Mr. Leon Yip
ICC United Kingdom
1st Floor, 1-3 Staple Inn
London WC1V 7QH
United Kingdom

2 December 2020

**Subject: Document 470/TA.908rev**

Dear Mr. Yip,

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

**QUOTE**

We were asked to confirm a credit which we did and subsequently honoured a complying presentation. However, the issuing bank claimed that one of the documents presented, namely an insurance policy, was not compliant. The credit was subject to UCP 600 and both parties agree that UCP 600 sub-article 28 (e) applies. The single alleged discrepancy relates to a clause in the insurance document reading:

"This insurance policy has been issued on 19.05.2020 for the insurance period starting on 02 May 2020. The end of the insurance cover in accordance with the insurance terms c100/2015. Warranted free from known and / or reported losses on or before 19.05.2020."

The issuing bank argue that "Warranted free from known and / or reported losses on or before 19.05.2020" is a claims restricting clause and is to be considered as an explicit violation of the above mentioned ICC rule, by way of addition it is such an example of restriction of our right to claim for damages as being assured party since the insurer has no liability or indemnification of our losses occurring before 19.05.2020 which is much later than exact shipment date i.e., 02.05.2020."

In an attempt to resolve the issue, although not required, we asked the insurance brokers for the policy the following three questions.

- To confirm that cover is effective from 2 May
- There have been no prior claims, and
- This is in no way restricting the assured's ability to claim should a claim event have occurred in the period from 2 May to 19 May, when the policy was issued.

The answer given in writing to all three questions was "yes".

In addition, our relationship, product management and trade teams liaised with their counterparts at the issuing bank to try to resolve the issue but to no avail. Amongst other things, we reiterated the clear statement in UCP 600 article 5 that banks deal with documents and not with goods. The issuing bank agreed but said they had spoken to local insurance companies who agreed with their view that it was a claused insurance document, so they stood by their original discrepancy. Also, after reviewing again, the issuing bank responded that they had spoken to an adviser of the ICC locally who agreed with their view that this was a valid discrepancy although they have not provided any written evidence to this effect.

We request a formal written opinion from ICC Banking Commission on the merits or otherwise of the issuing bank's rejection.

**UNQUOTE**

**ANALYSIS**

An insurance document was required under a documentary credit. The specific terms and conditions for the insurance document are not stated in the query.

The insurance document presented included the following wording: "This insurance policy has been issued on 19.05.2020 for the insurance period starting on 02 May 2020. The end of the insurance cover in accordance with the insurance terms c100/2015. Warranted free from known and / or reported losses on or before 19.05.2020."

Subsequently the presentation was refused by the issuing bank making reference to said clause arguing that it is a claims restricting clause and is to be considered as an explicit violation of UCP 600 sub-article 28 (e) which reads "The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment."

The purpose of UCP 600 sub-article 28 (e) is to ensure that the insurance cover is effective from a date no later than the date of shipment; this may be evidenced by the issuance date of the insurance document, or by wording on the insurance document evidencing the date from which the cover is effective.

From the text of the query it would appear that the date of shipment was 2 May 2020.

The wording of the clause in the insurance document makes it clear, in the first sentence, that the insurance period is "starting on 02 May 2020", i.e. that cover is effective from 2 May 2020. The final sentence of the clause, i.e. "Warranted free from known and / or reported losses on or before 19.05.2020", does not impact upon the date from which the cover is effective, nor upon the fact that the assured party can claim should a claim event occur in the period from 2 May to 19 May 2020.

The refusal of the issuing bank is not valid.

**CONCLUSION**

From the wording of the clause, it is clear that the insurance period commences on 2 May 2020, i.e., that cover is effective from 2 May 2020. For that reason, the refusal of the issuing bank 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