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**THE 1979 REVISION OF THE
GENERAL CONDITIONS FOR DELIVERY OF GOODS
BETWEEN MEMBER-NATIONS OF THE COUNCIL
OF MUTUAL ECONOMIC ASSISTANCE**

*Abby Henig**

I. Introduction

The General Conditions for Delivery of Goods (GCDG)¹ is a legal framework for the trade conducted between member-nations of the Council of Mutual Economic Assistance. The GCDG has gone through a series of revisions since its inception in 1958 in response to the growth of the economic network of socialist countries. The nature and type of trade that exists among socialist countries is determined by the structure and needs of economic socialism within that particular country. To provide for smoother

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The text of the General Conditions for Delivery was translated by Arlene Forman and Barbara Urbanic.

1. The General Conditions for Delivery of Goods provides the terms for the formation, delivery, quality, quantity, guarantee, liability, limitation of claims and conflicts of law which must be included in all contracts for the sale of goods to be concluded between economic organizations of the member-nations of the Council of Mutual Economic Assistance.

functioning, the legal aspects of this trade have been codified. As part of this codification, the GCDG provides a preemptory unification of sales law, conceived to serve a particular type of economic system. It is of interest to study the GCDG as one example of current attempts to create systems of uniform sales laws for international trade in general.

II. A Description of the Council of Mutual Economic Assistance² and the General Conditions for Delivery of Goods

A. The CMEA: An Economic Network of Socialist Countries

The CMEA, a subject of international law, was created in 1949 to promote the integration and coordination of economic activities among the socialist countries.³ Bulgaria, Czechoslovakia, Hungary, Poland, Romania, Albania⁴ and the USSR were its original members, while the German Democratic Republic (GDR) joined in 1950 and Mongolia in 1963. On the basis of a 1964 agreement, Yugoslavia became an associate member of the CMEA. At various times, Cuba, North Korea and North Vietnam have been accorded "observer status."⁵ On the basis of an agreement concluded between the CMEA and Finland, the latter country is involved in CMEA activity.⁶

2. The Council of Mutual Economic Assistance is abbreviated in English language literature as CMEA, as CEMA, and as COMECON. In this paper it is always abbreviated as CMEA.

3. The organization's Charter, promulgated in 1960, reiterated the CMEA's goal of development and progress among socialist countries.

4. Albania has not participated in CMEA activities since 1962.

5. At the 23rd Session of the CMEA, delegates from Angola, Afghanistan, Ethiopia, Finland, Iraq, Yemen, Laos, Mozambique and Mexico were present. Ekonomicheskoe Sotrudnitchestvo Stran-Chlenov SEV, Economic Cooperation of CMEA Member-Nations, No. 1, (Moscow, CMEA Secretariat 1980) at 7 [hereinafter, Ekon. Sotrud.].

6. For six years now, CMEA has been cooperating with Finland on the basis of a respective agreement concluded between them. Ivan Prokopiev, the author of an article dealing with that subject, writes that the Commission on cooperation and its working bodies, set up on the basis of that agreement, have carried out much work in preparing proposals and recommendations

Within the CMEA, socialist international relations are conceived as a new type of economic and political tie leading to the goal of a new socialist international law and order.⁷ Economic integration is imbued with the values of socialist internationalism. Such integration is more easily controlled within the framework of an association of planned economies than when dealing with other types of economies. At one point in CMEA development, a supranational central planning agency directing the flow and growth of foreign trade among member-nations was proposed,⁸ but this idea was superseded by that of national plan coordination.⁹

designed to expand and deepen the multilateral economic and scientific and technical cooperation between CMEA member-states and Finland. All in all, twenty-five agreements on cooperation were concluded in 1975-79 in the various areas of cooperation—mechanical engineering, the chemical industry, transport, science and technology. The close of 1978 saw the completion of a major task accomplished by the experts from CMEA countries and Finland, who worked out "The General Terms of Goods Deliveries from the CMEA Member-States to the Republic of Finland and from the Republic of Finland to the CMEA Member-States". The Commission on cooperation have approved these "General Terms . . ." and recommended that they should be used in concluding foreign-trade contracts.

The effective cooperation of CMEA countries and Finland can be seen from the data on their mutual trade: in 1973-78 mutual deliveries of goods grew by 2.6 times, while the share of CMEA countries in Finland's overall foreign trade increased from 13% in 1973 to 20.5% in 1978.

Id.

7. See Tunkin, *Teoria Mezhdynarodnovo Prava* (Theory of International Law 1970).

8. The Basic Principles on Socialist Division of Labor, promulgated in 1962, also provided for regional cooperation and specialization according to comparative advantage.

9. The strategy of planned coordination was formulated in the "Twenty Year Complex Integration Program" concluded in 1971. The Program aims for full integration of foreign trade through coordination of the economic plans of each member country.

The members of CMEA see the organization as steadily developing toward the goal of an integrated economic network of socialist countries. Figures

Foreign trade is currently carried out in the form of bilateral barter-type arrangements based on lagged world prices.¹⁰ These arrangements, concluded for five-year periods, set up yearly quotas governing the exchange of goods among members. Frequently, members negotiate protocols amending these quotas.¹¹ Furthermore, trade occurs within a specific financial framework established for CMEA members.¹²

Within each member-country, legislation establishes trade as a monopoly of the State.¹³ The State then delegates its powers to foreign trade organizations that are generally distinct from domestic production enterprises.¹⁴ The foreign trade organization

published by the CMEA Secretariat show that from 1950 to 1978 the aggregate national income of member countries grew by 7.6 times while industrial production expanded by 12 times. This growth is claimed to be the result of socialist international relations and the system of division of labor. Ekon. Sotrud. *supra* note 5, at 3.

10. Starting with 1975, the prices of goods exchanged among CMEA members are based upon world prices of such goods in the immediately preceding five years. Thus, the price for oil exported by the USSR to CMEA members in 1979 was, for the most part, 60% of the then current world price. Oil sold to Czechoslovakia and the GDR was under the 1966 world price. Ekon. Sotrud. *supra* note 5, at 7. However, prices arrived at by this method generally serve as reference points for further negotiations between any two CMEA members, so that the same commodity may command different prices among different members.

11. Ekon. Sotrud. *supra* note 5, at 8.

12. Prices of goods in the CMEA community are quoted in terms of "transferable rubles." These rubles are used in connection with goods designated in trade plans. However, these prices are units of account, not money.

Two banks have been established to serve the CMEA community. The International Bank for Economic Cooperation, started in 1964, is a clearing bank, offering short term credit. The International Investment Bank, founded in 1970, offers long term developmental loans as well as hard currency for capital projects benefiting two or more CMEA members.

13. See Grzybowski, *The Foreign Trade Regime in the Comecon Countries Today*, 4 Int'l L. & Pol. 183 (1971), for the legislative basis of this monopoly in each CMEA member country [hereinafter, Grzybowski].

14. The legislation of each member country varies in the degree to which it allows domestic enterprises to enter the sphere of foreign trade. See Grzybowski, *supra* note 13, and J. Garland, *Financing Foreign Trade in Eastern Europe—Problems of Bilateralism and Currency Inconvertibility* (1979) [hereinafter, Garland]. In the USSR, the distinction is complete as foreign trade is the exclusive realm of foreign trade organizations. See J. Quigley, *Soviet Foreign Trade Monopoly* (1974), for a description of the foreign trade regime in the Soviet Union.

(FTO) can initiate, negotiate and conclude contracts with foreign partners. Operating under their specific charters,¹⁵ these organizations are separate legal entities that operate in their own name on the basis of commercial accounting. They have their own circulating capital and are not responsible for other governmental organizations as the State is not liable for them. For the most part, actual trade among CMEA members is carried out by the FTOs. The FTOs have some discretion as to the prices, delivery dates and technical specifications arrived at in the contracts negotiated by them; however, prices and other particulars must be within the limits imposed by the bilateral agreements concluded between CMEA member-countries. These contracts set up civil law relations that are governed by the GCDG.

B. The GCDG

The GCDG is the legal framework of sales for the socialist economic world system.¹⁶ The first attempt toward unifying the law of sales for socialist countries was made in 1951 with the promulgation of the General Unified Commerce Conditions of Contracts for the Mutual Delivery of Goods. The latter were in fact recommendations by the Secretariat of the CMEA, for the optional use by CMEA members in their bilateral agreements. Between 1951 and 1957, twenty-eight different sets of bilateral conditions for delivery were worked out.

In 1958, the Foreign Trade Commission of the CMEA published the GCDG.¹⁷ This was, in effect, a single multilateral agreement containing substantive and procedural law norms as well as conflicts rules. Accepted by all the members, it had the force of law, compulsory for all contracts. Only when the GCDG made reference to the necessity of clarification through bilateral agreements were the latter resorted to.

The GCDG was revised in 1968¹⁸ in order to accommodate

15. For a discussion of the charters of Soviet FTO's, see Dietrich A. Loeber, *USSR: 69 Foreign Trade Organizations Involved in Foreign Markets*, 6 *Europa Industrie Revue* 13 (1978).

16. For a history of the development of the GCDG, see Hoya, *The COMECON General Conditions—A Socialist Unification of International Trade Law*, 70 *Colum. L. Rev.* 253 (1970); Grzybowski, *supra* note 13.

17. The GCDG were written with the delivery of machinery in mind.

18. This version went into effect on January 1, 1969. All contracts concluded from that date forward were governed by this version, while contracts made earlier could be amended to come within the rules of the newer

various kinds of goods as well as to update its provisions. While there had been uncertainty as to the status of the 1958 GCDG as an international undertaking, it was decided that the newly recommended GCDG would become an international undertaking when accepted by CMEA members.¹⁹ Until acceptance, the GCDG was only "moral-political advice,"²⁰ while after acceptance it took on new and binding legal force. However, as an international treaty, it was necessary for the GCDG to be incorporated into each country's internal legislation in order to become binding on the FTOs.

Further changes in the GCDG were made in 1975 and 1979, in order to take into account the changing patterns of trade relations among CMEA members.²¹

The GCDG aims for uniformity in law. All contracts concluded by the FTOs of CMEA member-countries must incorporate the GCDG,²² although individual provisions of the GCDG possess differing obligatory effects.²³

The present General Conditions for Delivery of Goods Between Organizations of CMEA Member-Nations (1979 Edition of the 1968/1975 CMEA GCD) represent the text of the 1968/1975 CMEA GCD with additions and changes introduced by a resolution of the CMEA Permanent Commission on Foreign Trade on April 13, 1979.

The 1979 Edition, like previous versions of the General Conditions for Delivery of Goods,²⁴ comprises seventeen chapters. While

legislation if the parties so desired.

19. Ivan Szasz, A Uniform Law on International Sales of Goods—The CMEA General Conditions (1976) at 83 [hereinafter, Szasz]. Within the CMEA, all recommendations must be unanimously supported by all interested member-countries.

20. F. M. Usenko, *Sovet Ekonomitcheskoi Vzaimopomotschi* (CMEA) (1975) at 222-24.

21. See Garland, *supra* note 14, in which CMEA economic activity is divided into four phases: a dormant phase until 1955, activation until 1962, consolidation from 1963 to 1968 and reactivation after 1968.

22. See Szasz, *supra* note 19, who would apply the GCDG to sales contracts only.

23. Szasz, *supra* note 19, defines these effects as preemptory, relative preemptory and permissive. See the discussion on the GCDG preamble *infra* note 29.

24. See Hoya & Quigley, COMECON 1968 General Conditions for the Delivery of Goods, 31 Ohio St. L.J. 1 (1970) for a translation of the 1968 version.

the overall scheme remains substantially similar to that of previous versions²⁵ significant changes have been made to a number of the

25. The contents of the 1979 Edition are provided below. The major variations between the 1968 version and the current one are noted.

Chapter I — Conclusion, Change and Termination of a Contract, ¶¶ 1-4. ¶ 2-A now provides methods for the termination or modification of contracts.

Chapter II — Basis of Delivery, ¶¶ 5-10. This chapter apportions the risk of accidental loss and determines the passing of rights of ownership in the goods for various methods of delivery (rail, motor vehicle, postal dispatch, water, air).

Chapter III — Period of Delivery, ¶¶ 11-14. Periodic delivery of goods shipped in separate lots, early delivery, delays caused by the buyer, and delivery terms for multi-faceted machines are covered; ¶ 11-A allows the parties to provide that late delivery will automatically annul the contract.

Chapter IV — Quality of Goods, ¶¶ 15-17. If not otherwise provided, the goods are to be of customary, average quality in the seller's country.

Chapter V — Quantity of Goods, ¶¶ 18-19. Verification of quantity for various means of transport is covered.

Chapter VI — Packing and Marking, ¶¶ 20-23.

Chapter VII — Technical Documentation, ¶¶ 24-25.

Chapter VIII — Verification of the Quality of Goods, ¶¶ 26-27. The responsibilities for the testing of goods are delineated. Participation of the buyer in the testing does not remove the seller's responsibility for the quality.

Chapter IX — Warranties, ¶¶ 28-38. Warranty periods, the seller's obligations to repair, replace or discount, return of defective goods, extension of warranty periods and spare parts are covered.

Chapter X — Shipping Instructions and Notification of Delivery, ¶¶ 39-48.

Chapter XI — Manner of Payment, ¶¶ 49-67. Payments against the presentation of documents, early payments, reasons and methods for return of payment to the buyer and unjustified demands for the return of payments are covered by this chapter.

Chapter XII — Several General Provisions on Responsibility, ¶¶ 67-A-70. Fines and completion for improper fulfillment of obligations and force majeure defenses are covered. ¶¶ 67-A-67-E are major new provisions relating to compensation for losses.

Chapter XIII — Claims on Quality and Quantity, ¶¶ 71-82. How claims for compensation and fines and warranty claims are to be presented, the time periods for doing so and what a claim declaration must indicate are set forth in this chapter. The new compensation remedy is incorporated into the chapter.

Chapter XIV — Sanctions, ¶¶ 83-89-A. The rates of fines for various contractual violations, maximum amounts and rights to cancel the contract are established. Extensive changes have been made throughout the chapter to incorporate the compensation remedy established in ¶¶ 67-A-67-E. There

provisions.²⁶ Most significantly, the 1979 Edition introduces the concept of compensation of losses, previously unknown in the system of socialist trade. Compensation based upon damages actually sustained is now available as an alternative to the traditional remedy of penalties.²⁷

The text of the 1979 Edition of the 1968/1975 CMEA GCD is to be applied to all contracts concluded on or after January 1, 1980. Contracting parties may also agree to apply the conditions of the 1979 Edition of the 1968/1975 CMEA GCD to contracts concluded earlier which will continue to be in effect after January 1, 1980.

Extracts from the resolutions of the CMEA Permanent Commission on Foreign Trade that concern the General Conditions for Delivery of Goods Between the Organizations of CMEA Member-Nations and the text of the 1979 Edition of the 1968/1975 CMEA GCD are reprinted below.

III. Resolutions of the CMEA Permanent Commission on Foreign Trade

RESOLUTION OF JUNE 1, 1968

"On the improvement of the 1958 CMEA General Conditions for Delivery"

1. To approve the text of the improved General Conditions for Delivery of Goods Between the Organizations of CMEA Member-Nations (1968 CMEA GCD) and to implement it on January 1, 1969.

have also been changes relating to penalties, including ¶ 86-A, which established a fine payable to the seller for unauthorized return of goods.

Chapter XV — Arbitration ¶¶ 90-91. Arbitration remains a peremptory means of dispute settlement.

Chapter XVI — Prescription of Claims, ¶¶ 92-103. The chapter establishes the limitations for claims arising under the General Conditions. ¶ 94 conforms these limitations to reflect the expanded right of a seller to demand compensation or a fine.

Chapter XVII — Other Provisions, ¶¶ 104-110.

26. *E.g.*, the additions and changes made in accordance with the resolution of the CMEA Executive Committee, adopted at the Eighty-eighth Session on January 18, 1979, which are reflected in Paragraphs 58, 67, 67-A, 67-B, 67-C, 67-D, 84, 84-A, 85, 86-A, 88, 89-A and 94 of the 1979 edition of the 1968/1975 CMEA GCD.

27. See Chapter XII, ¶¶ 67A-67E, *infra*.

2. To recommend to CMEA member-nations that they stipulate in intergovernmental agreements on commodity circulation and in agreements on economic cooperation that the appropriate organizations for reciprocal delivery of goods will apply to the 1968 CMEA GCD from the date of its implementation.

3. To approve the supplement on the application of Paragraphs 5 and 6 of the 1968 CMEA GCD.

4. To establish that for delivery of goods that are under warranty to the Mongolian People's Republic (MPR) from countries that do not share geographic borders with the MPR the warranty period is extended two months. To include this provision in the 1968 CMEA GCD, in the form of an annotation to Paragraph 29.

5. To recommend to CMEA member-nations purchasing perishable goods of livestock origin in the MPR, that they establish in contracts shorter time limits for the presentation of claims than those provided for in Paragraph 72 of the 1968 CMEA GCD.

SUPPLEMENT TO THE RESOLUTION OF JUNE 1, 1968, OF THE CMEA PERMANENT COMMISSION ON FOREIGN TRADE

Delegations from the People's Republic of Bulgaria, the Hungarian People's Republic, the German Democratic Republic, the Mongolian People's Republic, the Polish People's Republic, the Socialist Republic of Romania, the Union of Soviet Socialist Republics, and the Czechoslovak Socialist Republic came to the unanimous opinion that, in accordance with the Preamble to the 1968 CMEA GCD, conditions for the basis of delivery with rail or road transport that differ from those provided for in Paragraphs 5 and 6 of the 1968 CMEA GCD may be agreed upon in contracts for the delivery of all kinds of goods, if this is called for by the specific nature of the goods or the peculiarities of their delivery.

The opinion of the eight delegations stated above does not exclude the possibility of deviation from the provisions of other paragraphs by virtue of the Preamble.

RESOLUTION OF JUNE 5, 1975

"On the introduction of changes and additions to the General Conditions for Delivery Between Organizations of CMEA Member-Nations (1968 CMEA GCD) in accordance with the resolution of the Executive Committee adopted at the "69 Conference" (October, 1974)"

To introduce changes and additions into the text of the 1968 CMEA GCD in accordance with Supplement 5 and to recommend to CMEA member-nations the implementation of the changes and additions indicated in the Supplement on January 1, 1976, keeping in mind that:

(a) the text of the 1968 CMEA GCD clarified in accordance with the present resolution is to be applied to all contracts concluded on or after January 1, 1976. Contracting parties may agree to apply the conditions of this clarified text of the 1968 CMEA GCD to contracts concluded earlier;

(b) with respect to the Mongolian People's Republic, questions concerning compensation for losses will be decided bilaterally, with due regard for the peculiarities of its economic development.

RESOLUTION OF NOVEMBER 13, 1975

"On clarifications of the 1968/1975 CMEA GCD relating to the delivery of goods between organizations of the Republic of Cuba and other CMEA member-nations"

To introduce into the text of the 1968/1975 CMEA GCD clarifications relating to the delivery of goods between organizations of the Republic of Cuba and other CMEA member-nations, in accordance with Resolution 10,²⁸ and to recommend to CMEA member-nations that they implement them beginning January 1, 1976, keeping in mind that the text of the 1968/1975 CMEA GCD clarified in accordance with the present resolution is to be applied to all contracts concluded on or after January 1, 1976. Contracting parties may agree to apply the text of the 1968/1975 CMEA GCD clarified with the present resolution to deliveries of goods which will be made after January 1, 1976, under contracts concluded earlier than the date indicated.

RESOLUTION OF APRIL 13, 1979

"On the introduction of additions and changes into the General Conditions for Delivery of Goods Between Organizations of CMEA Member-Nations (1968/1975 CMEA GCD) in accordance with the resolution of the CMEA Executive Committee adopted at the Eighty-eighth Session on January 18, 1969"

1. To introduce additions and changes into the General Conditions for Delivery of Goods Between Organizations of CMEA

28. Stated in annotations to ¶¶ 29, 41, 52, 72.

Member-Nations (1968/1975 CMEA GCD) according to Supplement 4 and to call the document indicated the General Conditions for Delivery of Goods Between Organizations of CMEA Member-Nations (1979 Edition of the 1968/1975 CMEA GCD).

2. To recommend to CMEA Member-Nations that they implement the additions and changes mentioned in Point 1 of the present resolution on January 1, 1980, keeping in mind that the text of *The 1979 Edition of the 1968/1975 CMEA GCD* is to be applied to all contracts concluded by the organizations of CMEA Member-Nations beginning January 1, 1980.

Based on this, contracting parties may agree to apply the conditions of the 1979 Edition of the 1968/1975 CMEA GCD to contracts concluded earlier, which will continue to be in effect after January 1, 1980.

Record of proceedings of the delegation from the Socialist Republic of Vietnam.

Taking special circumstances into account, the organizations of the Socialist Republic of Vietnam (SRV) will continue to be governed in trade with organizations of other CMEA Member-Nations by the General Conditions for Delivery, which were concluded by the SRV bilaterally with each of the CMEA Member-Nations.

IV. Text

THE GENERAL CONDITIONS FOR DELIVERY OF GOODS BETWEEN ORGANIZATIONS OF CMEA MEMBER-NATIONS

(1979 Edition of the 1968/1975 CMEA GCD)

[Preamble]

All deliveries of goods between organizations of the member-nations of the Council for Economic Mutual Assistance, empowered to conduct foreign trade operations, are to be carried out on the basis of the following General Conditions for Delivery.

In cases when upon conclusion of a contract the parties conclude that the specific nature of the goods and/or peculiarities of their delivery require a deviation from individual conditions of the present General Conditions for Delivery, they may come to

an agreement about this in the contract.²⁹

CHAPTER I³⁰
CONCLUSION, CHANGE, AND TERMINATION
OF A CONTRACT

¶ 1

1. A contract is considered concluded:

(a) between those present—at the moment of signature by the negotiating parties;

(b) between those not present—at the moment the offeror receives notification of the acceptance of his offer without reservations, within the time limit indicated in the offer; or if such a time limit is not defined in the offer, within 30 days, counted from the day the offer was dispatched.

2. If the offeror receives notification of the acceptance of his proposal with reservations, or after the expiration of the time limit indicated in the offer or in Subpoint (b) of Point 1 of this paragraph, then such notification is considered a new offer. If, however, it is evident that notification was sent before the expiration of the time limit indicated in the offer or in Subpoint (b) of Point 1 of this paragraph, then it can be acknowledged as late only if the party who made the offer immediately informs the other party of receipt of late notification.

3. An offer is considered binding upon the offeror if it is

29. The provisions of the GCDG have varying obligatory effect, which can be defined according to the following three categories: those that are imperative and cannot be departed from, those that are explicitly non-imperative and from which the parties to a contract may depart at will, and those that apply to all contracts unless departed from on the grounds of the preamble of the GCDG. See Szasz, *supra* note 19. In the latter case, the parties can depart from those provisions which specifically relate to the special nature of the goods involved. The standard of departure is an objective one.

30. According to this Chapter of the GCDG, a contract cannot be implied from the existence of an agreement only. See Szasz, *supra* note 19. There is also no provision for oral contracts or for improperly executed contracts upon which there has been substantial reliance or part performance. The law governing the definition of an offer or the essential terms to be agreed upon in a contract is that of the civil sales law of the seller's country. See ¶ 110 of the GCDG.

not directly stipulated otherwise, or if notification of its recall was not received by the buyer before receipt of the proposal or simultaneously with it.

4. In the present General Conditions for Delivery, the word "offer" is to be understood as the order and the words "acceptance of the offer" are to be understood as the confirmation of an order.

¶ 2

1. The offer and the acceptance of the offer are valid if they are made in written form. Notification by telegraph or teletype is also understood as written form.

2. Supplements, additions, and changes in the contract are to be made in the form stipulated in Point 1 of this paragraph.

¶ 2-A

1. A contract may be changed or terminated by agreement of both parties.

2. Unilateral withdrawal from a contract or unilateral change of the terms of a contract is not permitted, with the exception of cases directly stipulated by the present General Conditions for Delivery, or by bilateral agreement or by contract.

¶ 3

All supplements to a contract, that is: technical conditions, specifications, special test conditions, instructions relating to packing, marketing, loading, and other indicated in the contract or in which reference is made to a corresponding contract, constitute an integral part of the contract.

¶ 4

From the moment the contract is concluded all previous correspondence and negotiations on the contract become invalid.

CHAPTER II³¹ BASIS OF DELIVERY

¶ 5

With rail transport, deliveries come free on rail (F.O.B.) the

31. According to the GCDG, all legal effects attendant upon the sale of goods occur simultaneously at the time and place of delivery. For situations

border of the country of the seller, hence:

(a) the seller bears the expenses for transportation of the goods to the border of his country; expenses for reloading and/or transfer of wheel couplings are borne by the buyer;

(b) the right or ownership of the goods, as well as the risk of accidental loss or accidental damage to the goods, is transferred from the seller to the buyer at the moment the goods are transferred from the railroad of the seller's country to the railroad accepting the goods;

(c) the date of delivery is considered the date of the stamp on the railroad way-bill of the border station at which the goods are transferred from the railroad of the seller's country to the railroad accepting the goods.

¶ 6

With road transport, deliveries come F.O.B. the place where the goods are loaded onto the buyer's means of transport, and if the seller provides transportation for the goods beyond the border of his country, F.O.B. the place of the inspection of the goods at the border customs station of the country which borders on the country of the seller, hence:

(a) the seller bears the expenses for transportation of the goods to the place where the goods are loaded onto the buyer's means of transport and, if the seller provides transportation for the goods beyond the border of his country, to the place where the goods are inspected at the border customs station of the country which borders on the country of the seller;

(b) the right of ownership of the goods, as well as the risk of accidental loss or accidental damage to the goods, is transferred from the seller to the buyer at the moment of acceptance of the goods from the seller's means of transport to the buyer's means of transport, and if the seller provides transportation for the goods beyond the border of his country, from the moment the goods are examined at the border customs station of the country bordering the country of the seller;

(c) the date of delivery is considered the date of the document that confirms the acceptance of the goods by the buyer's means of transport, and in cases where the seller provides trans-

that are not specifically covered by Chapter II, the civil law of the seller's country determines the point at which risk passes between the parties. See ¶ 110 of the GCDG.

port for the goods beyond the borders of the seller's country, the date of the border customs inspection of the goods by the country bordering the country of the seller.

¶ 7

1. With water transport, deliveries come F.O.B., C.I.F., or C.& F. to the port stipulated in the contract.

2. With F.O.B. delivery:

(a) the seller bears all expenses until the moment the goods are loaded on board the ship. Parties may, however, agree in the contract that the seller bears the expenses for loading the goods into the hold of the ship, including the expenses for stowing the goods;

(b) the right of ownership of the goods, as well as the risk of accidental loss or accidental damage to the goods, is transferred from the seller to the buyer at the moment the goods are transferred on board the ship in the port of loading;

(c) the date of the on-board bill of lading or the water waybill is considered the date of delivery.

3. With C.I.F. and C.& F. delivery:

(a) the seller bears all transportation expenses until the moment the ship arrives in the port of unloading. All expenses for unloading the goods from the hold of the ship are borne by the buyer; however, when transporting on ships of a line on which the expenses for unloading of goods are part of the freight, these expenses are not refunded to the seller by the buyer;

(b) the right of ownership of the goods, as well as the risk of accidental loss or accidental damage to the goods, is transferred from the seller to the buyer at the moment the goods are transferred on board the ship in the port of loading;

(c) the date of the on-board bill of lading or the water waybill is considered the date of delivery.

4. With water transport, which party bears expenses for separational materials may be agreed upon in the contract.

¶ 8

With air transport, deliveries come F.O.B. the place where the goods are surrendered for transport to the air transport organization in the country of the seller, hence:

(a) the seller bears all expenses until the moment the goods are surrendered to the air transport organization in the seller's country;

(b) the right of ownership of the goods, as well as the risk

of accidental loss or accidental damage to the goods, is transferred from the seller to the buyer at the moment the goods are surrendered to the air transport organization for air transport in the country of the seller;

(c) the date of delivery is considered the date of the freight way-bill of the air service.

¶ 9

With postal shipments, deliveries come F.O.B. the receiver, hence:

(a) the seller bears all transport expenses to the point of destination;

(b) the right of ownership of the goods, as well as the risk of accidental loss or accidental damage to the goods, is transferred from the seller to the buyer at the moment the goods are surrendered to the postal department of the seller's country. The right of claim, under the transport agreement concluded with the postal department, transfers from the seller to the buyer at the moment the package is surrendered to the postal department of the seller's country.

The date of delivery is considered the date of the postal receipt.

¶ 10

The seller is not required to insure goods supplied, if this is not directly stipulated by the contract.

CHAPTER III³² PERIOD OF DELIVERY

¶ 11

1. If it has not been agreed upon otherwise in the contract, with mass deliveries of goods as separate lots, shipment of separate lots should be carried out as evenly as possible within the time limits established in the contract.

2. The provisions of Point 1 of the present paragraph do not extend to the delivery of complete factories and installations.

3. The provisions of Point 1 of the present paragraph likewise do not extend to perishable agricultural and livestock goods

32. This Chapter deals with the time of delivery for goods under contract, and the problem of separate delivery of the component parts of a unit.

of a seasonal nature. With deliveries of these goods, the parties may agree upon the periodicity of the shipments within the time limits established.

¶ 11-A

1. The parties may conclude term contracts, i.e., contracts in which or from the contents of which it clearly follows that a violation of the time limit for delivery automatically annuls the contract or gives the buyer the right to withdraw immediately from the contract.

2. Under the contracts indicated in Point 1 of the present paragraph the seller has the right to effect delivery after the expiration of the time limit established in the contract only with the consent of the buyer.

¶ 12

1. Except for cases established in the contract, the seller may make early or partial delivery of goods only with the consent of the buyer.

2. If the buyer, having consented to early or partial delivery, does not stipulate additional terms, then the seller makes delivery by the terms established in the contract.

¶ 13

1. If the buyer does not fulfill the obligations stipulated in the contract to guarantee the seller's production within the time limit established in the contract, or if the buyer subsequently changes the data presented by him, and if in connection with this the seller suffers substantial production difficulties, then the seller has the right to a proportionate extension of the time limit for delivery, no longer, however, than the time that the buyer has delayed in fulfilling the obligations mentioned above, and/or to request compensation for losses arising as a result of this.

2. The seller is obliged to inform the buyer in good time of the extension of the time limit.

3. In exceptional, technically grounded circumstances, a technically grounded time limit other than the one stipulated in Point 1 of the present paragraph may be established by agreement of the seller and buyer. However, if the parties cannot reach an agreement, then the provision of Point 1 of the present paragraph is to be applied.

¶ 14

1. If concrete time limits for delivery of parts are not established in a contract for machines and equipment, then the day of delivery of the last part for the machine or equipment, without which the machine or equipment cannot be put into operation, is considered the day of delivery.

2. The provisions of the present paragraph do not deprive the buyer of the right of claim regarding unsupplied parts.

CHAPTER IV QUALITY OF GOODS

¶ 15

If it is not established in the contract that the quality of goods ought to conform to a specific quality characteristic, to technical conditions or to a standard (with indication of the number and date) or to a sample agreed upon by the parties, then the seller is obliged to deliver the goods in the customary, average quality existing in the country of the seller on delivery of the given type of goods and answering the purpose stipulated in the contract. If the purpose of the goods is not established in the contract, the goods are supplied in the customary, average quality conforming to the usual purpose of these goods in the country of the seller.³³

¶ 16

1. During the period of performance of the contract, the seller is obliged to inform the buyer about improvements and changes in the construction of the machines and equipment which are the subject of the contract.

2. Improvements tied to construction changes, if such are proposed after the conclusion of the contract, can be introduced only by agreement of the parties.

¶ 17

The quality of articles and parts delivered in place of defective goods ought to be such that it meets the contract requirements on the quality of the goods of which they are a component part.

33. It appears that in the absence of an agreement by the parties there is no effect on the validity of a contract regarding the quality of the goods involved, since the GCDG provides a standard for such determination.

CHAPTER V³⁴ QUANTITY OF GOODS

¶ 18

The quantity of pieces and/or weight of delivered goods is determined:

1. With rail transport:

(a) if the quantity of pieces and/or weight of the goods was determined by the railroad shipping station of the seller's country, which must be attested to by an agent of the railroad in the appropriate column of the railway bill of lading—on the basis of the railway bill of lading of the direct international rail cargo service;

(b) if the quantity of pieces and/or weight of the goods at the railroad shipping station of the seller's country was determined by the shipper and not verified by the railroad, then in the cases of non-transferred carriage, if it is not established otherwise by contract—on the basis of the bill of lading by direct international rail cargo service; but in cases when a verification of the weight and/or quantity of pieces is conducted by the railroad in the course of the journey or at the station of destination, on condition that the goods and car arrive at the place of verification in a condition barring the responsibility of the railroad—on the basis of a document reflecting the results of such weighing and/or verification of the quantity of pieces by the railroad, formulated in accordance with the Agreement on International Rail Freight Communication (AIFC);

(c) if the quantity of pieces and/or weight of the goods was determined by the shipper and not verified by the railroad at the shipping station of the shipper's country, then in the case of carriage with transshipment, the quantity of pieces and/or weight of the goods is determined in a manner established in bilateral agreement or by contract.

2. With road transport—on the basis of the transport document.

3. With water transport—on the basis of the bill of lading or water way-bill.

4. With air transport—on the basis of the air cargo service bill of lading.

5. With mail shipments—on the basis of the postal receipt.

34. This chapter discusses the documents by which the quantity of goods is determined for each type of transport.

6. In the case of the transfer of goods to a warehouse in accordance with ¶¶ 40 and 41—on the basis of the warehouse certificate or storage receipt.

¶ 19

The verification of the quantity of delivered goods in specified units of measure (for example, by metric area, pieces, pairs, net weight) is made according to the specifications of the seller.

CHAPTER VI PACKING AND MARKING³⁵

¶ 20

1. If in the contract there are no special instructions regarding packing, the seller ought to ship goods in packing used for export goods in the seller's country, which would provide for the safekeeping of the cargo in transport in the case of possible transfer and in the proper and customary handling of cargo. In appropriate cases the duration and means of transport also ought to be considered.

2. Before packing, the proper lubrication of machines and equipment ought to be conducted, providing for their protection from corrosion.

¶ 21

1. In each cargo piece a detailed packing list ought to be enclosed.

2. With deliveries of equipment and machines there should be indicated in the packing list: the designation of the machine and separate parts packed in the given piece, their quantity with a statement of technical data agreeing with the provisions of the contract, the factory number of the machines, the number of the plans, the gross and net weight and the exact marking of the given piece, so that it is possible to establish the identity of the goods with the given technical specifications indicated in the contract.

3. One copy of the packing list in a waterproof envelope is enclosed together with the equipment or machine inside the

35. For packing, marking and furnishing of technical documentation, the law of the seller's country governs in cases where there is no specific agreement by the parties.

box or attached to the outside of the box.

4. In cases when the equipment or machine is shipped without packing, an envelope or waterproof paper, in which the packing list is enclosed, ought to be covered with a thin tin plate welded directly to metal parts of the machine.

¶ 22

If it is not established otherwise in the contract, the seller is obliged to send together with transport documents one copy of local weight specifications and of a document confirming the quality of the goods.

¶ 23

1. If it is not established otherwise in the contract, the following marking ought to be clearly written on each piece with indelible paint:

- contract number and/or buyer's order number
- piece number
- consignee
- gross and net weight in kilograms

2. With rail transport, the marking ought to correspond to the requirements of the AIFC.³⁶

3. With water transport, the marking ought to contain also the size of the boxes in centimeters; and in necessary cases, the port of destination and the country of destination of the goods.

4. With transport by other means, markings ought to satisfy the requirements of rules affecting the corresponding means of transport.

5. If by virtue of the specific nature of the goods special (warning) markings are needed, the seller is obliged to apply such markings.

6. Boxes are marked on two wooden sides; unpacked goods—on two sides.

7. Markings are applied in the language of the seller's country with a translation of their text in Russian or German.

8. For equipment and machines the piece number is stated as a fraction, in which the numerator is the original number of the piece, and the denominator is the general number of pieces in which the complete unit of equipment is packed.

36. Agreement on International Rail Freight Communication.

CHAPTER VII TECHNICAL DOCUMENTATION³⁷

¶ 24

1. If it is not specified in the contract what kind of technical documentation (plans, specifications, instructions for care and operation, for assembly, etc.) ought to be sent by the seller in connection with fulfillment of the contract, and likewise the number of complete sets of documentation, the manner and time limit of delivery, then the seller ought to present for the instruction of the buyer technical documentation in accordance with the practice existing in the corresponding field of industry in the seller's country, and in such a period of time as to ensure normal use of the machines and/or equipment, the start of operation and care for them, and their routine repair.

2. Technical documentation ought to be executed in such a way as to ensure the possibility of normal use of the machines and/or equipment in production, and with complete installations, the assembly, if it is not stipulated by contract that the seller conducts assembly work, their start, operation and care for them in the process of operation, and likewise routine repair.

3. Technical documentation ought to be composed in the language agreed upon in the contract.

4. In technical documentation the appropriate contract, order, and lot (consignment) number ought to be indicated.

5. Technical documentation stipulated in the contract that is sent together with the goods must be packed in waterproof paper or in some other manner protecting it from damage in transport with the goods.

6. If the time limit on the delivery of plans for foundations, or building instructions, or data necessary for the planning of foundations is not established by the contract, then the parties will agree upon these time limits in a supplement.

¶ 25

1. If it is not established by contract otherwise, the seller reserves the exclusive right to technical documentation sent to the buyer.

2. The buyer has the right to use the technical documenta-

37. The rights of the buyer to the technical documents are circumscribed, unless otherwise provided by contract.

tion given to him, for which the seller reserves the exclusive right, only within the limits of his own country and only for care of the machine and/or equipment for which this documentation was sent, for their operation and repair (including the manufacture of spare parts necessary for repair).

3. Technical documentation sent in accordance with a contract is not to be published.

4. In cases of a contract's annulment, technical documentation sent by the seller to the buyer must be returned at the request of the seller without delay, but not later than three months from the day of the annulment of the contract.

5. If manufacture of goods is conducted according to the technical documentation of the buyer, the corresponding provisions of the present paragraph apply to the interrelation of the parties on technical documentation.

CHAPTER VIII VERIFICATION OF THE QUALITY OF GOODS

¶ 26

1. Before shipment of the goods the seller is obliged to undertake at his own expense the verification (testing, analysis, inspection, etc., depending on the kind of goods) of the quality of the goods in accordance with the terms agreed upon with the buyer; in the case of the absence of terms,—in accordance with the customary terms of verification existing in the seller's country in relation to the given goods.

2. With the delivery of goods of mass industry and agricultural production, including goods of general consumption and food products, in case of the absence of terms in the contract, the verification of quality is conducted only in relation to objects taken at random, according to generally accepted rules in the country of the seller.

3. In relation to machines or equipment for which a test is conducted, before shipment of the goods there must be drawn up at the instruction and expense of the seller a record of the test with indication of the essential details and results of the test; and in relation to other goods, a certificate of quality or other document attesting to the conformity of the quality of the goods to the terms of the contract.

4. If it is not established otherwise by contract, the seller is obliged to provide the buyer with the appropriate document attest-

ing to the quality of the goods. A record of the test is given to the buyer by the seller at the request of the former.

5. If owing to peculiarities of the machines or equipment or to other conditions, verification of productivity (as conditioned in the contract) is required on the place of installation, this verification is conducted in whole or in part on the place of installation of the machines or equipment in the buyer's country in the manner and within the time limit specified in the contract.

6. With delivery of a large set of equipment, at the request of the buyer and upon terms agreed upon by the parties, a representative of the seller will take part in the verification of the quality of the equipment stipulated by the contract. The results of the verification are indicated in a report signed by both parties.

¶ 27

1. In the case when the right of a representative of the buyer to participate in the verification of the quality of goods in the seller's country is stipulated in the contract, the seller is obliged to inform the buyer about the readiness of the goods for verification within a time limit which gives the buyer the opportunity to participate.

2. The seller is obliged to provide the buyer with the opportunity to participate in verification in accordance with the terms of the contract and with procedures accepted in the given field of industry. The seller bears all expenses connected with the conducting of verification (expenses for personnel, for use of technical equipment, energy, auxiliary materials, etc.), with the exception of expenses for the representative of the buyer.

3. The absence of a representative of the buyer in verification of the quality of goods does not delay shipment of the goods, if there is a document attesting to the conformity of the goods to the terms of the contract.

4. The participation of the representative of the buyer in the verification of the quality of goods conducted by the seller does not remove from the seller the responsibility for the quality of the goods.³⁸

38. See ¶ 82 of the GCDG, whereby if final acceptance of the goods by quality is made in the seller's country, the buyer can only file a claim for latent defects, unless otherwise provided by contract.

CHAPTER IX WARRANTIES³⁹

¶ 28

1. During the warranty period the seller is responsible for the quality of goods, in particular for the quality of materials employed in their construction and in the manufacture of machines and equipment (if the equipment, machines, etc., are not manufactured according to the plans of the buyer), and likewise for those properties of the goods which are agreed upon in the contract.

2. The extent and terms of the warranty on technical-economic performance of complete factories and complete installations must be determined in bilateral agreement or in contract.

¶ 29

1. The warranty period is established:⁴⁰

(a) on objects of precise mechanical construction, measuring instruments, optical articles and instruments—for nine months from the date of delivery;

(b) on standard machines and apparatus, small and medium installations—for twelve months, counted from the day they are put into operation, but no more than fifteen months from the date of delivery;

(c) on large machines and installations—for twelve months, counted from the day they are put into operation, but no more than twenty-four months from the date of delivery.

2. For complete factories and complete installations, a longer warranty period may be agreed upon in the contract.

3. For machines and equipment not mentioned in the present paragraph, ships and other sailing vessels, railroad rolling stock, wheel couplings of railroad rolling stock, cable products, and also for goods upon which a warranty is provided by agreement of the

39. The GCDG establishes definite warranty periods for broad categories of goods, while parties to a contract may agree on a warranty for other goods not specifically mentioned.

40. For delivery of goods to the Mongolian People's Republic from countries not having common national borders with the MPR, the warranty period, calculated from the date of delivery, is increased by two months.

For delivery of goods to the Republic of Cuba and from the Republic of Cuba, the warranty period, calculated from the date of delivery, is increased by two months.

parties or on the basis of trade custom, as for example on preserves and consumer goods of protracted use, the warranty period is established in the contract.

¶ 30

In cases of delay in putting machines or equipment into operation through the fault of the seller, especially due to the seller's failure to provide plans, operation instructions, and other data or services stipulated in the contract, the warranty period, calculated from the date of delivery, is moved back by the time of the delay in putting the machines or equipment into operation which has arisen at the fault of the seller.

¶ 31⁴¹

1. If during the warranty period goods appear defective or not conforming to the terms of the contract, independent of whether this can be established in tests at the factory of the seller, the buyer has the right to request either the removal of the defects discovered or the discounting of the goods.

2. If the buyer requests removal of the defects, then the seller is obliged to remove the defects discovered without delay at his own expense either by repair or by replacement of the defective goods or defective parts of the goods with new ones, which conform to the instructions of the contract or are in accordance with the instructions of ¶ 17.

3. If the buyer requests a discount on the goods, then the seller has the right at his own discretion either to remove the defect or to replace the goods or defective part of the goods, or to provide the buyer with a discount at an agreed-upon rate.

4. If the seller does not remove the defect during the period agreed upon or, if such period was not agreed upon, during a technically based period, then the buyer has the right to request from the seller in place of the repair of the defect the provision of a commensurate discount.

41. If the goods prove defective during the warranty period, the buyer may demand a correction of the defect or a reduction in price. (The latter alternative was added to the 1968 GCDG.) The seller has to repair or replace the goods, and pursuant to a demand for reduction in price, may at its discretion repair or replace the goods rather than provide the buyer with a discount. The buyer may also demand payment of a penalty in conjunction with its demand for elimination of defect or reduction in price. See ¶ 75 of GCDG.

5. In cases stipulated in Point 2 of the present paragraph, and likewise in cases when the seller has taken upon himself the obligation to repair a defect or to replace defective goods on the basis of Point 3 of the present paragraph, the buyer has the right, if the goods cannot be used for their purpose before the repair of the defect, to request from the seller the payment of a fine in a manner and at a rate which is stipulated in Point 4, ¶ 75.

6. In the case of agreement by the parties to a discount on the goods instead of repair of the defects, with agreement on the discount rate the parties must negotiate whether the fine, charged and/or paid in accordance with Point 5 of the present paragraph, is included in the amount of the discount or whether the discount is paid over and above this fine.

7. If the parties have agreed upon the discount rate, but there is no agreement by the parties on the question whether the fine indicated in Point 5 of the present paragraph is included in the amount of the discount or whether the discount is paid over and above this fine, then in such cases when the real losses arising with the buyer as a result of the non-use of the goods up to the moment of agreement on the discount:

- are lower than the amount of the fine, the fine charged and/or paid is decreased to the amount of the real losses;

- are higher than the amount of the fine, the real losses exceeding the amount of the fine are paid by the seller to the buyer, if this is stipulated in a bilateral agreement.

8. If the right of the buyer to the dissolution of the contract is established in bilateral agreement or contract, and the terms for dissolution are not contained there, then the buyer can use this right if arbitration recognizes that the seller cannot remove the defect by means of repair or replacement and the buyer cannot use the goods for their designated purpose with a discount suggested by the seller.

¶ 32

1. Replaced defective goods or defective parts of goods are returned to the seller no later than six months after receipt by the buyer of the seller's request for return. The seller has the right to request the return of defective goods or defective parts of goods no later than six months, and for complete factories and installations no later than twelve months, counted from the date of replacement.

2. Failure to request the return of replaced defective goods within the period indicated in Point 1 of the present paragraph deprives the seller of the right to turn to arbitration.

3. The seller bears all transport and other expenses connected with the return and/or replacement of defective goods or defective parts of goods, whether on the territory of the buyer's country and the transit country or on the territory of the seller's country.

¶ 33

1. If at the request of the buyer, the seller does not remove the stated defects without delay, the buyer has the right to remove them himself at the expense of the seller without detriment to his rights under the warranty. The seller is obliged in this case to pay for the repair in the amount of normal real expenses.

2. Small defects, whose removal does not support delays and does not require the participation of the seller, are corrected by the buyer with the seller undertaking normal real expenses.

¶ 34

The seller does not bear responsibility under the warranty, if he demonstrates that the discovered defects arose not at his fault, but occurred in particular as the result of incorrect assembly by the buyer, of repair of equipment or machines, of failure to observe instructions on operation and care, and likewise of changes produced by the buyer in the equipment or machines.

¶ 35

In the case of repair or replacement of defective goods or defective parts of goods, the warranty period for the basic equipment or machine is extended by the time during which the equipment or machine was not used as a result of the discovered defect.

¶ 36

If it is not established otherwise in the contract, the warranty period on spare parts delivered together with the machines or equipment expires at the same time as the warranty period on the machines or equipment.

¶ 37

1. Warranties on spare parts which quickly wear out are granted on the basis of negotiation between the buyer and seller, with due regard for international practice. The warranty agreed upon is specified in the contract.

2. If it is not agreed upon otherwise in the contract, at the request of the buyer, the seller must ensure delivery of spare parts which quickly wear out, for which a warranty was not given or for

which the warranty period is less than that on the basic machine or equipment, in quantities rising from the normal operation of these machines and equipment and for normal use of their spare parts and for the whole warranty period established for the machines or equipment. If the cost of these spare parts is not included in the price of the machines and equipment, the spare parts are delivered at additional payment.

¶ 38

On parts of goods supplied in place of defective ones, a warranty can be established in the contract with due regard for international practice.

CHAPTER X SHIPPING INSTRUCTIONS AND NOTIFICATION OF DELIVERY

¶ 39

1. The means of transport is agreed upon between the parties.
2. If time limits are not established in the contract, the buyer is obliged to report shipping data to the seller not less than thirty days before the beginning of the period established in the contract for the delivery of goods.

¶ 40

1. If it is not established otherwise in the contract, the right of determining the direction of transport by rail belongs to the buyer.

2. If other data are not provided in the contract, shipping instructions for rail transport ought to contain the tariff declaration, the border point for the transfer of goods in the seller's country, the freight consignee, and also the station of destination. The buyer is obliged to determine the point of transfer of goods in the seller's country, based upon the shortest possible general distance between the stations of shipment and destination.

3. The seller is obliged to compensate the buyer for all expenses arising from the seller's failure to observe the given shipping instructions.

4. If the seller does not in good time receive from the buyer instructions about the shipment of goods subject to delivery by rail, upon expiration of the period of delivery agreed upon by the parties, the seller has the right to transfer the goods to storage at the expense and risk of the buyer. In this case the buyer also pays for additional

expenses connected with the delivery of goods to storage and from storage to railroad cars. The date of the warehouse certificate or storage receipt is considered the date of delivery of the goods. However, the seller is not released from the obligation to ship the goods to the buyer's address and to pay the expense for delivery of goods to the border.

¶ 41

1. With F.O.B. delivery the seller is obligated to inform the buyer by telegraph or teletype within the period established by the contract about the readiness of the goods for shipping to the port.

2. If it is not agreed upon otherwise in the contract, this notification ought to contain the following data:

- destination of the goods;
- quantity of goods with indication of the gross weight;
- contract number.

3. Upon receipt of notification the buyer is obliged to inform the seller by telegraph or teletype within a seven-day period⁴² about the time limit for delivery of the goods to the port of loading. This period cannot be less than fifteen or more than thirty days, counted from the date the notification indicated was sent to the seller.

4. In the case of delay in the granting of freight space, the buyer bears expenses for the storage of goods over twenty-one days in the port of loading, counted from the date of the arrival of the goods in the port of loading. However, if the goods are brought by the seller to port before the time limit agreed upon by the parties, the charge of storage expenses to the buyer is effected only upon the expiration of twenty-one days after the time limit agreed upon for the delivery of goods to port.

5. Upon the expiration of twenty-one days, the seller has the right to transfer goods to storage at the expense and risk of the buyer, about which the latter should be informed immediately. In this case the buyer also pays additional expenses which arise, upon the expiration of twenty-one days, in connection with the delivery of goods to storage and from storage to on board the vessel.

6. Storage of goods in port can be commissioned only to a warehouse or to organizations having the right to give a warehouse

42. With delivery of goods to or from the Republic of Cuba, this period is 20 days.

certificate. A document of storage of goods in a warehouse in port, given by a state port authority or state forwarding agent, is also regarded as a warehouse certificate.

7. The date of the warehouse certificate is considered the date of delivery of the goods. The seller, however, is not released from the obligations stipulated in Subpoint (a), Point 2, ¶ 7.

¶ 42

If, in accordance with the contract, freight space must be provided by the seller, the buyer is obliged to inform the seller of the port of destination of the goods fifty-five days before the beginning of the delivery period; and seven days before the day of the beginning of loading of the goods, the seller is obliged to inform the buyer by telegraph or teletype about the intended shipment, having indicated the name of the vessel, the date of its projected arrival in the port of destination, the designation of the cargo, the quantity of pieces and/or approximate weight.

¶ 43

1. If the time limit and/or means of sending notification about the shipment of goods which follows is not agreed upon in the contract, or it is not stipulated that notification is not required, then in cases of rail, road, or air transport the seller is obliged to send notice to the buyer within such time and in such manner that the buyer would receive it before the arrival of the goods at the border of the buyer's country.

2. If it is not established otherwise in the contract, notification ought to contain the following data:

- date of loading;
- designation of the goods;
- quantity of the goods;
- contract number;
- car number (with rail transport).

¶ 44

1. If it is not established otherwise in the contract, in cases of water transport, the seller or his forwarding agent is obliged to inform the buyer by telegraph or teletype of the shipment of the goods immediately after the departure of the vessel, but no later than within two hours from the moment of departure, if the transit time of the cargo from port of shipment to port of destination does not exceed seventy-two hours, or no later than within twenty-four hours from the

moment of departure, if the transit time exceeds seventy-two hours.

2. If it is not established otherwise in the contract, such notification ought to contain the following data:

- name of the vessel;
- departure date;
- port of destination;
- designation of goods;
- consignment number (water bill of lading);
- number of pieces;
- gross weight;
- quantity in specified units of measure (in pieces, pairs, net tons, etc.).

3. Notification, sent by telegraph or teletype, ought to be confirmed in writing.

¶ 45

The seller shall bear the expenses of notifying the buyer of shipment of goods.

¶ 46

1. If the railroad assigns a car with a larger standard load than that required by the seller, or if the railroad, referring to the limit of pressure on the axle in a particular section, refuses to load a car to the standard weight prescribed or stipulated by the tariff for the given cargo, the seller is obliged to request official confirmation of this by the railroad in the bill of lading.

2. The provisions of Point 1 of the present paragraph apply also in the case when cars are assigned by the buyer.

¶ 47

If the car is not loaded in accordance with the norms of the Uniform Transit Tariff (UTT) at the fault of the seller, the seller bears the expenses for the underload which arises on transit railroads.

¶ 48

In the case of delivery of freight not corresponding to the dimension requirements of the railroad of the buyer's country, the seller is obliged to warn the buyer about this by registered letter no later than two months before the time limit of delivery, enclosing drawings of the dimensions of the freight, with an indication of its size and weight. The date of loading and the border station through which the freight ought to pass is to be specified by the parties. In this case the date of shipment must be confirmed by

the seller no later than twenty-one days before the shipment of the goods.

CHAPTER XI MANNER OF PAYMENT

¶ 49

1. Payment for supplied goods is made in the form of "encashment with subsequent acceptance" (encashment with immediate payment)⁴³ against the presentation of the following documents by the seller to the bank of the seller's country.

(a) a bill in three copies with indication in it of: the year and designation of the agreement (or protocol), the number of the contract and/or buyer's order, the position of the goods in the agreement (or protocol), and other data stipulated by the contract.

In the case of delivery of the goods before the conclusion of the agreement (or protocol), in place of the year and designation of the agreement (or protocol), the bill indicates only the year to whose calculation of quotas the delivery is made;

(b) transport documents, depending on the kind of transport agreed upon in the contract, or the warehouse certificate or storage receipt in cases provided for in ¶ 40 and ¶ 41 of the present General Terms of Delivery, or the deed of surrender/receipt of the goods by the seller to the buyer or, in the case of shipment in combined cars, the forwarding agent's shipment receipt with indication in it of the car number, railroad waybill and shipping date, or, if it is agreed upon in the contract, the forwarding agent's receipt for acceptance of the cargo for further shipment without the right of recall by the seller;

(c) other documents stipulated in the contract.

2. If it is established in the contract, besides the cost of

43. In payment by "subsequent acceptance," the seller receives payment from its national bank handling foreign trade transactions upon presentation to the bank of the documents stipulated by the GCDG. The seller's bank then sends these documents to the buyer's national bank handling foreign trade transactions in order to receive payment from that bank or the International Bank for Economic Cooperation. The buyer's bank then receives payment from and gives the documents to the buyer. The GCDG stipulates certain situations in which the buyer may refuse to accept or, having paid, may demand full or partial repayment. Disputes as to a buyer's refusal to accept are settled by the parties themselves.

the goods, the cost of freight, insurance, and other expenses subject to payment on the same bill and in the same manner as the goods can also be included in the bill (invoice).

3. One of the three copies of the bill, or by agreement of the seller with the buyer, a duplicate of the bill is presented by the seller through the bank or directly to the trade representative or trade counsellor (counsellor on economic questions) of the embassy of the buyer's country in the country of the seller at the latter's request.

¶ 50

1. The seller bears full responsibility for the conformity of the documents presented by him to the bank and of the data contained in them to the terms of the contract in accordance with Subpoints (a), (b), and (c), Point 1, ¶ 49.

2. The bank of the seller's country verifies the presence of the documents stipulated in Subpoints (a) and (b), Point 1, ¶ 49 and the correspondence of all the documents presented to each other in content and in numerical data.

3. On the basis of the verified documents, the bank of the seller's country provides payment to the seller and carries out a settlement with the bank of the buyer's country in accordance with the agreements in force between the countries and/or banks, sending the documents without delay directly to the bank of the buyer's country. The bank of the buyer's country transfers the documents without delay to the buyer, simultaneously collecting from the buyer the equivalent amount paid according to these documents by the bank of the seller's country. The prior agreement on the part of the buyer is not required with these settlements.

4. The buyer's obligations to pay the seller are considered fulfilled, if made upon settlements through the International Bank for Economic Cooperation, at the moment of the completion of the entry according to the accounts of the bank of the buyer's country and the bank of the seller's country in the International Bank for Economic Cooperation, or if made upon settlements according to accounts opened by the national banks with each other, at the moment of completion of the entry according to the account of the bank of the buyer's country in the bank of the seller's country.

¶ 51

If, having consented to early delivery, the buyer has not at the same time agreed otherwise, it is considered that he has also consented to early payment.

¶ 52

In the course of 14 work days from the day of receipt of the seller's bill by the bank of the buyer's country, the buyer has the right to request the return of all or part of the amount paid in cases provided for accordingly in ¶¶ 53, 54, and 55.⁴⁴

¶ 53

The buyer has the right to request the return of the whole amount of the bill, if:

1. The goods were not ordered or were shipped after the rescission of the contract with the seller's consent.

2. The goods were already paid for earlier by the buyer.

3. All elements of the documents indicated in Subpoints (a), (b), and (c), Point 1, ¶ 49, were not presented.

4. The equipment was shipped incomplete, and payment is stipulated in the contract for complete shipment.

5. The seller shipped the goods earlier than the period established by the contract without the consent of the buyer, or received payment before the beginning of the delivery period for goods in relation to which the buyer gave his consent to early delivery but warned of his non-consent to early payment.

6. The seller shipped goods after receiving the buyer's withdrawal from the contract, in accordance with ¶ 70 and ¶ 85.

7. As a result of discrepancies or errors of the data contained in them, the bill and/or attached documents do not allow the determination of the quantity and/or kind and/or quality and/or cost of the goods.

8. Detailed prices are not indicated or price-rate specifications are not stated in the bill, as stipulated by the contract.

9. Payment is to be effected in a form other than encashment with subsequent acceptance (encashment with immediate payment), or through a different bill.

10. Other conditions occur, in relation to which such a right is directly stipulated by contract.

¶ 54

At his own discretion the buyer can likewise request partial return of the amount of the bill for reasons indicated in Points 2-9, ¶ 53.

44. With delivery of goods to or from the Republic of Cuba, this time period is 25 working days.

¶ 55

The buyer has the right to demand partial return of the amount of the bill if:

1. In the bill, prices exceed those established by the contract, or expenses are included whose payment is not agreed upon in the contract.

2. It is apparent from documents, on the basis of which payment is effected, that unordered goods were shipped along with ordered goods.

3. The buyer refuses to accept part of the goods in view of the seller's non-observance of the assortment established by the contract, if that non-observance is apparent from the documents on the basis of which payment is effected.

4. It is apparent from the documents, on the basis of which payment is effected, that the quantity of goods shipped exceeds the quantity ordered, it being the case that the quantity of goods shipped over the quantity ordered exceeds that allowed by the contract.

5. The quantity of goods indicated in the bill exceeds the quantity indicated in the transport documents and/or specifications.

6. In the bill or in the documents attached to it, an arithmetic mistake is discovered favoring the seller.

7. Other conditions occur, in relation to which such a right is stipulated directly by the contract.

¶ 56

1. In filing a claim for full or partial return of the amount paid on the basis of the seller's bill, the buyer is obliged to present to the bank of his country a declaration, for which justification is given and binding on the buyer, together with copies in a quantity determined by the bank of the buyer's country, but not fewer than three. One copy of this declaration is designated for transmission to the seller. In each case the buyer ought to make the declaration for the return of the amount with reference to that Point of ¶ 53 or ¶ 55, on the basis of which he is requesting return of the amount.

2. At the same time that a claim for return of the amount is presented to the bank, the buyer is obliged to inform the seller about the return being collected. With continuous partial deliveries this ought to be made by telegraph or teletype.

3. At the request of the bank, the buyer is obliged to present to the bank the documents necessary for substantiating the claim for the return of a paid amount, in accordance with the terms

indicated in ¶ 53 or ¶ 55.

4. If the declaration for return of a paid amount relates to Point 10, ¶ 53, or to Point 7, ¶ 55, or to Point 5, ¶ 62, the bank of the buyer's country in each case verifies the presence of these conditions.

5. In cases noted in Points 1, 3, and 6, ¶ 53 and in Points 2, 3, and 4, ¶ 55, in his declaration containing the request for return of the paid amount, the buyer is obliged to affirm at the same time that he holds the goods not accepted by him at the disposal of the seller and at the latter's expense and risk.

¶ 57

1. If the bank of the buyer's country establishes that the request for full or partial return of the paid amount conforms to the terms stipulated in ¶ 53 or ¶ 55, then the bank of the buyer's country effects the return of the amount which was taken from the account of the buyer in accordance with the agreement between countries and/or banks. At the same time the bank of the buyer's country sends a copy of the declaration of the buyer to the bank of the seller's country, which debits the account of the seller.

2. On returning the amount, the bank of the buyer's country informs the bank of the seller's country of the date of the receipt of the documents indicated in Subpoints (a), (b), and (c), Point 1, ¶ 49.

3. Upon full return of the amount received in settlement, in accordance with Points 1, 3, and 6, ¶ 53, the buyer is obliged to return the documents received by the buyer, which relate to the given lot of goods, to the seller at the seller's first request.

4. After the return to the buyer of the amount earlier received by the seller, the seller has the right to present a second time to the bank of his country a document and/or bill, together with a copy of the buyer's declaration for the return, for repayment by means of encashment with subsequent acceptance (encashment with immediate payment), if in the cases indicated:

(a) in Points 3, 7, and 8, ¶ 53, the seller presents the missing and/or corrected documents;

(b) in Point 4, ¶ 53, the seller fills the delivery completely;

(c) in Point 5, ¶ 53, the time period for payment provided by the contract begins;

(d) in Point 9, ¶ 53, the seller presents documents for payment by the appropriate bill.

5. After restoration of the amount by the bank to the account of the buyer, all disagreements between seller and buyer are

resolved immediately between them.

¶ 58⁴⁵

If the amount paid by him was returned to the buyer on the basis of an unjustified claim, the buyer must pay to the seller in addition to the payment of the indicated amount, a fine at the rate of one-tenth of one percent of this amount for every day of delay, counting from the day of the return to the day of the final payment, but not higher than five percent of the amount which was returned without justification.

¶ 59

The payment of services and other expenses connected with reciprocal deliveries of goods, including expenses for assembly, planning and preparatory work and transport-forwarding services, and not included in the bill for goods, is effected in the manner of encashment with subsequent acceptance (encashment with immediate payment) against the creditor's presentation to the bank of his country of a bill and other documents agreed upon between countries.

¶ 60

With settlements for services and other expenses provided for in ¶ 59, the creditor bears full responsibility for the conformity of the documents presented by him to the bank, and of the data contained in them or the bills provided, with the agreement with the debtor.

¶ 61

With settlements for services and other expenses provided for in ¶ 59, the debtor has the right in the course of 24 working

45. This provision was changed in the 1979 revision to delete any reference to adjudication by an arbitration tribunal. Previously, it had provided:

If the buyer admits, or an arbitration tribunal establishes, that the amount paid was without justification returned to the buyer on the basis of his demand, the buyer must, in addition to payment of the said amount, pay a penalty in the amount of .1% of such amount for each day of delay, counting from the day of return of the amount until the day of final payment, but not exceeding 5% of the amount returned without justification.

days from the day of receipt by the bank of his country of the creditor's bill to request the return of all or part of the paid amount in cases provided for in accordance with ¶ 62 and ¶ 63.

¶ 62

The debtor has the right to request the return of the whole amount of the bill, if:

1. there is not a commission for service or it is annulled before the rendering of service;
2. these services were paid for earlier;
3. all elements of the documents agreed upon by the parties are not presented, or from the documents presented it is impossible to determine which services were rendered and in what amount;
4. payment ought to be effected in a form other than encashment with subsequent acceptance (encashment with immediate payment), or through another bill;
5. other circumstances occur, in relation to which such a right is directly stipulated by agreement of the parties.

¶ 63

The debtor has the right to demand partial payment of the sum if:

1. in the bill, or in the documents attached to it there is an arithmetic mistake in favor of the creditor;
2. in the bill, higher tariffs and/or rates are used than were agreed upon between the parties;
3. currency exchange rates were incorrectly employed;
4. in the bill, services, duties, commissioned compensations and increments are included which were not agreed upon by the parties;
5. the amount of the bill is calculated on the basis of incorrect data about the quantity, weight, and volume of the goods;
6. in the bill, alongside the cost of the services fulfilled, the cost of non-rendered and/or partially rendered services are included;
7. payment ought to be effected in a form other than encashment with subsequent acceptance (encashment with immediate payment), or through a different bill.

¶ 64

In the case of the return to the debtor of an amount in accordance with ¶¶ 62 and 63, the return of documents is made by agreement of the parties.

¶ 65

With settlements for services and other expenses stipulated in ¶ 59, in addition to resolutions ¶¶ 59-63, the provisions of ¶ 50 and ¶¶ 56-58 are applied by analogy.

¶ 66

1. Payments on claims for quantity or quality, for fines and for other reasons are effected in the manner of:

(a) direct transfer of the acknowledged amount by the debtor to the creditor, or

(b) payment by the bank of the creditor's country in the manner of encashment with subsequent acceptance (encashment with immediate payment) of the amount acknowledged by the debtor on the basis of his credit note.

2. The debtor has the right to request the return of the amount paid on the basis of Subpoint (b), Point 1 of the present paragraph, if he demonstrates that he transferred the amount of the bill which was debited from his account in accordance with Subpoint (a), Point 1 of the present paragraph.

¶ 67

1. If on the basis of special conditions for delivery, a letter of credit is not opened by the buyer in the time period established in the contract, he is obliged to pay a fine to the seller for each day of delay beyond the time period set in the contract until the day the letter of credit is opened, at the rate of one-twentieth of one percent but not exceeding five percent of the amount of the letter of credit.

2. The seller is obliged to give the buyer an additional time period to open a letter of credit, but does not lose the right to charge a fine.

3. If the buyer does not open a letter of credit in the additional period, the seller has the right to annul the contract. In this case he may receive at his discretion from the buyer either the fine stipulated in Point 1 of the present paragraph or a one-time fine levied at the rate of three percent of the amount of the letter of credit, if no other rate for the fine is established in the contract.

4. In a case where there is a delay in opening a letter of credit, the seller has the right to delay sending the goods.

5. If the goods are sent by the seller before a letter of credit has been opened, even if this is later than the time limit agreed upon, the bank of the seller's country accepts the documents of payment in the manner of encashment with prior acceptance.

CHAPTER XII SEVERAL GENERAL PROVISIONS ON RESPONSIBILITY

¶ 67-A⁴⁶

1. The parties bear material responsibility for non-fulfillment or improper fulfillment of obligations.

2. The forms of material responsibility are:

(a) payment of a fine by the party who did not fulfill an obligation or who fulfilled it in an improper manner (the debtor) to the other party (the creditor);

(b) compensation of losses to the creditor by the debtor.

3. The provisions of the present General Conditions for Delivery and of bilateral agreements determine in which cases the forms of material responsibility indicated in Point 2 of this paragraph are applied.

4. If not otherwise established in the contract, the party which enlists a third person to fulfill his contract obligations is responsible to the other party for the non-fulfillment or improper fulfillment of obligations by this third person as if they were his own actions.

¶ 67-B

1. The debtor is obliged at the request of the creditor to pay him a fine for non-fulfillment or improper fulfillment of an obligation, when such a fine is provided for by the present General Terms of Delivery, by bilateral agreement, or by contract.

2. The right of the creditor to request payment of a fine arises by virtue of the very fact of non-fulfillment or an improper fulfillment of the debtor's obligation.

3. Arbitration does not have the right to reduce the fine, the request for payment of which was presented in accordance with the present General Terms of Delivery or with bilateral agreement.

46. The new provisions 67-A, 67-B, 67-C, 67-D and 67-E of the 1979 revision of the GCDG introduce a new concept into the system of socialist trade—that of compensation of losses. Previously, the buyer could only exact payment of a penalty. Now, upon non-fulfillment or improper fulfillment of an obligation, the buyer is entitled to either a fine under the situations stipulated by the GCDG or compensation of incurred losses in situations for which fines are not stipulated. Certain conditions must be present before a claim for compensation of losses can arise, i.e., the presence of a party's non-fulfillment or improper fulfillment of an obligation, arising from the fault of this party, which directly causes material loss to the other party. Furthermore, losses are defined and compensation is limited to direct losses.

4. In cases when full or partial non-fulfillment or improper fulfillment of an obligation is the result of the creditor's failure to render assistance to the debtor in fulfilling the obligation, or in the completion by the creditor himself of other improper actions in fulfillment of an obligation, arbitration has the right to deny the creditor in full or in part satisfaction for his request to impose a fine, depending on the extent the improper behavior of the creditor influences the fulfillment of the obligation by the debtor.

¶ 67-C

1. A party does not have the right to file any kind of claim for compensation of losses on the grounds indicated below, for which the right of exacting a fine is stipulated by the present General Conditions for Delivery:

- for delay in delivery (¶ 83);
- for delay in presentation of technical documentation (¶ 84);
- for failure to present a certificate of analysis (¶ 84-A);
- for delay in delivery upon the suspension of shipment because of recurring defects (Point 3, ¶ 80);
- for non-use of goods (Point 5, ¶ 31 and Point 4, ¶ 75);
- for an unjustified request for return of payment (¶ 58);
- for a letter of credit unopened in the established time period (Points 1 and 3, ¶ 67).

2. On those grounds, for which in the present General Conditions, in bilateral agreement or in contract, a fine for non-fulfillment or improper fulfillment of obligation is not established, the debtor is obliged to compensate the creditor for the losses incurred.

¶ 67-D

1. In those cases when the exacting of losses is permitted, the obligation of a party to compensate the other party for losses incurred by non-fulfillment or improper fulfillment of an obligation is the result of the presence of the sum total of the following conditions:

- (a) when non-fulfillment or improper fulfillment of a contract obligation occurs;
- (b) when as a result of a party's non-fulfillment or improper fulfillment of a contractual obligation, the other party suffers material loss;
- (c) when there exists a direct causal tie between the non-ful-

fillment or improper fulfillment of a contractual obligation, by a party and the material loss suffered by the other party;

(d) when the debtor is at fault in the non-fulfillment or improper fulfillment of the obligation.

2. The care usually taken in relations of such kind will be taken into consideration as a criterion in determining fault.

3. The burden of proving the presence of the circumstances stipulated in Subpoints (a), (b), and (c), Point 1 of the present paragraph and the size of the losses lies upon the creditor.

The fault of the debtor is assumed.

¶ 67-E

1. Expenses sustained by the creditor, loss or injury of his property, and, similarly, the loss of expected profit are understood as losses.

2. By virtue of the present General Conditions for Delivery, expenses sustained by the creditor, and losses or injury of his property are liable to compensation as losses. The loss of expected profit is liable to compensation in the case when it is stipulated in bilateral agreement or in contract.

3. The debtor is not obliged to compensate losses which the creditor might have avoided if he had taken the care usually taken in relations of the same kind.

4. The parties of the contract do not have the right to present to each other claims for compensation for the amount of fines paid by them to contractual parties within the country in accordance with national legislation or economic agreements.

5. Indirect losses are not liable to compensation.

¶ 68⁴⁷

1. The parties are released from responsibility for partial or complete fulfillment of a contractual obligation, if this non-fulfillment is the result of circumstances of insurmountable force (force majeure).

47. When and whether insurmountable force is created by unilateral government action in a centrally planned economy presents legal problems. If a government body issues orders for foreign trade organizations of which it essentially is the owner, it may be questionable to view these orders or regulations as external and independent of the foreign trade organization. Szasz, *supra* note 19, at 109 concludes that in such cases, the contract must be amended in order to avoid breach of contract.

2. Circumstances which arise after the conclusion of the contract as the result of events of an extreme nature unforeseeable or unpreventable by a party are understood as circumstances of insurmountable force.

3. The parties are likewise released from responsibility for partial or complete fulfillment of a contractual obligation if this is the result of a bilateral agreement or contract, or of the substantive law of the seller's country applied to the given contract.

4. The burden of proving the presence of the conditions releasing the debtor from responsibility for the non-fulfillment or improper fulfillment of an obligation lies with the debtor.

¶ 69

1. The party for whom the fulfillment of a contractual obligation was impossible as a result of circumstances indicated in ¶ 68 ought to inform the other party about the onset of these circumstances in written form without delay; however, it must be done within the limits of the period of fulfillment of contractual obligations. Notification ought to contain data about the onset and nature of the circumstances and their possible consequences. The party likewise ought to inform the other party without delay about the cessation of these circumstances.

2. The circumstances releasing the party from responsibility for complete or partial non-fulfillment of a contract ought to be attested to by the chamber of commerce or other competent central organ of the appropriate country.

3. Non-notification or late notification about the onset of circumstances releasing him from responsibility by the party for whom the fulfillment of a contractual obligation was impossible entails compensation for losses incurred by the non-notification or late notification.

¶ 70

1. In cases stipulated in ¶ 68, the period of fulfillment of contractual obligations by the parties is moved ahead a proportionate time during which such circumstances and their consequences are in effect.

2. If these circumstances and their consequences continue to be in effect more than five months, for goods for which delivery period does not exceed twelve months from the moment of the concluding of the contract or more than eight months, for goods for which the delivery period is more than twelve months from the moment of the concluding of the contract, each of the parties has

the right to withdraw from further fulfillment of the contract. In such a case neither of the parties has the right to request compensation for possible losses from the other party.

3. A party can use his right to withdraw from a contract, if he informs the other party about the withdrawal from fulfillment of the contract before the beginning of the fulfillment of contractual obligations by the other party, however, not later than a thirty-day period counted from the moment of the concluding of the five- or eight-month period respectively, as stipulated in Point 2 of the present paragraph.

4. The resolutions of the present paragraph regarding extension of the period for fulfilling obligations does not extend to term contracts.

CHAPTER XIII CLAIMS ON QUALITY AND QUANTITY

¶ 71

1. Claims can be filed:

(a) on the quality of goods (including the violation of completeness or assortment) in the case of their failure to conform to the terms of the contract or to the provisions of ¶ 15, if that paragraph applies;

(b) on the quantity of goods, if from the circumstances the responsibility of the transporter is not evident.

2. The seller bears the responsibility for a change in the quality of the goods, for their damage, spoilage or deficiency even after transfer of property right and risk to the buyer, if the change in the quality of the goods, their damage, spoilage or deficiency arose at the fault of the seller.

¶ 72⁴⁸

1. Claims can be filed:

(a) in relation to the quality of goods—within six months, counted from the date of delivery;

48. Claims must be presented within the short periods stipulated by the GCDG, in order to induce speedy resolution of disputes. The presentation of a claim is a prerequisite for subsequently seeking arbitration upon nonsatisfaction of the claim. Suit must be brought in arbitration within the statute of limitations periods set by Chapter XVI of the GCDG.

(b) in relation to the quantity of goods—within three months,⁴⁹ counted from the date of delivery;

(c) in relation to goods which are under warranty—not later than thirty days after the expiration of the warranty period, under conditions revealing the defect within the warranty period.

2. Claims on quality and quantity of perishable fresh vegetables and fruits ought to be filed in periods shorter than that established in Subpoints (a) and (b), Point 1 of the present paragraph. Concrete time limits for the filing of claims for these goods are established in the contract.

3. Non-presentation of a claim in the time period indicated in Point 1 of the present paragraph or established in Point 2 of the present paragraph deprives the buyer of the right to turn to arbitration.

¶ 73

1. In the case when it is unclear from the circumstances who ought to bear responsibility for qualitative or quantitative deficiencies in the goods (the carrier or consignor), or it is possible that there is mixed responsibility, and the claim is presented to the carrier, in order not to lose the right to present a claim to the seller as a result of the expiration of the time limit, the buyer ought to inform him about the filing of the claim with the carrier within the period for presenting a claim to him.

2. If from the explanation of the carrier or a decision of the court, the conclusion is that responsibility for a given claim ought to rest with the consignor, after receipt of the refusal from the carrier or the decision of the court, the buyer is obliged to send to the seller without delay the documents supporting his claim, attaching a copy of the carrier's letter or the decision of the court. In this case the claim is considered presented on time.

¶ 74

1. A claim declaration must, as a minimum, indicate:

(a) the designation of the goods, corresponding to the contract;

(b) the quantity, for which the claim is made;

(c) the contract number;

(d) data allowing the determination of precisely which goods

49. With delivery of goods to or from the Republic of Cuba, this period is four months.

the claim is presented for, by indicating: for mass goods—the transport requisition; for other goods—transport or other requisitions;

(e) the substance of the claim (deficiency, discrepancy of quality, incompleteness, etc.);

(f) the request of the buyer (completion of delivery, correction of defects, etc.).

2. If in the claim declaration any of the data indicated in Subpoints (a) through (e), Point 1 of the present paragraph are not present, the seller is obliged to inform the buyer without delay which data are necessary to complete the claim declaration. In the case of non-fulfillment of this responsibility by the seller, he does not have the right to refer to the claim as incomplete.

3. If the buyer receives the information mentioned in Point 2 of the present paragraph from the seller at a moment when the time limit for the presentation of a claim, in accordance with ¶ 72, has expired or expires within seven days from the date of receipt of the seller's notification, the buyer has the right to complete the claim declaration within seven days from that date, regardless of the expiration of the time limit for the claim declaration.

4. In cases indicated in Points 2 and 3 of the present paragraph, the time limit for examination of the claim by the seller, in accordance with § 76, is calculated from the date of receipt from the buyer of supplementary data fulfilling the claim in accordance with Point 1 of the present paragraph.

¶ 75⁵⁰

1. Upon presentation of a claim on quantity, the buyer has the right to request either completion of the delivery of the

50. The goal of preservation of the contract characterizes the remedial forms available to a buyer for claims on quantity and quality. Completion of delivery or the return of the amount paid for missing goods is the remedy for insufficient delivery. For a claim on quality, the buyer can claim elimination of the defect or a discount for the goods, as well as a fine (similar to that stipulated for delay in delivery) when the goods cannot be used for their designated purpose before elimination of the defect. Furthermore, repeated deliveries of defective lots of goods under an installment contract only give the buyer the right to request suspension of further deliveries until the cause of the defects is corrected, *see* ¶ 80. However, the remedy of rescission of the contract is available: (1) where such right is accorded by bilateral agreement or the contract itself, and arbitration recognizes that the seller cannot eliminate the defect and the buyer cannot use the discounted goods for their designated purpose, or (2) for term contracts, *see* ¶ 77.

missing quantity, or the return of the amount paid by him for the missing quantity of goods.

2. Upon presentation of a claim on quality, the buyer has the right to request either the elimination of the discovered defects, or a discount for the goods.

3. If the buyer requests elimination of the defects, the seller ought to correct the defects at his own expense without delay or to replace the defective goods.

4. In the cases indicated in Point 3 of the present paragraph, if the goods cannot be used for their designated purpose before elimination of the defect, the buyer has the right to request from the seller the payment of a fine as for delay in delivery, at a rate stipulated in ¶ 83, counted from the date of filing the claim to the day of elimination of the defect or to the date of delivery of goods in place of the rejected goods. However, the amount of the fine on one lot or unit of goods cannot exceed 8% of the cost of the defective goods or defective part of the goods requiring correction or replacement, including the fine for delay in delivery, if such a delay took place and the fine was already charged.

5. In the case of agreement by the parties on a discount on the goods in place of the elimination of defects, upon agreement on the rate of the discount the parties ought to agree about whether the fine, charged and/or paid in accordance with Point 4 of the present paragraph, is included in the amount of the discount or whether the discount is paid over and above this fine.

6. If the parties have agreed upon the rate of the discount, but there is not agreement by the parties on the question whether the fine indicated in Point 4 of the present paragraph is included in the amount of the discount or whether the discount is paid over and above this fine, then in such cases, when the actual losses arising with the buyer as a result of non-use of the goods up to the moment of agreement on the discount:

- are lower than the amount of the fine charged and/or paid, the fine is decreased to the amount of the actual losses;
- are higher than the amount of the fine, the actual losses exceeding the amount of the fine are paid by the seller to the buyer, if this is stipulated in bilateral agreement.

7. If in bilateral agreement or in contract, the right of the buyer to withdraw from the contract is established and the terms for withdrawal are not included, then the buyer can use this right, if arbitration recognizes that the seller cannot eliminate the defect

by correction or replacement and the buyer cannot use the goods for their designated purpose with a discount offered by the seller.

¶ 76

1. The seller is obliged to examine a claim on quality or quantity of goods and to answer the buyer on the substance of the claim (to confirm agreement on its whole or partial satisfaction or to inform the buyer of full or partial refusal in its satisfaction) without delay, but no later than within the time limit established in the contract. If such a time limit is not established in the contract, an answer on the substance of the claim ought to be given by the seller without delay, but not later than within sixty days, and regarding whole factories and installations—within ninety days from the date of receipt of the claim by the seller.

2. If the seller does not answer the substance of the claim in the time limit according to Point 1 of the present paragraph, and the buyer turns to arbitration before receipt of the answer, then independent of the result of the matter, the costs for arbitration fees are charged to the seller. The enactment of the present paragraph does not apply to cases stipulated in Point 3 of the present paragraph.

3. If for technically grounded reasons the seller does not have the opportunity to answer the substance of the claim within the time period in accordance with Point 1 of the present paragraph, he can propose to the buyer to extend that time period to a specified date.

4. If the buyer does not consent to the seller's proposal on extension of the time period for answering the substance of the claim and he turns to arbitration, the question of the cost of arbitration fees will be decided by arbitration depending on the results of the matter.

5. If the buyer consents to the proposal of the seller on extension of the time period for answering the substance of the claim, but the seller does not answer within the limits of the agreed-upon period and the buyer turns to arbitration with his claim, then the arbitrator(s) deciding the matter in substance refer(s) the costs for arbitration fees to the seller regardless of the results of the matter.

¶ 77

1. For term contracts, the seller ought to eliminate defects or replace defective goods within the limits of the delivery period established by the contract. Otherwise, the buyer has the right to withdraw from the contract immediately upon the expiration

of the delivery period and to request from the seller payment of a fine in accordance with ¶ 86 or, if it is not established otherwise in bilateral agreement or in contract, to request compensation for losses incurred by the unfulfilled contract in place of this fine.

2. If the buyer agrees that the seller may eliminate defects in the goods supplied by a term contract after the expiration of the delivery period, then the buyer has the right to request from the seller payment of a fine as for delay in delivery in accordance with Point 5, ¶ 31 (corresponding to Point 4, ¶ 75) from the first day after the expiration of the delivery period stipulated in the term contract.

¶ 78

1. The buyer does not have the right to return goods to the seller upon which he has filed a claim on quality without the consent of the seller.

2. The execution of Point 1 of the present paragraph does not apply to cases when the seller continues shipments in spite of the buyer's request to discontinue shipment of the goods after successive deliveries of defective lots.

¶ 79

The provisions of ¶ 32 apply to the return of replaced defective goods or defective parts of goods which are not under warranty.

¶ 80

1. The filing of a claim on one lot does not give the buyer the right to refuse receipt of succeeding lots of goods provided for by contract.

2. With succeeding deliveries of defective lots of goods the buyer has the right to request the discontinuance of further deliveries of goods until the circumstances causing the defects are eliminated by the seller.

¶ 81

1. If in relation to goods which are not under warranty in the contract the seller does not eliminate defects for which he bears responsibility without delay, the buyer has the right to eliminate them himself, referring the normal actual expenses to the seller.

2. Small deficiencies, for which the seller bears responsibility, if their elimination does not cause delays and does not require the participation of the seller, are corrected by the buyer with

referral of normal actual expenses to the seller.

¶ 82

If the final acceptance of goods by quality is made in accordance with the contract in the seller's country, if it is not established otherwise in the contract, claims for quality can be filed only on hidden defects (which could not be revealed with the ordinary verification of goods).

CHAPTER XIV SANCTIONS

¶ 83

1. In the case of a delay in the delivery of goods against the period established in the contract, the seller pays the buyer a fine, calculated from the cost of the goods not supplied on time.

2. If it is not otherwise established in bilateral agreement or contract, the fine is charged from the first day of the delay at the following rate:

- during the first thirty days—.05% per day;
- during the following thirty days—.08% per day;
- subsequently—.12% per day of delay.

3. The general amount of the fine for delay, however, cannot exceed 8% of the cost of the goods in relation to which the delay took place.

¶ 84⁵¹

If the seller permits delay in the presentation of technical documentation without which machines or equipment cannot be

51. ¶¶ 84 and 84-A were revised in the 1979 GCDG. Previously, both were included in one ¶ 84 as follows:

1. If the seller permits a delay in the presentation of technical documentation without which the machines or equipment cannot be put into operation, he shall pay a penalty calculated on the basis of the value of the machines or equipment to which the technical documentation pertains, in the procedure and amount established in ¶ 83.

2. If the parties agreed, in a contract for goods intended for processing (for example, raw materials, castings, and rolled products), on provision by the seller of a certificate of analysis without which the goods

put into operation, he pays a fine calculated from the cost of the machines or equipment to which the technical documentation relates, in a manner and at a rate established in ¶ 83. If the delay in the presentation of technical documentation follows a delay in delivery of machines or equipment to which this technical documentation relates, then the fine for delay in presentation of technical documentation is calculated as a continuation of the fine for delay of delivery of machines or equipment. This situation applies likewise to the case when delay in delivery of machines or equipment follows delay in the presentation of technical documentation.

¶ 84-A

1. On goods designated for further work (for example, raw materials, castings, and rolled articles) the parties may agree on the presentation by the seller to the buyer of a certificate of analysis, without which the goods cannot be used for their designated purpose, with indication in the contract of indices which ought to contain such a certificate of analysis.

2. If, having taken on himself in accordance with Point 1 of the present paragraph the obligation to present to the buyer a certificate of analysis without which the goods cannot be used for their designated purpose, the seller permits delay in the presentation of such a certificate, he pays a fine calculated from the cost of the goods to which the certificate relates, in the manner and at the rate established in ¶ 83.

¶ 85⁵²

1. If another period is not established in the contract, then

cannot be used for the intended purpose, with an indication in the contract of the indices that the certificate must contain, then the parties may also agree in the contract that the seller is to pay a penalty for lateness in providing the specified certificate. Unless otherwise established in the contract, the said penalty shall be calculated on the basis of the value of the goods to which the certificate pertains, in the procedure and amount established in ¶ 83.

The revision makes clear the situations in which the 8% maximum penalty for claims of delay in delivery of goods and technical documentation do not apply independently but cumulatively.

52. Point 4 of ¶ 85 was added on in 1979, continuing the introduction of the concept of compensation of losses into the GCDG.

with delay in the delivery of goods of more than four months, and for heavy equipment of made-to-order production of more than 6 months, against the delivery period established in the contract, the buyer has the right to withdraw from fulfillment of the contract in relation to the delayed pieces and parts supplied earlier, if the part of the goods supplied cannot be used without that part which was not supplied.

2. The buyer has the right to withdraw from a contract even before the expiration of the time limit indicated in Point 1 of the present paragraph, if the seller informs the buyer in writing that he will not deliver the goods within this time period.

3. For complete factories and installations the time limit for withdrawal from a contract is agreed upon by the parties in each individual case.

4. Upon withdrawal from a contract on the basis of the present paragraph, the buyer has the right, at his own discretion, which he ought to establish at the moment of notification about withdrawal from the contract, to request from the seller in place of a fine for delay of delivery stipulated in ¶ 83:

- either payment of a fine for non-delivery at the rate of 8% of the cost of the goods, in relation to which the buyer withdrew from the contract;
- or the compensation of losses; with this the appropriate compensation for losses is 4% of the cost of the unsupplied goods, in relation to which the buyer withdrew from the contract, if the buyer does not succeed in demonstrating the presence of losses or of losses of a greater size.

5. In the case of withdrawal from a contract, the seller is obliged to return to the buyer the payments made by the latter with an added charge of 4% yearly.

6. The provisions of Points 1, 2, and 3 of the present paragraph do not apply to term contracts.

¶ 86

1. Upon violation of the time limit for delivery in term contracts, the seller pays the buyer a fine at the rate of 5 percent of the cost of the unsupplied goods, if another rate of fine is not stipulated in bilateral agreement or in contract.

2. If it is not established otherwise in bilateral agreement or in contract, upon violation of a time limit for delivery in a term contract, the buyer has the right, upon withdrawing from the contract, in place of exacting a fine as provided for in Point 1 of the

present paragraph, to request from the seller compensation for losses incurred by the unfulfilled contract.

3. If under a term contract the buyer agrees to accept goods with a delay, the fine indicated in Point 1 of the present paragraph is not collected. In such cases, the seller pays to the buyer a fine at a rate established in ¶ 83 for every day of delay from the first day of delay.

¶ 86-A⁵³

In the case of a return by the buyer of goods in relation to which a claim was filed, without the consent of the seller in violation of Point 1, ¶ 78, the seller has the right to request from the buyer either payment of a fine at the rate of 2% of the cost of the goods returned or compensation for losses.

¶ 87

1. With non-notification or late notification of the buyer by the seller about the shipment of goods, the seller pays to the buyer a fine at the rate of one-tenth of one percent of the cost of the goods shipped, however, not less than 10 rubles and not more than 100 rubles for one shipment.

2. With non-notification or late notification about the shipment, the buyer has the right to present to the seller any claims for compensation of losses, with the exception of expenses for simple transport means (vessels, railroad cars, etc.), for transport paid by the buyer and caused by such non-notification or late notification.

3. The expenses indicated in Point 2 of the present paragraph for simple transport means are paid:

(a) with water transport—over and above the amount of the fine charged and/or paid in accordance with Point 1 of the present paragraph;

(b) with other forms of transport—in part, for that which exceeds the fine charged and/or paid in accordance with Point 1 of the present paragraph; however, compensation for expenses for simple transport of a lot of goods sent under one transport document cannot exceed the maximum rate of the fine stipulated in Point 1 of the present paragraph.

53. This paragraph was added to the GCDG in its 1979 revision. It gives the seller a new right to receive either a penalty or compensation of losses.

¶ 87-A

In those cases when the present General Conditions for Delivery stipulate that the fine is charged for each day of delay, the fine is to be charged for each day of delay which is begun.

¶ 88⁵⁴

1. Claims for payment of a fine ought to be filed not later than within three months. Hence:

(a) for fines charged by the day, this time period begins from the day of fulfillment of the obligation or from the day when the fine has reached the maximum size on a given basis, if obligations were not fulfilled before that day;

(b) for fines which can be charged only once, this time period begins from the day the right of claim is incurred.

2. A claim declaration for payment of a fine ought to contain data which permit the party to whom the claim is presented to examine it and give an answer on its substance within the time limit established in ¶ 89.

If it is not stipulated otherwise by contract, in such a declaration there ought to be indicated:

(a) the contract number, and in appropriate cases, the position in the contract (in supplement to the contract) to which the claim relates;

(b) the designation of the goods, according to the contract;

(c) reference to the corresponding provision of the present General Conditions for Delivery, or of a bilateral agreement, or to the term of a contract, on basis of which the claim is presented;

(d) the violation which calls for filing of the claim (delay of delivery, return of an amount paid through a groundless claim, delay in the opening of a letter of credit, etc.);

(e) the amount of the request;

(f) computation of the fine.

If the claim affects two or more provision of the contract

54. Points 2 and 3 of this paragraph were changed in the 1979 revision. Formerly, these points were as follows:

2. The provisions of paragraph 1 of the present section shall also apply to claims for payment of a penalty in the event of rescission of the contract.

3. The calculation of a penalty charged shall be done either in the invoice attached to the claim or in the claim declaration itself.

(supplements to the contract), calculation of the fine ought to be made for each provision separately.

3. If in the claim declaration, some of the data indicated in Subpoints (a) through (e) of Point 2 of the present paragraph are missing, the provisions of Points 2 through 4, ¶ 74 apply.

4. The failure to present a claim for payment of a fine within the time limit stipulated in Point 1 of the present paragraph deprives the party filing the claim of the right to turn to arbitration.

¶ 89

The party to whom a claim for payment of a fine is presented is obliged to examine it and to give an answer on its substance within 30 days from the date of its receipt.

¶ 89-A⁵⁵

Provisions of ¶ 88 and ¶ 89 apply to all requests for payment of a fine stipulated by the present General Conditions for Delivery, by bilateral agreement or by contract.

CHAPTER XV ARBITRATION

¶ 90⁵⁶

1. All disputes which might arise from or in connection with a contract, with the exception of the jurisdiction of the general court, are to be examined in arbitration established for such disputes in the country of the defendant, or, by agreement of the parties, in a third nation-member of the Council for Economic Cooperation.

2. A cross-action or request for settlement emerging from the same legal relation as the primary suit is to be examined in the same arbitration as the primary suit.

55. This paragraph was added to the GCDG in the 1979 revision.

56. The arbitration provisions are considered to be preemptory. Also, arbitration does not deal with questions relating to the formation of contracts. See Katona, *The International Sale of Goods Among Member States of the Council for Mutual Economic Assistance*, 9 Colum. J. of Transnat'l L. 226, 251 (1970). Arbitration tribunals have no jurisdiction to supplement the will of the parties or set prices. See Szasz, *supra* note 19.

¶ 91

1. Disputes are examined in accordance with the rules of procedure valid in the arbitration in which the matter is considered.

2. Examination of the matter in arbitration and declaration of the decision are made in the language of the country of arbitration with official translation into another language at the request of one of the parties. The decision of arbitration is likewise formulated in the language of the country of arbitration with official translation into another language at the request of one of the parties.

3. The decisions of arbitration are final and binding upon the parties.

CHAPTER XVI PRESCRIPTION OF CLAIMS

¶ 92⁵⁷

The provisions on limitation of claims stipulated in the present chapter apply to claims arising from relations regulated by the present General Conditions for Delivery.

¶ 93

1. The general time limit for limitation of claims is set at two years.

2. A special time limit for limitation of claims is set at one year:

(a) in suits based on claims on quality or quantity of goods (¶¶ 31, 33, 71, 75, 77, 80-82);

(b) in suits based on claims for payment of fines.

¶ 94⁵⁸

1. The general period of limitation of claims is calculated from the moment the right of claim arises.

57. It is explicitly stated that the provisions of this chapter may not be altered, that is, they are peremptory. See ¶ 102.

58. In response to the changes in the 1979 GCDG enlarging the rights of the seller, the language of point 2(b) of this paragraph was amended. Previously, it read:

(b) for actions based on claims for payment of a penalty, from the day following the day of receipt by the buyer of an answer on the substance of the claim; but if an answer on the substance of the claim is not

2. A special time limit for limitation of claims is calculated:

(a) in cases based on claims for quality and quantity of goods—from the day following the day that the buyer receives the seller's answer on the substance of the claim; and if the answer is not given by the seller in the period in accordance with Point 1 or corresponding to Point 5, ¶ 76—from the day following the day on which the above mentioned period for answer in substance to the claim has expired. If the seller's answer does not contain resolution of the claim in substance, the period of limitation of claim is calculated from the day following the day on which the period for answer of the claim in substance has expired;

(b) in cases based on claims for payment of a fine—from the day following the day that the party who made the claim receives an answer in substance to the claim; and if the answer in substance to the claim is not made within the time limit established in ¶ 89, —from the day following the day on which the period for answer to the claim expires.

¶ 95

Limitation of claims applies to arbitration, if the debtor refers to it.

¶ 96

In a case in which the debtor fulfills an obligation after the expiration of the period of limitation of claim, he does not have the right to request a return of that which was fulfilled, although at the moment of fulfillment he did not know about the expiration of the period of limitation.

¶ 97

Claims for which the period of limitation of claims has expired can be presented for settlement by agreement between the parties.

¶ 98

The course of the period of limitation of claims is discontinued if the presentation of a suit is prevented by a circumstance of insurmountable force which arose or continued to be in effect

given by the seller within the period established in
¶ 89, from the day following the day on which the
period for an answer to the claim expires.

during the period of limitation. The time during which the limitation of claims was discontinued is not included in the period of limitation of claim.

¶ 99

1. The course of the period of limitation of claim is interrupted by the limitation of a suit, and likewise by the written acknowledgement of the debt by the obligated person.

2. After interruption, the course of the period of limitation of claims begins again.

3. If the plaintiff recalls the suit from arbitration, then the period of limitation of claims is not considered interrupted.

¶ 100

With the expiration of the period of limitation of claims on the primary claim, the period of limitation of claims for supplementary claims also expires.

¶ 101

The date of the presentation of a suit is considered the day of its submission to arbitration, and when a suit petition is sent by mail—the date of the stamp of the postal authorities for receipt of the registered letter for dispatch.

¶ 102

Change in the provisions stipulated in the present chapter is not permitted.

¶ 103

The provisions stipulated in the present chapter apply to obligations which have arisen from contracts to which the validity of the present General Conditions for Delivery extends.

CHAPTER XVII OTHER PROVISIONS

¶ 104

1. Claims ought to be presented in written form.
2. Claims for quality, including those for goods under warranty, and likewise for quantity can be filed by telegraph or teletype. In such cases they ought to be confirmed in writing no later than 7 working days from the date of filing the claim by telegraph

or teletype, however within the limits of the period established in ¶ 72. In the case of the sending of late confirmation by the buyer, this letter is considered the filing of the claim for the first time.

3. Supporting documents are attached to the claim. It is recommended that with the presentation of claims for quantity or quality the parties use a "claim act"⁵⁹ in the capacity of one of the documents supporting the claim.

4. The date of filing the claim is considered the date of the stamp of the postal authority of the country of the claimant for receipt of the letter or telegram, or the date of notification by teletype, or the date of serving the claim to the party to whom it is presented.

¶ 105

1. The parties will not present claims reciprocally, for which the amount of the claim does not exceed 10 rubles.

2. The provisions of Point 1 of the present paragraph do not extend to claims for settlements in connection with discovered arithmetic mistakes and to claims for which the goods cannot be used by the buyer without satisfaction.

¶ 106

1. If the debtor is found late regarding a monetary obligation, he ought to pay the creditor 4% yearly from the amount of the delayed payment.

2. The yearly percentage on the corresponding payment of the amount of the fine is calculated from the moment of the beginning of the course of the period of limitation of claims for the claim on payment of such a fine, until the day of its payment.

3. Losses tied with a delay in fulfilling a monetary obligation are not to be compensated when exceeding the yearly percent stipulated in Point 1 of the present paragraph.

¶ 107

If the last day of the period of presenting a claim or of the limitation of claims falls on a non-working day in the country of

59. "Reklamacionnyj/pretenzionnyj akt—mandatory presentation of a claim to a debtor before instituting an action in the court, procedure for extra-judicial settlement of claims in anticipation of an action in the court." N. Preschepenko, Russian-English Law Dictionary (1969).

the filer, the day of conclusion of the period is considered the next nearest working day after it.

¶ 108

1. Neither of the parties has the right to transfer his contractual rights and obligations to a third party without the written consent of the other party.

2. The provisions of Point 1 of the present paragraph do not extend to cases of transfer of contractual rights and obligations to another organization of the same country by the decision of a competent organ empowered to complete foreign trade operations, upon the condition of written notification of the other party.

¶ 109

All expenses, taxes, customs duties and fees on the territory of the seller's country tied with the fulfillment of the contract are paid by the seller, and on the territory of the buyer's country, and on transit territory, by the buyer.

¶ 110⁶⁰

1. The substantive law of the seller's country is to apply to relations of the parties for deliveries of goods on those questions which are not regulated or not fully regulated by contracts or by the present General Conditions for Delivery.

2. The substantive law of the seller's country is understood as the general provisions of civil law, and not special provisions established for relations between socialist organizations and institutions of the seller's country.

60. Other individual provisions of the GCDG specifically provide for application of the law of the seller's country, e.g. ¶¶ 15, 20, 24, 26, 68(3). This paragraph provides a general conflict of law rule. By reference to the "substantive" law of the seller's country *renvoi* is effectively excluded. The provision makes clear that it is the civil law, i.e., legislation regulating relations among citizens and between citizens and domestic socialist organizations, which applies. There is a difference of opinion as to whether this provision is peremptory and mandatory (cannot be departed from), see Katona, *supra* note 56, at 268, n. 59, or relatively peremptory (may be departed from on the basis of the Preamble of the GCDG), see Szasz, *supra* note 19 at 77.

V. Conclusion

The GCDG, a comprehensive multinational unified system of sales law, is also closely related to the municipal systems of its members, which come into play in the application, interpretation, and conflicts of law situations of the GCDG. Dealing with the specific structure of trade existing among planned-economy national systems, the main thrusts of the GCDG are: (1) speedy determination and resolution of conflicts, and (2) continuity of contracts. Although the 1979 revision of the GCDG has introduced the element of compensation of losses into this system, the emphasis remains upon specific performance and the smooth functioning of trade between the foreign trade organizations of these socialist countries. The GCDG is continuously evolving in response to the growth of trade among CMEA members in both volume and complexity, in itself a part of the changing economic scene in international world trade.