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Dear Sirs,

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

QUOTE

One of our member banks has raised an issue about a letter of credit (LC) and we would appreciate the ICC's opinion on whether a discrepancy raised by the issuing bank was indeed a discrepancy.

The LC in question called for the following document under Field 46A:

- Clean Airway Bill (AWB) consigned to (issuing bank), showing actual flight number and date, marked freight collect and notify the applicant.

The LC did not specify that the AWB had to be printed double-sided.

The beneficiary presented a set of AWB on 2 separate sheets, both printed single sided. On the first page was the AWB itself, fully complied with the terms and conditions of the LC, and duly signed. The second page contained the terms and conditions, and was not stamped nor signed.

The first page of the AWB contained a note:

> "It is agreed that the goods described herein are accepted in apparent good order and conditions (except as noted) for carriage subject to the conditions of contract on the addendum hereof. All goods may be carried by any other

means including road or any other carrier unless instructions are given hereon by the shipper. Shipper agrees that the shipment may be carried via intermediate stopping places as deemed appropriate by carrier."

The issuing bank replied and raised the following discrepancy:

"AWB: Not show contain terms and conditions of carriage."

Our member bank, as the nominated bank, disagrees with the issuing bank's findings. The AWB presented made reference to the addendum that contained the terms and conditions of carriage, i.e., the second page of the AWB (though not labelled as Page 2), and this satisfied UCP 600 sub-article 23 (a) (vi), which states that the AWB is to "contain terms and conditions of carriage or **make reference to another source containing the terms and conditions of carriage**. **Contents of terms and conditions of carriage will not be examined.**" (*emphasis added)

Furthermore, and as stated in UCP 600 sub-article 23 (a) (vi), contents of the terms and conditions would not be examined.

When this was raised to the issuing bank, it continued to maintain that there was a discrepancy:

"We cannot find such page 2 as per your good bank explained. In fact, the back page of the AWB is a blank page. Besides, we find a separate sheet stating the conditions but there is no sign on the face of the sheet to make it an integral part of the AWB, which means such sheet cannot suffice article 23A-VI of UCP600."

"On the face of the received docs, AWB and a separated sheet stating conditions not be physically bound together or contain internal cross references, which means such sheet cannot suffice article 23A-VI of UCP600 and A24 of ISBP745. Therefore, we reiterate our stand that the discrepancy is valid."

We would appreciate it if ICC could provide its opinion on this issue, especially as such transport documents are received on a daily basis:

Is the issuing bank correct that the discrepancy is valid?

UNQUOTE

ANALYSIS

The issuing bank considered the presented air waybill (AWB) to be discrepant as, in its view, it did not “show contain” the terms and conditions of carriage. The nominated bank disagreed.

The AWB made reference to an addendum by stating: “It is agreed that the goods described herein are accepted in apparent good order and conditions (except as noted) for carriage **subject to the conditions of contract on the addendum hereof** [emphasis added]. All goods may be carried by any other means including road or any other carrier unless instructions are given hereon by the shipper. Shipper agrees that the shipment may be carried via intermediate stopping places as deemed appropriate by carrier.”

When responding to the disagreement of the nominated bank, the issuing bank noted, in part, that: “we find a separate sheet stating the conditions but there is no sign on the face of the sheet to make it an integral part of the AWB, which means such sheet cannot suffice article 23A-VI of UCP600.” And, in addition, that: “On the face of the received docs, AWB and a separated sheet stating conditions not be physically bound together or contain internal cross references, which means such sheet cannot suffice article 23A-VI of UCP600 and A24 of ISBP745”. In summary, the issuing bank restated that it considered the discrepancy to be valid.

UCP 600 sub-article 23 (a) (vi) requires that an AWB “must appear” to “contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage. Contents of terms and conditions of carriage will not be examined”.

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. 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 AWB indicated that its “conditions (except as noted) for carriage subject to the conditions of contract” were “on the addendum hereof”. While UCP 600 sub-article 23 (a) (vi) notes that conditions of carriage “must appear” as part of the AWB or “make reference to another source containing the terms and conditions of carriage” and that the contents of terms and conditions of carriage will ~~are~~not ~~to~~ be examined, an AWB’s reference to an addendum cannot be ignored. In such cases there is a requirement to ensure that any addendum appears to contain the terms and conditions of carriage as referenced in the AWB. In business terms, an addendum is commonly interpreted as an addition, supplement or attachment to a document that includes, or clarifies, additional terms not included in the original document. ISBP 745 is not exhaustive in providing all possible examples and allowable solutions. While an “addendum” is not specifically mentioned in ISBP 745, addendums are routine documents and they fit within the definition of “another source” detailed in UCP 600 sub-article 23 (a) (vi).

In accordance with UCP 600 sub-article 23 (a) (vi), the AWB makes reference to another source which, in this case, is the addendum. Additionally, as noted in ISBP 745 paragraph A24 the AWB does contain an “internal cross reference” by indicating: “subject to the conditions of contract on the addendum hereof.” Concluding on the above, the AWB and its addendum meet the requirements of sub-article 23 (a) (vi).

CONCLUSION

No. The issuing bank is not correct. There is no discrepancy

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,

David Bischof
Deputy Director, Finance for Development