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**Document 470/TA.904rev**

Dear Ms. Yong Jeong-hwa,

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

**QUOTE**

**1. Background**

Since 2012, one of our member banks has issued a total of 376 letters of credit, each available by sight payment and involving the same beneficiary and applicant. Each credit was issued subject to UCP 600.

All of the letters of credit shared similar discrepancies such as inconsistent weight and quantity details among each of the required documents.

Despite the commonly detected discrepancies, the issuing bank accepted documents for 367 out of the 376 letters of credit and released payment based on the applicant's approval. However, the issuing bank refused to honour documents presented under the remaining 9 letters of credit due to similar discrepancies (hereinafter referred to as the "disputed L/C").

The "disputed L/C" were issued during the period between 27 November 2018 and 20 December 2018. The details of the credit terms and obvious discrepancies are as below:

**Letter of Credit Terms (the "disputed L/C" share the same terms as below, apart from the figures on quantity)**

| |
|---|
| **45A:DESCRIPTION OF GOODS AND/OR SERVICES**<br><br>+PRICE TERMS: CIF INCHEON PORT, S.KOREA<br>PRIMARY ALUMINIUM INGOT 99.7PCT MIN. AL AA170.9 |

75.468MT USD2,010.00/MT USD151,690.68

**46A:DOCUMENTS REQUIRED**

+ SIGNED COMMERCIAL INVOICE IN TRIPLICATE
+ FULL SET OF CLEAN ON BOARD OCEAN BILLS OF LADING MADE OUT TO THE ORDER OF [NAME OF ISSUING BANK] MARKED FREIGHT PREPAID AND NOTIFY [COMPANY A].
+ PACKING LIST IN TRIPLICATE

**47A:ADDITIONAL CONDITIONS**

+SHIPMENT PRIOR TO L/C OPENING DATE TO BE ACCEPTABLE.
+ONE B/L COPY TO BE ACCEPTABLE.
+THIRD PARTY B/L OR CHARTER PARTY B/L ACCEPTABLE.
+ALL DOCUMENTS NOT SHOWING L/C NUMBER TO BE ACCEPTABLE.
+NEGOTIATION CAN BE NEGOTIATED AGAINST B/L COPY, COMMERCIAL INVOICE, PACKING LIST.
+B/L MADE OUT TO ORDER ACCEPTABLE.
+DOCUMENTS PRESENTED LATER THAN 21 DAYS AFTER B/L DATE BUT WITHIN THE VALIDITY OF L/C TO BE ACCEPTABLE.
+ORIGINAL INSURANCE POLICY, CERTIFICATE OF ORIGIN, CERTIFICATE OF ANALYSIS ARE NOT REQUIRED FOR NEGOTIATION.

**<Details of the Discrepancies>**

| No | L/C Terms | Commercial Invoice | | Packing list | | Bill of lading | | Overload | |
|---|---|---|---|---|---|---|---|---|---|
| | Weight | Gross Weight | Net weight | Gross Weight | Net weight | Gross Weight | Net weight | Over weight | Ratio |
| 1 | 125.354 | 125.476 | 125.354 | 125.476 | 125.354 | 518.360 | 517.856 | 392.502 | 413% |
| 2 | 100.738 | 100.836 | 100.738 | 100.836 | 100.738 | 518.583 | 518.079 | 417.341 | 514% |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 3-1 | 100.713 | 57.596 | 57.54 | 57.596 | 57.54 | 518.360 | 517.856 | 417.143 | 514% |
| 3-2 | | 43.215 | 43.173 | 43.215 | 43.173 | | | | |
| 4 | 99.667 | 99.764 | 99.667 | 99.764 | 99.667 | 518.360 | 517.856 | 418.189 | 520% |
| 5 | 100.694 | 100.792 | 100.694 | 100.792 | 100.694 | 518.360 | 517.856 | 417.162 | 514% |
| 6 | 99.901 | 99.952 | 99.901 | 99.952 | 99.901 | 501.7025 | 501.444 | 401.543 | 502% |
| 7 | 100.186 | 100.284 | 100.186 | 100.284 | 100.186 | 503.468 | 502.976 | 402.790 | 502% |
| 8 | 74.629 | 74.702 | 74.629 | 74.702 | 74.629 | 503.468 | 502.976 | 428.347 | 674% |
| 9 | 75.468 | 75.542 | 75.468 | 75.542 | 75.468 | 500.209 | 499.719 | 424.251 | 662% |

## 2. Arguments

**Arguments of the Beneficiary**

The inconsistencies in the weight and quantity between the bill of lading and commercial invoice or packing list originate from the nature of Bonded Warehouse Transactions (BWT). The issuing bank obviously was aware of this fact during the transaction period. Furthermore, since the issuing bank settled the payment against previous letters of credit under the same conditions, without raising any disputes, the exporter strongly had trust that the “disputed L/C” will also be honoured and payment would be made as before.

**Arguments of the Issuing Bank**

According to UCP 600 article 7, an issuing bank is obligated to honour only the
documents that are in strict compliance with the credit terms. However, the disputed documents are clearly not in compliance in terms of quantity and weight, which cannot be considered as minor discrepancies. As a result, the issuing bank is not bound to honour the presentations.

In addition, UCP 600 article 4 states that a credit by its nature is a separate transaction from the sale or other contract on which it may be based. Therefore, banks are not bound by such contract and have no obligation to analyse the credit documents. The issuing bank did not recognise the fact that the underlying sales contract was a BWT transaction and the issuing bank is under no obligation to analyse or consider the transaction type.

Moreover, according to a published ICC Opinion, an issuing bank is not bound to the previous waiver of discrepancies and has the right to refuse a presentation under a credit even if it has similar discrepancies that were waived before.

**3. Query**

We kindly seek an opinion on the following matters:

1) If the issuing bank accepted an applicant waiver of discrepancies in a presentation, is the issuing bank bound to continually apply the waiver of discrepancies on a different credit with an identical beneficiary?

2) Whether the beneficiary's claim that because the issuing bank was aware that the credits originate from BWT transactions, which by nature cause inconsistencies in weight and quantity, the issuing bank should tolerate such inconsistencies, is a valid claim?

**UNQUOTE**

**ANALYSIS**

Numerous discrepant presentations were made under a series of documentary credits subject to UCP 600 and, in the great majority, the discrepancies were accepted by the applicant and its waiver accepted by the issuing bank. A smaller number of presentations, with similar discrepancies, in respect of inconsistent weight details between the documents, were refused by the issuing bank. There appears to be no argument that such refusals were made in accordance with UCP 600 article 16.

Based on the text of one of these documentary credits, as provided in the query, and which relates to item 9 in the list containing details of the discrepancies, the net weights on the commercial invoice and packing list were according to the goods description. However, an 'inconsistency' (conflict) occurred when comparing the weight with the gross and net weight shown on the bills of lading. It would appear that the structure of the other 8 documentary credits, and the drawings thereunder, were similar.

The beneficiary argued that the alleged discrepancies were purely inconsistencies (conflicts of data) that can be explained due to the fact that this is the nature of a BWT transaction. In addition, they highlighted that these discrepancies had previously been accepted by the issuing bank on many occasions, without the raising of any dispute (presumably meaning that no refusal notices had been issued), thus leading the beneficiary to expect corresponding and equitable treatment for all future presentations.

The issuing bank stated that the documents were discrepant and that they were not bound to honour.

In the response from the issuing bank, it made reference to UCP 600 article 7 and referred to the doctrine of 'strict compliance'. However, it should be noted that this is a legal principle derived from contract law that has been applied by courts to documentary credits. It is not interpreted by UCP 600.

In fact, and as stated in the ICC 'Notes on the Principle of Strict Compliance' (https://iccwbo.org/content/uploads/sites/3/2016/05/ICC-Banking-Commission-Executive-Committee-Issues-Paper_Notes-On-The-Principle-Of-Strict-Complance.pdf), "*ISBP, particularly the latest version ISBP 745, has made a significant impact in lessening the exactitude of the doctrine of strict compliance. In fact, it is arguable whether or not strict compliance even exists any more. A review of the General Principles section of ISBP 745 highlights numerous aspects of the document examination process that reduce the need for a literal application*."

The issuing bank further stated that under UCP 600 article 4, a credit by its nature is a separate transaction from the sale or other contract on which it may be based and, therefore, banks have no obligation to 'analyse' the credit documents. Given the wording of their response and the content of UCP 600 sub-article 14 (a), this is assumed to mean any documents that may have supported the application for issuance of the credits and not the documents that were presented thereunder.

Unless distinctly and clearly stated within the terms and conditions, presentations under credits must be viewed as separate and independent. The fact that a particular action has previously occurred (once, or even multiple times), does not create an antecedent for the exact same approach for future transactions. If a discrepancy exists, this is incontrovertible and such discrepancy must be individually considered every time, even if repeated on many occasions as is the case here. It is simply a fact that the issuing bank had identified similar discrepancies in the presentations made under the previous 367 credits and the applicant had provided a waiver to those discrepancies. For reasons unknown, and of no bearing on the acceptability of the presentations under discussion, either the applicant and/or the issuing bank had refused, respectively, to issue a waiver or accept a waiver of the applicant. There is no basis under UCP 600 for historical precedent to be applied to presentations.

As stated in ICC Opinion R332, (TA212) the fact that a bank may have previously accepted discrepant documents, with or without an applicant waiver, does not bind that bank to accepting a similar discrepancy(ies) on any future drawing(s) unless local law states otherwise. Such conclusion is further confirmed in ICC Opinion R556 (TA525) which emphasises that the usual attitude of banks is that such precedents cannot be created, because while circumstances may be superficially the same on the documentation level, each transaction (i.e., each credit or drawing thereunder) is separate from each of its predecessors and is considered independent.

The issuing bank mentioned that they did not recognise the fact that the underlying sales contract was a Bonded Warehouse Transaction (BWT) and that they were under no obligation to analyse or consider the transaction type. Unless clarifying terms and conditions are included within the credit, it cannot be expected that such transaction types are within the normal knowledge scope that is expected to be understood under international standard banking practice when examining documents under documentary credits.

Even with a BWT, such considerable differences in weight would be expected to be reflected in the bills of lading as an indication of a commingled shipment or that the shipment is part of a larger consignment. The presented bills of lading would indicate, in addition to the total gross and net weights, the actual weight(s) applicable to the shipment covered under the credit. Otherwise, it is the responsibility of the beneficiary to ensure that documents which indicate a conflict of any data, including weights, is reflected as being acceptable under the terms and conditions of the credit, so as to avoid UCP 600 sub-article 14 (d) being applicable.

**CONCLUSION**

1. No. Previous waivers of discrepancies do not create a precedent under UCP 600.

2. Such a claim 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,

David Bischof
Deputy Director, Finance for Development