INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

Mr Bryan Clark
ICC Australia
Level 3, Commerce House
24 Brisbane Avenue
Barton
ACT 2600
Australia

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Dear Mr Clark,

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

QUOTE

A credit called for presentation of, amongst others, the following document: "Certificate of Australian Origin of the commodity issued by Australian Business Chamber in the form for China-Australia Free Trade Agreement, issued in Australia in one original and three copies."

The beneficiary presented a document titled: 'Certificate of Origin – Form for China-Australia Free Trade Agreement'. It included the following data (a sample format of the document is attached) but did not include a statement certifying the origin of the goods, such as "Goods are of Australian Origin":

- Shipper.
- Producer's name and address.
- Basic shipment details, vessel name, port of loading, port of discharge, description of goods gross and net weights, and invoice number and date.
- It included a certification as follows: "On the basis of control carried out, it is hereby certified that the information herein is correct and that the described goods comply with the origin requirements of the China-Australia Free Trade Agreement". The certification was further certified by the Australian Chamber of Commerce and Industry.

The documents were considered as compliant by the nominated bank and forwarded to the issuing bank.

The issuing bank sent a refusal notice quoting the discrepancy "Certificate of Origin does not show the origin of goods". The nominated bank did not agree and argued that the

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

document did not need to meet the normal criteria, i.e., indicate the origin of the goods, provided it was in the format required by the credit.

The nominated bank also indicated that its view is supported by ISBP 745 paragraph L2 which states: "When a credit requires the presentation of a specific form of certificate of origin such as a GSP Form A, only a document in that specific form is to be presented."
The issuing bank did not agree and quoted ISBP 745 paragraph L1 which states: "When a credit requires the presentation of a certificate of origin, this will be satisfied by the presentation of a signed document that appears to relate to the invoiced goods and certifies their origin."

Subsequently, the nominated bank replied stating that ISBP 745 paragraph L1 could only be applied when the credit simply requires a Certificate of Origin. However, because this credit requested a specific type of document, which is created in a particular format, the applicable paragraph from ISBP 745 is L2.

The issuing bank responded by stating that when a credit requires the presentation of a specific form of certificate of origin, only a document in that specific form is to be presented, and this will be satisfied by the presentation of a signed document that appears to relate to the invoiced goods and certifies their origin. In this case, the document did not explicitly state the country of origin.

1. We seek the opinion of the ICC as to whether the document presented complied with the letter of credit terms.
2. Given the increasing proliferation of Free Trade Agreements globally, would the presentation of a specific "Free Trade Agreement" Certificate of Origin be acceptable, whether or not it included an indication of the origin of the goods, when a credit calls for a 'Certificate of Origin' or 'Certificate of Origin issued by the beneficiary'?

UNQUOTE

ANALYSIS

Issue 1:
ISBP 745, paragraph L1, describes the basic requirements when a credit calls for a "certificate of origin", one of which is that it must certify the origin of the goods.

ISBP 745, paragraph L2, addresses the situation where a credit requires the presentation of a specific form of certificate of origin. In such case, only a document in the required form is to be presented.

For the transaction in question, the credit required the presentation of a "Certificate of **Australian Origin** of the commodity issued by Australian Business Chamber in the form for China-Australia Free Trade Agreement, issued in Australia in one original and three copies" [emphasis added].

On the basis of the above condition, ISBP 745 paragraph L2 applies, and the presented document must be in the form for China-Australia Free Trade Agreement and, because of the express wording in the credit, it must also specifically indicate the origin of the commodity as Australian.

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Issue 2:

UCP 600, sub-article 14 (f), determines the type of document that is acceptable when a credit requires a "Certificate of Origin" or "Certificate of Origin issued by the beneficiary", and is further qualified by ISBP 745, paragraphs A39, L1 and L3 (c) (i).

When a credit requires a "Certificate of Origin" or "Certificate of Origin issued by the beneficiary", the presented document, which may bear a similar title to that required by the credit, is to be signed and must certify the origin of the goods. "Free Trade Agreement" Certificate of Origin is considered to be a similar title to "Certificate of Origin".

In addition, a requirement for a "Certificate of Origin issued by the beneficiary" would be satisfied by a certificate of origin issued by "Australian Chamber of Commerce and Industry" (according to the sample attached), provided it indicates the beneficiary, the exporter or the manufacturer as the case may be.

CONCLUSION

1. Absent an indication of "Australian origin" the document is discrepant.
2. Such a document must certify the origin of the goods.

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,

David Bischof,
Senior Policy Manager, Banking Commission

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