

# Recent ICC OPINIONS

Institute for International Banking Law and Practice  
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NOTE: This presentation is a **summary** of the most recent ICC Opinions.

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# Official Opinions Paris Fall 2019

- TA898rev
- Many issues including return of dishonored documents to presenter.
  - BL presented was 2 pages, both original.
  - BL returned was 2 pages, one original page and one photocopy page.
  - The issuing bank issued a refusal notice indicating, by reference to UCP 600 sub-article 16 (c) (iii) (b), that it was holding documents until it received a waiver from the applicant and agreed to accept it, or received further instructions from the presenter prior to agreeing to accept a waiver. The presenter requested the return of the documents, which means the return in the number of originals and copies of the stipulated documents as was received by the issuing bank. A failure to return all the documents that had been presented would be a breach of this sub-article and the issuing bank would be precluded under sub-article 16 (f) from claiming that the documents are discrepant.

# TA892rev

- LC required a draft survey report
- Document presented was Titled and on the form of the Survey Company, with original signature, but was not numbered page 1 of 2; second page was bound together and was numbered page 2 of 2.
- Issuing Bank dishonored – page not numbered page 1 of 2.
- ISBP 745, paragraph A 24, explains why this is not a discrepancy.

# TA895rev

- Credit issued stating the CFR Value of the goods, also stated a reduction clause of 0.5% for late shipment determined by the FOB order value. The credit referred to two different criteria i.e., purchase order value and FOB order value, on which any reduction is to be based; did not indicate the purchase order value or the FOB order value, or that they may be the same value; did not state how the reduction was to be shown in the documents.
- Documents presented evidenced late shipment
- Confirming bank accepted the presentation with a reserve towards the beneficiary that the issuing bank is entitled to deduct 0.5 PCT from the proceeds as per the above clause but did not tell issuing bank to subtract the 0.5% from the amount.
- Issuing Bank dishonored stating credit overdrawn.

# TA895rev (continued)

- Confirming bank instructed issuing bank to deduct the 0.5% from the payment.
- Issuing bank delayed in honoring the presentation minus the 0.5%
- Issuing Bank should have withdrawn their notice of dishonor and deducted the amount from the proceeds and paid immediately.

# TA896rev

- 2 credits, documents dishonored due to
- (1) failure to present a pre-shipment inspection certificate as mentioned in the purchase order.
- The credits did NOT require the presentation of a pre-shipment inspection certificate, it was on the Application forms but not in the credits.
- (2) Attachment in the Certificate of Origin not presented.
- Certificate of Origin stated “as per the attached invoice” and the invoice stated ATTACHMENT TO C OF ORIGIN, was authenticated by the Chamber of Commerce and included the invoice number and date.
- NO Discrepancy.

# DUBAI Final Opinions Spring 2020

## TA898rev

- The credit required a signed, Irrevocable Attestation from the beneficiary, indicating in part that: “YOU [Beneficiary] HAVE DULY PERFORMED ALL YOUR OBLIGATIONS CONCERNING THE SALE...”
- The beneficiary presented a signed Irrevocable Attestation citing, in part, that: “We [Beneficiary] have duly performed all obligations concerning the sale and shipment ...”. The confirming bank considered this as discrepant on the basis: “WORDING INCOMPLETE, NOT SHOWING '... O U R OBLIGATIONS...’”
- Issuer dishonored – statement does not say “our” obligations.
- UCP 600 sub-article 14 (d) states the documents must be read in context

NOTE: Credit also required a COPY OF BILL OF LADING CONSIGNED TO OR ENDORSED TO COMPANY Y [THE APPLICANT] AND SHOWING TRANSPORT OF FROZEN PRODUCTS

The BL did not state the word “FROZEN”.

The bill of lading stated that the goods were stowed in a refrigerated container set at a temperature of -20 degrees Celsius, this is a clear indication that the products were frozen.

# TA899rev

- **Credit required**
- CMR in 1 copy issued to the name of XYZ (the applicant).
- Certificate of origin in duplicate.
- Packing list in 1 original and 1 copy.
- Photocopy of original ATR.
- Beneficiary's declaration stating that 1 original CMR (original for sender/shipper) and original of ATR certificate have been sent together with the goods.

According to ISBP 745 paragraph A29 (d) (i), if a credit requires presentation of "invoice in 1 copy" it will be understood to be a requirement for an original invoice.



# TA899rev

## QUESTIONS:

- 1) Given the wording in field 46A, should it be an original CMR or a copy of CMR to be presented under the credit?
- 2) If a copy of the CMR should be presented under the letter of credit, would it be acceptable if it did not show, for example, the carrier, port of discharge, or was not signed in accordance with UCP 600 sub-article 24 (a) (i)?

## RESPONSE:

1. ISBP 745 paragraph A30 (b) 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.
2. ISBP 745 paragraph A6 (a), the presented copy of the CMR should not be examined based on UCP 600 article 24, but instead based on UCP 600 sub-article 14 (f). For that reason, the requirements outlined in UCP 600 sub-article 24 (a) (i) regarding carrier and the signing of the CMR do not apply when examining a copy of a CMR.

# TA900rev

- A credit issued under UCP 600 required, among other documents, the presentation of a performance guarantee in favour of the applicant and to be issued by the nominated bank. Such guarantee was issued by the nominated bank a few days before the presentation of the documents requested by the credit and was sent to the issuing bank in order to be advised to the applicant.
- The documents requested by the documentary credit – including the paper-based MT760 showing the required (by the credit) performance guarantee – were presented to the nominated bank and forwarded to the issuing bank in due time. The cover letter of the nominated bank listed the MT760 as follows: “copy of bank guarantee.....”.
- The issuing bank rejected the presentation because a copy of the MT760 was presented instead of an original. After some days, a new printed copy of the MT760 with an “original” stamp was then presented and it was accepted by the issuing bank.
- Examination of a document must be based on the document presented, not a description in the cover letter.
- It is not for UCP to determine the originality of a printed SWIFT message.
- The printed version of the MT760 is to be regarded as a physical representation of the SWIFT message itself. The issue of original and copy as mentioned in UCP 600 article 17 is not relevant here.

# TA901rev

- An LC indicated “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”, is the issuing bank right to effect payment on 10 October 2019 instead of 4 October 2019 as it had received the documents on 27 September 2019?
- Is the issuing bank right to claim that the value date should start from the date that it has determined compliance of the documents and not the date that it received the documents which was clearly stated in the LC?
- sub-article 14 (b) states: “A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying.” and
- sub-article 15 (a) states: “When an issuing bank determines that a presentation is complying, it must honour.”

The fact that an issuing bank undertakes to reimburse a nominated bank ‘*upon receipt of credit complying documents*’ does not absolve the issuing bank from its duty to examine documents as provided for in UCP 600 sub-article articles 7 (a), sub-article 14 (b), and sub-article 15 (a).

# TA901rev

## **CONCLUSION**

1. In effecting reimbursement on 10 October 2019, the issuing bank acted in accordance with the reimbursement condition in the credit and UCP 600.
2. The issuing bank is correct that the value date should be calculated from the date that it determined compliance of the documents.

# TA902

A Bill of Lading contained a “Covid-19” clause absolving the carrier from responsibility for failure to pick up from or deliver cargo to the designated ports, delays in carriage, and just about anything else than happens. There were 6 questions re a document containing this or similar wording.

The Opinion states:

- The COVID-19 clause referred to herein is a term and condition of carriage.
- UCP 600 sub-article 20 (a) (v) indicates “Contents of terms and conditions of carriage will not be examined”.
- A bank is not to examine the terms and conditions of carriage (which, as stated above, includes the COVID-19 clause), whether they appear on the face or the reverse of the bill of lading.
- Because a bank is not responsible for examining the terms and conditions of carriage, neither “may be” nor “will be” would make a difference in determining if the bill of lading is compliant or not.
- How a carrier would act e.g., if it becomes aware that the port of discharge may be unsafe or closed upon the arrival of the vessel is outside the scope of UCP 600.

# TA902 (Continued)

Question number 6:

- 6. If a bill of lading is presented **without** the COVID-19 wording but shows a different port of loading or discharge, because of COVID-19, is this a discrepancy or not?
- The response lists several important UCP600 articles and states:
- Question 6, if the bill of lading does not indicate shipment from the port of loading to the port of discharge stated in the credit, this would be a valid discrepancy.