ICC Banking Commission Opinions on Letters of Credit

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Details of weight on the copies of bill of lading

TA.832rev2
• Credit requirements:
  46A (Documents Required):
  – NON NEGOTIABLE COPY OF OCEAN BILL OF LADING. MARKED FREIGHT PAID. CONSIGNED TO (applicant's name) ...
  – ORIGINAL OF THE PACKING LIST
• Documents were presented to confirming bank including a packing list showing the following details of weight:
  – “Total Net Weight: 630000 kg, Total Gross Weight: 630360 kg.”
• The copy of bill of lading stated, as part of goods description:
  – "36 Containers as per specification attached" and "Net Weight: 630.000 Kos”. In addition, under pre-printed text of the form stating "Gross Wgt./Nett Wgt.” the same weight was stated, i.e. "630.000 Kos".
• Another presentation was made including a similar attachment to the B/L where the "Gross weight in kilos" column also contained net weight details.
B/L shows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Gross Wgt/Net Wgt</th>
</tr>
</thead>
<tbody>
<tr>
<td>36 CONTAINERS</td>
<td>630.000 kos</td>
</tr>
<tr>
<td>AS PER SPECIFICATION ATTACHED</td>
<td></td>
</tr>
</tbody>
</table>

NETT WEIGHT: 630.000 KOS

Attachment shows:

<table>
<thead>
<tr>
<th>Gross weight</th>
<th>Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>in kilos</td>
<td></td>
</tr>
<tr>
<td>630.000 kos</td>
<td></td>
</tr>
</tbody>
</table>

NETT WEIGHT: 630.000 KGS
Confirming bank sent notices of refusal stating the following discrepancy:

• Bill of lading: Gross weight in the specification to B/L not as per packing list"
ANALYSIS

• The confirming bank referring to UCP 600 sub-article 14 (d) notified a discrepancy that gross weight differed between the packing list and the attachment to the copy of Bill of Lading.

• The gross weight mentioned in the attachment to the bill of lading was the same as the net weight stated in the copy of the bill of lading but without being tagged as net weight. The field / column designated for goods description stated net weight without any figure or value.
CONCLUSION

- The details of weight stated in the bills of lading and the attachments are not in conflict with those stated in the packing list. The discrepancy raised by the confirming bank is not valid.
“Extend or Pay” under a SBLC subject to UCP600

TA.841rev2
SBLC Terms:

• A simple demand is required and it must show beneficiary’s written confirmation that
  1) the amount thereby claimed is due and payable due to the suppliers failure to fulfill his contractual obligations as well as specifications of the nature of his failure and
  2) the beneficiary has formally demanded payment of such amount from the supplier 30 days in advance.

• Valid at the counter of a confirming bank
• Just before expiry of the SBLC the confirming bank send the following message to the issuing bank:
  – “Beneficiary of your standby letter of credit claimed liquidation full standby letter of credit amount in case you failed to extend its validity until 31.12.2015. Unless your renewal instructions received by us during the current validity period we consider this swift as our valid formal claim for liquidation and for crediting its total amount to our account with [bank name]”
• The issuing bank rejected the message by reminding the confirming bank of the requirements for the claim to be made as per conditions of the SBLC.
QUESTION(S):
1) How should the issuing bank treat such “extend or pay” message from the confirming bank?
2) Upon expiry of the standby letter of credit, given that no extension is made, can the issuing bank remove the standby letter of credit from its books and release the applicant from their obligations, accordingly?
3) Can the issuing bank under any circumstances be obligated to pay on the basis of the “extend or pay” message, given that the applicant does not accept to extend the standby letter of credit?
ANALYSIS:

• “Extend or pay” demands do not usually occur within normal trade-related credits issued in accordance with UCP 600 provisions.

• The message sent by the confirming bank did not include the statement that all credit terms were complied with.
CONCLUSION:
1) The “extend or pay” message sent by the confirming bank does not comply with the reimbursement instructions given in the credit; the issuing bank is not obliged to reimburse the confirming bank.
2) Removal of the expired standby credit from the issuing bank’s books and releasing the applicant from their obligations under the credit will be outside the purview of UCP 600.
3) It may be possible for the confirming bank to re-lodge a revised and appropriate claim complying with the credit terms. Issuing bank is bound by its terms in the SBLC if it allows “extend or pay” irrespective of a decision of the applicant.
Case

- Documents are created via an electronic platform that allows the beneficiary to complete the details online, generate a “PDF” file for download, and then print the document for signature by the beneficiary.
- The documents were printed in black and white.
QUESTION(S):

1) Is it justifiable for the issuing bank to refuse to accept a black and white document as original simply because it is not printed in colour?

2) Can a bank decide that a document is a photocopy because it is printed in black and white? Likewise, can a bank reject a colour printed document as original?
TA.843rev

ANALYSIS:

• Article 17 is applicable.

• A document checker examines the paper document as presented whether it appears on its face to be compliant.

• The colour of the document, which is neither defined nor described in the credit, is not a criterion to determine the compliance of the document.
CONCLUSION:

1) No, provided it can be determined as an original in accordance with UCP 600 article 17.

2) There are no specific guidelines and criteria set forth under UCP 600 to distinguish a photocopy from an original printout, irrespective of whether it is in black and white or in colour, although the original pre-printed stationery of both the shipping companies and insurance companies could normally be differentiated from a photocopy.
Signing capacity in AWB

TA.844rev
• The following discrepancy in SWIFT message (MT 734 advice of refusal) from the confirming bank: “+ AWB: OMITS CAPACITY OF SIGNING PARTY”

• The confirming bank sent the next day an additional message as follows after talking to the beneficiary’s bank:
  – “WE REFER TO OUR MT734 DD. dd/mm/yy. REFERING TO OUR TODAY’S PHONE CALL WE STATE THE DISCREPANCY MENTIONED IN OUR A.M. SWIFT MORE PRECISELY AS FOLLOWS: + AWB: OMITS CAPACITY OF SIGNING PARTY IN FIELD - SIGNATURE OF ISSUING CARRIER OR ITS AGENT-“
• On top of the AWB the carrier was duly mentioned “CARRIER: ABC airlines”.

• At the bottom of the AWB, the box pre-printed “Signature of Shipper or his agent” was duly completed by: “XYZ AS AGENTS FOR CARRIER” followed by a stamp containing “XYZ” with full address and duly signed.

• The box pre-printed “Signature of Issuing Carrier or its Agent” was only completed by a stamp containing “XYZ” with full address and duly signed. No repetition in this box of the mention “XYZ AS AGENT FOR CARRIER”.
QUESTION(S):

1) Has the confirming bank the right to refuse payment under the L/C on the basis of the discrepancy raised?

2) Was the notice of refusal in conformity with article 16 of UCP 600 (single notice with complete details of the discrepancy) since the refusal (the first message received) did not mention in which box the capacity of the signing party was missing?
ANALYSIS:

• The AWB showed the same name and stamp in two separate boxes:
  1) for the signature of the shipper or his agent, and,
  2) for the signature of issuing carrier or its agent.

• The signing party is the same entity in both boxes and there is no need to repeat the words “as agent for carrier”.
CONCLUSION:
1) The discrepancy is not valid.
2) The notice of refusal was sufficiently precise in describing the discrepancy and is in conformity with UCP 600 sub-article 16 (c).
Remarks on B/L made by the Master

TA.846rev
The presented bills of lading bore the following remarks made by the Master of the vessel under the “description of cargo” section:

- MASTERS REMARKS
  - CONTAINERS STORED IN AN OPEN AREA
  - CONTAINERS EXPOSED TO WEATHER BEFORE SHIPMENT
  - CONTAINERS LOADED FROM OPEN STORAGE
  - CONTAINERS WET/MOIST BEFORE SHIPMENT
  - CONTAINERS LOADED DURING RAIN
  - CONTAINERS COVERED WITH DIRT/DUST PRIOR TO SHIPMENT
  - CONTAINERS ARE SECOND HAND, SOME OF THEM SLIGHTLY DENTED PRIOR TO SHIPMENT
  - SURFACES OF THE CONTAINERS ARE RUST STAINED, WITH SCRATCHES BEFORE SHIPMENT
  - THE MARKS OF SOME CONTAINERS ARE NOT CLEAR / MISSING
QUESTION(S):

• Is this a discrepancy in that the bill of lading is not a clean bill of lading as called for by the credit?
ANALYSIS:

• All of the master’s remarks on the bills of lading are confined to the exterior condition and appearance of the containers and the atmospheric/weather conditions at the time of loading the containers on to the vessel. None of these remarks make any direct adverse observations declaring any defective condition of the goods and/or packaging.

• Containers are not to be considered packing in the meaning of UCP 600 article 27.
CONCLUSION:

- The bills of lading presented are clean and are therefore not discrepant.
Description of goods in Health Certificate

TA.848rev
Documents presented:

• Invoice
  – FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) **VANNAMEI SHRIMPS**, 1,140 CTNS - SIZE 70/90  760 CTNS - SIZE 90/120

• Health certificate
  – Health certificate issued in Italian and English language to be used for import into EU of fishery products intended for human consumption. Description of commodity/ Descrizione della merce (In Box I.18.), showing: (MAZZANCOLLA TROPICALE SGUSCIATA SCOTTATA SURGELATA) 1/FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) **VANNAMEI SHRIMPS**, SIZE 90/120 : 760 CTNS - LOT NO: VN054IV034  2/FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) **VANNAMEI SHRIMPS**, SIZE 70/90 : 1,140 CTNS - LOT NO: VN054IV049.
  – Identification of the commodities/ Identificazione della merce (In Box I.28.), showing: Species/ Scientific name Specie / (Nome scientifico) 1/, 2/: **Penaeus vannamei**
• The credit was available by payment with issuing bank’s counters.
• Beneficiary’s bank negotiated and forwarded the “complying” documents to issuing bank.
• Issuing bank sent notice of refusal via SWIFT MT734, which indicated the following discrepancy:
  – “HEALTH CERTIFICATE STATES IN BOX 1.28: PENAEUS VANNAMEI
    Instead of VANNAMEI SHRIMP IN INVOICE”
  – Field 77B:/ NOTIFY

• Issuing bank returned the documents with a cover letter notifying that they sent documents back at their complete discharge.
QUESTION(S):

• Opinion on the above rejection notice is required.
• And, in case the stated discrepancy does not constitute valid grounds for refusal, does beneficiary’s bank still has the right to claim the amount of documents from issuing bank based on UCP 600 article 7 although issuing bank sent compliant documents back to beneficiary’s bank?
ANALYSIS:

• The credit did not specify the content or format of the Health Certificate. In the context of a health certificate, the additional identification of the commodity using a scientific name along with the description stated in the credit and invoice does not create a conflict of data.

• The credit is available by payment with the issuing bank only. Beneficiary’s bank is not nominated bank.

• The beneficiary’s bank has no rights under UCP 600 article 7.
CONCLUSION:

• The discrepancy stated by the issuing bank is not valid.
• The beneficiary’s bank was not a nominated bank under the credit.
• Although the issuing bank has returned the complying presentation, the beneficiary’s claim as per UCP 600 article 7 is still valid.