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INSTRUMENTS AND MECHANISMS OF PAYMENT IN
INTERNATIONAL COMMERCE.
PROSPECTS FOR THIS NEW CENTURY

DOCTORANDO

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This work has been carried out to show the need of knowing and implementing the new technology in international commerce, in order to be successful in the present century. It also demonstrates the importance of a paperless commerce and of becoming a member of the international electronic community.

Furthermore, it points out how essential it is for a bank, whether it belongs to the Nation, Provinces or it is private, to be included in this process as quickly as possible, profiting from the advantages these mechanisms offer.

The documents and illustrations enclosed herein, especially those of Bolero, are the ones accepted by the United Nations, the International Banking Association and the International Chamber of Commerce.

I sincerely hope this work will help to understand the new world we are living in now and therefore, to act accordingly in order to avoid being left aside.
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CHAPTER I

1. BANKING MECHANISMS OF PAYMENT FOR
   INTERNATIONAL COMMERCIAL TRANSACTIONS

INTRODUCTION

The risks in commercial transactions are higher in foreign commerce. Many are the reasons: the distance between the buyer and the seller; the danger and uncertainty of oceanic transport; the terms necessary for the credit; the difficulties in knowing the buyer's morale and financial capacity and finally the risks due to foreign exchange.

Because of these difficulties, the transaction called "Documentary Credit", is for banks an instrument of payment in foreign commerce, having a minimum cost and the smallest possible risk, through which, an exchange of products is done among people who are reciprocally unknown.

In this transaction, the bank is linked to the importer/exporter, but is independent from their reciprocal obligations. Moreover, this instrument of payment in commercial transactions, allows the exporter to transport the
amount of money due for his sale, immediately after the shipment of the goods.

The subject of export credit and financing facilities, is attractive primarily because the buyer's choice of his supplier is influenced by the terms of payment offered. Additional factors influencing an importer's decision as to where and from whom to purchase include: transit time for his purchases; the necessity to pay duties and taxes immediately upon landing goods; the high cost of borrowing funds and the turnover rate of goods after their reception. Conversely, the exporter must visualize these elements to understand the problems which confront his prospective customer or client. In examining his own position, the exporter must weigh those cogent considerations against the credit practices in his line, here and abroad; the buyer's credit standing; the supply situation of his goods; his own financial strength; the availability of dollar exchange; the imposition of exchange controls and the prevailing economic and political conditions in the importer's native land.

This analysis is basic to the comprehension of the reasons of the buyer abroad of the reasons why, when other aspects are fairly equal, he could conceivably prefer to transact business with his competitor.

About the financing of the exportation and importation of goods by means of bankers' commercial credits, it could be said that it is a device which, in
its modern form, is the creation of the mercantile genius of the British people. It is somewhat surprising, therefore, that in the English legal literature, there is no specific treatise dealing with these credits from a legal standpoint. There are only various series of English law reports on this subject.

1.1 BACKGROUND

However, in some authors' opinion the origin of the legal term “documentary credit”, is included in the receptum argentariorum of ancient Rome. A Bank was obliged to pay the debt belonging to some other Bank, and this engagement continued to exist even in the case of the disappearance of the original debt.

It is also believed that the modern documentary credit has its particular origin in the Letter of Credit, through which, traders and businessmen could get means of payment abroad, provided they themselves delivered the goods.

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1 Girard, Manuel Élémentaire de droit romain; and Sohm-Mitteis-Wenger, Institutionen des romischen Rechtes.
According to another version, the most ancient form of documentary credit, would be represented by credit through the issuing of drafts, and its development could be explained as follows: due to certain English traders' reputation, their foreign suppliers collected their money through the issuing of a draft, while other importers abroad had to submit to worse conditions. Therefore, they had to seek for an English company having a good credit and ask it to pay or accept the draft, remunerating it through a certain sum of money. So, this is how the possibility of paying debts through drafts having a long term was created and during this period sellers could find the money in cash by using a discount on these drafts. Then, this would be the modern documentary credit, of course in a rudimentary way, widely used in England and also in the Netherlands in the following centuries: XVII, XVIII and XIX. According to Cahn, the documentary credit probably was developed in both ways.

The fact is that before 1914, London practically had the monopoly of this instrument of payment in the so-called "accepting houses", which appeared after the famous "merchant bankers", and dealt with this type of operations.

\[E.M.Cahn, \text{ O'Hara, Banker's Magazine, 1922}\]