



# General Assembly

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## United Nations Commission on International Trade Law

### CASE LAW ON UNCITRAL TEXTS (CLOUT)

#### Contents

	<i>Page</i>
<b>Cases relating to the United Nations Convention on Contracts for the International Sale of Goods (CISG)</b> .....	3
<b>Case 1278: CISG 53; 54; 64(1) (a); 64(1)(b) - Republic of Korea: Seoul High Court Decision 2010Na29609 (14 October 2010)</b> .....	3
<b>Case 1279: CISG 25; 73(1); 73(2) - Republic of Korea: Daegu District Court 2007Gahap11525 (29 April 2010)</b> .....	3
<b>Case 1280: CISG 74; 81(1); 81(2) - Republic of Korea: Suwon District Court (Seongnam Branch Court), 2008Gahap14769 (13 April 2010)</b> .....	4
<b>Case 1281: CISG 25; 73(1); 73(2); 74; 75 - Republic of Korea: Seoul High Court 2008Na14857 (23 July 2009)</b> .....	5
<b>Case 1282 CISG 74 - Republic of Korea: Seoul High Court 2008Na20319 (23 February 2009)</b> .....	5
<b>Case 1283: CISG 53; 54; 61(1); 64(1); 74; 75; 77 - Republic of Korea: Seoul Central District Court 2007Gahap97810 (19 December 2008)</b> .....	6
<b>Case 1284: CISG 35(1); 49; 75 - Republic of Korea: Seoul Central District Court 2007GAHAB19698 (5 December 2008)</b> .....	7



## Introduction

This compilation of abstracts forms part of the system for collecting and disseminating information on Court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.1). CLOUT documents are available on the UNCITRAL website: ([www.uncitral.org/clout/showSearchDocument.do](http://www.uncitral.org/clout/showSearchDocument.do)).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual Articles of each text which are interpreted or referred to by the Court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available, in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references. The abstracts are searchable on the database available through the UNCITRAL website by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these.

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**Cases relating to the United Nations Convention on Contracts for the  
International Sale of Goods (CISG)**

**Case 1278: CISG 53; 54; 64(1) (a); 64(1)(b)**

Republic of Korea

Seoul High Court Decision 2010Na29609

(First instance — Seoul Central District Court Decision 2009Gahap79069)

14 October 2010

Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The seller, an Australian company, entered into a contract with the defendant, a Korean company, for the export of cotton seeds. The defendant accordingly opened a letter of credit (“L/C”) in favour of the plaintiff. However, the L/C included conditions not contemplated in the contract, which the defendant refused to remove despite the plaintiff’s requests. The plaintiff declared the contract avoided and claimed for the damages caused by the defendant’s breach.

Noting that under Articles 53 and 54 CISG, the defendant is obliged to pay for the goods received from the plaintiff in compliance with the formalities required by the contract, the court ruled that the defendant’s failure to open the L/C in a manner conforming to the plaintiff’s contractual terms constituted “a fundamental breach of contract”, justifying the plaintiff’s declaration of avoidance pursuant to Article 64(1)(a) CISG. But even had there been no “fundamental breach”, the defendant’s refusal to honor the plaintiff’s request for revision of the L/C, despite the plaintiff’s granting of additional time to do so, created valid grounds for avoidance under Article 64(1)(b) CISG. The court thus found in favor of the plaintiff.

**Case 1279: CISG 25; 73(1); 73(2)**

Republic of Korea

Daegu District Court 2007Gahap11525

29 April 2010

Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The Chinese buyer (plaintiff), originally a subsidiary of the Korean seller (defendant), was a distributor of the defendant’s goods in China, later on becoming an independent entity. The two parties entered into an agreement for the supply of goods. The defendant, discontent with the conditions of the agreement including substantially lower prices of the goods compared to the price applied to other buyers, suspended the delivery for a short time. It resumed the delivery after a few weeks with a request to renegotiate the terms when the parties renew the contract. The plaintiff, while refusing to renegotiate the price, asserted that the suspension of the delivery and the unilateral demand for raising the price constituted avoidance of the original agreement. It thus filed for damages.

The court found that as the supply agreement provided for the delivery of goods in installments, and the defendant’s suspension of delivery had been a temporary act,

there was no fundamental breach of contract by the defendant. Furthermore, the plaintiff had failed to respond to the defendant's requests to renegotiate the price of the goods several times, ignored the defendant's offer to restart the transaction and filed its lawsuit under a presumption that the contract had been avoided. These acts constituted 'a fundamental breach of contract' by the plaintiff and provided sufficient grounds for anticipating a 'fundamental breach with respect of future installments' as well. The court thus held that the contract was avoided pursuant to the declaration of avoidance subsequently made by the defendant under Article 73(1) and (2), and 25 CISG.

**Case 1280: CISG 74; 81(1); 81(2)**

Republic of Korea

Suwon District Court (Seongnam Branch Court) 2008Gahap14769

(Successful mediation at the second instance court)

13 April 2010

Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The Korean buyer (plaintiff) entered into a contract with the seller from the United States of America (defendant) to import thirteen cars. However, after paying the price of one car, the plaintiff refused to pay further, claiming it was not a party to the contract in question. According to the plaintiff, the buyer named in the contract was a separate corporation. Subsequently, the defendant discontinued the delivery of the cars it had been shipping. The plaintiff claimed this constituted a ground for avoidance of the sales contract and brought suit to recover its original payment. The defendant asserted that the contract had been avoided due to the plaintiff's breach of contract; therefore the plaintiff's original payment is set off by the defendant's claim for damages.

The court found that the plaintiff was in fact a party to the contract, and that the plaintiff had committed a "fundamental breach of contract" by denying its being a party to the contract and failing to pay the total sales price. Despite this, the defendant was still obliged to return the plaintiff's payment with interest and with compensation for any damages caused by the delayed return, pursuant to Articles 81(1) and 81(2) CISG. However, the plaintiff's claim was to be set off against the defendant's claim with the plaintiff receiving its original payment less the amount of damages owed to the defendant.

The court limited the plaintiff's liability to transportation costs and storage expenses in assessing the damages, in consideration of Article 74 CISG, which provides that "damages for breach of contract by one party consist of a sum equal to the loss ... [and] may not exceed the loss which the party in breach foresaw or ought to have foreseen as a possible consequence of the breach of contract." As the CISG does not have provisions to calculate the set off, California state law was applied.

**Case 1281: CISG 25; 73(1); 73(2); 74; 75**

Republic of Korea

Seoul High Court 2008Na14857

(First instance — Seoul Eastern District Court – 2006Gahap6384)

23 July 2009

Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The plaintiff, a Chinese company, concluded a sales contract with the defendant, a Korean company, under which the plaintiff agreed to deliver duck feathers to the defendant in multiple shipments. The defendant was to make payment upon receipt of each shipment. The plaintiff delivered several shipments to a location specified by the defendant and received payment.

When the plaintiff failed to deliver one shipment the defendant had to buy an equivalent amount of goods in replacement from another company. After this, the defendant notified the avoidance of the contract to the plaintiff.

The court noting that the parties had their place of business in different states, both contracting states to the CISG, determined that the Convention would apply. The court also noted that as per Article 4 CISG, the Convention only governs the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. Therefore, the defendant's claim for a set off among other claims was not governed by the CISG and would have to be determined by private international law. Article 26 of Korean Private International Law provides that the governing law of a set off is the seller's law, which means that Chinese law was the governing law in this regard.

As to the plaintiff's failure to deliver one of the installments of duck feathers, the court stated that it constituted a fundamental breach of contract and gave the defendant grounds to conclude that a breach of contract would occur also with respect to future installments. Therefore, the contract, except for the orders already completed, was to be considered avoided pursuant to Articles 25 and 73 CISG.

Since the defendant had to buy duck feathers from another company in replacement of the goods not delivered, the plaintiff should pay for the difference between the contract price and the price in the substitute transaction, as per Articles 74 and 75 CISG, as well as further damages such as the air transport cost.

**Case 1282: CISG 74**

Republic of Korea

Seoul High Court 2008Na20319

(First instance — Seoul Eastern District Court – 2006Gahap22303,

Last instance — Supreme Court 2009Da25982)

23 February 2009

Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The plaintiff, a Chinese company, sold clothing to the defendant, a Korean individual. The plaintiff delivered the clothing over several months for sale by the

defendant to other buyers. Because of defects with the goods and a delay in delivery, the defendant had to pay damages to those buyers.

The court ruled that as the parties to the contract had their places of business in different states, both contracting states to the CISG, the Convention would apply.

In its decision, the court noted that the plaintiff had been delivering clothing to the defendant for many years and it could have foreseen the damages as a possible consequence of a breach of contract at the time of the conclusion of the contract. Therefore, the plaintiff had to pay a sum equal to the loss suffered by the defendant (Art. 74 CISG).

**Case 1283: CISG 53; 54; 61(1); 64(1); 74; 75; 77**

Republic of Korea

Seoul Central District Court 2007Gahap97810

19 December 2008

Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The plaintiff, a Singaporean company, and the defendant, a Korean company, concluded a contract of sale on 1 March 2004 under which the former agreed to supply the defendant with crude oil in exchange for the defendant's opening a letter of credit (L/C) by a given date. When the defendant failed to perform its obligation, the plaintiff declared the contract avoided. Soon after, it resold the oil to a third party and suffered a loss.

The court stated that the CISG was applicable since the parties had their place of business in two different contracting States to the Convention.

Referring to Articles 53 and 54 CISG, the court noted that the defendant's failure to open a L/C constituted a fundamental breach of contract because the defendant did not comply with the obligation required under the contract. The plaintiff thus was entitled to declare the contract avoided pursuant to Articles 61(1) and 64(1) CISG.

Since the plaintiff had to resell the crude oil to another buyer at a lower price, and considering the provisions of the second contract and the storage condition inherent to crude oil, the court stated that the defendant foresaw or ought to have foreseen at the time of the conclusion of the contract that its failure to perform would lead the plaintiff to pay extra charges for the storage of the crude oil as a possible consequence (Art. 74 CISG). Therefore, the defendant must compensate the plaintiff for the difference between the contract price and the price in the substitute transaction and the extra payment for the storage (Art. 75 CISG).

The court rejected the defendant's claim for a reduction of the damages under Article 77 of the Convention, because the defendant had failed to prove that the plaintiff had not taken any reasonable measure to mitigate the damages.

**Case 1284: CISG 35 (1); 49; 75**

Republic of Korea: Seoul Central District Court

2007GAHAB19698

5 December 2008

Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The plaintiff, a Korean company, and the defendant, a Spanish company, entered into a contract under which the latter would supply the former with clothing. However, after receiving a sample of the material produced by the defendant, the plaintiff declared the contract void, claiming that the materials did not meet the standards agreed upon.

The plaintiff bought the clothing from another company in replacement and filed for damages equivalent to the price difference, pursuant to Articles 35(1), 49 and 75 CISG.

The court dismissed the claim on the basis that there was insufficient proof that the agreement required the material to be of a specific quality (Art. 35(1) CISG). In such a case, according to Article 35(2) (a) CISG, the goods can be considered as not conforming only when they “are not fit for the purposes for which goods of the same description would ordinarily be used,” which the claimant also failed to prove.