Mr. Ashok Ummat
Executive Director
ICC India
Federation House, Tansen Marg
New Delhi 110 001
India

24 August 2011

Subject: Document 470/TA.753 (UCP 500)

Dear Mr. Ummat,

Thank you for your query regarding UCP 500. Please find below the opinion of the ICC Banking Commission Group of Experts and Officers.

QUOTE

Sub: Query under UCP 500

We request an official opinion of the ICC Banking Commission on the following issue:

Letter of Credit No. 123 ("LC") was issued by Bank X favouring ABC Ltd and was subject to UCP 500 (1993 Revision). As per the terms of the LC, the last date of shipment was 30.06.1995 and last date for negotiation was 15.07.1995.

Within the time specified under the LC, ABC Ltd submitted relevant documents to Bank X, through their bank (Bank Y), on various dates as per table below for negotiation/payment. However, Bank X refused to make any payments under the LC as it found certain discrepancies in the documents which were pointed out to Bank Y vide their telex messages as per table below:

Sr. No.	Date of submission of documents by Bank Y to Bank X	Date of Telex message sent by Bank X to Bank Y intimating discrepancies
1	17.06.1995	27.06.1995
2	17.06.1995	27.06.1995
3	17.06.1995	27.06.1995
4	21.06.1995	27.06.1995
5	22.06.1995	27.06.1995
6	27.06.1995	03.07.1995
7	01.07.1995	05.07.1995
8	10.07.1995	17.07.1995
9	10.07.1995	17.07.1995

In this regard, please also note the following relevant dates:

15.07.1995: Last date for negotiation of documents;

27.06.1995: Rejection message was issued by Bank X in respect of documents mentioned at serial Nos. 1, 2 & 3 above, after the seven day period specified under UCP 500;

18.07.1995: Bank X, after the last date of negotiation of the documents and after rejecting the documents submitted by ABC Ltd, wrote a letter to the opener of the LC seeking waiver / acceptance of discrepancies in the documents;

21.07.1995: The opener of the LC expressly waived all the discrepancies pointed out by Bank X and requested them to make payment to ABC Ltd.

However, no payment till date has been made by Bank X on the grounds that waiver from the opener of the LC was obtained by the Bank after the last date for negotiation of documents.

In view of the above factual narration, we have the following clarifications to seek from you with respect to the true interpretation of the terms of UCP 500:

a. If Bank X is liable to make payment for the reason of 3 refusal messages issued beyond the prescribed 7 days (for serial numbers 1, 2 & 3);

b. Whether Bank X, on receipt of documents within the expiry of the LC, has the right to reject the same, after the expiry of the LC although within the seven days period provided under UCP 500 sub-article 13 (b)? and;

whether the seven day period as provided in sub-article 13 (b) continues to run even after the expiry of the LC?

c. Whether Bank X can seek a waiver of the discrepancies from the opener of the LC, under UCP 500 sub-article 14 (c), even after the expiry of the LC?

d. Whether Bank X can seek a waiver of discrepancies from the opener of the LC under UCP 500 sub-article 14 (c) even after rejecting the documents submitted by the beneficiary, under sub-article 14 (b)?

e. Whether seeking a waiver of discrepancies from the opener of the LC under sub-article 14 (c), after rejecting the documents under sub-article 14 (b), amounts to the rejection being void?

f. Whether an acceptance by the opener of the LC, of the discrepancies in the documents, after the expiry of the LC is binding on the issuing bank to make payment under the LC?

and

Whether an acceptance of the discrepancies by the opener of the LC, after the expiry date, especially when the acceptance of the discrepancies is sought after the expiry date, is binding on the issuing bank to make payment under the LC?

We request you to kindly provide us with your opinion on the aforementioned queries. We confirm that no court proceeding is pending or planned in respect of the query, as aforementioned.

ANALYSIS

UCP 500 sub-article 13 (b) states:

> The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.

UCP 500 sub-articles 14 (b), (c), (d) (i), (d) (ii) and (e), respectively, state:

b Upon receipt of the documents the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit, such banks may refuse to take up the documents.

c If the Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgment approach the Applicant for a waiver of the discrepancy(ies). This does not, however, extend the period mentioned in sub-Article 13 (b).

d i. If the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, decides to refuse the documents, it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay but no later than the close of the seventh banking day following the day of receipt of the documents. Such notice shall be given to the bank from which it received the documents, or to the Beneficiary, if it received the documents directly from him.

ii. Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.

e If the Issuing Bank and/or Confirming Bank, if any, fails to act in accordance with the provisions of this Article and/or fails to hold the documents at the disposal of, or return them to the presenter, the Issuing Bank and/or Confirming Bank, if any, shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the Credit.

The query, in a number of places, refers to the expiry date being the last date for negotiation. In this context the stated expiry date is to be considered as the last date for presentation of documents, as outlined in UCP 500 sub-articles 42 (a) and (b) which state:

a All Credits must stipulate an expiry date and a place for presentation of documents for payment, acceptance, or with the exception of freely negotiable Credits, a place for presentation of documents for negotiation. An expiry date stipulated for payment, acceptance or negotiation will be construed to express an expiry date for presentation of documents.

b Except as provided in sub-Article 44(a), documents must be presented on or before such expiry date."

If the issuing bank decides to refuse the presented documents, UCP 500 sub-article 14 (b) requires that it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay but no later than the close of the seventh banking day following the day of receipt of the documents.

"A banking day" in the context of sub-article 14 (b) means a day on which the issuing or nominated bank is regularly open to conduct letter of credit transactions; this would include a full or half day. (See ICC Opinion R.536).

From the information given in the table shown above, documents presented under serial numbers 1, 2 & 3 may or may not have been refused in time, i.e., within a reasonable time not exceeding seven banking days following the day of receipt of the documents. It is not clear from the query as to whether the "Date of submission" refers to the date Bank Y sent the documents to Bank X or the date that Bank X received the documents. The answer will also depend upon which days, within the period commencing on the day following the day of receipt of the documents until the date of the refusal notice, were "banking days" in the context of the meaning given above.

The reasonable time, not exceeding seven banking days following the day of receipt of the documents, is not curtailed by an expiry date that may occur following the date of presentation but within that period. Certainly, in many situations the examination of the documents by an issuing bank, and any refusal thereof, would take place after the expiry date (i.e., when documents were presented to a nominated bank close to or on the expiry date of the credit).

Following a decision to refuse the documents, UCP 500 sub-article 14 (c) permits an issuing bank, in their sole judgment, to approach the applicant for a waiver. Such an approach can only be made once the documents have been examined, whether this is prior to or after the expiry date of the credit. A decision to approach an applicant would only occur if the issuing bank was willing to hold the refused documents, at the disposal of the presenter, as would be stated in its notice of refusal.

In previous ICC Opinions, given under UCP 500 transactions, (namely R.254, 267, 268, 327) it is clearly stated that receipt of a waiver from the applicant is not binding on an issuing bank. This position prevails regardless of whether the waiver is received within the period of seven banking days, within the expiry date of the credit, or after the expiry date of the credit.

CONCLUSION

Answers to the questions posed:

a) In respect of serial numbers 1-3, if the issuing bank did not send a notice of refusal according to UCP 500 sub-article 14 (e) by the close of the seventh banking day following the day of receipt of the documents, it will be precluded from claiming that the documents are not in compliance with the terms and conditions of the credit, and therefore liable to pay the documents value.

b) Yes. The issuing bank, in the context of UCP 500 sub-articles 13 (b) and 14 (d), can refuse documents after the expiry date of the credit. The reasonable time not exceeding seven banking days following the day of receipt of the documents may continue after the expiry date of the credit depending upon the timing of the presentation in relation to the expiry date.

c) Yes. UCP 500 sub-article 14 (c) does not restrict the timing for an issuing bank to seek waiver from the applicant to such a request being made within the expiry date of the credit.

d) Yes, A waiver would only be sought if the documents were found to be discrepant. The issuing bank could seek waiver after the documents were already refused by it as per UCP 500 sub-articles 14 (b) and (d) so as to accommodate final settlement under the L/C.

e) No. UCP 500 sub-article 14 (c) grants the issuing bank the right to decide whether or not to seek waiver from the applicant.

f) No. A waiver given by the applicant to the issuing bank is not binding upon the issuing bank, regardless of whether the waiver was sought by the issuing bank or not, or whether it was received within the expiry date of the credit or after.

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,

Thierry Senechal
Senior Policy Manager
Banking Commission