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COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT

CONVENTION ON CERTAIN ASPECTS OF INTERNATIONAL FACTORING

Comments by the Government of the Netherlands on the
text of the preliminary draft Convention on inter-
national factoring and on the proposed final clauses

Rome, April 1987

DRAFT CONVENTION

Article 4 and Article X

Since a majority of representatives at the meeting are opposed
to the principle contained in Article 4, it would be more logical not to
lay down that principle in Article 4, but rather the converse rule, with a
reservation clause.

As far as concerns the additions to paragraph 2 of Article 4
proposed by the Secretariat, the first addition is prompted by a case which
is not likely to occur in practice, namely that of a State which, although
its internal law gives effect to a prohibition on assignment, has ratified
the Convention without availing itself of the reservation. It is doubtful
whether the Convention should provide for this situation. The second
addition, although useful, would introduce a rather complicated provision.
The very complexity of an adequate provision seems to offer another reason
for deleting the provision as it is now formulated.

Article 6

The drafting amendment which was introduced in paragraph 1
during the last meeting of the committee does not seem to be correct. On
the one hand the new wording makes it necessary for the debtor, before
paying the factor, to make enquiries about the claims of other persons, and
on the other it would offer malevolent debtors possibilities to chicane.
The amendment should therefore once again be deleted.

The amendment to paragraph 1 was introduced because the wording
of Article 6 as introduced in Doc. 20 caused a problem. According to
paragraph 1 of Article 6 as it then read the debtor was under a duty to pay
the factor if certain conditions were fulfilled, whereas according to
paragraph 2 the payment would discharge the liability of the debtor only if
he had made the payment in good faith and without knowledge of other
persons' claims. It is suggested that the problem be solved in the
following way.

It seems right to keep the words "is under a duty to pay" in
the first paragraph so as to meet the needs of the factor. It is doubtful,
however, whether paragraph 2 is correctly worded. The debtor - and the
factor - would be given more security if it were provided that payment to
the factor in accordance with paragraph 1 should discharge the liability of
the debtor pro tanto without good faith or the absence of knowledge of

other persons' superior rights being required in addition. The debtor, however, should not be protected if he has actual knowledge of the invalidity of the assignment. An amendment to that effect could be included in paragraph 2, which would then read as follows:

"2. Payment to the factor by the debtor in accordance with paragraph 1 of this article shall be effective to discharge his liability <u>pro tanto</u>, unless the debtor had actual knowledge of the invalidity of the assignment."

Article 8, paragraph 1

According to Dutch law the debtor can have a choice between a claim for recovery of the price and a claim for damages. It is illogical that the debtor shall not be entitled to recover money from the factor only if he has a claim against the supplier for recovery of the price. The addition of the words "for recovery of the price", which did not appear in the text proposed by the drafting committee in 1986 (W.P. 1, 23 April 1986), does not seem to be correct. But even then the new paragraph does not seem to solve any problems. If the debtor has a claim against the supplier, he has no reason to bring an action against the factor, except in one case, namely if he would have no redress against the supplier, e.g. because of insolvency. That case, of course, is not covered by Article 8. It is suggested that Article 8 be deleted.

DRAFT FINAL CALUSES

Article I

Variant I is preferred.