

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

OVERVIEW

1. Article 86 governs a buyer's obligation to preserve goods if the goods are subject to the buyer's control and the buyer intends to reject them. Article 86 (1) closely parallels for buyers the provisions of article 85 applicable to sellers: article 86 (1) imposes a duty on a buyer who has received goods and intends to reject them to take such steps to preserve them as are reasonable in the circumstances.¹ Furthermore, article 86 (1) gives a rejecting buyer a right to retain rejected goods until the seller reimburses reasonable preservation expenses. If a buyer who intends to reject goods has not "received" them within the meaning of article 86 (1), but the goods have nevertheless reached their destination and been placed at the buyer's disposition, article 86 (2) requires the buyer to take possession of the goods "on behalf of the seller." A buyer that takes possession under these circumstances is subject to the rights and obligations relating to preservation provided for in article 86 (1).

APPLICATIONS

2. Article 86 has been cited or involved in a small number of decisions. Most of those decisions have focused on a buyer's claim for the recovery of expenses of preserving goods that it wished to reject.² Thus article 86 has been invoked as the basis for a buyer's recovery of the cost

of preserving delivered goods after the buyer justifiably avoided the contract.³ On the other hand, costs incurred by the buyer, after timely and proper avoidance, for storing rejected air conditioner compressors were treated as damages recoverable under article 74, without citation of article 86.⁴ A buyer's failure to meet its obligation under article 86 (1) to take reasonable steps to preserve a shipment of non-conforming chemicals (as well as its failure to sell the chemicals as required by article 88 (1)) caused a court to deny, in large part, the buyer's claim for the expenses of nearly three years of warehousing the goods.⁵ Where defective steel plates rejected by a buyer were kept in the warehouse of a sub-buyer, the buyer was held not to be entitled to recover preservation expenses from the seller unless and until such expenses were settled and paid over to the sub-buyer.⁶ Where a buyer unjustifiably demanded that the seller stop delivering the goods, and the buyer did not qualify for an exemption for non-performance under article 79 CISG, its claim for the costs of storing goods that the seller delivered was denied.⁷ Finally, a buyer who allegedly received "excess" goods beyond the quantity called for in the contract was found to have an obligation either to return them or pay for them; in response to the buyer's argument that article 86 (1) permits a buyer to retain goods that it intends to reject until the seller reimburses the buyer's expenses of preserving them, the court noted that the buyer had not come forward with any allegation that it had incurred such expenses.⁸

Notes

¹ As was the case with the seller's article 85 obligation to preserve goods, a rejecting buyer's duty of preservation is further elaborated in article 87 (which permits goods to be preserved by being deposited in a warehouse at the other party's expense) and article 88 (which in certain circumstances permits—or even requires—goods to be sold by the party obligated to preserve them). See CLOUT case No. 1153 [Higher Court (Appellate Court) in Ljubljana, Slovenia, 14 December 2005] (Door and door jamb case), English translation available on the Internet at www.cisg.law.pace.edu (where a seller did not wish to take back delivered goods (doors and door jambs) after the buyer had properly avoided the contract, the court, citing article 88 (1) (but not article 86), held that the buyer properly resold the goods in order to reduce storage costs); CLOUT case No. 489 [Appellate Court of Barcelona, Spain, 11 March 2002] (*G & D Iberica S.A. v. Cardel*), English translation available at www.cisg.law.pace.edu, where the court applied domestic law that allowed the deposit of the goods with the court for the benefit of the seller, suggesting that that under articles 86 and 87 CISG depositing the goods with the court may also be carried out for the benefit of the buyer.

²High People's Court of Zhejiang Province, People's Republic of China, 20 August 2014, (Grand Resources Group Co. Ltd v. STX Corp.) (2014) *Zhe Shang Wai Zhong Zi* No. 48 Civil Judgment, available on the Internet at www.ccmt.org.cn; CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008 (Mitias v. Solidea S.r.l)], English translation available on the Internet at www.cisg.law.pace.edu (allowing the buyer to recover the reasonable costs of storing goods after properly avoiding the contract; citing article 85 rather than article 86). But see CLOUT case No. 594 [Oberlandesgericht Karlsruhe, Germany 19 December 2002], where the court noted that the buyer's obligation under article 86 to take reasonable steps to preserve goods was limited to periods when the goods were in the buyer's possession, and did not impose on the buyer responsibility for transporting non-conforming goods back to a seller who had agreed to remedy the lack of conformity (see full text of the decision).

³High People's Court of Zhejiang Province, People's Republic of China, 20 August 2014, (Grand Resources Group Co. Ltd v. STX Corp.) (2014) *Zhe Shang Wai Zhong Zi* No. 48 Civil Judgment, available on the Internet at www.ccmt.org.cn; CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008 (Mitias v. Solidea S.r.l)], English translation available on the Internet at www.cisg.law.pace.edu (allowing the buyer to recover the reasonable costs of storing goods after properly avoiding the contract; citing article 85 rather than article 86); CLOUT case No. 304 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7531)].

⁴CLOUT case No. 85 [U.S. District Court, Northern District of New York, United States, 9 September 1994] (characterizing recovery of preservation costs as "consequential damages"), affirmed in relevant part in CLOUT case No. 138 [U.S. Court of Appeals (2nd Circuit), United States, 6 December 1993, 3 March 1995] (characterizing recovery of preservation costs as "incidental damages") (see full text of the decision).

⁵China International Economic and Trade Arbitration Commission, People's Republic of China, 6 June 1991, Unilex, English translation available on the Internet at www.cisg.law.pace.edu.

⁶High People's Court of Zhejiang Province, People's Republic of China, 20 August 2014, (Grand Resources Group Co. Ltd v. STX Corp.) (2014) *Zhe Shang Wai Zhong Zi* No. 48 Civil Judgment (the buyer was effectively ordered to pay such expenses to the sub-buyer as it was held to be bound to return the goods to the seller at the sub-buyer's warehouse), available on the Internet at www.ccmt.org.cn.

⁷Bulgarian Chamber of Commerce and Industry, Bulgaria, 12 February 1998 (Arbitral award No. 11/1996) (Steel ropes case), English translation available on the Internet at www.cisg.law.pace.edu.

⁸CLOUT case No. 155 [Cour de cassation, France, 4 January 1995] (see full text of the decision).