

In-Transit Freight Finance: The WHY and HOW for Leveraging Every Container

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Global supply chains present unique opportunities for large shippers and their lenders to negotiate credit agreements. Lending against in-transit freight, in particular, allows a shipper to expand its asset base to include inventories beginning the moment goods leave foreign supplier docks. The feasibility of in-transit freight finance relies upon quality documentation of transportation services and the relationships with service providers across the entire span of multimodal international transportation. Strategic planning and well-structured document workflows are essential to successfully building these complex relationships.

The Strategic “WHY” for In-Transit Freight Finance

Shippers often own goods sourced abroad well before the freight reaches a United States port of entry. Commercial terms of sale, such as the Ex Works INCOTERM (EXW), can transfer title and risk of loss from the foreign supplier to the shipper even before the goods leave the country of origin. Lenders may lend against this in-transit freight just as if it were domestic inventory, provided that reporting provides sufficient visibility and the legal relationships to the freight offer recourse in the event of default. Shippers and lenders balance these interests by negotiating workflows that establish lender rights to the freight while permitting the uninterrupted movement of freight.

The key element for in-transit freight finance is effective management of the seemingly archaic world of negotiable bills of lading. Every shipment transported to the United States by ocean carrier is documented with a bill of lading. A “negotiable” bill of lading serves as a document of title and legally functions as if it were any other negotiable instrument. As a result, negotiable bills of lading entitle the party to whom the bill is issued or endorsed, or any party in possession of the bill if it is endorsed in blank, the exclusive right to receive the freight from the carrier. The right and title conferred by a negotiable bill of lading is superior to all parties except the carrier’s own lien for freight charges—it even defeats an unpaid supplier’s lien. Carriers may themselves bear liability for failing to deliver freight to the appropriate party as determined by the negotiable bill of lading.

Lenders establish their rights to the in-transit freight by requiring the issuance of negotiable master bills of lading that must be precisely completed. In particular, the Consignee field on the bill of lading must read “To The Order Of” the lender or its designated agent. The use of “Order” language causes the bill to become automatically negotiable and deliverable only to the legal entity identified. This technical completion of the shipping document creates a strong interest in the goods together with the right to march in and recover the freight despite the shipper-debtor’s objection. These rights do not exist in any meaningful way if the bill of lading is nonnegotiable or if it is issued “To The Order

Of” the shipper or another third party. Similar principles can be generally applied to domestic transportation and warehousing services, thereby encompassing the entire flow of traffic.

The Structural “HOW” for In-Transit Freight Finance

Negotiating effective in-transit freight financing arrangements requires attention to both the details of shipping documents as well as the numerous parties that may be in actual or constructive possession of any particular shipment or the associated shipping documents. International transportation remains a highly fragmented system composed of various carriers, NVOCCs, freight forwarders, consolidators, warehouses and customs brokers. Each of these operational relationships must be managed in addition to the fundamental relationship between lender and shipper, including the respective legal rights to the goods and the covenants to perform in support of the desired lending.

This process begins with negotiating applicable provisions of the credit agreement. The key terms supporting in-transit freight finance involve inclusion of the freight among the asset base, establishing routine reporting for those freight values, and agreeing upon the documentary workflows and relationships with third-party service providers. Separate agreements with the core service providers are required to further support the workflow and ensure the lender’s uninhibited right to the goods in the event of default.

The credit agreement will specifically require that carriers issue negotiable bills of lading for the eligible freight, in each case completed “To The Order Of” the lender or its designated agent. The lender will also require that the original master bill of lading is provided to the lender or its agent, often the shipper’s customs broker, for endorsement and processing on the lender’s behalf. This ensures that the lender has the right to receive the freight from the moment the vessel sets sail for import to the United States. The lender’s agent will endorse the bill of lading on the lender’s behalf and manage the entry of the goods in the ordinary course of business, which permits the uninterrupted flow of freight. If the lender seeks to exercise its right to the freight, it will instruct the agent to act upon a predetermined workflow that deviates from the ordinary course by holding the bills of lading rather than endorsing them over to the shipper. The lender may receive the freight in its own right if it chooses.

The ancillary agreements with service providers are often tripartite in nature with the lender, shipper and service provider as signatories. The key terms structuring the workflows and rights of the parties often include acknowledgment of the lender’s security interest, waiver or subordination of the service provider’s lien, acceptance of the lender’s right to enter and recover the freight or the shipping documents, agreement upon reporting requirements, and in some instances appointment as a limited agent (particularly with customs brokers) or bailee (particularly with warehouses) for the lender. This endeavor requires a keen understanding of the shipper’s inbound traffic flows and negotiation of terms with the significant nodes within that supply chain. Many sophisticated service providers accept these structures and terms of agreement in the interest of accommodating the financial needs of large shipper customers. The degree of negotiation and its impact on the relative rights of the lender may ultimately impact the desire to lend against the in-transit freight.

In-transit freight financing achieves the practical effect of conceptually extending the walls of a large shipper’s warehouses as far as the supplier’s door, provided that it is well-structured and documented across all relationships. This strategy is most advantageous for global supply chains

with high volumes of inbound freight and long transit times due to the relative magnitude of freight that may be in transit at any given time. The resulting impact to a shipper's assets can be appreciable while still protecting the shipper's supply chain management objectives and the lender's interest in those goods.

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