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《国际商会 跟单信用证统一惯例》 号条款研究

GUOJISHANGHUI GENDAN XINYONGZHENG TONGYIGUANLI

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《对外经贸实务》杂志社编

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《国际商会跟单信用证统一惯例》

400 号条款研究

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对外贸易教育出版社

《国际商会跟单信用证统一惯例》 4.00号条款研究

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开本 787×1052 1/32·印张8·375活页1·字数188千 1987年12月第一版·1987年12月第一次印刷 印数1-12000·定价 2.15元 ISBN7-81000-048-9/F·014 1975年11月1日开始实施《国际商会跟单信用证统一惯例》(以下简称《统一惯例》或UCP)第290号版本(共47条)以来,随着国际贸易的不断发展,通讯技术、货物运输、单据制作等方面出现了新情况,各国银行在业务实践中结合《统一惯例》条款内容,产生过各类问题,为此,国际商会(ICC)银行委员会为适应现时情况的需要,经过多次研究讨论,遂于1982年5月在具有普遍性的86个问题意见和决议的基础上(也就是ICC371和399号版本),草拟了《统一惯例》第400号版本修订草案(共54条)。征询研究后,终于1983年6月再次开会讨论修改并通过,7月份首次出版第400号正式修订本(计共55条),并规定于1984年10月1日起生效实施。

在我们实际进出口业务中,使用信用证付款方式是大量的,中外银行业和我经贸公司企业单位也都是以《统一惯例》的规定、解释、定义等项条款作为审单和处理信用证业务的主要参考依据;就是说目前我们接受国外开来载明"本证悉照国际商会1983年修订第400号版本跟单信用证统一惯例办理"的信用证时,即表明了承认按《统一惯例》条款办事,对当事人具有法律约束力。所以各对外经贸公司业务干部、从事国际金融外汇管理的银行干部、外贸院校的学生,应当

了解并掌握新修订的《统一惯例》400号文件。

在当前我国对外经济贸易发展的大好形势下,对具有世界性和普遍性的《统一惯例》新修订本条款的探讨不是多了而是太少。国际商会银行委员会主席惠伯尔先生(Bernard S.Wheble)曾对《统一惯例》1974年修订本(即299号)与1983年新修订本(即400号),进行了详细的比较和说明,著有"UCP1974/1983 Revisions Compared and Explained, DOCUMENTARY CREDITS"一书,并于1984年4月出版问世,列为国际商会第411号版本,这是一部具有权威性的个人著作。如果我们进一步以新修订本400号所列55条规定精神,对照原修订本290号47项条款,参照"411"号的精辟解说,探讨其中有哪些更改、删补和新发展,分析其变动的原因,理解各条款之间的内在联系,并在业务实践中加深理解和掌握,那就更有利于我们的外贸业务工作,提高经济效益。

本书条款正文由中原国际经济贸易公司顾问、广州财贸干部管理学院何廉永副教授编译试析。1982年冬,作者在河南省外贸学校任教为该省外贸各专业进出口公司干部培训班授课期间,对《统一惯例》400号文件进行了译注,作为专题讲稿,并于1984年元月,编成书稿,经该校校长田世华审定后,作为单行本向全国经贸系统内部发行,同年,《对外经贸实务》编辑部邀请作者编译了《统一惯例 400号条款研究》(援引国际商会411号解说)一书,作者遂于1984年10月脱稿,1985年6月发行后受到广大读者欢迎。

在此基础上,我社今年再次组织有关作者对原书进行补充和修订,编出《国际商会跟单信用证统一惯例 400 号条款研究》一书,由对外贸易教育出版社出版。

本书可供从事国际贸易和国际金融工作者学习业务之用,也可作为对外经贸工作、教学和研究的参考资料。

* * * *

增补修订后的本书内容:

第一部分

- 1. "400"条款英文原文、中文译文;
- 2. 参照国际商会"411"(英文版本)逐条译注、解说和比较;
- 3. 参照海外刊物逐条进行试析并增补台湾省金融研究中心最新丛书资料。

(以上由何廉永编译)

第二部分

- 1. 审核信用证应注意事项(方积中编写);
- 2. 信用证业务最新实例21则(黄建威等编写);
- 3. 对外贸易铁路运输(李清树编写)。

本书经广州市财贸管理干部学院袁俊文、对外贸易教育出版社孙希光审阅。本社袁永友、柏望生责任编辑。

《对外经贸实务》杂志社

1987年7月于武汉

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惠伯尔《前言》原文

FOREWORD

This foreword is written exactly fifty years since the ICC adopted the first edition of the Uniform Customs and Practice for Documentary Credits (UCP) at its 7th Congress in Vienna in 1933.

Innumerable aspects of international trading operations have changed radically over the intervening years.

Yet the UCP remain a vital element in world trade.

An ever increasing number of banking and other executives still need to know their provisions thoroughly and use them every day.

How can the UCP have become and remained soindispensable over such a long period—a period. which moreover seems certain to extend well intothe 21st century?

I see two reasons. First, the realities of international trade continue to require documentary credits and therefore an internatoinally accepted set of standards governing their use. Just as fifty years ago, sellers still hesitate to release their goods before receiving payment, while buyers prefer to have control over the goods before parting with their money.

But matching payment with physical delivery is rarely possible, so a compromise is normally agreed—payment against "constructive delivery", the handing over of documents transferring title to, or control over, the goods.

Creditworthiness then becomes important, and bankers are required to intervene, giving their conditional undertaking to the seller to pay against presentation of documents and compliance with conditions stipulated by the buyer. Hence the continuing need for documentary credits.

Secondly, the UCP are fortunately a living text which has been regularly updated by the ICC Banking Commission since its initial introduction.

Prior to 1962 the UCP were primarily designed to safeguard the banker when the buyer gave incomplete or imprecise instructions.

In the 1962 revision—the first to achieve global acceptance—stress was laid on the buyer's duty to specify what he wanted, setting out "international banking customs and other rules that facilitate banking functions".

The 1974 revision gave effect to changes in documentation and procedures caused by the progress of trade facilitation and the revolution in maritime transport-containerization and the resultant development of combined transport. The forward looking approach we adopted reflected banking practices, but also dictated "the most prudent course of behaviour irrespective at times of existing usage, course of dealing or custom".

For the 1983 revision we have again had "to-look to the future—because that is where we shall have to live". So, while the interests and problems of the buyer and the seller remain paramount, note has also been taken of:

- the continuing revolution in transport technology, and the geographical extension of containerization and combined transport;
- the increasing influence of trade facilitation activities on development of new documents and new methods of producing documents;
- the communications revolution, replacing paper as a means of transmitting information (data) relating to a trading transaction by methods of automated

or electronic data processing (ADP/EDP);

development of new types of documentary credits, such as the deferred payment credit and the standby credit.

In addition, for the UCP to give the maximum possible guidance and assistance to all parties, three basic principles have been borne in mind:

- that the buyer is responsible for stipulating, clearly and precisely, the documents required and the conditions to be complied with;
- the increasing interest and influence in international trade of nations which are less developed and, therefore, less experienced in this area;
- misunderstandings and interpretive problems caused by the 1974 text, necessitating amplification or simplification in the 1983 version.

Finally, thought has been given to the current major problem of fraud, while recognising that fraud originates when a commercial party first contracts with a rogue, and that the documentary credit merely pays for the commercial transaction and cannot "police" it.

The revision has been carried out by a Working Party—with representatives of commerce and industry, insurers, forwarders and carriers as well as bankers—reporting to the Banking Commission.

ICC National Committees, countries without National Committees reached primarily through the United Nations Commission on International Trade Law (whose support and participation have been of extreme importance and value), other UN bodies concerned with the facilitation of international trade procedures, and banking circles in countries represented in the ICC's East/West Committee, have all played an active role in the work, both through the Working Party and the Commission and in over four thousand individual ietms of written comment. Sincere thanks are given to them all: but their real reward will be the knowledge of their major contribution to the facilitation of international trade through this 1983 revision of the UCP.

Bernard S. Wheble Chairman,

ICC Commission on Banking Technique and Practice June 1983

惠伯尔《前言》译文

本"前言"之作,正值国际商会于1933年在维也 纳举行第七届大会上通过《跟单信用证》统一惯例》发行初版(UCP)以来整整五十年之际。

在此期间,国际贸易业务的各个方面 颇 多 变 易。然本"惯例"却仍不失为世界贸易的要件。为数日多的金融业及其它各业仍需确实地通晓并不时地应用本"惯例"之条文规定。

何以在此漫长期间——似可断定势必延续进入二十一世纪——本"惯例"可保持而成为如此不可或缺者?我以为其因有二。

第一,国际贸易的现实仍需要跟单信用证,因此,须有 一套为国际所接受的准则以约束其使用。

正如五十年前情况一样,卖方不愿在收到货款前轻易地 让货物脱手,而买方则甚愿在付款前控有货物。但是,要使 支付货款与实际交货同时进行,实在少有可能。因而,双方 通常同意一种折衷办法,即凭"推定交货付款"交付单据时 转让货物的所有权或控制权。这样,信用是否可靠则成为至 关重要的问题。银行遂须介入其间,给予卖方有条件的担 保,承诺提示买方所规定的单据并符合其所开条件时予以付 款。因此,需要继续使用跟单信用证。

第二,《统一惯例》自首次采行以来,几经国际商会银行委员会适时地定期增订,得能成为一种具有活力的文件。

1962年前《统一惯例》的拟订主要是为在买 主作 出不

完整或不精确的指示时,得以保护银行业者。1962年修订本——首次获得全球性的承认——强调买方负有叙明其所意欲的义务,乃制订出"促进银行职能的国际性银行惯例及其他规则"。

1974年修订本乃为适应贸易简化的发展及海洋运输的革新——集装箱化以及随之发展而来的联合运输——而导致在单据及程序上的变化。我们所采取的前瞻远虑态度,固然反映银行实务,但也坚定地采取"最慎重的行为准则",间或不可兼顾现行惯常做法、处理程序或习惯。

至于1983年修订本,我们也必须是"面向未来——因为 未来乃吾等生活所在"。所以,在买方与卖方的利益及问题 仍属首要地位的同时,尚须注意如下各点:

- *运输技术的不断革新及集装箱与联合运输在地理上的扩展;
- *新式单据及制作单据新方法的发展对贸易简便化活动 日益增加的影响;
- *通讯革命,以自动化或电子数据(ADP/EDP)处理方法取代以纸张作为传递贸易交往信息的办法;
- *新类型跟单信用证的发展,如延期付款信用证**与担保** 信用证。

此外,为使《统一惯例》为各当事人提供最大可**能的指**导与协助,我们并曾铭记如下三项基本原则:

- *买方负有清楚而准确地规定所需单据及所应遵循的条件的责任;
- *国际贸易,较不发达缺乏经验的国家的利益及**影响日** 益增长;
 - *1974年版本中所引起的误解及应加解释的问题,需

在1983年版本中加以补充或简化。

最后,我们应注意现今存在的欺诈这个主要问题,应该 认识到欺诈的起因首先是由于商业一方与一个无赖签订合 约,而跟单信用证只是为商业交易办理付款,它不可能充当 "警察"来阻止欺诈的发生。

此次修订系由工作小组会同工业、商业、保险、运输、 **承运人以**及银行等各业代表制订,并向银行委员会报告。

国际商会的各国全国委员会,无全国委员会者则主要经由联合国国际贸易法规委员会(该会的支持及参与极其重要并具极大的价值),联合国所属及简化国际贸易程序有关的其他机构,以及参加国际商会东西方委员会的各国银行界,在修订工作中作出了积极的贡献,有的经由工作小组及银行委员会,有的则通过四千多项的书面意见。

谨向上述所有有关人士致以诚挚谢意。而对他们的真正 **报偿,将**是经由《统一惯例》1983年修订本,得悉他们为促 **进国际贸**易所作出的巨大贡献。

> 国际商会银行技术与实务委员会主席 B.S 惠伯尔

> > 1983年6月

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第一部分

国际商会跟单信用证统一惯例第400号修订本条款原文、中译文及逐条试析

UNIFORM CUSTOMS AND PRACTICE FOR DCCUMENTARY CREDITS ICC No.400

国际商会跟单信用证统一惯例第400号修订本 1983 Revision in force as from 1 October 1984 (1983年修订1984年10月1日实施)

A. General provisions and definitions 总则与定义

Article 1

These articles apply to all documentary credits, including, to the extent to which they may be applicable, standby letters of credit, and are binding on all parties thereto unless otherwise expressly agreed. They shall be incorporated into each documentary credit by wording in the credit indicating that such credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication No.400.