Policy and Business Practices

Mr. Wilko Gunster
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The Netherlands

29 December 2010

Subject: Document 470/TA.734 (replaces educational query of the same number)

Dear Mr. Gunster,

Thank you for your query regarding UCP 600. Please find below the opinion(s) of the officers of the Banking Commission.

QUOTE

We seek an opinion on the correct interpretation of the L/C clause(s) mentioned below, since we recently experienced difficulties with their interpretation.

Although we realise that the clauses referred to are not subject to any specific UCP article, we believe that such clauses are so common that an opinion from the ICC would be beneficial in ensuring all parties apply a uniform understanding.

The following is the exact wording of the clause in dispute and is a clause we see in varying forms in L/Cs on a regular basis. The clause quoted appears in a L/C issued subject to UCP 600, which requires presentation of drafts, invoices, bills of lading, packing lists and 4 different beneficiary certificates:

(Example 1)

Quote
All documents except Bill of Lading must indicate this credit number and P.O. no. XXXXX
Unquote

The problem seems to be the interpretation of the word “except” and what effect it has on the clause. In our opinion, the word means that the “excepted” document does not need to comply with the instruction that follows. Only the remainder of the documents must comply.

In this example, so long as all documents other than the bill of lading quote the credit and P.O. numbers the clause is satisfied. The fact that the bill of lading may or may not quote the credit and P.O numbers is not a matter of concern since the document is “excepted” by the clause. We encounter banks that are of the opinion that the clause means that the bill of lading must not quote the credit and P.O numbers.

We would also like to add to the argument the following (actual) clause, which has a reverse effect but is nevertheless of a similar nature and follows the same principle.

(Example 2)

Quote
All documents except invoice and drafts must not show invoice number, invoice value, invoice date, unit price, contract number, name of applicant, trade term, L/C No., L/C issuing date and name of issuing bank.
Unquote

In this example, the clause points the document checker not in the direction of the invoice and drafts, since those documents have been “excepted”, but to all the other documents to ensure they do not quote any of the forbidden information. Therefore, the invoice and drafts may or may not quote any or all of this data. In this case, some banks are of the opinion that the wording means that the invoice and draft may show the specified details.

Since these L/C terms are not covered by any specific article of UCP, we believe that they must be applied literally and banks should not try to second guess the reasons for their inclusion.

ANALYSIS & CONCLUSION

Example 1.

The emphasis in this condition, as drafted, is that all documents must indicate certain data except the bill of lading. However, this condition does not prohibit the bill of lading mentioning the stated data. If the intention is that the bill of lading is not to include such data, then the credit should be specific and so state.

Example 2.

The emphasis in this condition is that the described data must not appear on any document except for the invoice and drafts. This condition, as drafted, does not require that the invoice and drafts mention all or some of the prescribed data. Whether the specified data is to appear on the invoice, will be subject to a specific condition in the credit. However, it should be noted that some of the stated data must be mentioned in the invoice according to UCP 600 article 18. ISBP Publication 681 also contains paragraphs that refer to the requirement for certain data to appear on invoices and drafts.

The opinion(s) rendered on this query reflect the opinion(s) of the ICC Banking Commission's officers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion(s) of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.

Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Adviser shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion(s).

Yours sincerely,

Thierry Senechal
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Banking Commission