

ICC OPINIONS

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TA.770rev2 - Any Chinese Port vs. Hong Kong Port

This query was also held over from Mexico City whilst further discussions could be held to ascertain the scope of any ICC response to the question "If a credit required shipment to be effected from "any Chinese Port", and where the shipment has been effected from Hong Kong, would that comply with the requirement of the credit?"

The analysis and conclusion stated that when a credit indicates that shipment is to be effected from "Any Chinese Port" (or to "Any Chinese Port"), it is recognised that in the context of examination of documents on their face, in accordance with UCP 600 sub-article 14 (a), this would include Hong Kong being shown as the port of loading (or port of discharge).

The analysis and conclusion went on to state that it is advisable for applicants and beneficiaries to be specific as to a port of loading or discharge. This is mainly due to the different customs systems and regimes that operate in Hong Kong and at ports in the Chinese Mainland.

Although the question referred to shipments from any Chinese port, the answer would equally apply to shipments that are to be made to "any Chinese port".

TA.775rev - Signing of Charter Party Bills of Lading

An initiator requested the views of the ICC Banking Commission in respect of what was stated to be an increasingly common practice of charter party bills of lading being signed in the name of a carrier or as agent for a named carrier.

The analysis stated that when a credit allowed for a charter party bill of lading to be signed by or for [or on behalf of] the carrier it would modify the content of UCP 600 sub-article 22 (a) (i).

The conclusion stated that sub-article 22 (a) (i) does not permit a charter party bill of lading to be signed in the manner stated.

In the discussion that took place it was agreed that this issue would be revisited if it became apparent that there was a growing and widespread trend for charter party bills of lading to be signed by a carrier or its agent.

TA.776rev - Language of Documents

A confirming bank had stipulated that its confirmation would be null and void if any wording appearing on a presented document was not in English, except for the description of the goods indicated in the credit. The credit contained no restriction on the applicable language of documents and only the applicant's name and address and the goods description were not in English (they were given in Spanish).

Documents were presented and the confirming bank noted that the shipping marks contained wording that was not entirely in English (some wording was given in Spanish).

The confirming bank declined to act under its confirmation due to these shipping marks in Spanish. They also refused to claim reimbursement under the credit, even though the documents were compliant with the terms and conditions of the credit as issued by the issuing bank.

Questions focused on two issues (1) whether the confirming bank was able to refuse to handle the documents and (2) were they in a position to claim reimbursement even though the documents did not comply with its own requirements?

In the analysis it is highlighted that a confirming bank may qualify its confirmation. However, for this case it did not change the fact that the documents complied with the credit as issued.

The confirming bank, as nominated bank, could have agreed to claim reimbursement and act under its nomination, by effecting settlement upon receipt of funds or effecting settlement to the beneficiary on a with recourse basis, but they were under no obligation to do so.

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TA.777rev & TA.778rev - Discrepancies in documents

These queries were very similar in that the same countries were involved and the issue concerned the validity of numerous discrepancies observed by an issuing bank under separate credits. TA.777rev related to 6 discrepancies including "an inconsistency between weights on the documents", "different port of discharge on documents (effectively omission of 'South' in 'South Korea', although the correct port name was shown)" and "packing details different on bill of lading and packing list."

The nominated bank offered a full rebuttal to each discrepancy and the ICC Banking Commission agreed that the documents were not discrepant.

Similar to TA.777rev, TA.778rev covered a presentation that resulted in 9 discrepancies being reviewed, including those that are highlighted under TA.777rev above.

Once again, the nominated bank offered a full rebuttal to each discrepancy and the ICC Banking Commission agreed that the documents were not discrepant.

TA.779rev - Delivery Terms, Insurance Policy, Refusal Notice, Fees

This request focused on four issues.

(1) Whether a delivery term CIF (named port) allowed for a line item charge covering "SASO Certification" to be included within that Incoterm;

(2) An insurance policy was issued in two originals and sent to the issuing bank in separate mails (according to the credit terms) and the issuing bank refused for absence of one original. Also, the insurance policy referred to General Insurance Terms and Clause Nos., which were stated to have been received by the policyholder but not presented with the policy;

(3) A refusal notice indicating that the documents were being held pending instructions from the presenter and also that the issuing bank was contacting the applicant for a waiver; and

(4) Whether the issuing bank was entitled to charge a SWIFT fee in respect of messages relating to the payment under the credit.

In respect of (1) the conclusion given indicated that the additional charge created no conflict with the content of ISBP 681, paragraph 61 and the discrepancy was not valid.

For (2), the credit required documents to be sent in two mails and sending an original in each mailing would be the expected outcome. There was no requirement for the terms and clauses to be presented unless specifically required by the document.

Under (3), although UCP 600 sub-article 16 (c) (iii) (a-d) requires only one of the options to be stated, the use of two does not in itself create preclusion against the issuer. The issuing bank would be required to obtain instructions regarding the disposal of the documents, if a waiver was received prior to instructions of the presenter.

(4), an issuing bank is not entitled to make a SWIFT charge in respect of the effecting of any payment or the advice of payment to a presenter.

TA.780rev - Additional Conditions

This was a joint submission and referred to the acceptability of an advising bank inserting a condition into its advice of a credit, requiring additional documents or conditions to be met as a basis for it agreeing to honour or negotiate, or even to handle documents, under the credit i.e., where the underlying goods may breach such bank's policies or be subject to government control and authorisation.

There was also the issue of whether an advisory group that operates within an ICC national committee may make recommendations to that advising bank for them to remove or change the text.

The analysis and conclusion indicate that a bank may incorporate or add its own conditions, i.e., where its ability to perform according to the nomination given by an issuing bank is subject to certain criteria being met or there is a need for presentation of evidence of compliance with local regulations i.e., an export licence for shipment of certain goods.

An ICC national committee may offer informed and 'unofficial' opinions based on a submission made to it by one of its members, but compliance therewith would be subject to the concurrence of the ICC Banking Commission by way of the issuance of a formal opinion.

TA.781rev - Discrepancies

A credit required the presentation of a truck consignment note. The presented document was issued on the letterhead of a named carrier and signed, but was marked 'duplicate'. The issuing bank refused the document.

The initiator, the nominated bank, made certain statements in support of its position to accept the document. However, the ICC Banking Commission determined that the issuing bank was correct to refuse the document.

TA.782 Refusal Notice

Documents were presented to a confirming bank and found to be discrepant (charter party bill of lading presented). The beneficiary requested that the documents be sent to the issuing bank on approval basis. The documents had initially been received within the expiry date, but were sent to the issuing bank three days after that date and were received seven days later. The issuing bank did not issue a refusal message.

After a number of follow up messages, the issuing bank responded stating that as documents were received after the expiry date, it had no obligation to examine them and that article 16 did not apply.

The ICC Banking Commission noted that the credit expired at the counters of the confirming bank and documents had been received within the expiry date.

As the issuing bank had not issued a refusal notice within 5 banking days following the day of its receipt of the presentation, they were required to honour the drawing.

TA.783 - Certificate of Quality

This query referred to a requirement in a credit that a certificate of quality be 'based on EN15376 specifications'.

A certificate of quality was presented and bore the statement "based on EN15376 specifications". However, the content of the document showed a breakdown of various specifications, one of which - electrical conductivity - showed a result that was greater than the maximum percentage given i.e., 3.1 against "max 2.5".

However, the results also showed that it was under a reference method 'EN15938' - a different standard to that which the inspection of the goods were subject. However, the issuing bank refused the documents for this reason.

The conclusion to the opinion stated that as the document bore the required statement "based on EN15376 specifications" it is not for a bank to know the relevance of any other referenced standard and there was no basis for any comparison between the stated specifications. The discrepancy was not valid.

TA.784rev - Insurance Documents

This query related to insurance documents and the need to identify whether all originals have been presented given certain circumstances.

UCP 600 sub-article 28 (b) states, "When the insurance document indicates that it has been issued in more than one original, all originals must be presented."

There is no requirement in UCP 600 article 28 for an insurance document to indicate the number of originals that have been issued.

Although the query, analysis and conclusion refer to insurance policy, the analysis and conclusion will apply to any form of insurance document.

Scenario A - The credit is "silent" as to the number of originals and / or copies to be presented (e.g., "Insurance certificate for 110 per cent of CIF value")

If an insurance policy does not indicate that it is issued in more than one original, then only one original is to be presented.

When an insurance policy is presented in more than one original, and does not indicate the number of originals that have been issued, the number presented will be considered to be the number of originals issued.

Scenario B - The credit requires "Insurance policy in original and duplicate"

ISBP 745, paragraph A28 states, "Documents issued in more than one original may be marked "Original", "Duplicate", "Triplicate", "First Original", "Second Original", etc. None of these markings will disqualify a document as an original."

There is no requirement for an insurance policy to indicate the number of originals that have been issued. The presentation may consist of two original insurance policies or one original and one copy (duplicate).

There is no requirement for an insurance policy to indicate the number of originals that have been issued.

If an issuing bank or applicant requires two originals of an insurance policy, and so as to avoid any potential ambiguity, a credit should require the presentation of the document in "two originals" as opposed to an "original and duplicate" or "in duplicate".

Scenario C - The credit requires "Insurance policy in duplicate"

UCP 600 sub-article 17 (e) states, "If a credit requires presentation of multiple documents by using terms such as "in duplicate", "in two fold" or "in two copies", this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise."

There is no requirement for an insurance policy to indicate the number of originals that have been issued. The number of original insurance policies presented will be considered to be the number of originals that have been issued.

There is no requirement for an insurance policy to indicate the number of originals that have been issued.

A duplicate may be a copy or an original insurance policy. If an issuing bank or applicant requires two originals of an insurance policy, and so as to avoid any potential ambiguity, a credit should require the presentation of the document in "two originals" as opposed to an "original and duplicate" or "in duplicate".

Scenario D - The credit requires "Insurance policy in 2 originals"

There is no requirement for an insurance policy to indicate the number of originals that have been issued, but at least 2 originals must be presented.

Scenario E - The credit requires "Full set Insurance policy".

There is no requirement for an insurance policy to indicate the number of originals that have been issued. However, if an insurance policy indicates the number of originals that have been issued, that number must be presented. Absent any such indication, the number of originals presented will be considered as the full set.

TA.785 - Documents in Two Mails

The credit in question expired at the counters of the issuing bank. It required the beneficiary to forward documents in two mails. The first mail was received within the credit validity; the second was received after this date. The question asked was whether the issuing bank was obliged to examine the documents based on the first mailing.

The conclusion stated that as the credit expired at the counters of the issuing bank, they should receive all documents within the expiry date and the presentation period.

The conclusion also stated that a request to send documents in two mailings, where the credit is available with the issuing bank, is bad practice. The choice of mailing method should be that of the beneficiary as it is they that must ensure that the documents reach the issuing bank within the required timeframes.

TA.786rev2 - Commercial Weight

This draft opinion had been held over from the April 2013 meeting and re-drafted on the basis of comments made in the discussion session.

The issue, which was heavily debated in both the April and October meetings, centered on a credit that made reference to two types of goods with a unit price and quantity stated to be 500,000kgs - but without indicating the basis for the quantity.

In normal circumstances, one would be looking at either a gross or net weight. In this case, whilst the bill of lading, certificate of origin and weight list, which covered a partial shipment, showed a gross weight of 504,402kgs and net weight of 501,604.80kgs, the invoice (and therefore the basis upon which payment was to be made) showed a 'commercial weight' and this was stated to be 513,828kgs. The commercial weight was also shown on the weight list.

The question asked was, absent any indication in the credit of the weight basis, was a commercial weight acceptable? It should be noted at this stage that the shipment covered Viscose Staple Fiber.

The analysis made reference to UCP 600 sub-article 14 (d), and made the point that there was no conflict of data between the documents and the credit. It went on to say that the quantity of goods to be supplied, as indicated in the credit, was stated in kilograms without any additional qualification. The commercial invoice and the weight list both indicated a "commercial weight" whilst the weight list, bill of lading and certificate of origin also showed a gross and net weight which differed from the commercial weight.

The analysis emphasises that when a drawing amount is to be based upon the weight of the goods that are shipped, multiplied by a unit price, it is the responsibility of the issuing bank (and applicant) to ensure that the credit indicates the basis under which that amount is to be determined i.e., the net, gross, commercial weight or other formula; absent which, any basis used to determine the drawing amount is acceptable.

'Commercial weight' is a recognised term in the fiber industry. In this respect, the answer given by the ICC Banking Commission, that an invoice showing the commercial weight as the basis for determining payment was acceptable, was made subject to a specific clause added to the analysis. This reads "Commercial weight" is a term commonly used in the determination of weight for fibers, a process that also takes into consideration the impact of moisture regain on the weight of the fiber. The incorporation of moisture regain accounts for why a commercial weight will be greater than a net weight, i.e., the moisture being taken into consideration after establishment of the dry weight.

In the fiber industry, commercial weight is an understood term. Whilst it would have been preferable for this to be stated in the credit, it does not detract from the fact that "commercial weight" is an acceptable term for the described goods. For other commodities, other practices may or will exist.

TA.787 - Bill of Lading Page Numbers

A credit contained a condition "B/L presented in incomplete number of page is not acceptable." A presentation was made, including a full set of charter party bills of lading as was permitted by the credit.

The issuing bank refused the documents due to "bill of lading presented in incomplete number of pages."

The issuing bank based its refusal on the following: "Full set charter party bill of lading presented has indicated "Page 01" at the reverse side of the B/L but the front page did not indicate "Page 02" to declare it was the 2nd page of the B/L."

The nominated bank made various arguments to counter the refusal including "On the front page of the B/L, it did not indicate wording such as 'continuation to page 2' or 'continue to next page' or 'page 1 of 2' that could lead to an interpretation there would be a 2nd page or supplement/appendix attached to it." and "There is no such requirement in the credit that front page of the document is to state the page no. and marking page 01 on the back page has no meaning at all so why the front page needs to declare itself as page 02?"

The beneficiary eventually arranged for an agent to amend the document and the issuing bank honoured two weeks after the original date of negotiation.

The analysis included "The requirement in the credit for 'B/L presented in incomplete number of page is not acceptable' is unclear as to the exact intention. There is no indication in the bill of lading that there are additional pages."

The conclusion of the ICC Banking Commission was that the document was compliant as originally presented.

TA.788rev - Vessel Under Arrest

This query focussed on an issue that is not that common. A bill of lading was issued bearing an on board notation showing "Clean on board 18 February 2013". The bill of lading also bore a clause "Vessel under arrest 18 February 2013".

Documents were found to be otherwise compliant by the nominated bank and forwarded to the issuing bank as a complying presentation. The issuing bank refused the documents for three reasons (two of which were subsequently withdrawn). The remaining discrepancy was "Bill of lading is not clean. It bears the clause as follows: Vessel under arrest 18 February 2013."

The nominated bank refuted the discrepancy arguing that UCP 600 article 27 does not extend to such clauses.

The analysis included "Arrest of a vessel, and any subsequent obligation or liability arising out of such arrest, is a matter of law and outside the remit of UCP 600." and that article 27 does not apply. The document was not unclean and the issuing bank should have taken up the documents.

TA.789rev - Presentation Period

A credit stated that documents must be presented not later than 10 calendar days after credit issuance date.

Documents were presented within 10 calendar days after the issuance date of the credit, but the bill of lading showed an on board date of 6 months previous. The issuing bank refused the documents due to them being presented later than 21 days after the date of shipment.

The issuing bank contended that although the credit contained a condition requiring presentation within 10 calendar days after the credit issuance date, the default presentation period of 21 days after the date of shipment (in UCP 600 sub-article 14 (c)) would still prevail. Also, that the clause in the credit did not waive or exclude the content of sub-article 14 (c).

The analysis quoted the content of a previous analysis given in ICC Opinion R716 (TA704rev). It made the point that if a rule in UCP 600 is to be excluded, there should be a specific statement to that effect.

The conclusion stated that the reference to presentation within 10 calendar days modified the effect of sub-article 14 (c) and the documents were compliant.

TA.790rev- Photocopy of Charter Party Bill of Lading

This query was in respect of a standby letter of credit that included a condition to the effect that if the documents show shipment effected by sea, a photocopy of an original bill of lading is to be presented. It was also stated that the document would be accepted as presented, subject to compliance with two sanctions driven requirements.

The beneficiary presented a photocopy of a charter party bill of lading. The issuing bank refused the documents. The nominated bank referred the issuing bank to the clause in the credit that the document would be accepted as presented and to ISBP 745, paragraph A20 that copies of transport documents are not transport documents for the purpose of UCP 600 articles 19-25. The issuing bank refused to change its view.

The analysis included "For a presentation of a photocopy of an original transport document UCP 600 sub-article 14 (f) applies (see also ISBP 745 paragraph A6 (a)) which determines the standard of examination of such photocopies. A photocopy of a transport document has no apparent function under a SBLC other than demonstrating that transport has taken place."

The conclusion stated that the discrepancy was not valid. This query demonstrates the need for a standby credit to be specific with regard to any documentary requirements, whether originals or copies, especially when supporting documentation is required, such as copies of transport documents and copies of invoices, etc.

TA.791rev- Signing of Bill of Lading

A bill of lading had been signed:

"[Company M] Lines Ltd, as Carrier" (pre-printed text)

"By [Company A] Shipping Ukraine Ltd, as agents."

There was also the stamp and signature of Company A. The issuing bank had refused the bill of lading due to "The signature of agent on B/L not indicating on whose behalf it is signing."

The analysis of the opinion referred to UCP 600 sub-article 20 (a) (i) and ISBP 745, paragraph E5 (c). It also emphasised that "In this particular example, the word "By" means "For and on behalf of the above."

The document was considered to be compliant.

TA.792rev - Originality of Insurance Document

The final query referred to two insurance documents and whether they could be considered as originals under UCP 600. The two documents had been presented in exclusively 'black on white' forms without, apparently, any additions such as stamps, symbols, marks or signatures being made.

The two documents were made available as part of the query. It is difficult here to describe the documents that had been presented, as only photocopies had been provided and, as a result, the arguments that were made to accept them as originals.

The conclusion stated that they should be treated as originals based on the text of the query and the information apparent from the copies that had been provided.

TA.793rev - Signing of Charter Party Bill of Lading

Further clarification was requested in respect of previous Opinion 470/TA.775. Two cases were outlined in respect of Charter Party Bills of Lading (CPBL).

Case 1 - does the freight clause indicate this is a CPBL? If so, is it discrepant as it is signed by an agent for a carrier?

Case 2 - Does the appearance of a 'carrier' on a CPBL cause an issue?

It was remarked in the analysis that the credit was badly worded in that it required a bill of lading marked freight payable as per charter party. In view of the fact that it was so marked, it was to be checked as a charter party bill of lading, not a bill of lading, and checked under UCP 600 article 22.

Accordingly, the fact that an agent for a carrier signs the charter bill of lading makes it discrepant.

In the second case, an agent for the master signed the charter bill of lading. The fact that it additionally included a carrier name did not make it discrepant.

TA.794rev - Insurance Certificate marked 'Not transferable'

Insurance Certificate included the wording "Not transferable unless countersigned" above the "countersigned" box.

The bank claimed that the following wording should be mentioned: "Only valid unless countersigned by the insured", otherwise the document would be discrepant.

On the assumption that the document was correctly signed, it was concluded that there was no discrepancy on the basis that inclusion of any such wording as the above is a matter for the insurance industry and not for UCP 600. The countersignature was included as a prerequisite for transferability and, as such, does not conflict with UCP 600.

TA.795rev - Discrepancy fee

This query revolved around a request to re-consider ICC Opinion TA700rev.

The credit included a clause that a discrepancy fee would be deducted if documents were presented with discrepancies. The issuing bank paid, deducting a discrepancy fee, but had not previously indicated any discrepancies to the advising bank.

It was concluded that in the event that a bank charges a discrepancy fee, it would be good banking practice for them to provide details of any associated discrepancies to the presenter.

This can be done at the time of noting the discrepancies or at a later date.

TA.796rev - North European Port

The credit called for shipment from any North European port and the presented bill of lading evidenced shipment from Antwerp.

The question raised was whether or not Antwerp could be considered as a North European port.

The analysis pointed out that it is not the role of banks to determine geographical locations.

It concluded that, as the credit did not include a definition of a north European port, then the document was to be considered as compliant.

TA.797rev - Remitting bank reduced the amount of a collection.

Despite the remitting bank having reduced the amount of a collection, the collecting bank erroneously paid the initial collection amount, not the reduced amount. A refund of the excess amount was questioned

URC 522 does not provide a rule for the handling of collection amendments. As such, it was concluded that the query was to be considered as a legal issue and outside the scope of URC 522.

TA.798

This query was withdrawn.

TA.799rev - Payment location of Guarantee

A credit was issued by an issuing bank located in country X on behalf of an applicant also located in country X and confirmed by a Bank located in country Y requiring a guarantee from an international first class bank payable in country X.

The bank guarantee presented to the confirming bank was issued by a bank located in country Y and stated that it was subject to the laws of country Y.

The wording of the guarantee neither contained an express indication that it was "payable in country X" nor any express reference to country X being the place of payment.

The opinion concluded that the guarantee should have stated that it was payable in country X. Accordingly the presented guarantee was discrepant.

TA.800rev - Signing of Charter Party Bill of Lading

The master on behalf of the owners signed the presented Charter Party Bill of Lading. This is not a signing scenario strictly covered by UCP 600 article 22.

However, the fact that it was signed by the master means the document is compliant in this respect.

TA.801rev - Alleged incomplete set of documents under a documentary collection

The remitting bank sent several documents for collection on behalf of its client (the principal) to a presenting bank. After numerous attempts, the presenting bank finally provided a written response alleging that they had only received 2/3 original Bills of Lading under each presentation of documents.

The presenting bank should have responded 'without delay' as stated in URC 52 sub-article 12 (a). As they did not, they are precluded from claiming that any documents were missing.

In the event that the presenting bank is unable to return the missing documents, they must pay the collection

TA.802rev - Original Standby LC not presented and additional discrepancies.

The beneficiary presented a demand under a standby credit, which arrived at the counters of the issuing bank before the expiry date of the credit.

The issuing bank subsequently issued a notice of refusal on the third day following presentation stating one discrepancy: "Original Standby LC Not Presented". There was no wording in the credit requiring presentation of the original Standby LC.

In the analysis, it was noted that the credit had not included a condition that the original credit be included with the claim. In any event, unless the credit was issued in mail or paper format, this would not even prove feasible.

Accordingly, it was concluded that this was not a discrepancy.

The initiator also asked whether the issuer was able to raise additional discrepancies at a later date. As stated in many previous opinions, it was re-emphasised that a bank has only one opportunity to raise discrepancies in respect of a presentation of documents.

TA.803 & 804

These queries were withdrawn.

TA.805rev - Originals & Copies

Documents were refused by an issuing bank for the following reason: "Health Certificate to be presented in 1 original and 2 copies but only presented in 1 original plus 1 copy."

The nominated bank stated that all required originals and copies were presented to them within the time limits foreseen by the credit, but admitted to having made an operational mistake by leaving one copy of the Health Certificate in their file and by only sending one original and one copy to the issuing bank.

As such, it was concluded that the discrepancy was valid, but would fall away once the missing document was received together with the nominated bank's confirmation of receipt of that document within the time limits in the credit.

TA.806rev - Endorsement of credit

A credit included a condition that the negotiating bank must confirm on the remittance letter / covering schedule that the amount of the drawing had been endorsed on the reverse of the credit.

A number of banks presented documents to the issuing bank with no notification regarding the endorsement.

It was highlighted in the analysis that this is a practice more suited to credits in paper format sent by mail, which is no longer the norm. In view of the fact that most credits are now sent by SWIFT, the beneficiary will only receive a copy of the credit, many of which may be in existence. In fact, many credits are now advised electronically, so a physical 'copy' does not exist.

It was stated that such a condition is not one that needs to be attended to by the beneficiary in order to complete a complying presentation.

As such, there is no need for a notification of endorsement and an issuing bank should honour or negotiate provided the documents comply.

TA.807rev - Reimbursement under a credit not subject to URR 725

An issuing bank claimed that reimbursement was subject to URR 725 despite this not being stated in the credit. It was questioned whether or not the confirming bank was entitled to claim 'delay' interest.

The analysis confirmed that, according to UCP 600 sub-article 13 (b), if a credit is silent with regard to URR 725 then UCP 600 sub-articles 13 (b) and (c) apply.

In line with UCP 600 sub-article 13 (b) (iii), issuing banks are responsible for any delay in payment and any associated interest claim.

TA.808rev - payment subject to receipt of funds from the applicant

A transferable credit available by deferred payment included a condition stating that payment would only be forthcoming provided compliant documents were presented and that funds were received from the applicant.

Discrepant documents were presented and, in due course, accepted by the issuing bank with the statement that payment would be made on the maturity date with the qualification 'as received funds from applicant'.

At maturity and despite numerous chasers, payment was not received from the issuing bank.

The response highlighted that this was not an instrument that fitted the definition of a credit as stated in UCP 600. Banks should, in fact, refrain from issuing such instruments if subject to UCP 600 as it is considered to be bad banking practice. In this particular instance, the advising bank should again contact the issuing bank in order to obtain more clarity on the issue.

TA.809.rev - Incorrect proforma invoice number on CMR

This query revolved around whether or not the inclusion of an additional character within the proforma invoice number appearing on the CMR, would be sufficient evidence to refuse to honour the presentation of documents i.e., proforma number 1074 dated 12/12/2012 instead of 104 dated 12/12/2012 as stated in the credit.

All other information on the documents was compliant, including the description of goods. Furthermore, the specified proforma invoice number was correctly stated on the invoice. It was stated that the reference on the proforma invoice expanded, but did not contradict, the actual number.

In summary, the additional character on the CMR was to be handled as a typographical error which, based on ISBP 745 paragraph A23, does not make the document discrepant.

TA.810rev - Incorrect amount on the shipment advice to insurance company

The credit called for a copy of a shipment advice to be sent to the insurance company. However, it was noted that the advice showed the invoice amount as USD 54,00.00 instead of 54,000.00.

The analysis mentioned that the function of such a document is to provide shipment information for the purpose of arranging relevant insurance cover. In view of the fact that the amount was incorrectly stated, this cannot be considered as a compliant document.

A corrected document was presented and was subsequently refused by the issuing bank due to late presentation. It was stated that the new discrepancy was valid as it related to the re-presentation of documents and not the original presentation.

TA.811rev - Difference between PO numbers on documents

The issuing bank refused documents on the basis of a single discrepancy, i.e. a difference existed in the PO number stated on the invoice (PO No. SOL140430-01) and the packing list (PO No. SOL140).

The credit itself had not included a condition that the PO number was to be added to any document.

In view of the fact that it is quite possible that both PO numbers could be valid, this issue was considered to be a discrepancy.

TA.812.rev - Refund under a price fluctuation clause in a documentary credit relating to oil, subject to UCP 600.

The credit included a condition that a drawing would initially be made against presentation by the beneficiary of a provisional invoice subject to specific pricing restrictions. However, the credit indicated that any balance

payment would be effected against the presentation of a final invoice whether the amount is owed to the beneficiary or the applicant.

In the event that the final price is for a lower amount, this would require the exact handling mechanism to be outlined in the credit. UCP 600 does not provide a solution to this issue, which, in effect, modifies UCP 600.

The opinion indicated that by not including details of the method by which a lower price should be handled, this is bad banking practice.

In this instance and bearing in mind that UCP 600 does not cover payment obligations of the beneficiary, handling of the final invoice must be covered outside the terms and conditions of the credit.

TA.813rev - Signing of a combined transport bill of lading

The issuing bank stated that documents were non-compliant due to the signature of the issuing party on the bill of lading being inconsistent with that of the carrier.

It was signed by the master but, in addition, included a stamp providing evidence of the name of a shipping company and the name of the carrier.

The response concluded that, as the document was signed by the master, and such signature was identified as that of the master, then it complied with UCP 600 sub-article 19 (a) (i). The stamp was considered to be what is commonly referred to as the 'ship's stamp'.

TA.815rev - 'Free Out' vs 'unloading cost' & Deduction of reimbursing bank fees

The trade term was stated to be "CPT Alexandria Port, Egypt without unloading cost". The credit stated that reference to 'unloading costs' on the bill of lading will be acceptable.

The presented bill of lading contained a clause stating 'Free Out Alexandria' which was seen by the issuing bank as a discrepancy but disputed by the confirming bank.

In an unrelated issue, the confirming bank also complained that the reimbursing bank had deducted fees from the ultimate settlement amount that were not appropriate to the confirming bank.

It was concluded that the reference 'free out', when predicated upon the context of the bill of lading and ISBP 745 paragraph 27 (b), is not a conflict in respect of unloading costs as it specifically relates to costs associated with loading or unloading of goods.

The question as to whether or not the reimbursing bank was entitled to deduct certain fees was considered to be outside the scope of UCP 600.

TA.816rev - Short shipment and short drawing

A credit allowed partial shipment but included a condition that if there were to be no further shipments, then the beneficiary must present a statement to this effect, and for the final shipment, this must also be evidenced by a certificate issued by the beneficiary.

The credit was not fully drawn and the beneficiary presented, along with the other required documents, a certificate confirming that there would be no further shipments.

The presentation was considered by the issuing bank to be discrepant due to 'short shipment and short drawing'. The nominated bank disputed this due to the fact that the credit allowed for partial shipments and the conditions relating to the certificates that were to be issued by the beneficiary.

As emphasised in the analysis, this was a self-contradicting credit for which the issuing bank must take responsibility.

The conditions of this credit may lead to a dispute between the buyer and seller but this is outside the scope of UCP 600. The discrepancy was considered as invalid.

TA.817rev - Shipment in FCL container

The credit required the bill of lading to show shipment effected in FCL container. The presented bill of lading stated CY/CY and not FCL, which was mentioned as a discrepancy by the issuing bank and disputed by the nominated bank.

A lot of discussion was provoked by this query as to the definition of FCL and CY/CY.

Ultimately it was considered that a document examiner should not be expected to understand such terms. As such, the document is considered to be discrepant, as it did not make express reference to a FCL shipment.

TA.818rev - No indication of applicant on the invoice

Documents were presented including an invoice that, whilst it did not specifically identify the applicant as such, included the correct full name and address of the applicant under a header 'Customer'.

The issuing bank raised a discrepancy that there was no indication of the applicant on the invoice i.e., implying that the invoice should have a header "applicant".

As stated in the analysis, there is nothing in either UCP 600 or ISBP 745 that requires the name and address of the applicant to appear in a specific place within an invoice.

Provided the name of the applicant appears somewhere on the invoice, it is compliant with UCP 600 sub-article 18 (a) (ii).

TA.819rev - Compliance of stamps and signature on a CMR

This query was with regard to UCP 600 article 24 and the acceptability of CMR documents that had been stamped and signed by a variety of methods and, in particular, when a combination of fields 16 "Transporter (name, address, land)", 17 "Transporter successive (name, address, land) and 23 "Signature and stamp of Transporter" are completed.

The analysis pointed out that a CMR is utilised for road transport and that signing requirements are enshrined within UCP 600 sub-article 24 (a).

Three of the various scenarios were considered to be compliant, whilst one was considered to be discrepant.

TA.821rev - Release of original documents under a documentary collection without payment.

A remitting bank mailed a documentary collection to a branch of the presenting bank. Because that specific branch did not handle such transactions, the envelope was apparently forwarded, unopened, to the drawee.

The envelope included a full set of bills of lading that the drawee utilised in order to collect the goods without effecting payment.

It was unclear from the information received whether or not there was another envelope that was actually addressed to the drawee within the envelope that was addressed to the presenting bank.

In any event the collecting bank, under URC 522, is responsible for the correct handling of the collection.

The remitting bank has a right to insist on payment by the collecting bank and, if not, return of the documents. The presenting bank was liable to make payment / settlement.

TA.822rev - Addition of a double confirmation on instruction of the issuing bank

An advising bank confirmed a credit. The credit was then also confirmed by the second advising bank.

The query questioned the possibility of a credit having a 'double' confirmation.

As outlined in the analysis, this is entirely feasible. UCP 600 does not restrict credits to having only one confirming bank.

TA.823rev - Handwritten notations on a Charter Party Bill of Lading

The reverse of a presented charter party bill of lading included two lines of handwritten notations, one of which was in respect of the amount of 'freight paid'. Such amount was not stated on the front of the bill of lading.

The credit had called for the charter party bill of lading to indicate 'the value of freight prepaid'.

As such, it would be expected that the issuer of the charter party bill of lading would add such data to the face of the document or authenticate the inclusion on the reverse.

In view of the fact that such details and authentication was missing, the document was considered to be discrepant.

TA.824.rev - Conflicting payment terms & additional order numbers

A credit was issued available by deferred payment payable at 60 days from date of shipment and subsequently two presentations were made.

The issuing bank refused both presentations for the discrepancy 'conflicting payment terms' on the invoice, with one further discrepancy for the second presentation stating that additional order numbers existed on the packing and weight lists which were not covered by the invoice.

The first discrepancy apparently related to a remark on the invoice that indicated 'Letter of Credit at sight'.

This was considered as non-consequential as the invoice also correctly stated the payment terms in accordance with the credit.

The additional order numbers were seen to be additional information which, provided it did not conflict with any other information in the presented documents, was not to be treated as a discrepancy.

TA.825rev - Payment of credit made by MT103 without stating credit reference

A nominated bank provided prepayment to the beneficiary under a deferred payment credit and the issuing bank were informed accordingly.

However, at maturity, it appeared that the issuing bank had not provided settlement.

Subsequent to investigation by the nominated bank it transpired that the issuing bank had made payment, however not by the usual channels. Payment was, in fact, made by MT103 directly to the beneficiary's account with the nominated bank and without mentioning the credit reference.

It was concluded that the method of payment as above was outside the credit. The issuing bank had failed to comply with UCP 600 sub-article 7 (c) in reimbursing the nominated bank and continues to be liable until such payment is made, along with any appropriate delayed payment interest.

TA.826rev - Discrepancy of "early presentation".

A credit was issued with the condition that documents were to be presented at least 21 days after shipment.

Documents were presented 11 days after the date of shipment, which caused the issuing bank to refuse the documents stating a discrepancy of 'early presentation'.

In accordance with the terms and conditions of the credit, the issuing bank would not have expected documents to be presented until the earliest 21 days after the date of shipment.

Therefore, the issuing bank was validly entitled to refuse the documents.

It was further questioned as to whether or not the issuing bank had the right to return the documents to the presenter. Obviously this is the case. However, in the event that the documents were re-presented between the 21st day after date of shipment and the expiry date, the issuing bank would be required to honour.

TA.827rev - Signing and content of a copy bill of lading

As required by a documentary credit, a copy bill of lading was presented.

The issuing bank refused the documents on the basis that a forwarder instead of a carrier, master or their agent had apparently signed the original bill of lading.

The analysis clarified that the signing requirements of article 20 only applied when a credit called for the presentation of at least one original bill of lading.

Presentation of a copy bill of lading, as allowed by this particular credit, is subject to examination under UCP 600 sub-article 14 (f) and further clarified by ISBP 745 paragraph A6 (a).

In view of the fact that a copy bill of lading cannot be considered as a transport document, the fact that a forwarder signed it without acting on behalf of the carrier cannot be considered as a discrepancy.

TA.815rev4 - Currency of the invoice stated as '\$' instead of 'USD'; B/L evidenced applicant as consignee

An invoice was presented referring to the designated currency as '\$'. This was considered by the issuing bank to be a discrepancy on the grounds that the actual currency was not specified. UCP and ISBP specify that an invoice must be in the same currency as the credit. It was decided that provided a beneficiary is not in a country other than the USA that uses '\$' to describe or reflect its base currency and, on the basis that there was no data in the invoice or any other document implying that '\$' referred to a currency other than 'USD', then the invoice complied and the discrepancy was invalid. Additionally, the credit included a condition that the bill of lading be negotiable and blank endorsed. The presented bill of lading showed the name of the applicant in the consignee field and was not endorsed. As this meant the bill of lading was straight consigned, the discrepancy was valid.

TA.820rev4 - Acceptance of an amendment under UCP 600

At the time of presentation of a set of documents, the beneficiary had not yet provided acceptance or rejection of a prior amendment. It was decided that if the presentation complied with the original credit, but not with the content of the amendment, the beneficiary would be considered as not, at that stage, as having accepted or rejected the amendment. On that basis, the presentation was determined as compliant. Beneficiaries can accept amendments at any time, regardless of the timing of any presentation(s). Furthermore, beneficiaries can, when presenting documents, communicate acceptance of an amendment to apply to future presentations. A presentation must fully comply with a credit either before or after amendment: there can be no mix of conditions.

TA.828rev - Packing list / weight memo reference number differs to that stated on the certificate of origin

A certificate of origin referred to the attached packing list / weight memo as 'rev03': the presented packing list / weight memo stated 'rev04'. It was concluded that in view of the fact each individual document complied with the terms and conditions of the credit and that the credit itself included no requirement for a particular revision number to be stated, then no discrepancy could be identified. It must be noted that this decision is predicated upon the conclusion that the wording 'rev' must be an abbreviation for the word 'revision'.

TA.829rev - 'Underdrawn' credit despite partial shipment allowed and no inclusion of a unit price

The term 'underdrawn' is not defined in UCP 600. The presentation covered a shipment of goods that equated to almost the full quantity of goods as stated in the credit. However, the amount claimed was only for approximately two thirds of the value of the credit. It was determined that the credit allowed partial shipment and also that a unit price was not quoted. On this basis, the stated discrepancy could not be supported and the documents were considered as compliant.

TA.830rev - Documents released to drawee without payment under a collection subject to URC 522

A collection instruction given by a remitting bank to a presenting bank stated that two sets of documents were to be delivered against payment. The documents were released to the drawee without payment being obtained and the drawee obtained the goods. It was concluded that the presenting bank was clearly in breach of URC and, in addition, did not provide required information 'without delay'. A court injunction had been issued that prevented the presenting bank from paying the collections, however this was only well after the date that documents had been released to the drawee and goods collected. Such a court injunction did not prohibit the presenting bank from complying with the collection instructions at the time of releasing the documents.

TA.831rev - Validity of confirmation fee; credit issued in two languages

An issuing bank instructed a bank to add its confirmation to a credit and to subsequently advise the credit to the beneficiary via a third bank. The third bank informed the beneficiary that it had received a confirmed credit and no adverse comments were received in this respect. Two presentations of documents were made. As no mention was made of discrepancies, it was assumed that these were compliant. Although the beneficiary had not specifically instructed the advising bank to add its confirmation, the beneficiary did not dispute this at the time and the bank was entitled to receipt of applicable fees. A query as to whether or not it was possible to use two languages in a credit was answered positively; there is nothing in UCP to prevent this. However, banks have no responsibility for providing translations.

TA.833rev - Net weight greater than gross weight

An issuing bank refused documents on the basis that all documents showed a net weight greater than the gross weight, which they considered to be illogical. The reasoning provided by the nominated bank was that the weight in question was actually ADMT (air dry weight), which can be greater than the gross weight due to included moisture. The Opinion highlighted that although this is information not likely to be known by a document examiner, use of the words 'net weight' in conjunction with 'ADMT' weight did not make the documents discrepant.

TA.834rev - Partial shipment within units

A credit was issued covering delivery of a number of merchandise units and allowing for partial shipment. The presented documents evidenced that partial shipment was made within the units themselves. This was, in the opinion of the issuing bank, a discrepancy. However, there was nothing in the credit to prevent such a scenario. Accordingly, this could not be considered as a discrepancy.

TA.835rev - Insurance policy does not indicate name of the proxy

An issuing bank refused documents presented under a credit on the basis that the insurance document did not indicate the name of the proxy; it had been signed as Proxy for a stated insurance company. It was determined that the signature and document was in compliance with UCP and the discrepancy was not valid.

TA.836rev - Bill of lading does not show capacity of signing party

An issuing bank refused documents presented under a credit on the basis that the presented bill of lading did not show the capacity of the signing party. However, both the signature and the capacity of the signatory were determined to be in line with the requirements of UCP. The master had manually signed it with the master's name in the signature field.

TA.837rev - Quoted abbreviation not acceptable

An issuing bank refused documents presented under a credit on the basis that within the name of the applicant the abbreviation 'Ind' had been used to represent 'Industries'. This, in its opinion, was not acceptable. Although ISBP 745, paragraph A1, lists a number of acceptable abbreviations, this is not all-inclusive, and other types of abbreviation can be acceptable. From the perspective of this specific query, the use of the word 'Ind' was not viewed as a discrepancy.

TA.838rev - Payment terms quoted incorrectly on invoice

A credit was issued with deferred payment details '30 days after transport document'. A third drawing under the credit included an invoice that included wording stating 'L/C 30 days sight'. This was considered by the issuing bank to be a discrepancy on the grounds that it differed with the payment terms of the credit. There was no requirement in the credit for the invoice to stipulate payment terms and, in any event, the wording on the invoice did not change the obligations of the issuing bank as stated in the credit. The discrepancy was not considered as valid.

TA.839rev - Flight/date box on AWB

The query was raised as to whether or not the box 'Flight/Date' on an AWB is a specific notation of the date of issuance. Under UCP 600, there are a variety of ways in which the date of issuance can be identified. The box

in question is normally used by the carrier to indicate the scheduled flight and date and, as such, cannot be considered as a definite notation of the date of issuance.

TA.840rev - Bill of lading had no indication of 'Regular Line Vessels' or 'By Regular Line Vessels'

The 'documents required' field of a credit, included mention that a full set of bills of lading was to be presented with '... notation date ocean bill of lading by regular line vessels ...'. It was observed that credits may include documentary requirements in addition to those stated in UCP. In the circumstances of this credit, it was not considered that any statement in respect of a regular line vessel was required. The discrepancy was not considered as valid

invoices: selected icc opinions

R213- The shipper's name on the L/C was X native produce and animal by products import and export corporation, Country A, but the shipper's name on the commercial invoice was X national native produce and animal by products import and export corporation, Country A. It should be noted that the term "shipper's" as used in this query actually meant the beneficiary. The name of the beneficiary on the commercial invoice displayed the addition of the word "national". This was considered as a discrepancy due to the fact that the document did not comply with the credit.

R584 (TA564rev) - The description of the goods in the credit stated "Men's suede jackets, plain suede fabric", whereas the goods description in the invoice stated "Men's suede jackets (imitation suede with 100 per cent polyester knitted backing) plain suede fabric". It was concluded that the word "imitation" indicated a different category or classification of the goods, which was in conflict with the goods description within the credit. The addition of the word "imitation" is not part of the description of the goods in the credit and provides a reason to refuse the documents on the basis that the goods description in the invoice did not correspond with that in the credit.

TA756 - The goods description in the commercial invoice included the addition of the words "second hand" which was not part of the description of the goods in the credit. The words "second hand" indicate a different category or classification of the goods. The addition of the words "second hand" was considered to be grounds for refusal on the basis that the goods description in the invoice did not correspond with that in the credit.

R208 - The description of goods in the credit included the words "Clock Movement" twice. The full description of goods in the letter of credit was: Clock Movement 'O.K.' BRAND QUARTZ CLOCK MOVEMENT WITH SWITCH. However, the description of goods in the invoice, bill of lading and packing list showed: 'O.K.' BRAND QUARTZ CLOCK MOVEMENT WITH SWITCH.

Logic would suggest that the first indication represented a general heading, whilst the second was part of a more detailed description of the goods. The words "Clock Movement" were missing as a general heading within the documents that were presented. However, the more detailed description of the goods was exactly as stated in the credit. It was concluded that the omission of the words "Clock Movement" was unimportant, based on the fact that the goods description stated in the documents complied with UCP.

R235 - A credit included a goods description stating "Pakistanese blue poppyseed". The presented Report on Quality and Weight described the goods as "Pakistanese blue (coloured) poppyseed". The opinion concluded that the addition of the word "(coloured)" made the description of the goods in the Report inconsistent with the description of the goods in the credit.

R419 - This Opinion included a question as to whether or not a 'discount' that is quoted in a commercial invoice but which is not authorised in the credit, would be acceptable, provided that the amount of the presented draft remained within the amount of the credit. The conclusion stated that a bank is under no obligation to accept an invoice for an amount which is greater than the L/C amount, but if the nominated bank elects to do so it binds all other parties, provided the settlement to the beneficiary is no greater than the value of the credit. An invoice that shows a deduction due to a 'discount' being granted would not be a reason, in itself, to refuse the documents.

R236 - This Opinion focussed on whether the price term in the description of goods in the invoice of 'F.O.B. Japan' would correspond with the price term in the description of goods in the L/C of 'F.O.B. Shimonoseki'. (Shimonoseki is a seaport in Japan). And if the above is a discrepancy, whether it is a discrepancy which would justify the refusal of documents under the terms and conditions of the L/C. Minority opinion: "FOB Japan" means inter alia that the price quoted is for delivery of the goods at the port of loading within Japan. Reference

may be made to Incoterms 1990 wherein the definition of FOB means that the seller fulfils his obligation to deliver when the goods have passed over the ship's rail at the named port of shipment. "FOB Japan" is not a named port of shipment. The credit specifically indicates that the price of the goods covered were to be quoted as free on board Shimonoseki, a particular defined place. Majority opinion: There is an evidence from the bill of lading required in the credit and presented, that "Shimonoseki" is a port in Japan, as it says "Port of Loading: Shimonoseki, Japan", and that the invoice in question also names "Shimonoseki, Japan" as the place where the goods have been shipped from. While not a unanimous decision, the majority of the Group of Experts said, in this particular case, that the trade term "FOB Japan" indicated in the invoice should not be considered a discrepancy and the documents should not be refused.

R237 - A credit included the trade term "FOB Shanghai" within the description of the goods. The commercial invoice did not state "FOB Shanghai". When commercial parties mutually agree on trade terms by stipulating them in a letter of credit, they are bound by these terms as a material part of the contract. This position is taken irrespective of whether the trade term is stipulated in the credit as part of the description of the goods. The opinion concluded that the trade term "FOB Shanghai" is deemed to be a requirement to be satisfied by a statement on the commercial invoice. Since the commercial invoice failed to indicate the trade term "FOB Shanghai", the bank had the right to refuse the document.

insurance documents: selected icc opinions

R765 (TA673rev) - This Opinion focussed on whether it would be acceptable for insurance documents to be signed by a broker. The initiator advised that issuance and/or signing by a broker was a common occurrence and that some banks were accepting such documents whilst others were refusing them. It was also pointed out that some insurance company personnel hold the position of 'broker' within the company. An example of one such document was provided for review.

Article 28 does not refer to insurance documents being issued or signed by brokers. The conclusion that was offered was that an insurance document may be issued and/or signed by a broker provided that the broker indicates it is acting in the capacity of agent or proxy for an insurance company or underwriter. If the broker is an employee of the insurance company and has a title of 'broker' then they must sign for or on behalf of the insurance company.

R767 (TA732) - This request for an Opinion asked whether a date stated as part of the countersignature data could be deemed to be the date of issuance of the insurance document or evidence of an effective date of insurance.

The insurance document showed "Countersigned at (blank) Date: 13/10/2009" and was properly signed. However, there was no issuance date or evidence of an effective date for the insurance coverage. The shipment date was the same as the date appearing in the countersignature area.

Sub-article 28 (e) states that the date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment.

The analysis stated that the date of the countersignature is the date that the insurance becomes valid (or effective) and can be taken into consideration by banks when determining compliance with the terms and conditions of the credit and UCP 600 article 28.

Absent any other date appearing in the document, that could cast doubt as to the date of issuance or effective date of the insurance, the document would be acceptable.

TA784 - This query related to insurance documents and the need to identify whether all originals have been presented given certain circumstances.

Credit is silent as to the number of originals / copies to be presented: if the insurance policy does not indicate that it is issued in more than one original, then only one original is to be presented; if the insurance policy does not indicate that it is issued in more than one original and more than one original is presented, then the number presented will be considered as the number of originals required.

Credit requires original and duplicate: there is no requirement for the insurance policy to indicate the number of originals that have been issued so presentation can consist of two originals or one original and one copy.

Credit requires insurance policy in duplicate: there is no requirement for the insurance policy to indicate the number of originals that have been issued so the number presented will be considered to be the number of originals that have been issued.

Credit requires insurance policy in two originals: there is no requirement for the insurance policy to indicate the number of originals that have been issued but at least two originals must be presented.

Credit required full set insurance policy: there is no requirement for the insurance policy to indicate the number of originals. If it does so, that number must be presented. If no indication is given, the number of originals presented will be considered as the full set.

R768 (TA687rev) - *An issuing bank refused documents due to the fact that the insurance coverage had not been calculated to three decimal places to accommodate the requirement for 110% of the invoice value. The conclusion made it clear that the international standard banking practice for the establishment of insurance coverage is two decimal places.*

R634 (TA638rev) - *A credit was issued deleting UCP 600 sub-articles 28 (h) and (i). The conclusion highlighted that if sub-article 28 (i) is excluded or does not apply, then the insurance document must not bear any exclusion clauses - which is extremely rare. To exclude this rule may, in a vast number of transactions, create an unworkable letter of credit or necessitate the beneficiary obtaining an amendment in order to allow specific exclusion clauses or the removal of the restriction completely. With respect to sub-article 28 (h), this rule was included in UCP 600 in order to discourage banks from merely indicating that the insurance document is to cover "all risks" rather than expressly stating the risks that are required to be covered. By excluding the rule, the issuing bank is further compounding the lack of detail in its credit by prohibiting any exclusions to a risk that most insurance companies do not cover, i.e., all risks.*

R778 (TA688rev) - *This Opinion focussed on the requirements for insurance documents to be endorsed. Six examples of how an insurance document could be issued were provided for comment:*

- 1. "To Bearer", where the LC required a blank endorsed insurance document.*
- 2. "ABC Exporting Co. Ltd, To Bearer", where the LC required a blank endorsed insurance document.*
- 3. "To Order", where the LC required a blank endorsed insurance document.*
- 4. "ABC Exporting Co. Ltd To Order", where the LC required a blank endorsed insurance document.*
- 5. "To Order of XYZ Bank Ltd", where the LC required an insurance document to be issued to order of XYZ Bank Ltd.*
- 6. "ABC Exporting Co. Ltd*

To Order of XYZ Bank Ltd", where the LC required an insurance document issued to order of XYZ Bank Ltd

In conclusion, the opinion states:

- 1. Structure is acceptable without endorsement*
- 2. The insurance document requires endorsement by ABC Exporting Co. Ltd*
- 3. Structure is acceptable without endorsement*
- 4. The insurance document requires endorsement by ABC Exporting Co. Ltd*
- 5. Structure is acceptable without endorsement*
- 6. The insurance document requires endorsement by ABC Exporting Co. Ltd*

Clearly, to avoid issues relating to the determination of compliance, an insurance document should not show the assured party as "Bearer" or "To Order" and neither should a credit require that an insurance document be issued in a similar manner or in a manner similar to the requirements for a bill of lading i.e., to order and blank endorsed.

R724 (TA731rev) - This Opinion covered clauses that had been seen on insurance documents and the question was whether the text would be acceptable or not.

Clause 1 which is pre-printed on the insurance document as part of the signature area:

"This insurance does not cover any loss or damage to the property which at the time of happening of such loss or damage is insured by or would, but for the existence of this Policy, be insured by any fire or other insurance policy or policies, except in respect of any excess beyond the amount which would have been payable under the fire or other insurance policy or policies had this insurance not been effected."

Clause 2 which is also pre-printed on the insurance document:

"This policy is prepared according to the material facts disclosed by the proposer as is shown in the proposal form and is subject to the general and special conditions and clauses enclosed or attached herewith and the Company hereby agrees to indemnify the Assured, against payment of the premium due, in case of a marine peril as described above."

The document contains a heading "Clauses" and shows thereunder "[Country T] General Conditions" and a list of applicable clauses including ICC (A), War, Strikes Clauses, Institute Classification Clauses, etc.

Clause 3 appears as part of the text inserted onto the insurance document:

"The cover will be valid, if and only if, the transporting vessel(s) have a valid ISM Certificate and Classification Certificate (according to Institute Classification Clause 01.01.2001) during the transport."

There is no data on any required document meeting the above-mentioned condition.

Clause 4 appears as part of the text inserted onto the insurance document:

"CAUTION:

This policy is subject to the following mentioned conditions and warranties:

- 1. The vessel should be fully classed and class maintained with class society member of IACS (including Turk Lloyd) as per Institute Classification Clause 01.01.2001 as per attached wording. Therefore, the vessel being nominated should be complied with the stipulation stated thereof.*
- 2. Vessel should also be a member of a respected P & I (Protection & Indemnity) club member of International Group.*
- 3. Vessel should also be complied with the ISM requirements.*
- 4. A vessel which does not have above mentioned qualifications and are aged over 35 and tankers aged over 15 will not be covered."*

There is no data on any required document meeting the above-mentioned conditions.

In responding to the effect of these clauses, the content of sub-article 14 (a) should be remembered:

"123 Someroad Street

Somewhere Town

Someplace nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation."

The Banking Commission decided as follows:

In respect of Clause 1, unless another insurance document issued in the same context as the quoted clause was presented, there would be no grounds to refuse.

In respect of Clause 2, by use of "enclosed" or "attached herewith" the document draws a distinction between the terms by the separate reference to "attached herewith". In interpreting "enclosed" this can only mean the clauses that are stated on the document itself.

The insurance document refers to "[Country T] General Conditions" and states other applicable clauses. It therefore follows that the "general and specific conditions and clauses" are stated (enclosed) on the document. The document will be acceptable.

In respect of Clauses 3 and 4, absent any data on another stipulated document that conflicts with the wording in the clauses, the document will be acceptable.

isbp 745 paragraphs a1-a20: selected icc opinions

A1 - R431: *This Opinion highlights when abbreviations may not be considered consistent. A credit stipulated that a FCR was to be issued by XXX SPA. However, XXX SRL issued the FCR. Although both "SPA" and "SRL" have the same effect as "company" and "limited" etc., they can also have a different connotation as to the standing of the issuer and subsequent acceptability under a credit. An FCR issued by XXX S.R.L. would be considered discrepant in respect of a credit requiring that XXX S.P.A. issue it.*

A5 - R555 (TA536): *A credit required presentation of three beneficiary certificates. Upon presentation, the issuing bank refused them stating that they were not dated and that under international standard banking practice it would normally be expected that certificates be dated. However, compliance without a date would depend on the type of certification that has been requested, its required wording and the wording that appears within it. On the basis of the information received, there was nothing in the credit that made dating of each certificate crucial to the establishment of compliance with any of the statements therein. Accordingly, it was considered that there was no discrepancy.*

A6 - TA767rev: *The credit required, amongst other documents, photocopies of an air waybill together with an insurance document. The airport of departure was stated to be any airport in Sweden and/or European countries and/or China. The air waybill date was to be deemed to be the date of shipment. Copies of the air waybill showed the airport of departure field quoting Sweden instead of the name of an actual airport in Sweden. This was the first discrepancy that was noted. The insurance document showed a date of issuance as 17 June 2011 and the air waybill date as 17 June. The air waybill was dated 13 June 2011 and showed the flight number as QR688/17. The second discrepancy was that the insurance document showed the wrong air waybill date. Although the credit required the presentation of photocopies of an air waybill, and therefore the document would not be subject to examination under article 23, the credit did indicate that dispatch was to be effected from an airport, amongst other places, in Sweden. The conclusion indicated that the air waybill, in accordance with the terms and conditions of the credit, should have shown the name of an airport in Sweden and therefore the discrepancy was valid. For the insurance document, the credit had indicated that the date of the air waybill was to be the basis for determining the date of shipment. Therefore, the document should have indicated that cover was effective no later than 13 June 2011. This discrepancy was also stated to be valid.*

A7 - R533 (TA103): *This issue revolved around the question of international standard banking practice in respect of corrections on documents, specifically: transport documents, documents issued by the beneficiary and documents issued by a party other than the beneficiary. In summary, the following conclusions were provided:*

Transport documents - corrections or additions on a transport document must be authenticated by a correction stamp as well as a signature or initials. Note the updated position that now prevails in A7. It should be clear who has corrected the document and on what authority. The adding of a freight paid stamp or an annotation of an on board date are not considered to be additions.

Beneficiary-issued documents - Corrections do not need to be authenticated by the beneficiary. Where documents have been, legalised, visaed or certified etc., any correction of data is to be authenticated by at least one of the entities that legalised, visaed or certified etc., the document.

Non-beneficiary documents - These documents must be corrected by the issuer and clearly identify who has made the correction. If a correction is made by an entity other than the issuer (i.e., an agent), then this must be

annotated with a declaration of the capacity of the person(s) making the authentication in relation to the issuer. It will not be the responsibility of a bank to ascertain whether or not the person(s) was authorised to make the correction on behalf of the issuer.

A9 - R632 (TA657rev): This Opinion focussed on two issues.

1. Whether a CMR was acceptable showing two carrier names.
2. Whether the insertion of the day of the month of the shipment, by pen, was acceptable when the rest of the date i.e., month and year were typed onto the CMR.

The CMR showed, in box 16 (titled: *Transporteur*) the name of Company S and in box 23 (titled: *Signature et timbre du transporteur*) the name and address of Company C. The presenting national committee had offered its own analysis and conclusion to the query and determined that the document was discrepant. The Banking Commission agreed with this position.

The CMR showed in boxes 4 (date of taking in charge) and 21 (date of issuance) "... -11-2007" and had been completed, in pen, with the addition of "28". The presenting national committee had differing views as to whether or not this was acceptable. The Banking Commission took the view that the document had been created on the basis that the actual day would be inserted later; that it would be acceptable according to the content of ISBP 681 paragraph 11 and would not require authentication by the carrier or its agent.

A9 - R552 (TA555): ISBP does not specifically validate the acceptability of a document completed in different type styles, font sizes or handwriting. The acceptance of a document issued in such a manner would be subject to the type and form of the added data. For beneficiary-issued documents, this would not necessarily indicate a reason for refusal or a requirement for authentication. But with regard to additions on, for example, a bill of lading, it may well be valid for a bank to ensure that such data were authenticated. However, in most circumstances, use of differing font sizes or style within a document is not necessarily a reason for refusal.

A16 - R210: This Opinion considers the acceptability of different date formats on documents within a single presentation, specifically the American format MM/DD/YY and the European format DD/MM/YY. The indication in the documents of a date in different formats such as those mentioned above does not by itself provide a reason to refuse the documents. However, there should be no reason to doubt that both dates have the same interpretation or, in case of doubt, that there is another indication in the documents or in the presentation of documents that clarifies only one interpretation of the date is possible.

isbp 745 paragraphs a21-a41: selected icc opinions

A22 - R775 (TA754rev): This opinion related to a presentation that had been refused by the issuing bank for two reasons (1) Invoice evidences multiplication of quantity $27181 \text{ pcs} \times 1,874 = 50937$ instead of 50937.194 and (2) CMR does not evidence "Expeditor" as beneficiary, as required by the credit.

It would seem that for discrepancy (1), the beneficiary rounded down the amount of the invoice to EUR50937. In respect of the refusal, the EUR currency is only calculated to 2 decimal places and therefore the beneficiary would not issue its invoice for EUR50937.194. For discrepancy (2), the CMR showed the field tag "Sender" and the nominated bank had considered "Sender" to be the same as "Shipper", "Consignor" and, the credit requirement of "Expeditor" to be of the same meaning. In respect of discrepancy 2, the ICC Banking Commission agreed with the nominated bank.

For discrepancy 1, there were issues discussed relating to whether the calculation should have been made i.e., was it a detailed mathematical calculation and the effect of the rounding down of the amount. The analysis and conclusion reflected that the invoice was also compliant.

The initiator raised a further issue relating to whether the issuing bank should have honoured its claim for reimbursement. The credit allowed the nominated bank to claim reimbursement, by SWIFT, from the issuing bank. There was no indication in the credit of a notice period required by the issuing bank. The nominated bank provided 3 banking days notice, which is in line with the established standard under URR725. It should be noted that this reimbursement was not subject to URR725. On the day that the payment was due, the issuing bank received the documents but the examination process was not concluded until after that date and they refused for

the two reasons quoted above without having honoured the claim. The initiator asked whether the issuing bank should have honoured in the first instance, and then, if necessary, requested a refund at a later date if the discrepancies were proven and not accepted by the applicant.

The conclusion stated that whilst the issuing bank was entitled to send a refusal notice after the completion of its examination of the documents, absent any indication in the credit as to a notice period it should have honoured the claim on the requested value date. The issuing bank bore the consequences of the ambiguity in its instructions.

A22 - TA778rev: *An issuing bank refused documents for a variety of reasons including a statement that the total amount on the commercial invoice differed from the "quantity x unit price" calculation. The opinion concluded that banks are not required to carry out such mathematical calculations and that the discrepancy was not valid.*

The nominated bank offered a full rebuttal to each discrepancy and the Banking Commission agreed that the documents were not discrepant.

A23 - R757 (TA708rev): *This Opinion represented a joint submission on behalf of both parties involved in a dispute.*

A bank issued 3 letters of credit that were available with them. Under each credit, the issuing bank found discrepancies. Three discrepancies were the same under each LC, and two of the LCs contained one and two more additional discrepancies respectively.

One discrepancy, consistent across all three LCs, was whether the port of discharge stated in the credit "Tallinn Port, Estonia" was to be stated in full in the respective field of the bill of lading i.e., Tallinn Port, Estonia. The bills of lading under all three LCs only stated Tallinn. The conclusion was that there is no requirement for the country name to appear and that the bills of lading are not discrepant in this respect.

Another discrepancy consistent across the LCs related to the seal numbers on the bills of lading, when compared to those stated on the invoices and packing lists. The numbers were exactly the same but the invoices and packing lists showed a prefix of MSC or APL (MSC and APL being the shipping lines that were used). Again, the conclusion reflected that there was no conflict of data. The last discrepancy for all 3 LCs related to the name of the beneficiary on the Certificate of Origin. It was shown as ABC Ltd on the document, but in the LC it was shown as "ABC Ltd, International Business". The conclusion reflected that the reference to 'International Business' was not part of the name of the beneficiary, merely an expression of the division or unit of the company. Again, the conclusion was that the document was not discrepant in this respect.

An additional discrepancy in one of the other LCs included the contract number being shown twice on the commercial invoice (once incorrectly). The Banking Commission saw this as being a typographical error and not a discrepancy. Another discrepancy under the same LC was that the notify party address contained an error "At" instead of "St" and a country code instead of the full name of the country. Again, these discrepancies were not found to be valid.

The remaining LC contained a discrepancy that the DHL receipt, evidencing dispatch of an original invoice and bill of lading, was addressed to the wrong party (but at the same address as given in the LC). The conclusion stated that this was a discrepancy. Therefore, of the three LCs, the conclusion was that the issuing bank must honour under two of them and they were correct to refuse under the other, but only in respect of the discrepancy relating to the DHL receipt.

A26 - R743 (TA689): *This Opinion covered a shipment of fresh ginger. The nominated bank had negotiated documents on the basis that they were compliant. The issuing bank received the documents on 13 December 2008. On 27 December, some 14 days after the receipt of the documents, the issuing bank sent a refusal notice. The refusal notice referred to two alleged discrepancies: (1) that a non-documentary condition in the credit had not been complied with, and (2) that the goods had not been shipped in the correct form of container (although the credit was silent in respect of the type of container or packaging to be used). Towards the end of January 2009, the issuing bank further informed the nominated bank that an injunction had been issued to stop payment as half the consignment had now been destroyed due to it being considered unfit for human consumption.*

Clearly, the refusal notice was sent beyond the five banking days allowed for in sub-article 16 (d) and the issuing bank is therefore precluded from claiming that the documents were discrepant under sub-article 16 (f).

The conclusion to the Opinion states that the documents were compliant at the time of presentation of the documents and that the issuing bank must reimburse the nominated bank. The issuing bank was recommended to approach the court and explain its responsibilities under the credit and the UCP with a view to the lifting of the injunction.

electronically produced documentation under a credit subject to ucp 600

A recent ICC opinion, TA.843rev, addressed a situation whereby a nominated bank had been receiving refusal notices from an issuing bank, in respect of documents presented under various documentary credits, stating an apparent discrepancy: 'photocopy of document presented instead of original'.

The nominated bank pointed out that the documents under discussion were created via an electronic platform that allowed the beneficiary to create documents online, generate a pdf file for download, and subsequently print the document for signature. In view of the fact that this process had converted the previous colour paper document to one now produced in black and white, the issuing bank were interpreting the electronically-produced document to be a photocopy.

As mentioned in the analysis to TA843rev, the documents had actually been presented in paper format and not by means of an electronic record. Therefore, UCP 600 article 17 applied in the determination of the originality of the document. The actual generation process for any document is not an issue with which banks are concerned. It is also not correct to use the colour of a document as a standard to measure compliance. Nowhere is it stated in UCP that printouts in black and white are to be treated as copies.

As we are all aware, it can be very difficult with modern technology to distinguish between a copy and an original. With this in mind, UCP 600 sub-articles 17 (b) and (c) outline that any document not appearing to be in accordance with the stated classifications is to be considered as a copy.

It was concluded that the presented document would not be discrepant provided that it could be determined that it was an original in accordance with article 17.

specification of currency in an invoice

The opinion, TA.814rev4, related to the identification of the currency in an invoice.

A credit was issued indicating the currency as 'USD'. The presented invoice, instead of stating 'USD', indicated the currency by means of the dollar ('\$') sign. Whilst this was considered to be acceptable by the nominated bank, the issuing bank refused the documents on the grounds that the actual currency was not specified. A second discrepancy was raised in respect of the transport document being wrongly consigned but that is not the subject of this blog.

The nominated bank argued that the '\$' sign was an internationally recognised, and frequently used, sign for denoting the US Dollar and did, in fact, specify the currency correctly. Payment was, ultimately, received from the issuing bank but only after the deduction of a discrepancy fee.

As mentioned in the analysis to this opinion, both UCP 600, within sub-article 18 (a) (iii), and ISBP 745, in paragraph C6 (c), specifies that an invoice must be in the same currency as the credit.

It was determined that, in respect of a credit issued in 'USD', any presented invoice that stated '\$' without further qualification, would satisfy the above sub-article. The only exception would be if the invoice, or any other presented document, included data that implied the '\$' sign could refer to a currency other than 'USD'. This could embrace, for instance, an indication that the beneficiary was domiciled in a country whose currency is commonly referred to with the '\$' sign e.g., Australia, Canada, Singapore, etc.

TA.832rev2 - Conflict of weight details between documents

The credit required (among other documents) a non-negotiable copy of an ocean bill of lading and an original packing list. The issuing bank claimed a discrepancy between the stated gross weights on each document.

It was deliberated that the information in the attachment to the bill of lading was not in conflict with that stated on the copy bill of lading and did not constitute a conflict with weights shown on the packing list. The packing list had shown a gross weight of 630,000kgs and gross weight of 630,360kgs. As part of the goods description appearing on the non-negotiable copy of the bill of lading, the net weight was shown as 630,000kgs. However, under the heading 'Gross Wgt/Nett Wgt' it was stated 630,000kgs. In an attachment to the non-negotiable copy of the bill of lading, under a heading of 'Gross weight in kilos' it showed 630,000kgs.

The discrepancy was not considered to be valid.

TA.841rev - 'Extend or Pay' under UCP 600

As highlighted, 'extend or pay' demands are not normally seen in credits issued subject to UCP 600 .

In this particular transaction the credit clearly stated that the confirming bank was to make payment against the presentation of the beneficiary's first simple written demand and that it would claim reimbursement from the issuing bank, by confirming that all credit terms were complied with. An 'extend or pay' demand sent by the confirming bank, prior to the expiry date of the credit, did not comply with the reimbursement instructions given in the credit in that it did not indicate that a valid demand had been received from the beneficiary.

TA.843rev - 'Black and white' documents, 'colour' documents, originality

A document was produced on-line via an electronic platform and then printed for signature by the beneficiary. Although documents had previously been printed in colour, this particular document had been produced in black and white.

It was concluded that an issuing bank cannot refuse a document simply because it is printed in black and white, provided that the document can be determined as an original in accordance with UCP 600 article 17.

TA.844rev - Signature and the capacity of signing party on an air transport document and the validity of the refusal message

A confirming bank refused to accept an Air Waybill on the basis that it omitted the capacity of the signing party in the field 'signature of issuing carrier or its agent'.

It was concluded that the signing party had been identified in the space for the signature of the shipper or its agent as well as the space for the signature of the issuing carrier or its agent.

The discrepancy was not considered as valid.

TA.846rev - Remarks made by Master on a bill of lading

A number of remarks made by the master of a vessel on presented bills of lading were determined by the issuing bank to constitute a defective condition of the goods / packaging thereby leading to a discrepancy that the bills of lading were not clean. These included "containers loaded during rain" and "Containers loaded from open storage."

It was considered that all of the master's remarks were confined to the exterior condition and appearance of the containers and that the bills of lading were not discrepant.

TA.847rev - Whether it is possible for a bank to be both the Obligor Bank and Recipient Bank in the same BPO transaction, or may it be made possible by adding a special condition to the BPO transaction

Whether or not the Obligor Bank and the Recipient Bank can be branches of the same bank in the same country is outside the scope of URBPO and is subject to local banking practice and applicable law. A Recipient Bank will always be a bank. On a separate issue, it was pointed out that the seller is not the beneficiary of a BPO.

TA.848rev - Alleged discrepancy in description of goods and timing of rejection notice

An issuing bank refused documents on the basis of a discrepancy in the Health Certificate, namely that the identification of the commodity included a scientific name as well as that stated in the description of goods in the credit. The credit itself had not specified either the form or content of the required Health Certificate.

The addition of a scientific name is not considered to be a discrepancy.

TA.842rev3 - Manual signing of documents

A condition in a credit stated that all documents were to be manually signed. The issuing bank refused the presented documents on the basis that a copy of the commercial invoice was not manually signed.

It was highlighted that ISBP 745 re-emphasised that copies of documents need not be signed (nor dated). In summary, it was concluded that, in accordance with international standard banking practice, copies of document do not require a signature unless an express requirement for signature, directly applicable to copies, is stated in the credit.

TA.849rev3- Invoice includes a 'sanctions' clause

An invoice presented under a credit included the following text: "These commodities, technology, or software were exported from the United States in accordance with the Administration Regulations. Diversion contrary prohibited." This was considered by the confirming bank to be a sanctions clause and therefore discrepant.

It was highlighted in the analysis that such text was not a sanctions clause. Furthermore, in view of the fact that the specific clause was not prohibited by the credit, the discrepancy could not be considered as valid.

However, any laws or regulations to which the confirming bank may be subject could prevent it from fulfilling its role under the credit and UCP 600.

TA.851rev3- Issuer of an acceptance certificate and Draft at sight

An issuing bank refused documents on the basis that the applicant's acceptance certificate differed to that required by the credit, without indicating in which respect it differed, and that the tenor of the presented draft was incorrect.

The presented acceptance certificate appeared to be a standard template form, which was duly completed with all required details and bore the requisite signatures of the applicant and beneficiary, but was presented on a document bearing the letterhead of the beneficiary. The document was not considered to be discrepant.

With regard to the draft, the credit included a condition for 'Drafts At: At Sight'. The presented draft stated 'At Sight'. This was determined to be sufficient to fulfil the terms and conditions of the credit.

TA.852rev - 90% payment against complying presentation

A credit was issued available with the confirming bank by payment at sight and stated: "Payment condition: 90% of the L/C value will be paid against presentation of complying shipping documents." Partial shipments were allowed. The confirming bank refused documents covering the first partial shipment on the basis that the credit stated 90% of the credit value rather than 90% of the documents value. The confirming bank also argued that it would be required to hold all the documents for each partial shipment until the credit was fully utilised, and it would only then effect honour or negotiation under the terms of its confirmation.

It was concluded that the discrepancy was not valid and that the confirming bank must honour complying presentations that are made for each partial shipment.

TA.853rev - Contract number and date on draft and courier receipt

A credit stated that all documents were to show the contract number and date. The nominated bank, on the basis that neither the draft nor the courier receipt accompanying the beneficiary's certificate evidenced the contract number and date, refused the documents. However, the details were included in the beneficiary's certificate and on the other stipulated documents.

As concluded in an earlier Opinion, a 'beneficiary statement' and an accompanying courier receipt form part of the same documentary requirement. Accordingly, this cannot be considered as a discrepancy.

The term 'all documents' does not include a draft, which is to be considered as an unconditional order in writing, not a document. Accordingly, this is also not a discrepancy.

TA.855rev - Credit issued by a non-bank / non-return of documents

The issuer of a credit, a non-bank, having originally informed the presenting bank of discrepancies, subsequently informed the presenting bank that there was a quality dispute between the buyer and seller. The presenting bank requested the return of the documents but the issuer advised that it had closed its files.

The issuer, by failing to return the documents, was precluded from claiming that the documents did not constitute a complying presentation and it must honour. Furthermore, the issuer cannot close its files without the approval of the presenting bank.

Non-bank issuers are held to the same obligation and standard of care as a bank.

TA.856rev - Typographical error?

An issuing bank refused documents presented under a credit on the basis that the contract number in the invoice was incorrect due to the addition of an additional character.

Although there was no dispute that a difference existed, it was decided that the invoice still provided sufficient data to determine that the additional character in the invoice was solely a typographical error.

Subsequent provision of a corrected invoice did not imply an agreement of the nominated bank/beneficiary to the discrepancy advised by the issuing bank.

TA.858rev - Applicability of existing Opinions

An issuing bank, on the basis that the on board notation on a bill of lading showed a pre-carriage vessel instead of the ocean vessel, refused documents. In view of the fact that the on board notation should have indicated the ocean vessel, the discrepancy was considered to be valid.

It was agreed that two referenced UCP 500 Opinions (R350 and R352) were still valid for transactions subject to UCP 600.

TA.859rev - Trade term and source

Various issuing banks had been refusing documents on the basis that the omission of the name of the country against a trade term constituted a discrepancy. Additionally, it was alleged that trade terms and their source should be stated in the same area of an invoice.

ISBP 745 states that the name of a country is not required to be mentioned in the port of discharge on a bill of lading. By extension, this equally applies to omission of the country in a trade term.

When a trade term and its source are part of a goods description, it may be stated in different areas of an invoice.

It was concluded that neither of these issues represented a valid discrepancy.

TA.860rev - Goods description: spare parts

A nominated bank refused documents presented under a credit on the basis that the packing specifications included reference to 'spare parts'.

As stated in ISBP 745 paragraph C5, it was concluded that the description of the goods could also indicate additional data in respect of the goods, provided that they did not appear to refer to a different nature, classification or category of goods.

The fact that the packing list additionally mentioned 'spare parts' did not create a conflict with the description of the goods shown in the credit or with that shown on the invoice.

TA.861rev - Copy of performance guarantee under UCP 600

A nominated bank refused documents on the basis that the required performance guarantee stated an expiry date and amount that was in conflict with the credit terms.

In view of the fact that the performance guarantee included three separate validity options and, in addition, a reduction clause that could be exercised by the applicant of the guarantee, it was concluded that these were valid discrepancies.

TA.862rev - AWB's not showing issuing date

An issuing bank refused documents presented under a credit on the basis that two Air Waybills did not show an issuance date.

In accordance with UCP 600 sub-article 23 (a) (iii), air transport documents must appear to indicate the date of issuance. The date of issuance of an air transport document will be considered to be the date of shipment, unless the air transport document contains a specific notation of the actual date of shipment. However, neither UCP 600 nor ISBP 745 indicates that the reverse is permitted. An air transport document must always include a date of issuance.

TA.863rev - Port of discharge in bill of lading

An issuing bank refused documents presented under a credit on the basis that the bill of lading showed port of discharge as 'Alexandria, Egypt' instead of 'Alexandria Seaport, Egypt.'

For the purpose of a bill of lading, a 'port' is considered equivalent to a 'seaport'. Therefore, the absence of the word 'seaport' cannot be considered as a discrepancy. If there is a necessity for the word 'seaport' to appear within the port of discharge field, then this should be made clear in the credit.

The discrepancy was not valid.

does the term 'all documents' include drafts?

TA.703rev, related to a credit that had called for all documents to be presented in English. In this instance, the draft was completed in a different language. The question was asked as to whether a draft constituted a document under a condition relating to 'all documents'. The Opinion concluded that in respect of a clause such as "all documents must be issued in English", a draft is not to be considered as within that requirement unless the credit specifically requires the presentation of a draft drawn on the applicant under "documents required".

documents released to an applicant without honour being effected

TA744rev : Documents, including a full set of bills of lading issued to order of the issuing bank are presented under a documentary credit, and negotiated by the nominated bank, but subsequently found to be discrepant by the issuing bank.

The nominated bank received amended compliant documents within the stated presentation period. These documents were forwarded to the issuing bank indicating that the presentation should now be honoured.

Honour is not forthcoming despite the presentation of compliant documents; furthermore it is brought to the attention of the nominated bank that the issuing bank had previously endorsed an original bill of lading to order of the applicant, allowing the applicant to take delivery of the goods without payment.

The nominated bank reacted by informing the issuing bank that there exists no justification for raising a discrepancy or for refusing to honour in a situation where the issuing bank has facilitated the applicant taking delivery of the goods.

In response, the issuing bank made no mention of an original bill of lading being released to the applicant but merely pointed out that the documents were discrepant.

In the meantime, the nominated bank received a copy of the relevant bill of lading clearly indicating that the issuing bank had endorsed the original to order of the applicant.

Despite this evidence, the issuing bank still refused to honour on the basis that information had been received from the applicant that the goods were not in accordance with the goods description stated in the credit. It subsequently indicated that fraud was suspected and that, on such basis, honour would not be forthcoming. Furthermore, the issuing bank mentioned that under its law an allegation of fraud is sufficient to prevent honour, even without a court order.

ASSESSMENT

The problem that arises in this scenario is that the applicant managed to obtain delivery of the goods without honour being effected by the issuing bank.

This was achieved by the issuing bank releasing an endorsed original bill of lading to the applicant.

In view of the fact that the issuing bank continued to refuse to honour, it must return all of the documents - as originally presented - to the nominated bank. However, this is not possible, as one original bill of lading is no longer in its possession.

CONSEQUENCE

UCP 600 sub-article 16 (c) (iii) (a) makes it clear that the issuing bank must hold the documents until it receives further instructions from the presenter, and (b) that the issuing bank must hold the documents until it receives an acceptable waiver of discrepancies from the applicant.

Having made the decision to release an original bill of lading to the applicant without receipt of an acceptable waiver, the issuing bank has contravened these sub-articles.

Accordingly, the protection that it receives from UCP is no longer available and, in accordance with UCP 600 sub-article 16 (f), the issuing bank is precluded from claiming that the documents do not constitute a complying presentation.

As a consequence, the issuing bank must honour.

Any issues concerning fraud or court orders are outside the scope of UCP and are a matter for local law.

indication of a different nature or Classification of the goods

Scenario - adapted from ICC Opinion TA756rev

Documents were presented under a documentary credit. The invoice, packing list and certificate of quality stated the goods description exactly as described in the credit but with the addition of the words "second hand".

The question was whether or not this is acceptable. In this particular query, there was a difference of opinion between the parties as to the appropriateness of the additional wording; the confirming bank and issuing bank stated that delivery of second hand goods was not as required by the credit.

The counter-argument was that the goods description was in line with UCP 600 sub-article 18 (c) in that it corresponded with that appearing in the credit. It was further stated that no wording appeared in the credit requiring brand new goods, thereby meaning that the words 'second hand' were not in contradiction to UCP 600 nor, incidentally, ISBP 682, paragraph 58 (now ISBP 745, paragraph C3) which stated that there is no requirement for a mirror image in the description of goods. In addition, and for clarification purposes, the certificate of quality confirmed that the goods were made of best materials in accordance with the original sales contract.

Nevertheless, the confirming and issuing banks re-iterated that the words 'second hand' had changed the original description of goods stated in the credit.

Assessment

Reference was specifically made to two UCP 600 sub-articles:

18 (c) - that the goods description in an invoice must correspond with that appearing in a credit.

14 (e) - that any goods description appearing in documents other than the invoice is not to conflict with that in the credit.

It is not at all unusual for the goods description in documents, particularly the invoice, to display additional details to those stated in the credit. However, inclusion of the words 'second hand' would indicate a different category or classification of the goods that is not apparent from the goods description in the credit.

Consequence

The addition of the words "second hand" is grounds for refusal on the basis that the goods description in the invoice does not correspond with that in the credit. Additionally, the description appearing in the packing list and certificate of quality, whilst only required to appear in general terms, conflicts with the description in the credit.

extension to the maturity date of a term credit

Scenario - adapted from **ICC Opinion R721**

Whilst not a common occurrence, on occasion the maturity date of an accepted draft or a deferred payment commitment under a documentary credit needs to be extended.

It was suggested that, provided all parties agree, this should not be a problem; however, UCP does not specifically address the issue.

The question that was raised was whether or not the rights and protections of UCP 600 continue to apply in the event that such an extension occurs. Furthermore, are the circumstances different between acceptance and deferred payment scenarios?

Assessment

The undertaking of an issuing bank is addressed in UCP 600 article 7 in that it must provide reimbursement at maturity for a credit available by acceptance or deferred payment. Such undertaking will extend to any re-acceptance of a draft or extension of a deferred payment undertaking.

Consequence

As a first consideration, it is likely that local law will need to be addressed in order to ascertain if a replacement draft or a new deferred payment undertaking is required.

Should it be the case that there is no legal requirement, either the draft can be re-accepted or the deferred payment undertaking amended to reflect the new maturity date.

missing documents

R.548 - It was concluded that an issuing bank would be obligated to honour any compliant presentations that had been lost in transit. It was made clear that reimbursement obligations are not subject to actual receipt of the documents.

R.651 - a presentation can be 're-created' with copies of the documents that were originally presented. In such a circumstance, the documents would need to be checked as if they were originals, e.g., signatures considered as original. Not all nominated banks retain copies of documents, but it is noted in the Opinion that such practice may ease problems in the event that documents are lost in transit and need to be 're-created'. It does need to be considered that this is additional work, is entirely optional, and may not necessarily be justified for such a rare occurrence.

endorsing documentary credits

*In ICC Opinion **TA806rev**, it was recommended that banks refrain from including 'endorsement' requirements in their credits. Although it was recognised that in order to fulfil any such requirement, it would be feasible to endorse the covering advice from the advising bank, this was not considered to be particularly practical, as, in many cases, such an advice no longer exists where documentary credits are sent to a beneficiary via an advising banks proprietary system.*

For the benefit of other nominated banks that may become involved in a documentary credit, an endorsement of an advising bank's advice of the documentary credit is advisable when the documentary credit is available with any bank by honour or negotiation.

The key conclusion from the above Opinion was that an issuing bank must honour or reimburse in accordance with UCP 600 and that there is no need for any endorsement to be notified by the negotiating bank.

TA.857rev2 : late presentation and credit expired

A credit was issued via SWIFT MT700 with an instruction in Field 78 that a full set of documents was to be received by the issuing bank within 21 calendar days after the date of shipment. Furthermore, expiry was set in the country of the beneficiary.

In accordance with the guidelines set out in the SWIFT User Handbook, this field should be used solely for instructions from the issuing bank to the paying, accepting or negotiating bank. The guideline indicates that any information within this field would not be applicable to a beneficiary. Normal practice is that Field 48 would contain details of the time period permitted for presentation of documents and, if this field were left blank, then the default period of 21 calendar days, as provisioned for within UCP 600 sub-article 14 (c), would apply.

In the case of this query, Field 48 was blank; thereby intimating that the default presentation period would apply for presentation to a nominated bank.

The issuing bank had refused documents on the grounds that late presentation and credit expired applied.

Within the analysis, it was pointed out that the basis within UCP 600 and associated international banking practice is that the expiry place and place for availability should be the same.

In accordance with this rationale, it was concluded that late presentation did not apply as the documents were presented to the nominated bank within the required presentation period (as permitted by Field 48 being blank). In addition, documents were presented to the nominated bank within the expiry of the credit; therefore the discrepancy of 'credit expired' also did not apply.

TA.864rev : Country of Origin - Free trade agreement

A credit was issued including a condition for presentation of a 'Certificate of Australian Origin of the commodity issued by Australian Business Chamber in the form for China-Australia Free Trade Agreement, issued in Australia in one original and three copies'.

The presented document was entitled 'Certificate of Origin - Form for China-Australia Free Trade Agreement'. It was argued by the issuing bank that this document did not actually specify the origin of the goods. The counter-argument, from the nominated bank, was that the document did not need to meet the normal criteria (specifically, stating the origin of goods) provided it was in the format required by the credit.

Within the analysis, it was highlighted that the document must be in the form as required by the credit and must also specifically indicate the origin of the goods as Australian, as also stated in the credit.

The field in the certificate that would indicate origin was only to be completed by the insertion of an acronym that was explained on the reverse of the document. This explanation did not explicitly indicate that the acronym could solely refer to Australian origin. Accordingly, the document was discrepant.

Our view is in conformity with that stated within the Opinion, however it is worth examining a few of the comments that have been raised in opposition.

Articles within the China-Australia Free Trade Agreement itself, specifically the origin requirements, evidence that the form issued by an authorised body of the exporting party, identifying the goods being consigned between the parties and certifying that the goods to which the certificate relates are originating in a party in accordance with the provisions of these articles.

It cannot be expected that a document examiner is aware of the content of any specific Free Trade Agreement.

An article within the China-Australia Free Trade Agreement states 'unless otherwise indicated in this Chapter, a good shall be considered as originating in a Party when ...', followed by stipulation of the applicable situations of the above-mentioned three categories of WO, WP and PSR. Furthermore, a form of the certificate is provided as an annex of The Free Trade Agreement that is exactly the same form as the certificate of origin presented by the beneficiary.

It cannot be expected that a document examiner is aware of the content of any specific Free Trade Agreement.

There would not be any difficulties for the bank's document examiners to determine that the goods mentioned in the presented certificate originated from Australia, after observing from the documents alone that the certificate was issued in Australia and signed by the Australian Chamber of Commerce and Industry.

The fact that the document was issued in Australia and signed by an Australian Chamber of Commerce is not a determination of the origin of the goods.

The certificate presented under ICC Opinion TA.864rev fulfills the function of a certificate of origin.

For goods subject to this type of trade agreement, the credit should make allowance for the presentation of this type of document and indicate that the origin criterion may be shown as acronyms allowed by the certificate itself.

In summary, the conclusion of the Opinion contains the appropriate response to this issue: "Absent an indication of "Australian origin", or any indication of the origin criterion which currently allows "WO", "WP" or "PSR", the document is discrepant.

The specific format of a "Free Trade Agreement" Certificate of Origin is acceptable provided it certifies the origin of the goods.

TA.867 : *alternative counter-signatories being stated as acceptable on an "and/or" basis.*

The credit required presentation of a factory acceptance test certificate with two alternative counter-signatories being stated as acceptable on an "and/or" basis.

Both counter-signatories signed the presented document. However, the confirming bank refused the document on the grounds that one of the counter-signatories did not evidence the full name of the company on behalf of which it was signed.

The analysis highlighted that the credit allowed for counter-signatories to be either one or both of those stated in the credit. The fact that one of the counter-signatories was as stated in the credit is sufficient grounds to fulfil the terms and conditions of the credit.

It was concluded that no discrepancy existed.

TA.868rev : *Technical Acceptance Certificate - certified successful implementation except one item that was pending*

A credit included a requirement for presentation of a 'Technical Acceptance Certificate' signed by the applicant and the beneficiary. The presented document, signed by both parties as required, stated that the goods were compliant with the contractual technical requirements. It also certified successful implementation except one item that was pending.

On this basis, the nominated bank refused the documents.

Within the analysis, it was stated that when a credit includes a provision for a 'Technical Acceptance Certificate' without any further clarification as to the actual content of such a certificate, then the document is to be examined in accordance with UCP 600 sub-article 14 (f) in order to ascertain whether or not its content fulfils the function of the document.

In view of the fact that the credit did not specifically state the actual type of technical acceptance that was to be fulfilled, it was considered, on the basis of the information received, that the presented document fulfilled the required function of such a document. The fact that the applicant had also signed the document strengthened its acceptability.

TA.869rev : partial shipment

A credit provided for shipment of a certain tonnage of goods to be packed in 8 containers, with partial shipment allowed.

Two presentations of documents were made, covering two separate shipments of goods. Although the full complement of 8 containers was utilised, the actual tonnage of shipped goods did not meet the requirement in the credit. On this basis, the issuing bank refused the second presentation. The query questioned whether or not either presentation was complying.

In view of the fact that the credit allowed partial shipment and that it did not specify actual quantities to be shipped in each container, it was evident that the first presentation was compliant.

With respect to the second presentation, the correct number of containers were utilised; however, the required overall tonnage was not met. It was concluded, therefore, that this presentation was discrepant.

TA865rev2: Electronic Signature

A credit required, among other documents, the presentation of a customs export declaration and an insurance policy.

The credit was subsequently amended in respect of the customs export declaration to read "A copy and/or original customs export declaration issued and authenticated by customs authorities in the exporting country certifying that goods subject of the L/C being exported to (country L) proving its quantity and specifications details, to be accepted in any language and it must be certified by the beneficiary."

The confirming bank refused the documents due to "Custom export declarations not authenticated by customs authorities as requested."

The customs export declaration was an electronically generated document that had not been signed by the customs authorities. However, the beneficiary, as required by the amendment, certified it. In addition, the document bore a bar code MRN that the customs authority later confirmed was the only form of authentication that is added to the document. It was the view of the presenter that the document need not be signed, as it was a copy of an electronically produced document.

The Analysis referred to a previous opinion R636 (TA668rev) that had indicated the acceptability of a bar code as a form of authentication on a courier receipt that had no space for a signature to be added. It also referred to ISBP 745 paragraph A31 (b) that states that copies of documents need not be signed (or dated).

For information, a bar code MRN (Movement Reference Number) contains 18 digits and is composed of the following elements:

- the last two digits of the year of formal acceptance of export movement;*
- an identifier of the EU Member State(s) from which the movement originated; and*
- a unique identifier for the export movement per year and country.*

The discrepancy was not valid.

TA870rev : *The payment terms stated on the invoice + Tolerance + docs includes language other than English*

A credit indicated that payment was due by deferred payment 30 days from bill of lading and included the condition that all documents are to be issued in English language. The credit contained no reference to any applicable tolerance.

The bill of lading indicated the date of shipment as 1 February 2017, which gives a maturity date of 3 March 2017. The invoice included "terms of payment up to 01.06.2017 without deduction". It also indicated "tolerance of +/-10% on quantity and value per line item". The beneficiary also presented a document titled 'Delivery Note' that appeared to meet the credit requirement for a packing list.

A certificate of analysis was presented on the beneficiary's letterhead (as allowed by the credit) and contained all the required data in English. However, there was some pre-printed text in Czech language (the beneficiary was from Czech Republic) - effectively confidentiality and copyright provisions.

The confirming bank refused the documents due to (1) the payment terms stated on the invoice (being in conflict with the LC payment terms); (2) the invoice and delivery note both referred to a tolerance that was not quoted in the credit; and (3) the certificate of analysis includes language other than English.

The beneficiary and confirming bank were not in agreement with these discrepancies and communicated their views to each other.

The analysis indicated that none of the discrepancies were valid. For (1), reference was made to a previous Opinion R848 (TA838rev) that indicated that differing payment terms on the invoice did not create a discrepancy. The issuing bank is required to honour according to the payment terms it has expressed in the credit. For (2), it appeared that the credit did not include any quantity of the goods to be shipped. Therefore, the reference to a tolerance would not create a discrepancy with the description of goods in the credit. For (3), this is covered by ISBP 745 paragraphs A21 (a) and (e).

The documents were not discrepant for the reasons stated.

TA871rev A: *Draft drawn XX days sight - tenor calculation*

Draft was to be drawn on a nominated bank at 30 days sight. Following a presentation by the beneficiary, for which the nominated bank found to be complying, the nominated bank decided that it would not act on its nomination at that time. However, it was willing to do so i.e., accept the draft, once the issuing bank sent its advice of acceptance of the documents.

The question in this query was what date was the due date.

The documents had been presented to the nominated bank on 3 April 2017, which would give a due date of 3 May 2017. The issuing bank had received the documents on 9 April.

The issuing bank had identified a discrepancy and issued its MT734.

Subsequently, on 12 April, it accepted a waiver of the applicant. This would give a due date of 12 May if it were deemed that the due date would be calculated from when the issuing bank received the documents. Unfortunately, the nominated bank did not indicate in its schedule the date it had received the documents. The nominated bank referred to ISBP 745 paragraphs B5 (b) (i) and (iii) to support a due date of 3 May.

The analysis and conclusion recognised that the nominated bank had agreed to accept the draft after it had received the acceptance advice of the issuing bank. Therefore, the due date was 3 May.

The lesson in this case is that in a similar situation a nominated bank should indicate the date that it received the documents and that it intends to act on its nomination when it receives the issuing bank's advice of acceptance. In this case, it would have saved a lot of unnecessary communications between the banks and the need for an opinion.

TA872 *Tolerance*

The amount of a credit was subject to a tolerance of +/- 10%.

It also stated "10 percent more or less on total quantity and amount allowed".

The goods description included a number of line items such as:

50MT for size 1.5 x 1,250XC

and a total quantity of 5,000MT

The nominated bank had negotiated a set of documents where one of the line items was outside the tolerance of +/-10% i.e., 55.55MT for size 1.5 x 1,250XC

The issuing bank refused the documents for an over-shipment of this size. The nominated bank argued that the reference to "total quantity" applied to the total as well as the individual items.

The analysis focussed on the fact that the credit had specifically referred to "total" quantity and that it would apply to the total and not the individual line items. Consequently, the discrepancy was not valid.

TA873rev Discrepancy wordings

A credit contained a very short goods description:

47 Pipeburster Pulling Unit Ref. Packing List DAP [Place B] [+address of applicant] Incoterms 2010

The credit also stated that typing errors not affecting figures are acceptable and will not constitute a discrepancy under the LC.

It also stated "IN THE EVENT THAT DOCUMENTS ARE DETERMINED TO BE DISCREPANT, WE MAY SEEK A WAIVER OF SUCH DISCREPANCIES FROM THE APPLICANT. SHOULD SUCH A WAIVER BE OBTAINED, WE MAY RELEASE THE DOCUMENTS AND EFFECT SETTLEMENT, NOTWITHSTANDING ANY PRIOR COMMUNICATION TO THE PRESENTER THAT WE ARE HOLDING DOCUMENTS AT THE PRESENTER'S DISPOSAL, UNLESS WE HAVE BEEN INSTRUCTED OTHERWISE BY THE PRESENTER, PRIOR TO OUR RELEASE OF DOCUMENTS." It can be seen that this wording was not necessary given the text of UCP 600 sub-article 16 (c) (iii) (b).

On the presented invoice, the goods were described as "T247 Pipeburster Pulling Unit + standard accessories. Machine [number of machine]. Engine [number of engine]. The Incoterm was not stated.

The issuing bank refused the documents due to "Goods description on invoice inconsistent with LC field 45A" and "invoice missing Incoterms".

It appears that the model number was incorrect in the credit. The nominated bank asked whether the discrepancies were valid and if the refusal notice was in accordance with article 16.

For the goods description, the analysis states that the incorrect model number was a reason to refuse the documents, as was the missing Incoterm.

With regard to the refusal notice, although details of what was actually wrong with the invoice was not given, the description in the credit was short enough for a determination to be made and in this instance the lack of specific detail would not cause the discrepancy to be invalid.

TA875rev Legal name of entity + difference in rounding off value

A credit was issued in favour of a company whose legal form was NV. It covered a quantity of 459.58 M2 of glass panels.

The beneficiary presented its documents including an invoice in the name 'Company SA-NV' instead of 'Company NV'.

The issuing bank refused the documents due to the name of the beneficiary appearing on the documents and that the value of goods was not equal to the unit price multiplied by the quantity shipped.

The confirming bank disagreed because NV means NAAMLOZE VENNOOTSCHAP", in Dutch language and SA is the abbreviation of "SOCIETE ANONYME", in French language, which both have the same meaning and represent the legal form of the company.

With regard to the second discrepancy, the query gave one example:

IPC 2499 - 1171MM Quantity M2: 2.93

The surface calculated was 2.926329 rounded to 2.93 and this was the case on each item i.e., rounding to two digits.

The quantity was shown as 119.74 M2 and a value of EUR107,046.36 which gave a difference of EUR1.31 due to the rounding.

In answer to the name of the beneficiary, the analysis indicates that the invoice clearly appears to have been issued by the beneficiary as required by article 18. The legal form does not change the beneficiary name.

For the calculation, the analysis refers to ISBP 745 paragraph A22. Reference was also made to ICC Opinion R775 (TA754rev) that states "It would be unreasonable to expect an invoice to be calculated to three decimal places for an amount shown in EUR, when it operates to two decimal places."

The discrepancies were not valid.

TA876rev LC number on documents

A credit required the presentation of a beneficiary's certificate confirming that certain shipment details had been sent by email to the applicant within 3 working days after the bill of lading date.

The credit also contained the following conditions:

+ Any spelling errors in our documentation is not going to affect payment obligation of the buyer, unless they materially affect quantity or value of product shipped.

+ The number of the letter of credit to be mentioned on the invoice.

Clearly, the first condition is a repeat of text that appears in the contract between the applicant and the beneficiary. However, the Banking Commission took this to also represent the issuing bank's position regarding any spelling errors.

The credit number was stated on the invoice. However, it was stated incorrectly on the beneficiary's certificate (even though the credit did not ask for the number to be quoted on this document). The credit number was xxx0724xxx whereas the certificate indicated xxx0742xxx.

The analysis refers to a number of previous ICC opinions where the importance of credit numbers appearing on documents has been discussed and dismissed. The conclusion indicates that the documents were not discrepant.

The analysis indicates some advice where the inclusion of a credit number (or the necessity for the correct number to be shown) is required. This should only be in circumstances where it is a local Government or Customs requirement for the number to appear and, in this case, the credit should indicate this as the reason for the number to be shown on one or more documents.

TA877 Port of discharge in the respective field + body of bill of lading

A credit required shipment to be effected to Jiangyin Fujian, China. The presented bill of lading indicated:

Port of Discharge: Jiangyin - Jiangsu? Within the body of the bill of lading it indicated "Port of Discharge: Jiangyin Fujian, China".

The nominated bank decided that the documents complied and negotiated. The issuing bank refused the documents as follows:

'IN BILL OF LADING: PORT OF DISCHARGE 'JIANGYIN-JIANGSU' DIFFER FROM LC FIELD (44F) 'JIANGYIN FUJIAN, CHINA'

The nominated bank referred to ISBP 745 paragraph E8 (b) in defence of its acceptance of the document, whilst the issuing bank argued that this paragraph did not apply.

The analysis refers to E8 (b) confirming the acceptability of a notation giving the name of the port of discharge, but only where "Jiangyin Fujian" had been stated in a field headed place of final destination, or words of similar effect. This was not the case in this bill of lading.

The document was discrepant.

TA878rev Discrepancy quoted on sales contract

The credit in question contained a number of conditions that referred to the underlying contract between the applicant and the beneficiary that would require the beneficiary to produce a credit note. However, the banks would have no idea as to when an event occurred that would invoke such a requirement.

Documents had been presented for the 25th shipment under the credit. The issuing bank sent an MT799 message to the confirming bank as follows:

"FOLLOWING DISCREPANCIES HAVE BEEN FOUND WITH THE DOCUMENT [THE APPLICANT] HAS ADVISED THAT THERE HAS BEEN DELAY IN COMMISSIONING OF PROJECT AS PER DATE SPECIFIED IN CONTRACT AS PER ADDITIONAL CLAUSE 47 A 3. MEANWHILE WE HOLD YOUR DOCUMENT AT YOUR RISK AND RESPONSIBILITY. REGARDS".

Clearly, the refusal notice failed to indicate any discrepancy in the documents and there was no indication of refusal on the part of the issuing bank.

The analysis and conclusion agreed that the refusal notice was not valid and that the issuing bank was precluded under sub-article 16 (f) from claiming that the documents were discrepant and must honour.

R727 (TA.747rev) Certificate of Origin - not mentioning nature of goods

This request referred to a requirement in a credit for the presentation of a Certificate of Origin. The presented document had no letterhead, header or footer and only stated "We certify that the goods are of French origin." The document was signed by the beneficiary.

The issuing bank refused the presentation on the basis that the Certificate of Origin did not provide any details of the goods to which the certification was being made.

ISBP Publication 681, paragraph 183 states that a certificate of origin must appear to relate to the invoiced goods. However, there is no such rule in UCP 600 and the ISBP are not a set of rules. Some ICC National Committees questioned under which article of UCP 600 could a bank refuse a document issued in this manner.

The ICC Banking Commission concluded that the document did not fulfil its function, as required by UCP 600 sub-article 14 (f), as it did not refer to the goods to which the certification of origin applied. Such indication of a relationship with the goods could be made by a goods description being added to the document, that corresponds with that stated in the credit, or one that is given in general terms. It could also be through the addition of a reference to the invoice number, the number of the respective transport document or reference to data that is contained in any of those documents.

The conclusion stated that the discrepancy was valid.

R805 (TA.758rev) inconsistent shipping dates

A bill of lading showed a shipped on board date of 14 September 2011 and the packing list stated "shipping date 13.09.2011". The issuing bank refused the documents due to the packing list showing an inconsistent shipping date to the bills of lading.

The argument of the nominated bank was that the wording might have different meanings depending on the context in which it is used in each document.

The analysis and conclusion of the ICC Banking Commission agreed with the nominated bank. In this case, the use of shipping date, in the packing list, could refer to the movement of the goods out of the warehouse of the

beneficiary for the delivery to the carrier or their agent and should not be seen as an indication of the date of shipment (as is the case with the date appearing in a shipped on board notation on a bill of lading).

R720 (TA.712rev) *Responsibility of issuing bank in spite of their central bank's regulations*

This question related to 13 documentary credits that had been issued by a bank that was subsequently placed under temporary administration, by the respective Central Bank in their country, and who had not honoured the drawings under these credits due to that status. It would now seem that the bank has been re-formed under another name, but the drawings remain outstanding.

The conclusion reflects the fact that given the administration order imposed by the Central Bank there is little that the ICC can do to bring this to a speedy conclusion. The issuing bank has an obligation to honour the drawings that were made under the credits, which the issuing bank previously confirmed represented complying presentations thereunder. Once the Central Bank conclude their findings, it is hoped that reimbursement will be made.

R728 (TA.685rev) *conflict of documents*

The question raised was whether a Health Certificate was required to contain the grade of the goods (as mentioned in the goods description in the credit) and whether the absence of this data on that document would create a conflict with the data shown on other documents (which included reference to the grade).

The credit provided no information as to the requirements for the content of the Health Certificate in relation to the goods description.

The examination of this document would be subject to sub-article 14 (f). There cannot be a conflict of data unless the Health Certificate showed a grade of the goods and that grade was different to that stated in the credit or any other stipulated document. There is no discrepancy.

TA879rev *delayed payment interest*

A credit was issued available with the nominated bank whilst also stating that the issuing bank would remit proceeds upon receipt of credit conforming documents. The nominated bank sent an MT 754 to the issuing bank and also forwarded the documents.

The issuing bank received the documents and, as no discrepancies were discovered, paid the nominated bank. However, payment was not made until 22 days after receipt of documents by the issuing bank. On this basis, the nominated bank had claimed delayed payment interest, starting 7 days after the date of the MT 754. In response, the issuing bank stated that they required the nominated bank to provide documentary evidence that they had actually paid the beneficiary. The question was asked as to whether or not such a demand was justified. Furthermore, it was queried if the issuing bank should have paid upon receipt of the MT754 without requiring sight of the original documents.

As stated within the analysis, this indicated that there was a technical flaw in the credit. The appropriate approach would have been for the credit to either include a reimbursing bank, or provide an authorisation to debit the account of the issuing bank with the nominated bank.

The period of 22 days between receipt of the documents by the issuing bank and payment was not considered to be reasonable. In addition, it was emphatically stated that there is absolutely no requirement in UCP 600 for the nominated bank to provide proof of honour to the beneficiary. Having said that, there is no provision within UCP 600 to cover issues surrounding delayed payment - this must be handled outside the credit.

Based upon the flawed wording within the credit, the process of reimbursement could only begin once the issuing bank received complying documents.

TA880 *Payments under two credits remained unpaid due to the issuance of an injunction*

Payments under two credits remained unpaid due to the issuance of an injunction at the request of the applicant. The injunction was based upon a dispute with regard to the underlying sales contract.

The question was asked as to whether the UCP 600 could prevail over an injunction.

The analysis noted that numerous opinions had previously been issued wherein it was clearly stated that disputes in respect of an underlying sales contract are outside the scope of UCP 600. It went on to highlight that whilst banks cannot ignore court injunctions, they should do their utmost to resist any injunctions by providing courts with the necessary information within UCP 600 and the terms and conditions of the credit.

TA881 mixed payment terms

A credit was issued on mixed payment terms: 80% against presentation of documents and 20% against presentation of an acceptance certificate issued by the applicant or, in case this document is not issued, at 45 days after the bill of lading date (whichever first occurs).

Although the documents for the 80% portion were presented, they were found to non-complying and, therefore, settlement was not forthcoming.

The question was asked as to whether or not the 20% portion would still fall due despite non-payment of the 80% portion. Or, was it fully reliant on the 80% portion being honoured?

It was opined that, in the absence of an acceptance certificate being presented, the issuing bank could only pay the 20% portion 45 days after the bill of lading date if the 80% portion had previously been honoured. It is considered unlikely that any bank, having refused the presentation for 80%, would then proceed to record a commitment to pay the 20% portion.

However, if an acceptance certificate had been presented, then the issuing bank would be obligated to honour.

TA882 Third party documents not acceptable

A credit was issued including the condition 'Third party documents not acceptable.'

In view of the fact that ISBP 745 states that this phrase has no meaning and is to be disregarded, it was queried if inclusion of such a phrase modifies UCP 600 or, on the contrary, should it be rejected.

It was highlighted that ISBP 745 does not expressly modify or exclude any article within UCP 600.

Conditions such as the phrase indicated above, should not be used in a credit unless there is an accompanying clarification as to how such phrase should be interpreted.

TA883 typographical error of data within same document

Pursuant to a presentation of documents, an issuing bank raised certain discrepancies that were accepted as valid by the confirming bank.

Corrected documents were presented and the issuing bank identified two discrepancies, one of which had not been mentioned with respect to the previous presentation.

The first discrepancy related to an inconsistent carrier name on the AWB. This was not considered to be valid, as the party that signed the AWB had signed as carrier.

The second discrepancy revolved around an apparent inconsistent contract number. The number was mentioned in two different places within the AWB, one of which omitted a section of the contract number. In view of the fact that the issuing bank did not previously consider this issue to be a discrepancy with respect to the initial presentation, it was assumed that the AWB correctly stated all other details and that, as such, partial omission in one notation could be considered as a typographical error. In any event, the correct contract number was also stated on the AWB.

TA.884rev Rejection of documents due to AML/sanctions clause

A bank had identified a number of refusals that it had received where the wording was (or similar) "NOTE THE DOCUMENTS HAVE BEEN REJECTED AND RETURNED TO YOU BY COURIER BECAUSE OF LOCAL AND INTERNATIONAL LAWS AND REGULATIONS AND INTERNAL POLICY FOR AML/CTF AND FOREIGN SANCTIONS IN ACCORDANCE WITH OUR L/C TERMS."

The credits in question had contained the following text "OUR BANK PROCESS TRANSACTIONS IN ACCORDANCE WITH LOCAL AND INTERNATIONAL LAWS AND REGULATIONS, AND RESERVE THE RIGHT TO COMPLY WITH FOREIGN SANCTIONS AS WELL. CONSEQUENTLY DOCUMENTS ISSUED BY OR SHOWING ANY INVOLVEMENT OF PARTIES SANCTIONED BY ANY COMPETENT AUTHORITY OR CONTAINED ANY INFORMATION THEREON MIGHT NOT BE PROCESSED BY OUR BANK AT OUR SOLE DISCRETION AND WITHOUT ANY LIABILITY ON OUR PART."

The issuing bank when pressed indicated that the refusals had been based on their own internal policies and not the UCP or any regulatory reason.

The analysis indicated, "Whilst banks are required to operate in accordance with relevant internal policies, they should also ensure that such policies do not contravene UCP 600 and, accordingly, should not issue documentary credits that are in breach of such policies. If such policies are in breach of UCP 600, the issuing bank should make clear in the credit the particular express modification or exclusion to the UCP".

It was also noted that the "refusal notice" was not appropriate, as it had nothing to do with the acceptability of the documents to the UCP 600 or to the terms and conditions of the credit.

The analysis also made reference to the ICC Guidance Paper on the use of Sanction Clauses by stating "Reference is made to ICC Document No.470/1238 " Guidance Paper On The Use Of Sanctions Clauses In Trade Finance-Related Instruments Subject To ICC Rules". Chapter 2.4 includes the following wording: "If the sanctions clauses in trade finance-related instruments, including letters of credit or demand guarantees or counter-guarantees, allow the issuer a level of discretion as to whether or not to honour beyond the statutory or regulatory requirements applicable to that issuer, they bring into question the irrevocable and documentary nature of the letter of credit or guarantee. The implementation by a bank of an internal sanctions-related policy that goes beyond what is required under the laws and regulations applicable to that bank is an illustration of that discretion. It may cause a serious problem when considering the role of a confirming bank, a nominated transferring bank, a guarantor or a beneficiary. If the reference to an internal, sanctions-related policy were to allow the bank discretion to honour or refuse payment, one could even question if that bank has in fact assumed a legally binding obligation, a question that of course has to be determined under the applicable law." Furthermore, Chapter 4.2 states that practitioners should refrain from bringing into question the irrevocable and independent nature of a credit, the certainty of payment or the intent to honour obligations."

The conclusion indicated that the issuing bank had an obligation to honour a complying presentation. If it wishes to incorporate conditions relating to its internal policies these should be substantiated in detail with the terms and conditions of the credit. The point was made that any objection to the documents based on a sanction regulation should not be construed as a refusal notice under UCP 600 article 16.

TA.885 rev cost additional to freight charges

A credit indicated that the trade terms were CIF Mundra Port, India. However, the routing was stated to be port of discharge Mundra and place of final destination ICD Moradabad, India, with bills of lading the chosen transport document.

The credit indicated "Documents of the following nature are not acceptable:?...?G. Bearing any reference by stamp or otherwise to cost additional to freight charges...". By a subsequent amendment, reference to condition G was removed.

The presented bills of lading indicated shipment to Mundra port and final destination as ICD Moradabad, India. However, the bills of lading bore the following clause "Inland haulage charges from Mundra seaport to ICD Moradabad are to buyer's account. Empty container to return to ICD TKD on consignee's risk & account."

The issuing bank refused the documents for the following reason "Bill of lading states that empty containers to return to ICD TKD on consignees risk and account whereas LC states no such condition."

The nominated bank objected, but the issuing bank maintained its position. The question was asked as to whether the refusal was correct and if not, would the answer be different if clause G had not been deleted?

The analysis indicated, "The stated delivery terms are CIF Mundra. Therefore, the freight costs under the credit are those up to Mundra port. The carriage from Mundra to ICD Moradabad is outside the credit (and the UCP) and on the buyer's account. The reference to costs additional to freight can only apply in the context of the freight costs incurred up to CIF Mundra. The buyer is responsible for all costs from unloading in Mundra to delivery at Moradabad.

The analysis also stated "... the clause "Empty container to return to ICD TKD on consignee's risk & account" relates to an activity which takes place after delivery to the port to where freight has been paid (Mundra) and is, therefore, outside the credit (and the UCP) and on the buyer's account. As such, UCP 600 sub-article 26 (c) does not apply."

The conclusion indicated that the refusal was not valid and it would be no different if clause G had not been deleted.

TA.886rev Language of Documents

A credit stipulated that all documents were to be issued in English, whilst providing a condition that documents in languages other than English would be acceptable provided that the text of the document was also in English language.

The issuing bank stated that a presented invoice did not appear to have been issued by the beneficiary and raised this as a discrepancy. As counter-argument, the nominated bank contended that, in view of the fact that the beneficiary name was stated in Chinese language within a stamp on the invoice, this rendered the document compliant in accordance with ISBP 745 paragraph A21 (e).

However, it was concluded that this was an erroneous argument because the credit required any non-English text within a document to also be written in the English language. The discrepancy was perceived as valid.

TA.887rev performance bond

A credit was issued requiring presentation of a performance bond issued either by a reputable Vietnamese bank or an international bank with a branch office in Vietnam.

Subsequently, a performance bond was issued by a bank in London and advised to the beneficiary via its branch in Vietnam. As the guarantee document itself did not specifically state that the issuing bank had a branch office in Vietnam, the question was raised as to whether or not this was acceptable.

In actual fact, there was no specific requirement in the credit for such a statement. Provided that the issuing bank had a branch in Vietnam, this would be sufficient. It was concluded that no discrepancy existed.

TA.888rev Release of discrepant documents

The originator of the query highlighted that they had received a number of credits including clauses that could be interpreted as modifying UCP 600 sub-article 16 (c) (iii) (b).

It was stated within the analysis that the referenced clauses did not imply that documents would be released to anyone other than the presenter without honour occurring. As clearly specified in UCP 600, in the event of an issuing bank accepting a waiver from an applicant, or an issuing bank withdrawing its refusal notice, prior to the receipt of any further handling instructions from the presenter, the issuing bank must honour. At that stage, it can then release the documents to the applicant.

TA.889rev Consignee in EUR1 Certificate

A credit was issued requiring presentation of a photocopy of a EUR1 certificate. The confirming bank refused the presented document on the basis that the consignee was inconsistent with that stated on the bill of lading. The bill of lading was consigned to order of the confirming bank whereas the EUR1 certificate stated 'to order' within the consignee field.

As stated in the analysis, the consignee field on such a certificate is not only optional, but also does not contain the same inference as it does so when stated on a bill of lading.

It was further observed that inclusion on the EURI certificate of 'to order' as consignee does not create any conflict under UCP 600. The discrepancy was not considered to be valid.

TA.890rev Signing capacity in Bill of Lading

An issuing bank refused documents presented under a credit subject to UCP 600 on the basis that the signing capacity within the bill of lading was not specified.

The bill of lading was signed by "ROH on behalf of HAP - the Carrier".

UCP 600 sub-article 20 (a) (i) requires a bill of lading to indicate that the signing party is acting in the capacity as an agent. This was not the case with this particular bill of lading and the bill of lading was therefore observed to be discrepant.

TA.891rev Return of original documents (discrepant) from Issuing Bank - Original is lost

A credit stipulated that 2/3 bills of lading were to be presented. Subsequent to presentation, the issuing bank cited a number of discrepancies including the fact that only 1/3 original bill of lading was actually presented. After a period of time, the presenting bank asked for the return of the documents. However, upon receipt, the presenting bank noted that page 1 of the original bill of lading was a photocopy and, as a result, contacted the issuing bank for the original page. The issuing bank also took 12 days to return the documents. The missing original page was not received, although the issuing bank did advise that the goods had been released. A number of questions were asked in respect of this situation.

It was concluded that the issuing bank had a responsibility to either honour or return the documents as presented. Documents can be returned at any time, but such action should be without delay. Failure to return the documents in the number of originals and copies as was received means that the issuing bank would be in breach of UCP 600 sub-article 16 (f).

TA.892rev Opinion on page numbers (if bound together - ISBP A24)

A credit was issued requiring presentation of a draft survey report issued by an independent surveyor. Although the presented documents were deemed as compliant by the confirming bank, the issuing bank raised a discrepancy that the draft survey report omitted to evidence the first page as 'page 1 of 2'. The second page was marked 'page 2 of 2'. In the analysis, it was noted that the two pages were bound together. As stated in ISBP 745 paragraph A24, pages that are physically bound together, however named or titled, meet the requirement for determination of whether or not such presentation is to be considered as the same document.

It was further noted that the refusal advice was sent by SWIFT MT799, with a comment that it should be treated as an MT734 message. If this is to be the case, then the MT799 message is subject to the same requirements as an MT734 as stated in UCP 600 article 16. In this particular case, such refusal advice was not issued in accordance with UCP 600 sub-article 16 (c) (iii), meaning that the issuing bank was precluded from claiming that the presentation was not complying and must honour.

TA.893rev Packing list to show dimensions - requirement of Documentary credit.

A credit was issued requiring presentation of a packing list that included dimensions of the bale to which the packing list pertained. The presented packing list identified the dimensions in CBM, which was refused by the nominated bank as being insufficient as the phrase 'dimension' required a linear measurement to be shown.

As stated in the analysis, the acronym CBM refers to 'cubic meter'. Such type of measurement does meet the 'dimension' requirement.

TA.894. The initiator withdrew

TA.895rev Reduction in value of credit for delayed delivery

A credit was issued with a condition that in the event of delay in delivery beyond a particular date, the value of the credit would be reduced by a certain percentage. However, the credit did not actually state how such

percentage reduction was to be identified and recorded. The confirming bank sent documents to the issuing bank apparently claiming the full amount of the credit. This was despite placing a reserve on the beneficiary, implying that they were aware that a deduction should be made. The issuing bank refused the documents due to the credit being overdrawn.

What was made very clear in the analysis was that the credit was poorly drafted, a fact that should have been noted by all parties but, in particular, by the issuing bank and the applicant who must take in the bulk of the blame. This does not, however, completely absolve the confirming bank or the beneficiary.

The stated condition in the credit was tantamount to an automatic reduction clause, and could not be ignored, even though it did not state exactly how such reduction was to be evidenced. It was concluded that the issuing bank's refusal notice should have been withdrawn once the confirming bank had agreed to a deduction, and the amount of the deduction was to be agreed by the issuing bank, confirming bank and the beneficiary, without delay.

TA.896rev Requirement of attachment in Certificate of Origin

A credit was issued requiring a certificate of origin in duplicate issued by a Chamber of Commerce. The issuing bank, on the basis that an attachment that was referenced in the certificate of origin was not presented, refused the documents. They further stated that a required pre-shipment inspection certificate was not presented, despite there being no such requirement in the credit.

In the analysis, it was stated that the required attachment was in place, and could clearly be related to the certificate of origin. With regard to the pre-shipment inspection certificate, this was not required by the credit and cannot, therefore, be stated as a discrepancy.

TA.897 withdrawn before the circulation of papers to National Committees

TA.898 validity of discrepancies in respect of a presentation under a standby credit

A discrepancy was raised by the confirming bank that the required irrevocable attestation to be issued by the beneficiary was incomplete in that it did not state the words 'our obligations'.

It was deliberated that, in view of the fact that the attestation plainly stated 'We', then this was a clear indication that it referred to the obligations of the beneficiary.

A further discrepancy stated that the bill of lading did not state a goods description. However, the analysis of the opinion did not agree, and pointed out that it was obvious that the bill of lading did indeed include a valid goods description.

In conclusion, neither discrepancy was considered to be valid.

TA.899 whether or not an original or a copy CMR should have been presented under a documentary credit

A documentary credit required, amongst other documents, presentation of a CMR in 1 copy. It was questioned, in relation to ISBP 745 paragraph 29 (d)(i), as to whether or not this should be an original CMR or a copy CMR. It should be noted that the credit required that the original CMR for sender/shipper was to be sent with the goods and a beneficiary certificate was to be presented to this effect.

The analysis clarified that although ISBP 745 paragraph 29 (d) (i) deems that a request for "Invoice in 1 copy" is deemed to be a requirement for an original invoice, this is qualified specifically for transport documents in ISBP 745 paragraph A30 (b) wherein it states that when a credit requires the presentation of a copy of a transport document and indicates a disposal instruction for all originals of that document, a presentation is not to include any original of such document.

As such, under the terms and conditions of this particular credit, a copy of the CMR (not the original) must be presented.

It was further clarified that the presented copy of the CMR would not be examined under UCP 600 article 24 but, instead, be based on UCP 600 sub-articles 14 (f) and 14 (d).

TA.900 originality of MT760 message presented under a documentary credit

A credit required, among other documents, the presentation of a performance guarantee. The guarantee was actually issued by SWIFT MT760 several days prior to the presentation of documents under the credit. As such, the presentation included a copy of the MT760 rather than the original. This was rejected by the issuing bank on the basis that they required the original.

The analysis outlined that, in view of the fact that the guarantee had already issued via the SWIFT network (which was in line with international standard banking practice) and that there was no dispute by the issuing bank that it had been received, it would not be possible to re-present the original MT760 guarantee in a paper form as it had already been issued previously by SWIFT message.

It was concluded that the paper version that was presented should be considered as a physical representation of the SWIFT original. As such, the discrepancy was not valid.

TA.901 reimbursement value date under a documentary credit

A credit was issued with the condition that, "UPON RECEIPT OF CREDIT COMPLYING DOCUMENTS AT OUR ABOVE ADDRESS, WE WILL COVER YOU ACCORDING TO YOUR INSTRUCTIONS, VALUE 5 NEW YORK/GENEVA BANK BUSINESS DAYS"

The query enquired as to whether this meant reimbursement was to be made on the day of receipt of documents (without the issuing bank having first determined that the presentation was complying), or once the issuing bank had determined that the presentation was complying.

It was considered that it was imperative that banks must have the standard period of time in which to examine documents and determine compliance. As stated in the Analysis, UCP 600 sub-articles 14 (b) and 15 (a) cannot be ignored.

The issuing bank cannot know the documents are credit complying until they have been examined, and UCP 600 allows five banking days for such examination.

The counting of the number of days can only start after documents have been found to be complying by the issuing bank. If banks are not allowed this period of time, it would go against standard banking practice. The reimbursement wording is not seen as poor wording and is, in fact, very common across the majority of credits available by negotiation.

TA.902 COVID-19 clause on a bill of lading

A bill of lading was presented under a documentary credit and included a 'COVID-19' clause on the bill of lading which, essentially, allowed the carrier to arrange an alternative vessel, and/or discharge the goods in an alternative port.

In view of the fact that the stated clause was a term and condition of carriage then, in accordance with UCP 600 sub-article 20 (a) (v), it is not to be examined.

TA.903rev presentation of an AWB on two separate sheets

Under a documentary credit subject to UCP 600, the beneficiary presented an air waybill (AWB) on two separate pages, both printed single-sided. The 2nd page contained the terms and conditions.

In the view of the issuing bank, this constituted a discrepancy because the AWB (considered by them to be the 1st page) did not show the terms and conditions of carriage. Although the AWB (1st page) included a reference to an addendum via addition of the wording 'subject to the conditions of contract on the addendum hereof', the issuing bank stated that there was no identifier to connect the two pages.

The analysis noted that reference to an addendum cannot be ignored. It was additionally stated that whilst an 'addendum' is not specifically cited in ISBP 745, addendums are routine documents which clearly fall under the definition of 'another source' as detailed in UCP 600 sub-article 23 (a) (vi).

Bearing in mind that the AWB (1st page) made reference to another source which was, in this case, an addendum, the '2nd page' is considered to be acceptable. The stated wording on the 1st page, 'subject to the conditions of contract on the addendum hereof', also provides sufficient evidence of an 'internal cross reference' as required by ISBP 745 paragraph A24.

It was concluded that no discrepancy existed.

TA.904rev *do previous waivers continue to apply for future presentations under documentary credits?*

A large number of documentary credits were issued subject to UCP 600 which, at a later date, resulted in frequent discrepant presentations. In the majority of cases, the applicant accepted the discrepancies and the issuing bank honoured.

In a minority of the cases, with similar discrepancies, the issuing bank refused the documents. It would appear that such refusals were made in accordance with UCP 600 article 16.

In any event, it was the viewpoint of the beneficiary that no discrepancies existed, merely inconsistencies based upon the fact that the credits covered Bonded Warehouse Transactions (BWT). They further argued that, in view of the fact similar discrepancies had been accepted previously by the issuing bank, then this should create a precedent for accepting all such discrepancies in comparable presentations.

As stated in the analysis, presentations under credits must be viewed as separate and independent. As such, there is no basis under UCP 600 for historical precedent to be applied to presentations.

With regard to a further question as to whether or not a bank can consider issues under credits based upon a BWT as inconsistencies rather discrepancies, it was concluded that it cannot be expected that such transaction types would fall under international standard banking practice. In any event, it falls under the responsibility of the beneficiary to ensure that any conflict of data should be reflected as being acceptable under the terms and conditions of the credit.

TA.906rev *lack of clarification regarding acceptance of documents by the issuing bank*

Documents were presented under a documentary credit subject to UCP 600 available by deferred payment. Although the issuing bank did not provide any notice of compliance or non-compliance as required by UCP 600, the confirming bank considered the documents to be compliant and expected payment on maturity. Non-provision of any notice precludes the issuing bank from claiming that the documents do not constitute a complying presentation.

Two days prior to maturity, the issuing bank stated that they could not honour, owing to the accounts of the applicant being frozen due to a 'justice decision'.

The ICC has consistently indicated that whilst banks cannot ignore court injunctions, they should seek to have such injunctions lifted. Under the circumstances of this query, the 'justice decision' was considered to be the equivalent of a court injunction.

However, it was unclear if the 'justice decision' only prevented the issuing bank from debiting the applicants account, not from honouring under the credit.

As such, it was concluded that the issuing bank must honour if this was the case.

TA.907rev *recovery of funds from a counter guarantor*

A guarantor received complying presentations under a number of guarantees subject to URDG 758. As a result, it made equivalent demands under the reciprocal counter-guarantees.

The counter-guarantor treated the guarantor's demands as compliant and indicated that payment would be made. However, on the same day, it sent a further message that payment would be delayed until a few days later owing to the operating area indicating that payment would be made the next day and then, by a further message, delayed until 2 working days later. However, later that day a further message was sent stating that no payment would be made due to 'payment restriction from authorities.' This contravenes URDG 758 sub-article 20 (b), which states that when a demand is determined to be complying, then it must be paid.

Furthermore, the content of the 'payment restriction' was entirely unclear, and there was no evidence that it prevented the counter-guarantor from paying under the counter-guarantees, or whether it solely related to debiting the account of the applicant.

It was concluded that provided the 'payment restriction' did not prevent the counter-guarantor from paying complying demands under the counter-guarantees, then it is obligated to pay.

If payment is prevented then, as established by precedent in previous ICC Opinions, the counter-guarantor should seek lifting of the 'payment restriction'.

TA.908rev *terms and conditions of an insurance document*

An issuing bank refused to honour a presentation under a credit subject to UCP 600, due to its opinion that the presented insurance policy was not compliant. Such refusal was based upon the premise that the insurance policy included a clause that restricted any subsequent claims, thereby contravening UCP 600 sub-article 28 (e) which reflects that insurance cover must be effective from a date no later than the date of shipment.

It was concluded that it was evidently clear that the insurance policy was effective from the date of shipment, and that the added clause had no detrimental impact upon cover.

Accordingly, the refusal of the issuing bank was invalid.



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