

### Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

#### OVERVIEW

1. Article 68 provides rules for the time when risk passes if goods are sold while in transit. The general rule for goods sold in transit is that the risk passes from the time the contract of sale is concluded.<sup>1</sup> If, however, the circumstances so indicate, the risk is deemed to have passed when the goods were handed over to the carrier.<sup>2</sup> Only if the seller knew or ought to have known that the goods were lost or damaged at the time the contract was concluded and did not inform the buyer will the risk remain with the seller. Some courts cite article 68 without interpreting its contents.<sup>3</sup> The consequence of the passing of the risk on the buyer's obligation to pay is dealt with in article 66. The effect of seller's fundamental breach on the passing of risk is addressed in article 70.

2. One arbitral tribunal cited article 68, together with article 32, to support the proposition that parties may buy and sell goods which are in any state, phase or process.<sup>4</sup>

#### DISCREPANCY IN AUTHENTIC TEXT

3. The authentic Russian text of Article 68 adopted when the text of the Convention was originally approved did not contain the first sentence of Article 68. One court interpreted that text and held that the risk in respect of goods sold in transit passes from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage.<sup>5</sup> The authentic Russian text of article 68 has been corrected.<sup>6</sup>

#### Notes

<sup>1</sup> China International Economic and Trade Arbitration Commission, People's Republic of China, 1 April 1997 (Fishmeal case), English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>2</sup> Landgericht Paderborn, Germany, 10 June 1997 (Furniture case), available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (affirmed in CLOUT case No. 338 [Oberlandesgericht Hamm, Germany 23 June 1998] which applied Article 69 instead).

<sup>3</sup> Schiedsgericht der Börse für landwirtschaftliche Produkte in Wien, Austria, 10 December 1997, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>4</sup> China International Economic and Trade Arbitration Commission, People's Republic of China, 10 March 1995, (Polyethylene film case), English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>5</sup> Federal Arbitration Court for the Northwestern Circuit, Russian Federation, 3 June 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>6</sup> See Depository notification C.N.233.2000.TREATIES-2 of 27 April 2000 (rectification of the Russian authentic text).