



**United Nations Commission
on International Trade Law**

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

Article 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

* 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.

1. Article 67 provides rules for when the risk of loss or damage passes to the buyer if the contract of sale involves carriage of the goods.¹ In general, the risk passes to the buyer when the seller hands over the goods to the specified carrier. The risk passes without regard to whether the seller or the buyer has title to the goods² or to who is responsible for arranging transport and insurance.³ The consequence of the passing of the risk on the buyer's obligation to pay is dealt with in article 66. The effect on the passing of risk in cases where the seller commits a fundamental breach is addressed in article 70.
2. Article 67 states a generally-accepted international rule. A constitutional court, hearing a challenge to a similar domestic rule on the ground that it was inconsistent with the constitutional principle of equality, cited articles 31 and 67 of the Convention as evidence of general acceptance.⁴
3. The parties may agree to derogate from the provisions of article 67 (article 6) or may be bound by usages of trade or a course of dealing that derogate (article 9). If the parties' agreement is consistent with article 67, courts frequently cite the article. This is also true when the parties agree on trade terms that address the passage of risk. Decisions have found the terms "CIF"⁵, "C & F"⁶ and "list price ex works"⁷ to be consistent with article 67 (1). If the trade term is inconsistent with article 67 (1), the parties' agreement prevails in accordance with article 6. Thus, although the goods in the particular case were handed over to a third-party carrier, a court did not apply article 67 in a case where the parties agreed that the goods would be delivered "*frei Haus*" ("free delivery"), which the court construed to mean that the seller undertook to deliver the goods to the buyer's place of business.⁸

Contracts of sale involving carriage of goods

4. Article 67 does not define when a contract of sale involves carriage of goods. A similar formula is used in article 31 (a), which provides that if the contract of sale involves carriage of goods the seller satisfies its obligation to deliver the goods when it hands them over to the first carrier. Given the identical language in the two provisions, they should be read to cover the same transactions.⁹

¹ [Federal] Southern District Court of New York, United States, 26 March 2002 (*St. Paul Guardian Ins. Co. v. Neuromed Medical Systems & Support GmbH*) (plaintiffs' experts wrongly asserted that Convention did not include rules on passage of risk).

² [Federal] Southern District Court of New York, United States, 26 March 2002 (*St. Paul Guardian Ins. Co. v. Neuromed Medical Systems & Support GmbH*) (passage of risk and transfer of title need not occur at the same time).

³ CLOUT case No. 247 [Audiencia Provincial de Córdoba, Spain, 31 October 1997] (risk passes without regard to who must arrange for transport or insurance).

⁴ CLOUT case No. 91 [Corte Costituzionale, Italy, 19 November 1992].

⁵ CLOUT case No. 253 [Cantone del Ticino Tribunale d'appello, Switzerland, 15 January 1998] (see full text of the decision).

⁶ CLOUT case No. 191 [Cámara Nacional de Apelaciones en lo Comercial, Argentina, 31 October 1995].

⁷ CLOUT case No. 283 [Oberlandesgericht Köln, Germany, 9 July 1997].

⁸ CLOUT case No. 317 [Oberlandesgericht Karlsruhe, Germany, 20 November 1992].

⁹ See, e.g., CLOUT case No. 360, Germany, 2000 (the word "carrier" means the same in both art. 31 and art. 67).

5. Article 68 sets out special rules when goods are sold in transit. Therefore, a sale of goods in transit is not a contract “involving the carriage of goods” within the meaning of article 67.

6. A contract of sale involves the carriage of goods when it expressly or implicitly provides for subsequent carriage. The contract may expressly provide that the goods are to be carried by including details with respect to the manner of carriage. This is often done most efficiently by incorporating trade terms, such as the International Chamber of Commerce’s Incoterms (e.g. “CIF”), that spell out the obligation of the seller to deliver the goods by a carrier. Other terms of the contract may, however, imply that the goods are to be carried. An arbitral tribunal found that the contract involved carriage when a contract provided that “the buyer shall pick up the fish eggs at the Seller’s address and bring the goods to his facilities in Hungary” and the price was stated to be “FOB Kladovo”.¹⁰

7. Article 67 refers to the carriage of goods and does not expressly require that the goods be carried by a third-party carrier. One decision assumes that delivery to a freight forwarder is the equivalent of delivery to the “first carrier”.¹¹

Allocation of risk

8. Paragraph (1) of article 67 sets out separate rules for when the seller is not bound to hand the goods over to the carrier at a particular place (first sentence) and for when the seller is so bound (second sentence). In both cases, the risk passes to the buyer when the seller hands over the goods to the specified carrier.

-- Where seller is not bound to hand over goods to carrier at particular place

9. If the seller is not bound to hand over the goods to a carrier at a particular place, the risk of loss or damage passes when the goods are handed over to the first carrier. This rule is consistent with the seller’s obligation to deliver the goods as set out in article 31 (a). In the absence of proof that the parties agreed on delivery at another location, one court found that the seller delivered and the risk passed when the seller handed over the goods to the first carrier.¹² Another court found that the risk had passed when a seller that handed over the good to a carrier in a timely fashion and therefore the seller was not responsible for any subsequent delay in delivery.¹³

10. Where the parties agreed that the goods would be delivered “*frei Haus*” (“free delivery”), a court construed the term to mean that the seller undertook to deliver the goods to the buyer’s place of business even though the goods in the particular case involved carriage. The court therefore did not apply article 67 (1).¹⁴

¹⁰ CLOUT case No. 163 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 10 December 1996].

¹¹ CLOUT case No. 283 [Oberlandesgericht Köln, Germany, 9 July 1997].

¹² CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000].

¹³ CLOUT case No. 219 [Tribunal Cantonal Valais, Switzerland, 28 October 1997].

¹⁴ CLOUT case No. 317 [Oberlandesgericht Karlsruhe, Germany, 20 November 1992].

-- Where seller is bound to hand over goods to carrier at particular place

11. The second sentence of paragraph (1) provides that if the seller is bound to hand over goods to a carrier at a particular place, the risk passes when the goods are handed over to the carrier at that place. An agreement by a seller whose place of business is inland to send the goods from a port falls within paragraph (1). There are no reported decisions interpreting this provision.

Retention of documents by seller

12. The third sentence of paragraph (1) provides that the passage of risk under article 67 is not affected by the seller's retention of documents controlling the disposition of the goods. There are no reported decisions interpreting this provision.

Identification of goods

13. Paragraph (2) of article 67 conditions the passage of risk on clear identification of the goods to the contract of sale.¹⁵ This rule is designed to protect against the possibility of a seller identifying lost or damaged goods after casualty. One court found that the requirement that the goods be clearly identified was satisfied by the description of the goods in the shipping documents.¹⁶ Another court noted that the parties to a CIF contract agreed that the risk of loss passed when cocoa beans clearly identified to the contract of sale was handed over to the carrier at the port of shipment.¹⁷

¹⁵ Article 32 (1) requires the seller to notify the buyer of the consignment of the goods if they are not otherwise clearly identified.

¹⁶ CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000].

¹⁷ CLOUT case No. 253 [Cantone del Ticino Tribunale d'appello, Switzerland, 15 January 1998].