



Ms. Amalie Butze
ICC Denmark
Boersen
1217 Copenhagen K
Denmark

18 August 2011

Subject: Document 470/TA.750

Dear Ms. Butze,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Group of Experts and Officers.

QUOTE

We kindly ask for your official opinion to the following query related to documents presented under a documentary credit issued subject to UCP 600.

An ocean carrier (“Carrier”) has replaced its agency (“Agent”) in the UK by a registered branch office (“Branch”). Since the Branch is part of the Carrier company and not an independent legal entity, as was the Agency, the bills of lading issued in the UK by the Branch are effectively issued by the Carrier itself. Consequently, the Carrier’s bills of lading are no longer signed by the local agent “as agent”, but by the local Branch “as carrier”:

New form:

“Signed as the Carrier [Name of Carrier]

[Signature of the branch]

[Name of Branch] (branch)”

It should be noted that the names of the Branch and the Carrier are not identical.

The bank rejected the bill of lading and subsequently argued as follows:
“It [the bill of lading] needs to be signed as I have shown it below. If it is not signed this way then the sign off does not conform to UCP 600 as it does not clearly show that [the Branch] are the agents for the carrier [Carrier]. [...]”

Signed as the Carrier [Carrier]

[Signature] [Branch] (branch) AS AGENTS”
(Emphasis added)

The ocean carrier responded:

“[The new form] signature fulfils the requirements of articles 19-21 of the UCP 600 which require that:

- the bill of lading indicates the name of the carrier; and
- the capacity of the party signing must be included.

The commentary to the UCP 600 (provided by the UCP 600 drafting group) explains that "...whatever the name of the company that issued the transport document, an indication to the effect that the issuing company or another company is the carrier is required. This requirement will also be fulfilled if the party signing the document indicates that it is signing "as carrier...". Clearly our proposal "Signed as Carrier..." satisfies this requirement as it directly names the carrier.

The commentary goes on to state that "if the party is signing as agent, the name of that agent must be included, as well as the capacity in which it is signing". As [the Branch] is not signing as agent, this is not relevant. The UCP 600 makes no reference to branch set-ups, however we are obliged to fulfill the requirement to state the capacity of the party signing, which is the branch. This does not alter the fact that [the carrier] is the carrier as they are the same legal entity."

Further, it would seem that the form requested by the bank is contradictory in that it states "signed as carrier" (above the signature) and "as agent" (under the signature). Clearly, the signatory cannot be both carrier and agent.

To the ocean carrier's reply, the bank responded:

"We, as a bank, are not obliged to understand the legal standing and linkage of companies and are not expected to either. We still would regard this as a discrepancy as [the Branch] should be identified as agents."

Since the Branch, as stated above, is a part of the Carrier company, it would be legally wrong to classify it as "agent", since that requires the agent to be a legal entity that is separate from the carrier.

Indeed, the bank is correct that it should not be obliged to understand the corporate structure of the signatories or carriers. In this case, however, the bill of lading clearly states that the branch signs as carrier, and such express statement must be compliant. The fact that the branch has a different name than that of the carrier (although being part of same) should not make the signature form discrepant either.

In light of the above you are kindly requested to assist in the interpretation of UCP 600 sub-article 20 (a) (i) as for:

1. whether the ocean carrier's new signature form is sufficiently clear to determine the capacity of the signatory as carrier i.e., if it is acceptable that a branch (however named) of the carrier signs the bill of lading.
2. whether, generally, a transport document that specifically states "Signed as the Carrier" followed by a signature, regardless of how the signatory is named, complies with the relevant provisions in articles 19 to 25.

ANALYSIS

Question 1

A bill of lading must be signed in accordance with UCP 600 sub-article 20 (a) (i):

"A bill of lading, however named, must appear to:

i. indicate the name of the carrier and be signed by:

- the carrier or a named agent for or on behalf of the carrier, or
- the master or a named agent for or on behalf of the master.

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.

Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master."

The bill of lading in question has been signed as follows:

"Signed as the Carrier [Name of Carrier]

[Signature of the branch],
[Name of Branch] (branch)"

It is stated that the names of the branch and the carrier are not identical.

The signatory is apparently identified as a branch, of the stated carrier, and, as such, does not act as an agent. The fact that it is a branch in a country different to the parent company is not relevant. Neither is the fact that the name of the branch differs to the name of the carrier.

The bill of lading clearly indicates the name of the carrier. Any of its branches may issue bills of lading and sign them as a branch of the named carrier.

The bill of lading thus fulfils the requirements of sub-article 20 (a) (i) by indicating:

- (a) the name of the carrier [Carrier]
- (b) that the signature is that of the carrier: “Signed as the Carrier [Name of Branch], Branch”.

Question 2

UCP 600 sub-articles 19 (a) (i), 20 (a) (i), 21 (a) (i), 23 (a) (i) and 24 (a) (i) stipulate provisions related to the signing of transport documents by a carrier.

In accordance with these provisions, a signature by the carrier must be identified as that of the named carrier.

A transport document that is signed by the use of expressions such as 'signed as the carrier' or 'as carrier' or 'carrier' will be acceptable provided it identifies the named party (i.e., the named carrier) for whom the signature was given.

The signatory and the carrier must be the same entity, which will include the possibility of the signatory being a branch of the named carrier, provided it is identified as such.

CONCLUSION

Question 1

The signature form as described in the enquiry complies with the requirements stated in UCP 600 sub-article 20 (a) (i) in relation to the identification of the carrier and the manner in which the bill of lading is to be signed.

Question 2

A document issued in the manner described under analysis will be acceptable.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Group of Experts and Officers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion 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. If this query relates to a matter currently under consideration by the courts, the ICC Banking Commission will refrain from considering it for adoption as an opinion.

Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen, Technical Adviser or any of the Group of Experts 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,

A handwritten signature in black ink, which appears to read 'Thierry Senechal', is positioned below the 'Yours sincerely,' text.

Thierry Senechal
Senior Policy Manager
Banking Commission