

ANNEX XIII

DRAFT REVISION OF ARTICLES 10 AND 15 AND COMMENTS ON ARTICLES 11-13 OF
THE UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS BY THE DELEGATION
OF GHANA

A) SUGGESTED REVISION OF ARTICLE 10

"For the purposes of the present Law, a breach of contract shall be regarded as a major one when such breach substantially derogates from the attainment or the main purpose of the contract, as objectively determined by the Court."

REASONS FOR CHANGE

1. The concept of fundamental breach is one which is in use in certain common law countries, but which means something different from the concept of fundamental breach defined in Article 10 of ULIS. The use of the same technical term to refer to two different types of breach within one legal system is likely to lead to confusion and so it is suggested that the appropriate epithet ought to be "major" and not "fundamental".
2. The present definition of fundamental breach, based as it is on the speculative and uncertain test of foreseeability, does not best fulfill the objectives of ULIS, one of which seems to be to lay down clear objective rules on the basis of which businessmen the world over can plan their sales transactions. From this point of view, predictability of the result of the application of the rules of ULIS is important. Consequently, the changed formulation set out above is recommended because, although it is as flexible as the original formulation, it does not demand of the decision-maker the imagination of a clairvoyant.

B) SUGGESTED REVISION OF ARTICLE 15

It is suggested that the present wording of Article 15 be retained but that some formulation such as the one following be added to the article to accommodate the demands of the Soviet Union and other countries which require their foreign trade contracts to be in writing:

"However, where the municipal law of a contracting state requires that an international contract of sale shall be in writing and such contracting state, at the time of the ratification of the present Law, lodges a declaration with the Government of _____ to this effect, contracts with traders in such contracting state shall comply with the writing requirement."

- C) Articles 11, 12 and 13 are believed to be acceptable in their present form.