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LETTERS OF CREDIT IN JAPANESE-UNITED STATES TRADE

KOHEI IZAWA,* KAZUAKI SONO** AND WARREN L. SHATTUCK***

In the long history of international trade the main points of friction have been assurance of payment for the seller and assurance of delivery for the buyer. Where there is business to be done, traders have, over the centuries, usually found ways and means. From their practices have evolved the familiar modern lubricants for these friction points, letters of credit (which will be referred to hereafter as "credits"), insurance contracts, bills of lading, and the inspection services offered by various private and governmental agencies.

The credit in the form we now know it developed during the nineteenth century¹ and is a most efficient solution for the seller's problem. Its practical importance in international commerce can hardly be overstated. It is both the servant of such trade, and a stimulus to it. No better example of its use and value in the movement of goods across international boundaries is to be found than in the commerce between Japan and the United States. Japan imported American goods worth one billion seven hundred million dollars during 1962. In the same period the United States imported Japanese goods worth one billion dollars.² It is estimated that ninety-five per cent of this tremendous flow of goods moved under credits.³ The volume of the import-export business varies from year to year. The percentage affected by credits remains fairly constant.⁴

It might be expected that a commercial law technique having the incidence and significance of credits would inevitably become sur-

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¹ Shattuck and Guernsey, Letters of Credit—A Comparison of Article 5 of the Uniform Commercial Code and the Washington Practice, 37 WASH. L. REV. 328 at n. 11.
² These figures are based on data in the files of the International Banking Department, Seattle-First National Bank.
³ This is an estimate supplied by Mr. Richard Soderquist, Assistant Vice-President, International Banking Department, Seattle-First National Bank.
⁴ Credits have a place in domestic trade too and are being so used in the United States in increasing number. This trend should be much strengthened with enactment of the Uniform Commercial Code, which supplies for the first time a reasonably certain legal framework for credits. In Japan, however, the availability of the services of banking organizations which operate nationally, and of other adequate financing arrangements, have inhibited the use of credits in domestic trade. Credits are not now used in such trade and there appears little likelihood that this pattern will change. See the discussion, Shattuck and Guernsey, supra note 1, at 333, n. 21 and 556, n. 153.
rounded by a network of supporting legal doctrine. This is, however, definitely not the case in Japan, which has no specific statutory coverage of credits and virtually no helpful court decisions. The extent to which the provisions of the Japanese Code are relevant will be indicated as the discussion develops. Nor is it the case in the United States, save where the *Uniform Commercial Code* has been enacted. The other states have no statutes and little or no common law coverage. The scarcity of positive law has in both countries created for issuers and users of credits areas of doubt and uncertainty about legal relations which would surely have curtailed the growth of credits were it not for the development of well-defined bank usages and their later formalization by the International Chamber of Commerce into a set of operating principles called the *Uniform Customs and Practices* (referred to hereafter as *UCP*).

There is in each of our countries a considerable interest in the views of the other concerning the operation and legal incidents of credits. We will endeavor to provide this information. Our concern is not with choice of law problems, *i.e.*, with determining which body of domestic law will govern in a particular controversy. It is rather to delineate the domestic situation in each country. Our frame of reference is indeed complex. The Japanese situation is a compound of the general principles stated in the Japanese Code, of *UCP*, and of bank practice apart from *UCP*. The United States situation is a compound of limited common law coverage, the *Uniform Commercial Code, UCP*, and bank practice apart from *UCP*. Our discussion has been written against the background of Professor Izawa's book, *Shogyo-Shinyojyo-Ron* (The Study on Commercial Letters of Credit), as revised in 1958; Shattuck and Guernsey, *Letters of Credit—A Comparison of Article 5 of the Uniform Commercial Code and the Washington Practice*, 37 WASH. L. REV. 325, 500 (1962); and Bank of Tokyo, Trade and Letters of Credit, as revised in 1958, which will be cited as *Bank of Tokyo*.

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6 The *Uniform Commercial Code* has been enacted in Alaska, Arkansas, Connecticut, Georgia, Kentucky, Illinois, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Wyoming. New York, in enacting the *Uniform Commercial Code*, devitalized Article 5, the letter of credit coverage of the statute. During early 1963 a movement was under way in New York to amend the statute to restore Article 5.

7 Shattuck and Guernsey, supra note 1 at 325 *et seq.*, in its discussion of the present law, demonstrates the dearth of significant case authority. See also page 555.
These publications supply most of the detailed text discussion which is appropriate to any inquiry into Japanese law and practice, and most of the case, periodical and text citations which are appropriate in a discussion of American legal problems. We have included as exhibits several forms currently in use, which the banks concerned have kindly permitted us to use in this way.

Banks in both countries adhere to UCP, routinely incorporate UCP in documentary credits, and expect the incorporation to be legally effective. Their expectations in this regard seem amply justified. UCP accordingly provides a legal and practical base point common to both countries. Its harmonizing influence in large measure explains the absence of disputes about credits, at the operating level. Were a clause incorporating UCP inadvertently omitted from a documentary credit, the fact that UCP represents general bank practices would probably induce a court in either country to regard UCP as a trade usage operative as between banks in both countries, and hence a part of the credit in any inter-bank controversy. UCP does not, however, purport to cover all of the problems which can arise. It is supplemented by other bank practice, which becomes both relevant and important when UCP fails to supply the answer to a problem. To the extent that this usage is as between Japanese and American banks sufficiently known and common to become an operative trade usage under the law in each country, it will no doubt regulate their legal relations.

8 For the United States, see Shattuck and Guernsey, supra note 1 at 326, n. 7, and 325, n. 3. Under Japanese law, the type of incorporation clause used in a credit with reference to UCP will be effective provided the affected party is shown to have actually known of the clause. The prominence with which such clauses are stated, plus the generality with which they are used and general awareness of them by traders, suggests strongly that the beneficiary will be bound by the incorporation.

9 Izawa, World Law and Letters of Credit, in Tanaka Kanreki Ronshu: Sho Ho no Kihon Mondai 351 et seq. (1952), states UCP as world custom. Adherence of Japanese and American banks to UCP can be readily established. Contrast the situation elsewhere during the period prior to 1963, in which English banks rejected UCP. See the discussion, Mentschikoff, Letters of Credit: The Need for Uniform Legislation, 23 U. Chi. L. Rev. 571, 572 et seq. (1956). The law of Japan would without difficulty draw a common business usage known to both banks into their legal relations. Japanese Commercial Code, § 1: "Where no provision exists in this Code as to a commercial matter, the commercial customary law shall apply; and if there is no such law, the Civil Code shall apply," and Civil Code, § 92: "If there is a custom differing from a provision of any law or regulation not relating to the public welfare, such custom is to be followed, if it is to be considered that the parties intended to be governed by such custom." A like result is expectable in the United States. The basic American trade usage principles are indicated in Shattuck and Guernsey, supra note 1 at 327, n. 9 as follows: "A usage is operative only where the parties agree that it shall apply, or one of them so intends and the other knows or should know he does, or the usage is known to or should be known to both parties and neither expresses dissent from its application."
apart from *UCP* is not, however, a reliable basis in either country for estimating the legal relations between banks and non-bank parties.\(^{11}\)

*UCP* contains a few propositions germane to customer-issuer relations, although the General Provisions and Definitions, part (a) (1963 edition) reads: "These provisions and definitions and the following Articles apply to all documentary credits and are binding upon all parties thereto unless otherwise expressly agreed." The customer is not a "party" to the credit, in the sense of being either an obligee or an obligor under it. *UCP* seems therefore internally inconsistent in its inclusion of passages referring to the applicant for the credit.

Inter-bank relations, as to which *UCP* is clearly relevant, can also become important in determining the legal relation between an issuer and its customer, since the typical credit brings the issuer into legal relations with other banks (advising, confirming, negotiating, collecting).

It is nevertheless the practice of some Japanese banks to incorporate *UCP* into the application forms taken from their customers. Other Japanese banks do not. Neither do American banks. Whether the propositions stated in *UCP* are an operative trade usage as between issuer and customer is not with certainty determinable in either country; the outcome in an individual transaction might well turn entirely on the specific facts before the court.\(^ {12}\) Japanese banks regard awareness of *UCP* sufficiently universal among purchasers of commercial credits to sustain a strong argument for a trade usage which would bind the customer. The point is largely moot in both countries, since, as will be indicated later, the application forms taken from customers are so comprehensive in scope as to make resort to *UCP* of infrequent concern.

Japanese banks and their lawyers are now becoming familiar with the importance and effect of the *Uniform Commercial Code* on letters of credit, interested in its impact on bank practices, and appreciative of its clarification of many points in American law otherwise doubtful. Their apprehensions that enactment of this statute might disturb prior practice are being set at rest, as it is becoming apparent that the incorporation of *UCP* into a credit makes *UCP* govern wherever it

\(^{11}\) *Id.* at 327, n. 9. See the Japanese Code sections cited in footnote 9 *supra*. Whether these basic principles will so operate as to bind the non-bank party to a bank usage turns on factual refinements which preclude any valid estimates of the results of litigation involving them.

\(^{12}\) Shattuck and Guernsey, *supra* note 1 at 327, n. 9, states the basic American trade usage principle. A comparable rule would govern in Japan. See the Code sections cited in footnote 9 *supra*. 
differs from the text of the *Uniform Commercial Code.* The current reaction in Japan to the fact that the *Uniform Commercial Code* is operative in the state where a credit originates is favorable. Such credits are and will no doubt continue to be acceptable to Japanese banks and traders. As time goes on and there is increasing familiarity with the advantages of the *Uniform Commercial Code* as a supplement which fills in the gaps left by *UCP*, there may well develop in Japan a preference for credits originating in *Uniform Commercial Code* states.

**The Power to Issue Credits**

American lawyers are accustomed to think of "capacity to contract" as inherent in all adults of sound mind, and of corporate powers in terms of corporation charters. Credits are promises and fall somewhere in the consensual obligation area. Theoretically, any individual, and any corporation the charter powers of which are broad enough, can issue a credit. For obvious business reasons, foreign-trade credits are in practice issued by banks and it is their charter powers which require exploration. National banks have been held to have implied power to issue credits. Although national banks dominate the field, state banks also issue credits. Whether they have the power to do so depends on the jurisdiction. Some state banking codes make adequate provision for this bank function. Others do not, and in such states the answer must be found in the area of implied powers. The outcome of litigation on this issue cannot be predicted with assurance. Where the *Uniform Commercial Code* has been enacted the odds would seem to very much favor a holding that local state banks have the requisite power. The statute is in one aspect a regulation of transactions which are in practice carried on by banks. Legislative regulation would seem to be a clear-cut recognition by the legislature that the capacity to engage in those transactions exists.

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15 FINELSTEIN, LEGAL ASPECTS OF COMMERCIAL LETTERS OF CREDIT 6 (1930).


17 Not to be confused with capacity are the propositions stated in *Uniform Commercial Code,* § 5-102, which regulate the scope of article 5 of the Code. That section restricts the coverage of the statute to documentary credits issued by banks, to credits of non-bank issuers which require a document of title, and a credit issued by anyone which "conspicuously states that it is a letter of credit or is conspicuously so entitled." See the discussion, Shattuck and Guernsey, *supra* note 1 at 330-333.
The practice in Japan is controlled by governmental foreign exchange restrictions, which so operate that credits are issued by twelve banks only. In terms of basic corporate powers, there appears to be no doubt but what the issuance of credits requires no specific charter or statutory authorization. The point is to a degree moot, since the defense of ultra vires would probably not be open to an issuer even though it were a banking corporation. Nor can a bank not authorized to deal in foreign exchange expect to avoid liability should it issue a credit in violation of currency restrictions. Its act would be unlawful in the sense of being punishable, but not unlawful in the sense of being void.

**Basic Theory**

Consideration is unknown to Japanese law. It is the view of Japanese legal scholars (whose opinions may be expected to carry great weight in litigation involving the application of broadly-stated Japanese Code propositions to credits) that a credit is a combination of instruction and mandate. The transaction has its inception in instruction by the customer to the issuer authorizing the issuer to honor drafts drawn by the beneficiary, and to notify the beneficiary of this authorization. In technical terminology the customer is the instructor; the issuer is

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19 Bank of Tokyo, Mitsui, Mitsubishi, Kobe, Sumitomo, Daiwa, Sanwa, Kangyo, Daiichi, Kogyo, Tokai and Fuji.

19 Nishihara, *Banking Business*, in MINJI HOGAKU JITEN 412 (1960) clearly states that the issuance of a letter of credit is within the purpose of any banking corporation. CIVIL CODE, § 43: “A judicial person has rights and duties according with laws and regulations within the scope of its object as defined in articles of association or the act of endowment.” COMMERCIAL CODE, § 502: “The transactions mentioned below, if effected as a business, are commercial transactions, except such transactions as are effected by persons who manufacture articles or render services solely for the purpose of earning wages . . . money changing and other banking transactions.” The most significant provision is in COMMERCIAL CODE, § 503: “Transactions effected by a merchant for the purpose of his business are commercial transactions. The transactions of a merchant shall be presumed to be effected for the purpose of his business.” COMMERCIAL CODE, § 4 is also significant: “A merchant within the meaning of this Code is a person who, on his own behalf, engages in commercial transactions as a business.” The issuance of credits has been held to be a method of making a loan. Appeal Court of Tokyo, 1937, 4242 Horitsu-Shinbun 16. Even if the service is rendered without charge to the customer, the power exists because maintenance of customer good will is thereby fostered, District Court of Nagoya, 1935, 3901 Horitsu-Shinbun 11.

20 It is the consensus of opinion among Japanese scholars that a commercial corporation which undertakes an obligation within the general commercial area cannot escape liability by pleading the absence of charter power. Ishimoto, *Capacity of Juridical Person*, in MINJI HOGAKU JITEN 1837 (1960).

21 TAKEDA, *SHOHO NO RIRON TO KAISHAKU* 588 (1927, 1959); Izawa, supra note 13, at 230 et seq.; CIVIL CODE, § 643: “A mandate is where one party directs the other to do a juristic act, and the other agrees to do so”; CIVIL CODE § 644: “A mandatory is bound to execute the business entrusted to him according to the terms of the mandate, and to use the care of a good manager.” As to instruction theory under Japanese law, see German CIVIL CODE, §§ 783-792.
legally binding on the issuer. UCP provides no help on this detail. Banking practice apart from UCP does not have any particular legal significance on a matter of this kind, since the practice is really only a generally held assumption by issuing banks that they are irrevocably bound once notice of the credit reaches the beneficiary, but not before. This is one of the many points at which the Uniform Commercial Code serves a useful function. It provides, in § 5-106, clearly stated principles for determining when a credit is a legal obligation. In its provision for effectiveness as to the customer when the credit is “sent” to the customer or when the credit or notice of it is “sent” to the beneficiary, the statute states a refinement which goes beyond any discernible banking usage or general legal principle in either country. In international transactions, neither in Japan nor in the United States are credits often sent to the customer. The idea that the credit can be legally extant as to the customer and not as to the beneficiary is a departure from present thinking of bankers in both countries. The idea may, however, have utility and judgment as to its merits should be deferred pending more experience with it.

The fact that Japanese law makes the credit obligatory when the accepted instruction is notified to the beneficiary provides, in that country, a certain point in time at which the issuer becomes legally liable on the credit. The “notice” contemplated here is a communication received, rather than one merely sent. Until it is received, Japanese banks deem themselves free to destroy the effect of the notice by a contradictory one which reaches the beneficiary first. In practice the legally significant notice is sometimes the credit itself. More often the notice is advice of the credit by an advising or confirming bank. The intercepting communication is of course sent via cable. The burden of proving that a credit has been countermanded in this way is expected to rest on the issuer. Where countermand is requested by the

24 Id. at 349.
25 Section 5-106(1) reads: “Unless otherwise agreed a credit is established (a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and (b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.” It is discussed in Shattuck and Guernsey, supra note 1 at 349, 350.
26 Id. at 350.
27 IZAWA, supra note 13 at 254, 372; BANK OF TOKYO 68; KOHSAKA, BOHEKI-KENRYAKU 313 (1960). Support for this proposition is to be found in § 97 of the Japanese Civil Code, which reads, “An expression of intention made to a person at a distance takes effect from the time when the communication thereof reaches him. The validity of an expression of intention is not affected, if the person who made it dies or becomes incapacitated after he has sent the communication.”
an instructee; and the beneficiary of the credit is the beneficiary of the instruction. So long as the transaction remains in this posture the issuer is under no legal duty to the beneficiary. The process by which the issuer comes under a legal duty to the beneficiary is denominated "acceptance of the instruction," and this is evidenced by notification of the beneficiary, in language of obligation such as "we agree to honor. . . ." This instruction-acceptance relation is independent and abstract, itself related only to the payment of money, independent from the mandate relation between the customer and the issuing bank, and also independent from the underlying sales contract.  

The Uniform Commercial Code makes discussion of theory academic in American jurisdictions which have enacted that statute. Section 5-104 states the legal criteria for creation of a credit. Section 5-105 indicates that consideration is not necessary. In other states judicial delineation of theory is not to be found and there is a remarkable lack of agreement among writers as to the proper theoretic analysis of irrevocable credits. A student of American contract law, confronted by an irrevocable documentary credit as the business community expects it to operate, might well be moved to say as has been reported of the man who saw his first giraffe, "There ain't no such animal." Application of normal mutual assent, consideration and failure-of-consideration principles to a credit introduces elements of uncertainty which are incompatible with the commercial use and understanding of this obligation. The introduction of suretyship principles raises suretyship-defense problems and charter-power complications which would destroy the utility of credits. It seems best to analyze the credit as sui generis, a special variety of consensual obligation. Because of the hiatus in the theory of credits there must be, in states which have not enacted the Uniform Commercial Code, some doubt as to whether an irrevocable credit is as a matter of law always irrevocable. There is also doubt concerning the correct analysis of revocable credits, but this is of little moment, both because revocable commercial credits are rare and because issues about them are not apt to come up.

### When Does the Credit Become Obligatory?

One consequence of the failure by courts in the United States to develop a common-law theory for credits is uncertainty concerning the precise point in the transaction at which an irrevocable credit becomes

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22 Takeda, op. cit. supra note 21, at 618; Izawa, supra note 13, at 223.

23 Shattuck and Guernsey, supra note 1 at 328, 329, 344-348.
customer he takes the risk that the intercepting cable may arrive too late.\footnote{Sono, Why not Uniform Commercial Code Article 5?, 12 Kansai Univ. L. Rev. 906 (1963). See Exhibit 5B, infra.}

**Revocable v. Irrevocable Credits**

Revocable credits have no commercial utility in Japanese-United States trade. Japanese exporters are obliged by government regulations to receive cash or an irrevocable credit as a condition to obtaining an export license and the basic sale-contract will routinely specify an irrevocable rather than a revocable credit. If the sales contract is not specific on this detail, it will probably be interpreted as requiring an irrevocable credit.\footnote{Izawa, supra note 13, at 245 et seq.} American exporters normally contemplate an irrevocable credit because a revocable one carries no assurance whatever of payment, and their sales contract will, if well drawn, so specify. The *Uniform Commercial Code* in § 2-325(3) implements this expectation by stating that a clause requiring the buyer to provide a "credit" means that an irrevocable credit will be supplied save where the contrary is expressly indicated. In other states, failure to specify in a sale-contract what type of credit is to be established produces an interpretation issue, the answer to which is entirely speculative.

Credits expected to be irrevocable are clearly labelled "Irrevocable" by banks in both countries, which would expect a credit not so labelled to be revocable,\footnote{Bank of Tokyo 16. This is stipulated in UCP, article 1 (1963 ed.). Were it not for the routine incorporation of UCP into credits, a different legal result would be expectable in Japan. Banks would regard the promise to honor as irrevocable after notice to the beneficiary unless the credit expressly reserved the power to revoke, this being a natural result of basic Japanese legal theory. Takeda, op. cit. supra note 21, at 603; Koësaka, Benek-Keiyaku 312 (1960). Cable credits can raise an awkward problem. Such a cable is regarded by Japanese banks as indicating an irrevocable credit unless the contrary is stated, despite UCP, and because of a special bank usage concerning cable credits, Bank of Tokyo 16. The *Uniform Commercial Code* is silent on this detail. The American common law is unclear as to the result expectable where UCP is not operative.} and would expect a revocable credit to be revocable without notice to anyone.\footnote{Izawa, supra note 13, at 354, 366; Bank of Tokyo 67; Koësaka, op. cit. supra note 30, at 312. UCP provides in art. 2 (1963 ed.) for cancellation without notice to the beneficiary. The *Uniform Commercial Code* provides in § 5-106(3): "Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary." See the discussion, Shattuck and Guernsey, supra note 1 at 354-356. The American common law is unclear. Id. at 354, n. 59. Japanese scholars provide a satisfactory theory which also conforms to the Japanese law, by declining to find any promise by the issuer in the revocable credit. Takeda, op. cit. supra note 21, at 617 et seq.; Izawa, supra note 13, at 230 et seq. Reflection suggests that this is a sound analysis under the American common-law, too. It provides a solvent for the treacherous notice-to-the-beneficiary problem for which a legal answer compatible with the expectations of banks cannot readily be found if the revocable credit is analyzed as an offer which the issuer can revoke or as a promise which the issuer can terminate.} Negotiation credits (i.e., credits containing
the phrase "We agree- with the drawers, endorsers and bona fide holders of drafts. . . ." are routinely issued by American banks for Japanese beneficiaries. They are issued by many, but not by all, Japanese banks for American beneficiaries. If a revocable negotiation credit were issued, the problem of liability to a negotiating bank could arise. It is expected by banks in both countries that the issuing bank would be legally bound to a bank which negotiated a draft of the beneficiary without actual notice of revocation. The customer would in turn be liable to the issuer, by reason of his indemnity undertaking in the application form. Whether the beneficiary can be held by an issuer who has had to pay a negotiating bank despite revocation is unclear. There is not in either Japanese or American law any certainly applicable theory, although in Japanese law negotiation with knowledge of prior cancellation may be a tort.

MODIFICATION OF CREDITS

That a revocable credit can be modified at the will of the issuer is assumed by banks in both countries. Irrevocable credits are quite another matter. Once established, an irrevocable credit cannot be changed in any particular in either country without the beneficiary's consent. The consent of the customer is not theoretically necessary, but this is a matter which is in practice regulated by the fact that the

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32 There is another basis for classifying a credit as a negotiation credit. Under bank practice in both countries an advising bank is authorized to negotiate drafts. An advised credit is therefore, so far as the advising bank is concerned, in effect a negotiation credit.

33 Izawa, supra note 13, at 363; Bank of Tokyo 17. ANDOH, FOREIGN EXCHANGE 476 (1958), states this expectation to be a world wide usage among bankers. UCP so provides, art. 2 (1963 ed.). The UNIFORM COMMERCIAL CODE so provides, § 5-106(4). Definitive American common-law case authority on this point has not been found.

34 Shattuck and Guernsey, supra note 1 at 356.

35 Japanese CIVIL CODE, § 709 broadly states "A person who intentionally or negligently violates another's right is bound to make compensation for damage arising therefrom."

36 Izawa, supra note 13, at 363; Bank of Tokyo 17. UCP so provides, art. 2 (1963 ed.). The UNIFORM COMMERCIAL CODE so provides, § 5-103(3). It was so held in United States Steel Prod. Co. v. Irving Bank-Columbia Trust Co., 9 F.2d 230, 232 (2d Cir. 1925), which appears to be the only relevant American case.


38 The credit creates a legal relation between issuer and beneficiary to which the customer is not a party. The customer's very real interest in the credit may well justify a rule which would limit the issuer's power to modify a credit without his consent. UCP, art. 3 (1963 ed.), requires the consent of "all concerned." UNIFORM COMMERCIAL CODE, § 5-106(2) so provides as to a credit "established as regards the customer," carrying out the system set up in § 5-106(1), under which a credit can be established as to one party but not the other.
issuer's relation with its customer will be adversely affected by a modification to which the customer does not consent. Specific authorization of modification by the issuer after the credit has been issued is not customarily a term of the application; which constitutes the agreement between the issuer and the customer, but there appears in the forms used in both countries exculpatory language which is probably broad enough to encompass modifications. Due concern for customer goodwill suggests that modification arrangements with the beneficiary without prior concurrence of the customer will be rare indeed save where the customer gets into financial difficulties which imperil the issuer's reimbursement position.

Modification of a negotiation credit is fraught with obvious peril. The beneficiary may already have negotiated drafts drawn under the credit, or may subsequently negotiate credits without disclosing the modification. American banks and some Japanese bankers expect a negotiating bank which takes a draft for value and without notice to take free of the modification provided the credit was exhibited to it before it acquired the draft. UCP lends support to this expectation, in its statement that a credit cannot be modified or cancelled "without the agreement of all concerned." The Uniform Commercial Code has no coverage of this detail. Neither does the Japanese Code. There appear to be no American cases in point.

The position of a negotiating bank under a non-negotiation credit is quite different. No greater rights than the beneficiary had can on any theory be acquired, and prior modifications are certainly operative against him. Less obvious is the position of a negotiating bank where the modification occurs after the negotiation. Banks in both countries expect the negotiating bank to be vulnerable to subsequent modifications even after notice to the issuer of the negotiation. The legal situation is most obscure, however, and there is nothing helpful on the point in UCP.

MATTERS OF FORM

In Japan a credit can in theory be oral, there being no applicable

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39 See Exhibits 1 and 5B infra. Of particular interest is the cancellation provision contained in para. 8 of Exhibit 5B. Under it, a total or partial cancellation agreed on between issuer and beneficiary will bind the customer. Under Exhibit 1, para. 8 it will be observed that "good faith" action taken by the issuer is in effect approved ahead of the event, by the customer.

40 Article 3 (1963 ed.). See also Shattuck and Guernsey, supra note 1 at 351, 352.

41 See the discussion in Shattuck and Guernsey, supra note 1 at 352.

42 Id. at 352 n. 54.

43 Takeda, op. cit. supra note 21, at 623, 624.
statute comparable to the American statute of frauds. There is however no commercial use of oral credits, confirmations, or modifications. The established trade usage might move a Japanese court to question an alleged oral credit, confirmation or modification.

The American cases divide on the applicability of the statute of frauds to credits. 44 The Uniform Commercial Code requires that a credit, a confirmation and a modification be in writing. 45 A memorandum will not suffice.

The use of cables is routine in communicating credits, requests for confirmation or advice of credits, and concerning modifications. Banks in both countries expect such cables to be legally effective and do not question the sufficiency of the symbols used to identify the sender. 46 Although there is no direct support for this expectation in UCP or the Japanese Code or in American cases (save for some indirect help in decisions holding a telegram to be a memorandum sufficient under the statute of frauds 47 ) the consistent and long-established trade custom suggests that there is no reason to doubt the legal effect of a cable. The Uniform Commercial Code meets the problem with a specific provision. 48 Cables are in practice typically followed by confirming letters, but this is a safeguard against mechanical failures in the telegraphic process rather than a precaution against possible legal deficiencies in the cable. 49

In neither country has any legal principle developed which forces credits into a stereotyped phrasing or format, and in practice the language of credits varies widely. 50 The Uniform Commercial Code

44 Finkelstein, Legal Aspects of Commercial Letters of Credit 33 (1930).
45 Section 5-104(1). See the discussion in Shattuck and Guernsey, supra note 1 at 340-343.
46 Takeda, op. cit. supra note 21, at 626; Bank of Tokyo 216.
47 2 Corbin, Contracts § 508 (1950); 4 Williston, Contracts § 568 (3d ed. 1961).
48 Section 5-104(2) reads: “A telegram may be a sufficiently signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.” See the discussion in Shattuck and Guernsey, supra note 1 at 343, 344.
49 Takeda, op. cit. supra note 21, at 626; Bank of Tokyo 216. In order to guard against the possible argument that the confirming letter is a second credit, Japanese banks insert in such letters a clause to the effect that “This is a confirmation of the credit opened by cable under today’s date through . . . . It is only available for such amount as has not already been availed of under such cable advice, and may not be availed of at all unless attached to and as part of our correspondent’s notification of such credit advice. The two jointly constitute evidence of the outstanding amount of this credit.”
50 Izawa, supra note 13, at 28. UCP is in conformity. It defines a credit in terms of the kind of undertaking, not in terms of specific forms or language. General Provisions and Definitions part (b) (1963 ed.). See also Shattuck and Guernsey, supra note 1 at 340, n. 35.
does not require any change in this practice. What is needed in both countries is an undertaking by the issuer to honor drafts which conform to the stated terms and are accompanied by the indicated documents.

Advice of Credits

Notice of a credit is often communicated by the issuer to the beneficiary through a bank in the beneficiary's country, known as the "advising bank." This is typically the practice where the communication is via cable. The advising bank on receipt from the issuer of a request to do so informs the beneficiary of the credit and its terms, employing language exemplified in Exhibits 3 and 7. It will be noticed that the advising bank makes no promise and expressly disclaims any engagement. It seems clear enough that the advising bank is not liable on the credit. UCP provides: "An irrevocable credit may be advised to a beneficiary through another Bank without engagement on the part of that other Bank (the advising Bank)." Uniform Commercial Code § 5-107(1) reads: "unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment under the credit."

It is expected by banks in both countries that an advising bank which negligently misstates the terms of the credit will be liable to the beneficiary for any ensuing loss. This is a detail on which UCP is silent. The Japanese Code probably establishes a theoretic base for the advising bank's liability. There appears to be no definitive American case law. The Uniform Commercial Code provides that the advising bank assumes "obligation for the accuracy of its own statement."

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51 Section 5-104 specifically provides that "no particular form of phrasing is required for a credit."

52 Izawa, supra note 13, at 525 et seq.

53 Article 3 (1963 ed.).

54 Izawa, supra note 13, at 226.

55 Civil Code, § 709: "A person who intentionally or negligently violates another's right is bound to make compensation for the resulting damage."

56 Section 5-107(1). See the discussion, Shattuck and Guernsey, supra note 1 at 156-58. This subsection begins with the phrase "unless otherwise agreed," which in context suggests that an advising bank can effectively disclaim liability for mistakes in its advice. If the import of this clause is authorization of disclaimer of liability for any kind of misstatement, it may represent a considerable departure from present law. At most, negligence can be disclaimed at common law, and even this is not clear in some states. Shattuck and Guernsey, supra note 1 at 357 n. 64, n. 65. Under the Japanese Code, liability for simple negligence can be disclaimed by agreement, but not liability for willful misdoing. Japanese Civil Code, § 1, The performance of duties must be done in good faith and honestly; § 90, A juristic act whose intended effect is
It is possible that a mistake by an advising bank can result in refusal by the beneficiary to ship goods, with resulting conflict between customer and beneficiary and possible loss to the customer. Whether the advising bank is liable to the customer for such a loss is not determinable under either Japanese or American law. This is not a detail on which UCP is helpful. There is no significant bank usage concerning it.

If the advising bank advises erroneous terms, the legal position of the issuer may become a problem. UCP provides that banks utilizing the services of another Bank for the purpose of giving effect to the instructions of the applicant for the credit do so for the account and at the risk of the latter. They assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other Bank.

Since UCP begins with the proposition that “These provisions... apply to all documentary credits and are binding upon all parties thereto unless otherwise expressly agreed” it is by no means clear that UCP is intended to apply to customer-issuer relations. The customer is hardly a “party” to the credit. There is also the problem, previously discussed, whether UCP will apply to the issuer-customer agreement unless incorporated therein and whether it will apply even though incorporated, where it cannot be shown that the customer knew the terms of UCP.

If it does apply to customer-issuer relations, UCP effectively insulates the issuer from liability for mistakes of the advising bank. It has become customary, however, for banks in both countries to guard against this kind of risk by exculpatory provisions in the applications taken from customers. Although these provisions might arguably

contrary to the public welfare or good morals is invalid; § 91, If the parties to juristic act have expressed an intention differing from a provision of any law or regulation not relating to the public welfare, such intention is to be followed; § 92, If there is a custom differing from a provision of any law or regulation not relating to the public welfare, such custom is to be followed, if it is to be considered that the parties intended to be governed by such custom. Whether these Code sections also invalidate a disclaimer of gross negligence is not clear. The principle of private autonomy might by a Japanese court be deemed to represent the stronger principle, and to permit the disclaimer.

The broad principle stated in Japanese CIVIL CODE, § 709 (quoted in note 55 supra) may or may not apply to protect the customer. See the discussion in Shattuck and Guernsey, supra note 1 at 358.

Article 12 (1963 ed.).

General Provisions and Definitions part (a) (1963 ed.).

See Exhibits 1 and 5B, infra. The former provides in para. 8 against liability “for any error, neglect or fault of any of your correspondents.” The latter provides in para. 2, “I/we assume full responsibility for any and all acts taken by you or your correspondents under the letters of credit in the case of the beneficiary thereof applying
also insulate the issuer against liability for negligence in phrasing its request to the advising bank, banks in both countries expect to be liable for the consequences of their own negligence in this situation.

Where the advising bank advises erroneous terms the legal relations between the issuer and the beneficiary are especially difficult to analyze. To the extent that the advising bank conformed to its instructions there seems no reason why the credit cannot be operative unless the deviations distort the remainder. The Uniform Commercial Code makes the issuer liable on the terms of the credit as the advising bank was authorized to advise it, a concept for which there is no American case precedent. Japanese banks expect to be liable to the extent that the advising bank correctly advises the credit but not otherwise, save where the advising bank’s mistake is the product of the issuer’s negligence. These expectations are probably supported by the Japanese Code. It is evident that the Uniform Commercial Code goes beyond Japanese law and Japanese bank practice. No discernible American bank usage relevant to the problem has developed.

An issuer’s request to advise a credit is assumed by banks in both countries to impliedly also request the advising bank to negotiate drafts drawn under the credit. As to drafts so negotiated it is expected that the advising bank is protected, in the case of a revocable credit, against revocation or modification not known to it at the time of the negotiation. It is also expected that the advising bank is protected against an unknown modification of an irrevocable credit made to you or your correspondents for negotiation or payment. This seems broadly enough phrased to protect the issuer against mistakes of the advising bank.

Section 5-107(3). See the discussion, Shattuck and Guernsey, supra note 1 at 360, 361.

In Japan, legal liability would appear to follow from a reasonable interpretation of Civil Code, sections 109, 110, 112, which read: § 109, A person who holds out another to a third person as his representative is bound by all acts between such other and the third person within the scope of such authority; § 110, If a representative acts in excess of his authority, but the third person had reasonable grounds to believe that it was within his authority, the provisions of the preceding article apply correspondingly; § 112, The extension of the right of representation cannot be set up against a third person acting in good faith; but this does not apply, if the third person is ignorant of the fact of his own negligence. It would appear that an issuer will be liable in accordance with the terms of the credit as advised, if the advising bank’s mistake is the product of negligence by the issuer. There is also the possibility that the issuer will be liable to the beneficiary in tort, if the issuer negligently instructs the advising bank, which in turn incorrectly advises the credit. For the latter proposition, Civil Code, § 709, quoted in note 55 supra, would be the controlling section.

Japanese banks recognize the risk that an advising bank can make mistakes. They confirm their instructions by transmitting two copies of the credit to the advising bank, by different mails. When advising a credit they recognize the hazards in paraphrasing the language of a cabled request and repeat the exact words of the cable together with a clause reading: “The Bank is not responsible for any amendments which may be necessary upon receipt of mail advice of this credit.” Bank of Tokyo, 215, 216.

Takeda, op. cit. supra note 21, at 598-99.
before the time of negotiation, and against modification of an irre-
vocable credit made after negotiation without its consent. The
request will also invoke *UCP*, under which there is a direct duty to reimburse.

**CONFIRMING BANKS**

As to the relation of a confirming bank to the beneficiary, the legal
and usage situation in both countries is well stated in *UCP*: "confirmation constitutes a definite undertaking on the part of the confirming Bank either that the provisions for payment or acceptance will be duly fulfilled or, in the case of a credit available by negotiation of drafts, that the confirming Bank will negotiate drafts without recourse to drawer."

It is expected by banks in both countries that a request for confirmation obligates the requesting bank to indemnify the confirming bank. *UCP* in effect so provides. Letters of request typically specify that the confirming bank shall obtain reimbursement by charging the requester's account or by drawing on the requester or on a specified correspondent of the requester. A confirming bank which honors drafts pursuant to its engagement to the beneficiary has a direct right against the requesting bank on an implied (if not express) promise to reimburse rather than a right derivative through the beneficiary. A request to confirm is also a request to honor or negotiate drafts, with consequences like those of a similar request to an advising bank as

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65 Compare the philosophy of *Uniform Commercial Code*, § 5-106(4). See the heading "Revocable v. Irrevocable Credits," above.

66 Article 8 (1963 ed.) reads: "Payment, acceptance or negotiation against documents which appear on their face to be in accordance with the terms and conditions of a credit by a Bank authorized to do so binds the party giving the authorization to take up the documents and reimburse the Bank which has affected the payment, acceptance or negotiation."

67 That this is the law in Japan is indicated both by the expectable legal effect of incorporating *UCP* into a confirmation letter (see Exhibit 8); and also by basic contract principles. Izawa, *supra* note 13, at 526. Definitive American common law cases appear to be lacking but the legal liability of a confirming bank is evidently like that of an issuer. The *Uniform Commercial Code*, § 5-107(2) provides: "A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were the issuer and acquires the rights of an issuer." See the discussion, Shattuck and Guernsey, *supra* note 1 at 359-60. 

68 Article 8 (1963 ed.), quoted n. 66 *supra*.

69 There is no direct statutory support for this conclusion in either country. The *Uniform Commercial Code* in § 5-103(g) defines "customer" as including a bank which requests another bank to confirm a credit for the requester's customer. This together with § 5-114(3), which provides for reimbursement of an issuer, appears to indicate that a confirming bank has a direct right against the requesting bank. There are a few supporting cases in the United States. See the discussion, Shattuck and Guernsey, *supra* note 1 at 533. In Japan, basic contract principles provide the confirming bank with a right to reimbursement, Izawa, *supra* note 13 at 523.
discussed above. In this connection it may be noted that in practice in both countries only irrevocable credits are confirmed.

The issuer will of course be liable to the beneficiary on a credit correctly advised by a confirming bank. That a confirming bank will be liable to the customer on the terms specified in its confirmation, without regard to the terms of the original credit, seems also inescapable.

If the confirming bank in its capacity as an advising bank makes mistakes, it should be liable to the beneficiary for any resulting loss and the legal situation as between issuer and beneficiary would seem to be identical with that previously discussed under the heading “Advising Banks,” infra. These are details on which the law is in both countries obscure. If a confirming bank fails to follow instructions and cannot meet the conditions of the credit it was instructed to advise and confirm, it would appear to be unable to obtain reimbursement from the issuer or customer on any theory.

Whether the confirming bank has a reimbursement right against the requesting bank’s customer is an issue not apt to arise so long as the requesting bank remains solvent. The law on this detail is obscure in the United States. UCP has no coverage. Neither does the Uniform Commercial Code. There appear to be no relevant American cases. The obvious approach is in terms of implied promise. Confirmation carries an additional fee and a request for confirmation will be made by the issuer only if the customer so directs. Whether agency principles might bridge the gap between customer and confirming bank and support an argument for an implied promise by the customer to reimburse the confirming bank is unclear. In Japan the confirming bank can proceed against the issuing bank’s customer on a theory of subrogation, if the issuing bank is insolvent. If the issuing bank is

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70 See the discussion, Shattuck and Guernsey, supra note 1 at 360; Izawa, supra note 13 at 526.
71 Under UCP art. 8 (1963 ed.) it cannot recover as an authorized bank, having failed to proceed “in accordance with the terms and conditions” of the credit. Basic contract principles in both countries would restrict a requesting bank’s implied or express promise to reimburse, so that a confirming bank can have reimbursement only if it exactly meets the terms of the request. In its derivative position as a successor of the beneficiary it would fail, being unable to meet the conditions of the credit.
72 See the discussion, Shattuck and Guernsey, supra note 1 at 533.
73 Japanese Civil Code, § 423: In order to protect his obligation, the creditor may exercise the rights of the debtor, except such as are merely personal to the debtor. So long as the obligation is not yet due, the creditor can exercise the rights of his debtor only by virtue of a judicial subrogation, but this does not apply to acts of preservation. It is the opinion of Japanese scholars that this section is available only in case of the debtor’s insolvency, Itaki, Subrogation, in MINJI-HOGAKU-JITEN 637 (1960).
solvent it is very doubtful that a theory under which the confirming bank might reach the customer could be found.

**LEGAL RELATIONS BETWEEN CUSTOMER AND ISSUER**

In both Japan and the United States, the existence of a duty in a bank to issue a credit is to be ascertained by the application of basic contract principles. In Japan the customer's application is an instruction and an offer for a contract which becomes obligatory when the bank signifies by notice to the customer its purpose to accept the instruction. In practice this step may or may not be taken prior to actual issuance of the credit by notification of it to the beneficiary. In the United States the customer's application also appears to be an offer, but whether for a unilateral contract or a bilateral one is difficult to determine. The language used in the typical form suggests an offer to be accepted by issuance of the credit. Ordinary business practices suggest that the customer expects and the bank often states, withal informally, a promise to issue the credit. There is apparently no definitive American case authority. The *Uniform Commercial Code* does not purport to deal with this detail. The test case would be an action by the customer against the bank for not issuing the requested credit.

In Japan a duty to follow the customer's instructions will exist when the mandate is accepted and there will be liability for an incorrectly issued credit. In the United States the problem is complicated by the distinction between unilateral and bilateral contracts. If the bank promises to issue a credit on certain terms, a credit incorrectly issued will be a breach of its undertaking. That liability exists on some theory seems certain, although support for the conclusion is not to be found in either cases or statutes.

An issuer which, under a credit correctly issued, honors drafts accompanied by non-conforming documents, is in both countries legally liable to the customer in the absence of an operative exculpatory agreement. Despite issuer-customer agreement clauses which might arguably exonerate the issuer from this liability, banks in both countries expect to answer for failure to examine documents with due care or to follow

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74 See the discussion, Shattuck and Guernsey, *supra* note 1 at 534.
75 Izawa, *supra* note 13, at 287 et seq.
76 *Japanese Civil Code*, § 644: A mandatory is bound to execute the business entrusted to him according to the terms of the mandate, and to use the care of a good manager. Overseas Trading Corp. v. Irving Trust Co., 82 N.Y.S.2d 72 (Sup. Ct. 1948) so held; it appears to be the only American case squarely in point. See also Shattuck and Guernsey, *supra* note 1 at 501 n. 78, 502 n. 81.
general banking usage. *UCP* in effect so provides.\textsuperscript{77} Japanese law is in accord.\textsuperscript{78} So is the *Uniform Commercial Code.*\textsuperscript{79}

The more complex aspects of the issuer's legal position vis-à-vis its customer result from the fact that the credit is an independent obligation which will bring the issuer into relationship with other parties—the beneficiary and possibly an advising bank, a confirming bank, a negotiating bank, and communication media. In those relationships there is opportunity for malfunctioning of one kind or another. The beneficiary may prove to be a scoundrel. Mistakes can occur in advising a credit. Messages in code may be incorrectly decoded. The telegraph company may garble a cablegram. Delays may occur which result in negotiation after modification, as has previously been discussed. Translation errors are not unknown. The small fees charged by issuers are for banking services and not for insurance against the various contingencies which can develop. These are risks which by long-established custom the customer is expected to bear, and issuer-customer agreements are so written. As Exhibits 1 and 5 demonstrate, the application forms used in both countries contain broadly phrased clauses under which the customer assumes full responsibility for third-party mistakes and misdoings.\textsuperscript{80} *UCP,* which may or may not be operative as between customer and issuer, also has some relevant coverage.\textsuperscript{81} There is little reason to question the legal effectiveness of an agreement by which the customer takes these risks.\textsuperscript{82} The same result would probably be reached by courts in both countries, apart from such an agreement. There is a limited amount of American case authority exonerating an issuer which received documents conforming on their face but in fact not genuine or not in conformity with the sales

\textsuperscript{77} Article 7 (1963 ed.): “Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit.” Whether *UCP* is intended to cover issuer-customer relations has been previously discussed.

\textsuperscript{78} See *Civil Code,* § 644, quoted in note 76 *supra.*

\textsuperscript{79} Section 5-109(2) states that “An issuer must examine documents with care so as to ascertain that on their face they appear to comply…” Section 1-102(3) forbids contract recitals aimed to remove a duty of care from an obligor.

\textsuperscript{80} In Japan such clauses would be legally effective to protect the issuer save for the consequences of its own gross negligence. See note 56, *supra.* In the United States such exculpatory clauses are probably effective at common law. See Bank of New York & Trust Co. v. Atterbury Bros., 226 App. Div. 117, 234 N.Y. Supp. 442 (Sup. Ct. 1929) aff’d 253 N.Y. 569, 171 N.E. 786 (1930) and the discussion in Shattuck and Guernsey, *supra* note 1 at 502, 503. The *Uniform Commercial Code,* however, invalidates clauses intended to relieve an obligor of the duty of care (§ 1-102(3)).

\textsuperscript{81} Articles 8, 9, 10, 11 and 12 (1963 ed.). It has already been observed that *UCP* has some language referring to the applicant for the credit, although General Provisions (a) states that *UCP* is “binding upon all parties” to documentary credits. The customer is arguably not a party to the credit.

\textsuperscript{82} Shattuck and Guernsey, *supra* note 1 at 503 n. 83. See also note 80 *supra.*
contract. The Uniform Commercial Code protects the issuer. There is no specific provision in the Japanese Code, but scholars would support protection of the issuer as Japanese law. Trade usage would no doubt supply the answer were the problem to reach litigation in Japan and would place the burden on the customer.

Two problems require special mention. One is the effect of non-bank trade usage. Banks in the course of their business acquire a good deal of information about general trade customs and might readily be charged with even broader knowledge of them. In the handling of credits, particularly at the point of determining the conformity of documents to credit, an issuer obliged to take cognizance of such trade customs would often encounter complications which would at least delay its decision whether to honor, and might make it very difficult to be sure the documents conform. This element of uncertainty should not be fastened on credits. Japanese scholars believe that the law in their country relieves the issuer from consideration of other than banking usage in deciding whether to honor drafts drawn under a credit. Japanese banks expect this result. The Uniform Commercial Code is in accord.

The other special problem grows out of beneficiary wrong-doing. The customer may inform the issuer the bill of lading is forged or the crates contain rubbish instead of goods and demand the dishonor of drafts. Most banks in both countries expect to be free to make their

83 Id. at 501-02.
84 Section 5-109(1) and (2) read: “An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility (a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or (b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or (c) based on knowledge or lack of knowledge of any usage of any particular trade. An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.” See the discussion, Shattuck and Guernsey, supra note 1 at 500-04. Section 5-107(4) reads: “Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.”
85 TAKEDA, op. cit. supra note 21, at 590; Izawa, supra note 13, at 300, 305, 308 et seq.; BANK OF TOKYO, p. 79.
86 TAKEDA, op. cit. supra note 21, at 590; Izawa, supra note 13, at 292, 300, 349 et seq.
87 BANK OF TOKYO 79.
88 Section 5-109(1) (c), quoted in note 84 supra.
89 There is some case authority relieving the issuer from imputed knowledge of non-bank usages, Shattuck and Guernsey, supra note 1 at 502, n. 82. There appears to be no definitive authority concerning the consequences of actual knowledge of such usages.
own decisions whether to honor despite such protests by the customer. They expect their right to reimbursement to be intact and they expect to be immune from any claim of damages by the customer, so long as they honor drafts accompanied by documents which conform on their face. They expect the application form clauses mentioned above to function in this situation. There is no reason to believe that courts in either country will hold otherwise, although there is a dearth of relevant case authority in the United States, and no direct coverage in the Japanese Code. UCP provides no help on this detail. The Uniform Commercial Code states an express rule protecting the issuer and making resort by it to an exculpatory application-clause unnecessary. In both countries the correct procedure for the customer to follow where he suspects fraud or forgery in the documents is to seek an injunction against honor. The availability of this remedy in Japan is not free from doubt. Its availability in the United States is unsettled. The Uniform Commercial Code recognizes the possibility of such relief but does not undertake to indicate whether it will be available. As will be indicated below in the discussion of Issuer-Beneficiary relations, injunctive relief is not expectable against the honor of drafts in the hands of a holder in due course.

The customer's duties to the issuer are in practice carefully spelled out in the application form. The customer typically undertakes to reimburse the issuer, or at the issuer's option to put it in funds before the time for payment of drafts arrives. Even without an express promise, Japanese law would, as to reimbursement, reach the same

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90 There is some feeling among Japanese bankers that they must refuse honor if they know of the beneficiary's fraud and have the means to prove it. Bank of Tokyo 79.
92 Izawa, supra note 13, at 297, 523.
93 Section 5-114(2) (b) "... as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor."
94 The independent nature of the letter of credit, to which the customer is not a party, appears on principle to preclude injunctive relief against the issuer. Japanese Civil Procedure Code, § 760. The fact that honor in the face of known fraud or forgery is in effect fostering a wrong suggests that injunctive relief would be desirable and possibly available against the issuer without joinder of the beneficiary. Alternatively, an injunction might be obtained against the beneficiary under § 760, but for this direct relief service on the beneficiary would be necessary and in the typical instance, practically impossible. In any action for injunctive relief, the court has much discretion. Civil Procedure Code, §§ 741, 756.
95 The cases are few and divided. See Shattuck and Guernsey, supra note 1 at 527, n. 116; 528 n. 119.
96 Section 5-114(2) (b), quoted in note 91 supra.
end result under the law of mandate, and American common law would do likewise on a theory of implied-in-fact contract. The Uniform Commercial Code provides for duties both of reimbursement and of indemnification. The customer's duty to reimburse is in both countries conditioned on the issuer's tender of documents which conform to the customer's application.

In practice, the operation of this condition is much complicated by application-form clauses authorizing the issuer to receive nonconforming documents. Although the operation of these clauses is far from clear in the United States, they are probably subject to the fundamental duty of the issuer to act in good faith with due care and pursuant to banking usage. This is certainly the law in Japan. An issuer which has not met these standards should not expect reimbursement. An issuer which has met them should be reimbursed despite its inability to proffer conforming documents. UCP is not helpful on this detail. Neither is the Uniform Commercial Code. The need for this kind of flexibility in issuer-customer relations will become clearer with the discussion of Issuer-Beneficiary relations.

Whether a local bank which for its customer asks another bank to issue a credit is itself a "customer" with the usual reimbursement duty is a question on which there has been some disagreement in the United

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97 Izawa, supra note 13, at 321; Civil Code, §§ 649, 650, which read: § 649, "If expenses will have to be incurred in the execution of the mandate, the mandator must on the demand of the mandatory furnish the amount of them in advance"; § 650, "If the mandatory in the execution of the business entrusted to him, has incurred expenses which could reasonably be regarded as necessary, he may claim as against the mandator reimbursement for such expenses together with interest on them from the day when they were incurred. If the mandatory in executing the business entrusted to him has assumed an obligation which could reasonably be regarded as necessary, he may require the mandatory to perform it in his place or, if its time of maturity has not yet arrived, to give proper security. If the mandatory by reason of the execution of the business entrusted to him has suffered damage without fault on his part, he may claim compensation from the mandator."

98 Shattuck and Guernsey, supra note 1 at 531, n. 121.

99 Section 5-114(3). "Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the date before maturity of any acceptance made under the credit." See the discussion in Shattuck and Guernsey, supra note 1 at 530-36.

100 The American cases are discussed in Shattuck and Guernsey, supra note 1 at 523, 531. See also pp. 535, 536. The Uniform Commercial Code evidently contemplates a like result, in its provision for reimbursement where the issuer has "duly" honored drafts. Section 5-114(3). The Japanese law appears to be no different. Civil Code, § 644, quoted in note 76 supra.

101 General principles dictate the result. See also: Appeal Court of Tokyo District, 1937, 4242 Hohitsu-Shinbun 17 and Supreme Court, 1939, 6 Daishin-in-Hanrei-shu 1102, holding a customer liable to an issuer which accepted drafts differing from the terms of the credit, where the issuer did not neglect the mandate and could reasonably so regard the instruction.
States.\textsuperscript{102} The \textit{Uniform Commercial Code} resolves the matter by treating the local bank as a customer of the issuing bank.\textsuperscript{103} This is true also in Japan, where the local bank is known as an “account party,” and is liable to reimburse the issuer.\textsuperscript{104}

\textbf{LEGAL RELATIONS BETWEEN ISSUER AND BENEFICIARY}

This discussion encompasses also the relations between a confirming bank and the beneficiary, and those between the issuer and any presenter such as a negotiating bank or a bank requested to honor on behalf of the issuer, as in the case of an advising or confirming bank.

The heart and soul of a credit is the issuer’s engagement to pay on stated conditions. Banks in both countries expect the issuer to be legally liable if it fails to honor drafts accompanied by genuine conforming documents, without regard to the state of the accounts between the issuer and its customer, and without regard to deviations between the documents and the sales contract.\textsuperscript{105} Their expectations are amply supported in the law.\textsuperscript{106} The picture is less clear where documents conform on their face but are forged or fraudulent (\textit{i.e.}, do not represent the true facts, as where shipping containers contain trash rather than merchandise). Banks in both countries deem themselves legally liable to a presenter who acquired the drafts in good faith and for value, where the defect is fraud. Japanese banks expect to pay such a

\textsuperscript{102} Shattuck and Guernsey, \textit{supra} note 1 at 340, 532.

\textsuperscript{103} Section 5-103(1)(g). “A ‘customer’ is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank’s customer.” Whether the local bank’s customer is also a customer of the issuer is not clear. See the discussion, Shattuck and Guernsey, \textit{supra} note 1 at 532.

\textsuperscript{104} Izawa, \textit{supra} note 13 at 279.

\textsuperscript{105} \textit{BANK OF TOKYO}, 70, 75.

\textsuperscript{106} Under Japanese law, the state of the accounts between issuer and the customer is not a relevant factor in a dispute between issuer and beneficiary. \textit{TAKEDA}, \textit{op. cit. supra} note 21, at 618; Izawa, \textit{supra} note 13, at 223. Under American contract law failure of consideration principles might suggest a defense for the issuer if the customer defaults to the issuer or becomes insolvent, but there seems little likelihood that courts would so hold. See the discussion in Shattuck and Guernsey, \textit{supra} note 1 at 344-348. The \textit{Uniform Commercial Code} resolves the problem by § 5-105: “No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms,” and by failing to state a defense of this kind for the issuer. Under Japanese law, failure of the credit to conform to the sales contract is not a relevant factor as between issuer and beneficiary. See Izawa, \textit{supra} note 13, at 296, 379. American case law is to the same effect. Shattuck and Guernsey, \textit{supra} note 1 at 520 n.107, n.108. \textit{UCP} provides: “Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and Banks are in no way concerned with or bound by such contracts.” General Provisions and Definitions part (c) (1963 ed.). “In documentary credit operations all parties concerned deal in documents and not in goods.” Article 1 (1963 ed.). The \textit{Uniform Commercial Code} provides: “An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary.” § 5-114(1).
holder even though the documents are forged. The American situation is obscure, as to forged documents presented by one who acquired them in good faith and for value. Arguably a forged document is no document at all and there should not be legal liability to anyone, but there has been insufficient contact with the problem to have produced any general bank usage. As against the beneficiary and his successors who do not meet the bona fide holder for value standard, banks in both countries anticipate no legal liability in the case of forgery, and do expect to be bound in the case of fraud unless honor is enjoined by the customer. UCP provides but limited help in this area. American cases are few and inconclusive. The Uniform Commercial Code provides adequate statutory coverage, which coincides only in part with prior bank usage. These are problems as to which consensus is particularly desirable and is not now to be found.

In day to day bank operations the difficult problems are not the esoteric legal issues which can (but rarely do) arise. Rather, they are the simple fact questions encountered on comparing credits and documents. Credits are not always ideally clear or simple, a fact recognized by UCP in its admonition that: “Credit instructions and the credits themselves must be complete and precise, and in order to guard against confusion and misunderstanding the issuing Bank should discourage any attempt by the applicant for a credit to include excessive detail.”

A classic example of the kind of credit calculated to engender dispute is found in an American case. The credit referred to cloth with “total width of stripes not more than 50% of the material width.” Whether particular words in a credit state conditions is not always clear and has often been litigated in the United States. Once the court is persuaded that a condition has actually been stated, literal compliance with it is a requisite to holding the issuer. There are many American cases in which compliance with the credit was a fact in issue. It will

107 Bank of Tokyo 76.  
108 Article 8 (1963 ed.) provides for inter-bank obligation where payment, acceptance or negotiation has been made against “documents which appear on their face to be in accordance with the terms and conditions of a credit...” This suggests that issues of fraud and forgery are not relevant but the inference is not a strong one.

109 Shattuck and Guernsey, supra note 1 at 527-28.  
110 Section 5-114(2) makes the issuer liable to a holder in due course of the drafts without regard to fraud or forgery in the documents and inferentially declares non-liability to other presenters. The subsection goes on, however, to authorize honor which will bind the customer, if undertaken in good faith, and provided honor is not restrained. See the discussion in Shattuck and Guernsey, supra note 1 at 527-30.

111 General Provisions and Definitions part (d) (1963 ed.).  
112 International Banking Corp. v. Irving Nat’l Bank, 283 Fed. 103 (2d Cir. 1922).  
113 Shattuck and Guernsey, supra note 1 at 519-20.  
114 Id. at 521-24.
be noticed that a surprising number of them grew out of the break in the commodity markets in the early nineteen-twenties, particularly the break in the sugar market. Recent cases are infrequent, indicating both a generally stronger market and greater care on the part of issuers in framing credits and of beneficiaries in assembling their documents.

Neither the Japanese Code nor the Uniform Commercial Code provides any help on interpretation and operation problems. UCP does however provide a great deal of help in the form of practical rules for determining whether a particular document conforms to the credit. Working with the UCP standards and against a background of long experience, bank personnel in both countries accomplish their responsibilities in this particular with a minimum of friction. An important factor in their operations is the leeway given them by the application forms taken from customers, which enable them to safely ignore minor defects which might technically preclude honor. It is not the practice in either country to abuse the freedom of action conferred by application forms. Deviations of any substantial character are not waived without prior concurrence of the customer.

Another tool in the hands of the issuer is an indemnity arrangement under which the presenter proffers nonconforming documents plus an undertaking to indemnify against loss by reason of the deviations. This can induce honor where otherwise dishonor would be deemed necessary. Whether to accept the indemnity is the key point and it is usually resolved in both countries by consulting the customer and adhering to his wishes. Customer application form do not ordinarily, in either country, refer specifically to the taking of indemnity in lieu of conforming documents. Other exculpatory clauses are broadly enough phrased to cover such an arrangement but these are not often relied on because of the customer good will factor.

There has not developed in Japan any usage which would require the issuer to receive an indemnity in lieu of conforming documents. Whether there is such a practice in the United States is doubtful. It may be doubted that banks in either country regard the taking of indemnity in lieu of conforming documents with any enthusiasm.

The operation of indemnity agreements is covered in some detail by

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115 Articles 13-45 (1963 ed.).
116 In Dixon, Irmaos & Cia v. Chase Nat'l Bank, 144 F.2d 759 (2d Cir. 1944) cert. denied, 324 U.S. 850 (1945) such a custom was found to exist in New York. The propriety of the finding is arguable. See Shattuck and Guernsey, supra note 1 at 515, n.99.
the *Uniform Commercial Code*.\(^{117}\) It states refinements for which there is not now either a significant bank usage or any relevant case authority.

Japanese banks do not regard an indemnity as covering genuineness of documents, but only non-conformity disclosed on the face. No clear-cut bank usage on this detail appears to have developed in the United States.

A Japanese beneficiary will often be interested in utilizing a credit for collateral purposes, as will be indicated in the later discussion of assignments. It is the practice in Japan to take from the beneficiary who is so using the credit an hypothecation agreement (Exhibit 9, para. 7) which authorizes his bank to issue a "guaranty" (indemnity) to the issuer without further consent of the beneficiary. No comparable practice appears to have developed in the United States.

That Japanese banks have the power to issue indemnities is not questioned.\(^{118}\) The power of an American bank to do so probably exists but is not entirely clear save as to state banks in states which have enacted the *Uniform Commercial Code*.\(^{119}\)

An important detail in the operation of credits is the time within which the issuer must act when the time for action comes. *UCP* provides some but not much help, in specifying that the issuing bank "shall have a reasonable time to examine the documents."\(^\text{120}\) Japanese banks regard three days as a "reasonable time" within the purview of *UCP* and usually take that much time. Failure to act within the permitted period is considered to be dishonor, with possible tort liability\(^{121}\) in the issuer if there is excessive delay in informing the presenter of the dishonor.

In the United States, banks in states having the *Uniform Commercial Code* are governed by § 5-112, which requires the issuer to act before the close of the third banking day following receipt of the documents unless the presenter grants further time. This section also directs that the issuer shall in the event of dishonor notify the presenter and hold the draft and documents at the disposal of the presenter, a provision with which Japanese bank practice is in harmony. It would appear, however, that the provision of *UCP* for a

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\(^{117}\) Section 5-113(2). See the discussion, Shattuck and Guernsey, *supra* note 1 at 514-16.

\(^{118}\) See the discussion at note 19 *supra*.

\(^{119}\) Section 5-113(1). See the discussion, Shattuck and Guernsey, *supra* note 1 at 514-17.

\(^{120}\) Article 8 (1963 ed.).

\(^{121}\) Japanese Civil Code, § 709, quoted in note 55 *supra*. 
"reasonable time" governs where UCP is incorporated into a credit. Failure to act within the permitted time is dishonor.

Banks in other states operate with a confused body of law,\textsuperscript{122} but with a fairly well defined banking usage. They expect to have a reasonable time to examine documents, and expect excessive delay to be dishonor. If honor is refused, they normally hold the documents at the presenter's disposal and notify him to that effect.

Japanese banks expect an issuer which wrongfully refuses honor to be liable for the difference between the amount of the credit and the value of the documents. In estimating the value of the documents it is expected that the special damages obtainable for breach of a sale contract\textsuperscript{123} will be allowed if such losses are in fact suffered,\textsuperscript{124} rather than the fixed interest which constitutes damages for failure to pay a money debt.\textsuperscript{125} No particular attention to mitigation-of-damages theory is necessary, since the same general result is obtained by treating negligence on the injured party’s part, in failure to take steps to control his loss, as supporting an offset.\textsuperscript{126}

Whether repudiation produces a cause of action against the issuer is not clear under Japanese law. But scholars would support the view that repudiation is tantamount to predictable impossibility of performance, which at once matures a right to sue the issuer.\textsuperscript{127}

UCP has no coverage of these matters.

There are a few relevant American cases, but not enough to support any solid generalizations. It seems likely that repudiation by the issuer will mature an immediate anticipatory breach action. The measure of

\textsuperscript{122} Shattuck and Guernsey, \textit{supra} note 1 at 509-14.

\textsuperscript{123} \textit{Civil} Code, § 416: Damages are to be measured by the sum necessary to compensate for all such losses as are the natural consequence of non-performance. The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.

\textsuperscript{124} Izawa, \textit{supra} note 13, at 419 \textit{et seq.}; Sono, \textit{supra} note 28, at 893.

\textsuperscript{125} \textit{Civil} Code, § 419: On an obligation whose subject is money the amount of damages is fixed according to the legal rate of interest (6\% - \textit{Commercial} Code, § 514), but if a higher rate of interest has been agreed upon, that shall govern. The creditor is not bound to prove the amount of such damages, nor can the debtor set up the defence of vis major as to them.

\textsuperscript{126} \textit{Civil} Code, § 418: If the fault of the creditor has contributed to the non-performance of the obligation, the court may take that into consideration in determining the liability for damages or their amount.

\textsuperscript{127} \textit{Cf.} \textit{Civil} Code, §§ 543, 545: § 543, If performance becomes wholly or partially impossible by reason of a cause attributable to the debtor, the creditor may rescind the contract; § 545, If one party has exercised his right of rescission each party must restore the other to his former condition; but this cannot impair any right of a third person. To money which is to be repaid in the foregoing case interest is to be added from the time when it was received. The exercise of the right of rescission does not affect a claim for damages.
damages in either an action for dishonor or for repudiation is far from stabilized. Unresolved is the basic problem, whether the issuer ought be treated as a debtor and the documents as collateral, or whether the issuer ought be treated as a buyer of goods.\textsuperscript{128}

The \textit{Uniform Commercial Code} makes express provision for both repudiation and dishonor problems. An issuer which dishonors, or repudiates after the documents have been procured, must answer for the amount of the draft and incidental damages, less any amount realized by resale of the goods or documents, and is entitled to have the documents if no such resale takes place. If the issuer repudiates before the documents have been procured, the beneficiary is referred to § 2-610.\textsuperscript{129}

Japanese banks take an authorization from their customers to cancel an irrevocable credit if the bank deems this course to be necessary, the customer undertaking to indemnify the bank against any ensuing loss.\textsuperscript{130}

\textbf{WARRANTIES OF PRESENTERS}

Most transactions work smoothly enough. There is an occasional dispute about conformity of documents to credit, which is resolved in ways already discussed. There is an occasional complaint by the customer that the goods do not conform to the sales contract, but banks in both countries stand aloof from this kind of squabble and adjustment must be made between customer and beneficiary on the basis of the sales contract. Infrequently very awkward problems of a different kind do arise which are not so readily resolved. These grow out of forged documents, and bills of lading which purport to represent containers of goods but which in fact cover only trash. One aspect of this phenomenon was examined in the discussion of the legal relations between beneficiary and issuer. Another aspect is presented where an issuer has been induced to honor the credit by documents of these kinds. Having honored, should the issuer be able to recover its payment from the beneficiary?

\textit{UCP} has no coverage of this problem. Bank usage is clear in Japan. Issuers expect the beneficiary to make restitution and Japanese law

\begin{itemize}
\item \textsuperscript{128} See the discussion, Shattuck and Guernsey, \textit{supra} note 1 at 539-42.
\item \textsuperscript{129} Section 5-115. The reference to § 2-610 in effect forces the beneficiary into a sale-contract theory of damages, including the burden of mitigation, a solution which seems entirely proper since he still has the goods when the repudiation occurs. See the discussion, Shattuck and Guernsey, \textit{supra} note 1 at 539-541.
\item \textsuperscript{130} Exhibit 5B, para. 9. Occasion to use this authorization rarely arises.
\end{itemize}
will apparently permit the recovery.\textsuperscript{131} Bank usage in the United States is not clearly defined. In the case of forged documents knowingly presented banks expect to have a right against the beneficiary for restitution, but in the case of forged documents innocently presented (a possibility but not frequently a probability) there is some feeling that the beneficiary should be free of responsibility. As to the kind of fraud which makes shipping documents misrepresent the contents of shipping containers, there appears to be no clear-cut bank usage. Problems of this kind shade into conformity-of-goods-to-sale-contract disputes so readily that there is an inclination to view this as strictly a customer-beneficiary fight. Since banks rely heavily on the documents as collateral for their reimbursement claim against the customer, their better interests would be served by a right over against the beneficiary. There is no definitive American case law on these details. The \textit{Uniform Commercial Code} provides that the “beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under articles 3, 4, 7 and 8.”\textsuperscript{132} It is not entirely clear that the \textit{Code} means to classify forged documents as not meeting the “necessary conditions” but this seems a reasonable construction. A forged document is really no document at all. It is even less clear that fraud produces a document failing to meet the “necessary conditions.” The inferred right of the issuer under § 5-114(2) to refuse honor suggests a construction of § 5-111 which would enable the issuer to recover back its payment.

The warranties of § 5-111 have another kind of function and a very important one. A transfer to a negotiating bank can occur under such circumstances that the sufficiency of the accompanying documents as satisfaction of credit-conditions cannot be finally determined until the issuer has examined them. In this situation a warranty by the beneficiary that the documents do comply seems an entirely appropriate supplement to whatever liability the beneficiary may have on the draft. Japanese banks expect the negotiating bank to receive such a warranty and Japanese law will apparently sustain their expectation.\textsuperscript{133} American bank usage is not defined. There appears to be no definitive

\textsuperscript{131} See note 142 infra.  
\textsuperscript{132} Section 5-111(1). See the discussion, Shattuck and Guernsey, \textit{infra} note 1 at 506-09. Concerning the operation of the warranties arising under articles 3, 4, 7 and 8, see Shattuck and Guernsey, \textit{infra} note 1 at 507, n.87.  
\textsuperscript{133} See note 142 infra.
American case law on the point. The *Uniform Commercial Code* in § 5-111(1) amply protects the negotiating bank as to non-conforming documents.

The position of a negotiating bank where documents conform on their face but are forged or fraudulent was discussed under the heading "Relations Between the Issuer and the Beneficiary," *supra*. If a negotiating bank fails to qualify as a holder in due course of the drafts and so has no right against the issuer under § 5-114, its relation to the beneficiary under § 5-111 will be important and will be regulated by construction of the words "necessary condition."

In neither country do banks expect an issuer which has honored drafts accompanied by genuine, non-fraudulent documents to have any recourse against the beneficiary, on later deciding that the documents do not in fact conform. The contrary inference of § 5-111(1) goes beyond American bank usage.

Where drafts and documents move through banking channels from beneficiary to issuer, as is often the case, the problem of inter-bank warranties is a serious one. Banks in both countries regard negotiating banks and a bank authorized to buy or pay, such as an advising or confirming bank, as making no warranties whatever concerning the genuineness of the documents. As to the conformity of documents American banks expect no warranty. In this situation the practice of Japanese banks is contrary. This bank practice is probably supported by the Japanese Code.\(^{134}\) *UCP* has no coverage of this detail. There is limited American case authority. It is in accord with the stated American bank usage.\(^{135}\) So is the *Uniform Commercial Code*.\(^{136}\)

**Availability of Credit in Portions and Notation Credits**

*UCP* article 33 (1963 edition) reads: "Partial shipments are allowed unless the credit specifically states otherwise," and accurately reflects the banking practice in both countries. The typical documentary credit expressly permits partial shipments. There is no specific coverage of this detail in the Japanese Code or in American case law. The *Uniform Commercial Code* reads: "Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary."\(^{137}\)

Where a credit is available in portions the problem of over-draws will occasionally arise. Banks in both countries have developed a

\(^{134}\) *Ibid.*

\(^{135}\) Shattuck and Guernsey, *supra* note 1 at 508, n.88.

\(^{136}\) Section 5-111(2).

\(^{137}\) Section 5-110(1). See the discussion, Shattuck and Guernsey, *supra* note 1 at 504, 505.
counter to the problem, in the form of a requirement that each draft 
be noted on the credit. This counter is widely used. Where a credit is 
established by cable, Japanese bank usage attaches a presumptive no-
tation requirement if the cable is silent on this detail. 

Under a non-notation credit available in portions, banking practice 
in both countries relegates presenters to a straight time-order priority 
so far as the issuer is concerned. In short, it is first come first served 
and when the credit is exhausted the issuer is discharged. UCP 
has no coverage of this detail. The Uniform Commercial Code is in accord 
with the bank usage. There appears to be no definitive American case authority. 

The inter-relations between the holders of competing drafts is less 
easily determined. There is no well-defined business or banking usage 
on the point in either country. It is the opinion of Japanese bankers 
that the holders of competing drafts have legal priorities in the time-
order of negotiation, and that if a presenter whose negotiation was 
later in time succeeds in obtaining honor he must make restitution to 
the holder of the draft first negotiated. There appears to be no Amer-
ican case law on this point. The Uniform Commercial Code provides: 
"as between competing good faith purchasers of complying drafts or 
demands the person first purchasing has priority over a subsequent 
purchaser even though the later purchased draft or demand was first 
honored."

Notation credits produce little actual controversy because notation 
is routinely made. This type of credit can, however, produce problems 
of considerable complexity, for which UCP has no helpful coverage. 

Notation seems clearly enough to be in both countries a condition, 
although the typical notation credit recites that "drafts shall be noted" 
rather than "the issuer will honor on condition that the draft is 
noted." It also seems clear that in each country a negotiating or 
other presenting bank warrants to the issuer that notation has been 
made.

What is not so clear is the position of an issuer which has honored

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138 It is the practice of many Japanese and American banks to note drafts drawn 
under a non-notation credit and this practice may in time create a banking usage which 
will affect the legal relations of an issuer to a negotiating bank, where the credit is a 
negotiation credit.

139 Section 5-108(3). See the discussion, Shattuck and Guernsey, supra note 1 at 
366, 367.

140 Section 5-108(3) (b).

141 See Exhibits 2 and 6, and the discussion, Shattuck and Guernsey, supra note 1 at 
364, n.74.

142 The spirit, philosophy and the reasonable interpretation of Japanese Civil Code,
an un-noted draft, not knowing that the notation condition has not been met. Japanese banks expect to be discharged.\textsuperscript{143} American banks apparently regard this as an unresolved detail. The \textit{Uniform Commercial Code} infers that the issuer cannot charge an un-noted draft to the credit as against the holder of a subsequently issued and properly noted draft,\textsuperscript{144} and what appears to be the only relevant American case reaches a like result.\textsuperscript{145} Under this approach the issuer must honor the noted draft and find its recourse in the warranty of the presenter which failed to note.

It is not the practice of banks in either country to demand proof of notation in commercial credits. The \textit{Uniform Commercial Code} accordingly goes beyond bank practice in providing that the issuer may delay honor pending presentation of the credit, or of a signed statement that notation has been made, or of other satisfactory evidence of notation.\textsuperscript{146} It also goes beyond the limits which in the writers' opinion should govern the issuer's handling of notation credits. This is a detail on which there appears to be no coverage in the Japanese Code, or any American case law. The \textit{Uniform Commercial Code} goes on to provide that the issuer's obligation "and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence."

American banks include in their application forms clauses relieving them from the risk of non-notation.\textsuperscript{147} Japanese banks do not, feeling that no need exists for such a provision.\textsuperscript{148}

\textsuperscript{143} Bank of Tokyo 131.
\textsuperscript{144} Section 5-108(2) (a).
\textsuperscript{145} Bank of Seneca v. First Nat'l Bank, 105 Mo. App. 722, 78 S.W. 1092 (1904). See the discussion, Shattuck and Guernsey, supra note 1 at 363, 364. Some issuers in both countries include an express warranty of notation, and some do not.
\textsuperscript{146} Section 5-108(2) (b). It is suggested in Shattuck and Guernsey, supra note 1 at 365 that the grace period feature of this subsection may prove to be a serious handicap to customers. It should also be noted that an American bank may hold up honor where it has reason to believe notation has not been made, pending assurance that it has, but nothing approaching a general bank usage has developed for this situation, which arises only occasionally. Japanese banks require surrender of the credit with the final draft. See Exhibit 6. This is not typically the American practice save as to a traveler's credit.
ASSIGNMENTS ("Transfers") by the Beneficiary

In the hands of the beneficiary a credit is an asset which he may want to sell or to use as collateral, the latter being considerably the more likely possibility. Any rights created by the credit are subject of course to whatever conditions the credit states, typically the production of various documents. The beneficiary may wish to effect a transfer which will enable his transferee to draw the drafts and to procure the documents, or he may wish only to enable his transferee to collect a draft drawn by the beneficiary and accompanied by documents procured by the beneficiary. There is a vast difference between the two objectives. It is characteristic of credits that the customer, and the issuer too, rely heavily on the beneficiary's honesty. The prior discussion of forged and fraudulent documents is demonstration enough of the scope and implications of this trust. Both the law and the practice may be expected to take cognizance of it.

In Japanese law, the basic assignment principle is that non-personal contract rights can be assigned save where the contract forbids. A documentary credit creates in the beneficiary a conditional right to have drafts honored, the condition being the proffer of specified documents. The issuer's reliance on the documents as security for its reimbursement claim creates obvious doubt concerning the assignability of the right. Where partial shipments are permitted, and perhaps in other situations, it can be argued with some force that the identity of the drawer of the drafts is important to the issuer. As a result of these factors, it would be the opinion of many Japanese scholars that both the drawing of drafts and the procuring of documents are elements of the right as to which there can be no substitution of obligees. Japanese bank practice is governed by UCP, which is interpreted as forbidding an assignment which will require the honor of drafts drawn by or documents procured by someone other than the beneficiary, unless the credit expressly provides otherwise. As a matter of

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147 Exhibit 1, para. 8.
148 Bank of Tokyo 131.
149 Izawa, supra note 13, at 111; Sono, supra note 28, at 891.
150 Civil Code, § 466, which reads: "An obligation may be assigned, unless its nature does not admit of it. This provision does not apply, if the parties have expressed a contrary intention. Such expression of intention, however, cannot be set up against a third person acting in good faith."
151 Izawa, supra note 13, at 632 reaches this result. His explanation comes from the fact that the conditions of the credit would not be met if it is assigned; Sono, supra note 28, at 892 deems the beneficiary's right to be personal.
152 Article 46 (1963 ed.). The wording of UCP is reasonably clear. It defines a "transferable credit" as one "under which the beneficiary has the right to give to the Bank called upon to effect payment or acceptance or to any Bank entitled to effect
terminology, it should be noted that the latest version of UCP prefers the term "transfer" rather than "assign" to describe the kind of substitution under scrutiny here.\textsuperscript{153}

American bank practice is also governed by UCP, which is given the interpretation indicated above. American cases in which an assignment of a credit was in issue "are few in number, unsatisfactory in analysis, and diverse in result."\textsuperscript{154} The Uniform Commercial Code is in conformity with bank usage, providing: "The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable."\textsuperscript{155} Although the phrase "right to draw" is new and is not defined, it seems obviously aimed at the doing of those things which the beneficiary is expected to do, \textit{i.e.}, draw the drafts and procure the documents.

Granted that both customer and issuer rely on the beneficiary's honesty and should not without their consent be obliged to deal with a substitute, some beneficiaries are hard pressed to finance their procurement of the goods (and hence the documents) without financing in which the credit provides collateral. In Japan the named beneficiary is often a main trader who expects to split up the transaction with various sub-traders.\textsuperscript{156} Beneficiaries therefore will on occasion demand and the customer will be willing to provide a transferable credit. Whether the issuer will write such a credit for a particular customer is governed entirely by the importance or otherwise of the documents as collateral, in the particular transaction.

Banks in both countries expect and UCP provides that consent to transfer infers, unless the contrary is stated, consent to partial transfers.\textsuperscript{157} In the handling of transferable credits bank usage is very similar in both countries. The most striking feature of the process is the participation in the transfer process of the advising bank (which includes a negotiation instructions to make the credit available in whole or in part to one or more third parties (second beneficiaries)." It is evidently contemplated that the transferee can proceed as though he were the initial beneficiary. Such a transfer is forbidden by UCP save where the credit is expressly designated as transferable.

\textsuperscript{153} Article 46 goes on to provide that "Terms such as 'divisible,' 'fractionable,' 'assignable' and 'transmissible' add nothing to the meaning of the term 'transferable' and shall not be used."

\textsuperscript{154} Shattuck and Guernsey, \textit{supra} note 1 at 544, n.139. See also the discussion, \textit{id.} at 546-49.

\textsuperscript{155} Section 5-116(1).

\textsuperscript{156} \textit{Bank of Tokyo} 35.

\textsuperscript{157} \textit{Bank of Tokyo} 140. The UCP provision is in article 46, discussed in note 152 \textit{supra}.
confirming bank) as agent of the issuer. Where transfer is made of the whole credit to one transferee, Japanese advising banks prefer to simply change the name of the beneficiary and will do so on presentation of the credit by the beneficiary with a written request for the change. Some American issuers, however, prefer that the credit be re-issued to the new beneficiary. In both countries where the credit is to be split up, the credit is re-issued. Each transferee gets a new credit in the amount of his part. This is done by the advising bank as agent for the issuer. For reissuing a credit a separate fee is charged. Some American banks, when acting as advising banks, require the use of form letters in which the beneficiary recites the fact of transfer and authorizes the issuer to deal with the transferee or transferees. In these procedures the original credit is always exhibited to the advising bank, which will either impound it or be sure it is indorsed to show the transfer, depending on how the transaction is being handled. The advising bank will have a record of the change, and inform the issuer. Rarely is the original credit transferred directly to and handed to the transferee. This would be especially unwise where multiple transfers are contemplated.

If the beneficiary can work out financing with a lender which will accept a transfer of proceeds, relying entirely on the beneficiary to draw the drafts and procure the documents, quite a different legal problem is presented. The right to proceeds is ordinarily not personal and is therefore transferable save where the credit contains a legally effective prohibition against the transfer (which will not often be the case). Under Japanese law this result attends the application of the Civil Code; the transferee must receive the credit (or the advising

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158 See Bank of Tokyo 141, on the transfer process in Japan.
159 The following sections are relevant. Civil Code, § 467, The assignment of an obligation in favor of a specific creditor can be set up against the debtor or another third person only if notice has been given to the debtor, or if the latter has assented to the assignment. Such notice or assent can be set up against a third person other than the debtor only if it is made by a document having an authenticated date; § 468, If the debtor has given the assent mentioned in the preceding article without reservation, he cannot set up against the assignee a defense which he might have made against the assignor. If, however, in order to extinguish the obligation, the debtor has made any payment to the assignor, he may recover it, or if for such purpose he has assumed an obligation to the assignor, he may treat it as if it did not exist. If the assignor has merely given notice of the assignment, the debtor may set up against the assignee any defense which he had against the assignor, before he received such notice; § 469, The assignment of an obligation performable to order can be set up against the debtor or other third persons only if the assignment is endorsed on the instrument, and the instrument itself is delivered to the assignee; § 470, The debtor on an obligation performable to order has the right, but is not bound, to verify the identity of the holder of the instrument or the genuineness of his signature or seal; but if the debtor acts in bad faith or with gross negligence, his performance is not valid; § 472, The debtor
letter if that is what the beneficiary has), and the issuer must be informed (which can be done through the advising bank). Under the American cases, a right to receive payment of a money debt is freely assignable, although in a number of states a contract clause forbidding assignment will be legally operative. The Uniform Commercial Code expressly authorizes the assignment of proceeds and forbids a restraint on such an assignment.

Japanese banks regard transfers of proceeds as interjecting an undesirable complication into their handling of credits, and do not look on such transfers with favor. In practice, few such transfers are made by Japanese beneficiaries.

American banks probably have not developed as clear a consensus concerning the undesirability of transfers of proceeds, which are as uncommon here as in Japan. American banks expect to be bound to the transferee on receipt of written notice of the transfer. Some have set up routines for handling such transfers, consisting of a form letter of notice from the beneficiary to the issuer, with a copy going to the assignee.

Partial assignments of proceeds are too infrequent to have any commercial significance in either country.

Back to back credits, an arrangement by which a bank in the beneficiary's vicinity receives the original credit (which must of course be transferable by its terms) as collateral and issues a second credit on which the original beneficiary is the customer and the new beneficiary is a supplier from whom he expects to procure all or part of the goods, are rarely used in Japan, but do have some utilization in the United States. An alternative solution for the same basic business problem has been developed in Japan and has some currency there. The bene-

on an obligation performable to order cannot set up against any assignee in good faith defences which he might have set up against the original creditor, except such as appear upon the face of the instrument or result naturally from its character.

The Uniform Commercial Code regulates the assignment of proceeds in some detail. § 5-116(a), (b) and (c). The assignee must receive the credit; the issuer must receive written notice of the transfer; and the issuer may require exhibition to it of the credit before honoring, after receipt of "what reasonably appears to be" notification of a transfer of proceeds. These are refinements which transcend present bank practice but which appear sensible and workable, if the proceeds are to be transferred.
ficiary, his supplier, and the advising bank work out a tri-partite agreement the terms of which are these: the beneficiary surrenders the credit to the bank, with a written instruction signed by beneficiary and supplier that a named sum be thereafter credited to the supplier’s account. The bank accepts the instruction by indorsement. The supplier delivers the goods, taking whatever precautions seem appropriate to insure that the beneficiary procures the documents, which are then delivered to the bank. Upon honor of the drafts by the issuer the bank acts on the instruction previously received and transmits the excess to the beneficiary. The key element in this arrangement is retention of the credit by the bank so the beneficiary cannot himself either sell or exhibit it. The supplier’s risk is that the beneficiary will not, after receiving the goods, obtain the documents. It will not ordinarily be necessary for the supplier to be informed of anything more than the amount of the credit and the conditions. The identity of the customer need not be disclosed, which is often an advantage from the beneficiary’s point of view. The back-to-back credit also provides this advantage.

Use by an American exporter of a credit as collateral is relatively infrequent. Where he anticipates such use he should, of course, require a transferable credit, although on occasion a bank can be induced to loan against possession of a non-transferable credit where there is entire confidence in the borrower’s integrity and his ability to procure the documents if the loan is made. There is some use of back-to-back credits. There is also some loaning against an assignment of a transferable credit, the funds being disbursed against delivery of shipping documents by the supplier. A trust receipt can be implemented with a credit at this stage of the sales transaction, as well as at the more familiar point which is reached when the credit has been honored and the issuer is working out its reimbursement relationship with the customer.

INSOLVENCY OF THE ISSUER

Bank failures are happily no longer a serious threat in either country. Where an issuer does become insolvent very complicated problems can arise concerning the relationship to its assets of a presenter or customer, where the customer has put up in cash part or all of the

164 Cf. Exhibits 10 and 11. The phrase “back-to-back credits” as traditionally used is not to be confused with a business practice recently developed in Japan and used in trade with some countries (but not with the United States), in which traders who are both buying and selling from each other require reciprocal credits.
sum called for by the credit, or has put up collateral to back his promise to reimburse. Japanese law resolves these issues in favor of the insolvent's general creditors. The presenter is regarded as just another general creditor, and the customer is equally without special protection. American case law is sparse and inconclusive. American banks probably expect to be more than general creditors if they negotiate drafts for the beneficiary and the issuer has received cash or property collateral from the customer, but this expectation is hardly a significant "usage." The Uniform Commercial Code undertakes to provide for these contingencies. It states that the presenter has a preference to the extent of the funds or collateral handed the issuer by the customer. If the credit expires the customer is entitled to return of his payment or collateral. When the drafts are honored the customer is entitled to the documents on discharging his obligation to reimburse the issuer.

CONCLUSION

This comparative examination of Japanese and American credits, with reference both to the law and to bank practice, has disclosed a remarkable similarity. The application of general legal principles to credits has in both countries been only partially satisfactory. The Japanese Code with its broader statements of basic law accommodates the credit better than does the American common law, but still leaves various details in such a posture that assurance about legal relations is difficult to achieve. Bank practice in the two countries is unified by UCP and as to matters not covered by UCP differs at a few points only. The Uniform Commercial Code supplies for the states which have enacted it the specific statutory coverage which must exist if the legal relations created by a credit are to be known with reasonable certainty. Since that statute supplements rather than supersedes UCP, it serves as a useful and desirable adjunct which will require few deviations in American bank practices, none of them materially inimical to the interests either of Japanese banks and traders or of American issuers.

165 There may be under Japanese law an exception made where the funds supplied by the customer have been separated in the bank's accounts and provided the customer can prove that these funds were handed to the bank with the condition that the funds were to be used only for the purpose of indemnifying the bank on honor of drafts drawn under the credit. See Bank of Tokyo 93. See also Izawa, supra note 13, at 720 et seq.
166 Shattuck and Guernsey, supra note 1 at 552-53.
167 Section 5-117. See the discussion, Shattuck and Guernsey, supra note 1 at 552-55.
168 Sono, supra note 28, at 910-20.
APPLICATION AND AGREEMENT FOR COMMERCIAL LETTER OF CREDIT

Seattle-First National Bank, 
International Banking Dept.,
Seattle, Washington.

Gentlemen:
The undersigned hereby requests you to issue by cable your Irrevocable Letter of Credit as follows:

In favor of...........................................................................................................................................

For account of ....................................................................................................................................

Up to the aggregate amount of ........................................................................................................

Available by drafts at..................................Sight, for............% of Invoice Value, drawn at your option on you or your correspondent..........................................................

Accompanied by the following documents indicated by check (✓) :

- Commercial Invoice in Triplicate/Duplicate.
- Special Customs Invoice and one copy.
- Full set clean "On Board" Bills of Lading dated not later than and issued to the order of Seattle-First National Bank, Seattle, Wash.
- Notify ........................................................................................................................................
- Packing List in triplicate.
- Certificate of Inspection issued by ..........................................................
- Certificate of Weight issued by ........................................................................
- Other Documents:

Evidencing shipment of.........................................................

(Avoid details as to grade, quality, price, etc.)

C.I.F.........................................................................................................
C. & F. .................................................................................................
F.A.S. .................................................................................................
F.O.B. .................................................................................................

To be shipped from..........................................................................to................................................................

Draft to be negotiated not later than..............................................

Partial Shipments: ☐ Allowed ☐ Not Allowed.

Transhipment: ☐ Allowed ☐ Not Allowed.

Other Conditions: ..................................................................................

Shipping Documents for Customs House entry are to be picked up by Name ........................................

or to be sent to Name of Bank ..................................................

Please forward the original Credit Instrument to beneficiary through Name of Bank ...........

Form 109 Rev. 1/60 10Y (ovnr)
In consideration of your opening, at our request, your Commercial Letter of Credit (herein called "The Credit"), substantially in accordance with the application on reverse side hereof, hereby approved by us, we hereby agree as follows:

1. As to drafts or acceptances under or purporting to be under the Credit which are payable in United States currency, we agree: (a) in the case of each sight draft, to reimburse you at your office, on demand, the equivalent of the amount paid, in United States legal tender at the rate of exchange then current in Seattle for cable transfers to the place of payment in the currency in which such draft is drawn; and (b) in the case of each acceptance, to furnish you, at your office on demand but in any event in time to reach the place of payment in the course of the mails not later than one business day prior to maturity, or, in case the acceptance is not payable at your office, then on demand but in any event in time to reach the place of payment in the course of the mails not later than one business day prior to maturity.

2. As to drafts or acceptances under or purporting to be under the Credit, which are payable in currency other than United States currency, we agree: (a) in the case of each sight draft, to reimburse you at your office, on demand, the amount thereof, on demand but in any event not later than one business day prior to maturity for the existence, character, design, or other modification of the Credit, at our request, this agreement shall be binding upon us with regard to the Credit so issued to, the administrator or executor of, or the trustee in bankruptcy or the receiver for any of the property of the party in whose name it is provided in the Credit that any drafts or other documents, or other modification of the terms of the Credit, at the request of any of us, to any of your correspondents, at any time, of other security, of whatsoever nature, including cash, shall not be deemed a waiver of any of your rights or powers herein recognized.

3. We also agree to pay you, on demand, a commission at the rate of...percent (....%) on such part of the Credit as may be used, and in any event, a minimum commission of...percent of the amount of the Credit, but not less than $10.00, and all charges and expenses paid or incurred by you in connection therewith, and interest where chargeable.

4. We hereby recognize and admit your ownership in and unqualified right to the possession and disposal of all instruments purporting to or in connection with the Credit, and in any way relative thereto or to the drafts drawn thereunder, whether or not released to us on trust or bailee receipt or otherwise, and in and to all shipping documents, warehouse receipts, policies or certificates of insurance and other documents accompanying or relative to drafts drawn under the Credit; and in and to the proceeds of each and all of the foregoing, until such time as all the obligations and liabilities of us or any of us to you at any time existing under or with reference to the Credit or this agreement, or any other credit or any other obligation or liability to you, have been fully paid and discharged, all as security for such obligations and liabilities; and that all or any of such property and documents, and the proceeds of any thereof, coming into the possession of you or any of your correspondents, may be held and disposed of by you as hereinafter provided; and the receipt by you, or any of your correspondents, at any time, of other security, of whatsoever nature, including cash, shall not be deemed a waiver of any of your rights or powers herein recognized.

5. Except in so far as instructions have been heretofore given by us in writing expressly to the contrary, we agree that you and any of your correspondents may receive and accept as "Bills of Lading" under the Credit, any documents issued or purporting to be issued by or on behalf of any carrier which acknowledge receipt of property for transportation, whatever the specific provisions of such documents, and that the date of each such documents shall be deemed the date of shipment of the property mentioned therein; and that you and any of your correspondents may receive and accept as documents of insurance under the Credit either insurance policies or insurance certificates; and that you and any of your correspondents may receive, accept or pay as complying with the terms of the Credit, any drafts or other documents, otherwise in order, which may be signed by, or issued to, the administrator or executor of, or the trustee in bankruptcy or the receiver for any of the property of the party in whose name it is provided in the Credit that any drafts or other documents should be drawn or issued.

6. Except in so far as instructions have been heretofore given by us to you in writing expressly to the contrary, we agree that part shipments or shipments in excess of the quantity called for in the Credit may be made under the Credit and you may honor the relative drafts, our liability to reimburse you for payments made or obligations incurred on such drafts being limited to the amount of the Credit; and that if the Credit specifies shipments in installments within stated periods, and the shipper fails to ship in any designated period, shipment of subsequent installments may nevertheless be made in their respective designated periods and you may honor the relative drafts.

7. We agree that in the event of any extension of the time of shipment or of the time for the drawing, negotiations, acceptance, presentation, or of the maturity of any drafts, acceptances, or other documents, or other modification of the terms of the Credit, at the request of any of us, with or without notification to the others, or in the event of any increase in the amount of the Credit, at our request, this agreement shall be binding upon us with regard to the Credit so increased, extended or otherwise modified, to drafts, documents and property covered thereby, and to any action taken by you or any of your correspondents in accordance with such extension, increase or other modification. We further agree to authorize you to surrender from time to time, to such parties as we or any of us may designate, or their nominees, the whole or any part of any merchandise shipped under the Credit, or the bills of lading or other documents representing the same, against payments satisfactory to you or under your usual form of trust or bailee receipt, signed by any such designated parties.

8. The users of the Credit shall be deemed our agents and we assume all risks of their acts or omissions. Neither you nor your correspondents shall be responsible: for the existence, character, quality, quantity, condition, or value of the property referred to in the Credit; for any difference in character, quality, quantity, condition, or value of the property from that expressed in documents; for the validity, sufficiency, or genuineness of documents, even if such documents should in fact prove to be in any or all respects invalid, insufficient, falsely drawn or fraudulently obtained; for the time, place, manner or order in which shipment is made; for partial shipments, even if such documents should in fact prove to be in any or all respects invalid, insufficient, falsely drawn or fraudulently obtained; for any damage, loss, or expense suffered by you in connection therewith, and interest where chargeable.
Credit; for the character, adequacy, validity or genuineness of any insurance; for the solvency or responsibility of any insurer, or for any other risk connected with insurance; for any deviation from instructions, delay, default or fraud by the shipper or any other person in connection with the property or the Credit or the relative drafts, documents or property, if taken in good faith, shall be binding on us and shall not put you or your correspondent under any resulting liability to us; and we make like agreement as to any inaction or omission, unless in breach of good faith.

9. We agree to procure promptly any necessary import and export or other licenses for the import or export or shipping of the property and to comply with all foreign and domestic governmental regulations in regard to the shipment of the property or the financing thereof, and to furnish such certificates in that respect as you may at any time require, and to keep the property adequately covered by insurance satisfactory to you in companies satisfactory to you, and to assign the policies or certificates of insurance to you, or, at your option, to make them payable to you, at your option; and to furnish you if demanded with evidence of acceptance by the insurers of such assignment.

10. Each of us agrees at any time and from time to time, on demand, to deliver, convey, transfer, assign, deliver or hold, for and all of his and/or our obligations and liabilities hereunder, and also for and all other obligations and liabilities, absolute or contingent, due or to become due, which are now or may at any time hereafter be owing by him or us to you, additional security satisfactory to you, or to make such other security as you may require. Each of us agrees that all property belonging to him, or us, in which he or we may have an interest, of every name and nature whatsoever, now or at any time hereafter delivered, conveyed, transferred, assigned, or paid to you or coming into your possession or into the possession of your correspondent or into the possession of any person to which you may assign such interest, whether expressly as security for any of the obligations or liabilities by him or us to you, or for safekeeping or otherwise, including any items received for collection or transmission, and the proceeds thereof whether or not such property is in whole or in part released to us on trust or bailee receipt are hereby made security for each and all such obligations and liabilities. Each of us agrees that upon his or our failure at all times to keep a margin of security with you satisfactory to you, or upon the making by him or us of any assignment of specified collateral against any liability shall waive any and all such property, arrived or to arrive, at private sale or at public auction, payment, without advertisement and without notice to us or any of us, all of which are hereby authorized you in any such event, or upon his or our failure to pay any of such obligations or liabilities when due, or at any time required, and to keep the property adequately covered by insurance satisfactory to you in companies satisfactory to you, and to assign the policies or certificates of insurance to you, or, at your option, to make them payable to you, at your option; and to furnish you if demanded with evidence of acceptance by the insurers of such assignment.

11. You shall not be deemed to have waived any of your options, powers or rights (including those hereunder) unless you or your authorized agent shall have signed such waiver in writing. No such waiver, unless expressly as stated therein, shall be effective as to any transaction which occurs subsequent to the date of such waiver, nor as to any continuance of a breach after such waiver. No segregation or specific allocation by you of specified collateral against any liability shall waive or affect any lien of any sort against other securities or property or any of your options, powers or rights (including those hereunder).

12. The word "property" as used in this agreement includes goods, merchandise, securities, funds, choses in action, and any and all other forms of property, whether real, personal or mixed and any right or interest therein. Property in your possession shall include property in possession of you for your own use, in any manner whatsoever. Your rights specified in this agreement are in addition to those otherwise created.

13. If this agreement is signed by one individual, the term "we", "our", "us" shall be read as both "I", "my", "me", as the case may be. If this agreement is signed by two or more parties, it shall be the joint and several agreement of such parties.

Seattle, Washington, ....................

Very truly yours,

[(Authorized Signature)]
Exhibit 2 — Irrevocable Letter of Credit — Documentary

CABLE ADDRESS "FIRST BANK" Seattle

SEATTLE-FIRST NATIONAL BANK

IRREVOCABLE INTERNATIONAL BANKING DEPARTMENT

CREDIT No. .................. SEATTLE 24, WASHINGTON AMOUNT..........

SPECIMEN

Gentlemen:

We hereby authorize you to value on us

For account of

to the extent of

Available by drafts at SIGHT FOR OF INVOICE VALUE TO BE ACCOMPANIED BY

Evidencing shipment of

FROM TO

NOT LATER THAN INSURANCE TO BE EFFECTED BY

drafts to be negotiated not later than AND MARKED.

"Drawn Under L/C No. of Seattle-First National Bank, Dated ."

The amount of any draft drawn under this credit must be endorsed by the negotiating bank on the reverse hereof. We hereby agree with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit that the same shall be honored on due presentation to drawer.

Except as expressly stated negotiations under this credit are subject to the uniform customs and practice for commercial documentary credits fixed by the thirteenth congress of the international chamber of commerce.

Very truly yours,

Authorized Signature

Form 644 (Rev. 1/60) 10Y
JAPANESE—U.S. LETTERS OF CREDIT

Exhibit 3 — Advice of Credit

SEATTLE-FIRST NATIONAL BANK
SEATTLE 24, WASHINGTON
INTERNATIONAL BANKING DEPARTMENT

MENTION OUR REFERENCE NUMBER AND DATE ON ALL DRAFTS AND COMMUNICATIONS

If the terms of this credit are unsatisfactory to you in any detail please communicate with your customers and have amended instructions sent to us.

CORRESPONDENT'S IRREVOCABLE
CREDIT NO. .......... Our REFERENCE No. ...........................................

Dear Sirs:

Our correspondent in their request us to inform you that they have opened their Irrevocable Credit No. in favor of yourselves.

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<tr>
<th>FOR ACCOUNT OF</th>
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<td>FOR AMOUNT NOT EXCEEDING TOTAL OF</td>
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<tr>
<td>AVAILABLE BY DRAFTS DRAWN ON</td>
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<td>ALL DRAFTS MUST BE MARKED</td>
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<td>Drawn under</td>
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<td>ACCOMPANIED BY DOCUMENTS IN DUPLICATE, WHICH ARE TO BE IN A FORM SATISFACTORY TO US.</td>
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<td>Commercial Invoices in triplicate</td>
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<td>EVIDENCING SHIPMENT OF</td>
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<tr>
<td>NOT LATER THAN</td>
<td>This Credit Expires</td>
<td>In</td>
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</table>

This advice conveys no engagement on our part, and is solely an advice of credit opened by

We shall be glad to place our services at your disposal in the negotiation of documents in connection with this transaction.

Yours very truly,

Unless otherwise expressly stated, this credit is subject to the uniform customs and practice for commercial documentary credits fixed by the Thirteenth Congress of the International Chamber of Commerce.

Form 537 Rev. 6-60 10Y

Authorized Signature
Exhibit 4—Advice and Confirmation of Credit

SEATTLE-FIRST NATIONAL BANK
SEATTLE 24, WASHINGTON
INTERNATIONAL BANKING DEPARTMENT Cable Address "FIRSTBANK" Seattle

MENTION THIS CREDIT NUMBER AND DATE ON ALL DRAFTS AND COMMUNICATIONS

If the terms of this credit are unsatisfactory to you in any detail please communicate with your customers and have amended instructions sent to us.

CONFIRMED IRREVOCABLE
CREDIT

No ................ Our REFERENCE No. ...........................

Dear Sirs:

Our correspondent in their of opened their Irrevocable Credit No. in favor of yourselves. The above correspondent engages with you that all drafts drawn under and in compliance with the terms of this Credit will be duly honored. We confirm the credit and thereby undertake that all drafts drawn and presented as above specified will be duly honored by us.

Yours very truly,

Authorized Signature

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<th>For Account of</th>
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<tbody>
<tr>
<td>For Amount Not Exceeding Total of</td>
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<tr>
<td>Available by Drafts Drawn On</td>
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<tr>
<td>All Drafts Must Be Marked</td>
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<td>At sight</td>
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<td>Drawn under</td>
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<tr>
<td>Commercial Invoices in triplicate</td>
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<tr>
<td>Evidencing Shipment of</td>
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<td>From</td>
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<td>To</td>
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<td>Not Later Than</td>
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<tr>
<td>This Credit Expires In</td>
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</tbody>
</table>

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Unless otherwise expressly stated, this credit is subject to the uniform customs and practice for commercial documentary credits fixed by the Thirteenth Congress of the International Chamber of Commerce.

Form 536 Rev. 6-60 10Y
APPLICATION FOR COMMERCIAL LETTER OF CREDIT

THE BANK OF TOKYO, LTD.

Gentlemen:

I/we hereby request you to issue an Irrevocable Commercial Letter of Credit as follows:

In favor of...................................................................................................................................

For account of...................................................................................................................................

Up to an aggregate amount of........................................................................................................

Available by beneficiaries' drafts at...............................................................sight drawn on you or your correspondents at your option for............................................................invoice cost when accompanied by the following documents:

Signed Commercial Invoice in...............................................................indicating Import License No..........................

Marine Insurance Policy or Certificate, endorsed in blank, for 110% of the invoice cost including: the institute cargo clauses ( ), and the institute war clauses and the institute strikes riots and civil commotions clauses.

Full set of clean on board ocean bills of lading made out to order and blank endorsed, and marked freight PREPAID/COLLECT and notify.......................................................

Other documents:

Evidencing shipment of

From.............................................. to..............................................

Insurance TO BE EFFECTED BY SHIPPER/HAS BEEN EFFECTED BY ME/US WITH.......................................................

.......................................................... (Name of Insurance Company)

Partial shipments are ALLOWED/PROHIBITED. Transhipment is ALLOWED/PROHIBITED,

Bills of lading must be dated not later than..........................................................

Drafts must be negotiated not later than..........................................................

Special instructions:

Please advise the beneficiaries of the opening of this credit by CABLE/AIRMAIL through ............................................................instructing them to advise ADDING/WITHOUT ADDING their confirmation.

In consideration of your issuing a Letter of Credit substantially conforming to the above request, I/we hereby agree and undertake to hold myself/ourselves liable to you as per provisions set forth in the commercial letter of credit agreement signed by me/us and separately submitted to you.

Yours very truly,

..........................................................

Signature Verified by

Imp. Form, No. 5-A-11.0
In consideration of your opening at my/our request your letter of credit and advising the beneficiary of any modification or supplementation of the terms thereof for negotiation or payment of a documentary bill of exchange drawn under the letter of credit, I/we hereby agree to the following:

1. In the case of your advising by cable or telegram of the opening of a letter of credit, or of any modification or supplementation of the terms thereof, you may use either plain words or code words at your option, and I/we will pay upon your request all expenses of every kind for your so doing.

Further, all errors, omissions and similar risks resulting from advice by cable or telegram shall be entirely my/our responsibility, and I/we shall raise no objection to you against any delays, errors or omissions in transmission or delivery of, or after the arrival of, such advice by cable or telegraph, or against any consequences caused thereby. I/we also undertake to bear and pay for any loss or damage arising therefrom.

2. I/we assume full responsibility for any and all acts taken by you or your correspondents under the letter of credit in the case of the beneficiary thereof applying to you or your correspondents for negotiation or payment of a documentary bill of exchange drawn under the letter of credit, and I/we shall also raise no objection to any acts taken by you or your correspondent at variance with the terms of the letter of credit to conform to the banking arrangements entered into heretofore or hereafter between you and your correspondents in respect to the handling of foreign bills of exchange at the place of payment or negotiation, or commercial customs and practices there, or under the pressure of any circumstances, with no prior notice to me/us.

3. You and your correspondents may accept invoices and bills of lading as tendered by the drawer of a documentary bill of exchange when you or your correspondents pay the amount of such bill of exchange. Consequently, I/we shall make no claim upon you or your correspondents against any falsification or incorrectness which may be found in such invoices or bills of lading. Further, neither you nor any of your correspondents shall be responsible for any falsifications, incorrectnesses or irregularities relating to shipping documents attached to shipments, errors or misrepresentations in description, quantity, quality or price of the goods, inadequacy in an amount of shipping charges claimed by shippers or of insurance terms, excess or shortage of the amount insured, solvency or ability of the insurer, risks relative to insurance, etc., and any breach of contract between the shipper or seller and the consignee or buyer.

4. As to bills of exchange drawn on me/us in accordance with the provisions of the letter of credit, or bills of exchange drawn on me/us by you for our settlement of the payment made under the letter of credit, or promissory notes made payable under the letter of credit, or bills of exchange drawn on me/us upon your request and instructions, I/we undertake to pay to you the amount that you have paid thereon on due date.

As to bills of exchange drawn by me/us and accepted by you for extending the maturity or time for payment, I/we undertake to pay to you the amount paid thereon not later than one business day prior to due date. In the event of your correspondents accepting bills of exchange drawn under a letter of credit, I/we undertake to pay to you the amount paid thereon not later than two business days prior to due date.

In the event that the amount of the above bills of exchange is payable in any foreign currency, I/we agree to pay to you the amount of each bill in Japanese currency converted either at the rate of exchange as previously contracted with you, or if not contracted, at your then selling rate on the date of settlement of the bill of exchange, or date of payment or negotiation at the place of export to the date of settlement of the bill of exchange or the date of arrival of cover to liquidate such bills of exchange either at the rate contracted or, if not contracted, at the rate you determine to be proper, together with any and all expenses and, charges paid or incurred by you in connection with such bills of exchange.

The bills of exchange mentioned in the preceding paragraphs shall be accepted and paid by me/us without regard to the terms of the application for negotiation or attached documents, and even should the bills be drawn without recourse or there exist on the bills of exchange formal irregularities such as interruption in series of endorsements, etc.

5. All losses arising from the suspension or delay of a shipment of goods by the shipper or any other person, or from the non-arrival or late arrival, loss, damage, mis-delivery or deterioration of goods, shall be entirely at my/our risk, and neither you nor your correspondents shall be responsible therefor, and all expenses and charges incurred in connection with the unloading, warehousing and storage of the aforesaid goods shall be borne and paid by me/us.

I/we hereby recognize and admit your unreserved right to the Title for Goods relative to the bill of exchange, and I/we agree to place with you additional collateral as you may at any time require, upon your request.

Or if I/we should fail to perform any duty or obligation stipulated in this Agreement or to comply with your requirements under this Agreement, you may dispose of the collateral furnished by me/us or the goods relative to bills of exchange and apply the proceeds for the payment of the amount insured, accrued interest, overdue interest and any other expenses without notifying me/us; and if there exists a shortage of funds, I/we undertake to reimburse you on demand, and to indemnify you from any detriment caused thereby. You also may withdraw from any of my/our deposits or current accounts regardless of the due dates of the bills any amount necessary for the settlement of our obligation and liability in the above cases.
You are further authorized to apply the above-mentioned collateral or goods relative to bills of exchange to the liquidation of any other obligation I/we now or hereafter owe you, and should there be any surplus remaining after having disposed of the proceeds as mentioned in the preceding paragraph, you are also authorized to apply the same to the settlement of any other obligation I/we owe you.

Whenever you deem the value of the goods relative to the bill of exchange will decrease or have decreased considerably, you may take such remedial steps as enumerated in the 2nd paragraph of this article.

7. In the event of any accidents or losses occurring to the goods relative to the bill of exchange, you and your correspondents are authorized to receive the insurance claims direct from the insurers and to act in the preceding article (No. 6).

The documents necessary for the receipt of the insurance claims shall be furnished to you by me/us upon your request.

8. Cancellation of the letter of credit opened by you upon my/our application shall in no case be requested by me/us.

Not only losses incurred by you by reason of your opening the letter of credit, but also those arising from the fact that a bill of exchange is negotiated and collected through other banks or that the amount of the letter of credit remains unavailed of in whole or in part, shall be reimbursed by me/us together with concurrent commissions.

9. Whenever you deem necessary, you may cancel the whole or unused balance of the letter of credit, and all losses resulting from such cancellation shall be borne by me/us. Further, all losses which may come from the fact that the shipper did not agree to the cancellation of the letter of credit shall also be borne and paid by me/us.

10. In case I/we fail to meet any one of the obligations I/we owe you, time allowance on all my/our obligations to you shall be regarded as being lost by me/us.

11. Whenever you have acted upon recognition that my/our signature or seal on a bill of exchange or any other documents is genuine by comparing the handwriting and impression thereof with those on the signature card and facsimile of seal furnished to you by me/us, or on any bills or documents previously submitted to you, I/we shall assume responsibility for such act of yours even in case of forgery, alteration, theft of seal or any other event, and in case you are caused any loss thereby, I/we undertake to indemnify you for the same without delay.

12. The commission at the rate you may deem appropriate in respect to the opening of letters of credit and all charges, expenses and interest borne and paid by you relative to the letters of credit shall be paid to you by me/us upon your request.

13. I/we have no objection to your applying the provisions of this Agreement mutatis mutandis to the cases in which your foreign correspondents or their agents forward to you or your correspondents for handling or processing bills of exchange and documents attached thereto to be settled under Open Account Agreement.

14. Whenever any permit, certificate or any other document is required by laws or regulations, foreign or domestic, in force at present or in the future, governing foreign trade and foreign exchange, the same shall be furnished to you by me/us, and whenever any loss is caused to you by reason of the enactment or amendment of such laws or regulations I/we shall reimburse you for such loss without delay.

Furthermore, if and when circumstances allow import bond and collateral deposited with you under laws or regulations, foreign or domestic, in force at present or in the future, governing foreign trade and foreign exchange to be released, I/we shall make no objection to your applying the import bond and collateral, when released, to the settlement of any payments under the letter of credit or any other obligations I/we owe you.

15. With regard to all litigations on letter of credit, I/we hereby agree that the district court and/or the summary court having jurisdiction over the place of your business to which the letter of credit is applied for opening shall be the competent court.

16. The validity term of this Agreement shall not be fixed, and I/we shall make no objection to the cancellation of this Agreement at any time you may deem proper.

17. All questions, which may arise within or without the courts, regarding the meaning of the words and provisions of this Agreement shall be decided by referring to the Japanese text of the Agreement form; of which this is the English translation.

All the provisions hereinabove set forth shall also be binding upon all letters of credit which you will at my/our request instruct any of your bank offices or your correspondents to open.

The singular shall be deemed to include the plural and the plural include the singular.

Dated this day of Nineteen Hundred and

Signature
Full Name
Address

We hereby guarantee jointly and severally with the above principal party to adhere to the terms and conditions of this Agreement, and agree not to cause any loss or damage to your Bank.

For Witness and Guarantor

Signature
Full Name
Address

(Imp. Form No. 4-A-1)
Exhibit 6 — Irrevocable Letter of Credit — Documentary

Model 103-A

THE BANK OF TOKYO, LTD.

IRREVOCABLE COMMERCIAL LETTER OF CREDIT NO.

SPECIMEN

Gentlemen:

We hereby authorize you to value on

for account of

up to an aggregate amount of

available by your drafts at sight for invoice cost accompanied by

Signed commercial invoice in indicating Import License No.

Marine insurance policy or certificate, endorsed in blank, for 110% of the invoice cost including: The Institute War Clauses, and the Institute Cargo Clauses ( ) and the Institute Strikes Riots and Civil Commotions Clauses.

Full set of clean on board ocean bills of lading made out to order and blank endorsed, and marked "Freight Prepaid" and "Notify"

evidencing shipment of

Partial shipments are Transshipment is

Bills of lading must be dated not later than

Drafts must be presented to the drawee bank not later than

All drafts must be marked “Drawn under The Bank of Tokyo, Ltd. Irrevocable Letter of Credit No. dated.” This letter of credit must be presented, together with the draft and all relative documents, to the drawee bank and the amount of any draft drawn under this credit must be endorsed by the drawee bank on the reverse hereof.

We hereby agree with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored on due presentation and on delivery of documents as specified to the drawee bank.

Your very truly,

THE BANK OF TOKYO, LTD.

p.p. Manager
Gentlemen:

We advise you that we have received a cable message dated from reading in substance as shown on the attached sheet signed by us.

Please note that this letter is solely an advice and conveys no engagement by us. And please further note that we assume no responsibility for any errors and/or omissions in the transmission and/or translation of the cable and we reserve the right to make such corrections as may be necessary upon receipt of the mail confirmation.

This letter must be presented with each negotiation, and the amount of any such negotiations must be endorsed on the reverse hereof by the negotiating bank.

Kindly acknowledge receipt of this letter by signing and returning to us the attached copy.

Yours very truly,
THE BANK OF TOKYO, LTD.
TOKYO OFFICE
Letter of Credit and Bills Division

p.p. Manager

N.B. In case of difficulties please consult us before communicating with your customers.

Model Exp. 1B H.O.
Gentlemen:

We advise you that we have received an airmail message dated from the above-mentioned correspondent as shown on the attached sheet signed by us.

We confirm the credit and hereby undertake that drafts drawn and presented at this office as above specified will be duly honored.

This letter must be presented with each negotiation, and the amount of any such negotiations must be endorsed on the reverse hereof by the negotiating bank.

Kindly acknowledge receipt of this letter by signing and returning to us the attached copy.

Yours very truly,

THE BANK OF TOKYO, LTD.

THE BANK OF TOKYO, LTD.

P. P. Manager

N.B. In case of difficulties please consult us before communicating with your customers. (In use, a reference to UCP would probably be added to this form by a rubber stamp.)
GENERAL LETTER OF HYPOTHETICATION

To THE BANK OF TOKYO, LTD.

I/We hereby agree that all documentary bills of foreign exchange (hereinafter called "Bills") drawn or endorsed by me/us shall be purchased or negotiated by your Bank on the following terms and conditions which are applicable to any and all cases.

1. I/We hereby authorize your Bank to deliver the Documents against acceptance to the acceptor(s) of such Bills, in any of the following cases:
   a. The Bills are marked "Documents against Acceptance" or "D/A"
   b. The Bills are drawn under the stipulation of the letter(s) of credit on the issuing bank thereof or on the bank designated therein.
   c. Commercial practices prevailing in the locality of acceptance or payment of the Bills do not permit delivery of the Documents against payment.

2. I/We also authorize your Bank, in case you or your correspondent deems it necessary, to alter without prior notice to me/us Bills drawn by me/us as "Documents against Acceptance" or "D/A", to "Documents against Payment."

3. I/We hereby authorize your Bank or your correspondent to deliver the Documents against payment of the amount of the Bills in case such Bills are marked "Documents against Payment" or "D/P", in case no instructions are given regarding the delivery of the Documents.

4. I/We further authorize your Bank to dispose of, at your discretion and without prior notice to me/us, the Bills drawn under Letters of Credit, and collateral Documents as provided for in the said Letters of Credit, or in accordance with the commercial practices prevailing in the locality of acceptance and/or payment of the Bills.

5. I/We further authorize your Bank to surrender for rediscout at your discretion, the Bills drawn or endorsed by me/us, and to tender as collateral security therefor the relative Goods and Documents, to any third party of your choice.

6. Should the Goods be, or in your opinion be, in danger of being lost, destroyed, deteriorated or depreciated, or should you judge their value to be insufficient to serve as collateral for any other reason whatsoever, I/We hereby agree to provide your Bank without delay with such additional collateral security as you may require.

7. Should the Bills negotiated by your Bank be refused handling or processing by your discounting bank or correspondent owing to some discrepancy in the Bills or the Documents attached thereto with the terms and conditions of the Letters of Credit, or should divergence of quality, quantity, etc. of the shipped goods become known to the interested parties upon delivery of the said goods or on any other occasion after the Bills have been negotiated, I/We shall take full responsibility therefor and reimburse you at any time the amount of such Bills, interest and other incidental charges incurred.

8. I/We further authorize your Bank to tender a letter of guarantee to the issuing bank or the correspondent on the Letter of Credit, without any notification to me/us, in case your Bank or your correspondent deems it fit to do so, and I/We solely shall be held liable for the guarantee thus offered.

9. I/We hereby agree to bear and pay freight charges, insurance premium, warehouse charges and/or any other expenses whatsoever upon the collateral Goods and also all indemnities, compensations etc. which may be charged to your Bank against damage caused to a third party or parties in transportation, storage, delivery etc. of the collateral Goods, and to release your Bank from any responsibility.

10. I/We agree to the Goods being warehoused at any warehouse designated by the acceptor of the relative Bills unless your Bank or your correspondent offers objection thereto, and I/We hereby agree solely to bear all risks and expenses arising therefrom.

11. I/We also agree to bear all risks and losses arising from the omission on the part of your Bank or your correspondent of carrying out proper acts of warehousing of the Goods.

12. I/We authorize your Bank, if requested by the acceptor of the Bills, to grant delivery or deliveries of the Goods before maturity of the said Bills, provided that your Bank receives payment of such a proportionate amount of the invoice value of such Goods as you may consider appropriate.

13. In the case of the drawee of the Bills requesting your Bank on the date of maturity of the Bills to postpone payment, and if this is deemed reasonable by you or by your correspondent, no objection shall be raised by us to your or your correspondent's agreeing to it without prior notice to me/us.

14. I/We hereby agree to indemnify your Bank or your correspondent upon your request for any and all expenses on the collection of the Bills.

15. Unless otherwise previously instructed by me/us, the holder of my/our Bills shall be released from any protest drawn up for non-acceptance or non-payment to exercise his right of recourse.

16. I/We may have released holder from the obligation of having a protest drawn up.
Any protest for non-acceptance or non-payment shall be honored by me/us as legally valid at the location of drawing, and no proof thereof shall be required.

14. Should the drawee of the Bills reject acceptance or payment of the said Bills, or should the cargo concern the identity of such Bills, I/we authorize your Bank or your correspondent to unload, clear, warehouse the Goods, effect insurance thereon and do any and all other acts which your Bank or your correspondent may deem necessary for the proper maintenance of the said Goods. In these cases, not only the expenses and cost incurred in the course of the above acts, but also any damage caused by those people or parties who deal with the unloading, clearance, warehousing and insurance in good or bad faith or by reason of war, natural disasters or any other Act of God shall be paid by me/us.

15. I/We hereby agree that, should the Bills be not accepted by the drawee or not paid by the drawee or acceptor by intervention, or should it happen that the Bills are not paid or the proceeds thereof are not transferred to Japan because of the local laws or regulations, I/We shall pay at your then applicable TT selling rate the amount of the Bills with interest and/or overdue interest on the said unaccepted or unpaid Bills as the rate designated by you as soon as you inform me/us in this connection by cable or by mail, without waiting for the return of said Bills. Should you demand any security of me/us at the same time, it shall be given by me/us without any objection.

16. Should the drawee or acceptor reject acceptance or payment of the Bills, I/We shall be satisfied with only your explanation of such acts or facts and of all expenses arising therefrom and shall not require any proof thereof; and all those expenses shall be paid by me/us upon your notice.

17. In the case of non-acceptance, non-payment or delay of payment at maturity of my/our Bills, I/we further authorize your Bank to sell all or part(s) of the Goods forming the collateral security thereof at such times and in such manners as you may deem fit without any prior notice to me/us, and to apply the net proceeds to the payment of such Bills. Should the said net proceeds be insufficient to cover the amount of any such Bills and incidental charges, if any, I/we undertake to pay you without delay such deficit upon your notice thereof. I/We have no objection to your buying at your option the balance of the net proceeds, if any, for the payment of any other liability of mine/ours to you at that time.

18. I/We authorize your Bank or your correspondent to realize the insurance policy(ies) on the Goods forming the collateral security for the above-mentioned Bills, and to apply the net proceeds in such manners as stipulated in the preceding Article, and I/We engage to give you without delay any documents required for this purpose.

19. It is understood that unconditional acceptance by intervention shall be allowed in the case of the drawee rejecting acceptance. In this case, such acceptance by intervention shall be regarded as if acceptance were made by the original drawee.

20. Should Bills and/or Documents be destroyed or lost in transit, or assumed as such, or their arrival at the place of payment is much delayed by accident such as mis-transportation, a new Bill, and if possible, new Documents shall be presented to your Bank by me/us according to your record book, at your demand without any legal procedures, or alternatively, at your option, the amount of such Bills, with all expenses, shall be paid to you by me/us.

21. I/We authorize your Bank or your correspondent to send the Bills and/or Documents to the place of payment by any method as you or your correspondent deems fit.

22. Should the right of claim on the Bills be not validly instituted on account of any formal defect, or should it become extinct owing to the default of safeguarding procedure or prescription, I/We agree to reimburse you for the amount equivalent to the face value of the Bills, interest incurred thereon before and after maturity and other incidental charges incurred in this connection.

23. I/We further agree that the collateral Goods covered by the Bills shall constitute a collateral security against the aforesaid liability.

24. I/We shall be responsible for the signature, seal or writing used on the Bills or any other documents accepted by you even though the signature, seal or writing is a forged or stolen one, should you have concluded the same to be identical with those submitted to you by me/us beforehand or those used on previous Bills or any other Documents. Any damage, caused you therefrom, shall be paid by me/us upon your notice.

25. Sold the drawee of my/our Bills or the issuing or confirming banks of the relative Letters of Credit become insolvent, or bankrupt, or seized, provisionally seized, provisionally disposed of, or offered for auction, or even should the drawee or the above banks apply for bankruptcy or settlement by composition, I/We agree to pay you upon your notice the total amount of my/our Bills with interest and other additional charges.

26. I/We agree that should you transfer my/our Bills to a third party, such holder and any other subsequent lawful holder with endorsement shall be treated by me/us to accord with the same conditions as stated herein.

27. The jurisdiction of a judicial court regarding any legal action on my/our Bills and/or collateral Goods shall be executed at the District Court or the Summary Court at the location of your office where I/we submitted such Bills for negotiation or purchase.

28. I/We have no objection to your applying mutatis mutandis the provisions set forth in this General Letter of Hypothecation to the Bills and/or Documents to be settled according to the Open Account Agreements.

29. This Agreement shall be valid and binding upon me/us till cancelled by you.

Dated this ............. Nineteen Hundred and .............

Signature ........................................
Full Name .......................................
Address ........................................

I/We hereby guarantee jointly and severally with the above principal party to adhere to the terms and conditions of this Agreement and agree not to cause any loss or damage to your Bank.

For Witness and Guarantor

Signature ........................................
Full Name .......................................
Address ........................................

(Exp Form No. 1-B)
The Bank of Tokyo, Ltd.

Gentlemen:

Re: Irrevocable and assignable Credit No.

issued by

for dated

in favor of the undersigned and/or assignee

your reference No.

I/We hereby irrevocably assign to the party named hereunder all my/our rights in the above credit:

Name of assignee:

Address:

Telephone No.:

By this assignment, all my/our rights in the credit are transferred to the assignee and the assignee shall have all rights as beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the assignee without any consent of or notice to me/us.

The original instrument of the credit is returned herewith, with all amendments made thereto up to this date. I/We request you to notify the assignee in such form as you deem advisable of this assignment of the credit and of the terms and conditions of the credit as assigned.

It is understood that this assignment shall not become effective until you notify the assignee thereof, and no portion of the credit or of any amendments may be re-assigned; and further, I/we agree to indemnify you in respect of all loss, damage and expense of any kind which may be incurred as a direct or indirect result of your acting on these instructions and also agree to pay you in full on demand for any such loss, damage or expense.

Yours very truly,

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.............................................................

Signature authenticated

Revenue Stamp

Model Exp. 21
APPLICATION FOR ADVICE OF PARTIAL ASSIGNMENT

The Bank of Tokyo, Ltd.

Gentlemen:

Re: Irrevocable and assignable Credit No. issued by

for dated in favor of the undersigned and/or assignee your reference No.

I/We hereby irrevocably assign to the party named hereunder all my/our rights in the above credit subject to the same terms and conditions with the exceptions of the terms described hereunder.

Assignee: Name:

Address:

Telephone No.:

Terms: 1. Amount in figures and letters: 2. Quantity of merchandise: 3. Latest shipping date: 4. Expiry date:

By this assignment, all my/our rights in the credit are transferred to the assignee (up to the amount aforesaid), and the assignee shall have the rights as beneficiary thereof, (up to the amount aforesaid), including amendments made thereto up to this date. However, it is understood that any amendments hereafter made are to be advised to me/us and I/we shall at that time indicate to you whether or not they are also to be advised to the assignee, and thereby I/we agree to indemnify you for any consequences as may arise from any delay and/or omission in my/our said indication.

Kindly notify the assignee in such form as you deem advisable of the terms and conditions of the credit as assigned, and after noting the assignment on the original instrument which I/we am/are forwarding to you herewith, kindly return it to me/us together with a copy of your notification to the assignee.

It is understood that this assignment shall not become effective until you notify the assignee thereof, and no portion of the credit or of any amendments may be re-assigned; and further, I/we agree to indemnify you in respect of all loss, damage and expense of any kind which may be incurred as a direct or indirect result of your acting on these instructions and also agree to pay you in full on demand for any such loss, damage or expense.

Yours very truly,

Signature authenticated

[Revenue Stamp]

Copy to: THE ISSUING BANK

Model Exp. 22