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Paper on Multi-Modal Transport
and its Application to Banking

Please find draft paper on the above subject enclosed
for your comment.

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MULTI-MODAL TRANSPORT

Documentation as it Affects Banking

Firstly, I would like to say that I have no practical experience in the field of combined transport documentation. I was chosen to be a member of this Committee simply because I happened to be one of the very few members of this Association who was working on the corporate side and it was thought appropriate that somebody with business experience should be a member. Therefore I bring no expertise to this subject, and the paper is the result of researches amongst the few basic materials that have been published on the matter.

Multi-modal transport has largely developed since 1962. There have been naturally many uncertainties in interpreting existing documentation against the developments in international transportation of which the multi-modal is perhaps the most important.

As other speakers have indicated, the basis of multi-modal transport is that one person, called a combined transport operator, arranges and accepts responsibility for the performance of the whole door to door movement, and accepts liability for loss or damage throughout the whole cycle from the seller's to buyer's door. To assume this liability he issues a carrier type document, usually referred to as a Combined Transport Document.

This Combined Transport Document is the catalyst which initiates the movement of goods from one country to another on a door to door basis. An essential part of this movement is the role played by the bank (both the buyer's and the seller's); the success otherwise depends on the negotiability (sometimes called the "bankability") of the documents.

At this stage it is appropriate to digress and speak briefly about the methods used by the banks in effecting an international business transaction.

Terms like "documentary credits, sight drafts", etc. are mystifying to most laymen and unless the basic concepts are understood a subject such as this would be quite meaningless.

The four main types of financing international transactions available in Australia are:

1. On Consignment

The exporter consigns the goods direct to the buyer. To meet the needs of the Reserve Bank of Australia which administers

the Foreign Exchange (Banking) Regulations he sends the shipping (or other) documents through his bank to the buyer's bank, arranging for payment to be made when the buyer receives the goods. In a consignment transaction the exporter really extends credit to the buyer and is out of money until the buyer pays up. He also loses control of the goods and relies only on the trustworthiness of the buyer.

2. Collections

Where the seller wishes to retain some control over the goods until the buyer has paid for them he can ship the goods and send the document through his bank to the buyer's bank and the buyer only receives the documents after he has paid the accompanying bill of exchange sent with the documents. If the seller wishes to extend credit to the buyer he can arrange for the documents to be handed over after the buyer "accepts" the bill.

3. Negotiations

In this case the seller ships his goods and takes the documents comprising a full set of bills of lading and insurance certificate, together with a bill of exchange drawn on the buyer to his bank. The bank then buys the bill of exchange and sends the bill to its agent in the buyer's town who eventually reimburses the bank - i.e. the bank finances ~~the bank~~ finances the goods until they are actually paid for by the buyer. The weakness with this system is that the bank has recourse against the seller who has received payment on the understanding that the buyer will meet his bill upon the due date.

4. Documentary Letters of Credit

This is the most commonly used method, particularly with the larger transactions. To eliminate the contingent risk of the bill not being met, the seller requests the buyer to establish a letter of credit in the seller's favour which will guarantee that the bills drawn by the seller will be met on the due date. The buyer requests his bank to authorise the seller's bank to negotiate the bills of exchange drawn by the seller up to a stated amount and accompanied by the documents stipulated in the credit. The seller's bank, on receipt of these instructions, advises the seller, who can safely go ahead and ship the goods and then obtain payment by presenting his draft and the necessary documents to his bank for negotiation. The latter despatches the draft and documents to the buyer's bank and obtains reimbursement in due course.

The virtue of the letter of credit is that it overcomes the financial risks associated with other methods of financing

overseas trade. The responsibility of payment for the goods is transferred from a dubious buyer to an international bank of repute and integrity, and the seller is assured of prompt payment by his own bank when he presents the draft (bill of exchange) and documents in accordance with the terms of the credit.

The buyer requests his bank to issue the letter of credit, stipulating the amount to be paid, the description of the goods, the documents required by the buyer, the terms of the bill to be drawn and an expiry date of the letter of credit. The buyer's bank will pass these instructions to the exporter (usually through the latter's bank) who will ship the goods and draw a bill for them and have it negotiated at his bank.

Therefore banks really play the primary role in negotiating documents and arranging payment for the goods sold from Australia.

The seller requires banking documentation of such a nature as to ensure that the money will be paid to him in exchange for him to arrange to ship the goods.

Problems and difficulties do arise with the different types of credits in use. Banks examine documents with care because they are committing their clients' funds and accepting liability themselves.

For many years the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits have been accepted in Australia and throughout the rest of the world.

The Uniform Customs and Practice for Documentary Credits were adopted by the Australian Trading Banks in July, 1963.

In 1974 UNCITRAL adopted a revision of these rules and recommended the use of the 1974 revision as and from 1st October, 1975 in all transactions involving the establishment of documentary credits. The Australian banks have adopted this recommendation.

These rules take account of the fact that the terms of purchase and sale have swung from the traditional FOB and CIF basis towards Delivered to Buyers' Premises terms, and the through multi-modal movement of unitized cargo increasingly competing with the traditional single mode carriage of break-bulk cargo.

This revision takes account of the rapid development of containerisation in the carriage of goods and recognises the difficulties in relation to documentation. e.g. a container will invariably be subject to successive carriage and some form of through documentation is necessary.

The revision contains a section, C.1.2 on combined transport documents.

Under Article 23 of this section if the credit calls for a combined transport document, defined as one which provides for a combined transport by at least two different modes of transport from a place at which the goods are taken in charge to a place designated for delivery, or if the credit provides for a combined transport document but in either case does not specify the form of document required and/or the issuer of such document, banks will accept such documents as tendered.

The banks will accept a document even though it does not indicate that the goods are on board a named vessel.

Under Article 24 the banks will consider a Railway or Inland Waterway Bill of Lading or Consignment Note, Counterfoil Waybill, Postal Receipt, Certificate of Mailing, Air Mail Receipt, Air Way Bill, Air Consignment Note or Air Receipt, Trucking Company Bill of Lading or any other similar document as regular when such document bears the reception stamp of the carrier or his agent. Article 25 states that where a credit calls for an attestation or certification of weight in the case of transport other than by sea, banks will accept a weight stamp or declaration of weight super-imposed by the carrier on the shipping document unless the credit calls for a separate or independent certification of weight.

Throughout this revision there are many references to the combined transport mode. e.g. under Article 19 (b) (1) Bills of Lading will be accepted even though they cover several modes of transport.

Much of the credit for the almost universal adoption of the 1974 Revision must go to Bernard Wheble who, as Chairman of the Banking Commission of the International Chamber of Commerce, was responsible for achieving agreement on the text.

Bernard Wheble addressed the Conference on Combined Transport organised by Lloyds of London in Amsterdam in November, 1975. He delivered a paper on the bankability of the Combined Transport Document.

As he stated, "Without international trade there would be no need for applicable international conventions and national laws - or for any transport documentation."

From the view of the bankers the documentation is not an end in itself but more importantly a means to an end - its purpose is not to satisfy legal rules but to meet the procedural needs of international trade and the financing of that trade.

He also spoke about the requirements which must be met if the transport document is to be deemed "bankable".

These requirements he described under four headings:

The document must:

1. give control over the goods. There could be a conflict between the buyer's requirements under a letter of credit and the lending banks requirements for security purposes.
2. prove the existence of the goods. i.e. gave third party confirmation of the quantity and description of the goods.
3. give an assurance of the goods being in sound condition.
4. show that the goods are in the possession of the issuer of the document as carrier.

Therefore, in the case of combined transport (a) there must be a single document and not a succession of documents covering the different modes, and (b) one party must remain responsible for the movement of the goods.

It is not possible to get third party confirmation of the quantity and general description of the goods, that the issuer of the document was not the carrier and that the goods were not necessarily in movement at the time the document was issued.

In addition, liability for loss or damage could be a matter of concern since the banking interest is certain to get either goods or cash in place of lost or damaged ones. Accordingly, the bank will require end to end cargo insurance covered with an underwriter of known standing and providing for payment of claim in the desired currency and at the desired place.

In the case of the documentary collection, where the function of the bank is acting as agent of the shipper (seller) for the purpose of exchanging documents for money the bank's potential exposure is less than in the case of the documentary credit, where the bank has to pay against and receive the document called for by the credit. The general rules of the 1974 Revision will apply in both cases.

Bernard Wheble concluded that there was a requirement for an international convention or national law to cover the multi-modal transport of goods and standardising the liabilities and responsibilities and documentation since individual banks may take different attitudes as to the acceptability of a combined transport document. e.g. is it a negotiable document, of title or a non-negotiable document of control?

Finally, it appears that any future convention will have to take cognisance of the development of Automatic Data Processing. i.e. providing for ADP transmission of data in place of its manual transmission in documentary form. So any standard document which may eventually be accepted could very well be soon out of date.

It is important to realize that convention or no convention, the banks have taken a very realistic and certainly non-legal approach to enable buyers and sellers to effect international trading transactions.

However the present situation rests upon mutual trust by the First Class International Trading Banks - there is presently no real method of legal enforceability as would be provided by international standardisation or the universal adoption of an international convention.

BWM
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