

Recommendation 14

AUTHENTICATION OF TRADE DOCUMENTS BY MEANS OTHER THAN SIGNATURE

The Working Party on Facilitation of International Trade Procedures, as subsidiary organ of the United Nations Economic Commission for Europe, has identified certain problems having legal implications in respect of data flows in international trade arising from a need for authentication by signature of trade data or documents used in international trade. A study of these problems by an informal team of experts, convened by the International Chamber of Commerce (ICC), during which the Belgian and Norwegian members gave special attention to the problem and worked closely with the convener, indicated the possibility of replacing signatures by different, alternative methods of authentication.

These findings, presented in a draft recommendation and a study, were submitted to the Working Party's Group of Experts on Data Requirements and Documentation which discussed them at its eighteenth and nineteenth sessions. The Group of Experts forwarded the draft Recommendation to the Working Party at its ninth session in March 1979 when it was adopted.

RECOMMENDATION

The Working Party on Facilitation of International Trade Procedures,

Being aware that the requirement for signature is tied to the use of paper documents and that the increasing use of electronic or other automatic means of data transfer makes it desirable to find new ways of securing the data and identifying their source;

Noting that the study annexed to the Recommendation shows the possibility of replacing signatures by different alternative methods of authentication, as evidenced by Article 14 (3) of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), and of replacing paper documentation by any other means which would preserve a record of data transfer, as evidenced by Article 5 (2) of the Montreal Protocol No. 4 to the Warsaw Convention on International Carriage by Air;

Recommends to Governments and international organizations responsible for relevant intergovernmental agreements to study national and international texts which

embody requirements for signature on documents needed in international trade and to give consideration to amending such provisions, where necessary, so that the information which the documents contain may be prepared and transmitted by electronic or other automatic means of data transfer, and the requirements of a signature may be met by authentication guaranteed by the means used in the transmission; and

Recommends to all organizations concerned with the facilitation of international trade procedures to examine current commercial documents, to identify those where signature could safely be eliminated and to mount an extensive programme of education and training in order to introduce the necessary changes in commercial practices.

At the ninth session of the Working Party representatives attended from:

Austria; Belgium; Bulgaria; Canada; Czechoslovakia; Denmark; Finland; France; German Democratic Republic; Germany, Federal Republic of; Hungary; Netherlands; Norway; Poland; Romania; Sweden; Switzerland; Turkey; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland, and United States of America; and from Australia, Japan and Kenya.

The following specialized agencies, intergovernmental and non-governmental organizations were also represented:

Food and Agriculture Organization of the United Nations (FAO); International Maritime Consultative Organization (IMCO); General Agreement on Tariffs and Trade (GATT); European Economic Community (EEC); Customs Co-operation Council (CCC); International Chamber of Commerce (ICC); Central Office for International Railway Transport (OCTI); International Road Transport Union (IRU); International Union of Railways (UIC); International Organization for Standardization (ISO); International Chamber of Shipping (ICS); International Railway Transport Committee (CIT); International Federation of Freight Forwarders Associations (FIATA) and International Cargo Handling Co-ordination Association (ICHCA).

1. It has long been a requirement in international trade that certain of the documents which are necessary for a transaction should be signed. There is now an increasing

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trend away from paper documentation to electronic or other automatic means of transmission of information to be exchanged. When information is sent by these means, it is not possible to transmit a signature as such. The view has been put forward that the absence of a signature reduces the value or authenticity of the information, and that machine-transmitted information is not acceptable, unless substantiated by a signed document. The requirement of signature can clearly be an obstacle to trade facilitation.

2. This study, which is in two parts, first defines a signature and its purpose in the context of international trade documentation giving the background to current requirements for a handwritten signature. It then examines modern alternative methods, stating the case of acceptance of information without a signature.

PART I - BACKGROUND TO CURRENT REQUIREMENTS FOR A HANDWRITTEN SIGNATURE

Definition of "signature"

3. "Signature" has been defined on many occasions, and a number of definitions given in legal and literary dictionaries are shown in Annex 1. Nearly all definitions require that the signatory write his name by hand. In court hearings the decision as to what constitutes a signature, is a question of fact which the judge decides himself. Some legal decisions about what constitutes a signature, taken from Belgian jurisprudence, are shown in part 2 of Annex I. Although the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), states in Article 14 (3) that a signature may be in handwriting, printed in facsimile, perforated, stamped, in symbols or made by any other mechanical or electronic means (if not inconsistent with relevant national law), this study is based on the generally-accepted meaning given to the word in international trade and legal circles.

Function of signature

4. A signature on trade documents serves three main purposes:

- (i) It identifies the source of the document, i.e. the writer;
- (ii) It confirms the information in the documents; and
- (iii) It constitutes proof of the signatory's responsibility for the correctness and/or completion of the information in the document.

The signature gives an element of proof which virtually amounts to undisputed legal validity of the document and the data transferred. Whereas the formal requirement is for a signed document, the essential function is that of authentication of data content. The need for verification may in certain cases also lead to requirements of compos-

ite authentication—that is to say, not only is the signature of the responsible part required, but also a signed declaration by some official or semi-official body endorsing the signature.

Requirement of signature

5. A signature may be required by virtue of a formal legal requirement, either in national law or international convention. It may serve a specific purpose, or the requirement may simply be based on commercial practice. Where there is a mandatory requirement, a signature is needed unless the law is amended or repealed. In order to make data transferred by electronic means acceptable as valid documents in law, the signature must be replaced by an alternative method of authentication.

6. In general, the following interests are affected: (a) commercial, (b) transport, (c) financial, and (d) official. Problems arise mainly with "documents that travel", often called "shipping documentation", i.e. documents that transfer data which are only available at dispatch and which are necessary for the clearance of goods at destination. Certain documents which actually accompany the goods, such as the ships' manifest or dangerous goods documentation, may not constitute problems. It should also be recalled that the information in some documents may be of interest to more parties than the originator and final recipient of the documents.

Commercial documents

7. The main principle of international trade law is that there is no formal requirement for a signature. Subject to an exceptional requirement of signature in national law, documents required for the practical performance of a contract, such as a commercial invoice, or a certificate regarding quality and quantity, need not therefore be signed. The parties concerned are mainly interested in identification of the documentation and verification of data content, which can be obtained from other sources and are not dependent on a signature. The same is true for the shipping advice/notification called for in most trade terms. There is therefore no reason to include a requirement of signature in the requirements for commercial information which is now often the case. Even if old habits are difficult to change, re-education is clearly the answer to this problem.

Transport documents

8. Some international conventions prescribe signatures on transport contracts. Others, like the CIM for transport by rail, have dropped this requirement, which would seem to indicate that here is no legal need for authentication in such a document, except in instances where a signature is required by national law. The problem can then only be solved by action on the lines mentioned in paragraph 4 above, such as repeal of the legal requirement or the acceptance by the relevant authorities of data produced by

electronic or other automatic means. In transport the position is, however, further complicated by the number of parties involved apart from the carriers themselves: exporters, importers, financiers, insurers and authorities. There would also appear to be several functions involved which give rise to demands for signed documents:

- (a) evidence of the contractual undertaking of transport;
- (b) evidence that goods have been accepted for transport;
- (c) evidence of details of the goods transported; and
- (d) evidence that the goods have been received in good condition.

As mentioned in paragraph 3 above it is, rather, the verification of the data content conveyed by the signature than the signature *per se* that is needed, and various alternative methods of meeting this need are described in Part II of the present study.

9. The (negotiable) bill of lading poses a special problem since it constitutes a transport contract which is also a negotiable document of title. This is the classic example of a document which travels and which is of interest to parties other than the originator and the final recipient. There is no immediate, obvious solution to the legal problems involved. The best way to make possible the use of modern methods of data transmission in sea transport is to make the parties consider whether their commercial relations are such that they could replace the bill of lading by a non-negotiable transport document. Experience shows that such documents are an acceptable alternative in many instances.

Financial documents

10. Requirements for the authentication of financial documents such as letters of credit are outside the scope of this study, although problems could be created by the specific documentary provisions of the credit. The need to verify whether insurance is in force for a particular shipment could, in certain circumstances, lead to the need for a signed document. However, the growing trend for exporters themselves to make out insurance certificates under cover of a general policy and the availability of alternative methods of ensuring that adequate cover exists may lead to a reduction of this particular requirement. As an example, there is a growing tendency on the part of major exporters merely to state that cover has been effected under a blanket arrangement, without any specific document being issued in respect of individual shipments.

Official documents

11. It would seem that the main need for authentication and acceptance of responsibility to meet official demand occurs at import in the country of final destination. These needs, however, often have a direct bearing on action in the country of purchase at the time of dispatch, or

subsequently. Import procedures are usually based on a compulsory form which incorporates a declaration to be made by the importer or his agent, and thereby constitutes a legal undertaking of responsibility. Since this document is created and signed in the country of importation, it does not necessarily in itself constitute an obstacle to international trade facilitation. Moreover, there is a trend towards the speedy removal of goods from the place of importation, under simplified documentation, associated with physical examination of the goods in inland premises when the complete documentation is available. This in itself is a great step forward in Customs facilitation. Nevertheless, the position is often complicated by demands for supporting documents, most of them “documents that travel”, such as certificates or invoices.

12. Customs authorities in some countries insist on a signed invoice, in the form of a commercial invoice, a consular invoice or a so-called Customs invoice. Where there is a legal requirement for a signed invoice, the need for such a document can only be overcome by the repeal of the relevant regulation. In other instances, import authorities, who have wide discretionary powers, may themselves educate traders and promote procedures to facilitate trade. The work in the Customs Co-operation Council contributes effectively to this objective.¹

It must be said, however, that clearance procedures are often complex. The Customs authorities must not only be satisfied as to the identity and content of the goods but also as to the relevant economic criteria to be applied. In addition, they are often requested to examine goods to ensure that they meet requirements laid down for a variety of “non-Customs” reasons, such as health or safety. However, as to signatures, it would seem to be perfectly possible to solve the problem by the use of alternative methods.

Signature and proof

13. If it is perfectly possible to envisage replacing the signature, why are people still so attached to it? The explanation may be found in the value of proof which a signature provides. Documents produced before a Court of Law are only legally valid in so far as they are acknowledged by the person said to have signed them. A handwritten signature can be particularly useful in this respect. While forgeries are possible and a person may refuse to recognize a signature, it must be said that it is more difficult to deny responsibility for a document which bears a signature than for one which does not.

14. Whilst a signature is not usually indispensable on

¹ In May 1979 the Customs Co-operation Council adopted a Recommendation concerning Customs Requirements regarding Commercial Invoices; the Recommendation intends, on the one hand, to encourage Customs authorities to accept commercial invoices produced by any process, including the one-rune method and, on the other, to induce Customs administrations to waive the requirement of a signature, for Customs purposes, on the commercial invoice which must be presented to Customs in support of the goods declaration. The Recommendation is reproduced in Annex II.

commercial documents, it is quite often required for official purposes. Because there are so many different national provisions, participants in international trade—fearing nonfulfillment of possible requirements—play safe by putting a signature on most documents. The guarantees thought to be provided by a signature mean that they are frequently used also on commercial documents, although less frequently, perhaps, when the parties are well known to each other.

Summary of Part I

15. It may be seen from the above that signatures are widely used, and will continue to be used, for a variety of reasons;

- (i) on commercial documents: mainly to secure proof in a Court of Law, often to comply with existing (or presumed) requirements in national trade laws;
- (ii) on transport documents: often to comply with existing national and/or international provisions requiring signatures on transport contracts and other transport documents;
- (iii) on official documents: generally to secure proof of data content by identification of a (legal) person responsible for the information as provided.

16. The usage or the requirement of a signature presents major problems for modern high-technology data transfer in those instances where the data are transmitted from the country of purchase to the country of (final) destination and where the signature must be available at the clearance of the goods. National legislation and international conventions should be changed wherever they impose signature as a guarantee for the authenticity of information transmitted in this way. As to other data, they are normally transmitted on paper inside the country where the information is available (country of dispatch, country of final destination) and the usage or requirement of signatures has not until now been viewed as a constraint preventing the use of economic high-technology data transfer in trade transactions. This is, however, expected to change within the foreseeable future, and a review of the use of signatures should be made by those responsible and concerned. Already a number of business relationships do not need to rely on signature—partners who have established trust between themselves need not wait to introduce modern procedures for trade transactions guaranteed by means other than signatures.

PART II - ALTERNATIVE METHODS

17. The requirement for a signature is tied to the use of paper documents. The increasing use of electronic and other automatic methods of data transfer means that the new ways of guaranteeing the data and their source need to be found. Some international conventions and other

intergovernmental agreements have been adapted—or initially drafted—taking these developments into account. Extracts from some relevant texts are reproduced in Annex II.

The methods available

18. There are several methods of instantaneous communications, some of which are already widely used. The following comments can be made concerning the most important:

(a) Telex: the answerback system seems to give adequate security for identification of the source of the data and acceptance of the commitments. Experience shows that problems often arise from incorrect data transmission; error rates need to be reduced.

(b) Remote copying: this method is already in use but can be costly and time-consuming. Recent technical improvements show that transmission times can be reduced significantly, and there is evidence of increased usage of this means. In time, this may become a major alternative method.

(c) Magnetic tape transfer: use of this method is steadily growing, with proven reliability for both in-house systems and inter-company information exchange.

(d) Computer-to-computer transfer: this method is becoming more acceptable and reliable. With the development of packet switched networks on an international scale, often using PTT provided facilities and protocols, it seems likely that this will become the standard method of electronic data transmission in international trade.

(e) Computer print-outs: there are interesting possibilities in an extension of the use of hard-copy print-outs at points of export and import.

Security of data

19. Generally speaking, electronic and other automatic methods provide a highly accurate and reliable means of data transfer. Data can be safeguarded by ensuring that access to the system is limited by the use of, for example, passwords, code words, special badges, or other methods. It is certainly true to say that these systems can provide a degree of reliability for the content of the message which is as good as any traditional documentation. Confidentiality of files is safeguarded by the methods mentioned. Identification of the parties can be assured by means of pre-arranged codes.

Responsibility for data transmission

20. Apart from the access code mentioned above, the users of a system also require to know the way in which to structure their messages. The conditions of use of a system are often called “protocols”. If the user accepts them, he will be bound by the system and could be held responsible for the use he makes of it. The acceptance of

the conditions of use of the system could be made in a properly-signed agreement between the parties, in which case the proof before a Court of the transmission made in conformity with the agreement would acquire the validity of duly signed documents. The system would have to identify each user in an irrefutable manner. Where necessary, it would also have to serve as proof of disputed identity of the source of the message; the guarantee which it offers would need to be capable of verification by a court or by an expert designated for this purpose. It is possible that a computer log or inventory, which could be verified to confirm its reliability, held by the system and listing reference proper to each message and to its source, would serve the purpose. If the log recorded the full content of all messages handled by the system, security would be enhanced, but this could be expensive and it might not be necessary in every-day routine transactions.

21. A guaranteed and verifiable identification procedure, together with a signed protocol, could provide proof in a Court of Law which would be of as much value as a signature. It is not possible to ensure complete protection against fraudulent intentions, but it may well be easier to forge a signature than to falsify the identity of the source

of a message in a well designed computer system. However, the evidence held in the computer records would need to be retained in case it were required for use in court proceedings. Recent national data laws have a bearing on the retention period, but in practice a period of five years would seem to be sufficient for this purpose.

22. The kind of system described above has already been developed for use in the S.W.I.F.T. system of data transmission. Further details may be found in Annex III.

CONCLUSIONS

23. Signatures are used to identify and confirm data. They are readily accepted as proof in Courts of Law. Where a formal obligation of signature exists, a name will continue to be required until the obligation is abolished. A valid replacement for signature can be offered by computer systems giving verifiable guarantees as to the identity of the parties; these could commit themselves to recognize messages exchanged by the system and to sign a written agreement to this effect. Where insistence on a signature continues to commercial practice, a process of education will be needed to make the parties aware of the advantages of change.

Annex I

PART I - SIGNATURE DEFINITIONS

(a) Name of a person, written by his hand put at the end of a letter, a contract or any document whatever in order to certify it, to confirm it, to make it valid.

Dictionary, French Academy, p. 588.

(b) The signature is the name of a person written by his hand, at the end of a letter or a document, to certify it, to confirm it or to make it valid.

Les Pandectes belges, p. 817.

(c) The name of a person (or significant mark - obsolete) written with his hand (or her) as an authentication of some documents of writing (to authenticate = to give legal validity).

Oxford Dictionary, p. 1892.

(d) To sign signifies writing one's name with one's own hand at the bottom of a document to prove it and to convey an obligation to do what it implies or to attest it.

Ferriere, *Law Manual*, cited in Belgian law first part, p. 114.

(e) The entry which a person makes of his name (in a particular or regular manner) to confirm the correctness, the genuineness of a writing, or to take responsibility for it.

A signed agreement.

Petit Robert, p. 1649.

(f) The signature of a person, written by his hand, at the bottom of a document, or a deed.

Littré, p. 155.

(g) Name or mark which one puts at the bottom of something written, to certify that one has written it or that one agrees with the content.

Larousse Lexis, p. 1893.

PART II - SOME LEGAL DECISIONS OF SIGNATURES TAKEN FROM BELGIAN JURISPRUDENCE

a) The written signature cannot consist of a finger print, or an initial (Brussels 27.1.1807), a mark (stamp) (Colman 23.12.1809), a cross (Bourges 27.11.1971).

(b) The signature of a married woman represented by the name of her husband, signature under an assumed name (pseudonym) or by a commercial name, or by means of a facsimile seal can be admitted as a valid signature. Whether that holds good equally for the initial is doubtful, but a cross, a finger print, seal, stamp with printed letters or a name impressed or struck are certainly not a signature.

Winkler Prins, tome 9, p. 105.

(c) If in the matter of testament the signature can be made up by a customary personal mark, it cannot be the same under Article 1347.

(literal proof) *Jurisprudence belge*, first part, p. 114.

(d) When the name is readable, correct and complete the signature exists, whether the manner is usual or not for the signatory. But it is necessary that it can be considered as constituting the characters of writing, otherwise it is reduced to a simple mark. An incomplete name is a signature, if the writer has the habit of signing in this way. A mark, a cross or other arbitrary symbols, even when often used by the person concerned, are not a signature.

But practically speaking, certain dispositions are accepted.

Les Pandectes belges, p. 823/4.

(e) The Law holds a special status for signature as far as proof is concerned. "The signature is the external form of a consent, or desire, or approval"

Les Pandectes belges, p. 833/4.

The will of the legislator is to bind the signatory by the very fact of his signature, and having made his own the declarations in the act.

Cassation belge, 30. 04. 1942.

(f) "A recorded tape, constituting a known fact from which the judge can draw a conclusion, can be invoked by him as a presumption."

Cassation belge, 24. 11. 1961.

(g) Formulation by the Court of Appeal at Algiers is interesting in this regard (18.12.1931): "Given that the authors of the Civil Code were not able to make provisions for all kinds of representation of thought that can be brought about by the progress of science, one should therefore interpret the word 'written' in a broad and comprehensive manner."

Annex II

EXTRACTS FROM CONVENTIONS, DRAFT CONVENTIONS, INTERGOVERNMENTAL AND OTHER INTERNATIONAL RECOMMENDATIONS RELEVANT FOR THE STUDY OF SIGNATURES/AUTHENTICATION IN TRADE DOCUMENTS

1. The texts reproduced below refer to:

- I. Air transport
- II. Sea transport
- III. Multimodal transport
- IV. Transport of dangerous goods
- V. Customs clearance
- VI. Sale of goods and formation of contracts
- VII. Payments

2. They are reproduced from documents available in the ECE secretariat at the end of 1979. It should be noted that several of the texts referred to are not yet operational, e.g. the Montreal Protocol and the Hamburg Rules have not yet entered into force and the draft conventions on multimodal transport and the international sale of goods have not yet been signed.

3. It can also be noted that different terms have been used to describe the same occurrence in the rules agreed by different organizations to deal with the new problems created by modern data transmission techniques. Examples are:

- electronic data processing techniques ...;
- any other means which would preserve a record of the carriage ...;
- any other mechanical or electronic means ...;
- documentation by manual, electronic or other automatic means ...;
- telephone, telex or other means of instantaneous communication ...; and
- communication by electronic systems ...

4. In documents issued by the Working Party on Facilitation of International Trade Procedures, expressions such as “transmission of information by electronic or other automatic means” and “electronic or other automatic methods of data transfer” are generally used, the reason being that trade data are still often processed automatically, but not by electronic means, and that future instantaneous data transfer systems may not always use electronic devices. For the same reason, “automatic data processing (ADP) is preferred to “electronic data processing” (EDP) in such documents.

I. AIR TRANSPORT

International Civil Aviation Organization (ICAO)

“B. Electronic Data-Processing Techniques

4.4 RECOMMENDED PRACTICE. – Contracting States should make arrangements which would enable the use of commercial documents required for the clearance of air cargo produced by electronic data-processing techniques in legible, understandable, and acceptable form.

4.5 RECOMMENDED PRACTICE. – Contracting States should examine, in close collaboration with international operators and others concerned with air cargo, the additional facilitation which can be derived from the application of electronic data-processing techniques and consider introducing such techniques where the volume of air cargo warrants.

4.6 RECOMMENDED PRACTICE. – When the introduction of electronic data-processing techniques is planned in a Contracting State for controlling the movement of import/export air cargo, that State should endeavour to apply the following principles:

- (i) existing control requirements and procedures should be examined with a view to their modification as necessary;
- (ii) all interested parties should, from the outset, be afforded the opportunity for consultation;
- (iii) close attention should be given to the need for ensuring that the new system is compatible with those in existence at its airports or being developed at airports in other States; and
- (iv) close attention should be given to the possibility of accepting the information necessary for the receipt, loading, discharge, delivery and clearance of air cargo prepared and transmitted by electronic data-processing techniques.”

Chapter 4 of Annex 9, “Facilitation”, to the Convention on International Civil Aviation (Chicago, 1944), Seventh edition, April 1974

“Section III. – Documentation relating to cargo

Article 5

1. In respect of the carriage of cargo an air waybill shall be delivered.

2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so

requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.

3. The impossibility of using, at points of transit and destination, the other means which would preserve the record of the carriage referred to in paragraph 2 of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

Article 6

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked, "for the carrier"; it shall be signed by the consignor. The second part shall be marked, "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor."

Montreal Protocol No. 4 to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw 1929; Montreal 1975)

II. SEA TRANSPORT

Inter-governmental Maritime Consultative Organization (IMCO)

"7. Electronic and other automatic processing of documents,

Add to standard 2.15 the following text:

Documents produced by electronic and other automatic data processing techniques, in legible and understandable form shall be accepted."

Final Act of the Conference of Contracting Governments to amend the Annex to the Convention on Facilitation of International Maritime Traffic, 1965 (November 1977)

United Nations Commission on International Trade Law (UNCITRAL)

"Article 1 - Definitions

8. "Writing" includes, *inter alia*, telegram and telex.

Article 14 - Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued."

United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978)

III. MULTIMODAL TRANSPORT

United Nations Conference on Trade and Development (UNCTAD)/IPG

"Part III. Draft provisions on documentation

Definition of the MT document

Draft provision A

"Multimodal transport document" means a document which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract.

Issuance of the MT document

Draft provision B

1. When the goods are taken in charge by the multimodal transport operator, he shall [, on demand of the consignor,] issue a multimodal transport document, which, at the option of the consignor, shall be in either negotiable or non-negotiable form.

2. The multimodal transport document may be signed by the multimodal transport operator or by a person having authority from him.

3. The signature of the multimodal transport document may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the multimodal transport document is issued.

[4. Any other means which would preserve a record of the carriage to be performed may with the consent of the consignor be substituted for the issuance of the multimodal transport document. If such other means are used, the multimodal transport operator shall, of so requested by the consignor, deliver to the consignor a receipt for the goods permitting identification of the consignment and access to the information contained in the record preserved by such other means.]"

Preliminary draft of a Convention on International Multimodal Transport, document TD/B/AC.15/50 (November 1978)

IV. TRANSPORT OF DANGEROUS GOODS

United Nations Economic and Social Council (ECOSOC)

“Chapter 13. Recommendations on consignment procedures

1. This Chapter sets forth the recommended procedures for dangerous goods shipments relative to marking, labelling, documentation by manual, electronic or other automatic means and placarding.”

Recommendation (December 1978) of the United Nations/ECOSOC Committee of Experts on the Transport of Dangerous Goods

V. CUSTOMS CLEARANCE

Customs Co-operation Council (CCC)

1. The Customs Co-operation Council, on 16 May 1979, adopted a Recommendation concerning Customs requirements regarding commercial invoices.

2. The above-mentioned Recommendation is intended, on the one hand, to encourage Customs authorities to accept and, on the other, to induce Customs administrations to waive the requirement of a signature, for Customs purposes, on the commercial invoice which must be presented to Customs in support of the Goods declaration.

3. The Recommendation is worded as follows:

“THE CUSTOMS CO-OPERATION COUNCIL.

Desiring to facilitate international trade by making it possible for trade circles to employ modern methods of data reproduction and transmission;

Taking into account, *inter alia*, the efforts being made at the international level to enable all the documents required for an international trade transaction to be prepared from a single master by the one-run method;

Taking into account the Recommendation concerning signatures and authentication adopted in March 1979 by the Working Party on Facilitation of International Trade Procedures of the Economic Commission for Europe, which notes in particular that the general adoption of mechanical or electronic methods of data transfer requires changes in current practice regarding handwritten signatures;

Considering that the requirement of a signature on the commercial invoice for Customs purposes does not afford the Customs any particular guarantee of its accuracy;

Recommends that Members should:

1. accept commercial invoices produced by any process, for example, the one-run method, in cases where the presentation of the commercial invoice is required in connection with the clearance of goods;

2. refrain from requiring a signature, for Customs purposes, on commercial invoices presented in support of a Goods declaration;

Requests Members who accept this Recommendation to notify the Secretary General of their acceptance, of the date from which they will apply the Recommendation, and of the conditions of its application. The Secretary General will transmit this information to the Customs administrations of Members.”

VI. SALE OF GOODS AND FORMATION OF CONTRACTS

United Nations Commission on International Trade Law (UNCITRAL)

Article 10

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirements as to form. It may be proved by any means, including witnesses.

Article 11

Any provision of Article 10, Article 27 or Part II of this Convention that allows a contract of sale or its modification or abrogation or any offer, acceptance, or other indication of intention to be made in any form other than in writing does not apply where any part has his place of business in a Contracting State which has made a declaration under Article (X) of this Convention. The parties may not derogate from or vary the effect of this Article.

Article (X)

A Contracting State whose legislation requires a contract of sale to be concluded in or evidenced by writing may at the time of signature, ratification or accession make a declaration in accordance with Article 11 that any provision of Article 10, Article 27, or Part II of this Convention, which allows a contract of sale or its modification or abrogation or any offer, acceptance, or other indication of intention to be made in any form other than in writing shall not apply where any party has his place of business in a Contracting State which has made such a declaration.

Article 18

(1) A period of time for acceptance fixed by an offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the latter or, if no such date is shown, from the date

shown on the envelope. A period of time for acceptance fixed by an offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) If the notice of acceptance cannot be delivered at the address of the offeror due to an official holiday or a non-business day falling on the last day of the period for acceptance at the place of business of the offeror, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Article 19

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror so informs the offeree orally or dispatches a notice to that effect.

(2) If the letter or document containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror informs the offeree orally that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

For the purpose of Part II of this Convention an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally

or delivered by any other means to him, his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

Article 32

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract."

UNCITRAL, Draft Convention on Contracts for the International Sale of Goods (June 1978; text integrating the draft Convention on the Formation of Contracts with the draft Convention on the International Sale of Goods)

VII. PAYMENTS

International Chamber of Commerce (ICC)

Article 4

Banks concerned with a collection 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, telex, or communication by electronic systems, or for errors in translation or interpretation of technical terms.

ICC Uniform Rules for Collection (latest revision 1979, publication No. 322)

Annex III

THE SYSTEM OF DATA TRANSMISSION OF THE SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL TELECOMMUNICATIONS s.c. (S.W.I.F.T.)

The S.W.I.F.T. system has been devised to give participating banks access to an international computerized financial network, which provides a communication service for the transmission of banking messages previously sent by mail, telex or cable. It was devised for the foreign exchange business where speed of performance is essential.

S.W.I.F.T. identifies both the sender and the recipient of messages.

S.W.I.F.T. keeps an inventory of the information exchanged.

Users sign a protocol which provides, *inter alia*:

"In connection with its participation in the company, the undersigned furthermore declares that it is prepared to *co-operate* with the members of the company and with the

users of the system of the company which will be connected to the same concentrator as the undersigned *in order to make and keep operative the system* of the company and to see to it that its foreign branches and its organizations as defined under Article 3 of the said General Terms will act accordingly."

The "co-operation in order to make and keep operative the system" which is mentioned in the undertaking leads to the acceptance of the rules of operation laid down by the system and, in this way, of the content of the messages.

The information transmitted is coded with the help of a hexadecimal key known only by the parties who are exchanging information and transforming, by means of a software routine, each position which forms a part of the message (the key guarantees the confidentiality of the content of the message during transmission).