INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

Department of Policy and Business Practices

Banking Commission

TECHNICAL MEETING, ICC BANKING COMMISSION
9 NOVEMBER 2016, ROME

1. **Opening Remarks**

Andrea Tomat, Chair, ICC Italy
Upon welcoming participants and thanking Italian Banking Association and the other sponsors of the meeting, Mr Tomat reiterated the importance of the cooperation with the ICC Banking Commission, it being the acknowledged rule-making body and the most authoritative voice in the finance world. Increasing its competences and always attentive to the needs of the market, the Banking Commission adjusts its range of tools for the benefit of banks and traders to make trade flow smoothly and more safely.

With the economy facing the worsening of the global shortage of trade finance affecting all business, it is now very important that policy makers pay more attention the trade finance sector, to rethink its future by encouraging governments, regulatory bodies and the G20 leaders to remove obstacles and stimulate economic growth and job creation. Here, the ICC Banking Commission is in the best position to identify, develop and discuss strategy issues, ensuring global coordination and reconciling divergent needs in the finance sector.

The trade finance sector is facing challenges from new market players, rapid market developments and structural changes brought about by the recent crises. ICC Banking Commission is thus encouraging the convergence of efforts of banks and corporates to facilitate trade and its financing. These could trigger new opportunities to complement existing solutions to bring simplicity and efficiency to trade.

Stefano Bertasi - Executive Director of the ICC Department of Policy and Business Practices
Opened the first technical meeting of the ICC Banking Commission by thanking the participants and the sponsors as well as everyone who has worked for making the meeting possible.

With an international environment full of surprises (after US elections), the global trading environment has become more challenging. the WTO forecasted world trade to grow more slowly in 2016 and likewise, revised downwards the forecast for 2017.There will be the slowest rate of growth since the economic crisis of 2008.

In this slow growth environment, the work of the ICC Banking Commission in facilitating trade finance is now more necessary especially in the blending of essential components of ICC work (rule writing and policy advocacy) and adding market intelligence via the ICC Global Survey on Trade and Finance.

The Banking Commission, through its policy work, can also benefit from working with the 11 other ICC commissions to address cross cutting issues with a multidisciplinary approach. An excellent example of the cross-cutting work the Banking Commission is doing with the other ICC commissions is the report just published on Financial Institutions and Arbitration from the work of the Banking Commission and the ICC Commission on Arbitration.

The technical meeting will allow the Banking Commission to take stock of its work and advance its many projects as well as discuss newer challenges, benefiting from the hard work of the various task forces and special groups.

2. Keynote Speech

Pierfrancesco Gaggi, Head of International Relations, Associazione Bancaria Italiana (ABI)
Welcomed participants in the Pope Clement X Hall, a fitting place to meet in since clemency means dialogue and mutual understating - qualities that underpin and animate the work of the ICC, which was founded by merchants of peace determined to promote world economic prosperity reeling from the devastation of the first world war.

This time, the industry is reeling from the crisis of 2008 and facing different challenges and disruptions, reshaping society but more so the banking community, the financial sector and trade. The ongoing globalisation seems to have reached a stalemate in the growth of trade. There is now an overall weakness in economic activities particularly in investments that is being witnessed everywhere. The wane of trade liberalisation and up-tick in protectionism have held back growth in trade.

The weak growth of trade is a symptom of the synchronised slowdown of economic activity across advanced and emerging markets and developing economies. Policies that relate to growth and particularly to investments should take centre stage to improve global economic health. The weak foreign demand outlook as well as other factors will dampen European economic growth prospects. Low interest rates are symptomatic of the underlying situation reflecting weak long term trends. Monetary policies cannot determine the sustainable level of interest rates in the long run. Other policy actors need to do their parts via structural fiscal policies to increase the potentials in the Euro area.

Technological evolution has also contributed to the change in the economic landscape. Banks have always been at the forefront of technological innovations while addressing the challenges of the existing business models. New digital business models add a new dimension to banking, moving them to rethink how they operate. Digital innovations have created new customers and customer expectations, forcing banks to create multi-channel approaches putting the customer at the centre and promoting the use of channels simultaneously instead of focusing on corporate silos.

In the future, when banking could be possible without banks, banks need to be smart to change away from how the older generations knew banks decades ago.

The most important disruption to trade is the disruption in the field of regulations. From 2008, there has been regulatory turmoil. There is a never-ending sequence of regulatory measures reshaping the activities of banks. The potential effects of these new regulations could lead to a 55% increase in the capital requirements for European banks. This is an aspect that must be taken seriously. The governments, the policy makers and the regulators must be asked to do something to avoid the potential effects that could impact the real economy in the next few years.

The Italian situation and the recent trends in the field of trade: on GDP evolution, the net result of international trade is positive and has helped reduce the negative contribution of private investments and household consumption. This has been made possible by the important role played by the support of the Italian banks to the internationalisation efforts of Italian companies. Export volumes for big and small companies have increased due to their decision to invest in international markets. These internationalised companies have proven to be more productive, more innovative and more profitable.

It is therefore important to analyse at the country level what the constraints are that are limiting the internationalisation processes in Italy – is it the size of the company, its organisational structure or insufficient information about the foreign trade partner country?

In the structure of the financial services dedicated to international trade, it should be noted that the mode of internationalisation of the banking system and the small size of the Italian industry are interrelated phenomena. The internationalisation of small Italian companies affect only the commercial side. It is on the production side where financial assistance is required.

The low level of demand has limited the critical mass of markets able to create economies of scale on the business side, which could justify significant investments by the banking system, especially for distant markets.

ABI has been working as partners with institutions responsible for providing financial support for the promotion of companies in foreign markets and is committed to the optimisation of public instruments financing international projects. These initiatives are aimed at strengthening public private action and make it more usable by banks and companies.

ABI has also been active in promoting Italian banks and businesses internationally together with the Italian Ministries of Economic Development, Environment and Foreign Affairs.

These issues that have been brought up are only a few of the issues affecting today's international trade and the markets. There are many challenges ahead that need to be looked into and will certainly animate the actions of the ICC.

3. ICC Banking Commission News and Updates:

Dan Taylor, Member of the Banking Commission Executive Committee
This first banking commission technical meeting counts 182 participants from 43 countries. Prior to the plenary, an intense programme of task force and working group meetings took place over two days, the results of which will be presented later today.

A National Committee Forum was held on 8 November to discuss issues of concern to NCs, including the potential revision of UCP as well as the actions that the Banking Commission can take in the digitalisation of trade.

In terms of governance: As announced at the Johannesburg meeting, the Advisory Board of the Banking Commission added 4 new members and likewise, the Executive Committee will be expanded to include new members who will be announced at a later date.

Mr Taylor expressed the Banking Commission's gratitude for the services of R.V. Balasubramani and Nicole Keller whose term as technical advisers for the Banking Commission came to a close this summer. He introduced Kim Sindberg and Glenn Ransier, who have replaced Bala and Nicole as new Technical Advisors.

The 2016 ICC Global Survey on Trade Finance was launched in October, and we would like to thank everyone who participated in answering the survey questions and were involved in producing the report.

Also launched in 2016 were the set of standard definitions and techniques for supply chain finance, a project the ICC participated in together with BAFT, EBA, FCI and ITFA. This document's aim is to harmonise and standardise industry terminology related to supply chain finance on a global basis.

The ICC Academy is up and running with its core and advanced courses, with more courses being added gradually. Both the Global Trade Certificate (GTC) and the Certified Trade Finance Professional (CTFP) are available.

4. Update: ICC Rule Making and Advocacy

ICC Trade Register, David Bischof, Senior Policy Manager, ICC Banking Commission:
Since its initiation in 2009,the Trade Register has been a success story and has increased the number of banks from all over the world involved in the project throughout the following years.

The project was devised to prepare the advocates of the trade finance industry to meet with regulators, arming them with facts and data showing that trade finance industry is safer than regulators thought in the beginning and at the same time explain to them the nature of the industry and its products. With the data and facts collected, banks in any country can subsequently present the findings to their regulators.

The project is now working with two partners: Global Credit Data (GCD) and Boston Consulting Group (BCG) to collect data and analyse/report on the findings.

Standard Definitions for Techniques of Supply Chain Finance, Doina Buruiana, Project Manager, ICC Banking Commission:
Released in March 2016 at the Supply Chain Finance Summit in Singapore organised by the ICC Academy.

The publication is the result of the collective work of the Drafting and Steering Groups over the last two years. The document puts together eight techniques for Supply Chain finance as well as an enabling framework. i.e. Bank Payment Obligation (BPO). Each chapter can be used stand-alone for each of the techniques. The publication also includes a glossary for all the terms relating to Supply Chain Finance.

Feedback has been very positive. The next step after publication is advocacy and education. Input, feedback and interaction are thus welcome. It is hoped the proposed terminology will be adopted and, when and where necessary, a revision of the techniques will be undertaken.

A dedicated website is currently being elaborated where users would be able to ask questions and receive expert answers. Before that, participants are encouraged to distribute the document to their contacts and facilitate industry adoption of the terminology.

Article 55: BRRD, Ron van Staten, Chair, Article 55 Working Group:
Banks have been subjected to a requirement to include a clause that recognised the effects of a bailing in their contracts not governed by EU laws. (Counter parties have to recognise that a bail in could affect their claim against the bank.) Trade finance industry practitioners realised that this was not an easy thing to effect and thus began talks with regulators, asking them to pull back the requirement for a bail in clause. Initial efforts were without success. However, in the meantime, it has been observed that in trade finance, very few banks managed to include any bail in clauses.

Eventually, EU regulators realised the clauses could not work and will not affect what the BRRD is aiming for. In its last review, the European Bank Authority said that they realised there should be a change to Art. 55. Unofficial word is that there will be an amendment to Art. 55, although in what form or shape is still unknown. It could be they would introduce some form of proportionality carve out, i.e. if the inclusion of the clause is disproportionate between the effort and the negative effects are too high, then the requirement may not be needed. Amendments might be announced next year.

Task Force on Forfaiting, Donald Smith, Member of ICC Task Force on Forfaiting:
The Uniform Rules for Forfaiting (URF800) Task Force has been successful in completing an application for UNCITRAL approval and endorsement of the URF in 2017. The rules, translated to several will be submitted with the application.

The International Forfaiting Association (IFA) has merged and is now known as the International Trade and Forfaiting Association (ITFA). They have reported an increased in use of the URF in a very short period of time.

Forfaiting is a strong financing tool to use to develop markets and a good alternative to use in both Western and Eastern Europe. It is a product that is easily understood, scalable, has a good profit margin potential for both trade parties.

Sustainability in Trade Finance Group, Doina Buruiana
The group is currently working on procedures and guidelines for sustainability applicability to trade and trade finance transactions.

The word “sustainability” has recently been widely used and to some extent abused. We are very careful in the steps taken to create a set of guidelines and recommendations for banks to use in their trade finance operations.

The goal of the group is, to some degree, to create an equivalent of Equator Principles, which are one of the best standards for project finance, only in this case for trade and short term finance.

The mapping out of current general sustainability procedures for finance already in place has started. Next will come the exploration and identification as to which are applicable and can be implemented for trade finance operations, as we do not want to create further barriers to trade finance The group is also trying to define what sustainable trade is, which is also proving to be complex.

Task Force on Guarantees, Andrea Hauptmann, Chair of the Task Force on Guarantees:
The project of drafting of the International Standard Demand Guarantees Practice (ISDGP) was started at the Johannesburg commission meeting. Since then, a drafting group has been set up to look at the main drivers.

The task force’s working topics include:

- The ISDGP in China: they have passed all steps and authorisations they need to have and are just waiting for the publication of the final draft. For the first time, independent international guarantees are being recognised in China. The second step would be to apply them to domestic guarantees.

  The ISDGP are closely following the URDG. In Russia, the new Civil Code and this new code is closely following the URDG. URDG may not be advancing in its use but it is influencing local laws a great deal.

- The BRRD 55 is also a topic for guarantees due to the bail in clause.
- Sanctions also influence long lasting guarantees. The situation in Iran is being closely monitored due to the Presidential election results.

- Customs guarantees is still an ongoing topic for review in the task force in light of the recent publication of a new custom code.

- The SWIFT changes coming up in 2018 for letters of credit and 2019 for the guarantees has also been followed up. Everybody needs to be well prepared for these changes.

- Lastly, a very promising meeting of the CEE Regional Banking Forum where assistance can be given to Central and Eastern Europe regions which, for financial reasons, cannot build up a strong ICC in their countries and are thus not able to participate in the activities of the ICC. The Forum is a way of reaching out to these countries and give them a voice in the ICC and allow them to profit from what the ICC is doing in the global economy. Countries in Central Asia are also being considered. The Forum could encourage these countries to take advantage of the ICC activities.

ICC Global Trade Finance Survey, Vincent O'Brien, Chair of the Task Force on Market Intelligence
The reality is difficult at present. The WTO has reduced the forecast of economic growth at 1.5% and could still be revised downwards. Trade growth is now significantly lower than GDP growth. Defaults are substantially up. The present environment is very challenging. It is important that everybody reads the report to be informed and forewarned to be able to come up with appropriate guidelines to facilitate trade.

Financial Institutions and International Arbitration, Georges Affaki and Claudia Salomon, Co-Chairs of the Task Force on Financial Institutions and International Arbitration
The ICC Banking Commission and the ICC Arbitration Commission unanimously endorse the Financial Institutions and International Arbitration Report. The task force worked for 2 years to analyse financial institutions' use and experience with international arbitration. The approach and analyses were truly global, inter-disciplinary and did not rely on impressions, intuitions and rumours - empirical data were used. The task force interviewed over 50 financial institutions from all over the world for their experience with and perspective about international arbitration; analysed the banks' policies and literature; the arbitration awards that are public and obtained data from the ICC and from more than a dozen arbitral institutions.

The take-away from the task force's work: financial institutions do use international arbitration under many circumstances, such as when:

- confidentiality is key
- transactions involved emerging markets where neutrality of the courts could be in question
- sovereigns are involved with transactions
- there are sensitive restructurings in complex M and A, in certain multilateral loans and asset management.

Based on the data gathered, international banks use arbitration but not consistently and not on a large scale. There is a lack of awareness of the benefits of arbitration as a tool. There are also many misconceptions about international arbitration.

The report offers a broad array of recommendations, practical tools to create a dispute resolution mechanism that meets the needs of each financial institution as well as the particular transaction. It also describes the many benefits of international arbitration.

There is a second volume of the report coming online, with more details of its 12 chapters. Now that the report is released, the task on Financial Institutions and International Arbitration will not be disbanded but will continue its work.

Legal Committee, Georges Affaki, Chair of the Banking Commission Legal Committee
The committee has pledged to stand by its two-fold jurisdiction that has been approved:

1. Primary jurisdiction will cover topics that the council members of the Legal Committee propose because they are the concerns of financial institutions and its clients.

   Under this jurisdiction, the Legal Committee has issued a statement that has set the record straight about banks' competence under optional jurisdiction clauses, stating that it is not an unfair approach nor an abuse by banks as was implied by the opinions of the courts on the matter.

   On credit mitigation arrangements, the legal committee decided to commission a law firm to issue four standard legal opinions confirming that any transaction that is governed by the ICC rules meets the requirements of CRR 194.

   The latest project of the Legal Committee involves electronic bills of lading in relation to questions about their validity as title documents. The Legal Committee will do the research to propose a statement position.

2. The second jurisdiction of the Legal Committee is to be the in-house unit of the Banking Commission, there to give legal advice on any legal question that comes up in the course of its work.

Wolfsberg Trade Finance Principles Drafting Group, Dan Taylor, Member of the Wolfsberg Trade Finance Principles Drafting Group
The drafting group is a partnership between the ICC, the Wolfsberg Group and BAFT and is coming to the end of its first phase of work. It has taken a while to get to this stage because the industry and the regulations are constantly changing. Hopefully, the core paper and the first appendices (Documentary Credits, Bills for Collection, Guarantees and Standby Letters of Credit and Open Account) will be ready by January 2017, but there will be additional appendices available later to cover more product areas, most specifically the supply chain area.

5. **Introduction to the Digitisation of Trade Finance,Thierry Roehm, Senior Advisor - Global Transaction Banking, Société Générale**
   The definition of digitisation is the adoption of solutions which enable parties in the supply chain to replace paper-heavy processes with standardised digital solutions that have legal equivalents.

Three questions:

1. Do banks need to invest in the digitisation of trade? Yes, because
a) banks need to review their business model in trade finance to reduce cost to streamline the processes and increase control.
b) The paradigm shift in trade finance. Country risks have increased due to changes in the political and economic environments, mainly from LC business to open account, resulting in small and medium sized business getting restricted access to financing of trade transactions.

2. Is the technology ready for the trade? Not yet, but many people think it is just a question of time. Some steps into digitisation are now in place in some banks. Digital document platforms and the e-bill of lading pave the way towards paper-less trade. The benefits for corporate banks are clear but the barriers to adoption are limiting their development. What are the barriers:
a) the cost of investment;
b) risk of cannibalisation of LC business in the case of BPO;
c) fact that all the parties in the trade transaction must adopt the solution and have to be connected;
d) the EBL document of title issue, particularly the wide adoption of the DLT in the trade community.

3. What role should ICC play in this evolution? There are a lot of technical iniatives that could result in the emergence of non-standardised proprietary solutions. To avoid this, someone has to set minimum digital standards for the digital trade providers to enable greater connectivity between the different digital platforms.

   From a business point of view, it is not clear if the market will move towards a full digitisation of the LC business, raising the question of the legal acceptance of electronic documents. The standards and format still need to be defined and to be agreed on. It will take time to digitise the LC business.

   The open-account solution is a possibility, based on data-ledger technology or smart contracts. In that case, the security of the transaction may be enhanced by using electronic bills of lading, BPOs and Internet-of-things solutions.

   What is emerging is an evolution hybrid product, a mix of solutions. In both cases, LCs and open account, the legal and regulatory framework must be clarified.
   The view of ICC France is that without providing the actors a clear direction for digitisation of trade, the risk is high that the trade bank community will miss the opportunity and suffer consequences on the business or face the high cost of interfacing the different solutions available. ICC is the right body to carry out this duty. A launching of a working group dedicated to digitisation of trade is proposed. Its mission could be to work on the legal value of digitised documents, to monitor the evolution of the technology particularly of DLT, to formulate amendments of existing rules and guidelines and establish and maintain contacts and regular dialogue with all the relevant industry bodies to align the agenda and the actions.

6. **Draft Opinion Review Session**
The following opinions were amended and finalised:
470/TA.842rev3
470/TA.849rev3
470/TA.851rev3
470/TA.852rev
470/TA.853rev
470/TA.855rev
470/TA.856rev
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470/TA.861rev
Additional information will be provided by ICC Singapore in respect of 470/TA.857 and the draft opinion re-submitted for the Jakarta meeting in April 2017.

7. **Close of Meeting**