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Department of Policy and Business Practices

Mr Donald R. Smith
International Banking Advisor
United States Council for International Business
1212, Avenue of the Americas
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Dear Mr Smith,

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

QUOTE

The documentary credit authorised confirmation, which was subsequently added.

Extracts from the documentary credit:
32B Currency Code, Amount: USD 80,000.00
39A Percentage Credit Amount Tolerance: 10/10
43P Partial Shipments: ALLOWED
45A Description of Goods and/or Services:
400 MT WIDGETS AT USD200.00/MT, PACKED IN 8 CONTAINERS
46A Documents Required:
1 ORIGINAL INVOICE, 3/3 ORIGINAL B/Ls
47A Additional Conditions:
BOTH QUANTITY AND AMOUNT 10 PCT MORE OR LESS ALLOWED

Two presentations of documents were made covering 2 shipments, as follows:

1st Presentation – USD 26,400.00
3 containers with 132 MT

2nd Presentation – USD 44,000.00 (presented after 1st presentation paid by issuing bank)
5 containers with 220 MT

The issuing bank paid the first presentation. The confirming bank had not received any refusal notice.

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The issuing bank refused the second presentation citing the following discrepancies:

1. Short shipment in 8 containers
2. LC amount short drawn

Questions:

1. Is the first presentation complying? Why or why not?
2. Is the second presentation complying; or, are the discrepancies cited by the issuing bank valid? Why or why not?

UNQUOTE

ANALYSIS

The credit allowed partial shipments and, additionally, its amount (USD 80,000) and quantity of goods to be shipped (400 MT) were both subject to a tolerance of plus or minus 10%. The unit price was stated to be USD 200 per MT.

Based on these conditions alone, it should be noted that as partial shipments are allowed, the beneficiary would be able to ship any quantity up to a maximum of 440 MT (i.e., 400 MT plus 10%) by the latest shipment date. Thereafter, it may make a presentation to the nominated bank or issuing bank for honour or negotiation, if the documents are otherwise complying. In other words, the beneficiary would not be penalised i.e., face a refusal of its documents for failing to ship at least 360 MT (i.e., 400 MT minus 10%). This is in accord with Opinion TA816rev/R843, which states that when a credit permits partial shipments, there is always the possibility of only a partial utilisation of the credit and many valid reasons may exist for this.

However, and of importance to this query, there is a distinct difference between the above-referenced Opinion and this particular query in that another condition of the credit was that the quantity of goods i.e., 400 MT plus/minus 10% (i.e., a quantity between 360 MT and 440 MT) <u>was to be packed in 8 containers</u>. This condition can also be stated or referred to as “8 containers containing 400 MT +/- 10% Widgets at USD 200/MT.” Accordingly, the conclusion reached in Opinion TA816rev/R843 would not be valid for the circumstances described herein.

Therefore, by the time 8 containers are utilised, the quantity of goods shipped is to be between 360 and 440 MT.

The first presentation covered a shipment of 132 MT shipped in 3 containers for a drawing amount of USD 26,400. Given that partial shipment was allowed, and the credit did not include a requirement in respect of the quantity to be shipped in each container, the shipped quantity, amount and number of containers was within that permitted by the credit.

The second presentation covered a shipment of 220 MT, shipped in 5 containers, for a drawing amount of USD 44,000.

Therefore, the beneficiary, in two shipments, utilised 8 containers for the shipment of 352 MT of the required goods for a total value of USD 70,400. Despite the credit indicating that partial shipments were allowed, the beneficiary had utilised 8 containers in shipping only 352 MT instead of a minimum of 360 MT.

The second presentation would be discrepant for the reason that the quantity of goods shipped and containers utilised in the first two drawings were 352 MT and 8 respectively, with a total drawing amount of USD 70,400 whereas the credit required that where 8 containers were utilised, the quantity shipped would be between 360 and 440 MT with a commensurate value of between USD 72,000 and USD88,000.

In addition, it should be noted that the number of containers shipped has a direct impact on the freight costs. This means that shipping a quantity below what has been agreed, in the number of containers agreed, will increase the total cost per MT.

CONCLUSION

For the reasons stated under Analysis:

1. The first presentation was compliant.
2. The second presentation was not compliant

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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