INTERNATIONAL CHAMBER OF COMMERCE

Hari Janakiraman
Chairman
ICC Australia Banking Committee
Level 14/100 Queen Street
Melbourne Vic 3000
Australia

17 February 2013

Subject: Document 470/TA.801

Dear Mr Janakiraman,

Thank you for your query regarding URC 522. Please find below the opinion of the ICC Banking Commission Technical Advisers and Officers.

QUOTE

We kindly seek your official opinion in respect of the following issue relating to presentations of documents on a Documentary Collection basis subject to URC522, details of which are below;

The remitting bank (Bank R, Australia) during the period early September 2013 to early November 2013 sent several documents for collection on behalf of its client (the principal) to a presenting bank (Bank P, India).

We note that the collection instructions which accompanied each set of documents clearly contained the following information for handling of documents by Bank P:

- Tenor: Sight. Documents are to be released against payment
- That the Documentary Collection was subject to Uniform Rules for Collections, 1995 Revision, International Chamber of Commerce Publication No. 522.
- A listing of documents including a numerical count of each document in accordance with URC522 Article 4(b)(vi). The listings in each instance incorporated a numerical count of documents presented, amongst which were Bills of Lading indicated as follows: '3 originals and 3 copies of Bills of Lading'

Over the following weeks and in the absence of any information from Bank P, several tracers were sent by Bank R seeking status of the respective collections.

In the meantime, Bank R received information from the principal that the goods had been released to the drawee. Further checking revealed that the goods were released as a consequence of the drawee having presented an original Bill of Lading to the shipping company.

On 13 December 2013, a SWIFT message was sent to Bank P requesting they confirm that they are holding documents relating to the Documentary Collections.

In the absence of any response, Bank R contacted Bank P by phone on 24 Dec 2013 to confirm that they still had possession of the documents including all 3/3 original Bills of Lading to which they replied that 'that all the documents are still lying with them at their counters'. However, no written confirmation was received through SWIFT.

In an effort to elicit a written response, further SWIFT messages were sent to Bank P on 15 January and 17 January 2014 indicating that it appeared that the relevant goods had been delivered to the drawee and demanding payment of the Documentary Collections in accordance with our instructions.

After numerous attempts, the presenting bank finally provided a written response on 25 January 2014 alleging, that they had only received 2/3 original Bills of Lading under each presentation of documents.

This clearly conflicts with the collection instruction sent by Bank R which indicated that 3/3 original Bills of Lading were sent. Bank R has also been able to verify that all originals of the Bills of Lading have been sent to Bank P.

In light of the above, Bank P in our view has breached URC522 Article 12(a) in that if Bank P believed it had not received all the documents as indicated in the collection instruction provided by Bank R, it was incumbent upon Bank P to inform Bank R 'by telecommunications or, if that is not possible, by other expeditious means, without delay'.

Given that Bank P was in receipt of these documents, delivered to their counters from early September 2013 until receipt by them of the last collection circa 5

November 2013 this by any reasonable measure does not, in our view, constitute advice being provided 'without delay'!

Given the circumstances outlined, we seek the opinion of the ICC in respect of the following;

1. Whether Bank P has indeed breached the provisions of URC522 Article 12(a) and is therefore precluded from claiming non-receipt of 3/3 original Bills of Lading given it did not provide advice 'without delay' and
2. Where in the event Bank P is requested to return the documents, (as indicated in our collection instructions to them), but is unable to do so, whether Bank P is liable to effect full payment of the collections?

UNQUOTE

ANALYSIS

The remitting bank Bank R sent a number of collections to the presenting bank Bank P with similar instructions. All of the collections included a set of 3/3 original plus 3 copy bills of lading. In accordance with URC 522 sub-article 4 (b) (vi) Bank R stated the number of original bills of lading in their collection instructions.

Bank R did not receive any information from Bank P as to the fate of the collections. After being informed that the goods were already released by virtue of presenting one original bill of lading Bank R contacted Bank P to get assurance that the originals sent as part of the collection instructions were still held by Bank P. About a month after the last of the collection instructions a verbal confirmation was given in a telephone conversation between the two banks.

Ultimately – two months after the last collection instruction – Bank P informed Bank R that the collection instructions were only accompanied by two original bills of lading which are being held by Bank P.

According to URC a bank is not obligated to act on any collection instruction received by them. URC 522 sub-article 1 (c) stipulates that such bank must inform the remitting bank accordingly without delay. No such information was given by Bank P.

URC 522 further require in sub-article 12 (a) that a presenting bank must inform the bank from which a collection instruction has been received in case one of the stipulated documents is missing. This information has to be given without delay. URC 522 also provide for such information to be given by telecommunication which also encompasses telephone.

There is no universal standard which time limit may be seen as without delay. The case described in the query gives the time elapsed between receipt of the – allegedly – incomplete documents for collection and the respective message to Bank R as two months. This is clearly outside of "without delay".

Bank P confirmed by telecommunication (telephone) that three original bills of lading are still held at their counters.

It should be noted that URC 522 does not impose payment obligations on the banks involved.

CONCLUSION

1. Bank P is in breach of URC 522 sub-article 12 (a).
2. The instruction given was to release documents against payment at sight. In case drawee refuses the collection Bank P has to hold the documents for Bank R. When instructed to do so it must return the full set of documents in the same condition as received. In the case described in the query this would include three original bills of lading.

When Bank P is unable to return the complete set they are liable. URC does not impose any payment obligation on banks, remedy would be outside URC.

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