



International Chamber of Commerce

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Recommendation
Paper



Prepared by ICC Commission on
Banking Technique and Practice

Recommendations of the Banking Commission in respect of the requirements for an On board Notation

Highlights

- Bills of Lading and the need for onboard notation
- UCP 600 articles applicable for examination of bills of lading
- Position in respect of Sea Waybills, Multimodal/Combined Transport Documents and Charter Party Bills of Lading
- Simple flowchart

Introduction

At the ICC Banking Commission meeting held in Dubai in March 2009, it was agreed that the UCP 600 Drafting Group would prepare a document outlining the requirements for an on board notation in respect of transport documents presented for examination under articles 19, 20, 21 or 22 of UCP600.

It has also been made clear by several national committees that there is a desire for this paper to become an official publication of the ICC.

This document provides the unanimous views of the UCP 600 Drafting Group and is presented to the ICC Banking Commission for agreement as an official ICC document that is reflective of practice in respect of the requirement for an on board notation.

Once approved, the contents will form part of the soon to be revised International Standard Banking Practice for the Examination of Documents under Documentary Credits.

Requirements for an on board notation in respect of a transport document presented for examination under articles 19, 20, 21 or 22 of UCP 600

■ Overview

Background and Introduction

- 1.1 From the first ICC Banking Commission meeting following the implementation of UCP 500, the ICC has been asked to respond to requests for opinions on the subject of on board notations i.e., in the context of when they are required and what form they should take, given a particular set of circumstances. This trend has continued following the implementation of UCP 600 in July 2007.
- 1.2 This document will:
- aid beneficiaries in instructing carriers and logistics companies of the requirements for any on board notation;
 - provide carriers and logistics companies with clear guidelines as to when an on board notation will be required to appear on a transport document and its data components; and
 - guide banks in the correct interpretation and application of the UCP in relation to on board notations for bills of lading, sea waybills and charter party bills of lading, and for multimodal or combined transport documents, where the first part of the carriage (as required by the credit) is by sea.
- 1.3 This document refers to the 'on board notation' requirements of a Transport Document Covering at Least Two Different Modes of Transport (i.e., Multimodal or Combined Transport Document), Bills of Lading, Sea Waybills and Charter Party Bills of Lading. To avoid repetitive text and duplication of consistent requirements, this document focuses on bills of lading, the transport document with the most requests for an ICC Opinion. Whilst an on board notation may be required on any of these documents, the addition of a notation does not change the nature of such document as an article 19, 20, 21 or 22 type of document. The on board notation requirements in relation to all the referenced transport documents appear in section 5.
- 1.4 For ease of review and applying the requirements of this document, a simple flowchart (appearing in section 6) explains when an on board notation is required and the form that it is to take. Sections 2-4 give the background to the requirements of UCP and ISBP and the basis for how the conclusions, in section 5, have been drawn.

■ ICC Opinions already given under UCP 600

- 1.5 Since October 2007, the first Banking Commission meeting following the implementation of UCP 600, ICC has responded to seven requests for Opinions on the subject of on board notations.
- ICC Opinions R.648 (TA.635rev) Query 3, R.644 (TA.665rev), R.645 (TA.667rev) and TA.679 have focussed on issues relating to bills of lading, whilst Opinions R.641 (TA.650rev), R.642 (TA.666rev) and TA.682 have been in respect of Multimodal or Combined Transport Documents.
- 1.6 The analysis and conclusions to Opinions R.644, R.645 and R.648 indicate that an on board notation will be required if the place of receipt was different to the port of loading "unless it is evident from the bill of lading that the shipped on board statement applies to the named vessel and the port of loading stated in the credit." These opinions place the burden on the

wording in the bill of lading to determine whether the on board notation requires more than just a date.

- 1.7 The conclusion to TA.679 was slightly different to that referred to above owing to the wording of the bill of lading (see section 2.6 for the wording). The conclusion in question stated: - "If the bill of lading evidences an inland place of receipt, the bill of lading will require a dated on board notation bearing the name of the vessel and port of loading stated in the credit, even if the bill of lading is pre-printed "shipped on board in apparent good order and condition" or similar."
- 1.8 In order to fully understand the issues pertaining to these Opinions, and the content of the analysis and conclusion given, their full transcript should be reviewed.

Bills of Lading and the need for an on board notation

■ UCP and ISBP provisions

- 2.1 During the revision of UCP 500, communications were sent between the Drafting Group and members of the ICC Transport Commission. As a result it was agreed that the bill of lading is a transport document covering shipment from a port of loading to a port of discharge and that the rules should reflect that position. It should be noted that ICC Publication No.680 "Commentary on UCP 600" refers to article 20 in the following manner: "[T]his article applies when the documentary credit requires presentation of a bill of lading covering transport by sea from one port to another port." Additionally, ISBP Publication 681, at paragraphs 91 and 92 states "[I]f a credit requires presentation of a bill of lading ("marine", "ocean" or "port-to-port" or similar) covering sea shipment only, UCP 600 article 20 is applicable." and "[T]o comply with UCP 600 article 20, a bill of lading must appear to cover a port-to-port shipment but need not be titled "marine bill of lading", "ocean bill of lading", "port-to-port bill of lading" or similar."
- 2.2 The main problems with on board notations arise when the bill of lading indicates place of receipt and/or pre-carriage details and the place of receipt is different to the port of loading stated in the credit, and therefore the question arises of whether or not there is a need for an on board notation showing the name of the vessel and the port of loading, even if they are the same details as shown in the respective fields on the bill of lading. An element of confusion initially arose through the UCP 600 not incorporating the wording that appeared in UCP 500 sub-article 23 (a) (ii) i.e., "If the bill of lading indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named in the bill of lading. This provision also applies whenever loading on board the vessel is indicated by pre-printed wording on the bill of lading, and".
- 2.3 The inclusion, in UCP 600 sub-article 20 (a) (ii) of "indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit" still requires a document examiner to be satisfied that the on board notation relates to the goods being on board the named vessel and not by any other means of conveyance for the pre-carriage (between a place of receipt and the port of loading).
- 2.4 It is often the case that the contract of carriage concluded between the carrier and shipper is not in line with the requirements for shipment expressed in the credit. The shipper may contract for the goods to be collected from an inland point for delivery to the port of loading for loading onto the vessel, but the letter of credit only refers to shipment from port to port. The bill of lading may consequently evidence a place of receipt that is different to the port of loading, and where there is a dated on board notation added to the bill of lading, or the bill of lading is pre-printed 'shipped on board in apparent good order and condition ...' the issue for the document checker is to determine whether or not the on board notation can be understood to 'indicate that the goods are on board the named vessel at the port of loading stated in the credit'.

■ Does “on board” always mean on board the named vessel?

- 2.5 Whilst a number of carriers, and their agents, specify verbally that they will not release a bill of lading unless the goods are actually loaded on board the vessel named in the bill of lading, this may not always be evident from the bill of lading itself and sub-article 14 (a) requires that a nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation (emphasis added).
- 2.6 Banks may encounter bills of lading containing specific wording as to the place to which the on board notation will apply. One such example has been given in ICC Opinion TA.679. This request for an Opinion highlighted the following wording that had been seen in a bill of lading: “[W]hen the place of receipt of the goods is an inland point and is so named herein, any notation of “on board”, “shipped on board” or words to like effect on this BL, shall be deemed to mean on board the truck, rail car, aircraft or other inland conveyance... from the place of receipt of the goods to the port of loading”. When incorporated into the pre-printed text on the bill of lading, the use of this form of wording clearly indicates that “shipped on board” or similar terms does not equate to ‘shipped on board a named vessel at the port of loading stated in the credit’ (as required by sub-article 20 (a) (ii)).
- 2.7 Wording of similar effect has been found on the face of other bills of lading such as “[W]hen the place of receipt box has been completed, any notation on this bill of lading of “on board”, “loaded on board” or words to like effect, shall be deemed to be on board the means of transportation performing the carriage from the place of receipt to the port of loading.”
- 2.8 This raises the questions: should a document examiner be required to examine pre-printed text on the face of the bill of lading to determine whether shipped on board really means shipped on board the vessel (at the port of loading) and under what circumstances can a document examiner reasonably be expected to apply an on board notation to the named vessel and port of loading? Document examiners must recognise that in reviewing a pre-printed shipped on board statement i.e., “shipped on board in apparent good order and condition
- the wording that follows thereafter determines the effect and application of that shipped on board statement and must be read. If, as indicated above, the wording indicates that ‘on board’ means on board the conveyance from the place of receipt to the port of loading stated in the credit, then the document examiner must refuse the documents for absence of an on board notation in relation to the vessel and the port of loading. Document examiners should only read the pre-printed text as far as is necessary to determine the place of loading “on board” the conveyance for the sea journey.
- 2.9 Subject to a bill of lading not incorporating wording to the effect shown above, it is the opinion of the ICC Banking Commission that a distinction can be drawn between bills of lading that evidence a place of receipt and a means of pre-carriage or those that only evidence a means of pre-carriage and those that only evidence a place of receipt – whether the place of receipt is the same as the port of loading or different. If the bill of lading only shows a place of receipt, with no reference to the means of pre-carriage, in the pre-carriage or place of receipt fields, an on board notation, or pre-printed wording to that effect can only be seen to apply to the named vessel and port of loading. Where a place of receipt and/or a means of pre-carriage is shown, there is doubt as to whether the on board notation or pre-printed wording refers to the named vessel and port of loading.

■ Which article of UCP 600 is applicable for examination of a transport document?

Transport documents must be examined under the article that is applicable to the conditions stated in the credit. These conditions include: the type of document that is to be presented and the details given with respect to the shipment of the goods e.g., those shown in fields 44A, E, F or B of the MT700, 710 or 720. Transport documents are not examined under the article applicable to the type of document that has been presented. For example, an MT700 is issued requiring presentation of a bill of lading with field 44E showing Rotterdam and field 44F showing Hong

Kong. A transport document that is presented showing as place of receipt Paris, port of loading Rotterdam and port of discharge Hong Kong will be examined under article 20 and not article 19. For avoidance of doubt, any document called for by a credit containing the phrase “bill of lading” and asking for port to port shipment (i.e., meeting the requirement of article 20 reading “A bill of lading, however named”) is to be examined against article 20, not article 19.

Note the following description for the SWIFT fields quoted above:

44A	<i>Place of Taking in Charge/Dispatch from .../Place of Receipt</i>
44E	<i>Port of Loading/Airport of Departure</i>
44F	<i>Port of Discharge/Airport of Destination</i>
44B	<i>Place of Final Destination/For Transportation to .../Place of Delivery</i>

■ Selecting the appropriate transport document

This is a key issue and one that banks should pay particular attention to. By selecting the transport document that reflects the correct routing and appropriate means of conveyance, many of the issues seen today can be avoided.

The structure of UCP 600, in particular in changing the order of the transport documents, was to emphasise that in most shipments today there is an element of multimodal or combined transport and that, perhaps, applicants should be calling for more multimodal or combined transport documents than bills of lading.

Banks are invited to educate their customers in selecting the correct transport document for the carriage that is being undertaken and that where transport by more than one means of conveyance will occur, to request the presentation of a multimodal or combined transport document instead of a bill of lading. This process can be aided significantly by the incorporation of SWIFT fields 44A, E, F and B into LC application forms. The correct completion of these fields, by the applicant and/or the issuing bank, will identify the suitable form of transport document e.g.

Fields 44E and F only = Bill of Lading, Sea Waybill, Charter Party Bill of Lading or Air Waybill

Fields 44A and B only = Multimodal or Combined Transport Document, Road, Rail or Inland Waterway or Post / Courier

Any 3 fields from 44A, E, F or B (or all of them) = Multimodal or Combined Transport Document

The recommendation for incorporation of these fields into the LC application form also pre-supposes that the form allows for the applicant to select from a range of transport documents and not only from a bill of lading or air waybill.

(3) Requirements of UCP 600 (in respect of bills of lading)

■ The pertinent rules in article 20 are:

Sub-article 20 (a) (ii):

- indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
- pre-printed wording, or
- an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the bill of lading will be deemed to be the date of shipment unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

If the bill of lading contains the indication "intended vessel" or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

Sub-article 20 (a) (iii):

- indicate shipment from the port of loading to the port of discharge stated in the credit.

If the bill of lading does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication "intended" or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the bill of lading.

(4) Selected wording from the ICC Publication No. 680 "Commentary on UCP 600"

- Commentary on UCP 600 Pages 89-92
Article 20

This article applies when the documentary credit requires presentation of a bill of lading covering transport by sea from one port to another port.

As a bill of lading covers shipment from a port to a port, the wording that appeared in UCP 500 sub-article 23 (a) (ii) was seen to encourage the presentation of a document that covered pre-carriage of the goods to the port of loading. The wording of this sub-article reads: "If the bill of lading indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named in the bill of lading. This provision also applies whenever loading on board the vessel is indicated by pre-printed wording on the bill of lading."

Where pre-carriage by road, rail or air and shipment by sea is envisaged, the parties should ensure that the credit allows for a transport document to be presented that would be subject to examination under UCP 600 article 19.

The Drafting Group recognized that whilst UCP 600 conveys that the bill of lading is a port-to-port document, there will be occasions when the shipping company or its agent will include reference to a place of receipt or taking in charge that is different from the port of loading. To cover this eventuality, the content of sub-article 20 (a) (ii) reads: "indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by." The emphasis in this condition is that the document checker must be able to determine that the bill of lading appears to indicate that the shipped on board statement (pre-printed wording or by a separate notation) relates to loading on board the named vessel at the port of loading stated in the credit and not to any pre-carriage of the goods between a place of receipt or taking in charge and the port of loading. **Unless it is evident from the bill of lading that the shipped on board statement applies to the vessel and the port of loading, the bill of lading will require, as was the case in UCP 500, an on board notation showing the port of loading and the name of the vessel, even if the goods are loaded on the vessel named in the bill of lading.** [emphasis added]

Sub-article (a) (iii) states that if a bill of lading does not indicate the port of loading stated in the documentary credit as the port of loading, it must contain an on board notation which indicates the

port of loading stated in the documentary credit, the date of shipment and the name of the vessel. The same criteria apply if the bill of lading indicates the qualification “intended” or similar in respect of the port of loading.

An example of where a bill of lading does not indicate the port of loading stated in the documentary credit as the port of loading would be when the port of loading stated in the documentary credit is shown as the place of receipt, since in the field “port of loading” it shows the port where transshipment is to occur. The documentary credit requires shipment from Rotterdam to Hong Kong. Sub-article (a) (iii) requires the bill of lading to indicate shipment from the port of loading to the port of discharge stated in the credit.

The bill of lading shows:

Pre-carriage	Moon Lagoon
Place of receipt	Rotterdam
Ocean Vessel	Sun Lagoon
Port of Loading	Dubai
Port of Discharge	Hong Kong

The bill of lading will require, according to sub-article (a) (iii), an on board notation showing the vessel Moon Lagoon, the port of loading Rotterdam and the on board date.

(5) Conclusions

The opinion of the ICC Banking Commission is as follows:

■ Bills of Lading

- (a) where the bill of lading indicates a place of receipt that is the same as the port of loading , for example, place of receipt Rotterdam CY and port of loading Rotterdam BUT there is NO indication of a means of pre-carriage (either in the pre-carriage field or the place of receipt field) then:
 - (i) if the bill of lading is pre-printed shipped on board, the date of issue will be deemed to be the date of shipment and no further on board notation is required;
 - (ii) if the bill of lading is pre-printed received for shipment, a dated on board notation will be required and the date appearing in the notation will be deemed to be the date of shipment.
- (b) where the bill of lading indicates a place of receipt that is different from the port of loading i.e., place of receipt Amsterdam and port of loading Rotterdam BUT there is NO indication of a means of pre-carriage (either in the pre-carriage field or the place of receipt field) then:
 - (i) if the bill of lading is pre-printed shipped on board, the date of issue will be deemed to be the date of shipment and no further on board notation is required;
 - (ii) if the bill of lading is pre-printed received for shipment, a dated on board notation will be required and the date appearing in the notation will be deemed to be the date of shipment.
- (c) where the bill of lading indicates a place of receipt that is different from the port of loading i.e., place of receipt Amsterdam and port of loading Rotterdam AND there is an indication of a means of pre-carriage (either in the pre-carriage field or the place of receipt field) then:

- (i) if the bill of lading is pre-printed shipped on board, a dated on board notation will be required indicating the name of the vessel and the port of loading. The date of the notation will be deemed to be the date of shipment;
- (ii) if the bill of lading is pre-printed received for shipment, a dated on board notation will be required indicating the name of the vessel and the port of loading. The date of the notation will be deemed to be the date of shipment.

The exception to the above is where the bill of lading contains wording such as that quoted in section 2.6 or 2.7 of this paper. Where such wording is incorporated into the pre-printed wording, a dated on board notation will be required that also indicates the name of the vessel and the port of loading.

As a result of the contents of this document, the conclusion given to Opinion R.644 will be replaced by that under (b) above.

In the context of this document, 'pre-carriage' refers to the carriage between a stated place of receipt and the stated port of loading on a transport document.

The flowchart in section 6 explains the requirements for an on board notation in relation to the data content of the bill of lading as may be presented.

■ Sea Waybills

Same position as for bills of lading.

■ Multimodal or Combined Transport Documents

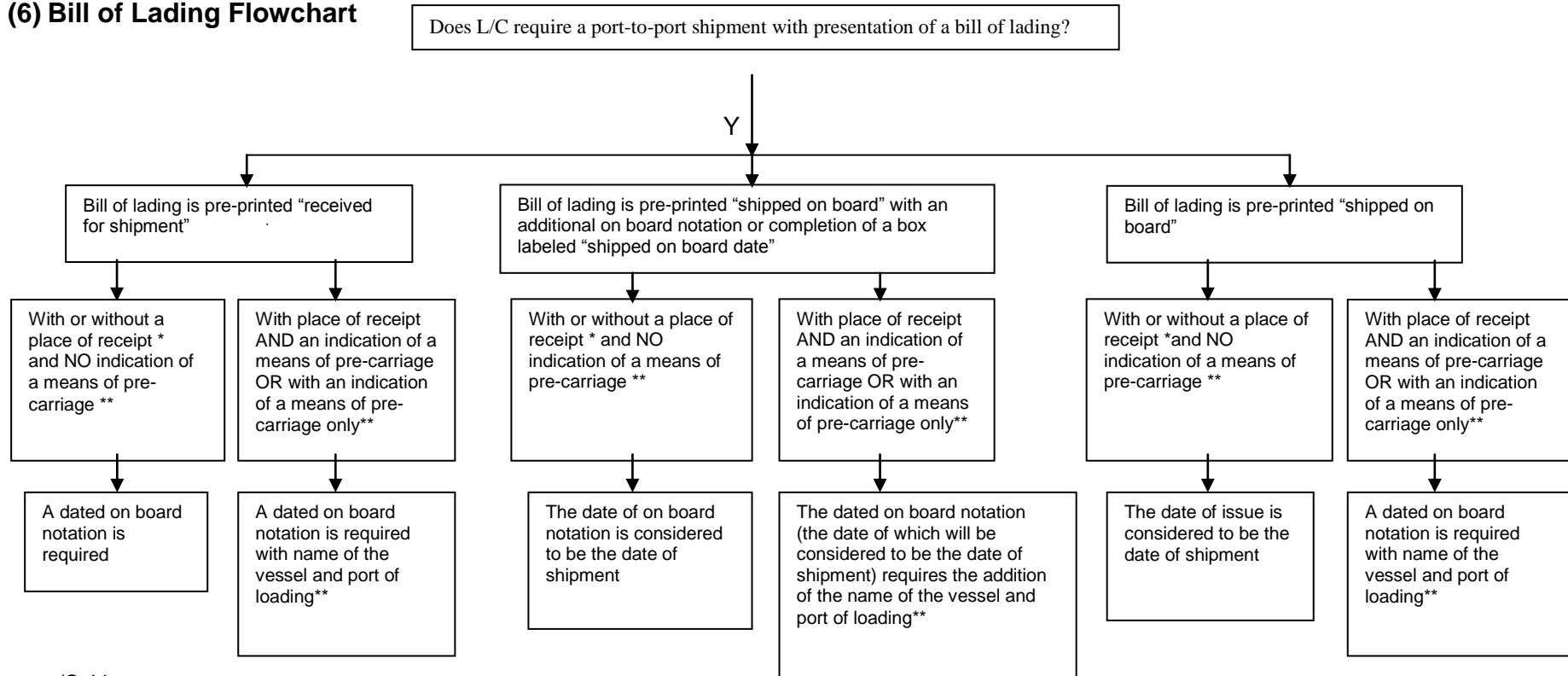
Article 19 provides for an indication of the goods being dispatched, taken in charge or shipped on board. The applicable wording will depend upon the mode of conveyance for the first leg of the carriage. It should be noted that article 19 does not require an on board notation as a default position for most of the time. However, in line with ICC Opinion R. 641 (TA.650rev), a dated on board notation is clearly required when the credit so requests. It is also required when the credit requires shipment to be effected from a port to the place of final destination i.e. the first leg of the journey, as required by the credit, is by sea. If a multimodal or combined transport document nonetheless evidences a place of receipt that is different to the place stated in the credit, and that place stated in the credit is a port, the dated on board notation will require the addition of the name of the vessel and port of loading, unless the transport document evidences that the on board notation or pre-printed shipped on board wording applies to the named vessel and port of loading. The key, therefore, is for the credit either:

- (a) to expressly require an on board notation, or absent that;
- (b) to make clear whether the place from which the goods are to be taken in charge by the carrier is a sea port.

■ Charter Party Bills of Lading

The content of the flowchart in section 6 will apply where the bill of lading contains an indication that it is subject to a charter party (charter party bill of lading).

(6) Bill of Lading Flowchart



Footnotes/Guidance:

1. *"With or without place of receipt" if only a place of receipt is shown, it can be the same place or a different place *provided there is no mention of a means of pre-carriage in the pre-carriage or place of receipt fields on the document.*
2. ***"Indication of a means of pre-carriage" – where an indication of the means of pre-carriage is given i.e., by truck or rail, the bill of lading will require an on board notation indicating the name of the vessel and the port of loading, whether or not a place of receipt field is completed.
3. An on board notation is also required where the ocean vessel and/or port of loading are stated to be "intended". In this event, the on board notation is to include the name of the vessel and/or the port of loading. Alternatively, the word "intended" may be deleted and the deletion authenticated by the carrier or their agent.
4. Where the port of loading stated in the credit is shown as the place of receipt (the ocean vessel and port of loading fields, in this case, are reflecting the transshipment details) with shipment by sea from that port, a dated on board notation is required evidencing the port of loading stated in the credit and the vessel that is leaving that port.
5. Where the bill of lading indicates the place of receipt as the same as the port of loading, for example, place of receipt Rotterdam CY and port of loading Rotterdam but there is no indication of the means of pre-carriage, the date of a pre-printed shipped on board bill of lading will be deemed to be the date of shipment. If the bill of lading is pre-printed received for shipment, a dated on board notation will be required and that date will be deemed to be the date of shipment.
6. The exception to the above is where the bill of lading contains wording such as that quoted in section 2.6 or 2.7 of this paper. Where such wording is incorporated into the pre-printed wording, a dated on board notation will be required that also indicates the name of the vessel and the port of loading.

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rules-setting, dispute resolution and policy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC enjoys a close working relationship with the United Nations and other intergovernmental organizations, including the World Trade Organization and the G8.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.



International Chamber of Commerce

The world business organization

Policy and Business Practices

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