Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

INTRODUCTION

1. This provision describes the extent to which parties to an international sales contract governed by CISG are bound by usages, as well as by practices that the parties have established between themselves.[1] Usages to which the parties have "agreed", along with practices that the parties have established, are covered by article 9 (1); usages that the parties "have impliedly made applicable to their contract" are addressed in article 9 (2). In any case, according to one court, "any applicable practice or usage has the same effect as a contract."[2]

2. The validity of usages is outside the Convention's scope;[3] the Convention addresses only their applicability.[4] As a consequence, the validity of usages is governed by applicable domestic law.[5] If a usage is valid, it prevails over the provisions of the Convention, regardless of whether the usage is governed by article 9 (1) or by article 9 (2).[6] Practices established between the parties and usages under article 9 (2), however, take a backseat compared to contractual agreements of the parties.[7]

USAGES AGREED TO AND PRACTICES ESTABLISHED BETWEEN THE PARTIES

3. Under article 9 (1), the parties are bound by any usage to which they have agreed. Such an agreement need not be explicit,[8] but—as one court has stated[9]—may be implicit. According to one decision, if parties do not want to be bound by the practices established between themselves, they need to expressly exclude them.[10]

4. According to the same court, article 9 (1)—unlike article 9 (2)—does not require that a usage be internationally accepted in order to be binding; thus the parties are bound by local usages to which they have agreed as much as international usages.[11] The same court (in a different case) has stated that usages need not be widely known in order to be binding under article 9 (1) (as opposed to article 9 (2)).[12]

5. According to article 9 (1), the parties are also bound by practices established between themselves—a principle that, according to one arbitral tribunal, "was extended to all international commercial contracts by the UNIDROIT Principles".[13] Article 1.9 (1) of those Principles provides that "the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves."

6. Several decisions provide examples of practices binding under article 9 (1). An arbitral panel has found that a seller was required to deliver replacement parts promptly because that had become "normal practice" between the parties.[14] In another case, an Italian seller had been filling the buyer's orders for many months without inquiring into the buyer's solvency; thereafter, the seller assigned its foreign receivables to a factor, and because the factor did not accept the buyer's account, the seller suspended its business relationship with the buyer; a court held that, based on a practice established between the parties, the seller was required to take the buyer's interest into account in restructuring its business, and thus the seller was liable for abruptly discontinuing its relationship with the buyer.[15] In a different decision, the same court ruled that a seller could not invoke the rule in CISG article 18 which provides that silence does not amount to acceptance because the parties had established a practice in which the seller filled the buyer's orders without expressly accepting them.[16] In another decision,[17] a different court ruled that practices established between the parties may lead to the need to comply with certain form requirements, despite the Convention being based upon the principle of informality. In one case, an arbitral tribunal upheld the practices established between the parties in relation to the determination of the contents of the contract via phone.[18] In a different case, a court disregarded the claim by one party that reservation of title by the seller amounted to a practice established between the parties, since no proof was given of such practice.[19] In a different case, an arbitral tribunal stated that the practices established between the parties imposed a certain way of examining the goods.[20] One court stated that practices established between the parties may impact the way standard contract terms become part of the contract.[21] A different tribunal stated that the fact that the buyer had on several occasions signed the faxed copy of the order confirmation containing standard contract forms established a practice between the buyer and the seller, a practice "the buyer has not deviated from . . . once nor has [the buyer] informed the seller after receipt of the general conditions that it did not wish the application of these conditions or wished to apply its own general conditions, if any." This led

the court to state that the seller's standard contract terms had become part of the contract, since, "[b]y not informing the seller that it did not accept the general conditions, the buyer created in any case the expectation that it agreed to the application of the general conditions".[22] In another case relating to the incorporation of standard contract terms, one court stated that "[a]lthough [Buyer]'s counter-offer was not expressly accepted by the [Seller], it was nevertheless common that the [Seller] accepted the orders of the [Buyer] and delivered according thereto, even though [Seller] had not responded to them." This led the court to state that this amounted to practices established between the parties, with the consequence that "the order of the [Buyer] was the basis for the contract and the standard terms had been effectively included."[23] One court stated that practices had been established between the parties, pursuant to which the seller had always to take back defective goods when providing the buyer with substitutes.[24] In one case, the court stated that a contract had also not been formed in accordance with the practices established between the parties, even though the same procedure, whereby an order was made orally by the buyer and confirmed in writing by the seller, had been followed before. The court held that the existence of such practices did not absolve the parties of their obligations arising out of article 14 (1) and article 18 (1), which provided, respectively, that an offer should be sufficiently definite and that silence on the part of the offeree did not in itself amount to acceptance. The court concluded that, in the case at hand, the seller, who wished to supply the buyer with a new kind of fabric very different from the fabrics sold previously, could not rely on the practices established between the parties for transactions concerning standard fabrics. Since the practices were irrelevant, the 'confirmation of order' should therefore be regarded as an offer to buy which the buyer had not accepted.[25]

7. The Convention does not define "practices established between the parties". According to one court, "[c]ontrary to usages, which must be observed in at least one branch of industry, practices within the meaning of article 9 CISG are established only between the parties. Practices are conduct that occurs with a certain frequency and during a certain period of time set by the parties, which the parties can then assume in good faith will be observed again in a similar instance. Examples are the disregard of notice deadlines, the allowance of certain cash discounts upon immediate payment, delivery tolerances, etc."[26] According to some courts, a practice is binding on the parties pursuant to article 9 (1) only if the parties' relationship has lasted for some time and the practice has appeared in multiple contracts. According to one tribunal, this requirement is met where the parties had previously concluded a dozen transactions.[27] One court asserted that article 9 (1) "would require a conduct regularly observed between the parties . . . [of] a certain duration and frequency . . . . Such duration and frequency does not exist where only two previous deliveries have been handled in that manner. The absolute number is too low".[28] Another court dismissed a seller's argument that reference on two of its invoices to the seller's bank account established a practice between the parties requiring the buyer to pay at the seller's bank. The court held that, even if the invoices arose from two different contracts between the parties, they were insufficient to establish a practice under article 9 (1) of the Convention. According to the court, an established practice requires a long lasting relationship involving more contracts of sale.[29] Another court has stated that one prior transaction between the parties did not establish "practices" in the sense of article 9 (1).[30] One court stated that where the parties had not concluded any previous contract, no practices could have been established between the parties.[31] According to a different court, however, "[i]t is generally possible that intentions of one party, which are expressed in preliminary business conversations only and which are not expressly agreed upon by the parties, can become "practices" in the sense of article 9 of the Convention already at the beginning of a business relationship and thereby become part of the first contract between the parties".[32] This, however, "requires at least (article 8) that the business partner realizes from these circumstances that the other party is only willing to enter into a contract under certain conditions or in a certain form".[33]

8. Several courts have stated that the party alleging the existence of a binding practice or usage bears the burden of proving that the requirements of article 9 (1) are met.[34]

BINDING INTERNATIONAL TRADE USAGES (ARTICLE 9 (2))

9. By virtue of article 9 (2), parties to an international sales contract may be bound by a trade usage even in the absence of an affirmative agreement thereto, provided the parties "knew or ought to have known" of the usage and the usage is one that, in international trade, "is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned."[35] One court has construed article 9 (2) as providing that "the usages and practices of the parties or the industry are automatically incorporated into any agreement governed by the Convention, unless expressly excluded by the parties".[36]

10. Usages that are binding on the parties pursuant to article 9 (2) prevail over conflicting provisions of the Convention.[37] On the other hand, contract clauses prevail over conflicting usages, even if the usages satisfy the requirements of article 9 (2), because party autonomy is the primary source of rights and obligations under the Convention, as the introductory language of article 9 (2) confirms.[38] Also, one court stated that the practices established between the parties prevail over the usages referred to in article 9 (2).[39]

11. As noted in paragraph 9 of this Digest, to be binding under article 9 (2) a usage must be known by (or be one that ought to have been known to) the parties, and must be widely known and regularly observed in international trade. According to one court this does not require that a usage be international: local usages applied within commodity exchanges, fairs and warehouses may be binding under article 9 (2) provided they are regularly observed with respect to transactions involving foreign parties.[40] The court also stated that a local usage observed only in a particular country may apply to a contract involving a foreign party if the foreign party regularly conducts business in that country and has there engaged in multiple transactions of the same type as the contract at issue.

12. The requirement that the parties knew or ought to have known of a usage before it will be binding under article 9 (2) has been described as requiring that the parties either have

places of business in the geographical area where the usage is established or continuously transact business within that area for a considerable period.[41] According to an earlier decision by the same court, a party to an international sales contract need be familiar only with those international trade usages that are commonly known to and regularly observed by parties to contracts of the same specific type in the specific geographic area where the party has its place of business.[42]

13. There is no difference in the allocation of burden of proof under articles 9 (1) and (2):[43] the party that alleges the existence of a binding usage has to prove the required elements, at least in those legal systems that consider the issue as one of fact.[44] If the party that bears the burden fails to carry it, an alleged usage is not binding. Thus where a buyer failed to prove the existence of an international trade usage to treat a party's silence after receiving a commercial letter of confirmation as consent to the terms in the letter, a contract was found to have been concluded on different terms.[45] In another case, a party's failure to prove an alleged usage that would have permitted the court to hear the party's claim led the court to conclude that it lacked jurisdiction.[46] Similarly, a court has held that, although the Convention's rules on concluding a contract (articles 14-24) can be modified by usages, those rules remained applicable because no such usage had been proven.[47] Where a buyer failed to prove a trade usage setting the place of performance in the buyer's country, furthermore, the place of performance was held to be in the seller's State.[48] And the European Court of Justice has stated that, in order for silence in response to a letter of confirmation to constitute acceptance of the terms contained therein, "it is necessary to prove the existence of such a usage on the basis of the criteria set out" in article 9 (2) of the Convention.[49]

14. There are several examples of fora finding that the parties are bound by a usage pursuant to article 9 (2). A recent Supreme Court decision recognized an international usage in the trade with used construction vehicles: they are usually sold without guarantee (excluding any remedy for defects) unless the seller did not disclose prior accidents or acts of sabotage which damaged the vehicle and of which he knew.[50] In one case, an arbitral tribunal held that a usage to adjust the sales price was regularly observed by parties to similar contracts in the particular trade concerned (minerals).[51] In another decision, a court held that a bill of exchange given by the buyer had resulted in a modification of the contract, pursuant to article 29 (1) of the Convention, which postponed the date of payment until the date the bill of exchange was due;[52] the court indicated that an international trade usage binding under article 9 (2) supported its holding. In yet another case, a court stated that there was a usage in the particular trade concerned which required the buyer to give the seller an opportunity to be present when the buyer examined the goods.[53] In a different case, a court stated that usages as defined under article 9 (2) may impose form requirements that otherwise do not exist under the Convention.[54] In a different case, an arbitral tribunal stated, on the basis of the relevant trade usages, that "the average profit margin of an organization, irrespective of the area of activity, amounts to 10 per cent."[55] In yet another case, one court stated, after looking into trade usages as defined by article 9 (2), that "[i]t appears that the placement of oral orders for goods followed by invoices with sales terms is commonplace, and while every term of the contract is not usually part of the oral discussion, subsequent written confirmation containing additional terms are binding unless timely objected to."[56] One court stated that "where international business usages with respect to certain characteristics [of the goods] exist, these must be presented as a minimum of quality"[57] pursuant to article 9 (2) of the Convention.

15. On the other hand, there are examples of courts finding that certain trade usages claimed by one party did not exist. One court found that in light of the particularity of the production process and the transportation requirements of the goods, a testing-before-delivery requirement "cannot be regarded as a generally accepted and commonly known usage as is contended by the representatives of the buyer."[58]

16. Several decisions have referred to usages when addressing the question of the interest rate to be applied to late payments. One court has twice invoked international usages binding under article 9 (2) of the Convention to solve the issue. In the first decision, the court stated that payment of interest "at an internationally known and used rate such as the Prime Rate" constituted "an accepted usage in international trade, even when it is not expressly agreed between the parties".[59] In the second decision, the court adopted the same position and commented that the "Convention attributes [to international trade usages] a hierarchical position higher than that of the provisions of the Convention".[60] Some courts stated that where the rate of interest has not been agreed upon by the parties or "if no relevant trade usage applies under article 9 CISG, interest rates are governed by the complementary domestic law."[61]

LETTERS OF CONFIRMATION, INCOTERMS AND THE UNIDROIT PRINCIPLES

17. Several cases have invoked article 9 in determining whether silence in response to a letter of confirmation signifies agreement to the terms contained in the letter. In response to an argument seeking recognition of a usage that such silence constituted consent to terms in a confirmation, one court stated that "[d]ue to the requirement of internationality referred to in article 9 (2) CISG, it is not sufficient for the recognition of a certain trade usage if it is only valid in one of the two Contracting States. Therefore, [in order to bind the parties], the rules on commercial letters of confirmation would have to be recognized in both participating States and it would have to be concluded that both parties knew the consequences . . . . It is not sufficient that the trade usage pertaining to commercial letters of confirmation exists only at the location of the recipient of the letter . . . ".[62] Because the contractual effects of silence in response to a letter of confirmation were not recognized in the country of one party, the court found that the terms in the confirmation had not become part of the contract. Although the court noted that domestic doctrines attributing significance to silence in response to a confirmation had no relevance in the context of international sales law, the court nevertheless suggested that "a letter of confirmation can have considerable importance in the evaluation of the evidence". Another court noted that a letter of confirmation binds the parties only "if this form of contract formation can be qualified as commercial practice under article 9 of the Convention".[63] The court held that such a

usage, binding under article 9 (2), existed in the case: both parties were located in countries in which "the contractual effect of commercial communications of confirmation" was recognized; furthermore, the "parties recognized the legal effects of such a communication" and for that reason should have expected that "they might be held to those legal effects".[64] Similarly, one court stated that "silence will in general not be of any legal effect as far as the CISG is concerned. Nevertheless, silence may—in deviation from article 18 (1) (2) CISG—result in an acceptance of the terms contained in the letter of confirmation, if there is a corresponding commercial usage in terms of article 9 (2) CISG which can be readily identified by the parties . . . . Such commercial usage can be assumed if the parties have their places of business in countries whose laws contain rules on commercial letters of confirmation and on the legal effects of silence on the part of the addressee and if these rules are similar to that under German law".[65] Yet another court rejected the idea that domestic rules on the effects of silence in response to a letter of confirmation can be relevant when the Convention is applicable.[66]

18. Several courts commented on the relationship between article 9 (2) and INCOTERMS.[67] After asserting that "INCOTERMS are incorporated into the Convention through article 9 (2)",[68] one court stated that, pursuant to article 9 (2), "INCOTERMS definitions should be applied to the contract despite the lack of an explicit INCOTERMS reference in the contract." Thus by incorporating a "CIF" term in their contract, the court held, the parties intended to refer to the INCOTERMS definition thereof.[69] Similar statements occur in an arbitral award[70] as well as in other decisions of a court in a different State.[71] In the latter decision, the court interpreted an "FOB" clause by referring to the INCOTERMS even though the parties had not expressly referenced the INCOTERMS.[72] More recently, one court stated "[i]n principle, the Incoterms apply only in case of a definite and express agreement by the parties, unless there is a practice which the parties have established between themselves (cf. article 9 (1) CISG . . .). In lack of an express agreement between the parties, these rules may also be applicable under article 9 (2) CISG, as their role as usages is widely recognized and regularly observed in international trade, provided, however, that the applicable Incoterm clause is relevant to the contract . . . . Finally, even when the Incoterms were not incorporated into the contract explicitly or implicitly, they are considered as rules of interpretation . . . ."[73]

19. One court has held that the UNIDROIT Principles of International Commercial Contracts constitute usages of the kind referred to in article 9 (2) of the Convention.[74] Similarly, an arbitral tribunal stated that the UNIDROIT Principles reflect international trade usages.[75]

Notes

[1] 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, 19; for a reference to the text of article 9 (1) in case law, see U.S. District Court, Eastern District of Pennsylvania, United States, 29 January 2010, available on the Internet at www.cisg.law.pace.edu.

[2] Turku Court of Appeal, Finland, 12 April 2002, English translation available on the Internet at www.cisg.law.pace.edu.

[3] CLOUT case No. 605 [Oberster Gerichtshof, Austria, 22 October 2001], also available on the Internet at www.cisg.at.

[4] See CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also available on the Internet at www.cisg.at.

[5] See CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also available on the Internet at www.cisg.at; CLOUT case No. 240 [Oberster Gerichtshof, Austria, 15 October 1998] (see full text of the decision).

[6] See Polimeles Protodikio Athinon, Greece, 2009 (docket No. 4505/2009), English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Ieper, Belgium, 18 February 2002, available on the Internet at www.law.kuleuven.be; Rechtbank Koophandel Veurne, Belgium, 25 April 2001, available on the Internet at www.law.kuleuven.be; Rechtbank Koophandel Ieper, Belgium, 29 January 2001, available on the Internet at www.law.kuleuven.be; CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also available on the Internet at www.cisg.at; Juzgado Nacional de Primera Instancia en lo Comercial No. 10, Argentina, 6 October 1994, available on the Internet at www.cisgspanish.com.

[7] For this result see, for example, Tribunal de Grande Instance de Strasbourg, France, 22 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; Hof van Beroep Antwerpen, Belgium, 24 April 2006, English translation available on the Internet at www.cisg.law.pace.edu.

[8] For a case in which the parties expressly chose to be bound by trade usages, see China International Economic and Trade Arbitration Commission, People's Republic of China, 1990 (Arbitral award No. CISG/1990/01), available on the Internet at www.cisg.law.pace.edu (in the case at hand the parties chose to be bound by an "FOB" clause).

[9] CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also available on the Internet at www.cisg.at.

[10] CLOUT case No. 579 [U.S. District Court for the Southern District of New York, United States, 10 May 2002] (see full text of the decision).

[11] Ibid.

[12] CLOUT case No. 240 [Oberster Gerichtshof, Austria, 15 October 1998] (see full text of the decision).

[13] Court of Arbitration of the International Chamber of Commerce, France, December 1997) (Arbitral award No. 8817), Unilex.

[14] Court of Arbitration of the International Chamber of Commerce, 23 January 1997 (Arbitral award No. 8611/HV/JK), Unilex.

[15] CLOUT case No. 202, France [Cour d'appel de Grenoble, France, 13 September 1995] (see full text of the decision).

[16]CLOUT case No. 313 [Cour d'appel de Grenoble, France, 21 October 1999] (see full text of the decision).

[17]See Kantonsgericht Zug, Switzerland, 14 December 2009, available on the Internet at www.cisg-online.ch.

[18]China International Economic and Trade Arbitration Commission, People's Republic of China, 9 January 2008, English translation available on the Internet at www.cisg.law.pace.edu.

[19]CLOUT case No. 827 [Gerechtshof 's-Hertogenbosch, the Netherlands, 29 May 2007].

[20]China International Economic and Trade Arbitration Commission, People's Republic of China, 2006 (Arbitral award in case No. CISG/2006/16), English translation available on the Internet at www.cisg.law.pace.edu.

[21]Oberlandesgericht Linz, Austria, 8 August 2005, English translation available on the Internet at www.cisg.law.pace.edu.

[22]Netherlands Arbitration Institute, the Netherlands, 10 February 2005, English translation available on the Internet at www.cisg.law.pace.edu.

[23]Oberlandesgericht Innsbruck, Austria, 1 February 2005, English translation available on the Internet at www.cisg.law.pace.edu; see also Landgericht Innsbruck, Austria, 9 July 2004, available on the Internet at www.cisg-online.ch.

[24]CLOUT case No. 889 [Handelsgericht Zürich, Switzerland, 24 October 2003].

[25]CLOUT case No. 490 [Cour d'appel de Paris, France, 10 September 2003].

[26]CLOUT case No. 750 [Oberster Gerichtshof, Austria, 31 August 2005] (see full text of the decision).

[27]High People's Court of Guangdong Province, People's Republic of China, 2005, English translation available on the Internet at www.cisg.law.pace.edu.

[28]CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000] (see full text of the decision).

[29]CLOUT case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 December 1997] (see full text of the decision); see also China International Economic and Trade Arbitration Commission, People's Republic of China, 21 February 2005, English translation available on the Internet at www.cisg.law.pace.edu, stating that "according to article 9 of CISG, the usual practice formed during the parties' long-term business relationship shall be followed".

[30]Landgericht Zwickau, Germany, 19 March 1999, available on the Internet at www.cisg-online.ch.

[31]Rechtbank Arnhem, the Netherlands, 17 March 2004, English translation available on the Internet at www.cisg.law.pace.edu.

[32]CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision); see also CLOUT case No. 537 [Oberlandesgericht Graz, Austria, 7 March 2002] (see full text of the decision).

[33]CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision).

[34]Landgericht Gera, Germany, 29 June 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000] (see full text of the decision); CLOUT case No. 347 [Oberlandesgericht Dresden, Germany, 9 July 1998].

[35]See Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 13 April 2006, English translation available on the Internet at www.cisg.law.pace.edu.

[36]CLOUT case No. 579 [U.S. District Court, Southern District of New York, 10 May 2002], also available on the Internet at www.cisg.law.pace.edu.

[37]CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also available on the Internet at www.cisg.at; CLOUT case No. 240 [Oberster Gerichtshof, Austria, 15 October 1998].

[38]See Hof van Beroep Antwerpen, Belgium, 24 April 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993] (see full text of the decision).

[39]CLOUT case No. 777 [U.S. Court of Appeals (11th Circuit), United States, 12 September 2006].

[40]CLOUT case No. 175 [Oberlandesgericht Graz, Austria, 9 November 1995].

[41]CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also available on the Internet at www.cisg.at.

[42]CLOUT case No. 240 [Oberster Gerichtshof, Austria, 15 October 1998] (see full text of the decision).

[43]See paragraph 8 *supra*.

[44]CLOUT case No. 425 [Oberster Gerichtshof, Austria, 21 March 2000], also available on the Internet at www.cisg.at.

[45]See CLOUT case No. 347 [Oberlandesgericht Dresden, Germany, 9 July 1998].

[46]CLOUT case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 December 1997].

[47]CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision).

[48]CLOUT case No. 998 [Højesteret, Denmark, 15 February 2001].

[49]*Mainschiffahrts-Genossenschaft eb (MSG) v. Les Gravihres Rhinanes SARL*, 20 February 1997, European Community Reports I 927 n.34 (1997).

[50]Bundesgericht, Switzerland, 26 March 2013, *Internationales Handelsrecht* 2014, 187 = CISG-online No. 2561.

[51]Court of Arbitration of the International Chamber of Commerce, France, 1995 (Arbitral award No. 8324), Unilex.

[52]CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (see full text of the decision).

[53]See Helsinki Court of Appeal, Finland, 29 January 1998, Unilex.

[54]Kantonsgericht Zug, Switzerland, 14 December 2009, available on the Internet at www.cisg-online.ch.

[55]Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 13 April 2006, English translation available on the Internet at www.cisg.law.pace.edu.

[56]U.S. District Court, Western District Washington, United States, 13 April 2006, available on the Internet at www.cisg.law.pace.edu.

[57]CLOUT case No. 536 [Oberster Gerichtshof, Austria, 27 February 2003].

[58]Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 16 February 2004, English translation available on the Internet at www.cisg.law.pace.edu.

[59]Juzgado Nacional de Primera Instancia en lo Comercial No. 10, Argentina, 23 October 1991, Unilex.

[60]Juzgado Nacional de Primera Instancia en lo Comercial No. 10, Argentina, 6 October 1994, Unilex.

[61]Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; see also CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision).

[62]CLOUT case No. 276 [Oberlandesgericht Frankfurt a.M., Germany, 5 July 1995].

[63]CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992]; see also Kantonsgericht Freiburg, Switzerland, 11 October 2004, English translation available on the Internet at www.cisg.law.pace.edu, stating that "[u]nder the CISG, differently from Swiss law, a document of confirmation which is not objected to shall be considered as acceptance only if it corresponds with international trade practices or usages between the parties. None of these circumstances are present in the instant case, with the consequence that [Buyer] is not entitled to base its contentions on them."

[64]CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992].

[65]Landgericht Kiel, Germany, 27 July 2004, English translation available on the Internet at www.cisg.law.pace.edu.

[66]Landgericht Frankfurt, Germany, 6 July 1994, Unilex.

[67]U.S. District Court, Southern District of Texas, United States, 7 February 2006, available on the Internet at www.cisg.law.pace.edu; CLOUT Case No. 447 [U.S. District Court, Southern District of New York, United States of America, 26 March 2002], also available on the Internet at www.cisg.law.pace.edu.

[68]See also U.S. District Court, Southern District of Texas, United States, 7 February 2006, available on the Internet at www.cisg.law.pace.edu, stating that "[b]ecause Incoterms is the dominant source of definitions for the commercial delivery terms used by parties to international sales contracts, it is incorporated into the CISG through article 9 (2)"; for similar statements, see CLOUT case No. 575 [U.S. Court of Appeals (5th Circuit), United States, 11 June 2003]; Juzgado Comercial No. 26 Secretaria No. 51, Argentina, 30 April 2003 (docket No. 44766), English translation available on the Internet at www.cisg.law.pace.edu; Juzgado Comercial No. 26 Secretaria No. 52, Argentina, 17 March 2003, English translation available on the Internet at www.cisg.law.pace.edu.

[69]CLOUT Case No. 447 [U.S. District Court, Southern District of New York, United States of America, 26 March 2002].

[70]Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 6 June 2000, available on the Internet at www.cisg.law.pace.edu.

[71]Corte d'appello Genova, Italy, 24 March 1995, Unilex.

[72]See also Juzgado Comercial No. 26 Secretaria No. 51, Buenos Aires, Argentina, 2 July 2003, English translation available on the Internet at www.cisg.law.pace.edu.

[73]Tribunal cantonal du Valais, Switzerland, 28 January 2009, English translation available on the Internet at www.cisg.law.pace.edu.

[74]International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 5 June 1997, Unilex.

[75]Court of Arbitration of the International Chamber of Commerce, Switzerland, October 1998 (Arbitral award No. 9333), Unilex.