

ICC Banking Commission

Technical Advisory Briefing No. 12

Subject: Interpreting and applying the phrase “read in context with” in respect of UCP 600 sub-article 14 (d)

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ISSUE

UCP 600 sub-article 14 (d) states that data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.

In order to ensure global clarity, it is considered appropriate to provide an understanding of the phrase “read in context with”.

INTRODUCTION

UCP 600 sub-article 14 (d) is critical to the process of examining documents under UCP 600; as such, careful attention must be taken when applying the content to the examination process.

The contextual application of the phrase “read in context with” has four perspectives:

- to the documentary credit as issued and/or amended,
- to the document presented for examination,
- to the governing UCP rules, and,
- to international standard banking practice.

The data in a document are to be read in context with all of the above and need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.

It is essential to read this sub-article in conjunction with UCP 600 sub-article 14 (a) wherein it is stated that a bank must 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.

Although one or more documents may individually comply, if one or more documents are in conflict with one another, there is no compliance.

The combination of sub-articles 14 (a) and (d) establishes three key principles:

- that a presentation must be examined solely on the basis of the documents stipulated in the credit, in order to determine if the documents appear on their face to constitute a complying presentation;
- that compliance is based upon the terms and conditions of the credit, the UCP 600 rules, and international standard banking practice;
- that documents appearing to contain conflicting data do not constitute a complying presentation.

ANALYSIS

UCP transition

UCP 500 sub-article 13 (a) stated that documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the credit. It was considered that the introduction in UCP 600 of the concepts of “not in conflict with” and “read in context with” would minimise misuse of the inconsistency rule by providing a tighter and more definite definition.

Before UCP 600 was introduced, banks sometimes misunderstood or incorrectly applied the key principle from UCP 500 sub-article 13 (a), which stated that documents which appear on their face to be inconsistent with one another would be considered as not appearing on their face to be in compliance with the terms and conditions of the credit. When inconsistencies encompassed issues such as simple typographical and grammatical errors, banks frequently cited discrepancies. However, such an interpretation was often unwarranted. It was considered that this concept needed to be changed and that the phrase specifying that data must not “conflict with” would be a much narrower and more preferable concept than one stating “documents which appear on their face to be inconsistent with”, thereby requiring banks to make a decision based on the compliance of the data itself.

UCP 600 sub-article 14 (d) is the equivalent of the second sentence of UCP 500 article 21 and the last sentence of the first paragraph of UCP 500 sub-article 13

(a). The essential concept contained in UCP 500 that any document must not be inconsistent with any other stipulated document was changed to reflect that the data in a document, when read in context with the documentary credit, the document itself and international standard banking practice, do not need to be identical, but must not conflict with data in the same document, any other stipulated document or the documentary credit. During the drafting process for UCP 600, the Drafting Group questioned ICC National Committees as to the need to review data in a document as against data in any other stipulated document. The overwhelming response from National Committees was to retain this principle in document examination.

“international standard banking practice”

The key issue to note in respect of “international standard banking practice” is that it goes beyond that enshrined in ISBP 821, which concentrates on the document examination stage. There are other banking practices that can be considered as international standards including document-checking practices that are not included within ISBP. As mentioned in the introduction to ISBP 745, no single publication can reflect all interpretations and standard practices.

“read in context with”

This phrase means that the data within a document should not be interpreted in isolation but rather should be understood in conjunction with other relevant data. It implies that a comprehensive understanding requires considering how different parts interact or relate to each other within the broader framework.

The phrase “read in context with” in UCP 600 sub-article 14 (d) highlights that the examination of documents for compliance with the terms and conditions of the documentary credit should not be completed in isolation. Instead, each document should be read and understood in the context of the documentary credit as a whole, the UCP 600 rules, international standard banking practice, and other stipulated documents. It means that an understanding of the individual document’s role, how it fulfils its function, and relevance within the entire set of presented documents is crucial.

This approach prevents an overly technical or isolated examination of documents, which might lead to unnecessary discrepancies. It promotes a holistic understanding, ensuring that the documents collectively meet the commercial intent of the credit and adhere to the principles set out in UCP 600. The aim is to balance the interests of all those involved and to facilitate smooth and predictable international trade transactions.

“need not be identical to, but must not conflict with”

This can be clearly exemplified in the below example:

- A documentary credit is issued for the delivery of “750 green hats”, partial shipment permitted.
- The goods description on the submitted invoice states “500 green hats”.
- The description of goods on the submitted certificate of origin states “green hats”.
- The description of goods on the bill of lading states “hats”.

Although the data are not identical between the documents, there is no conflict in the data that are shown. However, if the bill of lading had shown, for example, “red hats”, or the certificate of origin stated “499 green hats” (as opposed to 500), then there would clearly be a conflict of data and a discrepancy.

Any document issued by an entity other than the beneficiary may contain information specific to the needs of the issuer which differs from the terms and conditions of the credit or from data stated in stipulated documents issued by other entities. For example, if a document issued by an entity other than the beneficiary quotes a “reference number”, and that number is different from a number identified as “reference number” on a document issued by the beneficiary, this does not cause a conflict.

Further examples can also be found in ISBP 821, including, but not limited to:

- Paragraph N5 in which it is stated that a weight list may indicate a different invoice number, invoice date and shipment routing to that indicated on one or more other stipulated documents, provided the issuer of the weight list is not the beneficiary.
- Paragraph Q9 which states that, when a credit requires a transport document to be issued “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”, a certificate may show the consignee as any entity named in the credit except the beneficiary, and that when a credit has been transferred, the first beneficiary may be stated to be the consignee.

SUMMARY

UCP 600 sub-article 14 (d) refers to “when read in context with” as an additional qualification of “not in conflict with”.

It means that the requirements of the documentary credit, the structure and purpose of the document itself, UCP 600, and international standard banking practice need to be assessed, understood and be taken into consideration in determining compliance of a document. In essence, the role of the data in the credit and its role in the document itself are relevant to the determination of compliance together with international standard banking practice.

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