INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

Ms Glennalee Hayseldon
ICC South Africa
Chamber House
24 Sturdee Avenue
Rosebank 2196
Johannesburg, Gauteng

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Dear Ms Hayseldon,

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

QUOTE

The query has been referred by the nominated bank in the credit. The credit provided an option to the nominated bank that they 'May Add" confirmation to the credit. The credit had, among various other documents, called for clean shipped on board marine/ocean bills of lading.

On 26th June 2015, the beneficiary made one presentation for the full value of the credit. The presentation was made in two sets of documents comprising a full set of original bills of lading. On examination of the documents, the nominated bank found that the presented bills of lading bore the following remarks made by the Master of the vessel under the 'description of cargo' section:

MASTERS REMARKS

1. CONTAINERS STORED IN AN OPEN AREA
2. CONTAINERS EXPOSED TO WEATHER BEFORE SHIPMENT
3. CONTAINERS LOADED FROM OPEN STORAGE
4. CONTAINERS WET/MOIST BEFORE SHIPMENT
5. CONTAINERS LOADED DURING RAIN
6. CONTAINERS COVERED WITH DIRT/DUST PRIOR TO SHIPMENT
7. CONTAINERS ARE SECOND HAND, SOME OF THEM SLIGHTLY DENTED PRIOR TO SHIPMENT
8. SURFACES OF THE CONTAINERS ARE RUST STAINED, WITH SCRATCHES BEFORE SHIPMENT
9. THE MARKS OF SOME CONTAINERS ARE NOT CLEAR / MISSING

The nominated bank found the presentation to be otherwise credit compliant and, therefore, determined the maturity date as 21st December 2015. Accordingly, on 30th June 2015, the first mailing of the documents was sent to the issuing bank by courier and received by the issuing bank on 3rd July 2015. Second mailing sent on 1st July 2015.

UCP 600 Article 27 states that a clean bill of lading is one that does not contain a clause or notation expressly declaring a defective condition of the goods or their packaging. The problem we are faced with is that the master's remarks do not seem to expressly declare a defective condition of the goods or their packaging. ISBP 745 Paragraph F18 b) states that clauses about packaging such as "may not be sufficient for the sea journey" and similar words do not make the document discrepant.

Is this a discrepancy in that the bill of lading is not a clean bill of lading as called for by the credit?

UNQUOTE

ANALYSIS

The beneficiary made a single presentation for the full value of the credit. On examination of the presentation, the nominated bank found the same to be in conformity with the credit but noted the nine remarks made by the master of the vessel on the bills of lading in respect of the nature and condition of the containers prior to, and at the time of, shipment.

All of the master's remarks on the bills of lading are confined to the exterior condition and appearance of the containers and the atmospheric/weather conditions at the time of loading the containers on to the vessel. None of these remarks make any direct adverse observations declaring any defective condition of the goods and/or packaging.

The bills of lading are in conformity with the provisions of UCP 600 article 27 and ISBP 745 Paragraph E 20.

CONCLUSION

The bills of lading presented are clean and are therefore not discrepant.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers 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.

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

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,

Emily

Emily O'Connor,
Senior 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