Mr Nguyen Ngoc Thanh
Deputy Head of Export Documentary
Settlement Dept., South Division
Vietinbank Trade Finance Center
7th Floor, 79 A Ham Nghi Blvd
District 1st , Hochiminh City
Vietnam .

4 January 2016

Document 470/TA.848

Dear Mr Ngoc Thanh,

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

QUOTE

On 9th November 2015 beneficiary's bank negotiated compliant documents under a documentary credit and forwarded same to the issuing bank.

The credit was available with the issuing bank by payment at their counters. As per the requirement of the credit, the presented documents included the description of goods as follows:

Invoice:
FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) VANNAMEI SHRIMPS.
1,140 CTNS - SIZE 70/90
760 CTNS - SIZE 90/120

Health certificate:
Health certificate issued in Italian and English language to be used for import into EU of fishery products intended for human consumption.
Description of commodity/ Descrizione della merce (In Box I.18.), showing:
(MAZZANCOLLA TROPICALE SGUSCIATA SCOTTATA SURGELATA)
1/FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) VANNAMEI SHRIMPS
SIZE 90/120 : 760 CTNS - LOT NO: VN054IV034
2/FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) VANNAMEI SHRIMPS
SIZE 70/90 : 1,140 CTNS - LOT NO: VN054IV049.

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

Identification of the commodities/ Identificazione della merce (In Box I.28.), showing:
Species/ Scientific name
Specie / (Nome scientifico)
1/, 2/.: Penaeus vannamei

I.26			I.27. For import or admission into EU Per l'importazione/ ammissione nell'UE		
I.28. Identification of the commodities/ Identificazione della merce:					
Species/ Scientific name Specie /(Nome scientifico)	Nature of commodity Natura della merce	Treatment type / Tipo di trattamento	Approval number of establishments/ N. di riconoscimento dello stabilimento Manufacturing plant / Impianto di fabbricazione	Number of packages Numero di colli	Net weight Peso netto
1/,2/ Penaeus vannamei	1/,2/ AQUACULTURE, FARMED IN VIETNAM	FROZEN	[redacted]	1,900 CARTONS	19,000.00 KGS

On 17th November 2015 beneficiary's bank received issuing bank's notice of refusal via SWIFT MT734, which indicated the following discrepancy:

"HEALTH CERTIFICATE STATES IN BOX 1.28: PENAEUS VANNAMEI Instead of VANNAMEI SHRIMP IN INVOICE"

Field 77B:/ NOTIFY

Beneficiary's bank did not agree with the discrepancy and informed the issuing bank accordingly: "Health certificate indicated name of goods as "FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) VANNAMEI SHRIMPS" in compliance with goods description in the credit and invoice. PENAEUS VANNAMEI is the scientific name of the goods and this name was stated in Box I.28. Neither UCP 600 / ISBP 745 nor the credit prohibit the Health certificate indicating the name of goods (in compliance with credit and invoice) together with its scientific name."

However, on 1st December 2015 beneficiary's bank received from issuing bank a second SWIFT MT734 repeating the discrepancy, with field 77B stating:/ RETURN.

Beneficiary's bank received documents from the issuing bank on 3rd December 2015, accompanied by a cover letter notifying that they sent documents back at their complete discharge.

We would be obliged if you will give us your opinion on the above rejection notice.

And, in case the stated discrepancy does not constitute valid grounds for refusal, does beneficiary's bank still has the right to claim the amount of documents from issuing bank based on UCP 600 article 7 although issuing bank sent compliant documents back to beneficiary's bank?

UNQUOTE

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

Analysis

The query states that the beneficiary's bank negotiated documents presented to them under a credit available by payment with the issuing bank only. It did not act as a nominated bank but presented the documents to the issuing bank on behalf of the beneficiary.

The discrepancy stated by the issuing bank referred to data mentioned in a specific box I.28 in the Health Certificate titled 'Identification of the commodity' and, among others, subtitled 'Species/Scientific name'.

The credit did not specify the content or format of the Health Certificate. In the context of a health certificate, the additional identification of the commodity using a scientific name along with the description stated in the credit and invoice does not create a conflict of data.

Since the query has not provided detail on the date of receipt of the presentation at the issuing bank's counters, it is not possible to establish whether the notice of refusal has been sent in a timely manner in accordance with UCP 600 sub-article 16 (d).

The query evidences that the issuing bank had acted as per the provisions of UCP 600 sub-article 16 (c) (iii) (b) / (c) in their handling of the presentation and sending notices of refusal; both the initial notice of refusal with field 77 B reading "//NOTIFY//" and the later notice with field 77 B reading "//RETURN//".

Negotiation by the beneficiary's bank does not fall under the provisions of UCP 600 article 12 as they have not been named as a nominated bank in the credit. Any financing arrangements are exclusively between the beneficiary and their bank. As such, the beneficiary's bank has no rights under UCP 600 article 7.

Beneficiary's claim in accordance with UCP 600 sub-article 7 (a) (i) accrues from a complying presentation at the counters of the issuing bank. Return of complying documents by the issuing bank does not affect this claim.

Conclusion

The discrepancy stated by the issuing bank is not valid. Whether or not the notice of refusal was sent in time cannot be determined based on the information provided. Other than the invalid discrepancy, the handling of the notice of refusal by the issuing bank was in accordance with UCP 600 article 16.

The bank of the beneficiary was not a nominated bank under the documentary credit; any claim vis-à-vis the issuing bank would not be based on UCP600 but on their financing agreement with the beneficiary. Although the issuing bank has returned the complying presentation, the beneficiary's claim as per UCP 600 article 7 is still valid.

INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

Department of Policy and Business Practices

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.

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