



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
RESTRICTED

A/CN.9/WG.1/WP.6
20 July 1970

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Working Group on time-limits and
limitations (prescription) in
the international sale of goods
Second session
Geneva, 10 August 1970

TEXT OF PRELIMINARY DRAFT OF UNIFORM LAW ON
EXTINCTIVE PRESCRIPTION IN INTERNATIONAL SALE
OF GOODS BY DR. LUDVIK KOPAC, REPRESENTATIVE OF
CZECHOSLOVAKIA TO UNCITRAL

Uniform law on prescription concerning international sale of goods

Article 1

The present Law is applicable to extinctive prescription concerning international sale of goods

(a) irrespective of any rules of private international law, when the place of business of the seller and the place of business of the buyer are in the territories of Contracting States which have adopted the present Law without any reservation which would preclude its application to the prescription;

(b) when the rules of private international law indicate that the applicable law is the law of a Contracting State which has adopted the present Law without any reservation which would preclude its application to the prescription.

Article 2

1. For the purpose of this Law the prescription concerning the contract for international sale of goods is regarded as extinctive prescription affecting rights and duties of the seller and the buyer under the contract for international

sale of goods, their successors and assigns, and persons who guarantee their performance. This Law shall not apply to the rights and duties of any other persons.

2. This Law shall not apply to any damage caused to any person other than the buyer, the seller, their successors and assigns, regardless of whether the rights and duties arising from such damage may be qualified as being contractual or delictual.

Article 3

For the purpose of the present Law the contract for the international sale of goods means ...

Article 4

A right is prescribed through the expiration of the term of prescription set forth in this Law. Prescription does not bring about the extinction of a right; however, the right cannot be adjudged by a court or arbitrator(s) if the debtor (or any other person having a legally recognized interest therein) pleads prescription. Prescription may not be invoked by the court on its own initiative.

Article 5

1. The period of limitation shall run from the end of the calendar year in which the breach of contract occurred.

2. Where defective goods are delivered, the period shall run from the date on which the goods arrive at the place of destination agreed upon or are handed over by the seller to the buyer.

3. Where the contract contains an express guarantee relating to the goods for a particular period, specified by time or otherwise, the period of limitation in respect of any claim arising out of the guarantee shall expire one year after the expiration of such time or three years after the goods are handed over by the seller to the buyer or after they arrive at the place of destination agreed upon, whichever shall be later.

Article 6

1. Unless otherwise provided in this Law the general term of prescription shall be three years.

2. The term of prescription concerning claims for compensation of damages commences to run as of the day on which the entitled person learns or could learn of the whole damage caused to him and of the person obliged to provide compensation. However, the period of prescription shall end not later than ten years after the day on which the event causing the damage occurs.

3. Claims secured by mortgage shall be prescribed in ten years.

4. Rights of a creditor against a surety or other persons who guarantee a performance shall not be prescribed before the prescription of the right against the debtor.

5. A change in persons affected by the prescription shall not affect the running of its period.

Article 7

1. Parties may agree in writing on a longer term of prescription than provided in this Law. The prolonged period shall end two years after the end of the period of prescription provided by this Law at the latest.

2. Subject to the provision of paragraph 1 any agreement between Contracting Parties shall be null and void.

Article 8

Where a creditor has been prevented from exercising his right owing to an impediment not supervening on his part [not attributable to him] which he could neither avoid nor overcome, the prescription shall not take effect before the expiry of one year from the date on which the relevant impediment ceased to exist or could be overcome.

Article 9

If rights of or against persons who must have a legal representative are involved, the prescription shall not commence to run until such legal representative has been appointed for them, or until the necessity to have such

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a representative ceases to exist. Once commenced the prescription shall continue, but it shall not end until the expiration of the legal representative for those persons or the cessation of such necessity.

Article 10

1. If a creditor asserts his claim in court within the period of prescription and continues the commenced proceedings, the term of prescription shall not run during such proceedings as of the day on which the claim was asserted. The same shall apply mutatis mutandis to assertion of a right in arbitration proceedings provided it is based on a valid arbitration agreement.

2. The commenced proceedings shall be considered as continuing if the claim is asserted in a competent court within six months following the day on which the entitled person was served with a final judgement stating lack of competence or on which the arbitrator(s) declines to render an award on the ground of lack of validity of the arbitration agreement.

Article 11

1. If the debtor recognizes in any way his obligation to the creditor before the expiration of the period of prescription, the period of prescription shall commence to run afresh. The payment of an instalment or interest or any other conduct of the debtor which indicates that he does not contest his obligation shall be considered, inter alia, as recognition. If only a part of a right is thus recognized, the above effects shall take place only with respect to the recognized part.

2. In the case of a prescribed right, a new period of prescription shall run if the debtor has recognized his obligation to the creditor in writing. If the recognition is made only in respect of a part of a prescribed right, the period of prescription shall run afresh only with respect to such part.

Article 12

Alternative A

If a right is granted in a final judicial judgement or arbitral award the period of prescription is interrupted.

/s.s.

per

Alternative B

A right granted in a final judgement or an arbitral award shall become prescribed ten years after the date on which the obligation should have been performed under the respective judgement [or award].

Article 13

Questions concerning matters governed by the present Law which cannot be settled on the basis of literal sense of the wording used in this Law or of the purpose of the rules shall be settled in conformity with the general principles on which the present Law is based.
