INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

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Document 470/TA.865rev

Dear Ms. Ooghe,

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

QUOTE

We would like to seek an official opinion of the ICC Banking Commission on whether a copy of an electronically generated document, which is not signed by the issuer, will be considered acceptable under the documentary credit referred to below.

Information appearing in the credit:

By a SWIFT MT710, the second advising bank received from a confirming bank a documentary credit subject to UCP 600, which was then advised to the beneficiary. The credit, amongst others, contained the following requirements under field 46A:

(6) + CUSTOMS EXPORT DECLARATION ISSUED AND AUTHENTICATED BY CUSTOMS AUTHORITIES IN THE EXPORTING COUNTRY CERTIFYING THAT GOODS SUBJECT OF THIS L/C BEING EXPORTED TO [Country L) PROVING ITS QUANTITY AND SPECIFICATIONS DETAILS.

This documentary requirement was later amended as follows:

PLEASE AMEND UNDER FIELD 46A (ITEM 6) TO READ:
(6) + A COPY AND/OR ORIGINAL CUSTOMS EXPORT DECLARATION ISSUED AND AUTHENTICATED BY CUSTOMS AUTHORITIES IN THE EXPORTING COUNTRY CERTIFYING THAT GOODS SUBJECT OF THIS L/C BEING EXPORTED TO [Country L) PROVING ITS QUANTITY AND SPECIFICATIONS DETAILS, TO BE ACCEPTED IN ANY LANGUAGE AND IT MUST BE CERTIFIED BY THE BENEFICIARY.

Presentation:

Beneficiary presented documents that the second advising bank found to be complying and, upon which, it forwarded them to the confirming bank.

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Subsequently, a notice of refusal was received from the confirming bank stating:
+ CUSTOM EXPORT DECLARATIONS NOT AUTHENTICATED BY CUSTOMS AUTHORITIES AS REQUESTED

Customs export declaration was presented as follows (see attachment).

A copy was presented, as allowed after the amendment. It was an electronically generated document and therefore not signed by the customs authority. However, and as required by the amendment, it was certified by the beneficiary.

It is the opinion of the second advising bank that the declaration need not be signed as it is a copy of an electronically generated document that bears no signature, and it is correctly certified by the beneficiary as required by the amendment.

In many credits these days, we see a presentation of documents from entities such as Chambers of Commerce or Customs Authorities that have been generated electronically.

Also in this case, the document presented was issued by the Country N Customs Authorities and showed a bar code MRN. This bar code, as was later confirmed by the Country N Customs Authorities, is the only authentication that will be provided. Country N Customs Authorities do not sign any of these documents.

Our question is whether the discrepancy is valid or not?

UNQUOTE

ANALYSIS

A copy of the customs export declaration was presented, contained no field for a conventional signature and was signed by the beneficiary with the words “certified true and correct customs export declaration”.

ISBP 745 paragraph A31 (b) reflects existing international standard banking practice when reviewing copies of documents i.e., “Copies of documents need not be signed nor dated.”

Even if it were considered that the copy of the Customs Export Declaration was to indicate a form of signature, as would have appeared on the original, the signing of a document can include an electronic method of authentication (as stated in UCP 600 article 3). In ICC Opinion R636 (TA668rev), it was stated within the analysis that a bar code on a courier receipt could act as a form of signature (i.e., an electronic method of authentication) where there is no designated signature field within the document. This highlighted the fact that neither the ICC nor UCP can dictate how issuers of documents should create or authenticate such documents.

The MRN (Movement Reference Number) that appears on the presented copy, and referenced in the text of the query, is a unique number that is automatically allocated by the

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customs office that accepts the declaration. It contains 18 digits and is composed of the following elements:

- the last two digits of the year of formal acceptance of export movement;
- an identifier of the EU Member State(s) from which the movement originated; and
- a unique identifier for the export movement per year and country.

The MRN is printed in full on the document and would be represented within the machine-readable data in the bar code to enable any authentication to occur. It should be noted that banks are not required to verify or obtain such authentication.

The inclusion of a bar code will be considered as an electronic form of authentication.

For the avoidance of disputes, when it is known that a document will be presented bearing an electronic form of authentication, other than that described in ISBP 745 paragraph A35 (d), a credit subject to UCP 600 should be worded to reflect the required content of that document and the form of authentication (signature) that will be required or be acceptable.

CONCLUSION

The discrepancy is not valid.

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,

Olivier Paul
Head of Policy, Banking Commission