

ICC Banking Commission

Technical Advisory Briefing No. 8

Subject: Handling of Certificates under Documentary Credits subject to the UCP 600

28 November 2023

ISSUE

Although not a major issue in respect of the preparation and subsequent submission of documents under documentary credits, it is evident, nevertheless, that a lack of general awareness exists in the market for the handling of certificates.

INTRODUCTION

ISBP 821 paragraphs L1 through L8 address Certificates of Origin, P1 to P4 address Beneficiary's Certificate, and Q1 to Q11 address Analysis, Inspection, Health, Phytosanitary, Quantity, Quality and other Certificates under the generic heading of "Certificate".

ANALYSIS

Basic requirement and function

As stated in ISBP 821 paragraph Q1, a presented certificate may be titled as called for in the documentary credit, bear a similar title or be untitled, provided it fulfils its function by certifying the outcome of the required action; for instance, the results of the analysis, the inspection, or the health, phytosanitary, quantity or quality assessment. This is similarly reflected in ISBP 821 paragraph P1.

The action of fulfilling the required function can be satisfied, for example, by a certification in an inspection certificate to the effect that an inspection of the goods occurred, or a certification in an analysis certificate to the effect that an analysis of the goods occurred, including confirmation of the results in both

examples. Determining compliance of a certificate will be mandated by the terms and conditions, if any, of the documentary credit.

The certificate as a whole will also be subject to examination according to UCP 600 sub-article 14 (d) in order to ensure that there is no data conflict with data in that document, any other stipulated document, or the documentary credit.

UCP 600 sub-article 14 (e) emphasises that, in documents other than the commercial invoice, the description of the goods, services or performance, if stated, may be in general terms not conflicting with their description in the credit.

On occasion, as indicated in ISBP 821 paragraphs A12 (b) and Q2, a certificate may be required to evidence that an associated event has occurred no later than the date of shipment. In such circumstances, a certificate is to indicate:

- an issuance date that is no later than the date of shipment; or
- wording to the effect that the action took place prior to, or on the date of, shipment, in which event, when an issuance date is also indicated, it may be subsequent to the shipment date but no later than the date of presentation of the certificate; or
- a title indicating the event, e.g., “pre-shipment inspection certificate”, “pre-shipment analysis certificate”, etc.

As stated in ISBP 821 paragraph L1, when a credit requires the presentation of a certificate of origin, this will be satisfied by the presentation of a signed document that appears to relate to the invoiced goods and certifies their origin. This means that in respect of a certificate of origin, the document must provide an indication of the origin of the goods, otherwise it fails to fulfil its function. For example, a statement on a certificate of origin that merely states, *“The goods comply with the free trade agreement between countries X and Z”*, or the like, does not in itself fulfil the required function.

For certificates of origin, as indicated in ISBP 821 paragraph L2, the beneficiary must present the specific format of certificate of origin that may be stated in the documentary credit, e.g., a GSP Form A or a document that is used due to a ratified trade agreement between two countries. When such a certificate of origin is required, this will represent a modification of ISBP 821 paragraph L1 as the origin of the goods will be certified by the insertion of an appropriate letter or code taken from a selection indicated within the document, as opposed to a specific indication of one or more countries of origin.

Issuer

A certificate should only be issued by the entity stated in the documentary credit; also refer to ISBP 821 paragraph A20. However, it is not always the case that a specific issuer is indicated in the credit. Under these circumstances, any entity including the beneficiary may issue the certificate. It is important that all parties are aware of this situation as a beneficiary-issued certificate may not always fulfil the content of the underlying contract between the buyer and the seller. In most cases, a documentary credit will merely name the type of document that is required for presentation. The name of any issuing entity may possibly be given in the related underlying contract and not be reflected in the documentary credit itself.

As stated in UCP 600 article 4, the documentary credit is a separate transaction from the sale or other contract on which it may be based, and banks are in no way concerned with or bound by such contract.

The qualification to a named “issuer” not being stated is referenced in UCP 600 article 3, which notes that any reference in a documentary credit to terms such as “independent”, “official”, “qualified”, or words of similar effect, with regard to the issuer of a certificate, allows any entity, apart from the beneficiary, to issue the certificate. This is re-emphasised in ISBP 821 paragraph Q5.

Note that, in respect of a certificate of origin (ISBP 821 paragraph L3 (c) (ii)), when a documentary credit requires the presentation of a certificate of origin issued by a Chamber of Commerce, this condition will also be satisfied by the presentation of a certificate of origin issued by a Chamber of Industry, Association of Industry, Economic Chamber, Customs Authorities and Department of Trade or the like.

Content

As stated in ISBP 821 paragraph Q6, in order to comply with usual market practice, a certificate may indicate:

- that only a sample of the required goods has been tested, analysed or inspected;
- a quantity that is greater than that stated in the documentary credit or other stipulated document; or
- more hold, compartment or tank numbers than those stated on the bill of lading or charter party bill of lading.

A common discrepancy with a beneficiary certificate is that the beneficiary will repeat the wording in the documentary credit rather than provide a certification

that evidences compliance with that wording. For example, the documentary credit may state “Beneficiary *must send* one set of copy documents to the applicant, by courier, within 3 days after the date of shipment and a certificate to that effect is to be presented”. The presented certificate will state exactly those italicised words rather than provide a certification that the beneficiary “has sent one set of documents etc.”.

Accordingly issuing banks are recommended not to use such wording, and should clearly state the relevant document and required content, for example, "Beneficiary's certificate certifying that they have sent one set of copy documents to the applicant, by courier, within 3 days after the date of shipment."

Non-documentary conditions

It is often the case that a documentary credit will indicate specific requirements regarding analysis, inspection, or health, phytosanitary, quantity or quality assessments or the like, but not stipulate the document that is required to be presented in order to evidence compliance with those requirements.

ISBP 821 paragraph Q7 provides, in these circumstances, that if there is any reference in a stipulated document to any such assessments, it must not conflict with those stated in the documentary credit.

Statements

Documentary credits are often silent in respect of the precise wording that is to appear on a certificate with respect to determining the findings of any analysis, inspection or quality assessment.

In these circumstances, and as stated in ISBP 821 paragraph Q8, statements such as “not fit for human consumption”, “chemical composition may not meet required needs” or words of similar effect may be incorporated in a certificate provided such statements do not conflict with the documentary credit, any other stipulated document or the UCP 600.

Consignee

As stated in ISBP 821 paragraph Q9, in the event that consignee information is stated on a certificate, it must not conflict with the consignee information stated in the related transport document. However, when a documentary credit requires a transport document to indicate in the consignee field: “to order”; “to the order of shipper”; “to order of issuing bank”; “to order of nominated bank (or negotiating bank)” or “consigned to issuing bank”; and it is issued in one of these forms, a

certificate may show the consignee as any entity named in the documentary credit except for the beneficiary. The exception is when a documentary credit has been transferred, then the first beneficiary may be stated to be the consignee.

Note that the same practice applies to a certificate of origin (ISBP 821 paragraph L5).

Consignor

As stated in ISBP 821 paragraph Q10, when a consignor or exporter is stated on a certificate, it may be an entity other than the beneficiary. Such consignor or exporter may also be different from the shipper or consignor as indicated on any other document presented under the documentary credit.

Note that the same practice applies to a certificate of origin (ISBP 821 paragraph L6).

Invoice details

In accordance with ISBP 821 paragraph Q11, a certificate may indicate a different invoice number, invoice date and shipment routing to that indicated on one or more other stipulated documents, provided the exporter or consignor shown on the certificate is not the beneficiary.

Note that the same practice applies to a certificate of origin (ISBP 821 paragraph L8).

General Principles

Documentary credit reference number

ISBP 821 Preliminary Consideration (viii) states that, provided all the stipulated documents are received by the issuing bank, the absence of a documentary credit number or the mistyping of that number on a certificate does not constitute a reason for refusal. The exception to this position is where it is a requirement of the importing country that the documentary credit number be stated on a certificate. In such circumstances, the documentary credit must clearly indicate that this is the reason for the number to be shown on that certificate.

Grammatical issues

In accordance with ISBP 821 paragraph A1, generally accepted abbreviations may be used in certificates in substitution for a word or vice versa.

As stated in ISBP 821 paragraph A2 (a), virgules (i.e., slash marks “/”), when used in a documentary credit, may result in different meanings and should not generally be used as a substitute for a word. If, nevertheless, a virgule is used in a documentary credit and no context is apparent, the result is that any one or more of the stated options may be mentioned in a required certificate and will be deemed as acceptable under the documentary credit.

The use of a comma in a documentary credit, as stated in ISBP 821 paragraph A2 (b), when indicating a range of data, may result in different meanings and should not generally be used as a substitute for a word. If, nevertheless, a comma is used in a documentary credit and no context is apparent, the result is that any one or more of the options may be mentioned in a required certificate and will be deemed as acceptable under the documentary credit.

Signing and dating

ISBP 821 paragraph A3 clarifies that a certificate, certification, declaration or statement must be signed, even if the documentary credit is silent in this respect.

As stated in ISBP 821 paragraph A4, whether a certificate, certification, declaration or statement needs to be dated will depend on the type of certificate, certification, declaration or statement that has been requested, its required wording and the wording that appears within the document. Examples are provided in ISBP 821 paragraphs A4 (a) and (b).

ISBP 821 paragraph A5 states that when a certification, declaration or statement is added as part of a stipulated document, it does not require a separate signature or date provided the certification, declaration or statement appears to have been given by the same entity that issued and signed the document.

As stated in ISBP 821 paragraph A31 (b), copies of certificates need not be signed, even when a documentary credit states that all documents are to be manually signed. Furthermore, in accordance with ISBP 821 paragraph A31 (c), copies of documents need not be dated.

A presented certificate of origin is to be in the form of a signed document that appears to relate to the invoiced goods and certifies their origin. Note that there is no requirement in ISBP 821 paragraph L1 for the certificate of origin to be dated.

Completion of boxes, fields or a space for data

In accordance with ISBP 821 paragraph A17, the inclusion within a document of a box, field or space for data to be inserted does not make it a pre-requisite that such part of the certificate be completed. Furthermore, as stated in ISBP 821 paragraph A37, the fact that a document has a box, field or space for signature does not in itself mean that such box, field or space is to be completed with a signature.

Shipping marks

ISBP 821 paragraph A32 states that, in the event that a certificate evidences shipping marks, these must not be in conflict with those mentioned in the documentary credit (if any). Such shipping marks do not necessarily need to be displayed in the manner shown in the documentary credit or in any other stipulated document. The requirement is that there be no conflict, not that the marks be shown in “exactly” the same manner or order.

Dual purpose documents

As stated in ISBP 821 paragraph A41, a documentary credit may require a single document covering more than one function. As an example, in respect of a Certificate of Quality and Quantity, the presenter may provide two separate documents each covering one function or a single document.

Similarly, and as stated in ISBP 821 paragraph A40, a documentary credit may require separate documents, for example, an original packing list and an original weight list and the presenter may provide one document covering both functions. In this case, two originals of that document must be presented – each serving one of the functions.

A single or separate document may be presented provided that all the required functions are fulfilled within the presented document(s).

SUMMARY

Key to understanding the handling of certificates is a general awareness of the content of the ISBP 821, particularly the sections concerning certificates (paragraphs L1 through L8, P1 through P4, and Q1 through Q11), and the relevant paragraphs of section A (General Principles).

This briefing is educational only