

**4. Report of the Secretary-General: analysis of the observations received in respect of "Uniform Customs and Practice for Documentary Credits (1962)" and its revision by the International Chamber of Commerce (A/CN.9/101/Add.1)\***

INTRODUCTION

1. In 1933, the International Chamber of Commerce (ICC) drew up "Uniform Customs and Practice for Documentary Credits" and subsequently revised these rules in 1951 and 1962. ICC has now revised "Uniform Customs (1962)" and this 1974 version is reproduced in annex II to document A/CN.9/101.\*\*

2. At the seventh session of the Commission, representatives were in general agreement that "while the Commission could not adopt the revised text of 'Uniform Customs', it should consider, at its next session, the desirability of commending the use of 'Uniform Customs' in transactions involving the establishment of a documentary credit".<sup>1</sup>

3. At the same session, the Commission requested the Secretariat "to prepare an analysis of the observations received by the Secretary-General in respect to the 1962 version of 'Uniform Customs', with a view to examining whether the revised text reflected these observations".<sup>2</sup> This report was prepared in response to that request.

4. The greater part of the replies received by the Secretariat from Governments and banking and trade institutions indicated strong support for "Uniform Customs (1962)" and voiced the expectation that the revision by ICC of these rules would prove acceptable to the responding State and its banking institutions.

5. This analysis only deals with comments advocating substantive modifications of "Uniform Customs (1962)" and with suggestions concerning particular points as to which ICC presented draft revisions. For each of the general provisions and for each article, the analysis commences with the text of "Uniform Customs (1962)", followed by a short description of the substantive changes approved by ICC and an analysis of the comments on the provision.

ANALYSIS OF COMMENTS CONCERNING THE REVISION  
BY ICC OF UNIFORM CUSTOMS AND PRACTICE FOR  
DOCUMENTARY CREDITS (1962)

GENERAL PROVISIONS AND DEFINITIONS,  
PARAGRAPH (a)

1. General provisions and definitions, paragraph (a) [1962]:

(a) These provisions and definitions and the following articles apply to all documentary credits and are binding upon all parties thereto unless otherwise expressly agreed.

2. This paragraph was not modified.

\* 14 March 1975.

\*\* Reproduced in this Volume, part two, II, 3.

<sup>1</sup> Report of the United Nations Commission on International Trade Law on the work of its seventh session, *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 17 (A/9617)*, para. 34. (UNCITRAL Yearbook, vol. V: 1974, part one, II, A.)

<sup>2</sup> *Ibid.*

3. New Zealand noted that the words "apply to all documentary credits and are binding upon all parties thereto" were too narrow, since "Uniform Customs" was in practice incorporated not only in documentary credits, but also in contracts between the applicant for the credit and the issuing bank. The proposal by New Zealand to substitute a formulation such as "all interested parties" ("toutes les parties y intéressées") was not adopted.

GENERAL PROVISIONS AND DEFINITIONS,  
PARAGRAPH (b)

1. General provisions and definitions, paragraph (b) [1962]:

(b) For the purposes of such provisions, definitions and articles the expressions "documentary credit(s)" and "credit(s)" used therein mean any arrangement, however named or described, whereby a bank (the issuing bank), acting at the request and in accordance with the instructions of a customer (the applicant for the credit), is to make payment to or to the order of a third party (the beneficiary) or is to pay, accept or negotiate bills of exchange (drafts) drawn by the beneficiary, or authorize such payments to be made or such drafts to be paid, accepted or negotiated by another bank, against stipulated documents and compliance with stipulated terms and conditions.

2. This paragraph was reorganized so that the obligations assumed by the issuing bank now form two separate subparagraphs. In addition, the final phrase of this paragraph was changed from "documents and compliance with stipulated terms and conditions" to "documents, provided that the terms and conditions of the credit are complied with".

3. Several replies expressed support for the reorganization of this paragraph adopted by ICC. The following proposed modifications of this paragraph were not accepted by ICC, as it was of the view that its new arrangement was sufficient to dispel any doubts concerning the meaning of the term "negotiate" and to stress that the beneficiary must comply with the terms and conditions of the credit:

(a) Delete the words "or negotiate" from the words "to pay, accept or negotiate bills of exchange . . ." (Denmark);

(b) Limit the word "negotiate" to cases where a bank at its discretion buys drafts or documents at the invitation of the beneficiary and thus exclude cases where banks act directly or indirectly on behalf of the applicant for the credit (Hungary);

(c) Replace the phrase "authorizes such payments to be made" by the phrase "undertakes that such payments will be made", to clarify that the issuing bank remains responsible on its own credit even if its authorization given to another bank to pay is not acted on by that other bank (USSR);

(d) Expand the list of obligations of the issuing bank, now reading "to pay, accept or negotiate

bills of exchange (drafts) drawn by the beneficiary" to include "endorsement or guarantee of the bill of exchange", in order to cover the *aval* (commercial endorsement) as a form of documentary credit (Mexico);

(e) Specify at the end of this paragraph that the terms and conditions of the credit are to be complied with within "the duration of its period of validity" (Mexico);

(f) Conclude this paragraph with the phrase "against stipulated documents and provided that those documents are in conformity with the stipulated terms and conditions" (National Bank of Czechoslovakia). In slightly different form, this suggestion was adopted by ICC.

GENERAL PROVISIONS AND DEFINITIONS,  
PARAGRAPH (c)

1. General provisions and definitions, paragraph (c) [1962]:

(c) Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts.

2. This paragraph was not modified by ICC.

3. Nigeria suggested an additional clause linking the payment obligation under the credit to "clean performance of the underlying contract" and laying down a penalty if it was discovered, subsequent to payment under the credit, that the terms of the credit and those mentioned in the documents varied from the goods that were actually delivered. It was explained that such a clause would be aimed at protecting buyers in developing countries.

GENERAL PROVISIONS AND DEFINITIONS,  
PARAGRAPH (d)

1. General provisions and definitions, paragraph (d) [1962]:

(d) Credit instructions and the credits themselves must be complete and precise and, in order to guard against confusion and misunderstanding, issuing banks should discourage any attempt by the applicant for the credit to include excessive detail.

2. This paragraph was divided into two sentences in the English text; the French text had already been so divided in the 1962 version.

3. The following suggestions, aimed at strengthening the effect of this paragraph in discouraging incomplete or excessively detailed credits and credit instructions, were not adopted by ICC:

(a) Redraft the concluding portion of the second sentence in this paragraph to read ". . . the banks should refrain from undertaking to carry out orders containing excessive details." (Hungary);

(b) Provide a standard for measuring whether credit instructions and credits are "complete and precise" (Philippines); New Zealand proposed that "excessive detail" be measured by the prevailing banking practice;

(c) Delete the second sentence, since it contains what is merely an exhortation (Nigeria);

(d) State the legal consequences if, contrary to this paragraph, excessive details are included in credit instructions or credits (National Bank of Czechoslovakia).

GENERAL PROVISIONS AND DEFINITIONS,  
PARAGRAPH (e)

1. General provisions and definitions, paragraph (e) [1962]:

(e) When the bank first entitled to avail itself of an option it enjoys under the following articles does so, its decision shall be binding upon all the parties concerned.

2. This paragraph was modified in order to make it more specific and to clarify some issues that caused difficulties previously. ("Uniform Customs (1962)" only contained a general rule to the effect that the exercise of an option by the bank first entitled to it shall bind all the parties concerned.)

(a) The paragraph now specifies that it is the bank authorized to pay, accept or negotiate under a credit which may first exercise the option under revised article 32 (b) (i.e., to refuse a commercial invoice for an amount exceeding the amount permitted by the credit), and that such a decision will bind all the parties concerned. (Thus, the bank first entitled to exercise the option is identified and the effect of the rule is limited to revised article 32 (b).)

(b) The paragraph now describes how a bank becomes authorized to pay or accept under a credit, or to negotiate under a credit.

3. The revision of this paragraph seems to incorporate the principle proposed by Australia that, rather than relying on the general rule contained in the 1962 formulation of this paragraph, in each article the bank having the option mentioned therein should be identified.

GENERAL PROVISIONS AND DEFINITIONS,  
PARAGRAPH (f)

1. General provisions and definitions, paragraph (f) [1962]:

(f) A beneficiary can in no case avail himself of the contractual relationships existing between banks or between the applicant for the credit and the issuing bank.

2. This paragraph was not modified by ICC.

3. The Secretariat received no comments concerning this paragraph.

*Article 1 (old article 1)*

1. *Article 1* [1962]:

Credits may be either

(a) Revocable, or

(b) Irrevocable.

All credits, therefore, should clearly indicate whether they are revocable or irrevocable.

In the absence of such indication the credit shall be deemed to be revocable, even though an expiry date is stipulated.

2. The three sentences of this article are now arranged as paragraphs (a), (b) and (c); in addition, the end of the third sentence which had read “, even though an expiry date is stipulated” was deleted.

3. (a) Two replies (German Democratic Republic, National Bank of Czechoslovakia) favoured retention of the basic rule that all credits are revocable unless they are expressly marked as irrevocable; this basic rule was retained by ICC when it revised article 1;

(b) The suggestion by New Zealand that credits should be deemed to be irrevocable when there was no indication whether they are revocable or irrevocable was not retained. On the other hand, ICC accepted the suggestion by New Zealand to delete the last seven words of the third sentence, since revised article 37 requires an expiry date to be given for both revocable and irrevocable credits.

#### Article 2 (old article 2)

##### 1. Article 2 [1962]:

A revocable credit does not constitute a legally binding undertaking between the bank or banks concerned and the beneficiary because such a credit may be modified or cancelled at any moment without notice to the beneficiary.

When, however, a revocable credit has been transmitted to and made available at a branch or other bank, its modification or cancellation shall become effective only upon receipt of notice thereof by such branch or other bank and shall not affect the right of that branch or other bank to be reimbursed for any payment, acceptance or negotiation made by it prior to receipt of such notice.

2. This article has been reworded by ICC with the aim of simplifying its language and eliminating possible disputes. Thus revised article 2 states that a revocable credit may be modified or cancelled without prior notice to the beneficiary and that it is the issuing bank which is bound to reimburse a bank that paid, accepted or negotiated a revocable credit in compliance with its terms and conditions and any amendments received by that bank at the time of its action preceding notice to it of any other amendment or cancellation of the credit.

3. While the replies were generally agreed that the approach of ICC in revising article 2 was the proper one, the following proposals were made to augment the provisions of this article:

(a) Replace the word “notice” by the word “advice” wherever it appeared in this article (Denmark);

(b) Require notices of amendments or cancellations under this article to be sent by cable (Khmer Republic);

(c) Amend the second sentence to read “such a credit has been transmitted or made available for payment” instead of “and” (Mexico);

(d) Start the second sentence with the words “The cancellation or modification of a revocable credit is ineffective and the issuing bank is bound . . .” (New Zealand);

(e) Provide in article 2 that an issuing or advising bank that paid without reserve, accepted or negotiated a draft under a revocable credit may go against the beneficiary only in cases where he could do so after honouring an irrevocable credit (New Zealand).

4. The suggestion by the USSR that a paying, accepting or negotiating bank should be entitled to reimbursement if it acted in compliance with the terms and conditions of the credit as modified and of which it had notice at the time of its action, was in substance adopted by ICC.

#### Article 3 (old article 3)

##### 1. Article 3 [1962]:

An irrevocable credit is a definite undertaking on the part of an issuing bank and constitutes the engagement of that bank to the beneficiary or, as the case may be, to the beneficiary and *bona fide* holders of drafts drawn and/or documents presented thereunder, that the provisions for payment, acceptance or negotiation contained in the credit will be duly fulfilled, provided that all the terms and conditions of the credit are complied with.

An irrevocable credit may be advised to a beneficiary through another bank without engagement on the part of that other bank (the advising bank), but when an issuing bank authorizes another bank to confirm its irrevocable credit and the latter does so such confirmation constitutes a definite undertaking on the part of the confirming bank either that the provisions for payment or acceptance will be duly fulfilled or, in the case of a credit available by negotiation of drafts, that the confirming bank will negotiate drafts without recourse to drawer.

Such undertakings can neither be modified nor cancelled without the agreement of all concerned.

2. This article was reorganized and modified in order to delineate more clearly the undertaking of a bank issuing an irrevocable credit, to stress that the undertaking of a bank confirming an irrevocable credit is separate and additional to the undertaking by the issuing bank, to delineate the undertaking of such confirming bank, and to note that partial acceptance of amendments is only effective with the agreement of all parties thereto.

3. In revising article 3, ICC adopted the substance of the following comments:

(a) To clarify that the undertaking of a bank issuing an irrevocable credit is separate and different from the undertaking of another bank that confirms this irrevocable credit (USSR); while the ICC decided not to deal specifically with the case where the bank issuing an irrevocable credit purports, in order to comply with a provision in the contract for an irrevocable confirmed credit, also to confirm it, paragraph (b) of revised article 3 describes confirmation as occurring “when an issuing bank authorizes or requests another bank to confirm its irrevocable credit and the latter does so”;

(b) To clarify that partial acceptance of amendments of an irrevocable credit is effective only if all the parties agree to it (Egypt, Hungary); on the other hand, the reply of the German Democratic Republic

expressed the view that the Uniform Customs should not deal with partial acceptances of modifications of irrevocable credits;

(c) To delineate more clearly the precise undertaking by a bank issuing an irrevocable credit as to negotiation without recourse against either the drawer or a negotiating bank or holder in good faith of the beneficiary's draft (New Zealand), acceptance and payment by the drawee at maturity of the draft (Denmark), and acceptance and payment of drafts on the applicant for the credit, another bank or any other person (USSR);

(d) To delineate more clearly the precise undertaking by a bank confirming an irrevocable credit as to serving as a paying or accepting bank, or only as a negotiating bank (Federal Republic of Germany, Hungary), acceptance being accomplished by means of acceptance by the confirming bank (Lebanon), negotiation or acceptance involving the obligation to honour documents drawn on the applicant for the credit or another bank (Denmark, USSR) without recourse against a negotiating bank or holder in good faith of the beneficiary's draft (New Zealand).

4. The following suggestions were not adopted by ICC:

(a) To regulate the effect of silence by a beneficiary regarding a proposed modification of the credit of which he receives notice (Australia, Lebanon); according to Lebanon this should not be viewed as tacit acceptance and that therefore the preference of the beneficiary may be expressed as late as the time of the utilization of the credit;

(b) To consider "revolving credits" (Australia); on the other hand the comment by the German Democratic Republic stated that the Uniform Customs should not be expanded to deal with the special cases of "deferred" or "revolving" credits. (The USSR had suggested that the Uniform Customs should deal with "credits with partial deferment of payments" which are a special type of irrevocable credit used in the USSR.);

(c) To modify the language of article 3 by replacing, whenever they appeared, the phrase "whether against a draft or not" by the phrase "whether against a draft or without presentation of a draft", the word "advise" by the word "notify", and the word "undertaking" by the word "obligation" (Mexico);

(d) To provide that when an irrevocable credit is subject to a subsequent condition to be met by the applicant for the credit, the issuing bank will not be liable on its undertaking if the applicant for the credit fails to satisfy this condition subsequent (Lebanon);

(e) To add a paragraph to the effect that issuing banks and confirming banks may have recourse against the beneficiary of the credit only for fraud of the beneficiary (New Zealand);

(f) To provide that when an irrevocable or confirmed credit permits negotiation of drafts, the issuing or confirming bank's undertaking is deemed to go to the beneficiary and to negotiators and *bona fide* holders of his drafts (New Zealand);

(g) To provide that the credit terms may not require the presentation to the advising bank of a "sight draft

without recourse" drawn by the beneficiary (Federal Republic of Germany);

(h) To require that the advising bank notify the issuing bank within a reasonable time of the rejection by a party of an amendment of the credit, whether in part or in full (Egypt).

#### Article 4 (old article 4)

##### 1. Article 4 [1962]:

When an issuing bank instructs a bank by cable, telegram or telex to notify a credit and the original letter of credit itself is to be the operative credit instrument, the issuing bank must send the original letter of credit, and any subsequent amendments thereto, to the beneficiary through the notifying bank.

The issuing bank will be responsible for any consequences arising from its failure to follow this procedure.

2. This article was modified to cover all cases where the issuing bank instructs another bank, by cable, telegram or telex, to advise a credit and the mail confirmation of these instructions is to serve as the operative credit instrument (previously it only covered those cases where the original letter of credit was to serve as the operative credit instrument) and to clarify the consequences if the cable, telegram or telex which contains the instructions to the advising bank does not say either "details to follow" or that the mail confirmation is to be the operative credit instrument.

3. The basic principle behind the revision of article 4 was not challenged in the comments, although the reply of the German Democratic Republic noted that it may force some banks to modify their practice.

4. The following suggested modifications of article 4 were not adopted by ICC:

(a) Addition of a provision dealing with the legal position of an advising bank which honours the credit without having received instructions from the issuing bank (USSR);

(b) Required inclusion in the mail confirmation of a statement that "this credit was pre-advised by cable, telegram or telex dated . . . and addressed to . . ." (Lebanon);

(c) Use of the term "ratification" instead of the term "confirmation" in this article (New Zealand).

#### Article 5 (old article 5)

##### 1. Article 5 [1962]:

When a bank is instructed by cable, telegram or telex to issue, confirm or advise a credit similar in terms to one previously established and which has been the subject of amendments, it shall be understood that the details of the credit being issued, confirmed or advised will be transmitted to the beneficiary excluding the amendments, unless the instructions specify clearly any amendments which are to apply.

2. This article was not modified by ICC.

3. The Secretariat did not receive any comments dealing with this article.

*Article 6 (old article 6)*1. *Article 6* [1962]:

If incomplete or unclear instructions are received to issue, confirm or advise a credit, the bank requested to act on such instructions may give preliminary notification of the credit to the beneficiary for information only and without responsibility; and in that case the credit will be issued, confirmed or advised only when the necessary information has been received.

2. This article was left substantially unaltered by ICC, with only minor drafting changes in both the English and the French text.

3. ICC did not adopt the proposal by Romania to add the following provision to article 6: "Credits pre-adviced by telephone (*les accreditifs préavisés par fil*) and containing only certain details such as the applicant for the credit, credit amount and validity date (*ordonnateur, valeur, validité*) will be considered as informational, which are then only deemed to be opened or advised on receipt of all the necessary instructions." ICC was of the view that the revised text of article 4 met the concern of Romania regarding article 6.

*Article 7 (old article 7)*1. *Article 7* [1962]:

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit.

2. In order to define more precisely the obligation of banks to verify that all documents comply with the terms and conditions of the credit, the following second sentence was added by ICC to this article: "Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit."

3. The above addition to article 7 was supported by the German Democratic Republic and Luxembourg, and opposed by the National Bank of Czechoslovakia and the USSR.

*Article 8 (old article 8)*1. *Article 8* [1962]:

In documentary credit operations all parties concerned deal in documents and not in goods.

Payment, acceptance or negotiation against documents which appear on their face to be in accordance with the terms and conditions of a credit by a bank authorized to do so, binds the party giving the authorization to take up the documents and reimburse the bank which has effected the payment, acceptance or negotiation.

If, upon receipt of the documents, the issuing bank considers that they appear on their face not to be in accordance with the terms and conditions of the credit, that bank must determine, on the basis of the documents alone, whether to claim that payment, acceptance or negotiation was not affected in accordance with the terms and conditions of the credit.

If such claim is to be made, notice to that effect, stating the reasons therefor, must be given by cable or other expeditious means to the bank from which the documents have been received and such notice must state that the documents are being held at the disposal of such bank or are being returned thereto. The issuing bank shall have a reasonable time to examine the documents.

2. This article was restructured with a view towards making the rules contained therein more precise and pertinent to the current practice of taking up documents "under a reserve or against a guarantee". The main substantive modifications of this article are the following:

(a) Article 8 is now arranged in seven paragraphs;

(b) Paragraph (d) contains the rule found in the 1962 version of article 8 that "the issuing bank shall have a reasonable time to examine the documents", and adds a rule to the effect that during this period the issuing bank must also decide whether to claim that payment, acceptance or negotiation was against documents that did not comply with the terms and conditions of the credit;

(c) Paragraph (e) retains the language of former paragraph 4 of the 1962 version except for the last sentence (which is now in paragraph (d)), and adds the requirement that notice of any claim by the issuing bank that the documents did not comply with the terms and conditions of the credit be transmitted to the remitting bank "without delay";

(d) Paragraph (f) contains a new provision to the effect that an issuing bank which does not return the documents or hold them at the disposal of the remitting bank shall be precluded from claiming that the documents do not comply with the terms and conditions of the credit;

(e) Paragraph (g) provides that payment, negotiation or acceptance by a remitting bank under reserve or against a guarantee (due to some irregularity in the documents presented) shall not relieve the issuing bank from its obligations under this article.

3. A number of comments, such as those of Hungary, Kenya, the Republic of Viet-Nam, South Africa and the USSR, suggested that the revised "Uniform Customs and Practice" should deal with the legal position of the parties where documents are negotiated by a transmitting bank under a reserve, guarantee or indemnity. The thrust of this suggestion was met by ICC by adding paragraph (g) to article 8.

4. An earlier draft version of paragraph (c) included a clause to the effect that if the issuing bank considered that the documents on their face were not in accordance with the terms of the credit, that bank had to decide, "if necessary after having consulted the applicant for the credit", whether to challenge as unauthorized a payment, acceptance or negotiation made under that credit. The comments of the National Bank of Czechoslovakia and Luxembourg opposed the addition to paragraph (c) of such a provision authorizing the issuing bank to consult with the applicant for the credit before deciding whether to reject the documents as not conforming to the credit, arguing that this would be a deviation from the general principle that in documentary credit operations all parties only dealt in docu-

ments. On the other hand, the German Democratic Republic expressly, the Association of Banks in Malaysia-Singapore and New Zealand by implication, favoured retention of the above-mentioned clause. ICC decided not to add to paragraph (c) the phrase "if necessary after having consulted the applicant for the credit."

5. With respect to the time available to an issuing bank for examination of the documents under paragraph (d), the Central Bank of Jordan (if period is at least three weeks), the Association of Banks in Malaysia-Singapore, Mexico (reply of 12 October 1970), New Zealand, the Philippines and South Africa favoured a definite, fixed period of a specified number of days. However, the German Democratic Republic, Japan, Kenya, Bank Negara of Malaysia, and Mexico (reply of 14 June 1973) supported maintenance of a time-limit identified in terms of "a reasonable time". ICC decided that paragraph (c) should provide that the issuing bank has "a reasonable time" to examine the documents.

6. Under an earlier formulation of paragraph (d), the issuing bank was required to notify the remitting bank "at once". After considering a proposal by Iraq that the notification by the issuing bank occur "within a reasonable time", ICC decided to require that such notification be given "without delay".

7. An early draft version of paragraph (g) included language within brackets to the effect that the issuing bank was not authorized to inform the applicant for the credit that the remitting bank paid, accepted or negotiated documents under reserve or against a guarantee. The comments of the National Bank of Czechoslovakia, the German Democratic Republic, the Central Bank of Jordan, Bank Negara of Malaysia, the Association of Banks in Malaysia-Singapore, New Zealand, and Mexico proposed the deletion of this bracketed language. In fact, Bank Negara of Malaysia favoured the addition of a clause expressly permitting banks at their discretion to inform the applicant for the credit of any reserve or guarantee, and Mexico expressed its support for a clause mandating such notification by the issuing bank to the applicant for the credit. The ICC decided to delete the bracketed language.

8. Based on comments by the National Bank of Czechoslovakia and Hungary concerning the legal effect of a reservation or guarantee by the transmitting bank due to its having observed some irregularity of the documents, ICC added the following explanatory sentence to paragraph (g): "Such guarantee or reserve concerns only the relations between the remitting bank and the beneficiary."

9. The following proposals concerning article 8 were not adopted by ICC:

(a) To add a reserve clause to paragraph (a) to the effect that the parties are not considered to be dealing only in documents in cases where it was discovered that, due to deceit, the goods actually delivered differed from those paid for on the basis of their description in documents under the credit (Nigeria);

(b) To deal with the disposition of the documents and the goods where the documents are rejected by the issuing bank, stressing that they are then charged to the remitting bank (Romania, as to the documents; Khmer Republic, Republic of Viet-Nam, as to the goods);

(c) To provide a time-limit for the conditional status of a payment, acceptance or negotiation under a reserve or guarantee (USSR);

(d) To distinguish cases where the remitting bank notifies the issuing bank of an irregularity in the documents from cases where the irregularity is only discovered by the issuing bank (Central Bank of Jordan);

(e) In paragraph (g), to use the term "indemnity" rather than "guarantee", and to add that if the issuing bank decides not to accept irregular documents which were paid, accepted or negotiated by a remitting bank, the issuing bank must notify that bank promptly (New Zealand; however, this seems to be covered already by the general rule in paragraph (e) as to notification of a remitting bank);

(f) To deal in paragraph (g) with the bank practice of making guarantees valid for a period of between 3 and 6 months (German Democratic Republic);

(g) To require that the issuing bank notify the remitting bank when it begins examining the documents and thus the period in paragraph (d) begins to run (Association of Banks in Malaysia-Singapore).

#### Article 9 (old article 9)

##### 1. Article 9 [1962]:

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented thereby, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers or the insurers of the goods or any other person whomever.

2. This article was not modified by ICC.

3. The proposal of the USSR that this article deal with notations on documents to the effect that unloading shall be at the expense of the purchaser or of the carrier was accepted by ICC; however, ICC believed that such a provision should be incorporated in revised article 16 rather than in article 9.

4. The following suggestions were not retained by ICC:

(a) To mention specifically that banks assume no responsibility for the acts or good faith of forwarding agents and/or combined transport operators (Hungary; this seems covered by the phrase in article 9 "or any other person whomever");

(b) At the end of the article, to replace the expression "any other person whomever" by the phrase "any [other] person who issued the respective documents" (National Bank of Czechoslovakia);

(c) To provide that the article did not apply "in cases where the bank is at fault" (Japan);

(d) To provide that the article did not apply if it was discovered that due to deceit the goods actually delivered differed from those that were paid for according to their description in documents under the credit (Nigeria).

*Article 10 (old article 10)*1. *Article 10* [1962]:

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in the transmission of cables, telegrams or telex, or for errors in translation or interpretation of technical terms, and banks reserve the right to transmit credit terms without translating them.

2. ICC only made minor changes of a drafting nature in this article.

3. The following proposals were not adopted by ICC:

(a) To provide that the risk of delay or loss in transit of messages and documents, or of errors in the transmission of cables, shall be borne by the applicant for the credit (Hungary, USSR);

(b) To provide that a bank which was at fault will not be exempted from liability under this article (Japan);

(c) To consider a provision regarding the simultaneous transmission in one shipment of original and duplicate documents, as this increases the likelihood that no set of documents will arrive (Federal Republic of Germany).

*Article 11 (old article 11)*1. *Article 11* [1962]:

Banks assume no liability or responsibility for consequences arising out of the interruption of their business by strikes, lock-outs, riots, civil commotions, insurrections, wars, acts of God or any other causes beyond their control. Unless specifically authorized, banks will not effect payment, acceptance or negotiation after expiration under credits expiring during such interruption of business.

2. ICC adopted a new wording for this article, under which banks are also not responsible for consequences that stem from social conflicts within their respective places of business.

3. ICC did not retain the suggestion by Japan that a bank which was at fault should not be exempted from liability under this article.

*Article 12 (old article 12)*1. *Article 12* [1962]:

Banks utilizing the services of another bank for the purpose of giving effect to the instructions of the applicant for the credit do so for the account and at the risk of the latter.

They assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank.

The applicant for the credit shall be bound by and liable to indemnify the banks against all obligations and responsibilities imposed by foreign laws and usages.

2. ICC only made minor changes of a drafting nature in this article.

3. ICC did not adopt the proposal by Japan and Mexico that a bank utilizing the services of another bank should not be exempted from liability under this article, if there was fault or negligence in the selection of that other bank.

*New article 13*

1. ICC added this new article, clarifying that a paying or negotiating bank authorized to claim reimbursement from a third bank nominated by the issuing bank shall not be required to confirm to the third bank that payment or negotiation had been effected in accordance with the terms and conditions of the credit.

2. Originally proposed by ICC as a new paragraph (d) in article 12, the above proposal, while receiving some support (National Bank of Czechoslovakia, German Democratic Republic), was also opposed in a number of replies (Iraq, Jordan, Bank Negara of Malaysia) because it was feared that the provision would preclude the issuing bank from asking the paying or negotiating bank to confirm to the third bank that all the terms and conditions of the credit have been complied with. (It should be noted, however, that under paragraph (a) in the general provisions and definitions, the parties are free to agree on credit terms and conditions differing from those that would otherwise govern the credit under "Uniform Customs and Practice".)

*Article 14 (old article 13)*1. *Article 13* [1962]:

All instructions to issue, confirm or advise a credit must state precisely the documents against which payment, acceptance or negotiation is to be made.

Terms such as "first class", "well known", "qualified" and the like shall not be used to describe the issuers of any documents called for under credits and if they are incorporated in the credit terms banks will accept documents as presented without further responsibility on their part.

2. ICC only made minor changes of a drafting nature in paragraph (b) of this article. The words, at the end of paragraph 2 of article 13 of the 1962 version, "as presented without further responsibility on their part" were replaced by the words "as rendered".

3. The following suggestions concerning this article were not accepted by ICC:

(a) To settle whether documents bearing signatures by mechanical means may be accepted by banks (Federal Republic of Germany);

(b) To modify paragraph (b) so as to authorize a bank to accept such documents as tendered regarding the issuer, but to refuse them if their content in other respects deviated from the terms and conditions of the credit (Central Bank of Jordan).

*Article 15 (old article 14)*1. *Article 14* [1962]:

Except as stated in article 18, the date of the Bill of Lading, or date indicated in the reception stamp or by notation on any other document evidencing shipment or dispatch, will be taken in each case to be the date of shipment or dispatch of the goods.

2. This article was amended to extend to the date of taking charge of the goods indicated on a document evidencing such taking charge.

3. The above amendment followed a suggestion by the Federal Republic of Germany that this article be modified to prevent banks from demanding a notation that shipment has been effected when the credit only called for a document certifying that the goods have been taken over.

*Article 16 (old article 15)*

1. *Article 15* [1962]:

If the words "freight paid" or "freight prepaid" appear by stamp or otherwise on documents evidencing shipment or dispatch they will be accepted as constituting evidence of the payment of freight.

If the words "freight prepayable" or "freight to be prepaid" or words of similar effect appear by stamp or otherwise on such documents they will not be accepted as constituting evidence of the payment of freight.

Unless otherwise specified in the credit or inconsistent with any of the documents presented under the credit, banks may honour documents stating that freight or transportation charges are payable on delivery.

2. ICC made the following substantive modifications in this article:

(a) Paragraph (a) was made more general by the replacement of the expression "if the words 'freight paid' or 'freight prepaid' appear . . ." by the phrase "if words clearly indicating payment or prepayment of freight, however named or described, appear . . .";

(b) Paragraph (c) was amended so that now banks "will accept" (rather than "may honour") documents stating that freight or transportation charges are payable on delivery under the conditions given in the paragraph;

(c) A new paragraph (d) was added to the effect that banks "will accept" shipping documents referring to expenses additional to the freight charges (e.g. loading, unloading) unless this is specifically prohibited by the credit terms. (This addition to article 16 was advocated in comments by the USSR and the Federal Republic of Germany, to prevent banks from rejecting or only accepting under reserved documents referring to such expenses.)

3. The thrust of a suggestion by Australia to cover in article 16 the words "basic service charge", often used to denote ocean freight, was met by ICC when it widened the scope of paragraph (a) of this article to extend to "words clearly indicating payment or prepayment of freight, however named or described".

*New article 17*

1. ICC added this new article in order to clarify that banks are to accept shipping documents claused "shipper's load and count" or "said by shipper to contain", unless otherwise specified in the credit.

2. This new article responds to the question posed by Lebanon and the Federal Republic of Germany whether a clause on the shipping document whereby

the carrier disclaims knowledge of the "contents, weight, measurements, quality or technical specifications of the goods", or a "said to contain" clause, renders a shipping document unclean, by stating that banks are to accept such a document unless the credit terms provide otherwise. (Such clauses are frequent and unavoidable when goods are carried in sealed containers packed by the shipper.)

*Article 18 (old article 16)*

1. *Article 16* [1962]:

A clean shipping document is one which bears no superimposed clause or notation which expressly declares a defective condition of the goods and/or the packaging.

Banks will refuse shipping documents bearing such clauses or notations unless the credit expressly states clauses or notations which may be accepted.

2. ICC only made minor drafting changes in this article.

3. ICC did not adopt the following proposals:

(a) To state that clauses such as "vessel not responsible for condition of barrels, cases, other packages" or "vessel not responsible for insufficient packing" render a shipping document "unclean" (Lebanon);

(b) To note that a carrier cannot judge the condition of goods in sealed containers not packed by him (Sweden).

*Article 19 (old article 17)*

1. *Article 17* [1962]:

Unless specifically authorized in the credit, Bills of Lading of the following nature will be rejected:

(a) Bills of Lading issued by forwarding agents.

(b) Bills of Lading which are issued under and are subject to the conditions of a Charter-Party.

(c) Bills of Lading covering shipment by sailing vessels.

However, unless otherwise specified in the credit, Bills of Lading of the following nature will be accepted:

(a) "Port" or "Custody" Bills of Lading for shipments of cotton from the United States of America.

(b) "Through" Bills of Lading issued by steamship companies or their agents even though they cover several modes of transport.

2. ICC made the following substantive modifications in this article:

(a) Clarified that if a particular bill of lading fell within both paragraphs (a) and (b) of this article, paragraph (a) would be held to govern so that such a bill of lading would be rejected unless specifically authorized in the credit;

(b) Eliminated the special rule regarding acceptability of "port" or "custody" bills of lading for cotton shipments from the United States;

(c) Added a new subparagraph (ii) to paragraph (b) of this article defining Short Form Bills of Lading

and stating that they were to be accepted unless otherwise specified in the credit;

(d) Added a new subparagraph (iii) to paragraph (b) of this article, which establishes that bills of lading issued by shipping companies covering unitized cargoes (e.g. in containers) were to be accepted unless otherwise specified in the credit.

3. The comments of Governments and banks were largely in favour of the changes made in this article:

(a) The German Democratic Republic, Lebanon and Luxembourg supported deletion of the special rule contained in "Uniform Customs (1962)" dealing with the rare cases of "port" or "custody" bills of lading for cotton shipments from the USA;

(b) The National Bank of Czechoslovakia, the German Democratic Republic and the Federal Republic of Germany favoured a general rule making standard Short Form Bills of Lading acceptable. On the other hand, Lebanon would have preferred a rule making such bills of lading unacceptable unless expressly authorized in the credit;

(c) Australia, the National Bank of Czechoslovakia, the Federal Republic of Germany, Japan, the Association of Banks in Malaysia-Singapore, the Bank of Mauritius, Singapore, Sweden and the USSR all favoured the addition of a provision dealing with bills of lading issued in connexion with the transport of goods in containers. It was suggested by the Association of Banks in Malaysia-Singapore that bills of lading issued by container operators, and by Sweden that those issued by forwarding agents functioning as combined transport operators, be acceptable; however, those suggestions were not adopted by ICC.

4. The following proposals to amend this article were not accepted by ICC:

(a) To make bills of lading issued by forwarding agents generally acceptable (proposed by Hungary, opposed by the Republic of Viet-Nam), or at least when they bore an on-board endorsement (Nigeria);

(b) To define more clearly what constitutes a "through" bill of lading (proposed by Australia, Hungary, opposed by the German Democratic Republic);

(c) To deal with the acceptability of "liner" bills of lading (proposed by Cyprus, opposed by the German Democratic Republic);

(d) To modify the rule stating that bills of lading subject to the terms of a charter party were generally not acceptable (Romania: limit the rule to deliveries under C and F, CIF terms; Finland: make bills of lading dealing with carriage of timber pursuant to charter parties acceptable); the German Democratic Republic favoured retention of this provision as it appeared in the 1962 Uniform Customs;

(e) To deal with the signature on bills of lading (proposed by Romania, opposed by the German Democratic Republic).

5. Costa Rica was of the view that there was no necessity to amend articles 19, 20 and 22, since each expressly permitted the parties to authorize specifically in the credit the acceptance of bills of lading different from those that would otherwise be required under these articles.

### Article 20 (old article 18)

#### 1. Article 18 [1962]:

Unless otherwise specified in the credit, Bills of Lading must show that the goods are loaded on board.

Loading on board may be evidenced by an on board Bill of Lading or by means of a notation to that effect dated and signed or initialled by the carrier or his agent, and the date of this notation shall be regarded as the date of loading on board and shipment.

2. ICC made the following substantive modifications in this article:

(a) The revised text clarifies that, unless specified differently in the credit, either "on-board" or "shipped" bills of lading are acceptable and stresses that the goods must be loaded on board or shipped "on a named vessel";

(b) The revised text also notes that loading on board or shipment on a named vessel may be evidenced either by some wording on a bill of lading indicating this fact or by a notation to this effect on the bill of lading.

3. A number of comments (the German Democratic Republic, Hungary, Lebanon, the Association of Banks in Malaysia-Singapore, Nigeria) supported an amendment of this article making it clear that a later clear notation "shipped on board X vessel" by the ocean carrier on a bill of lading originally issued inland, or by a forwarding agent, or as a "received-for-shipment" bill, makes such bill of lading fully acceptable under the revised "Uniform Customs" unless there is a specific provision to the contrary in the credit; the revision of this article by ICC incorporates amendments bringing about this result.

4. In response to comments by Lebanon and New Zealand, ICC did not retain language in an earlier draft revision of this article which had stated that loading on board or shipment on a named vessel could be evidenced on a Bill of Lading by "*any wording customarily used to indicate*" this (as it raised problems as to what is customary at what port and how a bank would know these customs); instead, ICC substituted the more general expression "wording indicating", thus omitting any reference to custom.

5. ICC did not accept the suggestion of the Federal Republic of Germany and Sweden that for purposes of this article a notation to the effect that the ocean carrier has taken over the goods (received-for-shipment) should be sufficient.

### Article 21 (old article 19)

#### 1. Article 19 [1962]:

Unless trans-shipment is prohibited by the terms of the credit, Bills of Lading will be accepted which indicate that the goods will be trans-shipped en route, provided the entire voyage is covered by one and the same Bill of Lading.

Bills of Lading incorporating printed clauses stating that the carriers have the right to trans-ship will be accepted notwithstanding the fact that the credit prohibits trans-shipment.

2. This article was not modified by ICC.

3. ICC did not adopt the following suggestions:

(a) A proposal by Cyprus to clarify that where a credit calls for "direct shipment" or "shipment without trans-shipment", it was not necessary for compliance that the bill of lading include a specific clause prohibiting trans-shipment;

(b) A proposal by Lebanon to add the following words at the end of paragraph (a) of this article ". . . provided the insurance in case of a C and F sale also covers all risks of unlimited trans-shipment", since this was already covered by revised article 7 requiring consistency of the documents.

(c) A proposal by Iraq that this article should state clearly that a bill of lading showing, other than by a printed trans-shipment clause, that there was or will be trans-shipment where this is prohibited by the credit, shall be unacceptable (article 21, paragraph (b) already seems to provide this result).

*Article 22 (old article 20)*

1. *Article 20* [1962]:

Banks will refuse a Bill of Lading showing the stowage of goods on deck, unless specifically authorized in the credit.

2. ICC added a new paragraph (b) to this article (analogous to paragraph (b) of new article 21) to the effect that banks are to accept a bill of lading containing a clause permitting on-deck carriage, provided the bill does not state specifically that the goods are loaded on deck.

3. ICC did not adopt the suggestion made by Australia, the German Democratic Republic, the Federal Republic of Germany, the Association of Banks in Malaysia-Singapore, Nigeria and Sweden that this article include a special provision permitting the carriage on deck of goods packed in containers. Similarly, ICC did not accept the recommendation by Finland and the Association of Banks in Malaysia-Singapore that bills of lading evidencing the carriage on deck of bulk cargo customarily carried in that manner, such as timber, be acceptable under this article.

*Deletion of old article 21*

1. *Article 21* [1962]:

Banks may require the name of the beneficiary to appear on the Bill of Lading as shipper or endorser, unless the terms of the credit provide otherwise.

2. ICC decided to delete old article 21 which had given banks the option of requiring, unless the credit terms provided otherwise, that the name of the beneficiary appear on the bill of lading as shipper or endorser.

3. All the comments received expressed dissatisfaction with the 1962 formulation of this article, which gave banks full discretion whether to accept bills of lading which did not include the name of the beneficiary. The National Bank of Czechoslovakia, the German Democratic Republic and the Federal Republic of Germany favoured deletion of this article, since, whenever desired, such a provision could be included in the terms of the credit. Australia and Leb-

anon proposed modification of the article to limit the option to the discretion of the negotiating bank only. New Zealand favoured retention of old article 21.

*New article 23*

1. ICC added this new article in order to deal with the acceptability of combined transport documents.

2. It had been suggested by Australia and the Federal Republic of Germany that the revision of "Uniform Customs" as to the acceptability of documents evidencing combined transport should await adoption of the Combined Transport Convention (TCM), and that then such transport be dealt with in separate provisions.

*Article 24 (old article 22)*

1. *Article 22* [1962]:

Banks will consider a Railway or Inland Waterway Bill of Lading or Consignment Note, Counterfoil Waybill, Postal Receipt, Certificate of Mailing, Air Mail Receipt, Air Transportation Waybill, Air Consignment Note or Air Receipt, Trucking Company Bill of Lading or any other similar document as regular when such document bears the reception stamp of the carrier or issuer, or when it bears a signature.

2. Following a proposal by Japan, ICC modified this article by substituting the term "Air Waybill" for the term "Air Transportation Waybill" and clarifying that, in order to be considered as regular, the shipping documents mentioned in the article must bear either the stamp of the carrier or his agent or a signature purporting to be that of the carrier or his agent.

3. By limiting "regular" documents to those bearing the stamp of the carrier or his agent or purported to be signed by the carrier or his agent, ICC adopted the suggestion of the National Bank of Czechoslovakia (and made earlier by the USA) that documents issued by forwarders not be accepted.

4. The following proposals were not accepted by ICC:

(a) To consider requiring that reception stamps also be signed (National Bank of Czechoslovakia, Lebanon);

(b) To require an indication of the consignee (Federal Republic of Germany, Iraq);

(c) To state when banks may accept duplicates of documents (National Bank of Czechoslovakia);

(d) To add delivery orders and "documents from other modern modes of transport" to the documents listed in this article (Hungary).

*Article 25 (old article 23)*

1. *Article 23* [1962]:

When a credit calls for an attestation or certification of weight in the case of transport other than by sea, banks will accept a weight stamp or any other official indication of weight on the shipping documents unless the credit calls for a separate or independent certificate of weight.

2. ICC amended this article, making it clear that where the credit terms require a certification of weight,

banks must accept a "declaration of weight superimposed by the carrier on the shipping document" (thus deleting the previous, vague standard of "any other official indication of weight on the shipping document"), unless the credit called for an independent certificate of weight.

3. None of the comments received dealt with this article.

*Article 26 (old article 24)*

1. *Article 24 [1962]:*

Insurance documents must be as specifically described in the credit, and must be issued and/or signed by insurance companies or their agents or by underwriters.

Cover notes issued by brokers will not be accepted, unless specifically authorized in the credit.

2. Under this article as revised, the insurance documents must be "as specified in the credit" (no longer "as specifically described in the credit"), in recognition of the fact that the credits do not always "specifically describe" the insurance documents. (This modification was favoured by the National Bank of Czechoslovakia and the German Democratic Republic.)

3. The following suggestions were not accepted by ICC:

(a) To consider the special problems of insuring goods carried in containers from the warehouse where the goods were packed in the container (Association of Banks in Malaysia-Singapore, Sweden);

(b) To clarify whether an insurance policy may be presented where the credit calls for an insurance certificate, and vice versa (Federal Republic of Germany, New Zealand);

(c) To consider whether to require that, for CIF deliveries, the insurance certificate be marked "premium paid" (Federal Republic of Germany).

*Article 27 (old article 25)*

1. *Article 25 [1962]:*

Unless otherwise specified in the credit, banks may refuse any insurance documents presented if they bear a date later than the date of shipment as evidenced by the shipping documents.

2. ICC made the following substantive changes in this article:

(a) Banks are now to accept insurance documents issued later than the date of shipment or dispatch if these documents establish that the cover is effective at the latest from the date of shipment or dispatch, (under the 1962 provision banks had an option whether or not to accept);

(b) The article now extends to insurance documents covering combined transport, but in that case it requires that the cover be effective as from "the date of taking the goods in charge".

3. The amendment of this article, requiring banks to accept all insurance documents that show that coverage is effective at the latest from the date of shipment, was supported in the comments of Australia, the National Bank of Czechoslovakia, the German Demo-

cratic Republic, the Federal Republic of Germany, Hungary, Kuwait, Lebanon and South Africa.

4. The comment of the National Bank of Czechoslovakia had suggested that special provision be made for the commencement of insurance cover for combined transport.

*Article 28 (old article 26)*

1. *Article 26 [1962]:*

Unless otherwise specified in the credit, the insurance document must be expressed in the same currency as the credit.

The minimum amount for which insurance must be effected is the CIF value of the goods concerned. However, when the CIF value of the goods cannot be determined from the documents on their face, banks will accept as such minimum amount the amount of the drawing under the credit or the amount of the relative commercial invoice, whichever is the greater.

2. ICC did not change the text of this article.

3. No comments were received dealing with this article.

*Article 29 (old article 27)*

1. *Article 27 [1962]:*

Credits must expressly state the type of insurance required and, if any, the additional risks which are to be covered. Imprecise terms such as "usual risks" or "customary risks" shall not be used.

Failing specific instructions, banks will accept insurance cover as tendered.

2. ICC modified this article by noting that credits "should" (instead of "must", as previously) state the type of insurance required and that certain imprecise terms "should not" (instead of "must not") be used. ICC also clarified that banks are to accept insurance documents even if they include such imprecise terms.

3. No comments were received dealing with this article.

*Article 30 (old article 28)*

1. *Article 28 [1962]:*

When a credit stipulates "insurance against all risks", banks will accept an insurance document which contains any "all risks" notation or clause, and will assume no responsibility if any particular risk is not covered.

2. Except for changing the first word from "when" to "where", ICC did not modify the language of this article.

3. No comments were received dealing with this article.

*Article 31 (old article 29)*

1. *Article 29 [1962]:*

Banks may accept an insurance document which indicates that the cover is subject to a franchise, unless it is specifically stated in the credit that the insurance must be issued irrespective of percentage.

2. ICC modified the provisions of this article in the following respects:

(a) Removed the option that banks had previously of accepting or not insurance documents falling within the purview of this article;

(b) Added that insurance cover subject to "an excess (deductible)" was to be accepted by banks.

3. The removal of the option banks had enjoyed under this article was supported by the National Bank of Czechoslovakia and the Federal Republic of Germany.

*Article 32 (old article 30)*

1. *Article 30* [1962]:

Unless otherwise specified in the credit, commercial invoices must be made out in the name of the applicant for the credit.

Unless otherwise specified in the credit, banks may refuse invoices issued for amounts in excess of the amount permitted by the credit.

The description of the goods in the commercial invoice must correspond with the description in the credit. In the remaining documents the goods may be described in general terms.

2. ICC modified this article by noting that in documents other than the commercial invoice the goods may be described in general terms as long as those terms were not inconsistent with the description of the goods in the credit.

3. The concern expressed in the comments of the National Bank of Czechoslovakia and the USSR about the vagueness of the expression "general terms" in paragraph (c) was met by the addition of the proviso that the description of the goods "in general terms" in documents other than the commercial invoice had to be consistent with the description of the goods in the credit, and by the revision of article 7 which now requires that the documents presented not be inconsistent.

4. The following suggestions were not adopted by ICC:

(a) To require that the commercial invoice be made out in the currency of the credit (Lebanon);

(b) To require, rather than to permit, banks to refuse commercial invoices for amounts in excess of the credit amounts (National Bank of Czechoslovakia, Federal Republic of Germany);

(c) To clarify the legal position of banks where the credit only covers part of the purchase price and the documents are sent by the remitting bank with instructions not to release them to the buyer unless further conditions not mentioned in the credit are met (e.g. payment of the rest of the purchase price) (National Bank of Czechoslovakia);

(d) To amend paragraph (a) to require that the commercial invoice be made out in the name of the person for whose account the credit is issued (Federal Republic of Germany).

*Article 33 (old article 31)*

1. *Article 31* [1962]:

When other documents are required, such as Warehouse Receipts, Delivery Orders, Consular In-

voices, Certificates of Origin, of Weight, of Quality or of Analysis, etc., without further definition, banks may accept such documents as tendered, without responsibility on their part.

2. ICC eliminated the option banks had previously as to whether to accept the documents mentioned in this article; under the article as revised "banks will accept such documents as tendered".

3. The following suggestions concerning this article were not adopted by ICC:

(a) To clarify that acceptability of the documents under this article did not require that they contain the same description of the goods as the one which appeared in the credit (Lebanon);

(b) To provide that these documents were to be accepted unless on their face they were not in accordance with the terms of the credit (National Bank of Czechoslovakia);

(c) To provide guidelines for certificates required by credits and assure that they serve some object (New Zealand);

(d) To clarify whether "Certificates of Origin" refer only to official documents (Federal Republic of Germany).

*Article 34 (old article 32)*

1. *Article 32* [1962]:

The words "about", "circa" or similar expressions are to be construed as allowing a difference not to exceed 10 per cent more or 10 per cent less, applicable according to their place in the instructions, to the amount of the credit or to the quantity or unit price of the goods.

Unless a credit stipulates that the quantity of the goods specified must not be exceeded or reduced, a tolerance of 3 per cent more or 3 per cent less will be permissible, always provided that the total amount of the drawings does not exceed the amount of the credit. This tolerance does not apply when the credit specifies quantity in terms of packing units or containers or individual items.

2. ICC only made changes of a drafting nature in this article.

3. In its comment the USSR stated that it assumed that as soon as "Uniform Customs" incorporate a definition of "containerized transport", quantity specified in the credit in terms of containers would be added to those now listed in the second sentence of paragraph (b) as not permitting a 3 per cent tolerance.

4. A number of the comments were concerned with the case where the credit terms exclude partial shipments but do not specify the quantity of the goods and wanted to provide for such cases in article 34. In the view of Lebanon, the one shipment may be for any amount within the stated maximum value of the credit, while Kuwait favoured a rule that the one shipment should be for at least 90 per cent of the total amount of the credit and the Central Bank of Jordan that it be for at least 97 per cent.

*Article 35 (old article 33)*

1. *Article 33* [1962]:

Partial shipments are allowed, unless the credit specifically states otherwise.

Shipments made on the same ship and for the same voyage, even if the Bills of Lading evidencing shipment "on board" bear different dates, will not be regarded as partial shipments.

2. ICC amended this article by adding a provision to the effect that shipments on the same ship and for the same voyage will not be deemed partial shipments even if the bills of lading indicate different ports of shipment.

3. The above amendment of article 35 was supported by the comments of the National Bank of Czechoslovakia, the German Democratic Republic and Hungary.

4. The following suggestions were not accepted by ICC:

(a) To provide that documents showing that goods under a credit only filled part of a container which then was filled by other consignments would be unacceptable (Association of Banks in Malaysia-Singapore, Nigeria);

(b) To extend paragraph (b) of this article to "received-for-shipment" bills of lading (Australia);

(c) To specify what documents other than bills of lading may cover only part of a shipment without causing the shipment to be deemed a number of partial shipments (Mexico);

(d) To require each transport document to indicate the name of the carrying vessel (Costa Rica);

(e) To provide that shipments on the same train, although under more than one waybill, are not deemed partial shipments (Romania);

(f) To deal with the effect of the various bills of lading covering one shipment showing different ports of destination (Federal Republic of Germany).

#### *Article 36 (old article 34)*

##### 1. *Article 34 [1962]:*

If shipment by instalments within given periods is stipulated and any instalment is not shipped within the period allowed for that instalment, the credit ceases to be available for that or any subsequent instalment, unless otherwise specified in the credit.

2. ICC did not modify the text of this article.

3. ICC did not accept the proposal of Lebanon to provide in this article for the special case where the applicant for the credit accepts documents covering a partial shipment, although under the credit partial shipments are forbidden.

#### *Article 37 (old article 35)*

##### 1. *Article 35 [1962]:*

All irrevocable credits must stipulate an expiry date for presentation of documents for payment, acceptance or negotiation, notwithstanding the indication of a latest date for shipment.

2. ICC decided to require in this article that "all credits, whether revocable or irrevocable, must stipulate an expiry date". ICC decided further that the general rule of revised article 6 (on incomplete or

unclear instructions) would apply to credits which did not stipulate an expiry date.

3. As a consequence of the above decisions, ICC did not adopt proposals by Lebanon and New Zealand that this article provide that in the absence of a stipulated expiry date, the latest date for shipment should determine the expiry date. Several comments (National Bank of Czechoslovakia, German Democratic Republic, Khmer Republic, Lebanon) supported the decisions taken by ICC regarding this article and the correlative deletion of old article 38 (which had dealt with the expiry date for revocable credits in the absence of an express stipulation).

4. The USSR noted that in practice the expiry date for credits concerns the presentation of the documents not to the paying, accepting or negotiating bank, but to the bank in the beneficiary's country as it is there that the beneficiary will be paid; it suggested that ICC consider this point.

#### *Article 38 (old article 36)*

##### 1. *Article 36 [1962]:*

The words "to", "until", "till" and words of similar import applying to the expiry date for presentation of documents for payment, acceptance or negotiation, or to the stipulated latest date for shipment, will be understood to include the date mentioned.

2. ICC only made one minor change of a drafting nature in this article.

3. None of the comments received dealt with this article.

#### *Article 39 (old article 37)*

##### 1. *Article 37 [1962]:*

When the stipulated expiry date falls on a day on which banks are closed for reasons other than those mentioned in article 11, the period of validity will be extended until the first following business day.

This does not apply to the date for shipment which, if stipulated, must be respected.

Banks paying, accepting or negotiating on such extended expiry date must add to the documents their certification in the following wording:

"Presented for payment (or acceptance or negotiation as the case may be) within the expiry date extended in accordance with article 37 of the Uniform Customs."

2. ICC amended this article in order to make it clear that the latest date for shipment could not be extended under this article and that shipping documents dated later than the latest date for shipment (whether stipulated or based on the expiry date of the credit) would not be accepted; however, documents other than shipping documents are to be accepted even if bearing the date of the extended expiry date provided under the terms of this article.

3. ICC did not adopt the proposal by Japan to provide that if the latest date for shipment fell on a holiday during which there were no services at the port, the latest date for shipment would be the next working day.

4. The National Bank of Czechoslovakia suggested that in this article "non-working days" should be defined in a positive manner.

*Deletion of old article 38*

1. *Article 38* [1962]:

The validity of a revocable credit, if no date is stipulated, will be considered to have expired six months from the date of the notification sent to the beneficiary by the bank with which the credit is available.

2. This article was deleted by ICC, based on its decision to require in new article 37 that all credits bear an expiry date.

*Deletion of old article 39*

1. *Article 39* [1962]:

Unless otherwise expressly stated, any extension of the stipulated latest date for shipment shall extend for an equal period the validity of the credit.

Where a credit stipulates a latest date for shipment, an extension of the period of validity shall not extend the period permitted for shipment unless otherwise expressly stated.

2. This article, dealing with the effect of an extension of the stipulated latest date for shipment on the expiry date of the credit and vice versa, was deleted by ICC.

3. A number of comments had noted the serious difficulties in practice that had arisen under this article (National Bank of Czechoslovakia, German Democratic Republic, Federal Republic of Germany, Hungary, Romania) and offered various suggestions for its clarification; however, no objection was raised when ICC proposed deletion of this article on the ground that in each case extension of either the latest date for shipment or the expiry date of the credit should be only according to instructions given specifically for this purpose by the applicant for the credit.

*Article 40 (old article 40)*

1. *Article 40* [1962]:

Unless the terms of the credit indicate otherwise, the words "departure", "dispatch", "loading" or "sailing" used in stipulating the latest date for shipment of the goods will be understood to be synonymous with "shipment".

Expressions such as "prompt", "immediately", "as soon as possible" and the like should not be used. If they are used, banks will interpret them as a request for shipment within thirty days from the date on the advice of the credit to the beneficiary by the issuing bank or by an advising bank, as the case may be.

2. ICC added a paragraph (c) stating that expressions such as "on or about" will be interpreted as requests for shipment "during the period from five days before to five days after the specified date, both end days included".

*Article 41 (old article 41)*

1. *Article 41* [1962]:

Documents must be presented within a reasonable time after issuance. Paying, accepting or negotiating

banks may refuse documents if, in their judgment, they are presented to them with undue delay.

2. As formulated in "Uniform Customs (1962)" banks had the option of refusing to accept documents presented, in their judgement, with undue delay (i.e. not within a reasonable time after issuance). In revising this article ICC decided to abandon the concept of "stale" documents presented with undue delay; instead, article 41, as revised, requires that credits stipulate a specified period of time after the date of issuance of the bills of lading or other shipping documents during which documents must be presented for payment, acceptance or negotiation. Revised article 41 provides further that in the absence of such stipulation in the credit, "banks will refuse documents presented to them later [than] 21 days after the date of issuance of the bills of lading or other shipping documents".

3. Most comments had criticized the vagueness and practical difficulties inherent in terms such as "within a reasonable time" and "without undue delay" found in the 1962 version of "Uniform Customs", and the option previously given to banks to refuse documents on this basis (Australia, National Bank of Czechoslovakia, Germany (Federal Republic of), Lebanon, Mexico, Nigeria, South Africa, USSR, United Kingdom). It was also stated that arrival of the goods prior to the presentation of the documents should not automatically be deemed to be undue delay (Australia, Nigeria, USSR). The United Kingdom and the Central Bank of Jordan had suggested that instead of "presentation within a reasonable time", credits should specify a latest date for the presentation of documents, or, in the absence of such stipulation, a definite cut-off date should be provided in "Uniform Customs".

4. Most of the comments received are reflected in the revised text of article 41. However, the Association of Banks in Malaysia-Singapore noted that it entailed a change of their current practice, and the German Democratic Republic was of the view that the change was too favourable to banks by freeing them from their joint responsibility for the timely presentation of documents.

5. The following suggestions were not accepted by ICC:

(a) To provide that for shipping documents bearing "on-board" endorsements, for the purposes of article 41 the dates of such endorsements shall be considered as the dates of issuance of the documents (Costa Rica, Association of Banks in Malaysia-Singapore, Nigeria);

(b) To adopt a special provision to govern container transport (Sweden);

(c) To provide that banks are not obliged to accept documents received after the credit has expired (New Zealand);

(d) To state that documents may be issued earlier than the date of issuance of the credit, unless the credit bars this expressly (Federal Republic of Germany);

(e) To provide that banks may not refuse documents as "stale" if the credit did not include a stipulation of the latest date for the presentation of documents (USSR).

*Article 42 (old article 42)*1. *Article 42* [1962]:

Banks are under no obligation to accept presentation of documents outside their banking hours.

2. This article was not modified by ICC.

3. None of the comments received dealt with this article.

*Articles 43 and 44 (old articles 43 and 44)*1. *Article 43* [1962]:

The terms "first half", "second half" of a month shall be construed respectively as from the 1st to the 15th, and the 16th to the last day of each month, inclusive.

*Article 44* [1962]:

The terms "beginning", "middle" or "end" of a month shall be construed respectively as from the 1st to the 10th, the 11th to the 20th and the 21st to the last day of each month, inclusive.

2. These articles were not modified by ICC.

3. ICC did not adopt the suggestion made by the Federal Republic of Germany to define the meaning of the term "on/about" when followed by a specific date or one of the expressions mentioned in articles 43 and 44.

*Article 45 (old article 45)*1. *Article 45* [1962]:

When a bank issuing a credit instructs that the credit be confirmed or advised as available "for one month", "for six months" or the like, but does not specify the date from which the time is to run, the confirming or advising bank will confirm or advise the credit as expiring at the end of such indicated period from the date of its confirmation or advice.

2. The text of this article was not modified by ICC.

3. No comments were received dealing with this article.

*Article 46 (old article 46)*1. *Article 46* [1962]:

A transferable credit is a credit under which the beneficiary has the right to give instructions to the bank called upon to effect payment or acceptance or to any bank entitled to effect negotiation to make the credit available in whole or in part to one or more third parties (second beneficiaries).

A credit can be transferred only if it is expressly designated as "transferable" by the issuing bank. Terms such as "divisible", "fractionable", "assignable" and "transmissible" add nothing to the meaning of the term "transferable" and shall not be used.

A transferable credit can be transferred once only. Fractions of a transferable credit (not exceeding in the aggregate the amount of the credit) can be transferred separately, provided partial shipments are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the credit. The credit can be transferred only on the terms and conditions specified in the original

credit, with the exception of the amount of the credit, of any unit price stated therein, and of the period of validity or period for shipment, any or all of which may be reduced or curtailed. Additionally, the name of the first beneficiary can be substituted for that of the applicant for the credit, but if the name of the applicant for the credit is specifically required by the original credit to appear in any document other than the invoice, such requirement must be fulfilled.

The first beneficiary has the right to substitute his own invoices for those of the second beneficiary, for amounts not in excess of the original amount stipulated in the credit and for the original unit prices stipulated in the credit, and upon such substitution of invoices the first beneficiary can draw under the credit for the difference, if any, between his invoices and the second beneficiary's invoices. When a credit has been transferred and the first beneficiary is to supply his own invoices in exchange for the second beneficiary's invoices but fails to do so on demand, the paying, accepting or negotiating bank has the right to deliver to the issuing bank the documents received under the credit, including the second beneficiary's invoices, without further responsibility to the first beneficiary.

The first beneficiary of a transferable credit can transfer the credit to a second beneficiary in the same country, but if he is to be permitted to transfer the credit to a second beneficiary in another country, this must be expressly stated in the credit. The first beneficiary shall have the right to request that payment or negotiation be effected to the second beneficiary at the place to which the credit has been transferred, up to and including the expiry date of the original credit, and without prejudice to the first beneficiary's right subsequently to substitute his own invoices for those of the second beneficiary and to claim any difference due to him.

The bank requested to effect the transfer, whether it has confirmed the credit or not, shall be under no obligation to make such transfer except to the extent and in the manner expressly consented to by such bank, and until such bank's charges for transfer are paid.

Bank charges entailed by transfers are payable by the first beneficiary unless otherwise specified.

2. Aside from minor drafting changes, ICC modified this article as follows:

(a) Rearranged the sequence of the paragraphs so that the last two paragraphs in the 1962 version are now paragraphs (b) and (c);

(b) Under the second sentence of paragraph (f), the paying, accepting or negotiating bank can now be freed of responsibility to the first beneficiary if the latter fails to supply his own invoices "on first demand", rather than "on demand" as under the 1962 formulation;

(c) Adopted a new principle in paragraph (g), whereby "the first beneficiary of a transferable credit can transfer the credit to a second beneficiary in the same country or in another country unless the credit specifically states otherwise"; previously, transfer to a

second beneficiary in another country was only permitted if expressly authorized in the credit (supported by the Federal Republic of Germany; opposed by the National Bank of Czechoslovakia).

3. ICC did not accept the following proposals:

(a) To require that amendments of the credit be approved by the first beneficiary before their transmission to the second beneficiary (Egypt);

(b) To require notification of the issuing bank of the transfer of a credit (Federal Republic of Germany; opposed by the National Bank of Czechoslovakia);

(c) To make it possible to have transfers wherein the responsibility for payment is transferred to a new paying bank in the country of the second beneficiary (Hungary; opposed by the National Bank of Czechoslovakia);

(d) To clarify whether the first beneficiary can draw for the difference between the maximum credit amount and the amount drawn by the second beneficiary, pursuant to paragraphs (f) and (g) of this article, even after the expiry date of the credit (Lebanon);

(e) To limit transfers to a second beneficiary in another country, under paragraph (g), to "negotiation", instead of "payment or negotiation" (Lebanon);

(f) To clarify whether the first beneficiary may re-transfer the credit if it was returned without execution on it by the second beneficiary (Egypt);

(g) To permit transferable credits to be transferred more than once, unless specified otherwise in the credit (National Bank of Czechoslovakia);

(h) To specify in paragraph (d) that terms such as "divisible", "fractionable" etc. "shall be disregarded", instead of "shall not be used" (National Bank of Czechoslovakia);

(i) To merely provide in paragraph (b) that a bank may refuse to effect the transfer until its usual charges for transfer have been paid (New Zealand).

#### *New article 47*

1. ICC added this new article to "Uniform Customs" in order to make it clear that the fact of stating that a credit is non-transferable will not affect the rights of the beneficiary under the applicable law to assign the proceeds.

2. The United States had proposed the addition of a new article 47 regulating in detail the assignment of proceeds under a credit. This proposal was supported by Mexico, but opposed by the National Bank of

Czechoslovakia, the German Democratic Republic, the Federal Republic of Germany and New Zealand on the grounds that this matter should properly be left to national legislation. ICC adopted the suggestion of New Zealand to merely note that the non-transferability of a credit did not bar assignment of the proceeds by the beneficiary.

#### *General observations*

The comments received also included the following suggestions and proposals of a more general nature:

1. "Uniform Customs" should deal with "deferred-payment credits" (Federal Republic of Germany), and "credits with partial deferment of payment" (USSR).

2. There should be a provision that if the beneficiary does not pay the commission of an advising, confirming or paying bank, the commission will be charged to the applicant for the credit (Hungary).

3. "Uniform Customs" should provide that if any documents additional to those called for by the credit are presented, they will be accepted by the banks as tendered without any responsibility on their part (Mexico), or that banks may refuse to accept and forward such documents (Federal Republic of Germany).

4. There should be a rule that if the credit imposes some obligation on the beneficiary but does not require a specific document attesting the accomplishment of this obligation, negotiating banks will be able to rely on a declaration by the beneficiary which they will then transmit to the issuing bank (Lebanon).

5. To add as recommendations the following:

(a) Should avoid the terms CIF, FOB (Costa Rica);

(b) If a bank issues a credit in the currency of a third country, it should in the credit authorize the paying or negotiating bank to be automatically and directly reimbursed through a designated bank in such third country (Costa Rica).

6. To add a provision excusing the paying bank from the responsibility of controlling that export goods subject to complex, technical specifications in fact meet them; the paying bank should only require a statement by the exporter to the effect that the goods meet the specifications (Romania);

7. To add a provision that if the credit does not indicate its place of availability, such place shall be deemed to be the bank that should effect payment, acceptance or negotiation under the credit (National Bank of Czechoslovakia).