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TRADE SERVICES UPDATE

Covering practical aspects of payment instructions in international trade

In this Issue

From the Editor

Dear reader!

It always amazes me how things can change from one day to the other. To be fair, so far 2023 has been rather busy … but then … bum … it is like all things just stop; as everyone has left for vacation. In any case, the TSU has not left for vacation, and since you are reading this, you have received the latest issue. To be fair, it is really ICC centric in that it touches upon the latest meeting in the ICC Banking Commission. There is even an article that takes the outset in a newly published ICC Opinion (on Sanctions clauses). In addition, a good part of the "News" is somehow ICC related. There are however – and of course – other topics. The featured article is by Mr. HEI Zuqing and deals with Australian Demand Guarantee Cases. This was really an eye-opener for me.
I would also like to focus on the article "Different documents, different risks" which is published with kind permission from the IMB. Of course, the IMB do a huge job in fighting financial crime, and this article is really helpful in spotting potential foul play.

Again, I hope you enjoy these articles – and all that is left for me is to wish you all a great summer.

Happy reading.

Kind regards,
Kim Sindberg
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Editorial Board:

Special Character of Australian Demand Guarantee Cases

By HEI Zuqing

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There are many demand guarantee cases decided by Australian courts related to unconscionability. Some Australian courts have given judicial recognition to the concept of unconscionability and granted injunction on the basis of the unconscionable conduct under demand guarantees. The notion of unconscionability is vague and would be in the lack of certainty. It is my opinion that the unconscionability exception would have negative effect on the credibility of Australian demand guarantees and therefore the unconscionability doctrine deserves careful discussions.

Unconscionable Conduct

Unconscionability would generally be applied to demand guarantees and standby LCs.[1] The recently approved ICC International Standard Demand Guarantee Practice for URDG (ISDGP) leaves the issue of unconscionability to applicable law and to the courts of the various jurisdictions. In the *Ottoway* case[2] decided by an Australian Court (The Federal Court of Australia), a contractor applied for and received a loan under a Credit Facility from a lender and obtained the demand guarantee in favor of the lender. The Australian court concluded that it would be unconscionable for the beneficiary (lender) to draw on the guarantee beyond the amount owed notwithstanding the fact that there was no fraud on the part of the beneficiary. In the *Good Living* case[3] decided by an Australian Court (The New South

[1] STANDBY & DEMAND GUARANTEE PRACTICE: UNDERSTANDING UCP600, ISP98, AND URDG758, by James E. Byrne, IIBLP, p.203.

[2] Ottoway Engineering Pty Ltd. v. Westpac Banking Corp. ([2017] FCA 39; [2017] FCA 1500) [Australia], abstracted at 2018 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 575.

[3] Good Living Co.Pty Ltd. v. Kingsmeade Pty Ltd.([2017] NSWSC 641) [Australia], abstracted at 2018 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 499. At para [17], the court observes: 'I consider it sufficiently arguable for present purposes, that if the defendants had no right to call on the bank guarantee, their conduct in doing so would be unconscionable within the meaning of the section…'. And at [19] the court reiterates: 'I am satisfied that there is sufficient to infer that the plaintiffs may have an entitlement to make a claim for relief on the footing that the guarantee was called on without a proper basis, so as to make the defendants' conduct unconscionable.'

Wales Supreme Court), the beneficiary (landlord under a lease) of the demand guarantee terminated the lease and evidence suggested that the rent was not in arrears, but the beneficiary drew on the guarantee for its total amount. The Australian court explained that the beneficiary's conduct in doing would be unconscionable. In this case, the beneficiary was not entitled to receive in full the amount demanded under the underlying contract and the full amount claimed under the guarantee was found not to be owing under the underlying contract.

From these cases, it is my understanding that where the claims by the beneficiary are not owing under the underlying contract or non-performance of the underlying contract, its conduct may constitute unconscionability.[4] As such, unconscionable conduct would arise from the terms of the underlying contract and be pursuant to the contractual arrangements entered into between the beneficiary and applicant.

The Principle of Unconscionability Established

In jurisdiction of Australia, the Australian courts considered that unconscionability is a serious question for demand guarantee transactions. The Australian courts rarely interfere with demand guarantees as the issuers unconditionally undertake to pay on demand the sum demanded up to the limit specified in the guarantees except in a clear case of fraud (the independence principle under demand guarantee), but the courts generally should enjoin the beneficiary of a demand guarantee where there would be unconscionable conduct by the beneficiary.[5] The *Australian Consumer Law(*ACL)(the replace of *Trade Practices Act 1974* (Cth) (TPA)) states that "a person must not in trade or commerce engage in conduct that is unconscionable within the meaning of the unwritten law from time to time.", but neither the TPA nor the ACL provides a statutory definition of "unconscionable conduct". If the beneficiary's conduct would be unconscionable within the meaning of the provision, the beneficiary should have no right to call on the demand guarantee and it would be enjoined. There may be policy factors supporting the statutory intervention[6]. As such, breach of the unconscionable provision will give the court broad discretional remedies to restrain the payment of the demand guarantee.

There has been litigation on unconscionability in Australia since a new exception of unconscionable conduct was introduced into Australian law[7]. In the *Boral* case[8], the beneficiary's conduct in this standby LC case was unconscionable according to the *Australian Trade Practices Act*. Notwithstanding

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[4]Matthew Bisley and James Mok, 'Unconscionable demands under letters of credit, performance bonds and bank guarantees' (2005) 16 *Journal of Banking and Finance Law and Practice* 197

[5] In *Simic v New South Wales Land and Housing Corporation* [2016] HCA 47, the then Chief Justice of the High Court of Australia, French CJ, observed obiter (at [8]) that the autonomy principle did not preclude a claim of unconscionable conduct being raised against a beneficiary calling upon a performance bond.

[6] Thanuja Rodrigo, 'Injunctions restraining the enforcement of letters of credit and performance guarantees: The Australian experience' (2016) 44 *Australian Business Law Review* 404. referring (at 415) "fundamental principle of public policy that a court will not lend its authority and assistance to a party seeking to invoke its process in connection with seriously reprehensible conduct".

[7] The decision of the Vitorian Supreme Court in Olex Focas Pty Ltd v. Skodaexport Co Ltd [1998]3 VR 380.

[8] Boral Formwork & Scaffolding Pty Ltd. v. Action Makers Limited ([2003] NSWSC 713 – Supreme Court of New South Wales (5 August 2003), abstracted at 2004 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 254.

that fraud exception was not claimed, the Australian Court (The New South Wales Supreme Court) granted the motion for injunctive relief on the basis of unconscionable conduct of the beneficiary as the independence principle cannot override the statute. In the *Board Solutions* case[9], as the beneficiary of the demand guarantee acted unconscionably, the Australian court (The Supreme Court of Victoria) granted an injunction against the beneficiary and guarantor, even though the court did not regard the beneficiary's actions as fraudulent. In the *Telvent* case also decided in Australia (The Supreme Court of Queensland)[10], the court explained that an injunction could be issued if there was conduct of unconscionability.

From these cases, we learn that unconscionability has been established in Australian and unconscionability may be an independent ground for the courts to grant the injunction, even if fraud is not pleaded as the courts must work within the statutory framework and are obliged to apply statutory direction.

The Unconscionability Doctrine Does Not Apply in Some Jurisdictions

Some laws outside Australia do not recognize the doctrine of unconscionability[11]. English law recognizes fraud as the only ground on which a guarantee could be restrained. Demand guarantee is unconditional in nature, and it could only be restrained by fraud. Under English law, the only narrow exception abrogating the right to receive payment is fraud.[12] The courts universally require a serious or egregious fraud standard and fraud is a higher threshold to clear than unconscionability. In the *Shanghai Electric* case[13], a Singapore court concluded that since English law (not Singapore law) governed the demand guarantee in this case, the application to restrain the drawing only needed to address the issue of fraud, not unconscionability. In the *Boustead* case decided in Singapore[14], it was observed that English law does not acknowledge unconscionability for injunctive relief. In this case, English law governed the counter-guarantee, but the applicant argued that the guarantor made the demand under the counter-guarantee unconscionably and pursued an injunction. As a court must use the law of the counter-guarantee for issuing an injunction, the court rejected the applicant's argument of unconscionability and did not grant injunctive relief as to the demand. In the *New Civi* case[15], the applicant claimed that the beneficiary had engaged in unconscionable behavior. A Singapore court concluded that banks under the demand guarantee cannot be restrained other than for fraud once fraud

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[9] Board Solutions Australia Pty. Ltd. v. Westpac Banking Corporation ([2009] VSC 474), abstracted at 2010 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 453.

[10] Telvent Australia Pty. Ltd. V. Acciona Infrastructure Australia Pty. Ltd (2016)QSC201 (Australia), abstracted at 2017 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 623.

[11] (English)Courts will generally decline to uphold an unconscionable transactions not fraudulent but yet unfair, quoting from The Oxford Companion To Law, P.1247, Glarendon Press, Oxford, 1980.

[12]Thanuja Rodrigo, 'Theoretical justifications for restraining 'unconscionable demands under on-demand guarantees' (2012) 40 *Australian Business Law Review* 5

[13] Shanghai Electric Group Co v. PT Merak Energi Indonesia, abstracted at 2011 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 557.

[14] Boustead Singapore Ltd. v. Arab Banking Corp., abstracted at 2016 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 328.

[15] New Civilbuild Pte Ltd v. Guobena Sdn Bhd & Anor, abstracted at 2000 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 343.

or unconscionability is established. In general, the word 'unconscionability' appeared alongside the word 'fraud'.

From these cases, we learn that the unconscionability doctrine has not been followed by the courts in some jurisdictions outside Australia. The courts considered that if there is no fraud involved in the beneficiary's call on the demand guarantee, the unconscionability argument would be moot. As such, only in the case of a fraud could the court grant a restraining order and the issue of fraud instead of unconscionability is to be addressed.

The Approach by Australian Courts Related to Unconscionability Is Questionable

Unconscionability doctrine would potentially damage the demand guarantee product. The notion of unconscionability is vague and there is no room for the application of any vague notion of unconscionability. It depends on the facts of each case and any determination must be considered on a case-by-case basis. As this approach does little to serve the need for certainty of demand guarantee[16], it is at best unwise and at worst bad law. The letter of credit / demand guarantee community remains concerned about the independence principle and the integrity of the demand guarantee as the independent character of the undertaking should be subject to the fraud exception.[17] Some experts are unwilling to introduce the concept of unconscionability into independent undertaking law and practice. The introduction of the unconscionability concept into independent undertaking law also disables the independent undertaking[18] and it would be a mere promise. It is my opinion that it is not good practice as it may result in an inevitable backlash from sane beneficiaries of demand guarantees.

The Australian courts' intervention in the demand guarantees would not be welcome. The Australian cases involving unconscionability refused complying drawings for breach of contracts even though there is no fraud.[19] I do not agree to the proposition that the exception of unconscionability would not significantly undermine the commercial value of payment instruments,[20] but I consider that this exception will diminish the utility of the demand guarantees. The exception of unconscionability would impinge on the autonomy principle[21]. It will result in the demand guarantees less reliable and

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[16] FAIRNESS AT THE EXPENSE OF COMMERCIAL CERTAINTY: THE INTERNATIONAL EMERGENCE OF UNCONSCIONABILITY & ILLEGALITY AS EXCEPTIONS TO THE INDEPENDENCE PRINCIPLE OF LETTERS OF CREDIT & BANK GUARANTEES, NORTHERN ILLINOIS UNIVERSITY LAW REVIEW, Vol. 32, Issue 2 – Spring 2011,by Roger J. JOHNS and Mark S. BLODGETT, reprinted at 2012 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 107.

[17] Fleet National Bank v. Omni Industries, abstracted at 2001 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 221. (The case was decided by the USA Court.)

[18] John F. DOLAN,"BAD FAITH AND UNCONSCIONABILITY", reprinted at 2013 ANNUAL SURVEY OF LETTER OF CREDIT LAW & PRACTICE 102.(quoting there are grave and underestimated perils in bringing the doctrines of unconscionability into letter of credit (or independent guarantee) law and practice.)

[19] In Simic v. New South Wales Land and Housing Corporation [2016] HCA 47, the then Chief Justice of the High Court of Australian, French CJ, observed obiter(at[8] that the autonomy principle did not preclude a claim of unconscionable conduct being raised against a beneficiary calling upon a performance bond.

[20] Rodrigo refers (at 415) 'Even with the development of the unconscionable conduct exception, it is clear that the courts will seek wherever possible to preserve the autonomy principle'.

[21] Bill Dixon, 'As good as cash? The diminution of the autonomy principle' (2004) 32 *Australian Business Law Review* 391

uncertainty to the issuer's independent obligation as there is not a uniform interpretation of the term "unconscionable conduct" in Australia, but the only exception to the autonomy principle recognized widely by international letter of credit /demand guarantee community is demands involving fraud or forgery. This approach would encourage the applicant to include in the underlying contract an express provision specifying certain conditions which need to be satisfied before a beneficiary can make a claim on the demand guarantee. The demand guarantee may no longer be considered the functional equivalent of cash. The international letter of credit / demand guarantee community is concerned of the judicial intervention by the Australian courts against the autonomy principle on basis of the unconscionability doctrine. As such, demand guarantee cases related to unconscionability decided by some Australian courts remain questionable internationally and the Australian courts should consider carefully the implications. It is my opinion, that unconscionability should not be a basis to restrain payment on the demand guarantee, absent the presence of fraud as the terms of the underlying contract should not be incorporated by reference to restrict the beneficiary's right to make demand.

Conclusion

Unconscionability may be a basis for interrupting payment on a demand guarantee and it is a special character of the Australian demand guarantee cases. Some Australian courts supported the grant of relief where the beneficiary under a demand guarantee acted unconscionably, but there was insufficient evidence to establish that fraud existed. This approach is not generally used in other jurisdictions outside Australia. It is my view that unconscionability should not be a basis to restrain payment on the demand guarantee, absent the presence of fraud. The approach by some Australian courts related to unconscionability under demand guarantees remains questionable internationally and may significantly curtail the use of demand guarantees to be issued by the Australian banks.

ICC Banking Commission Meeting 18 April 2023

By Kim Sindberg (https://www.tradeservicesupdate.com/editor?editor=editor_kim)

18 April 2023 the ICC held their Global Banking Commission meeting. The main content of the meeting was the second Opinion session of the year. Prior to the meeting the slides with the suggested changes for the two Draft Opinions to be revised and finalized were circulated to the National Committees.

Also discussed at the meeting was a discussion on technical issue briefs and rules updates. This both in respect of the updated ISBP but also the updates made to eUCP and eURC.

ICC Opinion TA927rev – not approved

At the meeting, there was a long discussion about Draft ICC Opinion TA927rev (regarding free of charge goods). It was not possible to reach a unanimous conclusion.

For that reason, an updated version has been circulated to the ICC National Committees who have been given the three following choices:

- Accepted
- Accepted with reserve
- Inviting initiator for withdrawal for ISBP revision on the topic to occur

The ICC National Committees will have until 27 June 2023 to express their preference. Decision will be final by 11 July 2023 during the next official opinion session.

ICC Opinion TA930rev – approved

ICC Opinion TA930rev (No payment due to sanctions clause) was approved with changes to the Analysis and conclusion. The underlying issue in the Opinion is that prior to maturity, the issuing bank advised that they could not pay due to trade sanctions.

A number of questions were raised in the query including:

- Whether or not a sanctions clause is a non-documentary condition
- Whether the obligation of the issuing bank under an LC is separate from the underlying agreement
- Whether the bank must provide evidence that there are economic sanctions

- Whether the payment obligation remains in force until the sanctions issue is approved
- Whether an offer to pay in a different currency is valid.

For most of the questions the answer is that the issue is a matter outside the scope of the UCP 600.

However, for the issue of non-documentary conditions, reference is made to the Addendum to the Sanctions Guidance Paper, which states that sanctions clauses are non-documentary conditions for the purposes of the UCP (and the URDG) and recommends that banks should refrain from including sanctions clauses that impose restrictions beyond, or conflict with applicable regulatory requirements. It is added that non-documentary conditions are addressed in UCP 600 article 14 (h) wherein it is stated that if an L/C contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it. The scope of UCP 600 article 14(h) is in respect of determining if the presented documents constitute a complying presentation. The legality or enforceability of sanctions clauses may also involve considerations of mandatory law/regulations which may override the credit and the UCP.

On whether evidence is required to prove that there are economic sanctions, the answer is that it is expected that a bank should provide a reference to the applicable law or sanction regulation, and the document(s) and /or data in the presentation to which it relates.

A review of TA930rev has been added to lcviews premium duly linked to relevant rules and practice.

Technical Advisory Briefings

At the meeting there was also an overview of the Technical Advisory Briefings. It was mentioned that there is still room for new members to the TA Briefings Team. There can be one from each ICC National Committee – and they need to be appointed by their ICC National Committee.

So far, the team have issued 6 Technical Advisory Briefings. The Technical Advisory Briefings can be found here https://library.iccwbo.org/tfb/tfb-briefings.htm

The 7th is at the draft stage and concerns “Title of Invoice”.

Ideas for new briefings are:

- Handling of “Certificates”
- Issuing Bank charges
- Wet-ink / electronic / .pdf signatures

It was mentioned at the meeting that it is possible to send requests for future Briefings.

Updates to eUCP, eURC

At the end of the meeting the updates to eUCP, eURC was addressed.

For eUCP and eURC the purpose of the updates is to alignment with MLETR with respect to electronic transferable records. The ICC is currently in the process of updating those two sets of rules.

Update to ISBP

For ISBP 745 a working group have evaluated all ICC Opinions approved since the release of ISBP 745 and ensured full alignment between both sets of approved texts. In total 144 Opinions were reviewed, 13 of which had been withdrawn by the initiator. 9 Opinions were recognized as containing content that would be meaningful for addition within ISBP 745. More information about date of publishing and number to follow.

Following the updates to ISBP, the ICC are asking the National Committees on their view in respect of the future of ISBP. I.e., they are asked to answer the following questions:

- No further work;
- Full review of the newly aligned ISBP text retaining the scope as "examination of documents" only;
- Scope of ISBP to be extended beyond examination;
- Drafting of separate independent guidance publications covering issuance, advising, confirmation, amendment.

The ICC National Committees will have until 30 June 2023 to express their preference.

Next meeting

The next meeting to cover Opinions will be held virtually 11 July 2023.

Different documents, different risks

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All cargoes transported on ocean going vessels are under cover of a bill of lading (BL), giving the lawful holder the right of possession to the cargo. The BL is the key document, amongst many, presented to banks to facilitate payments. BsL are issued in triplicate as Originals, it is also common to have non-negotiable or "copy" BsL issued. These copy BsL give no rights over the cargo or against the carrier. It is a document used purely for information purposes. If payment for the cargo is made against any document other than the Original BL one assumes the risk that they cannot then compel the carrier to deliver the cargo, as the carrier is only bound to deliver the cargo against presentation of an Original BL.

If the Original BsL are unavailable cargoes can be discharged against a Letter of Indemnity (LOI) indemnifying the carrier of the consequences of delivery in the absence of the presentation of an Original BL. LOIs are regularly used in commodity trade finance, but it should be remembered they are only as reliable as the party issuing it. If the issuer is unwilling or unable to meet their obligations, then the counterparty may remain liable for any losses.

This was further demonstrated in a recent case referred to IMB where a Singaporean commodity trader provided LOIs for the sale of the cargo to another trader but also to the shipowner to secure delivery of said cargo without the BL. After taking delivery of the cargo, the Singaporean trader sold onto a third party. A third trader then claimed they were the legal holders of the Original BsL and entitled to the cargo. Upon discovering the cargoes had already been released arrest warrants were obtained against the six carrying vessels. When called on by the trader and the shipowners to indemnify them against their losses as per the LOI provided, the Singapore trader failed to respond to any requests and ultimately disappeared, leaving the vessel owner and the charterers to make good the loss to the third trader. While the ultimate risk of mis delivery against an LOI, lies with the vessel owner, a recent case heard in the UK courts, concerning the troubled oil trader Gulf Petroleum, ruled in favour of the owner, highlighting a shift in the way courts are looking at LOIs and their associated BsL.

Other documents often referred to IMB are Forwarder's Certificates of Receipt (FCRs), issued by freight forwarders to confirm they have assumed control of the goods with irrevocable instructions to be forwarded to the consignee. FCRs are not transport documents. They are not negotiable and they do

not confirm a cargo has been loaded. Its only purpose is to act as a receipt for the cargo, to be loaded at some point. It is not uncommon for IMB inquiries to find that the details on FCRs do not match the BsL, when finally issued, or that shipments are not affected for weeks or even months after the FCRs were issued. IMB are also frequently referred mates' receipts and Draft BsL. Whilst these may evidence an underlying shipment has or will take place, in addition to demonstrating the parties involved, they do not carry the same security as that offered by a BL. Furthermore, until the final Original BsL are issued, all details are always subject to change.

There may be genuine reasons why Original BsL are unavailable, but it would be prudent to ascertain why they are unavailable and who is in possession of them at the time of financing. Are they simply held up because there are several parties, and their respective banks, in the trading chain, as is often seen in oil trades? Or are they unavailable because the trader has already negotiated them elsewhere and is now looking for secondary financing? When BsL are inoperative and issued purely for financing purposes, as seen in the steel trade, the original BsL are also deliberately withheld.

Ultimately several documents can be presented for either the sale and purchase or the discharge and delivery of the cargo. The onus lies on the bank or the shipowner who must then decide whether to proceed based on their assessment of both the transaction and counterparty risk. Due to the difficulties couriering documents during the early days of the Covid pandemic, scanned copies of the Original BsL were also more widely accepted by both banks and shipowners. Whilst this was a business necessity at the time, it must be acknowledged that paying for or discharging against anything other than the Original BsL alters the risk parameters of the transaction. The IMB is available to assist all our members evaluate these risks with our document verification and counterparty due diligence services.

Sanctions clauses – It's a Jungle Out There - part 2

By Otis Sycamore (Mr. Sycamore is a retired banker)

In April this year the ICC Banking Commission circulated a new approved ICC Opinion. The reference of the Opinion is 470/TA930rev.

The issue addressed in the Opinion is an L/C that includes a sanctions clause. Within the Opinion there are some elements that relate to my previous article "*Sanctions clauses – It's a Jungle Out There*" (TSU Volume 25, Issue 1, January – March 2023). The purpose of this article is therefore to address the relevant issues from the Opinion and the Opinion as such.

Background for the Opinion

An L/C, denominated in USD (subject to UCP 600) was issued available with any bank by negotiation.

The L/C contained the following sanctions clause:

> *BREACHES OF LOCAL AND INTERNATIONAL ANTI-MONEY LAUNDERING OR ECONOMIC SANCTIONS LAWS AND REGULATIONS ADMINISTERED BY, INCLUDING BUT NOT LIMITED TO CHINA, UNITED NATIONS, UNITED STATES, ARE NOT ACCEPTABLE.OUR BANK MAY REJECT ANY TRANSACTION IN VIOLATION OF ANY OF THESE LAWS AND REGULATIONS WITHOUT ANY LIABILITY ON OUR PART.*

The nominated bank received a presentation from the beneficiary and forwarded same to the issuing bank.

Subsequently, the issuing bank accepted the draft due on 20 December 2022.

However, prior to the due date the issuing bank informed the nominated bank that they would not be able to pay because of "local and international laws and regulations and economic sanctions". It is inferred that the applicant to the L/C was placed on the US OFAC list between acceptance and the due date. It is not clear from the Opinion which OFAC list the Applicant has been placed on. This could for sure be relevant. For example, there is quite a difference between the OFAC SDN list[22] and of OFAC SSI list[23].

[22] https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists
[23] https://ofac.treasury.gov/consolidated-sanctions-list-non-sdn-lists/sectoral-sanctions-identifications-ssi-list

In any case, during the communication between the nominated bank and the issuing bank, the issuing bank made two interesting proposals:

1. First, the issuing offered to settle the transaction in CNY
2. Second, the issuing bank asked the nominated bank to speak with the beneficiary about arranging a direct payment

Both proposals were rejected by the nominated bank.
In the end the issuing bank made the following message to the nominated bank:

According to the article 1 of the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 ("UCP600"), UCP600 are rules that apply to any documentary credit ("credit") when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit, which means all parties are bound by UCP600 as well as stipulations and conditions in the specific L/C; and L/C stipulations and conditions prevail instead of UCP600 in this case. The L/C in this case clearly states that breaches of local and international anti-money laundering of economic sanctions laws and regulations administered by, including but not limited to China, United Nations, United States, are not acceptable. Our bank may reject any transaction in violation of any of these laws and regulations without any liability on our part in 47A.
The nominated bank] and the beneficiary did not raise any questions when receiving the L/C and presented the documents under the L/C, which means all parties accepted the stipulations and conditions in the L/C and thus are bound by the L/C. conditions. As the applicant is under sanction currently, [the issuing bank] may reject any transaction under the L/C without any liability according to above stipulations and conditions of the L/C, which prevail in this case. Therefore, we can not effect the payment under the LC.

The questions asked in the Query
Given the above, the nominated bank would appreciate an ICC opinion on the following:

1: Is the sanctions clause considered a non-documentary condition under UCP 600 sub-article 14 (h)? And if so, can the clause be disregarded and therefore have no effect on the underlying obligations of the issuing bank?

2: Is the issuing bank's obligations under the L/C and accepted bill of exchange independent from their underlying agreement and the issuing bank is therefore obligated to honour?

3: Is the issuing bank obligated to honour unless the issuing bank can provide evidence that there are economic sanctions on the applicant under which they are prohibited from making payment?

4: If it is proven that the issuing bank is unable to pay due to sanctions does their obligation to pay remain valid until they are able to make payment

5: The issuing bank has proposed to settle in CNY. Does this proposal contradict the position of the local laws preventing payment and suggest that they recognise their obligation to settle this commitment independent of any sanctions or local laws applicable to the applicant?

The answers from the ICC

For **questions 2 through 5** the main answer is that this "*is a matter outside the scope of the UCP 600*". The only real nuance provided is in question 3 where it is stated that "*it is expected that a bank should provide a reference to the applicable law or sanction regulation, and the document(s) and /or data in the presentation to which it relates*."

Question 1 is more interesting. In my article "Sanctions clauses – It's a Jungle Out There" it is boldly stated that:

"The scope of UCP 600 article 14(h) is therefore conditions relevant for determining if the presented documents constitute a complying presentation. Sanctions clauses are disclaimer clauses and are not relevant for determining if the presented documents constitute a complying presentation. Therefore, sanctions clauses (such as the ones quoted above) cannot be considered a non-documentary condition, and therefore cannot be disregarded for that reason."

Somehow, this seems to be also kind of the same view of the ICC. However, the Analysis includes the following wording:

"The Addendum to the Sanctions Guidance Paper, Introduction 2nd paragraph, states that sanctions clauses are non-documentary conditions for the purposes of the UCP and the URDG and recommends that banks should refrain from issuing trade finance-related instruments that include sanctions clauses that purport to impose restrictions beyond, or conflict with, the applicable statutory or regulatory requirements.
Non-documentary conditions are addressed in UCP 600 sub-article 14 (h) wherein it is stated that if a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it. However, the scope of this sub-article is in respect of determining if the presented documents constitute a complying presentation. The legality or enforceability of sanctions clauses may also involve considerations of mandatory law/regulations which may override the credit and the UCP."

Here it is fair to say that the ICC is trying to eat the cake and have it. First, they, referring to "*The Addendum to the Sanctions Guidance Paper*," states that "*sanctions clauses are non-documentary conditions for the purposes of the UCP and the URDG*". Secondly, they, referring to UCP 600 sub-

article 14 (h), explains that the scope of this sub-article is in respect of determining if the presented documents constitute a complying presentation – and further that "[*t]he legality or enforceability of sanctions clauses may also involve considerations of mandatory law/regulations which may override the credit and the UCP.*"

The above statements are simply contradicting each other. Since the scope sub-article 14(h) is in respect of determining if the presented documents constitute a complying presentation, sanctions clauses would per definition not be in scope for that sub-article. Likewise, if sanctions clauses really are "non-documentary conditions for the purposes of the UCP" then it could be disregarded. In my humble opinion, this would not be a good advice to give to the beneficiary and to confirming banks.

ICC Opinion 470/TA930rev in perspective

I should be the one to salute the ICC for constantly providing Opinions on how to interpret the practice rules used in Trade Finance. This is for sure a great contribution to the industry.

However, there are queries, where the good advice would be not to provide an Opinion. ICC Opinion 470/TA930rev is one of those. As can be seen from the above; on 4 out of 5 questions the ICC actually do not provide any answer. And for the last question, the answer seems to contradict itself and in worst case provide some false comfort, as it may well be understood so that the sanctions clause can be disregarded. As mentioned, this would not be a good advice to give to the beneficiary and to confirming banks.

Another reason why the good advice would be not to provide an Opinion in this case, is that the whole issue of sanctions is extremely complex, and it is only possible to provide guidance on a specific case after a thorough analysis. The underlying case to ICC Opinion 470/TA930rev is a specific case, and it is simply not possible to provide any qualified answer without having the full overview of the case. As illuded to in the beginning of this article, it is important to know which list the applicant has been placed on. It is however also important to understand (not comprehensive):

- When was the applicant added to the list?
- When was the agreement made?
- When was the goods shipped?
- What are the goods?
- Are there other parties involved?

The assessment of the cases would in general involve a sanctions lawyer carefully considering what sanctions apply – and what jurisdictions are involved in the transaction.

Conclusion

The issue of sanctions is complex – and so is the issue of sanctions clauses. From the newly published ICC Opinion 470/TA930rev it is clear, that the complexities cannot be fully captured under the UCP 600 framework. A main purpose of the ICC Opinions is to explain how to apply the UCP 600 (and

other ICC rules) in practice. For this to make sense, the Opinions must be meaningful. For ICC Opinion 470/TA930rev the answers are vague, and explained above, borderline misleading. For that reason, it is one of the Opinions where the ICC should probably have refrained from providing an answer.

Discussion Corner

Condition of insurance
A discussion amongst the country editors.

The country editors have been discussing the following issue. The below answers are excerpts of the discussion.

The case is:

The L/C stipulates:

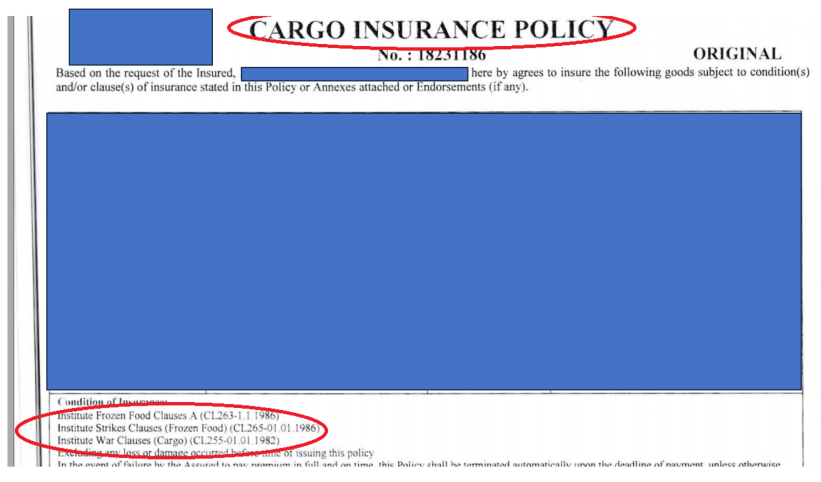
45A: FROZEN YELLOWFIN TUNA

46A: INSURANCE POLICY/CERTIFICATE DULY ENDORSED COVER RISK AS PER INSTITUTE CARGO CLAUSES A WAR AND STRIKES AS PER INSTITUTE UP TO MAURITIUS CLAIM PAYABLE IN MAURITIUS WITH NO EXCESS.

The presented insurance policy indicates condition of insurance:

- Institute Frozen Food Clauses A (CL.263-1.1.1986)
- Institute Strike Clauses (Frozen Foods (CL.265-01.01.1986)
- Institute War Clauses (Cargo) (CL255.01.01.1982)

This is a masked version of the document:


CARGO INSURANCE POLICY

No. : 18231186

ORIGINAL

Based on the request of the Insured, [redacted] here by agrees to insure the following goods subject to condition(s) and/or clause(s) of insurance stated in this Policy or Annexes attached or Endorsements (if any).

[redacted]

Condition of Insurance

Institute Frozen Food Clauses A (CL263-1.1.1986)

Institute Strikes Clauses (Frozen Food) (CL265-01.01.1986)

Institute War Clauses (Cargo) (CL255-01.01.1982)

Excluding any loss or damage occurred before time of issuing this policy

In the event of failure by the Assured to pay premium in full and on time, this Policy shall be terminated automatically upon the deadline of payment, unless otherwise

The issuing bank raised the discrepancy: Insurance policy: Clauses not as per LC “cargo clauses missing”

Is the discrepancy raised by the issuing bank valid?

Answer from Domenico Del Sorbo, Italy
In my opinion, this is a discrepancy. This is because the claim requires an insurance document... "COVER RISK AS PER INSTITUTE CARGO CLAUSES A WAR AND STRIKES...".

The insurance document covers risks pertaining to the Institute War Clauses and the Institute Strikes Clauses but not to the Institute Cargo Clauses (A).

Answer from Emile Rummens, Belgium
Insurance clauses are often difficult to understand for bankers and I agree that a document checker is not an expert in insurance matters.

However, as the underlying goods were frozen food (fish) it's "normal that the insurance document contains the more approriate" Institute Frozen Food Clauses A" which is in fact the "classic" II Cargo clause A, but for frozen foods.

I know that a document checker should not investigate the content of insurance clauses, but I think that, content wise, this document reflects the required coverage.

I refer a.o. to several publications of experts in Insurance like:

PowerPoint Presentation (clydeco.com)
https://abhillermarine.com/documents/clauses/institute-frozen-food-clauses-A.pdf

or the more extensive and in-depth publication by Marsh

I'm quite sure that if the issuing bank would submit the presented document to the applicant / importer that the latter would gladly accept the document. In fact I would even dare to say that the issuing bank was somewhat careless or negligent when it issued its L/C knowing that the goods are frozen food but, by routine (or lack of knowledge?), required a classic "all purposes" ICC A etc.

Strictly speaking it's a discrepancy but a court would, after having heard insurance experts, reject such refusal....

Food for thought...

Answer from Nguyen Huu Duc, Vietnam
In my opinion, the discrepancy raised by the issuing bank is not valid.

The L/C requires Institute Cargo Clauses A, War and Strike Clauses and the cargo under the L/C is frozen food, hence, the fact that the insurance policy indicates Institute Frozen Food Clauses A, Institute Strike Clauses and Institute War Clauses is deemed to meet the LC requirement.

Answer from Domenico Del Sorbo, Italy
Dear Emile,

Thank you very much for your comprehensive reply.

The applicant and the issuing bank could have been more precise with regard to the request for insurance cover.

Answer from Ravi Kumar Jinugu, New Zealand
I agree with Nguyen and Emile.

Such a comprehensive reply by Emile. I have had occasions where the issuing bank would argue (that the discrepancy
is valid). However, often when an ICC opinion is quoted or a document (like the one provided by Emile) is referred to, the discrepancy is withdrawn.

Answer from ATM Nesarul Hoque, Bangladesh
Institute Cargo clause A and Institute frozen good clause A are not the same for the document examiner. Even for the court, the outcome is uncertain. It depends upon how the proceedings will take shape.

I can refer here a very old court case; **J.H Rayner &Co Vs Hambris Bank** (not exactly similar to this one). Description of the goods in the L/C: Coromandel Groundnuts. The document mentioned description of the goods: Groundnut Kernels...

Before the court, the beneficiary argued that **anyone in the trade would have known that the two descriptions meant the same thing.** The court says, **a bank cannot be expected to have knowledge of the customs and customary terms of every one of the thousands of traders for whose dealings it may issue credits.**

I personally "Thank my dear friend **Emile"** for enlighten me with this more appropriate frozen clause A. Before that I was not aware of such clause. Had I issued the same L/C before this post, I would also have been inclined to ask for ICC A. What about You?

I think the beneficiary should carefully look into this clause and its ability to comply with it. If the beneficiary unable to comply, it should seek suitable amendment accordingly.

Answer from Jonne Perä, Finland
First of all, I'd like to start by saying I am very happy and honored to now be part of this Group of experts!
As a generic reference to my background, I am Chairing the technical advisory group in ICC Finland.

I appreciate the thorough analysis from Emile, but I must say I am not as confident as to how the court would actually rule it.

In any case, in the context of checking documents under UCP 600, I don't think that Institute Frozen Food Clauses A would suffice the requirement of Institute Cargo clause A simply because it goes beyond what is to be expected from a document checker to know. On its face it looks like a discrepancy in my opinion.

Answer from Daniel Devahive, Switzerland
Of course, no discrepancy.

Now, could anybody tell me why, in 2023, bankers or applicants still require insurance documents to be endorsed? An insurance document is not a document of title and insurers don't care about endorsement.
Incompetence? Ignorance?

Answer from Radek Dobáš, Czech Republic
Hi Daniel, Not ignorance, but ISBP. See K19 and K21. If I understand it correctly, it is the right to receive payment ("claims payable to"), not the full rights of an "insured" that are expected to be passed over be such endorsed (at least it seems to me to be so under ISBP logic).

I am not an insurance expert and do not know the practice in your country but the major insurance companies in my country expressly provide for the possibility to transfer the right to receive payment of claims by means of an endorsement (this being regardless of whether there is any mention of "to order" or not).

Answer from Mireille Troosters, Belgium
You could also see this as a matter of strict compliance versus common sense and good faith.

I would not refuse these documents. The L/C asks for Institute cargo clauses A, the insurance documents covers Institute frozen foods clauses A. The 'cargo' in this case is frozen foods so the insurance document is more specific and, in my view, the required insurance for the cargo.
I want my doc-checkers to apply UCP 600 of course but also to use their common sense and good faith.

If one would be more in favour of strict compliance, I don't see how the beneficiary could present a complying document at all because I don't understand the requirement:
"RISK AS PER INSTITUTE CARGO CLAUSES A WAR AND STRIKES AS PER INSTITUTE"

As per institute what? Institute up to Mauritius. What does this mean? A good way for the issuing bank to refuse in any case perhaps?

Answer from Jonne Perä, Finland
I'm a wholehearted supporter of removing unnecessary payment obstacles caused by too strict compliance. And I too advocate the approach to read the documents in context. But when it comes to insurance clauses It becomes a bit more delicate in my opinion

Would we then be comfortable with always replacing the word "cargo" with something reflecting the nature of the underlying goods? And how to draw the line and/or give guidance to the document checkers in that respect. Also, the fact that ISBP 745 K18 specifically mentions Institute Cargo Clause (A) as being one with "all risks" coverage, I think it is reasonable that a doubt of the coverage occurs if it is altered in name. Interestingly also the presented document quoted "cargo" in one of the clauses and "Frozen foods" in others.

Answer from Radek Dobáš, Czech Republic
Having read the contemplations from both sides I dived a bit deeper into the Institute Cargo Clauses issue and am now more inclined to consider the insurance policy in question discrepant.

The reasoning is as follows:

We speak about **I**nstitute **C**argo **C**lauses (A) (emphasis added) and not about mere "cargo clauses". I.e., Institute Cargo Clauses represent a specific set of contractual terms which is defined in a similar way as Incoterms - there is a set of written paragraphs labelled as "Institute Cargo Clauses (A)".

I agree with those saying that the L/C requirement was very purely drafted (it is quite hard to understand texts without correct punctuation, to the very least) but still it is apparent that the L/C referred to Institute Cargo Clauses (A) and separately about "war and strikes". It did not refer to a specific version the clauses, hence any (such as CL252, 1/1/82, or CL382, 1/1/09, or any historical one could have been used), but it still referred to a set of clauses defined as "Institute Cargo Clauses (A)". To the contrary, Institute Frozen Food Clauses (A), CL263, 1/1/86, represent completely separately defined set of clauses.

We can, of course, ask why the issuing bank (or, hopefully for the issuing bank, the applicant) called for an inappropriate set of clauses. But the L/C was issued in this way and its requirements must be met, no matter what.

It is a bit similar to the use of an "incorrect" Incoterm. I believe that all of us who issue/advise L/C's and/or examine documents on a regular basis came across a situation where an apparently inappropriate Incoterm for the underlying transaction in question was used in the L/C (such as FOB for air transport, to mention probably the most frequent situation; even FOB for containerised sea/multimodal transport is not much of a suitable term). But if the L/C is so issued, you must require "FOB" to appear on the invoice and you will not accept "more appropriate" FCA instead arguing that it is apparent to anyone that FOB cannot be used for air transport.
Anything you can do is ask the applicant before issuance whether he really means it. But if the applicant says "issue the L/C so because we have it so in our contract", most likely, you will not require

that they change the contract (or insist on issuance of the L/C with a term conflicting with the contract) but you will issue the L/C including such an "incorrect" Incoterm.

Thus, in the situation described in this query, in the shoes of a confirming / nominated bank I would consider this issue as a discrepancy and would refuse to honour or negotiate. For the issuing bank, I hope that they inserted this requirement on the applicant's instigation and NOT by their own decision (and I know that many banks use "standard" wordings, often including those similar to the one in question, by default without applicant even knowing about that in advance). Were it on applicant's express instruction, the issuing bank should refuse the document (and maybe learn the lesson and ask the applicant next time whether they wish to use a more appropriate clause). Were it the issuing bank's own default wording, I would be much more careful – such unilateral deviation from the applicant's instructions might cause dispute not only with the beneficiary, but also with the applicant.

Answer from Bogdan Ilie, Romania
In respect of:
+ UCP 600sub-article 14(d)
+ ISBP 745 paragraph C3, “There is no requirement for a mirror image”
+ document’s title being “Cargo Insurance Policy”
+ document indicating “Packing: Container”
+ container being one of the three categories a general cargo is sub-divided in

I would reject the discrepancy mentioned by the issuing bank.

The question is not if the document is discrepant but if the issuing bank’s discrepancy is valid.

Answer from Radek Dobáš, Czech Republic
Dear Bogdan, the discrepancy is not very well drafted, either, but even here it is rather clear what the issuing bank meant.

By the way, the issuing bank did not raise any discrepancy regarding bullet points 3 to 5 in your latest e-mail. I.e., they did not question the nature of the document or anything regarding containerisation.

Regarding the first two bullet points, in my reading UCP 600 sub-article 14 (d) rather indicates that the document is discrepant (and the issuing bank's refusal valid) insofar as, on the reasoning I used earlier, it appears that "Institute Frozen Foods Clauses A CL263, 1/1/86" conflict with the requirement for Institute Cargo Clauses A required by the L/C. As you mentioned, there need not be a "mirror image" but there must not be conflict.

Quantity of goods shipped on bills of lading
A discussion amongst the country editors.

The country editors have been discussing the following issue. The below answers are excerpts of the discussion.

The case is:

+ L/C description of goods:
15 units of xxx
10 units of zzz
5 units of ggg
... And description of goods (spare parts) goes on for other goods.

Partial shipment allowed.
L/C does not show unit prices.
Tolerance not allowed.

+ B/L of the 1st presentation shows the following:

"Partial shipment of 15 units of xxx
Total shipment of 10 units of zzz"

+ B/L of the 2nd presentation shows the following:

"Partial shipment of 15 units of xxx
Total shipment of 5 units of ggg"

The beneficiary's bank determines that the B/L of the 2nd presentation is discrepant for over shipment of xxx units (total 30 units) and asks the beneficiary to have the bill of lading corrected. However, the beneficiary refused, claiming that 7 units of xxx were shipped with the 1st B/L and 8 with the 2nd.

Questions:

1/ Is the beneficiary's bank correct?
2/ Are the bills of lading (that show partial shipment of 15 units of xxx) acceptable or must they show actual quantity of goods shipped?

Answer from Radek Dobáš, Czech Republic
In my personal view the bank must look at the B/L in context of the whole presentation. The B's/L clearly suggest that they cover only part shipment of the item xxx. If it is clear from the other documents what quantity of the item xxx was in fact delivered, the bank cannot claim over shipment.

The B/L need not contain detailed goods description. There is no requirement of UCP or international standard banking practice that the B/L show numbers of pieces or other units. B's/L usually contain

information about weight and volume, if such information conforms with the remaining documents, the B/L complies in this respect.

Answer from Bogdan Ilie, Romania
Would be nice to know what the invoice and other documents show as goods description and quantities of.

Nevertheless, in my opinion the bill of lading is discrepant. The bill of lading must reflect what has actually been shipped.

We do have ISBP745 – paragraph C4 related to invoice, stating that "…invoice is to reflect what has actually been shipped, delivered or provided". It is common sense to expect the transport document to evidence the invoiced goods description and quantity of what has actually been shipped. If the invoice is allowed to show both goods description and quantity stated in the L/C and goods description and quantity actually shipped, it is not the case when we are talking about the transport document.

There is something that I don't really get. Either the case was not properly presented or ….
Under 1st presentation the beneficiary's bank had nothing to say about the bill of lading which means that both invoice and B/L (and other docs if it is the case) show shipment of same quantity, i.e.,15 units of xxx.

Under 2nd presentation the beneficiary's bank raised the discrepancy of over shipment but made reference to B/L only, which make me think that the invoice does show shipment of only 8 units while bill of lading shows shipment of 15 units. If the beneficiary's bank asked the beneficiary to correct the B/L, did so because it shows a different quantity from the invoice.

No matter what quantity the invoice shows, it remains discrepancy of over shipment because the full quantity of xxx was shipped and invoiced under 1st presentation.

Bottom line, there is something fishy here and, in my opinion, some necessary details are missing.

Answer from David Meynell, UK
Agreed Radek … this is the key text for me:
… B's/L clearly suggest that they cover only partshipment of the item xxx …

Answer from Bogdan Ilie, Romania
I revert with some clarification to not be misunderstood.
The bill of lading does not have to show the quantity in pieces of each item shipped . Would have been enough to show goods description only . But since the b/l does show the quantities too, must not be in conflict with what invoice evidence to actually been invoiced and shipped.

Answer from Radek Dobáš, Czech Republic
You touched the key point in "must not be in conflict with what invoice evidence". The crucial point is that the B/L clearly states that in respect of goods xxx the shipment represents only a partial shipment. Neither UCP, nor international standard banking practice require (except for invoice) that where the shipment is indicated as partshipment, the document also show the quantity actually shipped. Therefore, in my reading of the situation there is no conflict, and the bank must look into the matter in context with the remaining documents in order to ascertain whether overshipment occurred or not.

This is not to say that the description of goods on B/L is "fortunate". Were we in the shoes of the beneficiary's bank we would recommend him to show the actual quantity shipped as soon as we saw the first partial drawing. But as you know, correcting bills of lading is not the easiest thing in L/C practice. Thus, the beneficiary may insist that the B/L is correct issued in this way and, if his bank confirmed the L/C and the presentation otherwise complies, that the confirming bank pays.

Answer from Nguyen Huu Duc, Vietnam
Actually, the question was from a colleague. I asked that it is clarified if the quantity of goods shown on the invoices are the same as that on the Bs/L and here is the information provided:

QUOTE

Commercial invoices show:

+For first shipment identical info that B/L:
"Partial shipment of 15 units of xxx
Total shipment of 10 units of zzz"

+For 2nd shipment:
"Final shipment of 15 units of xxx
Total shipment of 5 units of ggg"

UNQUOTE

I agreed that the bank cannot raise the discrepancy “over shipment” based on the information on the B/L but let me know if the invoices in question are discrepant when they show the quantity of goods as the above.

Answer from Radek Dobáš, Czech Republic
Under UCP 600 and international standard banking practice the invoice must reflect what was actually shipped. Therefore, missing information on actual shipped quantity on invoice is clearly a discrepancy.

Answer from Bogdan Ilie, Romania
According to ISBP 745 paragraph C4 the description of goods on an invoice is to reflect what has actually been shipped.

For example, would have been ok for the invoices to show:
+partial shipment of xxx: 7 units
+total shipment of zzz: 10 units
And
+ final shipment of xxx: 8 units
+ total shipment of ggg: 5 units

I do believe that must be a correlation between the description of the goods invoiced and the description of the goods shipped reflected not only in the description itself but in the quantities and weights also and if ISBP 745 asks for the commercial invoice to show what actually been SHIPPED (isn't using the wording "not invoiced") my understanding and believe is that a transport document, as the document that show what have been SHIPPED, must also evidence what actually been shipped. Consequently, I still believe that the bill of lading should have shown the actual quantity of xxx under each presentation.

Please read correct
(isn't using the wording "invoiced")

Answer from Radek Dobáš, Czech Republic
ISBP 745 paragraph C4 relates expressly and only to the invoice. There is no requirement in UCP 600 and no such international standard banking practice to require even any quantity stated on a transport document. It follows that the B/L would have been fully conform in this respect if it only had shown "xxx" and "zzz" (and, by the way, that is rather a common situation; very frequently there is no quantity detail on the transport document other than gross weight (sometimes net weight) and volume and the document only states a general description). See also ISBP 745 paragraph E22:

"A goods description indicated on a bill of lading may be in general terms not in conlict with the goods description in the credit".

So, similarly as with other "consistency" issues, you cannot look for a mirror image and may only refuse documents if there is a conflict. There appears to be no conflict between the B/L and the L/C and even no conflict between the invoice and the L/C. Thus, as to the B/L itself it appears to comply in this respect.

However, if the description of goods is stated in the same way on the invoice itself (i.e., only stating "partial shipment of 15 units of xxx" without stating actual quantity shipped, it is the invoice what is discrepant.

News from the Trade World

Next ICC Global Banking Commission Meeting

The next ICC Global Banking Commission meeting will take place in online format on Tuesday 11 July. The topics at the meeting will be the final decision on TA927 following survey sent to all as well as update on upcoming TA issue briefing and survey on ISBP.

Updated TORs technical advisors and call for interest

Following our last ICC Opinion session on 18 April 2023 it was raised to the Secretariat that the terms of reference (TOR) for the technical advisors team was outdated in several aspects including terms.

As a consequence, the TOR has been updated by the steering group. In essence the update means that there will be added 2 positions in addition to the already 3 technical advisors (David Meynell, Glenn Ransier and Kim Sindberg) and technical editor (Gary Collyer). These two are now open for nomination by ICC National Committees. Nominations will be received until Friday 9 July 2023.

ICC Banking Commission Updates

During June, the ICC provided updates on the current projects or achievements:

Commercialisation working group:
The Commercialisation working group has issued its first issue briefing based on the model developed by the technical advisors team.

The first commercialization working group engaged on the risks linked to email presentation and file attachments under documentary credits and explaining the reasons to avoid it. It is available directly on the ICC Digital Library where the Technical Advisors issue briefs are also free of access.

The ICC is also currently working on the eUCP directory in order to have it available on the ICCWBO website shortly. ICC Members wishing to appear on it and displaying their capabilities when it comes to eUCP issuance and advise can contact their ICC National Committees in order to be acknowledged.

ICC 2023 Trade Register:
Trade Register members have started the data gathering exercise for the 2023 report. The ICC will soon begin the analysis and drafting of the 2023 report.

All information on the ICC Trade Register is available on the dedicated webpage including pricing model and ways to become member.

Publication is expected for September 2023.

ICC Financial Crimes and Risks policy taskforce final draft papers – Dual use goods & Price checking

The ICC Banking Commission have circulated two recommendation papers for comments by the ICC National Committees. Both documents have been drafted by the FCRP Group.

The FCRP group has been recently focusing on the necessity of price checking of goods & services in trade transactions, identifying through the present draft the current challenges facing financial institutions as well as forecasting the future role of technology in this field. Additionally, it has also worked on the matter of dual-use goods and proliferation financing, highlighting the need for training, and raising awareness of relevant staff involved in the sector.

The feedback from the ICC National Committees will enable the FCRP to move forward and publish the recommendation papers.

Wolfsberg Group publishes guidance for financial institutions to prevent and protect against bribery and corruption

On April 17, 2023, the Wolfsberg Group issued updated guidelines for financial institutions relating to Anti-Bribery and Corruption Compliance Programs. Although the guidance is not binding, it certainly is influential and is expected to set the standard within the market.

For more information:
https://wolfsberg-group.org/news/39/

Famous Last Word:
The devil is in the details *Ludwig Mies Van Der Rohe*