

From the bill of exchange to the documentary credit

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The financial techniques of the transit trade have their modern successors in trade finance. The documentary credit, governed in international practice by the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (UCP 600), performs for a commodity trader in Lugano the functions that the bill of exchange and the forwarder's advance performed for the merchant of the old regime: it secures payment against documents, finances the period between shipment and sale and bridges the distance between parties who do not know each other.¹ Warehouse receipts and other documents of title to goods, which the Code of Obligations regulates in connection with the warehouse business (Art. 482 CO) and the general provisions on documents of title (Art. 1153 ff. CO), allow goods in storage to serve as collateral, as the consignments held by the old commission agents did.² Chapter G.I treats the law and practice of trade finance in Lugano in detail.

The most striking continuity lies in the Swiss statistical term for merchanting. The Swiss National Bank and the Federal Statistical Office record the purchase and resale of goods by Swiss firms, without the goods entering Switzerland, as *Transithandel* (transit trade, *commercio di transito*).³ The modern Lugano trading house, which buys steel in Ukraine or Turkey and sells it in Italy or North Africa without the goods touching Swiss soil, carries on a trade that bears the name of the Gotthard transit but has left the road behind. Chapter F.I describes this trade, its volume and its significance for the Ticino economy.

For the practitioner. Advising a Ticino trading or logistics company on goods that cross the southern border involves questions that the old transit trade already knew: - Customs status and procedure: free circulation, transit (Art. 49 CustA, common transit convention) or customs warehousing (Art. 50 ff. CustA), with the corresponding guarantees. - Allocation of risk in carriage and forwarding: Art. 439 and 440 ff. CO, and

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the international conventions on road and rail carriage where applicable. - Security over goods: warehouse receipts and documents of title (Art. 482 and 1153 ff. CO), pledges and the rights of the forwarder and carrier. - Payment security: documentary credits under UCP 600 and guarantees, with attention to document fraud. - Sanctions and export controls on goods and counterparties, especially at Chiasso (Chapter G.II). - The risk that commercial smuggling or misdeclaration makes the proceeds tainted under Art. 14 para. 4 ACLA and Art. 305bis SCC (Chapter G.III).

1 Notes

1. ICC Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600. See Chapter G.I. ↩
2. Code of Obligations, SR 220, Art. 482 paras 1–3 (a warehouse keeper who publicly offers storage may apply for the right to issue documents of title, which "are securities that confer the right to take delivery of the goods stored"), English translation at [lawbrary.ch](https://lawbrary.ch/law/art/OR-v2024.01-en-art-482/print), <https://lawbrary.ch/law/art/OR-v2024.01-en-art-482/print>; French text at [droit-bilingue.ch](https://www.droit-bilingue.ch/fr-en/2/22/220-482-697.html), <https://www.droit-bilingue.ch/fr-en/2/22/220-482-697.html>. Art. 1153 ff. CO (documents of title to goods). ↩
3. Swiss National Bank, Swiss Balance of Payments and International Investment Position, annual reports, section on merchanting (Transithandel). See Chapter F.I. ↩

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