

ICC Belgium
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Dear Sirs,

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

QUOTE

We would like to seek an official opinion of the ICC Banking Commission on the following matter regarding the signature and the capacity of signing party on an air transport document and the validity of the refusal message.

The documentary credit was subject to UCP 600, available by payment and duly confirmed.

The beneficiary's bank (which was not a nominated bank) remitted the shipping documents, containing among others an Air waybill to the confirming bank.

The confirming bank refused to honour, stating the following discrepancy in their swift message (MT 734 advice of refusal): "+ AWB: OMITS CAPACITY OF SIGNING PARTY"

After phone discussion between the confirming bank and the beneficiary's bank, the confirming bank sent the next day an additional message as follows:

"WE REFER TO OUR MT734 DD. dd/mm/yyyy. 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".

LETTRE DE TRANSPORT AÉRIEN Non négociable Emise par Not negotiable AIR WAYBILL Issued by	CARRIER :  airlines
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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".

Stamps and signatures were identical in both fields.

L'expéditeur certifie que les indications portées sur le présent d'... et que, dans la mesure où une partie... quelconque de l'expédition contient des marchandises dangereuses... et bien préparée pour le transport par air conformément à la ré... Shipper certifies that the particulars on the face hereof are... dangerous goods, such part is properly described by name and... applicable Dangerous Goods Regulations...		XYZ Aéroparc Paris-Vatry BP 80005 51555 CHALONS EN CHAMPAGNE RCS Châlons 420 516 197 - APE NAF 432 E AS AGENT FOR CARRIER
30/05/2015 XCR	XYZ E.V.E. Aéroparc Paris-Vatry BP 80005 51555 CHALONS EN CHAMPAGNE RCS Châlons 420 516 197 - APE NAF 432 E 300 420 516 197 002 3202 TEL: 03 26 54 52 00 - FAX: 03 26 54 02 11	

(FOR SHIPPER)

Beneficiary's bank maintained its position based on article 23 of UCP 600 and paragraph A17 of ISBP PUB 745, arguing that the requirement "any signature by an agent must indicate that the agent has signed for or on behalf of the carrier" has been duly fulfilled provided it appears on the document.

We would be grateful if you would kindly provide us with your opinion:

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?

UNQUOTE

ANALYSIS

UCP 600 article 23 requires that an AWB must indicate the 'name of the carrier' and be signed by 'the carrier or a named agent for or on behalf of the carrier'.

ISBP 745 Paragraph A37, referencing the example of an AWB, clarifies that a box, field or space for a signature in a document does not mean that such box, field or space is to be completed with a signature. ISBP 745 Paragraph A17 further states that when a document contains a box, field or space designated to include specific data, this does not necessarily mean that such data has to be included. ISBP 745 does not include a requirement for either box to be completed; in the circumstances of this query both of the boxes for signatures have been completed with stamps and signature.

The AWB showed the same name and stamp in two separate boxes:

- a) for the signature of the shipper or his agent, and,
- b) for the signature of issuing carrier or its agent.

However the capacity of the signing entity as 'agent for the carrier' had only been stated in the box for the signature of the shipper or his agent.

The query seeks to clarify whether the absence of the words 'as agent for the carrier' in the second box, for the signature of issuing carrier or its agent, is a basis for refusing the documents.

The AWB had been signed, in the box for the signature of the shipper or his agent, by the agent 'as agent for carrier'. The same name and stamp appeared in the box for the signature of issuing carrier or its agent without the addition of the words 'as agent for carrier'. It is obvious that the signing party is the same entity in both boxes and, as such, there is no need to repeat the words 'as agent for carrier'.

With regard to the second question in the query, UCP 600 sub-article 16 (c) clearly states that a single notice of refusal must be provided to the presenter. A notice of refusal was provided and subsequently discussed in a phone conversation between both parties. The fact that the notice of refusal did not specifically reference an exact signature box should not be considered as sufficient grounds for precluding such notice. Merely by viewing the document itself, it would have been immediately obvious to which signature box the refusal notice was referring.

Furthermore, in the context of this query, the second SWIFT message did not act as an additional notice of refusal but as confirmation of the telephone conversation.

CONCLUSION

1. The discrepancy is invalid.
2. The notice of refusal was sufficiently precise in describing the discrepancy and is in conformity with UCP 600 sub-article 16 (c).

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,



Emily O'Connor,
Senior Policy Manager
Banking Commission