Explanatory notes to COMBICONBILL

Combined Transport Bill of Lading – Revised 1995

When the COMBICONBILL Combined Transport Bill of Lading was developed in 1971 its aim was to introduce a truly intermodal document dealing with all modes of transport covering the need for a "door to door" service.

Like the ICC Uniform Rules for a Combined Transport Document it was to a large extent based on the International Convention for Combined Transport of Goods (The Draft TCM Convention) prepared under the auspices of the international institute for the Unification of Private Law (UNIDROIT) and the Comité Maritime International (CMI).

At the time the COMCONBILL was introduced to the market it was still uncertain when the Draft TCM Convention would gain enough acceptance to enter into force. In the meantime, however, the COMBICONBILL was meant to serve as a basis document to be used by, or at least serve as a guide to shipping entities which were considering acting as combined transport operators.

Whilst the TCM Convention never entered into force, the COMBICONBILL has been a most successful document which has been used as a combined transport document in its own right but which has been particularly successful in being used as the basis for a number of shipowners' standard conditions of carriage. For instance, the North Sea Standard Conditions of Carriage, which most shipowners use in their traffic to and from the Nordic countries within the Baltic and North Sea areas are based on the COMBICONBILL Combined Transport Bill of Lading.

It was recognised by BIMCO's Documentary Committee, however, that the COMBICONBILL dating back to 1971 could no longer be said to be quite up to date in all areas of combined transport. At the same time considering MULTIDOC 95 being subject to the UNCTAD/ICC Rules for Multimodal Transport Documents, it was felt important to be able to offer the commercial parties with an alternative document based strictly on the Hague-Visby Rules. Accordingly, it was decided that the Sub-committee which had been involved in the drafting of the MULTIDOC 95 should also consider a possible revision of the COMBICONBILL Combined Transport Bill of Lading.

At the same time, it was agreed that in the drafting of the COMBICONBILL, changes should be made to the original edition of the document only where absolutely necessary and to align it with the MULTIDOC 95 only when a similar approach was considered useful and appropriate.

A sample of the revised edition of the COMBICONBILL, which carries the annotation "revised 1995", is the final result of the work of the Sub-committee.

In line with the MULTIDOC 95 the COMBICONBILL has been developed in a negotiable as well as a non-negotiable form. The non-negotiable form, codenamed

COMBICONWAYBILL is, in the same manner as the MULTIWAYBILL 95, subject to the CMI Uniform Rules for Sea Waybills.

The COMBICONWAYBILL appears in a light blue colour clearly cross stamped "Non-negotiable" and it is advised that whenever there is no specific need for a negotiable document, members should make use of this form.

In addition, unless members are specifically required by their customers to issue a document subject to the UNCTAD/ICC Rules, in which case the MULTIDOC 95 may serve a suitable alternative, it is advised that the COMBICONBILL be used.

Basic Character

In accordance with the original edition of the COMBICONBILL, the 1995 revision applies the so-called "network approach", i.e. the document implements the underlying basis of liability set out in the various conventions or national laws which may be compulsorily applicable to each leg of the combined transport when the stage of transport where the loss or damage occurred is known.
As already mentioned, the COMBICONBILL is based on the Hague-Visby Rules being a globally accepted liability regime for the carriage of goods by sea. There is, therefore, no specific need for the Carrier to make prior consultation with the relevant P & I Club in each individual case to obtain its prior approval that cover will be provided when contracting on the COMBICONBILL.

Face of the Document

Except to reflect the fact the revised COMBICONBILL now appears in a negotiable and non-negotiable version, few changes have been made to the face of the document.

However, as will be seen, the signature box has been amended in order to meet the requirements of Article 26 of the ICC Uniform Customs and Practice for Documentary Credits (UCP 500) according to which the multimodal transport document must, on its face, appear to indicate the name of the Carrier and to have been signed or otherwise authenticated by:-

- the carrier or a named agent for and on behalf of the carrier, or - the master or a named agent for and on behalf of the master.
Accordingly, the name if the Carrier should be stated on the dotted line appearing immediately after the words "Signed for".

In line with the MULTIWAYBILL 95, the so-called "Right of Control" provision has been included on the face of the COMBICONBILL according to which the shipper shall be entitled to transfer the right of control of the cargo to the consignee.

Despite the fact that the right of control provision is already provided for in the CMI Uniform Rules for Sea Waybills, the Subcommittee was of the opinion that specific attention should be given to this provision as it is a requirement for the shipper to

exercise the option to transfer right of control of the cargo that it be noted on the waybill. This could, for instance, be done in the following way; "I, the shipper (named in the Shipper Box on the face of this waybill) hereby transfer the right of control to the cargo carried under this waybill to the consignee (named in the Consignee Box on the face of this waybill)."

The Sub-committee did not find it necessary to state specifically on the face of the COMBICONWAYBILL that, where the shipper has exercised his option to transfer right of control to the consignee, then the consignee shall be the only party to give the carrier instructions in relation to the contract of carriage. This clearly follows from the underlying CMI Uniform Rules for Sea Waybills.

Standard Terms and Conditions

Clause 1 – Applicability This Clause makes it clear that the provisions of the COMBICONBILL shall apply whether the combined transport involves one or several modes of transport. In other words, the document can also be used in port-to-port traffic.

Clause 2 – Definitions In line with other BIMCO standard documents the COMBICONBILL contains a set of definitions. For the purpose of the COMBICONBILL only two definitions have been listed, i.e. that of the "Carrier" and the "Merchant". Unlike the definition of the "Carrier" in the MULTIDOC which can mean either the performing carrier or the MTO himself the "Carrier", for the purpose of the COMBICONBILL, means the one on whose behalf the document has been signed and who assumes responsibility for the entire contract period.

Clause 3 – Carrier's Tariff This Clause incorporates the terms of the Carrier's Tariff to the extent they are not inconsistent with the terms and conditions of the COMBICONBILL.

Clause 4 – Time Bar As may be recalled, a time bar of eleven months was provided for in the previous edition of the COMBICONBILL in order to give the Carrier sufficient time to initiate possible recourse actions against sub-carriers in view of the fact that the Hague and Hague-Visby Rules, the CIM (railway) and the CMR (road) Conventions operate with a time bar o twelve months.
In line with the MULTIDOC 95, the Subcommittee decided to cut the time bar to only nine months to allow the Carrier sufficient time, i.e. three months, during which he may himself lodge a counter claim against any sub-carrier without being ousted by the time bar.

Clause 5 – Law and Jurisdiction The Subcommittee felt that the provisions of the previous edition of the COMBICONBILL, which contained a number of options for the claimant to instigate court proceedings against the Carrier, could give rise to a number of impractical jurisdictions being involved in a particular case. It is therefore now clearly stated that disputes arising under the COMBICONBILL shall be determined at the place where the Carrier has his principle place of business.
It should be observed, however, that some jurisdictions by law do not recognise

limitations the claimant's right to instigate court proceedings at other places than where the Carrier has his principal place of business.

Clause 6 – Methods and Routes of Transportation As will be seen, the previous Clause 6 (Subcontracting) has been deleted. The provisions of the previous Sub-clause 6(1) have now been covered in the "Received for shipment" Box which gives the Carrier the liberty to sub-contract the carriage. It was found that the provisions of the previous Sub-clause 6(2) dealing with the Carrier's responsibility for the acts and omissions of those persons whose services he makes use of to perform the contract of carriage more appropriately belong under the Carrier's liability provisions in Clause 9.

Sub-clause 6(1) in the new edition of the COMBICONBILL mainly constitutes what would apply in accordance with the general background law. However, as it was found desirable to make the provisions off this liberty clause as wide as possible and in line with the wording of the "received for shipment" Box the words "and all services related thereto" have been added immediately after "transport" in line 1. Sub-clause 6(2) is a clarification of events special to the carriage of goods by sea.

Clause 7 – Optional Stowage In sub-clause (1), the words "or similar articles of transport used to consolidate goods" have been added to the enumeration of containers, transportable tanks, flats and pallets. This has been done to cope with technical innovations which might appear in the future as regards how to consolidate goods.

Sub-clause (1) provides the Carrier with a right to carry containers, trailers and transportable tanks on deck without clausing the combined transport document in which case the usual bill of lading liabilities apply.

Clause 8 – Hindrances, etc. Affecting Performances Sub-clause (1) sets the general standard, providing that the Carrier has to use reasonable endeavours to complete the transport and to deliver the goods at the place designated for delivery. What is reasonable has to be decided by reference to the facts of each individual case.

It will be seen that compared to the previous edition of the COMBICONBILL a provision has been included to the effect that where the Merchant has not taken delivery of the goods within a reasonable time after the Carrier has asked him to do so, the Carrier shall be entitled to put the goods in safe custody on behalf of the Merchant at the latter's expense. This is in line with the provisions of the MULTIDOC 95.

Clause 9 – Basic Liability Sub-clause 9(1) provides that the period of responsibility includes the whole time the Carrier is in charge of the goods. Sub-clause 9(2) which, as mentioned earlier, previously formed part of Clause 6 (Sub-contracting), underlines the basic principle in combined transport operations, i.e. that the combined transport operator vis-a-vis the Merchant is responsible for the acts or omissions of any person, i.e. including independent sub-contractors

whose services he makes use of in order to perform the contract.

Clause 10 – Amount of Compensation Clause 10 deals with the evaluation of the goods, the amount of compensation, and the rules regarding limitation of liability when no other special provision applies in accordance with Clause 11.
The previous reference to 30 Francs Poincaré per kilo of goods lost or damaged has been replaced by an amount of two Special Drawing Rights (SDR) which is in accordance with the Hague-Visby Rules, as amended by the SDR Protocol 1979.
As in the previous edition of the COMBICONBILL, no reference has been made to the package limitation. In those circumstances when the Carrier (being responsible for the entire transport) has sub-contracted parts of the combined transport to other carrier's he may wish his liability under the COMBICONBILL to reflect that his sub-contracts, so that he is no being held liable for a greater amount than what he can recover from his sub-contractors. At the same time, since haulers only accept liability on the basis of weight limitation, it was agreed to make no reference to the package limitation.

Clause 11 – Special Provisions for Liability and Compensation This Clause contains special provisions for liability and compensation and it aims at those situations when it is known at which stage of the transport the loss or damage occurred.
Sub-clause (1)(a) and (b) provide that in those cases the Carrier's liability will be determined by reference to any international convention or national law, the provisions of which cannot be departed from by private contract, and which would have applied if the Merchant had made a separate and direct contract with the Carrier for that particular stage of the transport.
Sub-clause (2) ensures that, in the event no such international convention or national law applies for the carriage of goods by sea, the Hague-Visby Rules shall apply. In this way, the Clause duly recognises those trade where, for instance, the Hague Rules apply mandatorily for the sea carriage whilst at the same time providing a generally accepted liability regime as a "fall back" in those instances where there may be no such mandatory rules applicable.

Clause 12 – Delay, Consequential Loss, etc. Liability for delay is not expressly referred to in the Hague-Visby Rules and therefore some jurisdictions, although applying the Hague-Visby Rules may impose upon the owners liability for delay. Sub-clause (e) ensures that, in those circumstances, the Carrier shall also have a right to limit such liability.

Clause 13 – Notice of Loss of or Damage to the Goods This Clause is similar to the previous edition of the COMBICONBILL and the new MULTIDOC 95. A distinction has been made between apparent and non-apparent loss or damage as appearing in sub-clause (1) and sub-clause (2), respectively. In the former case, notice should be given in writing to the Carrier when the goods are handed over to the consignee. In the later case, notice should be given within three consecutive days after the day when the goods were handed over to the consignee. In case of late notice, the Carrier would have established a prima facie case to the effect that it is presumed

that no loss or damage has occurred unless the contrary could be proven by the claimant. The Clause does not deal with actions by the Carrier against the consignee and therefore no period of notice of such claims has been provided.

Clause 14 - Defences and limits for the Carrier, Servants, etc. Sub-clause (2) makes it clear that the Carrier shall not be able to limit his liability in those circumstances when loss or damage has been caused by his personal act or omission done with the intent to cause such loss or damage.

Sub-clause (3) is a so-called "Circular Indemnity" Clause which prescribes the Merchant to undertake that in his contract with his customers no claim be made against the sub-contractor. Should a claim nevertheless be made, as a result of which the sub-contractor claims against the Carrier, then the Merchant shall indemnify the Carrier against all consequences thereof.

Sub-clause (4) purport to protect the servants and agents whose services the Carrier has made use of in order to perform the combined transport contract and thereby indirectly the carrier himself by providing that the same protection which applies to the Carrier shall also be afforded to such servants and agents whether claims made are founded in contract or in tort.

The above-mentioned provision is by and large the same as the Himalaya Clause found in other transport documents. However, it is uncertain, at least in some jurisdictions which apply Anglo-American law, whether the protection given under the Himalaya or similar provisions also applies to independent contractors as distinguished from servants or agents. In combined transport arrangements this is of particular importance as the Carrier often engages various sub-contractors in order to perform the combined transport contract. Therefore, with a view to protect such sub-contractors from claims from third parties it is stipulated that in entering into the combined transport contract the Carrier does so not only on his own behalf but also as agent or trustee for such persons.

Clause 15 – Carrier's responsibility This Clause corresponds with the wording of the MULTIDOC 95 which in turn reflects the UNCTAD/ICC Rules. In the explanation to the corresponding clause in the MULTIDOC 95 it is stated as follows:
"With respect to the responsibility for the information in the MT document, the expression in Article 3.4 of the Hague-Visby Rules, "third party", has not been used since the governing factor is whether or not the consignee has relied and acted upon the information and not his position as a "party" or "third party" in relation to the Carrier. In particular, such an expression may be misleading where the seller has handed over the goods to the carrier, and the buyer under an FOB or an FCA contract has concluded the contract of carriage. In such case, the FOB/FCA-buyer – although relying on the information in the MT document – could not be considered a "third party".

The second sentence of the Clause provides for the so-called Doctrine of Estoppel which excludes the carrier from proving (once the bill of lading has been transferred to a third party) that the goods did not correspond with the information in the bill of

lading at the time it was received for shipment or loaded on the vessel.
In some jurisdictions, for instance, in Scandinavia, the waybill consignee is not afforded the protection of the Doctrine of Estoppel as is a consignee under a bill of lading. However, in accordance with the BIMCO Documentary Committee's decision to make the COMBICONWAYBILL subject to the CMI Uniform Rules for Sea Waybills (which was in conformity with a decision to make BIMCO GENWAYBILL Non-

Negotiable General Sea Waybill subject to the CMI Rules), the Sub-committee agreed to provide expressly in the COMBICONWAYBILL that "As between the Carrier and the Shipper, the information in the MT Waybill shall be conclusive evidence of receipt of the goods as so stated and proof to the contrary shall not be permitted, provided always that the Consignee has acted in good faith."

Clause 16 – Shipper's Responsibility The wording of this Clause, which is similar to the previous edition of the COMBICONBILL, emphasizes the importance of the shipper providing accurate details of the goods to the Carrier at the time such goods are to be taken in charge by the carrier by making the shipper liable under the principle that he is deemed to have guaranteed to the Carrier the accuracy of all information given with respect to the goods and, in particular, their dangerous character. The shipper's duty to indemnify the Carrier against loss resulting from wrong information in these respects is not limited to cases where inaccurate information is given but also applies when the information is inadequate. The fact that the Carrier may proceed against the shipper does not in any way prevent him from holding other persons liable as well, for instance, under the principle that anyone who tenders goods of a dangerous nature to the Carrier under the applicable law could become liable in tort.

Clause 17 – Shipper-packed Container, etc. This Clause, which is largely similar to the previous edition of the COMBICONBILL provides for the basis of liability as regards FCL packed containers.

In line with common practice, the Carrier accepts no responsibility for loss or damage caused by the negligent filling, packing or stowage of the container or caused as a result of the content being unsuitable for carriage in containers.
In accordance with general practice in the container trade, it will be seen that the Clause also excludes liability on the part of the Carrier for loss or damage due to the unsuitability or defective condition of the reefer equipment or trailers supplied by the Merchant.

Clause 18 – Dangerous Goods This Clause sets out in clear terms that the shipper shall comply with mandatory national law or international conventions as regards shipment of goods of a dangerous nature.
In accordance with the Hague-Visby Rules Article 4.6, the Clause provides the Carrier with various remedies to dispose of the dangerous goods in the event the consignor fails to provide the necessary information on such goods and of which the Carrier is unaware. In addition, the consignor shall be liable for and hold harmless the Carrier for all loss, damage, delay or expenses that may arise from the carriage of dangerous goods.

Clause 19 – Return of Containers This clause, which is to be found in a number of private forms of bills of lading or multimodal transport documents, is meant to take into account the increasing problem of containers, pallets or similar articles of transport received by the consignor or consignee for packing and unpacking not being returned to the Carrier in the same good order and condition as when handed over or which may not be redelivered at all. The Clause operates as follows:

Sub-clause (2) sets out the basic responsibilities of the consignor and the consignee to redeliver within the time prescribed in the Carrier's tariff, containers, pallets or similar articles of transport to the Carrier in a clean state and in the same good order and condition as when received, normal wear and tear excepted.

Sub-clause (3) (a) deals with the loading side of the transport, i.e. the consignor's liabilities as a result of his non-compliance with the basic responsibilities under (2). As will be seen, the Clause seeks to extend the coverage of the contract of carriage as regards the consignor's responsibilities for containers, pallets or similar articles of transport during the period between handing over to the consignor and the return to the Carrier of such articles, which would otherwise not be covered by contract of carriage.

Sub-clause (3)(b) deals with the discharging end of the transport, i.e. the consignee's liabilities as a result of his non-compliance with the responsibilities under (2). It should be noted, however, that there may be no legal basis to extend the coverage of the contract of carriage to a third party, such as the consignee, who has no contractual link with the carrier. Since, therefore, it may prove to be difficult, at least in some jurisdictions, to hold the consignee responsible, not being a party to the contract of carriage, sub-clause (b) holds the consignor and the consignee jointly and severally liable for non-compliance with the provisions of (2).

Clause 20 – Freight This Clause provides the Carrier, without consulting the Merchant, with a right to inspect the contents of containers, trailers or similar articles of transport for the sole purpose of verifying the freight basis.

Clause 21 – Lien This Clause is self-explanatory.

22 – General Average As will be seen and in accordance with other general average clauses, general average shall be adjusted at any port or place determined by the Carrier. Also, reference is now made to the York-Antwerp Rules 1994 which have been recommended for use by the Comité Maritime International as soon as practicable after 31 December 1994.

Clause 23 – Both-to-Blame Collision Clause This is a standard clause which forms part of almost every standard document issued by BIMCO.

Clause 24 – U.S. Trade This Clause provide for the application of the U.S Carriage of Goods by Sea Act, 1936 throughout the carriage by sea and the time that the gods are in the actual custody of the carrier or of any sub-contractor whose Services he makes use of in order to perform the multimodal transport.

The Clause further makes it clear that in the event the U.S. COGSA applies, the Carrier shall in no event become liable for loss of or damage to the goods in an amount exceeding the statutory limits, i.e. USD 500 per package or customary freight unit.

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