

### Article 3

[Contracts for services or for goods to be manufactured]

(1) This Convention does not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

(2) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

#### PRIOR UNIFORM LAW

ULIS, article 6.  
ULF, article 1 (7).  
Prescription Convention, article 6.

#### Commentary

1. Article 3 deals with two different situations in which the contract includes some act in addition to the supply of goods.

*Sale of goods and supply of labour or other services by the seller, paragraph (1)*

2. This paragraph deals with contracts under which the seller undertakes to supply labour or other services in addition to selling goods. An example of such a contract is where the seller agrees to sell machinery and undertakes to set it up in a plant in working condition or to supervise its installation. In such cases, paragraph (1) provides that if the "preponderant part" of the obligation of the seller consists in the supply of labour or other services, the contract is not subject to the provisions of this Convention.

3. It is important to note that this paragraph does not attempt to determine whether obligations created by one instrument or transaction comprise essentially one or two contracts. Thus, the question whether

the seller's obligations relating to the sale of goods and those relating to the supply of labour or other services can be considered as two separate contracts (under what is sometimes called the doctrine of "severability" of contracts), will be resolved in accordance with the applicable national law.

*Supply of materials by the buyer, paragraph (2)*

4. The opening phrase of paragraph (2) of this article provides that the sale of goods to be manufactured or produced by the seller to the buyer's order is as much subject to the provisions of this Convention as the sale of ready-made goods.

5. However, the concluding phrase in this paragraph "unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production," is designed to exclude from the scope of this Convention those contracts under which the buyer undertakes to supply the seller (the manufacturer) with a substantial part of the necessary materials from which the goods are to be manufactured or produced. Since such contracts are more akin to contracts for the supply of services or labour than to contracts for sale of goods, they are excluded from the scope of this Convention, in line with the basic rule of paragraph (1).