

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

OVERVIEW: MEANING AND PURPOSE OF THE PROVISION

1. Article 34 addresses the seller's duty to deliver documents relating to the goods being sold, where such an obligation exists. The provision does not create such an obligation, but presupposes it. The obligation can follow from the contract, practices between the parties or trade usages.
2. According to the first sentence of article 34, the documents must be tendered at the time and place, and in the form, required by the contract. The second sentence provides that, if the seller has delivered non-conforming documents before the agreed time, he has the right to cure the defects if this would not cause the buyer unreasonable inconvenience or expense. Under the final sentence of the provision, however, the buyer can claim any damages suffered despite the seller's cure.

DOCUMENTS RELATING TO THE GOODS: DEFINITION AND OBLIGATION TO DELIVER

3. Article 34 applies when "the seller is bound to hand over documents relating to the goods," but the provision does not specify when the seller has that obligation nor does it further define the documents to which it refers. The contract generally provides for what documents must be handed over, which it can do, e.g., by incorporating particular price-delivery terms, including price-delivery terms defined in the Incoterms. In one case the court concluded that, under an FOB term ("free on board") the seller is obliged to provide the buyer with an invoice stating the quantity and value of the goods.¹ Trade usages and practices between the parties may also dictate which documents must be provided.
4. "Documents relating to the goods" in the sense of article 34 include, in the main, documents that give their holders control over the goods, such as bills of lading, dock receipts and warehouse receipts,² but they also include insurance policies, commercial invoices, certificates (e.g., of origin, weight, contents or quality), and other similar documents.³
5. It has been found that the seller is usually not obliged to procure customs documents for the export of the goods, unless the parties agree otherwise.⁴

HANDING OVER OF DOCUMENTS

6. Article 34 requires that the place, time and manner of handing over the documents comply with the contract.⁵ Where price-delivery terms (such as Incoterms) are agreed upon, they will often fix these modalities. With regard to the price-delivery term CFR ("cost, freight"), one arbitral tribunal has held that that clause does not render the time for handing over documents of the essence of the contract.⁶ If neither the contract nor trade usages nor practices between the parties provide specific modalities for handing over the documents, the seller must tender the documents "in such time and in such form as will allow the buyer to take possession of the goods from the carrier when the goods arrive at their destination, bring them through customs into the country of destination and exercise claims against the carrier or insurance company."⁷ Where a buyer requested partial deliveries, a court regarded the seller's handing over of 'delivery orders' instead of the bills of lading as sufficient.⁸

NON-CONFORMING DOCUMENTS

7. The handing over of non-conforming documents constitutes a breach of contract to which the normal remedies apply.⁹ Provided the breach is of sufficient gravity it can amount to a fundamental breach, thus permitting the buyer to declare the contract avoided.¹⁰ However, delivery of non-conforming documents (a false certificate of origin and a faulty certificate of chemical analysis) has been found not to constitute a fundamental breach if the buyer itself can easily cure the defect by requesting accurate documents from the producer.¹¹ Another court has held that a quality certificate was not defective even if it did not state that, with time, the sold juice would become darker in colour.¹² However, the omission of certificates proving the bio-quality of the goods has been regarded as a breach of contract.¹³

EARLY TENDER OF DOCUMENTS

8. If the seller has handed over non-conforming documents before the time the documents are due, article 34 permits the seller to cure the lack of conformity provided the cure is accomplished by the due date and the buyer is not caused unreasonable inconvenience or expense. The cure may be effected by delivery of conforming documents.¹⁴

Notes

¹ CLOUT case No. 1193 [Compromex Arbitration, Mexico, 29 April 1996].

² Secretariat Commentary to (then) article 32, p. 31, paragraph 2. See also CLOUT case No. 216 [Kantonsgericht St. Gallen, Switzerland, 12 August 1997] (see full text of the decision).

³ CLOUT case No. 171 [Bundesgerichtshof, Germany, 3 April 1996] (certificate of origin and certificate of chemical analysis); CLOUT case No. 488 [Audiencia Provincial Barcelona, sección 14a, Spain, 12 February 2002] (certificate of origin); Tribunal of International Commercial Arbitration of the Ukrainian Chamber of Commerce and Trade, Ukraine, 5 July 2005, English translation available on the Internet at www.cisg.law.pace.edu (consignment note, quality certificate, insurance policy, invoice and packing list); China International Economic & Trade Arbitration Commission, People's Republic of China, September 2006 (Arbitral award No. CISGT 2006 14), English translation available on the Internet at www.cisg.law.pace.edu (spare parts case; digital copy of airway bill not a sufficient document); CLOUT case No. 1037 [Audiencia Provincial de Barcelona, Spain, 24 March 2009] (export license, health and quality certificates, customs documentation for frozen cuttlefish); see also Secretariat Commentary to (then) article 32, p. 31, paragraph 2.

⁴ CLOUT case No. 216 [Kantonsgericht St. Gallen, Switzerland, 12 August 1997].

⁵ See also Court of Arbitration of the International Chamber of Commerce, France, March 1995 (Arbitral award No. 7645), *ICC International Court of Arbitration Bulletin* 2000, 34.

⁶ *Ibid.*

⁷ Secretariat Commentary to (then) article 32, p. 31, paragraph 3.

⁸ Hof Antwerpen, Belgium, 14 April 2006 (Lothringer Gunther Grosshandelsgesellschaft für Bauelemente und Holzwerkstoffe GmbH v. Fepeco International N.V.), English translation available on the Internet at www.cisg.law.pace.edu.

⁹ CLOUT case No. 171 [Bundesgerichtshof, Germany, 3 April 1996]; CLOUT case No. 808 [China International Economic & Trade Arbitration Commission, People's Republic of China, 4 June 1999] (typing error in letter of credit ["1999" instead of "1998"] may be a breach, but is not a fundamental breach and does not give rise to a right to avoidance).

¹⁰ CLOUT case No. 171 [Bundesgerichtshof, Germany, 3 April 1996].

¹¹ *Ibid.*

¹² CLOUT case No. 1128 [Tribunal Supremo, Spain, 9 December 2008], also available on the Internet at <http://www.cisgspanish.com>.

¹³ Oberlandesgericht München, Germany, 13 November 2002, CISG-online No. 786.

¹⁴ Court of Arbitration of the International Chamber of Commerce, France, March 1998 (Arbitral award No. 9117), *ICC International Court of Arbitration Bulletin* 2000, 90.