

ANNEX II

Articles 18 and 19 of ULIS

Comments and proposals of the representative of the United Kingdom

/Original: English/

Article 18

This article contains a general declaration of the seller's obligations. It is not quite comprehensive. For example, it takes no account of Articles 54 or 91 which appear to impose obligations on the seller; but this is probably immaterial.

The Article refers to both the contract and the Uniform Law itself as sources of obligation in relation to the specific duties of the seller mentioned in the Article. Any express provisions of the contract relating to such matters as the delivery of the goods and the transfer of property may be incompatible with the relevant provisions of the Law and will, therefore, effect an implied exclusion of the Law pro tanto. Contractual obligations which are not incompatible with the Law will be supplementary to it. In these circumstances, it might have been expected that the Article would refer to the obligations "required by the present Law to the extent that its provisions have not been excluded by the parties and such further obligations relating to the delivery of the goods, the handing over of documents and the transfer of property as may be imposed by the contract in supplementation of the requirements of this Law".

No proposal appears to have been made for the amendment of this Article and there can be no question of deleting it since a number of subsequent provisions of the Law would lack a proper foundation in its absence. For example, the opening words of Article 33 (dealing with lack of conformity) presuppose that another Article imposes an obligation to deliver the goods.

It is thought that the existing simple provision suffices for all practical purposes.

Article 19

This article raises more fundamental questions.

The Hungarian and Mexican delegates both propose a revision of the concept of "delivery" so that it refers to the placing of goods at the disposal of the buyer instead of the handing over of goods. I am sympathetic to this proposal.

The present definition of "delivery" in terms of "handing over" is appropriate only where delivery is mentioned in connection with the seller's obligations. The word "delivery" is used in an entirely different concept in Chapter IV where the phrase "taking delivery" (first used in Article 56) is separately defined in Article 65. The definition in Article 19 is, therefore, really a definition of "making delivery".

"Deliveries" is used in a rather distinct sense in Article 75.

In view of the fact that "delivery" is referred to so widely in the Law, there may be a case for including all definitions relating to "delivery" in the opening general Chapter of the Law.

The proposed revision of Article 19 and its implication for subsequent Articles raise the question: whether it is right to limit "delivery" to cases where the goods conform with the contract. The proposition that there is no delivery if the goods do not conform with the contract produces certain anomalies and it occasions at least two complicated provisions in the Law, namely, Articles 35(1) and 97(2). The anomalies may be no more than theoretical but it would seem that the goods are never "delivered" where e.g. they do not conform to the contract but the buyer decides to keep them and to reduce the price (Article 41(c)) or where he loses the right to rely upon the lack of conformity (Article 39).

There seems to be no reason why non-conformity must be dealt with in terms of non-delivery. The proposed revision of Article 19.1 set out in paragraph 6 of Professor Barrera Graf's paper may be thought to provide a definition of "delivery" without reference to the question of conformity.

The Working Group may wish to consider in relation to Articles 19.2 and 19.3,

(a) whether the opening words of Article 19.2 "where the contract of sale involves carriage of the goods" are sufficiently precise; and

(b) how Article 19.3 operates in a case where goods are handed to a carrier without express appropriation to the contract, e.g. where A hands over 1000 tons of fuel oil to a carrier with instructions to deliver 100 tons to B and 900 tons to C.

As to (a), I presume that where the contract does not involve carriage but the goods are to be carried, e.g., where a foreign buyer purchases "ex works" delivery nonetheless takes place when the goods are handed over to the carrier who takes them on behalf of the buyer. It would be quite anomalous if the giving to a carrier of goods the subject of a c.i.f. contract constitutes "delivery" but the giving to a carrier of goods sold "ex works" does not. The relevant words were of course considered rather unsatisfactory in Article 1.1.a. of the Law. As to (b), it is presumed that there is no delivery until the consignment is split up or until delivery is made to the actual buyer.

Professor Barrera Graf has drawn attention to the use of a subsequent article of the Law of the phrase "handing over". These words are used to refer to the physical act involved in delivery in those circumstances where the act does not constitute "delivery" as defined in Article 19.1 because the goods which are handed over do not conform with the contract.

It is not easy to think of a term as simple as "handing over" to describe the act of placing goods at the disposal of the buyer. Such a term will be required if the definition of "delivery" is amended as proposed by the Hungarian and Mexican delegates but the reference to the conformity of goods with the contract is maintained.

We shall have to examine Articles 33(1), 37, 44, 45, 48, 97(2) and 98 closely if we redefine delivery and I think we must look at the appropriateness of the word "delivery" as at present defined in

the references to the delivery of missing parts or quantities in Articles 37, 42 and 44. It may be, therefore, that the Working Group should take no more than a provisional decision as to the revision of any definition of delivery and be prepared to retest the definition as the examination of subsequent Articles of the Law continues.