INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

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Dear Mr Riis- Jørgensen,

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

QUOTE

We kindly ask your official opinion to the following query received from one of our member banks. The query is related to documents presented under a documentary credit issued subject to UCP 600:

The credit was issued by a bank in country I, confirmed by a bank in country C, and advised to the beneficiary through a bank in country A. The credit called for, amongst other documents, an invoice.

After documents were presented to the confirming bank in country C, the bank refused the presentation (via SWIFT MT734) citing the following discrepancy:

"Invoice contains a sanctions clause"
At the bottom of the invoice the following text was stated:
"These commodities, technology, or software were exported from the United States in accordance with the Administration Regulations. Diversion contrary prohibited."

The advising bank disputed the discrepancy on the basis that this is not addressed at all in the credit; however the confirming bank maintained its position using the following argument:

"According to local law we are not in a position to process documents containing this clause."

We ask kindly your official opinion as to whether or not the confirming bank is correct in its refusal.

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ANALYSIS

The text at the bottom of the invoice clarifies that the goods are not to be diverted to a country contrary to U.S. Administration Regulations. This is a precaution in order to ensure that the goods are not forwarded to a country sanctioned by the U.S.

As stated in ICC Official Opinion TA 752rev3, mandatory laws to which an issuing or confirming bank is subject whether by virtue of, inter alia, its country of operation, its home country or the currency of the transaction override the UCP and any undertaking contractually issued by that issuing or confirming bank.

The confirming bank refused documents due to the fact that the invoice included a 'sanctions clause'. There is no indication in the query that the credit prohibited the specified clause to appear on any document. Thus, under the credit and UCP 600, the clause on the invoice would not in itself be a discrepancy.

It should be noted, that the stated clause is standard for certain goods exported from the United States. It does not mean that any sanctions have actually been breached but rather observation of certain restrictions as to final destination of exported goods.

CONCLUSION

Although the discrepancy stated in the MT734 is not considered to be valid, a confirming bank may decline to honour or negotiate under its undertaking when prohibited by law or regulation from doing so. According to the confirming bank, this was the case in this particular instance.

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.

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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

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