International Chamber of Commerce
The world business organization

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19 July 2013

Subject: Document 470/TA.790

Dear Ms Ooghe

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 seek an official opinion of the ICC Banking Commission on the following question relating to documents presented under a Standby Letter of Credit issued subject to UCP 600.

The SBLC was issued by Bank A, available by sight payment with issuing bank and contained the following additional conditions inter alia:

47A: Additional Conditions:

\+ In case of the documents show a shipment by vessel, a photocopy of original bill of lading must be presented with the other documents.

The photocopy of bill of lading will be accepted by us as presented except if not complying with the next two conditions:

1. in case of sea transport, the transport document must indicate IMO ship number of carrying vessel.
2. shipment by a shipping co and/or by ship under sanctions US/EU/UN are forbidden

The beneficiary presented to advising bank a photocopy of a charter party bill of lading together with the other required documents.

Issuing bank refused to honour stating the following discrepancy: "Presentation of B/L used with charter party, not foreseen in the SBLC terms (as per paragraph 115 of ISBP)" (PUB 681 Editor's Note)

Advising bank sent the following message to issuing bank:
"We draw your attention on the terms of your SBLC: 47A: additional conditions: the photocopy of bill of lading will be accepted by us as presented except ….. and especially on paragraph 20 of ISBP: 20) copies of transport documents are not transport documents for the purpose of UCP600 articles 19-25 and sub-article 14 (c) UCP600.

Transport articles apply where there are original transport documents presented. Where 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. Where copies (non-negotiable) are presented, they need not evidence signature, dates, etc. therefore, paragraph 115 of ISBP (Pub 681) is not applicable. We would like you to check this matter again and confirm the payment and also value applied."

Issuing bank maintained its refusal and did not honour the documents.

We would be grateful if you would kindly provide us with your opinion as to whether the issuing bank has the right refuse payment under the Standby Letter of Credit on the basis of the discrepancy raised.

UNQUOTE

ANALYSIS

According to the Additional Conditions of the Standby Letter of Credit presentation of a photocopy of a bill of lading was required when any document presented under the Standby Letter of Credit indicated that the means of transport was a ship. The Standby Letter of Credit stipulated two requirements for the photocopy (the fulfilment of which is not under dispute) but at the same time stated that the photocopy of the bill of lading will be accepted as presented.

UCP 600 articles 19 – 25 on transport documents only apply when a credit requires presentation of at least one original transport document. A requirement for presentation of a photocopy transport document would fall under UCP 600 sub-article 14 (f) which states: "If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfil the function of the required document and otherwise complies with sub-article 14 (d)."

UCP 600 sub-article 14 (f) clarifies that photocopies of transport documents will not be checked under UCP 600 articles 19 – 25 and it determines the standard of examination of such photocopies. A photocopy of a transport document has no apparent function under a SBLC other than demonstrating that transport has taken place.

The term "accepted by us as presented" does not by itself have a definite meaning under UCP 600 as to the extent of the disclaimer intended by the issuing bank. Without defining the meaning of such term issuing banks should not include it into the wording of any credit. ISBP 745 Paragraph A19) offers – in the absence of such a definition – the following clarification: "a presentation may consist of one or more of the stipulated documents provided they are presented within the expiry date of the credit and the drawing amount is within that which is available under the credit. The documents will not otherwise be examined for compliance under the credit or UCP 600, including whether they are presented in the required number of originals or copies."

The SBLC stated two specific requirements for the photocopy neither of which was a requirement to examine the photocopy under UCP 600 article 20.

CONCLUSION

The discrepancy cited by issuing bank is not valid under the terms of the Standby Letter of Credit and issuing bank would be required to honour the presentation.

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