

**General Assembly**

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**United Nations Commission
on International Trade Law****UNCITRAL Digest of case law on the United Nations
Convention on the International Sale of Goods****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.

Meaning and purpose of the provision

1. The provision specifies the seller's duty to deliver documents relating to the goods, where such an obligation exists.
2. According to the first part of article 34, the documents must be tendered as required by the contract. If the seller has delivered non-conforming documents before the agreed time, the seller has the right to cure the defects if this would not cause the buyer unreasonable inconvenience or expense. Despite the seller's cure, the buyer is allowed to claim any remaining damages.

* 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.

Documents relating to the goods

3. The provision refers generally to documents relating to the goods. What documents must be handed over is generally provided for in the contract, more so, when the contract has incorporated one of the Incoterms. In one case, the court concluded that under a FOB contract 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 indicate which documents are to be provided.

4. “Documents” in the sense of article 34 are mainly documents that give its holder the control over the goods, such as bills of lading, dock receipts, warehouse receipts,² but also insurance policies, commercial invoices, certificates of origin, weight, contents or quality or the like are covered.³

5. It has been found that the seller is generally not obliged to procure customs documents for the export of the goods, unless otherwise agreed upon by the parties.⁴

Handing over of documents

6. The place, time and manner of handing over of the documents has to comply with the contract.⁵ Where Incoterms are agreed upon, they will often fix these modalities. With regard to the Incoterm CFR (“cost, freight”), one arbitral tribunal decided that that clause does not render time (for the handing over of documents) essential to the contract.⁶ If neither the contract nor trade usages nor practices between the parties provide for specific modalities of handing over the documents then 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

¹ COMPROMEX Arbitration, Mexico, 29 April 1996, Unilex.

² Secretariat Commentary to (then) article 32, p. 31, para. 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 analysis); see also Secretariat Commentary to (then) article 32, p. 31, para. 2.

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

⁵ See also ICC Court of Arbitration, France, March 1995, award No. 7645, *ICC International Court of Arbitration Bulletin* 2000, 34.

⁶ *Id.*

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

Non-conforming documents

7. The handing over of non-conforming documents constitutes a breach of contract to which the normal remedies apply.⁸ Provided the breach is of sufficient gravity it can also amount to a fundamental breach and allow the buyer to declare the contract avoided.⁹ However, delivery of non-conforming documents (false certificate of origin and faulty certificate of chemical analysis) has been found not to constitute fundamental breach if the buyer itself can easily cure the defect by requesting correct documents from the producer.¹⁰

Early tender of documents

8. Article 34 grants the seller a right to cure any defects up to the delivery time as long as the buyer is not caused unreasonable inconvenience or expense. The cure may be executed by delivery of conforming documents.¹¹

⁸ CLOUT case No. 171 [Bundesgerichtshof, Germany, 3 April 1996].

⁹ *Id.*

¹⁰ *Id.*

¹¹ ICC Court of Arbitration, France, March 1998, award No. 9117, *ICC International Court of Arbitration Bulletin* 2000, 90.