Basics of export letters of credit

Glenn Ransier
Trade Services Product Manager

November 15, 2016
Speaker – Glenn Ransier

- Recognized trade finance banking professional with strong ties to the international trade community. Accomplishments include:
  - **International Chamber of Commerce (ICC), Paris**
    - Technical advisor supporting the production of official ICC Banking Commission Opinions
    - Member of the Banking Commission Opinions Drafting Group, which revised the Uniform Rules for Demand Guarantees (URDG) revision 758
    - Member of the global Task Force on Guarantees
    - Accredited as a Documentary Credit Dispute Resolution Expertise (DOCDEX) expert by ICC International Centre for Expertise for all ICC trade-related rule sets, Uniform Customs and Practice for Documentary Credits (UCP), Uniform Rules for Collections (URC), Uniform Rules for Bank-to-Bank Reimbursements (URR), and URDG
    - U.S. delegate to ICC Banking Commission meetings
    - Designer of comparison training document for UCP 500 to UCP 600 transition
  - **International Organization for Standardization (ISO)**
    - Active delegate on the ISO 20022 team, which developed industry standards for trade finance messages
Speaker – Glenn Ransier (cont’d)

- **Bankers Association for Finance and Trade (BAFT)**
  - Oil and Commodity Letters of Credit (L/C) Working Group Chair; led development of the industry publication “The Oil and Gas Industry: A Practical Guide to Undertakings” (2015)
  - National Chapter, Commercial L/C Committee Chair for three years (2005 – 2007); Vice Chair for seven years (1998 – 2004)
  - Consolidated and edited U.S. bank comments on all UCP 600 draft versions and aided in representing various U.S. positions to ICC Banking Commission
  - Member of the development team for the ICC – IFSA Certified Documentary Credit Specialists (CDCS) program
  - Chairman of the New York Uptown Regional L/C Committee (1990 – 1995)

- **Institute for Fiscal Studies (IFS) School of Finance**
  - Designed test questions used in the CDCS and newly created Certificate for Specialists in Demand Guarantees (CSDG) examinations

- **A Drafter’s Notes to URDG 758**
  - Authored this publication
Trade basics: the concept of trade transactions

- Trade has been in existence for as long as people have been in existence. You can trade goods for cash, other goods (barter trade), or services.

- Trade helps to facilitate peace.

- In a typical trade transaction, the seller and buyer enter into an agreement about the goods to be delivered, services to be performed, or rights (e.g. licenses) to be transferred.

- It is important to note that the basic agreement, once signed by both parties, becomes the legal contract between the buyer and seller. Accordingly, both parties should always protect their interests before signing the agreement.
What risks do you want to mitigate?

- **Politics**
  - Strikes
  - Civil commotion
  - War
  - Tariffs

- **Economy**
  - Buyer and seller country risks
  - Different legal systems
  - Foreign exchange (FX) risk

- **Language**
  - English can be a foreign language

- **Culture**
  - Time zones
  - Business practices and terminology

- **Fraud**
  - Documentation
  - Products
  - Phony financial instruments

- **Shipping**
  - Piracy
  - Weather and natural disasters

- **Foreign customs**
  - Quotas
  - Delays
  - Seizures
  - Fees and tariffs

Note: This list is not exhaustive
Sales contract

- As with most trade transactions, the proforma invoice or sales contract is mutually agreed upon between the buyer and seller.

- It details the agreed terms of sale, including:
  - Merchandise or service amount.
  - Unit pricing.
  - Method of merchandise shipment or service delivery.
  - Who is obligated to pay which fees.
  - Which documents are required by the buyer to clear customs.
  - Who insures and at what stage does insurance begin.
  - At what point does the title to the goods transfer.
### INCOTERMS® 2010 QUICK REFERENCE CHART

**INCOTERMS® 2010**

#### Rules for any mode or modes of transport

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<thead>
<tr>
<th>EXW*</th>
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#### Rules for sea and inland waterway transport

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<td><strong>Cost &amp; Freight</strong></td>
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### Notes:
1. Incoterms® 2010 do not deal with the parties’ obligations for stowage within a container and therefore, where relevant, the parties should deal with this in the sales contract.
2. FCA Seller’s facility – Buyer pays inland freight; other FCA qualifiers. Seller arranges and loads pre-carrige carrier and pays inland freight to the “T” delivery place.
3. Incoterms® 2010 does not oblige the buyer nor must the seller to insure the goods, therefore this issue be addressed elsewhere in the sales contract.
4. Charges paid by Buyer or Seller depending on contract of carriage.
5. Charges paid by Seller if through Bill of Lading or door-to-door rate to Buyer’s destination.

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Incoterms® 2010 – Did you know?

- Banks do not review L/C presentations based on any stated Incoterms® rules in an L/C. Typically, banks only ensure that the L/C's stated term is properly recorded on the invoice. Reference is made to UCP 600 Article 4, which states, in part: “A credit by its nature is a separate transaction from the sale or other contract on which it may be based.”

- “Buyer’s disposal” used throughout Incoterms 2010® does not mean that the buyer is there to receive the goods, but rather that the buyer is offered the opportunity to obtain the goods.

- Transfer of risk versus property rights differs – see Transfer of Ownership in International Trade (ICC pub. 546).

- As recognized in the ICC Guide to Incoterms 2010® (pub. 720), Incoterms® rules do not have significant influence in the U.S. The American Foreign Trade Definitions, circa 1941, remains a viable alternative.
Basics – Concept of trade transaction

1. Purchase order

U.S. importer, applicant, buyer

2. Proforma invoice and sales contract

Seller, beneficiary, exporter
Typical import payment methods

Buyer friendly

- **Cash in advance**
  - **Buyer risk**
    - Seller may fail or be otherwise prevented from shipping

- **Letter of credit**
  - **Buyer and seller risks**
    - Buyer reimburses the issuer only when a presentation is deemed compliant
    - Seller must be familiar with document preparation requirements and governing rule set

- **Documentary collections**
  - **Seller risk**
    - No obligation of collecting banks to assure payment
    - Buyer can simply not pay

- **Open account**
  - **Seller risk**
    - Goods shipped and documents released without any third-party promise of payment
    - Buyer could refuse or be prevented from paying

Seller friendly

- **Buyer risk**
  - No obligation of collecting banks to assure payment
  - Buyer can simply not pay
Trade basics – Concept of trade transactions

- In several business situations, payment support might be needed to win the contract.

- One of the most common means of support takes the form of an L/C, most often issued by a third-party financial institution.

- The L/C enhances a buyer’s creditworthiness by providing an irrevocable undertaking to make a payment to the seller from a neutral third party — provided the seller has shipped the contracted goods, performed the services, and has provided the required documentation stated in the L/C.

- Wells Fargo provides its clients with certain contract negotiation leverage as our AA credit rating will further enhance our client’s creditworthiness and reduce the need to outlay upfront cash, negotiate improved pricing, etc.

- Without the assistance of L/Cs, many trade transactions would not be completed.
Suggestions for incoming LCs using an MT700 format

SWIFT MT700 – ISSUANCE OF A DOCUMENTARY CREDIT
TO WFBUS6S or PNBUS33
WELLS FARGO BANK NA
27 SEQ OF TOTAL:
40A FORM OF DOC CREDIT:
IRREVOCABLE TRANSFERRABLE (OPTIONAL)
20 DOCUMENTARY CREDIT NUMBER:
(TBD)
31C DATE OF ISSUE:
(TBD)
40E APPLICABLE RULES:
UCP LATEST VERSION
31D EXPIRY DATE AND PLACE:
(TBD) IN U.S.A.
50 APPLICANT:
59 BENEFICIARY:
32B CURRENCY CODE AND AMOUNT:
(THREE-LETTER CURRENCY CODE e.g. USD FOLLOWED BY AMOUNT OF LETTER OF CREDIT)
39B MAXIMUM CREDIT AMOUNT:
NOT EXCEEDING TOLERANCE AMOUNT (OPTIONAL)
41D AVAILABLE WITH . . .BY . . .:
ANY BANK
BY SIGHT (NEGOTIATION or PAYMENT) OR BY TIME (ACCEPTANCE OR DEFERRED PAYMENT or NEGOTIATION)
42C DRAFTS AT:
SIGHT
DAYS AFTER SHIPMENT
DAYS AFTER SIGHT
42A DRAWEE:
ISSUING BANK or CONFIRMING BANK OR ADVISING BANK
43P PARTIAL SHIPMENTS:
ALLOWED OR PROHIBITED NOTE: THE UCP 600 RULES DEFAULT TO ALLOWABLE
3T TRANS SHIPMENT:
ALLOWED OR PROHIBITED NOTE: THE UCP 600 RULES DEFAULT TO ALLOWABLE
44A PLACE OF TAKING IN CHARGE/RECEIPT: } NOTE: USE OF THIS FIELD SHOULD AUTOMATICALLY REQUIRE A MULTIMODAL TRANSPORT DOCUMENT
44E PORT OR AIRPORT OF LOADING/DEPARTURE: } USE OF ONLY 44E AND 44F WILL REQUIRE AN OCEAN PORT TO PORT BL
44F PORT OR AIRPORT OF DISCHARGE: } USE OF ONLY 44E AND 44F WILL REQUIRE AN OCEAN PORT TO PORT BL
44B FINAL DESTINATION/PLACE OF DELIVERY: } NOTE: USE OF THIS FIELD SHOULD AUTOMATICALLY REQUIRE A MULTIMODAL TRANSPORT DOCUMENT
44C LATEST DATE OF SHIPMENT:
Suggestions for incoming LCs using an MT700 format

45A GOODS DESCRIPTION:
BRIEF DESCRIPTION OF GOODS AS PER PURCHASE ORDER NUMBER (INSERT) DATED (INSERT)
(IF SUBJECT TO INCOTERMS 2010 THIS MUST BE STATED USING THE RELEVANT TERM E.G. FOB NEW YORK PER INCOTERMS REV. 2010)

46A DOCUMENTS REQUIRED: (NOTE INSURE YOU CAN PRODUCE THE NEEDED DOCUMENTS)
1. COMMERCIAL INVOICES IN ___ ORIGINAL AND COPIES
2. PACKING LIST IN ___ ORIGINAL AND COPIES.
3. TRANSPORTATION DOCUMENTS: OPTION
   + FOR OCEAN SHIPMENT: FULL SET OF CLEAN ON-BOARD OCEAN BILLS OF LADING:
   + FOR THRU SHIPMENT: FULL SET CLEAN ON BOARD MULTIMODAL TRANSPORT DOCUMENT
   CONSIGNED TO ORDER OF (CHOOSE ONE): THE SHIPPER AND BLANK ENDORSED; THE ISSUING BANK OR THE BUYER
   NOTIFY APPLICANT MARKED FREIGHT PREPAID FOR INCOTERMS 2010 CFR, CIF, CPT, CIP (AND ALL D TERMS)
   FREIGHT COLLECT FOR INCOTERMS 2010 FOB, FCA, FAS, EXW
   + FOR AIR SHIPMENT: CLEAN AIR WAYBILL CONSIGNED TO ISSUING BANK,
   NOTIFY APPLICANT
   AND MARKED
   FREIGHT PREPAID FOR INCOTERMS 2010 CPT, CIP
   FREIGHT COLLECT FOR INCOTERMS 2010 FCA, EXW
4. INSURANCE POLICY OR CERTIFICATE, BLANK ENDORSED, FOR 110% OF CIF OR CIP VALUE, IN THE CURRENCY OF THE CREDIT AND
   PAYABLE IN THE COUNTRY OF APPLICANT COVERING ALL RISKS. – (NOTE FOR CIF & CIP ONLY)
5. OTHER DOCS (IF REQUIRED)

47A ADDITIONAL CONDITIONS:
1. INSERT AS NEEDED AND ENSURE IT IS TIED TO A DOCUMENT E.G. INVOICES MUST NOT SHOW PACKING IN WOODEN CRATES

71B DETAILS OF CHARGES:
ALL BANKING CHARGES EXCEPT FOR WELLS FARGO BANK, NA CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT
FOR USUANCE CREDITS, ACCEPTANCE, DISCOUNT AND INTEREST CHARGES IF ANY ARE FOR THE ACCOUNT OF
APPLICANT OR BENEFICIARY

48 PERIOD FOR PRESENTATION:
WITHIN 21 DAYS AFTER SHIPMENT DATE, BUT WITHIN THE VALIDITY OF THE CREDIT. (NOTE 21 DAYS IS THE UCP DEFAULT)

49 CONFIRMATION INSTRUCTIONS: OPTION
WITHOUT OR CONFIRM
CONFIRMATION CHARGES ARE FOR THE ACCOUNT OF APPLICANT OR BENEFICIARY

53 REIMBURSEMENT BANK
(NAME AND SWIFT ADDRESS OF USA REIMBURSING BANK)
ISSUING BANK

78 INSTRUCTIONS TO THE PAYING/ACCEPTING/NEGOTIATING BANK:
T/T REIMBURSEMENT ALLOWED
DEBIT ISSUING BANK ACCOUNT WITH WELLS FARGO BANK (PREFERRED – TYPICALLY THE SHORTEST DSO PERIOD)
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Basics – Letter of credit

1. Purchase order

U.S.
importer, applicant,
buyer

2. Proforma invoice and sales contract

Seller, beneficiary,
exporter

3. Letter of credit application

Wells Fargo
as issuing bank
The letter of credit

- If the application is acceptable to the FI, they will issue their LC.
- The type of LC we are discussing is a Commercial LC which typically covers a movement of goods. From the seller’s side they are also known as an export LC.
- The Letter of Credit becomes a stand-alone, independent undertaking (Note: It is not a contract) different from the underlying sales contract on which it may have been based.
- Once a LC is issued, the Issuing Bank (Well’s in the example) is now irrevocably committed to making a payment to the seller/beneficiary, provided that their document presentations comply with the LC’s terms.
- Note: The applicant/buyer is not a party to the LC. If the applicant should declare bankruptcy or simply refuse to pay, the Issuing Bank remains obligated to honour their LC, upon their receipt of complying documents.
- To a seller/beneficiary (The party entitled to proceeds against a LC), the LC becomes the primary means of payment. It replaces/exchanges the applicant/buyer’s payment obligations in the underlying contract.
- However, the underlying contract remains a viable payment option in the event the LC issuer should go bankrupt or otherwise refuse to pay.
Basics – Letter of credit

1. Purchase order

U.S. importer, applicant, buyer

2. Proforma invoice and sales contract

Seller, beneficiary, exporter

3. Letter of credit application

Wells Fargo as issuing bank

4. Letter of credit
Advising bank

- Often, the beneficiary is in a country that differs from that of the issuing bank.

- The beneficiary will typically request that an L/C be sent to a bank in their country or one with which they have a relationship.

- If the beneficiary does not request a specific bank, the issuing bank will generally choose a bank with which they have a relationship. The bank that receives the L/C from the issuing bank will be known as the advising bank.

- The vast majority of commercial L/Cs are forwarded to the beneficiary through the use of an advising bank.
Advising Bank (cont’d)

- The Advising Bank’s role is to:
  - A. Verify the authenticity of the LC, typically through means of: 1) authenticator keys if the LC is transmitted via SWIFT or 2) reviewing the signatures and determining that the signatures match and are authorized signatures of the issuer on file with Advising Bank, if the LC is sent via mail/courier.
  - B. Accurately advise the details of the LC they’ve received to the beneficiary.

- An Advising Bank is not a party to an LC.
Basics – Letter of credit

1. Purchase order

U.S. importer, applicant, buyer

2. Proforma invoice and sales contract

Seller, beneficiary, exporter

3. Letter of credit application

Wells Fargo as issuing bank

4. Letter of credit

5. Advised letter of credit

Wells Fargo as advising bank
Receiving the L/C

Ensure that the received LC mirrors the terms of the contract entered into between the buyer/seller.

- All of this information should agree with the Sales Contract:
  - Name of Applicant (buyer) & Bene.
  - Expiry date and place
  - Agreed upon amount
  - Partial and/or trans-shipments
  - Incoterms or other shipping terms
  - Payment terms, honour or negotiation
  - Last ship date and presentation period
  - Required documents
  - Foreign bank charges (who pays?)
  - Brief description of merchandise
  - Notify party for notice of arrival of goods

- Common things to consider
  - Applicant’s & Beneficiary’s name must be an exact match on all docs.
  - If expiry isn’t local, docs will need to reach the overseas issuer
  - If a UCP 600 LC & is silent, then partials and transshipments are allowed
  - Nego. provides flexibility; typically at a cost to a beneficiary
  - If silent then shipment date defaults to expiry date and presentation period is 21 days
  - Can you provide the required docs in the required timeframes?
  - Ensure the goods desc. conforms to the contracted goods
Important notes on UCP 600©

- **UCP 600 Article 4 states in part:**
  - “Credits v. Contracts
  - a. A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary”.

- **UCP 600 Article 5 states:**
  - “Documents v. Goods, Services or Performance
  - Banks deal with documents and not with goods, services or performance to which the documents may relate”. 
Interpreting L/C terms
Should you accept these terms?

- ““Not Exceeding a total amount of “about” USD 1 million against a LC subject to UCP”.
- “Shipment from any Eastern Port.”
- “Documents must strictly comply with the L/C’s terms and conditions”
- “6 copies of invoice” (See UCP Article 20 c ii)
- “This credit is subject to ISP98 and as to matters not covered by ISP98 the UCP 600 complies”
- “All bank charges or any drawdown under this L/C are for the customer’s account”
- “This LC expires at the confirming bank’s counters on 4/16/22. Special Condition - Our liability expires on 4/16/22”.
Amendments

- Once the Advising Bank sends the LC to the beneficiary, the beneficiary is expected to review the LC to ensure that they can comply with its terms and conditions. If they agree, they will ship the goods in accordance with the LC’s terms and forward the documents for payment as instructed in the LC.

- If they do not agree with a term or condition, they should contact the Buyer/applicant and request a change to the LC.

- Any change to an LC is called an “amendment” however named or described. The flow for an amendment is the same as the LC flow. Amendments change the LC terms or conditions and become part of the LC. They do not become separate undertakings.

- Beneficiary cannot partially accept an amendment (See UCP 600 Article 10 e. and ISP98 rule 2.06 d.) UCP states: it will be: “deemed to be notification of rejection of the amendment”.

- Must be complete and precise. You must review against the original LC terms.

- Costly, time consuming but “Worth It”! This is the best way to ensure payment especially when a discrepancy is incurable e.g. Late shipment or LC expired.
Confirmation

When requested, an L/C can nominate an advising or other bank to add its confirmation. The definition is provided in UCP 600 Article 2: “Confirmation means a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.”

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Dual recourse – Beneficiary has primary recourse to the confirmer and a secondary recourse to the issuer.</td>
<td>▪ More expensive – Applicant and beneficiary are responsible for the confirming bank’s fees (Note: fees are largely based on the credit strength of the issuer).</td>
</tr>
<tr>
<td>▪ Payment assurance – When complying documents are presented, the issuer and confirmer are irrevocably bound to pay,</td>
<td>▪ Actions occur at the confirmer’s rather than at the issuer’s counters – L/Cs must allow expiration and negotiation, or honor at the confirmer’s counters.</td>
</tr>
<tr>
<td></td>
<td>▪ Limits – Confirmers may limit their confirmations (e.g. reduced confirmation amounts or shorter expiration periods, etc.).</td>
</tr>
</tbody>
</table>
Beware the stop-gap L/Cs

- Prior to shipment, Beneficiary must send samples of goods to Applicant for their approval. Upon approval notice will be sent by us (Issuing Bank) to the advising bank
- Negotiating Bank must supply a credit report for the beneficiary
- This LC will only become operative upon our amendment
- Also, avoid any “revocable” LCs or LCs that indicate that they are not operative or not available for drawings, honour, or negotiation upon their issuance
In your opinion

- Are bankers responsible for knowing general industry codes and abbreviations?
Response - In your opinion

- No, banks are not responsible for being familiar with or appreciating the differences for every merchandise code or abbreviation.

- This is supported by numerous court cases. One of the most cited is a 1986 court case – *Marino Industries Corp. versus Chase Manhattan Bank.*
The International Chamber of Commerce, Paris

- The International Chamber of Commerce (ICC) was founded in 1919 with an overriding aim that remains unchanged: To serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital. Members include many of the world’s most influential companies and represent every major industrial and service sector.

- Traditionally, ICC has acted on behalf of business in making representations to governments and intergovernmental organizations. It has ensured that the international business view receives due weight within the U.N. system and before intergovernmental bodies and meetings, such as the G8, where decisions affecting the conduct of business are made.

- ICC commissions of experts, with members from the private sector, cover every specialized field of concern to international business. Subjects include banking techniques, financial services, taxation, competition law, intellectual property rights, telecommunications and information technology, air and maritime transport, international investment regimes, and trade policy.

- ICC is not a Chamber of Commerce in the traditional sense. It is a collective group of businesspeople who attempt to bring uniformity to trade transactions.

Source: International Chamber of Commerce website, www.iccwbo.org
The International Chamber of Commerce, Paris (cont’d)

- ICC facilitates trade and publishes internationally accepted rules, which define roles and responsibilities for parties involved in trade transactions.

- It provides Official Opinions relative to the rules that it has published. These Opinions provide banks and companies guidance.

- While the courts are many times guided by ICC publications, the publications are not law.
Globally accepted publications for trade transactions include but are not limited to:

- **Uniform Customs and Practices for Documentary Credits (UCP), current Revision 2007, Publication no. 600**
- Uniform Rules for Collections (URC), current Revision 1995, Publication no. 522
- Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR), current Revision 1995, Publication no. 525
- Uniform Rules for Demand Guarantees (URDG), current Revision 1992, Publication No. 458, Revision 758 July 1, 2010
- International Commercial TERMS (Incoterms® rules), current revision 2010
- International Standby Practices (ISP), current Revision 1998, Publication No. 590 (Note: adopted by but not owned by ICC. This is an IIBLP publication.)

Find publications on the ICC Store website at [http://store.iccwbo.org/](http://store.iccwbo.org/)
Official Opinion TA779rev - unpublished UCP 600

- L/C required:
  - Description of goods and services: Supply of lighting as per applicant’s purchase order ... and beneficiary's proforma invoice....
  - CIP (place) seaport or airport (no unit pricing or individual costs)

- A commercial invoice is received for an amount equal to the credit amount and states:
  - The goods description exactly per the L/C
  - The delivery term as: “CIF (place) seaport”
  - “Saudi Arabian Standard Organization (SASO) certification and its fee (EUR XX) was included in the calculation of the total invoice amount
  - “Sea freight to (place in Country S)”
  - The invoice referred to the CIF price and not the CIP price. The issuing bank did not raise this as a discrepancy.

- Part of the refusal cited a discrepancy: “Commercial invoice includes SASO certification charges for EUR....”.

- Is this a valid refusal?
Response - Official Opinion TA779rev - unpublished UCP 600

- International Standard Banking Practice (ISBP) 681 paragraph 61 states that “charges and costs must be included within the value shown against the stated term in the credit and invoice”.

- The inclusion of the certification charges does not conflict with the requirement of the credit, the UCP 600 or ISBP 681 paragraph 61, and the discrepancy is not valid.
A company has ongoing credit business in favor of a particular beneficiary.

Its L/Cs include a condition stipulating details of transport: To and from and a latest shipment date.

L/Cs do not stipulate any documentary requirements to confirm compliance with the stated conditions (e.g. no transport documents are called for).

Does a nominated bank have to ensure compliance with L/C terms before honoring or negotiating the documents?
According to UCP 600 subarticle 14 (h), banks will deem a non-documentary condition as not stated (on the basis that there is no necessity for the beneficiary to provide any evidence of compliance) and will disregard it.

However, should the beneficiary nevertheless elect to insert such data on any other stipulated document, then it must ensure that the data does not conflict with the data in the credit.

The view of the Banking Commission is that subarticle 14 (h) is not absolute and is qualified by the content of subarticle 14 (d).
Understanding LC Payments
Bank roles in the examination process – presenting bank

- A presenting bank is a bank that accepts the L/C-required documents on or before an L/C beneficiary and forwards them to the issuing bank for payment.

- There is no obligation on their part to review or otherwise make a payment against complying presentation.

- The presenting bank may and will often review documents prior to sending them to the issuing bank for their honor.

- They have no rights under an L/C.

- They will receive the payment on or before the beneficiary when the issuer honors the presentation.
Bank roles in the examination process – negotiation

- **Rights/ responsibilities from a bene’s point of view.**
- An LC can nominate the Advising Bank and/or other bank(s) to:
  - Negotiate the beneficiary’s documents.
- Per UCP Article 2, “Negotiation means the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank”.
- Any bank who receives the nomination to negotiate but is not a confirmer, **is not obligated** to negotiate. The nominated bank can negotiate “with recourse“ to the beneficiary.
- A confirmer must negotiate when they determine the documents are complying and they must do so without recourse to the beneficiary.
- Negotiation is meant to ensure that the beneficiary receives funds, on or before the time the issuer reimburses the nominated negotiating bank. Used effectively, it will shorten a beneficiary’s DSO.
- In order to induce a local bank to negotiate – the beneficiary must often pay a fee, often interest based, predicated on factors such as the issuer’s size and reputation, their credit rating & the number of days the negotiating bank expects to receive reimbursement from the LC issuer and the reputation of the beneficiary.
- Negotiation is the most flexible of the UCP terms in that the tenor can be available at sight or time e.g. 180 days from the BL date, by negotiation or at sight by negotiation, etc.
- A nominated negotiating bank which has only examined and forwarded a presentation to the issuer, without providing a firm payment commitment or an upfront payment is deemed a presenting bank.
Bank roles in the examination process – honor

- An L/C can nominate the advising bank or other bank(s) to:
  - Honor the beneficiary’s documents

- Per UCP 600 Article 2: “Honor means:
  a. To pay at sight if the credit is available by sight payment.
  b. To incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.
  c. To accept a bill of exchange (draft) drawn by the beneficiary and payable at maturity if the credit is available by acceptance.”

- A confirmer must honor when it has determined the documents are complying. Any other bank that receives the nomination to honor is not obligated to do so.

- A nominated bank that has only examined and forwarded a presentation to the issuer, without otherwise honoring the presentation, is deemed a presenting bank.
Note: When an L/C is made available with another bank(s) to honor or negotiate and it has done so in good faith, it receives certain rights and protections to an L/C's payment.

It is for this reason that UCP 600 Article 7c states, in part: “Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, 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.”
Basics – Letter of credit

1. Purchase order
   - U.S. importer, applicant, buyer

2. Proforma invoice and sales contract
   - Seller, beneficiary, exporter

3. Letter of credit application
   - Wells Fargo as issuing bank

4. Letter of credit
   - Advised letter of credit
   - SWIFT
   - Wells Fargo as advising bank

5. Documents

6. Letter of credit

7. Ship required goods

7. Documents
Reimbursement

- Funds can come from:
  - Issuing Bank;
  - Nominated Bank (Advising/Confirming Bank/Any Bank, etc.); or
  - A third party bank (reimbursing bank).

- Reimbursement/Payment
  - Each L/Cs terms dictate where reimbursement funding comes from.
  - An L/C may contain special conditions which affect the timing of payment e.g. Claim reimbursement from XXX Bank 3 days after you’ve notified us via SWIFT that documents are in compliance.
  - Unless a bank is negotiating a complying presentation then LC payments are made upon receipt of reimbursement.
  - When negotiating, the beneficiary typically assumes additional costs for the payment method but their DSO is shortened.
  - The longer the reimbursement delays the longer the DSO period is for the beneficiary.
Negotiation and pre-payment options

- Assume an LC’s tenor & reimbursement states: at sight; by negotiation and reimbursement states that the documents must be presented to the issuer for reimbursement.

  - In this example, a nominated bank willing to negotiate a complying presentation will assume a reimbursement period of at least 10 days from the date they’ve determined compliance e.g. 2+ days for the issuer to receive the documents, 6 working days max. for the issuer to examine them and at least one weekend. In this example, the bank willing to negotiate must either:
    - Commit to payment at a fixed future certain date e.g. 10 calendar days and most often a commitment fee is applied; or
    - If beneficiary wishes to shorten their DSO then may request to prepay the negotiation period most often against a simple request and agreement to pay negotiation discount interest costs in addition to the above commitment fee.

- If a bank does not negotiate then a beneficiary will be paid upon receipt of the issuer’s reimbursement and must assume a delay.

- Now let’s assume an LC’s tenor & reimbursement states: at 150 days from the BL date; by negotiation or by deferred payment or by acceptance and reimbursement states that the documents must be presented to the issuer for reimbursement.

  - In this example, the prepayment options are similar to the above with the exception being that the commitment and/or prepayment periods are predicated on the number of days between the date the nominated bank deemed a presentation to be compliant and the LC tenor’s maturity date. For example, a presentation is received on 1/2/2016 against a LC with a tenor of 150 days after the BL date. The bank examines the presentation and finds the document compliant on 1/4/2016. The BL was dated 12/28/2015. Adding 150 days to the BL date makes the due date 5/26/2016. Assuming a prepayment agreement is reached on 1/4/2016, the interest would be based on 143 days.
Why a deferred payment instead of an acceptance?

- There is a convenience in not requesting a draft.
- It may avoid an applicant having to pay a stamp duty or similar fee.
- Some companies are concerned about the privacy regarding their transactions. If a bank-accepted draft is sold in an open market, then the information is no longer confidential.
- Where the laws for negotiable instruments apply for banker’s acceptances, the laws for deferred payments do not always follow negotiable instrument law.
Current Revision 745

How it helps

- Provides a global document examination checklist for banks to follow.
- Helps alleviate improper presentation refusals.
- Goes beyond UCP 600 and provides interpretations for said rule set.
- Wells is guided by it.
Title of invoice

C1) a. When a credit requires presentation of an "invoice" without further description, this will be satisfied by the presentation of any type of invoice (commercial invoice, customs invoice, tax invoice, final invoice, consular invoice, etc.). However, an invoice is not to be identified as "provisional", "pro-forma" or the like.

b. When a credit requires presentation of a "commercial invoice", this will also be satisfied by the presentation of a document titled "invoice", even when such document contains a statement that it has been issued for tax purposes.

Issuer of an invoice

C2) a. An invoice is to appear to have been issued by the beneficiary or, in the case of a transferred credit, the second beneficiary.

b. When the beneficiary or second beneficiary has changed its name and the credit mentions the former name, an invoice may be issued in the name of the new entity provided that it indicates "formerly known as (name of the beneficiary or second beneficiary)" or words of similar effect.

Description of the goods, services or performance and other general issues related to invoices

C3) The description of the goods, services or performance shown on the invoice is to correspond with the description shown in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when read together, represent a description of the goods corresponding to that in the credit.
Discrepancies = Payment Delays = Extended DSO

<table>
<thead>
<tr>
<th>Method of resolution</th>
<th>Average Payment period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documents in order</td>
<td>1-6 days</td>
</tr>
<tr>
<td>Payment under Beneficiary’s indemnity</td>
<td>1-6 days</td>
</tr>
<tr>
<td>Documents corrected (as possible)</td>
<td>3-7 days</td>
</tr>
<tr>
<td>SWIFT message for issuers approval</td>
<td>3-11 days</td>
</tr>
<tr>
<td>Documents sent on approval</td>
<td>11-15 days</td>
</tr>
</tbody>
</table>

Additional notes:
- Each LCs reimbursement terms add payment delays even to a complying presentation.
- Per UCP 600 Article 14 sub-article b. banks have a maximum of 5 + 1 days to determine whether a presentation is compliant. It does not address when to make a payment.
- When discrepancies are not curable, sending documents on approval basis may be the fastest resolution.
- In a worse case scenario – payments do not have to be made when documents are discrepant.
- A credit was available with the issuing bank, by payment, at their counters.
- Description of goods as follows: Invoice: FROZEN IQF BLANCHED PEELED DEVENEINED TAIL-OFF (BPD) VANNAMEI SHRIMPS. 1,140 CTNS - SIZE 70/90 760 CTNS - SIZE 90/120
- Health certificate: Health certificate issued in Italian and English language to be used for import into EU of fishery products intended for human consumption
Beneficiary presented documents to their bank who negotiated them & sent them to the issuer.
Issuer promptly refused the documents citing: “HEALTH CERTIFICATE STATES IN BOX 1.28: PENAEUS VANNAMEI Instead of VANNAMEI SHRIMP IN INVOICE”

Nego. bank reviewed the discrepancy. They noted that in addition to the LC goods description, the specific box number I.28 in the Health Certificate is titled “Identification of the commodity” and, among others, was subtitled “Species/Scientific name“.
They refuted the discrepancy and the issuer reaffirmed their refusal and returned the documents.

**Questions:**
Is this a valid refusal?
Based on the facts presented, is there anything else unusual about this case?
1. The discrepancy stated by the issuing bank is not valid.

2. The bank of the beneficiary was not a nominated bank under the documentary credit; any claim vis-à-vis the issuing bank would not be based on UCP600 but on their financing agreement with the beneficiary.
On examination of the documents, the nominated bank found that the presented bills of lading bore the following remarks made by the Master of the vessel under the “description of cargo” section:

MASTERS REMARKS:
1. CONTAINERS STORED IN AN OPEN AREA
2. CONTAINERS EXPOSED TO WEATHER BEFORE SHIPMENT
3. CONTAINERS LOADED FROM OPEN STORAGE
4. CONTAINERS WET/MOIST BEFORE SHIPMENT
5. CONTAINERS LOADED DURING RAIN
6. CONTAINERS COVERED WITH DIRT/DUST PRIOR TO SHIPMENT
7. CONTAINERS ARE SECOND HAND, SOME OF THEM SLIGHTLY DENTED PRIOR TO SHIPMENT
8. SURFACES OF THE CONTAINERS ARE RUST STAINED, WITH SCRATCHES BEFORE SHIPMENT
9. THE MARKS OF SOME CONTAINERS ARE NOT CLEAR / MISSING

Note: UCP 600 Article 27 states that a clean bill of lading is one that does not contain a clause or notation expressly declaring a defective condition of the goods or their packaging.

ISBP 745 Paragraph F18 b) states that clauses about packaging such as “may not be sufficient for the sea journey” and similar words do not make the document discrepant.

Would these clauses contained in a BL be considered a discrepancy e.g. not a clean bill of lading?
None of the statements would make a BL discrepant.
DOCDEX (Documentary Credit Dispute Resolution)

- ICC recognized the need for a less expensive and time consuming way to resolve disputes rather than through local courts.

- Their objective is to provide an independent, impartial and prompt expert decision on how a dispute should be resolved on the basis of the terms and conditions of the documentary credit, the collection instruction, the demand guarantee and the applicable ICC rules, be it UCP, the URR, the URC or the URDG.

- Each case is weighed by a panel of 3 ICC nominated experts who render decisions based on compliance with UCP & the LC. The decisions are vetted by a TA from the Banking Commission.

- Technical Advisor Parties may file a Request for a DOCDEX Decision for any dispute relating to a:
  - documentary credit;
  - standby letter of credit;
  - bank-to-bank reimbursement;
  - collection;
  - demand guarantee or counter-guarantee;
  - forfaiting transaction,
  - bank payment obligation (BPO); or
  - any other trade finance-related instrument, undertaking or agreement.

- Unless otherwise agreed, a DOCDEX decision shall not be binding upon the parties.

- DOCDEX Decisions permit parties to stay out of court and to settle reliably at a low cost.

- The average DOCDEX decision is handed down in 2-3 months, while courts may easily take between 6-18 months or much longer.

- DOCDEX saves money compared to the unlimited costs of litigation. In DOCDEX the total cost is capped at US$ 5K or US$ 10K depending on the amount in dispute. Even in exceptional cases, the Centre will only charge an additional maximum fee of US$ 2,500.00 or US$ 5,000.00.
Helpful Resources
U.S. government oversight

- Special export licenses by the seller’s country
- Office of Foreign Assets Control (OFAC)
  - SDN (Specially Designated Nationals)
- Antiboycott regulations
- Money laundering “watch”
- USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001)
- Bank Secrecy Act (BSA) – “know your customer”
Useful websites

**OFAC (Office of Foreign Assets Control)**
http://www.treas.gov/ofac
   - Specially Designated Nationals such as terrorists, OFAC country list

**Bureau of Industry and Security**
https://www.bis.doc.gov/
   - Export policies and regulations
   - Export enforcement
   - Lists to check:
     • Denied persons
     • Unverified list
     • Specially Designated Nationals (OFAC)
     • Debarred list
     • Avoiding dealings with unauthorized parties
   - Antiboycott compliance

**U.S. Customs and Border Patrol**
http://www.cbp.gov/

**FirstGov (online resources for the Federal Government)**
   - International trade
   - Financing
   - Exporting
   - Buying from and selling to the government
   - Get an export license

**ICC (International Chamber of Commerce)**
http://www.iccwbo.org

**Wellsfargo.com – International Group**
https://www.wellsfargo.com/com/international/
## Contact us

<table>
<thead>
<tr>
<th>Charlotte, NC</th>
<th>El Monte, CA</th>
<th>International Direct Dial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone: 800-776-3862</td>
<td>Phone: 800-798-2815</td>
<td>Phone: 305-789-6975</td>
</tr>
<tr>
<td>Fax: 704-427-6738</td>
<td>Fax: 704-715-0199</td>
<td></td>
</tr>
</tbody>
</table>

### Wells Fargo Bank, N.A.

**Trade Customer Connection**

- **Charlotte**
  - 1525 West W.T. Harris Boulevard
  - MAC: D1109-011
  - Charlotte, NC 28262
  - Email: trade.ccucore@wellsfargo.com

- **El Monte**
  - 9000 Flair Drive, 3rd Floor
  - MAC: E2002-031
  - El Monte, CA 91731
  - E-mail: core.tradeconnections@wellsfargo.com

- **Hong Kong**
  - 7F Cityplaza, Four 12 Taikoo Wan Road
  - Taikoo Shing, Island East
  - Hong Kong
  - Phone: 852-2509-0888
  - Fax: 852-2845-2073
  - SWIFT: PNBPUS33CHA

### Wells Fargo International Trade Operations contact information

**Charlotte Import/ Export Trade Operations**

- Wells Fargo Bank, N.A.
- Trade Customer Connection
- 1525 West W.T. Harris Boulevard
- MAC: D1109-011
- Charlotte, NC 28262
- Fax: 704-427-6758
- Import Letter of Credit / Import Documentary Collections:
- Export Letter of Credit / Export Documentary Collections:
- SWIFT: PNBPUS33CHA
- FED ABA: 026005092
- CHIPS ABA: 0509

**El Monte Import/Export Trade Operations**

- Wells Fargo Bank, N.A.
- Trade Customer Connection
- 9000 Flair Drive, 3rd Floor
- MAC: E2002-031
- El Monte, CA 91731
- SWIFT: WFBIUS6S

**Hong Kong Import/Export Trade Operations**

- Wells Fargo Bank, N.A.
- Trade Customer Connection
- 7F Cityplaza, Four 12 Taikoo Wan Road
- Taikoo Shing, Island East
- Hong Kong
- SWIFT: PNBPUS33CHA

**Standby Letter of Credit Operations**

- Wells Fargo Bank, N.A.
- Standby Customer Connection
- 401 N Research Parkway, 1st Floor
- MAC: D4004-012
- Winston Salem, NC 27101
- Fax: 336-735-0950
- SWIFT: PNBPUS33SLC
- FED ABA: 053000219

- Wells Fargo Bank, N.A.
- Standby Customer Connection
- 794 Davis St., 2nd Floor
- MAC: A0283-023
- San Leandro, CA 94577
- E-mail: SBLC-New@wellsfargo.com
Any questions, on any topic?
Thank you for working together with Wells Fargo