinson of Whitley Bay:** We have touched a bit on this already, but I am interested in your comments about the huge interest in the Bill around the world and the significance for other jurisdictions. As you say, it is a means by which we might be able to catalyse further progress across the Commonwealth more broadly. Ms Gilbert mentioned the UK-Singapore agreement and the potential for the Department for International Trade to focus more on this in future agreements that we are looking at and signing. What more can government and other bodies do, besides the Bill, to encourage the use of electronic trade documents internationally?

Chris Southworth: We have worked with DCMS and the Department for International Trade—DIT—to incorporate the MLETR framework into the UK's FTAs and DEAs. The UK is a global leader right now in digital economy agreements: the UK-Singapore agreement has set a new precedent and is a new gold standard. The former DEPA agreement was always used as the model, but now it is the UK-Singapore agreement, which is a comprehensive solution that includes digital documentation but goes much wider, including the memoranda of understanding.

So we now have two parameters, which is the way we are approaching the work with the Department for International Trade. The Australia-New Zealand agreement is the basic minimum; it is nothing fancy, but it has that MLETR commitment in that legal framework. The DEA is the top-level agreement. We could still improve on that, but we are now pushing for a digital economy agreement to be put in place, wherever possible. Where that is not possible, an Australia-New Zealand-style deal is the basic minimum that we require for industry. That of course depends on the priorities and capabilities of the country that we are negotiating with.

So the frameworks are there. Now, it is just about applying them. The important thing is that this piece of legislation is a prerequisite to implement the frameworks. This is the piece of work that is holding up the implementation; we cannot move documents that are in that UK-Singapore agreement in digital form until this legislation goes through and hopefully comes into force in May or June. So it is a prerequisite to all the trade agreements from this point onwards.

The idea from the department is that every trade agreement has this incorporated into it, and we should encourage every other country to do exactly the same. So we are pushing full digital corridors outwards from

the UK in every area, and that absolutely complements all the work going on at the multilateral, plurilateral and domestic levels. It is a gold-standard benchmark for how all countries should operate, and the UK Government are doing a great job.

Lord Parkinson of Whitley Bay: As the Minister presenting the Bill, I am pleased to hear that. Ms Gilbert mentioned the World Trade Organization and other international fora a moment ago. Would you like to add anything further on what we might be able to do there or, indeed, the role for bodies other than government and for industry itself?

Chris Southworth: The number one priority at the WTO is that we have to seal the deal. The e-commerce agreement has stalled for two or three years now. It was supposed to be completed a long time ago—it got delayed during Covid of course—but 80% to 90% of the text is done, and the UK is absolutely at the forefront of getting that deal done. The priority is to get it done and finalised at the 13th WTO ministerial conference, which I understand is scheduled for 2024. Let us get it over the line—that is the number one priority—and then we can move forward on the next phase of the digitalisation journey. Would either of you like to add to that?

Hannah Gilbert: Mr Southworth put it very eloquently, and I can only concur with his points.

Q6 **Lord Lansley:** Let us look at how effective the technical solutions are, in your view. We will talk a little later to some of those who provide the systems. Of course, in the Bill, we are looking essentially for reliable systems to achieve certain effects. The law will essentially use common law "possession" in relation to electronic documents, where it has previously been used for paper documents.

I will turn to a number of issues. I should first declare an interest. I am vice-chair of the All-Party Parliamentary Group for Trade and Investment, of which the International Chamber of Commerce is the secretariat, so I thank it for that.

I suppose the starting point, from my point of view, is the question of identifying that there is an original document. If you recall, the idea of an original document is a very important one and, with paper documents these days, it is sometimes quite difficult to distinguish the original trade document from what purport to be copies. The same may be true in relation to electronic trade documents, or the technology may be, if anything, better. Are you confident that the systems will be able to identify the original document electronically, as well as we currently do for paper documents?

Dominique Willems: In principle, the technology has already existed for many years. Even without the legal equivalence that would be created by the current Bill, there are higher requirements in the current situation to ensure the reliability and security of the data. Under the current situation, if a company wants to use an electronic bill of lading, it needs a

system with more measures than we might need under the Bill, once it is here. In principle, the technology is fully there.

A few years ago, the market of solution providers was not really mature. There were just a few players and not much choice. The focus was mostly on larger companies and it was not as available to smaller and medium-sized enterprises; it was too expensive, and that kind of thing. The technology to ensure reliability and security is there and has already been proven in this area. On the other hand, the market of solution providers has matured very well and there is sufficient choice for different parties to use this in a trusted environment.

Chris Southworth: I can add a little to that. I wholly agree. From the International Chamber of Commerce's perspective, technology is not an issue at all. There are 10 or 12, if not more, solution providers in the global market that operate perfectly well using the existing technology. The two big ones are essDOCS and Bolero, but you have Lars from Enigio speaking in the next session, who is an excellent voice on this issue. Bolero, by the way, was the first to set the rulebook on this back in the 1990s. That kind of technology was available even then, although it is a lot more sophisticated today.

Some of the technologies are not blockchain now. There is a lot of talk about blockchain, but it is only one of many different solutions and there are lots of others coming. Some of the new provisions are military-grade. There is a lot of talk about security and safety, but this is military-grade technology coming to the market. This Bill is also expected to help drive even more innovation in the market than we already have. So technology is not the issue.

The issue, if we want to scale and improve access to the global trading system, is that we need a much broader public law environment rather than relying on just private law. All the evidence points to that. The fact is that we have providers in the market, but this has not scaled at an appropriate cost or price level to allow all SMEs to access it, all over the world. That is why we need the lower-cost public law environment, which is MLETR and all the national jurisdictions aligning to it.

In the future, I am sure that those two systems will run quite happily in parallel with each other, but our priority, for the purposes of this conversation, is to enable all SMEs and small companies around the world access to this trading system, at much lower cost, with faster flows of trade and much less complexity. Get rid of all that paper and the unnecessary bureaucracy, time and inefficiency that comes with it. The technology is there and I am sure there will be lots more coming—a lot from the UK, by the way.

Hannah Gilbert: This is to add to the points of Mr Willems and Mr Southworth. If we look at the varying degrees of success at kick-starting these initiatives in the past few years, technology has never been the issue. It is more about scaling up, as we have already discussed. The technology is there and it works. It has never been the problem. It is

more the aftermath and scaling up, as we have already discussed. That is the point I want to hammer home.

Lord Lansley: On the system administrator, one of the things that we are looking for is the concept of exclusive control. The Explanatory Notes to the Bill are clear that the intention is to identify the one person, or persons acting jointly, who has exclusive control. In these technological systems, to what extent is the system administrator in a position to exercise control? Is that a complicating factor, or are the systems and standards that we are talking about clearly able to identify that, although they administer the system, they do not control or have possession of any of the documents?

Chris Southworth: You are probably better off asking Lars from Enigio that exact question in the next session. We can help. If you want to speak to the other providers, we could easily set up those conversations. You can talk to them all, as they will all walk you through how that works specifically from a technology point of view.

Q7 **Lord Davies of Brixton:** I want to ask about the integrity and security of the software. The Bill is about the law, but this will work only if the software is there. You have, in effect, answered my question, as you seem extremely confident, but could you confirm that the software is going to be there?

I have more of an open-ended question. What are the biggest threats out there? Are you aware of other threats? What are you doing to cope with potential threats to the technology?

Dominique Willems: In principle, the threats are the same as they are in any other environment where sensitive data could be gained by people who do not have the right to it and who could manipulate it for the wrong reasons. The same thing works there as it does with customs, border patrol, medical information or those kinds of things. Especially with cyber, there is always a risk of a breach in security; that will always exist.

The thing is that it is easier to manipulate data in a paper environment than in an electronic environment. Plus, in a paper environment, there is no audit trail—as it is often called—where you can see who has been changing documents and whether that person had the right or exclusive control, yes or no. That can be traced and tracked much better in a digital environment than in a paper environment. When it comes to the function of a bill of lading or trade document overall, after it has become digital and it has been done in the right way, as has already been done in so many other areas, the security issues or risks should be fewer.

Lord Davies of Brixton: I am not clear from what you said whether documents are being exchanged electronically in parallel to the old system. Is there a dual system at the moment?

Dominique Willems: In principle, it is already possible, through legal frameworks and by agreeing on technology and security standards, to exchange these bills in the industry. There has been no serious incident

there, which is also an issue, as there has been no case law and no incident has occurred that would have tested these things.

With that lacking, there is an ambiguity about how high these security standards should be. In the current situation, they are very high because banks are involved. I am sure others on the next panel will explain this but, once legal equivalence is created, this could become more common, although it would require testing and piloting.

Chris Southworth: On the security point, it is worth noting that there is often an assumption that the existing system is safe. It is not. Documentary fraud is pretty widespread. The reliance on the postal system to shuffle deals around in brown paper envelopes is not particularly resilient, as we saw during Covid when the planes were grounded and the ships were sitting in Singapore. We could not transact the deals; they were all sitting in Heathrow in brown paper envelopes because the planes were not flying, and the postal system had been shut down. Digital is far quicker—you can do it in minutes. You do not need to wait months or days to do it. We could have been transacting deals during Covid. We did not need to be held up. That was purely because of our paper-based system.

That fraud piece is significant. All the evidence says that the technology is far safer. You cannot completely eliminate risk, of course, but the evidence points to the technology systems being far safer than the current paper system.

Q8 **Lord Bassam of Brighton:** In a sense, my question follows on and is a simple one. Are you clear on how time and place will apply when a paper document is converted into an electronic trade document?

Hannah Gilbert: Where time and place are relevant when converting from a paper form to an electronic trade document, my reading of the Bill is that if it is a legally salient feature upon which rights and obligations depend, those same rights and obligations will continue when converted into an electronic trade form. I do not think there has been any argument otherwise. As long as it is a legally salient feature in the paper trade form, it should be the same for the electronic trade form as well.

Chris Southworth: I completely agree with that. We are not fundamentally changing the law, in that the large proportion of the two pieces of the legislation that we are talking about—the Bills of Exchange Act 1882 and the Carriage of Goods by Sea Act 1992—stay the same. The Electronic Trade Documents Bill is important, hence it is primary legislation, but it is simply an amendment that enables us to handle those documents in digital form. Everything else remains the same as it did before, and that is worth bearing in mind in any of the conversations about provenance or the details of the information being transacted. It is the same as it always was; it is just in digital form.

Q9 **Lord Holmes of Richmond:** I declare an interest as a member of the advisory board of Circulor, a supply chain traceability company. Are there

any technical risks with the move to electronic trade documents that have not already been addressed?

Chris Southworth: I do not think so. There has been a tremendous amount of preparation and planning with the core and provider communities—the carriers, shippers, banks, traders, ports—in the lead-up to this point. People in the core community are acutely aware of what is coming. The big challenge ahead is that we have to broaden that out to every trading company, and there is a terrific amount of awareness-raising to do. I do not envision risks; I do not wake up in the morning thinking there are a thousand risks that we or others have not already considered. I do not see that as an issue. We just need to get the legislation in place and enable the market to get on with the job.

Dominique Willems: In terms of technical issues, we have been testing and piloting this with all the solution providers that are out there: banks, importers and exporters, our members, and we have not really come across technical issues in the private sector. In the regulatory area, where Governments either want a document or need data from it, during Covid this became in principle electronic in all the major trading jurisdictions. But electronic is just electronic; it is not digital in most cases. It is a copy of a paper document, so that does not necessarily lead to all the advantages that electronic could bring. We see downtime of those systems and of Governments, and updates constantly going on. The availability of other systems that are needed is a technical issue that we see, and the focus is not always fully there.

Chris Southworth: That is why the pilots are so important. The whole purpose of these inoperability pilots—starting with the UK-Singapore one, although they will be through every trade corridor—is to test the systems in a technical sense. At that level, there is a lot of technical challenge and work. All the necessary people in that field are around the table working through those technical challenges. It is technical for sure, but the pilots are there to test the systems and prove to the market that this works, and then obviously to scale up from that point. That is the approach. The Centre for Digital Trade and Innovation is busy working on that with partners, including the DCSA and the UK Government.

Hannah Gilbert: I will move away from technological risks and focus on the legal side. We touched on this earlier with regard to the similar initiatives being undertaken by other Governments in other countries. It is important to bear in mind that the Bill will not solve every problem with the potential of conflict of laws in other regimes. That is not what we are here to do. The Bill is to realise, on a more national supply chain level, the opportunities that are already available because of the technology in the market.

We already have regimes in place. In Europe there are the Brussels convention, and Rome I and Rome II. Rome I deals primarily with contract law and sets out a hierarchy in case there is a conflict of laws. In terms of technical legal risk, we already have regimes in place to deal with any potential conflict. I know that the Law Commission is planning to

release a consultation, in Q3 or Q4 of this year, specifically on conflict of laws and emerging technology. As much as we can emphasise how important this Bill is, I want to take a point that Mr Southworth raised earlier: that we are not fundamentally changing the entire legal system. We already have a good international regime in place that deals with potential legal risks of conflict.

Q10 **The Earl of Lindsay:** I have a general question for the panel. There is no need for everyone to respond if they do not have any response to make. You have been persuasive advocates of the move from paper-based to electronic trade documents. Do you have any concerns about the transition? Are you aware of any concerns among your fellow travellers, or the organisations you represent? If we were compiling a SWOT analysis from this morning's discussion, the columns under strengths and opportunities would have been filled in magnificently. Are there weaknesses and threats from the transition out there that people perceive?

Dominique Willems: In recent years, almost all the stakeholders we talk with, whether that is Governments, legislators, private sector parties, no longer see a threat in going digital. It became especially clear during Covid that there is need to do this.

However, we see the weakness perhaps, or the threat—it depends how you see it—of a lot of work being done to make it possible, but then no one actually uses it. With Covid gone, or no longer as severe, the urgency has gone a bit too. There is higher inflation, there is recession, there is a focus on cost saving.

Despite that, in principle, going digital and using an electronic bill of lading should reduce costs. There is an initial investment in different ways, but if the private sector parties that actually have to use it, especially the small and medium-sized enterprises where there are large volumes of companies, are not persuaded to go digital in the right way, there is the threat of this eventually becoming meaningless.

Chris Southworth: My concerns at a macro level are threefold. First, the West is significantly behind the East. The East is moving at a different pace and scale than the West. England and Wales changing their law is a big step forward, but we, as a western set of economies, need to drive this agenda to catch up, because we need a balance in systems and approaches for this to be successful. That is my first concern.

Secondly, and this is perhaps a bigger concern, there is a risk of a digital divide taking place. This is a collective endeavour and we have to help each other. We cannot be in a situation in which the G7 and G20 branch off and all go fully digital, but we leave the emerging markets behind. We also have to help the markets, particularly from places like Africa and Latin America, which need our help. There is a job to be done where we know that there is a capacity gap and it is simply a technical assistance activity.

Thirdly, it is about political will. It just so happens that the drivers are all convening at the right time at the moment, whether they are about sustainability, net zero, nature-positive, digitalisation or economic recessions. Everything is driving at the need to cut costs, create more efficiencies and create a more sustainable system. If, for whatever reason, the politicians change their view on priorities, the whole thing will slow down. The private sector can do pretty much everything, but it cannot change the law. It cannot change customs and the Government's side—its piece of the bargain. We need Governments to be fully engaged and to change the laws around the world. That is clearly going to take some time. We need that political will to stay for the long haul while we go through that journey and process as a global community.

Hannah Gilbert: From my perspective, probably at a more granular level, presuming that the Bill is passed in May, June or July this year, we need to start thinking about the different operating models that commercial shipping uses. For example, if we have bulk cargo carriers that carry one type of cargo in each vessel, that means that there is one owner with one bill of lading. Conversely, there are general cargo carriers that carry things on pallets, drums, containers, et cetera, with 10 to 20 different types of cargo on board with 10 to 20 different owners. That means 10 to 20 different bills of lading going through for that one ship.

This is not criticism; it is more commentary to bear in mind after the Bill has passed. This is where more granular work is needed to understand that there are different operating models in commercial shipping. There is no one-size-fits-all solution here. We need to recognise that we need more information on these different types of operating model. Again, this is not a criticism, as such. When the Bill is passed, more information gathering and research are needed to understand that there is not just one solution for every ship. This is very varied and diverse, so we will need more targeted solutions.

Q11 **Lord Harlech:** Panel, is there anything that is not in the Bill that you would like to see in it, or anything currently in the Bill that you think needs to be amended?

Hannah Gilbert: The simple answer is no, to keep it brief. The Bill is very well drafted and deals very well with the Law Commission's so-called "possession problem" in English common law. So no, I do not think anything further needs to be added or anything amended.

Dominique Willems: My short answer is also no. We were initially afraid, when the Bill was under consultation, that it was too limited to a specific list of documents. There is now an umbrella provision in it so that, if relevant, consignment notes would be in there. No, there is nothing else. It is really good.

Chris Southworth: I have the same answer. This is a terrific piece of work by the Law Commission. It is a well-consulted piece of legislation that has been going on for a long time. It also predates the Law Commission's work. A lot of people have fed in. All the key constituencies

and different parties that need to feed in have fed in, and that is the big issue with trade: it is complex and has a lot of stakeholders.

This is a great piece of law. Its simplicity is one of its biggest advantages. It is not complex; it is simple. That is what we most like about it. We are not changing the big picture of the legal framework of trade here; we are just going digital. Let us keep it simple, and I hope it inspires other countries to do the same thing and take the same approach. Going back to the Commonwealth, we could help accelerate that. This is a great piece of work.

The Chair: Unless anyone has any further questions that they wish to ask, I thank you, on behalf of the committee, for giving evidence this morning and for your very clear and enthusiastic answers to the many questions that we asked. We may follow up with some questions asking some more information on the matters you have raised, but we will do that in writing as soon as we can. Thank you all very much, and I thank those who have come with you and supported you in what you have been preparing to say.