SESSION ON ICC OPINIONS
Opinion TA.879 - Query

• A sight letter of credit (LC) was established for US$407,500 on 2 February 2017 for the import of soyabean. It was available by payment and contained the following reimbursement instruction:
  • “Upon receipt of credit conform documents at our counter, we will remit the proceeds at sight as per instructions on your covering schedule”.
  • The credit was restricted to a nominated bank and expired at its counters.

Opinion TA.879 - Query

• On 30 March 2017, an MT754 was received from the nominated bank stating “LC compliant documents have been forwarded to yourselves and in settlement, please credit our US$ account ------------ with ----------- for bill amount as per LC terms”.
  • On 3 April 2017, the issuing bank received the original documents from the nominated bank. The covering schedule included the following wording: “We attach the documents subject to the instructions shown below”. Some of the instructions relevant to this query are:
    • We certify that all LC terms and conditions have been complied with.
    • Documents presented within presentation period and LC validity.
    • In settlement, please credit our USD account on 6 April, 2017
Opinion TA.879 - Query

- On 25 April 2017, the issuing bank reimbursed the nominated bank as per its instructions. There was no discrepancy in the documents.
- The nominated bank claimed delayed payment interest of US$1176.35 for 19 days (6 April to 25 April).
- The issuing bank requested the nominated bank to provide documentary evidence that payment was made to the beneficiary on 6 April in order to verify the number of days the nominated bank was out of funds. No reply has yet been received on the date of payment to the beneficiary, only repeated claims for interest. A series of messages were exchanged between both banks, where the nominated bank was claiming interest and the issuing bank was denying that interest was due, owing to the lack of evidence as to when the documents were negotiated, (actually the credit was available by payment) or paid under the credit by the nominated bank.

Opinion TA.879 - Query

- From the above information, it is not evident whether the nominated bank has acted according to its nomination and honoured the sight payment obligation.
- Failure of the nominated bank to provide documentary proof as to whether payment was made to the beneficiary on 6 April gives an indication that it only received, examined and forwarded the documents, which does not constitute honour i.e., to pay at sight complying documents presented at its counter. They have waited for funds from the issuing bank and paid the beneficiary upon its receipt. This act contravenes UCP 600 article 2 i.e., Honour means: (a) to pay at sight if the credit is available by sight payment.
- There exists a technical flaw in the credit that is stated to be available with the nominated bank by payment. The credit should have included reference to claiming reimbursement from a reimbursing bank or, indeed, a reference to the debiting of the issuing bank’s account held with the nominated bank.
Opinion TA.879 - Query

We would appreciate if the ICC Banking Commission would give an opinion whether:

- The issuing bank, on the basis of no proof of payment on 6 April, is justified in declining the interest claim of the nominated bank?
- Can payment be made to the nominated bank on the basis of the MT754, without the receipt of original documents and the absence of reimbursement instructions to claim from or debit the issuing bank’s account, or for payment upon receipt of an MT754?

Opinion TA.879 - Analysis

➢ The query indicates that there was a technical flaw in the credit, which is seen as bad practice, in that it was available with the nominated bank by payment and yet, at the same time, indicated that the issuing bank would remit proceeds upon receipt of credit conforming documents.

- Consequently, the credit (being available by payment) should have provided the name of a reimbursing bank or an authorisation to debit the issuing bank's account held with the nominated bank. However, this “flaw” does not change the obligation of the issuing bank to honour a complying presentation.

- It is indicated that there was a period of 22 days between a complying presentation being received by the issuing bank and reimbursement being effected to the nominated bank.

- Although UCP 600 does not dictate a specific number of days within which the issuing bank must effect payment or reimbursement, a period of 22 days is excessive.
Opinion TA.879 - Analysis

• In any event, and regardless of such delay, it is important to note that UCP 600 does not require the nominated bank to provide proof that it has honoured or negotiated. The obligation of the issuing bank to honour is not dependent on whether the nominated bank has actually honoured or negotiated. It is not even dependent on whether the nominated bank has acted on its nomination.

• Apart from sub-article 13 (b) (iii), whereby an issuing bank is responsible for any loss of interest if reimbursement is not provided on first demand by a reimbursing bank, it should be borne in mind that UCP 600 does not, and cannot, cover any issues in respect of interest for delayed payment. This is a matter to be handled outside the credit, and resolved by the parties concerned.

Opinion TA.879 - Conclusion

➢ 1. UCP 600 does not require proof of honour or negotiation. The lack of such information does not in itself justify an issuing bank declining the payment of interest to a nominated bank.

➢ 2. No. The credit indicated that the issuing bank would remit proceeds upon receipt of credit conforming documents. Pursuant to such a condition, it is expected that the process of reimbursement should begin at that time. The credit did not allow for SWIFT reimbursement.
We entered into a forfaiting agreement, following which the negotiating bank duly assigned all of its rights under the letters of credit to us.

The issuing bank accepted the documents presented under the letters of credit.

However, due to an injunction being granted by the courts of [Country B], at the request of the applicant, on the basis of a claim it is bringing with regard to the underlying transaction (i.e., the sales contract between the applicant and beneficiary), the issuing bank has refused to make the payments due to us on the respective maturity dates. It should be noted that the injunction was not granted on the grounds of fraud or illegality.

As the issuing bank issued the letters of credit subject to UCP 600, we request the ICC to confirm the applicability of UCP 600 sub-article 4 (a), article 5, and sub-article 7 (b), and thereby the independent nature of documentary credit transactions from any underlying contracts, documents and/or goods, and the obligation of the issuing bank to honour its commitments under the letters of credit and make payment accordingly. In addition, we request the ICC to confirm that once the issuing bank has accepted the documents, it is obligated to make payment at maturity in accordance with UCP 600 sub-article 15 (a).

We also request the ICC to opine on the extent to which the UCP 600, as incorporated in the letters of credit, would prevail over an injunction imposed by a local court in the jurisdiction of the issuing bank.
Opinion TA.880 - Analysis

• Disputes in respect of the underlying sales contract are outside the scope of UCP 600 and several opinions have been published in the past in respect of court injunctions issued in such circumstances.

• As highlighted in Opinion R779 (TA736rev), an issuing bank is not able to ignore the fact that an injunction has been granted that prevents its payment, but it should be cognisant that the documents did comply, did not require any further instructions from the applicant as to their settlement, and that it should approach the court for the removal of that order.

• The general principle, as stated in the Analysis and Conclusion to ICC Opinion R519 (TA556), is that local law will prevail over the transaction. This Opinion additionally states that: “There are no guidelines on this in the UCP, and the expectation is that the issuing bank will seek to uphold the principles outlined in the UCP and preserve the relationship that exists between the banks. This is part of the correspondent banking relationship between the banks”.

Opinion TA.880 - Analysis

• Opinion R629 (TA672rev) also states that an issuing bank cannot ignore a court injunction, and its defence for not reimbursing will be based upon the terms of the injunction.

• However, in the event that the basis for the injunction being issued is related to the quality of the goods, a nominated bank that acted in good faith should be protected. Such issues should not affect the right of the nominated bank to receive reimbursement from the issuing bank. In this respect, reference should also be made to UCP 600 articles 4 and 5.
Opinion TA.880 - Conclusion

CONCLUSION

- As mentioned in the above analysis, an issuing bank cannot ignore a court injunction.
- However, **it should seek to** resist the imposition of such an injunction or, if an injunction has already been obtained, seek to have it lifted.

Opinion TA.881 - Query

Topic: Mixed Payment L/C, L/C amount: USD 100,000.00
Field 46A Required Documents:
- 1. Invoice
- 2. Bill of lading
- 3. Packing list
- 4. Insurance document
- 5. Acceptance certificate issued by the applicant
Field 47A: Additional Conditions:
- **Mixed Payment Details:**
  - 80 pct of credit amount will be paid against presentation of documents from 1 to 4 in field 46A
  - 20 pct of credit amount will be paid against presentation of acceptance certificate issued by the applicant or in case this document is not presented, at 45 days after B/L date (whichever occurs earlier).
Opinion TA.881 - Query

• Documents from 1 to 4 for USD 100,000 including a bill of lading dated 1 September 2016 were presented and found to be discrepant and are not yet accepted.

We would like to have an opinion of the ICC Banking Commission based on the following questions:

• 1. Was the issuing bank obligated to pay 20% of the presentation amount to the beneficiary on 16 October 2016 (B/L date + 45 days), if the acceptance certificate was not presented?
• 2. Was payment of the 20% subject to the drawing for 80% having been previously honoured or refused?
• 3. Was the issuing bank obligated to pay the beneficiary 20% of the credit amount, against presentation of the acceptance certificate, without presentation of documents 1 to 4?

Opinion TA.881 - Analysis

• The provision for the automatic payment of 20%, i.e., 45 days from the bill of lading date, is only effective if the drawing for 80% has been honoured due to the fact that this is a single presentation with two possible tenors, 80% at sight and 20% as stated in the credit. It is considered unlikely that any bank, having refused the presentation for 80%, would then proceed to record a commitment to pay the 20% portion.

• The query indicates that the presentation was refused due to discrepancies and that the discrepancies were not waived. Accordingly, there has been no utilisation under the credit and, therefore, no bill of lading date to which any claim for payment of the 20% can be applied.
Opinion TA.881 - Analysis

- Until the discrepancies are accepted by the issuing bank (e.g., based upon a waiver from the applicant), the 80% and the 20% that could be payable at 45 days from the bill of lading date (an amount that would now be due for payment immediately) cannot be honoured.
- It should be noted that if the applicant had chosen to issue an acceptance certificate (however unlikely as it may be, given that the applicant had not waived the discrepancies for documents 1 to 4) and the document had been presented and was compliant, the issuing bank would be required to honour the 20%.
- This is a poorly drafted credit and, if a complying acceptance certificate had been presented prior to any presentation of documents 1 to 4, although compliant under the terms and conditions of the credit this may cause some concern to the applicable banks as to how the goods have been accepted without any presentation covering the shipment of those goods and as to the whereabouts of the documents that cover that shipment. This is, however, outside the scope of UCP 600.

Opinion TA.881 - Conclusion

- 1. No. In the absence of an acceptance certificate, payment at 45 days from bill of lading date was subject to the 80% having previously been honoured.
- 2. Yes, given that 20% was predicated upon the bill of lading date, payment was subject to the 80% having previously been honoured. The answer would be no if 20% was to be paid upon the presentation of the acceptance certificate.
- 3. Yes, provided that presentation of the acceptance certificate is made prior to the expiry date of the credit. However, see the comments in paragraphs 5 and 6 of the Analysis.
Opinion TA.883 - Inquiry

• A credit, subject to UCP 600, required amongst others, one original air transport document (AWB) consigned to applicant showing flight number, flight date, contract number TECH/TCT-562-17-APPLICANT/XYZ OY -XYZ VN-VNPT TECHNOLOGY, L/C number, marked freight prepaid and notify applicant.

• The issuing bank refused to honour, stating the following two discrepancies:
  • 1. AWB showing inconsistent carrier’s name (i.e., “Cargolux” and “Panalpina World Transport BV”)
  • 2. AWB showing inconsistent contract number

Opinion TA.883 - Inquiry

• The confirming bank disagreed with the discrepancies raised by the issuing bank stating the following (in an MT799 message):
  • “1. Information field showing “Cargolux” is by recognized practice intended for carrier use only. The party acting as carrier for the shipment is identified in the signature field of the document and fulfills the requirement of UCP 600 art 23 (a). There is no discrepancy relating to the identification of carrier."
Opinion TA.883 - Inquiry

• The confirming bank disagreed with the discrepancies raised by the issuing bank stating the following (in an MT799 message):
  • 2. The contract number is stated in good order as per credit terms on the AWB in the space relevant for containing this information. The parallel occurrence of essentially same contract not showing full lettering does not create inconsistency or uncertainty on the applicability of the stated full contract no and the document as representing the correct AWB, relating to the stipulated contract for the purpose of presentation under this credit.

Opinion TA.883 - Inquiry

• The issuing bank maintained its position with the following arguments:
  • “1. Our L/C is subject to UCP 600 in which no article stipulates that banks should not check information fields similar to the field showing “Cargolux” in your AWB. Moreover, art 14D of UCP 600 indicate clearly that data in document must not conflict with data in that document itself and the credit. The presented AWB mentioned two different carrier’s name (“Cargolux” and “Panalpina World Transport BV”) this made the AWB discrepant due to data confliction in itself.
Opinion TA.883 - Inquiry

• The issuing bank maintained its position with the following arguments:
  • 2. Relating to contract no, the AWB also mentioned contract number twice. As recognized by your MT799, the contract number stated after invoice number obviously did not bear all letters as the other and in the credit. So, it constitutes a conflict data in the AWB itself and with L/C. In other words our discrepancy of inconsistent contract number is fully valid.”

Opinion TA.883 - Analysis

• The issuing bank contends that as Cargolux is mentioned in the “By First Carrier” field, this creates a conflict according to UCP 600 sub-article 14 (d).
  • An air waybill that provides carrier details, in the manner described in the query, and within the boxes designated as “Issued by”, "By First Carrier" and/or the signing field would not be seen as being in conflict with the requirements of UCP 600 sub-article 23 (a) (i) in naming the carrier, i.e., a sole carrier. In this case, the party signing the air waybill has signed as carrier. Such a signature complies with the requirements of sub-article 23 (a) (i). The signature of either of the above-mentioned parties, or a named agent signing on either of their behalf, would be acceptable.
Opinion TA.883 - Analysis

• The issue of a potential conflict in the stated contract number, appearing in one or more presented documents, has been addressed in numerous ICC Opinions including, inter alia, TA856rev, R740 (TA722rev) and R757 (TA708rev). Within the air waybill, the contract number is mentioned in two different places. One of these statements omitted to mention “OY -XYZ”.

• As it was not previously mentioned as a discrepancy by the issuing bank, it can be assumed that the air waybill correctly stated the credit number, goods description, and quantities, etc. Accordingly, it provided sufficient data from the credit to determine that the omission of “OY –XYZ” in one notation could be considered as a typographical error. For this query, in view of the fact that the correct contract number is also stated in the air waybill, the omission of “OY -XYZ” does not make the document discrepant.
Opinion TA.865 - Inquiry

- The credit, contained the following requirements under field 46A: + CUSTOMS EXPORT DECLARATION ISSUED AND AUTHENTICATED BY CUSTOMS AUTHORITIES IN THE EXPORTING COUNTRY CERTIFYING THAT GOODS SUBJECT OF THIS L/C BEING EXPORTED TO [Country L) PROVING ITS QUANTITY AND SPECIFICATIONS DETAILS.

- This documentary requirement was later amended as follows:
  - PLEASE AMEND UNDER FIELD 46A (ITEM 6) TO READ:
  - + A COPY AND/OR ORIGINAL CUSTOMS EXPORT DECLARATION ISSUED AND AUTHENTICATED BY CUSTOMS AUTHORITIES IN THE EXPORTING COUNTRY CERTIFYING THAT GOODS SUBJECT OF THIS L/C BEING EXPORTED TO [Country L) PROVING ITS QUANTITY AND SPECIFICATIONS DETAILS, TO BE ACCEPTED IN ANY LANGUAGE AND IT MUST BE CERTIFIED BY THE BENEFICIARY.
Opinion TA.865 - Inquiry

• Beneficiary presented documents that the second advising bank found to be complying and, upon which, it forwarded them to the confirming bank.

• Subsequently, a notice of refusal was received from the confirming bank stating:

• „CUSTOM EXPORT DECLARATIONS NOT AUTHENTICATED BY CUSTOMS AUTHORITIES AS REQUESTED“

Opinion TA.865 - Inquiry

• A copy of Customs export declaration was presented, as allowed after the amendment. It was an electronically generated document and therefore not signed by the customs authority. However, and as required by the amendment, it was certified by the Beneficiary.

• It is the opinion of the second advising bank that the declaration need not be signed as it is a copy of an electronically generated document that bears no signature, and it is correctly certified by the Beneficiary as required by the amendment.

• In many credits these days, we see a presentation of documents from entities such as Chambers of Commerce or Customs Authorities that have been generated electronically.

• Also in this case, the document presented was issued by the Country N Customs Authorities and showed a bar code MRN. This bar code, as was later confirmed by the Country N Customs Authorities, is the only authentication that will be provided. Country N Customs Authorities do not sign any of these documents.

• Our question is whether the discrepancy is valid or not?
A copy of the customs export declaration was presented, contained no field for a conventional signature and was signed by the beneficiary with the words “certified true and correct customs export declaration”.

ISBP 745 paragraph A31 (b) reflects existing international standard banking practice when reviewing copies of documents i.e., “Copies of documents need not be signed nor dated.”

Even if it were considered that the copy of the Customs Export Declaration was to indicate a form of signature, as would have appeared on the original, the signing of a document can include an electronic method of authentication (as stated in UCP 600 article 3). In ICC Opinion R636 (TA668rev), it was stated within the analysis that a bar code on a courier receipt could act as a form of signature (i.e., an electronic method of authentication) where there is no designated signature field within the document. This highlighted the fact that neither the ICC nor UCP can dictate how issuers of documents should create or authenticate such documents.

The MRN (Movement Reference Number) that appears on the presented copy, and referenced in the text of the query, is a unique number that is automatically allocated by the customs office that accepts the declaration. It contains 18 digits and is composed of the following elements:

- the last two digits of the year of formal acceptance of export movement;
- an identifier of the EU Member State(s) from which the movement originated; and
- a unique identifier for the export movement per year and country.

The MRN is printed in full on the document and would be represented within the machine-readable data in the bar code to enable any authentication to occur. It should be noted that banks are not required to verify or obtain such authentication. The inclusion of a bar code will be considered as an electronic form of authentication.

For the avoidance of disputes, when it is known that a document will be presented bearing an electronic form of authentication, other than that described in ISBP 745 paragraph A35 (d), a credit subject to UCP 600 should be worded to reflect the required content of that document and the form of authentication (signature) that will be required or be acceptable.
Opinion TA.872 - Inquiry

L/C with the following conditions:
Amount: EUR 2,418,154.10
Partial Shipment: Allowed
Credit Amount Tolerance: + / - 10%

10 percent more or less on total quantity and amount allowed.

Goods Description (included):
50MT For size 1.5x1,250XC

......
Total Quantity 5,000MT

......

The negotiating bank sent the shipping documents to the issuing bank with the following details:
Negotiated Amount: EUR1,471,959.10

55.55MT For size 1.5x1,250XC ..... Total Quantity 3,043.88MT'

Opinion TA.872 - Inquiry

The issuing bank refused the said documents citing the following discrepancy: **Quantity over-shipped for size 1.5x1,250XC**
(There were several items shipped under the above letter of credit and among them for the size 1.5x1,250XC, the quantity had been over-shipped.)

**MT734 from issuing bank was as follows:**
::734 ADVICE OF REFUSAL
::20 Sender’s TRN: ABCD123456
::21 Presenting Bank’s Reference: 954XYZ12345678
::32A Date and Amount of `Utilisation: 161219EUR1471959,10
::77J Discrepancies: 1. QUANTITY OVERSHIPPED FOR SIZE 1.5X1250XC
::77B Disposal of Documents: DOCS ARE HELD PENDING RECEIPT OF ACCEPTABLE WAIVER FR APPL IN ACCORD. WITH ART16C III B OF UCP600
Opinion TA.872 - Inquiry

➢ The negotiating bank pointed to the clause “10 percent more or less on total quantity and amount allowed” and argued that the word “total” applied to the 10 percent tolerance limit and not to individual items in the letter of credit.

➢ The issuing bank had argued that the tolerance in quantity applied to both the total quantity as well as to the quantity of individual items in the letter of credit.

Opinion TA.872 - Analysis

The credit allowed partial shipments and, additionally, indicated that the amount and total quantity of goods to be shipped were both subject to a tolerance of plus or minus 10%.

A number of line items were included within the goods description, each with an applicable quantity. The quantity of one of the line items that had been shipped was more than 10% over the quantity stated in the credit. As a result, this was cited as a discrepancy by the issuing bank.

However, the credit was specifically worded so that the tolerance of 10% applied only to the total quantity shipped under the credit and not to the individual line items noted in the goods description. As a consequence, the stated tolerance for the quantity did not apply to the individual quantities, but only to the total quantity.
Opinion TA.875 - Inquiry

• L/C subject to UCP 600 and available by payment at the counters of the confirming bank. It was issued in favour of “Company NV”.
• The goods description was mentioned as follows:
  • XXX Quantity: 459.58 M2 - Unit price EUR 893.99 /M2 (“XXX” being a brand name of special type of glass panels.)
• Partial shipments were allowed.

Opinion TA.875 - Inquiry

• The beneficiary presented a set of documents to the confirming bank, containing among others, an invoice issued by “Company SA-NV” amounting to EUR 107,047.67.
• The confirming bank honoured the documents and claimed reimbursement as per the credit terms.
• The issuing bank refused to honour, stating the following discrepancies in its notice of refusal:
  • + Invoice showing beneficiary as “Company SA-NV” i/o “Company NV”
  • + Invoice showing value of goods not equal to unit price multiplied with quantity
Opinion TA.875 - Inquiry

The confirming bank did not agree with the refusal for the following reasons:

1. “NV” is the abbreviation of “NAAMLOZE VENNOOTSCHAP”, in Dutch language and “SA” is the abbreviation of “SOCIETE ANONYME”, in French language, which both have the same meaning and represent the legal form of the company.

2. The invoice submitted showed 39 different items. For example:
   - “1 PC 2499 * 1171 MM Quantity M2: 2.93” The surface calculated was 2.926329 and rounded to 2.93 The surface quantity was rounded up or down to 2 digits per M2 in every item.
   - The total at the end of the invoice shows the following: “Total (including VAT) for the invoice EUR107,047.67.”
   - As additional information, the invoice also shows:
     - “Description of goods: XXX Quantity: 119.74 M2 Unit price: 893.99/EURO/m”
   - No additional amount was added and the results of the multiplication show EUR 107,046.36, being a difference of EUR 1.31.

In a multilingual country like Belgium it is common practice that documents, letterheads, names, stamps, etc. mention the company’s legal form in more than one language.

The legal form mentioned in the LC i.e., “NV”, is shown on the invoice. “SA” is to be considered as an additional mention in another language, not in contradiction with the LC terms.
Opinion TA.875 - Analysis

• Discrepancy 2 (Invoice showing value of goods not equal to unit price multiplied with quantity)
• The wording of the notice of refusal indicates that the discrepancy is the result of a mathematical calculation, i.e. ‘Invoice showing value of goods not equal to unit price multiplied with quantity.’
• ISBP 745 paragraph A22 states, “When the presented documents indicate mathematical calculations, banks only determine that the stated total in respect of criteria such as amount, quantity, weight or number of packages, does not conflict with the credit or any other stipulated document. There is no requirement to check any mathematical calculation.”

Opinion TA.875 - Analysis

• Discrepancy 2 (Invoice showing value of goods not equal to unit price multiplied with quantity)
• For this case, the quantity shipped (119.74 M2) is within that allowed by the credit (459.58 M2) and partial shipment is allowed. Furthermore, the unit price per M2 in the credit is the same as that indicated in the invoice.
• Reference by the confirming bank to Official Opinion R775 (TA754rev) is also relevant. This Opinion includes the following wording that has relevance to this query: “It would be unreasonable to expect an invoice to be calculated to three decimal places for an amount shown in EUR, when it operates to two decimal places.” As such, the rounding up or down of individual line items or an invoice value is acceptable.
• On the basis of the above, the stated discrepancy is not valid.
Opinion TA.857 - Inquiry

We have received, from an issuing bank in Country H, a LC with the following conditions:

- **31D:** DATE 160621 PLACE IN BENEFICIARY’S COUNTRY (Country S)
- **50:** APPLICANT (Country H)
- **59:** BENEFICIARY (Country S)
- **41D:** WITH ANY BANK BY NEGOTIATION
- **42C:** 30 DAYS AFTER SHIPMENT DATE
- **48:** PRESENTATION PERIOD [BLANK]
- **78:** …… FULL SET OF REQUIRED DOCUMENTS MUST BE RECEIVED BY CREDIT ISSUING BANK [WITH AN ADDRESS IN COUNTRY H] WITHIN 21 CALENDAR DAYS AFTER THE DATE OF SHIPMENT. OTHERWISE, IT WILL BE REGARDED AS DISCREPANCY.

Opinion TA.857 - Inquiry

- The information contained in field 78 i.e., ‘Instructions to the Paying/Accepting/Negotiating Bank’, would not normally be forwarded to the beneficiary and this was not discussed with the beneficiary.
- We, the beneficiary’s banker in Country S, received a complying presentation from the beneficiary. The documents were presented to us on the 18th calendar day after the shipment date and within the validity of the LC.
Opinion TA.857 - Inquiry

The issuing bank refused the documents with the following discrepancies:

• 1. Late presentation – documents not received by us within 21 calendar days after the shipment date; 600 article 7 is still valid.
• 2. LC expired – we received documents after expiry date in Country H.

We disagree with the discrepancies cited by the issuing bank as the beneficiary has presented the documents as required in the LC, to us, a nominated bank under the LC, within the presentation period as well as within the validity of the LC.

Opinion TA.857 - Inquiry

Here are our questions with regard to the above discrepancies.

• 1. Is it late presentation, as the beneficiary has presented the documents within 18 calendar days to us, a nominated negotiating bank in Country S?
• 2. Have the documents been presented within the validity of the LC as we, as a nominated negotiating bank, received the complying presentation one week before the expiry date?
Opinion TA.857 - Analysis

ANALYSIS

• According to the SWIFT User Handbook, field 78 is to specify the instructions from the issuing bank to the paying, accepting or negotiating bank.

• As a result, any instructions or conditions inserted in this field are not applicable to a beneficiary. It therefore follows that an issuing bank should not include instructions or conditions in field 78 of an MT700 for which it requires or expects compliance by a beneficiary, and it will bear any consequences for doing so.

Opinion TA.869 - Inquiry

Extracts from the documentary credit:

• 32B Currency Code, Amount: **USD 80,000.00**
• 39A Percentage Credit Amount Tolerance: **10/10**
• 43P Partial Shipments: ALLOWED
• 45A Description of Goods and/or Services:
  • **400 MT WIDGETS AT USD200.00/MT, PACKED IN 8 CONTAINERS**
• 46A Documents Required: 1 ORIGINAL INVOICE, 3/3 ORIGINAL B/Ls
• 47A Additional Conditions: BOTH QUANTITY AND AMOUNT 10 PCT MORE OR LESS ALLOWED
Opinion TA.869 - Inquiry

Two presentations of documents were made covering 2 shipments, as follows:

• 1st Presentation – USD 26,400.00 3 containers with 132 MT
• 2nd Presentation – USD 44,000.00 (presented after 1st presentation paid by issuing bank) 5 containers with 220 MT The issuing bank paid the first presentation. The confirming bank had not received any refusal notice.

The issuing bank refused the second presentation citing the following discrepancies:

• 1. Short shipment in 8 containers
• 2. LC amount short drawn

Opinion TA.869 - Inquiry

Questions:

• 1. Is the first presentation complying? Why or why not?
• 2. Is the second presentation complying; or, are the discrepancies cited by the issuing bank valid? Why or why not?
Opinion TA.869 - Analysis

• However, ….another condition of the credit was that the quantity of goods i.e., 400 MT plus/minus 10% (i.e., a quantity between 360 MT and 440 MT) was to be packed in 8 containers.
• This condition can also be stated or referred to as “8 containers containing 400 MT +/- 10% Widgets at USD 200/MT.” Accordingly, the conclusion reached in Opinion TA816rev/R843 would not be valid for the circumstances described herein.
• Therefore, by the time 8 containers are utilised, the quantity of goods shipped is to be between 360 and 440 MT.

Opinion TA.869 - Analysis

• The beneficiary, in two shipments, utilised 8 containers for the shipment of 352 MT of the required goods for a total value of USD 70,400. Despite the credit indicating that partial shipments were allowed, the beneficiary had utilised 8 containers in shipping only 352 MT instead of a minimum of 360 MT.
• The second presentation would be discrepant for the reason that the quantity of goods shipped and containers utilised in the first two drawings were 352 MT and 8 respectively, with a total drawing amount of USD 70,400 whereas the credit required that where 8 containers were utilised, the quantity shipped would be between 360 and 440 MT with a commensurate value of between USD 72,000 and USD88,000.
Opinion TA.842 - Query

• A credit stated in field 46A, “Documents required”:
  • + MANUALLY SIGNED AND DULY DATED BENEFICIARY’S COMMERCIAL INVOICE ADDRESSED TO APPLICANT, MARKED L/C NUMBER, EVIDENCING DELIVERY AND PAYMENT TERMS – IN 1 ORIGINAL AND 1 COPY

• The credit further stated in field 47A, “Additional conditions”:
  • + ALL DOCUMENTS TO BE MANUALLY SIGNED

Opinion TA.842 - Inquiry

The issuing bank refused the documents, raising the following discrepancy:

"Commercial invoice presented copy is not manually signed as per L/C terms and conditions field 46A and 47A".
Opinion TA.842 - ANALYSIS

• At the time of presentation of the documents, ISBP 681 was in place; ISBP 745 was published later. In both revisions, ISBP offers guidance in the correct application of UCP 600. ISBP 681 paragraph 32 stated: “Copies of documents need not be signed”. Additionally, ISBP 681 paragraph 62 stated: “Unless required by the credit, an invoice need not be signed or dated.” Both of these principles have been re-emphasised in ISBP 745: paragraph A31 (b) “Copies of documents need not be signed nor dated”, and paragraph C10 “An invoice need not be signed or dated.”

Opinion TA.842 - ANALYSIS

• The concept that copies of documents do not need to be signed is so entrenched in international standard banking practice that, where a manual signature is exceptionally required to be added to a copy of a document, it must be expressly stated in the credit e.g.,:
  • “All documents, and also copies, are to be manually signed.”
Opinion TA.859 - Inquiry

- LC: Field 45A:
- CIF [Port S], [Country C] Incoterms 2010
- Invoice presented:
  - CIF [Port S]
- A separate notation on the invoice shows:
  - Refer Incoterms 2010 for the appropriate rules applicable to the trade term mentioned above.

These notices of refusal often quote:
- Invoice shows incoterms incomplete.
- Without any further elaboration on how it is “incomplete”.

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- From what we can tell, they consider either:
  - 1. a lack of the country name, behind the port, to be incomplete; or
  - 2. “Incoterms 2010” under a separate notation to be unacceptable.
- For scenario 1, we tried quoting ISBP 745 paragraph E9, stating that the lack of the country name was insignificant and should not be quoted as a discrepancy. Many issuing banks have objected and refused to accept the explanation.
- For scenario 2, we pointed out that reference to Incoterms 2010 was shown as a separate notation on the invoice. However, some issuing banks ignored this and deducted a discrepancy fee at the time of payment.
Opinion TA.859 - Analysis

• 1. Omission of the name of the country [Country C] following the Port name.
The query makes reference to ISBP 745 paragraph E9, which states that when a credit indicates the port of discharge by also stating the country in which the port is located, the name of the country need not be stated. Although this paragraph relates to the content of a bill of lading, the same principle applies equally to this case; i.e., the omission of “[Country C]” as part of the trade term is not a discrepancy.

Opinion TA.859 - Analysis

• 2. The trade term (CIF) and source (Incoterms 2010) is stated in different areas in the invoice
According to ISBP 745 paragraph C3, for the goods description in the invoice, there is no requirement for a mirror image. The same applies when a trade term and its source is part of the goods description. The trade term and its source may be stated in different areas within an invoice which, when read together, represent the trade term and its source which corresponds to that in the credit. For this case, the correct trade term (CIF [Port S]) and source (Incoterms 2010) is indicated within the invoice.
Opinion TA.859 - Conclusion

• The fact that the trade term does not mention the country in which the port is located, and/or that the trade term and its source is stated in different areas within the invoice, does not constitute a discrepancy.

Opinion TA.860 - Inquiry

• A credit indicates a goods description as “Commodity: Steering Gear Poseidon 900-35” without mentioning ‘spare parts’.

• The beneficiary presented documents including an invoice and a detailed packing list. The nominated bank refused the documents due to the packing specifications in the packing list showing shipment of one package containing a set of ‘spare parts’ and referred to UCP 600 sub-article 18 (c) and ISBP 745 paragraph C12 (b). Although the referenced sub-article and paragraph refer solely to a commercial invoice, the nominated bank opines that when ‘spare parts’ are not to be shown on an invoice, this must also be the case for a packing list.
Opinion TA.860 - Inquiry

1. When the goods description in the credit does not mention ‘spare parts’, can an invoice refer to ‘spare parts’ in its detailed specifications?

2. If neither the goods description in the credit nor the commercial invoice mentions ‘spare parts’, can ‘spare parts’ be shown in the packing list specification?

3. If the goods description shows “xxx engine and related auxiliary equipment” or “xxx engine parts”, would this allow for spare parts to be shown on the invoice and/or packing list?

Opinion TA.860 - Analysis

Based on the information received under this query, the invoice complied with UCP 600 sub-article 18 (c) in that the description of goods corresponded with that appearing in the credit.

UCP 600 sub-article 14 (e) states that in documents other than the commercial invoice, the description of the goods may be in general terms not conflicting with their description in the credit.
Opinion TA.860 - Analysis

• The packing list mentioned ‘spare parts’ in the context of them being included in one of the packages that formed the shipment of the goods as described in the credit and the invoice.

• This does not create a conflict with the description of the goods shown in the credit or with that shown on the invoice.

• Neither does it provide an indication that goods have been shipped additional to those described in the credit.

Opinion TA.860 - Conclusion

• 1. Yes. As stated in ISBP 745 paragraph C5, the description of the goods may also indicate additional data in respect of the goods provided that they do not appear to refer to a different nature, classification or category of the goods.

• 2. Yes. For the reasons indicated under Analysis.

• 3. Yes. The two descriptions shown above would allow for various forms of goods to be shipped, including spare parts. As stated in ISBP 745 paragraph C5, the description of the goods may also indicate additional data in respect of the goods provided that they do not appear to refer to a different nature, classification or category of the goods.