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DISCIPLINA

INTERNATIONAL BUSINESS LAW

Suport de curs

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CHAPTER I

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1980)

International trade brings benefits, but international trade hinders in the social, economic and legal differences between states. Removal of these differences would lead to the removal of the barriers in international trade. Therefore, in 1980 it was adopted a common set of rules with regard to contracts for the international sale of goods, obligations of the parties (the Buyer and the Seller), remedies for breach of contract and other aspects of this type of contract. This common set of rules is the "UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS" – CISG, which comprises 101 articles.

Part I. Sphere of application and general provisions

SPHERE OF APPLICATION

The Convention applies to contracts of sale of goods between parties located in different states. It makes no difference:

a) The nationality of the parties
b) The civil or commercial character of the parties

This Convention does not apply to sales:

a) Of goods for personal use
b) By auction
c) On execution by authority of law

d) Of stocks, shares
e) Of ships, vessels, hovercrafts, aircrafts
f) Of electricity

The contracts for the supply of goods to be manufactured or produced are not considered sales if the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production; also this Convention does not apply to contracts in which the preponderant part of the obligations of the party that delivers the goods consists in the supply of labor or other services.

This Convention is not concerned with:

a) The validity of the contract
b) The property of the goods
c) Liability of the Seller for death or injury caused by the goods to any person

The parties may exclude the application of this Convention or vary the effect of any of its provisions. In matters that are not treated by this Convention, the private international law applies.

GENERAL PROVISIONS

If a party has more than one place of business, the place of business is that which has the closest relationship to the performance of the contract; if a party does not have a place of business, reference is to be made to his habitual residence.

A contract of sale need not be concluded in writing and it may be proved by any means, including witnesses; "writing" includes telegram and telex. This does not apply where any party has his place of business in a Contracting State where it is required that the contracts must be concluded in writing.

Part II. Formation of the contract

A proposal for concluding a contract addressed to specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. This proposal must define the goods, their quantity and the price. A proposal other than one addressed to specific persons is to be considered only an invitation to make offers.

An offer becomes effective when it reaches the offeree and can be irrevocable. Even if it is irrevocable, it may be withdrawn before it reaches the offeree. Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has accepted. Acceptance of the offer by the offeree becomes effective when the acceptance reaches the oofferorl an oral offer must be accepted immediately. An acceptance may be withdrawn if the withdrawal reaches the offeror before the same the acceptance would have become effective

A reply to an offer which claims to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counteroffer.

A period of time of acceptance fixed by the offeror in writing begins to run from the moment the telegram is handed in for dispatch. A period of time for acceptance fixed by the offeror by means of instantaneous communication begins to run from the moment that the offer reaches the offeree. Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on this kind of day at the place of business of the offeror, the period is extended until the first business day which follows.

A late acceptance is however considered to be an acceptance if without delay the offeror orally informs the offeree.

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Part III. Sale of goods

GENERAL PROVISIONS

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee such a result.

A declaration of avoidance of the contract is effective only if made by notice to the other party.

A contract may be modified or terminated by the mutual agreement of the parties. A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement.

OBLIGATIONS OF THE SELLER

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

Section *I. Delivery of the goods and handing over of documents*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;

b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;

c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer a notice specifying the goods.

If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

The seller must deliver the goods:

a) if a date is fixed by or determinable from the contract, on that date

b) ff a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

c) in any other case, within a reasonable time after the conclusion of the contract.

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.

Section II. *Conformity of the goods and third party claims*

The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

Except where the parties have agreed otherwise, the goods conform with the contract only if they:

a) are fit for the purposes for which goods of the same description would be used

b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract

c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding.

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided in this Convention.

The buyer must examine the goods within the shortest period possible. If the contract involves carriage of the goods, examination may be delayed until after the goods have arrived at their destination.

The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it.

In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice at the latest within a period of two years from the date on which the goods were actually handed over to the buyer.

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim or unless the parties were aware of this at the moment of concluding the contract.

Section III. *Remedies for breach of contract by the seller*

If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may exercise his rights and claim damages as follows:

- The buyer may require performance by the seller of his obligations
- If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made within a reasonable time.
- If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair. A request for repair must be made within a reasonable time.
- If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery. If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

The seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer.

The buyer may declare the contract avoided:

a) if the failure by the seller to perform any of his obligations under the contract or this Convention constitutes a fundamental breach of contract; or
b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer or declares that he will not deliver within the fixed period.

However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that

delivery has been made;
(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii An or after the buyer has declared that he will not accept performances.

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery

OBLIGATIONS OF THE BUYER

Compared to the obligations of the seller, the general obligations of the buyer are less extensive and relatively simple; they are to pay the price for the goods and take delivery of them as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to how the price is to be determined and where and when the buyer should perform his obligation to pay the price.

Section I: *Payment of the price*

In paying the price, the buyer has to comply with all the formalities required under the contract he signed with the seller or any laws and regulations to enable payment to be made.

In case the price for a certain good has not been clearly stated in the contract, nor any provisions for its determination have been made, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under **comparable** circumstances in the trade concerned.

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the **net weight**.

If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:
(a) at the seller's place of business; or
(b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents, even when the contract involves carriage of goods.

The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

In case that, after the conclusion of the contract, there will be a change in the seller’s place of business, **the seller** must bear any increase in the expenses incidental to payment that is caused by this change.

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II: *Taking delivery*

The buyer's obligation to take delivery consists:
(a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
(b) in taking over the goods.

Section III: *Remedies for breach of contract by the buyer*

The remedies of the buyer for breach of contract by the seller are set forth in connection with the obligations of the seller and the remedies of the seller are set forth in connection with the obligations of the buyer. This makes it easier to use and understand the Convention.

If the buyer fails to perform any of his obligations under the contract or the Convention, the seller may **require** the buyer to pay the price, take delivery or perform his other obligations, or he may resort to other remedies which are inconsistent with this requirement.

One of these remedies is an additional period of time of reasonable length that the seller may fix in order to allow the buyer to perform his obligations. In this case, the seller may claim **damages** for delay in performance, although he may not, during that period, resort to any remedy for breach of contract unless he has received notice from the buyer that he will not perform within the period so fixed.

If the buyer does not perform his obligations either under the contract or during the additional period fixed by the seller, then the seller has the right to declare the contract avoided, especially if the buyer has provided the buyer with a prior notice of his inability to perform. The United Nations Convention on Contracts for the International Sale of Goods stipulates that the seller may declare the contract avoided even if the buyer has paid the price, but did so after the expiration of the additional period of time fixed by the seller or after the buyer has declared he will not perform his obligations within such an additional period. And for any breach other than late performance by the buyer, after the seller knew or ought to have known, of the breach, the seller has the right to declare the contract avoided, even if the buyer has paid the price.

In all other cases where the buyer has paid the price, the seller loses the right to declare the contract avoided.

If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

PASSING OF RISK

Determining the exact moment when the risk of loss or damage to the goods passes from the seller to the buyer is of great importance in contracts for the international sale of goods. Parties may regulate that issue in their contract either by an express provision or by the use of a trade term. However, for the frequent case where the contract does not contain such a provision, the Convention sets forth a complete set of rules.

The United Nations Convention on Contracts for the International Sale of Goods states that the loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

The two special situations contemplated by the Convention are when the contract of sale involves carriage of the goods and when the goods are sold while in transit. In all other cases the risk passes to the buyer when he takes over the goods or from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery, whichever comes first.

If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at **that** place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise. In the frequent case when the contract relates to goods that are not then identified, they must be identified to the contract before they can be considered to be placed at the disposal of the buyer and the risk of their loss can be considered to have passed to him.

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage.

Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

If the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I: *Anticipatory breach and instalment contracts*

The Convention contains special rules for the situation in which, prior to the date on which performance is due, it becomes apparent that one of the parties will not perform a substantial part of his obligations or will commit a fundamental breach of contract. A distinction is drawn between those cases in which the other party may suspend his own performance of the contract but the contract remains in existence awaiting future events and those cases in which he may declare the contract avoided.

A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability of perform or in his creditworthiness; or

(b) his conduct in preparing to perform or in performing the contract.

If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. This provision relates only to the rights in the goods as between the buyer and the seller.

A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance. This requirement does not apply if the other party has declared that he will not perform his obligations.

In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future installments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their

interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II: *Damages*

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under the previous article.

If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under the previous article, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further recoverable damages. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III: *Interest*

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for recoverable damages.

Section IV: *Exemption*

A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. The exemption has effect for the period during which the impediment exists.

If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:
(a) he is exempt under the preceding paragraph; and
(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such nonreceipt.

Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V: *Effects of avoidance*

Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) the goods or part of the goods have perished or deteriorated as a result of the examination provided for; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods retains all other remedies under the contract and this Convention.

If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI: *Preservation of the goods*

The Convention imposes on both parties the duty to preserve any goods in their possession belonging to the other party. Such a duty is of even greater importance in an international sale of goods where the other party is from a foreign country and may not have agents in the country where the goods are located. Under certain circumstances the party in possession of the goods may sell them, or may even be required to sell them. A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them and must account to the other party for the balance.

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that

this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense.

This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination.

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party, provided that the expense incurred is not unreasonable.

A party who is bound to preserve the goods may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

Part IV: Final provisions

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties, to such agreement.

QUESTIONS:

Q1. To whom applies this convention?

Q2. What are the matters that this Convention is not concerned with?

Q3. What is a counteroffer?

Q4. In what situations the contract for sale of goods can be modified or terminated?

Q5. What are the general obligations of the Seller?

Q6. In which cases does the seller have the right to declare the contract avoided?

Q7. At which moment does the risk/ loss/ damage of goods pass from the seller to the buyer in the case of a contract that involves carriage?

Q8. In what case may a party involved in a contract for delivery of goods by instalments, declare the contract avoided?

Q9: What do damages for breach of contract consist of when referring to a contract for delivery of goods and what are their limits?

Q10: In which cases is a party exempt from liability for not performing his obligations in a contract for delivery of goods?

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www.uncitral.org/pdf/english/texts/sales/cisg/CISG.pdf

CHAPTER II

UNCITRAL - LETTER OF CREDIT

GENERAL UNDERSTANDING, USING AND APPLICATION

Part I. General information, terminology

A **letter of credit** is a document issued mostly by a financial institution (common types of financial institutions include banks, building societies, credit unions, stock brokerages, asset management firms, and similar businesses) which usually provides an irrevocable payment undertaking (it can also be revocable, confirmed, unconfirmed, transferable but is most commonly irrevocable / confirmed) to a beneficiary against complying documents as stated in the Letter of Credit. Historically, the commercial parties, particularly banks, have developed the techniques and methods for handling letters of credit in international trade finance. This practice has been standardized by the ICC (International Chamber of Commerce) by publishing the UCP in 1933. The UCP has substantially universal effect. The latest revision was approved by the Banking Commission of the ICC at its meeting in Paris on 25 October 2006. This latest version, called the UCP600, formally commenced on 1 July 2007.

Letters of credit are commonly used to reduce credit risk to sellers in both domestic and international sales agreements. Letter of Credit is abbreviated as an **LC** or **L/C**, and often is referred to as a **documentary credit**, abbreviated as **DC or D/C**, **documentary letter of credit**, or simply as **credit** (as in the UCP 500 and UCP 600) [1].

1) The Uniform Customs and Practice for Documentary Credits (UCP) is a set of rules on the issuance use of letters of credit. The UCP is utilized by bankers and commercial parties in more than 175 countries. Some 11-15% of international trade utilizes letters of credit, totaling more than a trillion dollars (US) per annum.

   The UCP remain the most successful set of private rules for trade ever developed. A range of individuals and groups contributed to the current revision including: the UCP Drafting Group, which waded through more than 5000 individual comments before arriving at this final text; the UCP Consulting Group, consisting of members from more than 25 countries, which served as the advisory body; the more than 400 members of the ICC Commission on Banking Technique and Practice who made pertinent suggestions for changes in the text; and 130 ICC National Committees worldwide which took an active role in consolidating comments from their members.

   During the revision process, notice was taken of the considerable work that had been completed in creating the International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP), ICC Publication 645. This publication has evolved into a necessary companion to the UCP for determining compliance of documents with the terms of **letters of credit**. It is the expectation of the Drafting Group and the Banking Commission that the application of the principles contained in the ISBP, including subsequent revisions thereof, will continue during the time UCP 600 is in force. At the time UCP 600 is implemented, there will be an updated version of the ISBP to bring its contents in line with the substance and style of the new rules.

A letter of credit is a document in commercial law that consists of a promise by a bank (or similar entity) that it will honor a demand for payment if certain conditions are satisfied.

LC is widely used in international trade where the supplier wants to be sure about getting payments for his delivered products, and the importer wants to be sure that the items are really delivered (documentary evidence, not the physical evidence) before payment is made to the supplier.

The LC can also be the source of payment for a transaction, meaning that an exporter will get paid by the letter of credit. Letters of credit are used nowadays primarily in international trade transactions of significant value, for deals between a supplier in one country and a wholesale customer in another. They are also used in the land development process to ensure that approved public facilities (streets, sidewalks, etc.) will be built. The parties to a letter of credit are usually a **beneficiary** who is to receive the money, the **issuing bank** of whom the applicant is a client, and the **advising bank** of whom the beneficiary is a client. Almost all letters of credit are irrevocable, cannot be amended or canceled without prior agreement of the beneficiary, the issuing bank and the confirming bank, if any. In executing a transaction, letters of credit incorporate functions common to Traveler's cheques [2]. Typically, the documents a beneficiary has to present are commercial invoice, bill of lading, insurance documents. However, the list and form of documents is open to imagination and negotiation and might contain requirements to present documents issued by a neutral third party evidencing the quality of the goods shipped.

The English name “letter of credit” derives from the French word “accreditif”, a power to do something, which in turn is derivative of the Latin word “accreditivus”, meaning trust. This in effect reflects the modern understanding of the instrument. When a seller agrees to be paid by means of a letter of credit he is looking at a reliable bank that has an obligation to pay them the amount stipulated in the credit notwithstanding any defence relating to the underlying contract of sale.

Part II. Types of letters of credit

There are two basic forms of letters of credit: **Standby** and **Documentary**.

Standby Letter of Credit

A Standby Letter of Credit is issued normally as a type of performance guarantee. For example, a municipality may require a contractor working on municipal property to post a Standby Letter of Credit at a completion of the work if the contractor is unable to do so. Used primarily in the United States, this type of performance guarantee was often called non-performing letters of credit because this are only used as a backup should the buyer fail to pay as agreed. Thus, a stand-by letter of credit allows the customer to establish a rapport with the seller by showing that it can fulfill its payment commitments. Standby letters of credit are used, for example, to guarantee repayment of loans, to ensure fulfillment of a contract, and to secure payment for goods delivered by third parties. The beneficiary to a standby letter of credit can cash it on demand. Stand-by letters of credit are generally less complicated and involve far less documentation requirements than irrevocable letters of credit.

2) A **traveler's cheque** (also **travelers cheque**, **traveler's check**, or **travelers check**) is a preprinted, fixed-amount cheque designed to allow the person signing it to make an unconditional payment to someone else.

Documentary Letter of Credit

A Documentary Letter of Credit usually consists of delivery of certain goods in long-distance sales. If an exporter was selling goods to a foreign country, he might insist on a Documentary Letter of Credit from the buyer's bank, but guarantied by the seller's bank. The exporter would then be paid upon presentation of documents such as commercial invoices, bills of lading, weight certificates or any number of documents evidencing the shipment of goods. Letters of credit enable a buyer to establish a line of credit upon which a seller in a long-distance transaction can rely.

Documentary letters of credit can be either Revocable or Irrevocable, although the first is extremely rare. Irrevocable letters of credit can be Confirmed or Not Confirmed. Each type of credit has advantages and disadvantages for the buyer and for the seller, which this information will review below. Charges for each type will also vary. However, more of the banks assume risk by guaranteeing payment.

Documentary Revocable Letter of Credit may be modified or even canceled by the buyer without notice to the seller. Therefore, they are generally unacceptable to the seller.

Documentary Irrevocable Letter of Credit is the most common form of credit used in international trade. Irrevocable credits may not be modified or canceled by the buyer. The buyer's issuing bank must follow through with payment to the seller so long as the seller complies with the conditions listed in the letter of credit. Changes in the credit must be approved by both the buyer and the seller. If the documentary letter of credit does not mention whether it is revocable or irrevocable, it automatically defaults to irrevocable.

There are two forms of irrevocable credits:
Unconfirmed credit (the irrevocable credit not confirmed by the advising bank)
In an unconfirmed credit, the buyer's bank issuing the credit is the only party responsible for payment to the seller. The seller's advising bank pays only after receiving payment from the issuing bank. The seller's advising bank merely acts on behalf of the issuing bank and, therefore, no risk appear.

In a **Confirmed credit** (the irrevocable confirmed credit), the advising bank adds its guarantee to pay the seller to that of the buyer's issuing bank. Once the advising bank reviews and confirms that all documentary requirements are met, it will pay the seller. The advising bank will then look to the issuing bank for payment. Confirmed Irrevocable letters of credit are used when trading in a high-risk area where war or social, political, or financial instability are real threats. Also common when the seller is unfamiliar with the bank issuing the letter of credit or when the seller needs to use the confirmed letter of credit to obtain financing its bank to fill the order. A confirmed credit is more expensive because the bank has added liability.

Part III. Common problems with letters of credit

Most problems result from the seller's inability to fulfill obligations stated in the letter of credit. The seller may find these terms difficult or impossible to fulfill and, either tries to fulfill them and fails, or asks the buyer to amend to the letter of credit. As most letters of credit are irrevocable, amendments may at times be difficult since both the buyer and the seller must agree.

Sellers may have one or more of the following problems:

- The shipment schedule cannot be met;
- The stipulations concerning freight costs are unacceptable;
- The price becomes too low due to exchange rates fluctuations;
- The quantity of product ordered is not the expected amount;
- The description of product is either insufficient or too detailed; and,

- The stipulated documents are difficult or impossible to obtain.

Even when sellers accept the terms of a letter of credit, problems often arise late in the process. When this occurs, the buyer's and seller's banks will try to negotiate any differences. In some cases, the seller can correct the documents and present them within the time specified in the letter of credit. If the documents cannot be corrected, the advising bank will ask the issuing bank to accept the documents despite the discrepancies found. It is important to note that, if the documents are not in accord with the specifications of the letter of credit, the buyer's issuing bank is no longer obligated to pay.

Part IV. How it works

1. After the buyer and seller agree on the terms of a sale, the buyer arranges for his bank to open a letter of credit in favor of the seller. Note: The buyer will need to have a line of credit established at the bank or provide cash collateral for the amount of the letter of credit.

2. The buyer's issuing bank prepares the letter of credit, including all of the buyer's instructions to the seller concerning shipment and required documentation.

3. The buyer's bank sends the letter of credit to the seller's advising bank.

4. The seller's advising bank forwards the letter of credit to the seller.

5. The seller carefully reviews all conditions stipulated in the letter of credit. If the seller cannot comply with any of the provisions, it will ask the buyer to amend the letter of credit.

6. After final terms are agreed upon, the seller ships the goods to the appropriate port or location.

7. After shipping the goods, the seller obtains the required documents. Please note that the seller may have to obtain some documents prior to shipment.

8. The seller presents the documents to its advising bank along with a draft for payment.

9. The seller's advising bank reviews the documents. If they are in order, it will forward them to the buyer's issuing bank. If a confirmed letter of credit, the advising bank will pay the seller (cash or a bankers' acceptance).

10. Once the buyer's issuing bank receives and reviews the documents, it either (1) pays if there are no discrepancies; or (2) forwards the documents to the buyer if there are discrepancies for its review and approval.

Imagine that a business called the MIN from time to time imports equipments from a business called INDA, which banks with the Romania Business Bank. MIN holds an account at the Commonwealth Financials. MIN wants to buy $500,000 quantity of merchandise from INDA, who agrees to sell the goods and give MIN 60 days to pay for them, on the condition that they are provided with a 90-day LC for the full amount. The steps to get the letter of credit would be as follows:

- MIN goes to The Commonwealth Financials and requests a $500,000 letter of credit, with INDA as the beneficiary.
- The Commonwealth Financials can issue a LC either on approval of a standard loan underwriting process or by MIN funding it directly with a deposit of $500,000 plus fees between 1% and 8%.
- The Commonwealth Financials sends a copy of the LC to the Romania Business Bank, which notifies the INDA that payment is ready and they can ship the merchandise MIN has ordered with the full assurance of payment to them.

- On presentation of the stipulated documents in the letter of credit and compliance with the terms and conditions of the letter of credit, the Commonwealth Financials transfers the $500,000 to the Romania Business Bank, which then credits the account to the INDA by that amount.
- Note that banks deal only with documents under the letter of credit and not the underlying transaction.
- Many exporters have misunderstood that the payment is guaranteed after receiving the LC. The issuing bank is obligated to pay under the letter of credit only when the stipulated documents are presented and the terms and conditions of the letter of credit have been met accordingly.

In specifying **required documents**, it is very important to include those required for customs and those reflecting the agreement reached between the buyer and the seller. Required documents usually include the bill of lading, a commercial and/or consular invoice, the bill of exchange, the certificate of origin, and the insurance document. Other documents required may be an inspection certificate, copies of a cable sent to the buyer with shipping information, a confirmation from the shipping company of the state of its ship, and a confirmation from the forwarder that the goods are accompanied by a certificate of origin. Prices should be stated in the currency of the letter of credit and documents should in the same language as the letter of credit.

Part V. The Letter of Credit Application

The following information should be addressed when establishing a letter of credit.

1. The seller should provide to the buyer its full corporate name and correct address. A simple mistake here may translate to inconsistent or improper documentation at the other end.

2. The seller should state the actual ***amount*** of the letter of credit. One can request a maximum amount when there is doubt as to the actual count or quantity of the goods. Another option is to use words like "approximate", "circa", or "about" to indicate an acceptable 10 % plus or minus from the stated amount. For consistency, if you use this wording you will need to use it also in connection with the quantity.

3. The seller will need time to ship and to prepare all the necessary documents. Therefore, the seller should ensure that the ***validity*** and period for document presentation after the shipment of the goods is long enough.

4. The seller should list its advising bank as well as a reimbursing bank if applicable. The reimbursing bank is the local bank appointed by the issuing bank as the disbursing bank.

5. The buyer and seller may agree to use sight drafts, time drafts, or some sort of deferred ***payment*** mechanism.

6. The buyer specifies the necessary documents. Buyers can list, for example, a bill of lading, a commercial invoice, a certificate of origin, certificates of analysis, etc. The seller must agree to all documentary requirements or suggest an amendment to the letter of credit.

7. The address to ***notify*** upon the imminent arrival of goods at the port or airport of destination. A notification listing damaged goods is also sent to this address, if applicable.

8. The seller should provide a short and precise description of the goods as well as the quantity involved.

9. With international arrangements, the seller may wish to confirm the letter of credit with a bank in its country.

Part VI. Amendment of a Letter of Credit

For the seller to change the terms noted on an irrevocable letter of credit, it must request an amendment from the buyer. The amendment process is as follows:

1. The seller requests a modification or amendment of questionable terms in the letter of credit;
2. If the buyer and issuing bank agree to the changes, the issuing bank will change the letter of credit;
3. The buyer's issuing bank notifies the seller's advising bank of the amendment; and
4. The seller's advising bank notifies the seller of the amendment.

Part VII. Procedures for the Seller

1. Before signing a sales contract, the seller should make inquiries about the buyer's business practices. The seller's bank will generally assist in this investigation.

2. In many cases, the issuing bank will specify the advising and/or confirming bank. These designations are usually based on the issuing bank's established correspondent relationships. The seller should ensure that the advising/confirming bank is a financially sound institution.

3. The seller should confirm the good standing of the buyer's issuing bank if the letter of credit is unconfirmed.

4. For confirmed letters of credit, the seller's advising bank should be willing to confirm the letter of credit issued by the buyer's bank. If the advising bank refuses to do so, the seller should request another issuing bank as the current bank may be or is in the process of becoming insolvent.

5. The seller should carefully review the letter of credit to ensure its conditions can be met. All documents must conform to the terms of the letter of credit. The seller must comply with every detail of the letter of credit specifications; otherwise the security given by the credit is lost.

6. The seller should ensure that the letter of credit is irrevocable.

7. If amendments are necessary, the seller should contact the buyer immediately so that the buyer can instruct the issuing bank to make the necessary changes quickly. The seller should keep the letter of credit's expiration date in mind throughout the amendment process.

8. The seller should confirm with the insurance company that it can provide the coverage specified in the letter of credit and that insurance charges listed in the letter of credit are correct. Typical insurance coverage is for CIF (cost, insurance and freight) often the value of the goods plus about 10 percent.

9. The seller must ensure that the goods match the description in the letter of credit and the invoice description.

10. The seller should be familiar with foreign exchange limitations in the buyer's country that could hinder payment procedures.

Part VIII. Procedures for the Buyer

1. When choosing the type of letter of credit, the buyer should consider the standard payment methods in the seller's country.

2. The buyer should keep the details of the purchase short and concise.

3. The buyer should be prepared to amend or re-negotiate terms of the letter of credit with the seller. This is a common procedure in international trade. With irrevocable letters of credit, the most common type, all parties must agree to amend the document.

4. The buyer can reduce the foreign exchange risk by buying forward currency contracts.

5. The buyer should use a bank experienced in foreign trade as its issuing bank.

6. The validation time stated on the letter of credit should give the seller ample time to produce the goods or to pull them out of stock.

7. A letter of credit is not fail-safe. Banks are only responsible for the documents exchanged and not the goods shipped. Documents in conformity with the letter of credit specifications cannot be rejected on grounds that the goods were not delivered as specified in the contract. The goods shipped may not in fact be the goods ordered and paid for.

8. Purchase contracts and other agreements pertaining to the sale between the buyer and seller are not the concern of the issuing bank. Only the letter of credit terms are binding on the bank.

9. Documents specified in the letter of credit should include those the buyer requires for customs clearance.

Part IX. Legal principles governing documentary credits

One of the primary particularities of the documentary credit is that the payment obligation is abstract and independent from the underlying contract of sale or any other contract in the transaction. Thus the bank’s obligation is defined by the terms of the credit alone, and the sale contract is irrelevant. The defenses of the buyer arising out of the sale contract do not concern the bank and in no way affect its liability. Article 3(a) UCP states this principle clearly. Article 4 the UCP further states that banks deal with documents only, they are not concerned with the goods (facts). Accordingly, if the documents tendered by the beneficiary, or his agent, appear to be in order, then in general the bank is both entitled and obliged to pay without further clarifications.

The policies behind adopting the abstraction principle are purely commercial and reflect a party’s expectations:

- Firstly, if the responsibility for the validity of documents was thrown on to banks, they would be burdened with investigating the underlying facts of each transaction and would thus be less inclined to issue documentary credits as the transaction would involve great risk and inconvenience.
- Secondly, documents required under the credit could in certain circumstances be different from those required under the sale transaction; banks would then be placed in a dilemma in deciding which terms to follow if required to look behind the credit agreement.
- Thirdly, the fact that the basic function of the credit is to provide the seller with the certainty of receiving payment, as long as he performs his documentary duties, suggests that banks should honour their obligation notwithstanding allegations of misfeasance by the buyer.

- Finally, courts have emphasized that buyers always have a remedy for an action upon the contract of sale, and that it would be a calamity for the business world if, for every breach of contract between the seller and buyer, a bank were required to investigate said breach.

The "principle of strict compliance" also aims to make the bank's duty of effecting payment against documents easy, efficient and quick. Hence, if the documents tendered under the credit deviate from the language of the credit the bank is entitled to withhold payment even if the deviation is purely terminological. The general legal maxim *de minimis non curat lex* [3] has no place in the field of documentary credits. In this phenomenon it is not possible for the investor to be sure that to get bank money from bank.

Part X. Legal Basis for Letters of Credit

Although documentary credits are enforceable once communicated to the beneficiary, it is difficult to show any consideration given by the beneficiary to the banker prior to the tender of documents. In such transactions the undertaking by the beneficiary to deliver the goods to the applicant is not sufficient consideration for the bank's promise because the contract of sale is made before the issuance of the credit, thus consideration in these circumstances is past.

In addition, the performance of an existing duty under a contract cannot be a valid consideration for a new promise made by the bank: the delivery of the goods is consideration for enforcing the underlying contract of sale and cannot be used, as it were, a second time to establish the enforceability of the bank-beneficiary relation.

Legal writers have analyzed every possible theory from every legal angle and failed to satisfactorily reconcile the bank's undertaking with any contractual analysis. The theories include: the implied promise, assignment theory, the negation [4] theory, reliance theory, agency [5] theories, estoppels [6] and trust [7] theories, anticipatory theory, and the guarantee theory. Accordingly, whether the documentary credit is referred to as a promise, an undertaking, a chose in action, an engagement or a contract, it is acceptable in English jurisprudence to treat it as contractual in nature, despite the fact that it possesses distinctive features, which make it suit generic.

Even though a couple of countries and US states (see e.g. Article 5 of the Uniform Commercial Code [8]) have tried to create statutes to establish the rights of the parties involved in letter of credit transactions, most parties subject themselves to the Uniform Customs and Practices (UCP) issued by the International Chamber of Commerce (ICC) in Paris. The ICC has no legislative authority, rather, representatives of various industry and trade groups from various countries get together to discuss how to revise the UCP and adapt them to new technologies. The UCP are quoted according to the publication number the ICC gives them. The UCP 600 are ICC publication No. 600 effective July 1, 2007. The previous revision was called UCP 500 and became effective 1993. Since the UCP are not laws, parties have to include them into their arrangements as normal contractual provisions. It is interesting to see that in the area of international trade the parties do not rely on governmental regulations, but rather prefer the speed and ease of auto-regulation.

3) **De minimis** is a Latin expression meaning *about minimal things*, which is used mostly as part of *de minimis non curat praetor* or *de minimis non curat lex*, to say that the law is not interested in trivial matters. *De minimis*, in a more formal legal sense, means something which is unworthy of the law's attention. In risk assessment, *de minimis* refers to a level of risk which is too small to be concerned with.

4) **Novation** is a term used in contract law and business law to describe the act of either replacing an obligation to perform with a new obligation, or replacing a party to an agreement with a new party. In contrast to an Assignment , a novation must be agreed upon by all the parties to the original agreement. The oblige, the person receiving the benefit of the bargain, must only be given notice. The obligor, the party making the novation, must only make the new obligor aware and receive consent from the new obligor. A contract transferred by the novation process transfers all duties and obligations from the original obligor to the new obligor (debtor).

5) **Agency** is an area of commercial law dealing with a contractual or quasi-contractual tripartite set of relationships when an Agent is authorized to act on behalf of another (called the Principal) to create a legal relationship with a Third Party. Succinctly, it may be referred to as the relationship between a principal and an agent whereby the principal, expressly or impliedly, authorizes the agent to work under his control and on his behalf. The agent is, thus, required to negotiate on behalf of the principal or bring him and third parties into contractual relationship. This branch of law separates and regulates the relationships between:

- Agents and Principals;

- Agents and the Third Parties with whom they deal on their Principals' behalf; and

- Principals and the Third Parties when the Agents purport to deal on their behalf.

6) **Estoppel** is a legal doctrine recognized both at common law and in equity in various forms. It is meant to complement the requirement of consideration in contract law. Estoppel is closely related to the doctrines of waiver, variation, and election and is applied in many areas of law, including insurance, banking, employment, international trade, etc.

7) In common law legal systems, a **trust** is an arrangement whereby money or property is managed by one person (or persons, or organizations) for the benefit of another but is owned by the 'Trust'. A trust is created by a **settlor**, who entrusts some or all of his or her property to people of his choice (the **trustees**). The trust is governed by the terms of the trust document, which is usually written and in **deed** form. It is also governed by local law. In the United States, the **settlor** is also called the **trustor**, **grantor**, **donor**, or **creator**.

8) The **Uniform Commercial Code** (**UCC** or the Code) is one of a number of uniform acts that have been promulgated in conjunction with efforts to harmonize the law of sales and other commercial transactions in all 50 states within the United States of America.

Part XI. Letter of Credit Terms

Acceptance Draft - payable at a fixed or determinable future date, upon the face of which the drawee has acknowledged in writing his or her obligation to pay at maturity. See also "banker's acceptance" and "trade acceptance".

Account Party - The party instructing the bank to open a letter of credit and on whose behalf the bank agrees to make payment. In most cases, the account party is the importer/buyer, and is also known as the applicant.

Advice of Fate - Notification of the status of a collection that is still outstanding. When a draft bears this phrase, the time begins to run from its date. The date of maturity is therefore fixed and does not depend on the date of acceptance of the draft.

Advising Bank - A bank that accepts a letter of credit from the issuing bank, verifies its authenticity, and forwards it to the beneficiary. The advising bank does not take on any payment obligations.

After Sight - When a draft bears this phrase, the time begins to run from the date of its acceptance.

Air Waybill (of lading) - A signed receipt and a contract to deliver goods by air. Such bills are non-negotiable and do not convey title to the goods as do “To Order” bills of lading used by ocean and land carriers. The title passes to the party to whom the goods are consigned (the Consignee).

Amendment - Change to terms of a letter of credit. Beneficiary has the right to refuse the amendment under an irrevocable letter of credit.

Applicant - See "account party".

Assignment of Proceeds - A request by the beneficiary to pay all or part of the funds due to him to a third party. This instrument does not transfer rights in the letter of credit nor the title to the goods.

Back-to-Back Letter of Credit (L/C) - Letter of credit issued for the account of a buyer who is already holding an L/C in his or her favor. The back-to-back L/C is issued in favor of the supplier to cover the same shipment as stipulated in the credit already held by the buyer. Terms of both L/Cs, except for the amount and expiration date, are so similar that the same documents presented under the back-to-back credit are subsequently applied against the credit in favor of the buyer. However, the buyer/beneficiary of the first credit substitutes this draft and invoice for those presented by the supplier. See also "letter of credit".

Banker's Acceptance - Form of credit created when a bank "accepts" a time draft typically drawn on the bank by a seller of goods. By accepting a draft, the bank is obligated to pay the face amount at a specified time in the future, usually six months or less after acceptance. A seller of merchandise can sell the banker's acceptance for an amount less than face value and have immediate use of funds. See also "acceptance".

Bank Draft - A check drawn by a bank on another bank payable to the seller at the request of the buyer. The check may be denominated in U.S. Dollars or most foreign currencies.

Beneficiary - The party who receives payment as stipulated in a letter of credit. This party is usually the seller/exporter.

Bill of Exchange - Formal written order addressed by one person (drawer) to another (drawee), signed by the drawer, and directing the drawee to pay on demand or at a fixed or determinable future time, a certain sum in money to the order of a specified person (payee).

Bill of Lading (Air, Ocean, Railroad, Truck) - A document of title issued by the carrier (transport company) or its agent. Bill of lading is a receipt for the merchandise in transit, as well as a contract for delivery to a specified party at a specified destination.

"BLANK ENDORSED" - A negotiable bill of lading in which the title to the merchandise is passed on to another party by means of an endorsement. The holder of the "blank endorsed" bill of lading is entitled to take possession of the merchandise.

"CLEAN BILL OF LADING" - One in which the goods are described as having been received by the carrier in "apparent good order and condition" and without qualification. "LATE PRESENTATION" (STALE): A bill of lading is presented to a bank for payment or negotiation after the stipulated date in the letter of credit, or later than 21 days after the date of its issuance.

"NEGOTIABLE OR 'TO ORDER'" - A bill of lading in which the merchandise is consigned directly "to order" or "to the order of" a designated party, usually the shipper or a bank. The phrase "to order" or "to the order of (a designated party)" signifies negotiability permitting the title of the merchandise to be transferred many times by means of appropriate endorsements.

"NOTIFY" - This phrase requires the carrier to notify a designed party upon arrival of the merchandise, but does not transfer title of the merchandise to that party.

"STRAIGHT OR NON-NEGOTIABLE" - A bill of lading in which the merchandise is consigned directly to a designated party, generally the buyer, but not to his "order". Delivery of the merchandise is made only to the designated party, usually without surrendering the bill of lading.

"THROUGH" - A bill of lading issued by a shipping company or their agent covering more than one mode of transportation.

Cash Against Documents (CAD) - Payment for goods in which an intermediary (usually a bank) releases title documents to the buyer upon payment in cash.

Cash in Advance (CIA) - A term of trade in which the exporter does not ship goods until payment is received; offers the least risk to sellers and the most risk to buyers.

Clean Draft - A sight or time draft (bill of exchange) which is not accompanied by additional documents. Also referred to as "Clean Collection".

Collecting Bank - Bank that acts as an agent for a remitting bank that wishes to have its collections handled. The collecting bank demands payment from the buyer and handles the funds received as instructed; generally the funds are sent back to the remitting bank.

Commercial Invoice - A written and signed list of merchandise and/or services with associated quantities, prices and expenses. It contains the terms of the sale and is prepared by the seller to show the total amount owed by the buyer.

Confirmed Credit - A letter of credit in which the issuing bank's obligation to pay is backed (confirmed) by a second bank.

Deferred Letter of Credit (L/C) - Letter of credit that calls for payment at a future date, but does not require a draft. See also "letter of credit" and "usance letter of credit".

Direct Collection - Method of payment for goods in which the seller sends a draft drawn on the buyer, the shipping documents, invoices, insurance certificates, other appropriate documents directly to the buyer's bank for collection. Only an information copy of the advice is sent to the exporter's bank to establish and monitor the collection transaction for the seller.

Discrepancy - Any deviation from the terms and conditions of a letter of credit or from the documents presented under the letter of credit.

Documentary Credit - A letter of credit issued to support the movement of merchandise supported by shipping documents presented by the beneficiary to the Issuing Bank for payment or acceptance.

Documents Against Acceptance (D/A) - Instructions given by a shipper to his or her acceptance bank that the documents attached to a time draft for collection are deliverable to the drawee/payer against his or her acceptance of the draft.

Documents Against Payment (D/P) - Instructions given by a shipper to his or her bank that the documents are deliverable to the drawee/payer only against his or her payment of the draft.

Draft - A draft is a formal demand for payment. It is an unconditional order in writing, addressed by one party (drawer) to another party (drawee), requiring the drawee to pay, at a designated or determinable future date, a specified sum in lawful currency (either in dollars or other currency) to the order of a named
party (the Payee). In international trade, drafts are also known as "Bills of Exchange."

Eurodollars - A term used for U.S. dollars held on deposit or traded anywhere else in the world except in the USA.

Eximbank (Export-Import Bank of the United States) - A U.S. government agency that offers insurance/guarantees of commercial or political risks associated with U.S. export transactions. These programs encourage U.S. exports by reducing the exporter's risk.

Expiry or Expiration Date - The date on which the draft and documents drawn under a letter of credit must be presented to the negotiating, accepting, paying, or issuing bank in order to effect payment. The issuing bank's obligation ceases on that date if the letter of credit is a "straight credit." If the letter of credit is a "negotiable credit," the issuing bank must honor the credit, provided the complying documents were submitted prior to the expiry (or expiration) date.

Foreign Exchange - The process of trading the currency of one country for that of another.

Foreign Exchange Exposure - A situation in which a U.S. company, selling/purchasing in a currency other than U.S. Dollars, runs the risk of receiving a reduced dollar amount or paying an increased dollar amount due to a fluctuating exchange rate.

Forward Transactions - Foreign exchange transactions settling between three business days and one year (and sometimes longer).

Freight Forwarder - An independent business that arranges for the shipment of export cargo and completes the necessary export documentation on behalf of the exporter.

Irrevocable Letter of Credit (L/C) - Letter of credit that cannot be changed or cancelled without the consent of all parties involved. Almost all L/Cs are irrevocable unless otherwise stated on L/C. See also "letter of credit".

Issuing Bank - Bank that draws up and issues the letter of credit and that makes payment according to the conditions

Letter of Credit - An instrument issued by a bank, at the request of the applicant, promising to pay the beneficiary upon his presentation of stipulated documents in accordance with the terms and conditions of the credit.

"CONFIRMED": A letter of credit issued by one bank to which another bank added its irrevocable confirmation to pay, thereby obligating itself in the same manner as the opening bank.

"STAND-BY": A letter of credit that generally guarantees payment due for an unfulfilled obligation on the part of the applicant or another party. It is payable upon presentation of a draft, as well as a signed statement or certification by the beneficiary that the applicant has failed in his obligation.

Maturity Date - The date on which negotiable instruments become due for payment.

Negotiate - Take action to verify that the documents presented under an L/C conform to the requirements in order to release funds to the seller.

Negotiating Bank - The bank that reviews the documents required in the letter of credit for compliance with its terms and remits payment to the beneficiary. The bank may be specifically named in the letter of credit, or may be a bank
chosen by the seller.

Opening Bank - See "Issuing Bank".

Paying Bank - Bank that effects payment of documents negotiated under a letter of credit, customarily the buyer's bank. It is usually also the negotiating bank, unless the L/C allows another bank to negotiate or the paying bank is unable to negotiate. See also "negotiating bank".

Presentation - Presentation for acceptance or payment on a collection or letter of credit.

Proforma Invoice - An invoice sent in advance of shipment, to enable the buyer to obtain an import permit or exchange permit or both. The proforma invoice gives a close approximation of the weights and values of the intended shipment.

Protest - Legal process of demanding payment of a negotiable item from the maker who has refused to pay.

Red Clause - Clause in a letter of credit that authorizes the advising/negotiating bank to make an advance payment to the beneficiary before presentation of shipping documents, usually against a simple receipt.

Reimbursing Bank - The bank names in a letter of credit as the bank authorized by the issuing bank to honor claims presented by the paying, accepting, or negotiating bank.

Revocable Letter of Credit (L/C) - A letter of credit that can be modified or canceled by the issuing bank without the beneficiary's consent unless the negotiation of complying documents has already taken place. The issuing bank must honor the draft(s) negotiated before the notice of revocation has been made.

Spot Transaction - Foreign exchange transaction in which foreign currency is bought at the current rate of exchange and delivered within two business days after the transaction date.

Spread - The difference between the buying (bid) rate and the selling (offer) rate of any foreign currency for any particular period.

Standby Letter of Credit (L/C) - Letter of credit issued to back an obligation of the applicant, but typically not intended to be the primary method of payment. Usually payable against drafts and statements, but not against commercial documents. See also "letter of credit".

Trade Acceptance - Draft drawn by the seller of goods on the buyer and accepted by the buyer for payment at a specified future date. See also "acceptance".

Transferable Letter of Credit (L/C) - Letter of credit that permits the beneficiary to transfer all or some of the rights and obligations under the credit to a second beneficiary. See also "letter of credit".

UCP - Uniform Customs and Practices for Documentary Credits. Publication issued by the International Chamber of Commerce (2007 revision, ICC Publication No. 600, or "UCP 600") that outlines the rules and guidelines involved in a letter of credit transaction.

Usance (Time) Credit - Letter of credit that calls for payment against drafts calling for payment at some specified date in the future. Gives buyers time to sell the goods to get the funds to reimburse the issuer.

Usance Letter of Credit (L/C) - Letter of credit that calls for payment at a future date -- generally within six months -- and requires a draft drawn on the issuing/paying bank for the amount of the invoice. See also "letter of credit".

Value (Settlement) Date - Contracted date on which the foreign exchange is to be delivered or received.

QUESTIONS:

Q1. Why is used a letter of credit in international trade?

Q2. Who are the three parties to a letter of credit?

Q3. What are the types of irrevocable letter of credit?

Q4. For what required documents the issuing bank is obligated to pay under the letter of credit if these are presented on the terms and conditions of the LC?

Q5. When was standardized the practice for handling letters of credit in international trade finance?

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CHAPTER III

INCOTERMS

Part I. Short history and definitions of incoterms

Incoterms are standard trade definitions most commonly used in international sales contracts. Devised and published by the International Chamber of Commerce, they are at the heart of world trade.

1. By letter of 28 February 2000 (reproduced in annex I),the Secretary-General of the International Chamber of Commerce (ICC) requested the Commission to consider endorsing Incoterms 2000 for worldwide use. This report gives the background to the previous actions of the Commission in respect of Incoterms 1953 and Incoterms 1990 and a short summary of the reasons for the preparation of the current revision.

2. At the Commission's first session in 1968, in deciding on its programme of work, the Commission identified Incoterms 1953 as an international instrument of special importance with regard to the harmonization and unification of the law of the international sale of goods. At its second session in 1969, with a view to encouraging the worldwide use of Incoterms 1953, the Commission, requested the Secretary-General to inform the ICC that Incoterms 1953 should be given the widest possible dissemination and to bring the views of the Commission to the attention of the United Nations regional economic commissions.

3. Amendments to Incoterms were made and additional terms were added in 1976 and 1980. However, those changes in Incoterms were not officially brought to the attention of the Commission and the Commission took no action leading towards endorsing the revision. By the late 1980s ICC decided to completely revise Incoterms 1953 in order to adapt them to contemporary commercial practice. Incoterms 1990 was adopted by the ICC with a date of entry into force on 1 July 1990 and became available as ICC publication no. 460.

4. At its twenty-fifth session in 1992, the Commission considered a request of the Acting Secretary-General of the ICC to endorse Incoterms 1990 for worldwide use. At that session, the Commission was agreed that Incoterms 1990 succeeded in providing a modern set of international rules for the interpretation of the most commonly used trade terms in international trade.

5. With regard to the reasons for the preparation of Incoterms 2000, the Foreword to Incoterms 2000 states: "Since the creation of Incoterms by ICC in 1936, this undisputed worldwide contractual standard has been regularly updated to keep pace with the development of international trade. Incoterms 2000 take account of the recent spread of customs-free zones, the increased use of electronic communications in business transactions, and changes in transport practices. Incoterms 2000 offer a simpler and clearer presentation of the 13 definitions, all of which have been revised."

6. Incoterms 2000 has been adopted by the ICC with a date of entry into force on 1 January 2000. It is available from ICC as publication no. 560.
Incoterms 2000 are already used in countless commercial sales contracts. Incoterms are contractual terms, the incorporation of which in sales contracts usefully complements the provisions of the United Nations Convention on Contracts for the International Sale of Goods and reduces the risk of misunderstanding that could lead to legal complications.

Part II. Definition and presentation

"Incoterms" is an abbreviation of International Commercial Terms, which were first published in 1936 by the International Chamber of Commerce (ICC). Since that time there have been six different revisions and updates to the Incoterms. The Incoterms provide a common set of rules for the most often used international terms of trade.

Incoterms are internationally accepted commercial terms defining the respective roles of the buyer and seller in the arrangement of transportation and other responsibilities and clarify when the ownership of the merchandise takes place. They are used in conjunction with a sales agreement or other method of transacting the sale.

The purpose of INCOTERMS is to provide a set of international rules for the interpretation of the chief terms used in foreign trade contract, for the optional use of businessmen who prefer the certainty of uniform international rules to the uncertainties of the varied interpretations of the same terms in different countries.

The chief difficulties met with by importers and exporters are the following:

1. Uncertainly as to law of what country will be applicable to their contracts
2. Difficulties arising from diversity in interpretation.

These handicaps to trade can be much reduced by the use of INCOTERMS published by the International Chamber of Commerce in 1936 and whose revised edition was published subsequently.

In any sales agreement, it is very important that a common understanding exists regarding the delivery terms. The terms in international business transactions often sound similar to those used in domestic business, but frequently have very different meanings.

Part III. The structure of INCOTERMS

In 1990, for ease of understanding, the terms were grouped in four basically different categories:

- the first group (the “E”-term Ex works) namely starting with the term whereby the seller only makes the goods available to the buyer at the seller’s own premises;
- the second group (the “F”-terms FCA, FAS and FOB) whereby the seller is called upon to deliver the goods to a carrier appointed by the buyer;
- the third group (the “C”-terms) where the seller has to contract for carriage, but without assuming the risk of loss or damage of the goods or additional costs due to events occuring after shipment and dispach (CFR, CIF, CPT and CIP);
- the fourth group (the “D”-terms) whereby the seller has to bear all costs and risks needed to bring the goods to the place of destination (DAF, DES, DEQ, DDU, AND DDP)

The following chart sets out this classification of the trade terms.

E-TERMS - Departure Terms

• EXW – EX WORKS

F-TERMS - Shipment Terms, Main Carriage Unpaid

• FCA – FREE CARRIER
• FAS – FREE ALONGSIDE SHIP
• FOB – FREE ON BOARD

C-TERMS - Shipment Terms, Main Carriage Paid

• CFR – COST AND FREIGHT
• CIF – COST, INSURANCE AND FREIGHT
• CPT – CARRIAGE PAID TO (named place)
• CIP – CARRIAGE AND INSURANCE PAID
TO (named place)
D-TERMS (Arrival Terms)
• DAF – DELIVERED AT FRONTIER
• DES – DELIVERED EX SHIP
• DEQ – DELIVERED EX QUAY
• DDU – DELIVERED DUTY UNPAID
• DDP – DELIVERED DUTY PAID

Part IV. Understanding incoterms - the 13th incoterms

E-TERMS - Departure Terms

❖ **EXW – EX WORKS**

"Ex works" means that the seller delivers when he places the goods at the disposal of the buyer at the seller's premises or another named place (i.e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle. This term thus represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller's premises.

The seller's obligations

- provide appropriate packing and marking
- place the goods at the disposal of the buyer at the named place of delivery
- on request assist the buyer with the export documentation

The buyer's obligations

- take delivery of the goods and contract for the carriage to the final destination

F-TERMS - Shipment Terms, Main Carriage Unpaid

❖ **FCA - FREE CARRIER**

"Free Carrier" means that the seller delivers the goods, cleared for export, to the carrier nominated by the buyer at the named place. It should be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller's premises, the seller is responsible for loading. If delivery occurs at any other place, the seller is not responsible for unloading.
"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes.
If the buyer nominates a person other than a carrier to receive the goods, the seller is deemed to have fulfilled his obligation to deliver the goods when they are delivered to that person.

The seller's obligations

- provide appropriate packing and marking
- load the goods on the means of transport nominated by the buyer (delivery at the seller's premises) or place the goods at the disposal of the carrier nominated by the buyer, not unloaded, in the seller's means of transport (delivery at the depot or elsewhere)

- carry out the export procedures and provide the buyer with the document received for the delivery of the goods

The buyer's obligations

- take delivery of the goods, loaded, on the means of transport (delivery at seller's premises) or take delivery of the goods on the arriving means of transport, not unloaded, and carry out unloading, storage, and loading of the goods (delivery at depot or elsewhere)
- carry out import procedures and contract of carriage to the final destination

❖ FAS – FREE ALONGSIDE SHIP

'Free Alongside Ship' means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment. The FAS term requires the seller to clear the goods for export.

The seller's obligations

- provide appropriate packing and markin
- place the goods at the disposal of the buyer alongside the ship
- carry out the export procedures
- provide the buyer with the document received for the delivery of the goods

The buyer's obligations

- take delivery of the goods alongside the ship
- carry out the import procedures and the carriage to the final destination

❖ FOB – FREE ON BOARD

"Free on Board" means that the seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the FCA term should be used.

The seller's obligations

- provide appropriate packing and marking
- deliver the goods on board the ship at the port of shipment
- carry out the export procedures
- provide the buyer with the document received for the delivery of the goods

The buyer obligations

- take delivery of the goods on board the ship at the port of shipment
- carry out the import procedures and the carriage to the final destination

C-TERMS - Shipment Terms, Main Carriage Paid

❖ CFR – COST AND FREIGHT

"Cost and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment. The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

The CFR term requires the seller to clear the goods for export. This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CPT term should be used.

The seller's obligations

- provide appropriate packing and marking
- contract for the carriage and pay the freight to the port of destination
- deliver the goods on board the ship at the port of shipment
- carry out the export procedures
- provide the buyer with the transport document without delay

The buyer's obligations

- accept delivery of goods at the port of shipment and receive them from the carrier at the port of destination
- carry out the import procedures and the carriage to the final destination

❖ CIF – COST, INSURANCE AND FREIGHT

"Cost, Insurance and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment.
The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. However, in CIF the seller also has to procure marine insurance against the buyer's risk of loss of or damage to the goods during the carriage.
The CIF term requires the seller to clear the goods for export.
This term can be used only for sea and inland waterway transport.
If the parties do not intend to deliver the goods across the ship's rail, the CIP term should be used.

The seller's obligations

- provide appropriate packing and marking
- contract for the carriage and pay the freight to the port of destination
- deliver the goods on board the ship at the port of shipment
- carry out the export procedures
- contract and pay for agreed cargo insurance in favour of the buyer
- provide the buyer with the transport document and cargo insurance document without delay

The buyer's obligations

- agree on the cargo insurance with the seller
- accept delivery of goods at the port of shipment and receive them from the carrier at the port of destination
- carry out the import procedures and the carriage to the final destination

❖ CPT – CARRIAGE PAID TO (named place)

"Carriage Paid to..." means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination.
This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered;

The seller's obligations

- provide appropriate packing and marking
- contract for the carriage and pay the freight to the place of destination

- deliver the goods to the carrier
- carry out the export procedures
- provide the buyer with the transport document without delay

The buyer's obligations

- accept delivery of goods at the place of dispatch and receive them from the carrier at the place of destination
- carry out the import procedures and the carriage to the final destination

❖ CIP – CARRIAGE AND INSURANCE PAID

"Carriage and Insurance Paid to..." means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been so delivered. However, in CIP the seller also has to procure insurance against the buyer's risk of loss of or damage to the goods during the carriage.
The buyer should note that under the CIP term the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

The seller's obligation

- provide appropriate packing and marking
- contract for the carriage and pay the freight to the place of destination
- deliver the goods to the carrier
- carry out the export procedures
- contract and pay for agreed cargo insurance in favour of the buyer
- provide the buyer with the transport document and cargo insurance document without delay

The buyer's obligations

- agree on the cargo insurance with the seller
- accept delivery of goods at the place of dispatch and receive them from the carrier at the place of destination
- carry out the import procedures and the carriage to the final destination

D-TERMS (Arrival Terms)

❖ DAF – DELIVERED AT FRONTIER

"Delivered at Frontier" means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import at the named point and place at the frontier, but before the customs border of the adjoining country. The term "frontier" may be used for any frontier including that of the country of export.
Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term.

The seller's obligations

- provide appropriate packing and marking
- place the goods at the disposal of the buyer on the arriving means of transport at the frontier not unloaded
- carry out the export procedures
- provide the buyer with the document received for the delivery of the goods

The buyer's obligations

- take delivery of the goods on the arriving means of transport, not unloaded
- carry out the unloading of the goods from the means of transport of the seller, storage, import procedures and carriage to the final destination

❖ DES – DELIVERED EX SHIP

"Delivered Ex Ship" means that the seller delivers when the goods are placed at the disposal of the buyer on board the ship not cleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to thenamed port of destination before discharging. If the parties wish the seller to bear the costs and risks of discharging the goods, then the DEQ term should be used.
This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on a vessel in the port of destination.

The seller's obligations

- provide appropriate packing and marking
- carry out the export procedures
- place the goods at the disposal of the buyer on board the ship at the named port of destination
-provide the buyer with the document received for the delivery of the goods

The buyer's obligations

- take delivery of the goods on board at the port of destination
- carry out the unloading of the goods
- carry out the import procedures and carriage to the final destination from the named port of discharge

❖ DEQ – DELIVERED EX QUAY

"Delivered Ex Quay" means that the seller delivers when the goods are placed at the disposal of the buyer not cleared for import on the quay (wharf) at the named port of destination. The seller has to bear costs and risks involved in bringing the goods to the named port of destination and discharging the goods on the quay (wharf). The DEQ term requires the buyer to clear the goods for import and to pay for all formalities, duties, taxes and other
charges upon import.

The seller's obligations

- provide appropriate packing and marking
- carry out the export procedures
- place the goods at the disposal of the buyer on the quay at the named port of destination
- provide the buyer with the document received for the delivery of the goods

The buyer's obligations

- take delivery of the goods on the quay at the port of destination
- carry out the import procedures and the carriage to the final destination.

❖ DDU – DELIVERED DUTY UNPAID

"Delivered Duty Unpaid" means that the seller delivers the goods to the buyer, not cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear the costs and risks involved in bringing the goods there, other than, where applicable, any "duty" (which term includes the responsibility for and the risks of the carrying out of customs formalities, and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination. Such "duty" has to be borne by the buyer as well as any costs and risks caused by his failure to clear the goods for import in time.

The seller's obligations

- provide appropriate packing and marking
- carry out the export procedures
- place the goods at the disposal of the buyer at the named place of destination not unloaded
- provide the buyer with the document received for the delivery of the goods

The buyer's obligations

- pay the price as provided in the contract of sale
- take delivery of the goods wheh they have been delivered
- bear all risks of loss of or damage to the goods from the time they have delivered
- pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

❖ **DDP – DELIVERED DUTY PAID**

"Delivered Duty Paid" means that the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods there to including, where applicable, any "duty" (which term includes the responsibility for and the risks of the carrying out of customs formalities and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination.
Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation.

The seller's obligations

- provide appropriate packing and marking
- carry out the export and import procedures
- place the goods at the disposal of the buyer at the named place of destination not unloaded

The buyer's obligations

- take delivery of the goods at the final destination
- carry out the unloading of the goods

Part V. The golden rules of INCOTERMS

1. Explicitly incorporate Incoterms into your sales contracts, eg. "FOB Liverpool Incoterms 2000".
Always include the words "Incoterms 2000" in your contracts. Incoterms 2000 came into effect as of January 2000 and applies to any date thereafter.
2. Have access to a copy of the full text of the terms and set of definitions, contained in the ICC publication "Incoterms 2000". This can be obtained directly from the ICC Secretariat in Paris, from a local ICC National Committee, or from an international business bookstore or local chamber of commerce. Refer to the ICC Web site: http://www.iccwbo.org/.
2. Recognize the 13 valid Incoterms, and refer to them by their 3-letter abbreviations. Incoterms are divided into four categories. Each category is identified by the first letter of the Incoterms contained thereunder.

Part VI. Glosar of terms and tables

Code: character string that represents a member of a set of values.

Code list: complete set of code values for a data item.

Document: recorded permanent data containing information.

Facilitation: implementation of measures leading to the simplification, standardization and harmonization of the formalities, procedures, documents and operations inherent to international trade transactions.

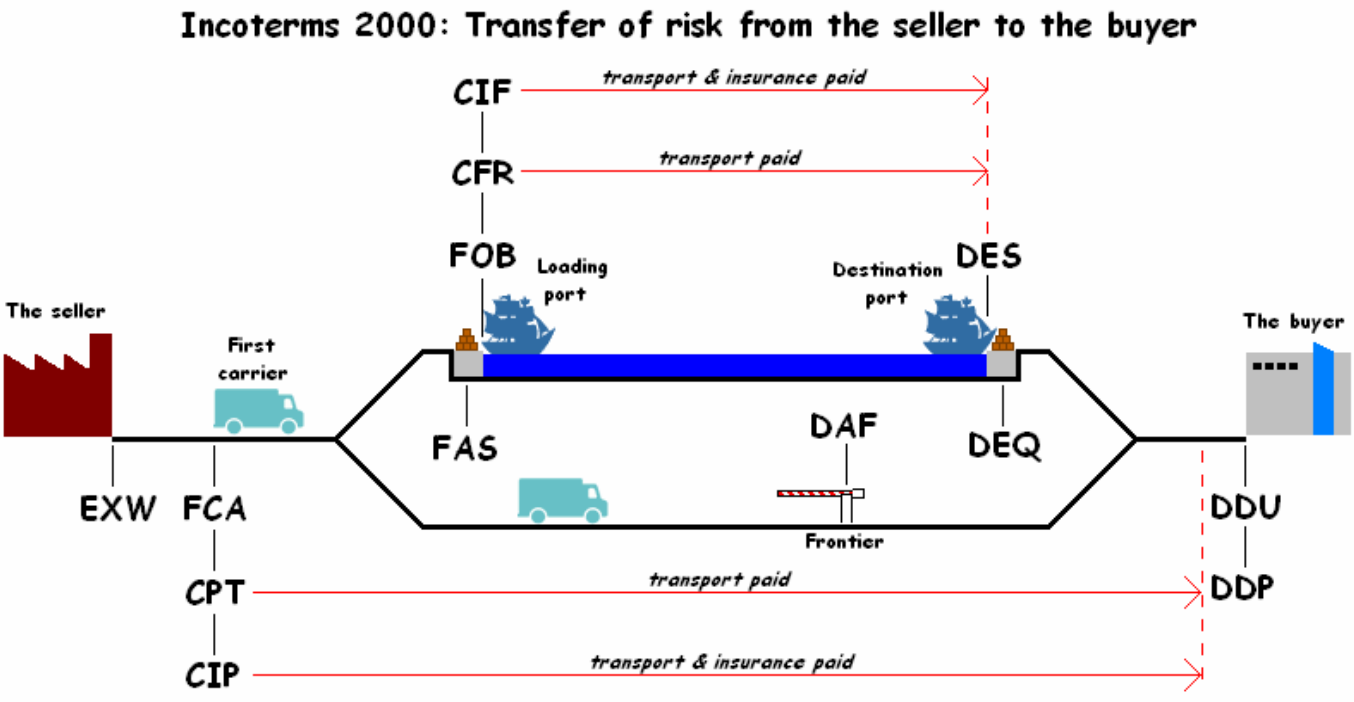
Formality: set of requirements of an official, commercial or institutional nature.

Harmonization: alignment of national formalities, procedures, documents, information, and operations to acceptable international commercial norms, practices and recommendations.

Intermodal transport: movement of goods in one and the same loading unit or vehicle which uses successively several modes of transport without handling of the goods themselves in changing modes.

Multimodal transport: carriage of goods by at least two different modes of transport.

Procedure: steps to be followed in order to comply with a formality, including the timing, format and transmission method for the submission of required information.



QUESTIONS:

Q**1. What are INCOTERMS?**

Q2. What is take into account INCOTERMS 2000?

Q3. Explain the abbreviation of INCOTERMS.

Q4. Why do INCOTERM need revising periodically?

Q5. What is the purpose of INCOTERMS?

Q6. Which of the 13th INCOTERMS represent the minimum obligation for the seller?

Q7. What does mean 'carier'?

Q8. What does mean FAS (Free Along Ship)?

Q9. Which are the maximum obligation for the seller?

Q10. Which are 'The golden rules of INCOTERMS'?

Q11. What kind of transport is used for CFR term?

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CHAPTER IV

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL CONCILIATION (2002)

In preparing and adopting model legislative provisions on international commercial conciliation, the United Nations Commission on International Trade Law (UNCITRAL or "the Commission") was mindful that such provisions would be a more effective tool for States modernizing their legislation if accompanied by background and explanatory information. The Commission was also aware of the likelihood that the model provisions would be used in a number of States with limited familiarity with conciliation as a method of dispute settlement. Primarily directed to executive branches of Governments and legislators preparing the necessary legislative revisions, the information provided in this Guide should also provide useful insight to other users of the text, including commercial parties, practitioners, academics and judges.

The term "conciliation" is used in the Model Law as a broad notion referring to proceedings in which a person or a panel of persons assists the parties in their attempt to reach an amicable settlement of their dispute.

There are critical differences among the dispute resolution processes of negotiation, conciliation and arbitration. Once a dispute arises, the parties typically seek to resolve their dispute by negotiating without involving anyone outside the dispute. If the negotiations fail to resolve the dispute, a range of dispute settlement mechanisms is available, including arbitration and conciliation.

An essential feature of conciliation is that it is based on a request addressed by the parties in dispute to a third party. In arbitration, the parties entrust the dispute resolution process and the outcome of the dispute to the arbitral tribunal that imposes a binding decision on the parties.

Conciliation differs from party negotiations in that conciliation involves third-person assistance in an independent and impartial manner to settle the dispute. It differs from arbitration because in conciliation the parties retain full control over the process and the outcome, and the process is non adjudicatory.

In conciliation, the conciliator assists the parties in negotiating a settlement that is designed to meet the needs and interests of the parties in dispute. The conciliation process is an entirely consensual one in which parties that are in dispute determine how to resolve the dispute, with the assistance of a neutral third party. The neutral third party has no authority to impose on the parties a solution to the dispute.

Article I. Scope of application and definitions

1. This Law applies to international commercial conciliation.

2. For the purposes of this Law, "conciliator" means a sole conciliator or two or more conciliators, as the case may be.

3. For the purposes of this Law, "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ("the conciliator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute.

4. A conciliation is international if:
(a) The parties to an agreement to conciliate have, at the time of the conclusion of that agreement, their places of business in different States; or
(b) The State in which the parties have their places of business is different from either:
(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or
(ii) The State with which the subject matter of the dispute is most closely connected.

5. For the purposes of this article:
(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to conciliate;
(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

6. This Law also applies to a commercial conciliation when the parties agree that the conciliation is international or agree to the applicability of this Law.

7. The parties are free to agree to exclude the applicability of this Law.

8. Subject to the provisions of paragraph 9 of this article, this Law applies irrespective of the basis upon which the conciliation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

9. This Law does not apply to:
(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and
(b) [. . .]

Article II. Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article III. Variation by agreement

Except for the provisions of article 2 and article 6, paragraph 3, the parties may agree to exclude or vary any of the provisions of this Law.

Article IV. Commencement of conciliation proceedings

1. Conciliation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in conciliation proceedings

2. If a party that invited another party to conciliate does not receive an acceptance of the invitation within thirty days from the day on which the invitation was sent, or within such other period of time as specific in the invitation, the party may elect to treat this as a rejection of the invitation to conciliate.

Article V. Number and appointment of conciliators

1. There shall be one conciliator, unless the parties agree that there shall be two or more conciliators.

2. The parties shall endeavour to reach agreement on a conciliator or conciliators, unless a different procedure for their appointment has been agreed upon.

3. Parties may seek the assistance of an institution or person in connection with the appointment of conciliators. In particular:
(a) A party may request such an institution or person to recommend suitable persons to act as conciliator; or
(b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

4. In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, where appropriate, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

5. When a person is approached in connection with his or her possible appointment as conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.
A conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article VI. Conduct of conciliation

1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the conciliation is to be conducted.

2. Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

3. In any case, in conducting the proceedings, the conciliator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

4. The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.

Article VII. Communication between conciliator and parties

The conciliator may meet or communicate with the parties together or with each of them separately.

Article VIII. Disclosure of information

When the conciliator receives information concerning the dispute from a party, the conciliator may disclose the substance of that information to any other party to the conciliation. However, when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the conciliation.

Article IX. Confidentiality

Unless otherwise agreed by the parties, all information relating to the conciliation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article X. Admissibility of evidence in other proceedings

1. A party to the conciliation proceedings, the conciliator and any third person, including those involved in the administration of the conciliation proceedings, shall not in arbitral, judicial or similar proceedings
rely on, introduce as evidence or give testimony or evidence regarding any of the following:
(a) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;
(b) Views expressed or suggestions made by a party in the conciliation in respect of a possible settlement of the dispute;
(c) Statements or admissions made by a party in the course of the conciliation proceedings;
(d) Proposals made by the conciliator;
(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the conciliator;
(f) A document prepared solely for purposes of the conciliation proceedings.

2. Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.

5. Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a conciliation.

Article XI. Termination of conciliation proceedings

The conciliation proceedings are terminated:
(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;
(b) By a declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;
(c) By a declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
(d) By a declaration of a party to the other party or parties and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Article XII. Conciliator acting as arbitrator

Unless otherwise agreed by the parties, the conciliator shall not act as an arbitrator in respect of a dispute that was or is the subject of the conciliation proceedings or in respect of another dispute that has arisen
from the same contract or legal relationship or any related contract or legal relationship.

Article XIII. Resort to arbitral or judicial proceedings

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.

Article XIV. Enforceability of settlement agreement4

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable . . . [*the enacting State may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement*].

QUESTIONS:

Q1. Define the term of "conciliation" as described in this Law.
Q2. When a conciliation process can be described as "international"?
Q3. In which condition an invitation to conciliation can be considered rejected (it is rejected) ?
Q4. Describe in which terms the negociator can disclose information regarding the conciliation case.
Q5. Which are the means of closing a conciliation procedure?

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CHAPTER V

UNCITRAL - ARBITRATION RULES

The UNCITRAL Arbitration Rules were adopted in 1976 after extensive deliberations and consultations with various interested international organizations and leading arbitration experts. The General Assembly of the United Nations has recommended the use of the UNCITRAL Arbitration Rules in international commercial contracts.

RESOLUTION 31/98 ADOPTED BY THE GENERAL ASSEMBLY ON 15 DECEMBER 1976
31/98. Arbitration Rules of the United Nations Commission on International Trade Law

The General Assembly
Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Being convinced that the establishment of rules for ad hoc arbitration that are acceptable in countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations,

Bearing in mind that the Arbitration Rules of the United Nations Commission on International Trade Law have been prepared after extensive consultation with arbitral institutions and centres of international commercial arbitration,

Noting that the Arbitration Rules were adopted by the United Nations Commission on International Trade Law at its ninth session 1/ after due deliberation,

1. Recommends the use of the Arbitration Rules of the United Nations Commission on International Trade Law in the settlement of disputes arising in the context of international commercial relations, particularly by reference to the Arbitration Rules in commercial contracts;

2. Requests the Secretary-General to arrange for the widest possible distribution of the Arbitration Rules.

Section I. Introductory rules

SCOPE OF APPLICATION

Article 1

1. Where the parties to a contract have agreed in writing* that disputes in relation to that contract shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing.

2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

Note - Parties may wish to consider adding:

(a) The appointing authority shall be ... (name of institution or person);

(b) The number of arbitrators shall be ... (one or three);

(c) The place of arbitration shall be ... (town or country);

(d) The language(s) to be used in the arbitral proceedings shall be ...

NOTICE, CALCULATION OF PERIODS OF TIME

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee of if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee=s last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, 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.

NOTICE OF ARBITRATION

Article 3

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;

(b) The names and addresses of the parties;

(c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;

(d) A reference to the contract out of or in relation to which the dispute arises;

(e) The general nature of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

(a) The proposals for the appointments of a sole arbitrator and an appointing authority referred to in article 6, paragraph 1;

(b) The notification of the appointment of an arbitrator referred to in article 7;

(c) The statement of claim referred to in article 18.

REPRESENTATION AND ASSISTANCE

Article 4

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Section II. Composition of the arbitral tribunal

NUMBER OF ARBITRATORS

Article 5

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

APPOINTMENT OF ARBITRATORS *(Articles 6 to 8)*

Article 6

1. If a sole arbitrator is to be appointed, either party may propose to the other:

(a) The names of one or more persons, one of whom would serve as the sole arbitrator; and

(b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.

2. If within thirty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within sixty days of the receipt of a party's request therefor, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.

3. The appointing authority shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment the appointing authority shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;

(b) Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

4. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into

account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Article 7

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

2. If within thirty days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed:

(a) The first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or

(b) If no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within thirty days after receipt of a party's request therefor, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an appointing authority in the same way as a sole arbitrator would be appointed under article 6.

Article 8

1. When an appointing authority is requested to appoint an arbitrator pursuant to article 6 or article 7, the party which makes the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfil its function.

2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

CHALLENGE OF ARBITRATORS *(Articles 9 to 12)*

Article 9

A prospective arbitrator shall disclose to those who approach him in connexion with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

Article 10

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrators impartiality or independence.

2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 11

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in articles 9 and 10 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

3.When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 6 or 7 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 12

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:

(a) When the initial appointment was made by an appointing authority, by that authority;

(b) When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;

(c) In all other cases, by the appointing authority to be designated in accordance with the procedure for designating an appointing authority as provided for in article 6.

2.If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in articles 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

REPLACEMENT OF AN ARBITRATOR

Article 13

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.

2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

REPETITION OF HEARINGS IN THE EVENT OF THE REPLACEMENT OF AN ARBITRATOR

Article 14

If under articles 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

Section III. Arbitral proceedings

GENERAL PROVISIONS

Article 15

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

PLACE OF ARBITRATION

Article 16

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the place of arbitration.

LANGUAGE

Article 17

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

STATEMENT OF CLAIM

Article 18

1. Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars:

(a) The names and addresses of the parties;

(b) A statement of the facts supporting the claim;

(c) The points at issue;

(d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

STATEMENT OF DEFENCE

Article 19

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.

2. The statement of defence shall reply to the particulars *(b)*, *(c)* and *(d)* of the statement of claim (article 18, para. 2). The respondent may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.

3. In his statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.

4. The provisions of article 18, paragraph 2, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

AMENDMENTS TO THE CLAIM OR DEFENCE

Article 20

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

Article 21

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counterclaim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

FURTHER WRITTEN STATEMENTS

Article 22

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

PERIODS OF TIME

Article 23

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed forty-five days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

EVIDENCE AND HEARINGS *(articles 24 and 25)*

Article 24

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Article 25

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.

4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

INTERIM MEASURES OF PROTECTION

Article 26

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.

3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

EXPERTS

Article 27

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 25 shall be applicable to such proceedings.

DEFAULT

Article 28

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

CLOSURE OF HEARINGS

Article 29

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

WAIVER OF RULES

Article 30

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

Section IV. The award

DECISIONS

Article 31

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

FORM AND EFFECT OF THE AWARD

Article 32

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

5. The award may be made public only with the consent of both parties.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

APPLICABLE LAW, AMIABLE COMPOSITEUR

Article 33

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

Article 34

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraphs 2 and 4 to 7, shall apply.

INTERPRETATION OF THE AWARD

Article 35

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

CORRECTION OF THE AWARD

Article 36

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

ADDITIONAL AWARD

Article 37

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

COSTS *(Articles 38 to 40)*

Article 38

The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 39;

(b) The travel and other expenses incurred by the arbitrators;

(c) The costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

Article 39

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and if that authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in

fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

3. If such appointing authority has not issued a schedule of fees for arbitrators in international cases, any party may at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal in fixing its fees shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

4. In cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

Article 40

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph *(e)*, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39, paragraph 1, in the text of that order or award.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

DEPOSIT OF COSTS

Article 41

1. The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in article 38, paragraphs *(a)*, *(b)* and *(c)*.

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Further updates to the UNCITRAL Arbitration

1982 - Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules

Adopted by UNCITRAL in 1982, the Recommendations are designed to provide information and assistance to arbitral institutions and other relevant bodies, such as chambers of commerce, in using the Arbitration Rules. This may include cases where the Arbitration Rules are being used as the basis for preparing or revising institutional rules, where arbitral institutions or other bodies are acting as an appointing authority as envisaged under the UNCITRAL Arbitration Rules, or in the provision of administrative services of a secretarial or technical nature for an arbitration conducted pursuant to the UNCITRAL Arbitration Rules.

1982 - Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules

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1985 - UNCITRAL Model Law on International Commercial Arbitration

The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world.

Amendments to articles 1 (2), 7, and 35 (2), a new chapter IV bis to replace article 17 and a new article 2A were adopted by UNCITRAL on **7 July 2006**. The revised version of article 7 is intended to modernise the form requirement of an arbitration agreement to better conform with international contract practices. The newly introduced chapter IV bis establishes a more comprehensive legal regime dealing with interim measures in suppport of arbitration. As of 2006, the standard version of the Model Law is the amended version. The original 1985 text is also reproduced in view of the many national enactments based on this original version.

1996 - UNCITRAL Notes on Organizing Arbitral Proceedings

Finalized by UNCITRAL in 1996, the Notes are designed to assist arbitration practitioners by providing an annotated list of matters on which an arbitral tribunal may wish to formulate decisions during the course of arbitral proceedings, including deciding on a set of arbitration rules, the language and place of an arbitration and questions relating to confidentiality, as well as other matters such as conduct of hearings and the taking of evidence and possible requirements for the filing or delivering of an award. The text may be used in both ad hoc and institutional arbitrations.

2002 - UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use

Adopted by UNCITRAL on 24 June 2002, the Model Law provides uniform rules in respect of the conciliation process to encourage the use of conciliation and ensure greater predictability and certainty in its use. To avoid uncertainty resulting from an absence of statutory provisions, the Model Law addresses procedural aspects of conciliation, including appointment of conciliators, commencement and termination of conciliation, conduct of the conciliation, communication between

the conciliator and other parties, confidentiality and admissibility of evidence in other proceedings as well as post-conciliation issues, such as the conciliator acting as arbitrator and enforceability of settlement agreements.

QUESTIONS:

Q1. Which is the mandatory content of a notice of arbitration?

Q2. How many arbitrators can be appointed in an arbitral tribunal?

Q3. Which data must be included in the statement of claim?

Q4. What does a correction of the award imply?

Q5. Which are the costs of arbitration that the arbitral tribunal must determine in its award?

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CHAPTER VI

THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT 1947)

The **General Agreement on Tariffs and Trade** (typically abbreviated **GATT**) was the outcome of the failure of negotiating governments to create the International Trade Organization (ITO). The Bretton Woods Conference had introduced the idea for an organization to regulate trade as part of a larger plan for economic recovery after World War II. As governments negotiated the ITO, 15 negotiating states began parallel negotiations for the GATT as a way to attain early tariff reductions. Once the ITO failed in 1950, only the GATT agreement was left. The GATT's main objective was the reduction of barriers to international trade. This was achieved through the reduction of tariff barriers, quantitative restrictions and subsidies on trade through a series of agreements. The GATT was a treaty, not an organization. The functions of the GATT were taken over by the World Trade Organization which was established during the final round of negotiations in early 1990s.

The most important rules and principles of GATT are further presented:

1. General Most-Favoured-Nation Treatment (Article I)

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, *any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties*. A derogation of MFN is the possibility that the principal can not be applied for custom unions and free trade areas.

2. National Treatment on Internal Taxation and Regulation (Article III)

The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting

3. *Freedom of Transit (Article V)*

Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".

There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.

Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

4. Anti-dumping and Countervailing Duties (Article VI)

The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(*a*) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or

(*b*) in the absence of such domestic price, is less than either

(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.

No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise.

No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

5. Valuation for Customs Purposes (*Article VII*)

` The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article.

The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

"Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

When the actual value is not ascertainable in accordance with subparagraph (*b*) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.

The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.

Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value

established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement.

Where no such established par value and no such recognized rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.

The CONTRACTING PARTIES, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by contracting parties of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any contracting party may apply such rules in respect of such foreign currencies for the purposes of paragraph 2 of this Article as an alternative to the use of par values. Until such rules are adopted by the Contracting Parties, any contracting party may employ, in respect of any such foreign currency, rules of conversion for the purposes of paragraph 2 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.

Nothing in this paragraph shall be construed to require any contracting party to alter the method of converting currencies for customs purposes which is applicable in its territory on the date of this Agreement, if such alteration would have the effect of increasing generally the amounts of duty payable.

The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

6. *Publication and Administration of Trade Regulations (Article 10)*

Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

7. *General Elimination of Quantitative Restrictions (Article XI)*

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

The provisions of paragraph 1 of this Article shall not extend to the following:

(*a*) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

(*b*) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

(*c*) Import restrictions on any agricultural or fisheries product, imported in any form necessary to the enforcement of governmental measures which operate:

(i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

(ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

(iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to subparagraph (*c*) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.

8. *Restrictions to Safeguard the Balance of Payments (Article XII)*

In order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary:

(i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves; or

(ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of such contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

Contracting parties applying restrictions under sub-paragraph (*a*) of this paragraph shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that subparagraph.

9. *Non-discriminatory Administration of Quantitative Restrictions(Article XIII)*

No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions and to this end shall observe the following provisions:

(*a*) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (*b*) of this Article;

(*b*)In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;

(*c*)Contracting parties shall not, except for purposes of operating quotas allocated in accordance with subparagraph (*d*) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;

(*d*) In cases in which a quota is allocated among supplying countries the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

10. Subsidies (Article XVI)

Section A - Subsidies in General

If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization.

Section B - Additional Provisions on Export Subsidies

The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not

be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.

Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.

The CONTRACTING PARTIES shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties.

11. General Exceptions (Article XX)

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(*a*) necessary to protect public morals;

(*b*) necessary to protect human, animal or plant life or health;

(*c*) relating to the importations or exportations of gold or silver;

(*d*) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

(*e*) relating to the products of prison labour;

(*f*) imposed for the protection of national treasures of artistic, historic or archaeological value;

(*g*) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(*h*) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;

(*i*) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(*j*) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

12. Territorial Application - Frontier Traffic - Customs Unions and Free-trade Areas (Article XXIV)

For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

The provisions of this Agreement shall not be construed to prevent:

(*a*) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

(*b*) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(*a*) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(*b*) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

(*c*) any interim agreement referred to in subparagraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

For the purposes of this Agreement:

A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those

permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.

QUESTIONS:

Q1. What means MFN?

Q2. What are the derogations from MFN Treatment?

Q3. What means National Treatment?

Q4. What requires the freedom of transit?

Q5. When is a product considered as being introduced into the commerce of an importing country at less than its normal value?

Q6. What is the „actual value”?

Q7. What does *General Elimination of Quantitative Restrictions* refer to?

Q8. What is the obligation of a country when serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization?

Q9. What are the situations in which restrictions are used to safeguard the balance of payments?

Q10. What is a free trade area?

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CHAPTER VII

EU INSTITUTIONS AND POLITICS

THE LISBON TREATY

The Lisbon Treaty (also referred to as "Reform Treaty" or "Simplified Treaty") is a replacement for the Treaty establishing a Constitution for Europe. While the Constitution attempted to replace all earlier EU treaties, the Reform Treaty amends them. In this sense the formal title of the treaty is Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.

The European Council, which met in Lisbon on 18th and 19th October 2007 approved the new reform treaty so called „Lisbon Treaty", which replaces the draft Treaty establishing a Constitution for Europe. This new treaty introduces modifications both to the Treaty on European Union (Maastricht Treaty) and the Treaty establishing the European Community (Rome Treaty).
On 13th December 2007 the 27 Heads of State and Government meet in Lisbon to sign the new treaty. The Lisbon Treaty has to be ratified by the 27 Member States before 1st January 2009 if it is to enter into force.

Some Key Points of the Treaty

- Qualified majority voting (QMV) will become the normal rule for the Council of Ministers. National vetoes will be removed in many areas;
- Decisions by qualified majority (QMV) will require a "double majority" in the Council (55 per cent of Member States representing 65 per cent of the EU's population);
- The European Parliament will gain co-decision powers in many policy areas;
- A European Council President will chair the European Council for up to five years;
- A High Representative of the Union for Foreign Affairs and Security Policy will combine two existing jobs - Vice-President of the Commission and High Representative for Foreign and Security Policy;
- The number of Commissioners will be reduced (each Member State would have a Commissioner for two out of every three terms);
- The number of MEPs is set at a maximum of 750, plus the Parliament's President (with a minimum of six and a maximum of 96 MEPs per country);
- National parliaments get the right to raise objections against draft EU legislation where national or local action would be more effective;
- The EU is given a single legal personality;
- An exit clause provides procedures for Member States wishing to leave the EU.

Structure of the Treaty

The Treaty of Lisbon (EU Reform Treaty), if ratified by the Member States, will operate by amending the two treaties that embody the EU's fundamental rules.

These are:

- the Treaty on European Union (TEU) i.e. the Maastricht Treaty (1992), as amended;
- the Treaty establishing the European Community i.e. the Treaty of Rome (1957) as amended. Its title will change to the Treaty on the Functioning of the European Union (TFEU). The new Treaty will change the format of both the existing Treaties.

The Treaty on European Union (TEU) will have six parts:

Title I Common Provisions

Title II Democratic Principles

Title III Institutions

Title IV Enhanced Cooperation

Title V External Actions and Common Foreign and Security Policy

Title VI Final Provisions

Title II on Democratic Principles and *Title III* on Institutions are new, although many of their provisions reflect existing rules, and the provisions on Freedom, Security and Justice have been moved to the Treaty on the Functioning of the European Union.

The Treaty on the Functioning of the European Union (TFEU), which will contain the detailed rules on the workings of the EU, will have the following format:

Part One Principles

Part Two Non-discrimination and citizenship of the Union

Part Three Union Policies and Internal Actions

Parts Four Overseas Countries and Territories

Part Five External Action by the Union

Asylum, immigration, police and judicial cooperation will no longer have a separate status ("pillar") but Ireland, with the UK, will have an opt-out/opt-in;

Foreign and Security Policy is integrated with other areas of the EU but special procedures still apply, including unanimity for policy decisions;

- The Treaty maintains full respect for Ireland's policy of military neutrality. It mandates Member States to increase their own military capabilities with a view to increasing the capabilities available for the EU's Common Security and Defence Policy;
- New challenges, such as climate change and energy solidarity, are recognised;
- A Protocol is added on services of general interest, including economic services of general interest;
- The EU is given greater controls in the area of macro economic policy and additional tools to curb Member States with excessive budget deficits;
- New procedures provide for simplified Treaty revisions in certain specified areas.
- The Charter of Fundamental Rights is given Treaty status.

Values and Objectives

Drawing largely on the provisions in the European Constitution, the new Treaty sets out the values on which the EU is founded and which are common to the Member States. In a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail, these values are:

- human dignity;
- liberty;
- democracy;
- equality;
- the rule of law;
- respect for human rights, including the rights of persons belonging to minorities.

While the Treaty does not adopt the Constitution's preamble, it does add a paragraph from the Constitution to the existing Treaty on European Union preamble on the values which have developed from Europe's "cultural, religious and humanist inheritance". Article 3 of the Treaty on European Union will set out the basic aim of the EU – "to promote peace, its values and the wellbeing of its peoples" – and a set of overall objectives for the EU.

Membership of the EU

In considering any application for membership of the EU, the new Treaty requires the conditions of eligibility agreed upon by the European Council to be taken into account. This refers to the "Copenhagen criteria" which are:

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities;
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;

Part Six Institutional and Budgetary Provisions
Part Seven General and Final Provisions

The bulk of the Treaty is contained in Part Three and Part Six. A notable change in the Treaty's structure is the addition of Part Five dealing with the EU's external action, which is linked to *Title V* of the Treaty on European Union (TEU).

The Lisbon (Reform) Treaty also contains a series of Protocols and a number of Declarations have been made regarding the Treaty. A number of these protocols and declarations are directly relevant to Ireland, particularly the protocol and declaration relating to the Irish and UK opt-out on judicial cooperation in criminal matters and police cooperation. An important effect of the new Treaty will be to abolish the EU's current structure of three "Pillars". The First Pillar is based on the Treaty establishing the European Community, which includes the Single Market. First Pillar decisionmaking normally involves a proposal from the Commission with a qualified majority vote in the Council. The role of the European Parliament depends on the nature of the proposal. The Second Pillar deals with the Common Foreign and Security Policy while the Third Pillar deals with Police and Judicial Cooperation in criminal matters. The second and third pillars have inter-governmental procedures with national vetoes for most decisions and a limited role for the European Parliament.

The Treaty would abolish this inter-governmental pillar system while retaining special voting procedures for the Common Foreign and Security Policy. The nature of the European Union's Second and Third Pillars has given rise to questions about its legal status. Under the new Treaty, the European Union replaces the European Community and the existing European Union with a single legal personality which has treaty-making powers.

EU Institutions

The Treaty adds both the European Council and the European Central Bank to the existing institutions of the European Union. These institutions are designed to promote the EU's values, and to advance its objectives, and interests. The EU will therefore be served by the following seven institutions working in co-operation:

- The European Parliament;
- The European Council;
- The Council;
- The European Commission;
- The Court of Justice of the European Union;
- The European Central Bank;
- The Court of Auditors.

Detailed arrangements for the working of each institution are set out in the Treaty on the Functioning of the European Union (TFEU).

The European Parliament

The new Treaty gives the European Parliament a significantly enhanced role. The Parliament will exercise legislative and budgetary powers jointly with the Council and it will exercise functions of political control and consultation as laid down in the Treaties.

The Parliament will elect the President of the Commission – at present, its assent is required for this appointment). It will have a maximum of 750 members plus its President (compared to 732 normally at present). Each Member State will have at least six Members of the European Parliament (MEPs) and no Member State will have more than 96. Within these limits, national representation will be broadly in proportion to population but with more favourable treatment for the smaller Member States. Under the Nice Treaty, seats were allocated to take account of the new Member States. Ireland was allocated 12 seats but received an additional temporary seat because Bulgaria and Romania did not join in 2004. The European Council recently greed on an allocation of seats, based on a proposal by the Parliament, for the 2009 elections. Ireland will have 12 seats, the same number as provided for under the Nice Treaty.

The European Commission

The Commission is intended to represent the interests of the EU as a whole. The Commission:

- is the only EU institution with the power to initiate the laws on which the European Parliament and Council have to take a decision;
- administers the budget and manages the Community programmes;
- seeks to ensure that EU treaties, laws, rules and decisions are complied with;
- negotiates for the EU in the international trade and aid areas;
- is independent from and does not seek instruction from any government or other body.

All this would continue but there will be important changes to the Commission's membership. Currently, each of the 27 Member States has one of its nationals as a Commissioner; agreed on an allocation of seats, based on a proposal by the Parliament, for the 2009 elections.

The European Council

The European Council gives the EU its political direction and sets its priorities. It is made up of the most senior political representatives of the Member States – Prime Ministers and Presidents with executive powers. The President of the European Commission is also a member of the European Council. The European Council, which does not have power to make laws, normally makes its decisions by unanimity. The Treaty creates a new position of "President of the European Council" who will chair its meetings, drive forward its work and represent the EU abroad at the highest level. This new position will replace the current system where the European Council is chaired by the Member State holding the rotating six-month Presidency of the EU Council. The European Council will meet at least four times a year (which is the current practice although it is only required to meet twice a year). The European Council will elect its President by a qualified majority vote. The President of the European Council cannot hold any national position - a serving Prime Minister or Head of State, for example, could not hold this post.

The Council

The Council, which is made up of government ministers representing the Member States, will be the key decisionmaking body, along with the European Parliament. Under the new Treaty, the Council

will continue to be made up of one Government Minister from every Member State. The European Council will decide on what will in future be the other council formations, e.g. agriculture ministers, environment ministers, etc. . However, a new post, the High Representative of the Union for Foreign Affairs and Security Policy, is being created to permanently chair the Foreign Affairs Council:

- the Council of Ministers, meeting at the level of Heads of State or Government, nominates the Commission's President-elect, deciding by QMV;
- the Council of Ministers, again by QMV, agrees the list of Commissioners nominated by the Member States;
- the full nominated Commission is submitted to the European Parliament for a vote of approval.

Under the Treaty, the system would change from November 2009. The Commission would be made up of one national from each Member State, including its President. The President of the Commission would be nominated by the European Council, acting on the basis of QMV, and elected by the European Parliament. The High Representative of the Union for Foreign Affairs and Security Policy would also be a Vice-President of the Commission.

From 2014 the Commission would comprise a number of members corresponding to two-thirds of the Member States (unless the European Council, acting unanimously, decides otherwise). The Commissioners will be selected on the basis of equal rotation between Member States. In effect, each Member State would have a national serving as Commissioner for ten years out of every fifteen.

Once this new system takes effect, for the first time, the European Parliament would be entitled to elect or reject the nominee for Commission President. In the case of rejection, the procedure would be re-run with a fresh candidate. The European Council would have to take account of the results of the European Parliament elections (e.g. as to the relative success of different political groupings) when proposing a candidate for election as Commission President. The Parliament would continue to have the legal right to approve or reject the proposed membership of the Commission, as a body. The Euro Group, which comprises the Member States of the euro zone, is also given a formal status by the Treaty. The Euro Group can adopt a recommendation on whether a new Member State should join the eurozone.

Other EU Bodies

The Treaty also makes minor changes regarding the EU Court of Auditors, the two main EU advisory bodies – the Economic and Social Committee and the Committee of the Regions – and the European Investment Bank. The Commission would continue, at all stages, to take decisions by a simple majority of its members. The allocation of portfolios would be a matter for the Commission President, who could also reshuffle the Commissioners' portfolios during its term of office.

The European Court of Justice (ECJ)

The Court of Justice of the European Union, comprising the Court of Justice supported by specialised courts, will continue to be the institution responsible for interpreting and applying EU law.

1. There will continue to be one judge appointed to the Court of Justice from each of the Member States (i.e. currently 27 judges). Under the Treaty, a panel of seven experts will scrutinise candidates for the Court of Justice;

2. Decisions amending the Court's Statute or creating new specialised courts will now be made by QMV and codecision;

3. The Court will have increased powers to impose fines on Member States for breaches of EU law;

4. There will be somewhat greater scope for actions to be brought before the Court of Justice, even if the applicant is not affected individually, as was a condition up to now;

5. The legal status of the Charter of Fundamental Rights under the Treaty will significantly increase the jurisdiction of the Court.

European Central Bank (ECB)

The ECB is the central bank for Europe's single currency, the euro. The euro is the official currency of the 15 EU Member States, including Ireland, that have introduced the euro since 1999. The Treaty of Lisbon formalises the position of the ECB by making it an institution of the European Union. The Treaty also gives the ECB wider power to adopt measures concerning international aspects of monetary union.

The European System of Central Banks (ESCB)

The ESCB comprises the ECB and the national central banks of all EU Member States whether or not they have adopted the euro. The EU and the Member States will each have competence to carry out activities and implement programmes in the areas of research, technological development and space. In the areas of development cooperation and humanitarian aid, the Union will have competence to carry out activities but this does not prevent Member States from also having programmes in these fields.

The EU will have a specific coordinating role on Member States' actions for:

- economic policies;
- employment policies;
- social policies.

Supporting Role

In addition to areas where the EU has exclusive or shared competence, the EU will have competence to support, coordinate or supplement the actions of the Member States in the areas of:

- protection and improvement of human health;
- industry;
- culture;
- tourism;
- education, vocational training, youth and sport;
- civil protection;
- administrative cooperation.

New legal bases

The EU can only take action if it has a legal base in the Treaty. The Treaty of Lisbon provides new legal bases which would allow the EU to take action on:

- public health (such as disease prevention), in response to wider concerns affecting the safety of the general public;
- energy security;
- dealing with natural or man-made disasters;
- sport;
- space policy.

EU Powers and Decisionmaking

The Treaty makes clear that it is the Member States who confer powers (competences) on the EU in order to attain objectives which they have in common. Powers not conferred upon the EU remain with the Member States and the new Treaty strengthens controls on actions which could better be taken at the level of the Member States.

Exclusive competence

The EU has exclusive competence in some areas (i.e. only the EU may legislate; Member States can only do so if empowered by the EU or to implement EU legislation). The EU has exclusive competence for:

- customs union;
- competition rules necessary for the internal market;
- monetary policy (for the Member States whose currency is the euro);
- conservation under the common fisheries policy;
- common commercial policy;
- conclusion of certain international agreements.

Shared competence

The EU will have shared competence with the Member States in a wide range of other areas. Shared competence means that the Member States can take action if the EU does not act. If the EU takes action which is limited to some particular elements of the area (e.g. energy policy), Member States are free to take action on other elements of that area. The following are the principal areas of competence:

- internal market;
- social policy, for the aspects defined in this Treaty;
- economic, social and territorial cohesion;
- agriculture and fisheries, excluding the conservation of marine biological resources;
- environment;
- consumer protection;
- transport;
- trans-European networks;
- energy;
- area of freedom, security and justice;
- common safety concerns in public health matters, for the aspects defined in this Treaty.

Under the principle of proportionality, the type and substance of EU action should not go any further than what is necessary to achieve the aims of the treaties, e.g. a regulation should not be proposed where a recommendation would suffice: if a regulation is needed, it should only cover what is strictly necessary. A legally binding protocol lays down how these principles are to be applied in detail. Any disputes over the application of the principles would be decided by the European Court of Justice.

Democratic principles

The Treaty of Lisbon introduces new provisions regarding citizenship and representative democracy. Every national of a Member State is also a citizen of the EU. This EU citizenship is additional to – not a replacement of - national citizenship. Citizens are directly represented in the European Parliament while the Member States are represented in the European Council and in the Council by their governments which are in turn democratically accountable either to their National Parliaments, or to their citizens. National Parliaments are given new functions in certain areas, particularly to ensure respect for "subsidiarity" and in future revisions of the Treaties.

National Parliaments will be given at least eight weeks in which to consider any proposed EU legislation before it is put to the Council. National Parliaments will receive key documents such as Council agendas, Commission communications and the Commission's legislative programme.

National Parliaments can vote to issue a 'reasoned opinion' on whether or not a Commission proposal respects the principle of subsidiarity. Each national Parliament has two votes in this system (the Dáil and the Seanad will each have one vote). If at least one-third (currently 18) of such votes are

issued, the Commission's draft must be reviewed. However the Commission is not obliged to amend or reject the proposal. In the case of proposals in the areas of judicial co-operation in criminal matters and police co-operation, the threshold is one-quarter of the votes.

Decisionmaking

The general rule will be that European legislation will be decided by the Council and the European Parliament interacting on an equal footing, on the basis of proposals made by the Commission. In the great majority of areas, only the Commission could put forward proposals. These arrangements are termed, in the new Treaty, the Ordinary Legislative Procedure. There are a small number of exceptions. Foreign policy is one such area where separate, specific decisionmaking procedures will apply.

Another important exception relates to

- judicial cooperation in criminal matters;
- police cooperation.

In these areas, legislative proposals can be made by Member States numbering at least one-quarter of the total (currently, seven Member States). The new Treaty changes the procedures under which the EU budget will be adopted by the European Parliament and the Council.

Principles that EU law-making must respect

The new Treaty and protocols attached to it significantly strengthen certain principles first set down in earlier treaties and streamline how decisions would be made. The use of EU powers is governed by the principles of subsidiarity and proportionality. The Treaty elaborates on these principles and adds control mechanisms. Under the principle of subsidiarity, the EU acts only where its objectives could not be sufficiently achieved by the Member States, whether at central, regional or local level, but could be better achieved at EU level. Clearly, this principle relates to cases where either the EU or the Member States could act – and not to areas where the EU has exclusive powers. Currently, 255 votes are required out of a total of 345 votes (of which Ireland has 7 votes). The new "double-majority", if applied now, would require support by:

- 15 out of 27 Member States;
- Member States representing a total population of 322 million, out of an EU total of 495 million (Ireland currently has approx. 0.85 per cent of the total EU population).

For a transitional period (from 1 November 2014 to 31 March 2017), a Member State may request application of the current weighted voting system, instead of the double-majority system. Under the new system, a group of states that cannot form a blocking minority can temporarily suspend a decision of the Council if the group represents at least 75 per cent of the number of Member States or 75 per cent of the population needed to block a proposal. In that event, the Council will continue to discuss the proposal for a "reasonable time". From 1 April 2017, the 75 per cent threshold will be lowered to 55 per cent and this can be reduced to a simple majority by a decision of the European Council (i.e. by unanimity). When not acting on a proposal from the Commission or the Minister for Foreign Affairs, a qualified majority would be defined as 72 per cent of the Members of the EU representing 65 per cent of the population of its Member States The need for a unanimous vote will remain in almost 60 cases. If it chooses to maintain the proposal, the Commission will have to justify, in a reasoned opinion, why it considers that the proposal complies with the principle of subsidiarity. If a majority of national parliaments oppose a Commission proposal as a breach of subsidiarity, and the Council or the European Parliament agree with them, then the proposal can be struck down. These two levels of control, known as 'yellow cards' and 'orange cards', are set out in a special Protocol. As a last resort, national parliaments or Member State governments or, in cases relevant to its functions, the Committee of the Regions, would have the power to refer their concerns about any breach of subsidiarity to the European Court of Justice, for a binding ruling. Provision is also made for a "Citizens' Initiative" where at least one million citizens from a number of Member States can invite the Commission to

submit a proposal on any matter where citizens want legislation to implement the Treaties. The Commission is obliged to consider the proposal.

Changes in Decisionmaking

Under the Treaty, there will be significant changes in how EU institutions make decisions. The European Parliament is given co-decision powers in many additional areas. The voting system in the Council would change from unanimity to QMV in further areas. The Treaty also creates special procedures – detailed below - which would extend QMV and/or co-decision under the Treaty if the European Council so decides unanimously. Until 2014, the definition of QMV in the Treaty of Nice would continue to apply. From 1 November 2014, a new definition of QMV would come into operation. From then on, a qualified majority, also known as "double majority", would be defined as 55 per cent of the members of the EU comprising at least 15 Member States representing 65 per cent of the population of the EU. On the other hand, a proposal can only be blocked if it is opposed by at least four Member States (a blocking minority).

Defined policy areas

In the Lisbon Treaty the distribution of competences in various policy areas between Member States and the Union is explicitly stated in the following three categories:

Exclusive competence	Shared competence	Supporting competence
The Union has exclusive competence to make directives and conclude international agreements when provided for in a Union legislative act.	Member States cannot exercise competence in areas where the Union has done so.	The Union can carry out actions to support, coordinate or supplement Member States' actions.
• the customs union • the establishing of the competition rules necessary for the functioning of the internal market • monetary policy for the Member States whose currency is the euro • the conservation of marine biological resources under the common fisheries policy • common commercial policy	• the internal market • social policy, for the aspects defined in this Treaty • economic, social and territorial cohesion • agriculture and fisheries, excluding the conservation of marine biological resources • environment • consumer protection • transport • trans-European networks • energy • the area of freedom, security and justice • common safety concerns in public health matters, for the aspects defined in this Treaty	• the protection and improvement of human health • industry • culture • tourism • education, youth, sport and vocational training • civil protection • administrative cooperation

The Lisbon Treaty and the Enlargement Policy

The enlargement of the European Union by ten new member States in 2004 plus two more (Bulgaria and Romania) on 1st January 2007 was the focus of debate during the referenda in France and the Netherlands. It became clear that the enlargement policy had to be examined. The Lisbon Treaty has taken the results of this reflexion on board. For the first time in a community treaty reference is made to the Union's accession criteria.

Common Foreign and Security Policy (CFSP)

The Common Foreign and Security Policy would enable the EU to draw on civil and military resources provided by the Member States to take part in missions outside its borders. The Common Foreign and Security Policy (CFSP), which covers all aspects of foreign and security policy, is based on a separate chapter of the Treaty of European Union. CFSP currently forms a separate part of the EU's so-called "Second Pillar", which operates largely through intergovernmental decisionmaking. The new Treaty would abolish this separate "Pillar" ending its inter-governmental character but CFSP would have special decisionmaking rules. The EU's action in the wider world will be guided by a set of principles which include democracy, the rule of law and respect for the UN Charter. Decisions in regard to the Common Foreign and Security Policy would, in general, continue to be made by unanimity. However, there would be two exceptions. Firstly, the Treaty specifically provides for the possibility of QMV where a particular decision relates to a policy previously decided at summit level or, alternatively, to details of implementation. But, even in these cases, a Member State could, for vital and stated reasons of national policy, veto any resort to decision by QMV. Secondly, there is a general clause, under which the European Council could decide unanimously to transfer decisions from unanimity to the QMV category in any Common Foreign and Security Policy domain, other than military and defence aspects.

These would be:

- joint disarmament operations;
- humanitarian and rescue tasks;
- military advice and assistance tasks;
- conflict prevention;
- peace-keeping;
- tasks of combat forces in crisis management (including peacemaking and post-conflict stabilisation);

Comparison with the European Constitution

1. The "Constitutional characteristics" are abandoned, notably by reverting to the system of an amending Treaty rather than replacing the existing Treaties;
2. Express provisions for EU symbols (flag, anthem, motto, Europe Day) have been dropped;
3. The title of the 'Union Minister of Foreign Affairs' has changed;
4. The Charter of Fundamental Rights is not part of the Treaty although it is legally binding;
5. The clauses on primacy of EU law have been dropped;
6. The objectives of the EU do not include a competition clause;
7. The preamble to the Constitution has almost entirely been dropped;
8. The competence clause has been further clarified;
9. Article 8c on national parliaments has been added;
10. Application of the new Council voting rules is delayed to 1 November 2014 – and an interim regime will apply until to 31 March 2017;
11. 'Enhanced cooperation' will require at least nine Member States (instead of one-third of them under the Constitution – this could make a real difference if the additional member States join the EU);
12. The 'Copenhagen criteria' are included in the clause on accession.

QUESTIONS:

Q1. What is the Lisbon Treaty?
Q2. Name 3 key points of the treaty.
Q3. What are the institutions of the European Union?
Q4. What will be the role of Parliament according to the new Treaty?
Q5. What does "shared competence" mean?
Q6. On which policies will the EU have a specific role on Member Sates' actions?
Q7. What do the three "Pillars" of the EU deal with?
Q8. Who will decide the European legislation?
Q9. What would the Common Foreign and Security Policy (CFSP) do?
Q10. What is the ESCB and what does it comprise?

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CHAPTER VIII

TREATY OF ACCESSION OF ROMANIA TO THE EUROPEAN UNION

Signed on April 25th, 2005 in Luxembourg, the Treaty of Accession represents in its form ratified by all member states of European Union, the act that defines under juridical aspect Romania's accession to the European Union. Its enforcement became valid on January 1st, 2007. The treaty presents the results of the negotiation process of the 31 chapters.

By signing the Treaty of Accession, Romania undertakes the following **general obligations**:

- *the Union's constitutive treaties become integral part of Romania's legislation;*
- *the supremacy principle of community legislation over the internal one;*
- *the Treaty of Accession is directly applicable to all citizens of Romania, creating both rights, but also obligations for these.*

The Treaty of Accession of Romania to the European Union is founded on:

- the Treaty of Rome (Treaty establishing the European Community)
- Euratom Treaty
- Maastricht Treaty (Treaty grounding the European Union)

as well as other documents that form together the legal acquis of the Union.

The European Atomic Energy Community (Euratom Treaty) - is an international organization composed of the members of the European Union. It was established on **March 25, 1957**, but came into effect just like the Treaty of Rome, on January 1, 1958, by a second treaty of Rome, signed the same day as the more famous Treaty of Rome which instituted the European Economic Community (EEC). The European Atomic Energy Community is a separate entity, but membership and organization is fully integrated with the European Union. The organizational structures of EURATOM and EEC (together with the now defunct European Coal and Steel Community -ECSC-), merged in 1967, by virtue of the Merger Treaty (signed in 1965).
The purposes of Euratom were to create a specialist market for atomic energy and distribute it through the Community and to develop nuclear energy and sell surplus to non-Community States.

Treaty of Rome - signed on March 25, 1957 by France, West Germany, Benelux (Belgium, The Netherlands, and Luxembourg), and Italy established the European Economic Community (EEC), an independent, supranational, economic organization that came into force on January 1, 1958.

The treaty's original full name was the **Treaty establishing the European Economic Community**, later renamed by the Treaty of Maastricht to **Treaty establishing the European Community** (**TEC**). On the European summit of June 22 and 23, 2007, it was agreed that both the Treaty on European Union and the Treaty establishing the European Community will be amended by a new Treaty of Lisbon to have most provisions of the European Constitution included. The Treaty establishing the European Community will be renamed once again in this process, this time to **Treaty on the Functioning of the European Union** (**TFEU**).

Maastricht Treaty - formally, the **Treaty on European Union**, was signed on February 7, 1992 in Maastricht, the Netherlands after final negotiations on December 9, 1991 between the members of the European Community and entered into force on November 1, 1993 during the Delors Commission. It led to the creation of the European Union and was the result of separate negotiations on monetary union and on political union. The Maastricht Treaty has been amended to a degree by later treaties.

By becoming integral part of the European Union, Romania must learn how to use community juridical instruments, instruments that community institutions use as according to valid treaties and by complying at the same time with the subsidiarity principle. These tools are:

- *Regulations* – juridical norms directly applicable, with a mandatory character in integrality of provisions they contain (these prevail over the national legislation);
- *Directives* – one of community's most powerful juridical tools – the objectives of the EU, included in directives are mandatory to all member states, but these have the possibility to decide the modality to incorporate these in their own legislation in a certain time interval. If upon the expiration time, the directive has not been transposed into national legislation, it automatically becomes enforced and the states are considered responsible for the damage caused;
- *Decisions* – measures with administrative character addressed to determined receivers by which community institutions may ask for a particular case to be solved in a certain manner;
- *Recommendations and approvals* – declarative instruments, with no mandatory character.

The European Constitution contains a simplified typology of community instruments:

- legislative instruments – European laws (regulations) and framework laws (directives). These will be adopted by co decision procedure that according to the project of European Constitution will become ordinary legislative procedure;
- non-legislative instruments – recommendations and decisions;
- facultative instruments – opinions and recommendations;
- sui-generis documents – conclusions and guiding lines of the European Council.

The Treaty of Accession of Romania to the EU includes:

1. General parts:

- The Treaty
- The Act of Accession
- The Protocol of Accession

2. Annexes – include the list of agreements and conventions to which Romania must become part upon its accession, lists of community documents that must be adjusted in consideration of Romania's participation as well as permanent and temporary measures agreed after negotiation of all 31 chapters.

3. Declarations attached to the Treaty that has a political character and do not produce juridical effects.

The Treaty of Accession is devoted to Romania's accession to EU, as well to the fact that by accession it becomes part of the Institutional Treaty for Europe's Constitution, under the conditions settled by the protocol which is an integral part of the Treaty.

The actual title of the Treaty sounds like this: "**Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union**" and it was signed in Luxembourg on April 25th 2005. The **Accession Protocol** and the **Act of Accession** together with their **Annexes** form an integral part of the Treaty of Accession.
The treaty itself contains 22 pages and its form resembles a lot that of a contract as it starts by enumerating the signing parties, all 25 member states of the European Union on the one side and the two new-comers, namely Romania and Bulgaria, on the other side. The object of the "contract" is the accession of the Republic of Bulgaria and Romania to the European Union. It follows then an enumeration of people empowered to sign the Treaty, by case Majesty, President, Royal Highness or Queen. A pledge of unity, determination and considering article I-58 of the Treaty, establishing a Constitution for Europe and article 49 of the Treaty on European Union, article that affords European countries the opportunity of becoming members of the Union but founded on the request of Romania and Bulgaria to become members of the Union, considering that of the time of signature of the Treaty,

the Treaty establishing a Constitution for Europe had been signed but not yet ratified by all member states of the Union and that the Republic of Bulgaria and Romania would join the Union as constituted starting January 1st 2007, member states have named their Plenipotentiaries empowered to sign the Treaty.

For Romania:

THE PRESIDENT OF ROMANIA - **Traian BĂSESCU**
Călin POPESCU – TĂRICEANU - Prime Minister
Mihai - Răzvan UNGUREANU - Minister of Foreign Affaires
Leonard ORBAN - Chief Negotiator with the European Union

The Treaty contains 6 articles, each formulated really concise, with a short text attached, with no room for interpretations, only that indicated by the Treaty.

Article 1 arranges the accession of Republic of Bulgaria and Romania to the European Union.

Paragraph 1 makes Republic of Bulgaria and Romania full members of the European Union.

Paragraph 2 makes both countries parties to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community. Thus Bulgaria and Romania does not have to ratify the Treaty establishing a Constitution for Europe separately.

Paragraph 3 makes Protocol that sets the conditions and arrangements for admission and its annexes integral part of the Treaty itself.

Paragraph 4 annexes the above mentioned Protocol to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community and makes its provisions integral part of these treaties.

"Article 1
1. *The Republic of Bulgaria and Romania hereby become members of the European Union.*
2. *The Republic of Bulgaria and Romania become Parties to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community as amended or supplemented.*
3. *The conditions and arrangements for admission are set out in the Protocol annexed to this Treaty. The provisions of that Protocol shall form an integral part of this Treaty.*
4. *The Protocol, including its Annexes and Appendices, shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community, and its provisions shall form an integral part of those Treaties.***"**

Article 2 provides for the situation when the Treaty itself enters into force before the Treaty establishing a Constitution for Europe. Thus it will provide the legal basis of the membership Bulgaria and Romania from 1 January 2007 until the Constitution of Europe is finally implemented in its present form (if ever).

Paragraph 1 states that both countries become parties to the Treaties on which the European Union is founded. Provisions of Article 1, paragraphs 2-4 will be applicable only from the date of the entry into force of the Constitution of Europe.

Paragraph 2 states that until the above mentioned event the conditions of admission and the adjustments to the Treaties on which the Union is founded will be provided by the Act annexed to the Treaty, which forms integral part of the Treaty itself.

Paragraph 3 arranges substitution of the Act with the Protocol upon the entry into force of the Constitution of Europe and legal consequences of this switch.

"Article 2
1. *In the event that the Treaty establishing a Constitution for Europe is not in force on the date of accession, the Republic of Bulgaria and Romania become Parties to the Treaties on which the Union is founded, as amended or supplemented. In such event Article 1(2) to (4) shall become applicable from the date of entry into force of the Treaty establishing a Constitution for Europe.*
2. *The conditions of admission and the adjustments to the Treaties on which the Union is founded, entailed by such admission, which will apply from the date of accession until the date of entry into force of the Treaty establishing a Constitution for Europe, are set out in the Act annexed to this Treaty. The provisions of that Act shall form an integral part of this Treaty.*
3. *In the event that the Treaty establishing a Constitution for Europe enters into force after accession, the Protocol referred to in Article 1(3) shall replace the Act referred to in Article 2(2) on the date of entry into force of the said Treaty. In such event, the provisions of the aforementioned Protocol shall not be considered as creating a new legal effect, but as preserving, under the conditions laid down in the Treaty establishing a Constitution for Europe, the Treaty establishing the European Atomic Energy Community and that Protocol, the legal effects which have already been created by the provisions of the Act referred to in Article 2(2).*
*Acts adopted prior to the entry into force of the Protocol referred to in Article 1(3) on the basis of this Treaty or the Act referred to in paragraph 2 shall remain in force and their legal effects shall be preserved until those acts are amended or repealed.***"**

Article 3 defines all member states of European union, including Bulgaria and Romania as equal in respect of all Treaties of the Union, including this one.

"Article 3
*The provisions concerning the rights and obligations of the Member States and the powers and jurisdiction of the institutions of the Union as set out in the Treaties to which the Republic of Bulgaria and Romania become Parties shall apply in respect of this Treaty.***"**

Article 4 is about ratification and entry into force of the Treaty.

Paragraph 1 stipulates that the Treaty should be ratified by all parties by 31 December 2006 and ratification instruments should be deposited with the Italian government.

Paragraph 2 and 3 define the data from which the Treaty enters into force, mechanism for eventual postponement in respect of one or both of the acceding states, and provides for the situation when one or more country have ratified the Treaty, but have failed to deposit the ratification instruments by 1 January 2007. The ratification procedures were completed in time and the Treaty entered into force on 1 January 2007 on the territory of all member states.

"Article 4
1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic by 31 December 2006 at the latest.
2. This Treaty shall enter into force on 1 January 2007 provided that all the instruments of ratification have been deposited before that date. If, however, a State referred to in Article 1(1) has not deposited

its instrument of ratification in due time, this Treaty shall enter into force for the other State which has deposited its instrument. In that case, the Council, acting unanimously, shall decide immediately upon such adjustments as have become indispensable to this Treaty, to Articles 10, 11(2), 12, 21(1), 22, 31, 34 and 46, Annex III, point 2(1)(b), 2(2) and 2(3) and Annex IV, section B, of the Protocol referred to in Article 1(3) and, as the case may be, to Articles 9 to 11, 14(3), 15, 24(1), 31, 34, 46 and 47, Annex III, point 2(1)(b), 2(2) and 2(3) and Annex IV, section B, of the Act referred to in Article 2(2); acting unanimously, it may also declare that those provisions of the aforementioned Protocol, including its Annexes and Appendices and, as the case may be, of the aforementioned Act, including its Annexes and Appendices, which refer expressly to a State which has not deposited its instrument of ratification have lapsed, or it may adjust them. Notwithstanding the deposit of all necessary instruments of ratification in accordance with paragraph 1, this Treaty shall enter into force on 1 January 2008, if the Council adopts a decision concerning both acceding States under Article 39 of the Protocol referred to in Article 1(3), or under Article 39 of the Act referred to in Article 2(2) prior to the entry into force of the Treaty establishing a Constitution for Europe. If such a decision is taken with respect to only one of the acceding States this Treaty shall enter into force for that State on 1 January 2008.
3. Notwithstanding paragraph 2, the institutions of the Union may adopt before accession the measures referred to in Articles 3(6), 6(2) second subparagraph, 6(4) second subparagraph, 6(7) second and third subparagraphs, 6(8) second subparagraph, 6(9) third subparagraph, 17, 19, 27(1) and (4), 28(4) and (5), 29, 30(3), 31(4), 32(5), 34(3) and (4), 37, 38, 39(4), 41, 42, 55, 56, 57 and Annexes IV to VIII of the Protocol referred to in Article 1(3). Such measures shall be adopted under the equivalent provisions in Articles 3(6), 6(2) second subparagraph, 6(4) second subparagraph, 6(7) second and third subparagraphs, 6(8) second subparagraph, 6(9) third subparagraph, 20, 22, 27(1) and (4), 28(4) and (5), 29, 30(3), 31(4), 32(5), 34(3) and (4), 37, 38, 39(4), 41, 42, 55, 56, 57 and Annexes IV to VIII of the Act referred to in Article 2(2), prior to the entry into force of the Treaty establishing a Constitution for Europe.
*These measures shall enter into force only subject to and on the date of the entry into force of this Treaty.**"***

Article 5 stipulates that the Treaty establishing a Constitution for Europe drawn up in the Bulgarian and Romanian languages shall be annexed to this Treaty and they will be authentic under the same conditions as the texts in all other official languages of the European Union.

"Article 5
The text of the Treaty establishing a Constitution for Europe drawn up in the Bulgarian and Romanian languages shall be annexed to this Treaty. Those texts shall be authentic under the same conditions as the texts of the Treaty establishing a Constitution for Europe drawn up in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages.
*The Government of the Italian Republic shall remit to the Governments of the Republic of Bulgaria and Romania a certified copy of the Treaty establishing a Constitution for Europe in all the languages referred to in the first paragraph.**"***

Article 6 states that the Treaty exists as a single original drawn in all official languages of the European Union. Each of these texts is equally authentic and the original will be deposited with the Italian government, while all parties will receive certified copies

"Article 6
*This Treaty, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will remit a certified copy to each of the Governments of the other Signatory States.**"***

The Act of Accession creates the framework needed for Romania's integration in the EU, by taking into account constitutive treaties valid presently. **The Accession Protocol** contains the amendments needed by the Constitutional Treaty of EU, to make possible Romania's accession to this document. The two documents have in principle an identical content but they will be enforced alternatively, based on the enforcement of a Treaty for a Constitution in Europe. The Act of Accession has been in use until January 1st 2007, when it was abolished and the Protocol started to produce juridical effects.

Act of accession / Accession protocol contains:

- **Part I (Principles)** contains definitions and provisions regarding the compulsory character for Romania of fundamental treaties and acts adopted by the communitarian institutions and by the European Central Bank before accession to the UE. The application of the provisions of the original treaties and of the acts of the institutions is subject to the agreed derogations during the negotiations of accession with each candidate state. It is statutory the obligation to accede to the conventions and agreements concluded by the European Union with third party states, the conventions concluded between member states, as well as the The Schengen acquis.
Romania will participate to the Economic and Monetary Union, from the accession date, being derogated from adopting the unique currency according to Article 122 of the Treaty establishing the European Economic Community.

- Part II (Institutional provisions) – participating to the EU institutions;

- Part III (Permanent provisions) - accepting the permanent negotiated measures;

- Part IV (Temporary provisions) – the transitory measures agreed during the negotiation, the institutional provisions and the financial provisions of temporary type. According to the financial provisions of temporary type, Romania will contribute to the subscribed capital of the European Investment Bank with 42.3 million Euros. The contribution of Romania to the Research Fund for Coal and Steel is of 29.88 million Euros.

- Part V (Safeguard clauses)
The treaty contains **three general safeguard clauses**:

- **General safeguard clause (economical)** – if until the end of three years after the accession, there will appear grave and persistent difficulties in a certain economical sector or which may deteriorate the economical situation in a certain domain, Romania may request the Commission the authorization to take protectionist measures to improve the situation created and adjust the respective economical sector of the Common Market. Under the same circumstances, any actual member state may request the authorization to take protectionist measures regarding one or both new member states.
- **Safeguard clause regarding Internal Market** – if during the first three years after accession., Romania does not fulfill the commitments assumed during negotiations, jeopardizing thus the activity on the Internal Market, the European Commission on its own initiative or upon request of any member state, may undertake necessary measures to solve this situation. This clause may be used even before accession date.
- **Safeguard clause justice and internal affairs** – if Romania and Bulgaria register delays in transposing or implementation of the community provisions regarding mutual recognition in the field of civil and penal law, the Commission on its own initiative or upon request of any member state, may by the end of the three year time period after enforcement of the Treaty undertake necessary measures and specify the application terms for these. These measures must be justified and maintained no longer than strictly needed to remedy the situation.

In the case of Romania, an **Accession delay clause** may be applied. The Council, by unanimous vote, upon the Commission's recommendation could have made the decision to delay accession with one

year, until January 1st 2008, if following the Commission's monitoring it had become clear that the stage of preparing and implementation of acquis was insufficient in order to become a member state of the Union. In addition, the Council could have decided by vote with qualified majority, **delay of accession for one year,** until January 1st 2008, if it was seen that insufficient preparing had occurred in the field of *justice* and *internal affairs* as well as *competition* (11 obligations).

- **Part VI** (Provisions regarding institutional adjustments) contains provisions regarding institutional adjustments that become necessary following accession of Romania, the application modalities of institutional community frameworks and final provisions.

Annexes:

Annex I: List of conventions and protocols to which Bulgaria and Romania accede upon accession (referred to in Article 3(3) of the Protocol)

Annex II: List of provisions of the Schengen acquis as integrated into the framework of the European Union and the acts building upon it or otherwise related to it, to be binding on and applicable in the new Member States as from accession (referred to in Article 4(1) of the Protocol)

Annex III: List referred to in Article 16 of the Protocol: adaptations to acts adopted by the Institutions

1. Company law / Industrial property rights
   - I. Community trademark
   - II. Supplementary protection certificates
   - III. Community designs
2. Agriculture
3. Transport policy
4. Taxation

Annex IV: List referred to in Article 17 of the Protocol: supplementary adaptations to acts adopted by the institutions

Agriculture

A. Agricultural legislation

B. Veterinary and phyto
-sanitary legislation

Annex V: List referred to in Article 18 of the Protocol: other permanent provisions

1. Company law
2. Competition policy
3. Agriculture
4. Customs union

Appendix to Annex V

Annex VI: List referred to in Article 20 of the Protocol: transitional measures, Bulgaria

Annex VII: List referred to in Article 20 of the Protocol: transitional measures, Romania

1. Freedom of movement for persons
2. Freedom to provide services
3. Free movement of capital
4. Competition policy
   - A. Fiscal aid
   - B. Steel restructuring
5. Agriculture
   - A. Agricultural legislation
   - B. Veterinary and phyto-sanitary legislation
     - I. Veterinary legislation
     - II. Phyto-sanitary legislation
6. Transport policy
7. Taxation
8. Energy
9. Environment
   - A. Air quality
   - B. Waste management

C. Water quality
D. Industrial pollution and risk management

Appendix A to Annex VII
Appendix B to Annex VII

Annex VIII: Rural development (referred to in Article 34 of the Protocol)

Annex IX: Specific commitments undertaken, and requirements accepted, by Romania at the conclusion of the accession negotiations on 14 December 2004 (referred to in Article 39 of the Protocol).

QUESTIONS:

Q1. Name the date and place the Treaty of Accession of Romania and Bulgaria to the European Union was signed.

Q2. Who signed the Treaty on behalf of Romania?

Q3. What documents form an integral part of the Treaty of Accession?

Q4. What is the typology of community instruments contained by the European Constitution soon to be ratified?

Q5. Under what circumstances can the European Commission invoke the safeguard clause regarding Internal Market?

Q6. Which are the treaties that Romania became Party to according to the first article of the Accession Treaty?

Q7. Which was the condition for the Treaty to enter into force on 1 January 2007?

Q8. Name the general obligations undertaken by our country upon signing the Treaty of Accession.

Q9. Which are the main treaties that represent the foundation of the Treaty of Accession?

Q10. Specify the community juridical instruments that Romania must learn how to use as according to valid treaties and by complying at the same time with the subsidiarity principle.

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CHAPTER IX

A ECONOMY OF THE EUROPEAN UNION AND THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

I Economy of the European Union

The **economy of the European Union** combines the economies of 27 member states and is generating an estimated nominal GDP of US $17.6 trillion in 2008 according to the IMF. It accounts for about 31% of the world's total economic output. Fifteen member states adopted a single currency, the Euro, managed by the European Central Bank. The EU economy consists of a single market and is represented as a unified entity in the WTO.

Economies of member states

Economic performance varies from state to state. The Growth and Stability Pact governs fiscal policy with the European Union. It applies to all member states, with specific rules which apply to the eurozone members that stipulate that each state's deficit must not exceed 3% of GDP and its public debt must not exceed 60% of GDP. However, many larger members have consistently run deficits substantially in excess of 3%, and the eurozone as a whole has a debt percentage exceeding 60%.

With the exception of Portugal, all countries with below average GNI per capita are those which joined the EU in May 2004 and all countries with above average GNI per capita come from the existing (pre-2004) member states.

Trade

The European Union is the largest exporter in the world and the second largest importer. Internal trade between the member states is aided by the removal of barriers to trade such as tariffs and border controls. In the eurozone, trade is helped by not having any currency differences to deal with amongst most members. The European Union Association Agreement does something similar for a much larger range of countries, partly as a so-called soft approach to influence the politics in those countries.

The European Union represents all its members at the World Trade Organization, and acts on behalf of member states in any disputes.

Stability and Growth Pact

The Stability and Growth Pact **(SGP) is an agreement by European Union member states related to their conduct of fiscal policy, to facilitate and maintain Economic and Monetary Union of the European Union.**

It is based on Articles 99 and 104 of the European Community Treaty (with the amendments adopted in 1993 in Maastricht), and related decisions. It consists of fiscal monitoring, and sanctions against offending members.

The pact was adopted in 1997, so that fiscal discipline would be maintained and enforced in the EMU.

Member states adopting the euro have to meet the Maastricht convergence criteria, and the SGP ensures that they continue to observe them.
The actual criteria that member states must respect:

- an annual budget deficit no higher than 3% of GDP (this includes the sum of all public budgets, including municipalities, regions, etc)
- a national debt lower than 60% of GDP or approaching that value.

II The Agreement creating the European Economic Area

The **European Economic Area** (**EEA**) came into being on January 1, 1994 following an agreement between member states of European Free Trade Association (EFTA), the European Community (EC), and all member states of the European Union (EU). It allows these EFTA countries to participate in the European Single Market without joining the EU.

The **European Free Trade Association** (**EFTA**) is a European trade bloc which was established on May 3, 1960 as an alternative for European states who were either unable to, or chose not to, join the then-European Economic Community (now the European Union).

The EFTA Convention was signed on January 4, 1960 in Stockholm by seven states. Today only Iceland, Norway, Switzerland, and Liechtenstein remain members of EFTA (of which only Norway and Switzerland are founding members).

The EEA Agreement is concerned principally with the four fundamental pillars of the Internal Market, “the four freedoms", i.e. freedom of movement of goods (excluding agriculture and fisheries, which are included in the Agreement only to a very limited extent), persons, services and capital. Horizontal provisions relevant to these four freedoms in the areas of social policy, consumer protection, environment, company law and statistics complete the extended internal market. It is in these areas that the EEA- EFTA States take over Community legislation.
As one of the primary obligations under the Agreement is to ensure equal conditions of competition, the substantive competition rules of the Agreement correspond to the Community acquis in this area. This covers the rules concerning cartels, abuse of dominant positions, merger control, state monopolies and state aid. The Agreement also includes areas which have an impact on the competitive position of enterprises, such as consumer protection, environment and certain elements of company law.
In addition to the obligation to accept the Community acquis in the fields of the four freedoms, the Agreement contains provisions to allow cooperation between the Community and the EEA-EFTA States in a range of Community activities: research and technological development, information services, the environment, education, social policy, consumer protection, small and medium-sized enterprises, tourism, the audio-visual sector and civil protection. Where the EEA-EFTA States are admitted to participate in these programmes, they contribute to the budgets of the programmes in question and participate in the committees that manage them, but with no right to vote. The EEA-EFTA states also make a financial contribution towards the reduction of economic and social disparities.
The EEA Agreement is implemented through a set of special institutional arrangements. There is an EEA Joint Committee, whose main function is to adopt decisions extending Community regulations and directives to the EEA-EFTA States. The Community is represented by the Commission in the Joint Committee. Decisions in the Joint Committee are taken by agreement between the Community and the EEA-EFTA States, which have to speak with one voice. The Joint Committee may set up sub-committees, which prepare the decisions of the Joint Committee and where discussion of different aspects of the Joint Committee’s work can take place. There are currently five such sub-committees.
The Agreement covers most of the substance of the EU's relations with the EEA EFTA States. Globally, the EEA machinery runs smoothly after ten years of operation. The updating of the Agreement through the incorporation of new relevant Community legislation has become a day-to-day business and thousands of legal acts have been extended to the EEA to date.
A major challenge in 2003/2004 was to ensure that the EEA was enlarged at the same time as the EU, so as not to disturb the good functioning of the Internal Market. To this end, an EEA Enlargement Agreement was negotiated between the Community and its Member States, the EEA EFTA States and

the Acceding Countries. The EEA Enlargement Agreement came into force on 1 May 2004, thus allowing for the simultaneous enlargement of the EU and the EEA. Most of the elements of the EEA Enlargement Agreement are technical adaptations, but one of the major substantial results of the enlargement negotiations was a ten-fold increase in the financial contribution of the EEA EFTA States, in particular Norway, to social and economic cohesion in the Internal Market (1167 M€ over five years, 600 M€ from all three EEA EFTA States and 567 M€ as a bilateral Norwegian contribution). Another element of the EEA Enlargement Agreement was that the Community would open additional quotas for certain marine and agricultural products from the EEA EFTA States.
Similar enlargement negotiations took place in 2006/2007 to ensure that Bulgaria and Romania also could become contracting parties to the EEA upon joining the EU. The main result of these negotiations was that for the duration of the current EEA and Norwegian financial mechanisms, Bulgaria will receive 40.5 M€ and Romania 98.5 M€ in financial contributions.

AGREEMENT ON THE EUROPEAN ECONOMIC AREA

FREE MOVEMENT OF GOODS

BASIC PRINCIPLES

Article 10

Customs duties on imports and exports, and any charges having equivalent effect, shall be prohibited between the Contracting Parties. Without prejudice to the arrangements set out in Protocol 5, this shall also apply to customs duties of afiscal nature.

Article 11

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between the Contracting Parties.

Article 12

Quantitative restrictions on exports and all measures having equivalent effect shall be prohibited between the Contracting Parties.

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Article 13

The provisions of Articles 11 and 12 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.

Article 14

No Contracting Party shall impose, directly or indirectly, on the products of other Contracting Parties any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.
Furthermore, no Contracting Party shall impose on the products of other Contracting Parties any internal taxation of such a nature as to afford indirect protection to other products.

Article 15

Where products are exported to the territory of any Contracting Party, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Article 16

1. The Contracting Parties shall ensure that any State monopoly of a commercial character be adjusted so that no
discrimination regarding the conditions under which goods are procured and marketed will exist between nationals of EC Member States and EFTA States.
2. The provisions of this Article shall apply to any body through which the competent authorities of the Contracting Parties, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between Contracting Parties. These provisions shall likewise apply to monopolies delegated by the State to others.

OTHER RULES RELATING TO THE FREE MOVEMENT OF GOODS

Article 25

Where compliance with the provisions of Articles 10 and 12 leads to:
(a) re-export towards a third country against which the exporting Contracting Party maintains, for the product
concerned, quantitative export restrictions, export duties or measures or charges having equivalent effect; or
(b) a serious shortage, or threat thereof, of a product essential to the exporting Contracting Party;
and where the situations referred to above give rise, or are likely to give rise, to major difficulties for the exporting Contracting Party, that Contracting Party may take appropriate measures in accordance with the procedures set out in Article 113.

FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

WORKERS AND SELF-EMPLOYED PERSONS

Article 28

1. Freedom of movement for workers shall be secured among EC Member States and EFTA States.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
(a) to accept offers of employment actually made;
(b) to move freely within the territory of EC Member States and EFTA States for this purpose;
(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
(d) to remain in the territory of an EC Member State or an EFTA State after having been employed there.
4. The provisions of this Article shall not apply to employment in the public service.
5. Annex V contains specific provisions on the free movement of workers.

Article 29

In order to provide freedom of movement for workers and self-employed persons, the Contracting Parties shall, in the field of social security, secure, as provided for in Annex VI, for workers and self-employed persons and their dependants, in particular:
(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
(b) payment of benefits to persons resident in the territories of Contracting Parties.

Article 30

In order to make it easier for persons to take up and pursue activities as workers and self-employed persons, the Contracting Parties shall take the necessary measures, as contained in Annex VII, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, and the coordination of the provisions laid down by law, regulation

RIGHT OF ESTABLISHMENT

Article 31

1. Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of
establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States.
This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to

set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.
2. Annexes VIII to XI contain specific provisions on the right of establishment.

Article 32

The provisions of this Chapter shall not apply, so far as any given Contracting Party is concerned, to activities which in that Contracting Party are connected, even occasionally, with the exercise of official authority.

Article 33

The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

Article 34

Companies or firms formed in accordance with the law of an EC Member State or an EFTA State and having their registered office, central administration or principal place of business within the territory of the Contracting Parties shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of EC Member States or EFTA States. 'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

SERVICES

Article 36

1. Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide
services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA
States who are established in an EC Member State or an EFTA State other than that of the person for whom the
services are intended.
2. Annexes IX to XI contain specific provisions on the freedom to provide services.

Article 37

Services shall be considered to be 'services' within the meaning of this Agreement where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.
'Services' shall in particular include :
(a) activities of an industrial character;
(b) activities of a commercial character;
(c) activities of craftsmen;
(d) activities of the professions.
Without prejudice to the provisions of Chapter 2, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 38

Freedom to provide services in the field of transport shall be governed by the provisions of Chapter 6.

Article 39

The provisions of Articles 30 and 32 to 34 shall apply to the matters covered by this Chapter.

CAPITAL

Article 40

Within the framework of the provisions of this Agreement, there shall be no restrictions between the Contracting Parties on the movement of capital belonging to persons resident in EC Member States or EFTA States and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested. Annex XII contains the provisions necessary to implement this Article.

Article 41

Current payments connected with the movement of goods, persons, services or capital between Contracting Parties within the framework of the provisions of this Agreement shall be free of all restrictions.

Article 42

1. Where domestic rules governing the capital market and the credit system are applied to the movements of capital liberalized in accordance with the provisions of this Agreement, this shall be done in a non-discriminatory manner.

2. Loans for the direct or indirect financing of an EC Member State or an EFTA State or its regional or local
authorities shall not be issued or placed in other EC Member States or EFTA States unless the States concerned
have reached agreement thereon.

Article 43

1. Where differences between the exchange rules of EC Member States and EFTA States could lead persons resident in one of these States to use the freer transfer facilities within the territory of the Contracting Parties which are provided for in Article 40 in order to evade the rules of one of these States concerning the movement of capital to or from third countries, the Contracting Party concerned may take appropriate measures to overcome these difficulties.

2. If movements of capital lead to disturbances in the functioning of the capital market in any EC Member State or EFTA State, the Contracting Party concerned may take protective measures in the field of capital movements.

3. If the competent authorities of a Contracting Party make an alteration in the rate of exchange which seriously
distorts conditions of competition, the other Contracting Parties may take, for a strictly limited period, the necessary measures in order to counter the consequences of such alteration.

4. Where an EC Member State or an EFTA State is in difficulties, or is seriously threatened with difficulties, as
regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a
result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardize the
functioning of this Agreement, the Contracting Party concerned may take protective measures.

Article 44

The Community, on the one hand, and the EFTA States, on the other, shall apply their internal procedures, as provided for in Protocol 18, to implement the provisions of Article 43.

Article 45

1. Decisions, opinions and recommendations related to the measures laid down in Article 43 shall be notified to the EEA Joint Committee.

2. All measures shall be the subject of prior consultations and exchange of information within the EEA Joint
Committee.

3. In the situation referred to in Article 43(2), the Contracting Party concerned may, however, on the grounds of
secrecy and urgency take the measures, where this proves necessary, without prior consultations and exchange of
information.

4. In the situation referred to in Article 43(4), where a sudden crisis in the balance of payments occurs and the
procedures set out in paragraph 2 cannot be followed, the Contracting Party concerned may, as a precaution, take
the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of

this Agreement and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which
have arisen.
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5. When measures are taken in accordance with paragraphs 3 and 4, notice thereof shall be given at the latest by the date of their entry into force, and the exchange of information and consultations as well as the notifications referred to in paragraph 1 shall take place as soon as possible thereafter.

COMPETITION AND OTHER COMMON RULES
STATE AID

Article 61

1. Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain
undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be
incompatible with the functioning of this Agreement.
2. The following shall be compatible with the functioning of this Agreement:
(a) aid having a social character, granted to individual consumers, provided that such aid is granted without
discrimination related to the origin of the products concerned;
(b) aid to make good the damage caused by natural disasters or exceptional occurrences;
(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of
Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused
by that division.
3. The following may be considered to be compatible with the functioning of this Agreement:
(a) aid to promote the economic development of areas where the standard of living is abnormally low or where
there is serious underemployment;
(b) aid to promote the execution of an important project of common European interest or to remedy a serious
disturbance in the economy of an EC Member State or an EFTA State;
(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid
does not adversely affect trading conditions to an extent contrary to the common interest;
(d) such other categories of aid as may be specified by the EEA Joint Committee in accordance with Part VII.

Article 62

1. All existing systems of State aid in the territory of the Contracting Parties, as well as any plans to grant or alter
State aid, shall be subject to constant review as to their compatibility with Article 61. This review shall be carried out:
(a) as regards the EC Member States, by the EC Commission according to the rules laid down in Article 93 of
the Treaty establishing the European Economic Community;
(b) as regards the EFTA States, by the EFTA Surveillance Authority according to the rules set out in an
agreement between the EFTA States establishing the EFTA Surveillance Authority which is entrusted with
the powers and functions laid down in Protocol 26.

2. With a view to ensuring a uniform surveillance in the field of State aid throughout the territory covered by this
Agreement, the EC Commission and the EFTA Surveillance Authority shall cooperate in accordance with the
provisions set out in Protocol 27.

Article 63

Annex XV contains specific provisions on State aid.

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Article 64

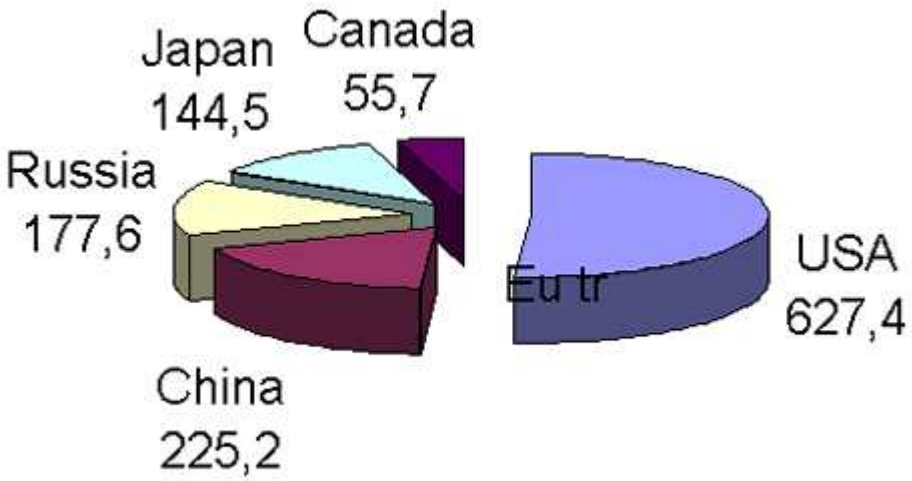
1. If one of the surveillance authorities considers that the implementation by the other surveillance authority of
Articles 61 and 62 of this Agreement and Article 5 of Protocol 14 is not in conformity with the maintenance of
equal conditions of competition within the territory covered by this Agreement, exchange of views shall be held
within two weeks according to the procedure of Protocol 27, paragraph (f).
If a commonly agreed solution has not been found by the end of this two-week period, the competent authority of the affected Contracting Party may immediately adopt appropriate interim measures in order to remedy the
resulting distortion of competition.
Consultations shall then be held in the EEA Joint Committee with a view to finding a commonly acceptable
solution. If within three months the EEA Joint Committee has not been able to find such a solution, and if the practice in question causes, or threatens to cause, distortion of competition affecting trade between the Contracting Parties, the interim measures may be replaced by definitive measures, strictly necessary to offset the effect of such distortion. Priority shall be given to such measures that will least disturb the functioning of the EEA.
2. The provisions of this Article will also apply to State monopolies, which are established after the date of signature of the Agreement.

EU’s relations with USA and LAC

The EU's relations with the United States of America

The EU and the USA are each other’s main trading partners (taking goods and services together) and account for the largest bilateral trade relationship in the world: together, they account for almost 40 % of world trade. Every day, about EUR 1.7 billion of transatlantic trade (in goods and services) takes place. The transatlantic relationship defines the shape of the global economy as a whole as either the EU or the USA is also the largest trade and investment partner for almost all other countries. The huge amount of bilateral trade and investment illustrates the high degree of interdependence of the two economies. Close to a quarter of all US–EU trade consists of transactions within firms based on their investments on either side of the Atlantic. Our mutual investment stocks add up to EUR 1.5 trillion, generating employment for about 12 million to 14 million workers.

EU trade in goods and services with regard to the USA, China, Russia, Japan and
Canada (billion EUR) (March 2006)



Bilateral trade and investment

The EU and the USA both account for around one fifth of each other's bilateral trade. The volume of trade in goods and services taken together amounted to more than EUR 627 billion in 2004.In 2005, exports of goods from the EU-25 to the USA amounted to EUR 250 billion, while imports from the USA amounted to EUR 162.7 billion. In services, EU imports from the USA were EUR 103 billion and EU exports to the USA amounted to EUR 111.7 in 2004. The investment links are even more substantial. The EU and USA are each other's most important source for foreign direct investment (FDI). In 2004, the EU held an estimated total of EUR 702.9 billion in FDI in the USA, while the USA had EUR 802 billion of investment stocks in the EU; this adds up to a total of over EUR 1.5 trillion. This means that about two thirds of European and American companies' investments abroad go to the other side of the Atlantic.

The European Union disapproves of unilateral extraterritorial legislation as a matter of principle. Therefore, in November 1996 the Council of Ministers of the European Union adopted a regulation and a joint action aimed at protecting the interests of natural or legal persons from the European Union against the extraterritorial effects of the Helms-Burton Act.

The Transatlantic Economic Initiative

Following the commitment reached at the 2004 Dromoland summit to further transatlantic economic integration, spur innovation and job creation and realise the potential of both economies, the June 2005 EU–US economic summit launched the 'EU–US initiative to enhance transatlantic economic integration and growth', This initiative covers the following areas: regulatory cooperation, capital markets, innovation, trade and transport security, energy efficiency, intellectual property rights, investment, competition, public procurement and services. In order to ensure that the economic initiative will be effectively implemented and progress will be made, a joint detailed work programme was then developed and endorsed by the first ever EU-US Economic Ministerial Meeting, held in Brussels on 30 November 2005.

Multilateral trade issues

This EU–US bilateral trade relationship must also be placed in the broader multilateral context. The EU–US partnership was one of the key driving forces behind the launch of the Doha Development Agenda round of negotiations in November 2001, which aims at deepening trade liberalisation while ensuring integration of developing countries in the multilateral trading system. Although the failure of

Cancun in September 2003 was obviously a setback in the process, it led to a period of global rethinking. The Hong Kong ministerial meeting in 2005 gave a new impetus to the round. The European Community remains in favour of an ambitious round. EU–US cooperation on the round is ongoing. Both sides are willing to conclude the Doha Development Agenda (DDA) as soon as possible. The EU focus remains on agriculture, industrial tariffs, services, anti-dumping rules, geographical indications (GIs), development, and trade and environment.

EU–NATO cooperation

In developing its global role, the EU has been fully conscious of the continuing importance of NATO as a guarantor of European security, as an important tie which binds Europe and the USA and as a force for good in the wider world. The EU has established regular consultation and cooperative military mechanisms with NATO to enable it to use NATO's common assets while ensuring enhanced transatlantic security and mutual decision-making autonomy. The NATO–EU link was formalised in the 2003 Berlin Plus arrangements, through which the EU can have 'ready access … to the collective assets and capabilities of the Alliance, for operations in which the Alliance as a whole is not engaged militarily' (Washington summit declaration 1999). The EU has established a planning cell at NATO's Supreme Headquarters Allied Powers Europe (SHAPE) to coordinate Berlin Plus missions.

EU-Latin America Trade relations

The EU is Latin America and the Caribbean's **second-largest trading partner** and the first trading partner for Mercosur and Chile. It has gradually strengthened and consolidated its economic and trade links with the region, resulting in trade figures that more than doubled between 1990 and 2005.

In 2005, EU imports from Latin America and the Caribbean totaled EUR 67.4 billion, and exports to the region amounted to EUR 58.2 billion. Closer examination reveals that EU imports from Latin America and the Caribbean grew faster than EU exports to the region over the last five years. In 2005 LAC countries had a trade surplus with the EU of EUR 9 billion.

The main exports from these countries to the EU are agricultural products, transport equipment and energy. The EU has a trade deficit with the LAC countries in agricultural products and energy and a surplus in other sectors. EU exports to the LAC countries are more varied, the main sectors being capital goods, transport equipment and chemical products.

The EU has been traditionally the leading investor in Latin America and the Caribbean. This is particularly true in South America where European investment represent almost 75% of total EU Foreign Direct Investment (FDI) in the region. European FDI was particularly important during the 1990s, but in 2000 the flows started to decline and the fall continued until 2004 when the trend started to change. In 2005, net FDI to Latin America and Caribbean countries - with a total of US$ 71 billion increased with respect to 2004, but was still short of the volumes observed during the FDI boom of the late ´90s.

In 2006, the leading FDI recipient countries in the region were Mexico and Brazil (which together accounted for 52% of total inflows), followed by Chile and Colombia. Also Uruguay, Ecuador, Central America and Chile experienced the highest percentage of increases with respect to their average annual FDI inflows. As for source countries, Europe has declined significantly, primarily due to a reduction in Spanish FDI, and the fact that the US has maintained its share.

In a report on Foreign Investment in Latin America and the Caribbean, ECLAC provides figures for European FDI flows for the most important countries of origin, including Spain, the Netherlands, the UK, France, Germany, and Portugal: in 2006, total European FDI flows to LAC countries amounted to US$ 15.391 million, which means that flows were below the average level of approximately US$

23.000 million for the period between 2001 and 2005. Data for Spain and The Netherlands, the most important countries of origin in terms of absolute FDI flows to the region, confirm this overall trend.

As for **Spain**, FDI flows have decreased significantly in 2006. They amounted to US$ 2.250 million, more or less 50% lower than in 2001 (US$ 5.029 million). However within the period from 2001 to 2005, Spanish FDI flows had reached a positive peak of US$ 12.686 million in 2004. The European country of origin that in 2006 generated the most important flows of FDI was **The Netherlands** with US$ 4.708 million. Similar to Spanish flows, also Dutch flows experienced a positive peak (US$ 12.204 million) in 2004. **Portugal** shows the same tendency for the last years. In 2006, Portugal ranks last within the group of most important investor countries for LAC, generating FDI flows of US$ 299 million, which means a decrease in comparison to the last years. **France** ranks third in terms of country of origin of FDI, the UK fourth and Germany fifth. French FDI flows have been more stable amounting to US$ 1.543 million in 2006 which is more or less in line with the average level of flows for the last years. FDI flows from **UK** were US$ 1.109 million in 2006 and **Germany** FDI flows amounted to US$ 967 million. Regarding investment flows from other European countries to Latin America and the Caribbean, a positive tendency can be identified over the last years. In 2006 flows were US$ 4.515.

Within this context, **the European Investment Bank (EIB)**, the EU's financing institution, has been active in the region since the early 1990s signed framework agreements with fifteen Latin American countries. The newly decided external mandate of the EIB for the period 2007-2013, foresees a financial envelope for Latin America, for an amount of 2,8 billion Euro. The activities of the EIB will be in line with the EU objectives towards Latin America, including support to regional integration and interconnectivity, notably in the field of energy.

The EU-LAC Summit process

Every two years, a high level meeting of Heads of States and Governments between the EU-Latin America & Caribbean (LAC) take place. These meetings, called "Summits", often constitute milestones in the relationship between both regions. The most recent EU-LAC Summit took place in Vienna (May 2006). The next Summit will take place in Lima, Peru (16-17 May 2008).

Summits are unique occasions to have a dialogue at high level, addressing important issues to the partnership between both regions. At each Summit, the Heads of State and Government adopt a Declaration, containing joint policy statements and commitments regarding the cooperation between both regions.

The first Summit between the Heads of State and Government of Latin America, the Caribbean and the European Union was held in the Brazilian city of Rio de Janeiro on the 28 and 29 June 1999. The objective of the Rio Summit was to strengthen the political, economic and cultural understanding between the two regions in order to encourage the development of a strategic partnership, establishing a set of priorities for future joint action in the political and economic fields. The Rio Summit also established the strategic partnership between the EU and the LAC regions.

A second EU-LAC Summit was held in Madrid on 17-18 May 2002. This summit assessed progress made in the framework of the strategic partnership established at Rio, emphasising progress in the three main pillars of the relationship: political dialogue, economic and financial relations including trade and capital, and co-operation in a number of areas. On this occasion, new proposals were made for the further strengthening of this bi-regional partnership.

The third EU-LAC Summit took place in Guadalajara (Mexico) on 28 May 2004. It achieved a great deal finding a common policy line to the 58 participating countries. Strong and concrete commitments were taken in three main domains: Social cohesion, Multilateralism and Regional Integration.

The fourth EU-LAC Summit took place in Vienna (Austria) on 12-13 May 2006 reiterating the commitment of both regions to strengthen the bi-regional strategic association. Heads of State decided in particular, to launch negotiations for an Association Agreement between the EU and Central America and paved the way for the launch of negotiations for an association agreement between the EU and the Andean Community.

In order to manage the process of increasing economic and financial interdependencies, the European Union maintains economic relations with many countries and institutions in the world. Its ultimate objective is to foster economic prosperity and stability in the EU and, while serving the Union's interests, also in the rest of the world.

The Commission's Directorate-General for Economic and Financial Affairs supports this by providing analysis and policy advice on international economic issues relevant to the EU, and by spreading the values and principles of the Union's economic framework and policy recommendations to other countries by shaping its external economic policies and their implementation. This includes:

- Providing economic analysis and policy advice for the development and implementation of EU external policies, for example on enlargement, the European Neighbourhood Policy, and the EU's development policy;
- Leading negotiations and regular dialogues on the economic aspects of bilateral relations, for example with China, India, Japan, Russia, South Africa, the US, EU candidate countries and EU Neighbourhood Countries;
- Ensuring the Commission's presence in multilateral economic forums (for example, the G7/G8, G10, G20, the Organisation for Economic Co-operation and Development, the Financial Stability Forum) and international financial institutions (for example, the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development);
- Managing EU financial instruments, such as macro-financial assistance to third countries or budget support within the different external assistance programmes, and ensuring coordination with other international financial institutions.

The lessons and experiences gathered from these activities related to non-EU countries are also fed into analysis and policy advice that informs policies in the Union, with particular regard to global economic developments and their potential effects on EMU, the international role of the euro, the external representation of the EU, and country-specific economic issues.

QUESTIONS:

Q1. Which agreement governs fiscal policy within the European Union?

Q2. For which countries is the European Economic Area Agreement applicable?

Q3. Name one of the primary obligations under the EEA Agreement

Q4. Which are the four fundamental pillars of the Internal Market (on which The EEA Agreement relies on) ?

Q5. What is the EEA Joint Committee main function?

Q6. What percent of the world trade do EU and USA account for?

Q7. EU–US partnership was one of the key driving forces behind which round of negotiations?

Q8. What is the EU's financing institution?

Q9. Which is the leading investor in Latin America and the Caribbean?

Q10. Where and when did the first EU-LAC Summit take place?

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