International Chamber of Commerce
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Subject: Document 470/TA.763 Final

Dear Ms. Ooghe,

Thank you for your query regarding UCP 600. We refer to our letter dated 23 April 2012. Please find below the opinion of the ICC Banking Commission.

QUOTE

We would like to ask the ICC Banking Commission whether a presentation of documents was complying with the following standby L/C.

The standby credit was issued on 30 January 2008, subject to UCP600 and available by sight payment at the counters of the advising bank until 22 October 2011. The amount was stated to represent "the value of beneficiary's deliveries of airfield ground lighting to be dispatched from 25 July 2007 until 31 October 2008 and services rendered".

Required documents:

1) Draft at sight drawn on the issuing bank with the clause "drawn under standby letter of credit no. … dated …….
2) Written declaration from the beneficiary stating that the goods and services mentioned in their invoice(s) have been ordered by applicant and delivered by beneficiary and remain unpaid by the applicant.
3) Copy of beneficiary's unpaid invoice representing value of goods delivered and/or value of services rendered.
4) Copy of transport document showing shipment to <country X> and representing value of goods only.

The credit allows partial drawings and does not state anywhere that it is mandatory that one and the same drawing must contain invoices for goods as well as for services. The advising bank was requested to add its confirmation to the standby and in such case the drafts required under item 1 above may be drawn on them.

On 11 February 2008, when adding its confirmation to the SBLC, the advising bank sent a message to the issuing bank, informing them that they understood from the terms of the credit that in case of presentation of documents containing invoices which only cover services, the presentation of document no.4 (copy of transport document) would consequently not be applicable. No reaction at all was received on this message.

On 21 October 2011 documents were presented to the confirming bank for an amount within the SBLC limit and consisting of a sight draft drawn on the confirming bank as per L/C terms, a written declaration and a copy of an unpaid invoice. The written declaration was signed, dated, made reference to the SBLC and the general description of the goods/services as indicated in the credit. It also mentioned the following declaration “We <beneficiary name> herewith declare that the services mentioned in invoice no. <123> dated <../../2011> have been ordered by applicant <applicant name> and delivered by beneficiary <beneficiary name> and remain unpaid by the latter.”

The copy of the unpaid invoice was made out by the beneficiary to the applicant, referred to the SBLC, showed a general description of goods/services as stipulated in the SBLC and furthermore specified the following “services rendered as claimed in progress report no. 43 dated 13/10/2011 and preceding progress reports”. The invoice furthermore showed an enumeration of engineering services, day works, installation services etc. but no goods at all. It also clearly shows in a separate place: value of goods = 0,00.

The beneficiary did not present a copy of a transport document.

On 21 October 2011, the confirming bank accepted the documents as complying, informed the beneficiary accordingly and claimed reimbursement as per L/C terms. On 28 October 2011 (still within the period as allowed per UCP 600 sub-article 14 (b)) the issuing bank refused the presentation stating the following discrepancy “copy of transport document not presented”.

The confirming bank did not agree with this discrepancy stating that it was obvious from the content of the SBLC that presentation of a copy of a transport document was only required in case goods were invoiced (while this presentation clearly related to services only). They also referred to their message of 11 February 2008 that they had sent in this respect.

When exchanging several messages, the issuing bank maintained their refusal for the reason as indicated above. As an argument for this refusal, the issuing bank stated that the SWIFT message of 11 February 2008 was never followed by an amendment from their side allowing presentation of documents without a copy of a transport document. Furthermore, they stated that their refusal was made on the basis of UCP 600 articles and sub-articles 5, 7, 14 (a) and 16 (a) and that their SBLC specifically requests that a copy of a transport document be presented.

The confirming bank refers to the full wording of the clause under item 4 of documents required which reads “a copy of transport document showing shipment to <country X> and representing value of goods only”. According to them, when establishing a requirement for presentation of a transport document in this way, the issuing bank recognized that it would not be possible or needed to present a transport document when only services would be invoiced (making otherwise any drawing under the SBLC impossible for services only). The SBLC allowed partial drawings.

The confirming bank agrees that the issuing bank did not formally amend their credit after receiving the message of 11 February 2011 but considers this as not needed or relevant in this case. For the confirming bank it was not necessary to amend the credit as careful reading of the credit itself implies that no copy of a transport document was required in case only services were invoiced. Furthermore, if there would have been any ambiguity, the confirming bank refers to paragraph 2 of ISBP.

The confirming bank considers the reference, by the issuing bank, to articles and sub-articles 5, 7, 14 (a) and 16 (a) as not relevant, as the discussion is based on the credit and documents only.

ANALYSIS

The standby letter of credit was subject to UCP 600 and article 1 states, inter alia: “The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 (“UCP”) are rules that apply to any documentary credit (“credit”) **(including, to the extent to which they may be applicable, any standby letter of credit)** when the text of the credit expressly indicates that it is subject to these rules.” [emphasis added]

The credit amount was stated to cover the value of deliveries and services rendered. However, it should be noted that any copy of an unpaid invoice was to represent the value of goods delivered **and/or** value of services rendered. [emphasis added]

The beneficiary made a presentation to the confirming bank that included only a draft, written declaration and a copy of the unpaid invoice but not a copy of the transport document[4].

The invoice indicated the description as required by the credit, a list of the services that had been rendered and also indicated “value of goods = 0,00”. The written declaration indicated that the services rendered, as mentioned in the invoice, had not been paid.

Collectively, the wording of the documentary requirements for the copy of the unpaid invoice and the copy of the transport document, lead to the conclusion that a copy of the transport document was only required in the event of any non-payment for deliveries made. In cases where only services have been rendered, a copy of the transport document would not be required as no transport document would have been issued.

The issuing bank refused the presentation by stating the discrepancy copy of transport document not presented. Their references to various UCP 600 articles and sub-articles as justification for the refusal holds no ground for the following reasons:

article 5 - the documents referred to services and the copy transport document was only required for a presentation that included an element of goods that had been delivered;

article 7 - is irrelevant as a complying presentation was made and therefore, the issuing bank is bound to honour;

sub-article 14 (a) - is incorrect as it refers to the duty of the issuing bank in the examination of documents; and

sub-article 16 (a) - as a reason for refusal to honour is only valid if the presentation is a non-complying one, which is not the case here.

Although the confirming bank drew the issuing bank’s attention to the anomaly in the text at the time it added its confirmation this message has no effect and would not amend the credit. However, and for the reasons stated above, although the wording of the standby could have been more precise it does not detract from the fact that a copy of a transport document was not required by the wording expressed for documents 3 and 4 where only services are rendered.

CONCLUSION

The refusal was not valid and the issuing bank is bound to reimburse the confirming bank.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under “QUOTE” above.

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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,

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Banking Commission