

# FIATA

Schaffhauserstrasse 104, P.O. Box, CH-8152 Glattbrugg, Switzerland  
Tel. +41-43-211 65 00, Fax +41-43-211 65 65  
E-Mail [info@fiata.com](mailto:info@fiata.com), Internet <http://www.fiata.com>



ICC – International Chamber of Commerce  
Mrs Viviane Schiavi  
Senior Policy Manager  
Transport and Logistics Commission  
38 Cours Albert 1er  
FR-75008 Paris  
France

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Ladies and Gentlemen

At the most recent world congress held in Moscow, the issue of UCP 600 and its impact on freight forwarders was raised in several venues, Working Group Sea and Advisory Body Legal Matters in particular.

The discussions therein surrounded to the greatest extent the possible removal of the existing UCP 500 Article 30 addressing “transport documents issued by freight forwarders” by the new far more generic Article 30 effectively eliminating all reference to “documents issued by freight forwarders” in the new draft of UCP 600.

The forwarding community represented by FIATA would be disappointed by the removal of reference to “transport documents issued by freight forwarders” principally because there is significant concern that this would adversely affect the use of the FIATA FBL, an ICC approved document used worldwide by the freight forwarding community when acting in their capacity as carriers.

While we believe that the concern is probably limited in developed countries, it is our experience that banks in undeveloped areas of the world consider reference to “transport documents issued by freight forwarders” as their justification in accepting them when they are presented for negotiations under a letter of credit.

Since the FIATA FBL is recognized as a forwarder document (and yes, we do acknowledge the fact that it is acceptable as a carrier’s bill of lading when signed by the forwarder as a carrier), we are concerned that this point may be overlooked by banks in developing countries given their preoccupation with the fact that this is a “forwarder’s bill of lading” and UCP 600 no longer makes reference to “transport documents issued by freight forwarders”.

The writer has reviewed several articles which have appeared in *DCInsight*, one of which appears in Volume 11 No. 3 entitled 'Freight Forwarder B/Ls: Two Responses'

I must admit that my personal view of the two responses is that Mr. Christensen is on the right track and that Mr. Lee's suggestion of the use of such definitions as contracting carrier and actual carrier could give rise to the virtual elimination of an extremely important competitive facility available to the industry worldwide and currently provided by freight forwarders and NVOCC's.

Given our understanding that you are meeting in the very near future to address this and other subjects in the draft of UCP 600, we wanted to raise this matter directly with the Transport Commission of the ICC to ensure that they are aware of our concerns and why our industry anticipates a negative affect as a result of this latest draft. We are hopeful that some compromise can be proposed and look forward to your thoughts concerning this issue.

A second issue of concern to us within the latest draft relates to the issue of transshipment in port to port marine or ocean bill of lading. While the revised article 30 acknowledges that modern day transportation in containers does not subject cargo to the same rigors as did breakbulk transportation and in consequence permits transshipment even if the letter of credit prohibits same, the existing wording creates a serious obstacle to banks.

It is hard to understand that the banking community cannot grasp the significance of the fact that the contract of carriage entered into between the shipper and the carrier and indicating thereon a "place of receipt", "port of load", "port of discharge", and "place of delivery" effectively commits the carrier to undertake movement of the goods from that place of receipt to that place of delivery. I hasten to add that this is under normal circumstances (under which the vast majority of shipments move) and understand the rights of the carrier under circumstances of say "force majeure", etc. The wording of the revised article and I quote article 30 item A 3 "indicates shipment from the port of loading to the port of discharge stipulated in the credit" (underlined by the writer). This remains a problem because banks interpret this to mean the field entitled 'port of discharge' or for that matter 'port of loading' must reflect that which is indicated in the letter of credit.

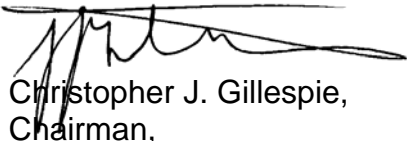
Carriers for their part face an issue with their insurers in that they require the contracts of carriage indicate transshipment if transshipment takes place. In consequence, a bill of lading presented under a letter of credit requiring a marine/ocean bill of lading and indicating transshipment will routinely be rejected by most banks because the port of discharge does not appear in the field labeled port of discharge even though the place of delivery clearly indicates that the carrier is committed to deliver the cargo to the port of discharge as required by the buyer.

Through FIATA and our representations to the banking commission, we have suggested that a simple inclusion of the following clause could easily facilitate and effectively remove this concern. "Where transshipment is permitted in accordance with item b and c of this article, a B/L evidencing a place of delivery which is the same as the port of discharge stipulated in the credit will be acceptable even if the port of discharge indicated thereon is different from that stipulated in the credit." This would eliminate the issue concerning transshipment and could even be adjusted to address those of place of receipt in similar situations.

Hopefully our comments will be seen in the light of constructive criticism and will lead to adjustments which can only serve to facilitate international trade undertaken through the vehicle of letters of credit.

Yours very truly,

FIATA



Christopher J. Gillespie,  
Chairman,  
Multimodal Transport Institute

CC: Mr Ron Katz, Policy Manager  
Banking Technique and Practice Commission

Mrs Maria L. Cattai  
Secretary General of ICC

Mr Abdelmalek Dahmani  
FIATA Delegate on ICC Banking Technique and Practice Commission