International Chamber of Commerce
The world business organization

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Subject: Document 470/TA.788

Dear Ms Benitez de Roux

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers and Officers.

QUOTE

We would like to request the ICC Banking Commission's advisors to prepare an ICC opinion on an issue that we received from one of our member banks as follows:

Quote

A letter of credit issued by the issuing bank covered the shipment of 120,000 mt +/- 10% of coal from South Africa to India. Partial shipments were allowed and presentation of documents later than 21 days was acceptable. Among the documents required was a full set of charter party bills of lading. Since the delivery basis was FOB it was the buyer's duty to charter the vessel.

The seller started loading the goods onto the vessel. When almost 24,000 mt were on board, an arrest order for the vessel was issued in the port of loading. According to information available, the arrest was neither directed against the seller nor against the buyer and it did not affect the cargo loaded. For information purposes: the cargo could not be unloaded, since the port of loading was specifically equipped to load coal but not to unload it.

About a month later, the seller was able to present documents under the letter of credit. Among these documents was a full set of charter party bills of lading, issued on April 12 but showing "clean on board 18 February 2013". The bill of lading also showed the remark "vessel under arrest 18 February 2013".

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The documents were sent to the issuing bank which refused them on the following grounds: “Bill of Lading is not clean. It bears the clause as follows: Vessel under arrest 18 February 2013.”

The issuing bank also listed two other discrepancies which were later withdrawn. The bank also informed us that the documents would be returned.

We rejected the discrepancy. Article 27 of the UCP clearly defines a “clean transport document” as a document not bearing any clause declaring a defective condition of the goods or their packaging, which is definitively not the case here. Furthermore Incoterm FOB means that the seller has to deliver the goods on board the vessel nominated by the buyer at the named port of shipment. This condition has been clearly fulfilled here.

The issuing bank insisted that the discrepancy was valid:

“We confirm our stand on refusal of the documents since the presented bill of lading is claused and clearly indicates the defect with the remark vessel under arrest 18th February 2013 becomes a claused bill of lading”

We will appreciate receiving your official opinion to the following questions:

1. Does the remark “vessel under arrest 18 February 2013” render the B/L unclean?
2. If your answer to question 1 is “no” is the issuing bank obliged to accept the B/L as credit conform?

Unquote

We would be grateful if the advisors could prepare the draft official opinion and to circulate it so that it could be discussed at the next Meeting of the Commission.

ANALYSIS

UCP 600 article 27 states, “A bank will only accept a clean transport document. A clean transport document is one bearing no clause or notation expressly declaring a defective condition of the goods or their packaging. The word “clean” need not appear on a transport document, even if a credit has a requirement for that transport document to be “clean on board”.

UCP 600 sub-article 14 (a) states, “A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation."

On the basis of the transport document, there is no indication that the goods or their packaging were defective. Accordingly, the transport document was compliant and the presentation must be honoured.

Arrest of a vessel, and any subsequent obligation or liability arising out of such arrest, is a matter of law and outside the remit of UCP 600.

CONCLUSION

1. The remark on the arrest of the vessel does not render the charter party bill of lading unclean.
2. Yes.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's 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 or Technical Advisors 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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