

SECTION III. REMEDIES FOR BREACH OF CONTRACT
BY THE SELLER

Article 41

[Buyer's remedies in general: claim for damages;
no period of grace]

(1) If the seller fails to perform any of his obligations under the contract and this Convention, the buyer may:

- (a) exercise the rights provided in articles 42 to 48;
- (b) claim damages as provided in articles 70 to 73.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

PRIOR UNIFORM LAW

ULIS, articles 24, 41, 51, 52 and 55.

Commentary

1. Article 41 serves both as an index to the remedies available to the buyer if the seller fails to perform any of his obligations under the contract and this Convention and as the source for the buyer's right to claim damages.

2. Article 41 (1) (a) provides that in case of the seller's breach, the buyer may "exercise the rights provided in articles 42 to 48". The substantive conditions under which those rights may be exercised are set forth in the articles cited.

3. In addition, article 41 (1) (b) provides that the buyer may "claim damages as provided in articles 70 to 73" "if the seller fails to perform any of his obligations under the contract and this Convention." In order to claim damages it is not necessary to prove fault or a lack of good faith or the breach of an express promise, as is true in some legal systems. Damages are available for the loss resulting from any objective failure by the seller to fulfill his obligations. Articles 70 to 73, to which article 41 (1) (b) refers, do not provide the substantive conditions as to whether the claim for damages can be exercised but the rules for the calculation of the amount of damages.

4. A number of important advantages flow from the adoption of a single consolidated set of remedial provisions for breach of contract by the seller. First, all the seller's obligations are brought together in one place without the confusion generated by the complexities of repetitive remedial provisions. This makes it easier to understand what the seller must do, that which is of prime interest to merchants. Second, prob-

lems of classification are reduced with a single set of remedies. Third, the need for complex cross referencing is lessened.

5. Paragraph (2) provides that a party who resorts to any remedy available to him under the contract or this Convention is not thereby deprived of the right to claim any damages which he may have incurred.

6. Paragraph (3) provides that if a buyer resorts to a remedy for breach of contract, no court or arbitral tribunal may delay the exercise of that remedy by granting a period of grace either before, at the same time as, or after the buyer has resorted to the remedy. The reasons for this provision are discussed in paragraphs 3—5 of the commentary to article 43. Such a provision seems desirable in international trade.