



Corporate Clients

top@doc Newsletter

Information on the origin of goods – more and more frequently source of controversial discussion. What is admissible and sensible in this connection?



Basically, the origin of goods can be determined relatively simply – the indication of one or several countries of origin on a specific document is sufficient. However, the precise arrangement of the terms depends on the requirements of the relevant letter of credit. And this frequently opens up numerous possibilities for interpretation and discussion as to how the requested proof of origin is to be integrated in the letter of credit documents correctly. top@doc presents such a case to you here and explains the point of view of Commerzbank.

WellDone Ltd. has received a letter of credit issued in its favour by Careful Bank as security for an export trade. WellDone Ltd. wishes to utilise the letter of credit by presentation of the corresponding documents to its main bank, Free and Easy Bank. The credit is payable with Free and Easy Bank and made available by sight payment.

Among others, the terms and conditions of the credit provide for presentation of a proof of origin:

“Certificate of German/Brazilian/Chinese and/or Japanese origin in one original and two copies issued by the manufacturer.”

WellDone Ltd. presents this document – together with the other documents requested in the credit – to Free and Easy Bank. The certificate bears the letterhead and signature of the “manufacturer” and describes the origin of goods as follows:

“We hereby certify that the goods are of German/Brazilian/Chinese and/or Japanese origin.”

Instead of the expected payment, WellDone Ltd. is informed by its bank that the presented documents will not be accepted by it. As reason for this non-acceptance, Free and Easy Bank states that the certificate of origin was not issued correctly. The bank finds fault with the fact that the certificate does not show the actual origin of the goods. If the goods were actually of different origin, the correct indication would have to be: “German AND Brazilian AND Chinese AND Japanese origin”.

WellDone Ltd. does not agree with the refusal of the documents and the argumentation of Free and Easy Bank. They even agreed with the issuer of the certificate of origin that the information on the origin of goods should be copied as a mirror image from the credit to the document to be issued in order to avoid difficulties with Free and Easy Bank in connection with the taking up of the documents.

Has the certificate of origin been issued correctly after all or is Free and Easy Bank right in refusing this document?

This question can in fact be discussed controversially and different points of views are certainly possible here. In this case, according to Commerzbank the document can be accepted.

It is assumed of course that the information provided by the manufacturer on the origin of the goods is true and correct. In this respect, Free and Easy Bank has no examination duty of its own. According to the “Uniform Customs and Practice for Documentary Credits UCP 600”, Article 14 a, it must determine on the basis of the documents alone whether or not they appear on their face to constitute a complying presentation.

And this is the argument used by Commerzbank to support its point of view. Even if the information on the origin of goods may not appear to be entirely sensible here – especially with regard to the indication “...and/or Japanese origin” –, the presented document appears on its face to comply with the terms and conditions of the underlying credit and does not conflict with the provisions of the UCP 600.

In the present case, the difficulties are caused by the fact that the terms and conditions of the credit were not worded by the issuing Careful Bank in an optimum manner. According to Paragraph A 2 of the “International Standard Banking Practice for the examination of documents under UCP 600” ICC publication 745 (ISBP), the use of slash marks (“/”) should be avoided since their meaning is not unambiguous. They can stand both as substitute for the word “or” and as a surrogate for “and”.

For the letter of credit in question, this means that the origin of the goods can be only German or only Brazilian or only Chinese or only Japanese or any combination of them.

In this connection, reference is made to the “Introduction” to the ISBP which says under point V: “The applicant [of the credit] bears the risk of any ambiguity in its instructions to issue or amend a credit. ... An issuing bank should ensure that any credit or amendment it issues is not ambiguous or conflicting in its terms and conditions.”

Do you have any questions or suggestions regarding top@doc?

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In the present case, this is relevant insofar as the terms and conditions of the credit allow the issue of the certificate of origin by the manufacturer. If an institution such as, for instance, the Chamber of Commerce was intended as the issuer of the document, the information in the document on the origin of the goods would most likely have been different. In this case, however, it is to be expected that the terms and conditions specified in the credit will be taken over verbatim by the issuer of the credit – even if this may not appear sensible in terms of contents.

To avoid any discussions and/or problems and delays in connection with the taking up of the documents and the payment thereof, WellDone Ltd. should ideally have requested an amendment of the credit in order to concretise the information on the origin of the goods in a clear and unambiguous manner.