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Item 4(c) of the provisional agenda

GENERAL CONDITIONS OF SALE AND STANDARD CONTRACTS

Report by the Secretary-General

Introduction

1. The United Nations Commission on International Trade Law (UNCITRAL) at its fourth session decided to request the Secretary-General:

"(a) To continue with the programme of implementation of the decision taken by the Commission at its second session 1/ concerning the promotion

1/ At its second session the Commission decided:

"1. (a) To request the Secretary-General to transmit the text of the ECE general conditions relating to plant, machinery, engineering goods and lumber to the executive secretaries of the Economic Commission for Africa (ECA), the Economic Commission for Asia and the Far East (ECAFE), and the Economic Commission for Latin America (ECLA), as well as to other regional organizations active in this field;

"(b) To request the Secretary-General to make the aforementioned general conditions available in an adequate number of copies and in the appropriate languages; the general conditions should be accompanied by an explanatory note describing, inter alia, the purpose of the ECE general conditions, and the practical advantages of the use of general conditions in international commercial transactions;

(Foot-note continued on following page)

of the wider use of the general conditions prepared under the auspices of the Economic Commission for Europe and to address inquiries, designed to obtain information on the questions set forth in the Commission's decision, directly to Governments, national chambers of commerce, trade associations and other trade organizations, and to submit a report on the replies that have been received to the Commission at its fifth session;

"(b) To continue his study on the feasibility of developing general conditions embracing a wider scope of commodities and to submit the study, if possible, to the Commission at its fifth session." 2/

I. IMPLEMENTATION OF THE COMMISSION'S DECISION  
WITH RESPECT TO THE PROMOTION OF THE WIDER  
USE OF THE ECE GENERAL CONDITIONS

2. Pursuant to the decision of the Commission set out in paragraph 1 (a) above, the Secretary-General, in a note verbale dated 4 August 1971, informed Governments in regions other than Europe of the above decision of the Commission and invited them to communicate their views and comments on the questions set forth in paragraph 1 (c) of the Commission's decision adopted at its second session. 3/ An invitation to communicate such views was also sent to chambers of commerce, trade organizations and trade associations in the same countries.

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(Foot-note 1 continued)

"(c) To request the regional economic commissions, on receiving the above-mentioned ECE general conditions, to consult the Governments of the respective regions and/or interested trade circles for the purpose of obtaining their views and comments on: (i) the desirability of extending the use of the ECE general conditions to the regions concerned; (ii) whether there are gaps or shortcomings in the ECE general conditions from the point of view of the trade interests of the regions concerned and whether, in particular, it would be desirable to formulate other general conditions for products of special interest to those regions; (iii) whether it would be desirable to convene one or more committees or study groups, on a world-wide or more limited scale, whereby with the participation (if appropriate) of an expert appointed by the Secretary-General, matters raised at a regional level would be discussed and clarified;

"(d) To request the other organizations to which the ECE general conditions are transmitted to express their views on points (i), (ii), and (iii) of sub-paragraph (c) above".

2/ Report of the United Nations Commission on International Trade Law on the work of its fourth session (1971) (Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17), para. 106.

3/ See note 1.

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3. The replies received from Governments and trade organizations are summarized and arranged in paragraphs 4 to 18 below. The presentation follows the same order as the questions referred to in paragraph 2 above. This report also summarizes briefly the replies received from Governments to the Secretary-General's inquiry in previous years. <sup>4/</sup>

(a) Feasibility of extending the use of ECE general conditions to other regions

4. Most replies received from States and trade organizations reflected the view that the use of general conditions in those regions was, in principle, to the advantage of international trade.

5. Australia commended the principle of general conditions of sale and standard contracts and stated that it would encourage their use by Australian businessmen. It also held that, in principle, it was desirable to extend the use of the ECE general conditions to the whole region. New Zealand expressed the view that it would be most useful, particularly for small exporters, to be able to have resort to standardized contracts for a wide range of transactions. Argentina also supported the use of general conditions and standard contracts such as the ECE formulations reflecting equally the interests of both parties as contrasted with contracts that permit the stronger party to impose its interests on the weaker party.

6. Ecuador considered that the use of the ECE general conditions might be extraordinarily useful and agreed that they should become generally applicable. The Philippines stated that there was no doubt about the practicability of the ECE general conditions. Similarly, Upper Volta noted that the parties in that country were satisfied with the ECE general conditions. Somalia also considered them acceptable in principle.

7. The Commission might wish to recall that of the countries replying to the Secretary-General's inquiry in previous years, Ceylon, Cuba, Fiji and Surinam had expressed their agreement with the extension of the use of the ECE general conditions to other regions.

8. The Zaire Chamber of Commerce and Industry stated in its comments that it agreed in principle with the harmonization of general conditions for use in international transactions. The Construction Equipment Manufacturers from Australia similarly stated that they were basically interested in internationally accepted conditions of trading. The Australian Metal Trades Export Group noted that they were enthusiastic about the principle of standard general conditions which would be a very valuable aid; they thought it was possible for members of the organization to use the ECE general conditions in their international sales transactions.

9. The only comments against the use of uniform general conditions were those of the Singapore International Chamber of Commerce and the International Federation of Cotton and Allied Textile Industries, Zurich. The former expressed

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<sup>4/</sup> A/CN.9/54, annex I.

the view that the adoption of general conditions of sale and standard contracts would not be helpful in the region and would tend to hinder the transaction of business. The Chamber of Commerce also noted that for primary products exported from Singapore standard contracts have long been established and that, in its opinion, trade associations were in the best position to standardize and regulate contracts. The Zurich Federation stated that according to information from its member organizations in 12 European countries, Egypt and the United States, uniform terms and conditions were unknown in the great majority of those countries and companies there seemed to use predominantly their own conditions. Some kind of uniform terms seemed to exist only in Egypt, the Federal Republic of Germany and the United Kingdom.

(b) Gaps and shortcomings in the ECE general conditions which may impede the extension of their use

10. New Zealand commented that the ECE general conditions seemed to be considerably more comprehensive than those which apply to normal trading transactions; a more simplified form of contract would be more appropriate. According to the opinion expressed by New Zealand, the ECE documents, in their present form, would have little application to trading in the ECAFE region. Similarly, the Singapore International Chamber of Commerce held that standard contracts should be limited to basic requirements; in the opinion of this Chamber of Commerce, it might be more useful to develop a list of contingencies and conditions any of which might be included in particular contracts according to circumstances.

11. Australia pointed out that the ECE general conditions were intended to be used by traders from countries on the same continent. Australia suggested therefore that the said general conditions might need to be amended in order to cover problems that might arise when the parties were separated by great distances or do not share a common legal system. Similar comments were made by Ecuador and Argentina. In Cuba's opinion, as reported to the fourth session, there were gaps and shortcomings in the general conditions both from the technical and legal viewpoints as well as from the point of view of Cuba's trade interests. On the other hand, the Australian Metal Trades Export Group noted that they did not find any particular clauses in the ECE general conditions that were objectionable nor did they find any major gaps or shortcomings which would impede the acceptance of those formulations as far as Australian engineering exporters were concerned. Somalia also expressed the view that there were no gaps or shortcomings in the said formulations which might hinder the extension of their use. The comments of Fiji and Surinam, submitted in previous years, expressed the same opinion.

12. The Philippines submitted detailed proposals in respect of particular provisions of ECE general condition No. 188, in order to eliminate gaps and shortcomings therein. Australia transmitted the comments of the Australian Commercial Law Association on a number of aspects, such as formation of contract, inspection and tests, passing of risk, guarantee, delivery, payment, etc., which are common to all the ECE contract forms. The Commission might wish

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to defer consideration of these comments until a later stage; the Secretary-General, therefore, has not included the analysis of those comments in the present report. At the fifth session copies of the comments will be available to representatives who may wish to examine them in detail at this time.

(c) Desirability of formulating other general conditions

13. The Philippines suggested that standardized forms of contract should be formulated for the sale of sugar (centrifugal and refined), base metals, mineral fuels, transport equipment, coconut oil, metalliferous ore, etc. Ecuador held that it would be necessary to study which elements would be included in a standard contract form relating to the sale of bananas and other perishable goods. According to Argentina, every effort that was directed towards the drawing up of general conditions for other commodities would be useful.

14. Somalia expressed the view that general conditions of sale and standard contracts should cover as wide a range as possible of all branches of trade, especially the primary products, which have particular importance to the development of the less developed countries.

(d) Advisability of convening meetings to discuss and clarify issues under subsections (a) to (c) above

15. In several replies the view was expressed that it was advisable to convene meetings or conferences in connexion with the extension of the use of general conditions. The Philippines suggested that it was necessary to convene such meetings, at which it would be possible to discuss concrete problems that caused difficulties among international traders, in order to obtain solutions that would satisfy all concerned. Argentina thought that such meetings would be very useful; the resistance of traders to the adoption of general conditions of sale and standard contracts was mainly due to the fact that only a small group of countries participated in their formulation. Fiji and Ceylon held it desirable that a meeting of a study group or committee should be convened as a forum to discuss and clarify such matters as may be raised at the regional level. The Australian Metal Trades Export Group also held it very desirable, if not essential, that meetings be held on an international level.

16. Somalia, which also supported the idea of holding meetings, suggested that the meetings should be convened on a regional basis if the replies from other countries supported the usefulness of such meetings. Cuba, on the other hand, believed that it would be desirable to convene committees or study groups on a world-wide level.

17. Australia agreed in principle with the holding of meetings, but only at a later stage after the collection and examination of information on certain basic questions, such as the extent of the use of the ECE general conditions in Europe and the practical advantages of these formulations over existing contractual arrangements.

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18. Ecuador was of the opinion that no special meetings were needed; the regional economic commissions should consider the question of general conditions at their next sessions, with the participation of an expert designated by the Secretary-General.

II. FURTHER WORK WITH RESPECT TO THE PROMOTION OF  
THE WIDER USE OF THE ECE GENERAL CONDITIONS

19. As it appears from the summary of the replies received in section I above, most of the countries which replied to the questionnaire of the Secretary-General were favourable to the idea that the use of the ECE general conditions should be promoted in regions outside Europe. Some of the replies, however, suggested that the general conditions should first be revised. As noted earlier, several countries expressed the view that it would be useful to organize meetings on a world-wide or regional level to bring about a more widespread appreciation of the ECE general conditions and to ascertain and eliminate deficiencies, if any, in those general conditions.

20. The Commission might conclude that although only a relatively small number of countries and trade organizations have replied to the questionnaire, the general trend of the replies seems to support the view that it would be profitable to adopt measures that would extend the use of the ECE general conditions to other regions. Therefore, the holding of meetings aimed at the task referred to in paragraph 19 above might prove to be rewarding. At the same time, however, the Commission might also wish to consider that the study on the feasibility of developing "general" general conditions, referred to in section III below, may lead to the conclusion that the development of such formulations is possible.

21. In view of the fact that available resources of the Secretariat would render it difficult to promote both projects simultaneously, the Commission might conclude that action with respect to the convening of meetings for the review of the ECE general conditions should be deferred until completion of the study mentioned in the previous paragraph. The Commission will then be in a position to conclude which further measures in this area would be appropriate.

III. IMPLEMENTATION OF THE COMMISSION'S DECISION WITH RESPECT TO  
PREPARATION OF A STUDY ON THE FEASIBILITY OF DEVELOPING  
"GENERAL" GENERAL CONDITIONS

22. The Commission at its third session requested the Secretary-General:

"To commence a study on the feasibility of developing general conditions embracing a wider scope of commodities. The study should take into account, inter alia, the conclusions in the report... and the analysis of the Economic Commission for Europe General Conditions to be submitted by the representative of Japan." 5/

5/ Report of the United Nations Commission on International Trade Law on the work of its third session (1970) (Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17), para. 102 (b).

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23. Pursuant to this request, the Secretary-General submitted to the Commission at its fourth session a report which included the first phase of this study. 6/

24. That phase of the study was directed towards the identification of the issues that are dealt with in existing general conditions relating to a wider scope of commodities. It was planned that the second phase of the study would be an analysis of the provisions of existing general conditions of sale relating to the above issues.

25. The Commission in its decision at the fourth session (see paragraph 1 above) requested the Secretary-General "to continue his study on the feasibility of developing general conditions embracing a wider scope of commodities, and to submit the study, if possible, to the Commission at its fifth session". 7/

26. In response to this request the Secretary-General has continued his study by commencing an analysis of a number of general conditions relating to different types of commodities. This part of the study is directed towards analysing those conditions in two different ways:

(a) It compares the issues dealt with in "general" general conditions with those dealt with in general conditions relating to specific commodities;

(b) It analyses the provisions embodied in both types of general conditions to find common ingredients which could form bases for drawing up a uniform provision on each of the issues that would be applicable to all commodities or to a wider scope of commodities.

27. It will be recalled that in his preliminary study on this subject, the Secretary-General pointed out that the greatest number of general conditions dealt with a specific commodity, mostly agricultural products, 8/ and that even existing "general" general conditions, with few exceptions, 9/ were intended to apply either to agricultural products or to manufactured goods, and not to all types of commodities. 10/

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6/ A/CN.9/54.

7/ See note 2.

8/ A/CN.9/54, para. 9.

9/ CMEA General Conditions of Delivery (A/CN.9/R.6, annex A), and Conditions of Sale of F.O.B. Contracts Generally of the Ceylon Chamber of Commerce (ibid., annex L).

10/ A/CN.9/54, para. 12.

28. In the light of those facts the Secretary-General started this part of his study by analysing general conditions relating to agricultural goods. The ECE general conditions relating to cereals (general conditions Nos. 1A to 8B) were compared with each other and then with a number of other general conditions relating to agricultural goods. 11/

29. The Secretary-General intends to continue his study by comparing the above formulations with general conditions relating to further agricultural goods 12/ and processed agricultural products. 13/ A later part of the study would deal with the analysis, and comparison with the above formulations, of general conditions relating to timber, rubber, minerals and other mining products and then with different kinds of manufactured and engineering goods. In view of the complexity of the field of inquiry, it has not been possible to complete the study in time for consideration by the Commission at the fifth session.

30. The investigation described above indicates that the general conditions relating to specific types of commodities deal basically with the same problems as existing "general" general conditions and that the solutions used in the two types of formulations are often similar. The study shows further that the main differences in the examined general conditions relating to specific goods do not, in most cases, result from the character or specific feature of the commodity to which they apply but rather from the differences in the mode of transport (ship, rail) or the commercial terms (F.O.B., C.I.F., reciprocal or non-reciprocal, etc.) which were taken as a basis for drawing up the particular formulations.

31. Although no final conclusions can be drawn from the above preliminary results of the study, it seems that drawing up general conditions relating to at least all agricultural goods may prove feasible. The Commission therefore might wish to request the Secretary-General to continue his study on the feasibility of developing general conditions embracing a wider scope of commodities and to prepare, if feasible, a draft set of such general conditions for submission to a later session of the Commission.

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11/ The following general conditions were compared with those drawn up by ECE: (a) Rules and Usages for the International Trade in Agricultural Seeds, 1968, drawn up by the Fédération Internationale du Commerce des Semences (FIS); (b) Rules and Usages for the International Trade in Seeds for Sowing, especially applying to cereal seeds, 1956, drawn up by FIS; (c) Standard Contract Forms of the Federation of Oil, Seeds and Fats Association, Ltd., for different agricultural commodities on C.I.F. basis; (d) Standard Contract Forms of the same association for Nigerian Groundnut Kernels, F.O.B. term; (e) Standard Contract Forms for Oil Seeds, on Ex-Ship Basis, drawn up by the same association; (f) Draft General Conditions for International Dealings in Potatoes, 1971, drawn up by ECE, and (g) Standard Contract Forms and Conditions of Sale for Coffee, 1963, drawn up by the Coffee Trade Federation.

12/ e.g., cotton and wool.

13/ e.g., vegetable oils, oilcakes and hides.