

〈ARTICLE〉

SOME STUDIES ON THE DOCUMENTARY BILL OF EXCHANGE WITH LETTER OF CREDIT

—From the Viewpoint of “Revised Uniform
Customs & Practice for Documentary Credits”—

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I. Preface

In the previous article, I discussed the “Documentary Bill of Exchange” of the Documentary Bill of Exchange with Letter of Credit⁽¹⁾ as it ought to be. Regarding the part “with Letter of Credit” in this article, by a two-fold approach of the historical use of Letter of Credit and Documentary Credits signified “Uniform Customs and Practice for Documentary Credits” in 1983 revised edition, I would like to suggest a growing communication-net basis on what future trading transactions should be.

As mentioned in the previous article⁽²⁾, Japanese society entered the information community from agricultural community through industrial one. In this information society, Mr. K. Takemura said, too,

Computer, Communication and Control are posited using the means of circulation, Cash, Credit(not L/C) and Currency. C.O.D. usually used cash in homeland. For a transaction with another country, payment is made by Currency and the Documentary Bill of Exchange is used for all Credits by accepting the shipments as Security. Information needed in trade transactions is kept in Computers and firms concerned can gain the information they want by pressing a button. They have a communication-net by which they can control all.

I would like to study the meaning of the Unified Letter of Credit Regulation, 1983 edition, by supposing a modern future plan for the above trading transactions form.

First, the Unified Letter of Credit Regulation, 1974 edition⁽³⁾, became the foundation for the developmental amplification of Later transactions as is universally known. This edition reflects the changes in method and documentation arising from the improvements in marine transportation as well as the development of trade simplification, especially containerization, thus promoted the development of the included combined transport.

In the 1983 edition, ① the continuing revolution in transport technology, and the geographical extension of containerization and combined transport; ② the increasing influence of trade facilitation activities on development of new documents and new methods of producing documents; ③ the communications revolution: automated or electronic data processing (ADP/EDP) replacing paper as a means of transmitting information (data) relating to a trading transaction; ④ development of new types of documentary credits, such as the deferred payment credit and the Stand-by Credit⁽⁴⁾, especially by the introduction of the computer, the simplification of trading transactions has taken the form of moving ahead.

On the one hand, the combined transport is established, on the other hand, what new documents should be, it seems to be expressly provided in details for the Unified Regulations. As for what new documents should be then, the extension of the deferred payment credit and Stand-by Credit, contrarily, would express remarkably trading transactions in the 1980's as it ought to be.

For example, Deferred Payment Credit used for an open account⁽⁵⁾, Documentary Bill of Exchange without L/C Settlement and consignment⁽⁶⁾, and Stand-by Credit are kinds of clean L/C as is universally known. Now this has been the simplification of trading transactions, and which means also Credits increasing with the simplification of Documents. Based upon the situation that the establishment of overseas offices is increasing⁽⁷⁾ particularly in organization and region nowadays, the increased possibility of this Stand-by Credit being used for finance or guarantee is very high.

Besides, may we have an observation on the history of "Marine transportation" including combined transport, thus Containerization risen from the distribution revolution. I would like to consider this through the historical background.

II. Toward the Unification of L/C

The function of the peculiar Letter of Credit, indispensable to the settlement of trading transactions, offered originally a high reliance on the issuer for Letter of Credit reinforcement of the client. In other words, as the traveller Letter of Credit of today, the bearer and the beneficiary are actually the same person⁽⁸⁾. The merchant who issued Letter of Credit has resulted the main business in accepting the bill as "the issuer who was well-known as the wealthy merchant in another

region, especially abroad, has resulted the main business in accepting the bill. And later, he was called the Merchant Bank or the Accepting House⁽⁹⁾ in the present London. The separation of “the issued client” and “the beneficiary” occurred there and thus took the initiative in a modern Letter of Credit.

Meanwhile, the beneficiary designated by the buyer as client became the seller for the other party in trade dealing, and the bank on behalf of the client, took itself the new form of Letter of Credit as the draft drawee at the beginning of the 20th century⁽¹⁰⁾.

After World War I, the competition between the U.S.A. and the United Kingdom, the king of world finance, lead to the severe confusion in the explanation and understanding of Letter of Credit words, and there were also a lot of disputes. Therefore, in order to prevent these disputes, it was necessary to make a unified explanation of Letter of Credit and the Provisions adopted by the New York Banker's Commercial Credit Conference Form in 1920 was enacted as the Commercial Credit Conference Form in 1922.

In France, “Clauses et modalités applicables aux ouvertures de crédit documentaires adoptées par l'Union Syndicate des Banquiers de Paris” in 1924 and in Germany “Das Regulatir das Akkreditivgeschäfts der Berliner Stempelvereigung” in 1923 have been explained as the independent domestic unified movement.

Then the Unified Regulations in every country necessarily moved in the direction of an international Unified Movement and in 1933, the Uniform Customs and Practice for Commercial Documentary Credits was adopted at the 7th General meeting of the Vienna International Chamber of Commerce⁽¹¹⁾.

The first revision was adopted in 1951 at the 13th General meeting

in Lisbon, then the second revision in 1962, was adopted at the General meeting in Mexico in 1963. In 1971, it was adopted in 175 countries, then in 1974, the third revision was completed⁽¹²⁾.

In 1983 the fourth revision moved on to the Unification on a world-wide scale⁽¹³⁾.

III. Transition to Intermodal Transportation

I have already mentioned that one of the major revisions of the 1974/1983 Edition of Uniform Customs & Practice for Documentary Credits was the "Combined Transportation"⁽¹⁴⁾. Along with this combined transportation, the views on shipping documents have also changed significantly.

In this article, I would like to discuss the inevitability or predominance of "Contanarization" in the combined transportation, while examining the transition of marine transportation to the present-day intermodal transportation.

Carriage by sea became a speciality approximately in the last half of the nineteenth century. Business in those days was a combination of foreign trade and shipping industry. The reasons were as follows: Firstly, the individual carrier was able to fill one vessel with his own merchandise because vessels in those days were normally small. Secondly, an overseas voyage was not an attractive occupation because of underdevelopment of shipbuilding engineering, unsafe sealanes, low-level knowledge of seamen, and so on. Thirdly, it was not necessary for a shipping agent to periodically assign a vessel for the underdeveloped overseas merchandise market, and an individual trader could own a vessel, navigate it, and carry goods on his own vessel, or have someone he could trust carry the goods for him⁽¹⁵⁾.

Since a single merchant could not till the bottom periodically with his own goods alone due to advancement of navigation technique and shipbuilding engineering...that is, the transition from the sailing ship to the steamer and from the wooden vessel to a steel ship...and the remarkable increase in the bottom tonnage, and that even a layman could join the shipping business without risking an enormous amount of loss because the overseas markets had progressed and the risk of voyage had disappeared, the shipping industry and foreign trade were gradually separated⁽¹⁶⁾.

It was at that point when the shipping industry started to progress toward modernization, and the progress form called Industrial Carrier that seemingly indicated the direction opposite to the progress form called "separation" appeared⁽¹⁷⁾.

Vessels are generally owned by individual owners, captains, partnership, corporations, and so on. Shipping enterprises were mainly those owned by rich capitalists and those founded under a king's charter. As large-scale vessels appeared, the ownership changed to the modern form, that is, the vessels are owned by corporations. In England, in particular, the entire legislation concerning corporations was completed with the Commercial Company Law of 1834, the Chartered Company Law of 1837, the Registration Law of 1844, the Limited Company Law of 1855, the Joint-stock Corporation Law of 1856, the Corporation Law of 1862, and so on, with which England made remarkable advances as a world-wide shipping nation⁽¹⁸⁾.

On the other hand, although the bottoms of the United States in those days were second only to England, they carried only ten percent of the international trade, and the vessel owners meant just the owners as corporations. However, World War I changed the situation. The

Shipping Act was enacted in 1916, and the United States Shipping Board was established with a fund of 50 million dollars with the intent to place the entire shipping industry under the government control, including the purchase and building of ships and navigation. The shipping industry was under the state control. However, due to an increase in bottoms, the rise of the shipbuilding industry, progress of the associated industries, etc., the American shipping industry occupied an important position of all industries and showed the tide to surpass the English shipping industry⁽¹⁹⁾.

The phenomenon of surplus bottoms for the decreased amount of trade as a result of the world-wide economic panic in 1929 had brought about the very root of the subsequent shipping recession.

Significant changes were seen in the marine freight movement, type, direction, and so on after the World War II. That is, it was a structural fluctuation of the world shipping industry. Firstly, the energy source was switched to petroleum and more than half of the total marine cargo was carried by ships running on petroleum. Secondly, new markets of raw materials were born in the Central-South American countries and in Africa after the war, and the new form of carriage by sea using the large-sized carriers were employed between these markets and the developed countries. Thirdly, as industrialization of the developing countries and development of the underdeveloped areas have progressed, the quantitative structure of trade merchandise has changed, and the world's marine trade has become more diversified and more equalized⁽²⁰⁾.

Especially, remarkable changes have been seen, such as advancement in shipbuilding techniques, increase in vessel size⁽²¹⁾ and speed, increase in long-term contracts, increase in tankers, carriers appeared in oil transportation, appearance of container ships and nuclearpowered ships, and

so on.

The container ship appeared on the scene for the first time during the transition of shipping industry. The liner business is said to have been modernized last of all shipping industries because of its characteristic as a semi-monopolistic system derived from the existence of the Shipping Conference⁽²²⁾. In reality, however, it seemed that the container could not help appearing because of the delay in modernization of the liner business.

General cargo had been the major cargo of liners from the beginning, but it had always been difficult to transport it in a more positive form. Then the container appeared. Transporting general cargo in containers loaded in good order on a container ship leads to saving of the packaging cost, prevention of damage and loss of cargo, reduction in the broken space, reduction in the cargo handling time through automation of port cargo, saving of the cargo handling expenses, and enables cargo handling on rainy days, all of which combined aims at improvement of the operation rate of liners as well as realization of the door-to-door land bridge system⁽²³⁾.

IV. Conclusion

Similar to the transactions within a domestic market, when concluding a sales contract in the international trade, the method of payment for commodities sold is the most important problem to the seller. On the other hand, this problem is also important to the buyer because of his own profit. Physical transfer of the commodity and payment seldom agree, and a compromise is unavoidable. As is generally known, it is the Documentary Bill of Exchange with Letter of Credit. Because of the unavoidable compromise, there have always been troubles arising from

difference of customs, lack of understanding of the language, political problems, and so on.

Moreover, as can be seen in Article I of the Unified Letter of Credit Regulation quoted below, the applicability of its binding force is rather flexible. "These articles apply to all documentary credits, including, to the extent to which they may be applicable, Stand-by Letter of Credit, and are binding on all parties thereto unless otherwise expressly agreed. They shall be incorporated into each documentary credit by wording in the credit indicating that such credit and Practice for Documentary Credits, 1983 revision, ICC Publication No. 400."

That is, through a smooth operation of the Letter of Credit which is one of the transferring media of the international payment, the Letter of Credit itself will become safe and secured by placing it under the behavior of open account of a bank. However, the problem is that, for the required institutionalization, the Unified Letter of Credit Regulation does not have the legal regulatory power, but is only a voluntary reference rule.

Nevertheless, from section II of this article, I hope that the readers will understand that the whole world has tried to unify the Letter of Credit.

The original purpose of drawing the Unified Letter of Credit Regulation was to eliminate the avoidable troubles and misunderstandings ① by giving uniformity and accuracy to the way of thinking and words in an internationally accepted language and ② by using simple and clear definitions and terms⁽²⁴⁾.

Therefore, even if a rule is a voluntary one, with the agreement of the majority of member nations, it can contribute to smooth transactions with respect to payments which can always be the causes of troubles.

This is the inevitability for unification of the Letter of Credit.

The major revisions made in the 1983 Edition of the Unified Letter of Credit Regulation were: ① International combined transportation as mentioned in III and ② Documentary Bill of Exchange with Letter of Credit in the information-oriented age, which seem to imply what the trade transactions in the future should be. The former led to the revisions of the 1974/1983 Editions of the Unified Letter of Credit Regulation by bringing about containers from the technical renovation of liners, transition from the container carriage to containerization⁽²⁵⁾, and finally caused the circulation revolution by structuring the international combined transportation. The latter is as follows:

As mentioned earlier, along with smooth operations of Letters of Credit as a medium of transferring international payments, the important rules of the Documentary, that is, Shipping Documents, which are the media for the transacted merchandise have been emphasized together with their simplification.

My last article⁽²⁶⁾ ended with the statement: "What changes will we see in the Documentary Bill of Exchange in the future?" which left a question. Along with introduction of computers into trade transactions in this information-oriented community, both "the Documentary" and "Bill of Exchange" will be more and more simplified substantially and technically.

Supposing that the whole world will be regulated by the computer system in the future, and if resources, know-how, products, etc. can freely be allocated at the touch of a button by individual merchants or organizations, a form of free trade without any intervention of the authorities might probably be realized.

REFERENCES

- (1) S. Okamoto "Some Studies on the Documentary Bill of Exchange" Kanagawa Shokei Ronso, No. 4.
- (2) Ibid., p. 14.
- (3) "Uniform Customs and Practice for Documentary Credits" (1974 Revision, ICC, Publication No. 290)
- (4) "Uniform Customs and Practice for Documentary Credits" (1983 Revision, ICC, Publication No. 400)
- (5) Algeria, Honda Giken Co., Ltd. and Nichimen Jitsugyo Co., Ltd. have entered into a contract in Japan on 13th November 1981.
- (6) In case of large amount for plant export or many cases of export into developing countries with bad condition of foreign currency have been seen. Sadao Ishida, *Boeki Yogo Jiten*, 1974, p. 49.
- (7) Refer to the same note "Figure VI".
- (8) Noboru Komine (Letter of Credit Unified Regulations) *Shinyojyo Toitsu Kisoku*, Upper Volume Foreign Exchange Trade Research Institute, 1974, p. 3.
The bill of exchange, a concrete practical means of finance in this Letter of Credit was introduced and developed into the form of Commercial Letter of Credit. Thus leads to the development of Documentary Letter of Credit appended by Shipping Documents accompanied with the custom of Documentary bill transactions as well as the harmonization of Documentary bill transactions.
- (9) Ibid., p. 4.
- (10) Ibid., p. 8.
- (11) Trade Section of Bank of Tokyo, *Trade and Letter of Credit*, Jitsugyo No Nippon Sha, 1975, p. 52.
- (12) Ibid., p. 53.
- (13) By the introduction of "Subject to Uniform Customs and Practice for Documentary Credit (1983 Revision) International Chamber of Commerce, Publication No. 290", Letter of Credit of every issuing bank are decided how to be prepared for the revision of Unified Regulations.
- (14) Kusuo Urata, *Containerization and Standardization*, Seizando, 1980, p. 282.
Intermodal transportation; Combined transport of various means under the

cooperative system of various organizations. The form of consistent transport using containers, etc. is a direct example. (By the Transport and Economic Conference)

Combined transport: Transport of goods carried in one and the same form of transport equipment using more than one mode of transport.

Multimodal transport: The carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract, from a place in one country by the multimodal transport operator to a place designated for delivery situated in a different country. (By the United Nations European Economic Committee).

- (15) Hideo Kuroda, *Sekai Kaiunshi*, Seizando, 1979, pp. 74-75.
- (16) Transition was remarkable from private carriers owned independently or jointly by individual merchants and producers to public or common carriers. *Ibid.*, p. 75.
- (17) Hiroshi Okaniwa, *Kaiun no Gaiyo*, Seizando, 1983, pp. 77-78.
The merchant carrier is a vessel owned by a trading company as a means of selling merchandise, while the industrial carrier is a vessel owned by an industrial company as a means of transporting materials for its own consumption. In many cases, the vessel is not owned directly by the industrial company, but by a separate shipping company operated by the industrial company which holds the whole of a part of its capital.
- (18) Hideo Kuroda, *op. cit.*, pp. 76-78.
Because of the advantageous natural geographical location, and being favored with curved coastlines, industrial power, ship fuel, abundant supply of coal as the tramp cargo, demands for foods and materials due to a rapid increase in population, and increase in Vessels, trades, and overseas investments, etc. due to the progress of capital accumulation, England owned approximately half of the total bottoms of the world before the World War I, and carried approximately 50 percent of the total world trade cargo.
- (19) *Ibid.*, p. 85.
- (20) *Ibid.*, p. 117.
- (21) In particular, the scale of tankers was increased sharply. 1930's: 7, 200DW, 1950's: 18, 000DW~60, 000DW, 1960's: 70, 000~100, 000DW, 1970's: 370, 000 DW~550, 000DW.
- (22) Hideo Iida, *Kairiku Fukugoyuso no Kenkyu*, Seizando, 1969, p. 3.
- (23) Hideo Kuroda, *op. cit.*, p. 125.

- (24) Sanyu Obara, *Shinyojyo-torihiki no kihon-kozo*, Kinyu homu jijyo, No. 762, p. 2.
- (25) Hiroshi Okaniwa, op. cit., p. 121.
- (26) S. Okamoto, "Some Studies on the Documentany Bill of Exchange," Kanagawa Shokei Ronso, No. 4, p. 14.

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