Perspectives — Selected Articles

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The Documentary Effect of the Five Powers War Clause — Reflections on TA.965rev and TA.968rev

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Perspectives from Practice

The credit prohibited exclusions affecting the required war-risk cover. The insurance policy confirmed that war risks were covered, but also referred to the *Five Powers War Clause*. It did not explain what that clause provided.

The question was not simply whether the clause could restrict the insurance. It was whether a bank, examining the presented documents, could establish such a restriction from a reference whose operative meaning was not disclosed.

The ICC Banking Commission addressed this question in **TA.965rev**, approved in London on 9 November 2026 and issued in its final form on 12 November.

The Commission concluded that the presentation was **not discrepant**. Although the credit's express prohibition on exclusions modified the application of UCP 600 sub-article 28(i), the mere reference to the Five Powers War Clause, without clarifying wording in the insurance document, did not establish that the required war-risk cover had been excluded or restricted.

In **TA.968rev**, the Commission reached a different conclusion. The insurance document expressly identified geographical exclusions applicable to risks covered under the war and/or strikes, riots and civil commotions (SRCC) clauses. The shipment was by air, and the confirming bank argued that the excluded areas were irrelevant to its route. Nevertheless, the Commission upheld the issuing bank's refusal.

The two conclusions are consistent within the rules of documentary examination. What deserves examination is their practical consequence.

What a reference proves

UCP 600 sub-article 28(i) permits an insurance document to contain a reference to an exclusion clause. ISBP 821 paragraph K17(b) reinforces that permission even when the credit expressly specifies the risks to be covered.

But K17(a) requires the insurance document to cover those risks.

And under article 1 of UCP 600, the credit may expressly modify the rules.

Both final Opinions recognise that an express prohibition on exclusions affecting the stipulated risks modifies the application of sub-article 28(i). The difference lies in what the respective insurance documents establish.

In TA.965rev, the Commission expressly declined to rely on the interpretation of the Five Powers War Clause provided in the query. Obtaining its wording from an external source, or relying on independent knowledge of marine insurance practice, would go beyond examination on the basis of the documents alone under sub-article 14(a).

That conclusion deserves to be understood precisely.

A clause may have contractual effect through incorporation by reference. The absence of its operative wording from the presented document does not necessarily deprive it of that effect. But a bank cannot establish a documentary discrepancy merely by importing that wording from outside the presentation.

In TA.968rev, the exclusion was not left to external interpretation. The document expressly connected the excluded territories and sea areas to the war and/or SRCC risks covered. The conflict arose from what the insurance document stated, not from an examiner's independent knowledge.

Nor could the apparent irrelevance of the geographical exclusions to the particular air journey remove that conflict. The Commission confirmed that banks need not reconstruct the actual or anticipated route to decide whether an expressly stated exclusion would become operative.

The distinction is not between a bank that knows more and a bank that knows less. It is between information established by the presented documents and information that the examiner would have to supply from elsewhere.

When absence becomes the decisive fact

The three conclusions in TA.965rev invite a closer look.

Whether the Five Powers War Clause contradicts the required war-risk coverage is outside the scope of UCP 600. Whether it actually restricts that cover cannot be determined from the presented insurance document. Yet the presentation is not discrepant.

There is no necessary contradiction. The first two questions concern the effect of the insurance arrangement; the third concerns what the bank can establish for documentary examination.

But the distinction has consequences.

The absence of documentary evidence of an exclusion is not evidence that no exclusion exists.

A bank may therefore correctly accept an insurance document without establishing whether the protection ultimately available under the policy corresponds to what the parties intended.

This raises an uncomfortable question:

Could a restriction that might be apparent if expressed in the insurance document become incapable of supporting a documentary refusal when presented only through the name of a clause?

TA.965rev establishes the examination result for the facts before the Commission. It does not establish that a restrictive clause loses its contractual effect because its wording is absent from the document.

Nor does the result depend simply on whether the word *exclusion* appears.

If an insurance document expressly describes a restriction affecting the stipulated risks, the examiner must assess its substance and its relationship to the credit, whatever heading or terminology the insurer uses. Removing the word *exclusion* would not, by itself, remove an otherwise apparent documentary conflict.

The more difficult situation arises when a document identifies a clause but gives no indication of the nature or extent of the restriction it may contain.

The bank cannot fill that gap by consulting external insurance terms. Yet the party relying on the insurance may still have to confront those terms if a loss occurs.

Documentary acceptability and effective insurance protection are not interchangeable conclusions.

Must every clause be reproduced?

One possible response would be to require more extensive wording in the credit.

But how far should that requirement go?

Must an applicant now require the operative wording of every clause capable of limiting the stipulated risks to appear in the insurance document, simply to make the credit's prohibition against exclusions capable of examination?

That would risk transferring another burden to documentary-credit drafting and examination, without necessarily providing a workable solution.

Banks are not expected to interpret the full legal operation of insurance contracts or examine their general terms and conditions. Nor should every insurance certificate become a reproduction of the entire policy.

The Commission itself recognises the practical difficulty of broadly prohibiting exclusions. Both final Opinions refer to ICC Opinion R634 (TA638rev), which acknowledges that excluding the application of sub-article 28(i) may result in an unworkable credit.

The recommendation to identify unacceptable exclusions more precisely is therefore understandable.

But it leaves another question insufficiently explored.

Why should the responsibility for making insurance restrictions identifiable rest principally on the applicant's drafting of the credit, rather than also on the insurer's disclosure of the cover it provides?

The distinction matters because the parties have different responsibilities.

The applicant may specify the protection required. The seller may arrange the insurance. The insurer determines the cover it is willing to provide and the restrictions attaching to it. The bank examines the resulting document within the limits of the credit and the applicable rules.

Those responsibilities should not become blurred merely because the documentary examination process cannot establish the effect of an unexplained contractual reference.

The insurer's responsibility for clarity

If banks are not expected to possess specialist knowledge of insurance clauses, as the Commission expressly acknowledges in TA.968rev, why should material restrictions on the stipulated cover remain difficult to identify in the insurance documents presented?

Would it not be more consistent with transparency and fair disclosure for insurers to identify significant exclusions and coverage limitations prominently, perhaps under a clear heading such as **“Exclusions and Coverage Limitations”**?

The purpose would not be to require every general condition of an insurance contract to appear in a certificate. Nor would a heading alone be sufficient if the restrictions remained unexplained.

What matters is that limitations materially affecting the stated cover should be recognisable, with enough information to understand which risks they restrict.

This is not foreign to established insurance-supervision principles. The International Association of Insurance Supervisors, through ICP 19, emphasises clear disclosure of insurance product features, including significant or unusual exclusions and limitations.

Those principles do not themselves create a new discrepancy rule under UCP 600 or require every cargo insurance document to adopt a prescribed heading. They nevertheless reinforce a legitimate expectation: parties arranging insurance should be able to understand the material boundaries of the protection being offered.

The point becomes especially important where the party arranging and paying for the insurance is not necessarily the party most exposed to the consequences of inadequate cover.

The documentary credit may require a stated level of insurance protection, but the commercial interests of the party procuring that cover and those relying upon it need not be identical.

That is not an allegation of improper conduct by insurers or sellers. It is a reason to insist that material limitations be identifiable before a loss reveals their significance.

A bank should not be expected to discover what an insurer could have made clear.

Nor should the party relying on the insurance be left to discover, only when making a claim, that a provision identified by name carried a restriction affecting the very risk for which protection was sought.

The solution cannot lie exclusively with the document examiner. It belongs equally in the quality of insurance disclosure and in the arrangements made before the credit is issued.

The boundary that should not become a refuge

TA.965rev and TA.968rev establish a disciplined distinction.

An examiner cannot establish a discrepancy by attributing externally obtained wording to a clause merely named in the insurance document. Equally, an examiner cannot disregard an expressly stated exclusion affecting the required cover because circumstances outside the document suggest that the restriction may never become relevant.

Those conclusions preserve the limits of documentary examination.

But those limits should not become a convenient refuge for ambiguity in the description of insurance protection.

There is a difference between protecting banks from responsibilities that do not belong to them and accepting that material insurance restrictions may remain unclear to the parties whose interests the insurance is intended to protect.

The former is essential to documentary-credit practice. The latter deserves attention from those who draft credits, arrange insurance and issue insurance documents.

Better drafting can identify unacceptable exclusions. Better insurance disclosure can make those exclusions intelligible. Neither requires the bank to become an insurance specialist.

An insurance clause may operate through incorporation by reference. A documentary discrepancy, however, must be established through the examination rules and what the presented documents sufficiently evidence.

The two are not necessarily identical.

And perhaps that is the distinction most worth remembering: **the bank's acceptance of an insurance document does not amount to its confirmation that the insurance will respond to every risk the parties believed they had covered.**

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