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UNITED NATIONS COMMISSION ON
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Working Group on time-limits
and limitations (prescription)
in the international sale of goods
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AMENDMENTS PROPOSED BY BELGIUM TO THE TEXT OF A PRELIMINARY
DRAFT OF A UNIFORM LAW ON PRESCRIPTION (LIMITATION) IN
INTERNATIONAL SALE OF GOODS (AUGUST 1970)

SPHERE OF APPLICATION OF THE LAW

Article 1

(1) This Law shall be applicable to the limitation of legal proceedings and to the prescription of the rights of the buyer and seller which are related to the performance of obligations created between them by a contract of international sale of goods.

(2) In this Law, "the limitation period" means the period within which the parties may exercise their rights through legal proceedings.^{1/}

(3) This Law shall not affect a rule of the applicable law which makes the exercise of a right dependent upon the performance of an act within a certain period of time.

(4) (No change, provided that the provision in paragraph 2 is inserted.)

Article 2

No change.

Article 3

No change.

Article 4

No change.

Article 5

No change.

^{1/} This provision should be included in paragraph 4.

THE LIMITATION PERIOD

Article 6

The limitation period shall be /three/ /five/ years.^{2/}

Article 7

(1) Subject to the provisions of paragraphs 3 to 6 of this article and to the provisions of article 9, the limitation period shall commence on the date when performance of the obligation is due.

(2) Where one party is required as a condition for the acquisition or exercise of a right to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice.

(3) Subject to the provisions of paragraph 4 of this article, the limitation period in respect of a right arising from defects in, or other lack of conformity of, the goods shall commence on the date on which they are placed at the disposition of the buyer by the seller according to the contract of sale, irrespective of the time when such defects or lack of conformity are discovered or damage therefrom ensues.

(4) Where the goods sold are in the course of carriage at the time of the conclusion of the contract or when the latter provides that they shall be carried, the limitation period in respect of rights arising from defects in, or other lack of conformity of, the goods shall commence on the date on which the goods are duly

^{2/} In its present form, this article makes no exception in the case of special legal proceedings, such as proceedings for lack of conformity of the goods sold, which involve special time-limits, not only under national laws but also under ULIS (article 49). Now, ULIS will probably soon become applicable among a number of States, which will be obliged to observe its rules, including those set out in article 49. The convention on time-limits and limitations should therefore include a clause stating that its provisions allow for the possible application of time-limits of a different length defined in other international conventions, particularly ULIS. Such a clause should be sufficiently general to solve the other problems of conflict between conventions raised by the present draft.

placed at the disposition of the buyer by the carrier, or are handed over to the buyer, whichever is the earlier.

(5) Where, even before the date agreed upon for performance, one of the parties fails to perform his obligations^{3/} so that the other party becomes entitled to and does elect to treat the contract as terminated, the limitation period in respect of any right arising out of such breach of the contract shall commence at the time when such breach occurred.

Where the contract is not treated as terminated, the limitation period shall commence on the date when performance is due.

(6) Where, in the case of a contract providing for deliveries or payments by instalments, one of the parties fails to perform his obligations, so that the other party becomes entitled to and does elect to treat the contract as terminated, the limitation period in respect of any right arising out of the breach of the contract shall commence at the time when such breach occurred (irrespective of any other breach of the contract in relation to prior or subsequent instalments).

Where the other party does not exercise the right to treat the contract as terminated, the limitation periods in respect of rights based on breaches of the contract shall commence (separately) at the time when the breaches occurred.

Article 8

Delete.

Article 9

Where the contract of sale contains a clause embodying an undertaking, the limitation period in respect of rights arising out of the undertaking shall commence at the time when the buyer informs the seller that he intends to avail himself of the clause; provided that the limitation period shall not exceed three five years after the expiration of the period of the undertaking.

^{3/} This means that before the date agreed upon for performance it is certain that one of the parties will not perform his obligations.

INTERRUPTION OF THE LIMITATION PERIOD

Article 10 A

(1) Any document which indicates the desire of the creditor to obtain performance of the obligation and which has been served on the debtor shall interrupt the limitation period and cause a new period to run.

(2) Save in the cases envisaged in articles 10 and 11, the new limitation period shall commence to run when the document is actually delivered to the debtor or to his residence.^{4/}

Article 10

(1) Where the creditor performs any act recognized under the law of the jurisdiction where such act is performed:

(i) as instituting judicial proceedings for the purpose of obtaining satisfaction of his right;

(ii) as invoking his right in the course of judicial proceedings commenced against the debtor in relation to another right,

the new limitation period shall commence to run when such act is performed.

(2) (No change.)

Article 11

(1) Where the parties have agreed to submit to arbitration, the new limitation period shall commence to run when either party commences arbitration proceedings by requesting that the right in dispute be referred to arbitration in the manner provided for in the convention or by the law applicable to the convention.

(2) (3) (No change.)

^{4/} This wording is based on article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

Article 12

Where any legal proceedings are commenced upon the occurrence of:

- (a) the death or incapacity of the debtor;
- (b) the bankruptcy or insolvency of the debtor;
- (c) the dissolution or liquidation of a corporation, company or other legal entity;

(d) the seizure or transfer of the whole or part of the assets of the debtor, the limitation period shall be interrupted only if the creditor performs an act recognized under the law governing the proceedings as being intended to obtain acknowledgement of the existence of the claim.

Article 12 bis

Where the debtor has through fraud, misstatement or concealment prevented the creditor from causing the limitation period to cease to run, the said period shall commence to run only at such time as the creditor discovers the fraud, misstatement or concealment or could with reasonable diligence have discovered them.

Article 13

- (1) (2) (3) (4) (No change.)
- (5) Delete.

SUSPENSION OF THE LIMITATION PERIOD

Article 14

Delete.

New article 14

The limitation period shall not run against a creditor who is not of full age, legally incapable or unable to indicate his wishes; it shall commence to run or shall resume when such cause of suspension ceases to exist.

Article 15

Where, as a result of circumstances which are not personal to the creditor and which he could neither foresee nor overcome, the creditor has been prevented from causing the limitation period to cease to run, and provided that he has taken the necessary measures of conservation, the limitation period shall be suspended during the time when he is so prevented. The limitation period which has still to run may not be less than one year six months.

Article 16

Delete.

(This provision is contained in article 12 bis.)

Article 17

- (1) In the cases envisaged in articles 10, 11 and 12:
 - (a) where the creditor permits his action to lapse or withdraws from it, the limitation period shall be deemed to have continued to run;
 - (b) where the court or the arbitrators are incompetent or where any legal proceedings have ended without a definitive judgement, the limitation period shall be extended for one year from the date of the decision concerning incompetence or of the last act in the proceedings.
- (2) Where an arbitration has been commenced in accordance with article 11 and the said arbitration has been terminated or the award has been set aside by a judicial decision, the limitation period shall be extended for one year from the date of such decision.

Article 18

- (2) The debtor may at any time extend the limitation period by making a declaration to the creditor. However, such declaration shall not extend the period more than three years beyond its normal duration as specified in articles 6 to 9.

EFFECTS OF THE EXPIRATION OF THE LIMITATION PERIOD

Article 19

(No change.)

Article 20

(2) Notwithstanding the expiration of the limitation period, the creditor may assert a right of his own against the other party (as a defence), provided that both claims arise from the same contract or that they could have been set off at any time before the expiration of the limitation period.

Article 21

(No change.)

Article 22

(No change.)

Article 23

(No change.)

Article 24

(No change.)

PRESERVATION OF EXISTING RIGHTS

Article 25

(No change.)
