



CLP Commission Executive Summary

27 April 2023, 14.00-17.00 (CET)

Hybrid virtual/in-person at ICC Secretariat in Paris

1. Welcome and Introductory Remarks

Emily O'Connor, Director of Trade + Investment (ICC), in the absence of Commission Chair **Ercüment Erdem**, welcomed participants to the meeting, taking place virtually and at the ICC Secretariat in Paris.

- 5 new Vice Chairs were welcomed
 - Dr. (Ms.) Ghada Darwish, Founder and Managing Partner of the Ghada M. Darwish Law Firm (Qatar)
 - Dr. (Mr.) Gao Xiang, Professor of Law and Director of the Centre International Banking Law and Practice at the China University of Political Science and Law (China)
 - Ms. Valle Garcia de Novales, Founder and Partner of Garcia de Novales Asesoria Juridica para Comercio Exterior (Spain)
 - Dr. (Mr.) Adewale Olawoyin, Managing Partner of Olawoyin + Olawoyin (Nigeria)
 - Mr. Christoph Martin Radtke, Partner at Fiducial Legal by Lamy (France)
- Outgoing Vice Chair Christian Steinberger, Legal Director at VDMA (Germany), was warmly thanked for his significant contributions and encouraged to continue his active engagement with the Commission.

2. Update from Global Policy Director Andrew Wilson

Andrew Wilson, Global Policy Director (ICC), briefed participants on the Global Policy Department vision for 2023 in the context of ICC's organizational strategy.

- Delighted to see you all and welcome new Vice Chairs.
- CLP Commission is a critical source of important and globally known ICC content, with real world applicability to the full range of global business actors.
- Major themes of focus for Global Policy Department in recent year or two
 - Revitalizing Commissions – increased participation, new more representative slates of officers, growing membership
 - Providing best-in-class service to members

- Developing unique, high-level, value-added content that reflects ICC's reach and mission in line with ICC's strategy
- Cross-Commission projects to reflect today's business reality
- Alignment with ICC strategic priorities
 - ICC's Executive Board has adopted 5 strategic organizational priorities related to: facilitating global trade, promoting the rule of law, driving the global digital economy, supporting climate and sustainability, and fostering the multilateral trading system.
 - The Global Policy Department work programme supports each of these priorities through Commission and cross-Commission activities and through our pioneering work through the Digital Standards Initiative in Singapore and the Global Alliance for Trade Facilitation, among other initiatives.

3. ICC model contracts

Emily O'Connor Director - Trade and Investment (ICC), briefed the group on refreshing and publicizing the suite of ICC model contracts.

- Model contracts are a flagship ICC product, developed under the impetus of long-time CLP Commission former Chair, Fabio Bortolotti. Now a robust library, well used by SMEs and larger companies.
- Models and CLP tools/rules are a key means of implementing the ICC strategic priority on facilitating trade.
- Increased cross-ICC focus on model contracts – Executive Board, Transformation team
- Two avenues: Refreshing individual models + publicizing the models across the ICC network and beyond
- Refreshing/Updating
 - Models updated from time to time to reflect changes in related ICC publications or regulatory/legislative evolution.
 - Currently working on light touch refresh of several (Sale, Agency, Occasional Intermediary), and tightly targeted update of Distributorship and Selective Distribution
 - ICC Court of Arbitration President, Claudia Salomon, has taken personal interest in the models and colleagues from the ICC Court of Arbitration revised drafts circulated for comment include suggestions on the dispute resolution provisions provided by ICC court staff.
- Publicizing/Disseminating
 - Initiatives touching on broadening reach of model contracts are being sparked in various parts of the ICC house
 - Learning:
 - ICC Academy – testing market appetite for online training
 - Institute of World Business Law – Task Force on International Contracts
 - Court of Arbitration aware of interest in spreading word on models
 - Network capacity building:
 - Business development for NCs using ICC tools including model contracts
 - Digital channels:
 - PocketLaw
 - Jus Mundi
 - Future: Discussions around ICC on contract automation

4. National Committee Update – ICC Spain +

Valle Garcia de Novales, Chair of ICC Spain's CLP Commission and Vice Chair of Global CLP Commission, presented projects underway and contemplated by ICC Spain. Other NC representatives added informal updates during the conversation.

See [\[LINK TO PRESENTATION\]](#)

- ICC Spain
 - Now provides replies to Incoterms® rules queries for a small fee – previously no charge -- and holds many training sessions (both in-person and online) on Incoterms rules and model contracts, in collaboration with business schools and chambers of commerce. An increased interest in ICC model contracts has been noted.
 - Is undertaking research to collect examples of bad practices with respect to the Incoterms rules – all NCs are welcome to share their examples.
 - In collaboration with ICC Argentina, works on Spanish translations of various ICC tools.
- ICC France
 - In keeping with the general spirit of cross-Commission work, is combining its CLP and Digital Economy committees into a Digital Practice Commission, with the aims of attracting new members and ensuring ICC tools are fit for our current digital age.
- ICC China
 - Is running a Chinese version of the recent flash Incoterms 2020 survey launched by the ICC Secretariat. Results (94 to date) to be presented once reviewed by ICC China CLP committee at its June meeting.
 - Has translated the ICC Academy Incoterms 2020 course into Mandarin.
 - Wonders whether the CLP Commission should issue opinions on Incoterms rules, to echo the longstanding ICC Banking Commission practice of issuing opinions on ICC banking rules URDG and UCP.

5. Update on EU Data Act

Christian Steinberger, outgoing Vice Chair of CLP Commission (Germany), briefed the group on the status and evolution of the EU Data Act and some concerning implications for business.

See [\[LINK TO PRESENTATION\]](#)

- One focus in ICC's efforts to make life easier for companies via models, tools, rules, publications and position papers is the ongoing struggle for the principle of freedom of B2B contract.
- Business must be alert to the evolution of the EU Data Act -- expected to be adopted around Q3 2023, with effect 12-18 months later -- and make its views known to the EU Parliament and Council through concrete practical examples of 'pain point' effect on companies. Fear that lessons from the difficulties caused by unclarity and the one-size-fits-all for B2C and B2B approach of the GDPR are not being learned by regulators.

- In the Data Act the European Commission is clarifying who can create value with (non-personal, eg, from machines) data and under which legal conditions. Central issues are access to and use of data and regulating the terms between enterprises. Questions as to how to separate personal v. non-personal data?
- Core obligation of data holder is to make data available free of charge, without undue delay and possibly continuously and in real time, upon request by user or any third party named by user.
- Lack of balance: a 3rd party may be in a position to use the data for, eg, after-sales services, even when the manufacturer might want to provide such services itself but has not stipulated that in its contractual agreement with the user.
- Protection of trade secrets and interaction generally with GDPR very uncertain, as is scope re meta data.
- Contracts to be established within new EU Terms and Conditions (clauses good and bad), similar to Germany's very restrictive commercial conditions law.
- Selling data in most cases no longer possible, which may have chilling effect on innovations related to new cloud solutions (eg, data spaces) and the data ecosystem generally.

6. Update on Report of ICC Task Force on ADR and Arbitration

Hélène van Lith, Secretary of Arbitration and ADR Commission (ICC) presented upcoming report prepared by the ICC Task Force on ADR and Arbitration.

See [\[LINK TO PRESENTATION\]](#)

- Arbitration Commission is think tank for Court and collaborates regularly with a range of Global Policy Commissions, of which it is the largest (c. 600 attendees at Arbitration Commission meetings).
- New CLP Vice Chair Ghada Darwish is an Arbitration Commission delegate.
- Sneak preview of key suite of products prepared by ICC Task Force on ADR and Arbitration - new tool will be of great value to in-house counsel, law firms lawyers, and companies regarding dispute resolution and dispute avoidance.
- Task Force on ADR and Arbitration is an important body, created in 2019 to study ICC dispute resolution services to determine whether they are appropriately tailored for businesses and how the various ICC techniques and tools can be used together.
- 2-part mandate:
 - Who could the services be useful to? Eg, SMEs and state entities
 - How to facilitate settlement in an arbitration process?
- Some 180 Task Force members organized in 4 tracks. Survey of 500+ users and series of open-mic sessions for in-house counsel.
- 2 new guides and a tool to launch on 23 May 2023 online – to be used by Global Policy Commissions and NCs
 - Guide: Effective Conflict Management (Proactive or Assisted)
 - Tool: Pre-action Risk Assessment Tool
 - Guide: Settlement Facilitation in Arbitration
- Outcomes from Miami and Paris Arbitration Commission meetings include internal recommendations regarding new kind of ICC service.

7. CLP Discussion Lab – A.I. and the Incoterms® rules?

Marta Prado, Vice Chair of ICC Spain CLP Commission + Valle Garcia de Novales, Vice Chair of CLP Commission (Spain) presented a proposal on possible applications of A.I. in the context of the Incoterms® 2020 rules. The intent of this initial discussion was to spark thinking, surface issues, and consider what problem[s] such a project would aim to solve.

See [\[LINK TO PRESENTATION\]](#)

- In connection with ICC Spain's research on bad practices regarding the Incoterms® rules, the questions arose: Is it worth it for ICC to explore the possible application of AI/ML to select the most suitable Incoterms rule? Should ICC lead research to explore the feasibility of this idea?
- Currently, ICC Germany is piloting the [Incoterms® 2020 Digital Guide](#), a rule-based decision-making tool to help users choose the right rule.
- AI/ML idea:
 - Build model to determine the selection criteria for an Incoterms® rule (who bears costs, etc), including what companies actually do (not for the moment being concerned with whether or not the right rule was chosen).
 - Knowledge extraction: Draw from the model the key factors that currently lead users to select any given Incoterms rule. See how factors interact independently or together to choose a rule. Once this information is verified by experts, use this information to develop a tool to help users choose the right Incoterms rule.
- Discussion
 - Key will be monitoring the transactions sets that are put into the query. How would we monitor the experience/transactions to enable the machine to make good decisions?
 - Very interesting concept that would require a lot of expert input. Would this envisioned product be monetizable? Would users want to pay for it?
 - Interesting project that should be made even bigger: Incoterms rules, tax and customs all in one. Tax effects are very interesting to companies and the tax approach to choosing an Incoterms rule can be very different from a logistics approach.
 - Discussion to be continued in Vienna at next CLP Commission meeting on 19 October 2023.

8. Project Proposal: Model contract on Commissioning and Maintenance Services

Valle Garcia de Novales, Vice Chair of CLP Commission (Spain) presented project proposal from ICC Spain to develop a new model contract covering after-sales services related to the supply of equipment or industrial solution – typically installation, assembly, putting into operation, and maintenance.

See [\[LINK TO PRESENTATION\]](#)

- The new model would cover commissioning and after-sales services and be geared towards SMEs that are selling machines and solutions, and posting workers abroad to help.

- While the existing ICC Model Turnkey Contract for Major Projects covers some of these topics, this model would be on a reduced scale and easier to use, targeted specifically to SMEs.
- Discussion
 - Nowadays lots of services are provided online, remotely, which must be included.
 - Model should also include supervision of commissioning and maintenance – during pandemic, a supervisor would travel and teach local teams how to provide the needed service.
- **ACTION: ICC Secretariat to invite volunteers to join a Working Group to participate in an initial project scoping discussion.**

9. Current legal and compliance challenges for SMEs in practice

Max Burger-Scheidlin, Secretary General, and Angelika Zoder, Legal Affairs (ICC Austria), discussed the range of legal and compliance obligations SMEs face, including sanctions/embargoes, anti-money-laundering, anti-corruption, supply chain ethics, and sustainability.

See [\[LINK TO PRESENTATION\]](#)

- SMEs are often overwhelmed by compliance obligations, and often face difficulty in obtaining trade finance, especially in developing economies. Companies may be exposed not only to company-level liability, but to personal liability for people involved in compliance.
- There is a real threat that these overwhelming obligations will reduce the competitiveness of SMEs. ICC Austria does A-Z grass roots work with companies and hears of their issues.
- Possible tools that might help include a standard AML questionnaire; model sanctions clause in the ICC Model Force Majeure Clause; advocacy on reducing personal liability of SME staff doing customs or tax declarations.
- Discussion:
 - The ICC Banking Commission has done sanctions and money laundering clauses, any work should be coordinated.
 - The ICC Institute of World Business Law is doing a series of webinars on related compliance topics and we hope to collaborate with them on a written guidance note.
 - Any work should coordinate with Banking Commission, Customs + Trade Facilitation Commission, and Anti-corruption Commission, possibly others.
 - While establishing a compliance management system within a company, including a comprehensive risk examination, is ideal, it's not always feasible/likely for SMEs. So we may need to find solutions that are a bit lighter to implement.
- **ACTION: CLP members and NCs to provide Secretariat with examples of SME needs regarding compliance with laws and regulations, gleaned from their daily work with companies. The results will form the basis for a brainstorming session on next steps at the 19 October Commission meeting in Vienna.**

10. Next meeting – Vienna on 19 October 2023, hybrid meeting

- 19 October 2023 – Vienna, hybrid with in-person participation warmly encouraged by ICC Austria.
- Q2 2024 – Date/place to come.