

ANNEX VIII

DRAFT REVISION OF ARTICLE C OF THE UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS AND EXPLANATORY COMMENTS BY PROFESSOR L. RECZETI, THE REPRESENTATIVE OF HUNGARY

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1. The parties shall be bound by any usage which they have expressly or impliedly made applicable to their contract and by any practices which they have established between themselves.
2. The usages which the parties shall be considered as having impliedly made applicable to their contract shall include any usage of which the parties are aware and which in international trade is widely known to, and regularly/and generally/ observed by parties to contracts of the type involved, or any usage of which the parties should be aware because it is widely known in international trade and which is regularly observed by parties to contracts of the type involved.
3. In the event of conflict with the present law the usages shall prevail unless otherwise agreed by the parties.
4. Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned.

EXPLANATORY COMMENT

According to the original wording of Art. 9 of ULIS, usages were to be applied in two cases: either on express or implied will of the parties, - or in cases where reasonable businessmen in the same situation as the parties usually consider the usages to be applicable to their contract. This latter provision, however, has given rise to certain doubts and concern. The reason of this was, that there are many international usages applicable to the same type of contract, applied in various geographical regions. Consequently two "reasonable men" from different parts of the world might consider different usages as regularly applied to their contract. Para. 2. of Art. 9. of ULIS did not contain exact definition as to which of the usages shall be applied to a given contract. It was, therefore, proposed to delete para 2. of Art. 9.

The present drafting of Art.:. provides the application of usages only in case this was expressly or impliedly stipulated by the parties. The new para 2 is an interpretative rule concerning the term "implied" as used in para 1. In the fourth line of the present text there is an alternative: we have to choose between the terms "regularly" and "generally". In the opinion of the Hungarian delegation the term "regularly observed" is enough to consider a certain usage applicable. The reason of it lies in the burden of proof. "Regularly" means that the party has to prove a permanent repetition of usages, - which seems to be easier than the proof of a "general" application. This may involve besides the regular/repeated/application a broader geographical application as well, the proof of which is more difficult/and less necessary/.

Paras 3. and 4. are left unchanged; para 3. is the last sentence of the para 2. of the original text, - para 4. is the former para 3.