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**United Nations Commission  
on International Trade Law**

**UNCITRAL Digest of case law on the United Nations  
Convention on the International Sale of Goods\***

*Article 31*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) If the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

(b) If, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;

(c) In other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

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\* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

## Meaning and purpose of the provision

1. The article specifies the place of performance of the seller's duty of delivery. The provision fixes where the seller has to deliver the goods and what the seller has to do for that purpose. Article 31 addresses three different cases for which different rules apply. The general rules, however, appears to be that the seller's place of business is preferred as the regular place of performance.<sup>1</sup>

## General remarks

2. Under some procedural rules, such as the ones based upon article 5 (1) of the 1968 Brussels and 1988 Lugano Conventions<sup>2</sup>, article 31 can be the basis for jurisdiction<sup>3</sup>. Such jurisdiction also extends to claims concerning the breach of the duty to deliver, as well as claims relating to the delivery of non-conforming goods.<sup>4</sup>

3. The rules formulated in article 31 apply only when the parties have not agreed otherwise, as party autonomy prevails over article 31.<sup>5</sup> Many of the court decisions concerning article 31 therefore deal with the construction of contract terms in order to decide whether those terms fix a place of performance or merely allocate the costs of transportation. If one of the Incoterms is included in the contract this term defines the place of performance and excludes the Convention's rule.<sup>6</sup>

4. Article 31 has also been used to determine the place of performance where the buyer has to return the goods after the contract has been avoided (article 81 (2)).<sup>7</sup> Therefore in case of doubt and if not otherwise foreseen in the contract the buyer has to deliver back the goods at his place of business.<sup>8</sup>

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<sup>1</sup> In Italy the constitutionality of the corresponding domestic rule has been attacked but has been rejected—among others based upon article 31 (a) CISG: CLOUT case No. 91 [Corte Costituzionale, Italy, 19 November 1992].

<sup>2</sup> Under that article jurisdiction is founded at the place at which the obligation has been actually performed or had to be performed. The place where the obligation had to be performed has to be determined according to the applicable law or—where uniform law applies—by the latter, see CLOUT case No. 298 [European Court of Justice, C-288/92, 29 June 1994].

<sup>3</sup> E.g., CLOUT case No. 268 [Bundesgerichtshof, Germany, 11 December 1996]; Hoge Raad, the Netherlands, 26 September 1997, Unilex; CLOUT case No. 207 [Cour de Cassation, France, 2 December 1997]; CLOUT case No. 242 [Cour de Cassation, France, 16 July 1998]; Oberster Gerichtshof, Austria, 10 September 1998, Unilex.

<sup>4</sup> CLOUT case No. 268 [Bundesgerichtshof, Germany, 11 December 1996] (see full text of the decision); Gerechtshof 's-Hertogenbosch, the Netherlands, 9 October 1995, Unilex; CLOUT case No. 244 [Cour d'appel, Paris, France, 4 March 1998]; CLOUT case No. 245 [Cour d'appel, Paris, France, 18 March 1998].

<sup>5</sup> Oberlandesgericht München, Germany, 3 December 1999, *Recht der Internationalen Wirtschaft* 2000, 712.

<sup>6</sup> CLOUT case No. 244 [Cour d'appel, Paris, France, 4 March 1998] (see full text of the decision); CLOUT case No. 245 [Cour d'appel, Paris, France, 18 March 1998].

<sup>7</sup> Oberster Gerichtshof, Austria, 29 June 1999, *Transportrecht—Internationales Handelsrecht* 1999, 48.

<sup>8</sup> *Id.*

### Carriage involved (lit. a)

5. The first alternative of article 31 presupposes that a carriage of the goods be involved. For distant sales it has been held that article 31 (a) ordinarily applies.<sup>9</sup> A carriage of the goods is generally involved if the parties have envisaged (or if it is clear from the circumstances<sup>10</sup>) that the goods be transported by independent carrier(s) from the seller to the buyer. Therefore, shipment contracts (e.g., under the Incoterms FOB, CIF or other F- or C-terms) as well as destination contracts (e.g. Incoterm EXW) involve a carriage of the goods.<sup>11</sup>

6. The provision by implication further requires that it is neither the seller's nor the buyer's own obligation under the contract to bring the goods from the place of the seller (or from where they are) to the place of the buyer (or wherever specified by the buyer).<sup>12</sup> It does not imply that the seller itself must deliver the goods to the place of destination of the transport. On the contrary, the seller has duly performed its duty of delivery when the goods are handed over to the carrier.<sup>13</sup> If several subsequent carriers are involved handing over to the first carrier constitutes delivery.<sup>14</sup>

7. Handing over means that the goods are taken in possession by the carrier.<sup>15</sup> The handing over of the documents relating to the goods does not appear to substitute the handing over of the goods themselves and could not constitute their delivery unless otherwise agreed upon by the parties.<sup>16</sup>

### Goods at a particular place (lit. b)

8. The second alternative of article 31 requires first that no carriage of the goods in the sense of article 31 (a) is involved so that it is the buyer's task to get possession of the goods. Secondly, specific goods or goods of a specific stock or goods to be manufactured or produced are required. The third requirement is that both parties knew when the contract was concluded that the goods were (or were to be manufactured or produced) at a particular place. If those conditions are met the seller has to place the goods at the buyer's disposal at that place.<sup>17</sup>

9. To place the goods at the buyer's disposal means that "the seller has done that which is necessary for the buyer to be able to take possession."<sup>18</sup> The seller has

<sup>9</sup> Compare CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000].

<sup>10</sup> Hoge Raad, the Netherlands, 26 September 1997, Unilex.

<sup>11</sup> See the Secretariat Commentary to (then) article 29; Commentary on the draft Convention on Contracts for the International Sale of Goods, A/CONF.97/5, reproduced in United Nations Conference on Contracts for the International Sale of Goods: Official Records, at p. 29, para. 5.

<sup>12</sup> See also the Secretariat Commentary to (then) article 29, at p. 29, paras. 5 and 8.

<sup>13</sup> CLOUT case No. 331 [Handelsgericht des Kantons Zürich, Switzerland, 10 February 1999].

<sup>14</sup> *Id.*

<sup>15</sup> CLOUT case No. 247 [Audiencia Provincial de Córdoba, Spain, 31 October 1997] (loading on board).

<sup>16</sup> Secretariat Commentary to (then) article 29, at p. 29, para. 9.

<sup>17</sup> See, e.g., CLOUT case No. 47 [Landgericht Aachen, Germany, 14 May 1993] (place of manufacture of ear devices corresponds to the place of delivery under article 31 (b)).

<sup>18</sup> Secretariat Commentary to (then) article 29, at p. 30, para. 16.

therefore to prepare everything necessary under the circumstances so that the buyer has nothing else to do other than to take the goods at the place of delivery.<sup>19</sup>

### Other cases (lit c)

10. Article 31 (c) is a “residuary rule”.<sup>20</sup> The provision covers those cases which do not fall under paragraph (a) or (b) and for which the contract does not provide a particular place of performance. In that situation the seller has to place the goods at its place of business at the buyer’s disposal.

### Contractual modifications of the conventional place of performance

11. Many decisions relate to the construction of contract clauses which may or may not modify the place of performance as provided in article 31. The courts generally look at all the circumstances of the case. The meaning of certain formulations can therefore vary with the circumstances. In respect of the Incoterm EXW (“ex works”) it has been stated that it does not vary the place of performance under article 31 (a) or (c).<sup>21</sup> As far as the Incoterm DDP (“delivered, duty paid”) it has been decided that the place of delivery is at the buyer’s place of business.<sup>22</sup> However, the parties can agree upon a different place of delivery at any time. If the buyer requests that the goods be delivered to another firm processing the goods for the buyer, the place of business of that other firm is then the place to which the goods have to be delivered.<sup>23</sup> The clause “free delivery (buyer’s place of business)” has been interpreted in different ways. Two courts considered that clause to be a mere allocation of costs which left the place of performance unchanged.<sup>24</sup> Other courts stated the contrary.<sup>25</sup> The contract clause “pricing ex work Rimini/Italy” as such has been held not to change the place of performance under article 31 in a case where an Italian seller had to deliver a plant to manufacture windows to a German buyer.<sup>26</sup> But the additional contract provision that the seller had to erect and to run the plant for a certain period at the buyer’s place of business led to the conclusion that that was the location of the place of delivery.<sup>27</sup> If the seller is obliged to install

<sup>19</sup> CLOUT case no. 338 [Oberlandesgericht Hamm, Germany, 23 June 1998].

<sup>20</sup> Secretariat Commentary to (then) article 29, at p. 30, para. 15.

<sup>21</sup> CLOUT case No. 244 [Cour d’appel, Paris, France, 4 March 1998] (see full text of the decision); CLOUT case No. 245 [Cour d’appel, Paris, France, 18 March 1998]. With the same result for a German clause “ex work”, see CLOUT case No. 311 [Oberlandesgericht Köln, Germany, 8 January 1997], and Oberster Gerichtshof, Austria, 29 June 1999, *Transportrecht—Internationales Handelsrecht* 1999, 48.

<sup>22</sup> CLOUT case No. 340 [Oberlandesgericht Oldenburg, Germany, 22 September 1998].

<sup>23</sup> *Id.*

<sup>24</sup> CLOUT case No. 268 [Bundesgerichtshof, Germany, 11 December 1996]; Oberster Gerichtshof, Austria, 10 September 1998, Unilex.

<sup>25</sup> CLOUT case No. 317 [Oberlandesgericht Karlsruhe, Germany, 20 November 1992]; Oberlandesgericht Köln, Germany, 8 January 1997, Unilex.

<sup>26</sup> Oberlandesgericht München, Germany, 3 December 1999, *Recht der Internationalen Wirtschaft* 2000, 712.

<sup>27</sup> *Id.*

the delivered goods at a particular place or to erect at a particular place the plant that it sold, that place has been regarded as the place of delivery.<sup>28</sup>

### **Consequences**

12. When the seller has delivered the goods it has fulfilled its duty of delivery and is no longer responsible for the goods. Courts regularly conclude the risk of subsequent damage to, or loss of, the goods passes onto the buyer, unless such damage or loss is intentionally or negligently caused by the seller. Therefore if the seller has handed over the goods to the first carrier any delay in the transmission of the goods is the risk of the buyer who may or may not have a claim against the carrier.<sup>29</sup> Similarly if goods are loaded on board a vessel in the designated port the seller has performed its duty of delivery.<sup>30</sup>

### **Burden of proof**

13. The party asserting that a particular place of performance—other than the place provided for in article 31—had been agreed upon must prove such agreement.<sup>31</sup>

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<sup>28</sup> Corte di Cassazione, Italy, 10 March 2000, *Recht der Internationalen Wirtschaft* 2001, 308.

<sup>29</sup> CLOUT case No. 331 [Handelsgericht des Kantons Zürich, Switzerland, 10 February 1999]; similarly CLOUT case No. 377 [Landgericht Flensburg, Germany, 24 March 1999].

<sup>30</sup> CLOUT case No. 247 [Audiencia Provincial de Córdoba, Spain, 31 October 1997].

<sup>31</sup> CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000].