INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

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Na Florenci 2116/15
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Dear Mr. Andrle,

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

QUOTE

Our bank advised a documentary credit, subject to UCP 600, that was received from the confirming bank. Among others, it contained the following conditions and documentary requirements:

43P (Deferred Payment Details): 30 DAYS FROM BILL OF LADING
46A (Documents Required):
3 ORIGINALS AND 3 COPY OF PACKING LIST
3 ORIGINAL(S) AND 3 COPIES OF COMMERCIAL INVOICE
3 ORIGINALS AND 3 COPIES OF CERTIFICATE OF ANALYSIS
47B (Additional Conditions):
6) ALL DOCUMENTS MUST BE WRITTEN IN ENGLISH

The credit stated no tolerance in respect of the goods quantity or amount. The description of goods only described the underlying goods by their nature, commercial name and technical details, and referred to a pro-forma invoice, but contained no indication of a quantity.

The beneficiary presented documents with the following details:
Bill of lading evidenced shipment on February 1, 2017 resulting in a due date of March 3, 2017.

Invoice contained the statement: "Terms of payment up to 01.06.2017 without deduction". It also contained the following clauses: "Tolerance of +/- 10% allowed on quantity and value per line item" and "Payment terms: Letter of Credit, 30 days from Bill of Lading date". The beneficiary also presented a document named "Delivery note" which contained packing details and was considered to meet the requirement for a packing list. The statement "Tolerance of +/- 10% allowed on quantity and value per line item" appeared on this document too.

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The certificate of analysis was presented on the beneficiary's letterhead. It contained all data required by the credit in English language and its footer contained text in Czech language, apparently pre-printed on the letterhead stationery (issuer's confidentiality and copyright provisions).

The confirming bank refused the presentation and insisted on three discrepancies out of five that were originally identified. The exact wording for the refusal is as follows:

"1.Invoice evidences incorrect terms of payemnt [sic] up to - 01.06.2017 (due date)."

"2.Invoice and delivery note evidences teolrance [sic] of +/110pct allowed in quantity and value per line item which is not allowed in LC."

"5.Certificate of analysis evidences some content (last two line) in language other than English which is not allowed as per LC field 47A-6."

We disagreed with the discrepancies using the following reasoning:

Re 1. By use of the words "up to", the statement on the invoice "Terms of payment up to 01.06.2017" includes the maturity date calculated in accordance with the L/C terms. Hence, there is no conflict. Under UCP 600 sub-article 14 (d) only a conflict of data may give reason for refusal. We also mentioned ICC Opinion R848 which concluded, on a matter we consider analogical, that "the differing payment term ... in the invoice is not a matter on which a discrepancy can be based'.

However, the confirming bank insisted on its claim, stating that: "As per LC tenor is 30 days from B/L so calculated maturity date 03-MAR-2017. Whereas invoice evidences upto 01.06.2017 (due date) which is incorrect." (N.B. the invoice presented does not contain the words "(due date)" within the clause in question.)

Re 2. The L/C states no quantity of the goods. Whether the goods were shipped in exact contract quantity or within a tolerance that may be included in the contract is fully outside the scope of a bank's considerations. With respect to the amount, the L/C does not state the contract amount. Whether the L/C was issued for the exact contract amount or whether it included any tolerance for the contract amount is unknown to the banks and outside of their considerations. The clause appearing on the invoice and delivery note (packing list) apparently relates to a contractual term and under UCP 600 sub-article 4 (a) the credit is a transaction separate from the contract. Inclusion of any contract term, not expressly stated in the credit, by no means represents a conflict of data.

The confirming bank insisted that: "It is a data conflict as per UCP art 14(d) with regards to LC. In LC tolerance is not mentioned however invoice and delivery note states the tolerenace [sic] +/-10pct allowed on quantity and value per line item. Hence discrepancy stands valid."

Re 5: We turned the confirming bank's attention to ISBP 745 paragraph A21 both sub (a) (the language requirement in the credit only relates to the data required by the credit to appear on the document) and sub (e) (the pre-printed text, including field headings etc., may be in a language other than required in the credit).

The confirming bank insisted that: "As per LC field 47A-6. All documents must be written in English. However COA evidences some content in language other than English hence discrepancy stands valid." Later, they added "Please note the LC is very specific with regards to the language of the Letter of Credit and certificate of analysis shows text in different language than English." We contested this statement arguing that the L/C did not go into any deeper detail in describing the language requirements, in general, or in respect of the certificate of analysis, beyond the requirement that "all documents must be written in English". Therefore, the standard practice as outlined in ISBP 745 paragraph A21 must apply.

We kindly seek your opinion on the following:

1. Are any of the discrepancies valid?
2. If the answer in respect of discrepancy number 1, under the stated circumstances, is "No", whether it would be different if the payment terms had omitted the words "up to".

UNQUOTE

ANALYSIS

In respect of discrepancy number 1 *(Invoice evidences incorrect terms of payemnt [sic] up to - 01.06.2017 (due date)),* it is agreed that it is appropriate to refer to ICC Opinion R848 (TA838rev), which includes the following wording:

"The credit has not specified that the invoice must state the payment terms of the credit; the payment term of "L/C 30 days sight", appearing on the invoice, does not alter the obligations of the issuing bank and does not provide any additional rights to the nominated bank or the beneficiary as to early payment. Hence, the differing payment term of "L/C 30 days sight" in the invoice is not a matter on which a discrepancy can be based."

The same principle applies to this query. Hence, the fact that the invoice indicates payment terms different from those stated in the credit does not render the invoice discrepant. In response to question 2, the same stance would apply even if the words "up to" had been omitted.

The credit is clearly available by deferred payment at 30 days from bill of lading date and the issuing bank is obligated to honour only in accordance with the payment terms and conditions of the credit. Any other commercial aspects unique to a beneficiary's industry, or their document preparation, and their internal needs do not necessarily make a document discrepant. However, a beneficiary should consider avoiding excessive detail when preparing its documents to avoid creating unnecessary confusion.

For this case, it should be further mentioned that the correct payment terms (Payment terms: Letter of Credit, 30 days from Bill of Lading date) were also mentioned on the invoice.

In respect of discrepancy number 2 (*Invoice and delivery note evidences teolrance [sic] of +/110pct allowed in quantity and value per line item which is not allowed in LC*), the key issue is whether or not the quantity shipped is within the quantity allowed by the credit. From the wording of the query this seems to be the case in that the credit contained no indication of a quantity. The fact that the invoice indicates an allowable tolerance does not, in itself, create a discrepancy.

In respect of discrepancy 5 (*Certificate of analysis evidences some content (last two line) in language other than English which is not allowed as per LC field 47A-6*), ISBP 745 paragraph A21 (e) clearly allows for (amongst others) pre-printed text shown on a document to be in a language other than the language required by the credit. For that reason this is not a valid discrepancy.

CONCLUSION

1. No. The three stated discrepancies are not valid.
2. No. If the words “up to” had been omitted the answer would not have been different.

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,

Olivier Paul
Head of Policy, Banking Commission