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Subject: Document 470/TA.789

Dear Ms Mark,

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

QUOTE

We seek the opinion of the ICC Banking Commission on a dispute between a credit issuing bank and the negotiating bank on “Presentation Period” and UCP 600 sub-article 14 (c.)

UCP 600 sub-article 14 (c) states “A presentation including one or more original transport documents subject to articles 19, 20, 21, 22, 23, 24 or 25 must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.”

What is in dispute is whether UCP 600 sub-article 14 (c) is to be applied in a credit that does call for a BL, but stipulates a presentation condition that makes a reference not to the date of shipment but to another document or a non-shipment event. Specifically, in this case, the credit requires an on-board BL but its presentation condition reads: “Documents must be presented not later than 10 calendar days after credit issuance date”.

Documents were tendered in good time (i.e. within 10 days of credit issuance date) but the BL showed an on-board date of 6 months earlier. The issuing bank listed discrepancy: “Presented later than 21 days after the date of shipment”. The negotiating bank disputed the discrepancy.

The issuing bank's contention is that while presentation must indeed occur within 10 calendar days of the credit issuance date, the BL that the credit calls for must still not be more than 21 days old at the time of its presentation, in accordance with UCP 600 sub-article 14 (c). That is, a stipulated presentation period that is not tied to the shipment date does not automatically or implicitly waive UCP 600 sub-article 14 (c). In other words, unless otherwise expressed, a BL presented under a credit must not be more 21 days old notwithstanding that the credit's presentation period does not reference the shipment date at all. Given the availability of UCP 600 sub-article 14 (i), the presentation of very old documents is not impossible. If the issuing bank's intention is indeed to accept and finance such old documents, the credit should either explicitly exclude UCP 600 sub-article 14 (c) or provide for a larger BL-related presentation period. Otherwise, a presentation such as the one above is discrepant.

The negotiating bank's contention is that the credit is concerned with the speed of presentation and not at all with the age of the BL and other documents. Given that shipment may have preceded credit issuance, and with the availability of UCP 600 sub-article 14 (i), keeping the shipment date as the reference point would only complicate matters. Its argument thus is that, by its non-reference to the shipment date, the credit implicitly excludes UCP 600 sub-article 14 (c). In other words, if the presentation period does not mention shipment date, then UCP 600 sub-article 14 (c) is not to be applied even if the presentation includes a called-for BL. Then, it does not matter whether the BL is 22 days old, 22 weeks old, 22 months old or whatever, so long as it is presented within whatever stipulated presentation period. In this case, the presentation was indeed within 10 calendar days of the credit issuance date, and thus is compliant notwithstanding that the BL shows an on-board date of 6 months ago. Meanwhile, if the age of the BL/documents is of concern, the credit should either exclude UCP 600 sub-article 14 (i) or disallow documents dated earlier than a certain date.

In summary:
Credit calls for on-board BL
Presentation period is ". . . not later than 10 calendar days after credit issuance date"
Credit does not mention anything relating to UCP 600 sub-articles 14 (c) 14 (i)

A. Documents presented within 10 calendar days of credit issuance date
B. BL shows on-board date of 6 months earlier

1. Issuing bank treats as discrepant (in view of UCP 600 sub-article 14 (c))

2. Negotiating bank disagrees (in view of non-reference to shipment date in the presentation period condition)

We respectfully request the opinion of the ICC Banking Commission.

UNQUOTE

ANALYSIS

The credit required presentation of an on-board BL, and also states “Documents must be presented not later than 10 calendar days after credit issuance date”.

UCP 600 14 (c) states “A presentation including one or more original transport documents subject to articles 19, 20, 21, 22, 23, 24 or 25 must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.”

UCP 600 sub-Article 14 (i) states “A document may be dated prior to the issuance date of the credit, but must not be dated later than its date of presentation.”

This has previously been addressed in ICC Opinion R716/TA704rev which is quoted below:

“…UCP 600 Article 1 includes the following sentence: "*[T]hey [UCP 600 rules] are binding on all parties thereto unless expressly modified or excluded by the credit.*"

The condition stated in the credit should be seen as an emphasis of the wording in article 1 and not one that detracts from, or implies a different approach from, the position envisaged by the article. In effect, the wording in the credit was not necessary to emphasize that the terms and conditions of the credit may modify or exclude one or more rules in the UCP.

The issue concerns the word "expressly" and whether or not this requires a bank to specifically indicate, in the credit, where a modification of the rules is being made and the extent to which it is being made. Ultimately, it is the examination of documents against the terms and conditions of the credit that will determine whether or not a presentation is complying. The rules contained in UCP 600 will apply to that credit to the extent that the credit does not contain one or more terms and conditions that modify one or more of those rules.

Modifications to the rules do not necessarily require a bank to specifically state the article that has been modified or the manner in which it has been modified. For example, the insertion of "15" in field 48 (Presentation Period) of an MT700 would modify the rule stated in sub-article 14 (c) that presentation must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment. There is no explanation of the modification, but the insertion of "15" clearly creates a modified rule in respect of the presentation period. (emphasis added)

It should be noted that when a rule is to be excluded, for whatever reason, there must be an express indication of this, by saying, for example, "Sub-article 14 (i) is excluded." In most cases when an exclusion occurs, the credit will need to contain a new rule replacing the language or article excluded. In respect of the exclusion of sub-article 14 (i), this would necessitate the credit stating the new conditions relating to the dating of documents. (emphasis added)

Final Conclusion

The wording in the credit is not recommended for use. The wording in article 1 is sufficient to explain that the terms and conditions of a credit may modify or exclude a rule. A modification of a rule may be made by the simple insertion of data that creates a situation different from that envisaged by the UCP. It should be recognized that there may be circumstances in which an issuing bank is required to modify a rule, due to the circumstances of a transaction, and this may require the issuing bank to provide more detailed wording to avoid the risk of ambiguity in the credit. **In this respect, reference should be made to ISBP Publication No. 681 paragraph 2, which states: "[T]he applicant bears the risk of any ambiguity in its instructions to issue or amend a credit." (emphasis added)**

CONCLUSION

The wording in the credit is not recommended for use. Unless it is clear from the credit that the provision of UCP 600 sub-articles 14 (c) and 14 (i) are expressly modified or excluded by the credit, as permitted by UCP 600 article 1, they continue to apply. The language of this credit modifies article 14 (c) and does not modify 14 (i). The documents comply.

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 Advisers 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
Policy Manager
Banking Commission