Mr. François Georges  
Secretary General  
ICC France  
9, rue d'Anjou  
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France  

8 February 2010  

Subject : Document 470/TA.721(ED)  

Dear Mr. Georges,  

Thank you for your query regarding UCP 600. Please find below the view(s) of the officers of the Banking Commission.  

QUOTE  

Upon request of one of our members, we kindly ask for your official opinion to the following question, related to a presentation of documents under a documentary credit issued subject to UCP 600.  

“The documentary credit required among others the following document:  

- full set clean on board multimodal bill of lading or through bill of lading plus 3 non negotiable copies consigned to order of issuing bank notify applicant and marked freight prepaid.  

The bill of lading has been presented as per the copy attached.  

Our question is: “Does the signature on this bill of lading respect the provisions of article 19 or 20 of UCP 600?”  

ANALYSIS  

The issue of a company signing as agent for itself, has been discussed previously in ICC Opinion R.674 (TA625rev2). The conclusion to this Opinion reads: “Based on the requirements of sub-article 23 (a) (i), the bill of lading must identify the party that is signing and the signing party must be identified as carrier or master or, in the event of an agent signing for the carrier or master indicate the capacity in which they are signing i.e., on whose behalf (carrier or master) they are signing.”
Due to the fact that this question goes beyond the general application and interpretation of signing requirements for a bill of lading, as expressed in the UCP i.e., it extends to the right of a party to sign in its own name as agent for a carrier of the same name; opinions have been solicited from the ICC’s Transport and Commercial Law & Practice Commissions.

View of the ICC Transport Commission:

“Paragraph 4 of the query states “The Bill of Lading in question shows ‘AS AGENT FOR THE CARRIER: ABC CO. LTD.’ indicating that ABC Co. Ltd is the carrier.”. However, we interpret this part of the bill of lading to indicate that ABC Co. Ltd is the AGENT. In most cases, carriers typically issue bills of lading through agents, and the bill of lading forms are printed in anticipation of the document being signed by the agent (hence the pre-printed text 'Signed as agent for the Carrier'), and therefore contain a blank space in which the agent can place its name. In our view, this section of the Bill of Lading, where text has been added, is the blank for the agent to fill in, and is not usually there to indicate the name of the carrier. The name of the carrier is indicated under the section 'For and on behalf of'.

This means that on the Bill of Lading in question the agent and the carrier both appear to have the same name, and there appear to be a number of possible explanations as to why this might be the case.

- One possible explanation would be that the carrier and the agent operate under the same name. Although the agent is normally a different entity to the carrier, it appears that it is not unusual for large container lines to own the local agency offices, which will operate as part of the main global brand. So, for example, the container line ABC Co. Ltd might own the agents ABC Co. (Hong Kong), who will be part of the main ABC Co. brand. In this case, if the agent sees themselves as being part of ABC Co. Ltd, rather than as a separate entity, then they might just identify themselves as ABC Co. Ltd, without seeing the need to specify themselves as ABC Co. (Hong Kong).

- It could also be the case that a department of the carrier company acts as the agent. In this case, the department that is acting as the agent may sign the Bill of Lading as the agent, to denote its operational role in relation to the shipment, notwithstanding the fact that there is no legal distinction between itself and the department performing the operational role of the carrier.

- Another explanation is that, in the limited number of cases where the carrier signs the bill of lading itself, it may opt to complete the blank space for
the 'agent' rather than revise the form or leave the agent space empty. In this case, the signature would be aimed at binding the carrier as the carrier.

The above points reflect quite accurately the current container shipping practice. Based on the practices outlined above, there is little ground to consider the document inconsistent.”

View of the ICC Commercial Law & Practice Commission:

- “The CLP Commission regards letters of credit as instruments of payment and would favour interpretations of the UCP which facilitate rather than hinder payment.

- It is clear that shipping practice varies in the manner in which bills of lading are signed. Article 23 of UCP 500 - and now article 20 of UCP 600 - injected a welcome dose of precision and clarity into this area, a clarity which advanced the interests both of shippers and receivers and of bankers holding bills of lading under letters of credit by making sure that these three parties knew the identity of the carrier.

- It is important that the requirements of article 23 of UCP 500 are not interpreted too restrictively lest the gain in clarity brings with the pain of unnecessary rejections. It would appear that the bill of lading says not once but twice who the carrier is: there can be no ambiguity about the fact that ABC Co Ltd is taking responsibility for the carriage of the goods. In these circumstances, rejection of such a bill of lading would appear to be unnecessary and unwelcome from the beneficiary's and possibly from the applicant's point of view; it may also expose the rejecting bank to the possibility of action for wrongful rejection.”

Based upon the feedback received, we can find no reason for refusal of a bill of lading that is signed in the manner shown under “QUOTE”.

CONCLUSION

The same conclusion will apply to this bill of lading i.e., that it will be compliant.

The opinion(s) rendered on this query reflect the view(s) of the ICC Banking Commission’s officers based on the facts under “QUOTE” above. They do not necessarily reflect the view(s) of the ICC Banking Commission. This query is considered to be of an educational nature and will not be placed before the next Banking Commission meeting for approval.
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.

Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Adviser 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,

Thierry Senechal
Policy Manager
Banking Commission