INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

Department of Policy and Business Practices

Prof. Avv. Maria Beatrice Deli
Segretario Generale
ICC Italia
Via Barnaba Oriani,
34 - 00197 ROMA
Italy

9 December 2014

Subject: Document 470/TA.809rev

Dear Professor Deli,

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

QUOTE

A documentary credit was issued by Bank B, by negotiation (usance draft) with any Italian bank, and received by Bank A. The description of goods in the credit included supplementary information: “As per proforma invoice n. 104 dated 12/12/1012”.

The documents required under the credit were invoice, packing list and CMR. When the documents were presented, they all included the following elements: description of goods, number of invoiced pieces, number of packages, shipment data and credit number. All of this data was compliant in each document.

Bank A did not act as nominated bank and sent the documents to Issuing Bank B. Bank B refused the documents by stating the following discrepancy: “CMR evidence proforma invoice n. as 1074 I/O 104”.

Bank A refuted the discrepancy as follows:

- the correct proforma invoice number (104) is shown in the presented invoice which is the right place where such a data is to appear;
- n. 1074 in the CMR, and in particular number 7 added to the numerical sequence, is clearly a typing error which does not change the actual good’s reference to the right proforma invoice; all other data of CMR are identical to the ones appearing on all other documents; the description of goods in the CMR without this additional data would not detract from the compliance of the transport document; the so called “discrepancy” is groundless as per UCP sub-article 14 (d). There is no conflict.

INTERNATIONAL CHAMBER OF COMMERCE
33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org

- the reasonable compliance is a principle adopted by the ICC Banking Commission since a long time.

Bank B did not honour the presentation.

ICC Italia Banking Commission supports the position of Bank A. We will be grateful if the ICC Banking Commission will offer its opinion on this case.

ANALYSIS

The question revolves around one issue: whether or not an additional character in a statement within the CMR, relating to the goods description, is sufficient evidence to refuse to honour the presentation of documents.

In this instance, the description of the goods included a requirement for the wording “As per proforma invoice n. 104 dated 12/12/1012.” Based on the information received, such wording was included correctly in the invoice, but the same wording in the CMR included one additional character in the proforma invoice number, changing it to 1074.

The CMR included all other information as required by the terms and conditions of the credit and was compliant in all aspects, as were all the other documents. It is argued that the addition of one character to the proforma invoice number within the CMR is not sufficient grounds for refusal, particularly when the correct proforma invoice number was stated in the invoice.

Whilst UCP 600 does not specifically address such errors, sub-article 14 (e) states: “In documents other than the commercial invoice, the description of the goods, services or performance, if stated, may be in general terms not conflicting with their description in the credit.” UCP 600 sub-article 14 (d) states that data has to be read in context and that between documents it need not be identical, but must not conflict. Considering that the description of goods within the CMR was not disputed; the proforma invoice number 1074 would not appear to indicate a conflict with the invoice.

A CMR is a road transport document. It is a consignment note with a standard set of conditions and confirms that the carrier has received the goods and that a contract of carriage exists between the exporter and the carrier. Information in respect of, for example, a proforma invoice number, is additional information over and above that required by this document and its purpose.

The proforma invoice number is stated correctly on the invoice and the reference to it on the CMR expands but does not contradict this. In the context of the otherwise correct description of the goods within the CMR and the function of the CMR, the wrong proforma invoice number (clearly a typographical error) cannot be considered to be in conflict with the data on other documents and the requirement in the documentary credit.

In view of the fact that typographical errors had been the focus of former ICC Opinions,

INTERNATIONAL CHAMBER OF COMMERCE
33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org

and that it was foreseen that such issues would re-occur, the issue had previously been included within ISBP. The latest version, ISBP 745, states in paragraph A23: “A misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant.”

As far as can be ascertained, the credit did not specify the contents to be mentioned in the CMR to include the proforma invoice number. UCP 600 sub-article 18 (c) only requires the description of goods, services or performance in a commercial invoice to correspond with that appearing in the credit. The description of goods other than the proforma invoice number is not in dispute. The fact that the proforma invoice number stated on the CMR included an additional character is clearly a typographical error.

CONCLUSION

There is no discrepancy.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under “QUOTE” above.

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

INTERNATIONAL CHAMBER OF COMMERCE
33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org