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UNITED NATIONS COMMISSION ON
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CO-ORDINATION OF WORK:
DOCUMENTARY CREDITS

Note by the Secretariat

1. The Commission at its first session in 1968 placed the subject of bankers' commercial credits on its priority list of topics. In view of the previous work done by the International Chamber of Commerce (ICC) in this field, through its publication of the Uniform Customs and Practice for Documentary Credits, the Commission requested the Secretary-General to inquire whether the ICC would be prepared to undertake a study of the subject. 1/

Study by the ICC

2. The study of the ICC, submitted to the Commission at its second session in 1969 as Annex I to document A/CN.9/15, described the manner in which documentary credits were used and the history in the ICC of the preparation of the Uniform Customs and Practice for Documentary Credits (UCP) from the initial "Uniform Regulation on Documentary Credits" adopted in 1929 through the then current 1962 version of UCP.

3. The study also pointed out that the ICC kept UCP under constant review to make sure that it did not drop behind current changes in international trade and shipping practice. The study closed by saying that:

"It would, however, be of considerable help to have the United Nations, through UNCITRAL, commend this Code to all Member nations, including, if possible, those where these rules are not yet applied." 2/

1/ Report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16, (A/7216), para. 48 (28).

2/ A/CN.9/15, Annex I, para. 26.

4. In response to this request of the ICC, the Commission at its second session commended to Governments the use of the 1962 version of UCP. 3/ At the same time it decided to keep the item on its agenda.

1974 revision of UCP

5. At its third session the Commission was informed that the ICC had appointed a working party for the revision of the 1962 version of UCP. 4/ The Commission welcomed the work of revision to be undertaken by the ICC and, in order to permit interested circles in countries not represented in the ICC to make observations on the operation of the 1962 version of UCP, it was decided that the Secretary-General should invite Governments and interested trade and banking institutions to communicate their observations to the Secretary-General for transmission to the ICC. In response to his invitation the Secretary-General received a number of replies, which were transmitted to the ICC for consideration along with the replies received by it from its National Committees.

6. At its seventh session in 1974, the Commission took note of the fact that the Commission on Banking Technique and Practice of the ICC had adopted a draft revised text of UCP. 5/ The Commission also noted that the text submitted to it was subject to further revision and that a final text was expected to be adopted by the Council of the ICC later in that year. There was general agreement in the Commission that, while the Commission could not itself adopt the revised text of UCP, it should consider at its following session the desirability of commending the use of UCP in transactions involving the establishment of a documentary credit.

7. As had been expected, between the seventh and eighth sessions of the Commission, the Executive Committee of the ICC adopted the 1974 version of UCP for use in transactions involving the establishment of a documentary credit as from 1 October 1975. In conformity with the view expressed at its seventh session the Commission, at its eighth session, decided to commend the use of the 1974 version of UCP. 6/ This decision of the Commission was adopted in the form normally used for resolutions and was reprinted by the ICC in its brochure containing the text of UCP. 7/

Current revision

8. The 1974 version of UCP has been considered to have been generally successful in eliminating certain problems arising under the 1962 version and to have

3/ Report of the United Nations Commission on International Trade Law on the work of its second session, Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18, (A/7618), para. 95.

4/ Report of the United Nations Commission on International Trade Law on the work of its third session, Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17, (A/8017), paras. 119-126.

5/ 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), paras. 30-35.

6/ Report of the United Nations Commission on International Trade Law on the work of its eighth session, Official Records of the General Assembly, Thirtieth Session, Supplement No. 17, (A/10017), para. 41.

7/ The text of the decision is contained in the Annex to this report. The 1974 version of UCP is contained in ICC publication No. 290.

allowed for developments in transport technology and commercial practice. However, since 1974 there have been further developments which have affected the use of documentary credits. In particular these developments are to be found in the use of and documentation for unitized cargo, especially in connexion with multi-modal transport, the establishment of documentary credits by tele-transmission, and certain recent changes in marine insurance.

9. Furthermore, in certain countries the use of stand-by letters of credit had become of great economic significance and it was desirable to specify their legal characteristics. As a result, the Commission at its eleventh session in 1978 placed on its priority list of subjects the topic of "stand-by letters of credit, to be studied in conjunction with the International Chamber of Commerce." 8/ The topic was further discussed at the Commission's twelfth session where it was noted that the work of the ICC in respect of documentary letters of credit had a direct bearing on work in respect of stand-by letters of credit. 9/ For this reason, there was general agreement that the ICC should be encouraged to continue its work on stand-by letters of credit in co-operation with the Commission's Secretariat.

10. As a result of these developments, in 1979 the ICC created a working party to consider a further revision to UCP. It was thought that the desirability of revisions in the following respects might particularly be examined:

- UCP provisions relating to the presentation of transport documentation bearing especially in mind development in techniques such as combined transport;
- The responsibilities of banks, and the relationships between banks, and between banks and other parties;
- The possible introduction of specific provisions relating to stand-by letters of credit. 10/

11. As a first step the working party sent a questionnaire to its National Committees to inquire as to the desirability of revising the 1974 version of UCP. At the request of the ICC, the Commission's Secretariat sent the same questionnaire by means of a note verbale to all Governments. 11/ The replies

8/ Report of the United Nations Commission on International Trade Law on the work of its eleventh session, Official Records of the General Assembly, Thirty-third Session, Supplement No. 17, (A/33/17), para. 67.

9/ Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17, (A/34/17), paras. 45-48. The Commission had before it a report of the Secretary-General entitled "Stand-by letters of credit" (A/CN.9/163).

10/ At its meeting of 14 March 1977 the Commission on Banking Technique and Practice of the ICC had given its opinion that a stand-by credit fell within the definition of a documentary credit contained in UCP. However, it was felt that a specific reference to stand-by letters of credit within the text of UCP would make this point clearer. Moreover, because of the somewhat different nature of a stand-by credit as compared to a documentary credit used in connexion with a sale of goods, it was expected that some changes might need to be made to the text of UCP to accommodate better the stand-by letter of credit.

11/ The Commission was informed at its fourteenth session of the planned revision of the 1974 version of UCP (A/CN.9/202/Add. 1, paras. 131-132 and A/CN.9/203, para. 22) and that the Commission's Secretariat had sent the questionnaire to all Governments at the request of the ICC (ibid).

received by the Commission's Secretariat were transmitted to the ICC for consideration by the working party. In addition, the Commission's Secretariat has been represented at the meetings of the working party.

12. The working party has prepared a draft revision of UCP which was considered by the Commission on Banking Technique and Practice of the ICC at its meeting of 24-25 May 1982. The Banking Commission accepted the major proposals of the working party, including a specific reference to the applicability of UCP to stand-by letters of credit and a major renovation of the articles on transport documents. It also requested the working party to reconsider several points for further clarification.

13. It is now anticipated that the Banking Commission will be in a position to approve a final text of the newly revised version of UCP before the spring of 1983.

Conclusion

14. The Commission may wish to take note of the work undertaken by the ICC to keep UCP abreast of developments in international trade and shipping practice and of its actions in response to the view expressed by the Commission at its twelfth session that the ICC should be encouraged to continue its work on stand-by letters of credit in conjunction with the Commission's Secretariat. The Commission may also wish to note that, as was the case with the 1974 revision of UCP and in order to permit interested circles in countries not represented in the ICC to make observations on the operation of UCP so that these could be taken into account in its revision, the Secretary-General has already addressed to all Governments the same questionnaire as was sent by the ICC to its National Committees and has transmitted the replies received to the ICC for its consideration.

15. The Commission may, therefore, wish to consider at its sixteenth session the possibility of commending the use of the revised text of UCP, as it did in respect of the 1962 and 1974 versions of UCP.

ANNEX

Decision of the United Nations Commission on International Trade Law, adopted on 17 April 1975:

The United Nations Commission on International Trade Law,

Expressing its appreciation to the International Chamber of Commerce for having transmitted to it the revised text of "Uniform Customs and Practice for Documentary Credits", which was approved by the Commission on Banking Technique and Practice of the International Chamber of Commerce on 14 October 1974 and adopted by the Executive Committee of the International Chamber of Commerce on 3 December 1974,

Congratulating the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by bringing up to date its rules on documentary credit practice to allow for developments in transport technology and changes in commercial practice,

Having regard to the fact that, in revising the 1962 text of "Uniform Customs", the International Chamber of Commerce has taken into account the observations made by Governments and banking and trade institutions of countries not represented within it and transmitted to it through the Commission,

Noting that "Uniform Customs" constitutes a valuable contribution to the facilitation of international trade,

Commends the use of the 1974 revision, as from 1 October 1975, in transactions involving the establishment of a documentary credit.