Ms Nynne Norman Scheuer
Deputy Secretary General
ICC Danmark
Boersen
1217 Copenhagen K.
Denmark

19 February 2014

Subject: Document 470/TA.798

Dear Ms Norman Scheuer

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

QUOTE

A standby letter of credit included (amongst others) the following requirements:

Documents required (SWIFT field 46A):

- Copy of the relevant invoice unpaid
- Beneficiaries statement that Company A [The applicant to the standby letter of credit] is in beach of its payment obligations under contract number 001.

Goods description (SWIFT field 45A):

- Shoes model 2300 and 3300
- Total amount: USD10,000,00

The beneficiary made a presentation to the issuing bank. Below are abstracts from the copy invoice and statement presented:

Abstract from the copy invoice:

Quote

Invoice number: 331133
Order number: 1334
Contract No.: 001 and 002

Item	Product	Colour	#boxes	Total USD
51034	Shoes	Black	50	5.000,00
51035	Shoes	Brown	50	5.000,00
52873	Boots	White	50	15.000,00

Total consignment CIF Hamburg Incoterms 2010 USD 25.000,00

Unquote

Abstract from the beneficiaries statement:

Quote

We hereby certify that Company A is in breach of its payment obligations under contract number 001 covering Shoes model 2300 and 3300.

On that basis we hereby demand payment under standby letter of credit number SBL441-7890-01 for USD 10.000,00.

Reference is made to unpaid invoice number 331133 (for a total value of USD 25.000,00

Signed by
[Name and signature of the beneficiary]

Unquote

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The covering letter to the issuing bank also indicated that the amount of the claim was USD 10.000,00. The issuing bank refused the presentation citing the following discrepancy: “Description of goods in the invoice not as per L/C field 45A”.

The beneficiary did not agree to the refusal making reference to ICC Opinion TA.728rev arguing that UCP 600 article 18 does not apply for the examination of a copy invoice, for which reason it should be examined on the basis of the requirements stated in the standby letter of credit. Consequently the standard for examination of a copy invoice is not that the description of the goods, services or performance in the copy invoice must correspond with that appearing in the credit, but rather according to UCP 600 sub-article 14(f).

The issuing bank defended its refusal by arguing that ICC Opinion TA.728rev refers specially to UCP 600 article 18(b), and that article 18 applies to this copy invoice, and therefore the description of the goods, services or performance in the copy invoice must correspond with that appearing in the credit. Therefore the copy invoice is discrepant for the following reasons:

1) The model numbers (2300 and 3300) mentioned in the standby letter of credit was not mentioned in the copy invoice, and
2) The copy invoice includes goods not called for on the standby letter of credit (the boots).

<u>Questions:</u>
We kindly ask your advice as to the following questions:

1) What is the standard for examining a copy invoice presented under a standby letter of credit issued subject to UCP 600? Is such to be examined based on UCP 600 article 18, or on the basis of the requirements stated in the standby letter of credit; specifically according to UCP 600 article 14(f).

2) If UCP 600 article 18 does not apply when examining the copy invoice, is it a discrepancy that it does not refer to model 2300 and 3300?

3) If UCP 600 article 18 does not apply when examining the copy invoice, is it a discrepancy that it includes goods not called for in the standby letter of credit (the boots)?

4) If UCP 600 article 18 does not apply when examining the copy invoice, is it sufficient (according to UCP 600 sub-article 16(c)(ii)) to refuse by saying that "Description of goods in the invoice not as per L/C field 45A" or must the refusal be worded specific as to the conflict between the data in the copy invoice and the standby letter of credit?

ANALYSIS

UCP 600 sub-article 18 (c) states: "The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit."

ISBP 745 paragraph C3 states: "The description of goods, services or performance shown on the invoice is to correspond with the description shown in the credit. There is no requirement for a mirror image."

ICC Opinion TA728 refers to a "copy of unpaid invoice" being acceptable if it is issued for a greater amount than that available under the credit, as per UCP 600 sub-article 18 (b).

This Opinion does not suggest that such a document should not be examined under article 18 in its entirety. The invoice must comply with the terms and conditions of the standby credit.

The presented invoice was numbered '331133' and covered a shipment of shoes and boots for USD 25,000.00 under 'Contract No. 001 and 002'. The presented beneficiaries statement referred to 'contract number 001', 'unpaid invoice number 331133 for a total value of USD 25,000.00' and additional information that this specific contract related to 'Shoes model 2300 and 3300'.

Between the two documents, there is sufficient corresponding evidence to relate the presentation to the credit.

In answer to the specific questions:

1) If included as a required document in the credit, and absent any exclusion of article 18 or any part thereof, a presented copy invoice is to

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be examined to the extent applicable under sub-article 18 (a) and the terms and conditions of the credit.

2) The invoice issued by the beneficiary, a copy of which has been presented under the credit, was not required to be issued subject to the requirements of sub-article 18 (c) in respect of a goods description appearing on that document. The fact that the copy invoice does not make complete reference to the stated goods description is not to be considered as a discrepancy as, between the copy invoice and beneficiary's statement, there is sufficient evidence to relate the presentation to the terms and conditions of the credit.

3) UCP 600 article 18 will apply to the extent indicated in 1 and 2 above. The fact that the copy invoice includes an additional goods description, and is issued for an amount greater than the amount of the credit, is not to be considered as a discrepancy. This was the basis for the Opinion given in TA.728rev.

4) UCP 600 article 18 will apply to the extent stated in 1 and 2 above. Given the very short description of goods in field 45A, the wording of the refusal would have been sufficient.

CONCLUSION

There is no discrepancy and therefore no basis for refusal of 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