



Charter Party Bills of Lading & Transhipment

UCP Art. 22 makes no reference to transhipment unlike Art. 20 and 21. We must therefore look to the latter articles when construing the manner in which transhipment under a C/P is to evidence when it may, or will, occur.

We have in the recent past had discussions with two different, international trade finance banks regarding the correct way of evidencing a transhipment on a transhipped C/P BL. Whilst the banks had their own views, this was at variance with that taken by the vessel owner as also our own.

To summarise the issues:

We had two separate transactions secured by separate BLs. Goods were shipped in Gdynia, Poland under the one BL resp. Kotka, Finland under the other, transhipment was to take place in Rotterdam for discharge in Jiangyin resp. Ningbo, both ports being in China.

For both BLs the same vessel owner was responsible for both vessels used as also the entire carriage from the loadports to the ultimate ports of discharge. The BLs presented were those issued after transhipment had taken place. Originally, the Place and Date of issue showed Gdynia resp. Kotka on 25th January resp. 12th November. Transhipment took place for both cargoes on two different, named vessels on a given date in Rotterdam on 28th January resp. 17th November to which both BLs expressly referred.

To recap, there were two separate cargoes involving entirely different BLs which were handled by two different trade finance banks.

The owner, and we, wanted to show Gdynia resp. Kotka as loadport as also the actual port of discharge and to make reference in the body of the document to the transhipment. The banks objected to this format because they held that at the time of issuance deduced from the date of the BL on its face, the issuing party could not with certainty state that transhipment would take place on the named vessels upon the dates stated. It is to be noted here that BLs are frequently issued after the actual date of shipment for logistical reasons e.g. the difficulty of concluding all the formalities on the same date i.e. the date of shipment. This is not unreasonable for it is quite possible that various cargoes furnished by sundry shippers are loaded during a given day, taking place from morning until evening, hence the practical difficulty of finishing all the formalities within the same time-span.

We had some sympathy for the banks' view (being ex-bankers ourselves, but which the owner did not share) and tried to explain to the banks that the BLs were issued AFTER transhipment had taken place, which is why the 2nd vessel (loaded in Rotterdam) could be stated with certainty and, with equal certainty, the port of discharge.

Notwithstanding this, the banks declined to accept the draft C/P formats presented and the owner was obliged to show the entire transit and also insisted on evidencing this 2nd vessel in the box under “Onboard the Vessel ...” because at the time of issuing the BL this was indeed the vessel upon which the goods had been shipped for further shipment to the port of discharge.

What we had suggested was a BL indicating the actual ports of loading and discharge with a statement in the body of the text indicating “transshipment to take place in Rotterdam” which the owner however declined to accept as it would “hide” the vessel and date of transshipment occurring in Rotterdam.

The banks wanted the BLs to show as loadport Rotterdam in order to evidence that transshipment actually took place on the named vessel and be dated as of the date of transshipment and declined to take up and pay for the shipping documents unless this could be achieved. The vessel owner on the other hand wanted to have the actual port of loading evidenced (in the “Port of Loading” box) and be issued as of this date as this was the point at which the owner’s liability as Carrier commenced but also wanted to have the 2nd vessel shown in the “Onboard the Vessel” box to prove that the 2nd leg of the transit had also been commenced.

The banks’ insistence upon showing the transshipment port (Rotterdam) in the “Port of Loading” box raised two important issues: 1st the risk of the “on board” date for such a “shipped” bill of lading being outside the latest date of shipment permitted in the LC and 2nd the legal obligation for the owner to evidence when, and where, his carrier obligations commenced.

Ultimately we found the following solution; Rotterdam was shown as the port of loading and the C/P BL was dated as of the date of transshipment whilst the banks accepted an additional clause in the BLs stating both the original port of loading and date goods were shipped on board there which further ensured there was no late shipment discrepancy, this also achieved consensus on the deferred payment date which was as is often the case, linked to the date of shipment.

We trust the above is instructive of the problems that traders sometimes have when trying to balance the demands of banks and 3rd parties, whilst still being able to present LC compliant documents which meet the requirements of the LC issuing bank and LC applicant which latter will refer also, if not primarily, to the underlying commercial contract for compliance therewith.
