**ICC Global Banking Commission**

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**Document 470/TA.926**

Dear Mr. Aziz,

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

**QUOTE**

Documents for USD447,204 were sent by the presenting bank to the issuing bank (located in Country C) on 12 August 2021. The credit was available at the counters of the issuing bank with the following details:

Field 41D:  Available with Issuing Bank by Deferred Payment

Field 48:  Period for Presentation: 40 days from the date of BL Issuance / Transport Docs Issuance Date.

On 27 August 2021, the presenting bank received a SWIFT message from the issuing bank pointing out the following discrepancy:

*Invoices not showing Price Terms as per L/C Terms.*

On 8 September 2021, corrected invoices were received from the beneficiary and forwarded by courier service to the issuing bank. On 27 September 2021, the presenting bank received a SWIFT message from the issuing bank with the following discrepancy:

*Late Presentation.*

Subsequently, the documents were returned to the presenting bank. The issuing bank intimated in a SWIFT message dated 28 October 2021 that as the applicant did not agree to waive the discrepancy, the documents were returned in accordance with UCP 600 sub-article 16 (e) and suggested we ask the beneficiary to contact the applicant directly. The presenting bank responded to the issuing bank by SWIFT message dated 8 November 2021 indicating that corrected invoices had been presented to them by the beneficiary and the same were dispatched on 8 September 2021 i.e., well within the latest presentation date i.e., 18 September 2021 as per field 48 of the L/C. However, they were only delivered at the counter of the issuing bank on 22 September 2021 due to reasons mentioned in their Documents Delivery Report which was shared by the presenting bank to the issuing bank as under:-

**Documents Delivery Report**

Quote

*- Shipment Delivery Area is Outsource Area and we arrange the Delivery on third party sources.*

*- Documents Booked on 08-09-21 and Arrived in “Country C” on 12-09-21.*

*- Handed Over to Local Courier for Delivery on 13-09-21.*

*- Documents Shipment was held in “Country C”**and awaiting movement to Local Service Provider. “Country C” was experiencing Extreme Backlogs Due to Limited Flights Availability and Other External Factors. Moreover, “Country C” was closed from 19-09-21 to 21-09-21 on account of Mid-Autumn Festival. Documents Delivery was effected on 22-09-21.*

Unquote

The attention of the issuing bank was drawn to UCP 600 article 35 in terms of which a bank assumes no liability or responsibility for the consequences arising out of delay in delivery of documents when such documents are sent according to the requirements stated in the credit. The presenting bank also shared with the issuing bank an opinion given by ICC to the following query raised by a bank: -

Question:  After the issuing bank informed their refusal to honour due to a discrepancy, the nominated bank presented corrected documents, which complied with the credit. In the circumstances, must the issuing bank honour?

Answer:  If corrected documents are presented within the latest presentation period and/or expiry date, then the issuing bank must honour. The presentation now complies.

Based on UCP 600 article 35 and the above Opinion of ICC, the presenting bank requested the issuing bank to release payment against the documents and remit proceeds.The issuing bank again refused to honour the documents, by their SWIFT message dated 11 November 2021, on the plea that the L/C is available with the issuing bank. Documents should be presented by the beneficiary or their bank to our Bank (Issuing Bank) within presentation period stipulated in the L/C.  The documents did not constitute a complying presentation; therefore, the issuing bank has no obligation to honour.

The issuing bank also sent its refusal notice (MT734) on 22 November 2021, citing the following discrepancies:

a) L/C Expired , b)  Late Presentation

The presenting bank replied by their SWIFT message dated 22 November  2021 and again drew the issuing bank’s attention to UCP 600 article 35 and the Documents Delivery Report narrated above, and reiterated that corrected documents were dispatched by to the issuing bank on  8 September 2021, i.e., well within the latest presentation date (18 September 2021) as per L/C terms (10 Days earlier than the latest presentation date). As such, the presentation conforms to the L/C terms and the presenting bank had fully complied with UCP 600 sub-article 6 (d) (ii) and Article 7. Delay in delivery of documents by the courier service was caused due to circumstances beyond their control as stated in their Documents Delivery Report. As such the presenting bank assumes no liability or responsibility for the consequences arising out of delay in delivery of documents. Based on the above facts / circumstances as well as the considered Opinion of ICC quoted above, the presenting bank argued with the issuing bank that the refusal of documents by them, by ignoring and disregarding the courier service report, was not justified and demanded payment.

In reply to the refusal notice (MT734) dated 22 November 2021, citing two discrepancies (L/C Expired and Late Presentation), the presenting bank replied by their SWIFT message dated 13 December 2021 that**:**

(a) Discrepancy “L/C Expired” is not valid because expiry date as per Field 31D of L/C is 25-09-2021 at issuing bank’s counter, whereas documents were delivered by courier at your counter on 22-09-2021 i.e., within the L/C expiry date.  As such we reject this discrepancy.

(b) With regard discrepancy No. 2 (Late Presentation), cogent reasons for delay in delivery of documents at your counter as per courier service report has already been provided to you. As already advised, please do not examine the documents in isolation and instead base your judgement on UCP 600 Article 35 and take into consideration the pressing circumstances that caused late delivery of documents by the courier service.

In its SWIFT MT799 dated 30 November 2021, the issuing bank argued as under:

**Quote -** *availability of their L/C is issuing bank, there is no nominated bank, therefore, your bank is acting as Presenting Bank. Documents were dispatched by you on Sept 8, 2021, i.e., within the Presentation Date Sept 18, 2021. But those were delivered to our counters**on Sept 22, 2021, beyond the Presentation Period, which did not constitute a complying presentation, as such we have no obligation to honor. Regarding ICC opinion quoted in your SWIFT message, that is a separate issue, because it was in the scenario of presentation of corrected documents to Issuing Bank by Nominated Bank*. **– Unquote**

Consequently,the presenting bank informed the issuing bankthat so far as their argument regarding presentation of documents bythem, as presenting bank is concerned, please note that as per ICC Technical Advisors Opinion, an issuing bank cannot refuse since documents have not been received from the nominated bank.

The presenting bank requests ICC Paris to provide their opinion to the following questions

1)      As the corrected invoices were sent by the presenting bank to the issuing bank within the latest presentation period, is the issuing bank obligated to honour?

2)      As the delay experienced by the courier service, in delivery of the documents at the counter of issuing bank, is outside the control of the beneficiary and the presenting bank, the beneficiary should not be penalised for the above reason. Under the circumstances, is UCP 600 article 35 applicable and the issuing bank should honour an otherwise complying presentation?

**UNQUOTE**

**ANALYSIS**

UCP 600 sub-article 6 (d) (ii) states that the place of the bank with which the credit is available is the place for presentation. The credit was available at the counters of the issuing bank with the period for presentation being 40 days from the date of issuance of the transport document.

Since the credit was available with the issuing bank, any presentation must be made to the issuing bank on or before the expiry date and within the stated period for presentation. This also extends to any subsequent re-presentations.

Documents were originally presented to the issuing bank within the 40 days from the date of issuance of the transport document. According to the content of the query, the last date for presentation would be 18 September 2021.

On 27 August 2021, the issuing bank refused the presentation stating that the invoice did not show price terms as per the credit. There are no comments nor question raised in connection with the documents being sent to the issuing bank on 12 August and the refusal notice only being sent on 27 August. Therefore, this opinion does not address this.

The presenting bank obtained and forwarded replacement invoices to the issuing bank, but delivery to the issuing bank was delayed due to problems experienced by the courier company.

The replacement documents were eventually received by the issuing bank on 22 September 2021 i.e., after the latest date for presentation, and the issuing bank refused the documents for “late presentation”, the consequence of which was that they returned the documents to the presenting bank according to sub-article 16 (c) (iii) (c).

The presenting bank objected and referred to UCP 600 article 35 arguing that a bank assumes no liability or responsibility for the consequences arising out of delay in delivery of documents when such documents are sent according to the requirements stated in the credit. However, the requirements of this particular credit were that it was available with the issuing bank. As such, the presentation should have been made to counters of the issuing bank within the latest date for presentation. UCP 600 article 35 does not cover the scenario in this query.

The ICC Opinion mentioned in the query is not specifically referenced. However, based upon the quoted text, it is apparent that the accredited Opinion referred to a credit that was available with a nominated bank and not with the issuing bank. Accordingly, it is not compatible with the circumstances outlined in this particular query, i.e., available with the issuing bank.

The later exchange of messages, including two further refusal notices on 11 and 22 November 2021, were superfluous as the documents had, apparently, already been returned. In any event, it would appear that by those dates, the credit had already expired, on 25 September 2021.

**CONCLUSION**

1) No. As the credit was available with the issuing bank, a complying presentation should have been made at the counters of the issuing bank on or before the latest date for presentation.

2) No. UCP 600 article 35 is not applicable for the scenario in this query and the issuing bank is not required to honour an otherwise complying presentation.

**The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Technical Advisers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.**

**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,

Tomasch Kubiak

Policy Manager Banking Commission

International Chamber of Commerce