

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

INTRODUCTION

1. Article 77 requires an aggrieved party claiming damages to take reasonable steps to mitigate losses; if he fails to do so, the breaching party may claim a reduction in the damages recoverable in the amount by which the loss should have been mitigated. If an aggrieved party does not request damages, whether by way of an affirmative claim or by way of set-off, article 77 does not apply.¹ A Supreme Court has held that articles 77 and 80 read together express the general principle in the sense of article 7 (2) that in cases where both parties have contributed to the damage both parties shall bear so much of the loss as corresponds to their share. Where the remedy allows, for instance damages, the loss must be distributed accordingly.²

RELATION TO OTHER ARTICLES

2. Article 77 appears in Section II (Damages) of Chapter V of Part III, and therefore does not expressly apply to remedies other than damages that are available under the Convention. The cost of taking reasonable steps to mitigate damages may be claimed as part of the aggrieved party's damages claim under article 74.³

3. One decision states that the mitigation rule compels the buyer to purchase replacement goods if reasonably possible.⁴ The buyer is then entitled to damages calculated with reference to article 75.

4. Other articles of the Convention may require parties to take specific measures to protect against losses. Articles 85 to 88 provide, for example, that buyers and sellers must take reasonable steps to preserve goods in their possession following breach.⁵ An arbitral tribunal referred to article 88 in deciding whether a seller acted reasonably in relation to perishable goods.⁶

5. Pursuant to article 6, the seller and buyer may agree to derogate from or vary the formula set out in article 77. One decision concluded that if an aggrieved party seeks to enforce a penalty clause in the contract, article 77 does not require the aggrieved party to reduce the penalty in order to mitigate the loss.⁷

6. Article 77 does not state at what point in a legal proceeding the issue of mitigation must be considered by a court or tribunal. One decision concluded that the question of whether mitigation should be considered in a proceeding on

the merits or in a separate proceeding to determine damages is a procedural issue governed by domestic law rather than by the Convention.⁸

MEASURES TO MITIGATE

7. An aggrieved party claiming damages must mitigate them by taking those steps that a reasonable creditor acting in good faith would take under the circumstances.⁹ If a contract has already been avoided, an aggrieved party's notice to the breaching party of a proposed act to mitigate does not revoke the earlier avoidance.¹⁰ In some circumstances the aggrieved party may be excused from taking such measures (see paragraphs 11 and 14 below).

8. Article 77 does not expressly state when the aggrieved party must take measures to mitigate. Several decisions state that an aggrieved party is not obligated to mitigate in the period before the contract is avoided (i.e. at a time when each party may still require the other to perform).¹¹ If an aggrieved party does take mitigation measures, however, he must do so within a reasonable time under the circumstances. One decision found that the seller's resale of goods to a third party two months after they had been rejected was reasonable within the context of the fashion industry.¹² Another decision found that the buyer's purchase of substitute goods approximately two weeks after the seller declared that it would not perform was not a failure to mitigate even though the price in a volatile market had risen sharply.¹³

MEASURES BY AGGRIEVED BUYERS

9. Decisions have found the following measures by aggrieved buyers to be reasonable: concluding cover sales within a reasonable time and at reasonable prices to replace goods that were not delivered;¹⁴ paying another supplier to expedite delivery of already-ordered compressors that could be substituted for defective compressors;¹⁵ contracting with a third-party supplier because of the inability of the breaching party to deliver moulds in time;¹⁶ contracting with a third party to treat leather goods when the seller refused to return tanning machines that it had sold to the buyer and then taken back for adjustments;¹⁷ continuing to print on purchased fabric notwithstanding the discovery of problems with the fabric;¹⁸ requesting special permission from a Government authority to permit re-exportation if the goods proved non-conforming, and proposing to test milk powder in the Free Trade Zone prior to import;¹⁹ using the buyer's own buffer

stocks of coal when the seller made late deliveries;²⁰ proposing to a sub-buyer that the goods the seller delivered late should be accepted with a 10 per cent reduction in price;²¹ selling perishable goods even though not required to do so by articles 85 to 88;²² taking reasonable steps to have a stolen car released from an insurance company;²³ accepting a reduction in the purchase price instead of sending the goods back;²⁴ requesting permission from the buyer to re-sell goods marked with the buyer's trademark, which permission was not given;²⁵ disassembling a unique machine and selling the parts where the machine could not be used or readily resold.²⁶

10. The aggrieved buyer was found to have failed to mitigate damages in the following circumstances: buyer failed to conclude reasonable cover purchases;²⁷ buyer failed to inspect goods properly and to give documents setting out its claims of non-conformity;²⁸ buyer failed to examine shipments of aluminium hydroxide before mixing the shipments together;²⁹ buyer failed to stop the use of vine wax after discovering the wax to be defective;³⁰ buyer failed to look for replacement goods in markets other than the local region;³¹ buyer failed to cancel its contract of sale with sub-buyer or to conclude a substitute purchase;³² buyer failed to provide evidence of the price it received on its sale of non-conforming goods to a sub-buyer;³³ buyer failed to provide evidence as to whether the buyer could buy the same product from the wholesaler newly-designated by the seller;³⁴ buyer failed to stop the processing of swimming suits for three days after becoming aware of a faulty manufacturing process;³⁵ buyer chartered a vessel despite repeated notices that shipment would not take place on time;³⁶ buyer failed to sell goods due to packing deficiencies until after their expiration date.³⁷

11. Several decisions have denied an aggrieved buyer's claim for reimbursement of expenditures because the expenditures did not have the effect of limiting the buyer's loss. One decision declined to award the buyer damages to compensate for the expenses of adapting a machine to process defective wire delivered by the seller because the cost of the adaptation was disproportionate to the purchase price of the wire.³⁸ An aggrieved buyer was also denied recovery for the costs of translating a manual to accompany the goods when the buyer resold them because the buyer failed to notify the seller, which was a multinational company that would already have had manuals in the language into which the manual was translated.³⁹ A few decisions have denied the aggrieved party's claim for the cost of enforcing its claim through a collection agent or lawyer.⁴⁰ One arbitral tribunal held that the buyer failed to mitigate its loss by failing to avoid the contract and conclude cover sales after it became clear that the seller would not perform.⁴¹

12. Several decisions have found that the buyer's failure to act did not violate the mitigation principle. One tribunal found that an aggrieved buyer's failure to buy substitute goods from another supplier was justified by the short delivery time in the contract and the alleged difficulty in finding another supplier.⁴² A court has also concluded that a buyer did not violate the mitigation principle by its failure to inform the seller that the buyer's sub-buyer needed the goods without delay because it was not established that the buyer knew of the sub-buyer's production plans.⁴³ One court held that the buyer's refusal to accept the goods at

much worse terms from the seller did not result in a failure to mitigate damages.⁴⁴ The buyer also did not fail to mitigate by refusing to supply its customers from its own stocks, as those stocks were earmarked for other customers.⁴⁵ A court held that where the steps suggested by the seller were merely speculative, it was insufficient to prove that the buyer failed to mitigate its damages.⁴⁶

MEASURES BY AGGRIEVED SELLERS

13. Decisions have found the following measures by aggrieved sellers to be reasonable: incurring expenses to transport, store, and maintain the undelivered machinery;⁴⁷ reselling goods to a third party;⁴⁸ reselling the goods to a third party within a short period of time;⁴⁹ concluding a substitute sale at the same price at which it obtained the goods, despite evidence that the price was below market price.⁵⁰

14. An aggrieved seller was found to have failed to mitigate damages in the following circumstances: seller drew on a guarantee before avoiding the contract;⁵¹ seller resold the goods at a price below the price offered by the breaching buyer when the latter sought unsuccessfully to amend the contract;⁵² seller failed to conclude a substitute sale for more than six months;⁵³ seller failed to make substitute sales of perishable goods before the goods perished;⁵⁴ seller failed to take administrative steps to avoid penalties on foreign currency earnings;⁵⁵ seller refused to have goods that were incorrectly packed remeasured, which would have solved the problem;⁵⁶ seller bought further raw materials for production despite knowing that buyer would not fulfil the contract;⁵⁷ seller caused delays in disposing of the goods.⁵⁸ Where a buyer breached by refusing to take delivery of goods, a court has reserved decision on the amount of damages, pending receipt of an expert opinion, where the seller's claim for lost profit and the cost of raw materials used to produce the goods might have been reduced if the seller had been able to resell or reuse the goods, or if the investments seller had made to produce the goods were valued or depreciated in a different fashion.⁵⁹

15. An aggrieved seller was excused from taking steps to mitigate in the following circumstances: the seller did not resell the goods during the period when the breaching party was entitled to demand performance, but was excused on the ground that resale during that period would have made it impossible for the seller to perform the contract;⁶⁰ the seller did not resell stockings made to the buyer's particular specifications.⁶¹

16. One court has stated that an aggrieved seller's damages are not to be reduced under article 77 by the price received in a resale of the goods where the seller had the capacity and market to make multiple sales. The court reasoned that to treat the resale as a substitute transaction under article 75 meant that the seller would lose the profit from a sale that it would have made even if the buyer had not breached.⁶²

COST OF REASONABLE STEPS

17. The cost of taking reasonable steps to mitigate damages may be claimed as part of an aggrieved party's damages claim under article 74. One court awarded the cost

of disassembling a machine (in order to resell the parts) as damages to the buyer.⁶³

REDUCTION OF DAMAGES

18. A breaching party may claim a reduction in the damages to be awarded to the aggrieved party in the amount by which reasonable mitigation measures would have reduced the loss to the aggrieved party. In one case the court reduced the damages by the extra costs incurred due to the seller waiting for more than six months to conclude a cover sale.⁶⁴ In another case the arbitral tribunal reduced the claim for loss of profit by an amount calculated with reference to possible cover purchases.⁶⁵ An arbitral tribunal reduced the claim for damages to the cost of the steps that could have been taken to avoid damages.⁶⁶ Several decisions have calculated the reduction without specific reference to the loss that could have been avoided. One decision found that the aggrieved buyer who failed to mitigate should be entitled only to 50 per cent of the difference between the contract price and the price the buyer received when it resold the non-conforming goods to its customers.⁶⁷ An arbitral tribunal divided the loss caused by the buyer's failure to mitigate damages between the aggrieved buyer and the breaching seller who was claiming payment for partial delivery.⁶⁸ One arbitral tribunal reduced the claim for loss of profit by 25 per cent due to the buyer's failure to take reasonable steps.⁶⁹

NOTICE OF STEPS TO MITIGATE

19. Article 77 does not explicitly require an aggrieved party to notify the other party of proposed steps to mitigate losses. One decision, however, denied a buyer compensation for the cost of translating a manual where the buyer failed to

notify the seller that it intended to take this step, reasoning that if the buyer had provided such notice the seller could have supplied existing translations.⁷⁰

PLEADING; BURDEN OF PROOF

20. The second sentence of article 77 states that the breaching party may claim a reduction in damages for failure to mitigate losses. A court has opined that by requiring the party in breach to "claim" a reduction in damages that sentence cast the onus of proof upon the party in breach, being the party who asserted, not the party who denied, the claim; accordingly, the injured party's right of recovery of damages was not conditioned upon its mitigation of losses, nor was that party bound to plead or prove that such mitigation had been properly conducted.⁷¹ Decisions divide on which party bears the burden of pleading the failure to mitigate. An arbitral tribunal has stated that the tribunal should review *ex officio* whether the aggrieved party had complied with the mitigation principle, but that the breaching party had the burden of establishing failure to comply.⁷² A court decision, on the other hand, stated that no adjustment to damages will be made if the breaching party fails to indicate what steps the other party should have taken to mitigate.⁷³ Another decision, however, requires the aggrieved party to indicate the offers for substitute transactions it had solicited before putting the breaching party to the burden of establishing the loss due to failure to mitigate.⁷⁴ One arbitral tribunal required the aggrieved party to prove that it took reasonable steps to mitigate the loss.⁷⁵

21. Decisions on who has the ultimate burden of establishing failure to mitigate consistently place the burden on the breaching party to establish such failure as well as the amount of consequent loss.⁷⁶

Notes

¹ CLOUT case No. 424 [Oberster Gerichtshof, Austria, 9 March 2000] (see full text of the decision).

² Bundesgerichtshof, Germany, 24 September 2012, *Internationales Handelsrecht* 2012, 231 = CISG-online No. 2348.

³ CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002], (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104. English translation available on the Internet at www.cisg.law.pace.edu.

⁴ Bundesgericht, Switzerland, 17 December 2009 (Watches case), English translation available on the Internet at www.cisg.law.pace.edu.

⁵ China International Economic and Trade Arbitration Commission, People's Republic of China, 6 June 1991, English translation available on the Internet at www.cisg.law.pace.edu (cost of freight for return of goods split between buyer who failed to return goods in a reasonable manner and seller who did not cooperate in return).

⁶ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 10 February 2000 (Arbitral award No. 340/1999), English translation available on the Internet at www.cisg.law.pace.edu.

⁷ Gerechtshof Arnhem, the Netherlands, 22 August 1995, Unilex (validity of penalty clause determined under national law); Hovioikeus hovrätt Helsinki, Finland, 31 May 2004 (Crudex Chemicals Oy v. Landmark Chemicals S.A.), English translation available on the Internet at www.cisg.law.pace.edu.

⁸ CLOUT case No. 271 [Bundesgerichtshof, Germany, 24 March 1999] (applying German law).

⁹ CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision).

¹⁰ Landgericht Berlin, Germany, 15 September 1994, Unilex.

¹¹ CLOUT case No. 361 [Oberlandesgericht Braunschweig, Germany, 28 October 1999] (requiring seller to resell would make it impossible for seller to perform the original contract during period when breaching party was entitled to demand performance); CLOUT case No. 130 [Oberlandesgericht Düsseldorf, Germany, 14 January 1994]; China International Economic and Trade Arbitration Commission, People's Republic of China, 18 August 1997 (Vitamin C case), English translation available on the Internet at www.cisg.law.pace.edu.

¹² CLOUT case No. 130 [Oberlandesgericht Düsseldorf, Germany, 14 January 1994] (finding that, in August most retailers in Italian market have filled their stock for the coming season and have no reason to buy more goods for the winter season).

¹³ CLOUT case No. 277 [Oberlandesgericht Hamburg, Germany, 28 February 1997] (transaction characterized as highly speculative).

¹⁴ Efetio Lamias, Greece, 2006 (docket No. 63/2006) (Sunflower seed case), English translation available on the Internet at www.cisg.law.pace.edu (concluding a cover sale for sunflower seed needed in the buyer's oil production business); Hof van Beroep Gent, Belgium, 10 May 2004 (N.V. Maes Roger v. N.V. Kapa Reynolds), English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 681 [China International Economic and Trade Arbitration Commission, People's Republic of China, 18 August 1997] (Vitamin C case), English translation available on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration Commission, People's Republic of China, 15 November 1996 (Oxytetracycline case), English translation available on the Internet at www.cisg.law.pace.edu.

¹⁵ CLOUT case No. 85 [U.S. District Court, Northern District of New York, United States, 9 September 1994], affirmed in part by CLOUT case No. 138 [U.S. Court of Appeals (2nd Circuit), United States, 6 December 1993, 3 March 1995].

¹⁶ Ontario Court of Appeal, Canada, 26 January 2000 (Nova Tool & Mold Inc. v. London Industries Inc.), available on the Internet at www.cisg.law.pace.edu

¹⁷ CLOUT case No. 311 [Oberlandesgericht Köln, Germany, 8 January 1997].

¹⁸ U.S. Court of Appeals (4th Circuit), United States, 21 June 2002 (Schmitz-Werke v. Rockland), 2002 US App. LEXIS 12336, 2002 WL 1357095, available on the Internet at www.cisg.law.pace.edu (buyer continued to attempt to print on the fabric both at the urging of seller and to mitigate damages; article 77 not cited).

¹⁹ Rechtbank 's-Hertogenbosch, Netherlands, 2 October 1998 (Malaysia Dairy Industries v. Dairex Holland) Unilex.

²⁰ Arbitration Court of the International Chamber of Commerce, October 1996 (Arbitral award No. 8740), Unilex (seller bore risk that buyer's buffers were insufficient in light of the unreliability of suppliers).

²¹ Arbitration Court of the International Chamber of Commerce, January 1997 (Arbitral award No. 8786) Unilex.

²² CLOUT case No. 104 [Arbitration Court of the International Chamber of Commerce, 1993 (Arbitral award No. 7197)] (see full text of the decision).

²³ CLOUT case No. 1235 [Oberlandesgericht Dresden, Germany 21 March 2007] (Stolen automobile case), English translation available on the Internet at www.cisg.law.pace.edu.

²⁴ Oberlandesgericht Koblenz, Germany, 19 October 2006 (T-Shirts case), English translation available on the Internet at www.cisg.law.pace.edu.

²⁵ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 16 February 2004 (Arbitral award No. 107/2002), English translation available on the Internet at www.cisg.law.pace.edu.

²⁶ CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002] (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104. English translation available on the Internet at www.cisg.law.pace.edu (buyer disassembled custom-built sizing machine to sell parts).

²⁷ Tribunal of International Commercial Arbitration at the Ukraine Chamber of Commerce and Trade, Ukraine, 2005 (Arbitral award No. 48), English translation available on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration Commission, People's Republic of China, 20 January 1998 (Polyester thread case), English translation available on the Internet at www.cisg.law.pace.edu.

²⁸ CLOUT case No. 474 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 24 January 2004 (Arbitral award No. 54/1999)].

²⁹ CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997].

³⁰ CLOUT case No. 271 [Bundesgerichtshof, Germany, 24 March 1999].

³¹ CLOUT case No. 318 [Oberlandesgericht Celle, Germany, 2 September 1998].

³² CLOUT case No. 476 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 6 June 2000 (Arbitral award No. 406/1998)].

³³ CLOUT case No. 303 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7331)].

³⁴ Helsingin hovioikeus, Finland, 26 October 2000, English translation available on the Internet at www.cisg.law.pace.edu.

³⁵ CLOUT case No. 1029 [Cour d'appel de Rennes, France, 27 May 2008] (Brassiere cups case), English translation available on the Internet at www.cisg.law.pace.edu.

³⁶ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 27 July 1999 (Arbitral award No. 302/1996), English translation available on the Internet at www.cisg.law.pace.edu.

³⁷ China International Economic and Trade Arbitration Commission, People's Republic of China, 8 September 1997 (BOPP film case), English translation available on the Internet at www.cisg.law.pace.edu.

³⁸ CLOUT case No. 235 [Bundesgerichtshof, Germany, 25 June 1997].

³⁹ CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000] (see full text of the decision).

⁴⁰ CLOUT case No. 296 [Amtsgericht Berlin-Tiergarten, Germany, 13 March 1997] (refusing to permit recovery when the aggrieved party employed a debt collection agency in breaching party's jurisdiction rather than bringing suit in aggrieved party's jurisdiction and enforcing this judgment in breaching party's jurisdiction); CLOUT case No. 410 [Landgericht Alsfeld, Germany, 12 May 1995] (denying recover when the aggrieved party hired collection lawyer in the aggrieved party's jurisdiction rather than the breaching party's jurisdiction); Landgericht Düsseldorf, Germany, 25 August 1994, Unilex (holding that employment of agent was reasonable only if it was established that the agent had more effective means of recovery than the aggrieved party itself); Landgericht Berlin, Germany, 6 October 1992, available on the Internet at

www.cisg-online.ch (hiring collection agency deemed contrary to mitigation principle because it was foreseeable that buyer would refuse to pay and the additional expenses of hiring an attorney would have been included in trial costs recoverable from defaulting buyer).

⁴¹ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 13 April 2006 (Arbitral award No. 105/2005), English translation available on the Internet at www.cisg.law.pace.edu.

⁴² CLOUT case No. 166 [Schiedsgericht der Handelskammer Hamburg, Germany, 21 March, 21 June 1996] (no “manifest violation” of mitigation principle) (see full text of the decision).

⁴³ Amtsgericht München, Germany, 23 June 1995, Unilex.

⁴⁴ Rechtbank Arnhem, the Netherlands, 1 March 2006 (Skoda Kovarny v. B. van Dijk Jr. Staalhandelmaatschappij B.V.), English translation available on the Internet at www.cisg.law.pace.edu. See also China International Economic and Trade Arbitration Commission, People’s Republic of China, 15 November 1996 (Oxytetracycline case), English translation available on the Internet at www.cisg.law.pace.edu.

⁴⁵ Rechtbank Arnhem, the Netherlands, 1 March 2006 (Skoda Kovarny v. B. van Dijk Jr. Staalhandelmaatschappij B.V.), English translation available on the Internet at www.cisg.law.pace.edu.

⁴⁶ CLOUT case No. 318 [Oberlandesgericht Celle, Germany, 2 September 1998] (see full text of the decision); (buyer destroyed irradiated meat which may have been difficult to resell in the local market, instead of relabeling and trying to resell).

⁴⁷ CLOUT case No. 301 [Arbitration Court of the International Chamber of Commerce, 1992 (Arbitral award No. 7585)] (need to mitigate because of size and specifications of machinery) (see full text of the decision).

⁴⁸ CLOUT case No. 130 [Oberlandesgericht Düsseldorf, Germany, 14 January 1994]; CLOUT case No. 93 [Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft, Wien—Austria, 15 June 1994] (resale by seller not only justified but may have been obligatory under article 77); CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992]; Iran-US Claims Tribunal, 28 July 1989 (Watkins-Johnson Co. v. Islamic Republic of Iran), Unilex (seller’s right to sell undelivered equipment in mitigation of its damages is consistent with recognized international law of commercial contracts).

⁴⁹ U.S. Court of Appeals (11th Circuit), United States, 12 September 2006 (Treibacher Industrie, A.G. v. Allegheny Technologies, Inc.), 464 F.3d 1235 (11th Cir. 2006), available on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration Commission, People’s Republic of China, 6 January 1999 (Australian raw wool case), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁰ Oberlandesgericht Graz, Austria, 24 January 2002 (Excavator case), English translation available on the Internet at www.cisg.law.pace.edu.

⁵¹ CLOUT case No. 133 [Oberlandesgericht München, Germany, 8 February 1995] (aggrieved seller drew on guarantee following breach without taking steps to mitigate).

⁵² CLOUT case No. 395 [Tribunal Supremo, Spain, 28 January 2000]; Hof van Beroep Antwerpen, Belgium 22 January 2007 (N.V. Secremo v. Helmut Papst), English translation available on the Internet at www.cisg.law.pace.edu (cars sold almost immediately to a third party); China International Economic and Trade Arbitration Commission, People’s Republic of China, 28 November 1996 (Moly-oxide case), English translation available on the Internet at www.cisg.law.pace.edu (seller failed to make cover sales within three months which would have been a reasonable period).

⁵³ Hof van Beroep Antwerp, Belgium, 24 April 2006 (GmbH Lothringer Gunther Grosshandelsgesellschaft für Bauelemente und Holzwerkstoffe v. NV Fepco International), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁴ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 10 February 2000 (Arbitral award No. 340/1999), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁵ CLOUT case No. 1082 [Tribunal of International Commercial Arbitration at the Ukraine Chamber of Commerce and Trade, Ukraine, 27 October 2004] (Lavatory paper case), English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Ukraine Chamber of Commerce and Trade, Ukraine, 12 January 2004 (Automobile tires), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁶ CLOUT case No. 977 [China International Economic and Trade Arbitration Commission, People’s Republic of China, 19 June 2003] (PTA case), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁷ CLOUT case No. 861 [China International Economic and Trade Arbitration Commission, People’s Republic of China, 29 September 1997] (Aluminium oxide case), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁸ China International Economic and Trade Arbitration Commission, People’s Republic of China, 5 February 1996 (Antimony ingot case), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁹ CLOUT case No. 480 [Cour d’appel Colmar, France, 12 June 2001].

⁶⁰ CLOUT case No. 361 [Oberlandesgericht Braunschweig, Germany, 28 October 1999].

⁶¹ China International Economic and Trade Arbitration Commission, People’s Republic of China, post-1989, English translation available on the Internet at www.cisg.law.pace.edu.

⁶² CLOUT case No. 427 [Oberster Gerichtshof, Austria, 28 April 2000] (see full text of the decision).

⁶³ CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002], (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104. English translation available on the Internet at www.cisg.law.pace.edu.

⁶⁴ Hof van Beroep Antwerp, Belgium, 24 April 2006 (GmbH Lothringer Gunther Grosshandelsgesellschaft für Bauelemente und Holzwerkstoffe v. NV Fepco International), English translation available on the Internet at www.cisg.law.pace.edu.

⁶⁵ Tribunal of International Commercial Arbitration at the Ukraine Chamber of Commerce and Trade, Ukraine, 2005 (Arbitral award No. 48), English translation available on the Internet at www.cisg.law.pace.edu. See also China International Economic and Trade Arbitration Commission, People’s Republic of China, June 1999 (Peanut kernel case), English translation available on the Internet at www.cisg.law.pace.edu (damages reduced with reference to the current market price where there was a cover sale for a lower price); China International Economic and Trade Arbitration Commission, People’s Republic of China, 28 November 1996 (Moly-oxide case), English translation

available on the Internet at www.cisg.law.pace.edu (damages reduced with reference to market prices within a three month period after the breach of contract).

⁶⁶ CLOUT case No. 977 [China International Economic and Trade Arbitration Commission, People's Republic of China, 19 June 2003] (PTA case), English translation available on the Internet at www.cisg.law.pace.edu (buyer refused to have goods remeasured where there was incorrect packaging and where remeasuring would have solved the problem).

⁶⁷ CLOUT case No. 474 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 24 January 2000 (Arbitral award No. 54/1999)].

⁶⁸ CLOUT case No. 265 [Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 25 May 1999].

⁶⁹ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russia, 13 April 2006 (Arbitral award No. 105/2005), English translation available on the Internet at www.cisg.law.pace.edu.

⁷⁰ CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000].

⁷¹ CLOUT case No. 1132 [Federal Court of Australia (Full Court), Victoria District Registry, Australia, 20 April 2011] (Castel Electronics Pty Ltd v Toshiba Singapore Pte Ltd), [2011] FCAFC 55 at [322]-[328].

⁷² Arbitration Court of the International Chamber of Commerce, June 1999 (Arbitral award No. 9187), Unilex.

⁷³ Bundesgericht, Switzerland, 15 September 2000 (FCF S.A. v. Adriafile Commmerciale S.r.l.), available on the Internet at www.bger.ch/fr/, English translation available on the Internet at www.cisg.law.pace.edu. See also U.S. Court (11th Circuit), United States, 12 September 2006 (Treibacher Industrie, A.G. v. Allegheny Technologies, Inc.), 464 F.3d 1235 (11th Cir. 2006), available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 17 June 2004 (Arbitral award No. 186/2003 (barter transaction), English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002] (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104. English translation available on the Internet at www.cisg.law.pace.edu.

⁷⁴ CLOUT case No. 318 [Oberlandesgericht Celle, Germany, 2 September 1998] (although burden of establishing failure to mitigate is on breaching party, that was irrelevant in case because buyer was obliged to indicate which offers for a substitute transaction she obtained and from which companies) (see full text of the decision).

⁷⁵ Ibid.; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 13 April 2006 (Arbitral award No. 105/2005), English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1182 [Hovioikeus hovrätt Turku, Finland, 24 May 2005] (Radiated spice case) available on the Internet at www.cisg.law.pace.edu.

⁷⁶ CLOUT case No. 318 [Oberlandesgericht Celle, Germany, 2 September 1998] (see full text of the decision); CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (breaching party had to establish how other party had violated the mitigation principle, the possible alternative courses of action, and the loss that would have been prevented; issue was raised on appeal without specific reference to facts that might be relevant) (see full text of the decision); U.S. Court (11th Circuit), United States, 12 September 2006 (Treibacher Industrie, A.G. v. Allegheny Technologies, Inc.), 464 F.3d 1235 (11th Cir. 2006), available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002] (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104. English translation available on the Internet at www.cisg.law.pace.edu; Arbitration Court of the International Chamber of Commerce, September 1996 (Arbitral award No. 8574) (Metal concentrate case), available on the Internet at www.cisg.law.pace.edu.