



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/CN.9/89/Corr.1
13 May 1974

ENGLISH, RUSSIAN AND
SPANISH ONLY

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Seventh session
New York, 13 May 1974
Items 5 (b) and (c) of the provisional agenda

INTERNATIONAL PAYMENTS

BANKERS' COMMERCIAL CREDITS; BANKERS' GUARANTEES

Note by the Secretary-General

Corrigendum

Replace pages 1 to 3 of the annex by the attached text.

Annex

INTERNATIONAL PAYMENTS

Note submitted by the International Chamber of Commerce
at the seventh session of the United Nations Commission
on International Trade Law

In accordance with the wish expressed by the United Nations Commission on International Trade Law at its fifth session, ICC is pleased to be able to submit to the Commission a progress report in respect of its revision of the "Uniform customs and practice for documentary credits", on contract guarantees and on payment guarantees.

I. REVISION OF THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS"

1. The International Chamber of Commerce is now in a position to submit to the United Nations Commission on International Trade Law (UNCITRAL) a complete draft revision, the general lines of which were adopted by the ICC Commission on Banking Technique and Practice at its meeting of 1 February 1974. The Commission authorized its working party on revision to finalize the text of the draft, on the basis of any final comments it might receive from National Committees of ICC. The working party will meet on 13 May 1974, so that the draft can be submitted for adoption to the Council of ICC, which will meet in Hamburg on 10 and 11 June 1974. UNCITRAL will, in the meantime, of course, receive a copy of the final ICC draft.

2. The draft revision appears in the annex to document No. 470/236 enclosed with this note. The work was based only on the English version of the draft, it being understood that a drafting committee will be set up to prepare a French version of the text, once it has been finally adopted. This draft was prepared after consideration of the comments that were made on earlier proposals for revision, as set out in ICC documents Nos. 470/214, 225 and Addendum, 226, 227 and 229. These comments came not only from National Committees of ICC but also, through the United Nations, from countries not represented in ICC, and from chambers of commerce of socialist countries through the Ad Hoc "Banking Technique" Working Group of the ICC Committee for Liaison with Chambers of Commerce of Socialist Countries.

3. As may be seen from the above-mentioned document, some substantive amendments are proposed to the "Uniform customs and practice for documentary credits", along with a number of purely drafting changes. One point which ICC wanted to take into account was the impact of the expansion of combined and containerized transport on the "Uniform customs", and for that purpose it introduced a number of new articles. Enclosed (as an annex to document No. 470/240) is a commentary by the Chairman of the ICC Commission on Banking Technique and Practice, which explains the reasons for the principal changes proposed in the draft.

/...

II. CONTRACT GUARANTEES

1. The draft annexed to the note submitted by ICC to the fifth session of UNCITRAL (document No. 460/139-470/217) was revised by a Joint Working Group, set up by its Commissions on International Commercial Practice and on Banking Technique and Practice, at meetings which extended over the period from June 1972 to November 1973. Here again, ICC had the benefit not only of comments by its National Committees, but also of a United Nations survey which acquainted it with the practice of countries not represented in ICC, as well as comments by chambers of commerce of socialist countries through the Ad Hoc "Banking Technique" Working Group of the ICC Liaison Committee.

2. As a result of this, a further revision of the draft uniform rules for contract guarantees could be submitted to the Commissions on International Commercial Practice and on Banking Technique and Practice at their meetings from 21 to 23 November 1973. The two Commissions felt that, with a view to establishing a just balance between the interests of the three parties involved in guarantees - namely, the tenderer, the beneficiary and the guarantor - in accordance with the task entrusted to ICC by UNCITRAL, the procedures for implementing guarantees should be the subject of thorough study. Accordingly, at a joint meeting on 29 March 1974, the two Commissions instructed the Joint Working Group to reconsider the question, with the following considerations as guidelines:

"The Commissions felt that, if procedures for implementing guarantees that were both fair and practical were to be instituted, two main problems would have to be settled. The first is the period within which the guarantor must make payment after being asked to do so by beneficiary, and in this connexion it seems essential for the rules to specify that the period must be mentioned in the guarantee itself. Secondly, with regard to the conditions to be fulfilled in order for the guarantee to be implemented, a distinction should be made between guarantees which specify what those conditions will be and those which are silent on the subject. In the case of the first category, a sufficient period should be allowed to enable the guarantor to verify that the specified conditions are in fact fulfilled (especially the examination of documents). In the case of the second category, it seems desirable not to establish a special régime for guarantees payable on first demand, and to institute a system providing effective protection to the parties involved and eliminating all possibility of abuse. On the latter point, the Working Group will have to consider the possibility of recourse to an appraisal or provisional arbitration procedure, under which a neutral third party would be asked to verify within a relatively brief period of time that the prima facie conditions for implementation of the guarantee were fulfilled."*

3. The activities of the Working Group will therefore continue on the basis laid down by the two Commissions. As soon as the Group has been able to prepare a complete draft of the rules - i.e., one containing new proposals concerning modes of implementation of guarantees - that draft will be communicated to the United Nations.

* Translation by the United Nations Secretariat from the French text.

III. PAYMENT GUARANTEES

1. At the suggestion of UNCITRAL, and more particularly, on the basis of a proposal by the Soviet delegation, ICC has undertaken a study of payment guarantees given by banks.
2. An initial questionnaire drawn up by Mr. B. S. Wheble, Chairman of the Commission on Banking Technique and Practice (document No. 470/207), revealed, as was mentioned in the note submitted by ICC to the fifth session of UNCITRAL, that there are two types of payment guarantee: one given in respect of payment against a documentary credit, and the other in respect of other, more varied liabilities. Following comparison of the views of representatives of ICC and of members of the ICC Committee for Liaison with Chambers of Commerce of Socialist Countries, it was felt there was no point in attempting to unify the latter types of guarantee. As suggested by the Soviet delegation to the fifth session of UNCITRAL, an additional questionnaire has been circulated concerning bank guarantees designed to ensure payment to the exporter of the price of goods under a contract of sale. This question was the subject of a symposium during the XXIVth ICC Congress at Rio de Janeiro in 1973, after which it was stated that further studies were required in this field.

Hence, it will be for the ICC Commission on Banking Technique and Practice, with the support of the Ad Hoc "Banking Technique" Working Group of the ICC Committee for Liaison with Chambers of Commerce of Socialist Countries, to determine the practical arrangements for the continuation of this study at a forthcoming meeting.

CONCLUSION

ICC wishes to affirm its great interest in close co-operation with the United Nations Commission for International Trade Law, whose surveys are of the greatest value to it in its continuing work on the standardization of commercial and banking practice. It wishes in particular to emphasize the importance to it of the presence of representatives of the UNCITRAL secretariat at meetings of its relevant subsidiary committees and expresses the hope that the current co-operation will remain fruitful.
