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Subject: Document 470/TA.756

Dear Dr. Spiliotis,

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 are acting as the intermediary between the confirming bank and the beneficiary's bankers and would like to have the opinion of the ICC Banking Commission on a particular case.

A letter of credit stipulated the delivery of the following goods as per field 45A:
HYDRAULIC DRILLING RIG ABI 12/14300
VIBRATOR VRZ 700 GL, AUGER DRIVE EBG – 3000
CONTRACT W/N DD 04.05.2011, ANNEX NO.1
CIP …, Country B (INCOTERMS 2010)

Documents required:
1. INVOICE – 1 ORIGINAL AND 1 COPY, …
2. CERTIFICATE OF QUALITY – 1 ORIGINAL, …

The documents presented by the beneficiary showed the general goods description as "HYDRAULIC DRILLING RIG ABI 12/14300, VIBRATOR VRZ 700 GL, AUGER DRIVE EBG - 3000. CONTRACT W/N DD 04.05.2011, ANNEX NO.1 CIP …, Country B (INCOTERMS 2010)", and in the detailed description of goods under item 1 "SECOND HAND HYDRAULIC DRILLING RIG ABI 12/14300".

These documents were delivered on 2 August 2011 at the counters of the confirming bank. On 3 August 2011 the confirming bank refused the documents claiming: "Invoice, Packing list and Cert. of Quality are showing that a second hand hydraulic drilling rig has been delivered, which is not as per L/C terms."

Insisting on the fact that we disagree with this discrepancy, we authorized the confirming bank to contact the issuing bank for a waiver, but the issuing bank also is not ready to take up the documents.

We disagree with the confirming bank and the issuing bank in this regard since the description of goods is according to the one required in the credit and is as required by UCP 600 sub-article 18 (c). Neither the description of goods nor any document in the letter of credit requires the shipment of a brand new machine. Therefore, we believe the wording 'second hand' is only an addition and not in contradiction to sub-article 18 (c) or paragraph 58 of ISBP Publication 681.

The Certificate of Quality required in the letter of credit confirmed the merchandise was made of best materials and being in accordance with the contract no. W/N dd. 04.05.2011, annex no. 1.

We have explained our point of view and the relevant articles of UCP 600 and ISBP Publication 681. However, the confirming bank and also the issuing bank, are insisting that the wording 'second hand' has changed the original description of goods stated in the letter of credit.

We would appreciate if the ICC Banking Commission would give an opinion whether what the confirming bank and issuing bank claim to be a discrepancy is valid or not.

ANALYSIS

Sub-article 18 (c) states: "The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit."

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."

It is normal that the invoice and other documents will show details that are in addition to the description stated in the credit or in addition to what can be considered as a general description of the goods.

The requirement of sub-article 18 (c) is quite clear, i.e., that the description of the goods must correspond with that in the credit. The addition of the words "second hand" is not part of the description of the goods in the credit. The words "second hand" indicate a different category or classification of the goods, which is not apparent in the goods description in the credit. The addition of the words "second hand" is grounds for refusal on the basis that the goods description in the invoice does not correspond with that in the credit.

For the same reason, the description appearing in the packing list and certificate of quality, whilst only required to appear in general terms, conflicts with the description in the credit.

CONCLUSION

The discrepancy is 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