

ICC Banking Commission

Technical Advisory Briefing No. 1 Subject: Non-documentary conditions in Documentary Credits

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ISSUE

As stated in UCP 600 article 2, a complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of UCP 600 and international standard banking practice.

However, from time to time, a documentary credit may include a condition that does not stipulate a required document evidencing compliance with that condition. Such conditions are generally referred to as *non-documentary* or a *non-documentary condition*.

Whilst the UCP 600 do not make explicit reference to a *non-documentary condition*, these are the focus of sub-article 14 (h).

A *non-documentary condition* may arise due to various reasons including:

- The issuing bank fails to carefully review the documentary credit application form for any instances where the applicant has stipulated a condition but not indicated the document on which compliance of such condition is to be indicated, nor mentioned any specific document that is to be presented for that purpose.
- Data that relate to a required document indicated in field 46A of a SWIFT MT700 appearing in field 47A. For example, field 46A requires a 'Packing List' but the packing details appear in field 47A. Field 46A should indicate the title of the required document, the name or type of the issuer (if applicable) and the required data content.
- For certain credits, including standby credits, references to an underlying contract/agreement are made for the purpose of fraud prevention. However, these references do not form part of the description of goods or services mentioned in the credit but as separate *non-documentary* data.

INTRODUCTION

Inclusion of a *non-documentary condition* does not in itself evidence a requirement for a document to be presented by the beneficiary and the beneficiary is not required to indicate compliance with such a condition in any other stipulated document presented under the documentary credit. If the beneficiary or any other issuer of a required document nevertheless incorporates data that relates to a *non-documentary condition*, such data must not be in conflict with that stated in the documentary credit.

For example, if a documentary credit incorporated a condition "Origin of goods – India", and there is no:

- (i) requirement for the presentation of a certificate of origin;
- (ii) requirement for the origin of the goods to appear on any required document; and
/or
- (iii) mention of the origin of the goods anywhere in the presented documents;

then the condition should be disregarded, as stated in sub-article 14 (h). However, if any stipulated document that is presented make reference to the origin of the goods, such origin must be stated as India in order for the document to be considered as compliant.

All data shown in a stipulated document that is presented are subject to review under UCP 600 sub-article 14 (d) and no conflicting data will be accepted.

A fairly common example of a *non-documentary condition* is where the documentary credit states "Beneficiary is to send one set of copy documents to the applicant by courier service." This condition does not require any evidence of compliance e.g. a beneficiary certificate to that effect. If a beneficiary nevertheless presents a document not expressly required by the credit, then such document is, as stated in sub-article 14 (g), to be disregarded.

It should be noted that the above applies regardless of the field of a SWIFT MT700 (or MT710 or MT720) message in which a *non-documentary condition* appears.

ANALYSIS

Non-documentary conditions have been addressed in the UCP 600, ISBP 745 and in official ICC Opinions:

UCP 600 sub-article 14 (h) states "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."

ISBP 745 paragraph A26 states "When a credit contains a condition without stipulating a document to indicate compliance therewith ("non-documentary condition"), compliance with such condition need not be evidenced on any stipulated document. However, data contained in a stipulated document are not to be in conflict with the non-documentary condition. For example, when a credit indicates "packing in wooden cases" without indicating that such data is to appear on any stipulated document, a statement in any stipulated document indicating a different type of packing is considered to be a conflict of data."

ICC Opinions include:

ICC Opinion R892 (TA878rev) - where the conditions mentioned in field 47A of a credit made reference, in certain circumstances, to the presentation of a credit note along with the beneficiary's invoice. However, whether or not a credit note was to be presented could not be determined by any bank from the presentation alone and was at the discretion of the beneficiary. The conditions under which the credit note was to be issued were non-documentary and, as stated in UCP 600 sub-article 14 (h), must be considered as not stated and be disregarded for the purpose of examining the presentation.

ICC Opinion R743 (TA689) - that a condition in a credit stating, "Goods must be shipped in export standard packing and clearly marked with country of origin and shipping marks in each and every package", was non-documentary according to UCP 600 sub-article 14 (h). Furthermore, provided the beneficiary did not insert data on one or more of the stipulated documents that conflicted with this requirement, the documents would be compliant in this respect.

ICC Opinion R631 (TA 644rev) - various credits had been received that included details relating to shipment of the goods, such as transport 'from' and 'to' and the latest shipment date, but did not require the presentation of any document evidencing compliance therewith. As such, where it had been agreed to handle such a transaction, these details may be disregarded for the purpose of determining a complying presentation and need not be stated in any other stipulated document presented. However, the data in the other stipulated documents would still be subject to review under sub-article 14 (d) to ensure that any data

was not conflicting with the data in the credit. Should the beneficiary, nevertheless, elect to insert such data on any other stipulated document that is presented, then it must ensure that the data does not conflict with the data in the credit.

SUMMARY

As highlighted in ISBP 745 Preliminary Consideration (iv), many of the problems that arise at the document examination stage could be avoided or resolved by the respective parties through careful attention to detail in the credit application and issuance of the credit thereto. The applicant and beneficiary should carefully consider the documents required for presentation, by whom they are to be issued, and their data content.

Such attention to detail should also be applied to any potential *non-documentary condition*. Issuing banks should be aware of the potential problems (e.g. unnecessary disputes or the incorrect citing of discrepancies) that may arise in respect of a *non-documentary condition* and discuss with the applicant the inclusion of a suitable document in the documentary credit, or evidence of compliance with the condition could be incorporated into the wording of an already stipulated document, or the removal of such condition, prior to the issuance of a documentary credit.

This is in line with the recommendation given in the 'Commentary on UCP 600' (ICC Publication No. 680), which emphasises that the issues covered by UCP 600 sub-article 14 (h) can be easily resolved by issuing banks and applicants ensuring that any term or condition stated in a documentary credit is clearly linked to a stipulated document.

Where, nevertheless, a *non-documentary condition* is incorporated into a documentary credit, banks and the beneficiary should pay attention to UCP 600 sub-articles 14 (h) and 14 (d).

Issuing banks should exercise due care in ensuring that a documentary credit does not include a *non-documentary condition* as this may lead to unnecessary disputes or incorrect identification of discrepancies. If a documentary credit does include a *non-documentary condition*, the beneficiary would be entitled to disregard it. A bank may not refuse to honour or negotiate a presentation on the basis that a *non-documentary condition* is not addressed in any stipulated document that is presented.

Should a stipulated document that is presented contain data relating to a *non-documentary condition*, a beneficiary must ensure that the data is not in conflict with that *non-documentary condition*.

In conclusion, and following consultation with the applicant, it is recommended that if a documentary credit application form includes a condition that could be complied with by the presentation of a specific document, or evidence of compliance with the condition could be incorporated into the wording of an already stipulated document, then it should be so mentioned in the application form and the documentary credit, and not included so that it becomes a *non-documentary condition* that will be disregarded.

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