



## General Assembly

Distr.: General  
8 June 2004

Original: English

---

United Nations Commission  
on International Trade Law

### **UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods\***

#### *Article 3*

1. Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.
2. This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

---

\* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.



1. This provision extends the Convention's sphere of application to some contracts that include some act in addition to the supply of goods.<sup>1</sup>

## Contracts for the sale of goods to be manufactured or produced

2. Paragraph 1 makes the Convention applicable to contracts for the sale of goods to be manufactured or produced,<sup>2</sup> thus making clear that the sale of these goods is as much subject to the provisions of the Convention as the sale of ready-made goods.<sup>3</sup> The extension of the Convention's sphere of application is, however, limited insofar as paragraph 1 excludes that the contracts where the party who "buys" the goods to be manufactured or produced supplies a "substantial part" of the materials necessary for the manufacture or production of the goods can be considered a contract for the sale of goods.<sup>4</sup> The provision does not provide a specific criterion to be used in determining when the materials supplied by the buyer constitute a "substantial part" of the goods necessary to manufacture or produce the goods. One decision is based upon the idea that a purely quantitative criterion should be used to determine

<sup>1</sup> See also United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 16.

<sup>2</sup> See Hof van Beroep Gent, Belgium, 17 May 2002, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-05-17.htm>>; Oberster Gerichtshof, 18 April 2001, available on the Internet at [http://www.cisg.at/7\\_7601d.htm](http://www.cisg.at/7_7601d.htm); Oberlandesgericht Saarländisches, 14 February 2001, *Internationales Handelsrecht*, 2001, 64; Oberlandesgericht Stuttgart, Germany, 28 February 2000, available on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/583.htm>>; CLOUT case No. 325 [Handelsgericht des Kantons Zürich, Switzerland, 8 April 1999]; CLOUT case No. 331 [Handelsgericht des Kantons Zürich, Switzerland, 10 February 1999]; CLOUT case No. 252 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1998] (see full text of the decision); CLOUT case No. 337 [Landgericht Saarbrücken, Germany, 26 March 1996]; CLOUT case No. 164 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995]; Hof s'Hertogenbosch, Netherlands, 9 October 1995, *Nederlands Internationaal Privaatrecht*, 1996, No. 118; Landgericht Oldenburg, Germany, 9 November 1994, *Recht der internationalen Wirtschaft*, 1996, 65 f.; CLOUT case No. 167 [Oberlandesgericht München, Germany, 8 February 1995] (see full text of the decision); CLOUT case No. 262 [Kanton St. Gallen, Gerichtskommission Oberrheintal, Switzerland, 30 June 1995]; Landgericht Memmingen, Germany, 1 December 1993, *Praxis des internationalen Privat- und Verfahrensrechts*, 1995, 251 f.; ICC Court of Arbitration Award 7660/JK, *ICC Court of Arbitration Bulletin*, 1995, 69 ff.; ICC Court of Arbitration Award 7844/1994, *ICC Court of Arbitration Bulletin*, 1995, 72 ff.; CLOUT case No. 97 [Handelsgericht des Kantons Zürich, Switzerland, 9 September 1993]; CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992] (see full text of the decision).

<sup>3</sup> See also United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 17.

<sup>4</sup> For the applicability of the CISG in cases where reference was made to article 3 (1), but where the courts stated that the "substantial part of the materials necessary" was provided by the seller, see Landgericht München, 27 February 2002, available on the Internet at <<http://131.152.131.200/cisg/urteile/654.htm>>; CLOUT case No. 313 [Cour d'appel Grenoble, France, 21 October 1999]; Landgericht Berlin, Germany, 24 March 1998, available on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=440&step=FullText>>.

whether the goods delivered by the “buyer” constitute a “substantial part” of those necessary for the production and manufacture of the goods.<sup>5</sup>

3. A different—albeit related—issue is that of whether the buyer’s supply of instructions, design specifications, etc., compares to the buyer’s supply of “material necessary” for the manufacture or production of the goods which leads to the contract’s exclusion from the Convention’s sphere of application. In one case, a court held that the Convention was inapplicable, on the grounds of article 3 (1), to a contract according to which the seller had to manufacture goods according to the buyer’s design specifications.<sup>6</sup> The court considered the plans and instructions handed to the “seller” by the “buyer” as being a “substantial part of the material necessary” for the production of the goods. Other courts have found that specifications are not considered “material necessary for the manufacture or production of goods”.<sup>7</sup>

### Contracts for the delivery of labour and services

4. Article 3, paragraph 2 extends the Convention’s sphere of application to also cover contracts pursuant to which the seller undertakes to supply labour or other services alongside the obligations to deliver the goods, transfer the property and hand over the documents,<sup>8</sup> as long as the supply of labour or services does not constitute the “preponderant part” of the seller’s obligation.<sup>9</sup> In order to determine whether the obligations of the seller consist preponderantly in the supply of labour or services, a comparison has to be made between the economic value of the obligations regarding the supply of labour and services and the economic value of the obligations regarding the goods,<sup>10</sup> as if two separate contracts have been made.<sup>11</sup> Thus, where the obligation regarding the supply of labour or services amounts to more than 50 per cent of the obligations of the “seller”, the Convention

<sup>5</sup> See CLOUT case No. 164 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995] (see full text of the decision).

<sup>6</sup> See CLOUT case No. 157 [Cour d’appel Chambéry, France, 25 May 1993].

<sup>7</sup> See CLOUT case No. 331 [Handelsgericht des Kantons Zürich, Switzerland, 10 February 1999] (see full text of the decision); CLOUT case No. 2 [Oberlandesgericht Frankfurt am Main, Germany, 17 September 1991] (see full text of the decision).

<sup>8</sup> For a definition of the contract for the sale of goods under the Convention, see the text of the Digest relating to art. 1.

<sup>9</sup> See Hof Arnhem, Netherlands, 27 April 1999, *Nederlands Internationaal Privaatrecht*, 1999, No. 245; CLOUT case No. 327 [Kantonsgericht des Kantons Zug, Switzerland, 25 February 1999]; CLOUT case No. 287 [Oberlandesgericht München, Germany, 9 July 1997] (see full text of the decision); CLOUT case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 January 1997]; CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995]; CLOUT case No. 152 [Cour d’appel Grenoble, France, 26 April 1995]; CLOUT case No. 105 [Oberster Gerichtshof, Austria, 27 October 1994]; CLOUT case No. 201 [Richteramt Laufen des Kantons Berne, Switzerland, 7 May 1993]; for a decision in which article 3 (2) was mentioned, but in which the court did not solve the issue of whether the contract was one for the sale of goods or one for the supply of labour and services, see Rechtbank Koophandel Hasselt, 19 September 2001, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-09-19.htm>>.

<sup>10</sup> See CLOUT case No. 327 [Kantonsgericht des Kantons Zug, Switzerland, 25 February 1999].

<sup>11</sup> For an implicit affirmation of the principle referred to in the text, see CLOUT case No. 26 [Arbitration—International Chamber of Commerce no. 7153 1992].

is inapplicable. It is on this basis that a court decided that a contract asking for a market study did not fall under the Convention's sphere of application.<sup>12</sup> On the other hand, a contract for the dismantling and sale of a second-hand hangar was considered to fall within the Convention's sphere of application on the grounds that the value of the dismantling amounted only to 25 per cent of the total value of the contract.<sup>13</sup>

5. One court stated that—as a clear calculation would not always be possible—other circumstances such as those surrounding the conclusion of the contract as well as the purpose of the contract should also be taken into account in evaluating whether the obligation to supply labour or services is preponderant.<sup>14</sup> Another court referred to the essential purpose of the contract as a criterion to determine whether the Convention was applicable or had to be disregarded.<sup>15</sup>

---

<sup>12</sup> See CLOUT case No. 122 [Oberlandesgericht Köln, Germany, 26 August 1994].

<sup>13</sup> See CLOUT case No. 152 [Cour d'appel Grenoble, France, 26 April 1995] (see full text of the decision).

<sup>14</sup> See CLOUT case No. 346 [Landgericht Mainz, Germany, 26 November 1998].

<sup>15</sup> See Cass. civ., Italy, 9 June 1995, no. 6499, *Foro padano*, 1997, 2 ff.