

An opinion about the originality in shipping documents

Banks, especially in developed countries, are more likely to look to the credit worthiness of the parties with whom they deal and other security arrangements they may have with those parties rather than to title documents such as B/Ls to be presented under the credit. The reason for this may be practical rather than legal-the goods being shipped may not be of great security value to bank due to its limited ability to resell them and the inherent risks involved in their carriage. Also, as a result of continuing advancement in document production technology, it is increasingly difficult to distinguish between a copy and an original document. The loose drafting of sub-article 20(b) of UCP 500 may have contributed to the reduced importance of B/Ls as security documents. Even though the practical difficulties are obvious, this should not be a reason for undermining the security value of the B/L. Problems arising from sub-article 20(b) of UCP 500 should have been addressed more clearly in UCP 600.

Sub-article of UCP 500 is confusing, to say the least, when read together with UCH 500 sub-article 23(a) (iv). Sub-article 23(a) (iv) requires the sole original bill of lading or, if issued in more than one original the full set to be tendered. At the same time, sub-article 20(b) enables production of additional originals. This is an odd outcome, bearing in mind that in most countries B/Ls are documents of title and are offered to banks as security for letters of credit. Nevertheless, sub-article 20(b) of UCP 500 is clear in its literal meaning.

UCP 600

In UCP 600 articles 20 and 23 of UCP 500 became articles 17 and 20, and the wording of these articles has been amended to some degree. However, the outcome did not change materially-sub article 17(c) (iii) still states; "Unless a document indicates otherwise, a bank will also accept a document as original if it..... states that it is original, unless the statement appears not to apply to the document".

The wording of the new sub-article 17 acknowledges that sonic documents marked as "Original" may not be originals, but it still requires banks to treat any documents, including copies of B/Ls which are marked as "Original", as original documents when there is no reason to doubt that the marking refers to some other document.

Shipping documents, and in particular B/Ls, would be more attractive as security if sub-article 20(a) (iv) of UCP 600 took precedence over article 17. In other words article 17 should not be applicable to B/Ls.

'think a situation in which a B/ L states that three original B/Ls were issued when the first B/L tendered to the bank as a genuine original and the second and the third are just copies stamped as "Original".

These tendered documents are neither discrepant nor inconsistent, and they are in compliance with the requirements set out in the L/ C and UCP 600, putting the document checker in to an 'unsure state.

The risk remains that the security for the L/C, the shipped goods, will be demanded by a third party in possession of a "missing" genuine original B/L, defeating the banks security.

Difficulties arise when the appearance of the document tendered to the bank is such that the bank cannot determine conclusively whether such document is a copy or an original. Unlike carriers, who know exactly what their shipping documents look like, document checkers have no way of verifying

- (i) who stamped the copy as original
- (ii) whether the B/L is forged or not and, most importantly,
- (iii) whether there are more genuine originals outstanding.

Loop Hole

Banks nowadays demand the entire set as a precaution against fraud. Therefore, a buyer, if properly advised, will ask for a provision in the sale contract giving him the entire set of B/Ls or risk being in breach if the bank rejects a tender of less than the entire set.

If banks would, instead of demanding a full set of B/Ls, encourage merchants and carriers to use a single original B/L, the market could move away from the practice of dealing with multiple original B/Ls. This should ultimately lead to an outcome in which carriers will issue only one original B/L, which would reduce considerably the risk of fraud arising from the 'loop hole', opened up by sub-article 20(b) of UCP 500.

It is not entirely clear whether article 17 of UCP 600 should be applicable to B/Ls. A plain reading of the new UCP suggests that article 17 is applicable, because B/Ls are not specifically excluded from the article. So far I presume, there have not been any cases concerning the originality of a B/L, but there are several cases concerning the originality of other documents.

Raymond Jack states in his book "Documentary Credits" that verification of originality will become increasingly difficult as document reproduction technology continues to improve and colour copying becomes commonplace.

This appears to have happened already, which is why Banking Commission should have reacted by clarifying in UCP 600 that article 17 in UCP 600 is not applicable when credit calls for a B/L.

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*References: DC Insight UCP 500 & 600
Documentary Credits - By Raymond Jack*