



**United Nations Commission
on International Trade Law**

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

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Introduction

1. As has been revealed by the preparatory work, the interplay of articles 14 and 55 is one of the most delicate questions raised by the Convention.¹

¹ 1980 Vienna Diplomatic Conference, Summary Records of Meeting of the First Committee, 8th meeting, Monday, 17 March 1980. On the same question, see Digest, article 14.

* 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.

Priority of the intention of the parties

2. Court and arbitral decisions consistently find that for the application of article 55, as for other provisions of the Convention, one must refer first and foremost to the intention of the parties. Article 55 does not enable a judge or arbitrator to establish a price when it has already been determined², or made determinable, by the contracting parties³. Article 55 of the Convention is likewise inapplicable when the parties have decided to make their contract subject to subsequent agreement on the price⁴.

Salvage of a contract specifying no price

3. In one case, a Supreme Court decided, with regard to the sale of aircraft engines, that an offer to sell had no force in the light of article 14 of the Convention because it did not contain the price of all types of aircraft engines among which the buyer could choose and that the contract was therefore invalid⁵. That decision seems to show that article 55 does not make it possible to give effect to a contract which is invalid owing to the absence of a price and that article 14 of the Convention thus prevails. Under that interpretation of article 55, the provision is applicable only if the contract of sale was validly concluded without a price.

4. On the other hand, one court invoked article 55 to determine the sale price of raw materials not agreed upon beforehand by the parties⁶. Equally, it appears that arbitrators, confronted with articles 14 and 55, give precedence to article 55 over article 14 and accept the responsibility of establishing the missing price with a view to rendering the contract effective⁷.

² CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000]; CLOUT case No. 151 [Cour d'appel, Grenoble, France, 26 April 1995].

³ ICC Court of Arbitration, award No. 8324, *Journal du droit international*, 1996, 1019; CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

⁴ CLOUT case No. 139 [Arbitration-Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, award No. 309/1993 of 3 March 1995].

⁵ CLOUT case No. 53 [Legfelsőbb Biróság, Hungary, 25 September 1992].

⁶ CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997]. See on this case, Digest, article 14, No. 16.

⁷ See ICC Court of Arbitration, 1999, award No. 7819, *Bulletin of the ICC International Court of Arbitration*, 2001, 60 (“Sale without prior fixing of a price is common in international trade, as is shown by the Vienna Convention of 11 April 1980 on the international sale of goods (art. 55) [. . .]”).

Price fixing by courts

5. The price established by the judge or arbitrator is that “generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned”. While implementation of this provision should not give rise to any particular difficulties when the goods consist of raw materials or semi-finished products, it is a different matter when the contract deals with manufactured products. Thus, in a case involving the sale of aircraft engines, the Supreme Court of a State came to the conclusion that the price of aircraft engines could not be determined under article 55 because they have no market price as such⁸.

⁸ CLOUT case No. 53 [Legfelsőbb Biróság, Hungary, 25 September 1992].
