

Lee, Ki Young; Lee, Yangkee

Article

Limitations of and proposals for L/C application of optional on-board B/L under the Incoterms® 2020 FCA rules

International Trade, Politics and Development (ITPD)

Provided in Cooperation with:

Department of International Commerce, Finance, and Investment, Kyung Hee University

Suggested Citation: Lee, Ki Young; Lee, Yangkee (2025) : Limitations of and proposals for L/C application of optional on-board B/L under the Incoterms® 2020 FCA rules, International Trade, Politics and Development (ITPD), ISSN 2632-122X, Emerald, Leeds, Vol. 9, Iss. 1, pp. 12-24, <https://doi.org/10.1108/ITPD-05-2024-0030>

This Version is available at:

<https://hdl.handle.net/10419/319597>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



<https://creativecommons.org/licenses/by/4.0/>

Limitations of and proposals for L/C application of optional on-board B/L under the Incoterms[®] 2020 FCA rules

Ki Young Lee and Yangkee Lee

Department of International Trade, Pusan National University, Busan, South Korea

Abstract

Purpose – This study examines the limitations of the practical application of letter of credit transactions requiring an on-board bill of lading under the FCA and presents opinions on the practical use of FCA-ruled bills of lading for letter of credit transactions.

Design/methodology/approach – It is very significant that the Incoterms[®] 2020 FCA rules have added new content regarding the optional description of the on-board bill of lading. However, even if the seller has received the on-board bill of lading, there is a limitation in that the bank may not judge the presented documents as a consistent presentation for payment. Identifying these limitations and suggesting solutions are very important for future international commerce transactions. This study is conducted in the following order. First, we review the UCP regulations that banks apply to confirm the consistency of transportation documents in letter of credit transactions. Second, we confirm the limitations in applying the selective description of the on-board bill of lading newly established in the FCA rules proposed by the ICC to letter of credit transactions. Lastly, necessary opinions are presented on how the buying and selling parties can properly utilize the Incoterms in letter of credit transactions.

Findings – The establishment of the ICC's Incoterms 2020 FCA rule's on-board bill of lading option regulation is intended to resolve merchants' inconvenience caused by the document screening standards of banks that ignore changes in the trade environment such as the emergence of containers and maintain traditional ship trading practices. It can be interpreted. However, there are still problems with the presentation of on-board bills of lading under FCA rules, and there are also problems with practices between merchants and banks. Existing prior research is limited to dealing with the problems of using FOB rules in container transportation and the limitations of the on-board bill of lading option provisions of FCA rules. The Fourth Industrial Revolution has also affected trade, ushering in the digital era. Trade platforms developed with new technologies are either under development or being prepared for commercialization.

Originality/value – This study reaffirmed the main implications covered in previous studies and proposed the use of multimodal transport documents rather than bills of lading as an alternative to problems that may arise in letter of credit transactions that require on-board bills of lading under FCA rules. Above all, it presented opinions on changes in banks' practices that require on-board bills of lading in letter of credit transactions, which are inconsistent with the mainstream container-based intermodal transportation.

Keywords Incoterms[®] 2020, FCA, On-board B/L, Letter of credit

Paper type Research paper

1. Introduction

After World War II, developed countries realized that one of the causes of the war was protectionism and made efforts to realize free trade. As a result, world trade is experiencing a renaissance thanks to the expansion of free trade centered on the World Trade Organization (WTO). Due to the efforts of the General Agreement on Tariffs and Trade (GATT) and WTO, global trade volume has massively increased, and the subjects of trade have expanded to include services and digital products in addition to goods. In addition, the emergence of large



container ships equipped with diesel engines established maritime transportation as the main method for trade transactions. Multimodal transportation, which combines maritime transportation with other transportation methods, has become the mainstream modern trade transportation method. These changes in transportation methods also affected the Incoterms, which are rules for goods delivery used when a selling party concludes a sales contract. When they were revised in 1980, “Free Carrier (FRC)” and “Freight or Carriage” were added to cover container transportation. The terms “Paid to . . . (DCP)” and “Freight or Carriage and Insurance Paid to . . . (CIP)” were revised or newly created, and FOR/FOT and FOB Airport were absorbed and integrated into the carrier delivery terms in the 1990 revision. They were then changed to the FCA rules.

The Incoterms[®]2020 FCA rules are very suited to container transport and multimodal transport. Unlike the FOB rules, the seller bears the risks and costs until the goods are delivered to the first carrier before being loaded onto the ship, and any risks and costs that arise thereafter are borne by the buyer.

However, if the payment method is agreed to be a letter of credit and a sea bill of lading on board is required on the letter of credit, if the first carrier designated by the buyer is a land carrier, the seller will not be able to receive a sea bill of lading on board. Considering this, Incoterms[®]2020 added a new optional entry for a new on-board bill of lading to party obligations A6/B6 as a way for sellers using the FCA rules to receive the on-board bill of lading required for letter of credit transactions. In other words, sellers using FCA rules require an on-board bill of lading. Therefore, the buyer can prevent document discrepancies due to the issuance of land transport documents by instructing the carrier to issue a bill of lading on board to the seller.

However, the instructions to users for the Incoterms[®]2020 FCA rules specify that the carrier may or may not accept the buyer’s instructions. In addition, the carrier has the obligation and right to issue a bill of lading when the cargo is actually loaded onto the ship, and if optional information is applied, the delivery date on land and the date of loading on board may naturally be different. As a result, the seller must comply with the requirements in the letter of credit. It is also specified that a matching presentation may not be constructed. As can be seen from the above, the selective entry of a new on-board bill of lading is limited in that it ultimately issues an on-board bill of lading to the seller only when the carrier accepts the buyer’s opinion. Furthermore, even if the seller has received the on-board bill of lading, there is another limitation in that the bank may not judge the presented documents as a consistent presentation for payment.

Relevant prior research includes a study that presented major revisions to the Incoterms[®]2020 and implications of their practical application, and a study that addressed the limitations of practical application when loading bookkeeping is required when applying the Incoterms[®]2020 FCA rules to letter of credit transactions.

First, studies on the revisions to the Incoterms[®]2020 include [Kim \(2019\)](#), [Park and Kim \(2019\)](#), [Shin and Kim \(2019\)](#), [Heo \(2021\)](#), and [Park and Shin \(2022\)](#). Points to keep in mind when applying the rules in practice were confirmed based on the obligations of the parties. In particular, [Shin and Kim \(2019\)](#) recommended clearly confirming the background to the introduction of the gross weight verification system and the obligations between parties when concluding a sales contract. Meanwhile, [Park and Shin \(2022\)](#) focused on general revisions, revisions in terms of transportation, and insurance-related revisions; they were dealt with separately by trade transaction stage.

In addition, the first work that addressed problems when requesting loading bookkeeping under the Incoterms[®]2020 FCA rules for letter of credit transactions was [Lee and Lee \(2019\)](#) study on cases using Rules C and F, which are shipping sales rules presented in the Incoterms[®]2020. In the case of reinterpretation of delivery and risk transfer and requiring an on-board bill of lading in letter of credit transactions under FCA rules, it was noted that the optional description presented for the first time in the Incoterms[®]2020 has limitations. In

addition, [Jeong \(2018\)](#) analyzed in detail the scope of the carrier's obligations and responsibilities regarding the delivery of goods under the FCA.

Second, [Woo \(2020\)](#) showed concern about the unreasonable misuse of containers and the issue of the seller bearing the risk from CY to loading onto the ship when concluding a contract with container shipping terms according to the FOB, CFR, and CIF rules of the Incoterms[®]2020. In practice, when a bill of lading on board is required in a letter of credit transaction, a contradiction between the UCP600 and Incoterms[®]2020 rules occurs. [Hong and Song \(2020\)](#) highlighted the need for an on-site review of the issue of whether a shipping bill of lading must be issued when a letter of credit is used, or whether a receiving bill of lading can be issued.

Third, [Kim \(2020\)](#) suggested that the allowance for the selective entry of an FCA on-board bill of lading in the Incoterms[®]2020 rules is limited as a way to avoid the misuse of container ship loading conditions. [Chae \(2016\)](#), in regard to the provisions on loading bookkeeping in the UCP600, suggested that it is necessary to reflect in the UCP that the notation of "shipped on board" must be related to loading on board the vessel designated at the loading port described in the credit, and not related to the prior transportation of the goods between the receiving location and loading location.

As briefly mentioned in the previous FCA-related research listed above, there are still many limitations in the selective description of the on-board bill of lading, and thus additional research is necessary. For example, the explanatory note for users of the Incoterms[®]2020 FCA rules specifies that the carrier may or may not accept the buyer's instructions. It also states that the carrier has the obligation and right to issue a bill of lading when the cargo is actually loaded onto the ship, and that if the carrier's optional entry applies, the delivery date on land and the date of loading on board may naturally be different.

The note further states that the seller may not be able to make a conforming presentation as required by the letter of credit. Considering these points, the FCA rules' new optional description of the on-board bill of lading has the limitation of issuing an on-board bill of lading to the seller only when the carrier accepts the buyer's opinion. Moreover, even if the seller has received the on-board bill of lading, there is a second limitation in that the bank may not judge the presented documents as a consistent presentation for payment.

Banks have no knowledge of or interest in shipping practices or sales contracts. Whether or not something constitutes a conforming presentation is based solely on consistency with the terms of credit, the applicable provisions of the UCP600, ISBP(International Standard Banking Practice), and in case of inconsistency, the bank may refuse payment. Therefore, the contents of the Incoterms[®]2020 FCA rules regarding the optional description of the on-board bill of lading have limitations in practical application.

Based on the results of previous research, this study aims to confirm the contents of the selective description of the on-board bill of lading newly added to the Incoterms[®]2020 FCA rules and the limitations in practical application. It also presents necessary opinions for the practice of letter of credit transactions.

2. Examination of each transport document in letter of credit transactions

In letter of credit transactions, the bank must examine the presentation based solely on the documents to determine whether the documents appear on their face to constitute a complying presentation (UCP, Art. 14, 2009). If the documents constitute a complying presentation, the bank is obligated to pay the beneficiary (UCP, Art. 15, 2009). If the documents are inconsistent, the bank may refuse payment (UCP, Art. 16, 2009). A complying presentation must be in accordance with the terms and conditions of the credit, and the applicable provisions of the rules and international standard banking practice (UCP, Art. 2, 2009). The types of documents required for letter of credit transactions are very diverse. In the case of transport documents, various documents are presented depending on the transport method, such as a

single sea bill of lading, multimodal transport document, non-negotiable sea waybill, air waybill, or road cargo receipt. Therefore, depending on the type of transport document, the contents differ and the bank must examine the documents according to precise standards.

International
Trade, Politics and
Development

2.1 Multimodal transportation documents

Multimodal transport is a transport service that combines two or more different means of transport, and the examination regulations for multimodal transport documents are specifically provided in Article 19 of the UCP600. First, a transport document indicating at least two different modes of transport (multimodal transport document), regardless of its name, indicates the name of the carrier and identifies the carrier or a designated agent for or on behalf of the carrier, or the master or captain. Any signature of the carrier, master, or agent must be the agent identified as that of the carrier, master or agent and any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier, or for or on behalf the master, and all signatures of the agent must be signed by the agent for or on behalf of the carrier. It must be indicated whether the signature is for or on behalf of the master (UCP, Art. 19(a)i, 2009).

Second, a transport document must indicate that the goods have been dispatched, taken in charge, or shipped on board at the place stated in the credit by pre-printed wording or a stamp or notation indicating the date on which the goods were dispatched, taken in charge, or shipped on board. The date of issuance of the transport document will be deemed to be the date of dispatch, taking in charge, or shipped on board, and the date of shipment. However, if the transport document indicates, by stamp or notation, a date of dispatch, taking in charge, or shipped on board, this date will be deemed the date of shipment (UCP, Art. 19(a)ii, 2009).

Third, if the transport document additionally specifies another place of dispatch, place of consignment or loading, or final destination—or if it contains an indication of “scheduled” or similar restrictions with respect to the vessel, port of loading, or port of discharge—it must indicate the place of dispatch, taking in charge, or shipment, and the final destination stated in the credit (UCP, Art. 19(a)iii). It must also be the sole original transport document or, if issued in more than one original, be the full set as indicated on the transport document (UCP, Art. 19(a)iv, 2009).

Fourth, for documents that contain terms and conditions of carriage, or that make reference to another source containing the terms and conditions of carriage (short form or blank-back transport document), the contents of the terms and conditions of carriage will not be examined (UCP, Art. 19(a)v, 2009). Documents will contain no indication that they are subject to a charter party (UCP, Art. 19(a)vi, 2009).

Finally, a transport document may indicate that the goods will or may be transshipped provided that the entire carriage is covered by the same transport document, and a transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment (UCP, Art. 19(c), 2009).

2.2 Maritime transportation documents

Transport documents issued for maritime transport can be divided into bills of lading, non-negotiable sea waybills, and charter party bills of lading, and these documents are presented in Articles 20, 21, and 22 of the UCP600, respectively. In the case of maritime bills of lading, the regulations for examining multimodal transport documents are almost identical. The maritime bill of lading must indicate the name of the carrier, Any signature of the carrier, master, or agent must be the agent identified as that of the carrier, master or agent and any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier, or for or on behalf the master. In addition, it must be indicated that the goods were shipped on board the designated vessel at the loading port specified in the credit, there must be no indication that it is subject to a charter party, and the tradition must be presented. Additionally, a loading on board notation indicating the port of loading, date of shipment, and vessel name as specified in the credit is required (UCP, Art. 20(a)ii, 2009). It must also indicate the port of loading and port of discharge specified in the credit (Chae, 2016).

There are two differences between the examination regulations for maritime bills of lading and those for multimodal transport documents. First, the multimodal transport document must list the place of origin, place of arrival, place of loading, and final destination, but the maritime bill of lading must only list the port of loading and port of discharge. The bank checks the port of loading and port of destination required in the letter of credit for the sea bill of lading presented and confirms their consistency. A maritime bill of lading indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment, if the goods have been shipped in a container, trailer, or LASH barge as evidenced by the bill of lading. This means that the application of Article 20 (c) of the UCP600 should be excluded in cases where transshipment to another vessel during maritime transportation is prohibited for direct transportation between the loading port and the discharging port in the maritime transportation section.

Second, in the case of a non-negotiable sea waybill, it is the same as a sea bill of lading. If a sea bill of lading is issued for cargo shipped for transportation by sea, a non-negotiable sea waybill cannot be issued, and similarly, if a non-negotiable sea waybill is issued, a sea bill of lading cannot be issued. Therefore, the bank checks the negotiable and non-negotiable indications, which are one of the legal characteristics of a sea bill of lading and a non-negotiable sea freight waybill, upon presentation of a non-negotiable sea waybill, and examines the presented documents based on the same standards as the sea bill of lading.

Third, in the case of transportation under a charter party contract, a charter party bill of lading is issued, and the presentation of the charter party bill of lading is reviewed by the bank in accordance with the provisions of Article 22 of the UCP600. This article stipulates that even if the letter of credit requires the presentation of a charter party bill of lading, it can be accepted if there is an indication that it is in accordance with the charter party contract on the maritime bill of lading, including the charter party bill of lading. Unless specifically stated in the letter of credit, a charter party can be accepted. Unless specifically stated in the credit, charter party bills of lading are not accepted (UCP, Art. 22(a), 2009).

2.3 Other documents

The examination regulations for transport documents for air, rail, and road transport, or inland water transport, are provided in Articles 23 and 24 of the UCP600, respectively. Regarding air transport documents, the bank rejects documents issued by a transport broker other than the carrier's designated agent, and considers accident-related documents, documents that have passed the presentation deadline, or documents that do not constitute a matching presentation as discrepancies and charges. It specifies that payment may be refused (UCP, Art. 23, 2009). Regardless of the name of the rail, road, or inland water transport documents, if they comply with the provisions of Article 24 of the UCP600, the bank will accept them.

A letter of credit is a bank's conditional payment commitment based on the principles of independence and abstraction. It is not involved in the contents of the sales contract between the selling parties or the transportation contract between the carrier and shipper. A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by the contract, even if a reference to it is included in the credit. Banks deal with documents and not with goods, services, or performances to which the documents may relate. When transacting with a letter of credit, the exporter must have all the documents required by the letter of credit.

3. Limitations in the application of the Incoterms® 2020 FCA rules to letter of credit transactions with selective descriptions of the on-board bill of lading

3.1 Incoterms® 2020 FCA optional description of on-board bill of lading

It is very significant that the Incoterms® 2020 FCA rules added new content regarding the optional description of the on-board bill of lading. With the development of shipbuilding

engineering, the speed and size of ships have increased, and containers have come to be used for transportation. Intermodal transportation has developed into a major means of international transportation. Moreover, after World War II, the free trade system centered on the GATT boosted international trade under the WTO system, resulting in a massive increase in world trade volume and, above all, the heyday of container-based transportation. As a result, the ICC established new FCA, CPT, and CIP rules in accordance with the need to establish Incoterms rules suitable for container transportation; they are still used in the current Incoterms[®]2020.

The carrier has the obligation and right to issue a bill of lading when the goods are actually loaded onto the ship (ICC, Para64, 2019). However, in the Incoterms[®]2020, if sea transportation is carried out according to FCA and a letter of credit is issued, the seller or buyer may wish to issue a bill of lading on board (ICC, Para63, 2019). To prepare for this situation, Incoterms[®]2020 FCA A6/B6 emphasizes that the buyer can agree to have the carrier issue a bill of lading to the seller after shipment. This means that when the seller delivers the goods to a land carrier in a sea transport sale under FCA, the land carrier will issue and deliver to the seller a road cargo consignment bill rather than the on-board bill of lading required by the letter of credit. If a seller who engages in maritime transportation under FCA delivers the goods to a land carrier, the land carrier will issue a road freight receipt to the seller rather than the bill of lading on board as required by the letter of credit. In addition, if the seller provides the road freight receipt to the bank, they may regard it as an inconsistent document and refuse payment.

Banks attach great importance to the collateral value of bills of lading. As a result, banks require a shipped bill of lading or a bill of lading with on-board notation rather than a received bill of lading. There is also the problem of conflicts between the UCP and Incoterms when using FOB instead of FCA (Hong and Song, 2020).

There have long been problems due to differences in the transportation documents required for different transportation methods (delivery of goods) and payment types (letter of credit, collection, etc.). As a solution, the optional description of the on-board bill of lading newly added by the ICC to the Incoterms[®]2020 FCA can be seen as a step forward in practical application.

3.2 Limitations due to the presentation of discrepancies in letter of credit document reviews

3.2.1 Limitations in practical application due to incongruence with trade customs. Since trade is conducted not only through the conclusion of a sales contract between contracting parties, but also in connection with areas such as transportation, insurance, and payment, the contracting parties agree on the terms of the sales contract by taking these areas into consideration. At this time, the contracting parties review the contract terms based on container transportation, except in cases such as bulk cargo. They utilize letter of credit transactions when the amount is large or the transaction takes place over a long period of time. The FCA rules for container transportation may cause difficulties for the seller in presenting the bill of lading required for payment when a letter of credit is used as the payment method. In other words, there is a difference between the delivery conditions of the sales contract and the delivery documents required by the bank, and consequently, the bank may consider the documents presented by the beneficiary to be inconsistent and refuse payment.

Therefore, the establishment of a new option rule for the bill of lading on board in the Incoterms[®]2020 FCA is of great significance. However, the letter of credit contract is an independent contract separate from the sales contract and other contracts, and the Incoterms are regulations on 10 obligations between the parties that are unrelated to transportation or insurance contracts and do not affect the letter of credit and other trade contracts. Therefore, the parts presented in the Incoterms affect letter of credit transactions and transportation contracts, making it difficult for banks or transportation organizations to change their transaction practices to match the Incoterms. The Incoterms present optional provisions to enable exporters to receive necessary transport documents, but these have the limitation of being applicable only within Incoterms practices, which are unrelated to trade-related parties other than parties to the sales contract.

3.2.2 *Limitations due to the presentation of documents that are inconsistent with the letter of credit.* At the end of the explanatory text for users of the FCA rules, the ICC suggests limitations due to the presentation of documents that are inconsistent with the text of the letter of credit. In other words, the inland goods delivery date and ship loading date may differ, and the seller must recognize the possibility that difficulties may arise in the letter of credit transaction due to this (ICC, Para6, 2019). In addition, problems arising from differences in the information contained in the transportation documents required by the letter of credit and those issued by the carrier must also be considered. A transport document issued according to the example set out in the Incoterms®2020 FCA rules is a maritime transport document. If the seller and buyer enter into a sales contract under the FCA (named place) rules, and the carrier designated by the buyer takes delivery of the goods at the agreed onshore location, transports them to the dock, and issues a bill of lading for loading on board at the dock, a legitimate bill of lading can be issued.

However, contrary to the original intention to issue a multimodal transport bill by applying the FCA (named place) rule agreed upon as a delivery condition in the sales contract, the carrier issues an on-board bill of lading.

Therefore, a problem arises where the terms of the sales contract do not match the transportation documents required by the letter of credit. In addition, if the land carrier issues an on-board bill of lading at the place of receipt of the goods in accordance with the optional description of the on-board bill of lading proposed in the Incoterms®2020 FCA rules, the bank will examine the maritime transport documents presented by the beneficiary in accordance with Article 20 of the UCP600.

The maritime transport document presented by the beneficiary is an on-board bill of lading issued by a land carrier, not a maritime carrier. The bank indicates that the shipment has been loaded on board the designated vessel at the port of loading specified in the credit, as stipulated in Article 20 of the UCP600, and that the shipment has been indicated from the port of loading to the port of discharge as specified in the credit. An on-board bill of lading indicating the date of shipment, the port of loading, and the name of the vessel is required.

However, the sea bill of lading presented by the beneficiary is marked as loaded on board to the seller after the first carrier, a land transport operator, has accepted the choice of loading on board at the buyer's request so that the seller can issue the necessary documents to receive payment through a letter of credit. In other words, even though the goods are not loaded on board the designated vessel at the loading port specified in the credit, they are marked as loaded on board, and the place where the land carrier takes over the goods is not a port but a place on land, that is, the loading port specified in the credit. This is a document showing the date and the ship's name.

Even if there is an agreement between the parties for the convenience of the exporter, it is difficult to provide a valid basis for a bank to recognize a letter of credit transaction. The ICC suggests that transport documents require a loading book with the name of the vessel departing from Port XXX and the date of loading, specifying the port of loading as "Port XXX." If the first carrier is a multimodal one, the corresponding bill of lading will be issued with a multimodal transportation document. In this case, a situation arises where it is difficult to understand things from the bank's perspective. If the presented documents are multimodal transportation documents, the bank will examine them in accordance with the provisions of Article 19 of the UCP600. In other words, the bank will determine if the documents indicating the place of origin, place of consignment or shipment, and final destination specified in the letter of credit are consistent presentations, even if the transport documents additionally specify a different place of origin, place of consignment or loading, or final destination. If the document presented by the beneficiary is a multimodal transport document, the place of shipment, place of consignment, and final destination must be indicated. However, because the letter of credit for such a transaction requires a matching presentation of the sea bill of lading, the port of loading and port of discharge are indicated. In fact, if the receiving location, loading location, unloading location, and destination, among others, of the goods differ from the shipment details stipulated in the letter of credit, interpretations may vary when determining

whether they are consistent (Chae, 2016). If the information required in the letter of credit and the information provided in the presented multimodal transport document are different, the bank will consider the presented documents as inconsistent. Regardless of the name of the document required in the letter of credit, which is presented as a maritime bill of lading rather than a multimodal transport document, the bank will determine consistency in accordance with the examination regulations for each transport document. FOB and CIF cannot be used when an on-board bill of lading is required for a transportation method other than sea transportation. Nevertheless, there are many cases where the selling party adds arbitrary special conditions to the letter of credit, making the presentation of an on-board bill of lading a necessary condition.

3.3 Limitations of selective description based on carrier acceptance

In a sale under the FCA, the buyer is obliged to arrange for a carrier, and the parties to the contract of carriage are the carrier and the buyer. The seller does not know the details of the transportation contract, and the risks and costs are transferred to the buyer as soon as the goods are delivered to the carrier on the agreed date. In general, when conducting a letter of credit transaction, the bank requires a bill of lading with a loading on-board indication, and if the documents do not match, the bank can refuse payment. In the case of a letter of credit transaction, if the document required by the letter of credit is a bill of lading indicating loading on board, the seller must have this document, but since the seller is not a party to the transportation contract, they cannot request it from the carrier. Therefore, if the buyer requests it upon concluding the sales contract or afterward and the buyer instructs the carrier to issue the document and the carrier accepts the request, the seller can receive the transportation document intended by the seller. In consideration of this, as a solution to problems that may arise in the seller's letter of credit transactions, the Incoterms®2020 FCA rules recommend that the carrier issue an on-board bill of lading to the seller when the buyer concludes a transportation contract (ICC, Para65, 2019).

However, the Incoterms®2020 FCA rules further explain that the carrier may or may not accept the buyer's request and issue a bill of lading (ICC, Para6, 2019). In other words, if the carrier accepts the buyer's instructions, the seller will issue the required on-board bill of lading. If the carrier does not accept it, the seller receives a multimodal transportation document, ocean bill of lading, air waybill, or road freight receipt depending on the transportation method. Therefore, problems will arise in letter of credit transactions. Ultimately, the optional entry on the on-board bill of lading cannot be unilaterally decided by the seller or buyer, and there is a limitation in that its application depends on whether the carrier accepts the buyer's request.

4. Proposals on the use of FCA-ruled on-board bills of lading for letter of credit transactions

4.1 Use of the most appropriate incoterms rules based on the characteristics of the transaction in question

Upon revision of the Incoterms®2010, the existing classification method based on the characteristics of groups E, F, C, and D was reorganized, and the rules were reorganized into a single maritime transportation method and a multimodal transportation method. This classification method is also maintained in the Incoterms®2020 rules, and for users who are familiar with the characteristics of each group, the Incoterms®2020 rules stipulate that the group classification method is also beneficial in understanding the delivery point (ICC, Para21, 2019).

Explanations for users (ICC, Para77, 2019), maintaining group-specific characteristics; introducing a horizontal system of party obligations for the first time (ICC, Para57, 2019), and allowing parties to use their own means of transport under the FCA, DAP, DPU, and DDP rules are all aimed at improving user convenience (ICC, Para71–73, 2019).

This is a very significant and positive change in the Incoterms rules, which are closely related to practice between parties. However, the Incoterms are used in transactions by sellers

and buyers. If the parties involved in a transaction do not fully understand the Incoterms rules and use them in their contracts, misunderstandings and disputes may occur regardless of the purpose of the Incoterms, and unimaginable consequences may occur regardless of the parties' intentions. The Incoterms themselves are not legally binding, but if used as the governing law in a contract, the court will make a ruling based on the obligations of the parties under the Incoterms, regardless of the parties' intentions. Of course, in addition to the Incoterms, special provisions between the parties and UNCISG regulations will also affect the ruling. However, above all, trading parties must use the Incoterms that are most appropriate for their transactional purposes. For example, until now, when FOB rules were used instead of FCA rules, there was a conflict between the UCP and Incoterms (Hong and Song, 2020).

The International Chamber of Commerce should not unreasonably stipulate the use of a bill of lading with on-board notation in the FCA rules, but rather promote the use of a sea waybill (Hong and Song, 2020), which is more suited to the FCA rules. In the case of a letter of credit transaction, the parties' basic knowledge of the bank's document review standards and letter of credit transaction practices is essential, and the delivery rules of the sales contract must be agreed upon in consideration of the basic purpose of the Incoterms, which recommend against using sea transportation for container transportation. In particular, it is already well known from previous studies that when the FOB rule is used in the letter of credit method, the risks and costs borne by the seller increase and that delays in payment collection from the beneficiary related to the purchase of the letter of credit occur. However, most trade transaction parties use FOB and CIF rules in their contracts as a matter of course without considering the differences in classification standards according to transportation method. In particular, considering that most goods are transported in containers today, parties who do not have to bear the risks and costs are instead bearing the risks and costs of using FOB and CIF rules that do not fit the container method. The party who has borne additional risks and costs is unaware of this fact, and the party who is well aware of the characteristics of the Incoterms does not mention this to the other party at all. However, international freight forwarding brokers also do not recognize or inquire about the problems in this area, and in particular, the lack of efforts by trade-related organizations can be said to be one of the causes of these problems. Therefore, it is necessary for the parties themselves to check the characteristics of the transaction in question and which Incoterms rules are the best fit. To prevent damage, related organizations and associations must conduct continuous promotion and education for practitioners so that they are fully aware of additional risks and cost burdens.

4.2 Filling out an application for the issuance of an irrevocable currency letter of credit requesting multimodal transportation documents

In a sales contract, when delivery is concluded in accordance with FCA rules and payment is made by a letter of credit, the letter of credit requires the presentation of an on-board bill of lading. If the seller delivers the goods to a road transport operator by land at the agreed-upon location, an on-board bill of lading is required. You may not be able to obtain a matching presentation for the bank. The ICC stipulated the selective issuance of on-board bills of lading as one solution to this issue. However, this is a limited opinion on the presentation of an on-board bill of lading in a letter of credit transaction and has nothing to do with the presentation of multimodal transport documents or cases where the first carrier is an ocean carrier.

The ICC's intention is that the buyer can agree with the carrier to issue a bill of lading on board to the seller in A6/B6, as opposed to obtaining a bill of lading on board from the carrier under FCA rules where delivery is completed prior to the loading of the goods. A new regulation was established to allow the seller to make a presentation to the bank consistent with a letter of credit transaction. However, this provision is limited, as the issuance of such a bill of lading is possible only upon the carrier's decision (ICC, Para65, 2019).

These issues are for the parties to resolve, not the Incoterms. The parties concerned are the most familiar with the details of the contract. Trade transactions may have unique conditions

for each transaction and each transaction situation is different. Therefore, because contract terms cannot be agreed upon on the premise of formalization and uniformity, it is necessary for the party who is most knowledgeable about the essential aspects of the transaction to agree to the delivery rules so that the transport document most appropriate for the contract can be issued.

In general, the transport documents required for a letter of credit transaction are those indicating the load on board, the bill of lading, or the multimodal transport document under Rule C of the Incoterms. Therefore, in the case of a transaction using a letter of credit, if the seller delivers the goods from the first carrier by land to a road carrier, the buyer must arrange for the FCA to require a multimodal transport document rather than an on-board bill of lading as a transport document for presentation to the bank. This fundamental problem must be resolved by filling out an application for the issuance of a letter of credit and ensuring that the purchase is made using the multimodal transport documents issued by the first carrier from the beginning.

4.3 Consideration of accessibility following the transition to digital trade methods

With the growth of cross-border e-commerce and the advancement of the Fourth Industrial Revolution, the digitization of trade transactions has progressed significantly. In addition to simple transactions of goods or services, digital product transactions through online streaming platforms have become common in everyday life. Due to these changes, international trade negotiations are also progressing toward digital trade negotiations, and expectations for a new type of trading platform suitable for the digital age are also increasing. Various trade platforms were developed to meet the need for electronic trade, but they had limitations. However, with the emergence of digital trade platforms such as Voltron and R3 Corda based on the blockchain, one of the technologies of the Fourth Industrial Revolution, people's positive expectations for digital trade are increasing. The problem of applying the Incoterms[®]2020 FCA rules to letter of credit transactions with selective entry of an on-board bill of lading can also be solved by utilizing the blockchain letter of credit platform. By using the blockchain, regardless of sea transportation, air transportation, or multimodal transportation, information on the entire transportation section, including the origin of the goods, where they were first delivered to the carrier, the port of shipment, the port of transshipment, the transit point, the port of discharge, and the final destination, is simultaneously available to all transaction-related parties, who can save, share, and check it. In addition, on the blockchain letter of credit platform, payment is made by automatically checking for consistency while storing and sharing information. Therefore, even if the location of the goods received by the initial road transporter and the location where the goods are actually loaded onto the ship are different, the blockchain platform can solve the problem of document inconsistency because all transportation routes from the starting point to the final destination are stored and can be confirmed. However, commercialization of the blockchain platform requires a lot of time, so the creation of a sound transaction ecosystem without consensus and vested interest disputes among the international community, trade-related organizations, and trading parties must come first.

Progress in the digitization of transportation and payment documents has started to bring about changes in practices, and trade-related organizations need to reorganize their international commercial practices to suit the digital age. To respond to these changes, the ICC revised and established international commercial practices such as eURC and eUCP2.1. Therefore, changes are needed in the Incoterms[®]2020 rules to prepare for the digitization of trade documents.

5. Conclusion

Should the carrier or bank accept the agreement between the seller and buyer? The answer is no. The sales contract, transportation contract, and letter of credit contract are independent of

each other. The ICC recognizes that despite some uneasy coupling between shipping bills of lading and delivery under FCA rules, these regulations meet market needs. Even so, contrary to the purpose of the ICC, the optional description of the on-board bill of lading under the FCA rules is an incomplete alternative and has the following limitations in practical application.

First, the Incoterms present optional regulations to enable exporters to receive necessary transport documents; however, these have the limitation of being applicable regulations within Incoterms practices unrelated to trade-related parties other than the selling party. In the Incoterms[®]2020 FCA rules, the establishment of a new option rule for the bill of lading indicating on board is of great significance. However, even if the optional description is adopted, the seller has no obligation to the buyer regarding the conditions of the transportation contract. In addition, the letter of credit contract has the effect of being an independent contract separate from the sales contract and other contracts, and the parts presented by the Incoterms affect letter of credit transactions and transportation contracts, making it easy for banks or transportation organizations to change their transaction practices to match the Incoterms. The Incoterms present optional provisions to enable exporters to receive necessary transport documents, but these have the limitation of being applicable regulations within Incoterms practices that are unrelated to trade-related parties other than the contracting party.

Second, the ICC recognizes that despite some uneasy coupling between shipping bills of lading and delivery under the FCA rules, these regulations respond to market needs. However, optional description has the limitation of being an incomplete alternative that is premised on acceptance by the carrier. The buyer and seller can agree that the buyer will instruct its carrier to issue an on board bill of lading to the seller after the loading of the goods, the seller then being obliged to tender that bill of lading to the buyer, typically through the banks. This may cause problems with letter of credit transactions.

The rights and obligations regarding the issuance of an on-board bill of lading are determined by the carrier, and the transaction practices between the seller and buyer, who are parties to the sales contract, are not taken into consideration. Therefore, the carrier is irrelevant and is not responsible for disputes related to the letter of credit or sales contract. Ultimately, the optional entry on the on-board bill of lading cannot be unilaterally decided by the seller or buyer, and there is a limitation in that its application depends on whether the carrier accepts the buyer's request.

Third, the bank may refuse payment due to a difference between the inland delivery date of the goods indicated in the transportation document and the loading date on board the ship. The bank does not know the circumstances under which the transport document was issued. In a letter of credit transaction, if a sales contract is concluded in accordance with the FCA rules and transportation is by sea, and the carrier designated by the buyer is a road or rail carrier, when the seller delivers the goods to the carrier at any point on land, the carrier provides the seller with a road or rail cargo consignment certificate. If the carrier issues an on-board bill of lading to the seller at the buyer's request even though it must issue a letter of credit, this appears to resolve the problem as the seller obtains the transportation documents necessary for the letter of credit transaction.

However, when the seller presents documents to the bank for payment, there is the possibility of unexpected situations occurring. Regardless of the type of transport document, the bank does not examine the title or name of the document, but only its contents. The ICC also takes this into account and further explains at the end of the explanatory text for users of the FCA rules that the delivery date of goods inland and the date of loading on board may be different, which may cause difficulties for the seller in letter of credit transactions.

The Incoterms[®]2020 FCA rules' new optional entry of on-board bills of lading presents a way for sellers to receive the required on-board bill of lading in letter of credit transactions. From this perspective, the Incoterms[®]2020 FCA rules can be seen as a step forward in terms of practical application.

However, this study confirmed that the selective description of the FCA on-board bill of lading has limitations in practical application, and we will now present recommendations on overcoming these limitations.

First, when conducting a letter of credit transaction in an FCA sale, the seller and buyer need to agree to issue a multimodal transport document instead of a bill of lading on board when concluding a sales contract. The FCA is a set of rules that can apply to all types of transport. In particular, the FCA rules are the most appropriate rules for container transportation, along with the CPT and CIP. When conducting a letter of credit transaction in FCA sales, problems that may arise when requesting a bill of lading on board can be overcome. Therefore, if the seller and buyer wish to use a letter of credit in a letter of credit transaction, the parties need to agree in advance so that when the buyer applies for the issuance of a letter of credit, they will request a multimodal transport document rather than a sea bill of lading. If the letter of credit requires the presentation of multimodal transport documents, the bank will determine payment by verifying that the multimodal transport documents presented by the seller are consistent with the multimodal transport document review regulations. In other words, when conducting a letter of credit transaction in an FCA sale, the seller and buyer must agree in advance on the issuance of multimodal transportation documents in the contract to prevent problems caused by misunderstandings with banks and transportation practices.

Second, above all, sellers and buyers must have expertise in trade customs or practices related to specific trades in international trade. Bank and carrier practices cannot be changed solely by agreement between the parties to the sales contract. In addition, sellers and buyers must overcome trade barriers such as complex trade transaction procedures, licensing, and certification. The parties at the center of international commerce are the seller and buyer, and the carrier or bank is a dependent party to the trade contract. Instead of relying on the practices of carriers or banks, sellers and buyers must independently participate in international transactions. If the main contracting party to a trade contract does not make efforts on their own, they may face situations that are difficult to resolve during the transaction process. Therefore, when concluding a sales contract, the seller and buyer must select Incoterms[®]2020 rules consistent with the essential characteristics of the contract until the fundamental problem is resolved. In addition, trade-related organizations and associations must conduct more promotion and education activities to improve sellers' and buyers' expertise regarding trade transactions.

Lastly, the Incoterms[®]2020 FCA rules are significant in that they have converged, to some extent, with market demands. However, as they do not present a complete solution, there is room for complex problems to arise. In practice, sellers and buyers use traditional FOB and CIF as transaction terms even when they use container shipping. If the seller loads goods into a container and uses the FOB rules as the delivery conditions, the seller must bear additional risks and costs compared to using the FCA rules. Regarding this issue, the ICC also recommends using the FCA rules because container shipping practices and the FOB rules do not match.

In most international commerce, cargo is loaded into containers and then transported via multimodal transportation that combines two or more different transportation methods. The ICC is not proposing selective entry of the FCA on-board bill of lading, but considering the reality that container transportation is mainstream, it is reviewing rules such as the FOB and CIF and revising them to fit container transportation, or deleting the FOB, CIF, and CFR rules. This also needs to be considered. When revising the Incoterms in the future, active data research and reviews are needed.

The Fourth Industrial Revolution has also affected trade, ushering in the digital era. Trade platforms developed with new technologies are either under development or being prepared for commercialization. The Incoterms[®]2020 FCA rules' letter of credit transaction problem of selective entry of on-board bills of lading can be solved by blockchain platforms. A blockchain letter of credit platform stores and transmits all transaction information and automatically checks document consistency. Therefore, problems caused by differences in the location and date of receipt of goods by the first road transporter and the location and date of shipment can be resolved. However, agreement is needed between buying and selling parties, banks, carriers, customs, and public authorities, and acceptance of the Incoterms for new practices and customs is needed based on the active participation of organizations such as the ICC.

References

- Chae, J.-I. (2016), “‘Seonhajeung-gwonsang-ui’ ‘jeogjaebugi’ui yogeongwa geu sisajeom-e gwanhan yeongu (A study on the requirements and implications for ‘on board notation’ on the bill of lading under letter of credit transactions)”, *Muyeogsangmuyeongu*, Vol. 71, pp. 107-126 (in Korean).
- Heo, H.-G. (2021), “Inkoteomjeu geuligo gaejeong inkoteomjeu 2020 (Incoterms and the revised Incoterms 2020)”, *Muyeogsangmuyeongu*, Vol. 89, pp. 1-28 (in Korean).
- Hong, J.-S. and Song, J.-G. (2020), “Keonteineo jeog-ibjogeon-ui oyongmunjewa Incoterms-2020 FCA gyuchig-ui silmusang yuijeom-e daehan yeongu (Misuse challenges of container loading conditions and practical points to note in the FCA rules of Incoterms-2020)”, *Muyeog-Yeongu*, Vol. 16 No. 5, pp. 375-388 (in Korean), doi: [10.16980/jitc.16.5.202010.375](https://doi.org/10.16980/jitc.16.5.202010.375).
- Jeong, B.-D. (2018), “FCAGyuchig-ui unsong-in-ui mulpum-indouimu mich chaeg-imhangye gwanhan yeongu (A study on the carrier’s obligation to deliver goods and liability limit in FCA rule)”, *Gugjesanghag*, Vol. 33 No. 4, pp. 65-80 (in Korean).
- Kim, S.-M. (2019), “Inkoteomjeu 2020 juyo gaejeong naeyong-gwa sisajeom (A study on the major changes in the Incoterms-2020)”, *Beobhagnongo*, Vol. 67, pp. 259-287 (in Korean).
- Kim, I.-G. (2020), “Seonha jeung-gwongwa gwanlyeon Incoterms 2020 FCA gyujeong-gwa UCP 600ui gyeong-ueuneun je-oedoen yeongue gwanhan geos-ibnida (A study on the avoidance for the contradiction between Incoterms 2020 FCA rules and UCP 600 related to bills of lading)”, *Jisigsan-Eob-Yeongu*, Vol. 43 No. 4, pp. 359-379 (in Korean), doi: [10.33932/rir.43.4.17](https://doi.org/10.33932/rir.43.4.17).
- Lee, Y.-K. and Lee, K.-Y. (2019), “Inkoteomjeu -2020 seonjeogmaemae gyuchig-ui silmu jeog-yongsang yuijeom (A study on the attention point for its practical use of Incoterms-2020 shipping sales)”, *Gugjesanghag*, Vol. 34 No. 4, pp. 3-21 (in Korean), doi: [10.18104/kaic.2019.34.4.3](https://doi.org/10.18104/kaic.2019.34.4.3).
- Park, K.-S. and Kim, K.-H. (2019), “Inkoteomjeu 2020ui juyo naeyong mich chugsosang uimi (A study on the main contents of Incoterms 2020 and its practical use)”, *Muyeogsangmuyeongu*, Vol. 84, pp. 1-20 (in Korean), doi: [10.35980/kric.2019.12.84.1](https://doi.org/10.35980/kric.2019.12.84.1).
- Park, S.-J. and Shin, G.-H. (2022), “Inkoteomjeu 2020ui jeog-yongsang munjejeomgwa silmujeog sisajeom-e gwanhan gochal: ilban, unsong, boheom gwanlyeon isyuleul jungsim-eulo (A study on the problems and practical implications of the application of Incoterms 2020: focusing on general, transportation, and insurance related issues)”, *Muyeogsangmuyeongu*, Vol. 96, pp. 1-16 (in Korean), doi: [10.35980/kric.2022.12.96.1](https://doi.org/10.35980/kric.2022.12.96.1).
- Shin, H.-S. and Kim, D.-Y. (2019), “Inkoteomjeu 2020ui juyo gaejeong naeyong-e gwanhan gochal (An examination of the revised contents of Incoterms- 2020 rules)”, *Muyeog-Yeongu*, Vol. 69, pp. 537-552.
- Woo, K.-M. (2020), “Inkoteomjeu ® 2020 keonteineo seonjeogjogeon-ui munjejeomgwa silmujeog yuijeom (A study on the problems and practical precaution of container shipping terms in Incoterms-2020)”, *Muyeog-Yeongu*, Vol. 16 No. 5, pp. 353-374 (in Korean), doi: [10.16980/jitc.16.5.202010.353](https://doi.org/10.16980/jitc.16.5.202010.353).

Further reading

- International Chamber of Commerce (ICC) (2009), “The uniform customs and practice for documentary credits”, 2007 Revision, ICC Publication No. 600.
- International Chamber of Commerce (ICC) (2019), “Incoterms-2020 ICC rules for the use of domestic and international trade terms, ICC Publication No. 723E”.

Corresponding author

Yangkee Lee can be contacted at: yangkee21@gmail.com