International Chamber of Commerce
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Policy and Business Practices

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Subject: Document 470/TA.755

Dear Ms. Vidović,

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 would like to ask your kind opinion about the following dispute between issuing and advising bank.

A letter of credit, subject to UCP 600, was issued and included the following terms and conditions:

- L/C available with issuing bank by payment
- Partial shipments: Allowed
- Description of goods: 'LADICAR'
  'ORMARIC DONJI'
  'ORMARIC VISECI'
  'VRATA KUPAONICE'
  'VRATA KLIZNA'
  'ORMARIC LADICAR'
  'OGLEDALA MIRROR POLISHED INOX'
  'TAPICIRANI DJELOVI KLUPE I VRATA'
  'ORMAR'
  'KOMODE'
  'PODLOGE POSTELJE 12 KOM,POLICE, ORMARIC(CABIN DECK)
  'SJENILA-ZALUZIJA KOZA'
  'ROLO SJENILA'
  'TUS KABINE I TUS VRATA'
  'OGLEDALA ZA KUPATILA'

(in addition to the description of goods, we also point out that each item has its specific measurement, for example 'LADICAR' 1400X260X410).

(**Note**: An English translation of this list, subsequently provided by the initiator, indicates that the items are types of blinds, mirror, padded parts of bench and doors, chest of drawers, cabinets, wardrobe, commodes, bed bases and shelves.)

Documents Required:

1. SIGNED COMMERCIAL INVOICE – ORIGINAL AND COPY

2. ROADWAY BILL (CMR) – COPY FOR SENDER
3. PACKING LIST

(No additional conditions were stipulated)

Following documents were presented to the issuing bank (under first presentation) through the advising bank:

- INVOICE No. 100301 in one original and one photocopy (stating description of goods exactly according to L/C terms)
- PACKING LIST in one original (stating description of goods exactly as stated on invoice)
- CMR –Copy for sender, stating description of goods as:

1 PALETA, 53 KOLI, 932kg
SENČILA
TAPICIRANI DELI KLOPI IN VRAT
OGLEDALA (POLISHED INOX)
LESENO POHISTVO
and among other data on CMR, field 5 (titled: Documents Annexes) indicates: 'Dobavnica', 'Faktura 100301'.

(**Note**: An English translation of the items listed on the CMR, subsequently provided by the initiator, indicates them to be blinds, padded parts of bench and doors, mirrors and, for 'Leseno Pohistvo', "wooden furniture".)

The invoice and packing list showed Paleta: 1, Koli: 53 and weight: 932kg.

Issuing bank has identified the following discrepancies:

1. Photocopy of invoice, instead of copy is presented.
2. Description of goods stated on CMR not as per L/C and invoice (cannot be related with description of goods stated on invoice, and that stipulated in L/C).
3. Not authenticated correction on CMR was made (specifically: in field 5 one figure constituting invoice number has been reconstructed).

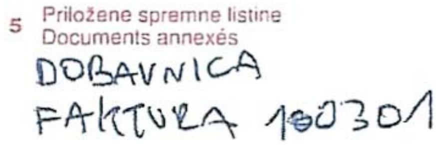
Issuing bank has based its opinion on:

1 UCP 600 sub-article 17 (d), which states: "If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted." In our opinion presentation of a photostat copy of a document does not comply with L/C term regarding presentation of stated document.
2 Although we are aware of UCP 600 sub-article 14 (e) and ISBP 2007 Revision paragraph 165 which concern description of goods, and which states that description of goods on documents (other than commercial invoice) need not be identical with those stated in the L/C, and may be in general terms not conflicting with the description in the credit, from the description provided in the CMR, we are unable to establish compatibility and are unable to determine if the wording stated in the CMR conflict with those provided in the invoice (and in the packing list).
3 International Standard Banking Practice 2007 revision for UCP 600, paragraph 9, clearly and undoubtedly states that documents, which are not issued by the beneficiary itself, must appear to be authenticated by the party who issued the document or by a party authorized by the issuer to do so.

The advising bank disputes the issuing bank's views with the following statements:

1 Documents could be considered as original or copies, furthermore photocopy of document is considered as a copy document according to worldwide banking practice.
2 Description of goods on CMR is in general terms, not conflicting (referring to UCP 600 sub-article 14 (e)), also pointing out that the issuing bank should be able to translate a few general terms from Country S language to Country C language.
3 A correction on the CMR was not made, quote: On CMR there is no correction which should be authenticated unquote the issuer just wrote "0" (in the invoice number) in a bolder manner. It can be checked via the original that there is no other number under "0". Please also check paragraph 11 of ISBP unquote.

An extract from the CMR is given below:


5 Priložene spremne listine
Documents annexés
DOBAVNICA
FAKTURA 100301

Issuing bank has stated that it is acting according to UCP 600 sub-article 16 (b) - upon determination of non-complying presentation the applicant was approached for a waiver of the discrepancies.

Furthermore, according to sub-article 16 (c) (iii) (a) and (b) the issuing bank has advised each discrepancy in respect of which the bank refuses to honour, and that they are holding the documents pending further instructions from the presenter.

Applicant, until now, has not waived the discrepancies and the issuing bank has maintained its viewpoint, whilst holding documents discrepant because of the above, and in spite of the advising bank's multiple expressions of disapproval and their insisting that payment be effected.

Due to the necessity to solve this matter, please provide us with your opinion as to whether the stated discrepancies represent a valid reason for refusal of documents.

ANALYSIS

Discrepancy 1 - Photocopy of invoice, instead of copy is presented.

The credit required: "signed commercial invoice in original and in copy." Under international standard banking practice, a "copy" is understood to mean a "non-original".

The ICC Decision "The determination of an "original" document in the context of UCP 500 sub-Article 20(b)" approved by the ICC Commission on Banking Technique and Practice and published on 12 July 1999, which appears as an Appendix to ISBP Publication No. 681, in relation to credits issued subject to UCP 600 states: "Banks treat as non-original any document that appears to be a photocopy of another document."

Unless a credit specifies the type of copy that is acceptable or not, any type of copy (non-original) is acceptable, including "a photocopy".

Discrepancy 2 - Description of goods stated on CMR not as per L/C and invoice (cannot be related with description of goods stated on invoice, and that stipulated in L/C).

UCP 600 sub-article 14 (d) states:
"Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict
with, data in that document, any other stipulated document or the credit."

UCP 600 sub-article 14 (e) states:

"In documents other than the commercial invoice, the description of the goods, services or performance, if stated, may be in general terms not conflicting with their description in the credit."

The credit, as issued, did not specify the language of the required documents. The description of the goods in the credit was apparently made in the language of Country C (the language of the issuing bank). The presented invoice showed the description in the Country C language, whereas the CMR was apparently made in the language of the beneficiary (Country S language).

Absent any indication of a required language to be used in the documents, the issuing bank must examine the description of goods in the CMR made in the Country S language (the language of the beneficiary) in order to establish whether there is any conflict between the relevant data.

The translation of the goods description on the CMR provides sufficient evidence of a description of goods that is shown in general terms not conflicting with the description of the goods in the credit. Three items can be associated with their respective description in the credit, whilst the remaining items from the list in the credit would fall under the more general description of "wooden furniture"

The CMR also clearly relates to the goods described in the invoice and packing list as it shows that the shipment consisted of: "1 paleta, 53 koli, 932 kgs" which are all in compliance with the data in the invoice and packing list. It also shows "invoice 100301" which is the number of the presented invoice.

Discrepancy 3 - Not authenticated correction on CMR was made (specifically: in field 5 one figure constituting invoice number has been reconstructed).

The CMR shows :"FAKTURA 100301" in field 5 which is designed for mentioning attached documents, if any. The CMR has been completed in the same handwriting. It seems that the issuer made the second "0" in the invoice number in a bolder manner, which does not in itself create any correction or alteration which would require authentication.

CONCLUSION

The discrepancies are not valid.

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