INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

Ms Anne-Mie Ooghe
FEBELFIN
Rue d'Arlon - Aarlenstraat 82
B-1040 Brussels
Belgium

27 January 2017

Document 470/TA.867

Dear Ms. Ooghe,

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

QUOTE

The expiry place of a documentary credit, subject to UCP 600, was restricted to the counters of the confirming bank.

A requirement of the credit was:

> +FACTORY ACCEPTANCE TEST CERTIFICATE COUNTERSIGNED BY MR. XXX (NAME) ON BEHALF OF "ABC" AND/OR MR. YYY (NAME) ON BEHALF OF NAME OF "XYZ FOR HI-TECH AND TRADING."
> +THE SIGNATURE OF (NAME) AND/OR (NAME) MUST BE IN THE FOLLOWING MANNER:
> (NAME OF THE APPLICANTS REPRESENTATIVE) ON BEHALF OF (NAME OF THE COMPANY) SUCH SIGNATURES MUST BE VERIFIED BY THE NOMINATED BANK PRIOR TO PRESENTATION OF DOCUMENTS.

The beneficiary presented its documents to the second advising bank, containing among others, "Factory Acceptance Test Certificate" countersigned as follows:

MR. XXX (NAME) ON BEHALF OF "ABC" AND MR. YYY (NAME) ON BEHALF OF NAME OF "XYZ" (NOTE: without mentioning "FOR HI-TECH AND TRADING").

The second advising bank presented the documents to the confirming bank, which refused to honour, stating the following discrepancy in its SWIFT MT734 (Advice of Refusal):

"Factory Test certificate signed by MR. YYY (NAME) ON BEHALF OF NAME OF XYZ instead of XYZ FOR HI-TECH AND TRADING."

The second advising bank responded to the confirming bank as follows:

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" . . .There is no need for strict compliance. Data on documents refer unmistakably to the same shipment of goods to which all documents refer to. Not indicating the name of a party in full does not constitute a discrepancy. Moreover, the signatories are the same as the ones in the documents sent to us by you on [date]."

The confirming bank maintained its position based on the fact that the field in the credit required the name in full.

We would be grateful if you would kindly provide us with your opinion as to whether the confirming bank has the right to refuse payment under the credit on the basis of the discrepancy raised.

UNQUOTE

ANALYSIS

The credit allowed the Factory Acceptance Test Certificate to be signed by either:

A. Mr. XXX on behalf of "ABC": **and/or**
B. Mr. YYY on behalf of "XYZ for Hi-Tech and Trading".

The document was signed by both:

A. Mr. XXX on behalf of "ABC": **and**
B. Mr. YYY on behalf of "XYZ", but omitting "for Hi-Tech and Trading".

Even though only one signature was required, the document presented contained the requested signatures from both parties, that apparently matched the signatures provided in advance by the confirming bank. Despite the second signature line omitting "For Hi-Tech and Trading", the signing requirement has been complied with by virtue of the first signature line complying with the condition in the credit.

CONCLUSION

There is no discrepancy. The credit allowed signatures on an "and/or basis". The Factory Acceptance Test Certificate was signed in accordance with the credit requirements, i.e. "Mr. XXX on behalf of "ABC".

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,

David Bischof,
Senior Policy Manager, Banking Commission

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