

Article 32

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

OVERVIEW: MEANING AND PURPOSE OF THE PROVISION

1. When the contract involves carriage of the goods (i.e., transporting the goods via a third party), article 32 sets forth obligations of the seller beyond those specified in article 31.

2. The article states three rules: If goods are not clearly identified (by markings on the goods, shipping documents, or other means) as the goods covered by the contract when they are handed over to a carrier, the seller must specify the goods in a notice to the buyer of the consignment (paragraph 1).¹ When the seller is bound to arrange for carriage of the goods, it must make reasonable arrangements (paragraph 2); if the seller is not bound to arrange for insurance covering the carriage of goods, it must nevertheless, at the buyer's request, provide the buyer "all available information" needed for the buyer to procure such insurance (paragraph 3).

3. There is little case law on article 32.² Three decisions have applied article 32 (2).³ This provision requires a seller who is under a duty to arrange for carriage of the goods to choose "means of transportation appropriate in

the circumstances and according to the usual terms for such transportation", but the provision does not otherwise oblige the seller to employ a particular mode of transport. Under article 6 of the Convention, of course, the parties could agree to a specific type of carrier. According to one of the decisions, the buyer in that case had failed to meet the burden of proving an agreement to transport the goods by a particular means (truck), so that the choice of the mode of transportation was left to the seller.⁴ The second decision stated that the price-delivery term CFR ("cost, freight") obliges the seller to arrange for the transport contract. The third decision held that a seller who is obliged to arrange for the transport of the goods does not fulfil this duty if it does not inform the carrier of the correct address of the buyer to whom the goods must be shipped.⁵

BURDEN OF PROOF

4. The party asserting an alleged agreement that would modify or go beyond the rules of article 32 has the burden of proving that such an agreement was concluded. Failing sufficient proof, article 32 applies.⁶

Notes

¹ The rules of article 32 (1) also relate to the Convention's rules on the passing of risk where carriage of the goods is involved. See article 67 (2).

² As of May 2006, CLOUT reports four decisions, and the website at www.cisg.law.pace.edu only 12 decisions, on article 32, most of which merely quote the provision.

³ See CLOUT case No. 261 [Bezirksgericht der Sanne, Switzerland, 20 February 1997]; Tribunal cantonal de Vaud, Switzerland, 26 May 2000, CISG-online No. 1840; Cixi People's Court, Zhejiang Province, People's Republic of China, 18 July 2001, CISG-online No. 1507.

⁴ CLOUT case No. 261 [Bezirksgericht der Sanne, Switzerland, 20 February 1997].

⁵ Cixi People's Court, Zhejiang Province, People's Republic of China, 18 July 2001, CISG-online No. 1507.

⁶ CLOUT case No. 261 [Bezirksgericht der Sanne, Switzerland, 20 February 1997] (the buyer failed to prove an agreement that the goods should be transported to Moscow by truck).