



"Reliable payment is the first fundamental of free trade."

John W. Dunlop, is President of AVG Trade Group, providing Letter of Credit management, documents and payment via the Internet to clients worldwide.

The Advising Bank's Disclaimer

"If you are unable to strictly comply with it's terms, please communicate directly with the Applicant to have the Credit amended", singed your Advising bank.

The Advising Bank's Dilemma

Advising banks play many roles in a typical Letter of Credit trade transaction, to include; advisor, examiner, negotiator, paying bank, and consultant. In most transactions they are between the issuing bank and the beneficiary, and have fiduciary responsibilities to both. For this reason they do not side with the beneficiary of the Credit, and do not take the role of Solomon on his behalf, even for Credits that are obviously unworkable.

A Trade Finance Industry Dilemma

The advising bank's dilemma becomes the exporters rock and a hard place. Reject the Credit and possibility lose the sale, accept it and possibility lose the goods, and your job along with it. The exporter, a.k.a. the seller, a.k.a. the beneficiary, except their responsibility for the sales terms and conditions. They are at a loss as to why the international banks issue and advise Letters of Credit they know to be "unworkable" and then pass the buck to them. Harry Truman would not have made a good trade banker.

Unworkable Letters of Credit From Advising Banks

Advising bank's Letter of Credit notification letters carrier a disclaimer, that if you can't comply with its terms, you are responsible to have it amended.

What is an Unworkable Letter of Credit ?

An unworkable Letter of Credit is one that contains conditions that the beneficiary cannot comply with. The result of which will be a discrepant submittal of negotiable documents, and the loss of the protection of the Credit.

Unworkable conditions must be considered separately form undesirable or unfavorable conditions. A Letter of Credit can be unfavorable and still be able to able to be complied with. Unworkable conditions can be categorized into xxxx broad areas; performance conditions, document requirements, additional conditions, and ambiguities. Unworkable conditions are often country specific, and must be tolerated if you are going to continue trading with that country.

Unworkable Performance Conditions

Unworkable Performance conditions are usually the Latest Shipping Date, the Expiry Date, or the Presentation Period. The buyer does not want to tie up his collateral with the issuing bank any longer than he has to, and often only allows the bear minimum time for the beneficiary to ship the goods and present documents before the Credit expires.

Unworkable Document Requirements

Unworkable document requirements are documents that the beneficiary does not have the capability to produce or procure upon shipment. These include applicant documents that the beneficiary must get form the applicant after shipment and delivery. An inspection certificate signed by the applicant that is required to be included in the negotiable document set is an example. The Letter of Credit has no

more value than a Purchase Order with open terms. Both are subject to will and capability of the buyer to pay, with the issuing bank not standing for the buyers credit.

Another example is a Certificate of Origin detailing the origin of each component in an products assembly. Even if a manufacture or supplier knew the information, American Chamber's of Commerce will only certify American products, not foreign ones. This is no way to comply with this document requirement.

Unworkable Additional Conditions

Unworkable additional conditions are requirements that cannot be complied with. For example, for a CIF shipment the applicant may required a copy of the carriers insurance policy instead of a Certificate of Insurance. The inch thick umbrella policies carriers use to cover their ongoing operations are simply not available to the Freight Forwards or their customers.

Unworkable Ambiguities

Unworkable ambiguities are usually two opposite requirements in the same Credit. The Incoterm may be FOB in one place, and then require freight prepaid to destination. The Credit may also contain language that is vague or not understandable such as, "an original copy", or "certified fax".

The Source of Unworkable Conditions

If the UCP 500 has been the standard for Letters of Credit since 1933; and it is recognized by over 200 countries, then why do the worlds banks continue to issue such junk. Primarily because they want to. The amount of fees and interest

foreign banks can collect on trade finance transactions is directly proportional to the confusion and complexity of the issued Credit. There simply is an opposite incentive to do it correctly. Exporters contribute to the problem by accepting unworkable Credits because they would rather take the risk than loose the sale.

Your Buyer is Your Ally

Your foreign buyer normally doesn't have a clue that he paid the bank to issue an unworkable Credit. He has his money tied up, and desires the goods be shipped as soon as possible. He is also the only entity that can request an amendment since all credits are assumed (by UCP 500) to be irrevocable unless stated otherwise. If he understands the problem created by his bank he will willing assist in its solution, which is to direct his bank to amend the Credit.

How to Fix the Credit

First, identify the unworkable elements of the Credit, and communicate in writing to your buyer what his bank needs to change. Include the new wording the bank needs to replace in the Credit, so that your buyer becomes a third party when approaching his bank. In addition, specify which Articles in UCP 500 that the Credit does not conform to. It adds a nice touch, and allows your buyer to be non partisan with his banker.

Second, provide Letter of Credit Instructions that spells out the terms and conditions you need to have in the Credit.

Third, you will receive the corrections in the form of an Amendment. The Amendment will usually not address all of the problems, so you must do an assessment of the business risk and make a decision to accept or reject the Amendment.

Country Problems Will Persist

Many problems are part of a country or regions trading policies and it will not be possible to change them. Chinese Credits will not allow confirmation. Indian Credits will insist on drafts to be drawn on the Applicant. Middle East Credits require certification that the carriers ship

will not make stops at politically incorrect ports. And, Japan favors split Bills of Lading. If you want to do business in these countries, you are going to accept unworkable Letters of Credit as part of the relationship with the buyer.

It comes to mind that non of these types of Credits conform to the UCP 500, even though they state in their text that they do so. UCP 500 is flexible enough in its language to allow it both ways, i.e. don't do something, but if you do, its ok.

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