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Hong Kong

28 November 2012

Subject: Document 470/TA.767rev

Dear Ms. Yuen,

Thank you for your query regarding UCP 600. We refer to our letter dated 8 June 2012. Please find below the opinion of the ICC Banking Commission.

QUOTE

Field 46A of MT700 (Documents Required):

+ Clean air waybill in 2 non-negotiable photocopies consigned to the applicant marked freight prepaid, showing flight number and flight date, number of this credit and notify the applicant.

+ Insurance policy in assignable form and endorsed in blank for 110% invoice value (DDU value) covering all risks showing claim payable in country V in invoice currency, in 1 copy.

Field 47A of MT700 (Additional Conditions):

+ Port of loading/airport of departure: any airport and/or port in Sweden and/or European countries and/or China.

+ In case of shipment by air, AWB date deemed to be the date of shipment.

Following is an extract of the presented air waybill:

			Air Waybill
Airport of Departure SWEDEN			
		Nature and Quantity of Goods Telecommunication Equipment	

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		ACTUAL FLIGHT NO. AND DATE: QR688/17	
	For Carrier's Use Only		
	Flight/Date 092/15	Flight/Date 688/17	
		ABC Global Forwarding AB as agent for the carrier Qatar Airways 2011/06/13 ……………………………………..…… Executed on (date) Signature of Issuing Carrier	

Following is an extract of the presented insurance policy:

Marine Insurance Policy		Place and date of issue Stockholm 2011-06-17	
Sent by AIRFREIGHT	From Arlanda Airport in Sweden	**AWB dated** 2011-06-17	

The issuing bank raised the following discrepancies.

1. AWB NOT SHOWING ACTUAL AIRPORT OF DEPARTURE
2. INSURANCE POLICY SHOWING INCORRECT AWB DATE

The nominated bank disagreed with the discrepancies based on the following reasons:

- 1st discrepancy "AWB: NOT SHOWING ACTUAL AIRPORT OF DEPARTURE". The LC requires copy AWB instead of original. Article 23 is not applicable. The presented copy AWB need not show the actual airport of departure in Sweden. Showing "Sweden" in the airport departure field is okay and there is no conflict between the copy AWB and the LC. ISBP Publication No. 681, paragraph 20 also refers.
- 2nd discrepancy: "INSURANCE POLICY: SHOWING INCORRECT AWB DATE" The insurance policy shows "*AWB dated 2011-06-17*" and "Place and date of issue – Stockholm 2011-06-17".

The copy AWB shows (i) the execution date as 2011/06/13 and (ii) "*ACTUAL FLIGHT NO AND DATE: QR688/17*".
The LC does not describe how to identify the AWB date in the copy AWB. Contra Proferentem Rule is therefore applicable and, as a result, treating 17 as the AWB date is reasonable.

The issuing bank insisted on the discrepancies with the following reasons:

1st discrepancy:

Although article 23 would not apply on the basis of the document being a copy of a transport document, the LC explicitly required an airport of departure. Consequently, there are prevailing "data contents" as referred to in UCP 600 sub-article 14 (f) to consider upon the examination of the copy AWB. A requirement for an airport of departure could not be seen as a requirement for a mere quotation "Sweden", but is actually an explicit statement requiring an identification of the airport from where the shipment took place. "Sweden" alone is not an identification of an airport. A copy of a transport document would be expected to capture essential and operative data required to fulfil the function of the document.

2nd discrepancy:

It cannot be established that the AWB date as shown in the insurance policy coincides with the AWB date. The contra proferentem rule states that where there is doubt about the meaning of the contract, the words will be construed against the person who put them forward. However, in respect of L/C's UCP is governing, and the rules are binding unless they are modified or excluded by the credit.

LC practitioners are aware that AWB's generally have an identification of a flight number and date <u>for carrier use only</u> which follows the principle of only indicating a one or two digit number as representing the flight date. In UCP 500 it was explicitly highlighted that such information was not to be considered upon checking of documents, and although not stated the same way in UCP 600 the same practice to disregard it remains.

For flight information stated in the manner corresponding to a carrier standard and for carrier use only, the carrier is in a position, in case of doubt, to verify the relevant month from its own records and thus it is understandable that it would suffice for carrier use. Such option to verify the correct month is not available for a document checker when checking documents under an LC. A separate notation as required would be expected to identify the date as per such standard so that it is possible to identify the date of which month.

Additional comments from the issuing bank:

A separately indicated actual flight date, would be expected to indicate the day and month if it is to overrule the existing AWB signature date and constitute an AWB date and shipment date. It should be noted that several other AWBs were included in the same presentation, with AWB signature dates in April, May, June and July. All AWBs, except the one under discussion, indicate an actual flight date by stating a day number and month either as April, May, Jun, or Jul. This would support the position that stating the month is considered instrumental for the identification of the actual date of shipment.

Further arguments from the nominated bank:
The issuing bank challenged whether "17" alone could be treated as a date. According to the Oxford Advanced Learner's English Dictionary, a number alone is also considered a date. As LC practitioners are aware, AWBs very often show the flight number (i.e., an airline code + a number) and date (i.e., a number) this way.

We would appreciate your official opinion whether the above discrepancies are valid or invalid and your opinion on whether ISBP681 Paragraph 142 is also applicable to a copy of a transport document.

ANALYSIS

Discrepancy 1 - AWB NOT SHOWING ACTUAL AIRPORT OF DEPARTURE

A photocopy of an air waybill is not a transport document covered by the content of UCP 600 articles 19-25 and the examination thereof is to be completed only to the extent expressly stated in the credit, otherwise in accordance with UCP 600 sub-article 14 (f).

Data shown on a photocopy of an air waybill is to be read in context with the credit, the document itself and international standard banking practice but is not to conflict with data in that document, any other stipulated document or the credit.

When read in context with the credit, there was a specific requirement (in field 47A of the MT700) for the document to show as airport of departure "any airport in Sweden and/or European countries and/or China", when dispatch is effected by air. Although UCP 600 article 23 does not apply to a photocopy of an air waybill, the requirement that dispatch was to be effected from any airport in Sweden is to be complied with. ISBP Publication 681, paragraph 20 includes "[W]here a credit allows for the presentation of a copy transport document rather than an original, the credit must explicitly state the details to be shown." In this case, the credit includes an explicit requirement, in field 47A, for the airport of departure to be any airport in Sweden and/or European countries and/or China, and the photocopy air waybill should have evidenced the name of a specific airport of departure located in Sweden.

In response to the specific question in the query, ISBP Publication 681, paragraph 142 would apply in this case, owing to the specific requirement in field 47A of the credit.

It is to be noted that the reference to “non-negotiable photocopies” in field 46A has no meaning in the context of the provisions of UCP 600 and should not be used in describing the type of document to be presented. Where it is appropriate or necessary, a credit should refer to a ‘photocopy of the air waybill” or a ‘copy of the air waybill”.

Discrepancy 2 - INSURANCE POLICY SHOWING INCORRECT AWB DATE

The credit required, amongst other specified data, that the photocopy of the air waybill is to show the flight number and flight date. In this respect, the photocopy of the air waybill indicates “Actual Flight no and date: QR688/17”.

The insurance policy indicated “AWB dated 2011-06-17” and “Place and date of issue Stockholm 2011-06-17”. Whilst it is common practice in the transport industry to indicate flight dates by reference to a day only, rather than showing the day and the month of dispatch, a document examiner would look for data on the photocopy of an air waybill that would provide an indication of the applicable month. In this respect, it would be reasonable for a document examiner to read the flight date “QR688/17” in conjunction with other date information indicated on the insurance policy (e.g., AWB dated 2011-06-17) and determine the month as June.

Although the reasons put forward by the issuing bank, in justification of their refusal are not valid, it should be noted that in this particular case the credit indicated (in field 47A): “[I]n case of shipment by air, AWB date deemed to be the date of shipment”. It is interesting to note that the issuing bank did not appear to refer to this condition in their communications with the nominated bank in justification of their refusal.

The extract from the photocopy of the air waybill indicates that the original air waybill appears to have been signed by the agent of the carrier on 2011/06/13 and, due to the wording in field 47A this date would represent the date of shipment. UCP 600 sub-article 28 (e) requires that “[T]he date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment”. The insurance document was dated on 2011-06-17 and indicated “AWB dated 2011-06-17”, which was the actual flight date, whereas the credit specifically stated that the date of issuance of the air waybill will be considered to be the date of shipment. This was despite the separate requirement for the air waybill to indicate the flight number and date. The insurance policy is dated later than the date of shipment as defined by the terms and conditions of the credit.

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CONCLUSION

The first discrepancy is valid.

The second discrepancy is valid.

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

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

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Banking Commission