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UNIFORM RULES GOVERNING THE INTERNATIONAL SALE OF GOODS: ANALYSIS OF COMMENTS AND PROPOSALS RELATING TO ARTICLES 18-55 OF THE UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS (ULIS)

Note by the Secretary-General

Addendum

ANNEXES

Contents

ANNEX I. Articles 18 and 19 of ULIS: Comments and proposals of the representative of Hungary

ANNEX II. Articles 18 and 19 of ULIS: Comments and proposals of the representative of the United Kingdom

ANNEX III. Articles 20 to 23 of ULIS: Comments and proposals of the representative of the United States

ANNEX IV. Articles 24 to 32 of ULIS: Comments and proposals of the representative of Japan

ANNEX V. Articles 33 to 37 of ULIS: Comments and proposals of the representative of the USSR

ANNEX VI. Articles 33 to 37 of ULIS: Comments and proposals of the representative of the United Kingdom

ANNEX VII. Articles 38 to 40 of ULIS: Comments and proposals of the representative of Austria

ANNEX VIII. Articles 38 to 40 of ULIS: Comments of the representative of the United States on the proposals of Austria

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ANNEX IX. Articles 38 to 40 of ULIS: Response by the representative of Austria to the comments of the representative of the United States.

ANNEX X. Articles 38 to 40 of ULIS: Comments and proposals of the representative of Kenya.

ANNEX XI. Articles 41 to 49 of ULIS: Comments and proposals of the representative of France.

ANNEX XII. Articles 50 and 51 of ULIS: Comments and proposals of the representative of India.

ANNEX XIII. Articles 52 and 53 of ULIS: Comments and proposals of the representative of the United Kingdom.

ANNEX XIV. Articles 52 and 53 of ULIS: Comments and proposals of the representative of Mexico.

ANNEX XV. Articles 52 and 53 of ULIS: Comments and proposals of the representative of the USSR.

ANNEX XVI. Articles 54 and 55 of ULIS: Comments and proposals of the representative of India.

ANNEX XVII. Comprehensive study of Articles 18 to 49, 65 and 97 of ULIS: Comments and proposals of the representative of Mexico.

ANNEX XVIII. Comprehensive study of Articles 18 to 55: Introductory note and amendments proposed by Norway for the revision of ULIS Chapter III (Obligations of the Seller).
The Hungarian delegation believes that there are two main problems concerning articles 18 and 19:

a. The present definition of delivery, by referring to "handing over", creates the impression that a bilateral act is meant, although it seems to be clear from the context that delivery should mean a unilateral act by the seller. Therefore it seems to be more appropriate to use the expression "placing at disposal" instead of "handing over".

b. The question arises whether in case where the goods do not conform with the contract, "placing at disposal" amounts to a delivery or not. Several opinions were expressed against identifying non-conformity with non-delivery. These views seem to be justified; greater clarity is accomplished if these two terms are kept apart.

On the basis of the above-mentioned ideas, considering the Note of Professor Ware commenting on our preliminary draft as well as the Report of Professor Barrera Graf, we propose the following text instead of the present text of articles 18-19 of ULIS:

"Obligations of the seller

"Article 18

"The seller shall effect delivery of the goods, place any documents relating thereto at disposal and transfer the property in the goods, as required by the contract and the present Law.

"Section I. Delivery of the goods

"Article 19

"1. Delivery consists in placing the goods at the disposal of the buyer in accordance with the terms of the contract.

"2. Where the contract of sale involves carriage of the goods and no other place for delivery has been agreed upon, delivery shall be effected by placing the goods at
the disposal of the first carrier or forwarding agent
for transmission to the buyer.

"3. Where the goods placed at the disposal of the
carrier or forwarding agent are not clearly appropriated to
performance of the contract by being marked with an address
or by some other means, the seller shall, in addition to
placing the goods at the disposal of the carrier or forwarding
agent, send to the buyer notice of the consignment and, if
necessary, some document specifying the goods."

With respect to our proposal we should like to add the following
remarks:

Having replaced the term "handing over" by "placing at disposal"
in paragraph 1 of article 19 it might be advisable to also change
article 18 and paragraphs 2 and 3 of article 19 on the lines of this
modification.

To satisfy the proposal that paragraph 1 of article 19 should
refer to the contract, we amended the paragraph 1 of article 19 by
the expression "in accordance with the terms of the contract".

The reason for amending paragraph 2 of article 19 by the term
"of the first carrier or forwarding agent" was to define more clearly
and exactly which is the carrier or forwarding agent at whose disposal
the goods should be placed to effect delivery in the case of paragraph
2 of article 19.

We propose to discuss the relation between paragraph 2 of article
19 and paragraph 2 of article 73 when the latter is discussed.

At this juncture we refrain from making proposals in respect of
how the term delivery, appearing in several articles of ULIS, is to be
modified if our proposal concerning paragraph 1 of article 19 is
accepted. In our view this should be preceded by the study of the
Secretariat's "Analysis of the use of the concept of delivery". This
should be followed by the drafting of the new text of paragraph 1 of
article 19, on the basis of which other articles using the term
"delivery" could more easily be dealt with.