

Chapter 9

Trade Documents and Transportation

DOCUMENTATION IN EXPORT-IMPORT TRADE

A number of documents are used in export-import trade. The completion and submission of required documents is critical to the successful shipment, transportation, and discharge of cargo at the port of destination. The documents used depend on the requirements of both the exporting and importing countries. Much of the documentation is routine for freight forwarders or customs brokers acting on the firm's behalf, but the exporter is ultimately responsible for the accuracy of the documentation. Information on documentation requirements in importing countries can be obtained from overseas customers, foreign government embassies and consulates, as well as various export reference books, such as the *Export Shipping Manual* and *Air Cargo Tariff Guide*. In the United States and other developed countries, government departments have specialists on individual foreign countries and can advise on country conditions and documentation requirements.

Air Waybill

The air waybill is a contract of carriage between the shipper and air carrier. It is issued by the air carrier and serves as a receipt for the shipper. When the shipper gives the cargo to a freight consolidator or forwarder for transportation, the air waybill is obtained from the consolidator or forwarder. Air waybills are nonnegotiable and cannot be issued as a collection instrument. Air waybills are not particular to a given airline and can be from any other airline that participates in the carriage (Wood et al., 1995).

Bill of Exchange (Draft)

A bill of exchange is an unconditional written order by one party (the drawer) that orders a second party (the debtor or drawee) to pay a certain sum

of money to the drawer (creditor) or a designated third party. For example, Hernandez Export Incorporated of Lawton, Oklahoma, sends an importer in Uzbekistan a draft for \$30,000 after having shipped a truckload of autoparts. The company's draft orders the overseas buyer in Uzbekistan to pay \$30,000 to its agent, Expotech, in Uzbekistan. In this scenario, Hernandez Incorporated is the drawer, the importer is the drawee, and Expotech is the payee. In many cases, the drawee is the overseas buyer and the drawer/payee is the exporter. When a draft is payable at a designated future date, it is a time draft. If it is payable on sight, it is a demand or sight draft.

Bill of Lading (B/L)

A bill of lading is a contract of carriage between the shipper and the steamship company (carrier). It certifies ownership and receipt of goods by the carrier for shipment. It is issued by the carrier to the shipper. A straight bill of lading is issued when the consignment is made directly to the overseas customer. Such a bill of lading is not negotiable. An order bill of lading is negotiable, that is, it can be bought, sold, or traded. In cases in which the exporter is not certain about payment, the exporter can consign the bill of lading to the order of the shipper and endorse it to the buyer on payment of the purchase price. When payment is not a problem, the bill of lading can be endorsed to the consignee (Zodl, 1995; Wells and Dulat, 1996).

Clean/Claused Bill of Lading

The bill of lading form is normally filled out in advance by the shipper. The carrier will check the goods loaded on the ship to ensure that they comply with the goods listed (quantity, condition, etc.) on the bill of lading. If all appears proper, the carrier will issue a clean bill of lading certifying that the goods have been properly loaded on board the ship. However, if there is a discrepancy between the goods loaded and the goods listed on the bill, the carrier will issue a claused bill of lading to the shipper. Such bill of lading is normally unacceptable to third parties, including the buyer under a CIF (cost, insurance, and freight) contract or bank that is expected to pay under documentary credit on receipt of the bill of lading and other documents.

Inland Bill of Lading

An inland bill of lading is a bill of lading issued by the railway carrier or trucking firm certifying carriage of goods from the place where the exporter is located to the point of exit for shipment overseas. This document is issued

by exporters to consign goods to a freight forwarder who will transport the goods by rail to an airport, seaport, or truck for shipment.

Through Bill of Lading

A through bill of lading is used for intermodal transportation, that is, when different modes of transportation are used. The first carrier will issue a through bill of lading and is generally responsible for the delivery of the cargo to the final destination.

Consular Invoice

Certain nations require a consular invoice for customs, statistical, and other purposes. It must be obtained from the consulate of the country to which the goods are being shipped and usually must be prepared in the language of that country (U.S. Department of Commerce, 1990).

Certificate of Origin

A certificate of origin is required by certain countries to enable them to determine whether the product is eligible for preferential duty treatment. It is a statement as to the origin of the export product and usually is obtained from local chambers of commerce.

Inspection Certificate

Some purchasers and countries may require a certificate attesting to the specifications of the goods shipped, usually performed by a third party. Such requirements are usually stated in the contract and quotation. Inspection certificates are generally requested for certain commodities with grade designations, machinery, equipment, and so forth.

Insurance Certificate

When the exporter provides insurance, it is necessary to furnish an insurance certificate that states the type, terms, and amount of insurance coverage. The certificates are negotiable and must be endorsed before presentation to the bank.

Commercial Invoice

A commercial invoice is a bill for the merchandise from the seller to the buyer. It should include basic information about the transaction: description

of the goods, delivery and payment terms, order date, and number. The overseas buyer needs the commercial invoice to clear goods from customs, prove ownership, and arrange payment. Governments in importing countries also use commercial invoices to determine the value of the merchandise for assessment of customs duties.

Dock Receipt

This receipt is used to transfer accountability when the export item is moved by the domestic carrier to the port of embarkation and left with the international carrier for export. The international carrier or agent issues it after delivery of the goods at the carrier's dock or warehouse. A similar document, when issued upon receipt of cargo by a chartered vessel, is called a mate's receipt.

Destination Control Statement (DCS)

This statement appears on the commercial invoice, bill of lading, air waybill, and shipper's export declaration. It is intended to notify the carrier and other parties that the item may only be exported to certain destinations.

Shipper's Export Declaration (SED)

A shipper's export declaration (SED) is issued to control certain exports and to compile trade data. It is required for shipments valued at more than \$2,500. Carriers and exporters are also required to declare dangerous cargo.

Pro Forma Invoice

A pro forma invoice is a provisional invoice sent to the prospective buyer, usually in response to the latter's request for a price quotation. A quotation usually describes the product, and states the price at a specific delivery point, the time of shipment, and the terms of payment. A pro forma invoice is also needed by the buyer to obtain a foreign exchange or import permit. Quotations on such invoices are subject to change without notice partly because there is a lag between the time when the quotation is prepared and when the shipment is made to the overseas customer.

Export Packing List

An export packing list itemizes the material in each individual package and indicates the type of package (e.g., box, carton). It shows weights and

measurements for each package. It is used by customs in the exporting and importing countries to check the cargo and by the exporter to ascertain the total cargo weight, the volume, and shipment of the correct merchandise. The packing list should be either included in the package or attached to the outside of a package in a waterproof envelope marked "packing list enclosed."

Manifest

A manifest is a detailed summary of the total cargo of a vessel (by each loading port) for customs purposes. It covers condition of the cargo, and summarizes heavy lifts and their location.

TRANSPORTATION

Three modes of transportation are available for exporting products overseas: air, water (ocean and inland), and land (rail and truck). Whereas inland water, rail, and truck are suitable for domestic transportation and movement of goods between neighboring countries (the United States to Canada, France to Germany, etc.), air and ocean transport are appropriate for long-distance transportation between countries that do not share a common boundary.

Export-import firms may use a combination of these methods to deliver merchandise in a timely and cost-efficient manner. The exporter should consider market location (geographical proximity), speed (e.g., airfreight for perishables or products in urgent demand, etc.), and cost when determining the mode of transportation. Even though air carriers are more expensive, their cost may be offset by reduced packing, documentation, and inventory requirements. It is important to establish with the importer the destination of the goods, since the latter may wish the goods to be shipped into a free-trade zone that allows for exemption of import duties while the goods are in the zone.

AIR TRANSPORTATION

Airfreight is the least utilized mode of transportation for cargo and accounts for less than 1 percent of total international freight movement (see Table 9.1 for advantages and disadvantages of this transportation type). However, it is the fastest growing mode and not just confined to the movement of high-value products. A 1996 study by McDonnell Douglas forecast that oversized freight business would increase tenfold to \$1.5 billion per year by 2010. A similar study by Boeing also found that about 4.5 million tons of

TABLE 9.1. Advantages and Disadvantages of Air Transportation

Advantages	Disadvantages
<ul style="list-style-type: none"> • Faster delivery of perishable commodities, production parts, etc. • Shipments do not require heavy packing (standard domestic packing is sufficient). • Reduces inventory and storage costs. • Reduces insurance cost and documentation. • Achieves savings in total transportation cost and provides reliability of service. 	<ul style="list-style-type: none"> • Generally expensive for high-bulk freight. Value must be high enough to justify higher freight cost. • Inefficient for shorter distances, which are handled faster by trucks. Only the express air services, such as UPS or DHL, have equally competitive services. • Shipping containers must be small enough to fit into an air carrier. • Not suitable for products that are sensitive to low pressures and variations in temperature.

heavy, oversized freight worldwide could be transported by air (Anonymous, 1998a). A number of factors are likely to contribute to such growth in airfreight:

1. In view of the heavy infrastructure investment being made in many developing countries, the potential need exists for imports of heavy equipment and services. It is estimated that such imports could amount to about \$17.8 billion in surface transport, sea, and airport projects in South America alone. Certain types of equipment exports to these countries, such as bulldozers, buses, or oil-drilling equipment, often do not fit in a standard ocean container (Anonymous, 1998a; Reyes and Gilles, 1998).
2. Since many of these projects are built from supplies shipped to the sites on a just-in-time basis, delays in delivering cargo can lead to heavy financial losses or penalties for the suppliers. Such needs cannot be accommodated by using the traditional modes of carriage for heavy freight. Airfreight becomes the only viable means of moving such cargo to ensure timely delivery.
3. Technological changes over the past two decades have significantly altered the size and design of aircraft to handle heavy cargo. For example, the recent version of the Boeing 747 can carry more freight (even with passengers) than all-cargo versions of the previous generation

of jets. The all-cargo plane has a weight capacity of about 122 tons (Anonymous, 1998a; Reyes and Gilles, 1998). Furthermore, improvements in terminal facilities in many countries have also contributed to increased speed and better handling and storage of shipments at airports, thus minimizing loss or damage to merchandise.

4. Integrators and forwarders have also played a role. The development of air carriers that provide integrated services (DHL, UPS) has increased the amount of air cargo. For example, UPS Sonic Air Service offers a guaranteed door-to-door service to most international destinations, regardless of size or weight limitations, within twenty-four hours. In addition, the role of forwarders as consolidators of small shipments makes it easier for shippers to send their merchandise by air without being subject to the minimum charge for small shipments. The forwarder consolidates various small shipments and tenders them to the airline in volume in exchange for a bill of lading furnished as the shipper of the cargo. The role of a forwarder is similar to that of a non-vessel-operating carrier in ocean freight.

Air Cargo Rates

Determinants of air cargo rates. Distance to the point of destination as well as weight and size of the shipment are important determinants of air cargo rates. The identity of the product (commodity description) and the provision of any special services also influence freight rates. If a product is classified under a general cargo category (products shipped frequently) a lower rate applies.

Products can also be classified under a special unit load (for shipments in approved containers) or a commodity rate (negotiated rates for merchandise not classified as general cargo). Special services such as charter flight or immediate transportation could substantially increase the freight rate.

Rate setting. The International Air Transport Association (IATA) is the forum in which fares and rates are negotiated among member airlines. Over the past few years, such fares and rates have been set by the marketplace, and tariff conference proposals have tended to become reference points. The service conferences of IATA also promote among members the negotiation of certain standards and procedures for cargo handling, documentation and procedures, shipment of dangerous goods, etc.

International air express services (the integrators). The big carriers are under increasing competitive pressure from the integrated air service providers such as Federal Express or UPS. While the traditional carriers provide airport-to-airport service, the integrators have the added advantage

of furnishing direct delivery services to customers, including customs clearance and payment of import duties at foreign destinations. Even though the strength of integrators had been in the transportation of smaller packages, they are now offering services geared to heavyweight cargo.

Carriage of Goods by Air

The international transportation of goods by air is governed by the Warsaw Convention of 1929 (original convention) and the amended convention of 1955. In certain cases, neither convention applies. Many countries, including the United States, are members of the original Warsaw Convention and did not accede to the amended convention. The major differences between the two conventions relate to the carrier's liability and limits of that liability (see International Perspective 9.1). The important aspects of the original Warsaw Convention are detailed in the following material.

Scope of the convention. The convention governs the liability of the carrier while the goods are in its charge, whether at or outside an airport. It applies when the departure and destination points set out in the contract of carriage are in two countries that subscribe to the original Warsaw Convention (i.e., both are not members of the amended convention).

Air consignment note (air waybill). A consignment note (air waybill) is a document issued by the air carrier to a shipper that serves as a receipt for goods and evidence of the contract of carriage. However, it is not a document of title to the goods, as in the case of a bill of lading. The carrier requires the consignor to make out and hand over the air waybill with the goods. The consignor is responsible for the accuracy of the statements relating to the

INTERNATIONAL PERSPECTIVE 9.1. The Two Warsaw Conventions and Air Carriage: Major Differences

- **Carrier's Liability:** Under the amended convention, defense of negligent pilotage or negligence in the handling and navigation of aircraft is no longer available to carriers. The amendment also extends the benefit of liability limitations to the agents and servants of the carrier.
- **Limitation of Action:** The time to give a written notice of loss or damage by consignee has been extended from seven days to fourteen days.
- **Required Particulars:** Required particulars on the air waybill are fewer under the amended convention.

goods stated in the air waybill. The carrier's receipt of the consignor's goods without an air waybill or all particulars relating to the goods will not entitle the carrier to exclude or limit liability under the convention. The carrier notifies the consignee as soon as the goods arrive and hands over the air waybill upon compliance by the consignee with the conditions of carriage.

Liability of carrier. The carrier is liable for loss or damage to cargo and for damage arising from delay unless it proves that: (1) the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft, and (2) the carrier and its agents have taken all necessary measures to avoid such damage. An airline can escape liability if it proves that the shipper was negligent regardless of its own negligence. In the case of intermodal transport where more than one carrier is involved, each carrier is responsible for the part of the carriage performed under its supervision. All the carriers are, however, jointly and severally liable to the consignor or consignee in the event of loss, damage, or delay to cargo.

Limitation of liability. The liability of the carrier with respect to loss or damage to the goods, or delay in delivery is limited to a sum of \$9 per pound (\$20 per kilogram) unless the consignor has declared a higher value and paid a supplementary charge. Any agreement to lower or exclude liability is void.

Limitation of action. The right to damages will be extinguished if an action is not brought within two years after the actual or supposed delivery of cargo. Notice of complaint must be made within seven days from the date of receipt of goods (in the case of damage) or within fourteen days from the date on which the goods have been placed at the consignee's disposal (in the case of delay).

The most recent amendment to the Warsaw Convention is the Montreal Convention adopted in 1999. The Montreal Convention has been adopted by about thirty countries including the United States. The convention provides protection for air travelers and amends existing limitations on liability for death and bodily injury for damages. It also provides for electronic waybills and tickets. Liability of carriers for cargo losses are still governed by the Warsaw Convention.

OCEAN FREIGHT

Ocean shipping is the least expensive and the dominant mode of transportation in foreign trade. It is especially suitable for moving bulk freight such as commodities and other raw materials. Today, almost all ocean freight travels by containers, which results in minimal handling at ports. If a full-container-load cargo is to be shipped, a freight forwarder arranges for the

container to be delivered to the shipper's premises. Once the container is fully loaded, it is moved by truck to a port to be loaded onto a vessel. Less-than-container-load freight is usually delivered at the port for consolidation with other shipments.

Types of Ocean Carriers

The following are the three major types of ocean carriers (see also International Perspective 9.2).

Private fleets. These are large fleets of specialized ships owned and managed by merchants and manufacturers to carry their own goods. Apart from its cost advantages, ownership of a private fleet ensures the availability of carriage that meets the firm's special needs. Such ships can occasionally be leased to other firms at times of limited activity. Some firms in certain industries, such as oil, sugar, or lumber, own their own fleets.

Tramps (chartered or leased vessels): Tramps are vessels leased to transport, usually, large quantities of bulk cargo (oil, coal, grain, sugar, etc.) that fill the entire ship (vessel). Chartered vessels do not operate on a regular route or schedule. Charter arrangement can be made on the basis of a trip or voyage between origin and destination or for an agreed time period, usually several months to a year. The vessel could be leased with or without a crew (bare-boat charter). The major factors for the continued existence of tramp shipping are that (1) it provides indispensable ocean transportation at the lowest possible cost, and (2) it is adaptable to the changing and/or unanticipated requirements for transportation. When charter rates are low, commodity traders tend to move materials in advance of actual delivery time to take advantage of low transportation costs (Wood et al., 1995). The just-in-time system that delivers products when they are needed is not often feasible in cases in which transport and distribution could be impeded by severe winter weather. A commodity trader's decision to purchase and export a product is influenced by the spread between the export and purchase price, the charter rate, and any warehousing or storage cost. This means that an exporter can purchase and export a product even before delivery time if the charter rate and storage cost are substantially less than the spread to allow for a reasonable profit margin.

Conference lines. A shipping conference line is a voluntary association of ocean carriers operating on a particular trade route between two or more countries. Shipping conferences date back to the nineteenth century when such associations were established for trade between England and its colonies. One of the distinguishing features of a liner service is that sailings are

INTERNATIONAL PERSPECTIVE 9.2. Types of Ocean Cargo/Vessels

Types of Ocean Cargo

Containerized: Cargo loaded at a facility away from the pier, or at a warehouse into a metal container usually 20 to 40 feet long, 8 feet high, and 8 feet wide. The container is then delivered to a pier and loaded on to a “containership” for transportation. Some cargo cannot be containerized, for example, automobiles, live animals, bulk products.

Bulk: Cargo that is loaded and carried in bulk, without mark or count, in a loose unpackaged form, having homogenous characteristics. To be loaded on a containership, bulk cargo would be put in containers first. It could also be stowed in bulk instead of being loaded into containers. Example: coal, iron ore, raw sugar, etc.

Break-Bulk: Packaged cargo that is loaded and unloaded on a piece-by-piece basis, that is, by number or count. This can be containerized or prepared in groups of packages covered by shrink wrap for shipment. Example: coffee, rubber, steel, etc.

Neo-Bulk: Certain types of cargo that are often moved by specialized vessels. Example: autos, logs.

Types of Ocean Vessels

Tankers: Vessels designed to carry liquid cargo such as oil in large tanks. They can be modified to carry other types of cargo such as grain or coffee.

Bulk Carriers: Vessels that carry a variety of bulk cargo.

Neo-Bulk Carriers: Vessels designed to carry specific types of cargo such as autos, logs, etc.

General Cargo Vessels: These include: (1) Containerships: vessels that carry only containerized cargo, (2) roll-on and roll-off (RO/RO) vessels: vessels that allow rolling cargo such as tractors and cars to be driven aboard the vessel, and (3) LASH (lighter Aboard Ship) vessels: vessels that can carry very large containers such as barges. It enables cargo to be loaded on barges in shallow waters and then loaded on board a vessel.

Barges: Unmanned vessels generally used for oversized cargo and towed by a tugboat.

Combination Carriers: Vessels that carry passengers and cargo, oil and dry bulk, or containers and bulk cargo. Other combinations are also possible.

regular and repeated from and to designated ports on a trade route, at intervals established in response to the quantity of cargo generated along that route. Even though the sailing schedule is related to the amount of business available, it is general practice to dispatch at least one ship each month (Kendall, 1983). The purpose of a shipping conference is the self-regulation of price

competition, primarily through the establishment of uniform freight rates and terms and conditions of service among the member shipping lines. In spite of its cartel-like structure, it is considered to be a necessary evil to ensure the stability and growth of international trade by setting rate levels that are more stable and predictable and by reducing predatory price competition.

Conference agreements become effective between carriers unless rejected, the forty-fifth day after filing with the Federal Maritime Commission (FMC), or the thirtieth day after publication of notice of filing in the Federal Register, whichever day was later.

Conferences serving U.S. ports must be “open,” that is, they must admit any common carrier willing to serve the particular trade or route under reasonable and equal terms and conditions. This is generally intended to preclude conferences from using membership limitations as a means of discriminating against other U.S. carriers. Conferences are also allowed to form an exclusive patronage contract with a shipper, allowing the latter to obtain lower rates by committing all or a fixed portion of its cargo to conference members. Vessels engaged in liner service may be owned or leased. Conferences compete with independent lines, chartered vessels, and each other, although the same carrier could belong to several conferences.

Example: An exporter in Taiwan intends to arrange for shipment of its textiles by a conference carrier to New York. A case for a lower (tariff) rate for large shipments can be made to a conference rate-making committee that consists of member lines. If the conference elects to reject the application for a lower rate, several options are available to the exporter: (1) the exporter may request a member of the conference to establish the rate independently of the conference, (2) the product could be shipped through non-conference carriers (independent or other conference lines) that offer a reasonably low tariff, (3) the product could be shipped through other ports using other conference carriers, or (4) the shipper could consider non-vessel-operating common carriers (NVOCC) or tramp vessels, depending on the amount of cargo. Non-vessel-operating common carriers take possession of smaller shipments from several shippers and consolidate them into full-container loads for shipment by an ocean carrier. They charge their own tariff rates and obtain a bill of lading as the shipper of the consolidated merchandise.

Carriage of Goods by Sea

International transportation of cargo by sea is governed by various conventions. The Hague Rules of 1924 have won a certain measure of global support. The U.S. law on the carriage of goods by sea is based on the Hague Rules. Subsequent modifications have been made to the Hague Rules (the

Hague-Visby Rules, 1968), which are now in force in most of Western Europe, Japan, Singapore, Australia, and Canada. In 1978, the United Nations Commission on International Trade Law (UNCITRAL) was given the task of drafting a new convention to balance the interests of carriers and shippers. Although the Hague-Visby Rules were intended to rectify the procarrier inclination of the Hague Rules, many developing countries felt that the Hague-Visby rules did not go far enough in addressing the legitimate concerns of cargo owners or shippers. The commission's deliberations led to an agreement in 1978 (the Hamburg Rules). It came into effect in 1991, and its impact remains to be seen. Unlike the Hague and Hague-Visby Rules, which have been ratified by many developed and developing nations, the Hamburg Rules are mostly followed by developing nations, except Austria (Flint and O'Keefe, 1997). In view of the widespread acceptance of the Hague Rules, it is important to briefly examine some of their central features (see International Perspective 9.3).

Scope of application. The application of the rules depends on the place of issuance of the bill of lading; that is, the rules apply to all bills of lading issued in any of the contracting states. If the parties agree to incorporate any

INTERNATIONAL PERSPECTIVE 9.3.

The Hague, Hague-Visby, and Hamburg Rules: Overview

All three rules define the rights and duties of parties in a contract of carriage of goods by sea, insurance for goods, and transfer of title. The Hague and Hague-Visby Rules are generally identical except for provisions dealing with limitations of liability, third parties, and a few minor areas. The Visby amendments to the Hague rules increase the limits of carrier's liability, change the method of expressing the limitation amount (by weight), and protect third parties acting in good faith.

The Hamburg rules have been criticized by carriers and their insurers as favoring shippers (cargo interests). The prominent differences between the Hamburg rules and Hague/Hague-Visby are as follows: (1) The Hamburg rules have higher limits of liability and set higher damages against carriers; (2) under the Hamburg rules, the carrier is liable for delays in delivery, in addition to loss or damage to goods; (3) any loss or damage to goods in transit imposes a burden of proof on the carrier to show that the latter was not at fault, whereas such burden is only triggered when the loss/damage resulted from an unseaworthy condition of the ship under the Hague and Hague-Visby rules; and (4) the limits of carrier's liability may not extend to acts of independent contractors unlike the other two rules.

one of the previous rules in their contract, such rules will govern the contract of carriage even when the countries where the parties reside subscribe to different rules. However, this will not be allowed if the parties are required to apply certain rules adopted by their countries. These rules apply only to bill of lading (B/L).

The carrier's duties under B/L. A carrier transporting goods under a B/L is required to exercise "due diligence" in (1) making the ship seaworthy; (2) properly manning, equipping, and supplying the ship; (3) making the ship (holds, refrigerating chambers, etc.) fit and safe for reception, carriage, and preservation of the goods; and (4) properly and carefully loading, handling, stowing, carrying, and discharging the goods. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence falls on the carrier. When different modes of transportation are used, the issuer of the bill of lading undertakes to deliver the cargo to the final destination. In the event of loss or damage to merchandise, liability is determined according to the law relative to the mode of transportation at fault for the loss. If the means of loss is not determinable, it will be assumed to have occurred during the sea voyage.

Basis of carrier's liability and exemptions. The carrier's liability applies to loss of or damage to the goods. It does not extend to delays in the delivery of the merchandise. The rules exempt carriers from liability that arises from actions of the servants of the carrier (master, pilot, etc.) in the management of the shipment, fire and accidents, acts of God, acts of war, civil war, insufficient packing, inherent defects in the goods, and other causes that are not the actual fault of the carrier. That loss or damage to the goods falls within one of these exemptions does not automatically absolve the carrier from liability if the damage/loss could have been prevented by the carrier's exercise of due diligence in carrying out its duties (Yancey, 1983).

Period of responsibility. The period of responsibility begins from the time the goods are loaded and extends to the time they are discharged from the ship.

Limitations of action. All claims against the carrier must be brought within one year after the actual or supposed date of delivery of the goods. This means that lapse of time discharges the carrier and the ship from all liability in respect to loss or damage. The Hague Rules also stipulate that notice of claim be made in writing before or at the time of removal of the goods.

Limits of liability. The maximum limitation of liability is \$500 per package. Under the Hague-Visby rules, it is \$1,000 per package. In most cases, a container is considered as one package, and the carrier's liability is limited to \$500. To ensure the application of liability limits to their agents and employees, carriers add the "Himalaya Clause" to their bills of lading. The

clause entitles such agents and employees the protection of the Hague Rules. Exporters can, however, obtain full protection against loss or damage by paying an excess value charge or by taking out an insurance policy from an independent source (Force, 1996; see also International Perspective 9.4 for accepted principles in ocean transportation).

INTERNATIONAL PERSPECTIVE 9.4. Generally Accepted Principles and Practices in Ocean Transportation

- A. Freight Forwarders:** The freight forwarder acts as an agent for the shipper in selecting a common carrier and booking cargo space. It does not issue a bill of lading and is not liable for damage to the goods while in the possession of the carrier. Liability may, however, arise in cases where the freight forwarder was negligent in selecting the carrier or customs broker.
- B. Removal of Limitation to Carrier's Liability:** The carrier shall become liable for any loss or damage in connection with the transportation of goods in an amount not exceeding \$500 per package or in cases of goods not shipped in packages, per customary freight unit or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by shipper on the bill of lading. The carrier can be held fully responsible for all damages (without the benefit of the liability limitation) in the following cases: (1) material deviation (carrier's geographical departures from course, unauthorized on-deck storage); (2) failure to give shipper fair opportunity to declare a higher value; (3) misdelivery—the carrier that issued the bill of lading is responsible for releasing the cargo only to the party who presents the original bill of lading, unless otherwise agreed with the shipper.
- C. Burden of Proof for Shipper and Carrier:** The initial burden of proof falls on the shipper to prove that the goods delivered to the carrier were in sound condition. This burden can be met by providing a "clean" bill of lading. The provision of a clean bill of lading shifts the burden to the carrier to prove that the damage or loss to the merchandise was not caused by its negligence.
- D. Four Parameters to Establish Seaworthiness of Ship:**
1. Is the ship appropriate for the type of cargo?
 2. Is the ship properly equipped for the goods (for reception, carriage, preservation of goods)?
 3. Is the ship staffed with a competent crew?
 4. Did the carrier properly load, handle, stow, and discharge the goods carried? Proper storage varies according to the types of goods transported.

Land Transport and Intermodal Service

Land transportation carriers (trucks, trains) are mainly used to transport exports to neighboring countries as well as to move goods to and from an airport or seaport. A substantial volume of U.S. exports to Canada and Mexico is moved by rail and/or trucks. Compared to rail transport, trucking has the advantage of flexibility, faster service, lower transportation costs, and less likelihood of damage to merchandise on transit. Rail transport has its own unique advantages: capacity to handle bulk cargo, free storage in transit, as well as absorption of loading, unloading, wharfage, and lighter charges. With the proliferation of free-trade agreements in various regions, there is likely to be a marked growth in the role of land carriers in transporting exports among countries that are in the same geographical area. For example, in eastern and southern Africa, an agreement that allows movement of land carriers across countries would make trucks and trains the dominant mode of transportation for exports. This is because land transport already accounts for over 80 percent of the region's freight movements and with a regional arrangement, these transportation services could easily be extended to neighboring countries with limited capital investment.

The use of land transportation is considered economically justifiable for large flows of cargo over distances greater than 500 kilometers (310 miles). A recent Swedish study on intermodal techniques (rail/truck) in transportation found that improving the competitiveness of intermodal transport for short-distance trips requires the operation of "corridor trains" that make short stops every 100 or 200 kilometers along a route (Anonymous, 1998b). Intermodal transport is not just limited to moving goods between rail and truck; it is also used for any service that requires more than one means of transportation (e.g., rail and ocean, truck and ocean) under one bill of lading. Such arrangements, ideally, must seek the fastest and least costly transportation for the shipper. The essence of intermodal contract is an agreement between different types of carriers (steamship lines, railroads, trucking firms, airlines, etc.) to achieve certain well-defined and carefully described functions. The advantages of such a mode of transport is simplicity for the shipper and consignee (one bill of lading and no other arrangements necessary), reduced damage because of fewer handlings, and reduced pilferage due to limited exposure of cargo. Such services are already offered by the integrators in the airline industry.

Examples of Intermodal Service

A truck will move merchandise from the exporter's warehouse outside New York City to a railroad yard some fifty miles away. The railroad will

take the container to a New York port where it will be placed aboard a ship to Rotterdam, Holland. The whole movement would be covered by a single contract of carriage issued by the trucker as the initiating carrier.

Fresh oranges that arrive by sea from Chile in Miami, Florida, are then distributed to a network of inland points by air and then delivered door to door to customers by truck.

Inland Carriage

Transportation of merchandise almost always involves the use of an inland carrier (a trucking or rail company) to move merchandise from the exporter's warehouse to the seaport or airport. Inland transportation is governed by domestic legislation unless goods are shipped to a different country or such movement of cargo from warehouse to port is the first part of intermodal transportation to a foreign country. In the United States, different laws, including the Carmack Amendment, govern domestic transportation. Under the Carmack Amendment, rail and motor common carriers are liable for the full value of the goods lost, damaged, or delayed in transit. However, there are certain exceptions to this strict liability: act of God, act of shipper, inherent vice (defects in the goods), act of a public enemy, and intervention of law. Even though there are no universal agreements, a few regional treaties regulate transportation of goods by road and rail (Schmitthoff, 1986). Prominent among these is the Convention on the Contract for the International Carriage of Goods by Road (Convention relative au Contract de Transport International de Merchandises par Route, or CMR, 1956) and the Convention Concerning International Carriage by Rail (Convention relative au Transport Internationaux Ferroviaires, or COTIF, 1980). Members include most European countries, and a few Middle Eastern nations in the case of COTIF. The respective conventions cover areas such as scope of application, liability of the carrier, the use of multiple carriers, and time limits:

- The conventions generally apply to contracts for the carriage of goods by road or rail between two countries, of which at least one is a contracting party. The convention also applies to carriage by states or public institutions.
- A carrier is required to issue a consignment note (nonnegotiable) as evidence of contract of carriage and condition of the goods. The consignee has a right to demand delivery of the goods in exchange for a receipt and to sue the carrier in its own name for any loss, damage, or delay for which the carrier is responsible. The shipper can change the

place of delivery or order delivery to another consignee at any time before the delivery of the consignment note or cargo to the first consignee.

- In cases involving multiple carriers, each carrier is responsible for the entire transaction.
- Carriers are liable for loss, damage, or delays up to a liability limit insofar as the contract is governed by the CMR or COTIF. There are, however, certain exceptions to liability in cases such as inherent vice in the goods, circumstances that the carrier could not avoid, and the consequences of which he was unable to prevent, or negligence on the part of the shipper.
- There is a limitation period for bringing action (one year) and for notice of reservations (i.e., notice of damage or loss).

THE ROLE OF FREIGHT FORWARDERS IN TRANSPORTATION

A freight forwarder is the party that facilitates the movement of cargo to the overseas destination on behalf of shippers and processes the documentation or performs activities related to those shipments. Freight-forwarding activity dates back to the thirteenth century when traders employed middlemen, or “frachtors,” to cart and forward merchandise throughout Europe. The frachtor’s responsibility later extended to provision of long-distance overseas transportation and storage services, issuance of bills of lading, and collection of freight, duties, and payment from consignees (Murr, 1979).

In the United States, the forwarding industry developed in the latter part of the nineteenth century. It started in New York, where the bulk of U.S. export trade was handled, to provide various transportation services to shippers. Ullman succinctly points out the changing role of the ocean freight forwarder in the United States:

Many forwarding concerns originally started as freight brokers, but with the continuing increase in manufactured shipments, the forwarding work took precedence over the broker activity. Today, some forwarders handle ship loads of large parcels either on a common carrier or tramp vessels as brokers, but for the most part, forwarders deal with individual shipments varying in size or containers. (Ullman, 1995, p. 130)

Role and Function of Freight Forwarders

The freight forwarder (1) advises the exporter on the most economical choice of transportation and the best way to pack and ship the cargo to

minimize cost and prevent damage, and (2) books for air, ocean, or land transportation (or intermodal movement of cargo) and arranges for pickup, transportation, and delivery of the goods. The forwarder also ensures that the goods are properly packed and labeled and documentation requirements are met so the cargo is cleared at the port of destination. When a letter of credit is used, the forwarder ensures that it is strictly complied with to enable the exporter to receive payment. Thus, the advantage of a forwarder goes far beyond moving freight. Forwarders help shippers and consignees by tracking and tracing cargo. They can also negotiate better rates with carriers because they can purchase space on airlines or ships at wholesale prices. The wide array of services they provide also helps shippers save time and money.

Freight forwarders are a significant part of U.S. commerce and facilitate the growth and expansion of international trade. A U.S. Senate report on the industry describes freight forwarding as follows:

a highly important segment of the economy of the United States in that its functioning makes possible participation in the nation's foreign commerce by many industries and businesses whose lack of familiarity with the complexities and formalities of exporting procedures might hinder or even preclude such participation if forwarding services were not freely available. (Ullman, 1995, p. 133)

Today, it is generally estimated that over 90 percent of export firms use the services of an international freight forwarder. Most of the forwarding activity is still concentrated in ocean shipping, although some diversification into air and land transportation has occurred.

A forwarder is distinguishable from a NVOCC. Non-vessel-operating common carriers are international ocean carriers that do not operate their own vessels. They fulfill the role of the shipper with respect to carriers and that of a carrier with respect to shippers. Typical NVOCCs will guarantee a steamship line a certain amount of freight per week or month and purchase the necessary space on a wholesale basis for shipment of cargo to and from a given port. They publish their own tariffs and receive and consolidate cargo of different shippers for transportation to the same port. They issue bills of lading to acknowledge receipt of cargoes for shipment. Unlike NVOCCs, freight forwarders do not publish their own tariff and consolidate small shipments. Forwarders use the services of NVOCCs and facilitate the movement of cargo without operating as carriers. Non-vessel-operating common carriers are often owned by freight forwarders or large transportation companies.

A forwarder also differs from a customs broker in that the latter deals with the clearing of imports through customs, whereas a forwarder facilitates the transportation of exports. The broker is licensed by the Treasury Department; while the forwarder is licensed by the Federal Maritime Commission (FMC).

Licensing Requirements

To be eligible for an ocean freight forwarder's license, the applicant must demonstrate to the FMC that he or she (1) has a minimum of three years' experience in ocean freight forwarding duties in the United States and the necessary character to render such services, and (2) has obtained and filed a valid surety bond with the FMC. A shipper whose primary business is the sale of merchandise can perform forwarding services without a license to move its own shipments. In such a case, the shipper is not entitled to receive compensation from the carrier for its services. A license is not required for an individual employee or unincorporated branch office of a licensed ocean freight forwarder. A common carrier or agent thereof may also perform forwarding services without a license with respect to cargo carried under such carrier's own bill of lading (FMC, 1984).

Other Obligations and Responsibilities

- A description of the freight forwarder as consignee on an inland transport bill of lading (i.e., truck or rail) may subject the forwarder to liability for freight charges to the airport or seaport. This can be avoided by clearly indicating on the forwarder's delivery instructions that the forwarder is acting merely as an agent and does not have any ownership interest in the merchandise.
- The forwarder is liable to the shipper for its own negligence in selecting the carrier, handling documentation, directing cargo, and classifying shipments. The forwarder, for example, must not rely totally on the shipper's instructions with respect to the classification of a shipment. The forwarder must take reasonable measures to ensure that the classification is proper and consistent with the description on the commercial invoice, bill of lading, and other documents.
- In cases in which the forwarder acts as an NVOCC, liability is that of a common carrier for loss or damage to cargo.
- The forwarder's liability is limited to the lesser of \$50.00 per shipment or the fee charged for its services. Any claims by the exporter

against the forwarder must be presented within ninety days from the date of exportation.

- Each freight forwarder is required to maintain current and accurate records for five years. The records should include general financial data, types of services, receipts, and expenses.
- Forwarders are prohibited from providing any rebates to shippers or sharing any compensation or forwarding fees with shippers, consignees, or sellers. Non-vessel-operating common carriers can receive compensation from carriers only when they act as mere forwarders, that is, when they do not issue bills of lading or otherwise undertake carriers' responsibilities.

CHAPTER SUMMARY

Documents Frequently Used in Export-Import Transactions

1. Air waybill
2. Bill of exchange
3. Bill of lading
4. Through bill of lading
5. Consular invoice
6. Certificate of origin
7. Inspection certificate
8. Insurance certificate
9. Commercial invoice
10. Dock's receipt
11. Destination control statement
12. Shipper's export declaration
13. Pro forma invoice
14. Export packing list
15. Manifest

Air Transportation

Reasons for the Growth of Airfreight

Growing demand for imports of heavy equipment and services in many developing countries; the need for timely delivery of imports; technological changes; the role of integrators and forwarders

Determinants of Air Cargo Rates

Distance, weight and size of cargo, commodity description, special services

Carriage of Goods by Air

Major international rules:

1. The Warsaw Convention (1929)
2. The Warsaw Convention—Amended (1955)

Ocean Freight

Types of ocean carriers: private fleet, tramps, conference lines

Carriage of Goods by Sea

Major international rules:

1. The Hague Rules (1924)
2. The Hague-Visby Rules (1968)
3. The Hamburg Rules (1978)

All three conventions cover rights and duties of parties to a contract of carriage by sea: Duty of carrier, carrier's liability, period of responsibility, limitation of action, and limits of carrier's liability.

Land Transport

1. *Rail transport*: It handles bulk cargo; absorbs loading, unloading, and other charges.
2. *Trucking*: Compared to rail transport, trucking has the advantage of flexibility, faster service, and lower transportation costs.

Inland Carriage

Inland carriage is the use of an inland carrier to move merchandise from the exporter's warehouse to the sea or airport. Major international rules governing inland carriage:

1. Convention on the Contract for the International Carriage of Goods by Road.
2. Convention Concerning International Carriage by Rail.

Both conventions cover areas such as liability for loss or damage to shipment, delays in delivery, and time limits for bringing action.

Freight Forwarders

A freight forwarder facilitates the movement of cargo to the overseas destination on behalf of shippers and processes the documentation or performs activities related to those developments.

Role and function of a freight forwarder:

1. Advises shipper on the most economical choice of transportation.
2. Books space and arranges for pickup, transportation, and delivery of goods.

Licensing requirements: To be eligible for a license as a freight forwarder, the applicant must demonstrate to the FMC that he or she has (1) a minimum of three years' experience in ocean freight forwarding duties in the United States; (2) the necessary character to render such services; and (3) a valid surety bond filed with the FMC.

REVIEW QUESTIONS

1. What is the difference between a bill of exchange and a bill of lading? Are straight bills of lading negotiable?
2. What is the significance of these documents for importers: certificate of origin, destination control statement, pro forma invoice?
3. What factors are likely to contribute to the growth in air freight in future? Is it a major mode of transportation for cargo?
4. What are the three major types of ocean carriers?
5. What is the carrier's duty under a bill of lading? Discuss the "Himalaya clause."
6. State the major differences between the Hamburg rules and the Hague/Hague-Visby rules on carriage of goods by sea.
7. Discuss the difference between a freight forwarder and NVOCC.
8. BG, a stevedoring company in the employment of Tatek shipping, negligently dropped several containers of soft drinks as it was loading them on the ship from Port Everglades, Florida. Is the container a package under the Carriage of Goods by Sea Act? The contents of the container were described in the bill of lading as 2,300 cases of soft drinks, with each case containing four six-packs. Can the shippers claim from Tatek and/or BG?

CASE 9.1. WHAT CONSTITUTES A PACKAGE UNDER COGSA?

In 1936, Congress enacted the Carriage of Goods by Sea Act (COGSA) in order to implement the Hague Rules, which the United States signed in 1924. The language in COGSA is almost identical to the Hague Rules except in regard to the carrier's limitation of liability. The Hague Rules limit a carrier's liability to £100 per package or unit, whereas COGSA limits such liability to \$500 per package, or in the case of goods not shipped in packages, per customary freight unit. They both indicate that the limitation of carrier's liability applies unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

Given the absence of a definition for the term "package," courts and scholars in the field have provided different interpretations. It has become a major source of litigation in cargo damage claims.

When a cargo is fully boxed or crated in such a manner that the identity of the cargo is concealed, the cargo is considered a COGSA package regardless of size, shape, or weight. If, however, the cargo has been partially packaged for facilitating transportation, the parties' description of the cargo in the bill of lading is a determinative factor. In a case where a company sought damages from a carrier for the loss of 1,680 television tuners shipped from New York to Rio de Janeiro, the court rejected that each cardboard carton was a package and held that each pallet constituted a package. The complete shipment consisted of nine pallets, each loaded with six cardboard cartons holding forty tuners. The dock receipt, the bill of lading, and other documents all indicated that the shipment consisted of nine packages.

Another case involves a container load of perfumes and cosmetics shipped from France to Florida that mysteriously disappeared while in a marine terminal at Port Everglades, Florida. The perfumes and cosmetics in the missing container were packaged in a total of 2,270 shoebox sized corrugated cardboard cartons, which were then consolidated into forty-two larger units. They were bound together with plastic wrap and packed onto forty-two pallets with two cartons remaining. The insurance company paid the shipper for the loss under a cargo insurance policy and brought a subrogation action against the carrier. The onboard bill of lading described the cargo as four container units. The pro-forma invoice and the revised bill of lading stated forty-two packages plus two cartons. The carrier issued a clean bill of lading with these particulars (forty-four packages). If the bill of lading does not show how many separate packages there are, then each container is generally considered a package.

CASE 9.2. THE CONTAINER REVOLUTION

Until the 1960s, nearly all international cargo was delivered to the dockside in small packages and shipped on break-bulk ships. They came in boxes, crates, barrels, and drums and loaded on board ship, stowed, and at the end of the voyage, unloaded individually. This process was complicated, time-consuming and exposed cargo to damage and theft.

The container revolution involved the introduction of truck-trailer-sized boxes as cargo containers. These standardized containers can be filled with cargo at the farm, factory, or loading depot, sealed and taken by truck, train, or barge to a port where it is put on board a ship. It greatly reduced cargo handling time (it costs much less to load and unload containers by crane than it is to load and unload individual packages). Containers also eliminated costs associated with shore side warehouses to protect conventional cargo from the weather. Export costs relating to crating, packaging, etc., as well as potential loss or damage to cargo, is substantially reduced.

In typical container transportation (1) the shipper puts individual packages or cartons in a container, usually at an inland facility, and (2) the container is moved by rail or truck to a container yard close to a seaport. Once the ship arrives, the container is pulled by a tractor alongside the ship and placed on board the container ship by cranes. Container ships have specially built vertical cells which are designed to firmly hold the containers in place during the voyage. Today over 90 percent of the world trade is moved in containers. Only a handful of commodities are shipped in break-bulk: steel, paper, plywood. Even rubber and cocoa beans, which were largely shipped in break-bulk, are now moved in containers. The container revolution necessitated development of port infrastructure such as dockside cranes, standardized containers, and the designation and building of specific areas for containers, as well as connections to railways and highways.

Questions

1. In Case 9.1, what is the correct number of COGSA packages?
2. Discuss the major benefits of cargo containers.

