

DECLARATION OF PRICE REDUCTION UNDER THE CISG  
ARTICLE 50 PRICE REDUCTION REMEDY

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I. AN OVERVIEW OF THE CISG ARTICLE 50 PRICE REDUCTION REMEDY

CISG Article 50<sup>1</sup> provides for the rules that govern the principle of price reduction. Price reduction as a remedy for contractual breach is found in most continental European legal systems, while it is unknown in the common law systems, which only acknowledge the right to damages.<sup>2</sup> It is said to have originated in the Roman era.<sup>3</sup>

Price reduction as a remedy will be quite useful to the buyer as an independent right coexisting with the right to claim damages provided for in Article 45(1)(b). For example, where the seller can claim exemption under Article 79, and therefore the buyer will not be able to claim damages, the latter may resort to the Article 50 price reduction remedy. In addition, where the buyer has difficulties in proving his loss, he may avoid these difficulties simply by choosing to reduce the price.

It is also suggested that where the price of the goods sold has gone down since the contract was concluded but before the goods are actually delivered, the buyer will be better off seeking remedies under the price reduction scheme, for the sum calculated under Article 50 will be higher than the actual

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If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

United Nations Convention on Contracts for the International Sale of Goods, art. 50, Apr. 11, 1980 [hereinafter CISG].

2. Commentary on art. 50 by Ulrich Huber *in* COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 437 (Peter Schlechtriem & Ingeborg Schwenzer ed., Geoffrey Thomas trans., 2d ed. 1998) [hereinafter COMMENTARY].

3. *Id.*

difference in value between the defective and non-defective goods at the time of delivery.<sup>4</sup>

## II. IS ANY SEPARATE DECLARATION OF PRICE REDUCTION REQUIRED UNDER ARTICLE 50?

In relation to the Article 50 price reduction remedy, it is often asked whether the buyer will have to make any separate declaration of price reduction before he actually reduces the price, as the buyer will have to when he wants to avoid the contract. The issue of a separate declaration requirement arises especially when the buyer has not yet paid the price. If he does not have to make any separate declaration of price reduction, then he may simply pay the price reduced by the amount calculated under Article 50. On the other hand, if he is required to do so, he will have to notify the seller of his intention to pay the reduced price before he actually does so.

Of course, the buyer may utilize the price reduction remedy even after he has already paid the price. In this case, however, the issue of a separate price reduction declaration does not arise because he will only be able to exercise this remedy by asking the seller to return the corresponding amount from the seller, which will function as a declaration or notice of his express intention to use the price reduction remedy.

Although there are several cases in which the courts decided that the buyers had lost their right of price reduction because they did not give notice of defects,<sup>5</sup> only one case is reported in the UNCITRAL CLOUT system which directly deals with the notice of intention, CLOUT Case No. 83 [Oberlandesgericht München, Germany, 2 Mar. 1994].

In this case, the plaintiff, a Swedish seller, entered into a contract with the defendant, a German buyer. According to the contract, the plaintiff was to deliver a certain amount of coke to a company in the former Yugoslavia under instructions of the defendant. Having received the coke, however, the defendant refused to pay the purchase price, mainly relying on a complaint made by the Yugoslav company that the coke was of inferior quality. The

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4. *Id.* at 438.

5. For example, CLOUT Case No. 56 [Canton of Ticino Pretore di Locarno Campagna, Switzerland, 27 Apr. 1992]; CLOUT Case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 Jan. 1993]; CLOUT Case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]; CLOUT Case No. 303 [Court of Arbitration of the International Chamber of Commerce; Case No. 7331, 1994]; CLOUT Case No. 343 [Landericht Darmstadt, Germany, 9 May 2000].

plaintiff brought an action against the defendant, demanding payment of the purchase price.

In the relevant part of its decision, the German court held that the defendant was not entitled to a reduction of the purchase price because he did not express his intention to reduce the price. The court's decision seems to be based on the assumption that Article 50 requires the buyer to make a separate declaration before he is able to resort to the price reduction remedy.

Citing this case, UNCITRAL in its digest of case law notes that “[i]t has been observed that [A]rticle 50 further requires that the buyer express its intention to reduce the price.”<sup>6</sup>

The court's decision is interesting because Article 50 does not say anything about the need of a separate declaration. It simply provides that if the goods do not conform with the contract, the buyer may reduce the price.

The court was not explicit about why it believed that the buyer should express his intention to the seller before he reduces the price. The court may have drawn on the requirement of declaration for avoidance of contract and envisioned a similar requirement for reduction of price, for before dealing with the buyer's attempt to reduce the price, the court discussed whether the buyer made a timely declaration for avoidance of contract. In the case of avoiding the contract, however, Articles 49(1) and 26, unlike Article 50, explicitly state that the buyer will have to declare avoidance of contract before he relies on the avoidance of contract.

Moreover, the reasoning behind the requirement of declaration for avoidance of contract is the possibility that without such a declaration, the seller might be led to perform in ignorance of the other party's decision to refuse the performance.<sup>7</sup> When the buyer attempts to reduce the price, however, this possibility simply does not exist, for the seller would have already been notified of the alleged defects in the goods by the notice the buyer had given as required by Article 39(1).

Alternatively, the court may have felt that equity requires that the seller be at least given an advance notice of the buyer's intention to seek remedies. It might have reasoned that if the buyer finds the delivered goods defective in any manner and simply pays the price reduced by the amount he deemed warranted, the seller would be deprived of any chance to dispute the buyer's

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6. The UNCITRAL digest of case law on the United Nations Convention on the International Sale of Goods, art. 50, U.N. Doc. No. A/CN.9/SER.C/DIGEST/CISG/50 (June 8, 2004) (*citing* CLOUT Case No. 83 [Oberlandesgericht München, Germany, 2 Mar. 1994]).

7. JOHN O. HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION § 187.1 (3d ed. 1999).

finding of defects in the goods or his calculation of the lost value due to the alleged defects.

This assumption forgets, however, that when the buyer seeks the price reduction, the seller has already been notified of the alleged defects in the goods by the notice the buyer had given as required by Article 39(1). The seller has already been warned that the buyer will seek remedies of some sort. Therefore it cannot be said that he has been unfairly surprised by the buyer's action when the buyer pays the reduced price, even unilaterally.

Commentators who discuss Article 50 seem to be in agreement that any separate declaration of price reduction is not necessary under the Article 50 price reduction remedy scheme. Professor Honnold, one of the CISG drafters, observes that “[l]anguage in earlier versions of Article 50 (‘the buyer may declare the price to be reduced’) might have been construed to give special weight to the buyer’s declaration,” and further notes that “[t]o prevent this interpretation the Diplomatic conference deleted the above language.”<sup>8</sup> Similarly, Professor Huber finds that “Article 50 deliberately does not provide for a specific ‘declaration’ of price reduction,”<sup>9</sup> strongly suggesting that viewed from CISG’s legislative history, its drafters intended that the breaching buyer does not have to make a separate declaration of price reduction to the seller before he resorts to the price reduction remedy.

### III. CONCLUSION

Article 50 does not make any explicit requirement for a separate declaration for reduction of price, and its legislative history supports the view that the drafters decided not to include the requirement in the provision, as correctly explained by commentators. Lacking any justifiable rationale the German court’s insistence upon it should, therefore, be rejected as the proper reading of Article 50. Rather, the provision should be construed as dispensing with any need of a separate declaration in the price reduction remedy scheme.

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8. *Id.* § 313.2.

9. COMMENTARY, *supra* note 2, at 444.