

A birthday to forget?



On the ISBP's first anniversary, we ask whether it fulfils its great expectations. Documentary specialist *Ravi Mehta* looks at how the International Standard Banking Practice (ISBP) guidelines have been received by those who should be using it to make their lives easier and more discrepant-free.

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The International Standard Banking Practice (ISBP) is now one year old. It was introduced with great fanfare and expectations that it may lead to further standardisation of document examination practice and minimisation of document rejection and resultant controversies, disputes, and delays, and thus may restore or enhance the consumer's trust in documentary credits.

This first anniversary is the right opportunity to assess whether the ISBP mission is workable.

The ICC's secretary general, Maria Livanos Cattai, says in the foreword to ISBP 645: "By using the ISBP, document checkers can bring their practices in line with those followed by their colleagues

worldwide. The result should be a significant reduction in the number of documents refused for discrepancies on first presentation."

Is the ISBP making progress in achieving this result?

The 'introduction' to ISBP 645 says: "The incorporation of this publication into the terms of a documentary credit should be discouraged, as the requirement to follow agreed practices is implicit in the UCP."

Will this factor moderate the ISBP's attempt to support the UCP for document examination and to achieve the intended result of documents rejection reduction? The UCP rule is binding but the ISBP's clarification of the UCP rule is not binding. This is an ambiguity/anomaly that may encourage banks to continue the practice of making trivial or immaterial

errors a reason for rejection and a source of income by way of discrepancy fee for accepting the rejected document. It thus may hinder achievement of the ISBP's intended aim of document rejection reduction by illustrating what is (not) a discrepancy.

'First reject, come what may, and then accept with fee' is not the standard banking practice but a deviant practice that goes

against the interest of global trade maximisation through payment facilitation. It will be interesting to see whether the ISBP is successful in counteracting such deviant practices and make the banker a trade facilitator by correcting his trade documentation examination practice, which before the ISBP was more or less a trade barrier.

Reduction issue debate

There is an increasing debate over whether or not there is a reduction in document rejection in the wake of ISBP. Opinions are split. Some do say there may be no reduction in rejection but there is a reduction in discrepancies as the errors that used to be considered discrepancies are no longer considered such in light of ISBP.

Another argument says the old discrepancies are gone with the wind of ISBP clarifications but new kinds of discrepancies have emerged.

No, no visible education

Michelle Walden, deputy director of Sitpro, the UK's trade facilitation

body, says, "I have not heard of overall reduction in document rejection, but I do understand that a number of banks do find

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it a very useful tool.... I do think it is important to remember that it is a tool and not a publication that should be quoted to reject a document." A banker from Saudi Arabia, Abdulkader Bazara, says, "Although I strongly believe that ISBP will minimise documents rejection, up to now we have not seen any visible reduction in the number of rejections. The reason could be that many LC practitioners are not yet aware of ISBP or aware but have not yet taken it seriously."

Another Saudi banker, Khalil Matar, adds, "The discrepancy rates (in the Saudi market) have not shown any decline."

Pavel Andrle, a Czech banker, says the question of whether ISBP helps to minimise the rejection of documents under LCs is very difficult one. "As there are no relevant statistics in my country I might only guess," he says. "Also we have very short experience with ISBP so far. So my guess would be that it does but not so significantly. It helps to clear some misunderstandings between banks."

A US law educator at Wayne State University in Detroit, John Dolan, says, "I honestly don't know yet the impact of the ISBP on the banking practice of examination of trade documents under documentary credits."

An LC specialist from Canada,

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TO Lee, says that the ISBP eliminates old discrepancies but breeds new ones.

What moderates ISBP use

Discrepancy fee

"I don't know whether the discrepancy charges that banks started to collect stands as an obstacle in ISBP application for document checking," believes Bazara.

ISBP illiteracy

According to Andrle, ISBP illiteracy is the reason among exporters for not using it for document preparation. As he says: "In my view, ISBP is an already well-known publication among bankers but not yet among exporters and importers. I guess the knowledge of ISBP, UCP or any other ICC document among traders to a great extent depends and will continue to depend on the approach taken by the banks themselves. To make a difference requires banks to buy these publications for their customers and to train them. In other words, to invest some money and resources into it. Nowadays many banks are not willing to do so. LC business and also the corporate banking sector as a whole is not seen as the cost/income ratio segment of banking by top bank managers at the moment."

In the opinion of Matar, exporters have not tangibly benefited from the ISBP in their presentations, due to unawareness.

They are right. When I asked an exporter in Spain whether he finds ISBP helpful he replied that he has not seen the ISBP and instead asked whether it is available online free of charge.

Vague ISBP not in vogue

The ISBP is vague here and there. Daniel Reiste, an LC payment manager in a Miami-based US bank, says, "The major weakness that ISBP

contains is that vague words continued to be used that can be interpreted in various ways...and carry no directive, ie, 'expected', 'must', 'should not', 'if necessary'."

He further says, "The ICC places banks in the awkward position of having to define these words and then defend their interpretation and decisions to other banks that wish to take the opposite position for their or their client's convenience. Given the nature of documentary credits, why would a governing body publish unclear guidelines? It only leads to additional expense and inefficiency in an industry that is continually striving to maximise production and reduce costs. This is a very bad precedent that has been set and hopefully will be partially addressed in the upcoming UCP revision."

Old wine in a new bottle

An LC specialist from Bahrain, ND George, says, "ISBP is nothing new for serious students of LCs, ie, those whose understanding of the LC product, both in letter and spirit, is reasonably good. In fact it hardly says anything more than the clarifications and opinions of the ICC already existing. However, sloppy students of the LC have a lot to benefit from ISBP."

Andrle says ISBP is based on ICC Banking Commission opinions and other documents. There are not so "many new things to be implemented" anyway.

It means it is not important to see whether or not the ISBP is serving the required purpose, because the purpose is already being served by the ICC Opinions. What's important is to see the effect of the old ICC clarifications and not of the new labelled ISBP, which contains the old clarifications. However, the advantage of the new ISBP is that there is now

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one single package (ISBP publication) to contain all the clarifications, which earlier were filled in several packages (several publications of ICC Opinions). And thus the ISBP is a more convenient and cost-effective method to use the ICC Opinions.

An opinion emerged in the recent New Delhi conference of the ICC Banking Commission to merge ISBP with UCP in UCP revision, to make the new UCP easily understandable and effectively usable by including in it the ISBP clarifications. It is inconvenient to use the tale of two ICC publications, UCP and ISBP, for the same purpose of document examination.

Lip service to ISBP

In the opinion of Reiste, "The advent of the ISBP is the first step in a much-needed attempt to put all banks globally on a level playing field with regard to claiming discrepancies. Its success depends not only upon the ICC's promotion of it, but also of banks implementing it but also referencing it in their communications. From the discussions with other practitioners it seems that many pay ISBP lip service but appear afraid to stand behind it and defend it. If it is truly an extension of UCP, which reflects internationally accepted banking practice then banks should utilise the potential it affords."

The passion of the ISBP: ignorant or ignored

The ISBP suffers at the hands of bankers who are ignorant of or ignore, inadvertently or otherwise, the ISBP guidelines and clarifications.

Reiste states that many credits continue to contain multiple violations of the ISBP rules. For example:

- Inclusion of "/" (virgules): paragraph 7 of ISBP discourages use of virgules as a substitute for a word saying

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virgules may have different meanings.

- Date expressions not formatted correctly: ISBP in paragraph 19 recommends that the name of the month be used instead of number in order to avoid confusion.
- Ambiguities in the LCs or in their amendments.
- Copies of transport documents are called for, without explicitly stating the details to be shown (paragraph 21).
- Use of unspecific time-related words: ISBP discourages use of words and phrases such as 'prompt', 'immediately', 'as soon as possible' (paragraph 23).

The examples indicate bankers are ignorant of ISBP or ignore it in operations. Meaning, the ISBP guidelines/clarifications are not in practice. They are only in the book and the book may or not be in the briefcase of the banker and the trader – or the book may not be opened. The ISBP (paragraph 5) says, "Many of the problems that arise at the examination stage could be avoided or resolved by careful attention to detail in the underlying transaction, the credit application, and issuance of the credit as discussed." But actually no attention is being given, as is evident from the experience of Miami-based LC payment manager Reiste, who is still facing defective LCs despite the ISBP.

Reduction and improvement in practice

The aforesaid statements of the 'no people' represent one side of the coin – the side showing no or little success for the ISBP. Let's see the other side – the side representing the views of the 'yes people'. Donald Smith, a US-based LC consultant at Norman Technologies who co-chaired the ICC's ISBP task force, says: "In my opinion it has greatly contributed to reduction in

discrepancies. For example, a Chinese banker noted a reduction of over 50% in less than a single year." Zahoor Dattu, AVP at Mashreqbank in Dubai, says

from his experience that frivolous discrepancies are not raised any more. Matar says that the ISBP has had a tangible positive effect on improving the way banks examine documents, which has led to better dispute management among banks.

An Iranian banker, Mohammad Ajorloo, working for Export Development Bank of Iran as deputy head of international affairs, says with the ISBP there is a sharp decline in document rejection and as a result there is maximisation of export payments. He further says that the ISBP fills gaps in documentary credit information. Tarek Al-Bakry, working for Egyptian Commercial Bank, says, "ISBP is helpful to our bank."

Improving LC issuance practice

Matar says the ISBP has slightly improved the issuance of LCs. Now some issuers better understand what it means when they include stipulations in their LCs. But Reiste does not agree, as said before.

What accelerates the ISBP

Passion for the ISBP
Smith says, "The ISBP has become in one year a highly valued and important publication. The sale of over 40,000 copies in less than a year is a significant indicator of the success of the publication and

the multiple translations further attest to the same conclusion." The sale indicates interest for the ICC's new publication. This interest may be the result of worldwide dissatisfaction with

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the old publication, UCP 500, that has caused discrepancies, disputes, and delays. The interest for ISBP may also be the result of the hope that the new publication may be a panacea for all the ills in the documentary credit world.

Simple and clear ISBP language

Smith adds: "I believe the clarity of the language and decision to use simple sentence structure and focus on words, which can be translated into many languages, is a significant factor in the early success. The task force greatly benefited from having two lawyers working on the project." No doubt, the ISBP's language is more simple than UCP's but is technically not clear in some paragraphs. The ICC has to issue corrections on its website, but the issue of vagueness is not yet fully resolved as is evident from the aforesaid examples given by Reiste.

Harmonisation of the ISBP

Dattu says: "The ISBP to a large extent has achieved its prime objective of minimising document rejection. The ISBP has been used as a guideline for document examiners and reduce the number of disputes in documentary credit operations in the UAE and Middle East. The ISBP has harmonised with the banking practice in most trading countries.... Bankers have now become more aware as to what

constitutes the ground for refusal. The ISBP has indeed achieved its objective to strengthen the reliability and popularity of documentary credits."

Internalisation of the ISBP

Heinz Hertl, a retired Austrian banker who participated in ISBP formulation for the ICC when he was a banker, says: "The ISBP has been implemented into a document checker's world as you can see several references made to ISBP in queries brought forward to the banking commission."

In its recent New Delhi meeting the ICC's Banking Commission discussed queries relating to insurance documents resulting from the interpretations of the ISBP.

The queries bring to light three things about the ISBP: a paragraph may not be (easily) understandable; a paragraph may be open to many interpretations; and the reader may fail to notice the ICC caution that examples given in the ISBP are illustrative and not exhaustive.

The Banking Commission reiterates that the terminology used in the ISBP should not be seen as being totally exclusive. The ISBP covers the more common type of practices that exist internationally, says the ICC.

The brisk sale of the ISBP, as said by Smith, indicates interest for the ICC's new publication. The resultant interest in training seminars on ISBP indicates enthusiasm to understand the ISBP. The queries, as pointed out by Hertl, indicate an attempt to use the ISBP. But the tendency of queries also indicates the problems in, and with, the ISBP – its silence or lack of clarity here and there and its lack of cohesion. The queries give rise to another form of ISBP acronym: International Standard Banking Problems.

Mismatches

In January 2003 when the ISBP was introduced as a curative/preventive remedy it was expected that it would effect:

- Reduction in document rejection as a result of the illustration of the international standard banking practice of document examination under documentary credits.
- Issue of error-free and clear LCs in accordance with ISBP guidelines.
- Presentation of error-free documentation by preparing the documents in keeping with the requirements and guidelines of the ISBP.
- Controversy-free document examination by bank checkers due to authoritative exemplification what is (not) a discrepancy.
- Dispute-free payments.

Yet there again...

But one year later we find that there is:

- No visible widespread reduction in documentary rejection. The success in the reduction is sporadic and that success is just guesswork as there are no statistics to prove the hypothetical success. Maybe it is too early to see the impact of ISBP on both banking and trade practices. However, there may be reduction in usual discrepancies, if not in rejection. But the side effect of ISBP as a curative remedy is that it has given rise to new kinds of discrepancies while eliminating the old kinds.
- No serious widespread implementation of ISBP in terms of observing its

guidelines for issuing LCs, for preparing and checking documents. Banks that do use ISBP tend to 'dial ISBP for compliance determination', or

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'dial ISBP for compliance defence in disputes'. The banks use ISBP as an offensive or defensive weapon against each other in disputes. Bankers in general know more about ISBP while traders in general,

particularly in developing countries, have no information or knowledge about ISBP. I often get an online question both from bankers and traders, particularly from developing countries asking what ISBP is or what it means.

- Hindrance in achieving the ISBP objective of document rejection rate reduction due to the banking tendency of discrepancy fee.

A discrepancy is considered in the banking world as a golden hen that lays a golden egg or a cow to milk for profit.

Any ICC effort that negates a bank's narrow aim of profit maximisation and not trade maximisation in the interest of the global economy is bound to fail if that effort is toothless. The ISBP is toothless.

So what is the remedy?

The remedy is to make the ISBP:

- More clear, through revision. The queries indicate problems with the ISBP. The ICC should use recent queries for revision purposes.
- More popular, particularly among traders and bankers in developing countries /emerging economies, through online

advertisements on the websites of banks, trade associations and the ICC. The banks in particular need to take action to fulfil the information needs of their exporting clients as a cost-effective strategy for marketing their trade finance services.

- More accessible, through free online publication, particularly by banks. They should use the internet as a weapon of mass distribution of ISBP rather than giving a complimentary hard copy of it to this or that client, which is not a cost-effective distribution/bank marketing method. Hard copy or offline distribution alone is not adequate.
- More usable, by making the ISBP binding on the document checkers – a toothless rule or its clarification is inherently ineffective; and by making it clear that the ISBP is meant for and helpful to international traders too.

The title 'International Standard Banking Practice (ISBP) for the examination of documents under documentary credits' is a misnomer, repugnant to traders. It makes them understand that ISBP is meant for bankers and they therefore are reluctant to buy or open this book. The title does not properly convey the message of triple purpose of clear and correct LC issuance, controversy-free document examination, and error-free

document preparation that the ICC intends. There is a need to change the title.

Further, that a UCP rule is binding but its clarification by the ISBP is not binding is an anomaly, which also hinders ISBP application for the intended document rejection minimisation purpose. The success of the ISBP or interest in the ISBP should not be measured by the number of copies sold by the ICC or by the number of queries raised by readers, but by assessing whether it has served to achieve the intended ultimate objectives.

One year on and there is still sloppy international banking practice despite international standard banking practice guidelines embodied in ISBP 645. Efforts are however underway on the part of banks to make the practice consistent

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with ISBP requirements and expectations. It takes time to change the habit and therefore efforts must be serious and persistent. ISBP would not be that successful if only bankers know and use it for document examination. Traders too must know it and use it for preparing and asserting

compliance. ISBP must be understood as a multipurpose vehicle. The title must make it understand that it is a multipurpose vehicle. The objectives and intentions of the ISBP are good but these will be defeated if they are not understood or not properly conveyed to, through title or otherwise, all the parties involved in LC transactions.