

Instalment drawing under article 32 of UCP 600

UCP 290: 1974	UCP 400:1983	UCP 500: 1993	UCP 600:2007
<p>Article: 36</p> <p>If shipment by instalments within given periods is stipulated and any instalment is not shipped within the period allowed for that instalment, the credit ceases to be available for that or any subsequent instalments, unless otherwise specified in the credit.</p>	<p>Article 45:</p> <p>If Drawings and/or shipment by instalments within given period are stipulated in the credit and any instalment is not drawn and /or shipped within the period allowed for that instalment, the credit ceases to be available for that or any subsequent instalments, unless otherwise stipulated in the credit.</p>	<p>Article 41:</p> <p>If drawings and/or shipments by instalments within given periods are stipulated in the Credit and any instalment is not drawn and/or shipped within the period allowed for that instalment, the Credit ceases to be available for that and any subsequent instalments, unless otherwise stipulated in the Credit.</p>	<p>Article 32:</p> <p>If a drawing or shipment by instalments within given periods is stipulated in the credit and any instalment is not drawn or shipped within the period allowed for that instalment, the credit ceases to be available for that and any subsequent instalment.</p>

Reason For changes:

From UCP 290 to UCP 400:

During the lifetime of UCP 290, although issuance of standby letters of credit was not specifically mentioned in the text, it was “incorporated” by the ICC in the standby letter of credit practice under via a banking commission opinion issued in March 1977. The first reference to standby letters of credit within the framework of the UCP was found in UCP 400, article 1, and subsequently carried forward to its successors.

UCP 400 Article 45 was amplified in its reference to "drawings" because the revision also incorporated "standby credits".

Case study of UCP 400, Case no. 140 uplifted a similar position,

Summary of Fact of Case study 140 on UCP 400:

The issuing bank disagreed for the following reasons:

a) UCP 290 Article 36 on shipment in instalments specifies that if one **instalment** is not shipped within the prescribed period, the credit ceases to be available for further shipments.

The Article implies that this also goes for credits allowing drawing in instalments.

This view is supported by the identical UCP 400 Article 45, which states that if any **instalment** is not drawn within the period allowed, the credit ceases to be available for that or any subsequent instalments unless otherwise stipulated in the credit.

Answer

As the credit was issued under UCP 290; no note can be taken of changes in the 1983 Revision. **In any case, UCP 400 Article 45 was amplified in its reference to "drawings" because the revision also incorporated "standby credits".**

Reason for Change between UCP 400 and UCP 500: No change has taken place

Reason for Change between UCP 500 and UCP 600: No factual change has taken place and remain same exactly what its predecessor was, except: omitting “unless otherwise stipulated in the Credit”.

From the above historical fact, we can reach in a conclusion that addition of the word “Drawing” is nothing but a result of incorporation of standby letter of credit into the text of UCP.

Impact of Drawing in commercial letter of credit practice:

Following the above we try to analyze the following situation to determine whether subsequent presentations [although complying] cease to available due to first presentation is not made within stipulated timeframe of the credit, i.e. *late presentation*:

Credit stipulated:

A credit stipulated the following shipment schedule:

1. 1st Shipment must be made within 1st July '08 to 10th July '08 .
2. 2nd shipment must be made within 11th July '08 to 20th July '08
3. Final shipment must be made within 21st July '08 to 30th July '08.

Credit available: at the counter of issuing bank by sight payment.

Additional condition: Document must be presented within 15 days from the date of Shipment.

Shipment effect by the beneficiary: 1st shipment = 5th July 08
2nd shipment = 15th July 08 and
3rd shipment = 25th July 08.

Presentation of document:

Beneficiary presented document under the following manner:

1. Document presented for 1st shipment at the counter of issuing bank as on 26th July 08 [**late presentation**]
2. Document presented for 2nd shipment at the counter of issuing bank as on 27th July 08
3. Document presented for 3rd shipment at the counter of issuing bank as on 30th July 08.

Fact:

On 1st presentation:

Issuing bank raised discrepancy i.e. late presentation [emphasis added]

Query:

Will the subsequent drawing ceases to be available?

Analysis:

Theoretical analysis:

From the history of UCP 400 to UCP 600, we come to know that the “**Irrevocable**” nature of the letter of credit has gradually been upgraded. The current version of UCP i.e.. the UCP 600 is the latest improvement in the field of the “**Principle of Irrevocability.**” The following sub-articles signify the above development.

According to article 2 Definition of UCP 600:

*“Credit means any arrangement, however named or described, that is **irrevocable** and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation”*

This “Irrevocable” position of the letter of credit is also emphasized by incorporating a principle at article 3, Interpretation:

“A credit is irrevocable even if there is no indication to that effect”

The spirit of the irrevocable nature of letter of credit has also apparent in sub article 10(a) of UCP 600:

“Except as otherwise provided by article 38, a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank(if any) and the beneficiary”

*Since the “**Principle of Irrevocability**” is the heart of each and every letter of credit transaction under the framework of UCP 600, all parties [especially the issuing bank and the nominated bank acting on its nomination or the confirming bank], engaging in a particular letter of credit transaction must ensure that its role will not demolish this principle.*

Situational analysis of fact:

In order to analyze the stand of issuing bank regarding right or wrong, first of all, we shall look into the options that issuing have under the framework of article 32 of UCP 600 for the above cases.

Basically the issuing bank's has two options, such as:

- 1. This credit will be ceased to be available due to late presentation on the first presentation.**
- 2. This credit will be available for subsequent presentation despite late presentation of first shipment's document.**

First we analyze option 1 i.e. whether or not it is conflicting with the "Principle of Irrevocability"

First of all, we have to recognize that if a credit followed by several separate presentations, each presentation will be examined separately in order to determine if presentation is complying. There is no scope to mix up several presentations under a single letter of credit transaction. ICC official opinions has also reflected the same position such for example "**Official Opinion R332 - 1998/99**". The analysis/conclusion from that opinion reads:

*The fact that a bank may have previously accepted discrepant documents, with or without an applicant **waiver**, does not bind that bank to accepting a similar discrepancy(ies) on any future drawing(s) unless local law states otherwise.*

*One main reason behind this conclusion it to maintain and protect the "**Principle of Irrevocability**". Sub article 7(a) of UCP 600 also stipulates the same position:*

*"Provided that the **stipulated documents are presented** to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour....."*

The above sub article reveals that the issuing bank's determination of whether or not the presentation is complying must be solely **based on stipulated presented document** and under no circumstances that the presentation is linked to prior presentations of a same letter of credit transaction [which may or may not be discrepant].

When the issuing bank decided that the presentation in complying, it must perform its role mentioned in sub article 15(a) of UCP 600:

"When an issuing bank determines that a presentation is complying, it must honour."

Conclusion:

Consequently, taking option 1, that is ceasing availability of drawing for subsequent complying presentation due to late presentation of first shipment's document is not only damaging the purity of "**Principle of irrevocability**" but also pushing other basic pillars of the UCP into venerable position based on which the UCP has been developed and carried forwarded over a period of time.

Finally, from the above analysis, we can infer that Issuing bank should not reject subsequent complying presentation on the plea that the first shipment's document is presented after stipulated timeframe mentioned on the credit.

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