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Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

In general

1. Article 41 governs the seller's duty to deliver goods of which the buyer will enjoy undisturbed possession and ownership. Although under article 4 (b) questions concerning "the effect which the contract may have on the property in the goods sold" is beyond the scope of the CISG, article 41 makes it clear that the seller's obligation to give the buyer clear property rights in the goods, so that the buyer is free from third party rights or claims, is a matter governed by the Convention, and that the seller will be in breach of its duties if it does not meet the requirements

* 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.

imposed by article 41. The basic statement of the seller's obligation is found in the first sentence of article 41: the seller must deliver goods that "are free from any right or claim of a third party . . .". An exception to this obligation arises, however, if the buyer "agreed to take the goods subject to that right or claim". The second sentence of article 41 mandates a distinction between third party rights or claims based on "industrial or other intellectual property" and other rights or claims of third parties. Only the latter are within the scope of article 41, whereas the former are governed by article 42 of the Convention.

Application of article 41

2. There have been relatively few decisions applying article 41; they have tended to focus on what constitutes a breach of the seller's obligations under the provision. In one, the court stated that a seller would violate article 41 if it delivered goods subject to a restriction, imposed by the seller's own supplier, on the countries in which the buyer could resell the goods, unless the buyer had previously consented to the restriction.¹ In another, an arbitration panel indicated that article 41 required a seller to arrange for its wholly-owned subsidiary, which had obtained a court order putting under arrest the vessel in which the goods were loaded, to avoid or lift the effects of the order.²

¹ CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision).

² ICC Arbitration Case No. 8204 of 1995, Unilex.