

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
LIMITED

A/CN.9/WG.2/WP.10/Add.1
13 December 1971

ORIGINAL: ENGLISH/FRENCH/
RUSSIAN

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Working Group on the International
Sale of Goods
Third session
Geneva, 17 January 1972

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

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ANNEX I

Articles 18 and 19 of ULIS

Comments and proposals of the representative of Hungary

Original: English

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, ^{their} "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.