



RECOMMENDATIONS FOR FOREIGN TRADE COMPANIES ESTABLISHED IN TURKEY ON MAKING CHARTER PARTY MARINE BILLS OF LADING IN ACCORDANCE WITH LETTER OF CREDIT-L/C METHOD

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Abstract:

This study discusses how charter party marine bills of lading should be made in accordance with the letter of credit-L/C method. In an L/C, in order that the obligation of payment of the applicant (issuing) bank and of the confirming bank, if any, against the beneficiary can continue, exporting companies are required to prepare documents in accordance with the UCP 600, ISBP 745 and terms of documentary letter of credit and present them properly (complying presentation).

In order to prepare appropriate documents, it is essential for the exporting companies to act according to the three important criteria (letter of credit requirements, UCP 600 and ISBP 745) prevailing in this regard. Since competence of complying presentation requires a certain level of expertise, the exporting companies established in Turkey have experienced difficulties in terms of how to prepare documents and could not get benefit from payment obligation undertaking of the applicant bank and of the confirming bank, if any, due to the presentation of discrepant documents, getting export prices late, and payment of extra fees/commissions. Due to trade property, importing company's demands and the conditions required by the legislation of the country where the exporting company is established, exporting companies are required to prepare many types of documents.

In this study, the common mistakes that exporting companies in Turkey made in preparation of the charter party and the other types of B/Ls are analyzed, the basic and critical features of the charter party B/Ls, in particular, are considered and different and common parts compared to other bill of ladings are evaluated and how they can be organized properly according to letter of credit payment is shown.

Keywords:

Letters of credit, Charter Party, Bill of Lading (B/L), Discrepancy, Complying presentation

1. Introduction

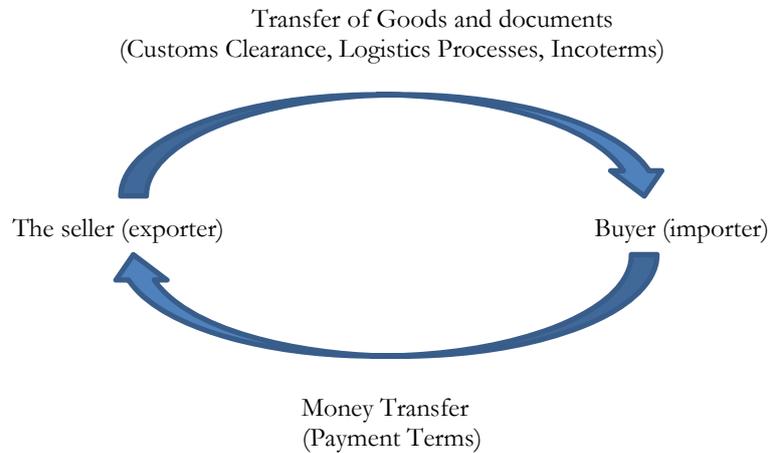
Foreign Trade has been carried out when one of buyer or seller parties have been in a different country. While the goods ¹ and documents ² are transferred from the vendor to the buyer, money transfer is expected to take place from buyer to vendor. In respect of the transfer of the goods, it should be decided how the type of delivery of the goods, subject to trade (Incoterms), and accordingly its logistics and customs clearance would be. The transfer of document and money must be treated differently from domestic trade in just the same way as the transfer of goods. An agreement should be reached between the parties detailing many operational factors such as the method of payment and the determination of the diversity, quality and quantity of documents. How a document will be transferred from the vendor to the buyer changes according to the method of payment. For example, the transfer of document regarding the methods of payment against documents (documentary collection) and L/C³ will be performed through the banks whereas remaining payment methods are performed through the buying and selling companies. The below Flow chart summarizes and illustrates foreign trade operations.

¹ In this study, goods and objects were used in the same meaning.

² Document is the plural of the word "documentary" and used in the meaning of documents used in foreign trade.

³ Letter of credit (L/C) and documentary credit (D/C) were used in the same meaning.

Foreign Trade Flow Chart:



Exporting companies are obliged to fulfil two basic necessities as the preparation of goods and documents in foreign trade flow. Although invoice and export customs declaration are sufficient in order to export goods in Turkey, any foreign trade operation performed with only these two documents has not been in existence. The main reason for this is that suppliers have requested exporters to prepare some extra trade-related documents. There are many reasons for this claim in question. Some of these are:

- The documents related to the goods to be imported, and required by the legislation of the country where importer firms are located (CE certificate, halal certificate, certificate of origin, etc.)
- The documents prepared for the purposes of providing exemption from import customs duties in the country where the importing will be performed (A.TR etc.)
- Fully importer company's requests originated or flow chart originated documents (loading notice, shipment advice, inspection certificate, packing list etc.)
- The mode of transport related documents (Marine Bill of lading⁴, CMR⁵, airway bill of lading, etc.) or documents related to the foreign trade flow chart (invoice, customs declaration, etc.)

Exporting companies have prepared some of the documents by themselves, that partly mentioned above and they have some of them prepared to the institutions and organizations that they purchased the service, due to the nature of the work. For example, while exporting, companies prepare some documents on their own, and these documents include invoice, packing list, shipment notice etcetera. They also have carrier companies executing transport service, and these companies prepare the transport documents such as B/L, CMR, Air Way B/L. Similarly, superintendence report has been prepared by the enterprise that performs this task. Whether exporting companies prepare some of the necessary documents themselves or they have an enterprise from which they purchased any service, and the latter prepares the other part of documents, undoubtedly, exporting companies are responsible for the correct preparation of all documents ultimately, relevant to foreign trade. In case the method of payment is a letter of credit-L/C, the preparation of documents in compliance with both conditions of L/C, UCP 600⁶ and ISBP 745⁷ issued by ICC, that is to say, preparation without discrepancy (complying presentation), is extremely important so that the obligation of payment of the applicant bank and of the confirming bank, if any, against the beneficiary (exporting company) could continue.

⁴ The English equivalent of marine bill of lading is bill of lading so, B/L abbreviation will be used in the rest of the study

⁵ It is the transport document prepared for international highway transportation of goods.

⁶ Uniform Customs and Practice for Documentary Credits, UCP 600, (ICC Publication No. 600 are rules that apply to any letter of credit-L/C)

⁷ International Standard Banking Practice – ISBP- (ICC Publication No. 745 is a comprehensive guide to handling and examining trade documents under documentary credits)

As noted above, exporting companies in Turkey have had issues regarding the proper presentation of documents, and have presented discrepant documents approximately in the ratio of 70 percent (Gul, 2010:50). According to the records of a public bank, exporting companies presented discrepant documents in approximately 72 out of every 100 operations between the years of 2006 and 2015. One of the main reasons why this study is needed arose at this point. In spite of the fact that exporting companies are required to prepare many documents, this study emphasizes how charter party B/Ls should be made in compliance with letter of credit-L/C method; common and different sides of the document in question with marine bills of lading and the issue was tried to be explained with examples. With the intent of determining the mistakes that exporting companies have made during the presentation of the document(s), a survey was conducted to the letter of credit services of 10 commercial bank stationaries in Turkey, at which letter of credit transactions have been performed. In this way, the issues on which, exporting companies have mostly experienced contradiction in terms were identified, and the subject-related detailed explanations were given at the further stages of the study.

The issues such as the contradictions in terms (incomprehensibility) that were experienced by beneficiary companies in Turkey in respect to preparation of other documents; mistakes they often make, and how other documents should be prepared so as to be presented properly were considered as the topic of other studies.

2. Parties to a Letter of Credit-L/C and the Review of Documents

2.1. Parties to a letter of credit –L/C

Although letter of credit –L/C is a way of payment preferred in international trade, any legal status blocking its use on domestic trade in Turkey hasn't been in existence. There isn't any legal status blocking its use in domestic trade in Turkey. Even although rare, it has sometimes been preferred in domestic trades⁸. Before buyer and seller deciding letter of credit–L/C, they are expected to constitute seller and buyer agreements between themselves especially in large amount trades. Not allowing to constitute seller and buyer agreement as supplementary or integral part in the text of the letter of credit (letter of credit opening) can't change the truth of that the texts of letter of credit have been constituted of the agreements in question, since the texts of letter of credit include a lot of elements such as, unit price, type of delivery, latest date of shipment, the documents needed to be prepared.

Letter of credit –L/C method is applied essentially in case exporting companies feel doubt against importer companies on making payment or as required by the laws of the country⁹. In the payment method in question, after accrediting while Importer Company is connected irrevocably to letter of credits until the exportation date of letter of credits according to article 3 of UCP 600¹⁰, exporting company is free whether to use or not the letter of credit accredited in favour of itself.

Since the party giving instructions to the bank to issue a documentary credit is an importer company, Importer Company is called “applicant”. The concept of applicant is used in banking technique and international trade in particular for the party giving instructions, and varies depending on the type of payment. For example, for the inception of operations in documents against payment, the party giving instruction of collection¹¹ against documents is the exporter, the applicant party in this type of payment is the exporter, not importer.

Since the issue of a documentary credit constitutes a matter in favour of exporter, exporting company is called “beneficiary”. Beneficiary can be defined as obliged company for proper presentation (complying presentation) so that obligation of payment of applicant bank and if any, of confirming bank against beneficiary company can continue in letter of credit-L/C method and also for fulfilment of presentation (honour), in other words, fulfilment of payment.

⁸ It has been derived from data of operating public bank in Turkey

⁹ Algeria has obliged only letter of credit-L/C method regarding foreign trade

¹⁰ UCP 600 Art. 3: “... if a letter of credit is not defined as irrevocable, the letter of credit in question is irrevocable...”

¹¹ Uniform Rules for Collections ICC issue no.522 Art.3/a/i.

Applicant/issuing bank is the bank preparing the text of credit opening with the instruction of supervisor and transmitting it to any of advising bank, confirming bank or nominated bank through SWIFT¹² system. It is also the bank which conducts the examination of documents¹³. As per article 7 of UCP 600, provided that the stipulated documents stated in the L/C are presented to the issuing bank, the issuing bank must honour the presentation.

As well as confirming bank might be advising bank, that is to say, beneficiary's bank, it may also be another bank established in a third country. It is mostly seen in practice that confirming bank is exporter's bank. The main reason for this is that a bank with which the beneficiary was in business relationship before, is under the obligation to pay, and because of that it places trust to beneficiary. Just as the confirming bank, applicant bank is obliged to honour complying presentation as well¹⁴. However, majority of commercial banks that act as confirming bank in Turkey, do not pay beneficiary unless complying presentation was credited by accounts of confirming bank through the applicant banks¹⁵. In order that a confirming bank could add a confirmation to the letter of credit, content of text of letter of credit should be approved by the confirming bank and credit line¹⁶ should be existed between the applicant bank and the confirming bank.

Article 12 of UCP 600 clarifies the nominated bank in the following way: "as long as the nominated bank is not the confirming bank, it is not obliged to honour complying presentation, but it enters into obligation provided it notifies to beneficiary that it will honour or purchase the document (negotiation)". In other words, the most important point that separates the nominated bank from the confirming bank or the applicant bank in regard to obligation to pay; the nominated bank should specify first its acceptance of this role to the beneficiary in an explicit way, and only by then it undertakes to honour and negotiate under the L/C terms and upon the timely presentation of credit conform documents. It has been observed that the nominated bank and negotiation bank are the same banks for its overall Turkey's application¹⁷. As well as the concept of negotiation bank hasn't been included in UCP 600, negotiation has been defined in article 2 of UCP 600. According to article 2 of UCP 600, it was declared that "negotiation means that purchasing policies and/or documents under complying presentation (taken over by another bank from the nominated bank of policies) on business day of the nominated bank needed to be paid or previously paying advance to beneficiary by the nominated bank or approving to be paid". The definition of negotiation made by UCP 600 implies that actually nominated bank and negotiation bank can be used in the same meaning.

The definition of "account bank" can be made for reimbursing bank. Opening account, one another of all banks issuing the letter of credit one another, located in different continents and geographies might not be possible or practical. Depending on the request of the bank that accredits while payment for this reason, it is expected to use an account correspondent, and this bank that is an account correspondent is called as reimbursing bank (Kütükçü, 2013:559). While reimbursing bank has not any obligation on complying honour, provided it makes a payment commitment under the scope of article 9 of URR 725¹⁸, and sends a SWIFT message with this content, in this case, it becomes obliged for honouring the payment request(s)/claim(s).

2.2. Document Examination

The document presented by beneficiary that needed for complying presentation in letter of credit transactions should not be contradicted with the conditions included in the text of credit opening, UCP 600 and ISBP 745. Ex-officio review of the document presented and determination of whether it is discrepant or not are performed by applicant bank or if any, confirming bank, and, if any, the nominated bank informing beneficiary obviously on entering into payment obligation. Apart from that, the beneficiary's bank, whose task is only to advise (advising bank), examines the document depending on the instruction of beneficiary.

¹² Society For Worldwide Interbank Financial Communication is a communication network that has been used only by banks and financial institutions throughout the world.

¹³ UCP 600 Article 7.

¹⁴ UCP 600 Article 8.

¹⁵ It was obtained from the results of the survey that was conducted to the letter of credit services of 10 commercial banks stationary in Turkey, having operations of letter of credit.

¹⁶ It is some kind of special corresponding bank's agreement or relationship.

¹⁷ It was obtained from the results of the survey that was conducted to the letter of credit services of 10 commercial banks stationary in Turkey, having operations of letter of credit

¹⁸ Uniform rules of International Chamber of Commerce for reimbursings, regarding letters of credit (ICC issue no. 725).

While the rules regarding how document will be reviewed have been explained in UCP 600, the detailed explanations on the issues causing hesitations frequently have been given in ISBP 745. ISBP 745 is much more specific, and more satisfactory in many respects than ISBP 681, which is its previous version. Despite the fact that the article 14 of UCP 600 has included the general expressions on how documents need to be made under the heading of "Standard for Review of Documents"; both UCP 600 and ISBP 745 include detailed applicant provisions on how the documents such as, invoice, insurance policy, transport documents, etc., will be constituted. For example, while on one hand, the article 22 of UCP 600 includes the basic provisions on which parties and how will sign charter party B/L, and how the documents will be prepared, on the other hand, ISBP 745 refers to both the article 22 of UCP 600 and also includes the detailed explanations to overcome the problems encountered in practice, in the G articles related to charter party B/L. In addition, for a proper preparation of charter party B/L, only article G of ISBP 681 and article 22 of UCP 600 would not be sufficient, also the other articles of both issues prepared mutually in respect to preparations of document will be needed to be taken into account (for example, UCP 600/article 14). In the light of the above mentioned explanations, a review in respect of compliance of charter party B/L included in the documents presented while accrediting will be fulfilled in respect to article 22 of UCP 600 primarily, all G articles of ISBP 745 and specific to other applicant articles prepared mutually on preparation of document and letter of credit.

3. Preparation Of Complying Charter Party B/Ls Through Examples

3.1. General Properties of Charter Party Bill of Lading

The charter agreements whether voyage charter or charter party, drawn up between the person chartering ship (charterer) and owner of ship (owner) handles affrighting in sea trade (Ülgener, 2010:29). Bill of lading is a valuable paper representing directly item and prepared as written by captain or captain's agency with qualification of carrier or representative of carrier (Ülgener, 2010:497). As well as marine bill of lading have been made under various names such as, liner B/L, port to port B/L, multimodal B/L, marine B/L, ocean B/L; a bill of lading made in scope of a charter agreement is called as charter party B/L.

As well as charter party B/Ls have a special importance in letter of credit-L/C method, their approval while accrediting is only possible by permission of text of credit opening, in other words, applicant bank. According to Özalp's opinion, the main reason for this is that charter party B/Ls have been yielded from an agreement constituted from the articles decided between charterer and owner and this agreement in question has priority in case of dispute of parties. For example, in the case of non-payment of freight ship, owner can seize the property. Due to the fact that importer, applicant bank, if any, bank in charge and confirming bank are unaware of the details of this agreement, an article of the agreement may work against buyer. Kütükçü summarized this situation as follows: as well as the terms of charter party agreement constituted between owner and charterer might be complex, its probability of including terms opposed to buyer or seller increases risks. The articles of the agreement in question might include terms opposed to all parties of letter of credit comprising banks on any issue including transfer of property of good. This case causes banks not to accept charter party B/Ls unless they take part in terms of the letter of credit.

3.2. Comparison of Charter Party Bill of Lading and Other Marine Bills of Lading in the Framework of UCP 600 and ISBP 745

It is an important issue for complying presentation to determine if a bill of lading is charter party bill of lading or marine bill of lading. Because charter party B/Ls structurally differ from other marine bills of credit. That's why it was mentioned in different articles of UCP 600 and ISBP that how charter party B/Ls and other marine bills of lading would be prepared properly. As mentioned before, how charter party B/Ls should be prepared, has explained in the articles G of UCP 600/22 and ISBP/745.

First of all, as in the case of other marine bills of lading, the rule of no matter how it is called is valid for charter party B/Ls¹⁹. Even if the name of the document presented while accrediting is Port to Port B/L, Multimodal B/L, Marine B/L, Ocean B/L etc.; taking part of the expressions such as "to be used with charter parties" on bill of lading is sufficient for the document to be evaluated as charter party B/L.

¹⁹ UCP 600 Art. 22/a and ISBP 745 Art G2 ve G3.

Herein another significant distinguishing point is that the names of the bills of lading referred to as Gencon B/L or Tanker B/L etc. is not sufficient to evaluate the document in scope of charter party B/L. This issue has been detailed in article G/3 of ISBP 745 as follows: “No matter how referred to, unless a transport document including a code or form name generally associated with charter party bills of lading, includes another symptom/registration or reference associated with for example, “Congenbill” or “Tanker B/L” charter party; it is not a charter party oriented symptom/registration or reference just due to this reason”. In summary, in order that bill of lading could be evaluated in the scope of charter party B/L; it should have number references such as, “freight payable as per charter party” or “charter party contact no:123...” or it should include such expressions like “to be used with charter parties”.

One of the significant differences of charter party B/Ls from other bills of lading is that these bills of lading in question has been signed by owner or charterer and their agents. That is to say, regarding the bill of lading including a record or symptom indicating that it is liable to a charter party according to article 22 of UCP 600, no matter under which name the bill of lading in question is made; it can be signed by captain or an agent, of which name is expressed, on behalf of captain; owner or an agent, of which name is expressed, on behalf of owner; charterer or an agent, of which name is expressed, on behalf of charterer. For example, provided the document has been prepared by the agent of owner, X Transportation Ltd, it should add annotation just below the signature in the document, as “signed by X Transportation as agent for the owner” etc. indicating who and which title signed the document. Whereas all of other marine bills of lading could be signed only by captain or an agent, of which name is expressed, on behalf of captain; carrier or an agent, of which name is expressed, on behalf of carrier.

Charter party B/Ls can be grouped basically as received bill of lading and shipped bill of lading just like other marine bills of lading. Received bills of lading are the ones indicating generally with printed expressions that goods were received to load in cases of that the ship to be loaded has not landed to port or not convenient for loading and the ones, on which necessarily board notation should be written after loading. Shipped bills of lading are the ones indicating generally with printed expressions that goods have been loaded (shipped on board) and not require any additional loading record. Thus, all bills of lading should have a content proving that goods have been loaded on ship.

Differing from other marine bills of lading, charter party B/Ls aren't required to include carrier's company information according to article 22 of UCP 600 and article G of ISBP 745. One of the main reasons is that in the event of damage to load during the journey when marine bills of lading other than charter party B/L are matters, since Carrier Company's name is lack of on bill of lading, it is impossible to detect the party responsible for damage. Whereas, regarding charter party B/Ls, the content of charter party agreement constituted between owner and charterer allows detection and discrimination of responsible for damages occurred during journey, loading and unloading.

The most basic and critical aspects in the preparation of Charter Party B/Ls are given above, and some common mistakes which are made in the process of preparing both charter part B/Ls and other types of B/Ls are presented in the table below in the light of the data gathered from surveys which are conducted with 10 commercial banks that have resident and credit transactions in Turkey.

Table: The mistakes that have been frequently made by companies established in Turkey in preparation of Charter Party B/L and other types of B/Ls, the problems originated from these mistakes and suggestions for correction.

Letter of Credit's Requirement	Mistake Made On Charter Party B/L Presented	Trouble It Causes and Correction Suggestion
46 A: + Full set ²⁰ charter party bill of lading consigned to xxx	Bill of lading's Consignee Section: Although requirement of bill of lading obliges B/L to be prepared "to the name" with statement of "consigned to", it was prepared "to the order of xxx". (This is a type of mistake which concerns the charter party B/Ls and other types of B/Ls as well.)	While it is possible to endorse the back of the document when prepared as payable to order, instead, endorsing the back of the document prepared as to the name is not suitable. It must be exactly the same with letter of credit's requirement.
46 A: + Full set charter party bill of lading consigned to order and blank endorsed	Bill of lading's Consignee Section Although it was written to the order, back of it wasn't endorsed. (This is a type of mistake which concerns the charter party B/Ls and other types of B/Ls as well.)	Exporter being in good's contractor status should prove that it transferred its right on good by blank endorsed. If it wasn't endorsed, importer company would suffer problems in terms of proof of ownership when clearing goods from customs.
46 A: +Full set charter party bill of lading.....freight payable as per charter party contract.	Because of that the type of delivery is exworks or group including F, phrase of "freight collect" was written on document, or due to type of delivery is group including C or D, phrase of "freight prepaid" was written on document. (This type of mistake is particularly associated with charter party B/Ls.).	Whether freight has been paid or not, specifying that on the document will contradict with letter of credit's requirement. Without specifying any phrase regarding freight, the phrase of "freight payable as per charter party contract" should be included just as in letter of credit's requirement
46 A: + Full set charter party bill of lading... + Full set insurance document....	The date of issuing of insurance policy was later than the date of shipping of goods included in B/L. (This is a type of mistake which concerns the charter party B/Ls and other types of B/Ls as well.)	Due to the fact that insurance policy requires to secure the risks that could happen during journey of goods, date of insurance policy should be not later than shipping of goods included in B/L (it means insurance policy will be functional after shipment of goods)

Conclusion

Bills of lading are in the transport documents that have been prepared by the organizations providing services to exporting companies. The carrier companies that took over transportation in Turkey make bills of lading according to the flow of work, as mostly unaware of the rules of CP 600 and ISBP 745. This situation leads to presentation of reserved document and accordingly, late received or missing export proceeds. In addition, in the cases, the bills of lading made while accrediting, are required to be made again, it was seen that most company established in Turkey considered that as additional service and they requested extra fees from exporters for making new document. In order that the bills of lading in question could be prepared properly, exporting companies are required to prepare the instructions constituted with in the related articles of letter of credit's requirement, UCP 600 and ISBP 745, intended for carrier companies.

In this study, it was mentioned on how beneficiary should prepare charter party B/L in scope of complying presentation and mistakes frequently made in specific to Turkey. The following issues has been considered to be subjects of another studies; how other documents are required to be prepared according to the method of letter of credit-L/C and their critical properties; the risks that exporting companies confronts due to presentation of reserved document; reserve costs that they have to suffer; additional costs such as, swift and the documents review fees, the amount of interest losses due to late received export proceeds.

²⁰ The concept of full set means comple set and indicates that all originals of document should be presented. Full Set does not include the copies of a document.

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