



CLP Commission Executive Summary

04 April 2024, 10.00-16.00 (CET)

**Hybrid virtual/in-person at Cámara de Comercio de
Sevilla in Seville, Spain**

1. Welcome from CLP Commission Chair Ercüment, Chair of ICC Spain, and ICC Spain Secretary General

2. UNCITRAL Project on Negotiable Cargo Documents

Angelo Estrella Faria, Principal Legal Officer, Head of Legislative Branch (UNCITRAL) presented the UNCITRAL WG VI project to develop a 'negotiable cargo transport document' for multimodal transport.

[\[See link to presentation\]](#)

The fact sheet and draft text of the instrument are available at the website link on the [UNICTRAL WG VI website](#).

Highlights included:

- **Presentation**
- Origin of project was a Chinese request in 2019 to study the issue. Despite the existence of UCP600, East Asian traders have trouble raising financing from local banks because banks rely on LCs more than do Western banks.
- The maritime sector is a bit fragmented - Hague Visby rules exist, but the Rotterdam rules haven't entered into force. Moreover, the 1980 multimodal convention hasn't entered into force. Each regime has its own difficulties and once something is not taken up, a kind of spell is cast over the instrument that is hard to shake. And the landscape changes, so earlier attempts at instruments may no longer fit for purpose.
- 2 aspects of negotiable cargo transport document project: (i) trade and finance facilitation, and (ii) digitalization of transport documents.
- Trying to find balance among 3 groups of stakeholders: (i) carriers/freight forwarders, (ii) banks, and (iii) shippers/consignors.

- Open question: future of multimodal transport sponsored by large carriers that haven't used negotiable documents heretofore. Earlier discussions of making rail consignment notes negotiable were paused for the evolution of this UNCITRAL discussion. These sectors are not used to negotiability, only consignee giving instructions to carrier.
- UNCITRAL doesn't want to supersede any existing conventions - need something that will work together with existing instruments. For example, one could write on a FIATA B/L, 'This serves as a negotiable document under the UNCITRAL Convention'.
- UNCITRAL is currently keeping open the possibility of issuing 2 documents if the first one can't act as a negotiable document, for example, where a rail consignment note expressly prevents negotiability.
- Liability for wrong delivery needs to be handled very carefully, and the allocation of obligations under the Incoterms rules also need to be taken into account (for example, regarding who negotiates carriage and who has rights to claim goods at destination).
- Provisions supporting e-commerce will be included but have not yet been drafted.
- Next session of WG VI to take place 6-10 May in NYC – we very much welcome ICC input on legal and commercial issues, and are also engaging with the ICC Global Banking Commission and the ICC Global Customs and Trade Facilitation Commission. Also, ICC is welcome to be included in person on the delegation at upcoming WG VI meetings.
- **Discussion**
- Support for relatively limited ambit of present instrument – perhaps 1980 multimodal convention and Rotterdam rules tried to do too much and thus failed to attract sufficient support.
- Issues on negotiability are divided into two; in the West, perhaps not enough attention given to these:
 - consignees' title to sue
 - lenders' security interest in the goods
- Important vis-à-vis Incoterms® rules not to allow scope creep from 3 highlighted groups of stakeholders above. Critical to keep in mind the multimodal Incoterms rules and keep a close eye on the transport documents section to ensure that things happen in sync so as not to cause problems with Incoterms® 2030.
- An ICC Spain committee is working on an MLETR report for the Spanish government and has also incorporated the UNCITRAL paper describing the project.
- ICC France will be in touch with French government representative who will be at the NYC May UN meeting regarding upcoming French bill on MLETR going to Senate to raise possible interaction with this future UNCITRAL negotiation.
- **ACTION:** CLP Commission to continue collaboration with UNCITRAL WG VI and provide input as needed.

3. ICC Model Contract on Commissioning and Maintenance Services

Valle Garcia de Novales, Chair of the Working Group (Spain), gave an update on status of new model services contract covering after-sales services related to the supply of equipment or an industrial solution.

Highlights included:

- Launched new Working Group to prepare new model.
- Had kick-off meeting in Vienna in October 2023. Very fulsome and successful – agreed on scope and structure.
- Early January first draft of the model prepared, discussed at a virtual WG meeting, and comments made.
- Tomorrow, a second draft will be discussed by the WG.
- Project is progressing quite fast, WG is aiming to have a final text by end of the year.

4. ICC Model Clauses on Digitalization

Robert Parson, Chair of the Working Group (UK), briefed the group on the new project in collaboration with the ICC Digital Standards Initiative (DSI) to create model contract clauses to help drive digitalization throughout the global supply chains.

[\[See link to presentation\]](#)

Highlights included:

- **Presentation**
- Over the past 20 years, developments in the regulatory and legislative world of e-commerce and trade digitization. The ICC Working Group has been assembled to seize the moment as momentum for the digitalization of trade is building globally, including through the accelerating adoption of MLETR around the world.
- In 2004, ICC developed a set of e-terms – now overtaken by events, but an interesting attempt to bring e-communications into contracting, accompanied by a user guide.
- There are lots of ongoing initiatives on legislation -- for example related to MLETR implementation – and WG Chair Robert Parson is involved in many for them, thus having a broad view of the topics globally.
- ICC leadership in the area of supporting digitalization in supply chains can play a key role in the global market. It is estimated that by 2027, 25% of consumer purchases will be made online but awareness of the legal effect of electronic/digital contracting is patchy.
- The ICC WG -- comprised of experts from different specialities and regions, including the Chair of the CLP Commission -- is in the process of carefully thinking through what topics to cover in a set of 4-6 model clauses. No one is served by ICC drafting clauses that the market doesn't want to use.
- CLP Commission members should feel free to contact the ICC Secretariat with endorsement of any items on the WG list of potential clauses below or any new ideas:
 1. Clause dealing with identification of parties/representatives/agents
 2. Clause allocating liability of parties generally in dealing electronically and for risk/loss to third parties
 3. Clause governing method of communication; email/data indemnity – requirement for writing?
 4. Clause dealing with data-matching framework
 5. Clause governing communications standards/language/confidentiality/data privacy
 6. Clause establishing receipt and acknowledgment protocol/availability of offer/timing

7. Clause governing consequences of errors in communication/security/system continuity and liability /exclusion of liability
8. Clause acknowledging validity of transaction – acceptance of electronic signatures/requirements as to quality /nature of electronic signature or other identification method/virtual execution/electronic sole version
9. Clause dealing with delivery/performance under the contract – digital content (B2B)
10. Clause determining choice of law – jurisdictional limitations may occur
11. Clause dealing with IP warranties

- **Discussion**

- NCs representatives raised the need to coordinate closely with other ICC Commission on the project, notable the Banking Commission and the Digital Economy Commission. The WG Chair is an active member of the Banking Commission Legal Committee and will be presenting this initiative at the full Commission meeting on 10 April. Several WG members are also key in the trade finance community.
- The WG is at a very early stage, will make sure to keep connected via ICC Secretariat to other relevant ICC Commission.. The WG is looking to provide not detailed sets of rules, but looking at very basic things that WG members see people are not getting right on a daily basis in their contracting.
 - **ACTION:** WG to identify 4-6 clauses to develop, keeping relevant ICC organs apprised and involved as appropriate through the ICC Secretariat.

5. EU Digital Agenda - Data Act

Christian Steinberger, Rapporteur on EU Digital Agenda for CLP Commission (Germany), introduced **Jan Paul Marschollek**, Deputy Head of Legal, VDMA (Germany), who briefed the group on the status of the EU Data Act soon to come become applicable and some concerning implications for business.

[\[See link to presentation\]](#)

Highlights included:

- **Presentation**
- The EU Data Act came into effect 1 January 2024, and will be generally applicable in September 2025. This is one more piece in the growing mosaic of regulation on data and e-commerce surrounding companies.
- Focus on Data Act chapter on Access to and use of data (one chapter among many)
 - Challenge for lawyers and companies
 - At center of everything, the user of connected products and services
 - Basic idea – connected products and related services (data holder) need to be designed so user can get the data
 - Hard to imagine how it will be complied with – very complicated
 - Art. 13 provides that contractual terms that are ‘unilaterally imposed’ can be overridden if ‘unfair’ – per se unfair terms and presumed-to-be-unfair terms
 - What are ‘data related obligations’ in Art 13 paragraph 1?

- SMEs have some grace, but the complexity (and resulting scariness) of digitalization is increasing exponentially
- **Discussion**
- Query how this will impact on business model of clients who are, for example, very active in the IT sector, transferring data into a cloud. They can no longer put a price just on having access to the data. Now they will have to have a price for providing a report on the data.
- Indeed, this will be very disruptive of business models. Lots of potential gray areas and since terminology not very clear, a fragmented world may result. Regarding free access to data, licensing access could be a different story, so this model may provide some hope. There may be good things arising from this – an emerging new market, companies newly able to charge for data.

6. Legal and compliance challenges for SMEs in practice

Angelika Zoder, Legal Affairs (ICC Austria) spoke about the range of compliance issues SMEs must grapple with and the challenges posed.

Highlights included:

- For those who missed the last CLP Commission meeting in Vienna – SMEs have huge and scattered compliance obligations. Many don't have compliance officers or legal departments and there is a movement of SMEs leaving international trade because compliance obligations are too dangerous and too heavy. One violation could jeopardize a business model – eg, sanctions, AML, etc.
- In Vienna, ICC Austria idea to have a catalogue of regulations, and discussed again with fellow ICC national committees at the Regional Consultative Group in Seville the day before the CLP Commission meeting. Consensus that there is a problem with no clear solution. One approach is to have NCs approach their Parliaments/regulators to seek national simplifications.
- ICC Austria will try to make approach to regulators regarding the ultimate aim of simplification and to continue to think of tools that ICC might provide. No one country can do it alone, all countries are encouraged to approach their governments and administrative organs.
- Max of ICC Austria has also reached out to the ICC Banking Commission and the Financial Action Task Force. Worldwide bodies that we can contact would be useful in addition to national approaches.
- Major problem noted at the EU level and solution should be found there – NCs should come up with examples of barriers that cost companies a lot of money. In Spain over the past 18 months, farmers have been protesting because they are completely fed up and longstanding family-run business can't manage the complexity. As with much regulation, one-size-fits-all can't be the way if MSMEs and SMEs are to survive.

7. ICC Learning and Development

Jennie Irving, ICC Global Learning Manager (ICC), and **Peter Friedman**, Head of Global Learning (ICC), briefed the group on ICC's global learning strategy and engagement with CLP Commission.

[\[See link to presentation\]](#)

Highlights included:

- Global Learning came out of ICC's revenue diversification efforts a couple of years ago – taking a deep look at opportunities for business to grow and better showcase the vast stores of expertise developed by the ICC network.
- The ICC Academy is the brand under which ICC sells online and blended learning – the Academy supplements the excellent trainings coming out of ICC HQ and NCs.
- The program of Academy offerings will be linked to the 5 ICC strategic pillars (see presentation for detailed course plans under each pillar):
 - Enabling global trade
 - Promoting access to justice, integrity, and respect for the rule of law
 - Accelerating sustainability and climate action
 - Shaping an open, trusted and interoperable digital environment
 - Strengthening multilateral cooperation
- Possibilities for deeper engagement with the Global Policy Department and ICC's Dispute Resolution Services (see presentation for examples of recent coordination).
- Members will recently have seen an email to the Global CLP Commission from Global Learning outlining a range of ways to contribute and showcase member and Commission expertise.
- Members and NCs are encouraged to propose ideas for articles, webinars, courses, et al by contacting Jennie Irving (jennie.irving@iccwbo.org) or Peter Friedman (peter.friedman@iccwbo.org).

8. Incoterms® 2020 + Technology

Emily O'Connor, Director of Commercial Law and Practice (ICC), briefed the group on internal consultations regarding the role of ICC in relation to possible applications of A.I. to the Incoterms® 2020 rules as well as other technological angles, including the Law as Code movement and the Inter-American Development Bank's (IDB) Incoterms® Price Calculator, featured on IDB's ConnectAmericas platform.

[\[See presentation\]](#)

Highlights included:

- Both analogue and digital tools are useful for helping traders better use the Incoterms® rules, e.g. the analogue *Incoterms(@) 2020 Checklist and Flowcharts*, and the interactive *Incoterms® 2020 Digital Guide*, developed ICC Germany and Luther law firm
- The Guide is available in German and English via the ICC Germany website and has proven a useful tool. Discussions have been held with big companies about incorporating the Guide into their operations; interest in that regard has mainly been for an expanded tool that would incorporate tax or customs information in as well.
- The Luther law firm is in the early stages of exploring automation of the *ICC Model International Sale Contract* to interact with the Digital Guide, updates to follow.

- An ICC NC representative raised the question of plans to establish a group to develop a methodology for incorporating a digital dimension into *Incoterms*® 2030, which would be essential for ICC's reputation and revenues,
- Others voiced support for the proposal made at the October 2023 CLP Commission meeting in Vienna that ICC develop a tailor-made generative AI bot/assistant in connection with the *Incoterms*® 2020 rules.
- The ICC Secretariat reported that ICC's Head of Digital Products had – in a late 2023 conversation – taken the view that it was unlikely that a new audience of paying customers would be generated for an IA tool on the *Incoterms*® rules alone, and that it was not clear there was a profitable business model for ICC to pursue development of a bespoke tool. Also unclear whether ICC is the right organization to develop such a tool in any case. He likened ICC to a quasi-government entity in this case, using the example of self-driving cars: while a government/authority wouldn't start building self-driving cars themselves, they might play a facilitative role by - for example - upgrading the road system to accommodate self-driving cars. In the *Incoterms*® + technology case, perhaps this could take the form – down the road – of exploring how to make the *Incoterms*® rules machine-readable.
- This news disappointed some meeting participants, who encouraged the ICC Secretariat to continue considering the AI/*Incoterms* question.
- Regarding machine-readability of the *Incoterms*® rules, the ICC Secretariat noted ongoing discussions with Craig Atkinson on the rules-as-data/law-as-code discipline, and the aim to have him present this interesting field at a coming CLP Commission meeting.
 - **ACTION:** ICC Secretariat to continue internal IHQ discussions on possible profitable business models regarding the use of AI in the context of the *Incoterms*® rules.

9. *Incoterms*® 2020 rules - Various issues

Christoph Radtke, Vice Chair of ICLP Commission; Co-Chair of *Incoterms*® Drafting Group (France), led a discussion on informal proposals raised in – and since – the Commission meeting in Vienna

- **Panel of Experts 2.0?** Discussion of proposal to create enhanced system for engaging NCs and experts in providing guidance on select queries of particular interest and significance for the application of the *Incoterms*® rules.
- ***Incoterms* rules + national law?** Discussion of proposal to collect through the ICC network national legislation impeding or prohibiting the use of certain *Incoterms*® 2020 rules.
- ***Incoterms*® 2020 Guidance Note: Using FCA, CPT and CIP for shipping containers through ports.** Translations and dissemination of new guidance paper.

Highlights included:

- Our mission is to use knowledge to develop practical tools with input from practice to better educate users. Some ideas recently raised include:
 - **Create updated version of the former *Incoterms* Panel of Experts** (existed 2000-2010) where experts answered selected queries from the public, which answers were then sent to the respective NC for addition of a local dimension. A number of

these answers appear in the *Incoterms® 2010 Q+A* book, still of relevance if you mentally accommodate changes made in *Incoterms® 2020*

- Agreed after discussion to explore creating an administratively light system in which members of the Incoterms(R) 2020 Drafting Group would consider carefully selected, significant, queries received from NCs based on practice and produce 'expert interpretations', not to be considered legal advice or for use in court proceedings.
 - **ACTION:** ICC Secretariat to coordinate next steps with *Incoterms® 2020* Special Advisor.
- **Gather national law barriers to use of particular Incoterms® rules:** With a view to encouraging large multinational integrated carriers to incorporate the Incoterms® rules into their internal software systems, the ICC Secretariat could gather from NCs an informal collection of country practices under which a particular Incoterms® rule might pose a problem (e.g, total prohibition on DDP; requirements that insurance be procured locally; restrictions regarding loading and unloading; tax treatment as infrastructure projects).
- Agreed after discussion to ask the NC network for examples, using a targeted series of prompts to encourage response.
 - **ACTION:** ICC Secretariat to put together short questionnaire with targeted questions for NCs.
- **Inco Guidance Note on shipping goods in containers through ports:** After discussion of several major issues regarding Incoterms® rules use in Vienna, the Incoterms® 2020 Drafting Group created paper as part of the continued response by ICC to demand from market for practical knowledge. The paper will eventually be up on the ICC website and in the Incoterms® 2020 app, and it is being translated into a number of languages.
- Links to the discussion above about creating expert interpretations on selected important issues (see especially the 3rd bullet of this Guidance Note) – encouraging how quickly this Guidance Note was able to be produced.
- Participants in Spain and Portugal reported that despite the general usefulness of such a note, local professionals - mainly in the logistics sector -- intend to continue using maritime rules for containers because of problems related to terminal handling charges (THC). Sellers and buyers run into problems with THC in freight forwarders' quotes because of interaction with national tax laws. (But a related complication may arise where local customs authorities may sanction companies who use eg, FOB for airfreight.) It was noted that there is no perfect substitute in the Incoterms® rules to account for delivery on board an aircraft.
- Apparently a similar problem re tax authorities and THC existed in the 1990s in Finland; sometimes parties have to characterize tax v. transport costs in a contract.

10. ICC model contracts – Marketing + promotion strategy for 2024

Aisling Achoun, Network Engagement Lead, Global Partnerships + Development (ICC), briefed the group on ICC Secretariat plans for increasing visibility and use of the ICC model contracts through a coordinated marketing campaign.

Highlights included:

- **Presentation**
- The Global CLP Commission is a major and consistent contributor to the ICC publication pipeline and the ICC Marketing and Communication Department is currently undertaking a campaign to give greater visibility to the library of ICC model contracts.
- First step will be to update the ICC branding for all PDFs and Word documents. The campaign -- expected mid-late May -- will feature different email campaigns for different audiences and experts will be enlisted to prepare some Q+A style information.
- On international SME day at the end of June, ICC will be running a series of projects and will offer the ICC Model Startup Contracts free for a brief period. The data from the free offer will be evaluated to see how improvements can be September through December. After much discussion about whether or not to make the model contracts entirely free, ICC will keep current prices and will offer certain things free from time to time.
- During the campaign NCs will be given re-activation packs to enable them to send out simplified messages and promotional material. Many NCs don't have much experience with selling or promoting the models and need support for ongoing promotion. The ICC Executive Board also wants to be involved in getting the messages out.
- Some figures related to current model contracts: approximately 800 models sold a year, of which 80% are digital sales, as customers typically want the contracts immediately. Customers want to have the Word file; downloading is being made easier. ICC headquarters sells 95% and ICC national committees sell the remaining 5%.
- **Discussion**
- Participants welcomed ICC's dedicated, proactive marketing push to promote CLP products and give them broader visibility. There are still frustrating gaps to be remedied, and the involvement of promotion by the ICC Court of Arbitration will be essential. Court president Claudia Solomon is a big supporter of the promotion, considers this an important project.
- Question regarding geographic spread of sales, and use of videos made in connection with the release of the model startup contracts. Information will be provided separately.
- Questions from NCs also regarding sales channels through ICC headquarters and NCs as well as targeted support requested for selling into particular franc-phone markets -- to be raised separately with relevant organs at ICC headquarters.

11. Next meetings

- 14 November 2024 -- Paris
- Q1/2 2025 -- Date/place to come.