



Banking Commission

Draft consolidated Opinions of the Banking Commission, January 2023

Attached are the following Opinions as distributed in November 2022

470/TA927

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Ms. Li Yuanzi
Policy Manager,
ICC China Banking Commission
ICC China
No. 2 Huapichang Hutong,
Xicheng District
Beijing
China

5 October 2022

Document 470/TA.927

Dear Ms. Li Yuanzi,

Thank you for your query regarding UCP 600 and ISBP 745. Please find below the opinion of the ICC Banking Commission Technical Advisers.

QUOTE

A documentary credit, subject to UCP 600 and URR 725, was issued available with any bank by negotiation. Description of goods field specified as follows:

QUOTE

COOKING RANGE AND ITS SPARE PARTS AS PER PURCHASE ORDER NO. XXX DATED 05-MAY-2021. FOB ANY PORT IN CHINA.

UNQUOTE

Among other documents, "SIGNED COMMERCIAL INVOICES IN 3 ORIGINAL AND 3 COPIES" were required.

On 10 September 2021, the nominated bank received a set of documents under the above credit, which they determined as complying and forwarded to the issuing bank without negotiation. Extracted details as shown in the invoice are as follows: (xxx refers to specific numbers)

Commodity	Item No.	Quantity	Carton	Unit Price	Amount
Cooking range	ABC	xxx	xxx	xxx	xxx
Spare parts	123	xxx	xxx	xxx	xxx
Spare parts (f.o.c)	321	xxx	xxx	Free of Charge	

On 16 September 2021, a refusal notice was received from the issuing bank, citing a discrepancy: INVOICE EVIDENCE FREE OF CHARGE GOODS NOT ALLOWED AS PER L/C. The nominated bank objected to this refusal.

On 20 September 2021, the nominated bank received the issuing bank's authorization to claim reimbursement from the reimbursing bank. The message also indicated the deduction of a discrepancy fee of USD100. In order to accelerate payment for the beneficiary, the nominated bank claimed as instructed. However, the nominated bank subsequently argued with the issuing bank by sending messages insisting that the discrepancy was invalid and requesting a refund of the discrepancy fee. The discrepancy fee was never refunded.

1. Preliminary Analysis and Opinion from Nominated Bank :

In its first reply, the issuing bank's main arguments were that "FREE OF CHARGE GOODS NOT ALLOWED AS PER LC TERMS" and "FOC GOODS CAN BE SHIPPED ONLY IF LC PERMITS".

The nominated bank considered that neither field 45A stipulated the price of the spare parts nor did it include any prohibitive clause on the price, and argued that spare parts could, therefore, be invoiced for a specific value or be free of charge. In either case, no L/C terms were violated.

In its subsequent replies, the issuing bank maintained that the discrepancy was valid quoting ISBP 745 paragraph C12(b).

However, the nominated bank considered that this paragraph did not apply to this case, based on the following reasons:

ISBP 745 paragraph C12(b) does not prohibit an invoice indicating goods to be free of charge under any circumstances. The intention of this paragraph is not to discuss the question as to whether goods that are free of charge are acceptable or not. It focuses on whether over-shipped goods could be accepted or not even if they are stated to be free of charge.

In this case, field 45A stipulates 'SPARE PARTS' without specifying any quantity, so it is unable to conclude that the spare parts shown are "ADDITIONAL" goods as specified in ISBP 745 paragraph C12(b). Moreover, as the credit does not stipulate the price of the spare parts, it is up to the beneficiary and the applicant, rather than the banks, to decide whether spare parts are to be free of charge or not.

The issuing bank disagreed with the nominated bank's arguments and considered such interpretation "INCORRECT PERSPECTIVE TO PARA C12". In addition, the issuing bank stated that it was standard banking practice that unless permitted in the credit, shipment of free of cost goods would not be allowed even though shipped goods were part of field 45A.

The nominated bank strongly disagreed to the issuing bank's interpretation and argued that the issuing bank's alleged standard banking practice had never been acknowledged by UCP, ISBP or ICC official Opinions.

2. Our Questions are :

We would appreciate an official Opinion to the following questions:

1) Was the discrepancy raised by the issuing bank valid? Absent any stipulation on the price and quantity in the credit, is it acceptable for the beneficiary to indicate goods that are free of charge on an invoice?

2) Is it correct to interpret ISBP 745 paragraph C12(b) as "it means to prohibit an invoice indicating goods stated to be free of charge under any circumstances unless allowed by the L/C"?

UNQUOTE

ANALYSIS

Documents were presented under a credit subject to UCP 600 and refused by the issuing bank on the basis that the invoice included free of charge goods. Four days later, the issuing bank provided the nominated bank with an authorisation to claim reimbursement but with deduction of a discrepancy fee of USD100.

The discrepancy fee was disputed by the nominated bank but, in the interests of time, they proceeded with the reimbursement process whilst separately raising an objection to the fee.

ISBP 745 paragraph C12 (b) clearly states: "An invoice is not to indicate: goods, services or performance not called for in the credit. This applies even when the invoice includes additional quantities of goods, services or performance as required by the credit or samples or advertising material and stated to be free of charge."

The rationale behind inclusion of this practice is that the incorporation in the invoice of goods not called for by the credit may cause problems with associated duties or taxes that may become due during the customs or import processes. This was addressed in ICC Opinion R599 (TA562rev) which stated that merchandise not called for in the credit should not be shipped and/or shown on the documents, and that any shipment of merchandise not called for in the credit may delay the entire shipment from clearing customs and preclude the applicant's ability to obtain any or part of the merchandise for which the credit was issued.

In essence, when applying ISBP 745 paragraph C12 (b) to this query (i.e. goods only, not services or performance), the approved practice is that an invoice is not to indicate goods not called for in the credit.

This is the case even when the invoice includes additional quantities of the goods that are allowed by the goods description stated in the credit and which are stated to be free of charge. For this credit, there was a requirement for shipment of spare parts, the value of which is understood to be covered within the amount of the credit. There was no mention of an additional quantity of spare parts that were to be shipped free of charge.

The same will apply in similar circumstances when a credit refers to services or performance.

CONCLUSION

1. The discrepancy is valid. Unless provided by the terms and conditions of a credit, an invoice should not indicate goods that are free of charge.
2. Yes, this is correct.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.

If this query relates to a matter currently under consideration by the courts, the ICC Banking Commission will refrain from considering it for adoption as an opinion.

Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Advisers shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion(s).

Yours Sincerely,

A handwritten signature in blue ink, appearing to be 'TK' with a horizontal line extending to the left.

Tomasch Kubiak
Policy Manager Banking Commission
International Chamber of Commerce

Ms. Christina E. Seierup
ICC Denmark Trade Finance Forum Chair,
ICC Denmark
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DK-1217 København K
Denmark

17 October 2022

Document 470/TA.928

Dear Ms. Seierup,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers.

QUOTE

We are the nominated and confirming bank of a documentary credit which calls for an insurance document.

We refused the presentation made by the beneficiary on the basis that the presented insurance policy “does not appear to have been issued and signed by an insurance company, an underwriter or their agent or proxy”.

Here are the signing characteristics of the presented insurance policy:

- The brand name / logo of the company issuing the document is stated in the top right: “XYZ”.
- The claim settling agent is mentioned in the body of the document “XYZ Country X Insurance Co”.
- The document is signed as follows:
XYZ Europe S.A. Filial I Sverige
[signature and name]
- In the footer of the document, contact information is mentioned, but without any names.

The insurance policy also includes the following pre-printed text “We hereby agree, in consideration of the payment to us by or on behalf of the Assured of the premium agreed, to insure against loss, damage or expenses in the manner hereinafter provided.”

The beneficiary argues that it is not a correct refusal as other banks are accepting this kind of document. Likewise, it is argued that the logo in the top right should be enough to document that they are an insurer as they are a well-known insurance company

Our view is that the insurance policy does not comply with UCP 600 article 28 as it does not appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies.

On the basis of the above, we kindly ask your view as to the whether the insurance policy complies with UCP 600.

UNQUOTE

ANALYSIS

The credit, subject to UCP 600, required an insurance document. Accordingly, the presented document was required to comply with UCP 600 article 28 which provides the default requirements for an insurance document and coverage.

Sub-article 28 (a) states: "An insurance document, such as an insurance policy, an insurance certificate or a declaration under an open cover, must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies. Any signature by an agent or proxy must indicate whether the agent or proxy has signed for or on behalf of the insurance company or underwriter".

Additional guidance is provided in ISBP 745 paragraph K2:

- a. An insurance document is to appear to have been issued and signed by an insurance company or underwriter or their agent or proxy. For example, an insurance document issued and signed by "AA Insurance Ltd" appears to have been issued by an insurance company.
- b. When an issuer is identified as "insurer", the insurance document need not indicate that it is an insurance company or underwriter.

The presented insurance policy contained the brand name/logo "XYZ" and was signed by XYZ Europe S.A. Filial I Sverige (Note: Filial I Sverige is translated to read as Sweden Branch).

This would appear to indicate that the insurance policy was issued by a branch of the insurer.

UCP 600 sub-article 14 (a) states that a 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.

By inclusion of the pre-printed text "We hereby agree, in consideration of the payment to us by or on behalf of the Assured of the premium agreed, to insure against loss, damage or expenses in the manner hereinafter provided", coupled with the brand name/logo 'XYZ' and the signature line evidencing that it was signed by a branch of XYZ, the insurance policy appears to have been signed by XYZ as the insurer and, on its face, was compliant.

When examining an insurance document, one of the tasks is to identify the insurer. In order to do this, it is necessary to read the face of the document in order to ascertain such identification. In respect of this query, the relevant information can be found within the above-mentioned pre-printed text.

It should be noted that this text is not one of the terms and conditions which would not ordinarily be examined. It is, in fact, an essential element of the process of determining the identity of the insurer. For comparative purposes, a further example of a term or condition to be examined in an insurance document is with regard to the determination of the number of originals that have been issued.

CONCLUSION

The insurance document was not discrepant.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

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Yours Sincerely,

A handwritten signature in dark ink, appearing to be 'Tomasz Kubiak', written over a light blue horizontal line.

Tomasz Kubiak
Policy Manager Banking Commission
International Chamber of Commerce

Mr. Leon Yip
International Policy Coordinator
ICC United Kingdom
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United Kingdom

21 November 2022

Document 470/TA.929

Dear Mr. Yip,

Thank you for your query regarding UCP 600 and eUCP. Please find below the opinion of the ICC Banking Commission Technical Advisers.

QUOTE

Should a bank accept a bill of lading under a letter of credit subject to UCP 600 (i.e., without the eUCP supplement) if the endorsement stamp(s) on the reverse of the bill of lading are printed images of the endorser's manual signature?

Background:

On 10 March 2022, an electronic bill of lading (**eB/L**) was issued to order (i.e., a bearer eB/L) via an electronic document platform (the '**Platform**') for a shipment from Country A bound for Country C.

The trade string involved a back-to-back letter of credit. Because the relevant parties in the first L/C were all users of the Platform, the first presentation was managed electronically under an eUCP credit. As a result:

- the eB/L was signed and issued on behalf of the carrier and transferred to the shipper on the Platform;
- the shipper attached and eSigned the supporting documents (**eDocs**) required under the terms of the eUCP credit and presented the eDocs to the advising bank;
- the advising bank electronically presented the eDocs to the issuing bank; then
- the issuing bank accepted the documents presented under the eUCP credit (the eDocs were returned to correct discrepancies, but this part of the flow is not relevant for the purpose of this request for an opinion, as ultimately the re-presented eDocs were accepted by the banks under the eUCP credit).

However, as is regularly the case, not all the parties in the trade chain had agreed to use eDocs. In this case, the second L/C was on UCP (not eUCP) terms.

As a result, the issuing bank requested that the eB/L be converted to paper using a specific function within the Platform's application

In accordance with the rules governing the Platform, the eB/L was converted to paper following the procedure set out therein. In particular:

- The issuing bank (being the holder of the original eB/L) made a request to the carrier to convert to paper. When making the request, the advising bank selected how many originals (3) and copies (3) of the bill of lading were required to comply with the terms of the back-to-back UCP L/C (this L/C was on standard terms requiring 3/3 clean on board bills of lading).

- Upon the request being made, the eB/L was automatically put into escrow, preventing any further action being taken on that eB/L.
- Under the provisions of the Platform's application, the carrier was obliged to comply with the demand to convert the eB/L to paper, and to do so, if possible, within 2 business days.
- When accessing the Platform, the carrier had the option either (i) to perform the convert to paper itself; or (ii) to delegate this action to an agent on the carrier's behalf.
- The carrier asked an agent to perform the convert to paper, and therefore the agent received an instruction to access the Platform to perform this task.
- The agent accessed the Platform and downloaded the PDF version of the bill of lading which had been automatically generated and made available to the agent in the agent's inbox. This bill of lading was identical to the eB/L at the time the convert to paper request was made, the only difference being that the carrier's electronic signature on the front of the eB/L had been automatically removed, and the carrier's signature block was blank
- Critically, the shipper's electronic endorsement which appeared on the back of the eB/L was retained on the (new) paper bill. The endorsement was standard in structure i.e., Signed by, followed by the shipper's name and an image signature with the words 'To Bearer' beneath this information.
- The agent manually signed 3/3 paper bills of lading on behalf of the carrier and delivered these to the issuing bank on 29 March 2022.
- They were rejected on 30 March 2022, on the basis that the bill of lading was not manually endorsed on the reverse with an ink signature.
- The documents were returned to the shipper to add a wet ink signature on the endorsement stamp, adding delay and inconvenience, and were subsequently accepted by the issuing bank.

Issue:

The use of an image signature for endorsement stamps was based on UCP 600 article 3, which provides that: *"A document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication."*

Convert to paper is a critical mechanism for maximising the adoption of eDocs in international trade. It allows trade participants to utilise eDocs with members of a trade chain who are willing to do so, and to convert to paper before transferring to other participants who are not eDocs enabled.

Critical to users' willingness to use eDocs and convert to paper is the ease of doing so. If convert to paper is a highly complex process, which requires each of the participants in the trade chain to manually recreate their eSignature, it will never be used.

Please note this issue is not unique to this Platform. All providers of eB/L solutions have a convert to paper process and all national and model laws on electronic transferable records (**ETRs**) make provision for the conversion of ETRs to paper-based instruments.

It is therefore critical to understand how the provisions of UCP 600 article 3, relating to mechanical or electronic signatures, should be interpreted as they are and will continue to be relevant, and critical to adoption.

The short question is: Can image signatures be used to endorse a paper bill of lading pursuant to article 3?

When converting bills of lading, which are transferable documents where singularity and uniqueness are important, the signature of the carrier on a paper bill of lading should be a wet ink signature which ensures that it can be identified as the original document. However, the provisions of article 3 should allow the use of image signatures for endorsement stamps on bills of lading, and banks should not reject documents on the basis that they are electronically endorsed.

UNQUOTE

ANALYSIS

This query concerns a presentation under a documentary credit, subject to UCP 600, where the presented bill of lading has been generated via an electronic document platform. The bill of lading was initially only available in electronic form, and the digital content reflected that ownership was transferred by way of endorsement.

For the purpose of presenting the bill of lading under the documentary credit, the bill of lading was converted to paper according to the rules of the electronic document platform and the carrier's agent had manually signed them. The endorsement on the reverse of the bills of lading remained as a digital representation.

The presentation was refused by the issuing bank on the basis that the bills of lading were not manually endorsed on the reverse with an ink signature despite the endorsement being standard in structure i.e., Signed by, followed by the shipper's name and an image signature with the words 'To Bearer' beneath this information. It was, therefore, a digital representation (also referred to as a form of facsimile signature) of the shipper's signature that was incorporated into the paper bills of lading.

In this respect, the query referred to UCP 600 article 3 (interpretation of signed) i.e., "A document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication."

The UCP 600 contains no rules relating to an endorsement of a transport document. In ISBP 745, "endorsements" are referenced (e.g., in paragraph E13) however, this paragraph does not outline the requirements for an endorsement. The question is whether or not signature within the endorsement is in a form that would be acceptable under UCP 600 article 3.

The presented bills of lading had been manually signed by the agent on behalf of the carrier, thereby complying with UCP 600 sub-article 20 (a) (i). The image of the signature within the endorsement would have been a part of the paper bills of lading when the agent signed them. In this context, the signature is deemed to be a facsimile signature and acceptable under UCP 600 article 3.

CONCLUSION

Yes. The image signature that forms part of the endorsement is in accordance with UCP 600 article 3 (interpretation of signed).

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

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Tomasch Kubiak
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