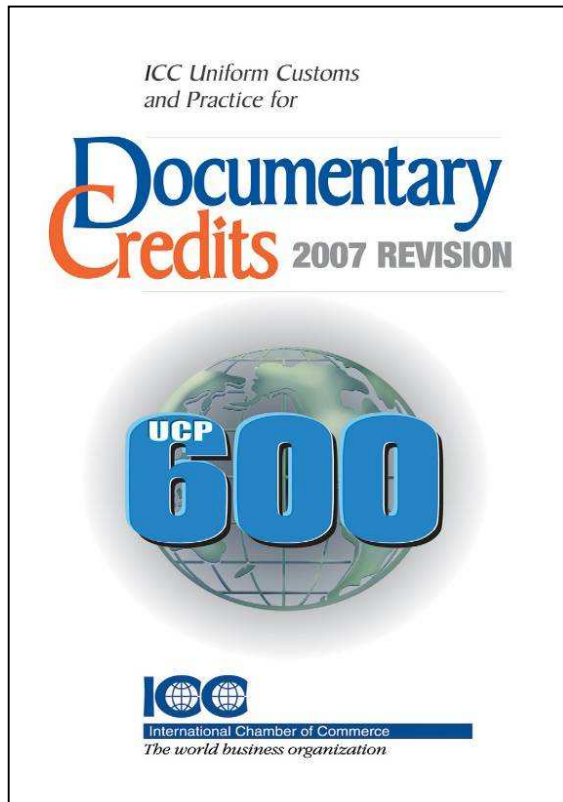


A Portuguese perspective

New Tools for International Trade

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Easier to read, easier to understand...

A format that set the standard for future ICC publications.

Definitions (Art. 2), Interpretations (Art.3) brought together rules that previously were dispersed by other sections and took out the ambiguity of unclear language and vague terms.

The UCP remain the most successful set of private rules for trade ever developed.

*Guy Sebban
ICC Secretary General*

A new attitude to a new UCP

Article 2

Credit means **any arrangement, however named or described**, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.

The role and responsibilities of the applicant were strongly enlarged and banks had to be ready to, as determined in ISBP, “... *develop or supplement the terms in order to permit the use of the credit.*”

Teamwork was the rule.

The Portuguese National Delegation organized several training sessions and the Portuguese translation, sponsored by major Portuguese banks, was already in the market when UCP600 came into force.

Banks also promoted a large number of meetings with its corporate centers all over the country and either in training reunions, newsletters or dedicated sites a really strong effort was made to spread the necessary information to the clients.

Application forms were reviewed and adjusted as well as advising letters to beneficiaries.

...and July 2, 2007 was business as usual.

Dishonour or disobey ? (1/2)

Article 7 c

“Reimbursement is due whether or not the nominated bank prepaid or purchased before maturity. An issuing bank’s undertaking to reimburse a nominated bank **is independent of the issuing bank’s undertaking to the beneficiary**”.

Article 12 b

“By nominating a bank to accept a draft or incur a deferred payment undertaking, an **issuing bank authorizes that nominated bank to prepay or purchase** a draft accepted or a deferred payment undertaking incurred by that nominated bank”

A Portuguese bank issued a letter of credit in favour of a cotton thread producer in the Far East, available by deferred payment with the advising bank at 90 (ninety) days after shipment date.

A compliant presentation was made to the nominated bank and a due date established. The advising bank, in its cover letter, informed that, acting on its nomination, had prepaid its deferred payment undertaking and advanced funds to beneficiary. Issuer recognized the presentation as compliant and confirmed the due date.

Fifteen days before due date, the issuing bank was notified by the civil court with jurisdiction in the area of the applicant that, in the terms of an injunction required by the applicant for alleged lack of quality of the merchandise, the issuing bank was prevented by the court to effect any payment under the scope of letter of credit ABC1234.

Dishonour or disobey ? (2/2)

Article 7 c

“Reimbursement is due whether or not the nominated bank prepaid or purchased before maturity. An issuing bank’s undertaking to reimburse a nominated bank **is independent of the issuing bank’s undertaking to the beneficiary**”.

Article 12 b

“By nominating a bank to accept a draft or incur a deferred payment undertaking, an **issuing bank authorizes that nominated bank to prepay or purchase** a draft accepted or a deferred payment undertaking incurred by that nominated bank”

Due to the content of sub-article 12 (b) and sub-article 7 (c), the issuing bank decided to resist the injunction in order to preserve the integrity of its credit.

The bank’s legal services approached the court requesting the removal of the injunction by referring the court to the appropriate articles of UCP 600, to the terms and conditions of the credit and to the engagement of the nominated bank.

Considering the double undertaking of the issuing bank and the evidence of payment having been made to the beneficiary , the court determined the withdrawal of the injunction, thus authorizing the payment to the nominated bank.

The applicant, in a separate suit, sued the beneficiary for breach of contract concerning the quality of the goods.

A Simple (?!) question of address...

Article 14 (j)

When the addresses of the beneficiary and the applicant appear in any stipulated document, **they need not be the same as those stated in the credit or in any other stipulated document**, but must be within the same country as the respective addresses mentioned in the credit. **Contact details** (telefax, telephone, email and the like) stated as part of the beneficiary's and the applicant's address **will be disregarded**. However, when the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document subject to articles 19, 20, 21, 22, 23, 24 or 25, they must be as stated in the credit.

A Portuguese pharmaceutical company systematically presented documents – quality and analysis certificates - in which both the address and the contacts were completely different from the same data in the other documents required, e.g. invoices, packing list and transport documents and the letter of credit.

And that resulted in constant discrepancies being noted.

Actually, the various letters of credit called for quality and analysis certificates to be issued by the company's own laboratory, a very reputable one, located in Portugal although in a different place from the headquarters. Applicable regulation determined that the documents had to be issued in standard forms with its proper letterhead, designation and address included; no corrections in the final documents, even if duly approved, were allowed.

The UCP600 revised wording put an end to the company's nightmare.

Old habits die hard.

Article 14 (I)

A transport document may be issued by any party other than a carrier, owner, master or charterer provided that the transport document meets the requirements of articles 19, 20, 21, 22, 23 or 24 of these rules.

UCP 500 in its article 30, addressed the issue of transport documents issued by freight forwarders that would be acceptable if signed or otherwise authenticated by the freight forwarder acting as carrier or multimodal transport operator or by an agent on his behalf.

In fact, this disposition was somewhat redundant. Transport articles already contemplated this particular point.

However...

Various banks, considering the specific activities of carriers and freight forwarders that they viewed as opposite, would go beyond the document and refused it as inadequate given some dispositions on the terms of the contract of transport or claiming that the issuer was referred to as a forwarding agent somewhere else in the document.

A mere change of language in article 14 (I) in UCP600 solved the problem by broadening the concept already existent in UCP500 to 'any party' - freight forwarders included -, as long as the requirements for transport documents are fulfilled.

The phase of deletions, exclusions, etc.

In the early days of UCP600, a couple of articles seemed to make some banks uncomfortable and to overreact by simply deleting or excluding those articles.

Highlights from our own experience

Sub-article 13 (b) (i) – Issuing banks indicating an expiry date in reimbursement authorizations .
A reimbursing bank has no direct involvement in the l/c other than honouring a valid claim. What if the expiry date of the reimbursement authorization is the same of the letter of credit?

Sub-article 14 (f) – If it is excluded, how is a nominated bank supposed to review the documents?

Sub-article 14 (l) - Deletion of this sub-article simply does not make sense as the criteria for the issuance and signing of transport documents are otherwise stated. If the applicant wants shipment to be effected by certain named carriers only, all he has to do is to mention it in the terms and conditions of the credit.

Sub-article 28 (i) – By deleting this sub-article a bank risks to issue an unworkable credit. It is a worldwide established practice in the insurance industry to exclude certain risks such as terrorism or cyber attacks. Risks excluded are not even remotely associated with common insurance risks in ICC (A), etc.

Article 35 – After the implementation of UCP600 some banks rediscovered the risk of documents being lost in transit simply forgetting that the same position was already present in UCP500 . Exclusion of this article will simply mean that no nominated bank will be willing to honour or negotiate.

**A patient dialogue and adequate explanations produced its fruits:
deletions and exclusions have practically disappeared.**

Evolving Trade Finance Landscape, indeed...

Yesterday, two important sets of rules were approved by the Banking Commission

The Uniform Rules For Bank Payment Obligations (URBPO)

Electronic data matching.

The International Standard Banking Practice for the Examination of Documents under Documentary Credits

Revised Guidelines for the checking of physical documents .

Tempora mutantur ,nos et
mutamur in illis

Times change and we
change with them

(Latin adage)

Although similar in its structure, each one serves its own purposes and is located in its proper space. Documentary Credits, as an internationally harmonized method of payment have been evolving since UCP first version in 1933. BPO first steps, eighty years later, seem very promising and its objectives are ambitious.

... but always with ICC Uniform Rules .

Good luck...