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B. General conditions of sale and standard contracts

1. Implementation of the Commission's decisions relating to general conditions of sale and standard contracts: report of the Secretary-General (A/CN.9/54) *

INTRODUCTION

1. The United Nations Commission on International Trade Law at its third session decided to request the Secretary-General:

"(a) To continue with the programme of implementation of the Commission's decision made at its second session,¹ and to submit to the fourth session of the Commission a progress report thereon including, if possible, an analysis of the comments made by the regional economic commissions and by States on the General Conditions of the Economic Commission for Europe, the General Conditions of 1968 of the Council for Mutual Economic Assistance and Incoterms, 1953;

"(b) To commence a study on the feasibility of developing general conditions embracing a wider scope of commodities. The study should take into account, *inter alia*, the conclusions in the report, referred to in paragraph 1 above, and the analysis

of the General Conditions of the Economic Commission for Europe, to be submitted by the representative of Japan."²

"(b) To request the Secretary-General to make the aforementioned general conditions available in adequate number of copies and in the appropriate languages; the general conditions should be accompanied by an explanatory note describing, *inter alia*, the purpose of the ECE general conditions, and the practical advantages of the use of general conditions in international commercial transactions;

"(c) To request the regional economic commissions, on receiving the above-mentioned ECE general conditions, to consult the Governments of the respective regions and/or interested trade circles for the purpose of obtaining their views and comments on: (i) the desirability of extending the use of the ECE general conditions to the regions concerned; (ii) whether there are gaps or shortcomings in the ECE general conditions from the point of view of the trade interests of the regions concerned and whether, in particular, it would be desirable to formulate other general conditions for products of special interest to those regions; (iii) whether it would be desirable to convene one or more committees or study groups, on a world-wide or more limited scale, whereby with the participation (if appropriate) of an expert appointed by the Secretary-General, matters raised at a regional level would be discussed and clarified;

"(d) To request the other organizations to which the ECE general conditions are transmitted to express their views on point (i), (ii) and (iii) of sub-paragraph (c) above;"

* 8 March 1971.

¹ At its second session the Commission decided:

"1. (a) To request the Secretary-General to transmit the text of the ECE general conditions relating to plant, machinery, engineering goods and lumber to the Executive Secretaries of the Economic Commission for Africa (ECA), the Economic Commission for Asia and the Far East (ECAFE), and the Economic Commission for Latin America (ECLA), as well as to other regional organizations active in this field;

² Report of the United Nations Commission on International Trade Law on the work of its third session (1970); *Yearbook of the United Nations Commission on International Trade Law* (hereinafter referred to as UNCITRAL Yearbook), vol. I: 1968-1970, part two, III, A, para. 102.

I. IMPLEMENTATION OF THE COMMISSION'S DECISION WITH RESPECT TO THE ECE AND CMEA GENERAL CONDITIONS AND INCOTERMS 1953

2. Pursuant to the decision of the Commission set out in paragraph 1 above, the Secretary-General, in his letters of 15 and 19 June 1970, requested the United Nations Economic Commissions for Africa, Latin America, and Asia and the Far East to inform the Governments of the States in their region of the decision of the Commission and to invite them to transmit their views and comments on the questions relating to the ECE General Conditions, contained in the Commission's decisions adopted at its second session,³ and on the 1968 General Conditions of CMEA, and Incoterms 1953. He also requested the Economic Commissions to submit their own views and comments on the said instruments.

3. No comments were received from the Economic Commissions of the United Nations on the general conditions of sale and standard contracts set out in the Commission's decision. However, consultations have been opened by the secretariat of ECA on the possibility of a meeting for the detailed review of certain ECE General Conditions that are of special significance for sellers and buyers in Africa.

4. In response to the inquiries from the Economic Commissions described in paragraph 2, *supra*, Ceylan, China, Cuba, Fiji and Surinam have made comments. The substantive parts of these comments are reproduced in annex I to this report.

5. It should, however, be noted that the Asian-African Legal Consultative Committee, an intergovernmental organization, has shown considerable interest in the subject of general conditions of sale and standard contracts. At its twelfth session held in January 1971 in Colombo, Ceylon, the subject was entrusted to a sub-committee to determine whether, in the light of ECE and CMEA general conditions, it was desirable to adopt standard or model contracts in respect of commodities of special interest to buyers and sellers of the Asian-African region. On the recommendation of this sub-committee, the Committee decided to investigate the need for developing model contracts for the sale of specific commodities such as rubber, timber, rice, textiles, machinery, oil and coconut products; following this investigation, the Committee plans to consider the convening, in collaboration with United Nations agencies, of an international conference of legal and commercial experts of the Afro-Asian region.

II. FEASIBILITY OF DEVELOPING GENERAL CONDITIONS EMBRACING A WIDER SCOPE OF COMMODITIES

A. Organization of the study

6. With respect to the Commission's decision quoted in paragraph 1 above, requesting the Secretary-General to commence a study on the feasibility of developing general conditions embracing a wider scope of com-

modities, it was thought that the first step in implementing that decision should be an analysis of existing general conditions and standard contract forms,⁴ especially those not restricted to specific commodities. This analysis is being made in two phases:

(a) The first phase of the study is a preliminary study directed towards the identification of issues that are dealt with in existing general conditions relating to a wide scope of commodities (hereinafter referred to as "general" general conditions").

(b) It is planned that the second phase of the study will be an analysis of the provisions of existing general conditions relating to the above issues. The purpose of both phases of the analysis would be to investigate the possibility of formulating appropriate provisions that could be applied to a wide scope of commodities. This preliminary report is a commencement of the first phase of the study indicated in (a) above.

7. On the basis of the above considerations, the Secretariat invited the representatives of the members of the Commission to supply information concerning general conditions of sale and standard contracts, used in international trade, which were prepared by, or under the auspices of national organizations, trade associations and commodity exchanges. The representatives were requested to send copies of those documents where available. The Secretariat also requested chambers of commerce, trade associations and other organizations all over the world to inform it of the existence of such documents and to send copies thereof. As a result, the Secretariat succeeded in collecting more than two hundred sets of general conditions of sale and standard contract forms relating to a great variety of commodities.

B. Survey of the collected general conditions

8. Taking also into account the general conditions prepared by the Economic Commission for Europe, and CMEA, the general conditions of sale and standard contract forms collected by the Secretariat might be categorized as applicable to:

(A) a certain kind of commodity (e.g., groundnuts) or a particular type of commodity (e.g., West African groundnuts);

(B) a certain group of commodities (e.g., cereals);

(C) all commodities without exception.

It should be noted that the same formulating agency often draws up separate general conditions for the sale of a certain kind of commodity or group of commodities according to the terms of the sale (e.g., f.o.b., c.i.f.) or other feature of the sale (e.g., conditions final at shipment of condition guaranteed at discharge, etc.).

9. The greatest number of general conditions belongs to category A, especially to agricultural products. There is a much smaller but nevertheless significant number of instruments applicable to the sale of machinery and other engineering goods, chemicals, etc. A list of the

³ See para. 1 (c) of the decision in foot-note 1 above.

⁴ Hereinafter referred to as "general conditions", "forms", "formulations" or "instrument".

commodities to which the collected general conditions relate is set out in annex II to this report.

10. Of the instruments received only a few have been drawn up by intergovernmental organizations, i.e. ECE and CMEA. ECE has prepared sixteen standard contract forms for the sale of cereals and a number of general conditions for the supply and erection of plant and machinery as well as for the sale of miscellaneous other commodities.⁶ ECE is now working on the preparation of further such instruments. CMEA has drawn up the "General Conditions of Delivery of 1968" that applies, without restriction as to type of commodity, to all sales among member countries of CMEA;⁶ CMEA has also drawn up standard contract forms for the sale of oil, coal and foundry-coke. All other such instruments were drawn up by national chambers of commerce, international and national commodity associations and federations of either sellers or buyers, commodity exchanges and the like. Some of the instruments were agreed upon by trade associations or similar organizations of sellers and buyers belonging to two or more countries.

C. Instruments under consideration

11. This preliminary report analyses the issues dealt with in instruments that can be considered as falling within the scope of "general" general conditions. These instruments, which will be made available to the Commission in a separate document (A/CN.9/R.6), are the following:

- A. CMEA General Conditions of Delivery (1968)
- B. Terms and conditions of the Commodity Association of the Hamburg-exchange (1970)
- C. General conditions of sale on c.i.f. basis for the products of Madagascar (coffee excepted)
- D. Standard Form of Contract for sale of Burma products on c.i.f. basis
- E. Standard Form of Contract for sale of Burma products on f.o.b. basis
- F. (a) Sino-Japanese Trade Import Contract (import to Japan)
- (b) Sino-Japanese L-T. Trade Import Contract (import to Japan)
- (c) Sino-Japanese Trade Export Contract (export from Japan)
- G. General terms and conditions for the sale of sundries (Japan International Trade Arbitration Association)
- H. Contract of sale form between China and Viet-Nam
- I. General conditions of sale for imported goods (Chambre

⁶ A list of the ECE General Conditions was attached to document A/CN.9/18 as annex III; UNCITRAL Yearbook, vol. I: 1968-1970, part three, C, 1.

⁶ Pursuant to the decision of the Commission at its second session (Report of UNCITRAL on its second session (1969) (UNCITRAL Yearbook, vol. I: 1968-1970, part two, II, A), para. 60 (2) (b), the Secretary-General has submitted copies of the CMEA General Conditions of 1968 to the members of the Commission and the United Nations regional economic commissions for information, and requested the latter to transmit copies to Governments and interested trade circles in their region.

syndicale des négociants importateurs de matériel de travaux publics et de manutention)

- J. Conditions governing the trade in ships' stores, provisions and supplies (ISSA conditions) (international Ship Suppliers Association)
- K. Contract form of the Foreign Transaction Company of Iran
- L. Conditions of Sale of f.o.b. contracts generally (Ceylon Chamber of Commerce)

12. The scope of application of none of the above general conditions is expressly restricted to a certain group or kind of commodity; their text, however, indicates that most of them are intended to apply either to agricultural products or to manufactured goods. Thus, the forms listed in paragraph 11 above, as B, C, D, E, F/a, F/b, H and K seem to apply primarily to agricultural goods while F/c, G, I and J apply mainly to manufactured goods. The texts or general conditions A and L do not point to any special kind of commodity.

D. Identification of the issues

13. In the following paragraphs, this report identified the issues that are dealt with in general conditions referred to in paragraph 11 above. Specific reference (e.g. by section or paragraph number) to the relevant provisions of the general conditions under consideration are given. Issues that are dealt with only in one or in a few of the formulations are also included in this report whenever they are considered relevant to a scheme of "general" general conditions. On the other hand, issues which do not seem suitable to such a scheme have been disregarded.

Formation of contract

14. The formation of contract is only dealt with in formulation A (§§ 1-3). This instrument states the time when the contract is deemed to be concluded (§ 1), the binding effect of offers (§ 1(2)(3)), the form of the contract (§ 2) and the legal character of appendices to the contract (§ 3).

Definitions

15. Several of the formulations in question contain provisions with respect to trade terms. Some of them (A and B) provide for interpretation of a number of such terms. Instrument "A" sets forth the interpretation of "f.o.r. border of the seller's country"—§ 5—; "by road"—§ 6—; "f.o.b.", "c.i.f.", "c and f"—§ 7—; "by air"—§ 8—; "by mail"—§ 9—. Instrument "B" provides for the interpretation of "franco"—§ 41(1)—; "f.o.b." and "fas"—§ 41(2)—; "f.o.r."—§ 41(3)—; "free wagon"—§ 41(4)—; "ex warehouse"—§ 41(5)—; "ex quai"—§§ 59-69—; "cleared"—§ 70—; "by rail over frontier"—§§ 45-58—etc. Other forms which were drawn up for f.o.b. (E) or c.i.f. (C, D) sales contain independent provisions on freight, passing of risk, insurance, etc. Formulation "L" may be regarded as an interpretation of the term "f.o.b.". Instrument "G" (para. 17) defines trade terms by references to "Incoterms 1953", an interpretation of nine trade terms

prepared by the International Chamber of Commerce, which is widely used and accepted in many countries.⁷

16. Some other definitions contained in the above formulations should be noted. Thus, forms "A" (§ 107) and "B" (§ 2) define which day should be considered to be the last day of a period if such day falls on a holiday. Form "B" also contains a definition of the terms "business-day" (§ 1) and "circa" (§ 8).

Quality of goods

17. Several general conditions stipulate the quality required of the goods when the required quality is not stipulated in the contract. Thus, according to instrument "A" (§ 15) they have to be of "usual average quality existing in the seller's country for the delivery of the given type of goods and corresponding to the purpose mentioned in the contract"; formulation "B" (§ 14) requires "average quality of the prevailing harvest", formulation "C" (art. 1.1) "fair and marketable quality, good average of the type of the place of origin at the time of shipment". Instrument "J" (para. 5) provides for "standard quality or... prime quality as rated at the place of delivery" and general conditions "K" (article 2) for "international standard".

18. A quality control, or inspection before shipment, of the goods is provided for in general conditions "A" (§§ 26, 27), "D" (para. 10), "F/a" (§ 6) "F/b" (§ 10), "G" (para. 5), "H" (term: Inspection) and "L" (para. 2). Of these formulations "A", "F/a", "F/b", and in certain cases "G", require quality control by the seller or an official quality control organization while the others provide for inspection by the buyer or his representative.

19. In addition to the quality control before shipment, referred to in paragraph 18 above, general conditions "A" (§ 26(3)(4)), "F/a" (§ 6), "F/b" (§ 10) and "H" stipulate that a certificate of quality be issued by the seller, or by the controlling organization and submitted to the buyer. Formulation "F/c" (para. 17) confers a right on the seller to issue such a certificate guaranteeing quality, quantity and/or weight of the goods.

Quantity of goods

20. The quantity of goods to be considered as delivered is dealt with in general conditions "A" (§ 18), "B" (§§ 4, 6), "C" (art. 12), "D" (para. 10) and "E" (para. 10). Formulations "B", "C", "D" and "E" provide for the determination of the weight of the goods, form "A" provides also for the number of packages or pieces delivered.

21. The formulations which relate primarily to the sale of agricultural goods with the exception of instrument "B", allow the seller, within certain limits, to deliver more or less than the quantity agreed in the contract. According to formulations "C" (art. 2(1)), "F/a" (para. 5 (2)), "F/b" (paras. 8, 11(3)) and "G"

(para. 8) the maximum amount of that tolerance is 5 per cent while under formulations D (para. 3) and E (para. 3) that maximum is to be agreed upon by the parties within the limit of 2 to 5 per cent. General conditions of the Economic Commission for Europe drawn up for the sale of agricultural products (Nos. 1-8 series on cereals, No. 312 on citrus fruit and No. 410 on soft wood) also provide for a tolerance at seller's option in the quantity of the delivered goods, varying from 3 to 10 per cent.

Packing

22. Some of the formulations contain provisions on the packing that is required if the contract does not stipulate otherwise. Formulation "A" (§ 20) requires that the goods be shipped "in packing used for export goods in the seller's country, which would assure safety of the goods during transportation, taking into account possible transshipment, under proper and usual handling of the goods". General conditions "I" (chapter: Packing) refers to the "best interests of the client" while form "J" (para. 5) to "the packing customary at the place of delivery, subject to any special requirements the purchaser may have in view of the destination of ship and/or goods".

Passing of risk

23. According to formulation "A" (§§ 5(b), 6(b), 7(2b), (3b), 8(b), 9(b)), the risk passes—at the time when delivery is effected. Similar provisions are contained in formulation "I" (chapter: Delivery) as well as in the formulation "B" with respect to sales "by rail over frontiers" (§ 47) and "ex quai" (§ 60). On the other hand, under instrument "B", in cases of "ex warehouse" sales (§ 29) the risk passes from the seller to the buyer at the end of the period within the buyer has to take delivery of the goods. General conditions C (art. 18(1)) provides for the risk to pass from the seller to the buyer at the time of shipment. Under formulation "F/b" (para. 12) risk passes at the time when the goods have been delivered on board, and under general conditions "H" (para. 1) at the time when the Bill of Lading is issued.

Passing of property

24. Some formulations also determine the time when the right in property passes from the seller to the buyer. According to instrument "A" (§§ 5(b), 6(b), 7(2b)(3b), 8(b), 9(b)), the property passes when delivery is effected, while according to instrument "C" (art. 17(1)), when the goods are put on ship's board. In view of the fact that formulation "C" relates to sales on c.i.f. basis, the two provisions are basically identical. Formulations "B" (§§ 44) and "J" (para. 12c) adopt a different approach by stipulating that the goods remain the property of the seller until the whole price has been paid.

Delivery of goods

25. The problem of the time when delivery is effected is dealt with in most general conditions; in many cases place of delivery is implicit in the provision determining time of delivery.

⁷ See document A/CN.9/14. Promoting the wider use and acceptance of Incoterms. Report submitted to the second session of the United Nations Commission on International Trade Law by the International Chamber of Commerce.

26. As to deliveries by ship, the date of delivery is considered to be:

(a) Under form "A": the date of the on board bill of lading or the river waybill (§ 7(2c)(3c)) and in case where under an f.o.b. contract, where the buyer is late in providing the necessary space on board a vessel, within twenty-one days from the date of arrival of the goods at the port of shipment, the date of delivery is the date of certificate of the warehouse to which storage of goods has been entrusted (§ 41(7));

(b) Under formulation "C": the date of "loaded" or "on board" Bill of Lading (art. 5(3));

(c) Under formulation "G": the date of the Bill of Lading or of similar document (art. 6(b));

(d) Under formulations "B" (§ 35(3)) and H (para. 1): the date of the Bill of Lading;

(e) Under formulation "J" providing for deliveries on f.a.s. term: the date of the arrival of the seller's craft or vehicle alongside the ship (para. 3(c));

(f) Under formulation "B", in cases where the goods are sold "floating": the time of the conclusion of the contract (§ 36(4)).

27. In case of delivery by means other than ship, the date of delivery is considered to be:

(a) In case of transport by rail "f.o.r. border of the seller's country": the date when the goods are transferred from the railway of the seller's country to the railway which receives the goods (A, § 5(c));

(b) In case of carriage by road: the date of the document confirming receipt of the goods by the buyer's means of transport (A, § 6(c));

(c) In case of carriage by air: the date of the air waybill (A, § 8(c));

(d) In case of postal dispatch: the date of the postal receipt (A, § 9(c)).

28. A general provision as to the time of delivery is contained in formulation "I". According to this provision delivery is considered to be effected either by delivery of the goods directly to the buyer or by simple notification of putting the goods at his disposal (chapter: *Livraison*, para. 2).

29. In connexion with delivery of goods, general conditions "A" (§ 12) and "B" (§§ 28, 52) also touch upon the question whether or not *preliminary and partial deliveries* are allowed.

Payment

30. The method of payment is dealt with in all instruments. Most of these provide for payment by letter of credit opened by buyer in favour of seller (D, para. 12); E, para. 12); F/a, para. 2; F/b, para. 8; F/c, para. 13; G, para. 8; H, condition: Payment; K, art. 5). Methods of payment provided for by other formulations are: "collection with subsequent acceptance (collection with immediate settlement)" (A, §§ 49-66); cash against documents (B, § 54; C, art. 8; L, para. 3); cash (I, *Conditions de paiement*); cash without discount (B, § 13); cash within thirty days (J, para. 12/a).

Insurance

31. Several formulations prescribe which of the

parties has to insure the goods and/or pay the premium. Some also provide for the risks and the amount to be covered. The following provisions are of interest: in c.i.f. (C, art. 14; D, para. 13; G, para. 9) and C and I (G, para 9) sales, marine insurance is to be provided for by seller while in C and F (G, para. 9; K, art. 3, note 1) and f.o.b. (E, para. 13; G, para. 9) sales, marine insurance is to be provided by buyer. Formulations "F/b" (para. 12) and "I" (chapter: *Transport, Assurance*) simply state that buyer shall assume cost of insurance, while under "A" (§ 10) the seller is not obliged to insure the goods unless this has been expressly agreed in the contract. Special risks, such as breakage, leakage, etc. are covered at buyer's expense (D, para. 13; H, para. 3); coverage for strikes and war risks is also at buyer's expense (C, arts. 15, 16; G, para. 9); insurance against war risk under formulation G (para. 9), may be taken out by seller if he deems it necessary. Formulations "C" (art. 14) and "G" (para. 9) also provide for the amount to be covered by the policy.

Taxes, custom duties, charges, etc.

32. The allocation to the seller or the buyer of the above expenses incurred in connexion with foreign trade transactions may be made implicitly by the use of a standard trade term (e.g., "c.i.f. as interpreted in Incoterms 1953"); a number of the formulations contain specific provisions concerning such expenses. These formulations ("A", § 109; "B" § 46; "C", art. 4; "D", para. 14; "E", para. 14; "K", art. 3, note 1 and art. 4) agree that taxes, custom duties, charges and similar expenses arising in seller's country shall be borne by seller and those arising in buyer's country by buyer. Formulations "A" (§ 109) and "C" (art. 4, para. 3) provide that such expenditures arising in transit countries are also at buyer's expense. Finally, general conditions "C" (art. 4, para. 3) and, in case of delivery in buyer's country, general conditions "B" (§ 13, para. 1) provide that any change in the above expenditures after the conclusion of the contract, which arise in buyer's country will be at buyer's expense or profit, as the case may be.

Notification of shipment

33. Provisions that buyer be notified by seller of the expected or actual date of shipment are contained in formulations "A" (§§ 41-45, 48), "B" (§§ 37, 51), "C" (art. 7), "D" (para. 6(c)), "F/a" (para. 5(1)), "F/b" (paras. 7, 11 (4)) and "F/c" (para. 16). With respect to f.o.b. contracts, notification of seller by buyer of the arrival of the ship is required in general conditions "A" (§ 41(3)) and "E" (para. 6). Some of these formulations also provide for the contents of such notifications.

Time-limits

34. The following must be distinguished: (a) time-limits for inspection of the quantity and/or the quality of goods, (b) time-limits for submission to the seller of claims for non-conformity of the goods with the contract and (c) prescriptive limits for bringing action because of breach of contract. All these types of time-limits and limitations appear in the general conditions under consideration. Time-limits for the inspection of

the goods bought and submission of claims to buyer for lack of quantity and quality are dealt with in formulations "A" (§§ 72, 88), "B" (§§ 3, 4, 18, 38, 55, 56), "F/b" (para. 10), "G" (para. 13 (a)), "H" (para. 4) and "J" (para. 8). Limitation on the time for bringing action before a court are provided for in general conditions "A" (§§ 93-107), "B" (§ 4(1)), and "C" (art. 21, para. (1)).

Remedies

35. Remedies which, under the general conditions referred to in para. 11 above, can be claimed in case of breach of contract are as follows:

- (a) Rejection of goods (D, para. 10; K, art. 7);
- (b) Penalty (A, §§ 31(5), 75 (4), 77, 80 (3), 83, 84, 86, 88, 89; C, art. 6(1); para. 15; F/c, para. 19; I, chapter: *Livraison*; K, art. 11);
- (c) Price reduction (A, § (31(6)(7), 72 (2)(5)(6); B, § 18);
- (d) Elimination of defects or replacement of defective goods (A, §§ 31(1-4), 32, 33, 75 (2-4); B, § 19; F/c, para. 17(2));
- (e) Compensation for damages (B, § 38; F/c, para. 17(2); K, art. 7, 8/a, b);
- (f) Cancellation of the contract (A §§ 31(8), 75(7), 77, 85; B, §§ 18, 38; C, arts. 6(1), 18(2); J, para. 8; K, art. 8/a).

Relief

36. Under all general conditions referred to in para. 11 above, *force majeure* relieves the parties from responsibility. Several of these general conditions contain a definition of "force majeure" (A, § 68, D, para. 15, E, para. 15, F/a, para. 9, F/c, para. 18, G, para. 12, H, para. 5, I chapter: *Livraison* and J, art. 13). Many formulations require that the party who is unable to fulfil his contractual obligations or can only fulfil them belatedly owing to causes of *force majeure*, should notify the other party of the occurrence of such causes (A, § 69; B, § 3(5); F/a, para. 9; F/c, para. 18) and submit appropriate certification thereof (A, § 69(2); F/a, para. 9; F/b, para. 14; F/c, para. 18). There are provisions which, as a consequence of *force majeure*: extend time-limits (A, § 70; B, § 3(5); C, art. 6(2); F/b, para. 14; G, para. 12; J, para. 13; K, art. 13); allow the cancellation of the contract (A, § 70; C, arts. 6(2), 18(2); F/a, para. 9; F/b, para. 14; G, para. 12; J, para. 13; K, art. 13); or consider the contract as cancelled or null and void (D, para. 15; E, para. 15; H, para. 5).

Arbitration

37. An arbitration clause can be found in almost all general conditions attached to this report (A, §§ 90-91; B, § 43; C, art. 21(5); D, para. 16; E, para. 16; F/a, para. 8; F/b, para. 13; F/c, para. 20; G, para. 15; H, para. 6 and J, para. 15(a)). Most of these formulations require that cases be referred to a specified institutional arbitration tribunal (A, F/a, F/b, F/c, G, J) while others call for *ad hoc* arbitration (C, D, E, H). The only formulation according to which disputes are

to be settled by an ordinary court is general condition "I" (chapter: *Contestations*) under which the competent commercial court in seller's country has jurisdiction.

38. Some of the formulations also determine the applicable law. They provide for the application of the substantive law of the seller's country (A, § 110) or the law of the country of the formulating agency (C, art. 19; G, paras. 15, 17).

Miscellaneous issues

39. There are several other issues dealt with in the general conditions annexed to this report which, although applicable to a great variety of goods, could not be applied to all kinds of commodities. Examples are certain provisions on guarantee (A, §§ 28-38; F/c, para. 17(2); I (chapter: *Garanties*), hidden defects (A, §§ 71(2); 82, B, § 57; J, paras. 7, 10), technical documentation (A, §§ 24-25; I, chapter: *Etudes et projets*)).

E. Conclusions

40. The issues contained in the analysed general conditions determine the principal rights and obligations of sellers and buyers arising from an international sales transaction.

41. Although not all the issues are contained in every set of general conditions, including conditions embracing all commodities, every issue is covered by at least one instrument that relates primarily to main groups of commodities, such as agricultural goods and manufactured goods. It may be concluded, therefore, that the issues listed above, with the exceptions of those in paragraphs 21 and 39, could be dealt with in a scheme of "general" general conditions.⁸

42. Although some of the issues do not necessarily relate to all kinds of commodities, this circumstance does not necessarily prevent the inclusion of such provisions in a scheme of "general" general conditions. For example, if it is clearly expressed in the text of the general conditions that a certain provision only relates to a particular kind of commodity, such a provision would permit the applicability of the instrument also to that particular kind of commodity without preventing the use of the instrument for other commodities.

43. The same applies to other competing provisions, e.g., interpretations of trade terms such as f.o.b., c.i.f., f.a.s., etc. The interpretations of all these trade terms may be included in the same set of general conditions, and the parties would choose which of these

⁸ Most of the issues listed in this report are also dealt with in other general conditions such as those prepared by the United Nations Economic Commission for Europe. Thus, e.g., ECE General Conditions No. 730 for the import and export of durable consumer goods and of other engineering stock articles provides, *inter alia*, for the formation of contract, packing, passing of risk, place and time of delivery, payments, remedies, reliefs, guarantee, arbitration, applicable law. ECE General Conditions No. 410 for export and import of sawn softwood contains provisions on the same issues and also on the quality and quantity of the goods, notification of shipment, payment of taxes, duties or fees, insurance, etc.

terms should apply to their contract. Under this approach, it would be unnecessary to draw up separate sets of general conditions for sales concluded on the basis of each trade term.

44. On the basis of these considerations, it might be concluded that the feasibility of drawing up general conditions does not depend on the question which issues should be covered in such a scheme but rather on whether it is possible to find a proper provision on each issue, reflecting the interests of both buyer and seller, that would be applicable to all kinds of commodities. The ascertainment of this possibility would require the continuation of this study, taking also into account the general conditions drawn up by ECE and the analysis of these formulations by the representative of Japan,⁹ as well as other selected instruments relating to the sale of specific goods.

45. It is suggested that as the study develops, consideration should be given to the following alternatives: (a) the preparation of general conditions applicable to all commodities; (b) the preparation of separate sets of general conditions for the major groups of commodities, such as agricultural products, manufactured goods, engineering goods, perishable goods; (c) the supplementing of the approach under (a) above, with provisions for specific commodities or groups of commodities.

III. FUTURE WORK

46. With respect to implementation of the Commission's decision set out in paragraph 1 (a) above concerning the extension of the use of certain ECE general conditions, it is considered that national chambers of commerce, trade associations and other trade organizations, rather than Governments, may be more directly concerned with the possible extension of the use of ECE general conditions of sale and standard contracts to their regions. This may be borne out by the fact that it was the trade circles which played a predominant role in the drawing up of the ECE general conditions. The secretariat of the United Nations Economic Commission for Africa has also suggested seeking the views of national trade organizations on this question. The Commission may, therefore, wish to request the Secretary-General to send the inquiry, contained in the Commission's decision, in respect of ECE general conditions also to national chambers of commerce, trade associations and other trade organizations. The Commission may also wish to give preliminary consideration to the advisability of convening regional meetings for consideration of possible extension of the use of ECE general conditions to other regions.

47. With respect to the feasibility of developing general conditions embracing a wide scope of commodities, the Commission might wish to request the Secretary-General to continue his examination of the

⁹ The representative of Japan has prepared the first part of a comparative study of a number of ECE general conditions. This study was distributed to the members of the Commission at the third session.

subject in consultation, if feasible, with chambers of commerce, trade associations and organizations concerned, and to submit a report of his findings to the fifth session of the Commission.

ANNEX I

CEYLON

[Original: English]
30 October 1970

"It would be a desirable objective to extend the use of the existing ECE General Conditions of Sale and Standard Contracts to all regions, as this would help to standardise international commercial practices and thus assist the development of international trade. However, any region accepting these general conditions and standard contracts will have to displace its own system being applied at present. For example, in Ceylon, the conditions regarding formation of contracts contained in these general conditions will have to be preferred to the Rules of Private International Law prevailing in the country. It had, however, not been possible to examine the full legal implications of such a change.

"Ceylon would support the proposal to set up committees or study groups that could examine, discuss, and clarify these matters, with the help of experts to be appointed by the Secretary-General of the United Nations."

CHINA

[Original: English]
4 February 1970

"... the provisions in the aforesaid documents are quite in line with general practices in international trade."

CUBA

[Original: Spanish]
22 January 1970

"1. The use of the ECE general conditions should be extended to the regions of Asia, Africa and Latin America. Despite their limitations, the general conditions may promote uniformity of international commercial usage and practices and eventually the establishment of international legal standards governing trade.

"2. There are obviously gaps and shortcomings in the general conditions, both from the technical and legal viewpoints and from the point of view of Cuba's trade interests. Nevertheless, it might be useful to formulate new general conditions, with certain changes and adaptations, which would apply to specific products of special interest to the underdeveloped countries, subject to the principle of equal rights.

"3. The Government of Cuba therefore believes that it would be desirable to convene committees or study groups, on a world-wide scale, so that matters raised at a regional level can be discussed and clarified."

Fiji

[Original: English]
24 December 1969

"... there appear to be no significant gaps or shortcomings in the ECE conditions and they appear to be generally acceptable from the point of view of present trade interests.

"It is considered that a meeting of a study group or committee may be desirable as a forum for discussing and clarifying such matters as may be raised at the regional level."

SURINAM

[Original: English]
18 August 1970

"...the Government of Surinam can accept the ECE general conditions. The civil and trade law in Surinam is generally speaking similar to the law presently in force in the Netherlands where the ECE general conditions are already applied. The application of these general conditions in Surinam will therefore not encounter any difficulty."

ANNEX II

List of commodities governed by general conditions of sale and standard contracts collected by the Secretariat

A. AGRICULTURAL PRODUCTS

Barley	Ginger seeds
Benniseeds	Grains
Cassava	Ground-nuts
Castor seeds	Linseed
Cereals	Hemp seeds
Cattle food	Herbs
Cocoa	Herbage seeds
Coffee	Jute
Copra	Kapok
Corn	Maize
Cotton	Manioc
Cotton seeds	Mesta fibre
Flax seeds	Millet
Fruits	Palm kernels
Forest trees seeds	Poppy seeds
Ginger	Potatoes

Rape seeds
Rice
Rye
Seeds in general
Skins and hides
Sorghum
Soya beans

Spices
Sunflower seeds
Tapioca
Tea
Vegetables
Wheat

B. PROCESSED GOODS

Chemicals
Coconut oil
Greases
Ground-nut oil
Gum and wood resin
Kernel oil
Lard
Linseed oil
Olive oil

Palm oil
Seeds oil and cake
Soya bean oil
Turpentine and other industrial oil
Vegetable oil
Whale oil
Wood oil

C. MANUFACTURED GOODS

Construction and engineering goods	Paper
Locomotives and railway railings	Pipes
Machinery	Ships
Machine-tools	Shoes
Machines for paper industry	Tiles and bricks
Office machines	Textiles and fabrics: cotton, wool and silk
	Textile machinery

D. OTHERS

Coal	Silk
Oil	Tallow
Raw wool	Timber and wood
Rubber	

2. List of relevant documents not reproduced in the present volume

<i>Title or description</i>	<i>Document reference</i>
General conditions of delivery of goods between organizations of the member-countries of the Council for Mutual Economic Assistance (GCD CMEA 1968)	A/CN.9/R.6 —Annex A
Terms and conditions of the Commodity Association of the Hamburg-Exchange (1970) [text in German]	A/CN.9/R.6 —Annex B
General conditions of sale on C.I.F. basis for the products of Madagascar (coffee excepted) (Fédération nationale des syndicats d'importateurs et d'exportateurs de l'Afrique orientale) [text in French]	A/CN.9/R.6 —Annex C
Standard form of contract for sale of Burma products on c.i.f. basis	A/CN.9/R.6 —Annex D
Standard form of contract for sale of Burma products on f.o.b. basis	A/CN.9/R.6 —Annex E
Sino-Japanese Trade Contracts:	A/CN.9/R.6
(a) Friendly Trade Import Contract (Import to Japan)	—Annex F
(b) L-T Trade Import Contract (Import to Japan)	
(c) Friendly Trade Export Contract (Export to Japan)	
General terms and conditions for the sale of sundries (Japan International Trade Arbitration Association)	A/CN.9/R.6 —Annex G