

FORMER AMBASSADOR JOHN DANILOVICH ELECTED ICC SECRETARY GENERAL

A global business leader and international diplomat, John Danilovich, has been appointed Secretary General of the International Chamber of Commerce (ICC). ICC's World Council voted unanimously to approve Mr Danilovich's appointment in Geneva on June 27, following a recommendation by the ICC Executive Board.

A selection committee appointed by the Board reviewed the qualifications of more than 300 candidates before selecting Mr Danilovich based on his impressive credentials in the international arena and extensive experience of trade related issues.

"John will be an outstanding Secretary General," said ICC Chairman Harold (Terry) McGraw III, who is Chairman of McGraw Hill Financial. "His experience and deep understanding of global markets as a business leader will be incredibly important to ensure public-private sector engagement in driving economic growth, creating jobs and raising standards of living around the world. We are pleased he will be taking the lead of the world's business organization."

Mr Danilovich has been active in the international maritime industry for several decades, holding executive board positions in a number of companies. He served as the US Ambassador to Brazil and to Costa Rica, and from 2005-2009 was the chief executive officer of the Millennium Challenge Corporation, an innovative and successful foreign aid programme. His current positions include Board Member of the International Advisory Council for the Harvard School of Public Health; Senior Advisor at the Center for Strategic and International Studies (Washington, DC); Life

Member of the Council on Foreign Relations (New York); Member of the North American Advisory Council of Chatham House (United Kingdom); and Member of the Board of Directors at d'Amico International Shipping.

"John is experienced with working in a multilingual and multicultural environment and possesses a keen understanding of ICC's unique value as a provider of business standards, policies, dispute resolution services, and practical training and tools for business," stated Mr McGraw. "He has both the personal qualities and the professional experience needed to take the organization to another level in its ability to mobilize business and influence policy decisions on the world economy."

As US Ambassador to Costa Rica, Mr Danilovich played a significant role in driving the Central America Free Trade Agreement (CAFTA). He is skilled at building international partnerships and has established advocacy relationships with policymakers, foreign dignitaries and leaders in major international forums.

Mr Danilovich, who has a Bachelor of Arts degree in Political Science from Stanford University and a Master of Arts degree in International Relations from the University of Southern California (London), said he will be honoured

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to take up the challenges when he takes the reins as ICC Secretary General on 30 June 2014. A long-term London resident, Mr Danilovich and his English-born wife, Irene Danilovich, will be moving to Paris.

I greatly look forward to working with ICC professionals, leadership and national committees around the world to strengthen the organization's role and visibility," he said. "This is an exciting organization at a crucial moment in its development. I want to build on the success achieved over the last few years under the leadership of former Secretary General Jean-Guy Carrier, who set ICC on a solid foundation and a steady course."

Six new members of the ICC Executive Board were also elected during the gathering of ICC's supreme authority. They were Maria Fernanda Garza, Chair and CEO of Orestia and Chair of ICC Mexico; Dennis M. Nally, Chairman of PricewaterhouseCoopers International; Yongmaan (YM) Park, Chairman and Chief Executive Officer of Doosan Group; Kasemsit Pathomsak, President and Chief Executive of Merchant Partners Securities and Chair of ICC Thailand; Latifur Rahman, Chairman of Transcom Group and Vice-Chair of ICC Bangladesh; and Thomas Wellauer, Chief Operating Officer of Swiss Re and Chair of ICC Switzerland. The World Council also appointed Kap-You (Kevin) Kim, Partner Bae, Kim & Lee as a Vice-President of the International Court of Arbitration as well as 13 new Court members.

The ICC World Council meeting took place as part of three days of meetings of ICC governing bodies in Geneva. On Wednesday, the ICC Executive

Board voted in Jan Kleinheisterkamp, Associate Professor of Law at the London School of Economics and Sven Dumoulin, General Counsel Executive Committee Member, Akzo Nobel NV as new members of the Governing Body for Dispute Resolution and announced that Karien Van Gennip, General Manager, Private Banking and Investments at ING, would take over as Chair of the ICC Finance Committee.

TRADE FACILITATION IMPLEMENTATION OFF TO GOOD START, WCO DIRECTOR TELLS ICC

Speaking to over 40 members of the ICC Commission on Customs and Trade Facilitation on June 19, World Customs Organization (WCO) Director of Compliance and Facilitation, Gaozhang Zhu said he was optimistic about the implementation of the World Trade Organization (WTO) Agreement on Trade Facilitation adopted at the WTO's Ninth Ministerial Conference in Bali at the end of 2013.

On behalf of its global network reaching 6.5 million companies worldwide, ICC was steadfast in its campaign to push for improvements in trade facilitation which according to an ICC report could boost the world economy by US\$1 trillion annually and result in job gains of 21 million.

"Because most articles of the WTO's Agreement on Trade Facilitation will be implemented by Customs agencies, the WCO is well-positioned to drive the trade facilitation agenda," Mr Zhu said. "The aim is to secure a resilient supply chain. We are off to a good start but the hard work is just beginning."

Mr Zhu, a guest speaker at the meeting, addressed ICC members from 20 countries at ICC global headquarters in Paris yesterday.

Underscoring the importance of business engagement, Mr Zhu gave an overview of the ways in which the WCO is working to support WTO members toward implementation. He told meeting participants that in December 2013 the WCO had adopted a resolution committing to the efficient implementation of the agreement on trade facilitation and had since trained a pool of some 500 experts to help Customs administrations and other government agencies.

Among other tools developed by WCO is the WCO Implementation Guidance, an interactive tool that gives an overview of each article of the agreement and provides best practice scenarios and performance indicators.

ICC has a longstanding strategic relationship with the WCO and through the work of the commission and the World Chambers Federation, ICC plays a key role ensuring that the voice of the private sector is heard in the implementation process.

Commission Vice-Chair Oliver Peltzer said: "The work to be done by Customs to implement the trade facilitation agreement must be supported by industry, as the private sector stands to benefit from seamless supply chains."

Mr Zhu said: "Compliance and facilitation are two sides of the same coin and we cannot overstress one at the expense of the other.

"The higher the compliance the higher the revenue, the better the facilitation, the safer society and that is why business must be involved in the international standards setting process. Working together will bring greater satisfaction for all and greater trade facilitation."

Opening the meeting, Norman Schenk, Vice-President of Global Customs Policy and Public Affairs at UPS and Chair of the ICC commission told participants: "One of the changes we have seen in recent years is that customs and regulation agencies are getting a clear message from governments which is 'we need to grow economically' and it all comes down to cross border trade facilitation; the true key to economic growth."

In an afternoon break-out session on Customs issues led by commission Vice-Chair Jean-Marie Salva, WCF Director Anthony Parkes brought attention to the important role that chambers of commerce play in facilitating cross border trade. "Chambers are a natural and preferred partner for Customs not only because of their heritage and unique nature but because they are non-commercial multi-sector organizations serving all sectors and in particular small businesses."

Another break-out session, led by Mr Peltzer, focused on transport and logistics issues including infrastructure in the context of trade facilitation and the use of Incoterms® rules for transport carriers. Other important issues affecting cross border trade addressed during the meeting included Rules of Origin, Authorized Economic Operators and Trusted Traders programmes as well as risk analyses related to intellectual property rights infringements.

The ICC Commission on Customs and Trade Facilitation has over 200 members from 49 countries. Commission members comprise customs policy, transport and logistics specialists from ICC member companies and business representative organizations.

To improve business' understanding of the WTO Agreement on Trade Facilitation and facilitation measures, ICC is creating a practical online resource centre – due to launch soon – providing an overview of available trade facilitation tools.

ICC RELEASES GLOBAL SURVEY 2014: RETHINKING TRADE AND FINANCE

The International Chamber of Commerce (ICC) has released the Global Survey 2014: Rethinking Trade and Finance on July 2, its largest and most comprehensive Global Survey to date – including data from 298 banks across 127 countries. The Survey concludes that the growth rate of international trade has dropped drastically when compared to the years prior to the global financial crisis

Lack of available trade finance causing global trade growth to slow

Global trade growth was a shade above 3% during 2013, although picked up to an annualized growth rate of 4% during the first quarter of 2014 and is anticipated to accelerate beyond 5% through 2016.

"We are cautiously optimistic, with a realization that this optimism is framed within a fragile international trade environment," said Vincent O'Brien, Member of the ICC Banking Commission Executive Committee. "The fragility is magnified by unpredictable political developments on the fringes of Europe, the Middle East, South East Asia and other part of the emerging world."

Further encouragement came from the survey with 68% of respondents reporting positively that the availability of trade finance increased by value

compared to the previous year. However, in terms of the "trade finance gaps", 41% of respondents reported that they perceived a shortfall of trade finance globally. According to Mr O'Brien: "This gap remains a major challenge, especially for SMEs as without access to trade finance, now widely acknowledged as an engine of growth, SMEs will not be able to contribute substantially towards economic recovery and development."

KYC and AML regulations causing banks to decline transactions and close relationships

Know Your Customer (KYC) and Anti-Money Laundering (AML) regulations caused 68% of respondents to decline transactions, and nearly a third (31%) to close down correspondent account relationships. Indeed, 41.03% of respondents reported that complying with sanctions restricted trade finance operations in 2013 to a greater extent than in previous years. Certainly, such compliance is expensive, with the ICC Global Survey citing the cost of compliance for one counterparty as high as US\$75,000.

G20 countries stalling agenda to open up world trade through trade-restrictive measures

The ICC Global Survey also highlighted that G20 countries accounted for three quarters of the trade restrictive measures imposed since 2008, with World Trade Organization figures showing that these countries introduced 193 new trade restrictive measures between December 2012 and November 2013. Such restrictions – many of which are protectionist and therefore trade distorting – have stalled the agenda to open up world trade.

Basel III regulations having an impact on bank liquidity

65% of respondents stated that Basel III regulations have affected the cost of funds and the liquidity of trade finance. Within the Export Finance section of the Global Survey, 72% of respondents agreed that Basel III has made them more innovative as an organization, although 69% also said it caused them to increase pricing for their customers.

South-South exports represent 46% of global exports

One key finding of the Global Survey is that South-South exports now represent 46% of global exports. Also, 40% of respondents identified Asia as the primary focus for trade. Even with trade slowing in the emerging markets, their significance within the global economy is increasing as new trade corridors are opening up. Yet it is these markets that most keenly feel the pinch on trade financing availability. Through aiding senior executives and world leaders in formulating policy, the Global Survey could prompt changes that would close the trade finance gap as well as increase productivity and competitiveness in trade, and thus create jobs.

Enhanced partnership between trade facilitation stakeholders

“The ICC Global Surveys provide meaningful statistical data to stakeholders and policymakers, and over the past six years ICC Banking Commission has played a key role in influencing regulatory reform,” said Kah Chye Tan, Chair of the ICC Banking Commission. “This study has reached a higher level of participation than ever before, and its broad geographical reach enhances the richness of the data collected. As such,

we trust that the impact of the results on trade finance regulation, and the subsequent change it triggers, will be the most significant to date.”

Indeed, one important benefit of the financial crisis is the spirit of partnership that has evolved between trade and trade finance stakeholders – something very evident since the commencement of the ICC Global Trade Finance Surveys.

IMPLEMENTING TFA NOT A ‘WALK IN THE PARK’, WTO D-G AZEVEDO TELLS ICC

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Speaking in Geneva on June 26 to the ICC Executive Board, Mr Azevedo said: “Even if we don’t change the face of world trade over night, you have to keep moving in the right direction.”

Mr Azevedo outlined work being undertaken to complete a post-Bali programme, saying that a critical element of the undertaking would be the completion of the Doha Development Agenda. This, he said, would unlock the doors for many other initiatives.

Mr Azevedo said that the new work programme should be finalized as

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quickly as possible. "Either you do it quickly or you will lose momentum," he said, noting that the endeavour would require an open mind and flexibility and that members should remain realistic. "What we cannot have is a full paralysis of negotiations. We have to recalibrate and recalibrating starts with the acceptance that we have to be realistic," he said.

Noting that protectionism was on the rise, Mr Azevedo said: "To ensure there is no room for protectionism we must continue to move with the disciplines in whatever way possible and make sure there is no room for backtracking." He stressed that while the private sector often wanted to know what it would be gaining, it was equally important to look at potential losses. He said that a system of ratcheting would prevent any backtracking and set the stage for future work. "We need to do what we can now," he said.

During his address, Mr Azevedo also recognized the importance of regional negotiations such as the Trans-Pacific Partnership (TPP), a Transatlantic Trade and Investment Partnership (T-TIP), a Regional Comprehensive Economic Partnership (RCEP), and the Pacific Alliance but warned that the global economy would lose out if there was no movement multilaterally.

Mr Azevedo updated ICC on the work of the WTO since the historic adoption of the Agreement on Trade Facilitation at the WTO's Ninth Ministerial Conference last December. He also conveyed his optimism for current negotiations on the expansion of product coverage of the Information Technology Agreement, which he described as a very important element.

Referring to the Bali package itself, Mr Azevedo said that incorporating the

trade facilitation agreement into the WTO disciplines was not "a walk in the park" and that ICC would most likely be called should help be required. One area of particular difficulty noted by Mr Azevedo, related to technical assistance for poorer countries, which had signed the deal with the promise of technical assistance to implement it. According to Mr Azevedo, the WTO was currently considering ways to help countries that fear they may not attract the donors for the required assistance. "There is a commitment to provide technical assistance to everyone. At some point the private sector may be able to help in this regard and we may come back to ICC because this element may be key to making sure that the trade facilitation is implemented fully."

Mr Azevedo underscored ICC's valuable role in supporting the work of the WTO and said: "In Bali, it was important for some critical delegations to show flexibility and to take risks and they were only in a position to take those risks because they knew that the private sector was behind them."

ICC Chairman Harold (Terry) McGraw reaffirmed ICC's commitment to establishing a post-Bali work programme and applauded Mr Azevedo's efforts to this end.

ICC BANKING COMMISSION WINS BEST NON-BANK TRADE SERVICES PROVIDER FOR 2ND CONSECUTIVE YEAR

The International Chamber of Commerce Banking Commission has won Trade and Forfeiting Review's (TFR) 2014 Excellence Award for Best Non-Bank Trade Services Provider for the second year in a row.

The award follows the commission's recent launch in New York of the expanded ICC Trade Register Report 2014, which provides empirical evidence that trade and export finance, in all forms, is a low-risk bank financing technique.

In an honourable mention, SWIFT – the financial messaging provider and key long-term institutional partner of the ICC Banking Commission – was also awarded the 2014 Excellence Award Silver Medal for Best Non-Bank Trade Services Provider. On 1 July 2013, the ICC Uniform Rules for Bank Payment Obligation was launched worldwide. The joint initiative between ICC and SWIFT produced a 21st century standard in supply chain finance to facilitate international trade.

"This recognition marks the shifts taking place in the Banking Commission as we strive to keep pace with the changes taking place in world markets," said Tan Kah Chye Chair of the ICC Banking Commission. "We will continue to build on our wealth of experience while expanding areas such as standards-writing, policy-making, market intelligence and education."

TFR is a leading trade and supply chain finance information resource providing essential updates to professionals all around the globe. Through an independent, third-party assessment based on testimonial comments and marketplace feedback of 500 voters, the TFR award goes a long way to help the Banking Commission benchmark the success of its dynamic strategy and projects.

"The mandates and functions of the Banking Commission have significantly evolved and expanded

over the last 10 years of our 80-year history,” said Thierry Senechal, ICC Banking Commission Senior Policy Manager. “The award is a tribute to the leadership, members, staff and partners of the ICC Banking Commission who engage in the important work of supporting the trade finance industry every day. We are thrilled to be recognized for the work we undertake – from working on regulatory issues and the production of market intelligence to providing training or drafting international business standards.”

The ICC Banking Commission strives to be the most reputable and reliable provider of market intelligence for the banking industry. The commission’s most prominent publications the ICC Trade Register Report 2014 – presenting data and analysis from the ICC Trade Register – and the annual global survey series entitled Rethinking Trade and Finance, both provide timely, accurate and comprehensive data that contributes to true portrait of the trade and export finance sector.

NEW PUBLICATIONS *

ICC Guide to Uniform Rules for Bank Payment Obligations

The ICC Guide to the Uniform Rules for Bank Payment Obligations examines the ways in which the three critical components - standards, platform and rules - must interact and complement one another to facilitate the successful completion of a BPO transaction.

BPOs enable banks to mitigate the risks associated with international trade to the benefit of both buyers and sellers. They enable flexible financing propositions across the entire transaction lifecycle, including pre-shipment, post-shipment and buyer

finance. This invaluable handbook explains workflow in detail and guides practitioners in their interpretation of the Uniform Rules for Bank Payment Obligations. The Guide to URBPO provides real life business scenarios and practical examples of how a Bank Payment Obligation may be applied in practice to support a variety of customer value propositions. It will help corporates to take full advantage of a host of bank-assisted open account solutions designed to optimise the management of the cash conversion cycle and of working capital.

This Guide is a vital reference for anyone involved in financial supply chain transactions and for students of international commerce.

Price: Rs. 6500

Uniform Rules for Bank Payment Obligations

ICC’s URBPO are the first-ever Uniform Rules for Bank Payment Obligations (BPOs), a 21st century standard in supply chain finance that governs Bank Payment Obligations transactions worldwide.

BPO benefits include:

- Mitigating risks in international trade for buyers and sellers alike
- Speed, reliability, convenience
- Reduced costs and improved accuracy
- Enhanced risk management
- Assurance of payment
- Access to flexible financing
- Securing the supply chain

Price: Rs. 2000

INTERNATIONAL STANDARD BANKING PRACTICE

International Standard Banking Practice - ISBP 2013 is the most up to date, comprehensive guide to handling and examining trade documents under documentary credits. An invaluable source of practical information for trade finance professionals and academics, this revised edition of ISBP provides readers with the latest ICC approved guidelines for all parties to documentary credits.

ISBP 2013 details how to apply banking practices under UCP600 to various trade documents (invoices, transport documents, bills of lading, certificates of origin...) and features the following documents, which were not covered in previous editions:

- Packing list
- Weight list
- Beneficiary certificate
- Non-negotiable sea waybills
- Analysis, Inspection, Health, Phytosanitary, Quantity and Quality certificates

Price: Rs. 2500

ICC Uniform Rules for Forfaiting, Pub no 800

Forfaiting facilitates the provision of finance to the international trade community. It eliminates certain risks, improves Cash Flow and can considerably speed up and simplify transactions. The International Chamber of Commerce (ICC) and the International Forfaiting Association (IFA) have joined forces to provide the business community with the first ever Uniform Rules on Forfaiting (URF 800).

ICC Uniform Rules for Forfaiting (URF 800) cover controversial subjects and clarify complex issues such as:

- ✓ Forfaiting agreements and conditions in the primary market
- ✓ Forfaiting confirmations and conditions in the secondary market
- ✓ Payments and payments under reserve
- ✓ Liabilities and More

Price: Rs 2500

* The publications are available at

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FORTHCOMING EVENTS

ICC INDIA – BNP PARIBAS SEMINARS ON MANAGING RISKS THROUGH LCS, GUARANTEES, SBLCS & BPO

September 3-5, Hyderabad and Bangalore

September 03 – Hyderabad

September 05 – Bangalore

Objective

The workshops will essentially be focusing on Letters of Credit, Guarantees and URBPO rules.

Who should attend

Trade finance officers in banks;

Export or Import consultants and advisors

Professionals working in finance and risk departments;

In-house freight and carriage operatives with carriers;

Contract/Execution managers involved in the export and import of goods;

The seminar will be led by Mr K Parameswaran, Corporate Advisor and a leading trade expert in International Trade and Finance.

DOCDEX DECISION NO. 281

Parties

Initiator: Bank A

Respondent: Bank I

Background

The Initiator is the advising, confirming and nominated bank in respect of a documentary credit issued by Bank I. The credit is available with Bank A by deferred payment 30 days after the B/L date. The credit was transmitted via SWIFT MT700 and is subject to UCP 600 (issued 12.11.2007 and includes the wording "UCP LATEST VERSION" in SWIFT field 40E).

Bank A has accepted documents presented by the beneficiary for USD 13,401,233.70 and claimed same from Bank I, but Bank I has only reimbursed Bank A for a total of USD 12,988,745.50, i.e., USD 412,488.20 less.

The presentation included two bills of lading dated 6 November 2007 and 13 November 2007 respectively.

The Respondent has replied to the request, providing its arguments. The Experts have not requested any supplemental documents.

Summary of representations

12.11.2007

Bank I issued a documentary credit for USD 14,000,000. The credit had the following goods description: "Covering: One cargo of fuel oil 180 (...) for reselling as bunker by the quantity of 25200-26000 MT (Company X - i.e. applicant's - Option) to be delivered CIF Port Said Port during the second half of November 2007.

Price: CIF Port Said Port: Per M/T equal to Platt's European market scan high CIF quotation for fuel oil 3.5 pct cargoes under the heading 'CIF med Genova-Lavera' on the B/L date.

One immediately previous quotation and one immediately following quotation to apply (3 quotations) plus the premium of USD 28.69 per M/T.

In case the bill of lading [date] falls on non-publication date, then the immediately preceding and immediately following quotation to apply (2 quotations)."

The credit further stipulated (additional condition K under SWIFT field 47A): "The value of the L/C may escalate deescalate [sic] in relation to above price clause without any further amendment on our part."

15.11.2007

Bank A sent the following message to Bank I: "We have notified this documentary credit adding our confirmation."

28.11.2007

Bank I sent the following message to Bank A (via SWIFT MT799): "At our principal's request we draw your kind attention that the value of the

consignment effected under L/C is USD 12988745.50 and should be complied with all L/C terms and conditions”.

30.11.2007

Bank A responded as follows: “In response to your SWIFT MT 799 sent to us on 28.11.07, please note that we have not received documents to this date and therefore disregard the amount stated in your said SWIFT, which we do not consider as being an amendment. The doc. credit amount is USD 14,000,000 and fluctuates according to the price clause as per additional condition K under TAG 47A. The credit being confirmed by our bank, it is quite obvious that at time of utilization we will examine the documents with great care.”

11.12.2007

Bank A dispatched documents to Bank I via courier for a total amount of USD 13,401,233.70, and at the same time claimed the same amount value 13.12.2007 via SWIFT message MT754.

13.12.2007

Bank I sent the following message (SWIFT message MT799) to Bank A: “Re your MT 754 dated 11/12/2007 have instructed (XXX) to credit your A/C with (YYY) for USD 12988145.50 informed by [Company X - i.e. applicant] that B/L date is 13/11/2007 consequently amount calculated based on B/L date, i.e., 13.11.2007 and price clause on credit terms QUOTE CIF med Genova - on B/L date - UNQUOTE. Also due date based on date of shipment which is 13/11/2007”.

14.12.2007 - 22.05.2008

Bank A and Bank I exchanged views on the matter, but were unable to

reach a common understanding. Their respective main arguments were the following:

Bank I

- Shipment date must be deemed to be 13.11.2007 because of UCP 600 sub-article 31 (b), which reads: “If the presentation consists of more than one set of transport documents, the latest date of shipment as evidenced on any of the sets of transport documents will be regarded as the date of shipment.” Consequently, 13.11.2007 should be the date used to determine the price in accordance with the price clause stated in the credit.

- The price clause in the credit (part of the description of the goods) mentioned “B/L date” in singular (rather than B/L dates) - indicating that one single date should be used to determine the price. There was no UCP 600 refusal according to article 16, because the documents were accepted and Bank A transferred a lesser amount.

Bank A

- The shipment was effected from different ports with different B/L dates, and the price (which was Platt’s related) was calculated for each respective quantify according to the respective B/L date and the price clause of the credit.

- UCP 600 sub-article 31 (b) does not apply - as the purpose of this sub-article is to determine the shipment date when there is more than one set of transport documents when part of the same presentation.

- The fact that “B/L date” is in the singular is of no effect because of UCP 600 article 3, which states that “words

in the singular include the plural and in the plural include the singular.”

- Bank I has failed to refuse the documents in accordance with UCP 600 article 16 - i.e., stating the [alleged] discrepancy in the unit price calculation and amount of the commercial invoice.

- The SWIFT message sent 28.11.2007 cannot be considered as an amendment to the documentary credit.

Issue to be decided

Bank A claimed USD 13,401,233.70, but Bank I paid only USD 12,988,745.50. Was Bank I entitled to deduct the difference, i.e., USD 412,488.20 from the amount claimed?

Analysis

It is argued that, according to UCP 600 sub-article 31 (b), the latest shipment date as shown on the sets of bills of lading (i.e. 13.11.2007) must be used to determine the shipment date and, as a result, to calculate the unit price and amount of the drawing.

The purpose of this sub-article is to determine the “date of shipment”, i.e., to be able to verify if goods are shipped timely as expressed in the credit or if the documents are presented within the period allowed for presentation. UCP 600 does not cover a scenario where the price of a certain commodity is based on “B/L date”; consequently, this must be determined by the wording of the credit.

The Panel therefore concludes, based on the wording in the credit, that the date to be used to calculate the price is the actual “B/L date” for each presented set of bills of lading.

B/L date expressed in singular

The rule quoted in article 3 refers to the articles of the UCP 600 and does not necessarily extend to the documentary credit or the documents presented.

The credit calls for shipment from “Any Port” to “Port Said Port/Egypt” and prohibits “partial shipments”. By calling for shipment from “any port”, the credit effectively opens the possibility that more than one B/L may be presented - showing different B/L dates. Consequently, it should have been recognized by Bank I that the presentation could include more than one set of bills of lading containing different B/L dates.

The wording “B/L date” can therefore not be interpreted in any absolute form, indicating that there must be only one.

No formal refusal according to UCP 600 article 16 was made.

It is clear from the correspondence that Bank I accepted the documents and therefore its obligation under the credit is to honour the drawing. The only disagreement is as to the amount of the drawing. If Bank I was of the opinion that the commercial invoice had been issued for an amount different from that allowed by the terms and conditions of the credit, it should have issued a refusal notice for this reason.

By failing to formally refuse the documents according to UCP 600 article 16, and by paying a part of the amount claimed, Bank I is precluded from claiming that the documents were not in compliance with the credit terms and conditions, and therefore is

obligated to reimburse Bank A for the full amount that was drawn.

No amendment made

The permissible amount to be drawn, according to Bank I, was given in a free format text message (SWIFT MT799) and not as an amendment to the credit. Therefore, this message is not to be seen as amending the credit, and compliance of the documents should be determined according to the original text of the credit.

Analyzing the fluctuation clause

The use of fluctuation clauses in documentary credits can often cause problems. Banks are, according to UCP 600 sub-article 14 (a), expected to be able to “ ... examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation”. Banks are not expected to check external sources, e.g., Platt’s in order to determine compliance.

In this credit the fluctuation clause states “The value of the L/C may escalate deescalate [sic] in relation to above price clause without any further amendment on our part.” Such wording must be considered automatic and unlimited and, in any case, the amount to be drawn should not be determined by a statement from the applicant of the credit.

The formula for calculating the amount should, where such is part of the goods description, be determinable from the invoice presented.

The goods description in the invoice corresponds with the goods description mentioned in the credit.

Decision

The documents were credit compliant and the amount drawn was clearly within the amount permitted by the credit. For that reason Bank I is obligated under the credit to reimburse Bank A for the full amount claimed i.e. USD 13,401,233.70.

QUERIES ANSWERED BY ICC BANKING COMMISSION

UCP 500 articles 13 and 14; sub-articles 14 (d) (i) and (ii) and 14 (e)

Where a credit required a certificate of origin “approved” by the “Arab League Chamber of Commerce”; whether a notice of refusal was sent within seven days after receiving the documents

Query [TA 649rev]

The documentary credit was subject to UCP 500. The L/C documentary requirement in relation to the query is given below:

“Certificate of origin approved by the Arab League Chamber of Commerce”

Under additional conditions:

“In case of documents not in compliance with credit terms you are held to communicate to us an exhaustive list of discrepancies. (A commission in euros ... will be deducted from used amount in case documents presented with discrepancies).”

- 2007-06-10: Documents including a certificate of origin issued by the Country S Chamber of Commerce and legalized by the consulate of Country M were negotiated and sent to the issuing bank.

- 2007-07-10: Advice of refusal: Documents refused due to

discrepancy: “Certificate of origin not approved by Arab League Chamber of Commerce. We keep the documents at your disposal in conformity with articles 13 and 14 of UCP 500.”

- 2007-07-16: The discrepancy was refuted by the confirming bank, as Country M is a member of the Arab League. As the confirming bank’s claim was not honoured, it traced the outstanding amount and reiterated that the refusal was sent too late by the issuing bank. The confirming bank stated that the issuing bank is precluded from claiming that the documents are discrepant, as the refusal was not sent within the time stipulated in UCP 500 article 14.

- 2007-09-24: The issuing bank argued that the confirming bank had not listed the discrepancies and suggested presentation of a certificate of origin approved by the Arab League Chamber of Commerce.

The confirming bank argued that the listing of discrepancies was not applicable, as the confirming bank considered the documents compliant. The certificate of origin was legalized by the consulate of Country M. Country M is a member of the Arab League. The confirming bank reiterated that the refusal was sent too late, and therefore the issuing bank is obliged to pay irrespective of the documents being discrepant or not.

The issuing bank has still not paid.

Analysis

The Arab League currently consists of 22 member states, of which Country M is one. The letter of credit required presentation of a certificate of origin approved by the Arab League Chamber

of Commerce. In fact there is no “Arab League Chamber of Commerce”, but there are chambers of commerce able to issue certificates of origin for exports to the 22 member states. In most countries, the organization is prefixed by “Arab-[country of export] Chamber of Commerce”. For example, the Arab-British Chamber of Commerce issues certificates of origin in relation to UK exports to countries in the Arab League. In letter of credit terminology, legalization by the consulate of Country M is an act separate from a certification (or approval - as stated in the credit) by an Arab League Chamber of Commerce, for example, a certificate of origin certified by a chamber of commerce and legalized by X country consulate/ embassy.

The condition in the credit stipulating that where discrepancies exist the confirming bank must provide the issuing bank with an exhaustive list is fairly subjective in that it is dependent upon the views of the respective banks, except where unquestionable discrepancies exist, such as late shipment, etc. If the confirming bank finds the documents to be in compliance (even if the issuing bank may subsequently find one or more discrepancies that are proved to be valid), the clause has no effect based on its own examination and determination of compliance.

UCP 500 sub-articles 14 (d) (i) and (ii) read:

(i) “If the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, decides to refuse the documents, it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means,

without delay but no later than the close of the seventh banking day following the day of receipt of the documents. Such notice shall be given to the bank from which it received the documents, or to the Beneficiary, if it received the documents directly from him.

(ii) Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.”

UCP 500 sub-article 14 (e) reads: “If the Issuing Bank and/or Confirming Bank, if any, fails to act in accordance with the provisions of this Article and/or fails to hold the documents at the disposal of, or return them to the presenter, the Issuing Bank and/or Confirming Bank, if any, shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the Credit.”

Given the timeline in the query and absent any other information pertaining to the delivery of the documents, it must be presumed that the issuing bank did not provide a refusal by the close of the seventh banking day following the day of receipt of the documents.

Conclusion

A certificate of origin issued by the Country S Chamber of Commerce and legalized by the Country M Embassy was presented, whereas a certificate of origin approved by the Arab League Chamber of Commerce was required by the credit. It is not clear what was intended by the use of the word “approved” and, as mentioned under “Analysis”, the Arab League is

made up of 22 member states, each of which may issue, certify or legalize documents. It therefore follows that a document issued by the “Arab League” would not be possible. The beneficiary should have sought an amendment to reflect the form of document that it could present.

In any event, the requirements of sub-articles 14 (d) (i) and (ii) are quite specific, and it is clear from the timeline shown in the query that the issuing bank did not provide a notice of refusal by the close of the seventh banking day following the day of receipt of the documents. According to sub-article 14 (e), the issuing bank is therefore precluded from claiming that the documents are not in compliance, and it must effect settlement according to the terms and conditions of the credit.

UCP 600 sub-article 20 (a) (v)

Where a credit required presentation of a bill of lading marked “freight prepaid” but contained pre-printed wording that qualified any notation of “freight prepaid”

Query [TA 642rev]

We, as confirming bank, negotiated documents for our customers and sent the documents to the issuing bank. The credit required submission of a B/L marked freight prepaid. The issuing bank refused the documents due to a number of discrepancies. One of them being, “Data within B/L conflicting with regards to freight prepaid”.

The bill of lading was marked with notation “freight prepaid” and also stated as one of the standard terms and conditions printed on the face of the B/L: “For freight prepaid bill of lading, delivery of cargo is subject to realization of cheque”.

Our opinion was that, as bankers, we should be guided by what is there as a notation on the B/L regarding payment of freight and not ensure whether actual payment has been made or is subject to realization. Second, even in cases where the cheque for freight is dishonoured, it is a matter between the shipper and the shipping company, which is outside the purview of UCP

We shall be grateful for the Opinion of the ICC Banking Commission on this matter.

Analysis and conclusion

The credit required presentation of a bill of lading marked “freight prepaid”. The bill of lading was so marked, but contained pre-printed wording that provided qualification of any notation of “freight prepaid”.

It should be noted that banks are not required to examine the terms and conditions of a bill of lading to determine compliance (sub-article 20 (a) (v)).

The bill of lading is not discrepant.

UCP 600 sub-article 24 (b) (i); UCP 500 article 28

Whether an international consignment note needed to bear wording or a marking indicating “copy for shipper”

Query [TA 656]

We shall appreciate your Opinion on the following issue under a credit subject to UCP 600. During determination of compliance of a presentation under a credit subject to UCP 600 calling for “International Consignment Note - Copy for Shipper”, we had conflicting views as follows:

a. The presented document must bear the words or marking “Copy for shipper”;

b. It is acceptable under sub-article 24 (b) (i), since it bears no marking indicating for whom it has been prepared.

For guidance we referred to the Opinions R 371 and R 467 covering identical credit requirements, but failed to find a clear solution for the matter at hand under the aforementioned sub-article. Therefore, we shall appreciate if you would kindly let us have your Opinion as to whether the presented document is acceptable without the marking “Copy for Shipper” under the above-mentioned credit term, without expressly requiring the document to be so marked.

Analysis

It should be noted that the requirements for road, rail and inland waterway transport documents have been modified in UCP 600. The positions taken in Opinions R 371 and R 467 reflected the fact that UCP 500 article 28 did not provide any requirements as to the form of document to be presented. As stated above, sub-article 24 (b) (i) now makes specific reference to the form of document required for presentation.

The credit required presentation of an “International Consignment Note - Copy for Shipper”. This requirement presupposed that the document would be issued in a fanfold style that would provide a copy for the shipper. When the document is not issued in such a format, there would be no version marked “Copy for Shipper” or a need for the carrier or agent to annotate the document in such a manner.

Conclusion

On the basis that the document did not indicate that it was intended for a party or function other than for use by the shipper, the absence of an indication that the document was the one intended to serve as the “Copy for Shipper” does not create a discrepancy.

NEWS ROUNDUP

ITALIAN BANKING GROUP JOINS EIB'S GREEK FACILITY

Italian banking group Intesa Sanpaolo has signed a EUR 75 million agreement with the European Investment Bank (EIB) to become a confirming bank in its Trade Finance Facility (TFF) for Greece.

Established in June 2013, the TFF was the EIB's first ever trade finance facility and covers most of the risk attached to Greek letters of credit (L/Cs).

Broader coverage

Intesa Sanpaolo joins other confirming banks including Citi, Commerzbank and HSBC in the TFF for Greece and broadens its coverage by supporting trade flows between Greece and Italy.

The facility is geared to support foreign trade activities of Greek small- and medium-sized enterprises (SMEs) and mid-caps.

Under the TFF, the EIB is providing EUR 500 million in guarantees for foreign banks covering 85 per cent of their risk vis-à-vis their Greek counterparts for L/Cs and other trade finance instruments, to mitigate the risks of non-payment and default.

Economic recovery

Specifically, the EIB is providing its guarantee on a portfolio of L/Cs as well as other trade finance instruments confirmed by international banks.

This aims to alleviate cash collateral constraints otherwise imposed on most SMEs and mid-caps and increase access to international trade instruments at a time when trade has a significant role to play in the country's economic recovery.

TRADE FINANCE SALARIES AMONGST THE LOWEST IN BANKING

Trade finance salaries feature amongst the lowest in the banking industry according to recent salary surveys.

The surveys, which looked at banking salaries in the US and the UK, have been produced by recruitment firms Robert Walters, Kennedy Pearce and Michael Page

Comparisons

After five years working in trade finance, a banker working in London can earn around £40,000 a year.

This is rather more than annual salaries of £35,000 earned by bankers in comparable treasury jobs but less than the £55,000 a year salary earned by those working in bank reconciliation.

Regional differences

Amongst the lowest paid bankers are working in settlements. According to Robert Walters, Wall Street bankers in this area earn annual salaries of between US\$35-\$55,000 after four years.

At least in the UK, there are big regional salary differences. Bankers in

reconciliation earning £55,000 a year in London would take home an annual salary of just £25,000 doing the same job in Birmingham

INVESTORS STILL ATTRACTED TO L/C ENHANCED CHINESE BOND ISSUES

Despite new rules issued last month by the Chinese authorities, this month has seen a flurry of standby letter of credit (L/C) enhanced bond issues.

The new rules are intended to make it less likely that issuers will need to use standby L/Cs or guarantees to strengthen offshore offerings (DC World News, 29 May 2014).

New issues

The first two weeks of June saw the launch of three standby L/C-backed bonds, bringing the total for 2014 up to eight.

Metallurgical Corporation of China, Rizhao Port and Zhufai Huafa Group have all launched such bonds this month.

Investor preferences

Market sources say investors would prefer issues guaranteed by an onshore parent, but as these are hard to come by, issues backed by either a standby L/C or a keepwell deed provide the next best option.

The new rules announced last month allow onshore companies to register cross-border payment guarantees, instead of seeking approvals in advance.

But the perceived advantage of the credit enhanced issue is that there are no regulatory hurdles.

US TRADE FINANCE PROVIDER LAUNCHES L/C ALTERNATIVE

Capital Business Credit (CBC) is marketing a new product that provides an alternative to letter of credit (L/C) financing specifically targeted at US importers buying from multiple Asian manufacturers.

CBC is one of the largest trade finance companies in the US that is not affiliated with a commercial bank.

Credit terms

For traders wanting to write business on closer to open account than L/C terms, CBC has developed its Supplier Early Payment (SEP).

It allows importers to extend credit for up to 90 days on open account credit terms.

Trader benefits

Under SEP, Asian exporters receive customer credit protection and immediate cash for receivables upon shipment while importers receive extended open account terms and payment flexibility.

CBC Trade Finance will purchase from exporters, without recourse, for up to 100%, less discounts, accounts receivable due from small- to medium-sized importers.

CANADA INSISTS ON L/Cs OR OTHER PAYMENT GUARANTEES FOR PIPELINE ABANDONMENT COSTS

Canada's National Energy Board (NEB) has said that pipeline companies under federal jurisdiction with plans for major oil projects to the west coast of British Columbia must put up a letter of credit (L/C) or another type of payment

guarantee to pay for abandoning pipelines.

Payment guarantees will be required by 1 January 2015, when the NRB says that pipeline companies must also create mechanisms to start setting aside money to pay for abandoning pipelines.

Assuring payment

Companies will be able to put up an L/C from a major bank, or provide suitable trust agreements or provide a surety bond.

This is because the NEB wants to ensure that rehabilitation and environmental costs of the pipelines do not fall to landowners or the state when they are shut down.

Abandonment costs

The board reckons the cost of abandonment of pipelines and associated land rehabilitation it has jurisdiction over is 7.2 billion Canadian dollars.

According to the NEB, which has authority over pipelines that cross provincial boundaries, most companies have many years to fund these future costs.

Regular reviews

An L/C or another instrument to cover abandonment will be required from almost all pipeline companies under the NEB's jurisdiction.

The board will regularly review the companies' estimates of abandonment costs, the coverage provided by their set-aside mechanisms and the assumptions about how those funds will grow.

UBA'S TRADE SERVICES OVERHAUL PROVIDES NON-L/C OPTIONS FOR AFRICAN TRADERS

United Bank of Africa (UBA) says its overhauled trade finance product offering will make it easier for intra-African traders to transact on a non-letter of credit (L/C) basis.

The bank says its remodelled AFRI-TRADE offers traders across Africa the opportunity to transact business through UBA without using a foreign correspondent bank.

Currency choices

Under the revamped product offering, payments for transactions and supporting documentation are routed through the bank's network across its subsidiaries in Africa or through some local participating banks in countries where UBA is not present.

With UBA acting as importer and exporter bank, businesses and individuals can pay in local currencies, euros or US dollars into a UBA account in a variety of ways.

Trading alternatives

Customers can still use L/Cs, but they could also use simpler alternatives such as straightforward cross-border funds transfers.

Traders will anyhow benefit from only having to make one currency transfer in a transaction under AFRI-TRADE, which is available to traders in 22 African countries.

BANK OF CHINA CLAMPS DOWN ON L/Cs FOR IRON ORE IMPORTS

One of China's big four state owned banks is making it more difficult for importers to obtain letters of credit (L/Cs) for iron ore.

The Bank of China - which is also China's biggest L/C provider for iron ore imports - is making the move in the wake of the government's crackdown on the use of imports as collateral for financing.

Local quotas

Reports suggest that quotas of L/Cs for iron ore are now set by the Bank of China's provincial headquarters for local branches in their respective province.

This means that some branches and their customers are finding it more difficult to open L/Cs for iron ore imports.

Stockpiling control

The Bank of China has also ordered local branches not to open L/Cs for importers that have not found a buyer for iron ore. This is intended to limit stockpiling.

Meanwhile, the China Banking Regulatory Commission has ordered banks to step up risk controls in respect of L/Cs used as collateral for financing.

CHINA SIMPLIFIES SYSTEM TO PROVIDE ALTERNATIVE TO L/C ENHANCED BONDS

Chinese regulators are simplifying foreign-exchange rules to make it easier for companies to guarantee offshore debt offerings.

The new rules will apparently make it less likely that issuers will need to use standby letters of credit (L/Cs) or guarantees to strengthen offshore offerings.

Speedier process

The new rules, which become effective on 1 June 2014, enable China's onshore companies to register cross-border payment guarantees at the same time a deal is struck.

Onshore guarantors will be able to register their guarantees with the State Administration of Foreign Exchange (SAFE) within 15 days of signing agreements.

Credit enhancement

Under the old rules, onshore Chinese companies had to seek approval from SAFE, which could take as long as a year to obtain.

To speed this process, issuers added so called credit enhancements, which used standby L/Cs and guarantees as well as keepwell agreements or equity interest purchase arrangements to support overseas transactions.

Concerns

The authorities and investors have been concerned over the use of standby L/Cs to guarantee Chinese bond offerings since last year.

They say the structure's reliability has yet to be tested and predicted the rapid growth of L/C enhanced bond issuances may prompt regulators to curb the practice (DC World News, 28 October 2013)

The new rules have been seen as a policy shift that is likely to boost bond issuance in China.

INDIA'S FOREIGN TRADE: MAY, 2014

A. EXPORTS (including re-exports)

Exports during May, 2014 were valued at US \$ 27998.50 million

(Rs.1660450.90 million) which was 12.40 per cent higher in Dollar terms (21.17 per cent higher in Rupee terms) than the level of US \$ 24910.59 million (Rs. 1370351.30 million) during May, 2013. Cumulative value of exports for the period April-May 2014-15 was US \$ 53632.58 million (Rs 3207636.90 million) as against US \$ 49264.36 million (Rs 2694604.60 million) registering a growth of 8.87 per cent in Dollar terms and growth of 19.04 per cent in Rupee terms over the same period last year.

B. IMPORTS

Imports during May, 2014 were valued at US \$ 39233.24 million (Rs.2326727.20 million) representing a negative growth of 11.41 per cent in Dollar terms and negative growth of 4.49 per cent in Rupee terms over the level of imports valued at US \$ 44284.54 million (Rs. 2436127.70 million) in May, 2013. Cumulative value of imports for the period April-May 2014-15 was US \$ 74953.27 million (Rs 4482666.50 million) as against US \$ 86310.41 million (Rs 4721313.60 million) registering a negative growth of 13.16 per cent in Dollar terms and negative growth of 5.05 per cent in Rupee terms over the same period last year.

C. CRUDE OIL AND NON-OIL IMPORTS:

Oil imports during May, 2014 were valued at US \$ 14464.9 million which was 2.5 per cent higher than oil imports valued at US \$ 14119.5 million in the corresponding period last year. Oil imports during April-May, 2014-15 were valued at US \$ 27442.7 million which was 1.0 per cent higher than the

oil imports of US \$ 27173.0 million in the corresponding period last year.

Non-oil imports during May, 2014 were estimated at US \$ 24768.3 million which was 17.9 per cent lower than non-oil imports of US \$ 30165.0 million in May, 2013. Non-oil imports during April-May, 2014-15 were valued at US \$ 47510.6 million which was 19.7 per cent lower than the level of such imports valued at US \$ 59137.4 million in April-May, 2013-14.

D. TRADE BALANCE

The trade deficit for April-May, 2014-15 was estimated at US \$ 21320.69 million which was lower than the deficit of US \$ 37046.05 million during April-May, 2013-14.

EXPORTS & IMPORTS : (US \$ Million)		
(PROVISIONAL)		
	APRIL	APRIL - MAY
EXPORTS(including re-exports)		
2013-2014	24910.59	49264.36
2014-2015	27998.50	53632.58
%Growth 2014-15/ 2013-2014	12.40	8.87
IMPORTS		
2013-2014	44284.54	86310.41
2014-2015	39233.24	74953.27
%Growth 2014-15/ 2013-2014	-11.41	-13.16
TRADE BALANCE		
2013-2014	-19373.95	-37046.05
2014-2015	-11234.74	-21320.69
EXPORTS & IMPORTS : (Rs. Million)		
(PROVISIONAL)		
	APRIL	APRIL - MAY
EXPORTS (including re-exports)		
2013-2014	1370351.30	2694604.60
2014-2015	1660450.90	3207636.90
%Growth 2014-15/ 2013-2014	21.17	19.04
IMPORTS		
2013-2014	2436127.70	4721313.60
2014-2015	2326727.20	4482666.50
%Growth 2014-15/ 2013-2014	-4.49	-5.05
TRADE BALANCE		
2013-2014	-1065776.40	-2026709.00
2014-2015	-666276.30	-1275029.60

Source: Department of Commerce, Government of India

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The seminars will be led by **Mr K Parameswaran, Corporate Advisor and a leading trade expert in International Trade and Finance.**

The one-day seminar will focus on important issues like overview of changing trends in international trade; risk perception of an exporter/Importer in international trade; Impact of ICC Rules in trade transactions; understanding ISBP 745 on examination of documents; avoiding discrepancies and discrepancy charges; ensure straight through processing of documents; operational issues in Bank guarantees and Standby letters of credit; comparative analysis of URDG 758 & ISP 98 and its impacts on trade transactions; Bank Payment Obligation (BPO) – from the corporate and bank perspective; how BPO will be beneficial to the parties in International trade.

Who should attend?

This workshop will be of benefit to officials of banks, exporters and importers as well as professionals working in banks' trade finance and risk management departments. It is also of interest to transport companies and other third party services providers who support exporters and importers in international trade. Banking and commercial lawyers will also gain an insight into developments in documentary credit operations and understand how to apply the ISBP in practice.

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