Mr. Hassan Al Hashemi
Executive Secretary
General
ICC United Arab Emirates
PO Box 8886,
Dubai
United Arab Emirates

15 October 2019

Document 470/TA.896rev

Dear Mr. Al Hashemi,

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

QUOTE

Two letters of credit, subject to UCP 600, and available with any bank, were issued by the same issuing bank and advised through the same advising bank. Applicant and beneficiary were the same. The advising bank did not take up its nomination to negotiate but did examine the documents and acted as the presenter to the issuing bank. The advising bank determined that the documents were compliant.

Among others, both credits required the following documents to be presented: Beneficiary signed commercial invoice in quadruplicate and Certificate of Origin in duplicate issued by Chamber of Commerce. For reasons that will become clear, neither credit required the presentation of a pre-shipment inspection certificate.

Two presentations were made under each credit on different dates.

Under one credit, the issuing bank refused both presentations (for USD570,232.53 and USD27,315.26) for the following reasons:

“1. Attachment referred in Certificate of Origin is not presented which is required as per ISBP Para A24.

2. Commercial Invoice certified as per LC terms 46A/1 that, goods supplied are as per purchase order no. RCPL/5174 dated 19.06.2018 and P.I. No. KID- 1819/0054C dated 18.06.18 However, required pre-inspection certificate not presented mentioned under above purchase order no.”

Under the other credit, the issuing bank refused both presentations (for USD519,643.60 and USD31,283.98) for the same two reasons, except that the purchase order and P.I. details for alleged discrepancy 2 were “RCPL/5172 and RCPL/5173 dated 19.06.2018 and P.I. No. KID-1819/0054-A dated 18.06.18”.

With regard to alleged discrepancy 1:

As can be noted from the extracts below, which represent an example from one of the four presentations, the certificates of origin, in addition to quoting the full goods description and quantity, also stated “As per the attached invoice”. The (referred to) invoice, was also stamped by the Chamber of Commerce, and as part of the stamp itself are the words “ATTACHMENT TO C. OF ORIGIN” (see example below). The authentication on the invoice by the Chamber of Commerce also included the invoice number and date, and the certificate of origin number and date. There was also a QR code appended (see extracts below) which also appeared on the certificates of origin.


Extracts from Commercial Invoice

COMMERCIAL INVOICE

Date : 14.09.2018

Inv. No. : KI-INV-VAT-1819/0385

غرفة دبي

DUBAI CHAMBER

ATTACHMENT TO C. OF ORIGIN

[redacted]

COO #: 18149412

COO Date: 26-Sep-2018

Invoice Date: 14-Sep-2018

For verification scan barcode

Extracts from Certificate of Origin

غرفة دبي

DUBAI CHAMBER

Certificate of Origin شهادة المنشأ

Certificate No. 18149412 Date 26-SEP-2018

ORIGINAL

As per the attached invoice

End of Description

Each of the advising bank’s covering schedules indicated that 4 original and 2 copies of the invoice were sent, as well as ‘COO – 2’ (COO = certificate of origin). As both credits required invoices in quadruplicate and a certificate of origin in duplicate, 6 invoices evidenced on the advising bank’s covering schedules provide evidence that 2 invoices accompanied the certificate of origin in duplicate, which were marked as above. The scanned copies of the invoices held with the advising bank clearly evidence that these invoices were presented (and forwarded to the issuing bank) in the form as indicated above.

In justification of its discrepancy, the issuing bank cited that the invoice referred to on the certificate of origin was missing and referred to ISBP 745 paragraph A24. However, two copies of the invoice (one each for the original and duplicate of each certificate of origin) contained an internal cross-reference, i.e., the certificate of origin number and date and the Chamber of Commerce stamp that included the words “ATTACHMENT TO C. OF ORIGIN”. Also, the first sentence of ISBP 745 paragraph A24 states “When a document consists of more than one page, it must be possible to determine that the pages are part of the same document.” This is clearly the case here with the internal cross-reference on the 2 invoices, coupled with the QR codes that appear on both documents.

With regard to alleged discrepancy 2:
Neither credit required the presentation of a pre-shipment inspection certificate. In subsequent communications between the applicant and issuing bank, copies of which were made available to the beneficiary, it appears that a requirement for the presentation of this document was included in the applicant’s application forms but the issuing bank failed to incorporate the requirement in their credits. Due to this omission, the issuing bank has refused the documents simply on the basis that the invoices refer to the purchase order number mentioned in the credit and that purchase order refers to an optional requirement for presentation of a pre-shipment inspection certificate. In this respect, our view is that UCP 600 sub-article 4 (a) applies.

In short, neither credit required the presentation of a pre-shipment inspection certificate, none were presented, therefore the presentations cannot be refused for the absence of this document simply because it is optionally referred to in the purchase order.

Please confirm that neither discrepancy identified by the issuing bank was valid.

UNQUOTE

ANALYSIS

The two documentary credits were issued subject to UCP 600 and called (amongst others) for "*Beneficiary signed commercial invoice in quadruplicate*" and "*Certificate of Origin in duplicate issued by Chamber of Commerce*". Neither credit required the presentation of a pre-shipment inspection certificate. According to the query a requirement for the presentation of a pre-shipment inspection certificate was included in the documentary credit application, but the issuing bank did not include this document in the terms and conditions of the two credits.

The presentations were refused on the basis of two discrepancies:

Discrepancy 1: "Attachment referred in Certificate of Origin is not presented which is required as per ISBP Para A24."

The refusal notice makes reference to ISBP 745 paragraph A24 which reads: "*When a document consists of more than one page, it must be possible to determine that the pages are part of the same document. Unless a document provides otherwise, pages which are physically bound together, sequentially numbered or contain internal cross references, however named or titled, will meet this requirement and are to be examined as one document, even if some of the pages are regarded as an attachment or rider.*"

The opening sentence of ISBP 745 paragraph A24 states "When a document consists of more than one page, it must be possible to determine that the pages are part of the same document.", It then goes on to say "Unless a document provides otherwise, …" (followed by examples of how documents can be considered as one document).

In these two presentations, the documents did provide otherwise as it was possible to determine that the pages were part of the same document due to the obvious cross-references between the two documents:

- The certificates of origin, in addition to quoting the full goods description and quantity, also stated "As per the attached invoice".
- The relevant invoice was also stamped by the Chamber of Commerce and, as part of the stamp itself, includes the wording "ATTACHMENT TO C. OF ORIGIN". The authentication on the invoice by the Chamber of Commerce included the invoice number and date as well as the certificate of origin number and date.

The query also indicates that 4 originals and 2 copies of the invoice were enclosed with the presenter's covering schedule. Each credit required invoices in quadruplicate and the further 2 copies would have been presented for the purpose of the certificate of origin that was issued in duplicate.

On the basis of the above, the presented certificate of origin (with its reference to the invoice) complies with the credit.

Discrepancy 2: "Commercial Invoice certified as per LC terms 46A/1 that, goods supplied are as per purchase order no. RCPL/5174 dated 19.06.2018 and P.I. No. KID- 1819/0054C dated

18.06.18. However, required pre-inspection certificate not presented mentioned under above purchase order no."
It is important to note that the credit did not require the presentation of a pre-shipment inspection certificate; hence there is no requirement for such document to be presented. This applies even when a reference to a pre-shipment inspection certificate is indicated in the purchase order referred to as part of the data requirements for the commercial invoice. UCP 600 sub-article 4 (a) states: "*A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary.*"

According to the query a requirement for the presentation of a pre-shipment inspection certificate was included in the documentary credit application, but the issuing bank did not include this requirement in the terms and conditions of the two credits. A requirement that solely exists in the documentary credit application cannot be used as a reason to refuse a presentation under a credit,. Such an omission in the actual credit terms is a matter to be resolved between the issuing bank and the applicant, outside the credit.

The cited discrepancy is not valid.

CONCLUSION

Discrepancy 1: The certificates of origin are compliant.

Discrepancy 2: The discrepancy is not valid.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under "QUOTE" above.

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
Director, Finance for Development