

*Article 8***[Usages and established practices]**

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

## PRIOR UNIFORM LAW

ULIS, article 9.  
ULF, article 13.

**Commentary**

1. This article describes the extent to which usages and practices between the parties are binding on the parties to the contract.
2. By the combined effect of paragraphs (1) and (2), usages to which the parties have agreed, are binding on them. The agreement may be express or it may be implied.
3. In order for there to be an implied agreement that a usage will be binding on the parties, the usage must meet two conditions: it must be one "of which the parties knew or ought to have known" and it must be one "which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned." The trade may be restricted to a certain product, region or set of trading partners.
4. The determining factor whether a particular usage is to be considered as having been impliedly made applicable to a given contract will often be whether it was "widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned." In such a case it may be held that the parties "ought to have known" of the usage.
5. Since usages which become binding on the parties do so only because they have been explicitly or implicitly incorporated into the contract, they will be applied rather than conflicting provisions of this Convention on the principle of party autonomy.<sup>1</sup> Therefore, the provision in ULIS article 9, paragraph 2, that in the event of conflict between an applicable usage and the Uniform Law, the usages prevail unless otherwise agreed by the parties, a provision regarded to be in conflict with the constitutional principles of some States and against public policy in others, has been eliminated as unnecessary.
6. This article does not provide any explicit rule for the interpretation of expressions, provisions or forms of contract which are widely used in international trade and for which the parties have given no interpretation.<sup>2</sup> In some cases such an expression, provision or form of contract may be considered to be a usage or practice between the parties, in which case this article would be applied.

<sup>1</sup> Article 5.

<sup>2</sup> Article 7 provides rules for the interpretation of statements made by and other conduct of a party.