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Documentaly Collections

メタデータ	言語: English 出版者: 公開日: 1981-01-01 キーワード (Ja): キーワード (En): 作成者: 小原, 三佑嘉, Ohara, Miyuka メールアドレス: 所属:
URL	https://kobe-cufs.repo.nii.ac.jp/records/2196

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Documentary Collections

by

Miyuka Ohara

How to handle the documentary collections

The seller and buyer engaged in international trade call on their respective banks to help in the payment procedures. The two most common methods are:

- Documentary collections; under this arrangement, the bank merely acts as a collecting agent on behalf of the seller, who must rely on the buyer to pay.
- Documentary credits, also called letters of credit; this is opened by the buyer against his own account, in favour of the seller. Under the most frequently used types, the bank, assuming the credit risks, commits itself to pay.

The degree of security the seller has in receiving payment for his goods differs for the various types of documentary credits and documentary collections. Also the bank's role varies with each type of transaction.

Whereas a clean cash payment does not involve any problems, the technicality of handling documentary collections is not so complicated as that of documentary credits.

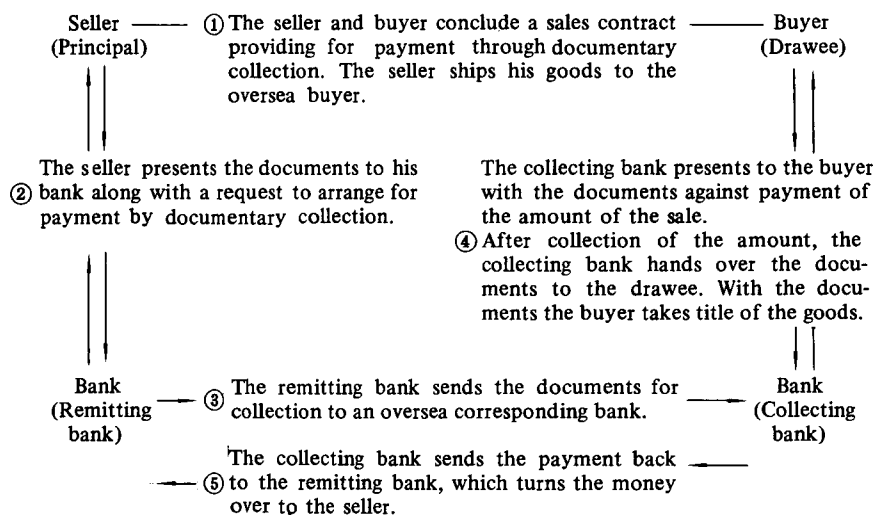
The seller and buyer conclude a sales contract providing for payment through documentary collections. After the goods have been shipped, the seller (principal) assembles the documents agreed upon with the buyer (drawee) and presents them to his bank (remitting bank) along with a request to arrange for payment by documentary collections (collection order). The collection order must contain instructions specifying the terms and conditions under which the documents may be released to the drawee.

The remitting bank transmits the documents for collection to a corresponding bank (collecting bank) in the country and if possible in the town of the buyer, indicating the terms and conditions under which the documents may be released to the drawee.

On the basis of the collection order received, the collecting bank will then notify the drawee that documents have arrived. The collecting bank informs the drawee of the terms and conditions under which he can dispose of documents.

If the documents were to be released against payment, the collecting bank transfers the amount collected to the remitting bank, which in turn credits the sum to his customer (principal). If the documents were to be released against acceptance, the collecting bank will, depend on the instructions received, either return the accepted draft to the remitting bank for forwarding to the principal, or hold the bill of exchange in trust till maturity and then pay the proceeds to the remitting bank after collection. The remitting bank then in turn credits the amount to the principal.

How documentary collections work



The seller sometimes agrees to have payment arranged by means of the documentary collections which is similar to the case of documentary credits in the sense that the banks act as the intermediary between seller and buyer by transferring the documents for the goods, upon which payment is made, from one to another. But when the goods are sold on a documentary collection basis, the seller must satisfy himself as to the standing of the

foreign buyer, for he must assume the full credit risks, unlike with documentary credits which carry with them the bank's guarantee of payment (except for a revocable credit). The bank's role in documentary collections is merely to serve as an intermediary in the collection process. Because the bank does not assume any risk it's charge less for its services with documentary collections than with documentary credits.

Under documentary collections the seller receives payment of a draft, and at times only the acceptance of a draft with actual payment on a future date. The seller does not, however, agree to transfer the ownership of the documents representing the goods or of the goods itself before being paid or before acceptance of his draft.

Various kinds of documentary collections.

The instructions of the principal to the remitting bank can differ, depend on the terms and conditions of the sales contract, in regard to the terms and conditions under which the documents may be released by the collecting bank abroad to the drawee.

The following three types of documentary collections must be distinguished:

- Release of the documents against payment (D/P)

The seller's bank, or respectively the corresponding bank in the buyer's country, is instructed to release the documents to the buyer only against actual payment. The seller has the risk that the buyer cannot accept or does not want to accept the documents. In this case the goods remains the property of the seller, but the goods is already shipped and it might be difficult to dispose of it in the foreign country or to have it reshipped. This is a risk which the seller (beneficiary) of documentary credits does not incur.

- Release of the documents against acceptance (D/A)

In this case the seller transmits the documents to the remitting bank together with a bill of exchange and instructions to release the documents to the buyer and request the acceptance the bill of exchange with the stipulated maturity. This means that the buyer can dispose of the documents only after having signed an internationally recognised "acknowledge-

ment of indebtedness” that will make it easier for the seller to take legal action in the courts in case of non-payment. A seller intending to have the documents released against acceptance must realise that the bill of exchange represents his only security after the documents have been released. So he should sell on this basis only if he is sure that the buyer will be in a position to meet the bill at maturity.

- Collection with acceptance—release of documents only against payment (acceptance D/P)

In this case the seller transmits the documents to the remitting bank together with a time bill of exchange. The accepted bill remains at the collecting bank together with the documents. However, the documents may be released to the buyer only upon payment of the bill of exchange. The seller grants the buyer a certain term for the payment, but still wants to be sure that the buyer can obtain the documents only after having made payment. If the buyer refuses to accept the bill of exchange, the seller receives early warning that he can expect trouble in completing the transaction. This gives him time to take appropriate precautions or possibly to look for another customers for the goods.

In the instance of D/A and acceptance D/P, despite of the willingness and ability of the buyer to liquidate the bills promptly, payments are frequently delayed because of foreign exchange restrictions. In this case, the documents are usually delivered against payment in local currency, pending availability of the hard currency funds due to the seller. The shortage of foreign currencies in many countries have added another risk to the credit risk of the exporter, namely the so-called transfer risk.

General Principle of the 1978 Uniform Rules for Collections

The Uniform Rules for Collections of the International Chamber of Commerce (first introduced in 1956, revised in 1967, and formerly entitled “Uniform Rules for Collection of Commercial Paper”) provide the only universally accepted text codifying the main provisions to be applied regarding Presentation, Payment, Acceptance, Protest, Case-of-need (Customer’s Representative) and Protection of Goods, Advice of Fate, Charges and Expenses, Liabilities and Responsibilities under operation of

collections. The latest version, finalized during 1978, modernises and clarifies the text, and introduces new provisions relating notably to Responsibilities, Interest, Advice of Fate and Definition of „Collection”, “the Parties concerned”, “Documents” etc.

The Rules are devised for application by banks throughout the world to all collection operations.

Since the Uniform Rules for Collections also follow a general pattern of layout along the lines of that evident in the Uniform Customs and Practice for Documentary Credits, they Commence with:

- (a) A declaration of their scope and application, indicating that they “apply to all collections” as defined in below, and that “unless contrary to the provisions of a national, state or local law and/or regulation which cannot be departed from”, or “unless otherwise expressly agreed” by the parties concerned, they “are binding upon all parties thereto”.
- (b) A set of definitions, expressed in very simple language, of the terms used, i.e.
 - (i) “Collection” means the handling by banks, in accordance with instructions received, of documents in order to
 - obtain acceptance and/or payment.
 - deliver commercial documents against acceptance and/or against payment.
 - deliver documents on other terms and conditions.
 - (ii) “Documents” consist of financial documents and/or commercial documents:
 - “financial documents” means bills of exchange, promissory notes, cheques or payment receipts etc.,
 - “Commercial documents” means invoice, shipping documents or documents of title etc., not being financial documents.
 - (iii) “Collection of documents, in general, and each of its two varieties:
 - “Clean Collection” means collection of financial documents not accompanied by commercial documents;
 - “Documentary collection” consists of collection of financial documents accompanied by commercial documents and

commercial documents not accompanied by financial documents

- (iv) "The parties thereto" i.e., to the collection operation, these being the "customer" (principal) who originates the transaction as he "entrusts" the operation of collection to his bank, and the "remitting bank" which is the bank to which the customer has entrusted the operation of collection, and the "collecting bank" utilized by the remitting bank (for the account of and at the risk of the customer) involved in processing the collection order (remittance letter), and the "processing bank" which is the collecting bank making presentation to the drawee.
 - (v) the "drawee" who, although "specified in the collection order as the one to whom the documents is to be presented" is not a party to the operation of collection as such, although he is a party to the documents which is been collected.
- (c) A statement of basic principles, i.e. that the customer originating the collection transaction must give complete and precise instruction in writing (the collection order), that such instructions, i.e. in the form of the collection order, are the only ones upon which the banks are permitted to act (e.g. they will not act upon a slip attached to the documents), that all documents sent for collection must be accompanied by such collection order.

Problems on Application of Article 6

For the purpose of studying the Rules in their practical application when the banks in Japan adhered to the Rules, The Federation of Bankers Associations of Japan conducted article-by-article study of important provisions. As a result of this study, the following point among others, was concluded as the provision requiring special attention in its application. Shipment despatched direct and consigned to a bank (Article 6):

“Goods should not be dispatched direct to the address of a bank or consigned to a bank without prior agreement on the part of that bank

In the event of goods being dispatched direct to the address of a bank or consigned to a bank for delivery to a drawee against payment or acceptance or upon other terms without prior agreement on the part of that bank, the bank has no obligation to take delivery of the goods, which remain at the risk and responsibility of the party dispatching the goods.”

Publication “Documentary Operation” issued by Swiss Bank Corporation explains as follows (page 64):

“If the goods are sent by rail, post, air freight or road to the buyer’s address, the shipment will be surrendered to him without his having to honour the collection documents presented to him by the bank.

If such a direct delivery is undesirable for reasons of security, there may be a possibility of addressing the shipment to the collecting bank in the buyer’s country, or possibly to a forwarding agent at the disposal of the collecting bank. If this is done, the goods are only surrendered to the buyer when he has complied with the conditions specified in the collection order. In this connection, the Rules stipulate that banks are not obliged to accept such shipments unless they have given prior consent to do so, this on account of the various difficulties and obligations that can arise for the consignee. If you intend to address shipments to a bank, you should therefore first obtain its consent to act as the consignee.”

Publication “Export-Import Banking” also says the following (pages 139-140):

“The air carrier’s bill of lading is known as the air waybill or air consignment note. Each airline furnishes its own distinctive bill but all the air waybills are similar in content. Like steamer and rail waybills of lading, it functions as a receipt for goods and as a contract between the shipper and the carrier. It is not, however, a document of title since the air waybill is never issued in negotiable form. Its non negotiable character is plainly noted on the air waybill. Should the shipper wish to retain the control of the shipment until the buyer has paid or accepted the corresponding bill of exchange, he must consign the shipment on the air waybill to a third party, such as his foreign agent or the foreign bank which is to collect the bill of exchange, but always with the prior knowledge and consent of such bank. When the bill of exchange has been paid or accepted according to its tenor, the consignee agent or bank instructs the airline holding the shipment to place it at the disposal of the buyer.”

As a result, Federation of Banker’s Associations of Japan earnestly requested to give ICC’s explanation and precise interpretation as follows:—

Japanese Comment:—

“In D/P and D/A operation, it is the usual practice to nominate the collecting bank in the consignee column of the Air Waybill. The first paragraph of Article 6 provides “Goods should not be consigned to a bank without prior agreement on the part of that bank”. Is not this new provision contrary to the present practice? Please clarify the following points:

- 1) The reason for inclusion of this provision.
- 2) We would request precise interpretation of the underlined section.
- 3) In case that “that bank is nominated as consignee without prior agreement, “can that bank refuse to collect.”

Brief reply from the ICC:—

- 1) The main reason for the inclusion of the provision of Par. 1 is to discourage this practice by reason of unreasonable burden placed upon collecting bank.
- 2) The words prior agreement mean agreement which is expressed or implicit whereas the consignee has agreed to accept this provision.
- 3) In case the bank is named as consignee it must act as requested.

Consignee bank may take this matter up with the remitting bank as to future practice.

Further Comments of Japanese bankers:—

Concerning Article 6, ICC was requested to answer the further inquiries delivered by the Federation of Bankers Associations of Japan.

They still have doubts concerning Article 6 and would expressly request ICC explanation of the following:—

1. Goods are dispatched by the exporter and not by the bank. Therefore, just in case the exporter obtains the prior agreement of the collecting bank of the importing country to directly dispatch the goods to that bank or consign the goods to that bank, can this be understood to have satisfied the requirement set forth in Par. 1 of Article 6?

In practical operations, it is technically difficult for a remitting bank to obtain prior agreement of the collecting bank for each separate transaction. Furthermore, if the remitting bank should request a general agreement in advance from the collecting bank, there is no reason to believe that the collecting bank will agree to such a request for the reason that it handles documents with a large number of customers and for other reasons.

2. In case goods are carried by airlines, arrival notices are communicated to the banks named as the consignees on the air waybills. The bank, however, does not take delivery of the goods but issues a release order only after the arrival of the documents for collection and acceptance or payment by the drawee is made.

As a result of the new provision of Par. 1 of Article 6, it will be expected that cases requiring the prior agreement from the collecting bank to be nominated on the air waybill will increase. In the case where the collecting bank simply agrees only to process the documents, in other words, when the collecting bank agrees without any reservation that it will not accept the goods, will not the collecting bank become responsible for taking delivery of the goods despite the provision of Article 19 and contrary interpretation of Par. 2 of Article 6 because the collecting bank has not expressly informed that the collecting bank will not accept goods?

3. According to the replay received “prior agreement” may be

“expressed or implicit”. What is the precise definition of “implicit agreement”? We would request an explanation giving an example.

In cases the collecting bank agrees once or several times to becoming consignee without prior agreement, will this constitute implicit agreement for future cases? If the answer is “yes”, the collecting bank will be responsible for taking delivery of goods.

In our opinion, condition such as “implicit agreement” does not exist in banking operations.

4. In the case the actual buyer is nominated as the consignee on the air waybill, will the instructions of D/P or D/A contained in the collection order become difficult to enforce because the air waybill is not a negotiable document but a mere piece of paper?

The ICC's answer to the above:

– It is true that the main reason for the inclusion in Art. 6, para 1, is that of discouraging the practice of addressing goods to a bank, however not only to avoid the burden which would be placed upon the bank by way of handling the operation, but also because of real technical problems, or even legal. By way of example be it mentioned that it is known that the authorities in some countries (including the customs authorities) do consider the party appearing as addressee of a consignment the actual importer of the goods, and so subject to the rules and regulations applicable to importers, which may even involve liability for any import duty, etc.

– Seeing that the Rules talk about “agreement”, any type of agreement must be acceptable, also an “implicit” one. However, it will be difficult to lay down hard and fast rules. The circumstances of the case would seem to carry weight in the individual instance. If a bank has agreed in perhaps a number of cases to have goods addressed to it, the same exporter and the same importer being involved in all the cases, it would scarcely be reasonable for the bank to change its attitude arbitrarily in exactly similar circumstances, including the same parties being involved. Still, no fixed rule can be set up.

– To say that the fact that a bank is named as consignee imposes upon it a duty to act as requested would seem to constitute a too rigid statement. The situation would rather be similar to that of Art. 19, and I

think that it would be more fit to say that the bank "will endeavour to act as requested". However it would all seem to be closely related to "technique bancaire" and not a matter that can be solved within the framework of the Uniform Rules.

As to the queries expressed by the Federation of Bankers Associations of Japan ICC would say:—

re 1. Answer to the point raised must be "Yes". However, it would probably not be the normal thing for an exporter to contact a collecting bank direct, but the course would be for the exporter to request the remitting bank in advance to endeavour to obtain the desired agreement, if possible.

re 2. In principle, if the documents are to be handled under the Uniform Rules, the bank is not obliged to accept the goods, which will remain at the risk and responsibility of the party dispatching the goods.

However, the whole problem is a delicate one and is difficult to solve in a uniform manner. This is probably due to the fact that each individual country has its own way to solve the question in.

According to experience it would seem, however, that it is possible to find a solution in most countries, as far as goods dispatched by ship, aircraft, rail or truck, are concerned. The goods might be addressed to a forwarding agent with instructions for him only to release the goods to the importer concerned if and when instructions are received from the collecting bank to that effect. In the case of goods dispatched by post the position is less easy as it will hardly be possible to have the postal authorities instruct the forwarding agent not to release the goods until authorized by the collecting bank.

re 3. See comments on "ICC answer to the above".

re 4. This would seem to be a question of law and not one of handling a collection operation.

However, ICC is not too happy to see an air waybill described as "a mere piece of paper". Although not being a negotiable document of title it does constitute more than a piece of paper!

The following are examples of two circulars addressed to the Japanese banks from foreign banks:

(A)

TO OUR CORRESPONDENTS

5 December, 1978

Dear Sirs,

PARCEL POST CONSIGNMENTS –
DOCUMENTARY BILLS FOR COLLECTION

In terms of the Uniform Rules for Collection goods should not be despatched or consigned to a bank without that bank's prior agreement. There were, of course, very practical reasons for the introduction of that article in these Uniform Rules and these continue to be most pertinent in today's circumstances. It would seem, however, that this requirement is in fact seldom met: one of our offices received some 1 000 parcel post advices in the course of a few months without once having been pre-advised, let alone having first been asked. As can be imagined, very many man-hours were spent at the Post Office.

The foregoing position can, of course, no longer be tolerated and unfortunately, but not unexpectedly, we have now had to decide to apply the Uniform Rules strictly. Consequently and with effect from 3 March, 1979, our branches will request Post Offices to return to senders any commercial parcels addressed to us unless prior arrangements otherwise have first been made. In general, we may say that as a rule our branches will not be prepared to make such arrangements.

May we ask you to bring the foregoing to the attention of your clients direct or through your local Chambers of Commerce? And, of course, you will wish to have this information in your outward collection departments. On our side we shall be advising those of our customers for whom we receive parcels regularly.

Thank you in advance for your co-operation.

Yours faithfully,

(B)

TO OUR CORRESPONDENTS

1st February, 1979

Dear Sirs,

AIRFREIGHT CONSIGNMENTS –
DOCUMENTARY BILLS FOR COLLECTION.

We refer to our Circular Letter of 5 December, 1978, when we advised that, for practical reasons and in line with the Uniform Rules for Collections, our branches will, with effect from 3 March, 1979, request Post Offices to return to senders any commercial parcels addressed to us, unless prior arrangements had first been made. We went on to say that in general our branches would not be prepared to make such arrangements.

Similar difficulties as those which gave rise to our earlier advices, are experienced with airfreight consignments addressed to us, albeit that these are considerably fewer in number. Consequently, we have decided that, with effect from 2 April 1979, our branches will ignore advices of arrival of airfreight consignments addressed to them unless prior arrangements to the contrary had been made. In this case, however, and in general, our branches will be prepared to make such arrangements if the consignor approaches them with full details – party to whom to be delivered, contents, conditions of delivery, etc. – prior to despatch and awaits clearance from our branch concerned. Provided, therefore, that these conditions are met we shall be pleased to continue to handle documentary collections covering airfreight consignments.

May we ask you to bring the foregoing to the attention of interested parties? Thank you in advance for your cooperation.

Yours faithfully,

The following is a sample of circular addressed to all oversea correspondents of Japanese foreign exchange banks:

To Japanese Banks' Correspondents
Air Consignment of Goods
Documentary Collections

SAMPLE
by Prof. Miyuka OHARA

In case where goods are sent by air and payment is made by documentary collections, it is the prevailing practice for Japanese shippers to nominate foreign agents or banks as the consignee on the air waybill for financial convenience and other reasons. It is expected that this practice will continue in the future.

The 1978 Uniform Rules for Collections provide in the first paragraph of Art. 6 that "goods should not be directly dispatched to the address of a bank or consigned to a bank without prior agreement on the part of that bank". Therefore, with regard to documentary collections including air waybills which nominate collecting banks as consignees, prior agreement of such banks is necessary.

In actual practice, it is technically difficult for remitting banks to obtain, or to confirm that shippers of importers have obtained, such prior agreement of the collecting bank for each separate transaction.

Consequently, we will pursue our current practice of accepting our customers' collection orders accompanying air waybills, which indicate collecting banks as consignees, without obtaining or confirming the prior agreement on the part of the said collecting banks, under the understanding that they have no obligation to take delivery of relative goods in accordance with the provision stipulated in the second paragraph of Article 6 of the Uniform Rules.

Please notify us in case there are any reasons on your part to prevent you from accepting such collections.

Thank you in advance for your kind co-operation.

Yours faithfully,

Requests for the improvement of Export Bill Insurance Law of Japan

Article. 19 of the former Rules (1967 text) provided that, "In the event of goods being despatched direct to the address of a bank for delivery to a drawee against payment or acceptance or upon other terms without prior agreement on the part of that bank, the bank has no obligation to take delivery of the goods." However, this provision is interpreted to mean that the bank is exempted from becoming consignee of the goods. In case prior agreement of the bank is required for each transaction, there will arise delays in payment and various obstacles in documentary collections.

Therefore, it has become the international custom to name the bank as consignee without prior agreement on the part of the bank. There has been no actual instances of the collecting bank's refusing to take delivery of the goods.

The provision of Art. 19 of the former Rules is provided for in Art. 6 of the 1978 Uniform Rules. However, the new Rules Art. 6 states, "Goods should not be dispatched direct to the address of a bank or consigned to a bank without prior agreement on the part of the bank." The wording has also been revised to mean that delivery direct to a bank is considered that the bank is named as the consignee. This poses the possibility of cases of a bank refusing to accept payment for goods sent by parcel post or air waybill which the bank is named consignee.

In view of the above circumstances, the following requests are made in connection with Export Bill Insurance system of the Ministry of International Trade and Industry. (MITI):

- (1) From January 1, 1980, a large number of countries are expected to adhere to the 1978 Rules. Even after the Rules are put in should not be addressed to a bank" ; also, par. 2 of the same article provides redemptive measure as provided for in the former Rule.

Furthermore, it is actually impossible to obtain prior agreement of a bank for each transaction. As it is expected that no major trouble occur in the future, there is no need for prior agreement on the part of the bank. Japanese banks are of the opinion to act as consignee in the case of parcel post and air waybill. It is believed that in these cases, there will be no objection on the part of the collecting

bank. In case payment is refused on the basis of lack of prior agreement, it is requested that some form of measure be taken to exempt the bank from responsibility.

- (2) As a result of the 1978 Rules, there is possibility of a third party such as forwarding agent being named as consignee in case of parcel post and air waybill. In this case, it will become impossible to take out governmental export bill insurance in the case of parcel post and air waybill. In view of the increasing volume of export by air transport, serious obstacles are expected to export on D/P or D/A terms from Japan.

It is, therefore, requested that improvement be made concerning ways to make it possible to cover the export insurance in case of parcel post and air waybill.

NOTE Reads as follows:

Article 19

Banks have no obligation to take any action in respect of the goods to which a documentary collection relates.

Nevertheless in the case that banks take action for the protection of the goods, whether instructed or not, they assume no liability or responsibility with regard to the fate and/or condition of the goods and/or for any acts and/or omissions on the part of any third parties entrusted with the custody and/or protection of the goods. However, collecting bank(s) must immediately advise the bank from which the collection order was received of any such action taken.

Any charges and/or expenses incurred by banks in connection with any action for the protection of the goods will be for the account of the principal.

Dec. 1980

List of adherence to the 1978 Uniform Rules for Collection

To prevent difficulties in the handling of documentary collections, it is important for banks and their customers to apply uniform definitions of terms, procedures and principles. The International Chamber of Commerce has therefore established "Uniform Rules for Collection" which are

recognised and adopted by the most of the banks in the world.

The following list gives the 68 countries and territories in which banks have indicated by the April 24 1980, that they adhere to the Rules. Countries and territories where banks adhere individually are expressly indicated (*). In the other 39 countries, banks adhere collectively to the Rules.

EUROPE

- Austria
- Belgium
- Bulgaria
- Czechoslovakia
- Denmark (Faroe Island, Greenland)
- Finland
- France (Overseas Departments included)
- Germany (Democratic Republic)
- Germany (Federal Republic)
- Greece
- Hungary
- Ireland
- Israel
- Italy
- Netherlands
- Norway
- Poland
- Portugal (Azores, Madeira, Macao)
- Spain (Canary Isl., Ceuta and Melilla)
- Sweden
- Switzerland
- Turkey
- United Kingdom
- U.S.R.R.

AFRICA

- Cameroons (*) (Rep. of the)
- Central African Republic (*)
- Chad (*)
- Gabon
- Ivory Coast (*)
- Kenya
- Mali (*)
- Mauritius (*)
- Morocco
- Niger (*)
- Nigeria (*)
- Senegal (*)
- Seychelles (*)
- Tunisia
- Togo (*)
- Zaire.
- Rwanda

ASIA

- Bahrain (*)
- Bangladesh (*)
- Cyprus
- Hong Kong
- Japan
- Korea (Rep. of)
- Lebanon (*)
- Malaysia
- Maldives (Rep. of) (*)
- Oman (*)
- Pakistan (*)
- Saudi Arabia (*)
- Singapore (*)
- Sri Lanka (*)
- United Arab Emirates (*)
(Dubai, Ajman, Umm al Qowain,
Sharjah, Foudjeira, Ras al
Khayma, Abu Dhabi)
- North Yemen (Arab Rep.of) (*)

AMERICA

- Argentina (*)
- Barbados (*)
- Brazil
- Canada
- Dominica (*)
- Guyana (*)
- Mexico
- Peru (*)
- United States of America

OCEANIA

- Australia
- New Zealand